

# City of Milford



## CITY COUNCIL AGENDA

**January 25, 2016 - 7:00 P.M.**

Joseph Ronnie Rogers Council Chambers  
Milford City Hall  
201 South Walnut Street  
Milford, Delaware

### PUBLIC HEARING

First State Manufacturing on behalf of GrowUSA LLC  
Final Minor Subdivision  
301 SE Fourth Street  
Tax Map 3-30-11.05-119.00

City of Milford on behalf of GrowUSA LLC  
Final Minor Subdivision/Independence Commons  
316 West Liberty Way  
Tax Map MD-16-173.00-01-02.17

Merestone Consultants on behalf of Milford Public School District  
Final Minor Subdivision  
Milford Middle School, 512 Lakeview Avenue  
Tax Map 1-30-3.07-138.00

Crop Production Services LLC  
Chance of Zone/Current Zone R3; Proposed Zone I2  
Holly Hill Road  
Tax Parcels MD-16-18207-01-01.00 - 99.00; MD-16-18207-02-01.00 - 99.00; MD-16-18207-03-01.00 - 23.00  
Adoption/Ordinance 2015-25

Code of the City of Milford  
Part II-General Legislation/Chapter 230 Zoning  
Article X-Site Plan Review  
§230-52- Review Procedures  
Adoption/Ordinance 2015-26

Change of Zone of Annexed Lands belonging to Mispillion Realty LLC  
Adjacent to Fieldstone Avenue/Brookstone Trace Subdivision  
Current Zone MR; Proposed Zone R3  
Tax Parcel 1-30-3.00-080.02  
Adoption/Ordinance 2016-01  
Adoption/Resolution 2016-04

James Roll on behalf of Manufacturers and Traders Trust Company  
Final Minor Subdivision  
1 NW Front Street  
Tax Map MD-16-183.10-03-56.00; MD-16-183.10-03-82.00; MD-16-183.10-03-87.00

**COUNCIL MEETING**

Call to Order - Mayor Bryan Shupe

Invocation

Pledge of Allegiance

Recognition

Communications

Unfinished Business

Approval/Employee Contract

New Business

Adoption/Resolution 2016-03/All Hazard Mitigation Plan for the City of Milford  
Approval/Amended & Restated City of Milford Retirement Plan

Recess into Executive Session

{Pursuant to 29 Del. C. §10004(b)(2)} (Property Sale/Lease/Incentives)

Return to Open Session

Approval/Letter of Conditions

Adjourn

This agenda shall be subject to change to include additional items including executive sessions or the deletion of items including executive sessions which arise at the time of the public body's meeting.

SUPPORTING DOCUMENTS MUST BE SUBMITTED TO THE CITY CLERK IN ELECTRONIC FORMAT NO LATER THAN ONE WEEK PRIOR TO MEETING; NO PAPER DOCUMENTS WILL BE ACCEPTED OR DISTRIBUTED AFTER PACKET HAS BEEN POSTED ON THE CITY OF MILFORD WEBSITE.

110315 012816

# City of Milford



## **PUBLIC NOTICE CITY OF MILFORD CITY COUNCIL HEARING**

NOTICE IS HEREBY GIVEN that the City Council of the City of Milford will hold a Public Hearing on Monday, January 25, 2016 at 7:00 p.m., or as soon thereafter as possible, in the Joseph Ronnie Rogers Council Chambers at Milford City Hall, 201 South Walnut Street, Milford, Delaware, to take final action upon the matter of:

First State Manufacturing on behalf of GrowUSA LLC for a Final Minor Subdivision of 4.80+/- acres in an I-1 (Limited Industrial District). Property is located at 301 SE Fourth Street, Milford Delaware. Present Use and Proposed Use: Employment and Open Space. Tax Map 3-30-11.05-119.00

All parties of interest are hereby notified to be present and to express their views before a final decision is rendered. If unable to attend, written comments will be accepted up to one week prior to the hearing. Anyone with questions or comments should contact Rob Pierce in the Planning Department via email at [RPierce@milford-de.gov](mailto:RPierce@milford-de.gov) or at 302.424.3712.

By: Christine Crouch  
Deputy City Clerk

*Advertised: Beacon 111115*



PLANNING & ZONING DEPARTMENT  
P 302.424.3712 F: 302.424.3558

201 SOUTH WALNUT STREET  
MILFORD, DE 19963

[www.cityofmilford.com](http://www.cityofmilford.com)

## DATA SHEET FOR GROWUSA LLC

Planning Commission Public Hearing: December 15, 2015

City Council Public Hearing: January 25, 2016

---

<b>Resolution</b>	:	PC15-009
<b>Application Number / Name</b>	:	15-227 / GrowUSA, LLC
<b>Applicant</b>	:	Dave Hitchens First State Manufacturing 301 SE Fourth Street Milford, DE 19963
<b>Owner</b>	:	GrowUSA, LLC 301 SE Fourth Street Milford, DE 19963
<b>Application Type</b>	:	Final Minor Subdivision/Lot Line Adjustment
<b>Present Comprehensive Plan Designation</b>	:	Employment & Open Space
<b>Present Zoning District</b>	:	I-1 (Limited Industrial District)
<b>Present Use</b>	:	Manufacturing
<b>Area and Location</b>	:	4.80 +/- acres located between Columbia Street and Ball Park Lane adjacent to the Milford Little League Facilities.
<b>Property Identification Numbers</b>	:	3-30-11.05-119.00

ENC: Staff Recommendation Report  
Exhibit A – Location & Zoning Map  
Exhibit B – Lot Line Adjustment Plan

X:\Planning & Zoning\0 SUBDIVISION APPLICATIONS\GrowUSA\GrowUSA data sheet.doc



PLANNING & ZONING DEPARTMENT  
P 302.424.3712 F: 302.424.3558

201 SOUTH WALNUT STREET  
MILFORD, DE 19963

www.cityofmilford.com

**STAFF RECOMMENDATION REPORT  
October 28, 2015**

**Application Number / Name** : 15-227 / GrowUSA, LLC

**Applicant** : Dave Hitchens  
First State Manufacturing  
301 SE Fourth Street  
Milford, DE 19963

**Owner** : GrowUSA, LLC  
301 SE Fourth Street  
Milford, DE 19963

**Application Type** : Final Minor Subdivision/Lot Line Adjustment

**Present Comprehensive Plan Designation** : Employment & Open Space

**Present Zoning District** : I-1 (Limited Industrial District)

**Present Use** : Manufacturing

**Area and Location** : 4.80 +/- acres located between Columbia Street and Ball Park Lane adjacent to the Milford Little League Facilities.

**Property Identification Numbers** : 3-30-11.05-119.00

**I. STAFF RECOMMENDATION:**

- The lot line adjustment is consistent with Chapter 230-16 and meets all design standards and area regulations, or has received variance approval for design standards and area regulations by the Board of Adjustment.
- The lot line adjustment would create one continuous parcel owned by the City of Milford for the use of the Little League and would eliminate future land leasing with GrowUSA.

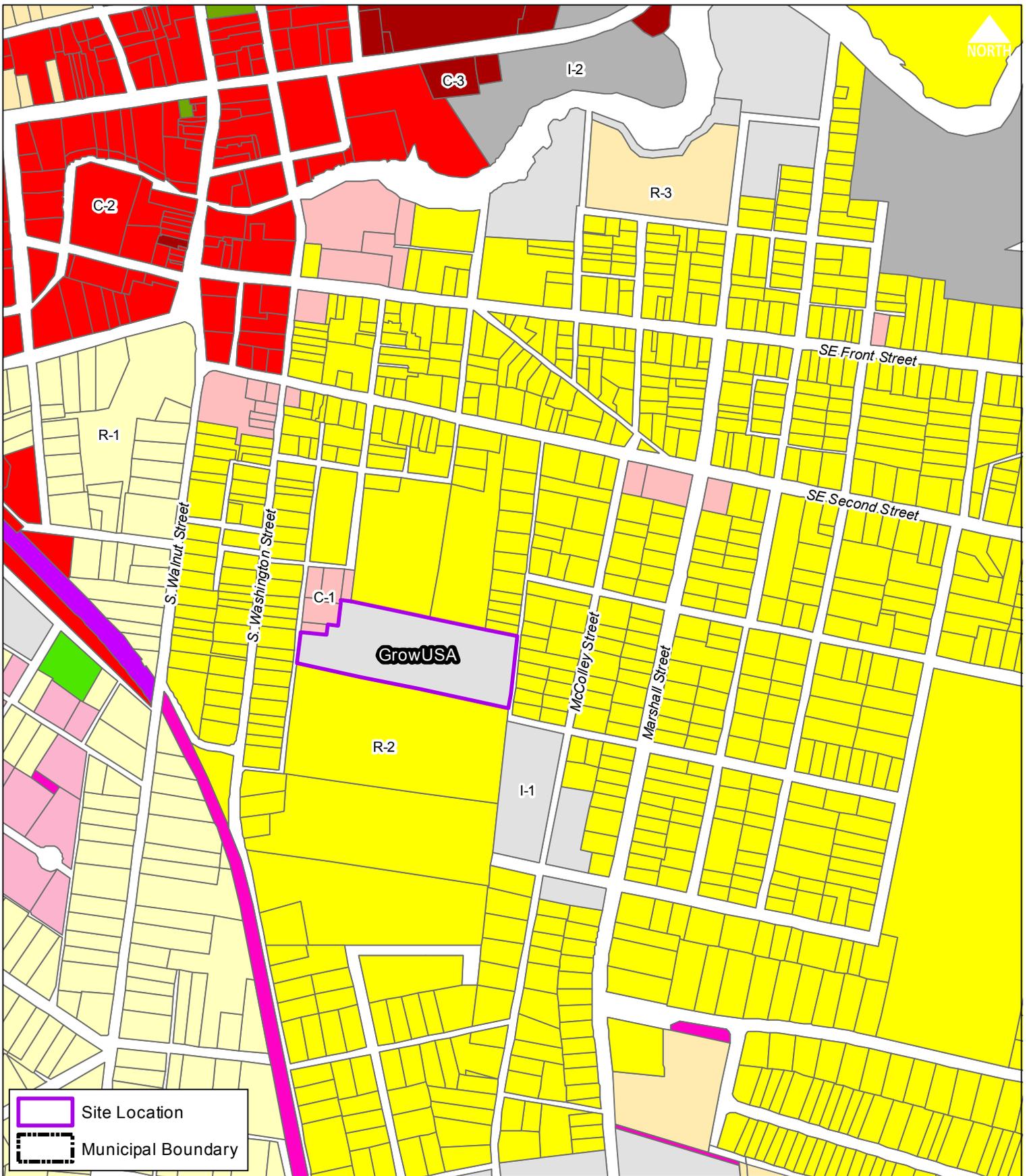
**II. BACKGROUND INFORMATION:**

- July 14, 2014, City Council authorized First State Manufacturing to proceed with the necessary appraisals, surveys and other documents needed in order to exchange land owned by GrowUSA, LLC for a portion of lands in Independence Commons.
- Board of Adjustment approved a variance for the maximum lot coverage allowed on an Industrial zoned property on August 13, 2015.

**III. AGENCY COMMENTS:**

- DelDOT – No comments solicited.
- Sussex Conservation District – No comments solicited.
- State Fire Marshall – No comments solicited.

This recommendation is offered without the benefit of public testimony and is based on the information presented when the application was received by the Planning & Zoning Department. The Planning Commission shall give considerable weight to public testimony received during public hearing in considering its recommendation to City Council in this matter.



Scale: Feet  
0 250 500

Drawn by: WRP Date: 10/26/15

Title:

Final Lot Line Adjustment  
**GrowUSA, LLC**  
Location & Zoning Map

Filepath: FinalLotLineAdjustment\_GrowUSA.mxd

Chapter 200 - SUBDIVISION OF LAND

[HISTORY: Adopted by the City Council of the City of Milford 11-10-2008 by Ord. No. 2008-12.1 ¶ Amendments noted where applicable.]

GENERAL REFERENCES qc

Building construction — See <a href="#">Ch. 88</a> .	Streets and sidewalks — See <a href="#">Ch. 197</a> .
Floodplain management — See <a href="#">Ch. 130</a> .	Trees — See <a href="#">Ch. 211</a> .
Property maintenance — See <a href="#">Ch. 174</a> .	Water — See <a href="#">Ch. 222</a> .
Sewers — See <a href="#">Ch. 185</a> .	Zoning — See <a href="#">Ch. 230</a> .

If, \_

*Footnotes:*

§ 200-1. - Purpose.

These regulations are adopted in order to promote and protect the public health, safety, convenience and general welfare; ensure the orderly growth and development of the City, the conservation, protection and proper use of land and adequate provision for housing, recreation, circulation, utilities and services; and safeguard the City from undue future expenditure for the maintenance of streets and public spaces.

§ 200-2. - Title.

These regulations shall be known and may be cited as the "City of Milford, Delaware, Land Subdivision Regulations."

§ 200-3. - Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ALLEY — A service roadway providing a secondary means of public access to abutting property and not intended for general traffic circulation.

COMMISSION — The Planning Commission of the City of Milford, Delaware.

OPEN SPACE — Areas of land within residential subdivisions or developments including planned unit developments that are available to all residents and or the public and which have the purpose to provide active and/or passive recreational opportunities, maintain land in a predominantly undeveloped and natural state including lands used for:

- (1) Community gardens;
- (2) Promotion of conservation and protection of wildlife;
- (3) Perpetual conservation easements;
- (4) Parks, plazas, walkways, sidewalks and trails;
- (5) Buffers or forested areas; or
- (6) For recreational uses as defined herein.

Open space shall not include areas of land for the following unless otherwise approved by Council:

- (1) Wetlands or stormwater management facilities;
- (2) Drainage easements;
- (3) Flagpole areas;
- (4) Medians (unless designed as a park);
- (5) Signage areas;
- (6) Landscaping in parking areas;
- (7) Predominantly impervious surfaces such as streets and parking lots;
- (8) Required front, side, or rear yards;
- (9) Any land included within designated lot lines; or
- (10) Utility facilities for uses such as sewer, water, gas or electric.

PLAT — The final drawing on which the subdivision plan is presented to the City Council for approval and which is submitted to the County Recorder of Deeds for recording.

PROPERTY OWNERS' ASSOCIATION — An association established by the subdivider as a non-stock corporation to provide for the perpetual maintenance of the common property in the subdivision.

RECREATIONAL USE — Areas of land within residential subdivisions or developments including planned unit developments which have the purpose to provide active recreational opportunities that are available to all residents of the community and/or the public including lands used for:

- (1) Indoor club houses;
- (2) Swimming pools and pool houses;
- (3) Tennis courts;
- (4) Basketball courts;
- (5) Athletic fields;
- (6) Picnic areas with tables;
- (7) Ponds for recreational use (boat, fishing or swimming);
- (8) Playgrounds; and
- (9) Bike or multi-model trails.

RIGHT-OF-WAY — A strip of land acquired by reservation, dedication, forced dedication, prescription, or condemnation and intended to be occupied by a road, crosswalk, railroad, electric transmission lines, gas pipelines, and water line, sanitary storm sewer, and other similar uses.

ROADWAY — The paved portion of the street primarily used for vehicular traffic.

A. ARTERIAL STREET and HIGHWAY — A street primarily used for fast and/or heavy traffic.

- B. COLLECTOR STREET — A street carrying traffic from minor streets to arterial streets and highways, including the principal traffic and entrance streets of a residential development.
- C. MINOR STREET — A street primarily used for access to the abutting properties.
- D. MARGINAL ACCESS STREET — A minor street paralleling and adjacent to an arterial street or highway and providing access to abutting properties and protection from through traffic.
- E. DEAD-END STREET or CUL-DE-SAC — A street closed at one end and having only one connection with any other street.
- F. HALF STREET — A street paralleling the boundary of a subdivision and lying partly in an abutting tract.

STANDARD SPECIFICATIONS FOR INSTALLATION OF UTILITY CONSTRUCTION PROJECTS AND SUBDIVISION PAVEMENT DESIGN — The current specifications regulating subdivision design and construction as adopted by the City.

STREET — All land between property lines, whether designated as a street, highway, throughway, thoroughfare, avenue, boulevard, road, parkway, right-of-way lane, place, court or any similar term.

SUBDIVIDER — Any person, firm, corporation, partnership or association or duly authorized agent who or which shall apply to the Commission for approval of the layout of any subdivision.

SUBDIVISION — The division or redivision of any tract of land into two or more lots or parcels for immediate or future sale or for building development.

SUBDIVISION, MINOR — Any subdivision fronting on an existing street, not involving any new street or road, not involving the extension of any municipal water or wastewater mains, not adversely affecting the development of the remainder of the parcel or adjoining property, and not in conflict with any provision or portion of the development plan, Official Map, Chapter 230, Zoning, or this chapter; limited to four lots.

SUPERBLOCK — An oversize residential block wherein private open spaces, closed to automobile traffic, are provided for the common use of all residents in the block.

[Ord. No. 2009-18, §§ 1, 2, 4-26-2010]

§ 200-4. - Application procedure.

A. Preliminary approval.

- (1) A preliminary plan and documents, as specified by the Planning Department, shall be prepared by the subdivider and submitted in accordance with the submission schedule as determined by the City Planner, along with the appropriate fees, as specified in § 230-57.
- (2) The Development Advisory Committee (DAC) shall review the application and plan. Comments from the DAC must be addressed via either submitting revised plans and/or necessary documents or via a narrative submitted to the City Planner. Upon confirmation by the City Planner that all DAC issues have been addressed satisfactorily, the application will then be scheduled to be heard by the Planning Commission.
- (3) The Planning Commission shall review the application and provide either a recommendation of preliminary approval with or without conditions, a recommendation of denial, or table the application. Upon a recommendation of approval with or without conditions or recommendation of denial, the application shall be scheduled to be heard by the City Council.
- (4) City Council shall grant preliminary approval of the application with or without conditions, deny the application, or table the application.
- (5) Preliminary approval from City Council shall be void after one year, unless an extension is requested by the owner and approved by City Council prior to the expiration.

B. Final approval.

- (1) A final plat and documents, as specified by the Planning Department, shall be prepared by the subdivider and submitted in accordance with the submission schedule as determined by City Planner, along with the appropriate fees, as specified in § 230-57.
- (2) The Development Advisory Committee shall review the application and plan. Comments from the DAC must be addressed via either submitting revised plans and/or necessary documents or via a narrative submitted to the City Planner. The final plan shall also be reviewed by the City Planner for confirmation that the application is designed in accordance with all subdivision, zoning and other land use regulations of the City. The final plan shall also be reviewed by the City Engineer for confirmation that the application is designed in accordance with the construction standards and specifications of the City. Upon confirmation by the City Planner and City Engineer that all issues have been addressed satisfactorily, the application will be scheduled to be heard by the Planning Commission.
- (3) The Planning Commission shall review the application and provide either a recommendation of final approval with or without conditions, a recommendation of denial, or table the application. Upon a recommendation of approval with or without conditions, or recommendation of denial, the application shall be scheduled to be heard by City Council.
- (4) City Council shall approve the application with or without conditions, deny the application, or table the application.
- (5) Within 90 days of final approval from City Council, the subdivider shall record the plat at the County Recorder of Deeds office and provide the City Planner a receipt of the recordation including the deed book and page number. Prior to recording the plat, five copies of the plat must be submitted to the City Planner for stamping and signing. Four sets will be returned to the subdivider.
- (6) Upon recordation of the plat, the subdivider shall provide the Land Data Manager of the City a mylar copy of the plat including the deed book and page printed thereon.
- (7) Failure to record the approved plat within one year from the date of City Council approval shall void the final approval. In order to obtain final approval after it has been voided, the subdivider must make application for final approval again.
- (8) Failure to record the approved plat in more than one year from the date of City Council approval shall void the preliminary approval and final approval. In order to obtain preliminary and final approval after they have been voided, the subdivider must make application for and receive preliminary approval, then make application for and receive final approval.

§ 200-5. - General requirements and design standards.

The following shall be deemed to be minimum requirements and may be varied or waived by the Commission only under circumstances set forth in § 200-6:

A. Streets.

- (1) The layout, character, extent, width, grade and location of proposed streets shall be established with due regard to:
  - (a) Public convenience and safety.
  - (b) Proposed uses of the land to be served by said streets.
  - (c) Proper relation and connection with and continuation and projection of streets in the adjacent areas, whether these streets are existing or proposed in another subdivision in a neighborhood plan, in the development plan or in the Official Map, as approved or adopted by the Commission.
  - (d) Topography and other land features.
- (2) The layout of proposed streets shall furthermore be arranged in a manner acceptable to the Commission and City Council.
- (3) Minor streets shall be laid out so as to discourage their use by through traffic.
- (4)

Where a subdivision abuts or contains an existing or proposed arterial street, limited-access highway or railroad, the City Council may require marginal access or service streets, reverse frontage with screen planting contained in a nonaccess reservation along the rear property line and deep lots with rear service alleys or other treatment, such as parks, which may be necessary for the protection of residential properties and for separation of through and local traffic, with due regard for the requirements of future approach grades and grade separations.

- (5) Where a tract of land is subdivided into lots substantially larger than the minimum size required in the zoning district in which a subdivision is located, the Commission may require that streets and lots be laid out so as to permit future resubdivision in accordance with the requirements of this chapter.
- (6) Reserve strips controlling access to streets shall be prohibited except where the control and disposal of land comprising such strips has been placed in the governing body under conditions approved by the City Council such as provided in Subsection A(4) above.
- (7) Certain proposed streets may be required to be extended to the boundary line of the subdivision to provide access to tracts which may be subdivided in the future. Wherever necessary, when a street is carried to the boundary line of the subdivision, the City Council may require a temporary turnaround improved to the satisfaction of the City Engineer and of the size specified in Subsection A(16) below at the stub end.
- (8) The creation of dead-end or loop streets and superblocks will be encouraged wherever the City Council finds that such layout will not interfere with traffic convenience and safety. The City Council shall determine the number of connections of streets in the proposed subdivision with existing streets. At least two such connections shall be provided, except where a proposed subdivision only contains one dead-end street.
- (9) Street jogs shall be prohibited. Street intersections, where center lines do not meet, shall have center-line offsets of 150 feet or more.
- (10) A tangent at least 100 feet long shall be introduced between reverse curves on arterial and collector streets and may be required on all other streets.
- (11) Street right-of-way lines deflecting from each other at any point shall be connected with a curve, the radius of which for the inner right-of-way lines shall not be less than 750 feet on arterial streets, 300 feet on collector streets and 100 feet on minor streets. The outer right-of-way line shall be parallel to said inner right-of-way line.
- (12) Streets shall be laid out so as to intersect as nearly as possible at right angles. The inner right-of-way line of a street intersecting another street at an angle of less than 90° shall be tangent to and follow a curve with a minimum radius of 150 feet centered on the nearest right-of-way line of the intersecting street. The outer right-of-way line shall be parallel to said inner right-of-way line.
- (13) Street right-of-way lines at intersections shall be connected with a curve, the radius of which shall be 25 feet.
- (14) Right-of-way widths.
  - (a) Street right-of-way widths shall be as shown on the Official Map or development plan, and, if not shown thereon, said widths for the various street types between face of curb or edge of road shall not be less than as follows:

Street Type (feet)	Right-of-Way Roadway (feet)	
	80 to 110	As required by DelDOT
Arterial	80 to 110	As required by DelDOT
Collector	60	28
Minor, for townhouses and apartments	60	30
Minor, for other residences	50	<u>25</u>
Dead-end	50	<u>22</u>
Marginal access	30	<u>16</u>
*Alley	<u>20</u>	<u>12</u>

Note:

\* If utilities are present in an alley, the City reserves the right to modify the minimum right-of-way and roadway widths.

- (b) Subdivisions utilizing open swale drainage shall have a ten-foot drainage easement along the front of each property to accommodate the back slope of the drainage swales.
- (15) Half streets shall be prohibited except where essential to the reasonable development of a subdivision in conformity with the requirements of this chapter and where the Commission finds that it shall be practicable to require the dedication of the other half when the abutting property is subdivided. Wherever an approved half street shall be adjacent to a subdivision, the other half of the street shall be platted within said subdivision.
- (16) Dead-end streets, designed to be so permanently, shall not be longer than 400 feet and shall be provided at the closed end with a turnaround having an outside roadway diameter of 76 feet and a street right-of-way diameter of 100 feet.
- (17) Street names.
  - (a) Street names shall be selected so as not to duplicate or be confused with the names of existing streets. Street names shall be subject to the approval of the Commission. It is recommended that all new streets shall be named in the following manner:

General direction	Long	Short (under 1,000 feet)
North and south	Streets	Places
East and west	Avenues	Courts
Diagonal	Roads	Ways
Curving	Drives	Lanes or Circles

- (b) Arterial streets shall be named "boulevards."
  - (18) Street grades shall not exceed 5%.
  - (19) Street grades shall be not less than 0.5% wherever feasible.
  - (20) Changes in street grades shall be connected by vertical curves of suitable length.
  - (21) The width of streets adjacent to areas designed, proposed or zoned for nonresidential use shall be increased by such amount as may be deemed necessary by the Commission to assure the free flow of through traffic without interference by parked or parking cars and to provide adequate and safe parking space.
  - (22) All required roads shall be constructed in accordance with the standard specifications as issued by the City Engineer.
- B. Sidewalks and curbs.
- (1) Sidewalks shall be required in all subdivisions on both sides of the street. Sidewalks shall have the following widths:
    - (a) In residential subdivisions: four feet unless otherwise specified.
    - (b) In commercial and industrial subdivisions: from the curb to property lines unless otherwise specified.
  - (2) Curbs or drainage swales conveying stormwater shall be required in all subdivisions.
  - (3) All required sidewalks shall be constructed in accordance with standard specifications as issued by the City Engineer.
- C. Easements. Where a subdivision is traversed by a watercourse, drainageway, channel, pipe or stream, there shall be provided a stormwater easement or drainage right-of-way of such width as will be adequate for the purpose, in accordance with requirements specified by the City Engineer. Parallel streets or parkways may be required in relation thereto.
- D. Blocks.
- (1) The lengths, widths and shapes of blocks shall be determined with due regard to:
    - (a) The provision of building sites suitable to the needs of the type of use contemplated.
    - (b) Zoning requirements as to lot sizes and dimensions.
    - (c) The control, safety and convenience of pedestrian and vehicular traffic.
    - (d) The characteristics of topography.
  - (2) Block length shall not exceed 1,200 feet.
  - (3) Block widths shall be not less than 275 feet nor more than 450 feet and shall be planned to provide two rows of lots.
  - (4) Pedestrian walkways other than in streets may be required where deemed essential to provide for circulation or access to schools, playgrounds, shopping centers, transportation and other community facilities. Said walkways shall be not less than four feet wide.
  - (5) Alleys shall be provided if required by the City Engineer.
- E. Lots.
- (1) Lot width, depth, shape and orientation and the building setback lines shall be appropriate for the location of the subdivision, for the type of development and for the use contemplated.
  - (2) Lot sizes shall conform to the requirements of Chapter 230, Zoning.
  - (3) Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to comply with the off-street parking and loading requirements contained in Chapter 230, Zoning.
  - (4) Corner lots shall have sufficient width to provide an adequate building site within all the yard requirements. Corner lots shall have two front yard setbacks fronting each street, one side yard setback, and one rear yard setback.
  - (5) All lots in a subdivision shall have frontage on a public street.
  - (6) Double-frontage lots shall be avoided. Reverse-frontage lots shall be provided where necessary for protection of residential properties from through traffic and adverse nonresidential uses, for separation of through and local traffic and to overcome difficulties of topography or other specific conditions. Screen planting and a fence or wall shall be provided along the rear property line within an easement 10 feet or more in width, across which there shall be no right of access.
  - (7) Side lot lines shall be at right angles or radial to street lines.
  - (8) No lots shall be platted on land subject to flooding for residential or any other use where danger to life or property or an aggravation of flood hazard may result. Such land should be set aside for uses which would not be endangered by periodic or occasional inundations.
  - (9) No lots shall be platted within 25 feet of land under the jurisdiction of the U.S. Army Corps of Engineers.
- F. Parks, playgrounds, open spaces, school sites and natural features.
- (1) Parks and playgrounds. Where a proposed park or playground is located in whole or in part in a subdivision, the Commission may require the dedication or reservation of such area within the subdivision, in those cases in which the Commission deems such requirements to be reasonable.
  - (2) Open spaces. Where deemed essential by the Commission and City Planner, upon consideration of the particular type of development proposed in the subdivision, and especially in large-scale developments, the Commission or City Planner may require the dedication or reservation of sites of a character, extent and location suitable to the needs created by such development for playgrounds or parks. The Commission shall not require that more than 10% of the gross area of the open space of the subdivision to be so dedicated or reserved unless otherwise specified by the Zoning Code.<sup>2</sup> In case of a conflict, the requirement of the Zoning Code prevails. The Commission shall give due credit for the provision of open spaces reserved for the common use of all property owners within the proposed subdivision by covenants in the deeds. Generally, the minimum area of contiguous open space acceptable for dedication for public use shall be at least three acres and preferably five acres. Open spaces with a lesser area may be approved by the Commission whenever it deems that the difference between the area offered and three acres may be made up in connection with the future subdivision of adjacent land or added to an existing recreation area.
  - (3) School sites or sites for other public uses. The Commission may also require a subdivider to set aside such area as it may deem to be required for a school or other public use. Upon failure of the proper authorities to purchase such site within one year after the date of the approval of the plat, the subdivider, upon application to the Commission and approval of such application, shall be relieved of the responsibility of reserving such land for public purposes.
  - (4) Preservation of natural features. The Commission may require the preservation of all natural features which add value to residential developments and to the community, such as large trees or groves, watercourses and historic spots and similar irreplaceable assets. In no case shall a tree over 12 inches in diameter measured three feet from the base be removed without prior approval by the City Arborist.
- G. General grading. No final slope on the property shall exceed the normal angle of repose of the soil of said slope as determined by the City Engineer, except where said slope consists of a natural rock formation or is supported by a retaining wall or equivalent of a design acceptable to the City Engineer.
- H. Improvements.
- (1) In major subdivisions the following improvements are required:
    - (a) Paved streets.
    - (b) Street signs.
    - (c) Curbs and gutters, or roadside swales. Curbs shall be required as per standard specifications to stabilize intersections, entrances, and parking areas, and where they are necessary for the conveyance of stormwater and protecting road surfaces and driveway surfaces from vehicular traffic.
    - (d) Sidewalks.

- (e) Streetlighting.
  - (f) Shade trees. Shade trees 150 feet on center each side of the road shall be located so as not to interfere with utilities or sidewalks and shall be of the types recommended by the City Arborist.
  - (g) Topsoil protection. No topsoil shall be removed from the site or used as spoil. Topsoil moved during the course of construction shall be redistributed so as to provide at least six inches of cover to all areas of the subdivision and shall be stabilized by seeding or planting.
  - (h) Monuments. Monuments shall be of the type, size and shape required by the City Engineer.
  - (i) Water mains, culverts, storm sewers and sanitary sewers.
    - [1] All water installations shall be looped; all sewer and storm sewer systems shall be extended at minimum slope, maximum depth, and connected with an approved method and shall be adequate to handle all present and probable future development.
    - [2] All of the above-listed improvements shall be subject to inspection and approval by the City Engineer, who shall be notified by the subdivider at least 24 hours prior to the start of construction. No underground installation shall be covered until inspected and approved.
    - [3] Utility easements shall be required to be granted and recorded by the subdivider to allow extension of utilities to neighboring properties.
  - (j) Swales. Conveyance of stormwater is permitted by open drainage systems where appropriate for environmental and engineering integrity and design. Such systems shall be separated from the edge of road to the top of bank by a minimum five-foot shoulder. The depth of such systems shall not exceed two feet below crown of road. The side slope shall be a maximum of 4:1. The bottom of the system shall have a minimum width of two feet. The system slope shall be such that the maximum velocity does not exceed two feet per second. The system has to be designed in such a way as to incorporate driveway and crossroad drainage pipes; such systems shall be restored with topsoil and sod. Temporary check dams shall be placed in intervals not to exceed 300 feet.
  - (k) Headwalls. Storm drainage pipes which are part of an open swale drainage system shall be terminated with a headwall in accordance with standard specifications.
- (2) The developer shall complete all utilities and street improvements not specifically waived by the Commission in accordance with standard specifications as issued by the City Engineer and with any additional requirements specified by the Commission. Construction drawings shall be submitted in a form satisfactory to the City Engineer.
- (3) When the Commission or the City Engineer, due to planning considerations extraneous to the subdivision, requires a standard of improvements higher than that which is sufficient to serve the subdivision, the amount of the bond to be posted shall be deemed to be satisfactory if it adequately covers the cost of improvements which would be normally required.
- (4) The developer shall pay the review and inspection fees as set forth in Chapter 230, Zoning, § 230-57, Planning, Zoning and Engineering Fees. The cost for each segment or phase of the development shall be paid prior to commencement of utility construction.

[Ord. No. 2013-7, § 1, 9-23-2013]

*Footnotes:*

--( )--

*Editor's Note: See Ch. 230, Zoning.*

§ 200-6. - Variances and waivers.

Applicants may request, at the time of application submission, the varying or waiving of requirements of Chapter 200, and the Planning Commission may, at its discretion, recommend to City Council the varying or waiving of said requirements and request conditions that substantially secure the objectives of the requirements so waived. Upon the findings of the City Council that, due to special conditions peculiar to a subdivision or a site, certain requirements of these regulations are inappropriate or that strict compliance with said requirements may cause extraordinary and unnecessary hardships, the City Council may vary or waive said requirements, provided that such variance or waiver shall not be detrimental to the public health, safety or general welfare or have the effect of nullifying the intent and purpose of the Official Map, Chapter 230, Zoning, the Development Plan or this chapter. In varying or waiving certain requirements, the City Council may specify such conditions at will, in its judgment, secure substantially the objectives of the requirements so varied or waived.

§ 230-16. - I-1 Limited Industrial District.

[Amended 7-9-1990]

In an I-1 District no building/structure or premises shall be used and no building/structure or part thereof shall be erected or altered which is arranged, intended or designed to be used, in whole or in part, for any purpose except for one or more of the following uses and complying with the requirements herein indicated.

- A. The purpose of an I-1 Limited Industrial District shall be to provide locations for the development of light to moderate industrial manufacturing, warehousing, wholesale and limited research establishments which, because of their type and nature, would be compatible with or adjacent to residential areas. Also, the purpose is to provide guidelines and performance standards which will control and confine any offensive features (i.e., noise, vibration, heat, smoke, glare, dust, objectionable odors, toxic wastes or unsightly storage) to the confines of the premises and within enclosed buildings or within a visually enclosed space.
- B. Permitted uses. Permitted uses of the I-1 District shall be as follows:
  - (1) All permitted uses of the OC-1 District.
  - (2) Light manufacturing, assembling, converting, altering, finishing, baking, cooking or any other type of processing or storage of an industrial nature for the production and/or distribution of any goods, materials, products, instruments, appliances and devices, provided that the fuel or power supply shall be of an approved type. Also included shall be all incidental clinics, offices, cafeterias and recreational facilities for the exclusive use of in-house staff and employees.
  - (3) Research, design, testing and development laboratories.
  - (4) Printing, publishing, binding, packaging, storage, warehousing, distribution and trucking terminal operations and trucking schools.
  - (5) Municipal and public services and facilities, such as utility supply areas (i.e., water, sewer and electric), distribution facilities and substations.
  - (6) Truck or large vehicle repair facilities with associated parking area. All fuel and lubricant storage shall be installed in compliance with state and federal regulations and shall not be closer than 500 feet to any school or building(s) used for assembly.

[Added 12-16-1996]

- C. Prohibited uses. The following are expressly prohibited in an I-1 District:
  - (1) Residences, except those in existence at the time of adoption of this amendment.
  - (2) Manufacturing uses involving production of the following products from raw materials: asphalt, cement, charcoal and fuel briquettes; chemicals: aniline dyes, ammonia, carbide, caustic soda, cellulose, chlorine, carbon black and bone black, creosote, hydrogen and oxygen, industrial alcohol, nitrates (both natural and manufactured) of an explosive nature, potash, petro chemical, pyroxilin, rayon yarn and hydrochloric, nitric, picric, phosphoric and sulfuric acids; coal, coke and tar products, including gas manufacturing, explosives, fertilizers, glue and size (animal); linoleum and oil cloth, matches, paint, varnishes and turpentine; rubber (natural and synthetic); and soaps, including fat rendering.
  - (3) Dumps, junkyards, automobile salvage and dismantling plants/yards, storage areas or operations for the storage or resale of used automotive or other machine parts.
  - (4) Operations involving slaughterhouses, stockyards or slag piles.
  - (5) Storage of explosives and bulk or wholesale storage of gasoline above ground.
  - (6) Quarries, stone crushers, screening plants and all associated uses.

- (7) The following processes: large-scale reduction, refining, smelting and alloying of metal or metal ores; refining petroleum products, such as gasoline, kerosene, naphtha and lubricating oil; and reduction and processing of wood pulp and fiber, including paper mill operations.
- D. Conditional uses. The following uses are permitted in the I-1 District, in accordance with the provisions within Article IX (conditional use portion) of this chapter:
- (1) Airfields or airport facilities.
  - (2) Mini-warehouses or public storage facilities.
  - (3) Radio-television facilities.
- E. Design standards and requirements. These are minimum requirements for all activities that are permitted or conditional uses. Conditional use activities are subject to much greater restrictions as may be required by the Planning Commission.
- (1) Accessory uses shall not be permitted without a principal use.
  - (2) Any uses not permitted, as previously listed, are prohibited.
  - (3) All uses shall be conducted within a completely enclosed building. There shall be no open storage of raw, in process or finished products, supplies or waste material, except that these items shall be shielded from public view by a landscaped screen, fence or wall.
  - (4) In a planned industrial park or any lands designated as an I-1 District, no building/structure, accessory structure or sign shall be located closer than 200 feet to any nonindustrial district boundary.
  - (5) Adequate off-street parking shall be provided for all employees and traffic to the buildings. The minimum requirements are given in Article IV of this chapter and are to be deemed as minimum standards only. Standards in excess of those stated in Article IV may be stipulated by the Planning Commission during the site plan review.
  - (6) All fencing shall be properly maintained.
  - (7) All front yard areas and all areas open to public view shall be maintained in a neat and attractive condition.
  - (8) All loading operations shall be conducted at the side or rear of the building. In the unloading or loading process, no vehicles participating in these operations shall be allowed to extend into any public or private driveway or street or impede its traffic circulation.
  - (9) All odorous fumes or matter emitted into the environment from any/all fuel-burning equipment, open stacks and internal combustion engines must comply with the requirements set forth by the State of Delaware, Department of Natural Resources and Environmental Control (DNREC).
  - (10) Dust or particulate debris from any processing or production operations will be minimized by the use of appropriate mechanical and/or electrical devices to the extent necessary to ensure that such emissions shall not be offensive at or beyond the property line of the industry/warehouse. All such activities will comply with the requirements of the DNREC, State of Delaware.
  - (11) All internal roads, driveways and parking areas (for public, in-house employee or truck/vehicular traffic) shall be paved.
  - (12) All dry waste, in dust or particulate form, will be transported in closed or covered vehicles.
  - (13) The proposed use shall not endanger the surrounding areas to the possibilities of fire, explosion or contamination. All uses shall comply with state regulations which govern their operations. There shall be no allowance for the storage of radioactive materials or those materials deemed to be toxic or dangerous. All liquid storage shall have an approved containment (area) barricade capable of containing any failure of storage medium.
  - (14) The proposed use shall not allow the emission of heat or glare beyond its property line. All lighting shall be directed so as not to cause glare to the surrounding properties. The light source shall be shielded so as not to be visible from adjoining properties or streets.
  - (15) All I-1 District projects and proposals are subject to site plan review by the Planning Commission.
- F. Area and height regulations.
- (1) Minimum lot area shall be two acres.
  - (2) Maximum lot coverage shall be 60%, with the remainder being that of grass and landscape areas. Parking areas shall be landscaped.
  - (3) Minimum lot width shall be 150 feet.
  - (4) Maximum building height shall be 50 feet.
  - (5) Minimum front yard setback shall be 75 feet.
  - (6) Minimum side yard setback shall be 40 feet.
  - (7) Minimum rear yard setback shall be 45 feet.
  - (8) Off-street parking. See Article IV of this chapter.
  - (9) Landscape screening. See Article V of this chapter.
  - (10) Sign requirements. See Article VI of this chapter.
  - (11) Accessory structures shall occupy no more than 10% of the lot area.
  - (12) Accessory structures shall be located in the rear yard/lot area.
  - (13) Accessory structures shall be located at least 45 feet from the rear lot line.

#### ARTICLE IV - Off-Street Parking and Loading

##### § 230-20. - General provisions.

- A. Establishment of off-street parking area. The establishment of any off-street parking area having a capacity of four or more automobiles shall be subject to the approval of the Code Official and further subject to the following requirements. It shall:
- (1) Have a buffer strip at least five feet wide between it and any adjacent residential lot.
  - (2) Be attractively landscaped and screened from neighboring residential lots.
  - (3) Not extend into any required front yard areas, except for the driveways.
  - (4) Be used solely for the periodic parking of private passenger (noncommercial) vehicles.
- B. Parking space size. Parking space sizes shall be in accordance with § 230-21.
- C. Parking spaces in driveways. Driveways shall be considered as constituting off-street parking space for one-family detached, semidetached or townhouse dwellings in residential districts, provided that sufficient space is available in such driveways to meet the requirements of this section.
- D. Location of parking spaces. All parking spaces shall be set back 15 feet from any street line. Parking spaces shall be located so that no spaces are a greater distance than 600 feet from the building or use to which they are assigned, provided that this requirement shall not apply to parking spaces for auditoriums, stadiums, assembly halls, gymnasiums and other places of assembly or industrial, wholesaling and manufacturing establishments.
- E. Parking spaces assigned to more than one use. Parking spaces for separate buildings or uses in all zoning districts may be combined in a single lot, provided that the number of parking spaces in the lot shall equal the sum of the parking spaces required for each building and use, except that the parking spaces required for places of assembly may include parking spaces assigned to other uses, provided that the place of assembly shall not be used at a time when the other uses are carried on.
- F. No off-street parking required in the C-2 Central Business District. No on-site, off-street parking shall be required in the C-2 District for newly constructed establishments or existing structures. Existing municipal parking facilities shall provide the necessary parking areas for downtown shoppers. The location of the municipal parking lots are:
- (1) North Walnut Street and Northeast Front Street.

- (2) Park Avenue and Northeast Front Street and Denney Row.
- (3) Park Avenue and North Washington Street.
- (4) Southeast Front Street between South Walnut Street and Church Street.
- (5) Southeast Front Street and South Washington Street.
- G. Parking lot and garage maintenance. Ground cover, shrubs, trees and landscape screening shall be located and maintained so as not to interfere with vehicular and pedestrian traffic on the property or with sight clearance and exits.
- H. Fractional spaces. When the application of a unit of measurement for parking space or loading space to a particular use or structure results in a fractional space, any fraction under 1/2 shall be disregarded and fractions of 1/2 or over shall be counted as one parking space or loading space.
- I. Boat, trailer, bus and van parking. In any residential district, no house trailer, camper, boat trailer, bus or boat shall be parked in the front yard. Parking is allowed in the side or rear yards five feet from the property line if it does not take up space normally occupied by an automobile. All vehicles requiring a trailer for transportation must be stored on a registered trailer.
- J. Points of ingress and egress. When the parking garage buffer strip is adjacent to any public street upon which the lot has frontage, the fifteen-foot buffer strip which extends for the full frontage of the lot may be interrupted only at points of ingress and egress. Only one accessway shall be permitted for each 100 feet of frontage upon a public road. Such accessway shall be not less than 25 feet and not more than 32 feet in width. No two accessways on the same lot shall be placed within 75 feet of each other.

[Ord. No. 2011-6, § 5, 6-27-2011; Ord. No. 2015-02, § 4, 3-23-2015]

§ 230-21. - Parking and loading standards.

A. Design standards (general).

[Amended 12-14-1992]

(1) Parking spaces and aisle ways shall be designed in accordance with the following dimensional standards:

[Amended 10-12-1998 by Ord. No. 10-1998]

Parking Angle	Stall Width (feet)	Aisle Way to Curb (feet)	Aisle Way Width
90°	<u>9</u>	<u>18</u>	As required by State Fire Marshal
60°	<u>9</u>	<u>20</u>	As required by State Fire Marshal
<u>45°</u>	<u>9</u>	<u>18</u>	As required by State Fire Marshal
Parallel	10	<u>20</u>	As required by State Fire Marshal

(2) All spaces reserved for handicapped accessibility shall conform to the requirements set forth by the federal standards provided by the ADA (Americans with Disabilities Act).

(3) All parking spaces for use in conjunction with public parking lots, garages, storage areas operated on a commercial basis and parking areas accessory to multifamily, commercial, industrial and office uses shall be appropriately paved and striped.

(4) Exceptions to the design standards shall be permitted as follows.

B. Use standards. All uses permitted in this chapter shall be subject to the following minimum off-street parking requirements in addition to any special requirements as indicated in each zoning district.

Types and Uses	Required Off-Street Parking Spaces
Retail stores and shops, all types, supermarkets, retail food stores and undertakers	1 per 200 square feet of floor area used or designed for sales on the ground floor, plus 1 per 300 square feet of floor area used or designed for sales on all other floors, plus 1 for each 2 employees

New and used car and boat sales, mobile dwelling unit sales, truck and trailer sales, outdoor equipment and machinery sales, commercial nurseries and auctions	4 per salesperson, plus 1 per per 2 employees during the period of greatest employment
Personal service establishments, laundromats and dry cleaning	1 per 200 square feet of gross floor area
Banks and other financial institutions	1 per 200 square feet of gross floor area, plus 1 for each employee
Business, governmental and professional offices	1 per 100 square feet of gross floor area
Medical and dental offices or clinics <b>[Amended 7-14-1997]</b>	From 1 per 100 square feet gross floor space for medical and dental offices or clinics to 1 per 150 square feet of gross floor area for medical and dental offices or clinics
Hospitals	1 for each bed of planned patient capacity, plus 1 per 3 employees or the shift of greatest employment
Sanatorium or nursing home	1 for every 4 beds
Churches and other places of worship	1 per 5 seats
Indoor and commercial outdoor recreation	1 for each 150 square feet of gross floor, building or ground area devoted to such use or 1 per 4 seats of facilities available for patron use, whichever is applicable to the facility
Restaurants, taverns and similar uses	1 per 3 seating accommodations, plus 1 per 2 employees on the shift of greatest employment
Dwelling, one-family detached, semidetached or mobile home	2 1/2 per dwelling unit
Dwelling, townhouse, garden apartment or multifamily dwelling	2 1/2 per dwelling unit
Rooming and boarding house or converted unit	1 per rented unit
Museum, art gallery and similar use	1 per 4 seats in rooms for public assembly or for each 150 square feet of gross floor area for use by the public, whichever is greater, plus 1 for each 2 employees on the shift of greatest employment
Public library	1 per 400 square feet of gross floor area for public use, plus 1 per 2 employees on the shift of greatest employment
Fire station	25
Auditorium, stadium, assembly hall, gymnasium, theater (excluding drive-in) and community or recreation center	1 per 4 fixed seats in the largest assembly room area or for each 40 square feet of floor area available for the accommodation of movable seats in the largest assembly room, or 1 per 150 square feet of gross floor area, whichever is applicable to the facility
Social club and fraternal, social service, union and civic organization building	1 per adult attendant, plus 1 per 100 square feet gross floor area devoted to such uses
Public or private school	3 per room used for administrative offices, plus 1 per room used for class instruction, plus 1 for each 5 seats in the auditorium and other places of assembly or facility available to the public
Industrial, manufacturing or wholesaling establishment	1 per 2 employees on the shift of the greatest employment, plus 1 per 200 square feet of floor area devoted to sales
Hotel and motel	1 for each guest room plus 1 for each 3 employees

- (1) Reduction in the required number of off street parking spaces in the case of developments such as shopping centers or other commercial developments required to provide more than 50 off-street parking space.

The developer must set aside space to accommodate 100% of the area necessary to provide the parking requirements established by this Ordinance, but, upon the request of the developer, if agreed by the City of Milford, the developer may be permitted to set aside space to accommodate 100% of the area necessary to provide the parking requirements established by this chapter but not be required to construct more than 80% of the required parking spaces. In the event the developer is permitted to construct fewer than the required parking spaces, the remainder of the parking area set aside must be kept free of all construction and be planted and maintained as a grassy area and designated as Future Parking Space. The City of Milford may require construction of the remaining parking spaces at any time by the then owner of the premises upon giving the owner not less than six months' advance written notice. In the event of the granting of the waiver

herein described, the fact of the grant as well as the requirement that the owner maintain the space set aside as a level grass area and that the City of Milford has reserved the right to require construction of the remaining parking spaces upon six months' notice to the owner of the site must be reflected in a note appearing on the subdivision or site development plans recorded.

C. Loading spaces.

(1) No building or structure shall be erected in any district for the uses listed below unless loading space for the accommodation of trucks is provided on the premises in accordance with the following requirements:

(a) For retail stores, markets, wholesale and jobbing establishments and storage warehouses, the number of berths based on the gross floor area devoted to such use shall be as follows:

[1] Five thousand to 7,999 square feet of floor area: one berth.

[Amended 10-12-1998 by Ord. No. 10-1998]

[2] Eight thousand to 19,999 square feet of floor area: two berths.

[Amended 10-12-1998 by Ord. No. 10-1998]

[3] Each additional 20,000 square feet or major fraction thereof up to a maximum of 60,000 square feet of floor area: one additional berth.

(b) For hotels and motels, the number of berths based on the gross floor area devoted to such uses shall be as follows:

[1] Eight thousand to 20,000 square feet of floor area: one berth.

[2] Each additional 50,000 square feet or major fraction thereof up to a maximum of 120,000 square feet of floor area: one additional berth.

(c) Each manufacturing, office research and industrial establishment with a total of 3,500 square feet or more of gross floor area devoted to manufacturing, research and/or industrial uses shall provide loading space adequate to accommodate the normal demands for loading and unloading incidental to the type of use proposed on the premises.

(2) Loading spaces shall not be allowed in any front yard of any property.

[Ord. No. 2010-14, § 2, 9-27-2010]

ARTICLE V - Landscape Screening

§ 230-22. - District requirements.

A. Residential districts.

(1) In any R-1, R-2 or R-3 District a landscape screen and/or fence or wall a minimum of six feet in height shall be planted and/or erected to separate any permitted nonresidential use from any existing residential use on a contiguous lot. Such landscape screen and/or fence or wall may extend into the lot setback, side yard and rear yard.

(2) In any R-3 District, for any lot developed for garden apartments or townhouses, a landscape screen and/or fence or wall a minimum of six feet in height shall be planted or erected to separate any contiguous lot developed as a single-family detached or semidetached residential dwelling on any contiguous lot zoned R-1 or R-2. Such landscape screen and/or fence or wall may extend into the lot setback, side yard and rear yard.

B. Commercial districts. In any C-1, C-2 or C-3 District a fifteen-foot buffer area shall be provided within which a landscape screen and/or fence or wall a minimum of six feet in height shall be planted or erected to separate any permitted use from any contiguous lot zoned R-1, R-2 or R-3 or any contiguous lot developed or approved for development for any residential use. Such landscape screen may extend into the lot setback, side yard or rear yard.

C. Institutional, Industrial and Office Building/Complex Districts: H-1, I-1, I-2, OB-1 and OC-1.<sup>4</sup> ¶

(1) Each use established in these districts shall set aside at least 20 feet in width immediately adjacent to any street upon which the lot has frontage, and extending for the full frontage of the lot, for purposes of providing for proper site distance and buffering from the public road. Within such area, the owner shall establish and maintain a planting of grass and/or horticultural ground cover. Other landscape materials may be incorporated, provided that there is no obstruction to vision, other than a tree trunk, in the area between two and seven feet above ground level. No use shall be made of this buffer area other than for a single driveway to provide access to the use for each 100 feet of frontage upon a public road. Such driveway shall not exceed 32 feet in width.

(2) Parking areas may be located in any hard area but shall not be closer than 15 feet to any street line or property line.

