

July 12, 2022

Town of Bridgeville
Attn: Bethany DeBussy, Town Manager
101 N. Main Street
Bridgeville, DE 19933

**RE: Chapter 234 Text Amendment Review
Conditional Uses in TC, C-1 & M-1 Districts**

Dear Ms. DeBussy:

At the Town's request, Wallace Montgomery (WM) reviewed the documents submitted for the above-referenced Text Amendment. We offer the following comments:

GENERAL COMMENTS

The Town is proposing to amend the Town Code, Chapter 234 (Land Use & Development), to provide for additional conditional uses in TC, C-1, and M-1 Districts for residential, business, commercial, or industrial uses, by adding the following text under the "Permitted as Conditional Uses" section of those Districts:

Residential, business, commercial or industrial uses when the purposes of this chapter are more fully met by issuing a conditional use permit.

It is our opinion that this proposed language is overly broad and would open the Town to allowing (or considering) any proposed use as a conditional use.

We understand that this language is similar to that used in the Sussex County Code. It is generally accepted that development within municipalities (as opposed to counties) tends to have stricter standards with which it is required to comply. To that end, we have researched conditional use language in other codes and provided this for your reference. As an additional reference, we have provided the 2020 Census population numbers for the jurisdictions; for reference, the Town of Bridgeville's 2020 population was 2,568.

From the selection of codes reviewed, there appears to be a strong mix of codes that have provisions for conditional uses, have clauses that allow for a determination of similar use, and have clauses that prohibit uses unless specifically listed. For those that allow determinations of similar use, language used closely matches that of the existing Town of Bridgeville Code. Very few have provisions of a general conditional use, such as those proposed by this amendment.

Jurisdiction	Population	Conditional Use Language
Bethany Beach	954	For each zoning district where pertinent, lists uses permitted by special exception or conditional use. Uses not specifically permitted or that are not commonly recognized as a clearly integral and harmonious component of such specifically permitted uses are prohibited. The only



listed conditional use for any district is Wireless Communication Facilities.

Blades	1,179	Includes a table of permitted uses, which includes Special Exceptions. A use not specifically listed as permitted in a zoning district is prohibited unless a determination of similar use is made. Standards governing the determination of a similar use: (1) The use closely resembles and contains the same characteristics as the classification to which it is to be added. (2) The use does not create dangers to health and safety and does not create offensive noise, vibrations, dust, heat, smoke, odor, glare, or other objectionable influences to an extent greater than normally resulting from other uses listed in the classification to which it is to be added. (3) The use does not create traffic to a greater extent than do other uses listed in the classification to which it is to be added.
Cheswold	1,923	Includes a table of permitted uses, including conditional uses. A use not specifically listed as permitted in a zoning district is prohibited unless meeting specific findings (similar to Bridgeville's).
Dagsboro	870	Each zoning district lists permitted uses. All uses not expressly permitted are prohibited.
Delmar	2,027	Each zoning district lists permitted uses, including special exceptions. No conditional use provisions included.
Dewey Beach	353	Each zoning district includes a table of uses, including conditional uses. Unless the contrary is clear from the context of the lists or other regulation, uses not specifically listed are prohibited.
Dover	39,403	Each zoning district includes a list of permitted uses, including conditional uses.
Felton	1,316	Includes a table of permitted uses, including conditional uses. A use not specifically listed as permitted in a zoning district is prohibited unless meeting specific findings (similar to Bridgeville's).
Fenwick Island	343	No provisions for conditional uses.
Frankford	790	Includes table of permitted uses, including conditional uses. Unless clear from the context of the list or other regulations, uses not specifically listed are prohibited.
Frederica	1,073	Includes a table of permitted uses, including conditional uses. A use not specifically listed as permitted in a zoning district is prohibited unless meeting specific findings (similar to Bridgeville's).
Georgetown	7,134	The following uses may be permitted as conditional uses when approved in accordance with this chapter: residential, business, commercial or industrial uses when the purposes and criteria of this chapter are more fully met by issuing a conditional use.
Greenwood	990	Each zoning district lists permitted conditional uses. No general conditional uses listed. Any uses not permitted are prohibited.



Harrington	3,774	Each zoning district Includes a list of permitted uses, including conditional uses. No general conditional uses listed. Any uses not permitted by this chapter are prohibited.
Henlopen Acres	139	Only specified uses are permitted. No provisions for conditional uses.
Lewes	3,303	Includes a table of permitted uses, including Conditional Uses. Includes a list of uses that are specifically prohibited. No general category is included in either list. Interpretation of uses: A use not specifically listed as permitted in a zoning district is prohibited unless determined to be comparable with, analogous with, akin to, or like a use permitted in that zoning district.
Milford	11,190	Includes a list of permitted uses, including Conditional Uses, for each Zoning District; also includes a list of uses that are specifically prohibited in each Zoning District. No general categories are included.
Millsboro	6,863	All uses not expressly permitted are prohibited. Conditional Use regulations include the following as a Conditional Use in any district: Residential, business, commercial or industrial uses when the purposes of this chapter are more fully met by issuing a conditional use permit.
Millville	1,825	For the purpose of {the Code}, permitted uses are listed for the various districts. Unless the contrary is clear from the context of the lists of other regulations..., uses not specifically listed are prohibited. As appropriate, buildings, structures, and uses may be approved by the Town Council as conditional uses in any district from which they are prohibited, except as otherwise provided, in accordance with the procedures and standards of {the Conditional Use Article}, provided that the location is appropriate and not in conflict with the Comprehensive Plan, that the public health, safety, morals, and general welfare will not be adversely affected, that adequate off-street parking facilities will be provided, and that necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values, and further provided that the additional standards of this article are complied with. Unless otherwise specified in this article or specified as a condition of approval, the height limits, yard spaces, lot area, and sign requirements shall be the same as for other uses in the district in which the conditional use is located.
Milton	3,291	The following uses shall be approved by the Mayor and Town Council as conditional uses in any district from which they are prohibited, except as otherwise provided, in accordance with the procedures and standards of this chapter, provided that the location is appropriate and that the public health, safety, morals and general welfare will not be adversely affected, that adequate off-street parking facilities will be provided, that they do not contribute to the traffic problem on congested roads and that necessary safeguards will be provided for the protection of surrounding property, persons and neighborhood values, and further provided that



