



NEW CASTLE COUNTY COUNCIL LAND USE COMMITTEE MEETING

Co-Chair: David Tackett, Eleventh District

Co-Chair: Janet Kilpatrick, Third District

January 17, 2023

3:00 PM

VIRTUAL ZOOM WEBINAR MEETING &
LOUIS L. REDDING CITY/COUNTY BUILDING
1ST FLOOR COUNCIL CHAMBERS
800 N. FRENCH STREET, WILMINGTON, DE 19801**

REVISED AGENDA

A. Meeting Call to Order

B. Approval of Minutes

C. Review/Discussion of Resolution(s)

R23-__: TO TERMINATE A DECLARATION OF RESTRICTIONS FOR 713 AND 721 VALLEY ROAD, NEW CASTLE COUNTY TAX PARCEL NOS. 08-0120.00-73 AND 08-012.00-033; APPLICATION NO. 2022-0623; COUNCIL DISTRICT 3 Introduced by: Ms. Kilpatrick

D. Review/Discussion of Ordinance(s)

°22-128: REVISE ZONING MAP: MILL CREEK HUNDRED, EAST SIDE OF VALLEY ROAD, 850 FEET SOUTH OF EVANSON ROAD; REZONE TAX PARCELS 08-012.00-033 – 040, AND TAX PARCELS 08-012.00-073 – 075, 58.31+ ACRES, FROM S (SUBURBAN), CN (COMMERCIAL NEIGHBORHOOD), AND I (INDUSTRIAL) TO ST (SUBURBAN TRANSITION) AND A PORTION OF TAX PARCEL 08-012.00-039, 1.02+ ACRES FROM S (SUBURBAN) TO ST (SUBURBAN TRANSITION) AND H (HISTORIC OVERLAY ZONE). (The Exploratory Major Subdivision Plan for Hockessin Station proposes to rezone tax parcels 08-012.00-033 – 040, and 08-012.00-073 – 075 from “S” (Suburban), “CN” (Commercial Neighborhood), and “I” (Industrial) to “ST” (Suburban Transition) and a portion of tax parcel 08-012.00-039, 1.02+ acres from “S” (Suburban) to “ST” (Suburban Transition) and “H” (Historic Overlay Zone) and subdivide the property into 147 lots with associated site improvements, utilizing the open space planned development option, and remove existing deed restrictions from tax parcels 08-012.00-033 and 08-012.00-073. App. 2021-0695-S, Council District 3.) Introduced by: Ms. Kilpatrick

E. Presentations

PRESENTATION OF WILMAPCO'S REGIONAL TRANSPORTATION PLAN (RTP)

F. Other

G. Public Comment

H. Adjournment

REVISED AGENDA POSTED: JANUARY 13, 2023
AGENDA POSTED: JANUARY 10, 2023.

This agenda was revised to remove a resolution that will now be considered at a later date. That resolution is to rename the apartment complex recorded as "COLONY NORTH SECTIONS 1,2, AND 3," TAX PARCEL NUMBERS 06-149.00-007, 06-149.00-050, AND 06- 145.00-169.

*The agenda is posted (7) seven days in advance of the scheduled meeting in compliance with 29 *Del. C.* Section 10004(e)(2). The meeting may go into Executive Session to address issues that arise at the time of the meeting.

**Under Title 29, Section 10006A of *Delaware Code*, New Castle County Council is holding this meeting as a telephone and video conference, utilizing  Webinar. In addition, this meeting is open to the public in Council Chambers (800 N. French Street, Wilmington, DE 19801). The link to join the meeting via computer, smart device, or smart phone is : <https://zoom.us/j/377322142> You may also call into the meeting (audio) using the following call in numbers: 1-312-626-6799 or +1-646-558-8656 or +1-346-248-7799 or +1-669-900-9128 or +1-253-215-8782 or +1-301-715-8592. Then enter the Webinar ID: 377 322 142. If you do not have a good connection with one, please try the others. Additional information regarding phone functionality during the meeting is available at: <https://support.zoom.us/hc/en-us/articles/360029527911-Live-Training-Webinars>

Meeting materials, including a meeting agenda, legislation to be addressed during the meeting, and other materials related to the meeting are electronically accessible at <https://www.nccde.org/2351/Agendas-and-Minutes> Members of the public joining the meeting may be provided an opportunity to make comments in real time. A comment period will be administered by a moderator to ensure everyone may have an opportunity to comment.

If permitted to comment, you will not be able to speak until called upon by the moderator. For those appearing virtually, there are functions in the program that allow you to do this. Please see the link in the previous paragraph.

Introduced by: Ms. Kilpatrick
Date of Introduction: January 24, 2023

RESOLUTION NO. 23-

**TO TERMINATE A DECLARATION OF RESTRICTIONS FOR
713 AND 721 VALLEY ROAD, NEW CASTLE COUNTY
TAX PARCEL NOS. 08-0120.00-73 AND 08-012.00-033;
APPLICATION NO. 2022-0623; COUNCIL DISTRICT 3**

WHEREAS, John J. McGrellis, III (the “Original Owner”) caused to be made and recorded that certain Declaration of Restrictions dated October 9, 2005, and recorded in the Office of the Recorder of Deeds in and for the New Castle County, State of Delaware (the “Recorder’s Office”), in Instrument No. 20070426-0037872 (the “Declaration”); and

WHEREAS, the Original Owner executed the Declaration to restrict the real property located on the southeast side of Valley Road (the “Property”), being New Castle County Tax Parcel Nos. 08-012.00-033 & 08-012.00-073, to certain permitted uses, for the benefit of New Castle County; and

WHEREAS, VRH2 LLC, successor-in-interest to the Original Owner (“Declarant”), desires to terminate the Declaration to remove the restriction as part of that certain Major Subdivision Plan for Hockessin Station, Application No. 2021-0695, prepared by CDA Engineering, Inc. dated October 22, 2021 (the “Plan”), said Plan to be recorded in the Recorder’s Office, to allow a subdivision of property into 149 lots on 58.31 acres and associated improvements; and

WHEREAS, the Plan will rezone the Property from its current commercial and residential zoning to Suburban Transition (“ST”); and

WHEREAS, the Declarant, as the owner of the Property, is authorized and permitted to terminate the Declaration, subject to the consent and approval of the New Castle County Council; and

WHEREAS, the Department of Land Use (the “Department”) recommends in favor of terminating the Declaration currently encumbering the Property, consistent with the purposes stated herein; and

WHEREAS, *New Castle County Code* Section 40.31.130 provides that upon receipt of a recommendation report from the Department and the Planning Board, County Council shall schedule a hearing and render a decision by resolution. A supermajority vote is required if voting contrary to a Department recommendation.

