

Introduced by: Ms. Durham, Mr. Carter
Ms. Kilpatrick, Mr. Hollins
Date of introduction: May 24, 2022

**SUBSTITUTE NO. 1 TO
ORDINANCE NO. 22-072**

**TO AMEND NEW CASTLE COUNTY CODE CHAPTER 40
(ALSO KNOWN AS THE UNIFIED DEVELOPMENT CODE OR “UDC”),
REGARDING ARTICLE 3 (“USE REGULATIONS”), ARTICLE 4 (“DISTRICT
INTENSITY AND BULK STANDARDS”), ARTICLE 6 (“SIGN REGULATIONS”),
ARTICLE 8 (“NONCONFORMING SITUATIONS”), ARTICLE 20 (“SUBDIVISION
AND LAND DEVELOPMENT DESIGN PRINCIPLES”), ARTICLE 22 (“DRAINAGE,
UTILITIES, SEPTIC SYSTEMS, PARKING, LOADING, AND LIGHTING”), ARTICLE
23 (“LANDSCAPING, TREES, PLANT MAINTENANCE, AND EROSION AND
SEDIMENT CONTROL”), ARTICLE 31 (“PROCEDURES AND ADMINISTRATION”),
ARTICLE 33 (“DEFINITIONS”), APPENDIX 1 (“APPLICATION AND PLAN
REQUIREMENTS”), APPENDIX 2 (“FEES”), AND TO ESTABLISH ARTICLE 18
 (“BYWAY PROTECTION”), AND APPENDIX 8 (“BYWAY AREA RESOURCES”)
REGARDING BYWAY PROTECTION**

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

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

WHEREAS, the County desires to provide a level of County regulatory protection to Federal, State and County designated byways; and

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

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

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

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

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

Section 1. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 3 (“Use Regulations”), Division 40.03.300 (“Additional limited and special use standards”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Sec. 40.03.337. Large-scale solar energy system.

A. The following requirements apply...

4. The SES shall be enclosed by a barrier, such as a fence, suitable to prevent unauthorized access. The barrier shall be constructed to meet ~~any~~ all applicable state or federal rules or standards addressing the physical security of power system facilities. The barriers shall not be used to display any signage except as required by applicable law.

E. ~~The~~ An SES shall not be located:

1. ~~upon~~ On any land that is subject to a conservation or preservation easement acquired with public funds or required by a government entity to the extent the SES would materially interfere with any purpose of the easement.

2. Within 660 feet of the right-of-way of a designated byway, except that any Community Solar Energy System (CSES) located outside any SR zoning district in the Coastal Zone shall be located no closer than 200 feet from the right-of-way of a designated byway. As it relates to any CSES, the barrier and buffer required under this section shall be provided adjacent to CSES structures where visible from the right-of-way. Plant unit types 3 and 4, in accordance with Article 23, are preferred to provide adequate screening in a leaf-off condition.

Section 2. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 3 (“Use Regulations”), Division 40.03.500 (“Loading and parking standards”), is hereby amended by adding the material that is underscored, as set forth below:

Sec. 40.03.522. Off-street parking.

A. *Minimum parking requirements.* Table 40.03.522 specifies...

B. *Changes in use.* For purposes of accommodating changes...

C. *Parking requirements along designated byways.* Parking requirements for development within 660 feet of the right-of-way of a designated byway must be in accordance with the provisions of Article 18.

Section 3. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 4 (“District Intensity and Bulk Standards”), Division 40.04.100 (“District performance standards”), is hereby amended by adding the material that is underscored, as set forth below:

Sec. 40.04.110. District and bulk standards.

This Section contains the basic district standards applicable to all uses. Table 40.04.110 contains intensity, lot, bulk and exterior storage standards. These standards may be modified by the Department pursuant to Article 18 and Article 26.

- A. *Minimum open space ratio.* For residential subdivisions of five...
- I. *Development along a designated byway.* For nonresidential buildings within 660 feet of the right-of-way of a designated byway, the maximum building height is limited to forty-five (45) feet.

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

Sec. 40.04.240. Scenic corridors.

Scenic corridors shall be provided as follows, and shall meet the criteria of Table 40.04.240:

- A. Major subdivision plans and major land development plans [~~shall be required to~~]must provide a scenic corridor in accordance with this section. Scenic corridors shall be established along all arterial and collector roads in the Suburban Reserve (SR) District[;] and in the Suburban (S) District land south of the C&D canal[; ~~and along roads designated as scenic in the Brandywine, Red Clay, and White Clay Scenic Rivers and Highway Studies.~~ Scenic corridors shall be comprised of open space and shall meet the criteria].
- B. Major and minor subdivision and major and minor land development plans for properties within 660 feet of the right-of-way of a designated byway must provide a minimum 100-foot-wide scenic corridor. Applications that demonstrate compliance with Section 40.04.110.F are exempt from this section.
- C. Scenic corridors for major plans shall be comprised of open space. Scenic corridors for minor plans shall be protected through on-lot conservation easements.

Table 40.04.240 SCENIC CORRIDOR STANDARDS	
Buffer Width	Landscape/Requirements
50'	Existing forest to be preserved
100' to 150'	6 plant units per 100 linear feet of street frontage
151' to 200'	5 plant units per 100 linear feet of street frontage

201' to 400'	3 plant units per 100 linear feet of street frontage
400' or greater	1 plant unit per 100 linear feet of street frontage
600' or greater	minimum 30 acres preserved for agricultural use (no landscaping required)

Section 5. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 6 (“Sign Regulations”), Division 40.06.000 (“Applicability”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Sec. 40.06.030. - Specifications.