D. Limited Industrial District. At the boundary line between an I-1 District and any R-1, R-2 or R-3 District or any lot developed or approved for development for residential use, there shall be a fifty-foot buffer area which shall include a landscape screen and/or fence or wall a minimum of six feet in height. Such landscape screen may extend into the lot setback, side yard or rear yard.<sup>5</sup> ¶

*Footnotes:*

-- () --

*Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).*

-- () --

*Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).*

§ 230-23. - Maintenance.

It shall be the responsibility of the property owner of record or his delegated representative(s) to properly maintain and care for any landscape plan planted or erected.

**CITY OF MILFORD  
PLANNING COMMISSION**

**RESOLUTION NO. PC15-009**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF  
MILFORD, DELAWARE, RECOMMENDING TO CITY COUNCIL OF  
THE CITY OF MILFORD  
THE APPROVAL OF A FINAL MINOR SUBDIVISION FOR  
GROWUSA LLC  
AT 301 SE FOURTH STREET  
FOR A 2 LOT, 1 UNIT SUBDIVISION  
CONSISTING OF 1 EMPLOYMENT COMMERCIAL BUSINESS AND  
1 OPEN SPACE LOT  
IN AN I-1 ZONING DISTRICT  
TAX MAP 3-30-11.05-119.00**

WHEREAS, the owner and applicant has made application with the City of Milford; and,

WHEREAS, the proposed application shall comply with the standards and regulations of the Code of the City of Milford; and,

WHEREAS, the Planning Commission met and heard said application during a public hearing on December 15, 2015; and,

WHEREAS, by a vote of \_\_\_\_\_ recommended approval of the application.

NOW, THEREFORE, BE IT RESOLVED, the Planning Commission has recommended approval of the application to the Mayor and City Council of the City of Milford, Delaware with the following recommendations:

1.

APPROVED: \_\_\_\_\_

Arthur Campbell,  
Planning Commission Chairman

SIGNED: \_\_\_\_\_

Christine Crouch,  
Deputy City Clerk

# City of Milford



## **PUBLIC NOTICE CITY OF MILFORD PLANNING COMMISSION HEARING**

NOTICE IS HEREBY GIVEN that the Planning Commission of the City of Milford will hold a Public Hearing on Tuesday, December 15, 2015 at 7:00 p.m. in the Joseph Ronnie Rogers Council Chambers at Milford City Hall, 201 South Walnut Street, Milford, Delaware to consider the following matter:

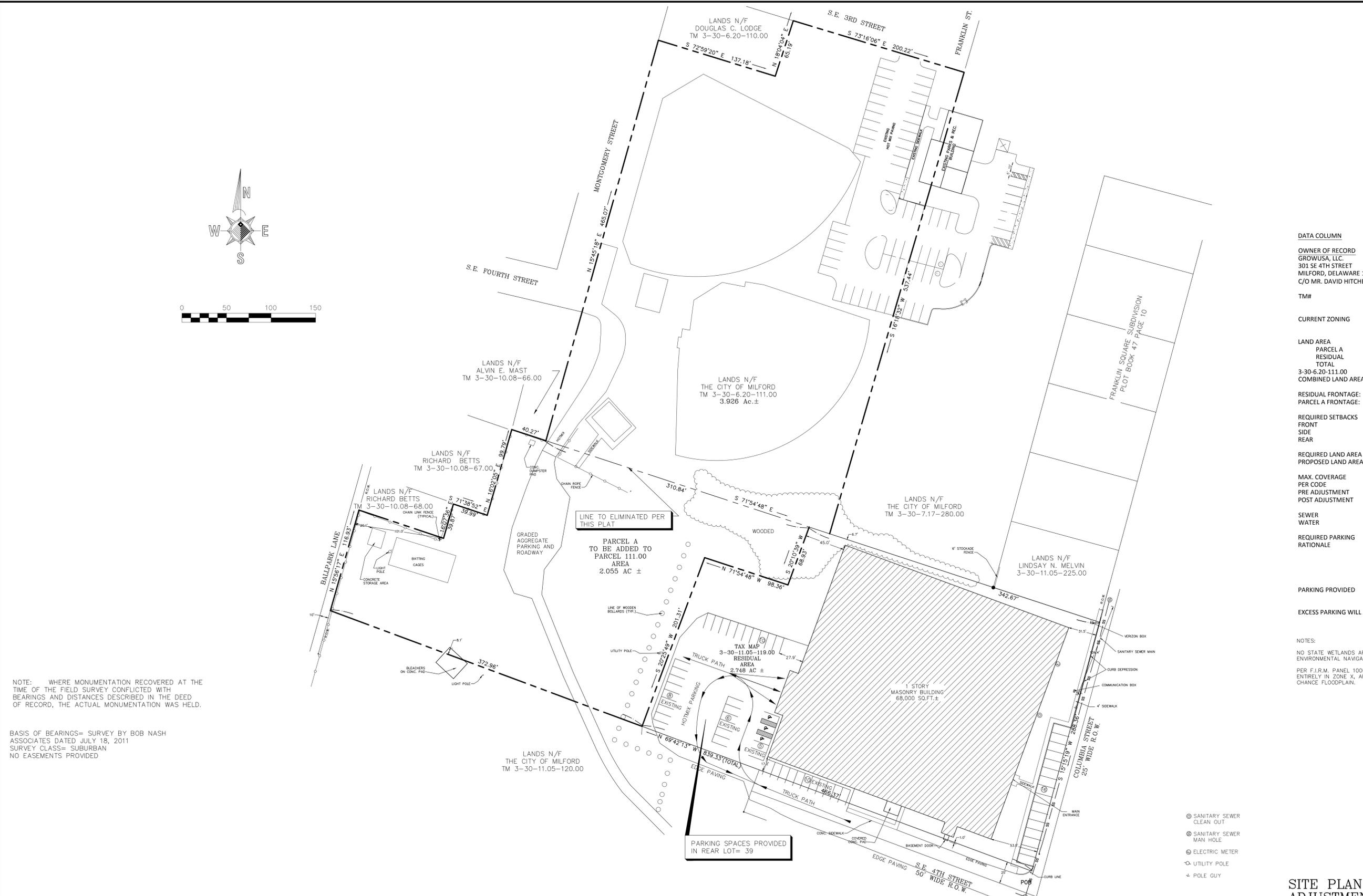
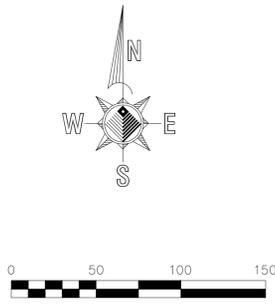
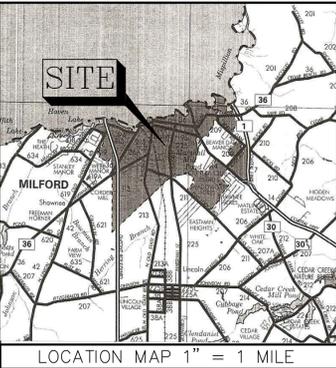
First State Manufacturing on behalf of GrowUSA LLC for a Final Minor Subdivision of 4.80+/- acres in an I-1 (Limited Industrial District). Property is located at 301 SE Fourth Street, Milford Delaware. Present Use and Proposed Use: Employment and Open Space. Tax Map 3-30-11.05-119.00

All interested parties are hereby notified to be present for the review and recommendation by the Planning Commission to City Council. Final action will be taken by City Council.

If unable to attend, written comments will be accepted up to one week prior to the hearing. Anyone with questions or comments should contact Rob Pierce in the Planning Department via email at [RPierce@milford-de.gov](mailto:RPierce@milford-de.gov) or at 302.424.3712.

By: Christine Crouch  
Deputy City Clerk

*Advertised: Beacon 111115*



NOTE: WHERE MONUMENTATION RECOVERED AT THE TIME OF THE FIELD SURVEY CONFLICTED WITH BEARINGS AND DISTANCES DESCRIBED IN THE DEED OF RECORD, THE ACTUAL MONUMENTATION WAS HELD.

BASIS OF BEARINGS= SURVEY BY BOB NASH ASSOCIATES DATED JULY 18, 2011  
 SURVEY CLASS= SUBURBAN  
 NO EASEMENTS PROVIDED

DATA COLUMN	
OWNER OF RECORD	GROWUSA, LLC 301 SE 4TH STREET MILFORD, DELAWARE 19963 C/O MR. DAVID HITCHENS
TM#	3-30-6.20-111.00 3-30-11.05-119.00
CURRENT ZONING	I-1(3-30-11.05-119.00) R-2(3-30-6.20-111.00)
LAND AREA	PARCEL A 2.055 AC.± RESIDUAL 2.748 AC.± TOTAL 4.803 AC.± 3-30-6.20-111.00 3.926 AC.± COMBINED LAND AREA 5.981 AC.±
RESIDUAL FRONTAGE:	754.73'
PARCEL A FRONTAGE:	118.93'(BALLPARK LANE)
REQUIRED SETBACKS	FRONT 75 FEET SIDE 40 FEET REAR 45 FEET
REQUIRED LAND AREA	2 AC. MIN. PROPOSED LAND AREA 2.748 AC.
MAX. COVERAGE	PER CODE 60% PRE ADJUSTMENT 49.3% POST ADJUSTMENT 78.7% (RESIDUAL LOT)
SEWER WATER	CITY OF MILFORD CITY OF MILFORD
REQUIRED PARKING RATIONALE	38 SPACES SALES OFFICE 1 PER 200 SQ.FT. AREA= 2200 SQ.FT.= 11 SPACES MANUFACTURING 1 PER 2 EMPLOYEES SHIFT OF GREATEST NO. OF EMP. EMPLOYEES= 53 SPACES= 27
PARKING PROVIDED	TOTAL= 55 OFFICE 16 SPACES MANUFACTURING 39 SPACES
EXCESS PARKING WILL ACCOMMODATE	34 ADDITIONAL EMPLOYEES

NOTES:  
 NO STATE WETLANDS ARE PRESENT ON THIS SITE PER THE DNREC ENVIRONMENTAL NAVIGATOR MAP.  
 PER F.I.R.M. PANEL 1000SC0041K, EFFECTIVE MARCH 16, 2015 THIS SITE LIES ENTIRELY IN ZONE X. AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN.

SURVEYOR'S CERTIFICATION

I, ROBERT W. NASH, P.L.S. #551, HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR IN THE STATE OF DELAWARE, THAT THE INFORMATION SHOWN HEREON HAS BEEN PREPARED UNDER MY SUPERVISION, AND TO THE BEST OF MY KNOWLEDGE AND BELIEF REPRESENTS GOOD SURVEYING PRACTICES AS REQUIRED BY THE APPLICABLE LAWS OF THE STATE OF DELAWARE.

ROBERT W. NASH, PLS 551 \_\_\_\_\_ DATE \_\_\_\_\_

OWNERS CERTIFICATION TM 3-30-11.05-119.00

WE, GROW USA, LLC., HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE PROPERTY DESCRIBED AND SHOWN ON THIS PLAN, THAT THE PLAN WAS MADE AT OUR DIRECTION, AND THAT WE ACKNOWLEDGE THE SAME TO BE OUR ACT AND DESIRE THE PLAN TO BE DEVELOPED AS SHOWN IN ACCORDANCE WITH ALL APPLICABLE LAWS AND REGULATIONS.

\_\_\_\_\_  
 SIGNATURE/TITLE DATE \_\_\_\_\_

OWNERS CERTIFICATION TM 3-30-6.20-111.00

WE, THE CITY OF MILFORD, HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE PROPERTY DESCRIBED AND SHOWN ON THIS PLAN, THAT THE PLAN WAS MADE AT OUR DIRECTION, AND THAT WE ACKNOWLEDGE THE SAME TO BE OUR ACT AND DESIRE THE PLAN TO BE DEVELOPED AS SHOWN IN ACCORDANCE WITH ALL APPLICABLE LAWS AND REGULATIONS.

\_\_\_\_\_  
 MAYOR OF THE CITY OF MILFORD DATE \_\_\_\_\_

REVISIONS		Property of:	
Oct. 28, 2015	NOTE	GROWUSA, LLC.	
APRIL 16, 2015	PER CITY	CITY OF MILFORD	
APRIL 29, 2015	PER CLIENT	SUSSEX COUNTY, DELAWARE	
JUNE 4, 2015	ADD PARKING	DATE: APRIL 10, 2014	
JUNE 23, 2015	PER CITY	W.O.: 23008N	
JULY 9, 2015	PER CITY	SCALE: 1" = 30'	
JULY 22, 2015	HC PARKING	F.B.: BNA-6 DRAWN BY: RWN	
T.M.:	3-30-11.05-119.00	DISK: FSM-MINOR	

# City of Milford



## **PUBLIC NOTICE CITY OF MILFORD CITY COUNCIL HEARING**

NOTICE IS HEREBY GIVEN that the City Council of the City of Milford will hold a Public Hearing on Monday, January 25, 2016 at 7:00 p.m., or as soon thereafter as possible, in the Joseph Ronnie Rogers Council Chambers at Milford City Hall, 201 South Walnut Street, Milford, Delaware, to take final action upon the matter of:

City of Milford for a Final Minor Subdivision of 3.21+/- acres in an OC-1 (Office Complex District). Property is located at 316 West Liberty Way, Milford Delaware. Present Use and Proposed Use: Solar Field and Vacant Land. Tax Map MD-16-173.00-01-02.17

All parties of interest are hereby notified to be present and to express their views before a final decision is rendered. If unable to attend, written comments will be accepted up to one week prior to the hearing. Anyone with questions or comments should contact Rob Pierce in the Planning Department via email at [RPierce@milford-de.gov](mailto:RPierce@milford-de.gov) or at 302.424.3712.

By: Christine Crouch  
Deputy City Clerk

*Advertised: Beacon 111115*



PLANNING & ZONING DEPARTMENT  
P 302.424.3712 F: 302.424.3558

201 SOUTH WALNUT STREET  
MILFORD, DE 19963

[www.cityofmilford.com](http://www.cityofmilford.com)

## DATA SHEET FOR CITY OF MILFORD/INDEPENDENCE COMMONS/LOT 13

Planning Commission Public Hearing: December 15, 2015

City Council Public Hearing: January 25, 2016

---

<b>Ordinance/Resolution</b>	:	PC15-010
<b>Application Number / Name</b>	:	15-228 / COM Independence Commons – Lot 13
<b>Applicant</b>	:	City of Milford 201 S. Walnut Street Milford, DE 19963
<b>Owner</b>	:	Same
<b>Present Comprehensive Plan Designation</b>	:	Business Park
<b>Present Zoning District</b>	:	OC-1 (Office Complex District)
<b>Present Use</b>	:	Solar Panels
<b>Area and Location</b>	:	3.21 +/- acres located at the end of W. Liberty Drive known as Lot 13 in the Independence Commons business park off of Airport Road.
<b>Property Identification Numbers</b>	:	MD-16-173.00-01-02.17-000

ENC: Staff Recommendation Report  
Exhibit A – Location & Zoning Map  
Exhibit B – Lot Line Adjustment Plan



PLANNING & ZONING DEPARTMENT  
P 302.424.3712 F: 302.424.3558

201 SOUTH WALNUT STREET  
MILFORD, DE 19963

[www.cityofmilford.com](http://www.cityofmilford.com)

**STAFF RECOMMENDATION REPORT**  
**October 28, 2015**

**Application Number / Name** : 15-228 / COM Independence Commons – Lot 13

**Applicant** : City of Milford  
201 S. Walnut Street  
Milford, DE 19963

**Owner** : Same

**Application Type** : Final Minor Subdivision

**Present Comprehensive Plan Designation** : Business Park

**Present Zoning District** : OC-1 (Office Complex District)

**Present Use** : Solar Panels

**Area and Location** : 3.21 +/- acres located at the end of W. Liberty Drive known as Lot 13 in the Independence Commons business park off of Airport Road.

**Property Identification Numbers** : MD-16-173.00-01-02.17-000

---

**I. STAFF RECOMMENDATION:**

- The minor subdivision is consistent with Chapter 230-19.1 and meets all design standards and area regulations.
- Lot 13-A will contain the existing solar panels and fenced in area. Lot 13-B will be residual vacant land to be conveyed to GrowUSA, LLC in exchange for lands adjacent to the Little League complex.

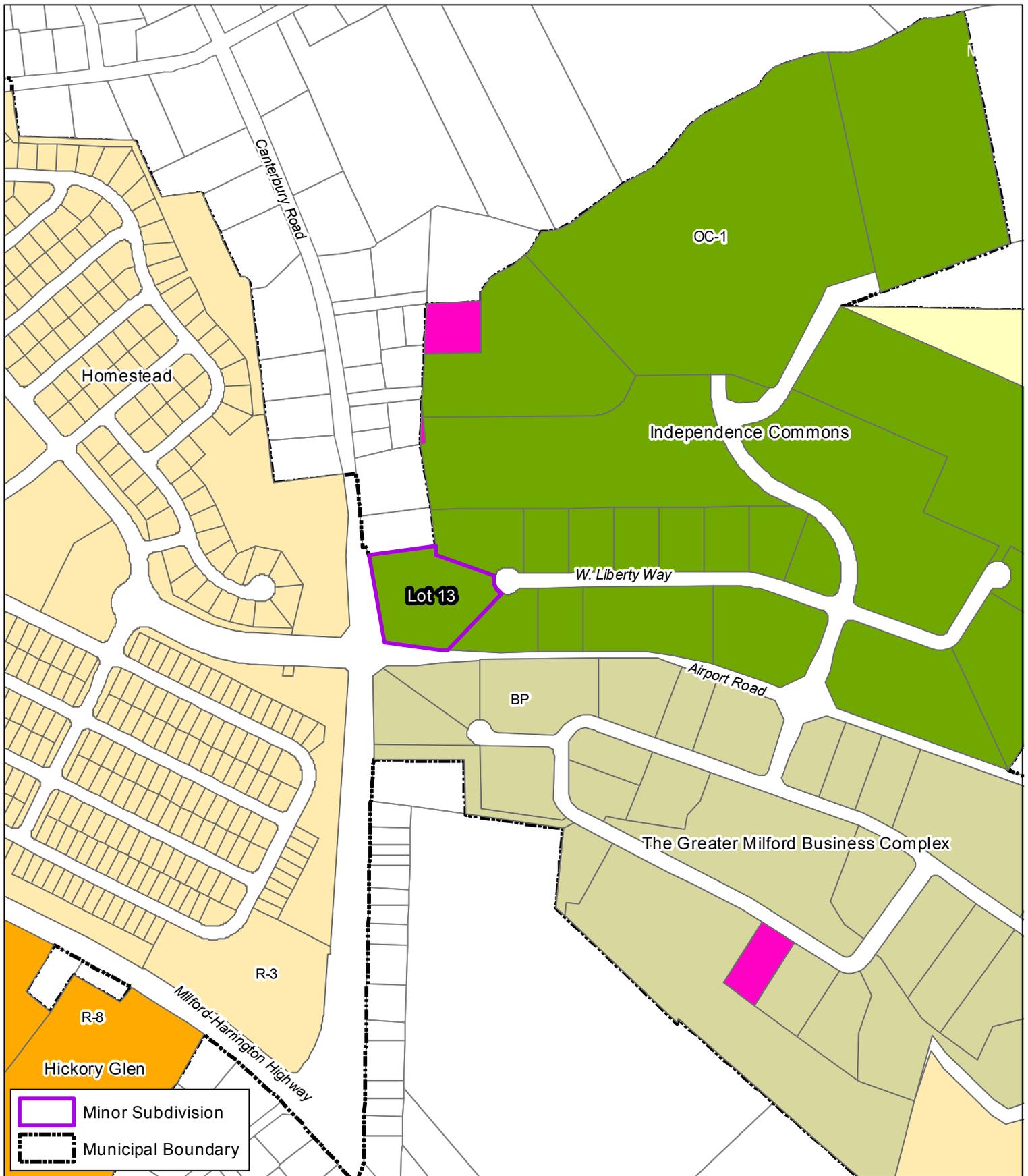
**II. BACKGROUND INFORMATION:**

- July 14, 2014, City Council authorized First State Manufacturing to proceed with the necessary appraisals, surveys and other documents needed in order to exchange land owned by GrowUSA, LLC for a portion of lands in Independence Commons.

**III. AGENCY COMMENTS:**

- DeIDOT – No comments solicited.
- Sussex Conservation District – No comments solicited.
- State Fire Marshall – No comments solicited.

This recommendation is offered without the benefit of public testimony and is based on the information presented when the application was received by the Planning & Zoning Department. The Planning Commission shall give considerable weight to public testimony received during public hearing in considering its recommendation to City Council in this matter.



Drawn by: WRP Date: 10/26/15

Title:

**Final Minor Subdivision  
Independence Commons - Lot 13  
Location & Zoning Map**

Filepath: FinalMinorSubdivision\_IndependenceCom monsL ot13.mxd

Chapter 200 - SUBDIVISION OF LAND

[HISTORY: Adopted by the City Council of the City of Milford 11-10-2008 by Ord. No. 2008-12.1 ¶ Amendments noted where applicable.]

GENERAL REFERENCES qc

Building construction — See <a href="#">Ch. 88</a> .	Streets and sidewalks — See <a href="#">Ch. 197</a> .
Floodplain management — See <a href="#">Ch. 130</a> .	Trees — See <a href="#">Ch. 211</a> .
Property maintenance — See <a href="#">Ch. 174</a> .	Water — See <a href="#">Ch. 222</a> .
Sewers — See <a href="#">Ch. 185</a> .	Zoning — See <a href="#">Ch. 230</a> .

If, \_

*Footnotes:*

§ 200-1. - Purpose.

These regulations are adopted in order to promote and protect the public health, safety, convenience and general welfare; ensure the orderly growth and development of the City, the conservation, protection and proper use of land and adequate provision for housing, recreation, circulation, utilities and services; and safeguard the City from undue future expenditure for the maintenance of streets and public spaces.

§ 200-2. - Title.

These regulations shall be known and may be cited as the "City of Milford, Delaware, Land Subdivision Regulations."

§ 200-3. - Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ALLEY — A service roadway providing a secondary means of public access to abutting property and not intended for general traffic circulation.

COMMISSION — The Planning Commission of the City of Milford, Delaware.

OPEN SPACE — Areas of land within residential subdivisions or developments including planned unit developments that are available to all residents and or the public and which have the purpose to provide active and/or passive recreational opportunities, maintain land in a predominantly undeveloped and natural state including lands used for:

- (1) Community gardens;
- (2) Promotion of conservation and protection of wildlife;
- (3) Perpetual conservation easements;
- (4) Parks, plazas, walkways, sidewalks and trails;
- (5) Buffers or forested areas; or
- (6) For recreational uses as defined herein.

Open space shall not include areas of land for the following unless otherwise approved by Council:

- (1) Wetlands or stormwater management facilities;
- (2) Drainage easements;
- (3) Flagpole areas;
- (4) Medians (unless designed as a park);
- (5) Signage areas;
- (6) Landscaping in parking areas;
- (7) Predominantly impervious surfaces such as streets and parking lots;
- (8) Required front, side, or rear yards;
- (9) Any land included within designated lot lines; or
- (10) Utility facilities for uses such as sewer, water, gas or electric.

PLAT — The final drawing on which the subdivision plan is presented to the City Council for approval and which is submitted to the County Recorder of Deeds for recording.

PROPERTY OWNERS' ASSOCIATION — An association established by the subdivider as a non-stock corporation to provide for the perpetual maintenance of the common property in the subdivision.

RECREATIONAL USE — Areas of land within residential subdivisions or developments including planned unit developments which have the purpose to provide active recreational opportunities that are available to all residents of the community and/or the public including lands used for:

- (1) Indoor club houses;
- (2) Swimming pools and pool houses;
- (3) Tennis courts;
- (4) Basketball courts;
- (5) Athletic fields;
- (6) Picnic areas with tables;
- (7) Ponds for recreational use (boat, fishing or swimming);
- (8) Playgrounds; and
- (9) Bike or multi-model trails.

RIGHT-OF-WAY — A strip of land acquired by reservation, dedication, forced dedication, prescription, or condemnation and intended to be occupied by a road, crosswalk, railroad, electric transmission lines, gas pipelines, and water line, sanitary storm sewer, and other similar uses.

ROADWAY — The paved portion of the street primarily used for vehicular traffic.

A. ARTERIAL STREET and HIGHWAY — A street primarily used for fast and/or heavy traffic.

- B. COLLECTOR STREET — A street carrying traffic from minor streets to arterial streets and highways, including the principal traffic and entrance streets of a residential development.
- C. MINOR STREET — A street primarily used for access to the abutting properties.
- D. MARGINAL ACCESS STREET — A minor street paralleling and adjacent to an arterial street or highway and providing access to abutting properties and protection from through traffic.
- E. DEAD-END STREET or CUL-DE-SAC — A street closed at one end and having only one connection with any other street.
- F. HALF STREET — A street paralleling the boundary of a subdivision and lying partly in an abutting tract.

STANDARD SPECIFICATIONS FOR INSTALLATION OF UTILITY CONSTRUCTION PROJECTS AND SUBDIVISION PAVEMENT DESIGN — The current specifications regulating subdivision design and construction as adopted by the City.

STREET — All land between property lines, whether designated as a street, highway, throughway, thoroughfare, avenue, boulevard, road, parkway, right-of-way lane, place, court or any similar term.

SUBDIVIDER — Any person, firm, corporation, partnership or association or duly authorized agent who or which shall apply to the Commission for approval of the layout of any subdivision.

SUBDIVISION — The division or redivision of any tract of land into two or more lots or parcels for immediate or future sale or for building development.

SUBDIVISION, MINOR — Any subdivision fronting on an existing street, not involving any new street or road, not involving the extension of any municipal water or wastewater mains, not adversely affecting the development of the remainder of the parcel or adjoining property, and not in conflict with any provision or portion of the development plan, Official Map, Chapter 230, Zoning, or this chapter; limited to four lots.

SUPERBLOCK — An oversize residential block wherein private open spaces, closed to automobile traffic, are provided for the common use of all residents in the block.

[Ord. No. 2009-18, §§ 1, 2, 4-26-2010]

§ 200-4. - Application procedure.

A. Preliminary approval.

- (1) A preliminary plan and documents, as specified by the Planning Department, shall be prepared by the subdivider and submitted in accordance with the submission schedule as determined by the City Planner, along with the appropriate fees, as specified in § 230-57.
- (2) The Development Advisory Committee (DAC) shall review the application and plan. Comments from the DAC must be addressed via either submitting revised plans and/or necessary documents or via a narrative submitted to the City Planner. Upon confirmation by the City Planner that all DAC issues have been addressed satisfactorily, the application will then be scheduled to be heard by the Planning Commission.
- (3) The Planning Commission shall review the application and provide either a recommendation of preliminary approval with or without conditions, a recommendation of denial, or table the application. Upon a recommendation of approval with or without conditions or recommendation of denial, the application shall be scheduled to be heard by the City Council.
- (4) City Council shall grant preliminary approval of the application with or without conditions, deny the application, or table the application.
- (5) Preliminary approval from City Council shall be void after one year, unless an extension is requested by the owner and approved by City Council prior to the expiration.

B. Final approval.

- (1) A final plat and documents, as specified by the Planning Department, shall be prepared by the subdivider and submitted in accordance with the submission schedule as determined by City Planner, along with the appropriate fees, as specified in § 230-57.
- (2) The Development Advisory Committee shall review the application and plan. Comments from the DAC must be addressed via either submitting revised plans and/or necessary documents or via a narrative submitted to the City Planner. The final plan shall also be reviewed by the City Planner for confirmation that the application is designed in accordance with all subdivision, zoning and other land use regulations of the City. The final plan shall also be reviewed by the City Engineer for confirmation that the application is designed in accordance with the construction standards and specifications of the City. Upon confirmation by the City Planner and City Engineer that all issues have been addressed satisfactorily, the application will be scheduled to be heard by the Planning Commission.
- (3) The Planning Commission shall review the application and provide either a recommendation of final approval with or without conditions, a recommendation of denial, or table the application. Upon a recommendation of approval with or without conditions, or recommendation of denial, the application shall be scheduled to be heard by City Council.
- (4) City Council shall approve the application with or without conditions, deny the application, or table the application.
- (5) Within 90 days of final approval from City Council, the subdivider shall record the plat at the County Recorder of Deeds office and provide the City Planner a receipt of the recordation including the deed book and page number. Prior to recording the plat, five copies of the plat must be submitted to the City Planner for stamping and signing. Four sets will be returned to the subdivider.
- (6) Upon recordation of the plat, the subdivider shall provide the Land Data Manager of the City a mylar copy of the plat including the deed book and page printed thereon.
- (7) Failure to record the approved plat within one year from the date of City Council approval shall void the final approval. In order to obtain final approval after it has been voided, the subdivider must make application for final approval again.
- (8) Failure to record the approved plat in more than one year from the date of City Council approval shall void the preliminary approval and final approval. In order to obtain preliminary and final approval after they have been voided, the subdivider must make application for and receive preliminary approval, then make application for and receive final approval.

§ 200-5. - General requirements and design standards.

The following shall be deemed to be minimum requirements and may be varied or waived by the Commission only under circumstances set forth in § 200-6:

A. Streets.

- (1) The layout, character, extent, width, grade and location of proposed streets shall be established with due regard to:
  - (a) Public convenience and safety.
  - (b) Proposed uses of the land to be served by said streets.
  - (c) Proper relation and connection with and continuation and projection of streets in the adjacent areas, whether these streets are existing or proposed in another subdivision in a neighborhood plan, in the development plan or in the Official Map, as approved or adopted by the Commission.
  - (d) Topography and other land features.
- (2) The layout of proposed streets shall furthermore be arranged in a manner acceptable to the Commission and City Council.
- (3) Minor streets shall be laid out so as to discourage their use by through traffic.
- (4)

Where a subdivision abuts or contains an existing or proposed arterial street, limited-access highway or railroad, the City Council may require marginal access or service streets, reverse frontage with screen planting contained in a nonaccess reservation along the rear property line and deep lots with rear service alleys or other treatment, such as parks, which may be necessary for the protection of residential properties and for separation of through and local traffic, with due regard for the requirements of future approach grades and grade separations.

- (5) Where a tract of land is subdivided into lots substantially larger than the minimum size required in the zoning district in which a subdivision is located, the Commission may require that streets and lots be laid out so as to permit future resubdivision in accordance with the requirements of this chapter.
- (6) Reserve strips controlling access to streets shall be prohibited except where the control and disposal of land comprising such strips has been placed in the governing body under conditions approved by the City Council such as provided in Subsection A(4) above.
- (7) Certain proposed streets may be required to be extended to the boundary line of the subdivision to provide access to tracts which may be subdivided in the future. Wherever necessary, when a street is carried to the boundary line of the subdivision, the City Council may require a temporary turnaround improved to the satisfaction of the City Engineer and of the size specified in Subsection A(16) below at the stub end.
- (8) The creation of dead-end or loop streets and superblocks will be encouraged wherever the City Council finds that such layout will not interfere with traffic convenience and safety. The City Council shall determine the number of connections of streets in the proposed subdivision with existing streets. At least two such connections shall be provided, except where a proposed subdivision only contains one dead-end street.
- (9) Street jogs shall be prohibited. Street intersections, where center lines do not meet, shall have center-line offsets of 150 feet or more.
- (10) A tangent at least 100 feet long shall be introduced between reverse curves on arterial and collector streets and may be required on all other streets.
- (11) Street right-of-way lines deflecting from each other at any point shall be connected with a curve, the radius of which for the inner right-of-way lines shall not be less than 750 feet on arterial streets, 300 feet on collector streets and 100 feet on minor streets. The outer right-of-way line shall be parallel to said inner right-of-way line.
- (12) Streets shall be laid out so as to intersect as nearly as possible at right angles. The inner right-of-way line of a street intersecting another street at an angle of less than 90° shall be tangent to and follow a curve with a minimum radius of 150 feet centered on the nearest right-of-way line of the intersecting street. The outer right-of-way line shall be parallel to said inner right-of-way line.
- (13) Street right-of-way lines at intersections shall be connected with a curve, the radius of which shall be 25 feet.
- (14) Right-of-way widths.
  - (a) Street right-of-way widths shall be as shown on the Official Map or development plan, and, if not shown thereon, said widths for the various street types between face of curb or edge of road shall not be less than as follows:

Street Type (feet)	Right-of-Way Roadway (feet)	
	80 to 110	As required by DelDOT
Arterial	80 to 110	As required by DelDOT
Collector	60	28
Minor, for townhouses and apartments	60	30
Minor, for other residences	50	<u>25</u>
Dead-end	50	<u>22</u>
Marginal access	30	<u>16</u>
*Alley	<u>20</u>	<u>12</u>

Note:

\* If utilities are present in an alley, the City reserves the right to modify the minimum right-of-way and roadway widths.

- (b) Subdivisions utilizing open swale drainage shall have a ten-foot drainage easement along the front of each property to accommodate the back slope of the drainage swales.
- (15) Half streets shall be prohibited except where essential to the reasonable development of a subdivision in conformity with the requirements of this chapter and where the Commission finds that it shall be practicable to require the dedication of the other half when the abutting property is subdivided. Wherever an approved half street shall be adjacent to a subdivision, the other half of the street shall be platted within said subdivision.
- (16) Dead-end streets, designed to be so permanently, shall not be longer than 400 feet and shall be provided at the closed end with a turnaround having an outside roadway diameter of 76 feet and a street right-of-way diameter of 100 feet.
- (17) Street names.
  - (a) Street names shall be selected so as not to duplicate or be confused with the names of existing streets. Street names shall be subject to the approval of the Commission. It is recommended that all new streets shall be named in the following manner:

General direction	Long	Short (under 1,000 feet)
North and south	Streets	Places
East and west	Avenues	Courts
Diagonal	Roads	Ways
Curving	Drives	Lanes or Circles

- (b) Arterial streets shall be named "boulevards."
  - (18) Street grades shall not exceed 5%.
  - (19) Street grades shall be not less than 0.5% wherever feasible.
  - (20) Changes in street grades shall be connected by vertical curves of suitable length.
  - (21) The width of streets adjacent to areas designed, proposed or zoned for nonresidential use shall be increased by such amount as may be deemed necessary by the Commission to assure the free flow of through traffic without interference by parked or parking cars and to provide adequate and safe parking space.
  - (22) All required roads shall be constructed in accordance with the standard specifications as issued by the City Engineer.
- B. Sidewalks and curbs.
- (1) Sidewalks shall be required in all subdivisions on both sides of the street. Sidewalks shall have the following widths:
    - (a) In residential subdivisions: four feet unless otherwise specified.
    - (b) In commercial and industrial subdivisions: from the curb to property lines unless otherwise specified.
  - (2) Curbs or drainage swales conveying stormwater shall be required in all subdivisions.
  - (3) All required sidewalks shall be constructed in accordance with standard specifications as issued by the City Engineer.
- C. Easements. Where a subdivision is traversed by a watercourse, drainageway, channel, pipe or stream, there shall be provided a stormwater easement or drainage right-of-way of such width as will be adequate for the purpose, in accordance with requirements specified by the City Engineer. Parallel streets or parkways may be required in relation thereto.
- D. Blocks.
- (1) The lengths, widths and shapes of blocks shall be determined with due regard to:
    - (a) The provision of building sites suitable to the needs of the type of use contemplated.
    - (b) Zoning requirements as to lot sizes and dimensions.
    - (c) The control, safety and convenience of pedestrian and vehicular traffic.
    - (d) The characteristics of topography.
  - (2) Block length shall not exceed 1,200 feet.
  - (3) Block widths shall be not less than 275 feet nor more than 450 feet and shall be planned to provide two rows of lots.
  - (4) Pedestrian walkways other than in streets may be required where deemed essential to provide for circulation or access to schools, playgrounds, shopping centers, transportation and other community facilities. Said walkways shall be not less than four feet wide.
  - (5) Alleys shall be provided if required by the City Engineer.
- E. Lots.
- (1) Lot width, depth, shape and orientation and the building setback lines shall be appropriate for the location of the subdivision, for the type of development and for the use contemplated.
  - (2) Lot sizes shall conform to the requirements of Chapter 230, Zoning.
  - (3) Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to comply with the off-street parking and loading requirements contained in Chapter 230, Zoning.
  - (4) Corner lots shall have sufficient width to provide an adequate building site within all the yard requirements. Corner lots shall have two front yard setbacks fronting each street, one side yard setback, and one rear yard setback.
  - (5) All lots in a subdivision shall have frontage on a public street.
  - (6) Double-frontage lots shall be avoided. Reverse-frontage lots shall be provided where necessary for protection of residential properties from through traffic and adverse nonresidential uses, for separation of through and local traffic and to overcome difficulties of topography or other specific conditions. Screen planting and a fence or wall shall be provided along the rear property line within an easement 10 feet or more in width, across which there shall be no right of access.
  - (7) Side lot lines shall be at right angles or radial to street lines.
  - (8) No lots shall be platted on land subject to flooding for residential or any other use where danger to life or property or an aggravation of flood hazard may result. Such land should be set aside for uses which would not be endangered by periodic or occasional inundations.
  - (9) No lots shall be platted within 25 feet of land under the jurisdiction of the U.S. Army Corps of Engineers.
- F. Parks, playgrounds, open spaces, school sites and natural features.
- (1) Parks and playgrounds. Where a proposed park or playground is located in whole or in part in a subdivision, the Commission may require the dedication or reservation of such area within the subdivision, in those cases in which the Commission deems such requirements to be reasonable.
  - (2) Open spaces. Where deemed essential by the Commission and City Planner, upon consideration of the particular type of development proposed in the subdivision, and especially in large-scale developments, the Commission or City Planner may require the dedication or reservation of sites of a character, extent and location suitable to the needs created by such development for playgrounds or parks. The Commission shall not require that more than 10% of the gross area of the open space of the subdivision to be so dedicated or reserved unless otherwise specified by the Zoning Code.<sup>2</sup> In case of a conflict, the requirement of the Zoning Code prevails. The Commission shall give due credit for the provision of open spaces reserved for the common use of all property owners within the proposed subdivision by covenants in the deeds. Generally, the minimum area of contiguous open space acceptable for dedication for public use shall be at least three acres and preferably five acres. Open spaces with a lesser area may be approved by the Commission whenever it deems that the difference between the area offered and three acres may be made up in connection with the future subdivision of adjacent land or added to an existing recreation area.
  - (3) School sites or sites for other public uses. The Commission may also require a subdivider to set aside such area as it may deem to be required for a school or other public use. Upon failure of the proper authorities to purchase such site within one year after the date of the approval of the plat, the subdivider, upon application to the Commission and approval of such application, shall be relieved of the responsibility of reserving such land for public purposes.
  - (4) Preservation of natural features. The Commission may require the preservation of all natural features which add value to residential developments and to the community, such as large trees or groves, watercourses and historic spots and similar irreplaceable assets. In no case shall a tree over 12 inches in diameter measured three feet from the base be removed without prior approval by the City Arborist.
- G. General grading. No final slope on the property shall exceed the normal angle of repose of the soil of said slope as determined by the City Engineer, except where said slope consists of a natural rock formation or is supported by a retaining wall or equivalent of a design acceptable to the City Engineer.
- H. Improvements.
- (1) In major subdivisions the following improvements are required:
    - (a) Paved streets.
    - (b) Street signs.
    - (c) Curbs and gutters, or roadside swales. Curbs shall be required as per standard specifications to stabilize intersections, entrances, and parking areas, and where they are necessary for the conveyance of stormwater and protecting road surfaces and driveway surfaces from vehicular traffic.
    - (d) Sidewalks.

- (e) Streetlighting.
  - (f) Shade trees. Shade trees 150 feet on center each side of the road shall be located so as not to interfere with utilities or sidewalks and shall be of the types recommended by the City Arborist.
  - (g) Topsoil protection. No topsoil shall be removed from the site or used as spoil. Topsoil moved during the course of construction shall be redistributed so as to provide at least six inches of cover to all areas of the subdivision and shall be stabilized by seeding or planting.
  - (h) Monuments. Monuments shall be of the type, size and shape required by the City Engineer.
  - (i) Water mains, culverts, storm sewers and sanitary sewers.
    - [1] All water installations shall be looped; all sewer and storm sewer systems shall be extended at minimum slope, maximum depth, and connected with an approved method and shall be adequate to handle all present and probable future development.
    - [2] All of the above-listed improvements shall be subject to inspection and approval by the City Engineer, who shall be notified by the subdivider at least 24 hours prior to the start of construction. No underground installation shall be covered until inspected and approved.
    - [3] Utility easements shall be required to be granted and recorded by the subdivider to allow extension of utilities to neighboring properties.
  - (j) Swales. Conveyance of stormwater is permitted by open drainage systems where appropriate for environmental and engineering integrity and design. Such systems shall be separated from the edge of road to the top of bank by a minimum five-foot shoulder. The depth of such systems shall not exceed two feet below crown of road. The side slope shall be a maximum of 4:1. The bottom of the system shall have a minimum width of two feet. The system slope shall be such that the maximum velocity does not exceed two feet per second. The system has to be designed in such a way as to incorporate driveway and crossroad drainage pipes; such systems shall be restored with topsoil and sod. Temporary check dams shall be placed in intervals not to exceed 300 feet.
  - (k) Headwalls. Storm drainage pipes which are part of an open swale drainage system shall be terminated with a headwall in accordance with standard specifications.
- (2) The developer shall complete all utilities and street improvements not specifically waived by the Commission in accordance with standard specifications as issued by the City Engineer and with any additional requirements specified by the Commission. Construction drawings shall be submitted in a form satisfactory to the City Engineer.
  - (3) When the Commission or the City Engineer, due to planning considerations extraneous to the subdivision, requires a standard of improvements higher than that which is sufficient to serve the subdivision, the amount of the bond to be posted shall be deemed to be satisfactory if it adequately covers the cost of improvements which would be normally required.
  - (4) The developer shall pay the review and inspection fees as set forth in Chapter 230, Zoning, § 230-57, Planning, Zoning and Engineering Fees. The cost for each segment or phase of the development shall be paid prior to commencement of utility construction.

[Ord. No. 2013-7, § 1, 9-23-2013]

Footnotes:

-- 0 --

Editor's Note: See Ch. 230, Zoning.

#### § 200-6. - Variances and waivers.

Applicants may request, at the time of application submission, the varying or waiving of requirements of Chapter 200, and the Planning Commission may, at its discretion, recommend to City Council the varying or waiving of said requirements and request conditions that substantially secure the objectives of the requirements so waived. Upon the findings of the City Council that, due to special conditions peculiar to a subdivision or a site, certain requirements of these regulations are inappropriate or that strict compliance with said requirements may cause extraordinary and unnecessary hardships, the City Council may vary or waive said requirements, provided that such variance or waiver shall not be detrimental to the public health, safety or general welfare or have the effect of nullifying the intent and purpose of the Official Map, Chapter 230, Zoning, the Development Plan or this chapter. In varying or waiving certain requirements, the City Council may specify such conditions at will, in its judgment, secure substantially the objectives of the requirements so varied or waived.

#### § 230-16. - I-1 Limited Industrial District.

[Amended 7-9-1990]

In an I-1 District no building/structure or premises shall be used and no building/structure or part thereof shall be erected or altered which is arranged, intended or designed to be used, in whole or in part, for any purpose except for one or more of the following uses and complying with the requirements herein indicated.

- A. The purpose of an I-1 Limited Industrial District shall be to provide locations for the development of light to moderate industrial manufacturing, warehousing, wholesale and limited research establishments which, because of their type and nature, would be compatible with or adjacent to residential areas. Also, the purpose is to provide guidelines and performance standards which will control and confine any offensive features (i.e., noise, vibration, heat, smoke, glare, dust, objectionable odors, toxic wastes or unsightly storage) to the confines of the premises and within enclosed buildings or within a visually enclosed space.
- B. Permitted uses. Permitted uses of the I-1 District shall be as follows:
  - (1) All permitted uses of the OC-1 District.
  - (2) Light manufacturing, assembling, converting, altering, finishing, baking, cooking or any other type of processing or storage of an industrial nature for the production and/or distribution of any goods, materials, products, instruments, appliances and devices, provided that the fuel or power supply shall be of an approved type. Also included shall be all incidental clinics, offices, cafeterias and recreational facilities for the exclusive use of in-house staff and employees.
  - (3) Research, design, testing and development laboratories.
  - (4) Printing, publishing, binding, packaging, storage, warehousing, distribution and trucking terminal operations and trucking schools.
  - (5) Municipal and public services and facilities, such as utility supply areas (i.e., water, sewer and electric), distribution facilities and substations.
  - (6) Truck or large vehicle repair facilities with associated parking area. All fuel and lubricant storage shall be installed in compliance with state and federal regulations and shall not be closer than 500 feet to any school or building(s) used for assembly.

[Added 12-16-1996]

- C. Prohibited uses. The following are expressly prohibited in an I-1 District:
  - (1) Residences, except those in existence at the time of adoption of this amendment.
  - (2) Manufacturing uses involving production of the following products from raw materials: asphalt, cement, charcoal and fuel briquettes; chemicals: aniline dyes, ammonia, carbide, caustic soda, cellulose, chlorine, carbon black and bone black, creosote, hydrogen and oxygen, industrial alcohol, nitrates (both natural and manufactured) of an explosive nature, potash, petro chemical, pyroxilin, rayon yarn and hydrochloric, nitric, picric, phosphoric and sulfuric acids; coal, coke and tar products, including gas manufacturing, explosives, fertilizers, glue and size (animal); linoleum and oil cloth, matches, paint, varnishes and turpentine; rubber (natural and synthetic); and soaps, including fat rendering.
  - (3) Dumps, junkyards, automobile salvage and dismantling plants/yards, storage areas or operations for the storage or resale of used automotive or other machine parts.
  - (4) Operations involving slaughterhouses, stockyards or slag piles.
  - (5) Storage of explosives and bulk or wholesale storage of gasoline above ground.
  - (6) Quarries, stone crushers, screening plants and all associated uses.

- (7) The following processes: large-scale reduction, refining, smelting and alloying of metal or metal ores; refining petroleum products, such as gasoline, kerosene, naphtha and lubricating oil; and reduction and processing of wood pulp and fiber, including paper mill operations.
- D. Conditional uses. The following uses are permitted in the I-1 District, in accordance with the provisions within Article IX (conditional use portion) of this chapter:
- (1) Airfields or airpark facilities.
  - (2) Mini-warehouses or public storage facilities.
  - (3) Radio-television facilities.
- E. Design standards and requirements. These are minimum requirements for all activities that are permitted or conditional uses. Conditional use activities are subject to much greater restrictions as may be required by the Planning Commission.
- (1) Accessory uses shall not be permitted without a principal use.
  - (2) Any uses not permitted, as previously listed, are prohibited.
  - (3) All uses shall be conducted within a completely enclosed building. There shall be no open storage of raw, in process or finished products, supplies or waste material, except that these items shall be shielded from public view by a landscaped screen, fence or wall.
  - (4) In a planned industrial park or any lands designated as an I-1 District, no building/structure, accessory structure or sign shall be located closer than 200 feet to any nonindustrial district boundary.
  - (5) Adequate off-street parking shall be provided for all employees and traffic to the buildings. The minimum requirements are given in Article IV of this chapter and are to be deemed as minimum standards only. Standards in excess of those stated in Article IV may be stipulated by the Planning Commission during the site plan review.
  - (6) All fencing shall be properly maintained.
  - (7) All front yard areas and all areas open to public view shall be maintained in a neat and attractive condition.
  - (8) All loading operations shall be conducted at the side or rear of the building. In the unloading or loading process, no vehicles participating in these operations shall be allowed to extend into any public or private driveway or street or impede its traffic circulation.
  - (9) All odorous fumes or matter emitted into the environment from any/all fuel-burning equipment, open stacks and internal combustion engines must comply with the requirements set forth by the State of Delaware, Department of Natural Resources and Environmental Control (DNREC).
  - (10) Dust or particulate debris from any processing or production operations will be minimized by the use of appropriate mechanical and/or electrical devices to the extent necessary to ensure that such emissions shall not be offensive at or beyond the property line of the industry/warehouse. All such activities will comply with the requirements of the DNREC, State of Delaware.
  - (11) All internal roads, driveways and parking areas (for public, in-house employee or truck/vehicular traffic) shall be paved.
  - (12) All dry waste, in dust or particulate form, will be transported in closed or covered vehicles.
  - (13) The proposed use shall not endanger the surrounding areas to the possibilities of fire, explosion or contamination. All uses shall comply with state regulations which govern their operations. There shall be no allowance for the storage of radioactive materials or those materials deemed to be toxic or dangerous. All liquid storage shall have an approved containment (area) barricade capable of containing any failure of storage medium.
  - (14) The proposed use shall not allow the emission of heat or glare beyond its property line. All lighting shall be directed so as not to cause glare to the surrounding properties. The light source shall be shielded so as not to be visible from adjoining properties or streets.
  - (15) All I-1 District projects and proposals are subject to site plan review by the Planning Commission.
- F. Area and height regulations.
- (1) Minimum lot area shall be two acres.
  - (2) Maximum lot coverage shall be 60%, with the remainder being that of grass and landscape areas. Parking areas shall be landscaped.
  - (3) Minimum lot width shall be 150 feet.
  - (4) Maximum building height shall be 50 feet.
  - (5) Minimum front yard setback shall be 75 feet.
  - (6) Minimum side yard setback shall be 40 feet.
  - (7) Minimum rear yard setback shall be 45 feet.
  - (8) Off-street parking. See Article IV of this chapter.
  - (9) Landscape screening. See Article V of this chapter.
  - (10) Sign requirements. See Article VI of this chapter.
  - (11) Accessory structures shall occupy no more than 10% of the lot area.
  - (12) Accessory structures shall be located in the rear yard/lot area.
  - (13) Accessory structures shall be located at least 45 feet from the rear lot line.

**CITY OF MILFORD  
PLANNING COMMISSION**

**RESOLUTION NO. PC15-010**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF  
MILFORD, DELAWARE, RECOMMENDING TO CITY COUNCIL OF  
THE CITY OF MILFORD  
THE APPROVAL OF A FINAL MINOR SUBDIVISION FOR  
CITY OF MILFORD  
AT 216 WEST LIBERTY WAY  
FOR A 2 LOT, 2 UNIT SUBDIVISION  
CONSISTING OF 1 SOLAR FIELD AND  
1 VACANT LOT  
IN AN OC-1 ZONING DISTRICT  
TAX MAP MD-16-173.00-01-02.17**

WHEREAS, the owner and applicant has made application with the City of Milford; and,

WHEREAS, the proposed application shall comply with the standards and regulations of the Code of the City of Milford; and,

WHEREAS, the Planning Commission met and heard said application during a public hearing on December 15, 2015; and,

WHEREAS, by a vote of \_\_\_\_\_ recommended approval of the application.

NOW, THEREFORE, BE IT RESOLVED, the Planning Commission has recommended approval of the application to the Mayor and City Council of the City of Milford, Delaware with the following recommendations:

1.

APPROVED: \_\_\_\_\_

Arthur Campbell,  
Planning Commission Chairman

SIGNED: \_\_\_\_\_

Christine Crouch,  
Deputy City Clerk

# City of Milford



## **PUBLIC NOTICE CITY OF MILFORD PLANNING COMMISSION HEARING**

NOTICE IS HEREBY GIVEN that the Planning Commission of the City of Milford will hold a Public Hearing on Tuesday, December 15, 2015 at 7:00 p.m. in the Joseph Ronnie Rogers Council Chambers at Milford City Hall, 201 South Walnut Street, Milford, Delaware to consider the following matter:

City of Milford for a Final Minor Subdivision of 3.21+/- acres in an OC-1 (Office Complex District). Property is located at 316 West Liberty Way, Milford Delaware. Present Use and Proposed Use: Solar Field and Vacant Land. Tax Map MD-16-173.00-01-02.17

All interested parties are hereby notified to be present for the review and recommendation by the Planning Commission to City Council. Final action will be taken by City Council.

If unable to attend, written comments will be accepted up to one week prior to the hearing. Anyone with questions or comments should contact Rob Pierce in the Planning Department via email at [RPierce@milford-de.gov](mailto:RPierce@milford-de.gov) or at 302.424.3712.