NOW, THEREFORE, BE IT RESOLVED, by and for the County Council of New Castle County, that County Council hereby approves the Termination of Declaration of Restrictions, attached hereto as Exhibit “A” and hereby authorizes the Declarant to record the Termination of Declaration of Restrictions in the Recorder’s Office.

Adopted by County Council of
New Castle County on:

President of County Council
of New Castle County

SYNOPSIS: Same as title.

FISCAL NOTE: There will be no discernible fiscal impact upon the approval of this resolution.

Tax Parcel Nos.: 08-012.00-033
08-012.00-073

Prepared By and Return To:
Barnes and Thornburg, LLP
Attn: Michael A. DeNote
222 Delaware Avenue, 10th Floor
Wilmington, Delaware 19801

TERMINATION OF DECLARATION OF RESTRICTIONS

THIS TERMINATION OF DECLARATION OF RESTRICTIONS (this “Termination”) is hereby made this ____ day of _____, 2022, by VRH2 LLC, a Delaware limited liability company (referred to herein as “Declarant”).

WHEREAS, Declarant is seized in fee simple of certain tracts of land and the improvements erected thereon, situate in Mill Creek Hundred, New Castle County, State of Delaware, located along the Southerly side of Valley Road, consisting of approximately 19 acres of land, more or less, being a portion of Tax Parcel Nos. 08-012.00-033 & -073 (the “Property”); and

WHEREAS, on October 9, 2005 John J. McGrellis, III, predecessor in interest to Declarant, caused to be made and recorded that certain Declaration of Restrictions of record in the Office of the Recorder of Deeds in and for the New Castle County, State of Delaware (the “Recorder’s Office”), in Instrument No. 20070426-0037872 (the “Declaration”); and

WHEREAS, with the consent of New Castle County pursuant to New Castle County Resolution No. _____, a copy of which is attached as Exhibit A, Declarant desires to terminate the Declaration.

NOW, THEREFORE, Declarant hereby **TERMINATES** the Declaration, and any and all right, interest, obligation or duty created thereunder are terminated and of no further force or effect.

IN WITNESS WHEREOF, Declarant has caused this Termination to be executed and sealed by the day and year first above written.

WITNESS:

VRH2 LLC

_____ (SEAL)

Name/Title:

STATE OF DELAWARE)
) SS.
NEW CASTLE COUNTY)

The foregoing instrument was acknowledged before me this _____ day of _____ 2022, by _____, the _____ of VRH2 LLC, party to this indenture, known to me personally to be such and acknowledge this Indenture to be his act and deed.

My Commission Expire:

(Printed Signature)

EXHIBIT A

New Castle County Resolution



Department of Land Use

DEPARTMENT OF LAND USE
RECOMMENDATION REPORT

Application No. 2022-0623-DRC

Deed Restriction Change for
713 and 721 Valley Road
December 20, 2022

Location: East side of Valley Road, 850 feet south of Evanson Road.

Date of Hearing: November 1, 2022

Tax Parcel No's.: 08-012.00-033 & 08-012.00-073

Applicant: VRH2 LLC

EXECUTIVE SUMMARY

Application 2022-0623-DRC proposes to terminate the Declaration of Restrictions that was recorded as part of rezoning application 2004-0472-S/Z for the subject site. The current restrictions prohibit the use of the property to specific uses, mostly relating to the auction house as proposed by the 2004 plan.

The Department of Land Use has considered the standards in Section 40.31.130.D of the New Castle County Code and other public comments. Based on this analysis, the Department is of the opinion that the proposed changes are in the best interest of the parties to the restrictions and that the proposed changes to the existing deed restrictions are consistent with the planning goals for the County. As a result, the Department recommends **APPROVAL** of the termination of the Declaration of Restrictions.

At its business meeting held on December 20, 2022, the Planning Board considered the recommendation offered by the Department of Land Use. On a motion made by Mr. Snowden and seconded by Ms. Visvardis, the Board voted to recommend **APPROVAL** of the termination of Declaration of Restrictions.

DESCRIPTION

Application 2022-0623-DRC proposes to terminate the Declaration of Restrictions that was recorded as part of Application 2004-0472-S/Z.

Under Application 2004-0472-S/Z, Ordinance 05-115, adopted by County Council on October 10, 2005, rezoned a portion of the subject site from S (Suburban) to CN (Commercial Neighborhood). A Declaration of Restrictions, recorded at Instrument Number 20070426-0037872, established certain

restrictions regarding the use of the property, as well as the design of any structures that could be built due to the zoning change, as part of the rezoning application.

The rezoning was necessary to facilitate the recordation of the land development plan (Application 2004-0472-S/Z), which proposed to convert an existing 24,150 square foot pole barn into an auction building and social hall. The land development plan for Valley Road Hall was recorded on January 9, 2009, as Instrument Number 20090109-0001447.

BACKGROUND

In 1995 the property was proposed for rezoning from R-2 (Agricultural and General Purpose) to C-3 (General Business) for the purpose of constructing an auction building, social hall and indoor/outdoor soccer facilities (Ordinance 95-212). The Department's position was the proposed commercial zoning district was incompatible with the surrounding residential land uses and inconsistent with the Comprehensive Plan Map designation of Low Density Residential. The Planning Board agreed with the Department's position and recommended denial of Application 1995-0408-S/Z. This application/ordinance was later withdrawn.

Under Application 2004-0472-S/Z, Ordinance 04-102 was a rezoning proposal similar to the 1995 application. Ordinance 04-102 and a draft Declaration of Restrictions were presented at the August 4, 2004, Planning Board public hearing, where there was an abundance of public comment both for and against the proposal. Like the previous proposal, both the Department and Planning Board recommended denial of Ordinance 04-102 using the same rationale as the 1995 application. Ordinance 04-102 was later withdrawn by the applicant.

Ordinance 05-115 was later introduced on September 27, 2005, under Application 2004-0472-S/Z. The proposal was identical to that of Ordinance 04-102. Ordinance 05-115 was approved by County Council despite the negative recommendations of the Department of Land Use and the Planning Board. As part of Application 2004-0472-S/Z, a Declaration of Restrictions (as presented at the August 4, 2004, Planning Board public hearing) was recorded at Instrument Number 20070426-0037872, which imposed certain restrictions regarding the use of the property, as well as the design of any structures that could be built.

The associated land development plan (Valley Road Hall) under Application 2004-0472-S/Z was recorded on January 9, 2009, at Instrument Number 20090109-0001447.