- A. *Generally.* General specifications for signs ...
- B. *Specifications by sign type.* Specifications for sign types shall be as follows:
 - 1. *Ground sign...*
 - 6. *Electronic variable message sign (EVMS).*
 - a. An electronic variable message sign ...
 - g. EVM off-premises advertising signs, in addition to being subject to the standards for off-premises advertising signs in Section 40.06.070, are subject to the additional location and spacing restrictions as set forth below:
 - i. EVM off-premises advertising signs shall only...
 - iv. EVM off-premises advertising signs shall not be placed along designated [~~scenic or historic~~]byways.
 - v. EVM off-premises advertising signs ...

Sec. 40.06.080. Signs along designated byways.

The following standards apply to signs located within 660 feet of designated byways.

- A. *Prohibited Signs.* The following signs are prohibited:
 - 1. Electronic Variable Message Signs (EVMS).
 - 2. Marquee signs,
 - 3. Projecting signs,
 - 4. Roof signs,
 - 5. Window signs,
 - 6. Wall signs that project above a roofline, and
 - 7. Off-premises advertising.
- B. *Size.* All signs requiring a permit will be limited to fifty (50) percent of the sign area

permitted in the zoning district.

- C. Height. All signs requiring a permit will be limited in height to fifteen (15) feet, or one-half the height allowed in the zoning district, whichever is less.
- D. Number of Signs. The number of signs on a lot is limited to one ground sign per street frontage and one wall sign per principal use.
- E. Lighting. If lit, the light source must be exterior to the sign using shielded, low wattage and diffuse white light. Back-lit and internally illuminated signs are prohibited.

Section 6. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 8 (“Nonconforming Situations”), Division 40.08.100 (“General regulations”), is hereby amended by adding the material that is underscored, as set forth below:

Sec. 40.08.130. Alteration/Enlargement/Extension.

- A. Nonconforming use. Nonconforming use of a building or structure...
- B. Nonconforming building, structure or situation. A nonconforming building, structure...
 - 1. Extensions and enlargements. Any new extension or enlargement...
 - 6. Redevelopment and Brownfields.
 - a. Purpose. Redevelopment is intended to facilitate...
 - e. Design element improvements. Improvements toward further code compliance...
 - i. The exploratory sketch plan shall identify...
 - viii. The redevelopment of a site within 660 feet of the right-of-way of a designated byway must be designed in accordance with Article 18.

Section 7. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”) is hereby amended to establish a new Article 18 (“Byway Protection”), Division 40.18.000 (“Purpose”), Division 40.18.100 (“Byways, corridor management plans and design guidelines”), Division 40.18.200 (“Development standards”), Division 40.18.300 (“Review procedures”), and associated new division sections by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

[ARTICLE 18. RESERVED]

ARTICLE 18. BYWAY PROTECTION

Division 40.18.000. Purpose.

This Article provides the standards and review criteria for development within 660 feet of the right-of-way of any federal, state and county designated byways in the County. These designated

intrinsic scenic, natural, historic, archeological, recreational and cultural resources are critical to the County, and promote and enhance the health, quality of life, prosperity, and welfare of all citizens of the County. These provisions are intended to protect, preserve, and enhance the intrinsic qualities of designated byways within the County by:

- A. Ensuring maximum preservation and enhancement of the byway's outstanding and unique intrinsic qualities.
- B. Minimizing grading, tree removal, signage, and changes to the existing character of designated byways, including the natural vegetation and topography of areas along and adjoining such roads.
- C. Reducing visual intrusions that are not compatible with the intrinsic qualities of the byways.
- D. Ensuring that the design and placement of buildings and other improvements preserve, complement, or enhance views from designated byways.
- E. Ensuring that new development, redevelopment, infill development, and other changes along the byways are compatible with the intrinsic qualities, and consistent with the goals, objectives, and management strategies of the Corridor Management Plans or other County studies related to designated byways as set forth in Appendix 8.
- F. Requiring the use of conservation design techniques, as defined in this Chapter, to minimize impact to the scenic viewshed or position buildings outside the scenic viewshed of any federal, state, or county designated byway, while respecting the property rights of those who own property along a byway.
- G. Encouraging design flexibility that permits modifications in mass, height, landscaping and open space configuration.

Division 40.18.100. Byways, corridor management plans and design guidelines.

Sec. 40.18.110. Applicability.

Major and minor subdivision and major and minor land development plans for properties within 660 feet of the right-of-way of designated byways as defined in Article 33 are subject to the requirements of this Article.

Sec. 40.18.120. Corridor Management Plans and other studies.

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

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

Division 40.18.200. Development standards.

Sec. 40.18.210. General standards.

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

1. Required parking may be reduced up to twenty-five (25) percent of the minimum parking requirements in this Chapter for non-residential uses along designated byways on properties subject to this Article. Reductions greater than twenty-five (25) percent may be granted upon approval of a special study pursuant to Section 40.03.524.
2. The maximum number of parking spaces may not exceed one hundred fifteen (115) percent of the minimum parking requirements in this Chapter.
3. Parking areas should be avoided in the front or street yard. Parking areas are prohibited within a scenic corridor.

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

C. *Site Access.* Points of access must be context sensitive and minimized through the use of common driveway easements and new public roadways that avoid multiple individual driveways along designated byways.

D. *Minimal Screening.* The provisions of this Article are intended to preserve scenic viewshed corridors with little or no screening or buffering.