By: Christine Crouch  
Deputy City Clerk

*Advertised: Beacon 111115*

PARCEL 12  
 CITY OF MILFORD  
 MD-16-173.00-01-02.16  
 DR 286-59

LOT 13A  
 CITY OF MILFORD

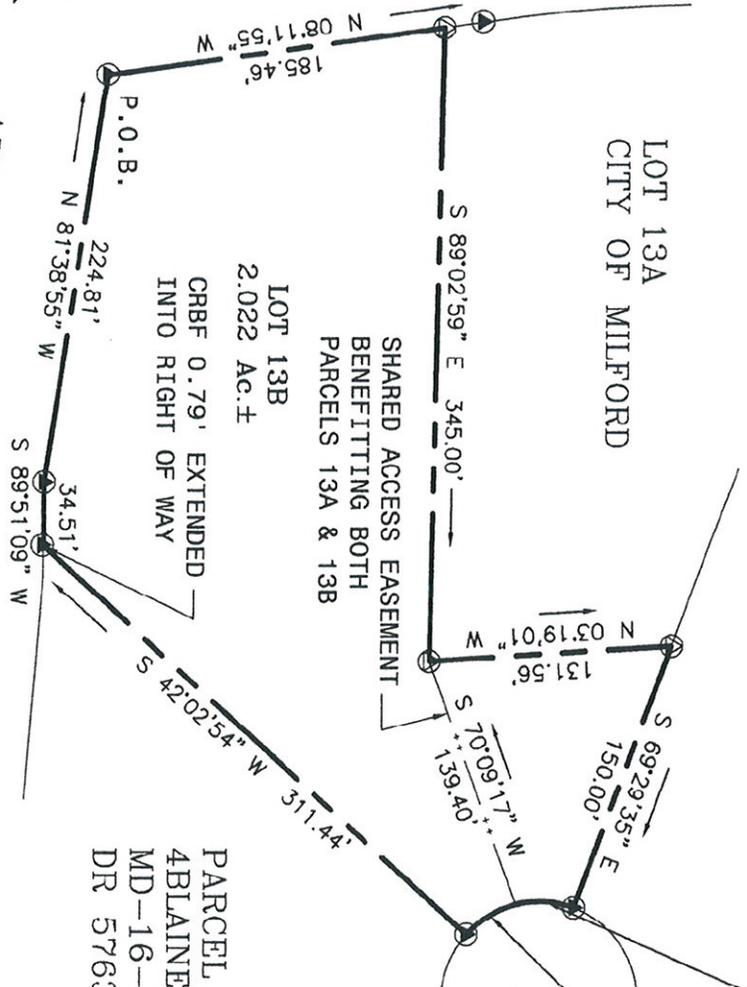
LOT 13B  
 2.022 Ac.±

SHARED ACCESS EASEMENT  
 BENEFITTING BOTH  
 PARCELS 13A & 13B

PARCEL 14  
 4BLAINE, LLC.  
 MD-16-173.00-01-02.18  
 DR 5763-202

AIRPORT ROAD KCR 407  
 WIDTH VARIES

CANTERBURY ROAD STATE RD 15  
 WIDTH VARIES



CRD: LOT 13 LIBERTY

BASIS OF BEARINGS= PLOT OF MILFORD  
 INDEPENDENCE COMMONS  
 RECORDED IN PLOT BK. 103 PG. 2  
 SURVEY CLASS= SUBURBAN  
 NO EASEMENTS PROVIDED

PROFESSIONAL LAND SURVEYOR  
 DATE

Lands to be conveyed to:  
**FIRST STATE MANUFACTURING, INC.**

**M E R E S T O N E**  
 CONSULTANTS, INC.  
 ENGINEERS - PLANNERS - SURVEYORS

5215 WEST WOODMILL DRIVE 19633 BLUE BIRD LANE, SUITE 9  
 WILMINGTON, DE 19808 REHOBOTH BEACH, DE 19971  
 PH: 302-992-7900 PH: 302-226-5880  
 FAX: 302-992-7911 FAX: 302-226-5883

T.M.: MD-16-173.00-01-02.17

CITY OF MILFORD  
 KENT COUNTY, DELAWARE  
 DATE: SEPT. 14, 2015  
 W.O.: 23009N  
 SCALE: 1" = 100'  
 F.B.: JRN DRAWN BY: RWN  
 DISK: FSM LOT 13B

# City of Milford



## **PUBLIC NOTICE CITY OF MILFORD CITY COUNCIL HEARING**

NOTICE IS HEREBY GIVEN that the City Council of the City of Milford will hold a Public Hearing on Monday, January 25, 2016 at 7:00 p.m., or as soon thereafter as possible, in the Joseph Ronnie Rogers Council Chambers at Milford City Hall, 201 South Walnut Street, Milford, Delaware, to take final action upon the matter of:

Merestone Consultants for a Final Minor Subdivision of 23.96+/- acres in an R-1 (Residential District). Property is located at 512 Lakeview Ave, Milford Delaware. Present Use and Proposed Use: School and Vacant Land. Tax Map 1-30-3.07-138.00

All parties of interest are hereby notified to be present and to express their views before a final decision is rendered. If unable to attend, written comments will be accepted up to one week prior to the hearing. Anyone with questions or comments should contact Rob Pierce in the Planning Department via email at [RPierce@milford-de.gov](mailto:RPierce@milford-de.gov) or at 302.424.3712.

By: Christine Crouch  
Deputy City Clerk

*Advertised: Beacon 111115*



PLANNING & ZONING DEPARTMENT  
P 302.424.3712 F: 302.424.3558

201 SOUTH WALNUT STREET  
MILFORD, DE 19963

[www.cityofmilford.com](http://www.cityofmilford.com)

## DATA SHEET FOR MILFORD SCHOOL DISTRICT

Planning Commission Public Hearing: December 15, 2015

City Council Public Hearing: January 25, 2016

---

<b>Resolution</b>	:	PC15-011
<b>Application Number / Name</b>	:	15-230 / Milford School District – Middle School
<b>Applicant</b>	:	Milford School District 906 Lakeview Avenue Milford, DE 19963
<b>Owner</b>	:	Same
<b>Application Type</b>	:	Final Minor Subdivision
<b>Present Comprehensive Plan Designation</b>	:	Institutional
<b>Present Zoning District</b>	:	R-1 (Single Family Residential)
<b>Present Use</b>	:	School
<b>Area and Location</b>	:	23.96 +/- acres located between Lakeview Avenue and Seabury Avenue, and School Place and Kent Place.
<b>Property Identification Numbers</b>	:	1-30-3.07-138.00

ENC: Staff Recommendation Report  
Exhibit A – Location & Zoning Map  
Exhibit B – Final Minor Subdivision Plan



PLANNING & ZONING DEPARTMENT  
P 302.424.3712 F: 302.424.3558

201 SOUTH WALNUT STREET  
MILFORD, DE 19963

[www.cityofmilford.com](http://www.cityofmilford.com)

**STAFF RECOMMENDATION REPORT  
November 02, 2015**

**Application Number / Name** : 15-230 / Milford School District

**Applicant** : Milford School District  
906 Lakeview Avenue  
Milford, DE 19963

**Owner** : Same

**Present Comprehensive Plan Designation** : Institutional

**Present Zoning District** : R-1 (Office Complex District)

**Present Use** : Vacant School

**Area and Location** : 23.96 +/- acres located between Lakeview Avenue and Seabury Avenue, and School Place and Kent Place.

**Property Identification Numbers** : 1-30-3.07-138.00

---

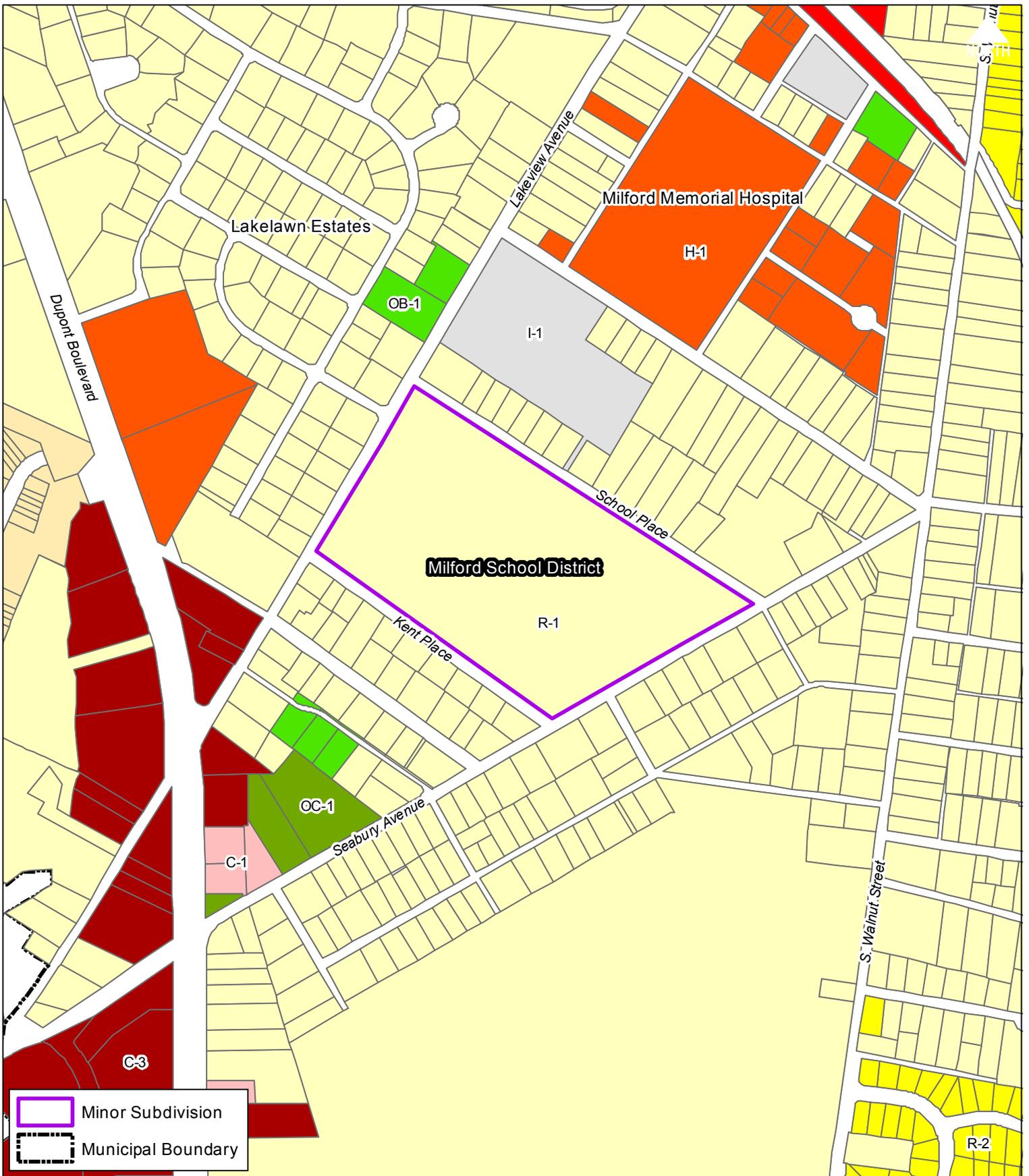
**I. STAFF RECOMMENDATION:**

- The minor subdivision is consistent with Chapter 230-9 and meets all design standards and area regulations.

**II. AGENCY COMMENTS:**

- DelDOT – No comments solicited.
- Sussex Conservation District – No comments solicited.
- State Fire Marshall – No comments solicited.

This recommendation is offered without the benefit of public testimony and is based on the information presented when the application was received by the Planning & Zoning Department. The Planning Commission shall give considerable weight to public testimony received during public hearing in considering its recommendation to City Council in this matter.



 Minor Subdivision  
 Municipal Boundary



Drawn by: WRP Date: 10/26/15

Title:

Final Minor Subdivision  
**Milford School District**  
 Location & Zoning Map

Filepath: FinalMinorSubdivision\_MilfordSchoolDistrict.mxd

[HISTORY: Adopted by the City Council of the City of Milford 11-10-2008 by Ord. No. 2008-12.<sup>1</sup> □ Amendments noted where applicable.]

GENERAL REFERENCES qc

Building construction — See <u>Ch. 88</u> .	Streets and sidewalks — See <u>Ch. 197</u> .
Floodplain management — See <u>Ch. 130</u> .	Trees — See <u>Ch. 211</u> .
Property maintenance — See <u>Ch. 174</u> .	Water — See <u>Ch. 222</u> .
Sewers — See <u>Ch. 185</u> .	Zoning — See <u>Ch. 230</u> .

If;\_

*Footnotes:*

§ 200-1. - Purpose.

These regulations are adopted in order to promote and protect the public health, safety, convenience and general welfare; ensure the orderly growth and development of the City, the conservation, protection and proper use of land and adequate provision for housing, recreation, circulation, utilities and services; and safeguard the City from undue future expenditure for the maintenance of streets and public spaces.

§ 200-2. - Title.

These regulations shall be known and may be cited as the "City of Milford, Delaware, Land Subdivision Regulations."

§ 200-3. - Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ALLEY — A service roadway providing a secondary means of public access to abutting property and not intended for general traffic circulation.

COMMISSION — The Planning Commission of the City of Milford, Delaware.

OPEN SPACE — Areas of land within residential subdivisions or developments including planned unit developments that are available to all residents and or the public and which have the purpose to provide active and/or passive recreational opportunities, maintain land in a predominantly undeveloped and natural state including lands used for:

- (1) Community gardens;
- (2) Promotion of conservation and protection of wildlife;
- (3) Perpetual conservation easements;
- (4) Parks, plazas, walkways, sidewalks and trails;
- (5) Buffers or forested areas; or
- (6) For recreational uses as defined herein.

Open space shall not include areas of land for the following unless otherwise approved by Council:

- (1) Wetlands or stormwater management facilities;
- (2) Drainage easements;
- (3) Flagpole areas;
- (4) Medians (unless designed as a park);
- (5) Signage areas;
- (6) Landscaping in parking areas;
- (7) Predominantly impervious surfaces such as streets and parking lots;

- (8) Required front, side, or rear yards;
- (9) Any land included within designated lot lines; or
- (10) Utility facilities for uses such as sewer, water, gas or electric.

**PLAT** — The final drawing on which the subdivision plan is presented to the City Council for approval and which is submitted to the County Recorder of Deeds for recording.

**PROPERTY OWNERS' ASSOCIATION** — An association established by the subdivider as a non-stock corporation to provide for the perpetual maintenance of the common property in the subdivision.

**RECREATIONAL USE** — Areas of land within residential subdivisions or developments including planned unit developments which have the purpose to provide active recreational opportunities that are available to all residents of the community and/or the public including lands used for:

- (1) Indoor club houses;
- (2) Swimming pools and pool houses;
- (3) Tennis courts;
- (4) Basketball courts;
- (5) Athletic fields;
- (6) Picnic areas with tables;
- (7) Ponds for recreational use (boat, fishing or swimming);
- (8) Playgrounds; and
- (9) Bike or multi-model trails.

**RIGHT-OF-WAY** — A strip of land acquired by reservation, dedication, forced dedication, prescription, or condemnation and intended to be occupied by a road, crosswalk, railroad, electric transmission lines, gas pipelines, and water line, sanitary storm sewer, and other similar uses.

**ROADWAY** — The paved portion of the street primarily used for vehicular traffic.

- A. **ARTERIAL STREET and HIGHWAY** — A street primarily used for fast and/or heavy traffic.
- B. **COLLECTOR STREET** — A street carrying traffic from minor streets to arterial streets and highways, including the principal traffic and entrance streets of a residential development.
- C. **MINOR STREET** — A street primarily used for access to the abutting properties.
- D. **MARGINAL ACCESS STREET** — A minor street paralleling and adjacent to an arterial street or highway and providing access to abutting properties and protection from through traffic.
- E. **DEAD-END STREET or CUL-DE-SAC** — A street closed at one end and having only one connection with any other street.
- F. **HALF STREET** — A street paralleling the boundary of a subdivision and lying partly in an abutting tract.

**STANDARD SPECIFICATIONS FOR INSTALLATION OF UTILITY CONSTRUCTION PROJECTS AND SUBDIVISION PAVEMENT DESIGN** — The current specifications regulating subdivision design and construction as adopted by the City.

**STREET** — All land between property lines, whether designated as a street, highway, throughway, thoroughfare, avenue, boulevard, road, parkway, right-of-way lane, place, court or any similar term.

**SUBDIVIDER** — Any person, firm, corporation, partnership or association or duly authorized agent who or which shall apply to the Commission for approval of the layout of any subdivision.

**SUBDIVISION** — The division or redivision of any tract of land into two or more lots or parcels for immediate or future sale or for building development.

**SUBDIVISION, MINOR** — Any subdivision fronting on an existing street, not involving any new street or road, not involving the extension of any municipal water or wastewater mains, not adversely affecting the development of the remainder of the parcel or adjoining property, and not in conflict with any provision or portion of the development plan, Official Map, Chapter 230, Zoning, or this chapter; limited to four lots.

**SUPERBLOCK** — An oversize residential block wherein private open spaces, closed to automobile traffic, are provided for the

common use of all residents in the block.

[Ord. No. 2009-18, §§ 1, 2, 4-26-2010]

§ 200-4. - Application procedure.

A. Preliminary approval.

- (1) A preliminary plan and documents, as specified by the Planning Department, shall be prepared by the subdivider and submitted in accordance with the submission schedule as determined by the City Planner, along with the appropriate fees, as specified in § 230-57.
- (2) The Development Advisory Committee (DAC) shall review the application and plan. Comments from the DAC must be addressed via either submitting revised plans and/or necessary documents or via a narrative submitted to the City Planner. Upon confirmation by the City Planner that all DAC issues have been addressed satisfactorily, the application will then be scheduled to be heard by the Planning Commission.
- (3) The Planning Commission shall review the application and provide either a recommendation of preliminary approval with or without conditions, a recommendation of denial, or table the application. Upon a recommendation of approval with or without conditions or recommendation of denial, the application shall be scheduled to be heard by the City Council.
- (4) City Council shall grant preliminarily approval of the application with or without conditions, deny the application, or table the application.
- (5) Preliminary approval from City Council shall be void after one year, unless an extension is requested by the owner and approved by City Council prior to the expiration.

B. Final approval.

- (1) A final plat and documents, as specified by the Planning Department, shall be prepared by the subdivider and submitted in accordance with the submission schedule as determined by City Planner, along with the appropriate fees, as specified in § 230-57.
- (2) The Development Advisory Committee shall review the application and plan. Comments from the DAC must be addressed via either submitting revised plans and/or necessary documents or via a narrative submitted to the City Planner. The final plan shall also be reviewed by the City Planner for confirmation that the application is designed in accordance with all subdivision, zoning and other land use regulations of the City. The final plan shall also be reviewed by the City Engineer for confirmation that the application is designed in accordance with the construction standards and specifications of the City. Upon confirmation by the City Planner and City Engineer that all issues have been addressed satisfactorily, the application will be scheduled to be heard by the Planning Commission.
- (3) The Planning Commission shall review the application and provide either a recommendation of final approval with or without conditions, a recommendation of denial, or table the application. Upon a recommendation of approval with or without conditions, or recommendation of denial, the application shall be scheduled to be heard by City Council.
- (4) City Council shall approve the application with or without conditions, deny the application, or table the application.
- (5) Within 90 days of final approval from City Council, the subdivider shall record the plat at the County Recorder of Deeds office and provide the City Planner a receipt of the recordation including the deed book and page number. Prior to recording the plat, five copies of the plat must be submitted to the City Planner for stamping and signing. Four sets will be returned to the subdivider.
- (6) Upon recordation of the plat, the subdivider shall provide the Land Data Manager of the City a mylar copy of the plat including the deed book and page printed thereon.
- (7) Failure to record the approved plat within one year from the date of City Council approval shall void the final approval. In order to obtain final approval after it has been voided, the subdivider must make application for final approval again.
- (8) Failure to record the approved plat in more than one year from the date of City Council approval shall void the preliminary approval and final approval. In order to obtain preliminary and final approval after they have been voided, the subdivider must make application for and receive preliminary approval, then make application for and receive final approval.

§ 200-5. - General requirements and design standards.

The following shall be deemed to be minimum requirements and may be varied or waived by the Commission only under circumstances set forth in § 200-6:

- A. Streets.
- (1) The layout, character, extent, width, grade and location of proposed streets shall be established with due regard to:
    - (a) Public convenience and safety.
    - (b) Proposed uses of the land to be served by said streets.
    - (c) Proper relation and connection with and continuation and projection of streets in the adjacent areas, whether these streets are existing or proposed in another subdivision in a neighborhood plan, in the development plan or in the Official Map, as approved or adopted by the Commission.
    - (d) Topography and other land features.
  - (2) The layout of proposed streets shall furthermore be arranged in a manner acceptable to the Commission and City Council.
  - (3) Minor streets shall be laid out so as to discourage their use by through traffic.
  - (4) Where a subdivision abuts or contains an existing or proposed arterial street, limited-access highway or railroad, the City Council may require marginal access or service streets, reverse frontage with screen planting contained in a nonaccess reservation along the rear property line and deep lots with rear service alleys or other treatment, such as parks, which may be necessary for the protection of residential properties and for separation of through and local traffic, with due regard for the requirements of future approach grades and grade separations.
  - (5) Where a tract of land is subdivided into lots substantially larger than the minimum size required in the zoning district in which a subdivision is located, the Commission may require that streets and lots be laid out so as to permit future resubdivision in accordance with the requirements of this chapter.
  - (6) Reserve strips controlling access to streets shall be prohibited except where the control and disposal of land comprising such strips has been placed in the governing body under conditions approved by the City Council such as provided in Subsection A(4) above.
  - (7) Certain proposed streets may be required to be extended to the boundary line of the subdivision to provide access to tracts which may be subdivided in the future. Wherever necessary, when a street is carried to the boundary line of the subdivision, the City Council may require a temporary turnaround improved to the satisfaction of the City Engineer and of the size specified in Subsection A(16) below at the stub end.
  - (8) The creation of dead-end or loop streets and superblocks will be encouraged wherever the City Council finds that such layout will not interfere with traffic convenience and safety. The City Council shall determine the number of connections of streets in the proposed subdivision with existing streets. At least two such connections shall be provided, except where a proposed subdivision only contains one dead-end street.
  - (9) Street jogs shall be prohibited. Street intersections, where center lines do not meet, shall have center-line offsets of 150 feet or more.
  - (10) A tangent at least 100 feet long shall be introduced between reverse curves on arterial and collector streets and may be required on all other streets.
  - (11) Street right-of-way lines deflecting from each other at any point shall be connected with a curve, the radius of which for the inner right-of-way lines shall not be less than 750 feet on arterial streets, 300 feet on collector streets and 100 feet on minor streets. The outer right-of-way line shall be parallel to said inner right-of-way line.
  - (12) Streets shall be laid out so as to intersect as nearly as possible at right angles. The inner right-of-way line of a street intersecting another street at an angle of less than 90° shall be tangent to and follow a curve with a minimum radius of 150 feet centered on the nearest right-of-way line of the intersecting street. The outer right-of-way line shall be parallel to said inner right-of-way line.
  - (13) Street right-of-way lines at intersections shall be connected with a curve, the radius of which shall be 25 feet.
  - (14) Right-of-way widths.
    - (a) Street right-of-way widths shall be as shown on the Official Map or development plan, and, if not shown thereon, said widths for the various street types between face of curb or edge of road shall not be less than as follows:

Street Type (feet)	Right-of-Way Roadway (feet)	
Arterial	80 to 110	As required by DeIDOT
Collector	60	28
Minor, for townhouses and apartments	60	30
Minor, for other residences	50	<u>25</u>
Dead-end	50	<u>22</u>
Marginal access	30	<u>16</u>
*Alley	<u>20</u>	<u>12</u>

Note:

\* If utilities are present in an alley, the City reserves the right to modify the minimum right-of-way and roadway widths.

(b) Subdivisions utilizing open swale drainage shall have a ten-foot drainage easement along the front of each property to accommodate the back slope of the drainage swales.

(15) Half streets shall be prohibited except where essential to the reasonable development of a subdivision in conformity with the requirements of this chapter and where the Commission finds that it shall be practicable to require the dedication of the other half when the abutting property is subdivided. Wherever an approved half street shall be adjacent to a subdivision, the other half of the street shall be platted within said subdivision.

(16) Dead-end streets, designed to be so permanently, shall not be longer than 400 feet and shall be provided at the closed end with a turnaround having an outside roadway diameter of 76 feet and a street right-of-way diameter of 100 feet.

(17) Street names.

(a) Street names shall be selected so as not to duplicate or be confused with the names of existing streets. Street names shall be subject to the approval of the Commission. It is recommended that all new streets shall be named in the following manner:

General direction	Long	Short (under 1,000 feet)
North and south	Streets	Places
East and west	Avenues	Courts
Diagonal	Roads	Ways
Curving	Drives	Lanes or Circles

(b) Arterial streets shall be named "boulevards."

- (18) Street grades shall not exceed 5%.
- (19) Street grades shall be not less than 0.5% wherever feasible.
- (20) Changes in street grades shall be connected by vertical curves of suitable length.
- (21) The width of streets adjacent to areas designed, proposed or zoned for nonresidential use shall be increased by such amount as may be deemed necessary by the Commission to assure the free flow of through traffic without interference by parked or parking cars and to provide adequate and safe parking space.
- (22) All required roads shall be constructed in accordance with the standard specifications as issued by the City Engineer.

B. Sidewalks and curbs.

- (1) Sidewalks shall be required in all subdivisions on both sides of the street. Sidewalks shall have the following widths:
  - (a) In residential subdivisions: four feet unless otherwise specified.
  - (b) In commercial and industrial subdivisions: from the curb to property lines unless otherwise specified.
- (2) Curbs or drainage swales conveying stormwater shall be required in all subdivisions.
- (3) All required sidewalks shall be constructed in accordance with standard specifications as issued by the City Engineer.

C. Easements. Where a subdivision is traversed by a watercourse, drainageway, channel, pipe or stream, there shall be provided a stormwater easement or drainage right-of-way of such width as will be adequate for the purpose, in accordance with requirements specified by the City Engineer. Parallel streets or parkways may be required in relation thereto.

D. Blocks.

- (1) The lengths, widths and shapes of blocks shall be determined with due regard to:
  - (a) The provision of building sites suitable to the needs of the type of use contemplated.
  - (b) Zoning requirements as to lot sizes and dimensions.
  - (c) The control, safety and convenience of pedestrian and vehicular traffic.
  - (d) The characteristics of topography.
- (2) Block length shall not exceed 1,200 feet.
- (3) Block widths shall be not less than 275 feet nor more than 450 feet and shall be planned to provide two rows of lots.
- (4) Pedestrian walkways other than in streets may be required where deemed essential to provide for circulation or access to schools, playgrounds, shopping centers, transportation and other community facilities. Said walkways shall be not less than four feet wide.
- (5) Alleys shall be provided if required by the City Engineer.

E. Lots.

- (1) Lot width, depth, shape and orientation and the building setback lines shall be appropriate for the location of the subdivision, for the type of development and for the use contemplated.
- (2) Lot sizes shall conform to the requirements of Chapter 230, Zoning.
- (3) Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to comply with the off-street parking and loading requirements contained in Chapter 230, Zoning.
- (4) Corner lots shall have sufficient width to provide an adequate building site within all the yard requirements. Corner lots shall have two front yard setbacks fronting each street, one side yard setback, and one rear yard setback.
- (5) All lots in a subdivision shall have frontage on a public street.
- (6) Double-frontage lots shall be avoided. Reverse-frontage lots shall be provided where necessary for protection of residential properties from through traffic and adverse nonresidential uses, for separation of through and local traffic and to overcome difficulties of topography or other specific conditions. Screen planting and a fence or wall shall be provided along the rear property line within an easement 10 feet or more in width, across which there shall be no right of access.
- (7) Side lot lines shall be at right angles or radial to street lines.
- (8)

No lots shall be platted on land subject to flooding for residential or any other use where danger to life or property or an aggravation of flood hazard may result. Such land should be set aside for uses which would not be endangered by periodic or occasional inundations.

(9) No lots shall be platted within 25 feet of land under the jurisdiction of the U.S. Army Corps of Engineers.

F. Parks, playgrounds, open spaces, school sites and natural features.

(1) Parks and playgrounds. Where a proposed park or playground is located in whole or in part in a subdivision, the Commission may require the dedication or reservation of such area within the subdivision, in those cases in which the Commission deems such requirements to be reasonable.

(2) Open spaces. Where deemed essential by the Commission and City Planner, upon consideration of the particular type of development proposed in the subdivision, and especially in large-scale developments, the Commission or City Planner may require the dedication or reservation of sites of a character, extent and location suitable to the needs created by such development for playgrounds or parks. The Commission shall not require that more than 10% of the gross area of the open space of the subdivision to be so dedicated or reserved unless otherwise specified by the Zoning Code.<sup>2</sup> In case of a conflict, the requirement of the Zoning Code prevails. The Commission shall give due credit for the provision of open spaces reserved for the common use of all property owners within the proposed subdivision by covenants in the deeds. Generally, the minimum area of contiguous open space acceptable for dedication for public use shall be at least three acres and preferably five acres. Open spaces with a lesser area may be approved by the Commission whenever it deems that the difference between the area offered and three acres may be made up in connection with the future subdivision of adjacent land or added to an existing recreation area.

(3) School sites or sites for other public uses. The Commission may also require a subdivider to set aside such area as it may deem to be required for a school or other public use. Upon failure of the proper authorities to purchase such site within one year after the date of the approval of the plat, the subdivider, upon application to the Commission and approval of such application, shall be relieved of the responsibility of reserving such land for public purposes.

(4) Preservation of natural features. The Commission may require the preservation of all natural features which add value to residential developments and to the community, such as large trees or groves, watercourses and historic spots and similar irreplaceable assets. In no case shall a tree over 12 inches in diameter measured three feet from the base be removed without prior approval by the City Arborist.

G. General grading. No final slope on the property shall exceed the normal angle of repose of the soil of said slope as determined by the City Engineer, except where said slope consists of a natural rock formation or is supported by a retaining wall or equivalent of a design acceptable to the City Engineer.

H. Improvements.

(1) In major subdivisions the following improvements are required:

(a) Paved streets.

(b) Street signs.

(c) Curbs and gutters, or roadside swales. Curbs shall be required as per standard specifications to stabilize intersections, entrances, and parking areas, and where they are necessary for the conveyance of stormwater and protecting road surfaces and driveway surfaces from vehicular traffic.

(d) Sidewalks.

(e) Streetlighting.

(f) Shade trees. Shade trees 150 feet on center each side of the road shall be located so as not to interfere with utilities or sidewalks and shall be of the types recommended by the City Arborist.

(g) Topsoil protection. No topsoil shall be removed from the site or used as spoil. Topsoil moved during the course of construction shall be redistributed so as to provide at least six inches of cover to all areas of the subdivision and shall be stabilized by seeding or planting.

(h) Monuments. Monuments shall be of the type, size and shape required by the City Engineer.

(i) Water mains, culverts, storm sewers and sanitary sewers.

[1] All water installations shall be looped; all sewer and storm sewer systems shall be extended at minimum slope, maximum depth, and connected with an approved method and shall be adequate to handle all present and probable future development.

[2]

All of the above-listed improvements shall be subject to inspection and approval by the City Engineer, who shall be notified by the subdivider at least 24 hours prior to the start of construction. No underground installation shall be covered until inspected and approved.

- [3] Utility easements shall be required to be granted and recorded by the subdivider to allow extension of utilities to neighboring properties.
- (j) Swales. Conveyance of stormwater is permitted by open drainage systems where appropriate for environmental and engineering integrity and design. Such systems shall be separated from the edge of road to the top of bank by a minimum five-foot shoulder. The depth of such systems shall not exceed two feet below crown of road. The side slope shall be a maximum of 4:1. The bottom of the system shall have a minimum width of two feet. The system slope shall be such that the maximum velocity does not exceed two feet per second. The system has to be designed in such a way as to incorporate driveway and crossroad drainage pipes; such systems shall be restored with topsoil and sod. Temporary check dams shall be placed in intervals not to exceed 300 feet.
- (k) Headwalls. Storm drainage pipes which are part of an open swale drainage system shall be terminated with a headwall in accordance with standard specifications.
- (2) The developer shall complete all utilities and street improvements not specifically waived by the Commission in accordance with standard specifications as issued by the City Engineer and with any additional requirements specified by the Commission. Construction drawings shall be submitted in a form satisfactory to the City Engineer.
- (3) When the Commission or the City Engineer, due to planning considerations extraneous to the subdivision, requires a standard of improvements higher than that which is sufficient to serve the subdivision, the amount of the bond to be posted shall be deemed to be satisfactory if it adequately covers the cost of improvements which would be normally required.
- (4) The developer shall pay the review and inspection fees as set forth in Chapter 230, Zoning, § 230-57, Planning, Zoning and Engineering Fees. The cost for each segment or phase of the development shall be paid prior to commencement of utility construction.

[Ord. No. 2013-7, § 1, 9-23-2013]

*Footnotes:*

--- 0 ---

*Editor's Note: See Ch. 230, Zoning.*

#### § 200-6. - Variances and waivers.

Applicants may request, at the time of application submission, the varying or waiving of requirements of Chapter 200, and the Planning Commission may, at its discretion, recommend to City Council the varying or waiving of said requirements and request conditions that substantially secure the objectives of the requirements so waived. Upon the findings of the City Council that, due to special conditions peculiar to a subdivision or a site, certain requirements of these regulations are inappropriate or that strict compliance with said requirements may cause extraordinary and unnecessary hardships, the City Council may vary or waive said requirements, provided that such variance or waiver shall not be detrimental to the public health, safety or general welfare or have the effect of nullifying the intent and purpose of the Official Map, Chapter 230, Zoning, the Development Plan or this chapter. In varying or waiving certain requirements, the City Council may specify such conditions at will, in its judgment, secure substantially the objectives of the requirements so varied or waived.

#### § 230-9. - R-1 Single-Family Residential District.

In an R-1 District no building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used except for one or more of the following uses and complying with the requirements so indicated.

- A. Purpose. The intent of the R-1 Residential District is to preserve the spacious residential atmosphere and quality of living of existing low-density residential development, to provide for the orderly and appropriate development of new low-density housing and to allow related uses that would not be detrimental to the residential character of the district.
- B. Permitted uses. Permitted uses for the R-1 District shall be as follows:
  - (1) A single-family detached residential dwelling.
  - (2) Farming, agricultural activities and roadside stands for the sale of farm and nursery products produced on the property where offered for sale.
  - (3)

Municipal and public services and facilities, including City Hall, water storage towers, water reservoirs, water pumping stations, water treatment plants, sewage pumping stations, sewers (storm and sanitary), street rights-of-way, utility transmission and distribution lines, public transportation bus or transit stops, police and fire stations and substations for electric, gas and telephone facilities.

- (4) Parks, playgrounds, athletic fields, recreation buildings, swimming pools and community centers operated on a noncommercial basis for recreation purposes.
- (5) Customary accessory uses, such as private garages, swimming pools and storage sheds, subject to the following special requirements:
  - (a) The primary residence must exist or be under construction.
  - (b) Private residential garages shall not exceed 750 square feet.
  - (c) Residential storage sheds or related outbuildings shall not exceed 150 square feet.
- (6) Home occupational/office (subject to the following special requirements):

[Added 4-9-1990]

- (a) All employees are to be of the immediate family.
- (b) The appearance of the dwelling shall not be inconsistent with the primary use of the structure.
- (c) The area used for the home occupation shall not exceed 30% of the total floor area of the dwelling, unless, as in the case of family day care, the state has final jurisdiction of the area requirements.
- (d) No storage of products or associated materials is allowed in accessory structures/buildings, and no products are to be stored where they are outwardly visible to the public view.
- (e) Family day care shall involve a maximum of six full-time and two after-school children, as specified by state regulations.
- (f) The occupation will not cause excessive vehicular traffic or noise.
- (g) The occupation will not involve animal boarding and/or care.
- (h) A maximum of one nonilluminated sign (size and setback specified in Article VI of this chapter) may be affixed to the building or placed within the front property line.

C. Conditional uses subject to special regulations. The following uses may be permitted with the approval of a conditional use permit by the Milford City Council in accordance with the provisions in Article IX of this chapter:

- (1) Churches and other places of worship and cemeteries.
- (2) Public and private elementary, junior or senior high schools.
- (3) Day-care centers.
- (4) Conversion of a one-family dwelling into multiple dwelling units, if such dwelling is structurally sound but too large to be in demand for one-family use and if that conversion would not impair the character of the neighborhood, subject to conformance with the following requirements:
  - (a) There shall be a lot area of at least 2,000 square feet for each unit to be accommodated.
  - (b) There shall be a gross leasable floor area, computed as the sum of those areas enclosed by the outside faces of all exterior walls surrounding each story used for the residence, exclusive of any area for any accessory private garage, of at least 500 square feet per family to be accommodated.
  - (c) No dwelling shall be converted unless it complies with Chapter 145, Housing Standards, and Chapter 88, Building Construction, of this code.
  - (d) No addition shall extend within the front yard, side yards or rear yard required for the district within which it is located.
  - (e) Fire escapes and outside stairways leading to a second or higher story shall, where practicable, be located on the rear of the building and shall not be located on any building wall facing a street.
  - (f) Two off-street parking spaces shall be provided for each additional dwelling unit created.
- (5) Professional occupation restricted to the owner/occupant, subject to conformance with the following requirements:
  - (a) There shall be three off-street parking spaces in addition to those otherwise required.
  - (b) No more than two persons shall be employed by the practitioner of the professional occupation to provide secretarial, clerical, technical or similar assistance.

- (c) No storage of materials or products outside the dwelling shall be permitted unless completely housed.
  - (d) The area used for the practice of a professional occupation shall occupy no more than 50% of the total floor area, including garages or other accessory buildings.
  - (e) The professional use shall be clearly incidental to the residential use of the dwelling and shall not change the essential residential character of the dwelling.
  - (f) No external alterations inconsistent with the primary residential use of the dwelling shall be allowed.
  - (g) No display of products shall be visible from outside the building.
  - (h) A maximum of one nonilluminated display sign affixed to the building not exceeding two square feet shall be permitted.
- (6) Customary home occupation or a studio for artists, designers, photographers, musicians, sculptors and other similar persons, subject to conformance with the following requirements:
- (a) The area used for the practice of the home occupation or studio shall occupy no more than 50% of the total floor area of the dwelling unit in which it is located.
  - (b) No storage of materials or products outside the dwelling shall be permitted unless completely housed.
  - (c) The home occupation or studio shall be clearly incidental to the residential use of the dwelling and shall not change the essential residential character of the dwelling.
  - (d) No external alterations inconsistent with the primary residential use of the dwelling shall be allowed.
  - (e) No display of products shall be visible from outside the building.
  - (f) A maximum of one nonilluminated display sign affixed to the building not exceeding two square feet shall be permitted.
  - (g) A maximum of two employees shall be permitted in the operation of the home occupation or studio.
- (7) Social club or fraternal, social service, union or civic organization.
- (8) Cultural facilities, including a library, museum or art gallery.
- (9) Country club, regulation golf course, including customary accessory uses, provided that all buildings have a minimum setback of 120 feet from all street and property lines.
- (10) Planned unit residential development.

[Added 6-11-2001 by Ord. No. 4-2001]

- (11) Planned Residential Neighborhood Development.

[Added 11-27-2006 by Ord. No. 2006-15]

- (a) Planned Residential Neighborhood Development. In order to encourage superior residential environments through a unified planning process, the Planned Residential Neighborhood Development shall be permitted in the R-1 Single Family Residential District Zone as a conditional use subject to the provisions of this chapter and after a determination by the Planning Commission that the proposed planned neighborhood design presents a community design that would not be possible under the conventional zone and is in accordance with the goals and policies of the Comprehensive Plan. The minimum size required for a Planned Residential Neighborhood Development (PRND) shall be 10 acres.
- (b) Review process. The planned neighborhood design option shall involve a three-step review and approval process. In the first step, the developer shall meet with the City Council and present a general sketch plan and a statement documenting the project's compliance with the goals of the Comprehensive Plan for review. The general sketch plan shall reflect the general layout of streets, open space, and housing areas and types. The City Council shall determine whether the proposed project is of such a design and type that it warrants further review by the Planning Commission. If the City Council determines that further review is warranted, the second step shall be the conditional use review process which involves the submission of a conceptual plan which conforms in content to the design standards and requirements specified in this section, as well as the plan submission requirements of this chapter and Subdivision Ordinance. If the conditional use/conceptual subdivision plan is approved, the plan would proceed to the third step which involves the submission of a site development plan and preliminary/final subdivision plans for review and approval by the Planning Commission and City Council.

- (c) Maximum density. The gross residential density in a Planned Residential Neighborhood Development shall not exceed four dwelling units per acre, however the density could be increased to eight dwelling units per acre, provided the development provides the amenities listed under the density bonus section. In no case shall the development exceed eight dwellings units per gross acre.
- (d) Design standards. The design standards and dimensional requirements (bulk and parking regulations) shall be in accordance with this chapter.
- [1] Lot coverage. Based on the following type of residential construction, the following is the maximum lot coverage:
- [a] Single-family detached dwelling: 35%.
  - [b] Single-family semidetached dwelling: 35%.
  - [c] Single-family attached dwelling: 40%.
  - [d] Garden apartments/condominiums: 30%.
- [2] Minimum setback areas. New buildings shall observe a twenty-five-foot minimum front yard, ten-foot minimum side yards, and a twenty-five-foot minimum rear yard.
- [3] Height of buildings. The height of buildings shall not exceed three stories or 35 feet. Accessory buildings shall not exceed 15 feet in height.
- [4] Off-street parking. Off-street parking shall be provided for residents, visitors and employees of the facility. The applicant shall demonstrate to the satisfaction of the Planning Commission that, based on total potential occupancy load (resident, visitor and employee), a sufficient number of off-street parking spaces will be provided.
- (e) Design requirements.
- [1] Common open space.
- [a] The area set aside and preserved for open space shall aggregate no less than 25 percent of the total site area. Common open space shall be provided in the PRND proposals. The common open space shall not include any wetlands, floodways or similar area not suitable for building as determined by the Planning Commission and City Council. Significant natural features shall be incorporated into common open space whenever possible.
  - [b] The common open space shall be designed as a contiguous area if possible, and shall be interspersed with residential areas so as to provide pedestrian access and visual amenity. The common open space shall be designed and maintained by the property owner/s or an HOA. Recreational areas shall be constructed and may be located within the 25% of open space set aside.
- [2] Planned neighborhoods. The area set aside and preserved for open space shall aggregate no less than 25% of the total site area.
- [3] Buffers. Buffers shall be required to provide transition between planned residential development and adjacent properties/rights-of-way or changes in land use. Buffers should consist of earth berms and a planting area. No building shall be constructed less than 40 feet from the perimeter property line of the development. This buffer may consist of either common open space, earth berms, planting areas or private yards or a combination of both; however, no more than 30% of the required buffer area may be counted toward the minimum common open area requirement.
- [4] Disruption of natural environment. The planned neighborhood design development shall be designed and scheduled so as to minimize earthmoving, erosion, tree clearance and other disruption of the natural environment. Existing vegetation shall be preserved wherever possible. Where extensive natural tree cover and vegetation do not exist or cannot be preserved on the site, landscaping shall be undertaken in order to enhance the appearance of the development and screen streets and parking areas, and enhance privacy of private dwellings. Natural drainage systems shall be preserved wherever possible.
- [5] Privacy. Dwelling unit structures shall be located and arranged so as to promote privacy for residents within the development and maintain privacy for residents adjacent to the development. Recreational and nonresidential uses shall be located and designed so as not to interfere with nearby residential areas. All structures and activities located near the periphery of the site shall be designed so as to harmonize with neighboring areas.

(f) Density bonus.

- [1] A density bonus may be granted if the developer furnishes improvements that significantly demonstrate to the Planning Commission that the improvements contribute to superior design and which exceed the standard requirements of the city ordinances in accordance with the following schedule:
- [a] Open space. For each increase of 10% in common open space over the minimum requirement of 25%, a density bonus of 10% shall be granted.
  - [b] Housing types. Neighborhood design which integrates a variety of housing types to provide architectural diversity and which avoids monotony and segregation by dwelling type in order that single housing type does not dominate the planned neighborhood or section thereof shall be awarded a density bonus of 10%. The term "housing type" refers to each of the following dwelling types: single-family detached houses, semidetached and duplex houses, multiplexes, townhouses, and garden apartments.
  - [c] Public buildings. The construction and leasing of a public building, including a firehouse, or a library, or a branch library which is necessitated, either wholly or partially, by the development, may increase the permitted density by 10%, if approved by the City, the Planning Commission and the agency to which the building is to be leased.
  - [d] School sites. The donation of a school site may increase the permitted density by 25%, if approved by the City, the Planning Commission and the local school board.
  - [e] Recreation facilities. Where the developer provides recreation facilities in accordance with recommendations from the City, the Planning Commission, and the Parks and Recreation Department where the facilities are in excess of those required by City ordinances, a density bonus of 5% shall be given. Such facilities may include, but are not limited to walking trails, bike paths, tennis courts, and boating access areas.
  - [f] Community gardens. The reservation of additional common land for the establishment of community gardening space for the raising of flowers, fruits and vegetables shall be awarded a 5% of density bonus.
  - [g] Community day-care facilities. The construction of a building to house a day-care center for use primarily by residents of the community shall be awarded a density bonus of 10%.
  - [h] Community buildings. The construction of a community building to serve as a meeting hall for various community functions, including, but not limited to, civic meetings, recreational purposes, receptions and special events, shall be awarded a density bonus of 10%.
  - [i] Conservation easements. The establishment of a permanent easement for the purpose of conserving and protecting a woodland area, a wetland area, and/or a stream corridor from removal of existing natural vegetation, and/or encroachment by future development shall be awarded a density bonus of 5%.
  - [j] Parking lot landscaping. The construction of landscaping in and around parking lots/areas shall be awarded a density bonus of 2%.
  - [k] Low-level lighting. The construction of low level light within the development and in/around parking lots/areas shall be awarded a density bonus of 3%.
  - [l] School bus pull off/school bus shelter. The construction of school bus pull offs or school bus shelters within the development shall be awarded a density bonus of 5%.
- [2] Note: City Council will have the final determination in determining the amount of the allowable density bonus.

(g) Conditional use plan approval.

- [1] In addition to the minimum conditional use plan requirements listed in this chapter and the minimum conceptual subdivision plan requirements listed in the Land Subdivision Regulations, the following additional items shall be reflected on or shall accompany the conditional use plan:
- [a] Architectural drawings illustrating exterior elevations of typical dwelling units and nonresidential structures to be constructed.
  - [b] Statements and illustrations of the materials to be used in construction and their compatibility with the

City Building Code and other codes relating to construction.

- [c] Total acreage of development, land uses in each area, total number of dwelling units, average gross residential density, average lot area and lot width by unit type, and gross residential density in each section.
  - [d] Building coverage lines accurately locating all types of dwelling units, and nonresidential structures, giving dimensions of the structures, distances between the structures, and distances to street rights-of-way and parking areas, with distances accurate to the nearest hundredth of a foot, and total amount and percentage of impervious area.
  - [e] Accurate dimensions of common open space areas specifically indicating those areas to be developed for active recreation. Where common space areas are to be developed, the exact location of the structures in common open space will be illustrated.
  - [f] Locations and dimensions of parking areas and pedestrian walkways.
- [2] Each application for a conditional use plan approval shall be accompanied by a fee of \$700 (§ 230-57).
- (h) Site development preliminary subdivision plan review.
- [1] Application for site development plan approval shall be made to the Planning Commission in accordance with this chapter and the land subdivision regulations. Such application may be requested in stages. The following additional requirements shall be included for review along with the site development plan submission:
- [a] A development phasing plan if proposed, which clearly defines the boundaries of each phase of the development and indicates the number of dwelling units to be constructed in each phase. Each phase shall be assigned a number which represents that phase's order in the construction sequence of the development.
  - [b] Architectural drawings illustrating exterior and interior designs of typical dwelling units of each type and nonresidential structures to be constructed.
  - [c] Statements and illustrations of the materials to be used in construction and their compatibility with the City Building Code and other codes relating to construction.
  - [d] All covenants running with the land governing the reservation and maintenance of dedicated or undedicated open space land. These shall bear the certificate of approval of the City Solicitor as to their legal sufficiency.
  - [e] Restrictions of all types which will run with the land and become covenants in this chapter or in the Land Subdivision Regulations.
  - [f] In the case of a planned neighborhood design which is proposed to be developed over a period of years in specific phases, the site development/preliminary subdivision plan requirements as listed in this section shall apply to the phase or phases for which approval is being sought. The site development plan for each phase must demonstrate compliance with minimum plan requirements and shall provide phase specific information regarding proposed development density and dwelling types, locations of common open space, sanitary sewer and water distribution systems, and street systems consistent with the approved conditional use conceptual plan developed for the entire neighborhood.
- [2] Each application for a preliminary plan approval and final plan approval shall be accompanied by a fee of \$1,000 plus \$10 per dwelling unit (§ 230-57).
- (i) Site requirements.
- [1] All structures shall be so located as to provide proper access to the building for fire-fighting equipment, trash collection and deliveries.
  - [2] All off-street parking shall be provided at the rate of 2.5 spaces for every dwelling unit.
  - [3] Outdoor light fixtures shall be provided at locations that will assure the safe and convenient use of walks, steps, parking areas, driveways, streets and other facilities.
  - [4] Facilities for temporary trash/refuse storage shall be provided in such manner that is adequate for the dwelling units they support.
- (j) Final subdivision plat approval.

[1] Final subdivision plat review and approval for planned neighborhood design projects involving subdivision of land shall follow the requirements pertaining to the review and recordation of final subdivision plats. In the case of projects for which a phasing plan has been approved, the final subdivision plat for each phase shall demonstrate compliance with minimum plan requirements and shall provide phase specific information regarding proposed development density and dwelling types, locations of common open space, sanitary sewer and water distribution systems, and street systems consistent with the approved conditional use conceptual plan developed for the entire neighborhood.

[2] Each application for a preliminary plan approval shall be accompanied by a fee of \$1,000 plus \$10 per dwelling unit (§ 230-57).

(k) Signs. Signs shall be reviewed and approved by the Planning Commission and City Council to ensure they meet the requirements of this chapter.

(12) Bed-and-breakfast, subject to the following requirements:

[Added 9-8-2008 by Ord. No. 2008-13]

(a) The bed-and-breakfast establishment does not adversely affect the residential character of the neighborhood and such use is carried on in an existing residential structure.

(b) The building proposed for use as a bed-and-breakfast must have the owner of the bed-and-breakfast residing in the building as his/her principal residence.

(c) The serving of meals shall be limited to breakfast and afternoon tea for overnight guests and customers.

(d) Rooms used for sleeping shall be part of the primary residential structure and shall not have been specifically constructed for rental purposes.

(e) No exterior alterations other than a sign and those required by law to ensure the safety of the structure shall be made.

(f) The bed-and-breakfast operation shall not use more than 50% of the floor area of the principal residence. Common areas such as the kitchen, foyer, living room or dining room are not included in this calculation.

(g) No areas shall be floodlit. Drives and parking areas shall not be illuminated by lighting fixtures higher than 20 feet. Sidewalks shall not be illuminated by lighting fixtures higher than 15 feet. Exterior lighting shall be so shaded as to prevent illumination off-site. All external lighting, except for demonstrated security needs, shall be extinguished by 10:00 p.m.

(h) All bed-and-breakfasts must be in compliance with the requirements of the Uniform Building Code and Uniform Fire Code as adapted and enforced by the state fire marshal. Requirements include smoke detectors centrally located on each floor with sleeping rooms and the basement stairway. They must have battery backup and be connected or have a sounding device to provide an alarm which can be heard in all sleeping areas. Every sleeping room must provide at least 50 square feet of floor area per guest and have an operable window of 5.7 square feet or more of clear opening or exterior door for emergency escape or rescue. The maximum distance to a fire extinguisher rated 2A and having a BC rating is 75 feet.

(i) Safe food handling is the responsibility of the "host." He/She must properly train employees and other household members in safe food handling procedures and requirements and secure the proper state health permit if applicable.

(j) Parking requirements: one space per guestroom plus two spaces for residence. Spaces shall be located to the side and rear of the building and shall be screened from adjacent properties by a five-foot-high wood or masonry fence or by sight-obscuring vegetation of the same height. The area of the parking lot, including driveways, shall be graded, surfaced with asphalt or other suitable material and drained to the satisfaction of the City Engineer to the extent necessary to prevent dust, erosion or excessive water flow across streets or adjoining properties.