the additional standards of this chapter are complied with. Unless otherwise specified in this chapter or specified as a condition of approval, the height limits, yard spaces, lot area and sign requirements shall be the same as for other uses in the district in which the conditional use is located.

A. Any use that is not permitted in the zoning district for which it is intended, for example, businesses, commercial stores or light industrial uses.

Ocean View	2,636	Includes a table of permitted uses, including Special Exceptions. A use not specifically listed as permitted in a zoning district is prohibited unless determined to be comparable with, analogous with, akin to, or like a use permitted in that zoning district. Standards for interpretation include: (1) The use closely resembles and contains the same characteristics as the uses in the zone to which it is to be added; (2) The use does not create dangers to health and safety and does not create offensive noise, vibrations, dust, heat, smoke, odor, glare, or other objectionable influences to an extent greater than normally resulting from other uses listed in the classification to which it is to be added; (3) The use does not create traffic to a greater extent than do other uses listed in the classification to which it is to be added.
Rehoboth Beach	1,108	Includes a table of permitted uses, including Special Exceptions. Specific Conditional Uses are listed under pertinent District use regulations. Both Special Exceptions and Conditional Uses require public hearing before the Board of Adjustment.
Seaford	7,957	Includes Special Exceptions listed for each pertinent zoning district. No provisions for uses not listed.
Selbyville	2,878	As appropriate, buildings, structures and uses may be approved by the Mayor and Council of the Town of Selbyville as conditional uses in any district from which they are prohibited, except as otherwise provided, in accordance with the procedures and standards of this article, provided that the location is appropriate and not in conflict with the Comprehensive Plan of the Town of Selbyville, that the public health, safety, morals and general welfare will not be adversely affected, that adequate off-street parking facilities will be provided, and that the necessary safeguards will be provided for this protection of surrounding property, persons and neighborhood values, and further provided that the standards of this article receive compliance. Unless otherwise specified in this article or specified as a condition of approval, the height limits, yard spaces, lot area and sign requirements shall be the same as for other uses in the district in which the conditional use is located. Approval of a conditional use shall become null and void unless construction, when applicable, is completed or substantially completed, as determined by the Town, within one year following the date of conditional use approval or until the use is commenced within one year following the date of conditional use approval. No business license shall



be issued by the Town until the foregoing construction completion and/or use requirements, within the one-year time frame provided, are satisfied. Permits issued under a conditional use approval may be revoked by the Mayor and Town Council for failure to comply with conditions of approval or other applicable requirements, including, but not limited to, federal, state, county or Town regulations.

Slaughter Beach	218	Each zoning district includes a list of permitted uses and permitted uses with conditions. Unless the contrary is clear from the context of permitted use lists or other regulations uses not specifically listed are prohibited.
South Bethany	451	Zoning districts include lists of permitted and prohibited uses.
Wyoming	1,680	Includes a table of permitted uses, including conditional uses. A use not specifically listed as permitted in a zoning district is prohibited unless determined to be comparable with a like use permitted.

It is our opinion that if a change to uses is desired, that the existing list of permitted, permitted with development plan approval, and permitted as conditional uses lists be reviewed in their entirety and a future text amendment be developed that amends the existing lists as needed and adds desired uses to those three categories (i.e. permitted, permitted with development plan approval, and permitted as conditional uses), if needed. If this activity is undertaken, we also strongly suggest that the review and amendment include reviewing existing definitions and proposing new, when needed. Lastly, if this task is undertaken, it is also suggested that language related to the interpretation of uses be reviewed and amended as needed.

Thank you for the opportunity to review this submission. We reserve the right to review any additional material submitted in relation to this application and provide further comment, as appropriate. If you have any questions, comments, concerns, or would like to discuss our review further, please do not hesitate to contact me at 302.232.6965 or lgood@wallacemontgomery.com.

Sincerely,

WALLACE, MONTGOMERY & ASSOCIATES, LLP

A handwritten signature in blue ink that reads "Lauren E. Good".

Lauren E. Good, AICP
Project Manager

cc: Darren O'Neill, Wallace Montgomery VP of Delaware Operations & Contract Manager
File

Town of Bridgeville Development Plan Review
Text Amendment Review: Conditional Uses in TC, C-1 & M-1 Districts
WM No.: 221033.0001
July 12, 2022



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