1. Where proposed buildings or visual intrusions are sited in the viewshed area, applicants must use a combination of tools to minimize impact to the scenic viewshed or vista. Such mitigation may include changing rooflines, elevations, grading, reorienting the building facade and shifting building bulk from the side yards to the front or rear yards within the permitted building envelope.
2. Applicants must screen structures and visual intrusions by achieving an opacity standard pursuant to Table 40.18.210 without the use of walls, fences, berms or hedges. Plant unit types 3 and 4, in accordance with Article 23, are preferred to provide adequate screening in a leaf-off condition. Applications that demonstrate compliance with Section 40.04.110.F are exempt from the standards in Table 40.18.210.
3. Scenic corridor standards in Table 40.04.240 may be reduced when a scenic viewshed is preserved, as demonstrated through a viewshed plan, and approved by the Department. To qualify for consideration of a reduction, development must be designed in accordance with Appendix 8. The land development application must include a narrative identifying how the proposal addresses the provisions of Appendix 8.

4. Solid or opaque fencing is prohibited within the scenic corridor.

<i>Table 40.18.210</i>			
Screening Standards for Development Along Designated Byways			
<u>Distance as Measured From ROW¹</u>	<u>Opacity²</u>	<u>Maximum Building Height³</u>	
		<u>Residential</u>	<u>Nonresidential</u>
<u>Less than or equal to 100 ft.</u>	<u>0.5</u>	<u>35 ft.</u>	<u>45 ft.</u>
<u>>100 – 150 ft.,</u>	<u>0.5</u>	<u>35 ft.</u>	<u>45 ft.</u>
<u>>150 – 200 ft.,</u>	<u>0.4</u>	<u>40 ft.</u>	<u>45 ft.</u>
<u>>200 – 400 ft.,</u>	<u>0.2</u>	<u>Table 40.04.110</u>	<u>45 ft.</u>
<u>>400 – 660 ft.,</u>	<u>0.1</u>	<u>Table 40.04.110</u>	<u>45 ft.</u>
<u>>660 ft.</u>		<u>Table 40.04.110</u>	<u>Table 40.04.110</u>

¹ Total right-of-way as established by DeIDOT.
² Listed opacity or the opacity required by Article 4, whichever is greater.
³ Listed height or the height required by Article 4, whichever is less.

Sec. 40.18.220. Protection of intrinsic qualities.

Intrinsic qualities identified in a Corridor Management Plan or other study identified in Appendix 8 must be protected with a conservation easement that preserves the resource, pursuant to the following:

- A. Identified intrinsic qualities must be protected by a conservation easement as shown on the record plan, consistent with the purposes of this Article, running in favor of the County or a third-party conservancy, providing that such resource shall be preserved or left in a natural state. A conservation easement may be sufficiently documented on a record plan without need for a separately recorded instrument where maintenance responsibility is assigned.
- B. Parcels with historic resources may also be rezoned as an Historic (H) overlay zoning district as an alternative protection mechanism or in addition to an easement.
- C. Pre-existing easements may be sufficient for protection, provided the easement terms are acceptable to the County.

Division 40.18.300. Review procedures

A. Applications for development within 660 feet of the right-of-way of designated byways must demonstrate compliance with the purpose, goals, and objectives of this Article, and protect, conserve, and enhance the byway’s resources identified in the Corridor Management Plan or other County study as set forth in Appendix 8.

B. In addition to the review requirements of Article 31, required applications within 660 feet of the right-of-way of a designated byway must submit a Viewshed Plan consistent with the requirements of Appendix 1.

C. If the Department determines an application does not protect or enhance the scenic viewshed, the applicant must submit a ‘Scenic’ Environmental Impact Assessment Report (S-EIAR) pursuant to Sec. 40.10.701. The S-EIAR must be certified by a landscape architect registered in the State, or a professional engineer with a background in civil engineering registered in the State, and must demonstrate appropriate consideration of the scenic viewshed.

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

Section 8. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 20 (“Subdivision and Land Development Design Principles”), Division 40.20.200 (“Subdivision layout”), is hereby amended by adding the material that is underscored, as set forth below:

Sec. 40.20.210. Blocks.

Standards for blocks in subdivisions shall be as follows:

- A. Where possible, blocks shall be laid out...
- E. For development along designated byways, modifications to block design will be permitted for scenic viewshed protection where conservation design is utilized.

Sec. 40.20.220. Lots.

Design standards for lots in subdivisions shall be as follows:

- A. Every lot shall have frontage along the right-of-way lines of a street.
- H. For development along designated byways, modifications to lot design may be permitted where an applicant incorporates conservation design and scenic viewshed protection. The applicant is encouraged to use conservation design techniques to locate buildings outside the scenic viewshed. Smaller lots, zero lot-lines and other flexible siting techniques are permissible provided the applicant demonstrates a logical configuration and contextually sensitive approach to lot sizes and setbacks.

Section 9. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 22 (“Drainage, Utilities, Septic Systems, Parking, Loading, and Lighting”), Division 40.22.500 (“Other utilities”), is hereby amended by adding the material that is underscored, as set forth below:

Sec. 40.22.511. Electric and communications utilities along byways.

All electric, telephone and communication service facilities, both main and service lines, within 660 feet of the right-of-way of a designated byway shall be provided by underground cables installed in accordance with the prevailing standards and practices of the utility or other companies providing such services, except where it is demonstrated by the subdivider or the utility company that the underground installation required in this Section is not feasible. All main underground cables that are within the right-of-way of a street shall be located as specified by the Department and DeIDOT. Underground electric and telephone lines may be located in front yards. Where alleys are used, the utilities should, if possible, be located in the alleys.