(k) Signs. For each bed-and-breakfast, one small unlighted announcement sign not exceeding three square feet in area may be attached to and parallel with the front porch or wall of the building.

D. Area regulations.

(1) Minimum lot area shall be 10,000 square feet. Minimum interior lot shall be 10,000 square feet. Minimum corner lot shall be 13,000 square feet.

- (2) Maximum lot coverage shall be 30%, exclusive of accessory buildings.
- (3) Minimum lot width shall be 80 feet.
- (4) Height of buildings shall not exceed three stories or 35 feet. Accessory buildings shall not exceed 15 feet in height.
- (5) Minimum front building setback line shall be 25 feet.

[Amended 11-27-2006 by Ord. No. 2006-15]

- (6) Minimum rear yard shall be 25 feet. For corner lots the rear yard may be reduced 20% in depth to allow for skewing of a residential dwelling on the lot.
- (7) Side yards shall be provided as follows: each lot shall have two side yards with a minimum of 12 feet each.
- (8) Parking shall comply with the requirements provided in Article IV of this chapter.
- (9) Signs shall comply with the requirements provided in Article VI of this chapter.
- (10) Decks, subject to the following requirements:

[Added 11-27-2006 by Ord. No. 2006-15; amended 9-8-2008 by Ord. No. 2008-13]

- (a) The deck cannot be located in the front yard.
- (b) A minimum distance of 10 feet must be maintained from the deck to the rear property line.

#### ARTICLE IV - Off-Street Parking and Loading

##### § 230-20. - General provisions.

- A. Establishment of off-street parking area. The establishment of any off-street parking area having a capacity of four or more automobiles shall be subject to the approval of the Code Official and further subject to the following requirements. It shall:
  - (1) Have a buffer strip at least five feet wide between it and any adjacent residential lot.
  - (2) Be attractively landscaped and screened from neighboring residential lots.
  - (3) Not extend into any required front yard areas, except for the driveways.
  - (4) Be used solely for the periodic parking of private passenger (noncommercial) vehicles.
- B. Parking space size. Parking space sizes shall be in accordance with § 230-21.
- C. Parking spaces in driveways. Driveways shall be considered as constituting off-street parking space for one-family detached, semidetached or townhouse dwellings in residential districts, provided that sufficient space is available in such driveways to meet the requirements of this section.
- D. Location of parking spaces. All parking spaces shall be set back 15 feet from any street line. Parking spaces shall be located so that no spaces are a greater distance than 600 feet from the building or use to which they are assigned, provided that this requirement shall not apply to parking spaces for auditoriums, stadiums, assembly halls, gymnasiums and other places of assembly or industrial, wholesaling and manufacturing establishments.
- E. Parking spaces assigned to more than one use. Parking spaces for separate buildings or uses in all zoning districts may be combined in a single lot, provided that the number of parking spaces in the lot shall equal the sum of the parking spaces required for each building and use, except that the parking spaces required for places of assembly may include parking spaces assigned to other uses, provided that the place of assembly shall not be used at a time when the other uses are carried on.
- F. No off-street parking required in the C-2 Central Business District. No on-site, off-street parking shall be required in the C-2 District for newly constructed establishments or existing structures. Existing municipal parking facilities shall provide the necessary parking areas for downtown shoppers. The location of the municipal parking lots are:
  - (1) North Walnut Street and Northeast Front Street.
  - (2) Park Avenue and Northeast Front Street and Denney Row.
  - (3) Park Avenue and North Washington Street.
  - (4) Southeast Front Street between South Walnut Street and Church Street.
  - (5) Southeast Front Street and South Washington Street.
- G. Parking lot and garage maintenance. Ground cover, shrubs, trees and landscape screening shall be located and maintained so as not to interfere with vehicular and pedestrian traffic on the property or with sight clearance and exits.

H.

Fractional spaces. When the application of a unit of measurement for parking space or loading space to a particular use or structure results in a fractional space, any fraction under 1/2 shall be disregarded and fractions of 1/2 or over shall be counted as one parking space or loading space.

- I. Boat, trailer, bus and van parking. In any residential district, no house trailer, camper, boat trailer, bus or boat shall be parked in the front yard. Parking is allowed in the side or rear yards five feet from the property line if it does not take up space normally occupied by an automobile. All vehicles requiring a trailer for transportation must be stored on a registered trailer.
- J. Points of ingress and egress. When the parking garage buffer strip is adjacent to any public street upon which the lot has frontage, the fifteen-foot buffer strip which extends for the full frontage of the lot may be interrupted only at points of ingress and egress. Only one accessway shall be permitted for each 100 feet of frontage upon a public road. Such accessway shall be not less than 25 feet and not more than 32 feet in width. No two accessways on the same lot shall be placed within 75 feet of each other.

[Ord. No. 2011-6, § 5, 6-27-2011; Ord. No. 2015-02, § 4, 3-23-2015]

§ 230-21. - Parking and loading standards.

A. Design standards (general).

[Amended 12-14-1992]

(1) Parking spaces and aisle ways shall be designed in accordance with the following dimensional standards:

[Amended 10-12-1998 by Ord. No. 10-1998]

Parking Angle	Stall Width (feet)	Aisle Way to Curb (feet)	Aisle Way Width
90°	<u>9</u>	<u>18</u>	As required by State Fire Marshal
60°	<u>9</u>	<u>20</u>	As required by State Fire Marshal
<u>45°</u>	<u>9</u>	<u>18</u>	As required by State Fire Marshal
Parallel	10	<u>20</u>	As required by State Fire Marshal

- (2) All spaces reserved for handicapped accessibility shall conform to the requirements set forth by the federal standards provided by the ADA (Americans with Disabilities Act).
- (3) All parking spaces for use in conjunction with public parking lots, garages, storage areas operated on a commercial basis and parking areas accessory to multifamily, commercial, industrial and office uses shall be appropriately paved and striped.
- (4) Exceptions to the design standards shall be permitted as follows.

B. Use standards. All uses permitted in this chapter shall be subject to the following minimum off-street parking requirements in addition to any special requirements as indicated in each zoning district.

Types and Uses	Required Off-Street Parking Spaces
Retail stores and shops, all types, supermarkets, retail food stores and undertakers	1 per 200 square feet of floor area used or designed for sales on the ground floor, plus 1 per 300 square feet of floor area used or designed for sales on all other floors, plus 1 for each 2 employees
New and used car and boat sales, mobile dwelling unit sales, truck and trailer sales, outdoor equipment and machinery sales, commercial nurseries and auctions	4 per salesperson, plus 1 per per 2 employees during the period of greatest employment
Personal service establishments, laundromats and dry cleaning	1 per 200 square feet of gross floor area
Banks and other financial institutions	1 per 200 square feet of gross floor area, plus 1 for each employee
Business, governmental and professional offices	1 per 100 square feet of gross floor area
Medical and dental offices or clinics <b>[Amended 7-14-1997]</b>	From 1 per 100 square feet gross floor space for medical and dental offices or clinics to 1 per 150 square feet of gross floor area for medical and dental offices or clinics
Hospitals	1 for each bed of planned patient capacity, plus 1 per 3 employees or the shift of greatest employment
Sanatorium or nursing home	1 for every 4 beds
Churches and other places of worship	1 per 5 seats
Indoor and commercial outdoor recreation	1 for each 150 square feet of gross floor, building or ground area devoted to such use or 1 per 4 seats of facilities available for patron use, whichever is applicable to the facility

Restaurants, taverns and similar uses	1 per 3 seating accommodations, plus 1 per 2 employees on the shift of greatest employment
Dwelling, one-family detached, semidetached or mobile home	2 1/2 per dwelling unit
Dwelling, townhouse, garden apartment or multifamily dwelling	2 1/2 per dwelling unit
Rooming and boarding house or converted unit	1 per rented unit
Museum, art gallery and similar use	1 per 4 seats in rooms for public assembly or for each 150 square feet of gross floor area for use by the public, whichever is greater, plus 1 for each 2 employees on the shift of greatest employment
Public library	1 per 400 square feet of gross floor area for public use, plus 1 per 2 employees on the shift of greatest employment
Fire station	25
Auditorium, stadium, assembly hall, gymnasium, theater (excluding drive-in) and community or recreation center	1 per 4 fixed seats in the largest assembly room area or for each 40 square feet of floor area available for the accommodation of movable seats in the largest assembly room, or 1 per 150 square feet of gross floor area, whichever is applicable to the facility
Social club and fraternal, social service, union and civic organization building	1 per adult attendant, plus 1 per 100 square feet gross floor area devoted to such uses
Public or private school	3 per room used for administrative offices, plus 1 per room used for class instruction, plus 1 for each 5 seats in the auditorium and other places of assembly or facility available to the public
Industrial, manufacturing or wholesaling establishment	1 per 2 employees on the shift of the greatest employment, plus 1 per 200 square feet of floor area devoted to sales
Hotel and motel	1 for each guest room plus 1 for each 3 employees

- (1) Reduction in the required number of off street parking spaces in the case of developments such as shopping centers or other commercial developments required to provide more than 50 off-street parking space.

The developer must set aside space to accommodate 100% of the area necessary to provide the parking requirements established by this Ordinance, but, upon the request of the developer, if agreed by the City of Milford, the developer may be permitted to set aside space to accommodate 100% of the area necessary to provide the parking requirements established by this chapter but not be required to construct more than 80% of the required parking spaces. In the event the developer is permitted to construct fewer than the required parking spaces, the remainder of the parking area set aside must be kept free of all construction and be planted and maintained as a grassy area and designated as Future Parking Space. The City of Milford may require construction of the remaining parking spaces at any time by the then owner of the premises upon giving the owner not less than six months' advance written notice. In the event of the granting of the waiver herein described, the fact of the grant as well as the requirement that the owner maintain the space set aside as a level grass area and that the City of Milford has reserved the right to require construction of the remaining parking spaces upon six months' notice to the owner of the site must be reflected in a note appearing on the subdivision or site development plans recorded.

C. Loading spaces.

(1) No building or structure shall be erected in any district for the uses listed below unless loading space for the accommodation of trucks is provided on the premises in accordance with the following requirements:

(a) For retail stores, markets, wholesale and jobbing establishments and storage warehouses, the number of berths based on the gross floor area devoted to such use shall be as follows:

[1] Five thousand to 7,999 square feet of floor area: one berth.

[Amended 10-12-1998 by Ord. No. 10-1998]

[2] Eight thousand to 19,999 square feet of floor area: two berths.

[Amended 10-12-1998 by Ord. No. 10-1998]

[3] Each additional 20,000 square feet or major fraction thereof up to a maximum of 60,000 square feet of floor area: one additional berth.

(b) For hotels and motels, the number of berths based on the gross floor area devoted to such uses shall be as follows:

[1] Eight thousand to 20,000 square feet of floor area: one berth.

[2] Each additional 50,000 square feet or major fraction thereof up to a maximum of 120,000 square feet of floor area: one additional berth.

(c) Each manufacturing, office research and industrial establishment with a total of 3,500 square feet or more of gross floor area devoted to manufacturing, research and/or industrial uses shall provide loading space adequate to accommodate the normal demands for loading and unloading incidental to the type of use proposed on the premises.

(2) Loading spaces shall not be allowed in any front yard of any property.

[Ord. No. 2010-14, § 2, 9-27-2010]

ARTICLE V - Landscape Screening

§ 230-22. - District requirements.

A. Residential districts.

(1) In any R-1, R-2 or R-3 District a landscape screen and/or fence or wall a minimum of six feet in height shall be planted and/or erected to separate any permitted nonresidential use from any existing residential use on a contiguous lot. Such landscape screen and/or fence or wall may extend into the lot setback, side yard and rear yard.

(2) In any R-3 District, for any lot developed for garden apartments or townhouses, a landscape screen and/or fence or wall a minimum of six feet in height shall be planted or erected to separate any contiguous lot developed as a single-family detached or semidetached residential dwelling on any contiguous lot zoned R-1 or R-2. Such landscape screen and/or fence or wall may extend into the lot setback, side yard and rear yard.

B. Commercial districts. In any C-1, C-2 or C-3 District a fifteen-foot buffer area shall be provided within which a landscape screen and/or fence or wall a minimum of six feet in height shall be planted or erected to separate any permitted use from any contiguous lot zoned R-1, R-2 or R-3 or any contiguous lot developed or approved for development for any residential use. Such landscape screen may extend into the lot setback, side yard or rear yard.

C. Institutional, Industrial and Office Building/Complex Districts: H-1, I-1, I-2, OB-1 and OC-1.<sup>4</sup> □

(1) Each use established in these districts shall set aside at least 20 feet in width immediately adjacent to any street upon which the lot has frontage, and extending for the full frontage of the lot, for purposes of providing for proper site distance and buffering from the public road. Within such area, the owner shall establish and maintain a planting of grass and/or horticultural ground cover. Other landscape materials may be incorporated, provided that there is no obstruction to vision, other than a tree trunk, in the area between two and seven feet above ground level. No use shall be made of this buffer area other than for a single driveway to provide access to the use for each 100 feet of frontage upon a public road. Such driveway shall not exceed 32 feet in width.

(2) Parking areas may be located in any hard area but shall not be closer than 15 feet to any street line or property line.

D. Limited Industrial District. At the boundary line between an I-1 District and any R-1, R-2 or R-3 District or any lot developed or approved for development for residential use, there shall be a fifty-foot buffer area which shall include a landscape screen and/or fence or wall a minimum of six feet in height. Such landscape screen may extend into the lot setback, side yard or rear yard.<sup>5</sup> □

*Footnotes:*

--- () ---

*Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).*

--- () ---

*Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).*

§ 230-23. - Maintenance.

It shall be the responsibility of the property owner of record or his delegated representative(s) to properly maintain and care for any landscape plan planted or erected.

**CITY OF MILFORD  
PLANNING COMMISSION**

**RESOLUTION NO. PC15-011**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF  
MILFORD, DELAWARE, RECOMMENDING TO CITY COUNCIL OF  
THE CITY OF MILFORD  
THE APPROVAL OF A FINAL MINOR SUBDIVISION FOR  
MILFORD SCHOOL DISTRICT  
AT 512 LAKEVIEW AVENUE  
FOR A 2 LOT, 1 UNIT SUBDIVISION  
CONSISTING OF 1 SCHOOL AND  
1 VACANT LOT  
IN AN R-1 ZONING DISTRICT  
TAX MAP 1-30-3.07-183.00**

WHEREAS, the owner and applicant has made application with the City of Milford; and,

WHEREAS, the proposed application shall comply with the standards and regulations of the Code of the City of Milford; and,

WHEREAS, the Planning Commission met and heard said application during a public hearing on December 15, 2015; and,

WHEREAS, by a vote of \_\_\_\_\_ recommended approval of the application.

NOW, THEREFORE, BE IT RESOLVED, the Planning Commission has recommended approval of the application to the Mayor and City Council of the City of Milford, Delaware with the following recommendations:

1.

APPROVED: \_\_\_\_\_  
Arthur Campbell,  
Planning Commission Chairman

SIGNED: \_\_\_\_\_  
Christine Crouch,  
Deputy City Clerk

# City of Milford



## **PUBLIC NOTICE CITY OF MILFORD PLANNING COMMISSION HEARING**

NOTICE IS HEREBY GIVEN that the Planning Commission of the City of Milford will hold a Public Hearing on Tuesday, December 15, 2015 at 7:00 p.m. in the Joseph Ronnie Rogers Council Chambers at Milford City Hall, 201 South Walnut Street, Milford, Delaware to consider the following matter:

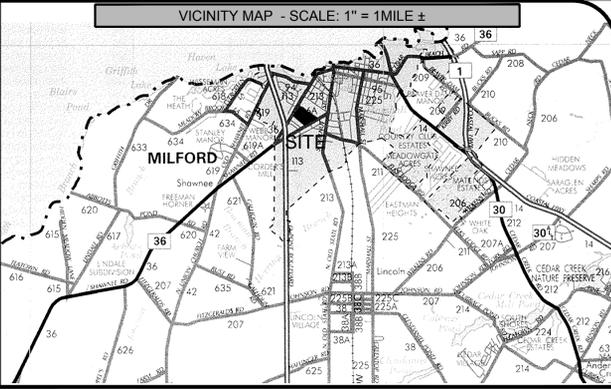
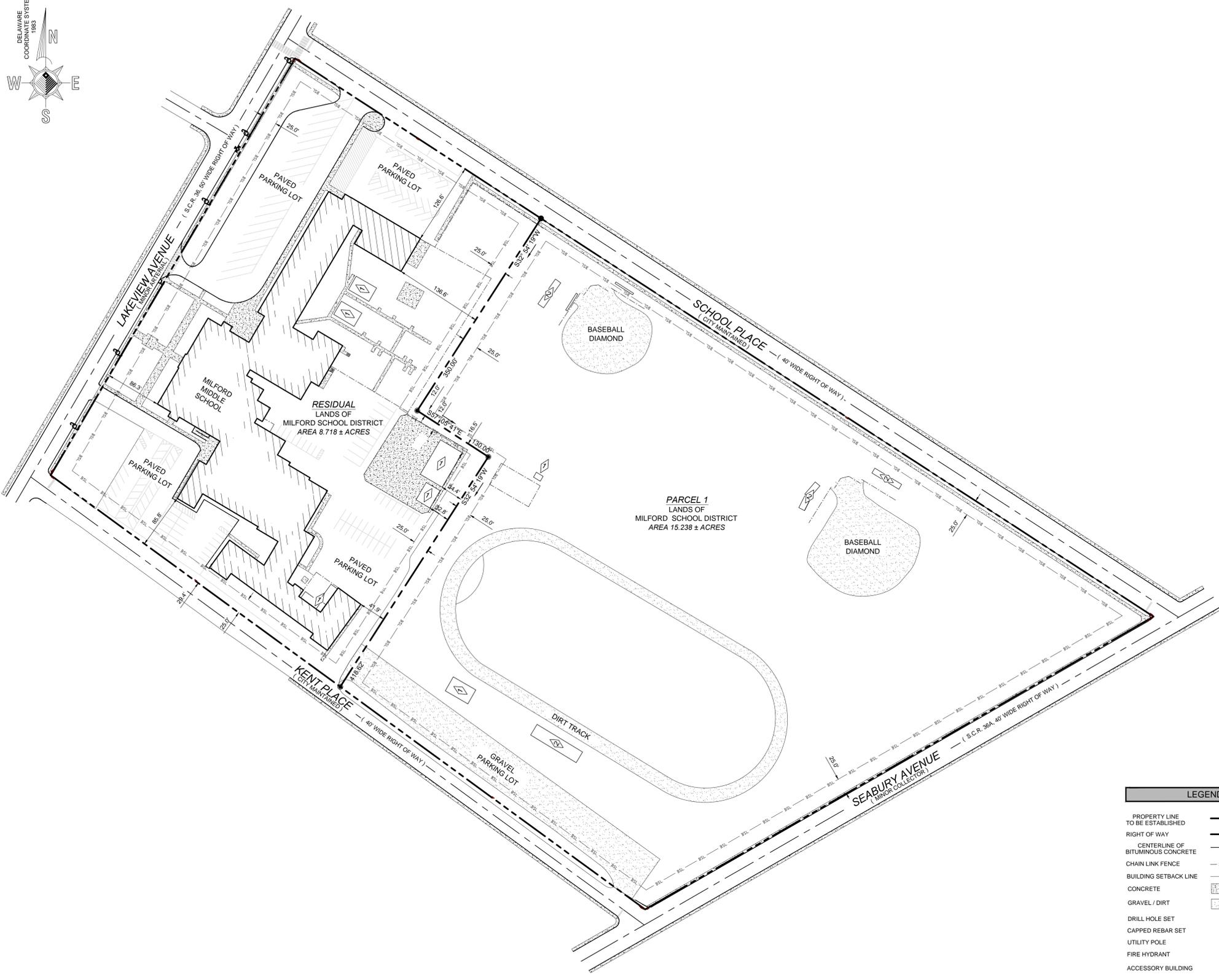
Merestone Consultants for a Final Minor Subdivision of 23.96+/- acres in an R-1 (Residential District). Property is located at 512 Lakeview Ave, Milford Delaware. Present Use and Proposed Use: School and Vacant Land. Tax Map 1-30-3.07-138.00

All interested parties are hereby notified to be present for the review and recommendation by the Planning Commission to City Council. Final action will be taken by City Council.

If unable to attend, written comments will be accepted up to one week prior to the hearing. Anyone with questions or comments should contact Rob Pierce in the Planning Department via email at [RPierce@milford-de.gov](mailto:RPierce@milford-de.gov) or at 302.424.3712.

By: Christine Crouch  
Deputy City Clerk

*Advertised: Beacon 111115*



PARCEL DATA	
PARCEL ID NO.	1-30.00-3.07-138.00
OWNERS	MILFORD SCHOOL DISTRICT
SOURCE OF TITLE	DEED BOOK 272, PG 162
HORIZONTAL DATUM	NAD 83
NO. OF PARCELS CREATED	2 PARCELS
EXISTING ZONING	R-1 (SINGLE FAMILY RESIDENTIAL)
PROPOSED ZONING	R-1 SINGLE FAMILY RESIDENTIAL
PRESENT USE	SCHOOL
PROPOSED USE	SCHOOL/RECREATIONAL
SEWER PROVIDER	CITY OF MILFORD
WATER PROVIDER	CITY OF MILFORD
<b>AREA ± ACRES</b>	
PARCEL	15.238
R/W DEDICATION	8.718
GROSS	23.956
ZONING	R-1 (SINGLE-FAMILY RESIDENTIAL DISTRICT)
MIN. LOT AREA	10,000 S.F.
MIN. LOT WIDTH	80'
MIN. FRONT SETBACK	25'
MIN. REAR SETBACK	25' (CORNER LOTS MAY BE REDUCED 20% IN DEPTH)
MIN. SIDE SETBACK	12'
MAX. HEIGHT	35'

- NOTES:**
- BOUNDARY AND TOPOGRAPHICAL INFORMATION WAS TAKEN FROM A SURVEY PERFORMED BY MERESTONE ON 5 AUGUST 2015 AND 31 AUGUST 2015.
  - NO EASEMENTS OTHER THAN SHOWN WERE PROVIDED.
  - DIMENSIONS FROM BUILDING TO PROPERTY LINE ARE MEASURED FROM THE EXTERIOR SIDING.
  - RIGHT OF WAY WAS ESTABLISHED BY THE CENTERLINE OF ALL ROADS LOCATED FROM SURVEY DATA.
  - ALL ENTRANCES SHALL CONFORM TO DELDOT'S DEVELOPMENT COORDINATION MANUAL AND SHALL BE SUBJECT TO ITS APPROVAL.
  - SHRUBBERY, PLANTINGS, SIGNS AND/OR OTHER VISUAL BARRIERS THAT COULD OBSTRUCT THE SIGHT DISTANCE OF A DRIVER PREPARING TO ENTER THE ROADWAY ARE PROHIBITED WITHIN THE DEFINED DEPARTURE SIGHT TRIANGLE AREA ESTABLISHED ON THIS PLAN. IF THE ESTABLISHED DEPARTURE SIGHT TRIANGLE AREA IS OUTSIDE THE RIGHT-OF-WAY OR PROJECTS ONTO AN ADJACENT PROPERTY OWNER'S LAND, A SIGHT EASEMENT SHOULD BE ESTABLISHED AND RECORDED WITH ALL AFFECTED PROPERTY OWNERS TO MAINTAIN THE REQUIRED SIGHT DISTANCE.
  - THIS PLAN IS VALID ONLY WHEN SIGNED IN RED INK & EMBOSSED WITH A RAISED IMPRESSION SEAL AND WAS PREPARED IN ACCORDANCE WITH THE MINIMUM STANDARDS OF ACCURACY FOR A SUBURBAN CLASSIFICATION.
  - PER FIRM 10005C0043K EFFECTIVE MARCH 16, 2015, THE ENTIRE SITE LIES WITHIN ZONE "X" (AREAS DETERMINED TO BE OUTSIDE OF 0.2% ANNUAL CHANCE FLOODPLAIN.)
  - NO STATE WETLANDS ARE PRESENT ON THIS SITE PER THE DNREC ENVIRONMENTAL NAVIGATOR MAP.
  - THIS SITE DOES NOT LIE WITHIN A SOURCE WATER PROTECTION AREA AS MAPPED ON THE DNREC ENVIRONMENTAL NAVIGATOR MAP.

LEGEND	
PROPERTY LINE TO BE ESTABLISHED	---
RIGHT OF WAY	---
CENTERLINE OF BITUMINOUS CONCRETE	---
CHAIN LINK FENCE	--- ---
BUILDING SETBACK LINE	--- ---
CONCRETE	▨
GRAVEL / DIRT	▨
DRILL HOLE SET	●
CAPPED REBAR SET	●
UTILITY POLE	⊕
FIRE HYDRANT	⊕
ACCESSORY BUILDING	◇
ALUMINUM BLEACHERS	◇

**MINOR SUBDIVISION PLAN**

PREPARED FOR  
**MILFORD SCHOOL DISTRICT**  
 FOR PROPERTY KNOWN AS  
**LAKEVIEW AVENUE**  
 SITUATE IN  
 CITY OF MILFORD  
 SUSSEX COUNTY - STATE OF DELAWARE  
 SCALE: 1" = 80'  
 DATE: 31 AUGUST 2015  
 GRAPHIC SCALE

(IN FEET)  
1 inch = 80' ft.

**DEVELOPER'S / OWNER'S CERTIFICATION**

I, THE UNDERSIGNED, HEREBY CERTIFY AND ACKNOWLEDGE THAT I AM THE LEGAL REPRESENTATIVE OF THE OWNER OF THE PROPERTY SHOWN ON THIS PLAN, AND THAT THIS MINOR SUBDIVISION PLAN WAS PREPARED IN ACCORDANCE TO MY DESIRES AND AT MY DIRECTION IN ORDER TO BE LEGALLY RECORDED AMONG THE LAND RECORDS OF SUSSEX COUNTY, DELAWARE.

APPROVED: \_\_\_\_\_ DATE: \_\_\_\_\_  
 AUTHORIZED SIGNATURE

**LAND SURVEYOR'S CERTIFICATION**

I, ROBERT W. NASH, P.L.S., HEREBY CERTIFY THAT I AM A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF DELAWARE, AND THAT THE INFORMATION SHOWN HEREON HAS BEEN PREPARED UNDER MY SUPERVISION AND TO THE BEST OF MY KNOWLEDGE AND BELIEF REPRESENTS GOOD SURVEYING PRACTICES AS REQUIRED BY THE APPLICABLE LAWS OF THE STATE OF DELAWARE.

APPROVED: \_\_\_\_\_ DATE: \_\_\_\_\_  
 PROFESSIONAL LAND SURVEYOR

<p><b>MERESTONE CONSULTANTS, INC.</b> ENGINEERS - PLANNERS - SURVEYORS</p>			5215 WEST WOODMILL DRIVE WILMINGTON, DE 19808 PH: 302-992-7900 FAX: 302-992-7911	19633 BLUE BIRD LANE, SUITE 9 REHOBOTH BEACH, DE 19971 PH: 302-226-5880 FAX: 302-226-5883	
			DATE: 10/28/15	REVISION: CITY OF MILFORD CMNT	CHKD:
DATE: 10/28/15	REVISION:	CHKD:	DRAWN BY: DTG	DATE: 31 AUGUST 2015	SHEET#: 1 OF 1

PLAN #: 23319N - 327609

# City of Milford



## NOTICE OF PUBLIC HEARINGS

PLANNING COMMISSION PUBLIC HEARING: DECEMBER 15, 2015

CITY COUNCIL PUBLIC HEARING: JANUARY 25, 2016

NOTICE IS HEREBY GIVEN the Planning Commission of the City of Milford will hold a Public Hearing on Tuesday, December 15, 2015 at 7:00 p.m. or as soon thereafter as possible.

A FINAL PUBLIC HEARING is scheduled on Monday, January 25, 2016 at 7:00 p.m. before Milford City Council. Following the hearing the ordinance may be adopted, with or without amendments.

### ORDINANCE 2015-25

#### **Change of Zone/Lands belonging to Crop Production Services LLC**

Tax Parcel MD-16-18207-01-01.00 through 99.00

MD-16-18207-02-01.00 through 99.00

MD-16-18207-03-01.00 through 23.00

34.17 +/- Acres

**Current Zone R3/Proposed Zone I2**

AN ORDINANCE OF THE CITY OF MILFORD, DELAWARE to amend the zoning map of the City of Milford by rezoning 34.17 +/- acres of real property from R3 to I2 on Holly Hill Road, Milford, Delaware. Present Use: Vacant. Proposed Use: Fertilizer Sales and Storage Facility. Tax Map and Parcel: MD-16-18207-01-01.00 through 99.00, MD-16-18207-02-01.00 through 99.00, MD-16-18207-03-01.00 through 23.00

WHEREAS, the City of Milford Planning Commission will consider the change of zone application at a Public Hearing on December 15, 2015; and

WHEREAS, Milford City Council will hold a Public Hearing on January 25, 2016 to allow for public comment and further review of the ordinance; and

WHEREAS, it is deemed in the best interest of the City of Milford to allow a change of zone as herein described.

NOW, THEREFORE, the City of Milford hereby ordains as follows:

Upon the adoption of this ordinance, tax map and parcels MD-16-18207-01-01.00 through 99.00, MD-16-18207-02-01.00 through 99.00, MD-16-18207-03-01.00 through 23.00, owned by Crop Production Services located on Holly Hill Road, is hereby zoned I2.

Dates:

Introduction: December 14, 2015

Planning Commission Public Hearing & Recommendation: December 15, 2015

Adoption (Projected) Date: January 25, 2016

For additional information, please contact Rob Pierce in the Planning Department at Milford City Hall either by e-mail at [RPierce@milford-de.gov](mailto:RPierce@milford-de.gov) or by calling 302-424-3712.

*Advertised: Beacon 11/11/15*



PLANNING & ZONING DEPARTMENT  
P 302.424.3712 F: 302.424.3558

201 SOUTH WALNUT STREET  
MILFORD, DE 19963

[www.cityofmilford.com](http://www.cityofmilford.com)

## DATA SHEET FOR CROP PRODUCTION SERVICES

Planning Commission Public Hearing: December 15, 2015

City Council Public Hearing: January 25, 2016

---

<b>Ordinance</b>	:	2015-25
<b>Application Number / Name</b>	:	15-232 / Crop Production Services
<b>Applicant</b>	:	Crop Production Services, Inc. 250 Rehoboth Boulevard Milford, DE 19963 302-422-3570
<b>Owner</b>	:	Same
<b>Application Type</b>	:	Change of Zone
<b>Present Comprehensive Plan Map Designation</b>	:	Employment
<b>Proposed Comprehensive Plan Map Designation</b>	:	Employment
<b>Present Zoning District</b>	:	R-3 (Garden Apartment and Townhouse District)
<b>Proposed Zoning District</b>	:	I-2 (General Industrial)
<b>Present Use</b>	:	Vacant
<b>Proposed Use</b>	:	Fertilize Sales and Storage Facility
<b>Size and Location</b>	:	34.17 +/- acres on the south side of Holly Hill Road
<b>Tax Map &amp; Parcel</b>	:	MD-16-182.07-01-01.00 through 99.00 MD-16-182.07-02-01.00 through 99.00 MD-16-182.07-03-01.00 through 23.00

ENC: Staff Recommendation Report  
Exhibit A – Location & Zoning Map  
Exhibit B – Conceptual Site Plan



PLANNING & ZONING DEPARTMENT  
P 302.424.3712 F: 302.424.3558

201 SOUTH WALNUT STREET  
MILFORD, DE 19963

www.cityofmilford.com

**STAFF RECOMMENDATION REPORT**  
**November 02, 2015**

<b>Application Number / Name</b>	:	15-232 / Crop Production Services, Inc.
<b>Present Comprehensive Plan Designation</b>	:	Employment
<b>Proposed Comprehensive Plan Designation</b>	:	Employment
<b>Present Zoning District</b>	:	R-3 (Garden Apartments & Townhouse District)
<b>Proposed Zoning District</b>	:	I-2 (General Industrial District)
<b>Present Use</b>	:	Vacant
<b>Proposed Use</b>	:	Fertilizer Sales and Storage Facility
<b>Tax Map &amp; Parcel</b>	:	MD-16-182.07-01-01.00 through 99.00 MD-16-182.07-02-01.00 through 99.00 MD-16-182.07-03-01.00 through 23.00
<b>Size and Location</b>	:	34.17 +/- acres on the south side of Holly Hill Road.

**I. STAFF RECOMMENDATION:**

Based on the information presented, the City of Milford Code, and the Comprehensive Plan, staff submits the following regarding the request to amend the Zoning Map:

- The property is surrounded by industrial and residential zoning districts. The properties to the north are zoned R-8 (Garden Apartment and Townhouse District) and AC (Agricultural Conservation - Kent County). The property to the west is zoned IL (Limited Industrial) and is the site of the Baltimore Air Coil Facility. Properties to the east are zoned AC (Agricultural Conservation - Kent County) and are currently agricultural use. The properties to the south are zoned R-2 (Residential District) and are currently agricultural use. The property is bonded on the south by an active railroad right of way.
- The proposed change of zone is located along an established local road as depicted on DelDOT's functional classification map (2005).
- The project site is located within an excellent groundwater recharge area and any development of this parcel must adhere to the City's Source Water Protection ordinance (Chapter 230-19.5). The proposed use for this property will require a conditional use site plan review.

- The proposed change of zone meets all area regulations outlined in Chapter 230-17 – I-2 General Industrial District.
- The proposed rezoning meets the conditions for approval based on the following;
  - A. The new zoning classification conforms to the Comprehensive Plan for the City of Milford in relation to land use and intensity of nonresidential buildings and location.

*The applicant requested an amendment to the Comprehensive Plan Future Land Use Maps to revise the area of petition from Moderate Density Residential to Employment. The City of Milford prepared the amendment which was reviewed by the Office of State Planning Coordination in June 2015. Comments were received from OSPC in July 2015 and the Comprehensive Plan amendment was approved by City Council on October 26, 2015 at public hearing. PLUS comments are attached.*

- B. Transportation facilities, water and sewerage systems, storm drainage systems, schools and fire suppression facilities adequate to serve the proposed use are either in existence or programmed for construction.

*The applicant will be responsible for the required water, sewer and electrical improvements required to develop the property. The applicant must submit the land development plan to DelDOT and Kent Conservation District for review and approval of transportation and storm drainage systems. The applicant will be required to submit the land development plan to the State Fire Marshall's Office for review and approval as well.*

- C. There is compatibility between the uses of the property as reclassified and the surrounding land uses, so as to promote the health, safety and welfare of present and future residents of the county.

*The property is located adjacent to the existing Baltimore Air Coil facility.*

- The existing residential parcels must be consolidated prior to site plan approval.

## **II. BACKGROUND INFORMATION:**

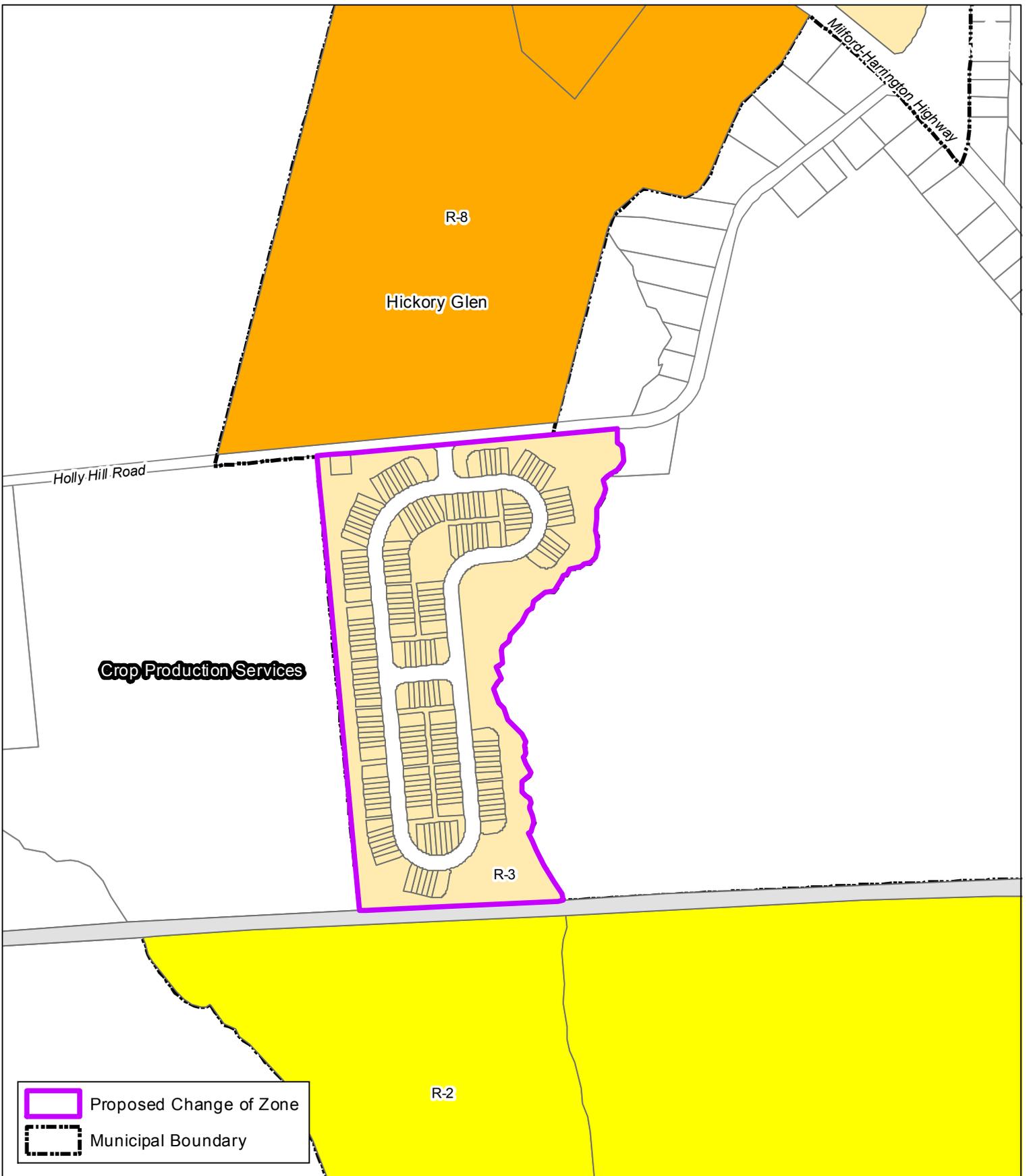
- The property was approved as a 216 unit townhouse subdivision by City Council in 2009.
- The applicant requested an amendment to the Comprehensive Plan Future Land Use Map to revise the area of petition from Moderate Density Residential to Employment. The City of Milford prepared the amendment which was reviewed by the Office of State Planning Coordination in June 2015. Comments were received from OSPC in July 2015 and the Comprehensive Plan amendment was approved by City Council on October 26, 2015 at Public Hearing. PLUS comments are attached for the Comprehensive Plan Map Amendment.

## **III. AGENCY COMMENTS:**

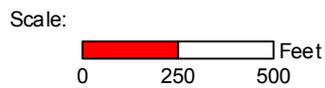
- DelDOT – No comments solicited for change of zone application. No comments provided during Comprehensive Plan Future Land Use amendment during PLUS hearing. Site Plan will require approval.

- Kent Conservation District – No comments solicited. Site Plan will require approval and adherence to Sediment and Stormwater Regulations.
- State Fire Marshall – No comments solicited for change of zone application. The Site Plan will require approval.

This recommendation is offered without the benefit of public testimony and is based on the information presented when the application was received by the Planning & Zoning Department. The Planning Commission shall give considerable weight to public testimony received during public hearing in considering its recommendation to City Council in this matter.



	Proposed Change of Zone
	Municipal Boundary



Drawn by: WRP      Date: 10/30/15

Title:

Change of Zone  
**Crop Production Services**  
 Location & Zoning Map

Filepath:      ChangeOfZone\_CropProductionServices.mxd

[Added 7-9-1990]

In an I-2 District no building/structure or premises shall be used and no building/structure or part thereof shall be erected or altered which is arranged, intended or designed to be used, in whole or in part, for any purpose except for one or more of the following uses and complying with the requirements herein indicated.

- A. The purpose of the I-2 General Industrial District shall be to provide locations for the development of large or heavy manufacturing, warehousing, wholesale and research establishments, which may include those that may produce some objectionable conditions, and also to concentrate the more intensive industrial uses in areas that would least impact neighboring zoning districts or uses.
- B. Permitted uses. Permitted uses for the I-2 District shall be as follows:
- (1) All items allowed in the I-1 District.
  - (2) Heavy manufacturing, assembling, converting, altering, finishing, cleaning or any other processing, handling or storage of products or materials, provided that the fuel or power supply shall be of an approved type. Also included shall be all incidental clinics, offices, cafeterias and recreational facilities for the exclusive use of in-house staff and employees.
  - (3) Research, design and development laboratories.
  - (4) Wholesale storage and warehousing.
  - (5) Building contractors' yards.
  - (6) Large public utility facilities, or major uses thereof.
- C. Prohibited uses. The following are expressly prohibited in an I-2 District:
- (1) Residences.
  - (2) Manufacturing uses involving primary production of the following products from raw materials: asphalt, cement, charcoal and fuel briquettes; chemicals: carbide, ammonia, aniline dyes, caustic soda, cellulose, chlorine, carbon black and bone black, creosote, hydrogen and oxygen, industrial alcohol, nitrates (manufactured and natural) of an explosive nature, potash, petro chemical, pyroxylin, rayon yarn and hydrochloric, nitric, picric, phosphoric and sulfuric acids; coal, coke and tar products, including gas manufacturing, explosives, fertilizers, gelatin, glue and size (animal); linoleum and oil cloth, matches, paint, varnishes and turpentine; rubber (natural and synthetic); soaps, including fat rendering; and starch.
  - (3) Dumps, junkyards, automobile salvage and dismantling plants/yards, public storage areas or operations for the storage or resale of used automotive or other machine parts.
  - (4) Operations involving slaughterhouses, stockyards or slag piles.
  - (5) Quarries, stone crushers, screening plants and all associated uses.
  - (6) The following processes: nitrating of cotton or other materials; magnesium foundry; milling or processing of flour; large-scale reduction, refining, smelting and alloying of metal or metal ores; refining petroleum products, such as gasoline, kerosene, naphtha and lubricating oil; distillation of wood or bones; and reduction and processing of wood pulp and fiber, including paper mill operations and sawmills.
  - (7) Storage of explosives and bulk or wholesale storage of gasoline above ground.
- D. Conditional uses. The following uses are permitted in the I-2 District in accordance with the provisions within Article IX (conditional use portion) of this chapter:
- (1) Airfields or airpark facilities.
  - (2) Tractor-trailer storage and parking facilities.
  - (3) Farm machinery and truck manufacture, sales, storage and repairs.
  - (4) Fertilizer storage and distribution centers.
  - (5) Heating, ventilating, cooling and refrigeration manufacturing.
  - (6) Trash compaction: transfer station and solid waste management system, not to include hazardous waste.
  - (7) Recycling or collection facilities for paper, glass, plastics and metal.
  - (8) Grain storage and processing.
  - (9) Meat processing, chicken processing and seafood processing.

(10) Aluminum recycling and smelting (small scale).

(11) Food and vegetable cleaning, canning and freezing.

E. Design standards and requirements. These are minimum requirements for all activities that are permitted or conditional uses. Conditional use activities are subject to much greater restrictions as may be required by the Planning Commission.

(1) Accessory uses shall not be permitted without a principal use.

(2) Any uses not permitted, as previously listed, are prohibited.

(3) All uses shall be conducted within a completely enclosed building. There shall be no open storage of raw, in process or finished products, supplies or waste material, except in areas approved by the Planning Commission during the site plan review hearing.

(4) In a planned industrially zoned I-2 District, no building/structure, accessory structure or sign shall be located closer than 250 feet to any existing nonindustrial district boundary.

(5) Adequate off-street parking shall be provided for all employees and traffic to the buildings. The minimum requirements are given in Article IV of this chapter and are to be deemed as minimum standards only. Standards in excess of those stated in Article IV may be stipulated by the Planning Commission during the site plan review.

(6) Fencing is required in any and all areas which would pose a threat to public safety and the security of the facility. All fencing shall be properly maintained.

(7) All front yard areas shall be maintained in a neat and attractive condition. All side and rear yard areas shall be kept uncluttered and free from any conditions that would constitute a safety hazard for employees or anyone visiting the site.

(8) All loading operations shall be conducted at the side or rear of the building. In the unloading or loading process, no vehicles participating in these operations shall be allowed to extend into any public or private driveway or street or impede its traffic circulation.

(9) All odorous fumes or matter emitted into the environment from any/all fuel-burning equipment, open stacks or chimneys and internal combustion engines must comply with the requirements set forth by the DNREC, State of Delaware.

(10) Dust or particulate debris from any processing or production operations will be minimized by the use of appropriate mechanical and/or electrical devices to the extent necessary to ensure that such emissions shall not be offensive at or beyond the property line of the industry/warehouse. All such activities will comply with the requirements of DNREC, State of Delaware.

(11) All internal roads, driveways and parking areas (for public, in-house employee or truck/vehicular traffic) shall be paved.

(12) All dry waste, in dust or particulate form, will be transported in closed or covered vehicles.

(13) The proposed use shall not endanger the surrounding facilities or communities to the possibility of fire or explosion. All uses shall comply with state regulations which control or govern their operation. There shall be no allowances for the storage of radioactive materials or those materials deemed to be toxic or dangerous.

(14) The proposed use shall not allow the emission of heat or glare beyond its property line. All lighting shall be directed so as not to cause glare to the surrounding properties. The light source shall be shielded so as not to be visible from adjoining properties.

(15) All I-2 District projects and proposals are subject to site plan review by the Planning Commission.

F. Area and height regulations.

(1) Minimum lot area shall be 2 1/2 acres.

(2) Maximum lot coverage shall be 50%, with the remainder being that of grass and landscaped areas. Parking areas shall be landscaped.

(3) Minimum lot width shall be 150 feet.

(4) Maximum building height shall be 50 feet.

(5) Minimum front yard setback shall be 75 feet.

(6) Minimum side yard setback shall be 50 feet.

(7) Minimum rear yard setback shall be 50 feet.

(8) Off-street parking. See Article IV of this chapter.

- (9) Landscape screening. See Article V of this chapter.
- (10) Sign requirements. See Article VI of this chapter.
- (11) Accessory structures shall occupy no more than 10% of the lot area.
- (12) Accessory structures shall be located in the side and rear lot areas.
- (13) Accessory structures shall be located at least 50 feet from the rear lot line.



# City of Milford



## NOTICE OF PUBLIC HEARINGS

PLANNING COMMISSION PUBLIC HEARING: DECEMBER 15, 2015  
CITY COUNCIL PUBLIC HEARING: JANUARY 25, 2016

NOTICE IS HEREBY GIVEN the Planning Commission of the City of Milford will hold a Public Hearing on Tuesday, December 15, 2015 at 7:00 p.m. or as soon thereafter as possible.

A FINAL PUBLIC HEARING is scheduled on Monday, January 25, 2016 at 7:00 p.m. before Milford City Council. Following the hearing the ordinance may be adopted, with or without amendments.

### ORDINANCE 2015-25

#### **Change of Zone/Lands belonging to Crop Production Services LLC**

Tax Parcel MD-16-18207-01-01.00 through 99.00

MD-16-18207-02-01.00 through 99.00

MD-16-18207-03-01.00 through 23.00

34.17 +/- Acres

**Current Zone R3/Proposed Zone I2**

AN ORDINANCE OF THE CITY OF MILFORD, DELAWARE to amend the zoning map of the City of Milford by rezoning 34.17 +/- acres of real property from R3 to I2 on Holly Hill Road, Milford, Delaware. Present Use: Vacant. Proposed Use: Fertilizer Sales and Storage Facility. Tax Map and Parcel: MD-16-18207-01-01.00 through 99.00, MD-16-18207-02-01.00 through 99.00, MD-16-18207-03-01.00 through 23.00

WHEREAS, the City of Milford Planning Commission will consider the change of zone application at a Public Hearing on December 15, 2015; and

WHEREAS, Milford City Council will hold a Public Hearing on January 25, 2016 to allow for public comment and further review of the ordinance; and

WHEREAS, it is deemed in the best interest of the City of Milford to allow a change of zone as herein described.

NOW, THEREFORE, the City of Milford hereby ordains as follows:

Upon the adoption of this ordinance, tax map and parcels MD-16-18207-01-01.00 through 99.00, MD-16-18207-02-01.00 through 99.00, MD-16-18207-03-01.00 through 23.00, owned by Crop Production Services located on Holly Hill Road, is hereby zoned I2.

Dates:

Introduction: December 14, 2015

Planning Commission Public Hearing & Recommendation: December 15, 2015

Adoption (Projected) Date: January 25, 2016

For additional information, please contact Rob Pierce in the Planning Department at Milford City Hall either by e-mail at [RPierce@milford-de.gov](mailto:RPierce@milford-de.gov) or by calling 302-424-3712.

*Advertised: Beacon 11/11/15*

NOTICE OF PUBLIC HEARINGS

PLANNING COMMISSION PUBLIC HEARING: JANUARY 19, 2016

CITY COUNCIL PUBLIC HEARING: JANUARY 25, 2016

NOTICE IS HEREBY GIVEN the Planning Commission of the City of Milford will hold a Public Hearing on Tuesday, January 19, 2016 at 7:00 p.m. or as soon thereafter as possible.

A FINAL PUBLIC HEARING is scheduled on Monday, January 25, 2016 at 7:00 p.m. before Milford City Council. Following the hearing, the ordinance may be adopted, with or without amendments.

ORDINANCE 2015-26  
CODE OF THE CITY OF MILFORD  
PART II-GENERAL LEGISLATION  
CHAPTER 230-ZONING  
ARTICLE X-SITE PLAN REVIEW  
§230-52- REVIEW PROCEDURES

WHEREAS, the City of Milford deems it necessary to assure that the large-scale developments are in accord with the Comprehensive Plan and that such developments comply with the regulations of this chapter. Site plans are required to assure good arrangement and appearance of new development; ensure harmony with existing structures; assure consistency with the City's adopted building and design standards, the Comprehensive Plan, and the City's Standard Specifications for Installation of Utility Construction Projects and Subdivision Pavement Design; to provide an understanding of the impacts of proposed development on public facilities and services and ensure the availability and adequacy of the same; and to otherwise meet the purposes of this chapter; and

WHEREAS, the Planning Department deems it necessary to update the Site Plan Review procedures.

NOW, THEREFORE, THE CITY OF MILFORD HEREBY ORDAINS:

*Section 1.*

An Ordinance to Amend the Code of the City of Milford by Amending Chapter 230 entitled Zoning by adding and renumbering as follows:

A. Preliminary approval.

- (1) A preliminary plan and documents, as specified by the Planning Department, shall be prepared by the applicant and submitted in accordance with the submission schedule as determined by the City Planner, along with the appropriate fees, as specified in § 230-57.
- (2) The Development Advisory Committee (DAC) shall review the application and plan. Comments from the DAC must be addressed via either submitting revised plans and/or necessary documents or via a narrative submitted to the City Planner. Upon confirmation by the City Planner that all DAC issues have been addressed

satisfactorily, the application will then be scheduled to be heard by the Planning Commission.

- (3) The Planning Commission shall review the application and shall approve the application with or without conditions, deny the application, or table the application.
- (4) Preliminary approval from the Planning Commission shall be void after one year, unless an extension is requested by the owner and approved for good cause by the Planning Commission prior to the expiration.