Proposed Change

The existing Declaration of Restrictions restricts the property to the following uses:

- Auction gallery and/or exhibit hall and uses customarily associated therewith
- Social hall; reception hall; place of assembly or gathering, and similar uses
- Retail sales of antiques
- Day care – child and/or adult
- Indoor sports arena for basketball, soccer, volleyball, etc.; tennis, racquet ball or handball courts; sports performance training center educational institutions
- Bed and breakfast facility

- Funeral home
- Religious institution; place of assembly and worship
- Uses which are accessory and/or ancillary to any of the foregoing uses such as a snack bar, café, food service facilities, pro shop, gift shop, etc.

The Declaration of Restrictions also impose restrictions on lighting, sound, commercial deliveries/trash pick-ups, hours of operation for the auction hall/gallery, outside storage, signage, building appearance of the auction house/social hall, and restrictions for the protection of the existing wooded area near the rear of the property.

Application 2022-0623-DRC proposes to terminate the Declaration of Restrictions in its entirety. The current land development plan application proposes to rezone the subject site to ST, a residential zoning classification. The existing restrictions do not allow for the housing types proposed by the current land development plan application, as the prior zoning did not permit residential uses. The removal of the existing restrictions is required for the recordation of Application 2021-0695-S/Z, which proposes 15 single-family detached homes, 42 two-story townhomes, 64 three-story townhomes, and 26 twin homes.

Public Hearing – November 1, 2022

Shawn Tucker, Esq. of Barnes & Thornburg LLP gave a combined presentation for the Hockessin Station projects for the rezoning as well as for the elimination of deed restrictions.

Mr. Tucker provided the Board with a description of the proposed applications, including the rezoning request, the residential development patterns in the surrounding area of the subject application, and how this project fits within the character of the surrounding community. He addressed Section 40.31.130.D of the New Castle County Code which sets the standards for the evaluation of changes of deed restrictions.

Mr. Tucker stated that the restrictions were created as a result of the McGrellis Auction House rezoning application to Commercial Neighborhood (CN). However, the auction house has been demolished and with the adoption of the Suburban Transition (ST) zoning there is no longer a need to maintain the current restrictions.

Mark Blake, who is with Greater Hockessin Area Development Association (GHADA), expressed that this project was one of the longest focus group projects that GHADA has ever held – primarily due to the pandemic. Mr. Blake stated that there were over 27 members participating including homeowners, nearest neighbors, neighboring communities, etc. taking part in a process that has taken over four years which included 15 meetings. Mr. Blake explained that this is a site that GHADA has been looking at for over 20 years as a potential site for development. He explained that this plan will eliminate one of the troublesome zoning districts within the Hockessin area that was seen as out of place, namely the I (Industrial) zoning district. Mr. Blake stated that GHADA supports this plan and asks that the termination of the Deed Restrictions be approved as they pertain only to the rezoning that was approved for the McGrellis Auction House.

No other comments or questions were offered by the public or Planning Board members.

Department Analysis

In considering whether to support a change to a deed restriction to which the County is a party, Section 40.31.130.D of the UDC identifies two (2) areas of evaluation; (1) are the proposed changes in the best interests of the parties to the restrictions and (2) are they consistent with the planning goals of the County.

When evaluating whether a change to a deed restriction is appropriate, it is important to understand the context under which the agreements were made. The subject site had long served in a residential and farmland capacity from 1961 until 1990, which was when John McGrellis, III purchased the property from Susan Conway. As the new property owner, Mr. McGrellis sought to rezone the property in order to create an auction house and social hall on the subject site.

The existing deed restrictions sought to provide the surrounding community with a level of comfort and predictability regarding the rezoning and future development of the subject site. Recognizing that potential nuisances created by the future development and rezoning of the subject site would most impact the adjacent residential communities, the restrictions specified the uses that would be permitted.

Since the recordation of the original Declaration of Restrictions, the auction house has been demolished and the commercial use of the property has been discontinued. In January of 2018 the property was purchased by VHR2 LLC, who has worked extensively with the Greater Hockessin Area Development Association (GHADA) and the surrounding communities on the design of the plan.

The Department believes that the proposed termination of the Declaration of Restrictions that limited the property to specific commercial uses is in the best interest of the parties to the restrictions. The proposed residential use of the property is more in keeping with the character of the surrounding community.

The Department believes that the proposed termination of the Declaration of Restrictions is consistent with the Planning Goals of the County as set forth by the 2012 New Castle County Comprehensive Plan. Objective 12 of Chapter 3 calls for projects to incorporate “design guidelines to complement and enhance the area and surrounding community”. The use of the property is consistent with the character of Valley Road which is primarily residential. Along with the removal of the deed restrictions for the existing commercial zoning district, the project proposes rezoning the site to ST which will remove the commercial neighborhood zoning that is inconsistent with the suburban context along Valley Road. Additionally, Code requirements will provide protections for the existing wooded area near the rear of the property.

DEPARTMENT OF LAND USE RECOMMENDATION

The Department of Land Use has considered the standards in Section 40.31.130.D of the New Castle County Code and other public comments. Based on this analysis, the Department is of the opinion that the proposed changes are in the best interest of the parties to the restrictions and that the proposed changes to the existing deed restrictions are consistent with the planning goals for the County. As a result, the Department recommends **APPROVAL** of the termination of the Declaration of Restrictions.

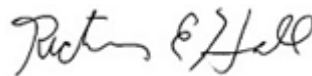
PLANNING BOARD RECOMMENDATION

At its business meeting held on December 20, 2022, the Planning Board considered the recommendation offered by the Department of Land Use. On a motion made by Mr. Snowden and seconded by Ms. Visvardis, the Board voted to recommend **APPROVAL** of the termination of the Declaration of Restrictions. The motion was adopted by a vote of 8-0-0-1 (Yes: Cahill-Krout, Daigle, Drake, Gray, McGlinchey, Peterson, Snowden, Visvardis; No: none; Abstain: none; Absent: Cochran).

There was no discussion preceding the vote.

STATUTORY GUIDELINES

In the phraseology of 9 Delaware Code Section 2603 (a), the Department of Land Use finds that this termination of Declaration of Restrictions would promote the convenience, order, and welfare of the present and future inhabitants of this state.

 12/21/2022

Richard E. Hall, AICP date
General Manager
Department of Land Use

 12/21/2022

Karen Peterson date
Chair
Planning Board

Introduced by: Ms. Kilpatrick
Date of introduction: October 25, 2022

ORDINANCE NO. 22-128

REVISE ZONING MAP: MILL CREEK HUNDRED, EAST SIDE OF VALLEY ROAD, 850 FEET SOUTH OF EVANSON ROAD; REZONE TAX PARCELS 08-012.00-033 – 040, AND TAX PARCELS 08-012.00-073 – 075, 58.31± ACRES, FROM S (SUBURBAN), CN (COMMERCIAL NEIGHBORHOOD), AND I (INDUSTRIAL) TO ST (SUBURBAN TRANSITION) AND A PORTION OF TAX PARCEL 08-012.00-039, 1.02± ACRES FROM S (SUBURBAN) TO ST (SUBURBAN TRANSITION) AND H (HISTORIC OVERLAY ZONE).