Section 10. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 22 (“Drainage, Utilities, Septic Systems, Parking, Loading, and Lighting”), Division 40.22.600 (“Parking and loading”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Sec. 40.22.610. Parking.

A. *Applicability.* The standards and requirements contained in this Division shall apply to all new vehicle parking areas.

B. *Waiver of parking lot design standards.* The Department may, upon request in writing, waive or reduce any of the requirements listed in this Division where the standard is determined to not be applicable, or for environmental or scenic preservation. ~~[When a particular standard is waived or the requirements are reduced, the Department shall require that a note be placed on the parking facility plan or record plan identifying the reasons why a particular standard was reduced or waived. The Department also may require an area to be land banked if that parking ultimately proves to be needed. If a waiver is granted, the applicant shall be required to mitigate the impacts of the waiver with proportional site improvements consistent with the Guiding Principles for Development.]~~When a particular standard is reduced:

1. A note shall be placed on the parking facility plan or record plan identifying the reasons why a particular standard was reduced or waived.
2. The applicant must mitigate the impacts of the waiver with proportional site improvements consistent with the Guiding Principles for Development.

Section 11. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 23 (“Landscaping, Trees, Plant Maintenance, and Erosion and Sediment Control”), Division 40.23.000 (“Purpose”), is hereby amended by adding the material that is underscored, as set forth below:

Sec. 40.23.010. Applicability.

All developments shall comply with Divisions 40.23.100, 40.23.200, 40.23.300, 40.23.400 and 40.23.500. Minor residential subdivisions shall be required only to comply with street tree and tree replacement requirements, except for residential developments in the NC2a zoning district, which are exempted. Major subdivisions and land developments, minor nonresidential

subdivisions, and minor land developments shall comply with all divisions. Bufferyard standards may be reduced where it can be demonstrated through a viewshed plan that reductions in planting or buffering protect or enhance the scenic viewshed.

Section 12. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 31 (“Procedures and Administration”), Division 40.31.100 (“Application review procedures”), is hereby amended by adding the material that is underscored, as set forth below:

Sec. 40.31.113. Exploratory plan review stage.

A. *Applicability.* An exploratory plan review is required for all...

C. Submission requirements.

1. The applicant shall make a complete...

5. *Viewshed plan.* For all development subject to Section 40.04.240, the applicant shall submit a viewshed plan prepared in accordance with Appendix 1 of this Chapter.

Section 13. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 33 (“Definitions”), Division 40.33.300 (“General definitions”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Division 40.33.300. General definitions.

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

Abandonment. That the use, structure, or sign is...

Cooperative. Multi-family dwellings...

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

Corridor Management Plan (CMP). A document that specifies the practices and strategies to maintain the archaeological, cultural, historic, natural, recreational and scenic qualities that support a byway's designation. A CMP is developed with community involvement, provides for the conservation and enhancement of the byway's intrinsic qualities as well as the promotion of tourism and other economic development, and provides an effective management strategy to balance these concerns while providing for the users' enjoyment of the byway. The document should be generally consistent with the State of Delaware standards for such plans.

Critical natural area (CNA). Any site listed...

Design storm frequencies. Time interval...

Designated byway. A right-of-way having special scenic, historic, recreational, cultural, archeological, or natural qualities that is recognized as a byway by the Federal Government, State of Delaware, or County. The designated byways are: (1) the Brandywine Valley National Scenic Byway, (2) the Red Clay Valley Scenic Byway, (3) Harriet Tubman Underground Railroad Byway, and (4) Delaware Bayshore Byway.

Designated watershed. A watershed...

Farm. The land, buildings, structures...

Facade. One exterior side of a building.

Fascia. A band located...

Intermittent stream. A channel with banks and a bed...

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

Invasive woody plants. Trees and other woody plants...

Marquee. A hood or permanent roof-type construction...

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

Maximum permitted illumination. The most illumination, measured in footcandles...

Sanitary sewer system. A central treatment and disposal plant...

Scenic resource.

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

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

1. Size and dimension of landscape,
2. Characteristics of roadway (e.g., runs with topography, winds through landscape, changes with terrain),
3. Visual accents or scenic vistas along roads,
4. Historic characteristics of the landscape, of a road, or along roads (e.g., historic bridges, houses, barns, mills, springhouses, stone walls, or other structures),

5. Natural resources or ecosystems near, or visible from, roads (e.g., watercourses, wetlands, rock outcrops, or other geologic formations, woodlands, wildlife habitat), and
6. Parkland or recreation along or adjacent to roadways.

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

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

Screen, visual. A physical device...

Solar energy system, accessory. Any SES that is designed...

Solar energy system, community. (“CSES”) Any large-scale SES meeting the definition of a “Community-owned energy generating facility” as set forth in § 1001, Title 26 of the *Delaware Code*.

Solar energy system, ground-mounted. Any SES that has...

Subdivision, minor. See Minor land...

Subdivision regulations. Articles 1, 18, 20-27 and 30-33 of this Chapter.

Substantial construction...

Village house. A single-family dwelling which...

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

Visual accents. Elements or improvements that are compatible with the character and nature of a scenic area and add to the protection or enhancement of a scenic area's character-defining features or intrinsic qualities. Visual accents may be natural or man-made features which contribute to the landscape (e.g., rock outcroppings, historic structures, stone walls, farm complexes, historic stone bridges, streams or other water bodies).

Visual amenity. Any type of visible feature...

Visual intrusions. Elements or improvements that are not compatible with the character and nature of a scenic area and do not add to the protection or enhancement of a scenic area's character-defining features or intrinsic qualities. Visual intrusions may be identified in applicable

studies or may be comprised of new improvements and structures that affect the byway (e.g., transmission lines, new structures proposed in a scenic viewshed, opaque fences).