B. Final approval.

- (1) A final plat and documents, as specified by the Planning Department, shall be prepared by the applicant and submitted in accordance with the submission schedule as determined by City Planner, along with the appropriate fees, as specified in § 230-57.
- (2) The Development Advisory Committee (DAC) shall review the application and plan. Comments from the DAC must be addressed via either submitting revised plans and/or necessary documents or via a narrative submitted to the City Planner. The final plan shall also be reviewed by the City Planner for confirmation that the application is designed in accordance with all subdivision, zoning and other land use regulations of the City. The final plan shall also be reviewed by the City Engineer for confirmation that the application is designed consistent with the preliminary plan, if applicable, and in accordance with the construction standards and specifications of the City. Upon confirmation by the City Planner and City Engineer that all issues have been addressed satisfactorily, the application will be scheduled to be heard by the Planning Commission.
- (3) The Planning Commission shall review the application and shall approve the application with or without conditions, deny the application, or table the application.
- (4) **Prior to receiving final site plan approval, the City Engineer shall provide a copy of the signed subdivision agreement to the City Planner.**
- (5) Within 90 days of final approval from Planning Commission, the applicant shall record the plat at the County Recorder of Deeds office and provide the City Planner a receipt of the recordation including the deed book and page number. Prior to recording the plat, five copies of the plat must be submitted to the City Planner for stamping and signing. Three sets will be returned to the applicant.
- (6) Upon recordation of the plat, the applicant shall provide the Land Data Manager of the City a mylar copy of the plat including the deed book and page printed thereon.
- (7) Failure to record the plat within 90 days of Planning Commission approval will result in the approval being voided.

C. The site plan review by the Planning Commission shall be limited to those proposed developments enumerated by this chapter and to those proposed developments that require a site plan review as determined by the City Planner. No other site plans shall be considered by the Planning Commission for review.

~~D. Prior to the Planning Commission holding a public hearing to review the application for the site plan, the City Engineer shall provide a copy of the signed subdivision agreement to the City Planner.~~

*Section 2. Dates.*

Planning Commission Review and Public Hearing: January 19, 2016

City Council Review and Public Hearing: January 25, 2016

Adoption: January 25, 2016

Effective: February 4, 2016

This ordinance shall take effect and be in force ten days after its adoption.

A complete copy of the Code of the City of Milford is available by request through the City Clerk's office or by accessing the city website at [www.cityofmilford.com](http://www.cityofmilford.com).

*Advertised: Beacon 11/25/15*

# City of Milford



## NOTICE OF PUBLIC HEARINGS

PLANNING COMMISSION PUBLIC HEARING: JANUARY 19, 2016

CITY COUNCIL PUBLIC HEARING: JANUARY 25, 2016

NOTICE IS HEREBY GIVEN the Planning Commission of the City of Milford will hold a Public Hearing on Tuesday, January 19, 2016 at 7:00 p.m. or as soon thereafter as possible.

A FINAL PUBLIC HEARING is scheduled on Monday, January 25, 2016 at 7:00 p.m. before Milford City Council. Following the hearing, the ordinance may be adopted, with or without amendments.

### ORDINANCE 2016-01

Annexation/Lands belonging to Mispillion Realty LLC

Tax Parcel 1-30-3.00-080.02

2.00 +/- Acres

Current Zone MR/Proposed Zone R3

AN ORDINANCE OF THE CITY OF MILFORD, DELAWARE to amend the zoning map of the City of Milford by rezoning 2.00 +/- acres of real property from MR to R3 adjacent to Fieldstone Avenue in Brookstone Trace, Milford, Delaware. Present Use: Vacant. Proposed Use: Garden Apartment/Townhouse. Tax Map and Parcel: 1-30-3.00-080.02

WHEREAS, the City of Milford Planning Commission will consider the change of zone application at a Public Hearing on January 19, 2016; and

WHEREAS, Milford City Council will hold a Public Hearing on January 25, 2016 to allow for public comment and further review of the ordinance; and

WHEREAS, it is deemed in the best interest of the City of Milford to allow a change of zone as herein described.

NOW, THEREFORE, the City of Milford hereby ordains as follows:

Upon the adoption of this ordinance, tax map and parcels 3-30-3.00-080.02, owned by Mispillion Realty LLC located on Fieldstone Avenue in Brookstone Trace, is hereby zoned R3.

Dates:

Planning Commission Review & Public Hearing: January 19, 2016

City Council Introduction: January 11, 2016

City Council Public Hearing: January 25, 2016

Adoption: January 25, 2016

Effective: February 4, 2016

This ordinance shall take effect and be in force ten days after its adoption.

For additional information, please contact Rob Pierce in the Planning Department at Milford City Hall either by e-mail at [RPierce@milford-de.gov](mailto:RPierce@milford-de.gov) or by calling 302-424-3712.

*Advertised: Beacon 12/30/15*

Mispillion Realty, LLC  
715 S. Dupont Hwy  
Milford, DE. 19963

October 29, 2015

City of Milford Planning & Zoning  
c/o Christine Crouch  
201 South Walnut Street  
Milford, Delaware 19963

RE: Request For Annexation

Property Address: Vacant Lot Adjacent to Brookstone Trace,  
Near Old Shawnee Road, Milford, Delaware 19963  
Owner: Mispillion Realty, LLC  
Tax Parcel # 1-30-3.00-80.02 - 2.0 +/- Acres

Dear Christine,

Please accept this letter as my request for annexation on the above 2 acre parcel. This parcel is located next to Brookstone Trace, a townhouse project located within the City limits. This is the same parcel that I requested the comprehensive plan amendment (to moderate density residential) on last year that the City approved. The Brookstone subdivision is zoned R-3 so I request that this parcel have the same possibilities so I am requesting the R-3 zoning. I plan to design the site for comparable development in the near future which I believe will be an asset to the community.

Thank you in advance for your consideration. Please feel free to call me with any questions or clarifications, if necessary.

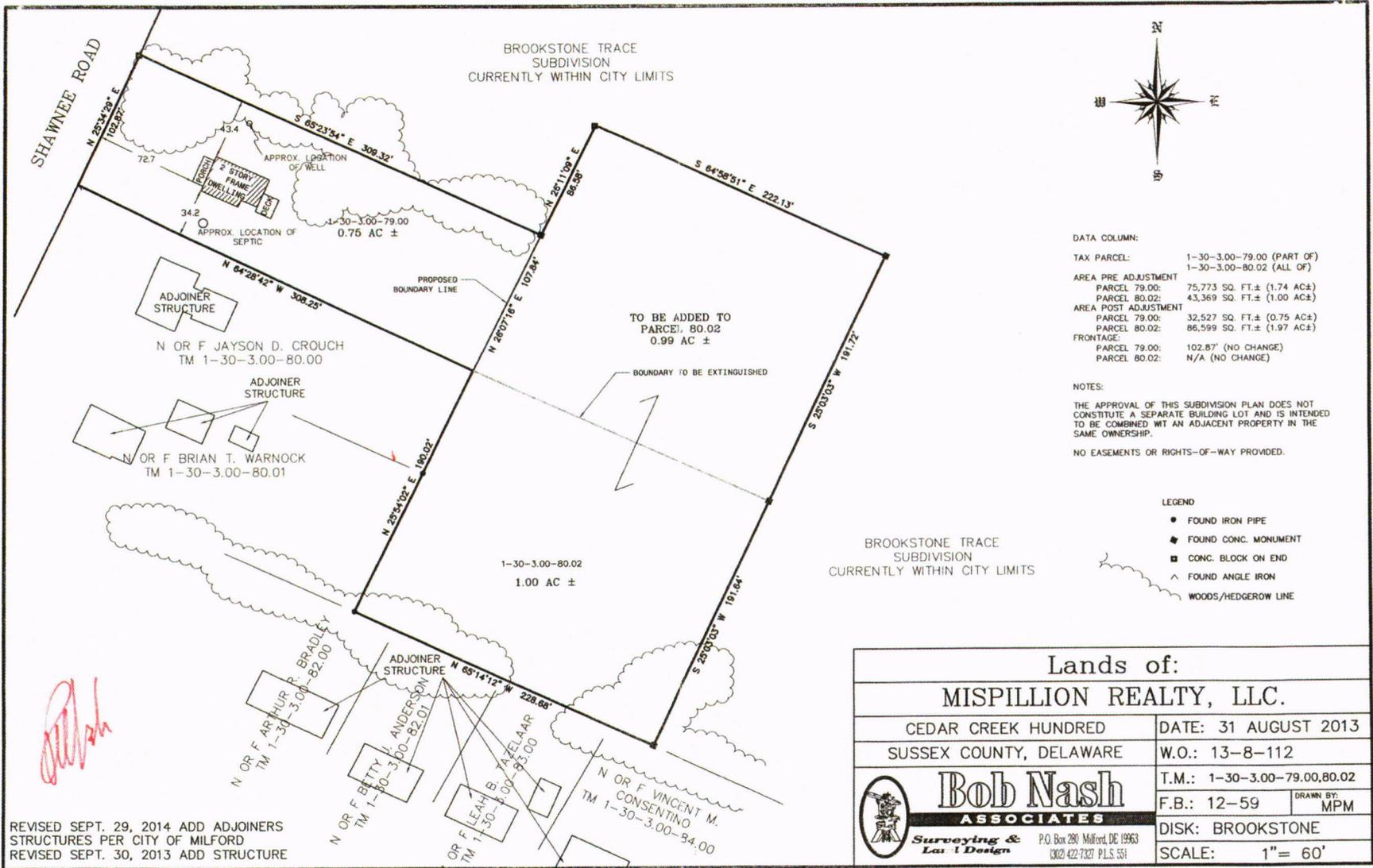
Sincerely,



James J. Masten, Owner  
Mispillion Realty, LLC  
302-422-1850



Witness



DATA COLUMN:

TAX PARCEL:	1-30-3.00-79.00 (PART OF) 1-30-3.00-80.02 (ALL OF)
AREA PRE ADJUSTMENT	PARCEL 79.00: 75,773 SQ. FT.± (1.74 AC±) PARCEL 80.02: 43,369 SQ. FT.± (1.00 AC±)
AREA POST ADJUSTMENT	PARCEL 79.00: 32,527 SQ. FT.± (0.75 AC±) PARCEL 80.02: 86,599 SQ. FT.± (1.97 AC±)
FRONTAGE:	PARCEL 79.00: 102.87' (NO CHANGE) PARCEL 80.02: N/A (NO CHANGE)

NOTES:  
THE APPROVAL OF THIS SUBDIVISION PLAN DOES NOT CONSTITUTE A SEPARATE BUILDING LOT AND IS INTENDED TO BE COMBINED WITH AN ADJACENT PROPERTY IN THE SAME OWNERSHIP.  
NO EASEMENTS OR RIGHTS-OF-WAY PROVIDED.

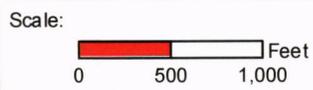
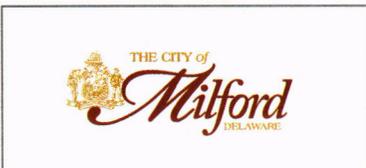
- LEGEND
- FOUND IRON PIPE
  - ◆ FOUND CONC. MONUMENT
  - CONC. BLOCK ON END
  - ▲ FOUND ANGLE IRON
  - ~~~~~ WOODS/HEDGEROW LINE

BROOKSTONE TRACE  
SUBDIVISION  
CURRENTLY WITHIN CITY LIMITS

<b>Lands of:</b>	
<b>MISPILLION REALTY, LLC.</b>	
CEDAR CREEK HUNDRED	DATE: 31 AUGUST 2013
SUSSEX COUNTY, DELAWARE	W.O.: 13-8-112
<b>Bob Nash</b>	
<b>ASSOCIATES</b>	
<i>Surveying &amp; Law 1 Design</i>	P.O. Box 280, Milford, DE 19663 302-422-7327 P.L.S. 551
T.M.: 1-30-3.00-79.00, 80.02	DRAWN BY: MPM
F.B.: 12-59	DISK: BROOKSTONE
SCALE: 1" = 60'	

REVISED SEPT. 29, 2014 ADD ADJOINERS  
STRUCTURES PER CITY OF MILFORD  
REVISED SEPT. 30, 2013 ADD STRUCTURE

*[Handwritten signature]*



Drawn by: WRP Date: 07/01/15

Title:

**Proposed Annexation:**  
**Mispillion Realty, LLC**  
 Location Map

Filepath: Z:\GIS\GEO\_PROJECT\Annexation\_MispillionRealty.mxd



# Land Use Application Cover Sheet

File Name: Brookstone Trace

Date Stamp

File Number: 11-156

**Instructions for Applicants:**

Please read and follow all instructions on your application carefully. If you have any questions about the process or your project, it is strongly recommended that you speak with staff prior to submitting your application to help ensure that processing can advance in a timely manner. Every application must include this cover sheet, the application/checklist and all required items. No applications will be accepted/processed if violations exist or if any fees are owed to the City.

**Specify Type of Land Use Application to be submitted (check all that apply):**

- Preliminary Site Plan
- Preliminary Major Subdivision
- Final Minor Subdivision
- Final Site Plan
- Final Major Subdivision
- Variance/Appeal
- Change of Zone
- Conditional Use
- Annexation

**Please Type or Print Legibly**

<b>Property Owner:</b> <u>MISPELLION REALTY, LLC</u>			<b>Phone:</b> <u>422 1850</u>
<b>Address:</b> <u>715 S. DuPont Hwy</u>			<b>Cell:</b> <u>422 2280</u>
<b>City:</b> <u>MILFORD</u>	<b>State:</b> <u>DE</u>	<b>Zip:</b> <u>19963</u>	<b>Fax:</b> <u>422 8020</u>
<b>E-Mail:</b> <u>jami@nasterrealty.com</u>			
<b>Applicant Name and Company:</b> <u>SAME AS ABOVE</u>			<b>Phone:</b>
<b>Address:</b>			<b>Cell:</b>
<b>City:</b>	<b>State:</b>	<b>Zip:</b>	<b>Fax:</b>
<b>E-Mail:</b>			
<b>Surveyor or Engineer:</b> <u>BOB NASH</u>			<b>Phone:</b> <u>422 - 7327</u>
<b>Address:</b> <u>PO BOX 280</u>			<b>Cell:</b>
<b>City:</b> <u>MILFORD</u>	<b>State:</b> <u>DE</u>	<b>Zip:</b> <u>19963</u>	<b>Fax:</b>
<b>E-Mail:</b> <u>bob.nash@merestoneconsultants.com</u>			
<b>Site Address:</b> <u>E/SD STANWEE RD; S/SD FIELDSTONE AVENUE</u>			<b>Zoning:</b> <u>Proposed R-3</u>
<b>Tax Map &amp; Parcel Number (s):</b> <u>1-30-3.00-80.02</u>			<b>Acreage:</b> <u><del>2.07</del> 1.99 +/-</u>
<b>Brief Description of Proposal:</b> <u>REQUEST TO ANNEX PARCEL SO IT CAN BE COMBINED INTO THE ADJACENT BROOKSTONE TRACE SUBD.</u>			
I/We certify that the information provided in this application, including all submittals and attachments, is true and correct to the best of my/our knowledge.			
<b>Signature of Property Owner:</b> <u>[Signature]</u>			<b>Date:</b> <u>10/7/14</u>
<b>Signature of Applicant:</b> <u>[Signature]</u>			<b>Date:</b> <u>10/7/14</u>

REVISED: 01.2014



# Annexation Application

File Name: Brookstone Place

Date Stamp

File Number: 11-156

A Land Use Application for Annexation is deemed complete when it is accompanied by the required items identified below. Please be advised that additional information may be required during the review process in order to respond to or resolve particular issues. No application shall be considered complete if any of the required information is missing.

Current County Zoning: AR  
MR

Requested Zoning: R-3

Comprehensive Plan Designation: MOD DSN RES

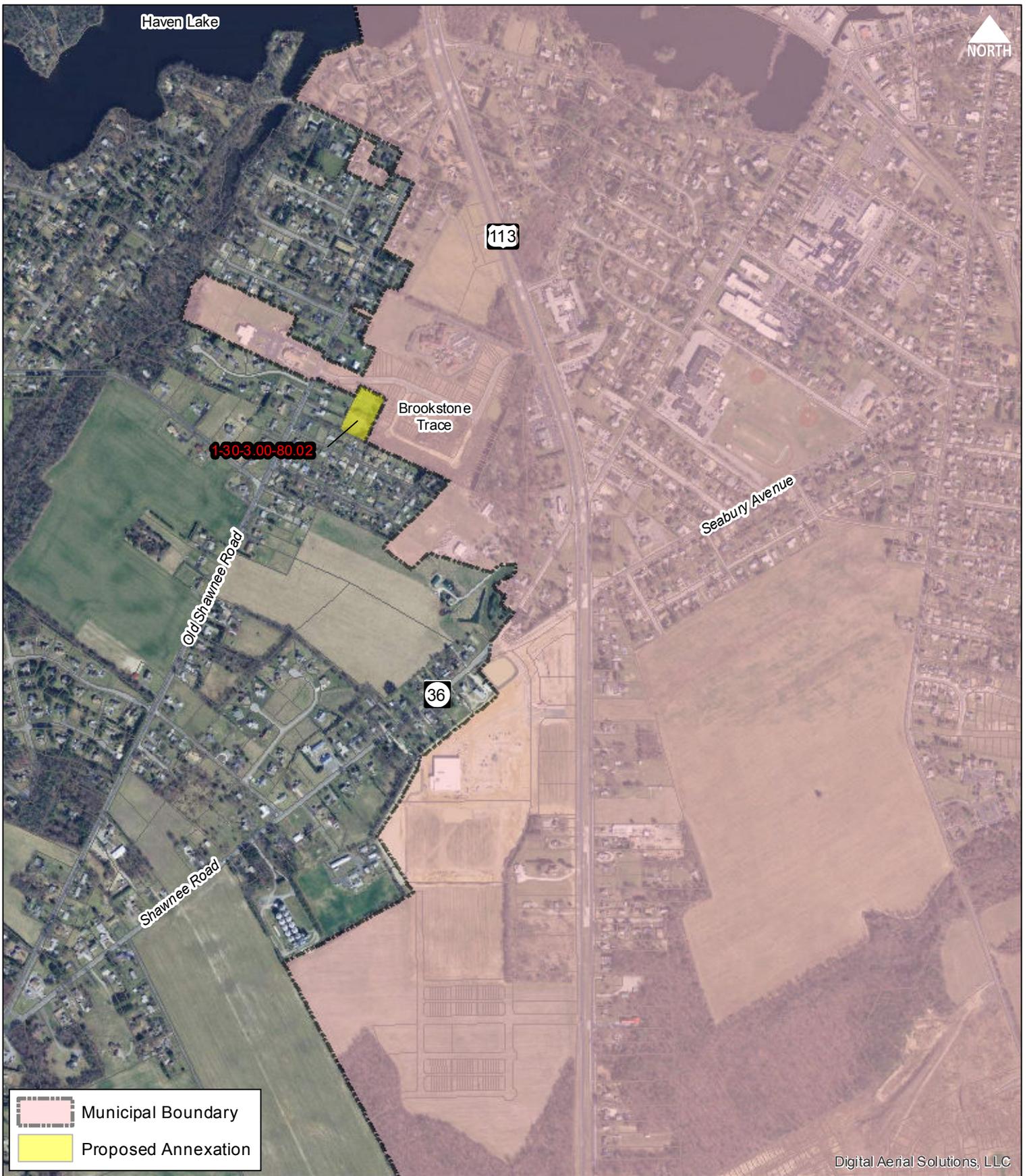
REQUIRED ITEMS		For Staff Use ONLY	
		Verified	Waived
<input checked="" type="checkbox"/>	1. Land Use Application Cover Sheet.	<input checked="" type="checkbox"/>	
<input checked="" type="checkbox"/>	2. Petition for annexation, signed by ALL property owners with signature of each petitioner duly witnessed; petition must contain:	<input checked="" type="checkbox"/>	
<input checked="" type="checkbox"/>	A. Site address;	<input checked="" type="checkbox"/>	
<input checked="" type="checkbox"/>	B. Tax map number (s);	<input checked="" type="checkbox"/>	
<input checked="" type="checkbox"/>	C. Size of property in acres;	<input checked="" type="checkbox"/>	
<input checked="" type="checkbox"/>	D. Reasons for request;	<input checked="" type="checkbox"/>	
<input checked="" type="checkbox"/>	E. General location description (proximity to closest roadways, streets and intersections).	<input checked="" type="checkbox"/>	
<input checked="" type="checkbox"/>	3. A full legal description of the property in Word format.	<input checked="" type="checkbox"/>	
<input checked="" type="checkbox"/>	4. Current recorded deed showing legal description and ownership.	<input checked="" type="checkbox"/>	
<input checked="" type="checkbox"/>	5. Current sealed survey (no larger than 11" x 17"), drawn to scale, showing:	<input checked="" type="checkbox"/>	
	A. Property identified for annexation which clearly shows the parcel(s) and demonstrates contiguity to the City;	<input checked="" type="checkbox"/>	
	B. Date, scale and north arrow;	<input checked="" type="checkbox"/>	
	C. Existing right-of-ways and improvements;	<input checked="" type="checkbox"/>	
	D. Existing utilities;	<input checked="" type="checkbox"/>	
	E. Existing natural features;	<input checked="" type="checkbox"/>	
	F. Existing structures and other improvements;	<input checked="" type="checkbox"/>	
	G. All structures, natural features and other improvements on abutting property.	<input checked="" type="checkbox"/>	
<input checked="" type="checkbox"/>	6. Application fee (see page 2).	<input checked="" type="checkbox"/>	

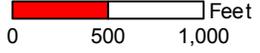
I/We certify that the information provided in this application, including all submittals are attachments, is true and correct to the best of my/our knowledge.

Signature of Property Owner: John Steell Date: 10/7/14  
 Signature of Applicant: John Steell Date: 10/7/14

FOR STAFF USE ONLY			
City Council	Annexation Committee	Planning Commission	City Council
Applicant			
Owner			

REVISED: 01.2014



	Scale:  Feet 0      500      1,000	Title:  <b>Proposed Annexation:          Mispillion Realty, LLC          Location Map</b>
	Drawn by: WRP      Date: 07/01/15	
Filepath: Z:\GIS\GEO_PROJECT\Annexation_MispillionRealty.mxd		



STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF STATE PLANNING COORDINATION

December 1, 2015

Mr. Rob Pierce  
City of Milford  
201 S Walnut Street  
Milford, DE 19963

**RE: Plan of Services 2015-20, Mispillion Realty Annexation  
Tax Parcel # 130-3.00-80.02**

Dear Mr. Pierce,

This letter is to confirm that we have accepted the Plan of Services as complete for the above-referenced annexation. The City of Milford has completed all relevant annexation requirements of Title 22, Section 101, Subsection (3), Delaware Code.

After this property has been annexed please notify our office in writing so that we may update our records and maps. A copy of the official annexation resolution should accompany this notification. If you have any questions or concerns, please do not hesitate to contact me at (302) 739-3090.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Edgell".

David L. Edgell, AICP  
Principal Planner

cc: Connie Holland  
Laura Simmons

Tax Parcel No. 1-30-3.00-80.02

Prepared by: Planning & Zoning  
City of Milford  
201 S Walnut St  
Milford, DE 19963

Return to: The Honorable Bryan Shupe, Mayor  
City of Milford  
201 S Walnut St  
Milford, DE 19963

MISPILLION REALTY, LLC ANNEXATION AGREEMENT

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between MISPILLION REALTY, LLC (hereinafter “MISPILLION”) whose principal location is located at 715 S. DUPONT BOULEVARD, MILFORD DE 19963 and the City of Milford, a municipal corporation of the State of Delaware with its principal offices located at 201 South Walnut Street, Milford Delaware, 19963 (hereinafter “City”).

RECITALS

A. WHEREAS, MISPILLION is the record title owner of a parcel of land consisting of 2.0 acres, more or less, lying contiguous to the City of Milford, said tract identified on the Sussex County, Delaware tax maps as Tax Parcel No. 1-30-3.00-80.02, said tract hereinafter referred to as “Mispillion Property”.

Mispillion is desirous of having the Mispillion Property annexed into the City of Milford and requested the land use to be residential in nature.

B. WHEREAS the City, through its City Council (in consultation with the City Solicitor and City Planner), has duly considered the proposed annexation and has determined that the proposed annexation would be in the City’s overall best interest for the following reasons among others:

1. The property would be within the planning area of the City of Milford.
2. Identified within the Urban Growth Boundary Area of the 2008 Comprehensive Plan.
3. Consistent with the Future Land Figure of the amended 2008 Comprehensive Plan.

C. Recognizing that Mispillion request for annexation is unilateral (in that the City cannot annex the Mispillion Property unless Mispillion desires the property to be annexed) and further recognizing that the intended land use is consistent with the City’s Land Use Plan, and can be accommodated within the City’s long range Comprehensive Plan, the City Council has determined that it is in the City’s best interest to provide Mispillion with binding assurances to proceed with annexation.

D. Article I, Section 1.04 of the City Charter of the City of Milford (pursuant to Chapter 148, Volume 72, Laws of Delaware {as amended}) authorizes and empowers the Mayor of the City of Milford to appoint a Committee composed of not less than three (3) of the elected members of the City Council and one member of the City Planning Commission to investigate the possibility of annexation.

NOW THEREFORE, in consideration of the premises, and in consideration of Mispillion’s request to be annexed into the City of Milford, in consideration of \$3780.00 paid to the City by Mispillion, the receipt whereof is hereby acknowledged, and for other good and valuable

consideration, the parties hereto, intending to be legally bound, hereby covenant and agree as follows:

1. Annexation Contingency. This Agreement is expressly contingent upon the annexation, by the City, of the Mispillion Property. In the event that such annexation does not occur, this Agreement shall be null, void, and of no legal force or effect.
2. Land Subject to Annexation. The land subject to this Agreement consists of 2.0 acres, more or less, said tract identified on the Sussex County, Delaware tax maps as Tax Parcel No.1-30-3.00-80.02.

The hereinabove described parcel of land is more fully depicted on that certain Survey "Lands of Mispillion Realty, LLC., dated August 31, 20103, prepared by Bob Nash Associates" a copy of which is attached hereto as **Exhibit "A"** and incorporated herein by reference; metes and bounds description for parcel is attached hereto as **Exhibit "B"** and incorporated herein by specific reference.

3. Water Distribution System and Sanitary Sewer. Notwithstanding any other provision or requirement under any City ordinance or regulation, Mispillion agrees that the Mispillion Property will be connected to the City water distribution system and to the City's sanitary sewer system, treatment of which is provided by Kent County. The actual EDU's cannot be calculated at this time and are regulated by the permitted uses within the R-3 Zoning District. The parties agree that Mispillion, at their sole expense, shall connect to public utilities, if not already in place on the property, and at their sole expense shall be responsible for the upgrade to any and all pump stations to accommodate the increase in EDU's from their existing capacity. Mispillion agrees to execute any documents needed to apply and obtain the CPCN rights.
4. Electric Distribution System. Mispillion agrees that the Mispillion Property will utilize the City electric system. Mispillion agrees to execute any documents needed to apply and obtain the CPCN rights.
5. Natural Features. The U.S. Army Corp of Engineers will control provisions under Section 404 of wetlands on the parcel.
6. Zoning. The Mispillion Property shall be annexed as City district R-3 Garden Apartment and Townhouse District and shall be developed in accordance with said district. Nothing in this agreement shall remove or eliminate the owner from the necessary site plan reviews, fees, public hearings and all other requirements under the City's Land Use Ordinance.
5. City Not Responsible for Infrastructure Improvements; MISPILLION Right to Assign.

Anything herein to the contrary notwithstanding:

- a) The City shall have no obligation or responsibility (financial or otherwise) for providing, installing, or constructing any of the required infrastructure improvements;

- b) Mispillion may, with the City's prior written consent, which shall not be unreasonably withheld, sell, lease, or convey all or any portion of Mispillion Property to any third party and, as part of such sale, lease, or conveyance, assign all or any of its rights and *corresponding obligations* hereunder to such third party.
6. Except as Modified, All Other City Ordinances and Regulations to Control. Except as specifically provided herein, once finally annexed into the City of Milford, all lands subject to this Agreement shall be subject to and governed by all provisions of the City Charter and all City ordinances and regulations as they now exist or may hereafter be amended, revised, or repealed, as well as any new ordinances or regulations adopted by the City Council, to the same effect and degree as all other lands within the City boundaries of the City of Milford.
7. Term of Annexation Agreement. This annexation agreement shall become null, void, and unenforceable after the expiration of seven (7) years from the date of the City Council's final annexation resolution; provided however that Mispillion may at any time, in writing, release the City from any of the provisions of this Agreement.
8. Annexation Agreement to be a Material Part of Annexation Proceedings. Pursuant to Title 22, Delaware Code §101 Plan of Services Reporting, this Agreement shall be deemed to be a material part of the annexation proceedings conducted pursuant hereto; that is to say:
- a. The resolutions and notices adopted by the City Council, including any resolution and notices for public hearings, proposing the aforesaid annexation shall recite that the proposed annexation includes, and is subject to, an annexation agreement, shall briefly summarize the terms of this annexation agreement, and shall state that copies of the annexation agreement are available upon request at the City Hall.
- b. If the results of the annexation special election are favorable to the proposed annexation, the final resolution annexing the territory shall recite that the annexation is subject to an annexation agreement and shall incorporate the terms of such annexation agreement by specific reference.
9. Land Use Planning Act. The City of Milford shall notify the Delaware State Planning Office, Kent County Department of Public Works, Milford Police Department, Carlisle Fire Department and Milford School District of the proposed annexation contemplated by this Agreement and the parties shall comply with the requirements of the Delaware Land Use Planning of Title 29 of Delaware Code, Chapter 92 (Land Use Planning Act effective until February 14, 2004; Preliminary Land Use Services effective February 14, 2004), as amended.
10. Governing Law. This Agreement shall be governed by the laws of the State of Delaware (notwithstanding the fact that one or more parties may now or later become a resident of another state) and the parties hereto agree that the courts of the State of Delaware shall have jurisdiction over any case or controversy and hereby consent to such jurisdiction.

11. Separability. If any section, paragraph, sentence or clause of this Agreement is determined or declared to be invalid or unenforceable by any court of competent jurisdiction, the remainder hereof shall remain in full force and effect.
12. Entire Agreement. This Agreement constitutes the entire understanding of the parties. It supersedes any and all prior agreements between them. There are no representations or warranties other than those herein contained.
13. Amendments. This Agreement shall not be amended except in writing executed by all parties hereto.
14. Binding Effect. This Agreement shall be binding upon the parties hereto, their administrators, successors, successors in interest and assigns.
15. Contra Proferentum. The fact that one party has drafted this Agreement shall in no way be used against that party in construing the terms, condition, and obligations hereunder.
16. Headings. Headings and captions used herein are solely for the convenience of the parties and shall have no legal significance in construing the terms of this Agreement.
17. Non-Waiver. The failure of either party to exercise any of its rights under this Agreement for a breach thereof shall not be deemed to be a waiver of such rights or a waiver of any subsequent breach.
18. Enforcement. In the event of a breach, this Agreement shall be enforced through a decree of specific performance, the parties agreeing that monetary damages would not provide an adequate remedy.
19. Recording. This agreement, dully executed by the City and Mispillion, shall be recorded in the office of the Recorder of Deeds, in and for Sussex County, Delaware. The cost of recording shall be paid by the Mispillion.

Attest: \_\_\_\_\_ Date \_\_\_\_\_ By: \_\_\_\_\_ James Masten

State of Delaware  
County of Kent

Signed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_.

(Seal)

\_\_\_\_\_  
Signature of Notary Public, State of Delaware

\_\_\_\_\_  
Stamp of Notary Public

Attest: \_\_\_\_\_ Date \_\_\_\_\_ By: \_\_\_\_\_ (Seal)  
City Clerk Mayor, City of Milford

State of Delaware  
County of Kent

Signed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_.

(Seal)

\_\_\_\_\_  
Signature of Notary Public, State of Delaware

\_\_\_\_\_  
Stamp of Notary Public

**Exhibit A**

DRAFT

**Exhibit B**

DRAFT

## § 230-11. - R-3 Garden Apartment and Townhouse District.

In an R-3 District no building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used except for one or more of the following uses and complying with the requirements so indicated.

A. Purpose. The purpose of the R-3 District is to provide for the orderly development of existing and proposed medium- to high-density residential areas where adequate public facilities exist. The district will permit development of garden-type apartments as well as townhouses that will yield high densities in selected areas, multifamily dwellings and a variety of housing types.

B. Permitted uses. Permitted uses for the R-3 District shall be as follows:

(1) All uses permitted in an R-2 District and subject to its area regulations, unless otherwise indicated in this section as provided below:

(a) Single-family and two-family dwellings shall be subject to the following area regulations:

- [1] Minimum lot area shall be 7,500 square feet.
- [2] Maximum building coverage shall be 45%.
- [3] Minimum lot width shall be 60 feet.
- [4] Height of buildings shall not exceed three stories or 35 feet.
- [5] Minimum building setback line shall be 30 feet.
- [6] Side yards shall be provided as follows: each lot shall have at least two side yards eight feet in width, except semidetached structures, which shall have at least one side yard per lot eight feet in width.
- [7] Minimum rear yard setback shall be 15 feet. For corner lots the rear yard setback may be reduced 20% in depth to allow for skewing of a residential dwelling on the lot.
- [8] Decks, subject to the following requirements:

[Added 9-8-2008 by Ord. No. 2008-13]

[a] The deck cannot be located in the front yard.

[b] A minimum distance of 10 feet must be maintained from the deck to the rear property line.

(2) Garden or low-rise apartments, subject to site plan review and the following requirements:

- (a) The number of dwelling units per acre shall not exceed 16.
- (b) Building coverage shall be a maximum of 20% for any lot developed for garden apartments.
- (c) The maximum number of dwelling units per building shall be 12.
- (d) Distance between buildings or groups of buildings shall be as follows: each building or group of buildings shall be at least 25 feet from any other building or group of buildings.
- (e) Minimum lot width on any public street shall be at least 50 feet.
- (f) Minimum lot size shall be one acre for garden apartment properties or complexes, with a minimum of 2,500 square feet of lot area for each dwelling unit.
- (g) A minimum of 400 square feet per unit shall be designated as open space subject to the following recreational use requirements in Subsection B(2)(h) herein.
- (h) Recreational use requirement. 50% of the required open space shall be set aside for recreational uses. This requirement only applies to subdivisions or developments with 15 or more lots or units.

(3) Townhouses or row dwellings, subject to site plan review and the following requirements:

- (a) The number of dwelling units per group shall not exceed eight nor be fewer than three.
- (b) The number of dwelling units per acre shall not exceed 12.
- (c) Maximum building coverage shall be 60%.
- (d) No group of townhouses shall be closer than 60 feet as to facing walls and 30 feet as to end walls from any other group of such dwellings nor closer than 60 feet from any boundary line of a designated townhouse area of which the group is a part.
- (e) There shall be within any contiguous group of townhouses at least three different architectural plans having substantially different designs and building materials. In addition, no more than three continuous townhouses shall have the same front setback, and the variations in front setback shall be at least four feet.
- (f) The minimum width of any side yard abutting a street, driveway or parking area within the townhouse area shall not be less than 30 feet.
- (g) Height of buildings shall not exceed three stories or 35 feet.
- (h) Alleys in the rear of townhouse groups are required for access to units by owners and to facilitate City services, trash collection, meter reading and parking.
- (i) Minimum lot size shall be one acre for townhouse projects or complexes, with a minimum of 2,000 square feet of lot area for each dwelling unit.
- (j) A minimum of 400 square feet per unit shall be designated as open space subject to the recreational use requirements in Subsection B(3)(k) herein.
- (k) Recreational use requirement. 50% of the required open space shall be set aside for recreational uses. This requirement only applies to subdivisions or developments with 15 or more lots or units. <sup>2</sup>

C. Conditional uses subject to special regulations. The following uses may be permitted with the approval of a conditional use permit by the Milford City Council in accordance with the provisions of Article IX of this chapter:

- (1) Rooming or boarding houses.
- (2) Business offices for administrative purposes only.
- (3) Professional offices (nonresident).
- (4) Medical clinics.
- (5) Sanatoriums or nursing homes.
- (6) Mobile home parks, subject to conformance with the following requirements and subject to site plan review:
  - (a) The total area to be developed as a mobile home park shall be at least 20 acres.
  - (b) The maximum density shall not exceed eight units per acre.
  - (c) Mobile home parks with more than 25 units shall provide at least 5,000 square feet or 400 square feet per lot of open space. At least 10% of the open space shall be developed as a recreational area.
  - (d) Landscape screening shall be required along all property lines. The screening shall be accomplished with an evergreen hedge, shrubs or trees. The screen shall be located not less than five feet from the property line.
  - (e) Common sidewalks four feet in width shall be required where pedestrian traffic is located. Individual sidewalks 2 1/2 feet wide shall connect each mobile home unit to the common walk.
  - (f) Off-street parking shall be provided on the basis of two spaces per lot. All parking areas shall be located not more than 400 feet from the mobile home unit. There shall be no on-street parking.
  - (g) Signs.

- [1] An identification sign may be set up at the park entrance. This sign may be illuminated and shall have a street setback of 15 feet. It may have a maximum height of 20 feet and may not exceed 20 square feet of area on either side.
- [2] Unilluminated traffic direction signs may also be erected. These signs shall have a street and property setback of 15 feet. They shall be no more than four square feet in area or two feet in height.
- (h) Streets shall be required from abutting public streets to individual lots. The streets shall be designed to minimize congestion and traffic hazards and must be built to the street and storm drainage specifications of Chapter 200, Subdivision of Land, of this Code. No more than two streets shall intersect at one point.
- (i) Minimum requirements for mobile home lots.
  - [1] Lot area shall be 5,000 square feet per mobile home.
  - [2] Width shall be 40 feet.
  - [3] Public street setback shall be 50 feet.
  - [4] Mobile home park setback shall be 35 feet.
  - [5] Mobile home street or parking area setback shall be 30 feet.
  - [6] Distance from other mobile homes and buildings shall be 25 feet.
  - [7] One patio shall be required per unit, 10 feet by 40 feet paved.
  - [8] Landscaping shall be one tree per lot.
  - [9] Mobile homes must meet the requirements of the Federal Manufacturer Housing Construction and Safety Standard Act of 1974.
  - [10] The entire lot occupied by a mobile home park shall be maintained in single ownership throughout the entire life of the mobile home park.

- (7) Art or specialty shops/galleries. The following items shall be reviewed for conformance during the site plan review hearing by the Planning Commission:

[Added 7-16-1990]

- (a) The residence shall remain as the predominant feature of the site.
- (b) The shop or gallery shall occupy only 40% of the residence.
- (c) Public parking shall be available, with the determination of said parking requirements being made by the Planning Commission during the site plan review hearing. These determinations and recommendations must be done in conjunction with any state regulations concerning traffic control within the given site area.
- (d) The Fire Marshal review must be applied for and recommendations made by the agency must be presented two weeks prior to the hearing date. All requests or recommendations shall be adhered to.

- (8) Planned unit residential development.

[Added 6-11-2001 by Ord. No. 4-2001; Ord. No. 2009-17, §§ 3, 4, 4-26-2010; Ord. No. 2015-02, § 2, 3-23-2015]

*Footnotes:*

--- (2) ---

*Editor's Note: Former Subsection B(4), regarding planned unit developments, was repealed 6-11-2001 by Ord. No. 4-2001. See now Subsection C(8).*

TAX MAP NO: 1-30-3.00-80.02

PREPARED BY AND

RETURN TO: WALTER G. FEINDT, P.A.  
P.O. Box 1184  
Milford, De. 19963

**THIS DEED**, made this *29<sup>th</sup>* day of August, 2013, BETWEEN **BRIAN T. WARNOCK**, 6097 Old Shawnee Road, Milford, Delaware 19963, Party of the first part, -AND- **MISPILLION REALTY, LLC**, a Delaware Limited Liability Company, 715 South Dupont Highway, Milford, DE 19963, Party of the second part,

WITNESSETH, that the said party of the first part, for and in consideration of the sum of TEN DOLLARS (\$10.00) AND OTHER VALUABLE CONSIDERATION, current lawful money of the United States of America, the receipt whereof is hereby acknowledged, hereby grant and convey unto the said party of the second part, its successors and assigns,

ALL that certain parcel of land located in Cedar Creek Hundred, Sussex County, Delaware located southeasterly of but not adjacent to the southeasterly right of way of Shawnee Road (#619) a short distance north of Betty Street, and being more particularly described by AKS Associates, Inc. on February 11, 2002 as follows:

COMMENCING at the intersection of the centerline of Betty Street and the southeasterly right of way of Shawnee Road (#619); thence northeasterly with Shawnee Road 149.5 feet to an iron pipe found; thence South 56 degrees 19 minutes 48 seconds East 308.79 feet to an iron pipe found, the Point of Beginning; thence North 34 degrees 48 minutes 25 seconds East 190.02 feet to a nail set at the base of a cedar tree; thence South 56 degrees 45 minutes 00 seconds East 225.92 feet to a concrete monument found; thence South 33 degrees 58 minutes 12 seconds West 191.64 feet to a concrete monument found; thence North 56 degrees 19 minutes 48 seconds West 228.68 feet to the point of beginning; containing 43,368 square feet of land.

BEING part of (Parcel 2) the same lands conveyed unto **BRIAN T. WARNOCK** by deed of **FRANK J. KOVACH** and **JAN W. KOVACH**, dated March 22, 2002 and recorded in the Office of the Recorder of Deeds, in and for Sussex County, Delaware in Deed Book **2689**, at Page 51.

MS  
FD

5



50518

BK: 4214 PG: 135

TAX MAP NO: p/o 1-30-3.00-79.00

PREPARED BY AND  
RETURN TO: WALTER G. FEINDT, P.A.  
P.O. Box 1184  
Milford, De. 19963

**THIS DEED**, made this *31<sup>st</sup>* day of December, 2013, BETWEEN **FRANK EMMI, JR.** and **FRANK EMMI, SR.**, Parties of the first part, -AND- **MISPILLION REALTY, LLC**, a Delaware Limited Liability Company, 715 South DuPont Highway, Milford, Delaware 19963, Party of the second part,

WITNESSETH, that the said parties of the first part, for and in consideration of the sum of TEN DOLLARS (\$10.00) AND OTHER VALUABLE CONSIDERATION, current lawful money of the United States of America, the receipt whereof is hereby acknowledged, hereby grant and convey unto the said party of the second part, its successors and assigns,

All that certain lot, piece and parcel of land, lying and being situate in Cedar Creek Hundred, Sussex County and the State of Delaware, as depicted on a survey prepared by Bob Nash Associates, Inc., dated 31 August 2013, last revised 30 September 2013, east of but not adjacent to the easterly right of way line of Shawnee Road, also known as SCR 619, at sixty (60) feet wide, adjoining other lands now or formerly of Frank Emmi, Jr., lands now or formerly of Brookstone Trace Subdivision and lands now or formerly of Brian T. Warnock, being more particularly described as follows, to wit:

BEGINNING at a corner for other lands now or formerly of Frank Emmi, Jr., and at a corner for lands now or formerly of Brian T. Warnock, said point being distant 300 feet more or less from the centerline of Betty Street and 308 feet, more or less, from the right of way line of Shawnee Road; thence proceeding with said Emmi lands North 26 degrees 07 minutes 16 seconds East 107.84 feet to a found concrete monument at a corner for lands known as Brookstone Trace Subdivision; thence proceeding with said Brookstone Trace Subdivision the following three courses and distances: (1) North 26 degrees 11 minutes 09 seconds East 86.58 feet to a found concrete block on end; (2) South 64 degrees 58 minutes 51 seconds East 222.13 feet to a found concrete monument and (3) South 25 degrees 03 minutes 03 seconds West 191.72 feet to a found concrete monument at corner for lands now or formerly of Brian T. Warnock; thence finally, running with said Warnock lands North 65 degrees 39 minutes 23 seconds West 225.88 feet to the place of beginning, containing .99 acres of land, more or less.

CR





STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF STATE PLANNING COORDINATION

December 1, 2015

Mr. Rob Pierce  
City of Milford  
201 S Walnut Street  
Milford, DE 19963

**RE: Plan of Services 2015-20, Mispillion Realty Annexation  
Tax Parcel # 130-3.00-80.02**

Dear Mr. Pierce,

This letter is to confirm that we have accepted the Plan of Services as complete for the above-referenced annexation. The City of Milford has completed all relevant annexation requirements of Title 22, Section 101, Subsection (3), Delaware Code.

After this property has been annexed please notify our office in writing so that we may update our records and maps. A copy of the official annexation resolution should accompany this notification. If you have any questions or concerns, please do not hesitate to contact me at (302) 739-3090.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Edgell".

David L. Edgell, AICP  
Principal Planner

cc: Connie Holland  
Laura Simmons

## Municipal Annexation Plan of Services

Pursuant to Title 22, Delaware Code, §101, any city or town proposing to extend its boundaries, irrespective of any municipal charter provisions, whether such extension is proposed by action of the General Assembly or pursuant to the provisions of a home rule charter, must submit a Plan of Services to the Office of State Planning Coordination. The Plan of Services must be received by our office for review and acceptance at least 20 working days prior to the final discretionary action taken by the municipal legislative body. Please review your charter to identify the final discretionary action for your particular jurisdiction. For example, in some municipalities, the act of voting to hold a special election obligates the jurisdiction to annex the property in advance, pending the outcome of the election. For your information, provisions of the Delaware Code applicable to annexations are attached at the end of the Plan of Services.

- If you complete the form electronically, the template will expand as you type. You must also send a signed original form through the regular mail. To submit attachments electronically, place your cursor in the area indicated at the end of the document and use the Insert function on your toolbar.
- A completed Plan of Services demonstrates the ability of your municipality to provide utilities and public services to the area proposed for annexation. We welcome the inclusion of supplemental materials that illustrate the character of the site, any proposed development, and the impact the proposed annexation will have on your community.
- The form and all attachments must be fully completed at the time of submission. The Plan of Services will not be reviewed unless all attachments have been provided. You can use the list below to be sure all attachments have been included with the Plan of Services.

### Attachment Checklist

Locator map	attached	
Annexation map from comprehensive plan	attached	
Water facilities plan	attached	on file with OSPC
Water provider letter	attached	not applicable
Wastewater facilities plan	attached	on file with OSPC
Wastewater provider letter	attached	not applicable
Electric provider letter	attached	not applicable
Police, Fire, EMS letters	attached	
Current municipal budget	attached	on file with OSPC
Current municipal audit	attached	on file with OSPC
Annexation agreements	attached	not applicable
Planning or Annexation Committee report	attached	
Signatures of Mayor and Town Engineer	attached	

---

NOTES:

# MUNICIPAL ANNEXATION PLAN OF SERVICES

## 1. Property Information

1.1	Property name/description:		
1.2	Tax parcel identification number(s):		
1.3	Address:		
	City :	State:	Zip code:
1.4	Total acreage:		
1.5	Locator map which clearly shows the parcel(s) and demonstrates contiguity attached.		
1.6	Annexation map from the certified municipal comprehensive plan which clearly indicates the location of the parcel(s) attached.		
1.7	Name of petitioner for annexation:		
	Address:		
	City :	State:	Zip code:
1.8	Municipality name:	Contact person:	
	Address:		
	City :	State:	Zip code:
	Phone:	E-Mail:	

## 2. Planning Information

2.1	Is the property developed?      Yes              No		
2.2	How is the property identified in the certified municipal annexation plan?		
	Annexation area	Short-term annexation area	Long-term annexation area
	Other (define):		
2.3	What is the land-use designation in the certified municipal annexation plan?		
2.4	Current use:		Current county zoning:
2.5	Proposed use:		Proposed municipal zoning:
2.6	Proposed density:		Maximum allowable density:
2.7	EDUs within current municipal boundaries:		
	Vacant acreage within current municipal boundaries:		
2.8	<b>Utility/Service:</b>	<b>Provider:</b>	
	Water		
	Wastewater transmission		
	Wastewater treatment		
	Electricity		
	Police		
	Fire		
	EMS		
	Road maintenance and repair		
	Other:		

### 3. Abbreviated Plan of Services

Indicate if any of the following conditions apply to the proposed annexation area and proceed to Section 9. If none apply, proceed to Section 4.

	The property is an enclave <sup>1</sup> of five (5) acres or less.
	The property is ten (10) acres or less and more than 50% is within municipal boundaries.
	The property has been subdivided and fully developed and utilities and services are currently provided by the municipality.
	The property has been subdivided and fully developed and utilities/services are provided by the municipality or another public utility. The public utility must supply a letter of concurrence describing their ability to provide necessary services to the proposed annexation area.

### 4. Water System

- 4.1 Check here if the municipality will provide water to the proposed annexation area, attach relevant sections of the most recent water facilities plan and complete Items 4.2 through 4.7. If not, proceed to Item 4.8.
- 4.2 Current municipal system capacity (maximum gpd without capital expenditure):
- 4.3 Average municipal water usage (gpd):
- 4.4 DNREC permit allocation (gpd):      DNREC permit #:
- 4.5 Estimated future water demand (gpd) within current municipal boundaries based on approved EDUs and full build-out of vacant acreage under current zoning:
- 4.6 Estimated future water demand for the proposed annexation area (gpd) based on EDUs for proposed density or maximum allowable density under the proposed zoning:
- 4.7 If the current infrastructure cannot meet the estimated demand of the proposed annexation area, indicate how this will be addressed:
- 4.8 If the municipality does not provide water, attach statement(s) from the water provider indicating their ability to serve the proposed annexation area and briefly describing system capacity and capital improvements needed to support either the proposed density or maximum allowable density under the proposed zoning. The provider should detail specific phasing plans or other special arrangements needed to supply service to the annexation area.      letter attached

### 5. Wastewater System

- 5.1 Check here if the proposed annexation area will be served by a public wastewater system and complete Items 5.2 through 5.8. If not, complete Items 5.8 and 5.9.
- 5.2 Check here if the municipality will transmit and treat wastewater from the proposed annexation area, attach relevant sections of the wastewater facilities plan, and complete Items 5.3 through 5.8.  
Check here if the municipality will transmit wastewater to another treatment operator and proceed to Item 5.9.  
Check here if wastewater will be transmitted and treated by another treatment operator and proceed to Item 5.9.
- 5.3 Current municipal treatment capacity (daily maximum gpd without capital expenditure):
- 5.4 Current municipal average wastewater flow (gpd):
- 5.5 DNREC permitted discharge (gpd):
- 5.6 Estimated future wastewater demand (gpd) within current municipal boundaries based on approved EDUs and full build-out of vacant acreage under current zoning:

- 5.7 Estimated future wastewater demand for proposed annexation area (gpd) based on EDUs under the proposed density or maximum allowable density under the proposed zoning:
- 5.8 Describe any municipal or developer funded infrastructure improvements necessary to transmit and/or treat waste from the proposed annexation area.
- 5.9 If the municipality does not provide wastewater transmission and/or treatment, attach statement(s) from the wastewater service provider and/or treatment operator indicating their ability to serve the proposed annexation area and briefly describing system capacity and capital improvements needed to support either the proposed density or maximum allowable density under the proposed zoning. The provider should detail specific phasing plans or other special arrangements needed to supply service to the annexation area. letter attached

## 6. Electricity

- 6.1 Check here if the municipality will provide electric service to the proposed annexation area and complete Items 6.2 and 6.3. If not, proceed to Item 6.4.
- 6.2 Date of the most recent municipal electrical facilities plan:
- 6.3 Describe electrical upgrades underway or planned within the next 5 years for the proposed annexation area:
- 6.4 If electrical service is to be provided by another jurisdiction or a public utility regulated by the Delaware Public Service Commission, attach a statement from the provider indicating their ability to serve the proposed annexation area and briefly describing phasing plans or special arrangements needed to support either the proposed density or maximum allowable density under the proposed zoning. letter attached

## 7. Public Safety

- 7.1 Public safety and other non-municipal authorities are obligated to serve their territories and are to be notified of proposed annexations. Attach copies of notification letters and any responses to and from non-municipal police, fire, EMS, county or other authorities having jurisdiction in the proposed annexation area. letters attached

## 8. Fiscal Information

- 8.1 Attach a copy of the municipality's current fiscal year budget.  
 budget attached      budget on file with Office of State Planning Coordination  
 budget not available; the fiscal management practices of the municipality are described as follows :
- 8.2 Attach a copy of the most recent audit prepared for the municipality.  
 audit attached      audit on file with Office of State Planning Coordination      audit not available
- 8.3 If applicable, attach copies of any annexation agreement(s) with owners, potential buyers or developers, and/or service providers pertaining to the proposed annexation area.  
 agreement(s) attached      not applicable
- 8.4 If applicable, use the following table to indicate the source of funds to construct infrastructure necessary to develop the annexation area to either the proposed density or maximum allowable density under the proposed zoning.      not applicable

Capital Infrastructure Improvements	Impact Fees or Annexation Fees from Developer or Public Utility	Other Municipal Funds
Water system		
Wastewater transmission		
Wastewater treatment		
Electrical system		
Public streets		

8.5 If applicable, use the following table to indicate the source of funds to maintain the annexation area when developed to either the proposed density or maximum allowable density under the proposed zoning. not applicable

Operating and Maintenance Costs	Homeowner or Condominium Association Fees	Public Utility Fees or Enterprise Funds <sup>2</sup>	Other Municipal Funds
Water system			
Wastewater transmission			
Wastewater treatment			
Electrical system			
Public streets			

## 9. Certifications

The undersigned certify that the information provided in this Plan of Services is complete and accurate to the greatest extent practicable and that all letters required from service and utility providers are attached.

Mayor \_\_\_\_\_

Town Engineer \_\_\_\_\_

Place your cursor below this line and use the Insert function on your toolbar to attach documents electronically.

<sup>1</sup> The Office of State Planning Coordination has final discretion and is available to help your municipality evaluate whether specific parcels meet these guidelines or merit additional consideration due to unusual boundary configurations or other special factors. An enclave is defined for the purpose of evaluating this Plan of Services as an individual lot, piece or parcel of land, a group of parcels or an entire subdivision of record; where

a. the boundaries are not less than 50% contiguous with the boundaries of an annexing municipal corporation; and which is designated by the municipality's most recent certified comprehensive plan as an annexation area; and

b. is lawfully accessible by vehicular traffic over lands lying within the annexing municipal corporation; and

c. is receiving public services such as water, sewer, electric, police protection, fire protection or trash collection, from the said municipal corporation, its municipal electric company, or any water and/or sewer authority of which the said municipal corporation is a member; or

d. in addition to item B, is not currently receiving public services but will have available such public services as are provided to other properties within the annexing municipal corporation whether by the said municipal corporation, its municipal electric company, any water and/or sewer authority of which the said municipal corporation is a member, or by a public utility regulated by the Delaware Public Service Commission.

<sup>2</sup> Enterprise funds, typically for municipal utilities, are financed by user fees for the utilities. The purpose of enterprise funds is to provide services to consumers at a price that will cover both the current cost of operations and the maintenance and financing of necessary capital assets.

## Provisions of the Delaware Code Applicable to Annexations

### Title 22 § 101 Annexation by city or town

Any city or town proposing to extend its boundaries, irrespective of any municipal charter provisions, whether such extension is proposed by action of the General Assembly or pursuant to the provisions of a home rule charter, except any proposed annexation that has been submitted to the Office of State Planning Coordination prior to the effective date of this Act for review, shall conform to the following provisions:

(a) All annexations must be consistent with the most recently adopted municipal comprehensive plan meeting the requirements of Title 22, Chapter 7, Delaware Code. The area(s) being considered must be depicted as area(s) for future annexation on the adopted plan. If a municipality does not have an adopted comprehensive plan, or if its adopted comprehensive plan does not depict areas for future annexation, it shall prepare and adopt a plan or plan amendment within 12 months of the effective date of this Act. The municipality shall not approve any annexations until such plan or plan amendment is adopted, notwithstanding any other charter provisions; except that during the 12-month period a municipality may consider an annexation of already developed parcels where the proposed use(s) will not change from that currently authorized in the adjacent jurisdiction and where the primary purpose of the annexation is to address existing public health or safety issues such as, but not limited to, failing on-site wastewater disposal systems or contaminated or inadequate drinking water. In such cases the provisions of §101(b) through (f) of this section shall not apply.

(b) A city or town shall prepare a plan of services indicating those services it expects to provide to the newly annexed area, how such services will be provided, and the fiscal and operating capabilities of the municipality to provide such services. Should any services be provided by another jurisdiction or a public utility regulated by the Delaware Public Service Commission, the written comments of such provider on the provider's ability to provide the necessary services for the proposed annexation shall be obtained and included in the plan of services. The study shall be conducted in accordance with standards or criteria established by the Cabinet Committee on State Planning Issues as administered

by the Office of State Planning Coordination.

(c) At the time of annexation the jurisdiction shall by ordinance rezone the area being annexed to a zoning classification consistent with the adopted comprehensive plan or development strategy.

(d) A municipality proposing annexation must fully comply with the provisions of Chapter 92, Title 29, Delaware Code as to State notice, and must demonstrate that it has notified all other affected jurisdictions, conducted a public hearing, and provided a comment period of at least 30 days before formal annexation. The city or town proposing annexation shall file with the State Office of Planning Coordination any written comments received concerning such proposed annexation together with any response(s) thereto.

(e) The Advisory Council on Planning Coordination shall establish a mechanism for resolving disputes between jurisdictions regarding annexations. The mechanism developed by the Council shall address: determination of how the costs for the dispute resolution process are born among the parties; timeline for the dispute resolution process; and extent to which the dispute resolution process will be enforceable.

### **Title 22 § 702. Comprehensive development plan**

(a) A planning commission established by any incorporated municipality under this chapter shall prepare a comprehensive plan for the city or town or portions thereof as the commission deems appropriate. It is the purpose of this section to encourage the most appropriate uses of the physical and fiscal resources of the municipality and the coordination of municipal growth, development and infrastructure investment actions with those of other municipalities, counties and the State through a process of municipal comprehensive planning.

(b) Comprehensive plan means a document in text and maps, containing at a minimum, a municipal development strategy setting forth the jurisdiction's position on population and housing growth within the jurisdiction, expansion of its boundaries, development of adjacent areas, redevelopment potential, community character, and the general uses of land within the community, and critical community development and infrastructure issues. The comprehensive planning process shall demonstrate coordination with other municipalities, the county and the State during plan preparation. The comprehensive plan for municipalities of greater than 2,000 population shall also contain, as appropriate to the size and character of the jurisdiction, a description of the physical, demographic and economic conditions of the jurisdiction; as well as policies, statements, goals and planning components for public and private uses of land, transportation, economic development, affordable housing, community facilities, open spaces and recreation, protection of sensitive areas, community design, adequate water and wastewater systems, protection of historic and cultural resources, annexation and such other elements which in accordance with present and future needs, in the judgment of the municipality, best promotes the health, safety, prosperity and general public welfare of the jurisdiction's residents.

(c) The comprehensive plan shall be the basis for the development of zoning regulations as permitted pursuant to Chapter 3 of this title.

(d) After a comprehensive plan or portion thereof has been adopted by the municipality in accordance to this chapter, the comprehensive plan shall have the force of law and no development shall be permitted except as consistent with the plan.

(e) At least every 5 years a municipality shall review its adopted comprehensive plan to determine if its provisions are still relevant given changing conditions in the municipality or in the surrounding areas. The adopted comprehensive plan shall be revised, updated and amended as necessary, and re-adopted at least every 10 years.

(f) Municipalities shall file their adopted comprehensive plan with the Office of State Planning

Coordination within 90 days of the effective date of this section, and within 90 days after any re-adoption or revision, update or amendment thereto. Municipalities shall further provide to the Office of State Planning Coordination by December 31 of each year a report describing implementation of their comprehensive plan and identifying development issues, trends or conditions since the plan was last adopted or amended.

# City of Milford



## RESOLUTION 2016-04

Annexation/Lands belonging to Mispillion Realty LLC  
1.99 +/- Acres  
Current Zone M-R/Proposed Zone R-3

**Whereas**, the Milford City Council having considered the advantages and disadvantages of annexing into the City the following described lands, to wit:

Tax Parcel No. 1-30-3.00-80.02

All that certain lot, piece and parcel of land, lying and being situate in Cedar Creek Hundred, Sussex County and the State of Delaware, as depicted on a survey prepared by Bob Nash Associates, Inc., dated August 2013, last revised 30 September 2013, east of but not adjacent to the easterly right of way line of Shawnee Road, also known as SCR 619, at sixty (60) feet wide, adjoining other lands now or formerly of Frank Emmi, Jr., lands now or formerly of Brookstone Trace Subdivision, lands now or formerly of Brian T. Warnock, lands now or formerly of Jayson D. Crouch, lands now or formerly Vincent M. Consentino, lands now or formerly of Leah B. Tazelaar, lands now or formerly of Betty J. Anderson and lands now or formerly of Arthur R. Bradley, being more particularly described as follows, to wit:

BEGINNING at a corner for other lands now or formerly of Frank Emmi, Jr., and at a corner for lands now or formerly of Jayson D. Crouch, said point being distant 300 feet more or less from the centerline of Betty Street and 308 feet, more or less, from the right of way line of Shawnee Road; thence proceeding with said Emmi lands North 26 degrees 07 minutes 16 seconds East 107.84 feet to a found concrete monument at a corner for lands known as Brookstone Trace Subdivision; thence proceeding with said Brookstone Trace Subdivision the following four courses and distances: (1) North 26 degrees 11 minutes 09 seconds East 86.58 feet to a found concrete block on end; (2) South 64 degrees 58 minutes 51 seconds East 222.13 feet to a found concrete monument and (3) South 25 degrees 03 minutes 03 seconds West 191.72 feet to a found concrete monument at corner for lands now or formerly of Brian T. Warnock; (4) South 25 degrees 03 minutes 03 seconds West 191.64 feet to a found concrete monument at a point in the line of Vincent M. Consentino; thence following lands of said Consentino and in part with lands now or formerly of Leah B. Tazelaar, Betty J. Anderson and Arthur R. Bradley, North 65 degrees 14 minutes 12 seconds West 228.68 feet to a found iron pipe at a corner for lands of Brian T. Warnock; thence finally running with lands now or formerly of said Warnock and Jayson D. Crouch, North 25 degrees 54 minutes 02 seconds East 190.02 feet to the place of beginning,

CONTAINING 1.99 ACRES of land, more or less.

and having considered the recommendation of the Annexation Committee appointed to investigate said annexation on whether or not to proceed with said annexation, having considered the zoning recommendation of the Planning Commission subject to compliance with Chapter 230 of the City of Milford Code, having held a Public Hearing on February 18, 2014, having received acknowledgment of the accepted Plan of Services by the State of Delaware as required of Title 22, Section 101, Delaware Code, the City of Milford, hereby determines as follows:

**Now, Therefore, Be It Resolved,**

That this land is hereby annexed into the municipal boundaries of the City of Milford and the description and plot of said lands are to be recorded in the Office of the Recorder of Deeds in Sussex County, Delaware where said lands are situate.

The Petitioner and the City of Milford enter into an annexation agreement for purposes including, but not limited to, the dedication of easements and/or right-of-ways to the City of Milford or State of Delaware for future utility, roads or other public improvements as determined by the City of Milford and/or State of Delaware.

That ten days following the adoption date of this resolution, the territory annexed will be assessed and taxed at the same rate and basis as other taxable properties within the City of Milford.

The annexation area is contiguous to Ward 2 and City Council intends that these parcels become part of and be included within the Ward 2 area upon annexation.

That the Official Zoning Map and Boundary/Ward Map(s) of the City of Milford, Delaware be amended to include the herein described property.

**Now I, Bryan W. Shupe, Mayor of the City of Milford,** do hereby certify that the foregoing is a true and correct copy of a Resolution passed by the affirmative vote of two-thirds (2/3) of all the elected members of the City Council of the City of Milford at a meeting held on January 25, 2016 at which a quorum was present and voting throughout and that the same is still in full force and effect.

---

Mayor Bryan W. Shupe  
City of Milford

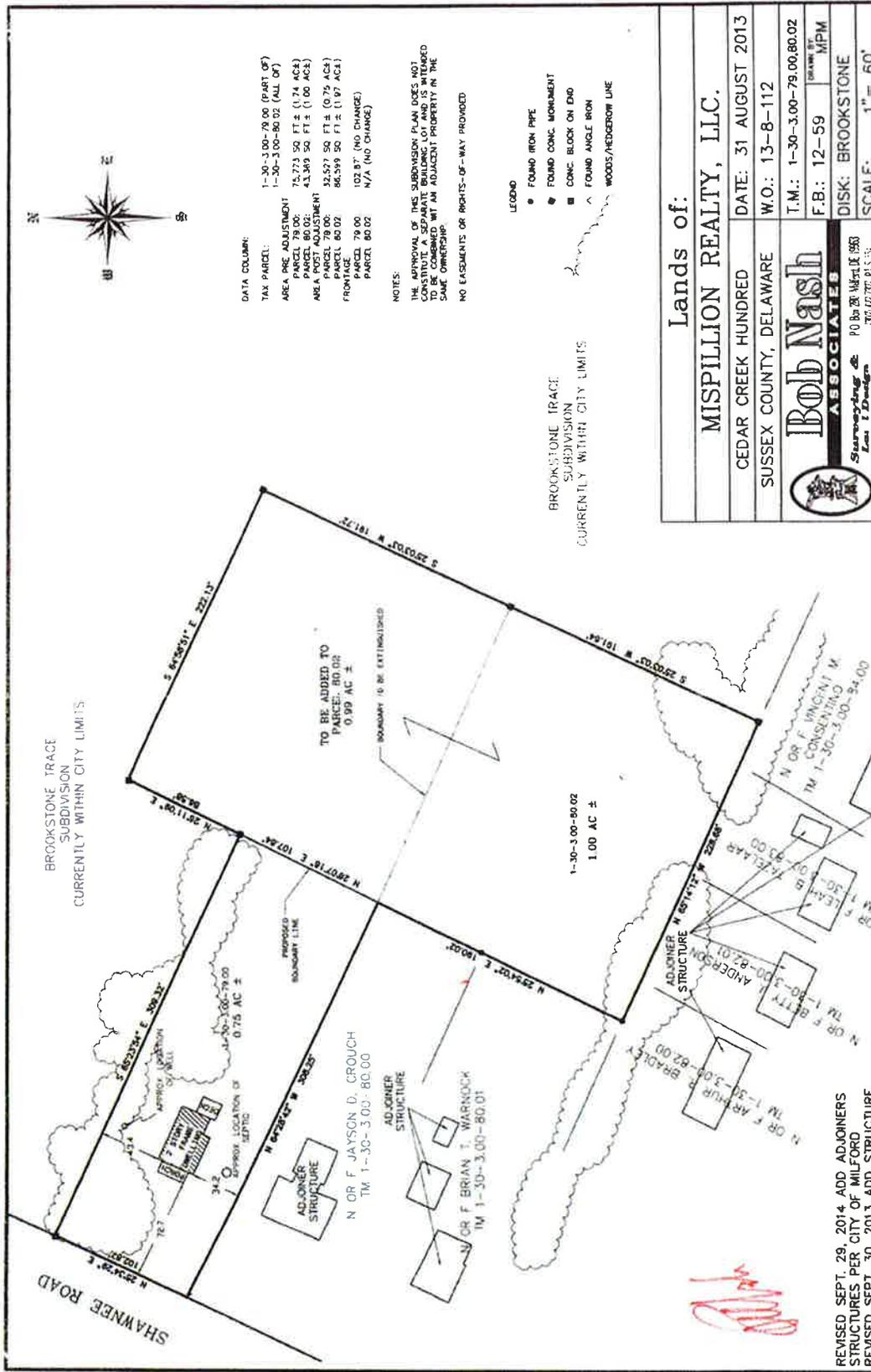
Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

---

Teresa K. Hudson, Notary Public  
Commission Expires 06-17-18

Effective Date: February 4, 2016

Attachment: Plot



BROOKSTONE TRACE  
SUBDIVISION  
CURRENTLY WITHIN CITY LIMITS

SHAWNEE ROAD

DATA COLUMN:

TAX PARCEL:	1-30-3.00-79.00 (PART OF)
	1-30-3.00-80.02 (ALL OF)
AREA ARE ADJUSTMENT	
PARCEL 79.00:	75,773.50 FT ± (1.74 AC±)
PARCEL 80.00:	43,349.50 FT ± (1.00 AC±)
AREA ARE ADJUSTMENT	
PARCEL 79.00:	32,527.50 FT ± (0.75 AC±)
PARCEL 80.00:	86,539.50 FT ± (1.97 AC±)
FRONTAGE	
PARCEL 79.00:	103.87' (NO CHANGE)
PARCEL 80.00:	N/A (NO CHANGE)

NOTES:

THE APPROVAL OF THIS SUBDIVISION PLAN DOES NOT CONSTITUTE AN ENDORSEMENT BY THE CITY OF MILFORD TO BE COMBINED WITH AN ADJACENT PROPERTY IN THE SAME OWNERSHIP.

NO EASEMENTS OR RIGHTS-OF-WAY PROVIDED

- LEGEND
- FOUND IRON PIPE
  - FOUND CONC. MONUMENT
  - CONC. BLOCK ON END
  - ▲ FOUND ANGLE IRON
  - ~~~~~ WOODS/HEDGE-ROW LINE