(The Exploratory Major Subdivision Plan for **Hockessin Station** proposes to rezone tax parcels 08-012.00-033 – 040, and 08-012.00-073 – 075 from “S” (Suburban), “CN” (Commercial Neighborhood), and “I” (Industrial) to “ST” (Suburban Transition) and a portion of tax parcel 08-012.00-039, 1.02± acres from “S” (Suburban) to “ST” (Suburban Transition) and “H” (Historic Overlay Zone) and subdivide the property into 147 lots with associated site improvements, utilizing the open space planned development option, and remove existing deed restrictions from tax parcels 08-012.00-033 and 08-012.00-073. App. **2021-0695-S**, Council District 3.)

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

Section 1. The Zoning Map of New Castle Hundred, as amended, is hereby further amended by changing the zoning classification of the land shown on attached Exhibits “A” and “L” dated October 7, 2022, as set forth therein.

Section 2. The 2012 Comprehensive Development Plan Update for New Castle County, as shown amended, is hereby further amended, by changing the land use designation shown on Exhibit “E” dated October 7, 2022, as set forth herein, so as to make such land consistent with the amendment of the zoning map, as per Section 1 above.

Section 3. This Ordinance shall become effective immediately upon passage by New Castle County Council and approval of the County Executive, or as otherwise provided in 9 *Del. C.* § 1156.

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: Same as Title.

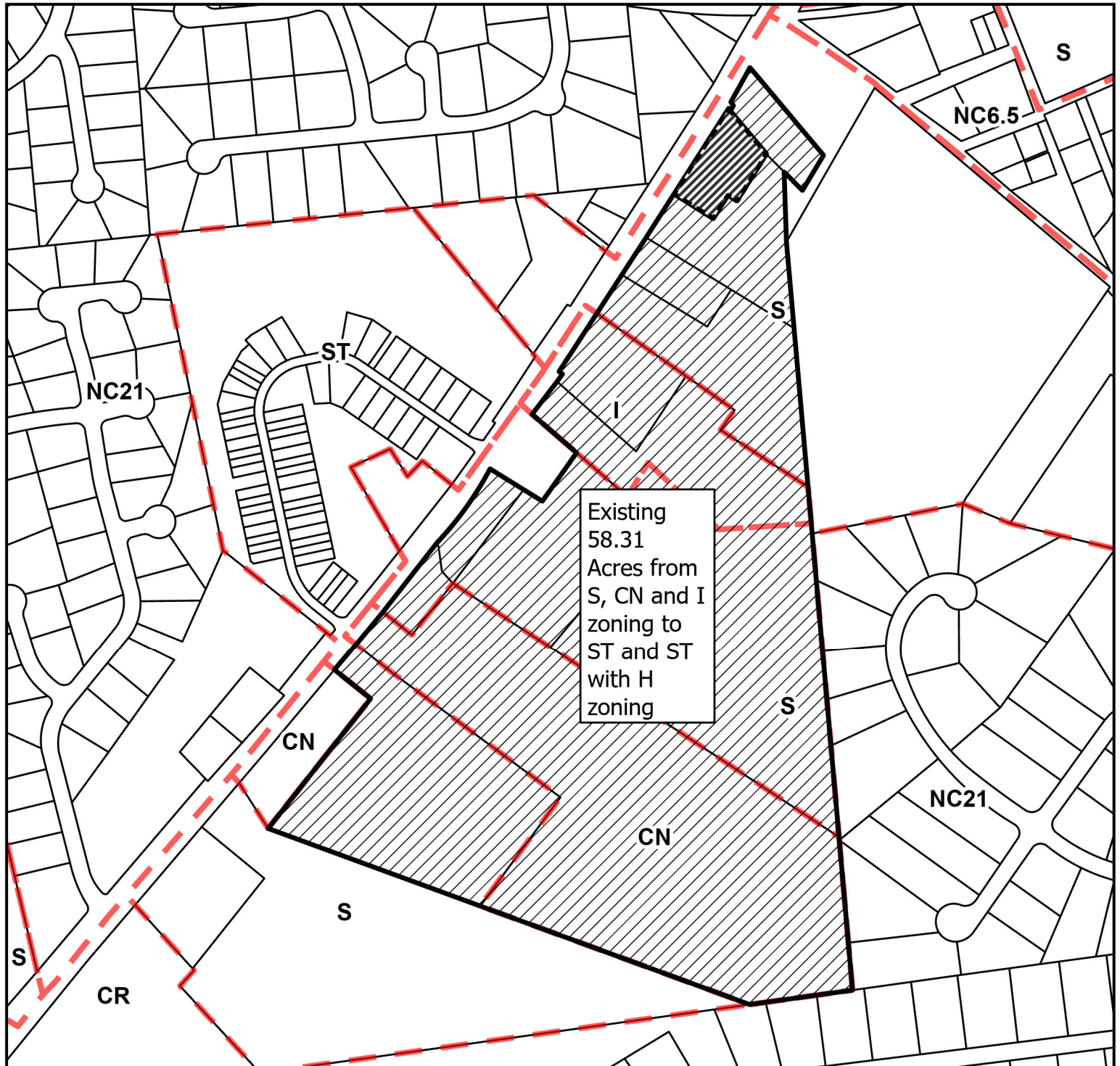
FISCAL IMPACT: This rezoning ordinance will have no immediate discernable fiscal impact on the County, but if the parcel(s) rezoned is (are) developed in accordance with the new rezoning, there may be one or more indirect fiscal effects on New Castle County government, including, but not limited to, an increase in the assessed value of the property with a resultant increase in taxes collectible thereon, and an increased demand for county services.