Zoning permit. A written permit...

Zoning regulations. Articles 1- ~~15~~17, and 30-33 of this Chapter.

Section 14. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Appendix 1 (“Application and Plan Requirements”), is hereby amended by adding the material that is underscored, as set forth below:

APPENDIX 1: APPLICATION AND PLAN REQUIREMENTS

1. Land development application submission requirements. . .

3. Other reports and applications.

A. *Floodplain permit application . . .*

P. *Viewshed plan.* A viewshed plan is required for applications subject to Section 40.04.240 and must bear the seal of a registered landscape architect licensed in the State of Delaware or be prepared by an individual certified by the American Institute of Certified Planners. The viewshed plan must clearly indicate how the identified scenic resources are to be preserved and explain any efforts used to minimize disturbance to, and enhance the characteristics of, the byway. Information must be submitted in the form of a written narrative with accompanying photographs, maps, and graphic representations in CAD format. The viewshed plan must include the following minimum information:

1. Documentation

- a. A written narrative of any scenic resources, visual features, scenic viewsheds or vista points including those identified in the respective Corridor Management Plan (CMP) or other County study related to designated byways and included viewshed maps referenced in Appendix 8. Any observable additions to, or deletions from, the scenic landscape must be explained in the plan narrative.
- b. Photographic or video documentation of the subject property as viewed from the roadway. Documentation must be submitted for the entire length of frontage of the subject property and shall record multiple observable angles from each location. Photographs or video shall specifically identify the existence, where applicable, of the scenic viewsheds, vistas and contributing features. Photographs or videos shall be taken from the observed height of a vehicle window, approximately six (6) feet above ground level. Photographs shall be taken at no less than 20-foot intervals and video at a speed not to exceed the speed limit of the roadway in question.

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

Section 15. *New Castle County Code* Chapter 40 (Unified Development Code or "UDC"), Appendix 2 ("Fees"), is hereby amended by adding the material that is underscored, as set forth below:

APPENDIX 2: FEES

1. Land Development and ...

4. Other

A. Zoning Permit...

Y. Viewshed plan review - \$500.00

Section 16. *New Castle County Code* Chapter 40 (Unified Development Code or "UDC"), Appendix 8 ("Byway Area Resources"), is hereby established by adding the material that is underscored as set forth below:

APPENDIX 8: BYWAY AREA RESOURCES

A. This Appendix establishes general design principles and expectations for development along the designated byways of New Castle County. It establishes guidelines for building design, site design and amenities. These guidelines serve as an advisory supplement to the Unified Development Code (UDC) and do not supersede or negate those regulations. These guidelines offer a more detailed explanation of design when applying the UDC. Compliance with these guidelines is mandatory for applications seeking to reduce scenic corridor standards pursuant to UDC Section 40.18.210.D.3.

1. Goals and Objectives. These design principles are intended for the protection, preservation and enhancement of the character-defining features, unique qualities and resources of the byway, including scenic, natural, cultural, historic, archeological and recreational features. The primary protection and enhancement objectives are scenic viewshed protection and historic resource protection.
2. Conservation Design. To the greatest extent feasible, applications should use conservation design strategies, consistent with the goals and objectives encompassed in the term conservation design as defined in Division 40.33.300.
3. Context Sensitive Solutions (CSS). All applications should use context sensitive solutions, materials, and methods compatible with the character of the community's existing culture and landscape (e.g., the visible features of an area, its characteristics, historic

improvements, landforms, and how they integrate with natural or man-made features). CSS is an approach to integrating land use and transportation decision-making and design that takes into consideration the communities and lands through which streets, roads and highways pass. A developer using CSS would plan and design streets, roads and highways so that they are more sensitive to local communities and lands. CSS recognizes that transportation projects can be an asset for communities and enhance the environment. CSS is a collaborative, interdisciplinary approach that leads to preserving and enhancing scenic, historic, community and environmental resources. Characteristics of CSS include:

- a. the project is in harmony with the community, and it preserves the environmental, scenic, aesthetic, historic and natural resource values of the area;
 - b. the project is perceived as adding lasting value to the community as a whole; and
 - c. the project involves efficient and effective use of resources (time and budget) of all involved stakeholders.
4. *Building Scale, Bulk and Mass.* The scale and proportions of new construction on properties along designated byways should be compatible with buildings on adjacent properties.
- a. Buildings should be designed to use scaling of architecture and material elements to reduce the appearance of the height and length of building facades through the use of changes in wall plane, height and materials. The appearance of mass can be minimized through the use of design elements such as porches, porticos, bay windows, dormer windows and pergolas.
 - b. Reduction of Visual Bulk: the effective visual bulk of development should be reduced so that structures do not create negative impacts on adjacent properties or “stand out” prominently when seen from a distance. The form, mass, profile and architectural features of the buildings should be designed to be compatible with the scale and character of the visible community.
 - c. General Massing: Buildings should be divided into smaller parts, including detached buildings, to reduce effective visual bulk. This is especially important in visible hillside settings.
5. *Enhanced Resource Protection.* In addition to the protections and other standards of Article 10, applications should also preserve and protect the following natural, cultural and other character-defining features: mature forests, stone walls, old lanes, hedge rows, fence rows, historic vegetative plantings and visible cultural remnants of past human settlement. These features should be integrated into the overall plan for the property.
6. *Minimal Impact to the Byway.* Applications should avoid visual intrusions into the scenic viewshed. If visual intrusions are unavoidable, the nature, intensity and quantity of the intrusion should be minimized. All unavoidable visual intrusions should be mitigated with an appropriate level of compensating features.