BROOKSTONE TRACE  
SUBDIVISION  
CURRENTLY WITHIN CITY LIMITS

Lands of:

**MISPILLION REALTY, LLC.**

DATE: 31 AUGUST 2013  
 W.O.: 13-8-112  
 T.M.: 1-30-3.00-79.00,80.02  
 F.B.: 12-59 DRAWN BY: MPM  
 DISK: BROOKSTONE  
 SCALE: 1" = 60'

**Bob Nash**  
 ASSOCIATES  
 Surveying & Land Design  
 PO Box 281416 9863  
 SEASIDE, WA 98138

REVISED SEPT. 29, 2014 ADD ADJOINERS  
STRUCTURES PER CITY OF MILFORD  
REVISED SEPT. 30, 2013 ADD STRUCTURE

# City of Milford



## ORDINANCE 2016-01

Change of Zone of Annexed Lands belonging to Mispillion Realty LLC

Tax Parcel 1-30-3.00-080.02

2.00 +/- Acres

Current Zone MR/Proposed Zone R3

AN ORDINANCE OF THE CITY OF MILFORD, DELAWARE to amend the zoning map of the City of Milford by rezoning 2.00 +/- acres of real property from MR to R3 adjacent to Fieldstone Avenue in Brookstone Trace, Milford, Delaware. Present Use: Vacant. Proposed Use: Garden Apartment/Townhouse. Tax Map and Parcel: 1-30-3.00-080.02

WHEREAS, the City of Milford Planning Commission will consider the change of zone application at a Public Hearing on January 19, 2016; and

WHEREAS, Milford City Council will hold a Public Hearing on January 25, 2016 to allow for public comment and further review of the ordinance; and

WHEREAS, it is deemed in the best interest of the City of Milford to allow a change of zone as herein described.

NOW, THEREFORE, the City of Milford hereby ordains as follows:

Upon the adoption of this ordinance, tax map and parcels 3-30-3.00-080.02, owned by Mispillion Realty LLC located on Fieldstone Avenue in Brookstone Trace, is hereby zoned R3.

Dates:

Planning Commission Review & Public Hearing: January 19, 2016

City Council Introduction: January 11, 2016

City Council Public Hearing: January 25, 2016

Adoption: January 25, 2016

Effective: February 4, 2016

# City of Milford



## NOTICE OF PUBLIC HEARINGS

PLANNING COMMISSION PUBLIC HEARING: DECEMBER 15, 2015

CITY COUNCIL PUBLIC HEARING: JANUARY 11, 2016

NOTICE IS HEREBY GIVEN the Planning Commission of the City of Milford will hold a Public Hearing on Tuesday, December 15, 2015 at 7:00 p.m. or as soon thereafter as possible.

A FINAL PUBLIC HEARING is scheduled on Monday, January 11, 2016 at 7:00 p.m. before Milford City Council to hear the following matter:

James Roll on behalf of Manufacturers and Traders Trust Company for a Final Minor Subdivision of 1.10+/- acres in a C2 (Central Business) Zoning District.

Property is located at 1 NW Front Street, Milford Delaware. Present and Proposed Use: Bank and Parking Lot. Tax Map MD-16-183.10-03-56.00; MD-16-183.10-03-82.00; MD-16-183.10-03-87.00

All interested parties are hereby notified to be present for the review and recommendation by the Planning Commission to City Council and express their views before a final decision is rendered by City Council. If unable to attend the hearings, written comments will be accepted up to one week prior to the hearings.

Anyone with questions or comments should contact Mr. Rob Pierce in the Planning Department via email at [RPierce@milford-de.gov](mailto:RPierce@milford-de.gov) or at 302.424.3712.

By: Christine Crouch  
Deputy City Clerk

*Advertised: Beacon 12.02.15; DE State News 11.25.15*



PLANNING & ZONING DEPARTMENT  
P 302.424.3712 F: 302.424.3558

201 SOUTH WALNUT STREET  
MILFORD, DE 19963

[www.cityofmilford.com](http://www.cityofmilford.com)

## DATA SHEET FOR M & T Bank

Planning Commission Public Hearing: December 15, 2015

City Council Public Hearing: December 14, 2015

---

<b>Resolution</b>	:	PC15-014
<b>Application Number / Name</b>	:	15-234 / M & T Bank
<b>Applicant</b>	:	Manufacturers & Traders Trust Company 1 M&T Bank Plaza, 18 <sup>th</sup> Floor Buffalo, NY 14203
<b>Owner</b>	:	Manufacturers & Traders Trust Company 1 M&T Bank Plaza, 18 <sup>th</sup> Floor Buffalo, NY 14203
<b>Application Type</b>	:	Final Minor Subdivision
<b>Present Comprehensive Plan Designation</b>	:	Highway Commercial
<b>Present Zoning District</b>	:	C-2 (Central Business District)
<b>Present Use</b>	:	Bank
<b>Proposed Use</b>	:	Public Parking & Bank
<b>Area and Location</b>	:	1.098 +/- acres located at the northwest intersection of Front Street and Walnut Street.
<b>Property Identification Numbers</b>	:	MD-16-183.10-03-56.00, 82.00 & 87.00

ENC: Staff Recommendation Report  
Exhibit A – Location & Zoning Map  
Exhibit B – Final Minor Subdivision Plan



PLANNING & ZONING DEPARTMENT  
P 302.424.3712 F: 302.424.3558

201 SOUTH WALNUT STREET  
MILFORD, DE 19963

www.cityofmilford.com

**STAFF RECOMMENDATION REPORT  
November 23, 2015**

**Application Number / Name** : 15-234 / M & T Bank

**Applicant** : Manufacturers & Traders Trust Company  
1 M&T Bank Plaza, 18<sup>th</sup> Floor  
Buffalo, NY 14203

**Owner** : Manufacturers & Traders Trust Company  
1 M&T Bank Plaza, 18<sup>th</sup> Floor  
Buffalo, NY 14203

**Present Comprehensive Plan Designation** : Highway Commercial

**Present Zoning District** : C-2 (Central Business District)

**Present Use** : Bank

**Proposed Use** : Public Parking & Bank

**Area and Location** : 1.098 +/- acres located at the northwest intersection  
of Front Street and Walnut Street.

**Property Identification Numbers** : MD-16-183.10-03-56.00, 82.00 & 87.00

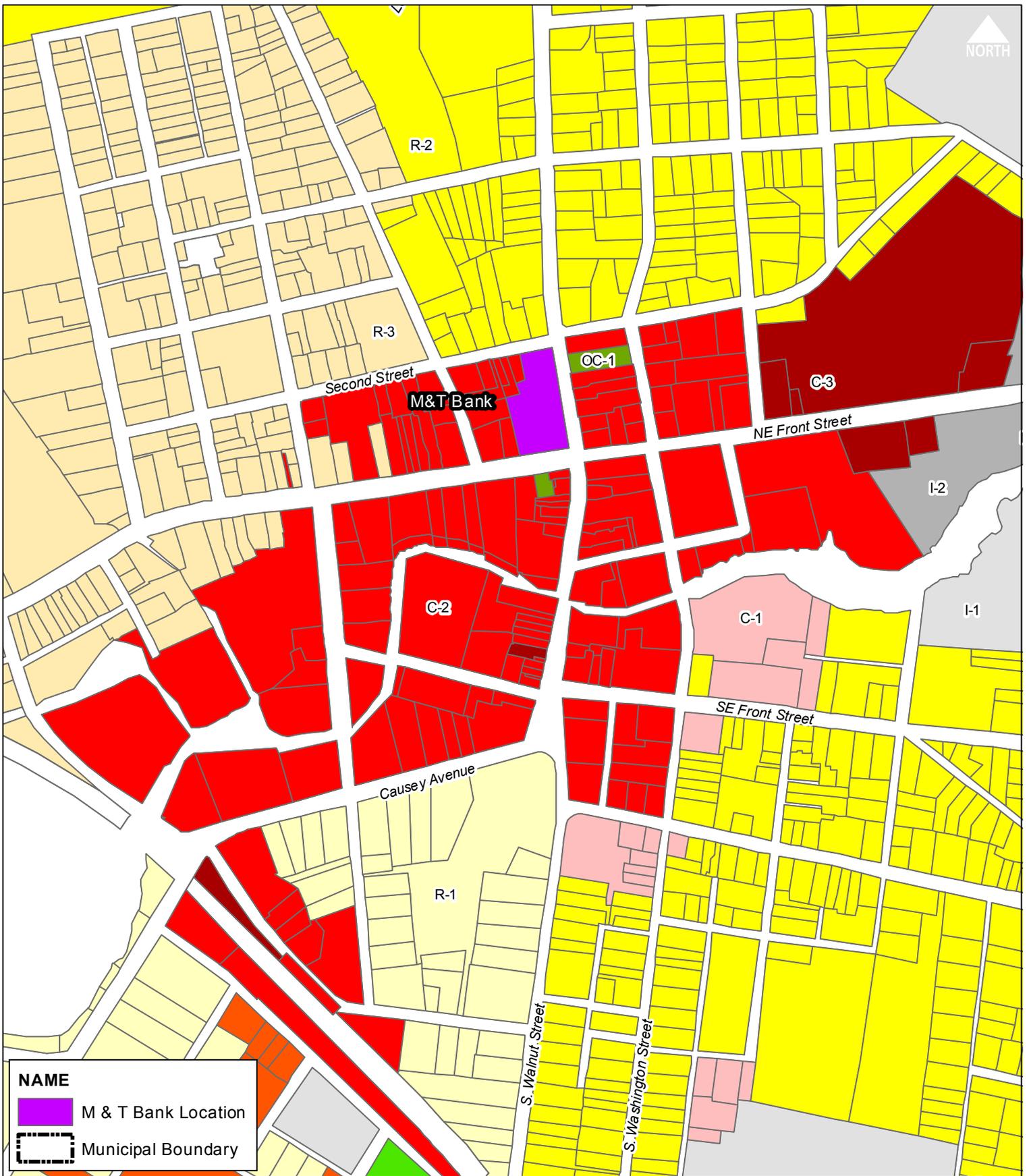
**I. STAFF RECOMMENDATION:**

- The minor subdivision is consistent with Chapter 230-13 and meets all design standards and area regulations.

**II. AGENCY COMMENTS:**

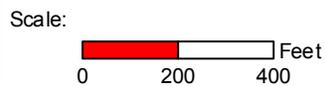
- DeIDOT – No comments solicited.
- Sussex Conservation District – No comments solicited.
- State Fire Marshall – No comments solicited.

This recommendation is offered without the benefit of public testimony and is based on the information presented when the application was received by the Planning & Zoning Department. The Planning Commission shall give considerable weight to public testimony received during public hearing in considering its recommendation to City Council in this matter.



**NAME**

- M & T Bank Location
- Municipal Boundary



Drawn by: WRP      Date: 11/16/15

Title:

**Final Minor Subdivision  
M & T Bank  
Location & Zoning Map**

Filepath: FinalMinorSubdivision\_M&TBank.mxd



PLANNING & ZONING DEPARTMENT  
P 302.424.3712 F: 302.424.3558

201 SOUTH WALNUT STREET  
MILFORD, DE 19963

[www.cityofmilford.com](http://www.cityofmilford.com)

November 19, 2015

Mr. James M. Roll  
M&T Bank  
One M&T Plaza, 18<sup>th</sup> Floor  
345 Main Street  
Buffalo, NY 14203

RE: M&T Bank – Final Minor Subdivision  
Application Number 15-234  
Parcel Number(s): MD-16-183.10-03-56.00, 82.00 & 87.00

Mr. Roll:

The City of Milford acknowledges that Manufacturers and Traders Trust Company ("M&T Bank") has applied for a Final Minor Subdivision pertaining to certain real property within the City having an address of 1 NW Front Street, Milford, DE 19963. Notwithstanding this subdivision application, the City of Milford hereby certifies and attests that M&T Bank may withdraw its application for a Final Minor Subdivision at any time prior to M&T Bank's execution of the final subdivision site plan or lot line adjustment plan and recordation of the same. Further, the City of Milford hereby releases M&T Bank from any claims, costs or expenses that M&T Bank may otherwise incur or be responsible for with respect to the Final Minor Subdivision process or withdrawal from the same.

Feel free to contact me at 302-424-3712 should you have any questions regarding this letter.

Sincerely,

A handwritten signature in blue ink that reads "William R. Pierce II".

Rob Pierce  
Coordinator of Planning &  
Economic Development Activities

*cc: Project file*

**-Code**

**CITY OF MILFORD  
PLANNING COMMISSION**

**RESOLUTION NO. PC15-014**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF  
MILFORD, DELAWARE, RECOMMENDING TO CITY COUNCIL OF  
THE CITY OF MILFORD  
THE APPROVAL OF A FINAL MINOR SUBDIVISION FOR  
MANUFACTURERS & TRADERS TRUST CO  
AT 1 NW FRONT STREET  
FOR A 2 LOT, 1 UNIT SUBDIVISION  
CONSISTING OF 1 BANK AND  
1 VACANT LOT  
IN A C-2 ZONING DISTRICT  
TAX MAP MD-16-183.10-03-56.00; MD-16-183.10-03-82.00;  
MD-16-183.10-03-87.00

WHEREAS, the owner and applicant has made application with the City of Milford; and,

WHEREAS, the proposed application shall comply with the standards and regulations of the Code of the City of Milford; and,

WHEREAS, the Planning Commission met and heard said application during a public hearing on December 15, 2015; and,

WHEREAS, by a vote of \_\_\_\_\_ recommended approval of the application.

NOW, THEREFORE, BE IT RESOLVED, the Planning Commission has recommended approval of the application to the Mayor and City Council of the City of Milford, Delaware with the following recommendations:

1.

APPROVED: \_\_\_\_\_  
Arthur Campbell,  
Planning Commission Chairman

SIGNED: \_\_\_\_\_  
Christine Crouch,  
Deputy City Clerk

**LEGEND:**

- IPF IRON PIPE FOUND
- ▲ PKS PK NAIL SET
- IRCS IRON ROD WITH CAP SET
- ⊕ CHISEL MARK SET
- UNMARKED PROPERTY CORNER
- ⊙ POWER POLE
- ⊙ LIGHT POLE
- — — — — PROPERTY LINE
- - - - - ABANDONED PROPERTY LINE
- — — — — ADJACENT PROPERTY LINE
- X - X - FENCE

**NOTE:**

HORIZONTAL DATUM IS DELAWARE STATE GRID, NAD 83 BASED ON GNSS OBSERVATIONS.

**SITE DATA**

CURRENT OWNER: MANUFACTURERS AND TRADERS TRUST COMPANY  
 ONE M&T PLAZA  
 18TH FLOOR  
 BUFFALO, NY 14203

TAX MAP, PARCEL NO.: 5-16-183.10-03-87.00-00001  
 5-16-183.10-03-82.00-00001  
 5-16-183.10-03-56.00-00001

DEED REF.: D 6146/92

TOTAL SITE AREA: 1.098 ACRES±

FLOOD ZONE: ZONE SHADED X & X  
 FIRM MAP 10005C 0041K

EFFECTIVE DATE: MARCH 16, 2015

**ENGINEER'S STATEMENT**

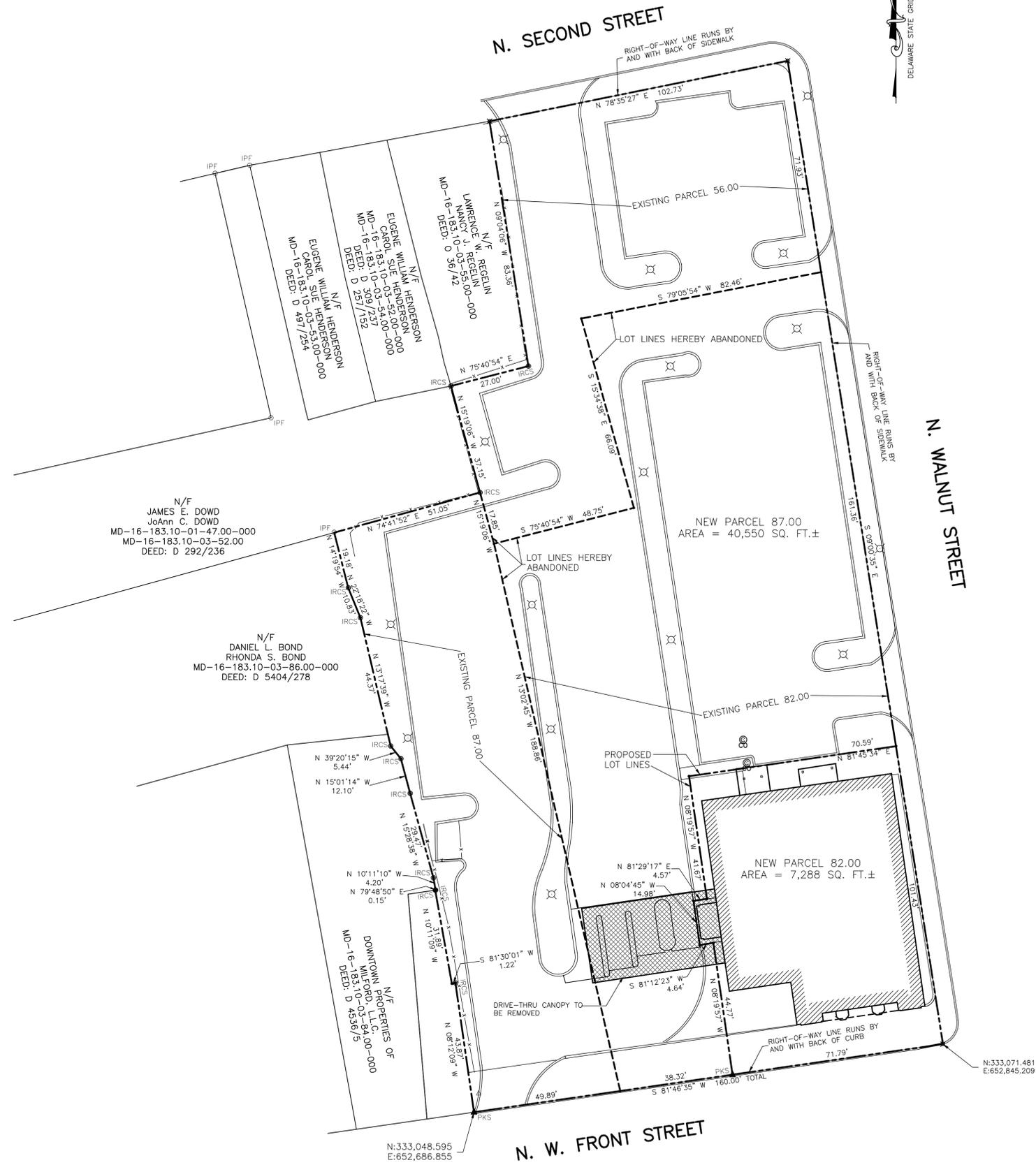
I, RANDY B. DUPLECHAIN, P.E., HEREBY STATE THAT I AM A REGISTERED ENGINEER IN THE STATE OF DELAWARE, THAT THE INFORMATION SHOWN HEREON HAS BEEN PREPARED UNDER MY SUPERVISION AND TO MY BEST KNOWLEDGE AND BELIEF REPRESENTS GOOD ENGINEERING PRACTICES AS REQUIRED BY THE APPLICABLE LAWS OF THE STATE OF DELAWARE.

DAVIS, BOWEN & FRIEDEL, INC.  
 RANDY B. DUPLECHAIN, P.E.  
 DE No. 9959

**OWNERS' STATEMENT**

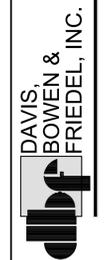
WE, THE UNDERSIGNED, HEREBY STATE THAT WE ARE THE OWNERS OF PARCELS 5-16-183.10-03-87.00-00001, 5-16-183.10-03-82.00-00001 AND 5-16-183.10-03-56.00-00001 DESCRIBED AND SHOWN ON THIS PLAN. THE PLAN WAS MADE AT OUR DIRECTION. WE ACKNOWLEDGE THE SAME TO BE OUR ACT AND DESIRE THE PLAN BE RECORDED ACCORDING TO LAW.

MANUFACTURERS AND TRADERS TRUST COMPANY \_\_\_\_\_ DATE  
 PRINTED NAME \_\_\_\_\_ TITLE



S:\052\0052A175\_A01-A & T B\mk\052A0175-Memor Sub\_v2.dwg Nov 18, 2015 - 8:03am

ARCHITECTS, ENGINEERS, SURVEYORS  
 SAUSBURY, MARYLAND (410) 543-9091  
 MILFORD, DELAWARE (302) 424-1441



**LOT LINE ADJUSTMENT**  
 of the Lands of  
**MANUFACTURERS AND TRADERS TRUST COMPANY**  
 CITY OF MILFORD  
 KENT COUNTY, DELAWARE

Revisions:  
 11/17/15-Client Comment

Date: OCT. 29, 2015  
 Scale: 1"=20'  
 Dwn.By: EWT  
 Proj.No.: 0052A175.A01  
 Dwg.No.:

THIS DRAWING, THE DESIGN AND CONSTRUCTION FEATURES DISCLOSED ARE PROPRIETARY TO DAVIS, BOWEN & FRIEDEL, INC., AND SHALL NOT BE ALTERED OR REUSED WITHOUT WRITTEN PERMISSION.

## Hudson, Terri

---

**From:** Brandon Olenik <Brandon.Olenik@CO.KENT.DE.US>  
**Sent:** Tuesday, January 5, 2016 10:55 AM  
**To:** Hudson, Terri  
**Cc:** Arthur.Paul@state.de.us; Colin Faulkner; Ed (DEMA) Tyczkowski; White, Katrina  
**Subject:** Resolution adopting Kent County All Hazards Plan  
**Attachments:** Milford 2011 Resolution.jpg; Milford 2011 FEMA letter.tiff

**Categories:** Red Category

Good morning Ms. Hudson,

In accordance with 44 CFR, Part 201, as authorized by the Disaster Mitigation Act of 2000 (DMA2K), Kent County Levy Court has updated the Multi-Jurisdictional All Hazard Plan and has adopted the plan effective October 13, 2015. Now in further accordance, it is time to reach out to the respective municipalities within Kent County and have them adopt the plan via resolution as well.

The link below is to the PDF version of the plan. You may be prompted to create an account, however at the bottom just click no thank you, continue to view. The file is large and may take a few seconds to download in full. Please feel free to print and/or save the document for quick reference and review.

<https://www.dropbox.com/s/n1jcm5rq23zfsm9/Kent%20County%20DE%20HMP%20Update%202015%20Full%20Plan.pdf?dl=0>

Also attached is a previous resolution from the City of Milford to use as a reference, and a copy of the FEMA acceptance letter that you will receive after they receive your resolution.

If you can, let me know when you think we can get this on the agenda so I can be in attendance. I look forward to hearing from you, let me know if you have any questions.

Thank you,



### **Brandon L. Olenik**

*Administrative Officer  
Kent County Department of Public Safety  
Emergency Management Division  
911 Public Safety Blvd  
Dover, DE 19901  
P: (302)-735-2201  
F: (302)-735-3473  
[brandon.olenik@co.kent.de.us](mailto:brandon.olenik@co.kent.de.us)*

# City of Milford



## RESOLUTION 2016-03

### ADOPTION OF KENT COUNTY ALL HAZARD MITIGATION PLAN

WHEREAS, the Disaster Mitigation Act of 2000, as amended, requires that local government develop and adopt natural hazard mitigation plans in order to receive certain federal assistance, and

WHEREAS, a local Hazard Mitigation Advisory Committee comprised of county governmental departments, municipal council members, business community representatives, nonprofit organizations and citizens working in Kent County of the State of Delaware, convened in order to study the City of Milford's risks from, and vulnerabilities to natural, technological and terrorism and to make recommendations on mitigating the effects of such hazards on the city, and

WHEREAS, a contract was issued to an experienced consulting firm to work with the Kent County Hazard Mitigation Advisory Committee and the Delaware Emergency Management Agency to develop a comprehensive All Hazard Mitigation Plan for Kent County in Delaware, and

WHEREAS, the efforts of the City of Milford, Kent County, and the consulting firm have resulted in the development of an All Hazard Mitigation Plan for Kent County and the City of Milford.

NOW THEREFORE, BE IT RESOLVED by Milford City Council, that the updated Kent County All Hazard Mitigation Plan, dated October 13, 2015, is hereby approved and adopted for the City of Milford and Kent County in the State of Delaware. A copy of the plan can be found on the City of Milford website.

Mayor Bryan W. Shupe

City Clerk \_\_\_\_\_

Adoption Date: January 25, 2016

January 14, 2016

**VIA FEDEX**

Ms. Lisa Carmean  
City of Milford  
10 S.E. 2<sup>nd</sup> Street  
Milford, DE 19963

Re: City of Milford Retirement Plan

Dear Lisa:

Per my email to you, enclosed please find the following documents:

1. Amended and restated City of Milford Retirement Plan document;
2. IRS Form 5300, Application for Determination for Employee Benefit Plan; and
3. IRS Form 2848, Power of Attorney and Declaration of Representative.

Please have the Plan document, Form 5300 and Form 2848 signed and dated and return the originals to me, along with a check in the amount of \$2,500.00, payable to the United States Treasury. The application will be submitted to the IRS on January 29, 2016, so please return the signed documents to me before that date. We will provide a complete copy of the signed application and plan document to you once they have been submitted.

If you have any questions, please feel free to contact me.

Very truly yours,



Lisa Crompton Lesky  
Paralegal

LL:hs  
Enclosures  
cc: Timothy J. Snyder, Esquire

# Application for Determination for Employee Benefit Plan

(Under section 401(a) and 501(a) of the Internal Revenue Code)

Information about Form 5300 and its instructions is at [www.irs.gov/form5300](http://www.irs.gov/form5300).

Review instructions and the Procedural Requirements Checklist before completing this application.

For Internal Use Only

Complete lines 1j-1m and 2h-2k only if you have a foreign address, see instructions.

1a Name of plan sponsor (employer if single-employer plan)

City of Milford

b Address of plan sponsor

10 S.E. 2nd Street

c City

Milford

d State

DE

e Zip code

19963

f Employer identification number (EIN)

51-6000177

g Telephone number

302-424-3712

h Fax number

i Employer's tax year end (MM)

12

j City or town

k Country name

l Province/country

m Foreign postal code

2a Person to contact. If a Power of Attorney is attached, mark box, and do not complete this line.

Contact person's name

b Contact person's address

c City

d State

e Zip code

f Telephone number

g Fax number

h City or town

i Country name

j Province/country

k Foreign postal code

If more space is needed for any item, attach additional sheets the same size as this form. Identify each additional sheet with the plan sponsor's name and EIN and identify each item.

Under penalties of perjury, I declare that I have examined this application, including accompanying statements and schedules, and to the best of my knowledge and belief it is true, correct, and complete.

SIGN HERE ▶

Type or print name

*Jeff Portmann*

Type or print title

Date ▶

11/15/16

Jeff Portmann

Finance Director



3a (1) Determination requested for (enter applicable number in box):

- 1 – Initial Qualification – New Plan
- 2 – Initial Qualification – Existing Plan
- 3 – Request after initial qualification

(2) Enter applicable number (4-7) in box for special rulings, if applicable.

- 4 – Affiliated Service Group (ASG) status (section 414(m))
- 5 – Leased employee status (section 414(n))
- 6 – Partial termination
- 7 – Termination of multiemployer collectively bargained or multiple employer plan covered by Pension Benefit Guaranty Corporation (PBGC) insurance.

b If line 3a(1) is "1" or "2," enter the date the plan was initially adopted.

c If line 3a(2) is "6," enter the date of the partial termination.

d If line 3a(2) is "7," enter the effective date of termination.

e (1) Yes No

Is the plan being filed "on-cycle" pursuant to section 13 or 14 of Rev. Proc. 2007-44, 2007-28 I.R.B. 54? If "Yes," complete lines 3e(2) and 3e(3) below.

(2) Provide the submission cycle indicator pursuant to section 13 or 14 or Rev. Proc. 2007-44.

- A. Cycle A      C. Cycle C      E. Cycle E      G. Pre-approved DB plans
- B. Cycle B      D. Cycle D      F. Pre-approved DC plans

(3) Provide the cycle reason.

1. The last digit of the EIN, or
2. A multiple employer plan, or
3. A governmental plan including governmental multiple employer plan, or
4. A multiemployer plan, or
5. A DC pre-approved plan, or an individually designed DC plan that is eligible for the six-year remedial amendment cycle (RAC), filing in the two-year window, or
6. A DB pre-approved plan, or an individually designed DB plan that is eligible for the six-year RAC, filing in the two-year window, or
7. EIN of the parent company, jointly trustee single employer collectively bargained plan (if the plan sponsor is the Joint Board of Trustees include the EIN used on the Form 5500 filing) or centralized organization if that organization administers and operates the plan, or
8. New plan exception, or
9. Cycle changing event (include the date and explanation of the cycle changing event), or
10. Cycle A controlled group election, ASG election or centralized group election. Attach a copy of the election. Also, attach a statement showing in detail:
  - a. All members of the group (including their EIN),
  - b. The type(s) of plan(s) each member has, and
  - c. Plans common to all members.
11. Urgent business need, or
12. Other, attach an explanation.

See Rev. Proc. 2007-44 for details, including sections 10, 11 and 16.



(Line 3 continued)

If line 3e(2) is "A" through "E," skip to line 3g.

If line 3e(2) is "F" or "G," go to line 3f.

Yes No

f (1)   Is the plan a pre-approved Master & Prototype (M&P) plan?

(2)   Is the plan a pre-approved Volume Submitter plan (VS)?

(i) Name of sponsor or practitioner

(ii) Date of opinion/advisory letter

(iii) Serial # of opinion/advisory letter

Yes No

g (1)   Is this form being filed because it is a pre-approved plan required to file on a Form 5300?

(2) If "Yes," mark each applicable box. (More than one box may be checked, if applicable.)

- 1 - Multiple employer plan, or
- 2 - Request required pursuant to published guidance by Service (such as minimum funding waiver), or
- 3 - Section 415 and 416 added to an M&P plan due to required aggregation, or
- 4 - The normal retirement age in the M&P or VS pension plan is earlier than age 62.

If this is a pre-approved plan that does not meet one of the requirements above, attach an explanation why the Form 5300 is being filed.

h   If the plan is not a pre-approved plan, is the plan an individually designed plan that is eligible for the six-year RAC?

i (1)   If this is a VS plan, did the VS practitioner have the authority to amend on behalf of adopting employers for the entire prior RAC?

(2)   If this is a VS plan, does the VS practitioner have the authority to amend on behalf of adopting employers for the entire current RAC?

j   Was the plan sponsor entitled to rely on a favorable opinion or advisory letter as an "identical adopter" of a pre-approved plan for the plan's RAC immediately preceding the cycle in which the application is submitted?

If "Yes," complete j(i), (ii) and (iii).

If "No," go to line 3k.

(i) Name of sponsor or practitioner

(ii) Date of opinion/advisory letter

(iii) Serial # of opinion/advisory letter

Yes No

k   Does the plan have a determination letter (DL) for the plan's RAC immediately preceding the cycle in which the application is filed?

If "Yes," complete line k (i), (ii), and (iii).

If "No," go to line 3l.



(Line 3 continued)

(i) Date the letter was issued

(ii) Year of the Cumulative List considered in the letter

(iii) Expiration date of the letter

Yes No

l   Do any amendments not considered in a prior DL have any discretionary provisions?

If "Yes," and the amendment contains only discretionary provisions, mark an "X" in column (v) in the table.

If "Yes," and the amendment contains both interim and discretionary provisions, mark an "X" in columns (iv) and (v) in the table.

m Complete the following table (for (iv), (v), and (vi) mark with an "X" in the applicable boxes). If additional space is needed, attach a separate sheet of paper the same size, label it "Attachment to "3m" using the same format as below.

	(i) Amendment ID	(ii) Effective Date (MMDDYYYY)	(iii) Adoption Date (MMDDYYYY)	Type of Amendment		(vi) Power to Amend on Behalf of	(vii) Due Date of Tax Return (including extensions) (MMDDYYYY)
				(iv) Interim Amnd.	(v) Discr. Amnd.		
3m(1)							
3m(2)							
3m(3)							
3m(4)							
3m(5)							
3m(6)							
3m(7)							
3m(8)							
3m(9)							
3m(10)							

n Enter total number of amendments on line 3m.

o Designate the specific tax return that the employer uses to file its return.



**4a** Name of plan (plan name cannot exceed 70 characters, including spaces):  
 The City of Milford Retirement Plan

**b** Enter 3-digit plan number  **c** Enter the month on which the plan year ends (MM)

**d** Enter plan's original effective date  **e** Enter number of participants   
 If 100 or less, complete line 4f. Otherwise, go to line 5a.

**f** **Yes**  **No**  Does the plan sponsor have no more than 100 employees who received at least \$5,000 of compensation for the preceding year?  
 If "Yes," go to line 4g.  
 If "No," go to line 5a.

**g**   Is at least one employee a non highly compensated employee?

**5a** Indicate the type of plan by entering the number from the list below.   
 (Use the lowest number from the list below applicable to the plan.)

- 1 – Pension Equity Plan (PEP)
- 2 – cash balance conversion
- 3 – cash balance (not converted)
- 4 – defined benefit but not cash balance
- 5 – ESOP
- 6 – money purchase
- 7 – target benefit
- 8 – stock bonus
- 9 – 401(k)
- 10 – profit sharing plan

**b (1)** **Yes**  **No**  If the response to 5a was "1," "2," "3," "4," "6," or "7," was the plan's normal retirement age below 62 any time after 5/22/07?  
 If "Yes," go to line 5b(2).  
 If "No," go to line 5c(1).

**(2)**   Has the employer (or trustees, if this is a multiemployer plan) made a good faith determination that the plan's normal retirement age is not lower than an age that reasonably represents the typical retirement age for the industry in which the covered workforce is employed? If "Yes," attach required statement. Governmental plans see instructions.

**c (1)** If the response to 5a was "5," mark the box to indicate whether the plan sponsor is an S Corporation or a C Corporation.  
 C Corp.  S Corp.

**(2)** If there has been a change to the corporate status from C to S or S to C (election/revocation), provide the effective date of such change.

**6a (1)** **Yes**  **No**  Is the plan sponsor a member of an ASG, controlled group of corporations, or a group of trades or businesses under common control within the meaning of section 414(b) or (c)?  
 If "Yes," attach the required statement.

**(2)**   Is the plan sponsor a foreign entity or is the plan sponsor a member of an ASG, controlled group of corporations, or a group of trades or businesses under common control within the meaning of section 414(b) or (c) that includes a foreign entity?

**b**   Is this a governmental plan under section 414(d)?

**c (1)**   Is this a church plan under section 414(e)?  
 If "Yes," go to line 6c(2).  
 If "No," go to line 6d.



(Line 6 continued)

- |       | Yes                      | No                                  |  |
|-------|--------------------------|-------------------------------------|--|
| (2)   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Was an election made by the church to have participation, vesting, funding, etc. provisions apply in accordance with section 410(d)? |
| d     | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Does this plan benefit any collectively bargained employees under Regulations section 1.410(b)-6(d)(2)?                              |
| e     | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Is this an insurance contract plan under section 412(e)(3)?  |
| f     | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Is this a multiemployer plan under section 414(f)?   |
| g     | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Is this a request for a ruling under section 401(h)?   |
| h     | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Is this a request for ruling under section 420?  |
| i (1) | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Is this a multiple employer plan under section 413(c)?<br>If "Yes," complete lines 6i(2) through 6i(5).<br>If "No," go to line 7.    |

(2) Enter the total number of participating employers.

(3) Enter the number of participating employers submitting a Form 5300 concurrent with this application.

(4) Enter the EIN of the employer submitting the controlling plan.