PROPERTY MAP

EXHIBIT "A"
ZONING ORDINANCE AS INTRODUCED

APPLICANT: VRH2 LLC
PROPOSED REZONING: EXISTING S, CN AND I ZONING
TO ST AND ST WITH H ZONING

APPLICATION NO. 2021-0695-S/Z
TAX PARCEL NO. 08-012.00-033, -034, -035, 036,
-037, -038, -039, -040, -073, -074, AND -075



HUNDRED: MILL CREEK HUNDRED
NEW CASTLE COUNTY, DELAWARE

Scale: 1:5,000

Prepared by: property.munsaka

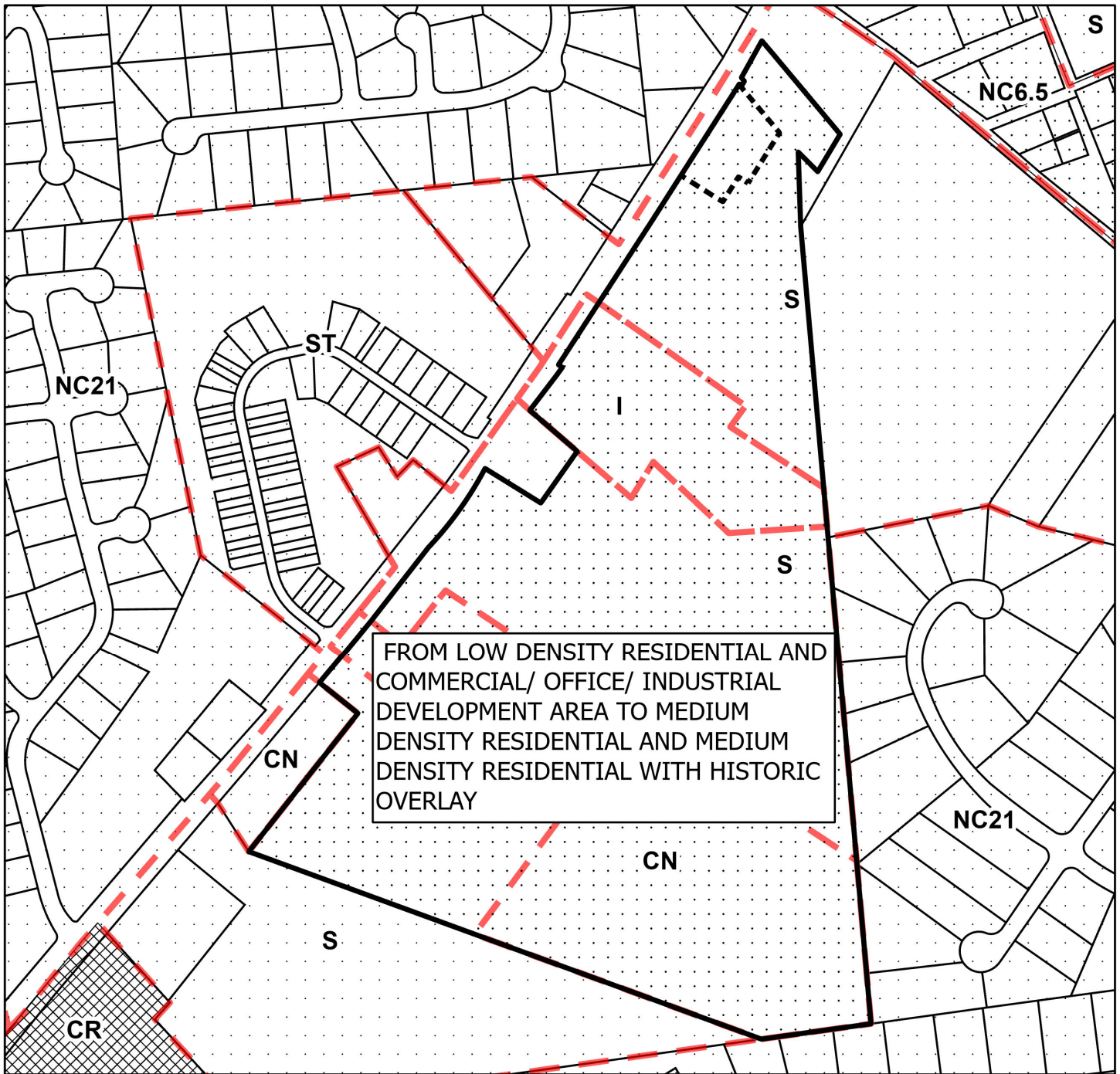
Date: 10/7/2022



PERMANENT ORDINANCE NO. 22- 128

Date Adopted by County Council _____

Date Approved by County Executive _____



AMENDMENT TO THE 2012 COMPREHENSIVE DEVELOPMENT PLAN
NEW CASTLE COUNTY, DELAWARE



Ordinance No.22-128

Exhibit E

App. No. 2021-0695-S/Z

Date: 10/7/2022

Scale: 1:5,000

Residential	Commercial/Office/Industrial Development Area	Resource & Rural Preservation
Very Low Density	New Community Development	Hometown (HT) Overlay
Low Density	HI Zoned Land	Historic Overlay (H)
Medium Density	Municipal Land	
High Density		

PROPERTY MAP

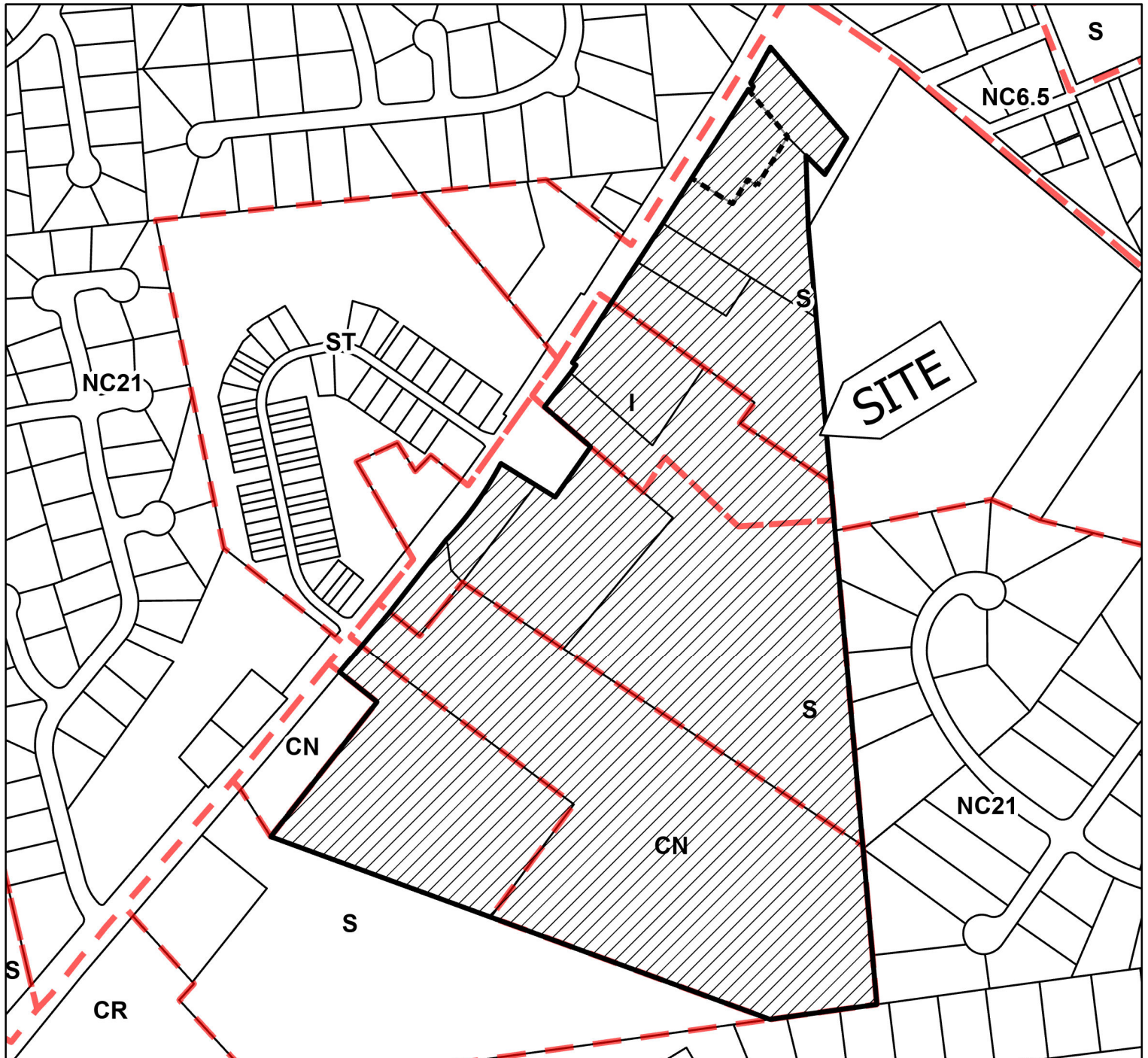
EXHIBIT "L"
ZONING ORDINANCE AS INTRODUCED