7. Open Space Design and Relationship to Designated Byways. Designs should support open space systems that protect scenic vistas, contributing visual features, resource areas and other character-defining features. Designs should be configured to provide a contiguous and viable greenway and recreational system along the byway.
8. Curbs. In general, curbs should be avoided consistent with a naturalized open-section road capable of supporting disconnected runoff managed in above-ground stormwater best management practices. If roadways or other areas are intended to be dedicated to the State, DelDOT may determine curb need. Alternative materials may be used, subject to acceptability of design by County or State agencies.
9. Sidewalks. If sidewalks are required for public safety or accessibility purposes, trails and shared-use pathways in lieu of sidewalks are encouraged. Alternative materials may be used, subject to acceptability of design by County or State agencies. Alignments may vary to adjust to existing topographic and natural features. Other forms of egress easements or agreements are encouraged to ensure public accessibility or connectivity to existing paths and trails.

B. Viewshed Composition. A corridor is composed of four (4) sub-districts as follows:

1. Sub-District 1 (SD-1): Those portions of the corridor that are within the right-of-way as specified by Delaware Department of Transportation's (DelDOT) Functional Classification Map and are thereby under the jurisdiction of DelDOT.
2. Sub-District 2 (SD-2): Those portions of the corridor that are within two hundred (200) feet of either side of the right-of-way or property line, whichever is greater, of a designated scenic road (SD-1) and which are also within established scenic viewsheds or contain vista points as depicted on viewshed maps contained in Appendix 8.
 - a. SD-2 are the protective areas immediately adjacent to the scenic road rights-of-way that require the highest degree of viewshed protection.
 - b. All areas within SD-2 (with the exception of visual intrusions) should be protected, conserved and enhanced. Within SD-2, a building's largest facade should not directly face the scenic viewshed along the scenic road, unless the viewshed plan demonstrates that the proposed design and screening will reduce impact to the byway.
 - c. Visual intrusions into this sub-district should be in compliance with the Subdistrict Standards Table. Impacts should be minimized and mitigated in accordance with the findings of a viewshed plan prepared pursuant to Appendix 1.
 - d. Existing structures in SD-2 are exempt from the standards contained in the Subdistrict Standards Table. Additions to or modification of such structures should mitigate impacts to viewsheds consistent with the objectives of this Appendix.
3. Sub-District 3 (SD-3): Those portions of the corridor that are between two hundred (200) feet and six hundred sixty (660) feet of the right-of-way or property line, whichever is

greater (SD-1), and which are also within established scenic viewsheds or contain vista points.

- a. Development permitted within this sub-district should maximize conservation design strategies and minimize impacts and visual intrusions into the viewshed, pursuant to the Subdistrict Standards Table.
 - b. Visual intrusions into this sub-district should be in compliance with the Subdistrict Standards Table. Impacts should be minimized and mitigated in accordance with the findings of a viewshed plan prepared pursuant to Appendix 1.
4. Other Areas: Those portions of the corridor that would otherwise be within Scenic Districts 1, 2 or 3 but are not within established scenic viewsheds or do not contain vista points are considered Other Areas.

C. *Byway Development Standards Table.* The sub-district development standards contained in the Subdistrict Standards Table regulate street yard setbacks, visible building facade, landscaping and grading/earthwork for development along a designated byway. The purpose of these standards is to reduce the overall impact of development on the scenic resources and intrinsic qualities of the byways and, where feasible, complement or enhance views from designated byways.

1. Street yard and paving setbacks reduce direct impacts to roadway visibility, provide for proper ingress and egress, reduce infringements on adjoining properties, provide room to buffer objectionable uses or soften the impact of such uses, and serve as filtration areas for storm water run-off.
 - a. Street yard and paving setbacks established by this Appendix may be reduced by the Department. Modification should mitigate impacts to viewsheds consistent with the objectives of this district. The Department will not grant modifications beyond the standards required for the zoning district as set forth in Article 4.
 - b. The applicant should document the mitigated impact on a viewshed plan, depicting the extent to which the modification reduces paving or shifts paving or buildings out of the viewshed.
2. Visible building facade standards reduce the overall impact of a building facade on the byway through selective screening or alternative building placement and architectural design. The Subdistrict Standards Table establishes the maximum visible building facade as seen from a designated byway. The building facade square footage is calculated by multiplying the building facade length by the building facade height as depicted on architectural renderings and a viewshed plan.
3. Buildings located outside the scenic viewshed or scenic vistas are exempt from visible building height requirements except where the visible building height will affect the scenic viewshed or scenic vista. Under such circumstances, only the building height within 660 ft. of the right of way should be mitigated when the height would otherwise infringe upon the scenic viewshed or scenic vista and as viewed from a byway. For

example, for Other Areas that are within 100 to 150 feet from the right of way, only twenty (20) percent of allowable building height may be visible.