(5) Enter the 3-digit plan number of the controlling plan.

7   Have interested parties been given the required notification of this application?

8   Is a separate DL application for this plan currently pending before the IRS?

9a   Does this plan satisfy one of the design-based safe harbor requirements for contributions or benefits under Regulations section 1.401(a)(4)-2(b) or 3(b)?  
If "Yes," go to line 9b.  
If "No," go to line 10a.

	Yes	No	
b	<input type="checkbox"/>	<input type="checkbox"/>	Is this an election for a determination regarding a design-based safe harbor? If "Yes," complete lines 9c through 9e. If "No," go to line 10a.

c  Enter the letter ("A" - "E") from the list below that identifies the safe harbor intended to be satisfied.  
**A** = 1.401(a)(4)-2(b)(2) defined contribution (DC) plan with uniform allocation formula  
**B** = 1.401(a)(4)-3(b)(3) unit credit defined benefit (DB) plan  
**C** = 1.401(a)(4)-3(b)(4)(i)(C)(1) unit credit DB fractional rule plan  
**D** = 1.401(a)(4)-3(b)(4)(i)(C)(2) flat benefit DB plan  
**E** = 1.401(a)(4)-3(b)(5) insurance contract plan

d   Does this plan satisfy one of the safe harbor definitions of compensation under Regulation sections 1.414(s)-1(c)(2) or (3)?



(Line 9 continued)

e List the plan section(s) that satisfy the design-based safe harbor (including, if applicable, the permitted disparity requirements):

[Empty text box for listing plan sections]

Yes No

10a   Does this plan have a cash or deferred arrangement (CODA)?  
If "Yes," go to line 10b(1).  
If "No," go to line 10(e).

b (1)   Does the CODA satisfy a safe harbor?  
If "Yes," go to line 10b(2).  
If "No," go to line 10d.

(2) Indicate by using the corresponding number the type of section 401(k) safe harbor that was satisfied.

- 1. 401(k)(12)(B)
- 2. 401(k)(12)(C)
- 3. 401(m)(11)(B)

c   Does this plan contain a qualified automatic contribution arrangement (QACA) within the meaning of section 401(k)(13)?

d   Does this plan contain an eligible automatic contribution arrangement (EACA) within the meaning of section 414(w)?

e   Does this plan have matching contributions within the meaning of section 401(m)?  
If "Yes," go to line 10f.  
If "No," go to line 10g.

Yes No

f   Does this plan satisfy the 401(m) safe harbor?

g   Does this plan have after-tax employee voluntary contributions within the meaning of section 401(m)?

11   Does this plan utilize the permitted disparity rules of section 401(l)?

12   Is this plan part of an offset arrangement with any other plans?  
If "Yes," attach the required statement.

13   Is this plan part of an eligible combined plan arrangement within the meaning of section 414(x)?  
If "Yes," include the EIN and Plan # of the other plan.

EIN: [Empty text box] Plan #: [Empty text box]

14   Has this plan been involved in a merger, consolidation, spinoff, or a transfer of plan assets or liabilities that was not considered under a previous DL?  
If "Yes," submit the required attachment.

15a   Has the plan been amended or restated to change the plan type?  
If "Yes," go to line 15b.  
If "No," go to line 16a.

b   Was the change considered in a prior DL?  
If "No," attach a statement explaining the change.



- 16a**     **Yes**     **No**
- Does the plan sponsor maintain any other qualified plans under section 401(a)?  
If "Yes," attach required statement and complete lines 16b and 16c.  
If "No," go to line 17.
- b (1)**            Does the plan sponsor maintain another plan of the same type (for example, both this plan and the other plan are DC plans or both are DB plans) that covers non-key employees who are also covered under this plan?  
If "No," go to line 16c(1).  
  
If "Yes," when the plan is top-heavy, do non-key employees covered under both plans receive the top-heavy minimum contribution or benefit under:
- (2)**            This plan, or
- (3)**            The other plan?
- c (1)**            If this is a DC plan, does the plan sponsor maintain a DB plan (or if this is a DB plan, does the plan sponsor maintain a DC plan) that covers non-key employees who are also covered under this plan?  
If "No," go to line 17.  
If "Yes," when the plan is top-heavy, do non-key employees covered under both plans receive:
- (2)**            The top-heavy minimum benefit under the DB plan,
- (3)**            At least a 5% minimum contribution under the DC plan,
- (4)**            The minimum benefit offset by benefits provided by the DC plan, or
- (5)**            Benefits under both plans, using a comparability analysis, at least equal to the minimum benefit.
- 17**            Does any amendment to this plan reduce or eliminate any section 411(d)(6) protected benefit?  
If "Yes," attach the required statement.
- 18**     **Yes**     **No**     **NA**
- If this is a DC plan, are trust earnings and losses allocated on the basis of account balances?  
If "No," attach a statement explaining how they are allocated.
- 19**     **Yes**     **No**
- Is any issue involving this plan currently pending or has any issue related to this plan been resolved during the current RAC by:
- (1)** Internal Revenue Service,  
**(2)** Department of Labor,  
**(3)** PBGC,  
**(4)** Any court (including bankruptcy), or  
**(5)** The Voluntary Correction Program of the Employee Plans Compliance Resolution System.  
If "Yes," attach a statement with the contact person's name (IRS Agent, DOL Investigator, etc.) and telephone number.



20 Indicate the regular (non top-heavy) vesting provisions of the plan by entering the letter from the list below:

<input type="checkbox"/> a	a - Full and immediate	d - Full vesting after 5 years of service	f - 3 to 6 year graded vesting
	b - Full vesting after 2 years of service	e - 2 to 6 year graded vesting	g - Other
	c - Full vesting after 3 years of service		

21 For DB plans - method for determining accrued benefit:

a(1) Benefit formula at early retirement age is:

a(2) Benefit formula at normal retirement age is:

a(3) Normal form of retirement benefit is:

22 For DB plans - enter the letter of the accrual rule satisfied by the plan:

A = Regulations section 1.411(b)-1(b)(1) - 3 percent method  
 B = Regulations section 1.411(b)-1(b)(2) - 133 1/3 percent rule  
 C = Regulations section 1.411(b)-1(b)(3) - Fractional rule

23 For DC plans - Employer contributions:

a(1) Profit sharing or stock bonus plan contributions are determined under (mark box):

A definite formula     A discretionary formula     Both

Indicate the plan section where the above formula is located in the plan document:

(2) Matching contributions are determined under (mark box):

A definite formula     A discretionary formula     Both

Indicate the plan section where the above formula is located in the plan document:

(3) Money purchase plan - Enter rate of contribution:

Indicate the plan section where the above formula is located in the plan document:

(4) Target benefit plan formula is:

Indicate the plan section where the above formula is located in the plan document:

24a Yes  No  NA  For DC plans - Is this an applicable DC plan as defined in Regulations section 1.401(a)(35)-1(f)(2)?

b If this is an applicable DC plan enter the section of the plan that contains the diversification language.

c If the plan satisfies one of the exceptions noted in line 24 of the instructions, enter the relevant section(s) of the plan.



## Power of Attorney and Declaration of Representative

For IRS Use Only

Received by: \_\_\_\_\_  
 Name \_\_\_\_\_  
 Telephone \_\_\_\_\_  
 Function \_\_\_\_\_  
 Date \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

▶ Information about Form 2848 and its instructions is at [www.irs.gov/form2848](http://www.irs.gov/form2848).

**Part I** Power of Attorney

**Caution:** A separate Form 2848 must be completed for each taxpayer. Form 2848 will not be honored for any purpose other than representation before the IRS.

**1 Taxpayer information.** Taxpayer must sign and date this form on page 2, line 7.

Taxpayer name and address City of Milford 10 S.E. 2nd Street  Milford, DE 19963	Taxpayer identification number(s) 51-6000177  Daytime telephone number 302-424-3712
	Plan number (if applicable) 012

hereby appoints the following representative(s) as attorney(s)-in-fact:

**2 Representative(s) must sign and date this form on page 2, Part II.**

Name and address Timothy J. Snyder, Esquire Young Conaway Stargatt & Taylor, LLP 1000 North King Street Wilmington, DE 19801  Check if to be sent copies of notices and communications <input checked="" type="checkbox"/>	CAF No. 2005-20957R PTIN P00012405 Telephone No. (302) 571-6645 Fax No. (302) 576-3336  Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address  Check if to be sent copies of notices and communications <input type="checkbox"/>	CAF No. _____ PTIN _____ Telephone No. _____ Fax No. _____  Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
(Note: IRS sends notices and communications to only two representatives.) Name and address	CAF No. _____ PTIN _____ Telephone No. _____ Fax No. _____  Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
(Note: IRS sends notices and communications to only two representatives.) Name and address	CAF No. _____ PTIN _____ Telephone No. _____ Fax No. _____  Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>

to represent the taxpayer before the Internal Revenue Service and perform the following acts:

**3 Acts authorized (you are required to complete this line 3).** With the exception of the acts described in line 5b, I authorize my representative(s) to receive and inspect my confidential tax information and to perform acts that I can perform with respect to the tax matters described below. For example, my representative(s) shall have the authority to sign any agreements, consents, or similar documents (see instructions for line 5a for authorizing a representative to sign a return).

Description of Matter (Income, Employment, Payroll, Excise, Estate, Gift, Whistleblower, Practitioner Discipline, PLR, FOIA, Civil Penalty, Sec. 5000A Shared Responsibility Payment, Sec. 4980H Shared Responsibility Payment, etc.) (see instructions)	Tax Form Number (1040, 941, 720, etc.) (if applicable)	Year(s) or Period(s) (if applicable) (see instructions)
Pension Matters	5300	

**4 Specific use not recorded on Centralized Authorization File (CAF).** If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. **Specific Use Not Recorded on CAF**

**5a Additional acts authorized.** In addition to the acts listed on line 3 above, I authorize my representative(s) to perform the following acts (see instructions for line 5a for more information):

Authorize disclosure to third parties;  Substitute or add representative(s);  Sign a return; \_\_\_\_\_

Other acts authorized: \_\_\_\_\_



## User Fee for Employee Plan Determination Letter Request

For  
IRS  
Use  
Only

OMB No. 1545-1772

Amount paid \_\_\_\_\_

▶ Attach to determination letter application.  
 ▶ For the latest information about this form, go to [www.irs.gov/form8717](http://www.irs.gov/form8717).

<b>1</b> Name of plan sponsor (employer if single-employer plan)			
City of Milford			
<b>2</b> Sponsor's employer identification number	<b>3</b> Plan number	<b>4</b> Plan name	
51-6000177	012	The City of Milford Retirement Plan	

**Caution.** If you qualify for the exemption from user fees for small business employers, complete only the certification below (see the instructions on page 2 for details). For all other applications, leave the certification blank and check the appropriate box in column B of line 5.

### Certification

I certify that the application for a determination letter on the qualified status of the plan listed above meets the conditions for exemption from user fees described in section 7528(b)(2)(B) of the Internal Revenue Code.

Sign Here ▶ \_\_\_\_\_ Date ▶ \_\_\_\_\_

Type or print name and title ▶ \_\_\_\_\_

	Fee Schedule	
	A	B no Demo 5 and no Demo 6:
<b>5a Form 5300:</b>	<input checked="" type="checkbox"/>	\$ 2,500
<b>b Form 5307:</b>	<input type="checkbox"/>	\$ 500
<b>c Form 5310:</b>	<input type="checkbox"/>	\$ 2,000
<b>d</b>		
<b>e Multiple employer plans (Form 5300):</b>		
(1) 2 to 10 Forms 5300 submitted . . . . .	<input type="checkbox"/>	(1) \$ 3,000
(2) 11 to 99 Forms 5300 submitted . . . . .	<input type="checkbox"/>	(2) \$ 3,000
(3) 100 to 499 Forms 5300 submitted . . . . .	<input type="checkbox"/>	(3) \$15,000
(4) Over 499 Forms 5300 submitted . . . . .	<input type="checkbox"/>	(4) \$15,000
<b>f Multiple employer plans (Form 5310):</b>		
(1) 2 to 10 employers maintaining the plan . . . . .	<input type="checkbox"/>	(1) \$ 3,000
(2) 11 to 99 employers maintaining the plan . . . . .	<input type="checkbox"/>	(2) \$ 3,000
(3) 100 to 499 employers maintaining the plan . . . . .	<input type="checkbox"/>	(3) \$15,000
(4) Over 499 employers maintaining the plan . . . . .	<input type="checkbox"/>	(4) \$15,000
<b>g Reserved</b>		
(1a)		
(1b)		
(2a)		
(2b)		
(3)		
(4)		
<b>h Reserved</b>		
(1a)		
(1b)		
(2)		
(3)		
(4a)		
(4b)		
(5)		
(6)		
(7)		
<b>i Form 5316 (Group trusts) . . . . .</b>		<b>\$ 1,000</b>

Attach Check or Money Order Here



## NOTICE TO INTERESTED PARTIES

1. Notice To: Participants in the City of Milford Retirement Plan (401(a) Plan)

An application is to be made to the Internal Revenue Service for an advance determination on the qualification of the following employee pension benefit plan:

2. City of Milford Retirement Plan (401(a) Plan)
3. Plan Number 012
4. City of Milford  
10 S.E. 2<sup>nd</sup> Street  
Milford, DE 19963
5. 51-6000177
6. City of Milford  
10 S.E. 2<sup>nd</sup> Street  
Milford, DE 19963

The application will be filed on January 29, 2016 for an advance determination as to whether the plan meets the qualification requirements of §401 or §403(a) of the Internal Revenue Code of 1986, with respect to the plan's amendment and restatement. The application will be filed with:

Internal Revenue Service  
Attention: EP Determination Letters  
Stop 31  
P.O. Box 12192  
Covington, KY 41012-0192

8. The Plan is frozen and all active participants have been transferred to the State of Delaware Pension Plan.
9. The Internal Revenue Service has previously issued a determination letter with respect to the qualification of this plan.

## RIGHTS OF INTERESTED PARTIES

10. You have the right to submit to EP Determinations, at the above address, either individually or jointly with other interested parties, your comments as to whether this plan meets the qualification requirements of the Internal Revenue Code. Your comments to EP Determinations may be submitted to:

Internal Revenue Service  
EP Determinations  
Attn: Customer Service Manager

P.O. Box 2508  
Cincinnati, OH 45202

You may instead, individually or jointly with other interested parties, request the Department of Labor to submit, on your behalf, comments to EP Determinations regarding qualification of the plan. If the Department declines to comment on all or some of the matters you raise, you may, individually, or jointly if your request was made to the Department jointly, submit your comments on these matters directly to EP Determinations at the Cincinnati address above.

### **REQUESTS FOR COMMENTS BY THE DEPARTMENT OF LABOR**

11. The Department of Labor may not comment on behalf of interested parties unless requested to do so by the lesser of 10 employees or 10 percent of the employees who qualify as interested parties. The number of persons needed for the Department to comment with respect to this plan is 7. If you request the Department to comment, your request must be in writing and must specify the matters upon which comments are requested, and must also include:

- (1) the information contained in items 2 through 5 of this Notice; and
- (2) the number of persons needed for the Department to comment.

A request to the Department to comment should be addressed as follows:

Deputy Assistant Secretary  
Employee Benefits Security Administration  
U.S. Department of Labor,  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210  
Attention: 3001 Comment Request

### **COMMENTS TO THE INTERNAL REVENUE SERVICE**

12. Comments submitted by you to EP Determinations must be in writing and received by it by March 14, 2016. However, if there are matters that you request the Department of Labor to comment upon on your behalf, and the Department declines, you may submit comments on these matters to EP Determinations to be received by it within 15 days from the time the Department notifies you that it will not comment on a particular matter, or by March 14, 2016, whichever is later, but not after March 29, 2016. A request to the Department to comment on your behalf must be received by it by February 13, 2016 if you wish to preserve your right to comment on a matter upon which the Department declines to comment, or by if you wish to waive that right.

### **ADDITIONAL INFORMATION**

13. Detailed instructions regarding the requirements for notification of interested parties may be found in sections 17 and 18 of Rev. Proc. 2015-6. Additional information concerning this application (including, where applicable, an updated copy of the plan and related trust; the

application for determination; any additional documents dealing with the application that have submitted to the Service; and copies of section 17 of Rev. Proc. 2015-6 are available at

City of Milford, 10 S.E. 2<sup>nd</sup> Street, Milford, Delaware 19963

during the hours of 9:00 am to 4:00 pm for inspection and copying. (There is a nominal charge for copying and/or mailing.)

**THE CITY OF MILFORD**

**RETIREMENT PLAN**

**THE CITY OF MILFORD  
RETIREMENT PLAN**

**TABLE OF CONTENTS**

ARTICLE I DEFINITIONS ..... 1

ARTICLE II PARTICIPATION AND SERVICE ..... 8

ARTICLE III EMPLOYER CONTRIBUTIONS ..... 10

ARTICLE IV ROLLOVERS AND TRANSFERS FROM OTHER PLANS ..... 11

ARTICLE V ALLOCATIONS TO PARTICIPANTS' ACCOUNTS ..... 12

ARTICLE VI DETERMINATION AND DISTRIBUTION OF BENEFITS ..... 14

ARTICLE VII HEART ACT PROVISIONS ..... 25

ARTICLE VIII LIFE INSURANCE AND ANNUITY POLICIES ..... 25

ARTICLE IX LOANS TO PARTICIPANTS ..... 28

ARTICLE X AMENDMENT AND TERMINATION ..... 29

ARTICLE XI MISCELLANEOUS ..... 30

ARTICLE XII PLAN ADMINISTRATION AND CLAIMS PROCEDURES ..... 34

ARTICLE XIII THE TRUST AND THE TRUSTEE ..... 36

# THE CITY OF MILFORD RETIREMENT PLAN

## INTENT AND EFFECTIVE DATE

THIS AMENDMENT AND RESTATEMENT IS MADE this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by The City of Milford, a Delaware corporation with offices in Milford, Delaware.

By this Document, The City of Milford amends and restates The City of Milford Retirement Plan and Trust.

Unless otherwise stated herein, the provisions of this Plan and Trust are effective January 1, 2016.

## ARTICLE I DEFINITIONS

Whenever used herein, the following words and phrases shall have the meanings stated below unless a different meaning is plainly required by the context:

1.1. “Adjusted Balance” means the balance in a Participant’s account or accounts, as adjusted in accordance with Sections 5.3 and 5.4 of the Plan as of the applicable Valuation Date.

1.2. “Adjustment Factor” shall mean the cost of living adjustment factor prescribed by the Secretary of the Treasury under Section 415(d) of the Code for years beginning after December 31, 1987, applied to such items and in such manner as the Secretary shall prescribe.

1.3. “Annual Additions” means the total of: (a) Employer contributions allocated to a Participant’s Employer Contribution Account under this Plan and any Related Plan during any Limitation Year; (b) the amount of employee contributions made by the Participant under this Plan and any Related Plan; and (c) forfeitures allocated to a Participant’s accounts under this Plan and any Related Plan.

1.4. “Beneficiary” means the person, persons, or entity designated, or determined pursuant to the provisions of Section 6.2 of the Plan.

1.5. “Code” means the Internal Revenue Code of 1986, as amended from time to time. Reference to a section of the Code shall include that section and any comparable section or sections of any future legislation that amends, supplements or supersedes said section.

1.6. “Compensation” means a Participant’s base earnings from the Employer paid during a Plan Year for services rendered, and excludes bonuses, overtime, commissions, any contributions or benefits under this Plan or any other pension, profit sharing, insurance, hospitalization or other plan or policy maintained by the Employer for the benefit of such Participant, and all other extraordinary and unusual payments. However, compensation shall

include any elective deferrals made by a Participant to a Code Section 125 or Section 457 plan maintained by the Employer. For the first Plan Year in which an Employee becomes a Participant in the Plan "Compensation" shall mean Participant's compensation as defined herein from the Participant's Plan Entry Date until the end of the Plan Year.

(a) In no event shall the Compensation of a Participant taken into account under the Plan for any Plan Year exceed \$245,000, or such greater amount provided pursuant to Section 401(a)(17) of the Code.

(b) If Compensation for any prior determination period is taken into account in determining an Employee's benefits accruing in the current Plan Year, the Compensation for that prior determination period is subject to the annual compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the first Plan Year beginning on or after January 1, 1994, the OBRA '93 annual compensation limit is \$150,000.

(c) For Plan and Limitation Years beginning on and after January 1, 2001, Compensation paid or made available during such Plan and Limitation Years shall include elective amounts that are not includible in the gross income of the Employee by reason of Section 132(f)(4).

1.7. "Early Retirement Date" means the date a Participant attains age fifty-five (55) and completes one (1) year as a Participant in the Plan.

1.8. "Employee" means only the employees of The City of Milford and shall include any leased employees of The City of Milford within the meaning of Section 414(n)(2) of the Code. Notwithstanding the foregoing, if such leased employees constitute less than twenty percent of the Employer's non-highly compensated work force within the meaning of Section 414(n)(1)(C)(ii) of the Code, the term "Employee" shall not include those leased employees covered by a plan described in Section 414(n)(5) of the Code unless otherwise provided by the terms of the plan other than this amendment.

(a) A leased employee within the meaning of Section 414(n)(2) of the Code shall become a Participant in, or accrue benefits under, the plan based on service as a leased employee only as provided in provisions of the Plan. For purposes of this paragraph, The term "Leased Employee" means a person who is not an Employee of the Employer or of an Affiliate, but who provides services to the Employer or an Affiliate where (a) such services are performed pursuant to an agreement between the recipient of those services and any other person or entity, (b) the person performing the services has done so on a substantially full-time basis for at least one year; (c) as to Plan Years starting before January 1, 1997, the services so performed are of a type historically performed in the business field of the recipient by employees, and (d) as to Plan Years starting after December 31, 1996, the services so performed are performed under the primary direction and control of the recipient of those services, except that even if an individual would otherwise be considered a Leased Employee hereunder, that person shall not be considered a Leased Employee if (1) he is covered by a money purchase pension plan which (i) covers all employees of the leasing organization (other than those rendering service directly to the leasing organization), (ii) provides a non-integrated employer contribution rate of at least ten

percent (10%) of compensation (as defined for the purposes of Section 415 of the Code), and (iii) allows immediate participation and full and immediate vesting, and (2) Leased Employees (including, for this purpose, those who would be Leased Employees but for the operation of this sentence) do not constitute more than twenty percent (20%) of that part of the recipient's workforce consisting of non-highly compensated employees.

(b) "Employee" does not include any individual covered by a collective bargaining agreement between employee representatives and the Employer if retirement benefits were the subject of good faith bargaining between such employee representatives and the Employer.

1.9. "Employer" means The City of Milford, a Delaware municipal corporation, or any successor corporation resulting from a merger or consolidation with the Employer or transfer of substantially all of the assets of the Employer, if such successor or transferee shall adopt and continue the Plan by appropriate corporate action, pursuant to Section 10.3 of the Plan. Notwithstanding anything to the contrary contained in this section, no provision of this section shall be construed or interpreted to require the Employer to make an Employer contribution under the Plan for any individual who is not an Employee.

1.10. "Employer Contribution Account" means the record of money and assets held by the Trustee for an individual Participant or Beneficiary pursuant to the provisions of the Plan, derived from Employer contributions to the Trust.

1.11. "Employment Year" means a twelve (12) consecutive month period commencing with an Employee's initial date of hire (or last date of rehire if he has incurred a Break in Service) or with any anniversary thereof.

1.12. "Family Member" means, with respect to any Employee, such Employee's spouse and lineal ascendants or descendants and the spouse of such lineal ascendants or descendants.

1.13. "Highly Compensated Participant" means a Participant who: (a) during the current Plan Year or preceding Plan Year was at any time a five percent (5%) owner of the Employer; or (b) during the preceding Plan Year received Compensation from the Employer in excess of \$110,000 (or such greater amount provided by the Secretary of the Treasury pursuant to Section 414(q) of the Code), and was in the Top Paid Group of Employees for such Plan Year. A Participant is in the Top Paid Group for such Plan Year if he is in the group consisting of the top twenty percent (20%) of the Employees when ranked on the basis of compensation (as defined in Section 414(q)(4)) paid during such Plan Year.

1.14. "Inactive Participant" means any Employee or former Employee who has ceased to be a Participant and on whose behalf an account is maintained under the Plan.

1.15. "Late Retirement Date" means the first day of the month coinciding with or next following a Participant's actual Retirement Date after having reached his Normal Retirement Date.

1.16. "Limitation Year" means the twelve (12) consecutive month period to be used in determining the Plan's compliance with Section 415 of the Code and the regulations thereunder. The Employer shall take all actions necessary to ensure that the Limitation Year is the same twelve (12) month period as the Plan Year.

1.17. "Maximum Permissible Amount" means the lesser of:

(a) Effective for Limitation Years beginning after December 31, 2001, "Maximum Permissible Amount" means the lesser of:

(1) \$40,000, as adjusted for increases in the cost of living under Section 415(d) of the Code, or

(2) one hundred percent (100%) of the Participant's compensation, within the meaning of Section 415(c)(3), for the Limitation Year.

For purposes of applying the limitations of Code Section 415, "415 Compensation" Compensation is defined as wages, salaries, and fees for professional services, and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the employer maintaining the plan to the extent that the amounts are includable in gross income (including, but not limited to, commissions paid salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements, or other expense allowances under a nonaccountable plan (as described in section 1.62-2(c) of the Income Tax Regulations), and excluding the following:

- (i) employer contributions (other than elective contributions described in section 402(e)(3), section 408(k)(6), section 408(p)(2)(A)(i), or section 457(b)) to a plan of deferred compensation (including a simplified employee pension described in section 408(k) or a simple retirement account described in section 408(p), and whether or not qualified) to the extent such contributions are not includable in the employee's gross income for the taxable year in which contributed, and any distributions (whether or not includable in gross income when distributed) from a plan of deferred compensation (whether or not qualified), other than, amounts received during the year by an employee pursuant to a nonqualified unfunded deferred compensation plan to the extent includable in gross income;
- (ii) amounts realized from the exercise of a non-statutory stock option (that is, an option other than a statutory stock option defined in section 1.421-1(b) of the Income Tax Regulations), or when restricted stock (or property) held by the employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;
- (iii) amounts realized from the sale, exchange or other disposition of stock acquired under a statutory stock option;
- (iv) other amounts that receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includable in the

gross income of the employee and are not salary reductions amounts that are described in section 125 of the Internal Revenue Code; and

- (v) other items of remuneration that are similar to any of the items listed in (i) through (iv).

For any self-employed individual, Compensation shall mean earned income.

Except as provided herein, for Limitation Years beginning after December 31, 1991, compensation for a Limitation Year is the compensation actually paid or made available during such Limitation Year. Compensation for a Limitation Year shall include amounts earned but not paid during the Limitation Year solely because of the timing of pay periods and pay dates, provided the amounts are paid during the first few weeks of the next Limitation Year, the amounts are included on a uniform and consistent basis with respect to all similarly situated employees, and no compensation is included in more than one Limitation Year.

For Limitation Years beginning on or after July 1, 2007 compensation for a Limitation Year shall also include compensation paid by the later of 2 1/2 months after an employee's severance from employment with the employer maintaining the Plan or the end of the Limitation Year that includes the date of the Employee's severance from employment with the Employer maintaining the Plan, if: (a) the payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and, absent a severance from employment the payments would have been paid to the employee which the employee continued in employment with the employer; (b) the payment is for unused accrued bona fide sick, vacation, or other leave that the employee would have been able to use if employment had continued; or (c) the payment is received by the employee pursuant to a nonqualified unfunded deferred compensation plan and would have been paid at the same time if employment had continued, but only to the extent includable in gross income. A Participant's compensation for a Limitation Year shall not include compensation in excess of the limitation under section 401(a)(17) of the Internal Revenue Code that is in effect for the calendar year in which such Limitation Year begins.

Any payments not described above shall not be considered compensation if paid after severance from employment, even if they are paid by the later of 2 1/2 months after the date of severance from employment or the end of the Limitation Year that includes the date of severance from employment, except (a) payments to an individual who does not currently perform service for the employer by reason of qualified military service (within the meaning of section 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform service for the employer rather than entering qualified military service; or (b) compensation paid to a participant who is permanently and totally disabled, provided salary continuation applies to all participants who are permanently and totally disabled for a fixed or determinable period, or the participant was not a highly compensated employee, as defined in section 414(q) of the Internal Revenue Code, immediately before becoming disabled.

Back pay, within the meaning of section 1.415(c)-2(g)(8) of the Income Tax

Regulations, shall be treated as compensation for the Limitation Year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

For Limitation Years beginning after December 31, 1997, compensation paid or made available during such Limitation Year shall include amounts that would otherwise be included in Compensation but for an election under section 125(a), section 402(e)(3), section 402(h)(1), section 402(k), or section 457(b) of the Internal Revenue Code.

For Limitation Years beginning after December 31, 2002 Compensation shall also include any elective amounts that are not includable in the gross income of the employee by reason of section 132(f)(4) of the Internal Revenue Code.

For Limitation Years beginning after December 31, 2001 Compensation shall also include deemed section 125 compensation. Deemed section 125 compensation is an amount that is excludable under section 106 of the Internal Revenue Code that is not available to a participant in cash in lieu of group health coverage under a section 125 arrangement solely because the participant is unable to certify that he or she has other health coverage. Amounts are deemed section 125 compensation only if the employer does no request or otherwise collect information regarding the participant's other health coverage as part of the enrollment process for the health plan.

Compensation shall not include amounts paid as compensation to a nonresident alien, as defined in section 7701(b)(1)(B) of the Internal Revenue Code, who is not a participant in the plan to the extent the compensation is excludable from gross income and is not effectively connected with the conduct of a trade or business within the United States.

The annual compensation of each Participating Employee taken into account shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Code. Annual compensation means compensation during the Plan Year or such other consecutive twelve (12) month period over which compensation is otherwise determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

The dollar limitation under Code Section 415(b)(1)(A) stated above shall be adjusted annually as provided in Code Section 415(d) pursuant to IRS Regulations. The adjusted limitation is effective as of January 1 of each calendar year and is applicable to "limitation years" ending with or within that calendar year.

The limitation stated above for Participating Employees who have separated from service with a non-forfeitable right to an accrued benefit shall be adjusted annually as provided in Code Section 415(d) pursuant to the regulations prescribed by the Secretary of the Treasury.

For the purpose of this paragraph 1.17, all qualified defined benefit plans (whether terminated or not) ever maintained by the Employer shall be treated as one defined benefit plan, and all qualified defined contribution plans (whether terminated or not) ever maintained by the Employer shall be treated as one defined contribution plan.

1.18. “Non-Highly Compensated Employee” means an Employee of the Employer who is not a Highly Compensated Employee.

1.19. “Normal Retirement Date” means the date a Participant attains age sixty-five (65).

1.20. “Participant” means an Employee who becomes a Participant under the provisions of Section 3.1 of the Plan. However, an Employee who has deposited a “rollover contribution” pursuant to Section 4.1 of the Plan shall be deemed a “Participant” for purposes of the Plan to the extent that the provisions of the Plan apply to the Rollover Account of such Employee.

1.21. “Plan” means The City of Milford Retirement Plan and Trust, which is intended to qualify as a discretionary contribution plan (profit sharing plan) for purposes of Sections 401(a), 402, 412, and 417 of the Code.

1.22. “Plan Entry Date” means the date that an Employee commences participation under the Plan. The Plan Entry dates are January 1<sup>st</sup> and July 1<sup>st</sup>.

1.23. “Plan Year” means the fiscal year of the Employer, which is currently designated as the twelve-month period of January 1 through December 31.

1.24. “Related Employer” means: (i) any corporation that is a member of a controlled group of corporations (as defined in Section 414(b) of the Code) that includes the Employer; (ii) any trade or business (whether or not incorporated) that is under common control (as defined in Section 414(c) of the Code) with the Employer; and (iii) any member of an affiliated service group (as defined in Section 414(m) of the Code) that includes the Employer. “Related Plan” means any other defined contribution plan (as defined in Section 415 of the Code) maintained by the Employer or by a Related Employer.

1.25. “Rollover Account” means the account maintained for an Employee to record amounts transferred to the Trust Fund pursuant to Section 4.1 of the Plan and adjustments relating thereto.

1.26. “Terminated Participant” is a Participant in the Plan who has terminated his employment with the Employer for any reasons other than retirement, death or disability.

1.27. “Trust” or “Trust Fund” means all money, securities, and other property held under the Trust Agreement for purposes of the Plan.

1.28. “Trust Agreement” means this agreement between the Employer and the Trustee governing the administration of the Trust, as it may be amended from time to time.

1.29. “Trustee” means the corporation or individual(s) appointed by the Shareholders of the Employer to administer the Trust.

1.30. “Valuation Date” means the last day of each Plan Year.

**ARTICLE II  
PARTICIPATION AND SERVICE**

2.1. Eligibility and Participation Requirements. All Employees of The City of Milford shall be eligible to participate in the Plan upon completing one (1) Year of Service and attaining age eighteen (18). Participation shall commence on the Plan Entry Date that is coincident with or next following the completion of the eligibility requirements. Notwithstanding anything to the contrary, if the eligibility requirements would cause an Employee to enter the Plan more than six (6) months after he has satisfied the eligibility requirements, he shall become a Participant as of the Plan Entry Date immediately preceding the one on which he would otherwise be eligible.

2.2. Years of Service. An Employee's eligibility to participate in the Plan and the vesting of benefits are based upon Years of Service which are twelve consecutive month periods during which the Employee is credited with not less than one thousand (1,000) Hours of Service as defined in Section 2.5.

(a) For purposes of participation, the twelve consecutive month period for initial eligibility (initial Eligibility Computation Period) shall begin on the Employment Commencement Date. The Employment Commencement Date is the first day for which the Employee is entitled to be credited with an Hour of Service. For each succeeding eligibility computation period, a year shall begin with the first day of the Plan Year that includes the first anniversary of the Employee's Employment Commencement Date.

(b) For purposes of vesting, a Participant's Years of Service shall include all Plan Years in which the Employee has been credited with a Year of Service after the Employee has attained 18 years of age.

(c) Periods of employment with any corporation, trade, or business which is a member of a controlled group of corporations or under common control (as defined by Section 1563(a) and Section 414(c) of the Code), or is a member of an affiliated service group (as defined in section 414(m) of the Code) shall be recognized.

2.3. Breaks in Service. The term "One Year Break in Service" means:

(a) the Plan Year during which the Participant has not completed more than five hundred (500) Hours of Service.

(b) Where an Employee is absent from work by reason of (i) pregnancy of the Employee, (ii) the birth of a child of the Employee, (iii) the placement of a child with the Employee in connection with the adoption of such child by the Employee, or (iv) caring for such child for a period beginning immediately following such birth or placement, such Employee will be given credit for Hours of Service during such absence as provided in Section 2.5.

(c) An Employee shall not be deemed to have a Break in Service if Service is interrupted for a leave of absence which has been granted by the Employer or for any other reasons set forth in subsection (b) above. Such leaves of absence shall be granted under

rules established by the Employer and uniformly applied to all individuals similarly situated; provided however that the Employee returns to the Employer within twelve (12) months following the expiration of the leave of absence.

2.4. Renewed Participation. Where an Employee quits, resigns, is fired or fails to return after a leave of absence, has a One Year Break in Service, and is subsequently rehired, the Employee shall be treated as a new Employee for the sole purpose of again becoming a Participant under Section 2.1. Once a rehired Employee has satisfied the conditions of Section 2.1, the Employee shall be considered a Participant retroactively to the rehire date for all purposes. The Employee's Pre-break Years of Service shall then again be considered for vesting purposes of the Post-break Account balances.

2.5. "Hour of Service" shall mean

(a) Each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Employer. These hours shall be credited to an Employee for the computation period in which the duties are performed; and

(b) Each hour for which an Employee is paid, or entitled to payment, by the Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, Military duty, or leave of absence granted for any valid reason. No more than five hundred-one (501) Hours of Service shall be credited under this paragraph for any single continuous period (whether or not such period occurs in a single computation period). Hours under this paragraph shall be calculated and credited pursuant to Section 2530.2006-2 of the Department of Labor Regulations, which are incorporated herein by this reference.

(c) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by Employer. The same Hours of Service shall not be credited both under paragraph (a) or paragraph (b), as the case may be, and under this paragraph (c). These hours shall be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made.

(d) Hours of Service shall be determined on the basis of actual hours for which the Employee is paid or entitled to payment.

(e) Each hour an Employee normally would have been credited (if normal hours cannot be determined, then eight (8) hours for each day) while the Employee is absent on a parental leave. A parental leave occurs when the Employee is absent due to:

- (1) the Employee's pregnancy,
- (2) the birth of the Employee's child,
- (3) the placement of a child in connection with its adoption by

the Employee, or

(4) the caring of a child during the period immediately following its birth or placement for adoption.

(f) No more than five hundred-one (501) hours may be credited under this provision for any particular parental leave. All the hours shall be credited (under this provision) in the Year the absence begins only if it is necessary to prevent a Break in Service in that Year. Otherwise all the hours shall be credited in the following Year.

(g) Hours of Service will be credited for employment with other members of an affiliated service group (under Section 414(m) of the Code), a controlled group of corporations (under Section 414(b) of the Code), or a group of trades or businesses under common control (under Section 414(c) of the Code), of which the Employer is a member.

(h) Hours of Service will also be credited for any individual considered an employee under Section 414(n) of the Code.

### **ARTICLE III EMPLOYER CONTRIBUTIONS**

#### 3.1. Amount of Contributions.

(a) For Plan Years beginning on and after January 1, 2005, the Employer shall not make contributions to this Plan.

(b) For Plan Years beginning before January 1, 2005, the Employer shall contribute to the Trust for each Plan Year as follows:

(c) An amount that is equal to six percent (6%) of the bi-monthly Compensation of each Participant (other than City of Milford policemen) that is employed on the last day of each bi-monthly period; and

(d) The annual payment received by the Employer from the State of Delaware pursuant to 18 Del. C. Section 708(b) on behalf of each City policeman; and

This Plan shall be considered a profit sharing plan; however, Employer Contributions for any Plan Year shall not be contingent upon the profits of the Employer. Notwithstanding the preceding provisions of this Section, in no event shall the Employer contribute an amount for any Limitation Year which would cause: the Annual Additions to the accounts of any Participant to exceed the Maximum Permissible Amount for such Participant for that Year.

For purposes of this Article III, the first bi-monthly period shall end on the last day of February, and each succeeding bi-monthly period shall end on the last day of every other month thereafter.

3.2. Time for Making Contributions. The Employer may pay to the Trustee its contribution hereunder within thirty days of the end of each bi-monthly period, however with

respect to a particular Plan Year such contribution shall be made no later than the period prescribed by Section 412(c)(10) of the Code and the regulations thereunder.

3.3. **Exclusive Benefit of Employees.** All contributions made pursuant to the Plan shall be held by the Trustee in accordance with the terms of the Trust Agreement for the exclusive benefit of those Employees who are Participants under the Plan, including former Employees, and their Beneficiaries, and shall be applied to provide benefits under the Plan and to pay expenses of administration of the Plan and the Trust, to the extent that such expenses are not otherwise paid. At no time prior to the satisfaction of all liabilities with respect to such Employees and their Beneficiaries shall any part of the Trust Fund (other than such part as may be required to pay administration expenses and taxes) be used for, or diverted to, purposes other than for the exclusive benefit of such Employees and their Beneficiaries. However, without regard to the provisions of this Section, if a contribution or any portion thereof is made by the Employer by a mistake of fact, the Trustee shall, upon written request of the Employer, return the contribution or such portion and any increment thereon to the Employer within one (1) year after the date of payment to the Trustee.

#### **ARTICLE IV ROLLOVERS AND TRANSFERS FROM OTHER PLANS**

##### 4.1. Rollovers and Transfers from Other Plans.

(a) An Employee who has received a distribution of his interest in a retirement plan of a former employer under circumstances meeting the requirements of Code Section 402(c) relating to qualified eligible rollover distributions from qualified retirement plans may elect to deposit all or any portion (as designated by such Employee in writing to the Committee) of the amount of such distribution as a "rollover contribution" to this Plan. A rollover contribution may be made only within sixty (60) days following the date the Employee receives the distribution from the plan of his former employer (or within such additional period as may be provided under Code Section 408 if the Employee shall have made a timely deposit of the distribution in an individual retirement account). The Trustee may also receive directly from the trustee under the plan of the former employer all or any portion (as designated by such Employee in writing to the Committee) of the amount that would otherwise be distributable to an Employee by reason of his termination of employment with that employer. The Committee shall establish rules and procedures to implement this Section 4.1, including, without limitation, such procedures as may be appropriate to permit the Committee to verify the tax qualified status of the plan of the former employer and compliance with any applicable provisions of the Code relating to such contributions and transfers. The amount contributed or transferred to the Trustee pursuant to this Section shall be placed in the Employee's Transfer Account for the benefit of the Employee. The Employee shall have a fully vested interest in the Adjusted Balance of his Transfer Account at all times and such account shall share in the earnings, gains and losses of the Trust Fund as set forth in Section 5.4 of the Plan and may be distributed at the same times and in the manner set forth in Article VI below.

(b) Notwithstanding the preceding provisions of this Section, the Trustee will not accept a transfer of an Employee's interest in a retirement plan of a former employer if it is determined that such acceptance would render this Plan a direct or indirect

transferee of a defined benefit plan, money purchase pension plan (including a target benefit plan), stock bonus, or profit sharing plan that provides for a life annuity form of payment to the Employee.

## **ARTICLE V ALLOCATIONS TO PARTICIPANTS' ACCOUNTS**

5.1. Separate Accounts. There shall be created and maintained such separate accounts for each Participant as shall be needed including an Employer Contribution Account.

5.2. Allocations of Employer Contributions.

(a) The Employer contributions for each Plan Year made on behalf of Participants who are not City of Milford policemen shall be allocated as of the last day of each bi-monthly period commencing with January and February of each Plan Year (even though receipt of the Employer contributions by the Trustee may take place after the close of such bi-monthly period) among the Employer Contributions Accounts of all Participants who are not City of Milford policemen and were employed on the last day of the bi-monthly period.

(b) Each Participant who is not a City of Milford Policeman and is eligible to receive an allocation for the Plan Year pursuant to this Section 5.2 shall receive an allocation for the Plan Year that is equal to six percent (6%) of the Participant's Compensation for each bi-monthly period for which the Participant is employed on the last day of such bi-monthly period.

(c) The Employer Contributions for each Plan Year that are made on behalf of Participants who are City of Milford policemen shall be allocated on a per capita basis as of the last day of the Plan Year (even though receipt of the Employer Contributions by the Trustee may take place after the close of the Plan Year) among the Employer Contribution Accounts of the Participants who are City of Milford policemen who, during the course of the Plan Year:

(1) completed at least one thousand (1,000) Hours of Service and were employed on the last day of the Plan Year;

(2) retired on or after their Normal Retirement Dates;

(3) died; or

(4) became disabled.

(d) Notwithstanding any provision of the Plan to the contrary, each Eligible Participant shall receive an annual allocation to his account of at least six percent (6%) of his Compensation. In the case of a Participant who is a City of Milford policeman, if the funds received from the State of Delaware on behalf of the City of Milford policemen and contributed to the Plan to provide benefits to the City of Milford policemen does not provide an annual allocation on behalf of each City of Milford policeman of at least six percent (6%), the

City shall make an additional contribution to the Plan in an amount sufficient to ensure an allocation of six percent (6%) of Compensation of each City of Milford policeman.

(e) Notwithstanding the preceding provisions of this Section, in no event shall an allocation be made to the Employer Contribution Account of any Participant, for any Limitation Year, which would cause: (A) Annual Additions to the accounts of such Participant to exceed the Maximum Permissible Amount for that Year; or (B) the sum of the defined benefit plan fraction and the defined contribution plan fraction to exceed one for such Participant for that Year.

(f) Allocations of Employer contributions shall not be discontinued for any Employee merely because such Employee has attained any age.

### 5.3. Maximum Allocation.

(a) Except as provided in paragraph (b) below, the allocations to the accounts of any Participant in any Limitation Year shall be limited so that the Participant's Annual Additions for such Year do not exceed the Maximum Permissible Amount for a Plan Year. The Plan Administrator shall reallocate any excess in the Annual Addition to other Participants as an investment gain.

(b) The provisions of this Section shall be interpreted by the Employer, in the administration of the Plan, to reduce contributions and allocations (as required by this Section) only to the minimum extent necessary to reflect the requirements of Section 415 of the Code, as amended and in force from time to time, and Regulations promulgated pursuant to that Section, which are incorporated by reference herein.

(c) If not otherwise fully vested, each Participant shall be one hundred percent (100%) vested in the Participant's Employer Contribution Account if participation ceases under any one (1) of the following circumstances:

(1) The Participant retires as of the Participant's Normal Retirement Date, at which time the Participant is entitled to his normal retirement benefits.

(2) A Participant's Normal Retirement Date is the day of the Plan Year on which the Participant attains normal retirement age.

(3) A Participant's normal retirement benefit is the Participant's Employer Contribution Account computed as of the Normal Retirement Date. Notwithstanding anything to the contrary, a Participant shall have a non-forfeitable interest in such normal retirement benefit upon the Participant's attainment of normal retirement age.

(4) The Participant retires at any time after the Participant's Normal Retirement Date.

(5) The Participant's service with the Employer ceases due to a total Disability, prior to the Participant's Normal or, where applicable, Early or Late Retirement Date. A Participant is deemed totally disabled if such Disability is determined to have rendered

the Participant permanently incapable of performing the Participant's usual and customary duties or qualifies the Participant for Social Security Disability Benefits. Such determination shall be made by the Employer, who may require evidence to one (1) or more independent physicians.

(6) The Participant dies prior to the Participant's termination of employment with the Employer.

(7) The Plan is terminated or the Employer completely discontinues contributions to the Plan.

#### 5.4. Valuation of Funds and Allocations of Earnings.

(a) As of each Valuation Date, the Trustee shall determine the fair market value of the Trust Fund after deducting withdrawals, distributions and any expenses of Plan administration paid out of the Trust, excluding from such valuation any contributions and forfeitures for the period ending on such Valuation Date. In determining such value, the Trustee shall use such generally accepted methods and bases as the Trustee, in its discretion, shall deem advisable. If the fair market value of the Trust Fund so determined on the current Valuation Date (excluding contributions made and forfeitures occurring since the last preceding Valuation Date) is greater or less than the total amount of all Participants', former Participants' and Beneficiaries account balances, as determined on the preceding Valuation Date the difference shall be allocated among such account balances proportionately in the ratio that each such account balance bore to the total of all such account balances on the last preceding Valuation Date (subtracting for purposes of determining such ratio of account balances on the last preceding Valuation Date, all distributions made from such accounts during the period commencing on the last preceding Valuation Date and ending on the current Valuation Date).

(b) Whenever an account balance is distributable in installments, the undistributed balance of such account shall participate in the valuation as provided in paragraph (a) above.

### **ARTICLE VI DETERMINATION AND DISTRIBUTION OF BENEFITS**

6.1. Determination of Benefits Upon Retirement. Every Participant may terminate his employment with the Employer and retire for the purposes hereof on his Normal or Early Retirement Date. Upon such Normal or Early Retirement Date, all amounts credited to such Participant's account shall become distributable. However, a Participant may postpone the termination of his employment with the Employer to a later date, in which event the participation of such Participant in the Plan shall continue until his Late Retirement Date. Upon a Participant's Retirement Date, or as soon thereafter as is practicable, the Trustee shall distribute all amounts credited to such Participant's Account in accordance with Section 5.4.

#### 6.2. Determination of Benefits upon Death.

(a) Upon the death of a Participant before his Retirement Date or other termination of his employment, all amounts credited to such Participant's Account shall become fully Vested. On or before the Valuation Date coinciding with or next following such death, the

Administrator shall direct the Trustee, in accordance with the provisions of Sections 6.6 and 6.7, to distribute the value of the deceased Participant's Account to the Participant's Beneficiary.

(b) On or before the Valuation Date coinciding with or next following the death of a Former Participant, the Trustee, in accordance with the provisions of Sections 6.6 and 6.7, shall distribute any remaining amounts credited to the account of such deceased Former Participant to such Former Participant's Beneficiary.

(c) The Administrator may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the account of a deceased Participant or Former Participant as the Administrator may deem desirable. The Administrator's determination of death and of the right of any person to receive payment shall be conclusive.

(d) Unless otherwise elected in the manner prescribed in Section 6.6, the Beneficiary of the death benefit shall be the Participant's spouse, who shall receive such benefit in the form of a Pre-Retirement Survivor Annuity pursuant to Section 6.6. Except, however, the Participant may designate a Beneficiary other than his spouse if:

(1) the Participant and his spouse have validly waived the Pre-Retirement Survivor Annuity in the manner prescribed in Section 6.6, and the spouse has waived his or her right to be the Participant's Beneficiary, or

(2) the Participant has no spouse, or

(3) the spouse cannot be located.

In such event, the designation of a Beneficiary shall be made on a form satisfactory to the Administrator. A Participant may at any time revoke his designation of a Beneficiary or change his Beneficiary by filing written notice of such revocation or, change with the Administrator.

However, the Participant's spouse must again consent in writing to any change in Beneficiary unless the original consent acknowledged that the spouse had the right to limit consent only to a specific Beneficiary and that the spouse voluntarily elected to relinquish such right. In the event no valid designation of Beneficiary exists at the time of the Participant's death, the death benefit shall be payable to his estate.

6.3. Determination of Benefits in Event of Disability. In the event of a Participant's Total and Permanent Disability prior to his Retirement Date or other termination of his employment, all amounts credited to such Participant's Account shall become fully Vested on or before the Valuation Date coinciding with or next following the event of Total and Permanent Disability. The Trustee, in accordance with the provisions of Sections 6.5 and 6.7, shall distribute to such Participant all amounts credited to such Participant's Account as though he had retired.

6.4. Determination of Benefits upon Termination.

(a) On or before the Valuation Date coinciding with or subsequent to the termination of a Participant's employment for any reason other than death, Total and Permanent Disability, or retirement, the Administrator may direct the Trustee to segregate the amount of the Vested portion of such Terminated Participant's Account and invest the aggregate amount thereof in a separate, federally insured savings account, certificate of deposit, common or collective trust fund of a bank or deferred annuity. In the event the Vested portion of a Participant's Account is not segregated, the amount shall remain in a separate account for the Terminated Participant and share in allocations until such time as a distribution is made to the Terminated Participant. The amount of the Terminated Participant's Account which is not Vested shall be credited to a forfeiture account (which will always share in gains and losses of the trust) and shall, subsequently, be allocated to the accounts of the remaining Participants in accordance with the terms of the Plan at such time as the amount becomes a Forfeiture.

(b) Distribution of funds due to a Terminated Participant may be made with the consent of the Participant and his spouse, if any, after ninety days after the end of the Plan Year in which the Participant's employment is terminated. The amount distributed to the Participant shall be the value of the segregated account on the date of distribution. If the Participant's vested portion of his account balance is not segregated, the amount distributed shall be the value of the terminated Participant's account balance on the last Valuation Date immediately preceding the distribution.

(c) A Terminated Participant's Vested benefit derived from Employer and Employee contributions may not be paid without his written consent if the value ever exceeded \$1,000. Further, the spouse of the Participant must consent in writing to any such distribution. Written consent of the Participant and his spouse to the distribution must be obtained not more than one hundred eighty (180) days before commencement of the distribution and shall be made in a manner consistent with Section 6.5.

(d) If the value of a Terminated Participant's Vested benefit derived from Employer and Employee contributions is \$1,000 or less and has never exceeded \$1,000 at the time of any prior distribution, the Administrator shall direct the Trustee to cause the entire Vested benefit to be paid to such Participant without regard to the Participant's election, or the consent of said Terminated Participant's spouse. For purposes of this Section, if the value of a Terminated Participant's Vested Benefit is zero, he shall be deemed to have received a distribution of such Vested Benefit.

(e) The Vested Portion of any Participant's Account shall be one hundred percent (100%) at all times.

(f) (1) If any Former Participant shall be reemployed by the Employer before a One Year Break in Service occurs, he shall continue to participate in the Plan in the same manner as if such termination had not occurred.