APPLICANT: VRH2 LLC

APPLICATION NO. 2021-0695-S/Z

PROPOSED REZONING: EXISTING S, CN AND I ZONING
TO ST AND ST WITH H ZONING

TAX PARCEL NO. 08-012.00-033, -034, -035, 036,
-037, -038, -039, -040, -073, -074, AND -075



HUNDRED: MILL CREEK HUNDRED
NEW CASTLE COUNTY, DELAWARE

Scale: 1:5,000

Prepared by: property.munsaka

Date: 10/7/2022



PERMANENT ORDINANCE NO. 22- 128

Date Adopted by County Council _____

Date Approved by County Executive _____

**DEPARTMENT OF LAND USE
RECOMMENDATION REPORT**

**Ordinance 22-128
Application 2021-0695-S/Z
Major Subdivision Plan for Hockessin Station**

December 20, 2022

Location: East side of Valley Road, 850 feet south of Evanson Road.

Sponsor: Councilwoman Janet Kilpatrick, District 3

Description: Rezone 58.31± acres from Suburban (S), Commercial Neighborhood (CN), and Industrial (I) to Suburban Transition (ST); and 1.02± acres from Suburban (S) to Suburban Transition (ST) and Historic Overlay Zone (H) to subdivide the property into 147 lots with associated site improvements, utilizing the open space planned development option.

Applicant: VRH2 LLC

EXECUTIVE SUMMARY

The proposed major land development plan along Valley Road south of the village of Hockessin seeks to rezone 58.31± acres from Suburban (S), Commercial Neighborhood (CN), and Industrial (I) to Suburban Transition (ST); and 1.02± acres from Suburban (S) to Suburban Transition (ST) and Historic (H) overlay zoning district to construct an Open Space Planned development, known as Hockessin Station. The 147-lot proposed development consists of several housing types, including single-family homes, two-story and three-story townhomes, and twin homes. The subject site also contains an historic dwelling known as the Robinson House that is proposed to be preserved as part of the plan.

The Department of Land Use has considered the Standards for Zoning Map Amendment in Section 40.31.410, A through E, the proposed plan, and the comments received from the outside agencies and the public. Based on this analysis, the Department is of the opinion that the standards are met by this proposal.

The Department of Land Use recommends **CONDITIONAL APPROVAL** of the subject application with the following conditions:

1. Comply with the recommendations made by the Historic Review Board at the May 3, 2022, Business Meeting:
 - A. Provide an interpretive sign (a minimum of 2'x2' in size) along the shared use pathway adjacent to Valley Road that is accessible to the public regarding the historic significance of the site as it relates to the Belton (Bulah) v. Gebhart case.

- B. The owner is encouraged to refurbish the barn structure. If the barn structure is demolished and an accessory structure is to be constructed, it shall be required to be built with similar location, materials and design to the Phase I Block of the existing barn. In addition, the spigot shall be placed in its original position, which is at the barn.
 - C. Provide measured drawings and documentation of the existing complex structures, including the dwelling interior, in accordance with the Historic American Buildings Survey (HABS) as required by Section 40.15.310.B.2 of the New Castle County Code.
 - D. Provide a schedule for long term maintenance that includes the frequency of inspections to be completed by the property owner as required by Section 40.15.310.B.3.c of the New Castle County Code.
 - E. Provide a landscape design that provides an open view of the house and site from the shared use pathway and the road.
2. To provide architectural elevations consistent with what was presented by the Applicant at the November 1, 2022, Planning Board public hearing.

At its business meeting held on December 20, 2022, the Planning Board considered the recommendation offered by the Department of Land Use. On a motion made by Ms. Cahill-Krout and seconded by Mr. Snowden, the Board voted to recommend **CONDITIONAL APPROVAL** of Ordinance 22-128 subject to the condition made by the Department of Land Use.

DESCRIPTION

The subject site is located on the east side of Valley Road, 850 feet south of Evanson Road. The proposed development is situated just south of the Village of Hockessin roughly at the center of Valley Road between Limestone Road (SR 7) and Old Lancaster Pike. The application and accompanying rezoning ordinance (22-128) propose to rezone the subject site from S (Suburban), CN (Commercial Neighborhood), and I (Industrial) to ST (Suburban Transition) to enable the development of 147 residential lots. The application also proposes to rezone approximately 1.02+/- acres (Lot 146 as shown on the plan), containing the historic Robinson House, to an Historic overlay zoning district. The Historic overlay rezoning is accompanied by a Preservation Plan for the Robinson House, which memorializes the long-term preservation and maintenance of the historic resources on the 1.02+/- acre lot.

ZONING & DEVELOPMENT PATTERN

Valley Road is developed primarily with residential subdivisions constructed in the 1980s containing single family detached housing. Abutting this property to the east are the medium density developments of the Manley Subdivision and Hockessin Valley Falls, both of which are zoned NC21 (Neighborhood Conservation). Directly across Valley Road is the ST (Suburban Transition) subdivision of Valley Grove, which is currently under construction. Several parks are also along Valley Road including Swift Memorial Park, Roser Park, and Tweeds Park, which are S (Suburban) zoned County parks. In 2005, part of the subject property was rezoned to CN (Commercial Neighborhood) to facilitate the recordation of the plan for the McGrellis auction house and social hall.