Subdistrict Standards Table

	<u>Sub-District 2 (SD-2) (0-200 ft.)</u>	<u>Sub-District 3 (SD-3) (>200 ft. to 660 ft.)</u>	<u>Other Areas</u>
<u>Street Yard & Paving Setback From ROW¹</u>			
<u>S, SE, SR</u>	<u>100-foot minimum</u>		<u>Table 40.04.110</u>
<u>All other Districts</u>	<u>40-foot minimum</u>		<u>Table 40.04.110</u>
<u>Building Facade Distance From ROW¹</u>	<u>Maximum Permitted Visible Building Facade² (less than 2,000 square feet of building facade)</u>		
<u>Less than or equal to 100 ft.</u>	<u>Not permitted</u>		
<u>>100 to 150 ft.,</u>	<u>30 percent</u>		
<u>>150 to 200 ft.,</u>	<u>50 percent</u>		
<u>>200 to 400 ft.,</u>		<u>70 percent</u>	
<u>>400 to 660 ft.,</u>		<u>90 percent</u>	
<u>>660 ft.</u>		<u>100 percent</u>	
<u>Building Facade Distance From ROW¹</u>	<u>Maximum Permitted Visible Building Facade² (2,000 square feet or greater of building facade)</u>		
<u>Less than or equal to 100 ft.</u>	<u>Not permitted</u>		
<u>>100 to 150 ft.,</u>	<u>20 percent</u>		
<u>>150 to 200 ft.,</u>	<u>40 percent</u>		
<u>>200 to 400 ft.,</u>		<u>60 percent</u>	
<u>>400 to 660 ft.,</u>		<u>80 percent</u>	
<u>>660 ft.</u>		<u>100 percent</u>	
<u>Building Distance From ROW¹</u>	<u>Maximum Permitted Visible Building Height</u>		
<u>Less than or equal to 100 ft.</u>			<u>Not permitted</u>
<u>>100 to 150 ft.,</u>			<u>20 percent</u>
<u>>150 to 200 ft.,</u>			<u>40 percent</u>
<u>>200 to 400 ft.,</u>			<u>60 percent</u>
<u>>400 to 660 ft.,</u>			<u>80 percent</u>
<u>>660 ft.</u>			<u>100 percent</u>
<u>Grading & Earthwork</u>	<u>Limit to 10-foot maximum cut or fill</u>		

¹ Total Right of way as established by DelDOT.

² The percentage of the zoning district's permitted visible building facade square footage that is allowed to be seen from a byway. Example: A building with 1,000 sf of facade within 100-150 ft. of the right of way is permitted a maximum 30% visible building facade (300 sf) as seen from a designated byway.

Examples of Viewshed Preservation Techniques

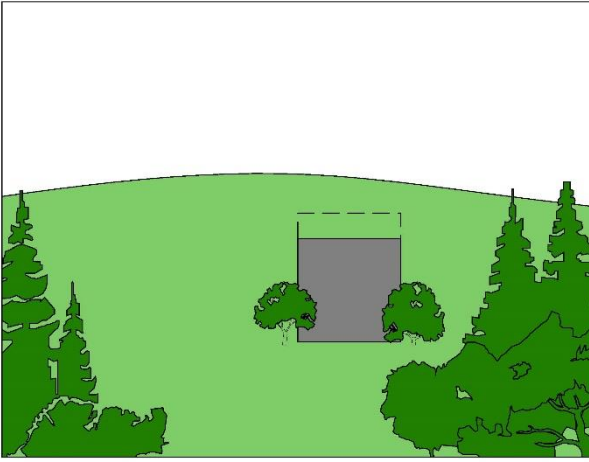


Figure 1 - Building height is reduced and building screened to minimize impact on the viewshed

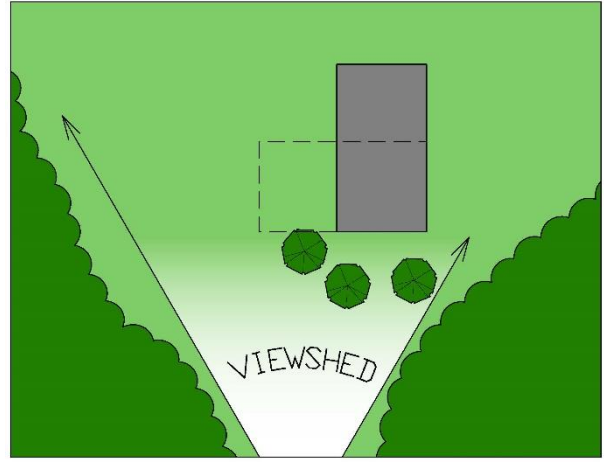


Figure 2 - Building in viewshed is reoriented and screened to reduce impact on viewshed

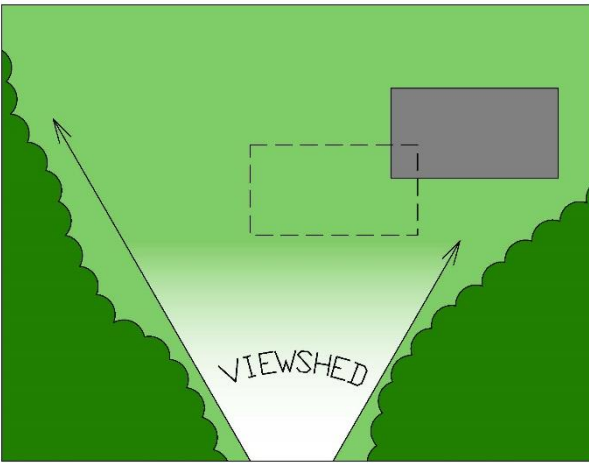


Figure 3 - Building is relocated to be partly outside the viewshed

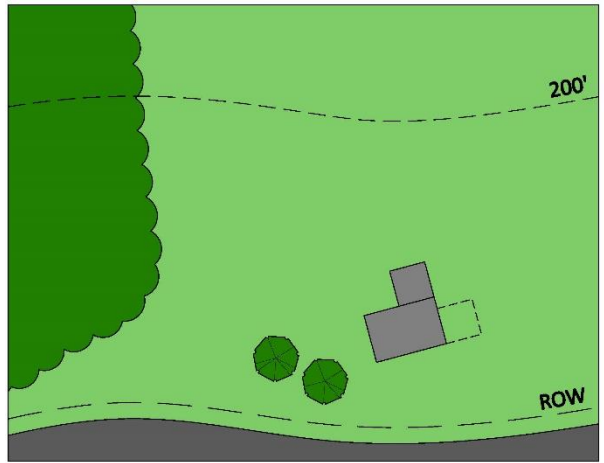


Figure 4 - Addition to existing structure is placed to the rear of the building rather than directly in the viewshed