(2) If any Former Participant shall be reemployed by the Employer before five (5) consecutive One Year Breaks in Service, and such Former Participant had received a distribution of his entire Vested interest prior to his reemployment, his forfeited account (if any) shall be reinstated only if he repays the full amount distributed to him before the

earlier of five (5) years after the first date on which the Participant is subsequently reemployed by the Employer or the close of the first period of five (5) consecutive One Year Breaks in Service commencing after the distribution. In the event the Former Participant does repay the full amount distributed to him, the undistributed portion of the Participant's Account must be restored in full, unadjusted by any gains or losses occurring subsequent to the Anniversary Date or other valuation date preceding his termination.

(3) If any Former Participant is reemployed after a One Year Break in Service has occurred, Years of Service shall include Years of Service prior to his One Year Break in Service subject to the following rules:

i. If a Former Participant has a One Year Break in Service, his pre-break and post-break service shall be used for computing Years of Service for eligibility and for vesting purposes only after he has been employed for one (1) Year of Service following the date of his reemployment with the Employer;

ii. Any Former Participant who under the Plan does not have a nonforfeitable right to any interest in the Plan resulting from Employer contributions shall lose credits otherwise allowable under (i) above if his consecutive One Year Breaks in Service equal or exceed the greater of (A) five (5) or (B) the aggregate number of his pre-break Years of Service;

iii. After five (5) consecutive One Year Breaks in Service, a Former Participant's Vested Account balance attributable to pre-break service shall not be increased as a result of post-break service;

iv. If a Former Participant who has not had his Years of Service before a One Year Break in Service disregarded pursuant to (ii) above completes one (1) Year of Service for eligibility purposes following his reemployment with the Employer, he shall participate in the Plan retroactively from his date of reemployment;

v. If a Former Participant who has not had his Years of Service before a One Year Break in Service disregarded pursuant to (ii) above completes a Year of Service (a One Year Break in Service previously occurred, but employment had not terminated), he shall participate in the Plan retroactively from the first day of the Plan Year during which he completes one (1) Year of Service.

6.5. Distribution of Benefits. (a) (1) Unless otherwise elected as provided below, a Participant who is married on the “annuity starting date” and who does not die before the “annuity starting date” shall receive the value of his benefits in the form of a joint and survivor annuity. The joint and survivor annuity shall be equal in value to a single life annuity. Such joint and survivor benefits following the Participant’s death shall continue to the spouse during the spouse’s lifetime at a rate equal to fifty percent (50%) of the rate at which such benefits were payable to the Participant. The Participant may elect to receive a smaller annuity benefit with continuation of payments to the spouse at a rate of seventy-five percent (75%) or one hundred percent (100%) of the rate payable to a Participant during his lifetime. An unmarried Participant shall receive the value of his benefit in the form of a life annuity. Such unmarried Participant, however, may elect in writing to waive the life annuity. The election must comply with the provisions of this Section as if it were an election to waive the joint and survivor annuity by a married Participant, but without the spousal consent requirement.

(2) Any election to waive the joint and survivor annuity must be made by the Participant in writing during the election period and be consented to by the Participant’s spouse. Such election shall designate a Beneficiary (or a form of benefits) that may not be changed without spousal consent (unless the consent of the spouse expressly permits designations by the Participant without the requirement of farther consent by the spouse). Such spouse’s consent shall be irrevocable and must acknowledge the effect of such election and be witnessed by a Plan representative or a notary public. Such consent shall not be required if it is established to the satisfaction of the Administrator that the required consent cannot be obtained because there is no spouse, the spouse cannot be located, or other circumstances that may be prescribed by Regulations. The election made by the Participant and consented to by his spouse may be revoked by the Participant in writing without the consent of the spouse at any time during the election period. The number of revocations shall not be limited. Any new election must comply with the requirements of this paragraph. A former spouse’s waiver shall not be binding on a new spouse.

(3) The election period to waive the joint and survivor annuity shall be the one hundred eighty (180) day period ending on the annuity starting date.

(4) For purposes of this Section, the “annuity starting date” means the first day of the first period for which an amount is payable as an annuity, or, in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitles the Participant to such benefit.

(5) With regard to the election, the Administrator shall provide the Participant within a reasonable period of time before the annuity starting date (and consistent with Regulations), a written explanation of:

- i. the terms and conditions of the joint and survivor annuity, and
- ii. the Participant’s right to make an election to waive the joint and survivor annuity, and

iii. the right of the Participant's spouse to consent to any election to waive the joint and survivor annuity, and

iv. the right of the Participant to revoke such election, and the effect of such revocation.

(6) The distribution of a benefit in the form of a joint and survivor annuity shall require the Participant's consent if such distribution commences prior to the later of his Normal Retirement Age or age sixty-two (62).

The Participant shall have thirty (30) days from the date of the notice to review the notice and to decide whether to waive the joint and survivor annuity and/or to elect a direct rollover of all or any portion of his vested balance. If the Participant completes the election prior to the expiration of the (30) day period, the Participant will have waived the balance of the thirty (30) day period during which he may consider the direct rollover option. The Participant may revoke his waiver of the annuity form of benefit and his direct rollover election prior to the date on which distribution of benefits commences under the form of benefit elected by the Participant.

(b) In the event a married Participant duly elects pursuant to paragraph (a)(2) above not to receive the retirement benefit in the form of a joint and survivor annuity, or if such Participant is not married, in the form of a life annuity, the Administrator shall direct the Trustee to distribute to a Participant or his Beneficiary any amount to which he is entitled under the Plan in one or more of the following methods as elected by the Participant:

(1) One lump-sum payment in cash or in property;

(2) Payments over a period certain in monthly, quarterly, semiannual, or annual cash installments after first having (A) segregated the aggregate amount thereof in a separate, federally insured savings account, certificate of deposit in a bank or savings and loan association, money market certificate or other liquid short-term security or (B) purchased a nontransferable annuity contract providing for such payment. The period over which such payment is to be made shall not extend beyond the Participant's life expectancy (or the life expectancy of the Participant and his designated Beneficiary);

(3) Purchase of or providing an annuity. However, such annuity may not be in any form that will provide for payments over a period extending beyond either the life of the Participant (or the lives of the Participant and his designated Beneficiary) or the life expectancy of the Participant (or the life expectancy of the Participant and his designated Beneficiary).

(c) The present value of a Retired Participant's joint and survivor annuity derived from Employer and Employee contributions may not be paid without his written consent if the value ever exceeded \$1,000. Further, the spouse of a Retired Participant must consent in writing to any immediate distribution. If the value of the Retired Participant's benefit derived from Employer and Employee contributions does not exceed \$1,000 and has never exceeded \$1,000 at the time of any prior distribution, the Administrator may immediately distribute such benefit without the Retired Participant's consent. No distribution may be made

under the preceding sentence after the annuity starting date unless the Participant and his spouse consent in writing to such distribution. Any written consent required under this paragraph must be obtained not more than one hundred eighty (180) days before commencement of the distribution and shall be made in a manner consistent with Section 6.5.

(d) Required Minimum Distributions. The Required Minimum Distribution provisions of Section 401(a)(9) of the Code and Treasury Regulations Sections 1.401(a)(9)-1 through 1.401(a)(9)-9 applicable to governmental plans as defined in Section 414(d) of the Code are hereby incorporated by reference. All distributions from the Plan shall be made in accordance with Treasury Regulations Section 1.401(a)(9)-1 through 1.401(a)(9)-9 and the provisions of Section 401(a)(9) override any distribution options in the Plan that are inconsistent with Section 401(a)(9).

#### 6.6. Distribution of Benefits Upon Death.

(a) Unless otherwise elected as provided below, a Vested Participant who dies before the annuity starting date and who has a surviving spouse shall have his death benefit paid to his surviving spouse (i) in the form of a Pre-Retirement Survivor Annuity. The Participant's spouse may direct that payment of the Pre-Retirement Survivor Annuity commence within a reasonable period after the Participant's death. If the spouse does not so direct, payment of such benefit will commence at the time the Participant would have attained the later of his Normal Retirement Age or age sixty-two (62). However, the spouse may elect a later commencement date. Any distribution to the Participant's spouse shall be subject to the rules specified in Section 6.6(h).

(b) Any election to waive the Pre-Retirement Survivor Annuity before the Participant's death must be made by the Participant in writing during the election period and shall require the spouse's irrevocable consent in the same manner provided for in Section 6.5(a). Further, the spouse's consent must acknowledge the specific non-spouse Beneficiary or the alternative form of death benefit to be paid in lieu of the Pre-Retirement Survivor Annuity. Notwithstanding the foregoing, the non-spouse Beneficiary or the alternative form of death benefit need not be acknowledged, provided the consent of the spouse acknowledges that the spouse has the right to limit consent only to a specific Beneficiary or a specific form of benefit and that the spouse voluntarily elects to relinquish one or both of such rights.

(c) The election period to waive the Pre-Retirement Survivor Annuity shall begin on the first day of the Plan Year in which the Participant attains age thirty-five (35) and end on the date of the Participant's death. In the event a Vested Participant separates from service prior to the beginning of the election period, the election period shall begin on the date of such separation from service.

(d) With regard to the election, the Administrator shall provide each Participant within the applicable period, with respect to such Participant (and consistent with Regulations), a written explanation of the Pre-Retirement Survivor Annuity containing comparable information to that required pursuant to Section 6.5(a)(5). For the purposes of this paragraph, the term "applicable period" means, with respect to a Participant, whichever of the following periods ends last:

(1) The period beginning with the first day of the Plan Year in which the Participant attains age thirty-two (32) and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains thirty-five (35);

(2) A reasonable period after the individual becomes a Participant. For this purpose, in the case of an individual who becomes a Participant after age thirty-two (32), the explanation must be provided by the end of the three (3) year period beginning with the first day of the first Plan Year for which the individual is a Participant;

(3) A reasonable period ending after the Plan no longer fully subsidizes the cost of the Pre-Retirement Survivor Annuity with respect to the Participant;

(4) A reasonable period ending after Code Section 401(a)(11) applies to the Participant;

(5) A reasonable period after separation from service in the case of a Participant who separates before attaining age thirty-five (35). For this purpose, the Administrator must provide the explanation at the time of separation or within one year after separation.

(e) If the value of the Pre-Retirement Survivor Annuity derived from Employer and Employee contributions does not and has never exceeded \$1,000 at the time of any prior distribution, the Administrator shall direct the immediate distribution of such amount to the Participant's spouse. No distribution may be made under the preceding sentence after the annuity starting date unless the spouse consents in writing. If the value exceeds or has ever exceeded \$1,000, an immediate distribution of the entire amount may be made to the surviving spouse, provided such surviving spouse consents in writing to such distribution. Any written consent required under this paragraph must be obtained not more than one hundred eighty (180) days before commencement of the distribution and shall be made in a manner consistent with Section 6.5(a)(2).

(f) (1) In the event the death benefit is not paid in the form of a Pre-Retirement Survivor Annuity, it shall be paid to the Participant's Beneficiary by either of the following methods as elected by the Participant (or if no election has been made prior to the Participant's death, by his Beneficiary, subject to the rules specified in Section 6.6(g):

i. One lump-sum payment in cash or in property;

ii. Payment in monthly, quarterly, semi-annual, or annual cash installments over a period to be determined by the Participant or his Beneficiary. After periodic installments commence, the Beneficiary shall have the right to direct the Trustee to reduce the period over which such periodic installments shall be made, and the Trustee shall adjust the cash amount of such periodic installments accordingly.

(2) In the event the death benefit payable pursuant to Section 6.2 is payable in installments, then, upon the death of the Participant, the Administrator shall direct the Trustee to segregate into a separate Trust Fund(s) the death benefit, and the Trustee shall invest such segregated Trust Funds separately, and the funds accumulated in such Trust Fund(s) shall be used for the payment of the installments hereinabove provided.

(g) (1) If the Participant dies after distribution has commenced pursuant to Section 6.5(a) but before his entire interest in the Plan has been distributed to him, then the remaining portion of that interest will be distributed at least as rapidly as under the method of distribution being used under Section 6.5 at the date of his death.

(2) If the Participant dies before distribution has commenced pursuant to Section 6.5, then, except as provided in subsections (3) and (4) below, his entire interest in the Plan will be distributed within five (5) years after his death.

(3) Notwithstanding the provisions of subsection (g)(2), if the Participant dies before distribution has commenced pursuant to Section 6.5 and if any portion of his interest in the Plan is payable (i) to or for the benefit of a Beneficiary, (ii) in accordance with regulations prescribed by the Secretary of the Treasury over a period not extending beyond the life expectancy of the Beneficiary, and (iii) beginning not later than one year after the date of the Participant's death or such later date as the Secretary of the Treasury may prescribe by regulations, then the portion referred to in this subsection shall be treated as distributed on the date on which such distribution begins.

(4) Notwithstanding the provisions of Section 6.5 and Section 6.6(g)(3), if the Beneficiary referred to in subsection (g)(3) is the surviving spouse of the Participant, then (A) the date on which the distributions are required to begin shall not be earlier than the date on which the Participant would have attained the age 70½, and (B) if the surviving spouse dies before the distributions to that spouse begin, then this subsection shall be applied as if the surviving spouse were the Participant.

(h) For purposes of this Section, the life expectancy of a Participant and a Participant's spouse (other than in the case of a life annuity) shall be redetermined annually in accordance with the Regulations. Additionally, life expectancy and joint and last survivor expectancy shall be computed using the return multiples in Tables V and VI of Regulation Section 1.72-9.

6.7. Time of Segregation or Distribution. Except as limited by Sections 6.5 and 6.6, whenever the Trustee is to make a distribution or to commence a series of payments on or as of the Valuation Date, the distribution or series of payments may be made or begun on such date or as soon thereafter as is practicable, but in no event later than one hundred eighty (180) days after the Valuation Date. Except, however, unless a Former Participant elects in writing to defer the receipt of benefits (such election may not result in a death benefit that is more than incidental), the payment of benefits shall begin not later than the sixtieth (60<sup>th</sup>) day after the close of the Plan Year in which the latest of the following events occurs: (a) the date on which the Participant attains the earlier of age sixty-five (65) or the Normal Retirement Age specified

herein; (b) the tenth (10<sup>th</sup>) anniversary of the year in which the Participant commenced participation in the Plan; or (c) the date the Participant terminates his service with the Employer.

6.8. Distribution for Minor Beneficiary. In the event a distribution is made to a minor, the Administrator may direct that such distribution be paid to the legal guardian, or if none, to a parent of such Beneficiary or a responsible adult with whom the Beneficiary maintains his residence, or to the custodian for such Beneficiary under the Uniform Gift to Minors Act or Gift to Minors Act, if such is permitted by the laws of the state in which said Beneficiary resides. Such a payment to the legal guardian, custodian or parent of a minor Beneficiary shall fully discharge the Trustee, Employer, and the Plan from further liability.

6.9. Location of Participant or Beneficiary Unknown. In the event that all, or any portion, of the distribution payable to a Participant or his Beneficiary hereunder shall, at the expiration of five (5) years after it shall become payable, remain unpaid solely by reason of the inability of the Administrator, after sending a registered letter, return receipt requested, to the last known address, and after further diligent effort, to ascertain the whereabouts of such Participant or his Beneficiary, the amount so distributable shall be treated as a Forfeiture pursuant to the Plan. In the event a Participant or Beneficiary is located subsequent to his benefit being reallocated, such benefit shall be restored.

6.10. Pre-Retirement Distribution. At such time as a Participant shall have attained Normal Retirement Age, the Administrator, at the election of the Participant, shall direct the Trustee to distribute the entire amount then credited to the accounts maintained on behalf of the Participant. However, no distribution from the Participant's Account shall occur prior to one hundred percent (100%) vesting. In the event that the Administrator makes such a distribution, the Participant shall continue to be eligible to participate in the Plan on the same basis as any other Employee. Any distribution made pursuant to this Section shall be subject to the rights of consent afforded to the Participant's spouse pursuant to Section 6.5.

6.11. Limitations on Benefits and Distributions. All rights and benefits, including elections, provided to a Participant in this Plan shall be subject to the rights afforded to any "alternate payee" under a "qualified domestic relations order" as those terms are defined in Code Section 414(p).

6.12. Direct Rollovers. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Article, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a direct rollover.

(a) Definitions.

(1) Eligible Rollover Distribution: An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the

Distributee and the Distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities). For distributions made after December 31, 2001, a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, such portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Sections 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable.

(2) Eligible Retirement Plan: An Eligible Retirement Plan is an Individual Retirement Account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified trust described in Section 401(a) of the Code, that accepts the Distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the surviving spouse, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity. For distributions made after December 31, 2001, an Eligible Retirement Plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan. Effective for distributions on and after January 1, 2008, Eligible Retirement Plan shall also mean a Roth Individual Retirement Account described in Section 408A of the Code. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Section 414(p) of the Code.

(3) Distributee: A Distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are Distributees with regard to the interest of the spouse or former spouse. Distributee shall include the designated beneficiary of a participant who is not the surviving spouse of a participant but only with respect to Eligible Rollover Distributions to an Individual Retirement Account described in Section 408(a) of the Code or an individual retirement annuity described in Section 408(b) of the Code. If the participant dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treas. Reg. Section 1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary's distribution.

(4) Direct Rollover: A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee."

## **ARTICLE VII HEART ACT PROVISIONS**

7.1. Death benefits. In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code §414(u)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed and then terminated employment on account of death.

7.2. Differential wage payments. For years beginning after December 31, 2008, (i) an individual receiving a differential wage payment, as defined by Code §3401(h)(2), is treated as an employee of the employer making the payment, (ii) the differential wage payment is treated as compensation, and (iii) the Plan is not treated as failing to meet the requirements of any provision described in Code §414(u)(1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

7.3. Severance from employment. Notwithstanding Section 7.2(i), for purposes of Code Section 401(k)(2)(B)(i)(I), an individual is treated as having been severed from employment during any period the individual is performing service in the uniformed services described in Code Section 3401(h)(2)(A).

(a) Suspension of deferrals. If an individual elects to receive a distribution by reason of severance from employment, death or disability, the individual may not make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution.

(b) Nondiscrimination requirement. Section 7.2(iii) applies only if all Employees of the Employer performing service in the uniformed services described in Code Section 3401(h)(2)(A) are entitled to receive differential wage payments (as defined in Code Section 3401(h)(2)) on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the Employer, to make contributions based on the payments on reasonably equivalent terms (taking into account Code Sections 410(b)(3), (4), and (5)).

## **ARTICLE VIII LIFE INSURANCE AND ANNUITY POLICIES**

8.1. Purchase of Contracts. The Trustee, when so directed by the Employer, shall with reasonable diligence apply to the Insurer for, and purchase on the life of each Participant:

(a) If insurable at standard or substandard rates, a level annual premium ordinary life type of insurance contract in an amount that can be purchased by up to forty-nine percent (49%) of the annual contribution for each Participant, as selected by the Participant. The aggregate premiums paid on ordinary life insurance contracts on the life of such Participant shall at all times be less than fifty percent (50%) of the aggregate Employer Contributions allocated to the Participant's account at any time.

(b) If uninsurable, an annual premium deferred annuity contract in the amount that can be purchased by up to forty-nine percent (49%) of the annual contribution for each Participant, as selected by the Participant.

(c) If at the inception or any time a Participant is entitled to increase in benefits should the amount allocated for the purchase of life insurance be insufficient to purchase \$1,000 of life insurance, the total allocation shall be applied to the investment account of the Participant.

(d) The value of a Participant's account when added to the cash value of contracts referred to in (a) and (b) above, whichever is applicable at Normal Retirement Date, will provide the Participant's retirement benefit.

8.2. Adjustment of Amount of Insurance Contracts. On each Plan anniversary date the Employer shall determine whether the contract on the life of each Participant provides the amount of insurance or annuity indicated in Section 8.1(a), (b) or (c). If not, the Trustee when so directed by the Employer shall take such action as set forth below:

(a) If the annual compensation of a Participant as defined in Section 1.6 is more than that on the last anniversary and the annual contribution for the Participant has therefore been increased, the Trustee when so directed by the Employer shall apply for an additional policy on the life of such Participant in an amount indicated in 8.1(a), (b) or (c) in accordance with his current base annual compensation and shall allocate the balance to the Participant's investment fund account.

(b) If the annual base compensation is less than that of the preceding anniversary, the Trustee shall not reduce the then existing contracts until the annual cost of the life insurance or annuity exceeds forty-nine percent (49%) of the Participant's annual allocation.

(c) If it becomes necessary to reduce or surrender an existing contract, the Trustee shall request the Insurer to provide a paid-up Annuity contract of such amount as would be obtained by the value of the contract or portion thereof which is being discontinued. If such a paid-up contract is not obtainable under the rules of the issuing Insurer, the Trustee shall be entitled to the resulting cash credit which will be invested in the same manner and subject to the same provisions as the investment fund. The Trustee shall hold such a paid-up Annuity contract under this Agreement for the benefit of the Participant, and it shall be paid as provided for such contingencies in this Agreement, provided, however, that the Participant may arrange with the Employer in writing and by salary deduction for the Participant to contribute the entire premium costs of continuing the amount of the contract to be reduced or surrendered, in which case the contract or contracts will not be reduced.

8.3. Rules Regarding Insurance. The following rules shall be applicable to the acquisition, handling and disposition of all policies:

(a) The basic options, cash surrender values and other material features of all policies shall be as nearly uniform as possible and no option shall be used that will in any way be in violation of Article VI.

(b) Trustee shall be designated the sole owner of all policies purchased hereunder, but all benefits, rights, privileges and options under such policies and all dividends payable or refunds made by the insurance company on such policies shall be exercised and dealt with for the sole benefit of such Participants (or their Beneficiaries) on whose behalf the policies were purchased.

(c) Payments made to any insurance company with respect to any policy purchased on behalf of a Participant shall constitute an investment of the funds credited to such Participant's Employer Contribution Account and the Employer Contribution Account shall accordingly be reduced by any such payments.

(d) If the policy purchased on behalf of a Participant is ordinary whole life insurance, the aggregate premiums paid for such policy shall at all times be less than one half of the aggregate Employer contributions and forfeitures allocated to the Participant's Employer Contribution Account.

8.4. Payment of Death Benefits. All death benefits payable under any policy held on behalf of a Participant shall be paid to the Beneficiary designated by such Participant pursuant to the Plan. In the event that a Beneficiary has not been designated, or the designated Beneficiary does not survive the Participant, such benefits shall be paid in accordance with Section 6.5. Such benefits may, as the Trustee shall determine, be paid directly by the insurance company to the designated Beneficiary or to the Trust Fund, in which case the cash proceeds thereof shall be included as part of the Employer Contribution Account of such Participant and distributed in accordance with the terms of the Plan.

8.5. Disposition of Policy Upon Retirement. Upon the Retirement of a Participant, Trustee shall transfer and deliver any policy held on behalf of such Participant to the Participant, convert such policy to an annuity, or surrender such policy, in which case the cash proceeds thereof shall be included as part of the Employer Contribution Account of such Participant and is distributed in accordance with the terms of the Plan. No portion of such value shall be used to continue life insurance coverage payable to the Trust on the life of such Participant for the period after the retirement of the Participant.

8.6. Disposition of Policy Upon Termination. Upon the termination of employment of a Participant for reasons other than retirement or death, the Trustee shall be designated as Beneficiary under any policy held on behalf of such Participant. All such policies shall then be offered to the Participant at a price equal to their total cash surrender value.

If the Participant purchases such policies, the Trustee shall transfer ownership of the policies to such Participant, endorsed so as to vest in the transferee all right, title and interest thereto, free and clear of the Trust.

If such Participant declines to purchase such policies, Trustee shall liquidate the policies for their cash surrender values or transfer the policies to the Participant as a distribution of benefits, provided the Trust Fund is reimbursed by the Participant for that portion of the cash surrender value to which the Participant did not have a vested interest as determined in accordance with the provisions of the Plan.

8.7. Disposition of Dividends. Any dividends received on any policy purchased shall be credited to the Employer Contribution of the Participant covered by such policy.

## **ARTICLE IX LOANS TO PARTICIPANTS**

9.1. Authorization. The Trustee is hereby authorized in its sole discretion to enact a Participant Loan Program under the Plan. Upon such decision to enact a Participant Loan Program, the Administrator shall promptly notify all Participants of the availability of such loans and their terms and conditions. The Participant Loan Program shall be subject to the limitations and conditions set forth in this Article.

9.2. Maximum Limits. Loans will be limited to the lesser of:

(a) \$50,000 reduced by the excess (if any), of the highest outstanding balance of loans from the Plan to the Participant during the one-year period ending on the day before the date on which such loan is made, over the outstanding balance of loans from the Plan to the Participant on the date on which such loan was made; or

(b) One-half ( $\frac{1}{2}$ ) of the present value of the non-forfeitable account balance of the Participant under the Plan. However, such loan shall never exceed one hundred percent (100%) of the Participant's vested portion in such Participant's Employer Contribution Account.

Notwithstanding the limits in (a) or (b) above, no loan shall be made for less than \$1,000.00.

9.3. Availability. The Trustee is authorized, in its sole discretion, to make such loan to such Participant upon written application of a Participant submitted no later than January 1<sup>st</sup> or July 1<sup>st</sup> of the Plan Year. Only one application for a loan shall be available to each Participant per Plan Year.

9.4. Interest Rate. Interest shall be charged on each loan equal to the prime rate, available on the day the Participant's loan application is approved, plus one percent (1%).

9.5. Duration. All loan agreements shall provide for repayment within five (5) years from the date of the loan.

9.6. Other Rules.

(a) All Plans of all related businesses are to be combined for purposes of maximum limits on loans.

(b) All loans must be evidenced by a written loan agreement signed by all relevant parties to the loan and evidenced by a promissory note of the borrower wherein such borrower personally guarantees the repayment of the loan.

(c) The vested portion of the Participant's Employer Contribution Account shall secure any unrepaid portion of such Participant loan. However, the Trustee shall not foreclose on any Participant's accrued benefit until a distributable event occurs. The Trustee may also require any additional security as he shall determine is necessary to adequately secure the loan as required by Department of Labor regulations.

(d) Any loan made pursuant to this Article where the Vested Account of the Participant is used to secure such loan shall require the written consent of the Participant's spouse. Such written consent must be obtained within the one hundred eighty (180) day period prior to the date the loan is made.

(e) Repayment of the loan shall be made in installments of principal and interest, by automatic withholding from the Participant's paycheck. Upon termination of a Participant's employment with the Employer the then outstanding balance of the loan (principal and accrued interest) shall become immediately due and payable.

## **ARTICLE X AMENDMENT AND TERMINATION**

10.1. Amendment. The Employer reserves the right to amend the Plan at any time and from time to time by resolution of the Board. All Participants, Employees and other persons claiming any interest under the Plan shall be bound by any amendment. However, the Employer shall make no amendment that will (i) directly or indirectly divest the interest of any Participant in any amount that such Employee would have been entitled to receive had he terminated employment with the Employer immediately prior to the effective date of such amendment or the interest of any Beneficiary as such interest existed immediately prior to the effective date of such amendment; (ii) directly or indirectly affect the schedule by which benefits vest when the Plan is not Top-Heavy unless such amendment is made pursuant to Section 6.4(f); (iii) directly or indirectly affect the minimum benefit and vesting provisions while the Plan is Top-Heavy; (iv) vest in the Employer any right, title, or interest in or to any of the Plan assets; (v) cause any part of the assets of the Trust Fund to be used for any purpose other than for the exclusive benefit of the Participants and their Beneficiaries; and (vi) cause or effect discrimination in favor of officers, shareholders, supervisors or highly compensated Employees.

10.2. Voluntary Termination of or Permanent Discontinuance of Contributions to the Plan. The Employer expects the Plan to be permanent, but since future conditions affecting the Employer cannot be anticipated, the Employer shall have the right to terminate the Plan in whole or in part, or to permanently discontinue contributions to the Plan, at any time by resolution of its Board and by giving written notice of such termination or permanent discontinuance to the Trustee. Such resolution shall specify the effective date of termination or permanent discontinuance, which shall not be earlier than the first day of the Plan Year which includes the date of the resolution.

10.3. Involuntary Termination of Plan. The Plan shall automatically terminate if the Employer is legally adjudicated as bankrupt, makes a general assignment for the benefit of creditors, or is dissolved. In the event of the merger or consolidation of the Employer with or into any other corporation, or in the event substantially all of the assets of the Employer shall be

transferred to another corporation, the successor corporation resulting from the consolidation or merger, or transfer of such assets, as the case may be, shall have the right to adopt and continue the Plan and succeed to the position of the Employer hereunder. If, however, the Plan is not so adopted within ninety (90) days after the effective date of such consolidation, merger or sale, the Plan shall automatically be deemed terminated as of the effective date of such transaction. Nothing in this Plan shall prevent the dissolution, liquidation, consolidation or merger of the Employer, or the sale or transfer of all or substantially all of its assets.

10.4. Payments on Termination of, or Permanent Discontinuance of Contributions to the Plan. If the Plan is terminated as herein provided, or if it should be partially terminated, or upon the complete discontinuance of Employer contributions to the Plan, the following procedure shall be followed, except that in the event of a partial termination it shall be followed only in cases of those Participants and Beneficiaries directly affected:

(a) The records, books of account and other necessary data of the Administrator shall be turned over to the Trustee and the Trustee shall act on its own motion as hereinafter provided.

(b) Notwithstanding any other provisions of the Plan all interest of Participants shall become fully vested and non-forfeitable.

(c) The value of the Trust and the shares of all Participants and Beneficiaries shall be determined as of the date of termination or discontinuance.

(d) Distribution to Participants and Beneficiaries shall be made at such time after termination of or discontinuance of contributions to the Plan and by such of the methods provided in Section 6.5 as the Trustee in its discretion shall determine, except that distribution shall be made not later than the time specified in Section 6.5.

(e) By written notice to the Trustee and Administrator, the Employer may direct either:

(1) complete distribution of the assets in the Trust Fund to the Participants, in cash or in kind, in one "qualified total distribution" (as such term is defined in the Code) as soon as the Trustee deems it to be in the best interests of the Participants, but in no event later than two years after such termination; or,

(2) continuation of the Trust created by this agreement and the distribution of benefits at such time and in such manner as though the Plan had not been terminated.

## **ARTICLE XI MISCELLANEOUS**

11.1. Duty to Furnish Information and Documents. Participants, surviving Spouses and Beneficiaries must furnish to the Trustee such evidence, data or information as the Administrator considers necessary or desirable for the purpose of administering the Plan, and the provisions of the Plan for each person are upon the condition that full, true, and complete

evidence, data and information requested by the Administrator will be promptly furnished. All parties to, or claiming any interest under, the Plan hereby agree to perform any and all acts, and to execute any and all documents and papers, necessary or desirable for carrying out the Plan and the Trust.

11.2. Annual Statements and Available Information. The Employer shall advise Employees of the eligibility requirements and benefits under the Plan. As soon as practicable after making the annual valuations and allocations provided for in the Plan, and at such other times as the Employer may determine, the Employer shall provide each Participant, and each former Participant, Spouse and Beneficiary entitled to a benefit under the Plan, with a statement reflecting the current status of his accrued benefits. No Participant shall have the right to inspect the records relating to any other Participant. The Employer shall make available for inspection at reasonable times by Participants, Spouses and Beneficiaries copies of the Plan, any amendments thereto, Plan summary, and all reports of Plan and Trust operations required by law.

11.3. No Enlargement of Employment Rights. Nothing contained in the Plan shall be construed as a contract of employment between the Employer and any person, nor shall the Plan be deemed to give any person the right to be retained in the employ of the Employer or limit the right of the Employer to employ or discharge any persons with or without cause, or to discipline any Employee.

11.4. Applicable Law. All questions pertaining to the validity, construction and administration of the Plan shall be determined in conformity with the laws of the State of Delaware.

11.5. Unclaimed Funds. The Employer shall be kept informed of the current address of each Participant and the current address of the Spouse, or Beneficiaries of each Participant. Neither the Employer nor the Trustee shall be obligated to search for the whereabouts of any person. If the location of a Participant is not made known to the Employer within three (3) years after the date on which distribution of the Participant's benefits may first be made, distribution may be made as though the Participant had died at the end of the three (3) year period. If, within one additional year after such three (3) year period has elapsed, or, within three (3) years after the actual death of a Participant, the Employer is unable to locate any individual who would receive a distribution under the Plan upon the death of the Participant pursuant to the provisions of the Plan, any benefit payable under the Plan to such individual shall be deemed a forfeiture and shall be used to reduce Employer contributions to the Plan for the Plan Year next following the year in which the forfeiture occurs; provided, however, that in the event that the Participant, Spouse or Beneficiary makes a claim for any amount which has been so forfeited, the benefits which have been forfeited shall be reinstated.

11.6. Merger or Consolidation of Plan. Any merger or consolidation of the Plan with another plan, or transfer of Plan assets or liabilities to any other plan, shall be effected in such a manner that each Participant in the Plan would receive, if the merged, consolidated or transferee plan were terminated immediately following such event, a benefit which is equal to or greater than the benefit the Participant would have been entitled to receive if the Plan had terminated immediately before such event.

#### 11.7. Non-Alienation of Benefits.

(a) Except to the extent provided below, the benefits for which this Plan provides may not be voluntarily or involuntarily, assigned or alienated in any manner. This includes, but is not limited to, the prohibition against any sale, pledge, lien, garnishment, levy, or other encumbrance of any kind, and claims in bankruptcy proceedings.

(b) The prohibition against assignment or alienation set forth in (a) above shall apply to the creation, assignment or recognition of a right to any benefit payable with respect to a Participant pursuant to a domestic relations order, unless such order is a "Qualified Domestic Relations Order" as defined in Section 414(p)(1)(A) of the Code.

(c) When any domestic relations order is received by the Plan the Plan Administrator will promptly (or within the date to be determined in Regulations) notify the Participant and any other Alternate Payee of the receipt of such order and of the Plan's procedures for determining the qualified status of domestic relations orders and, as soon as practicable, determine whether such order is a Qualified Domestic Relations Order and notify the Participant and each Alternate Payee of such determination. Such notices are to be sent to the addresses specified in the order or, if the order fails to specify an address, to the last address of the Participant or Alternate Payee known to the Plan Administrator.

(d) The Plan Administrator shall establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders.

11.8. Prudent Man Rule. Notwithstanding any other provision of the Plan and Trust, the Trustee, and the Employer shall exercise their powers and discharge their duties under the Plan and Trust for the exclusive purpose of providing benefits to Employees and their Spouses and Beneficiaries, and shall act with the care, skill, prudence and diligence under the circumstances that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. Subject to the terms of the preceding sentence, the Trustee shall diversify investments of the Trust Fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

11.9. Limitations on Liability. Notwithstanding any of the preceding provisions of the Plan, none of the Trustees, the Employer and each individual acting as an employee or agent of any of them shall be liable to any Participant, former Participant, Spouse or Beneficiary for any claim, loss, liability or expense incurred in connection with the Plan, except when the same shall have been judicially determined to be due to the gross negligence or willful misconduct of such person.

11.10. Headings. The headings in this Plan are inserted for convenience of reference only and are not to be considered in construction of the provisions hereof.

11.11. Gender and Number. Except when otherwise required by the context, any masculine terminology in this document shall include the feminine, and any singular terminology shall include the plural.

11.12. Approval Under Internal Revenue Code. This Plan is intended to qualify as a Plan and Trust meeting the requirements of Sections 401(a) and 501(a) of the Code, as now in effect or hereafter amended, so that the income of the Trust Fund may be exempt from taxation under Section 501(a) of the Code and contributions of the Employer under the Plan may be deductible for Federal Income Tax purposes under Section 404 of the Code, as now in effect or hereafter amended. Any modification or amendment of the Plan and/or Trust may be made retroactively, as necessary or appropriate, to establish and maintain such qualification and to meet any requirement of the Code.

11.13. Payment of Expenses. All expenses of administration may be paid out of the Trust Fund unless paid by the Employer. Such expenses shall include any expenses incident to the functioning of the Administrator, including, but not limited to, fees of accountants, counsel, and other specialists and their agents, and other costs of administering the Plan. Until paid, the expenses shall constitute a liability of the Trust Fund. However, the Employer may reimburse the Trust Fund for any administration expense incurred. Any administration expense paid to the Trust Fund as a reimbursement shall be considered an Employer contribution.

11.14. Special Rules Relating to Veterans Reemployment Rights Under USERRA. Effective on and after December 12, 1994, the following special provisions of this Section shall apply to an Employee or Participant who is reemployed in accordance with the reemployment provisions of USERRA following a period of qualifying military service (as determined under USERRA):

(a) Each period of qualifying military service served by an Employee or Participant shall, upon such reemployment, be deemed to constitute Service with the Employer for all purposes of the Plan, including determining the Participant's vested percentage in his Employer Contribution Account.

(b) The Participant shall be permitted to make up Voluntary Contributions missed during the period of qualifying military service. The Participant shall have a period of time beginning on the date of the Participant's reemployment with the Employer following his period of qualifying military service and extending over the lesser of (i) the product of three (3) and the Participant's period of qualifying military service, and (ii) five (5) years, to make up such missed Voluntary Contributions.

(c) If the Employer made any Employer Contributions to the Plan during the period of qualifying military service, it shall make an Employer Contribution on behalf of the Participant upon the Participant's reemployment following his period of qualifying military service, in the amount that would have been made on behalf of such Participant had the Participant been employed during the period of qualifying military service.

(d) The Employer shall not (i) credit earnings to a Participant's Accounts with respect to any Voluntary Contribution or Employer Contribution before such Contribution is actually made, or (ii) make up any allocation of forfeitures, with respect to the period of qualifying military service.

(e) For all purposes under the Plan, including the Employer's liability for making contributions on behalf of a reemployed Participant as described above, the Participant shall be treated as having received Compensation from the Employer based on the rate of Compensation the Participant would have received during the period of qualifying military service, or if that rate is not reasonably certain, on the basis of the Participant's average rate of Compensation during the 12-month period immediately preceding such period.

(f) If a Participant makes a Voluntary Contribution or the Employer makes an Employer Contribution in accordance with the foregoing provisions of this Section 11.14:

(i) such Contributions shall not be subject to any otherwise applicable limitation under Code Sections 402(g), 404(a) or 415, and shall not be taken into account in applying such limitations to other Participant or Employer Contributions under the Plan or any other plan, with respect to the year in which such Contributions are made, and such Contributions shall be subject to these limitations only with respect to the year to which such Contributions relate and only in accordance with Regulations prescribed by the Internal Revenue Service; and

(ii) the Plan shall not be treated as failing to meet the requirements of Code Sections 401(a)(4), 401(m), or 416 by reason of such Contributions.

(g) Loan repayments pursuant to Article XII shall be suspended under the Plan during each period of qualified military service as permitted by Code Section 414(u)(4).

## **ARTICLE XII PLAN ADMINISTRATION AND CLAIMS PROCEDURES**

12.1. Employer as Fiduciary. The Employer shall be responsible for and shall control and manage the operation and administration of the Plan. The "Plan Administrator" shall be subject to service of process on behalf of the Plan. The Board of the Employer shall appoint, from time to time, a committee consisting of up to nine (9) persons, whether or not Employees or Participants, to serve as the Plan Administrator. The Board may require that each person appointed as a Plan Administrator shall signify his acceptance by filing an acceptance with the Board. The term Plan Administrator, as used in the Plan, shall refer to the members of the committee, either individually or collectively, as appropriate.

12.2. Powers and Duties of the Plan Administrator. The Employer or its duly authorized agent (Administrator) shall administer the Plan in accordance with its terms and shall have all powers necessary to carry out the provisions of the Plan. The Administrator shall direct the Trustee concerning all payments which shall be made out of the Trust pursuant to the Plan. The Administrator shall interpret the Plan and shall determine all questions arising in the administration, interpretation, and application of the Plan, including but not limited to questions of eligibility and the status and rights of Participants, Beneficiaries and other persons. Any such determination by the Administrator shall presumptively be conclusive and binding on all persons. The regularly kept records of the Employer shall be conclusive and binding upon all persons with respect to an Employee's Hours of Service, date and length of employment, time

and amount of Compensation and the manner of payment thereof, type and length of any absence from work and all other matters contained therein relating to Employees. All rules and determinations of the Administrator shall be uniformly and consistently applied to all persons in similar circumstances.

### 12.3. Claims Procedures.

(a) Claims for benefits under the Plan shall be made in writing to the Administrator. In the event a claim for benefits is wholly or partially denied by the Administrator, the Administrator shall, within a reasonable period of time, but not later than ninety (90) days after receipt of the claim, notify the claimant in writing of the denial of the Claim. If the claimant shall not be notified in writing of the denial of the claim within ninety (90) days after it is received by the Administrator, the claim shall be deemed denied.

(b) A notice of denial shall be written in a manner calculated to be understood by the claimant, and shall contain (i) the specific reason or reasons for denial of the claim, (ii) a specific reference to the pertinent Plan provisions upon which the denial is based, (iii) a description of any additional material or information necessary for the claimant to perfect the claim together with an explanation of why such material or information is necessary, and (iv) an explanation of the Plan's review procedure.

(c) Within sixty (60) days of the receipt by the claimant of the written notice of denial of the claim, or within sixty (60) days after the claim is deemed denied as set forth above, if applicable, the claimant may file a written request with the Administrator that it conduct a full and fair review of the denial of the claimant's claim for benefits, including the conducting of a hearing, if deemed necessary by the Administrator. In connection with the claimant's appeal of the denial of his benefit, the claimant may review pertinent documents and may submit issues and comments in writing. The Administrator shall render a decision on the claim appeal promptly, but not later than sixty (60) days after the receipt of the claimant's request for review, unless special circumstances (such as the need to hold a hearing, if necessary) require an extension of time for processing, in which case the sixty (60) day period may be extended to one hundred and twenty (120) days. The Administrator shall notify the claimant in writing of any such extension.

(d) The decision upon review shall (i) include specific reasons for the decision, (ii) be written in a manner calculated to be understood by the claimant and (iii) contain specific references to the pertinent Plan provisions upon which the decision is based.

### 12.4. Investment Options.

(a) Each Participant may elect to direct the Trustee to invest all or a portion of the Participant's Account balance in one or more options selected by the Plan Administrator. The Plan Administrator shall establish a non-discriminatory, uniform procedure by which the electing Participants may direct the Trustee in writing with respect to the investment in various options selected by the Plan Administrator as provided herein. A Participant may direct the Trustee to invest his Account balance, in whole percentages, in one or a combination of the following investment media:

- (1) Common stock fund;
- (2) Managed fund;
- (3) Bond fund;
- (4) Money market fund;
- (5) Fixed account;
- (6) Guaranteed accumulation account; and
- (7) Any other fund or class of investment suggested by the Plan Administrator from time to time and approved by the Trustee.

Such portion of the Account balance of any Participant which is the subject of an election herein shall not be taken into consideration for purposes of Section 6.3(a).

(b) Such portion shall not share in the earnings of the Trust Fund, but shall be credited or charged, as the case may be, with a portion of the net earnings, gains, losses and expenses directly attributable to the investment option(s) selected by the Participant, such amounts to be allocated in the same proportion that a Participant's Account invested in an investment option bears to the total of all Participants' Accounts invested in the same investment option as of each Anniversary Date or other valuation date before allocation of Forfeitures and Employer contributions.

### **ARTICLE XIII THE TRUST AND THE TRUSTEE**

13.1. Creation of Trust Fund. Upon the adoption of this Plan and Trust, the Employer transferred into trust an amount sufficient to create a Trust fund. From time to time, in accordance with the Plan and applicable law the Employer shall make additional contributions to the Trust Fund as provided in the Plan. All Employer contributions and all Employee contributions, if any, and all investments thereof, and all accumulations, accruals, earnings and income with respect to such investments shall be held by the Trustee as the Trust Fund.

13.2. Custody of Assets. The Trustee or any person or entity which the Trustee may designate shall be the custodian of all of the assets and funds of the Trust, shall accept and receive all sums of money paid to it from time to time by the Employer pursuant to the terms of this Agreement, and shall hold, invest, reinvest, manage and administer those monies and the increment, earnings and income thereof as the Trust Fund for the exclusive benefit of Participants and their Beneficiaries.

13.3. Payment of Benefits. The Trustee shall pay benefits to such person, at such times, and in such amounts as shall be set forth in written instructions furnished to it by the Administrator, provided, however, that in no event shall the Trustee be under any obligation to make any payment other than from the funds in the Trust. The Trustee shall have no right or obligation to inquire whether the terms of any instructions furnished to it by the Administrator

are in conformity with this Agreement. The liability of the Trustee with respect to matters contained in such instructions is expressly limited to any failure on its part to comply with instructions.

13.4. Investments Authorized. The Trustee shall collect the income of the Trust Fund, and shall invest and reinvest the assets of the Trust Fund without distinction between principal and income, except such amounts as may be estimated from time to time to be required for current payments and expenses. The Trustee is authorized to invest the Trust Fund in any property whatsoever, or in any undivided interest therein, wherever located, including: bonds of the United States of America and of any other country or of any state, municipality or subdivision thereof; first mortgages on, and secured by, improved or unimproved real estate located in the United States of America or in any other country; insurance or annuity contracts; bonds, notes, debentures, mortgages, equipment trust certificates, investment trust certificates and preferred, common or other stocks or any other security of any company, corporation or association within the United State of America or any other country and any other property, whether real, personal or mixed, or in any interest therein wherever located (other than capital stock or securities of the Employer or Employer real property). The Trustee shall exercise its own discretion in the investment of the Trust Fund.

13.5. Powers of Trustee.

(a) The Trustee shall have the following powers, rights and duties in addition to those vested in it elsewhere in this Trust Agreement or by law:

(1) to retain, manage, improve, repair, operate and control all property, real or personal, at any time comprising part of the Trust Fund;

(2) to manage, sell, contract to sell, grant options to purchase, convey, exchange, partition, lease for any term (even though such term commences in the future or may extend beyond the duration of the Trust), and otherwise dispose of the Trust Fund from time to time in such manner, for such consideration, and upon such terms and conditions as the Trustee in its discretion shall determine;

(3) to vote any corporate stock either in person or by proxy for any purpose; to exercise or sell any stock subscription or conversion right; to participate in voting trusts; to consent to, take any action in connection with, and receive and retain any securities resulting from, any merger, consolidation, reorganization, readjustment of the financial structure, liquidation, sale, lease, or other disposition of the assets of any corporation or other organization the securities of which may constitute a portion of the Trust Fund;

(4) to keep any property in the name of a nominee with or without disclosure of any fiduciary relationship;

(5) to borrow money, and to mortgage, pledge or otherwise encumber the Trust Fund or any part thereof;

(6) to take any action with respect to conserving or realizing upon the value of any property in the Trust Fund; to collect, pay, contest, compromise, or

abandon demands of or against the Trust Fund, to pay any tax, assessment or other charge attributable to the interest of any beneficiary of the Trust Fund out of the interest of such beneficiary;

(7) to retain agents, attorneys, investment managers, auditors, depositories, and proxies (who may also be retained by the Employer), with or without discretionary powers, and to pay them reasonable compensation out of the Trust Fund;

(8) to appoint, discharge and replace an investment advisor or advisors, or investment manager or manager, to advise as to the selection of investments for any assets of the Plan or manage any such assets or perform any other such services as the Trustees shall deem necessary or desirable in connection with the management of the Trust Fund. The Trustees shall be relieved of the authority to manage and solely control any assets of the Plan to which such authority has been delegated to an investment manager under this subsection. Any investment advisor or investment manager appointed under this subsection shall (i) be registered as an investment advisor under the Investment Advisors Act of 1940; or (ii) be a bank as defined in the 1940 Act; or (iii) be an insurance company qualified to manage, acquire or dispose of qualified plan assets under the laws of more than one state. Any such investment advisor or investment manager shall acknowledge in writing to the Trustees that it is a fiduciary with respect to the Plan.

(9) to perform any and all acts in its judgment necessary or desirable for the proper and advantageous administration and distribution of the Trust Fund.

(b) However, the Trustee shall not engage in any transaction that would be a prohibited transaction under Section 4975 of the Code.

13.6. Administration. The Trustees, in the event more than one Trustee is appointed, shall act by majority vote of their number from time to time, and such action may be taken either at a meeting or in writing without a meeting. The Trustees (if more than one (1)) shall elect a chairman and such other officers as it may deem appropriate. The chairman and such other officers shall hold office at the pleasure of the Trustee and shall have and perform such powers and duties as shall be prescribed from time to time by the Trustees. The Trustee may adopt such bylaws and regulations as it deems desirable for the conduct of its duties. The Trustee shall determine the depositories in which Trust assets shall be kept.

13.7. Expenses and Compensation. The Trustee is authorized and directed to pay from the Trust Fund all of its expenses, taxes and charges, including reasonable fees and expenses of its attorneys and agents, incurred in connection with collection, administration, management, investment, protection and distribution of the Trust Fund, to the extent that such amounts are not paid by the Employer. The Trustee shall serve without compensation for its services as such.

13.8. Maintenance of Records and Valuation of Trust. The Trustee shall keep accurate and detailed accounts of all investments, receipts, disbursements and other transactions hereunder, and all accounts, books, and records relating thereto shall be open to inspection and audit at all reasonable times by any person designated by the Administrator. Within seventy-five

(75) days following the close of the fiscal year of the Plan (a Valuation Date), and within thirty (30) days following any other Valuation Date, Trustee shall file with the Administrator a written account setting forth all investments, receipts, disbursements and other transactions during such fiscal year or during the period from the close of the last fiscal year to the date of such account, whichever is appropriate, and setting forth the fair market value of the Fund on such Valuation Date. Upon the expiration of thirty (30) days from the date of filing such annual or other account, Trustee shall be forever released and discharged from all liability and accountability to anyone with respect to the propriety of the acts and transactions shown in such account, except with respect to any such acts or transactions as to which the Administrator shall file with Trustees written objections within such thirty (30) day period.

13.9. Removal, Resignation, Death and Appointment of Successor Trustee. Any Trustee may be removed by Employer at any time upon thirty (30) days written notice to such Trustee and remaining Trustee. Any Trustee may resign at any time upon thirty (30) days' notice in writing to Employer and remaining Trustees. In the event of a vacancy in the office of Trustee arising by death, removal, resignation, refusal to act, or inability to act of any Trustee, Employer may appoint a successor individual or corporate Trustee who, upon acceptance of such appointment, shall have the same powers and duties as those conferred upon original Trustee hereunder; and the title to all of the funds and properties constituting the Trust Fund shall vest jointly in those who shall from time to time be Trustees hereunder. Pending the appointment of any successor Trustee and the acceptance of such appointment, the remaining Trustee(s) shall have full power to take any action hereunder.

#### 13.10. Immunity of Trustee.

(a) Trustee shall be under no duty to enforce payment of any contributions to the Fund and shall not be responsible for the adequacy of the Fund to meet and discharge any liabilities under the Plan.

(b) Trustee shall not be liable for the making, retention or sale of any investment or reinvestment made by them, as herein provided, nor for any loss to or diminution of, the Fund, except due to gross negligence, willful misconduct or lack of good faith on the part of the Trustee.

(c) Except as otherwise herein specifically provided, any action by the Employer pursuant to any of the provisions of this Agreement shall be evidenced by (i) a resolution of its Board of Directors (or similar governing body) certified to the Trustee over the signature of its Secretary or Assistant Secretary or other duly authorized agent, if any, or (ii) by appropriate written authorization of any person or group of persons to which the Board has delegated the authority to take such action, and the Trustee shall not be liable to any person when acting in accordance with any such resolution or other authorization.

(d) Trustee shall be fully protected against liability in relying upon a certification of a member of the Employer with respect to any instruction or direction of the Administrator. Trustee shall not be liable for the proper application of any part of the Fund if action is taken by the Trustee in accordance with the written directions of the Administrator as herein provided.

(c) Employer agrees to indemnify the Fund and Trustee against any liability imposed as a result of a claim asserted by any person or persons under the laws of any State where the Trustee has acted in good faith in reliance on a written direction of the Administrator. Claims against the Trustee by persons dealing with the Trustee shall be limited to the Fund, and the Trustee shall not be responsible for such claims in any individual capacity.

13.11. Plural Interpretation. The references in this Article to Trustee shall be interpreted to mean Trustees where applicable if more than one Trustee is named.

IN WITNESS WHEREOF, the Employer has caused this instrument to be executed in its name by its duly authorized officers and its corporate seal to be hereunto affixed, all on the day and year first above written.

ATTEST:

THE CITY OF MILFORD

\_\_\_\_\_

By: \_\_\_\_\_  
Mayor