Valley Road serves as a connector between the commercial uses located in two concentrated nodes; Lantana Square Shopping Center to the south, and the core of the Village of Hockessin along Lancaster Pike and Old Lancaster Pike to the north, both of which are zoned CR (Commercial Regional). In 2021, the neighboring property along the southeast side of Valley Road, just west of the subject property, was rezoned through Ordinance 18-129 to CN (Commercial Neighborhood) to facilitate the recordation of Hockessin Commons to construct a medical office building. The pattern of development along Valley Road remains primarily residential.

BACKGROUND

Historically, Hockessin was an agricultural area with farms and scattered mushroom growing operations. Today the development pattern in the Hockessin area is strongly residential with few farms and few remnants of the mushroom industry remaining.

The communities in the immediate vicinity generally feature single family detached dwellings. However, attached units are not uncommon in the area. Examples of attached housing in the Hockessin area include Valley Grove, Valley Pointe, Gateway, and Walker Farm Estates.

Application 2021-0695-S/Z

The applicant proposes an Open Space Planned subdivision with a total of 147 dwelling units. These units will consist of several housing types, 15 single-family homes, 42 two-story townhomes, 64 three-story townhomes, and 26 twin homes at a total gross density of 2.6 dwelling units per acre. As the application proposes a rezoning, 10% of the dwelling units must be Moderately Priced Dwelling Units (MPDUs) to meet the requirements of Section 40.07.510 of the UDC.

The current proposal for Hockessin Station provides two entrances off Valley Road. The southern entrance will accommodate 132 dwelling units, while the northern entrance will accommodate the remaining 15 dwelling units, including the residual lot that contains the

historic dwelling. These two areas of the project will not be connected to limit the amount of disturbance to protected resources, which includes floodplain and wetlands. The development proposes 38.31 acres of open space.

The project is spread across 11 existing parcels with a total area of 58.31 acres. The subject project site contains three zoning districts; CN (Commercial Neighborhood), I (Industrial), and S (Suburban). The I zoned piece of property is the remnant of the mushroom growing operations that were a common element in the Hockessin area. The 19-acre portion which is currently zoned CN is the former site of the McGrellis auction house, which was rezoned under Application SLD 2004-0472 - Valley Road Hall. The project required a rezoning from S to CN and received County Council approval in 2005. The application included deed restrictions to provide the surrounding community with a level of comfort and predictability regarding the rezoning and future development of the subject site.

A separate current application to the Department (2022-0623-DRC) proposes to terminate deed restrictions that were recorded as part of a previous application and rezoning. Ordinance 05-115, which rezoned the subject site from S (Suburban) to CN (Commercial Neighborhood), was adopted by County Council on October 10, 2005. A Declaration of Restrictions was recorded at Instrument Number 20070426-0037872 which established certain restrictions regarding the use of the property, as well as the design of any structures that could be built due to the zoning change, as part of the rezoning application. The rezoning was necessary to facilitate the recordation of the subsequent land development plan SLD 2004-0472 S/Z, which proposed to convert an existing 24,150 square foot pole barn into an auction building and social hall. The land development plan for Valley Road Hall was recorded on January 9, 2009, at Instrument Number 20090109-0001447.

Application 2022-0209-H (Robinson House (H) overlay rezoning & Preservation Plan)

Pursuant to the requirements of Section 40.15.310 of the *Unified Development Code*, the subject application calls for the preservation of the historic Robinson House, constructed ca. 1895.

Historic Overlay Zoning Eligibility & Major Land Development Plans

Given the historic value of the Robinson House, App. 2021-0695-S/Z is subject to recently adopted legislation that requires all major land development plans with historic resources to take appropriate measures to ensure the long-term maintenance of the County's valuable historic resources. UDC provisions require that an historic resource be rezoned to an Historic overlay zoning district prior to the plan's recordation.

As part of the Historic overlay rezoning, applicants are required to complete a Preservation Plan, a recorded document that describes existing conditions, measures to be taken for rehabilitation, restoration, and/or preservation, and a provide a performance guarantee. The proposed draft of the Preservation Plan is reviewed and approved by the Historic Review Board prior to the major

land development application proceeding to the Planning Board and subsequently County Council. The final draft of the Preservation Plan is recorded at the Recorder of Deeds Office and is referenced on the record plan.

The Robinson House was determined eligible for Historic overlay zoning by the Historic Review Board at the May 3, 2022, Business Meeting. Shown as proposed Lot #146, the existing Robinson House site is situated along Valley Road and includes an early twentieth century barn.

Historic Background – Robinson House

Located at 863 Valley Road, the Robinson House was constructed ca. 1895, by the heirs of Hockessin farmer Ephraim Wilson. The farm was utilized for kaolin mining in the mid to late nineteenth century. Based on research conducted by the University of Delaware's Center of Historic Architecture and Design (UD CHAD), the house was likely utilized as a tenant house through 1921.¹

In 1921, Spotsylvania, Virginia natives Bert and Matilda Robinson purchased 4.06± acres of land, containing the tenant house and its grounds. According to the history compiled by UD CHAD, the Robinson's immigration to Hockessin can be understood as part of the earliest years of the Great Migration, a decades-long period during the early- to mid-twentieth century when African Americans in the south moved north in large numbers seeking freedom from racial violence and access to better educational and work opportunities during the onslaught of Jim Crow laws. Their home and farm located on Valley Road was situated in a racially mixed crossroad of renters and owners in close proximity to the center of Hockessin's Black community, which included Chippy Chapel, the African Union Methodist Church, and Hockessin Colored School. Bert Robinson remained an active community member in the 1920s and 1930s, serving as a trustee of the segregated school, a site which would later play a significant role in the US Supreme Court decision *Brown v. Board of Education*.

While the exact date range of the Robinson's occupation of the house located at 863 Valley Road is unclear, during their ownership the subject property was a main stopping point of African American children who walked great distances to school without bus service. The subject site was situated at an approximate halfway point along the route travelled by the Bulah children, who were at the center of the *Bulah* action that ultimately became a part of the *Brown v. Board of Education* ruling. According to an interview with Hilda O. (Bulah) Morris, granddaughter of the Bulahs, children would often stop at the Robinson's property to rest and drink from the spigot on the side of the existing barn. To this day, the Robinson house and its barn remain in the built environment as a resource significant to the local Black history of Hockessin and New Castle County.