D. Resources. Below is list of maps and studies that may be used while planning for development along designated byways:

1. Identified Intrinsic Qualities Map.
2. Reference to Viewshed GIS Maps.
3. Subdistricts Map.
4. Illustrative Graphics regarding visual intrusions.
5. Land section graphic showing subdistricts.

E. Relevant Studies.

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

Section 17. New Castle County Council finds that the provisions of this Ordinance are consistent with the spirit and intent of the New Castle County Comprehensive Development Plan.

Section 18. All ordinances or parts of ordinances and all resolutions or parts of resolutions that may be in conflict herewith are hereby repealed except to the extent they remain applicable to land use matters reviewed under previous Code provisions as provided in Chapter 40 of the New Castle County Code.

Section 19. The provisions of this Ordinance shall be severable. If any provision of this Ordinance is found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that County Council would have enacted the remaining valid provisions without the unconstitutional or void one, or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with County Council's intent. If any provision of this Ordinance or any zoning map or portion thereof is found to be unconstitutional or void, all applicable former ordinances, resolutions, zoning maps or portions thereof shall become applicable and shall be considered as continuations thereof and not as new enactments regardless if severability is possible.

Section 20. This Ordinance shall become effective immediately upon passage by New Castle County Council and signature of the County Executive or as otherwise provided in 9 Del. C § 1156 and shall only apply to Land Use applications submitted after such date unless the applicant by written request agrees to submit to the provisions of this Ordinance.

Adopted by County Council of
New Castle County on:

President of County Council
of New Castle County

Approved on:

County Executive
New Castle County

SYNOPSIS: The following is a summary of the revisions contained in this ordinance broken down by New Castle County Code Division or Section number.

Sec. 40.03.337. This amendment provides that a Solar Energy System may not be located in a designated byway.

Sec. 40.03.522. This amendment provides that the requirements of Article 18 apply to parking along designated byways.

Sec. 40.04.110. This amendment limits the height of buildings along designated byways.

Sec. 40.04.240. This amendment clarifies that scenic corridors are required generally for major plans and provides that minimum 100 foot scenic corridors are required for major and minor plans for property along designated byways. Scenic corridors are provided on major plans through open space; on minor plans, through conservation easements. A table number is provided for Scenic corridor Standards.

Sec. 40.06.030. This amendment clarifies that EVM off-premises advertising is not to be placed along any designated byway.

Sec. 40.06.080. This amendment provides sign regulations along designated byways.

Sec. 40.08.130. This amendment provides that redevelopment along designated byways be designed in accordance with Article 18.

Division 40.18.000. This new division establishes the purpose of Article 18, which is generally to provide a level of County regulatory protection to the intrinsic qualities of the County's designated byways.

Division 40.18.100. This new division establishes that certain subdivision and land development plans for properties within 660 feet of a designated byway are subject to Article 18. Corridor Management Plans or other studies will be consulted for guidance in development.

Division 40.18.200. This new division establishes standards for development along designated byways, including reduced parking, minimal screening, and appropriate grading and site access. Intrinsic qualities are to be protected through conservation easements.

Division 40.18.300. This division provides procedures for applications to develop along a designated byway.

Sec. 40.20.210. This amendment provides flexibility in block design along designated byways.

Sec. 40.20.220. This amendment provides flexibility in lot design along designated byways.

Sec. 40.22.511. This amendment requires the use of underground cables for certain utilities along designated byways.

Sec. 40.22.610. This amendment provides flexibility in parking lot design for environmental or scenic preservation, and separates the paragraph into subsections for clarity.

Sec. 40.23.010. This amendment provides flexibility for bufferyard standards for certain land developments accompanied by viewshed plans.

Sec. 40.31.113. This amendment provides that a viewshed plan must be submitted for all development subject to scenic corridor standards.

Division 40.33.300. This amendment provides definitions for terms related to the protection and enhancement of designated byways.

Appendix 1. This amendment provides additional submission requirements for a viewshed plan.

Appendix 2. This amendment establishes a fee for viewshed plan review.

Appendix 8. This amendment establishes a new appendix to provide design guidelines for development along designated byways.

Substitute No. 1. The following changes are included in Substitute No. 1:

Sec. 40.03.337. This amendment allows Community Solar Energy Systems to be located 200 feet from the right-of-way of a designated byway consistent with Subdistrict 3, except within the SR (Suburban Reserve) zoning district in the coastal zone, with their associated barrier and buffer to be located away from the roadway.

Sec. 40.04.240. This amendment exempts projects compliant with the build-to line provisions of Section 40.04.110.F from providing a Scenic Corridor.

Sec. 40.18.210. This amendment exempts projects compliant with the build-to line provisions of Section 40.04.110.F from providing additional screening.

Division 40.33.300. This amendment creates a definition for community solar installations.

FISCAL NOTE: The fiscal impact of the Ordinance, if approved, will be an increase in revenue of approximately \$6,000 per year.