¹ [Determination of Eligibility Report – University of Delaware Center for Historic Architecture & Design](#)

Historic Review Board Review & Recommendation

The Robinson House was initially evaluated by the Historic Review Board at its May 3, 2022, business meeting (App. 2022-0209-H). At the meeting, the Historic Review Board determined that the Robinson House met the following Criteria for Designation for Historic overlay zoning pursuant to Section 40.15.110 of the *Unified Development Code*:

- B. Has significant character, interest, or value as an example of the development, heritage or cultural characteristics of the County, the State or the United States.*
- C. Is the site of a significant historic event.*
- D. Exemplifies the cultural, political, economic, social or historical heritage of the community.*

The Preservation Plan for the Robinson House was presented to the Historic Review Board at the May 17, 2022, Historic Review Board public hearing. During the hearing, there was discussion regarding the existing barn on the subject site, as well as the importance of the preservation of the spigot located adjacent to the barn. At their June 7, 2022, business meeting, the Historic Review Board recommended **conditional approval** of the proposed Preservation Plan, with the following conditions:

1. Provide an interpretive sign a minimum of 2'x2' in size along the shared use pathway adjacent to Valley Road that is accessible to the public regarding the historic significance of the site as it relates to the Belton (Bulah) v. Gebhart case.
2. The owner is encouraged to refurbish the barn structure. If the barn structure is demolished and an accessory structure is to be constructed, it shall be required to be built with similar location, materials and design to the Phase I Block of the existing barn. In addition, the spigot shall be placed in its original position, which is at the barn.
3. Provide measured drawings and documentation of the existing complex structures, including the dwelling interior, in accordance with the Historic American Buildings Survey (HABS) as required by Section 40.15.310.B.2 of the New Castle County Code.
4. Provide a schedule for long term maintenance that includes the frequency of inspections to be completed by the property owner as required by Section 40.15.310.B.3.c of the New Castle County Code.

5. Provide a landscape design that provides an open view of the house and site from the shared use pathway and the road.

The final draft of the Preservation Plan, with landscape plan, will require review and approval by the Department of Land Use prior to its recordation at the Recorder of Deeds and memorialization on the record plan for Hockessin Station (App. 2021-0695-S/Z).

PRELIMINARY LAND USE SERVICE (PLUS) REVIEW

The subject application was reviewed at a PLUS meeting held on February 23, 2022. The PLUS Review Letter dated March 18, 2022, notes the site is located within State Investment Level 2 and 3. Investment Level 2 reflects areas where growth is anticipated by local, county, and state plans in the near-term future. Level 3 reflects areas where growth is anticipated by local, county, and state plans in the longer-term future, or areas that may have environmental or other constraints to development. State investments will support growth in these areas.

The review letter also includes commentary from other State agencies including the following:

DelDOT made comments that were general in nature regarding the Development Coordination Manual requirements and that the TIS process was on-going.

DNREC made comments regarding the treatments of natural resources that exist on-site, including wetlands and floodplain. They noted that the former McGrellis Auction house site has been identified as a Brownfield Site and cited requirements for developing a Brownfield. DNREC also made comments about stormwater management and the requirements per the Delaware Sediment and Stormwater Regulations.

Delaware Emergency Management Agency (DEMA) identifies that this project has a community risk level of 1 and suggests a minor risk from flooding due to the floodplain found on the project site. DEMA also made recommendation on utilities utilized, storage of electric vehicles, and encourages renewable energies and green infrastructure such as green roofs.

Comments were also received from the State Fire Marshal, and the State Historic Preservation Office however, these comments were general in nature.

PLANNING BOARD PUBLIC HEARING – November 1, 2022

Shawn Tucker, Esq. of Barnes & Thornburg LLP gave a combined presentation for Hockessin Station projects for the rezoning as well as for the elimination of deed restrictions.

Mr. Tucker provided the Board with a description of the proposed applications, including the rezoning request from S, I, and CN to ST. Mr. Tucker described the residential development patterns in the surrounding area of the subject application and how this project fits within the

character of the surrounding community. He addressed the Standards for Zoning Map Amendments pursuant to the UDC and stated the proposed application is consistent with the goals and intent of the 2012 update to the Comprehensive Plan. Mr. Tucker noted the site is consistent with uses in the surrounding area.

Mr. Tucker also explained that the application had extensive public outreach, specifically coordinating with GHADA (Greater Hockessin Area Development Association). He stated that the plan had changed since the start of the process of creating this plan; however, the plan that is before the Planning Board is consistent with the plan that had been supported by the community.

Ms. Gray asked about the Traffic Study, and if there was any recommendation to add a traffic light or an additional entrance to the southern entrance along Valley Road, citing concerns regarding quality of life and life safety. Mr. Tucker responded stating that if they met a “warrant” regarding DelDOT code for traffic, then the project would require a traffic signal – however, this project did not meet this “warrant” and DelDOT will not allow for the installation of a traffic signal unless that warrant is met. Ted Williams of Landmark Engineering, the Engineer for this application, spoke about the Traffic Impact Study that included traffic counts and existing Level of Service (LOS), which concluded that a warrant was not met to require the installation of a traffic signal.

Mr. Snowden asked about the design of the plan, if the southwest corner of the property, which is shown as open space, could instead be an area for reforestation. Mr. Tucker explained that he believed the plan met the requirement for reforestation. Mr. Snowden stated that he was looking at this as an “above and beyond” addition to the plan. Mr. Tucker thanked Mr. Snowden for his suggestions and explained that this is something that he and his team will consider.

Jerry Rose, son in law of John Foskey whose property abuts the subject project, thanked the project team for taking everyone’s thoughts and comments into consideration, and that the design exceeded everyone’s expectation.

Mark Blake, who is with Greater Hockessin Area Development Association (GHADA), expressed that this project was one of the longest focus group projects that GHADA has ever held – primarily due to the pandemic. Mr. Blake stated that there were over 27 members participating including homeowners, nearest neighbors, neighboring communities, etc. taking part in a process that has taken over four years which included 15 meetings. Mr. Blake explained that this is a site that GHADA has been looking at for over 20 years as a potential site for development. He explained that this plan will eliminate one of the trouble some zoning districts within the Hockessin area that was seen as out of place, namely the I (Industrial) zoning districts. Mr. Blake stated that GHADA appreciates the additional buffering this plan affords to the surrounding residential communities and asked that the Planning Board support this project allowing for the rezoning to ST.

No other Board members or members of the public had any other comments or questions for the project team.

Written Testimony

Roger Reinicker, a resident of Wellington South, provided written comment that opposed the rezoning and the project. He focused on the loss of open space in the community which reduces the quality of life, and how the additional housing will add more traffic and pollution to Delaware. He shared his concern about the loss of mature forests and explained how these mature trees are often used as part of mulch which adds to greenhouse gasses that get released into the atmosphere. He explained that the County should have a no net loss of biomass goal which should be included as a calculation when there is potential disturbance to mature forests. Mr. Reinicker explained that the County should also adopt a “green” building policy, and highlighted examples in his comments. He also shared concerns for the preservation of the historic structure and that it needs to be protected.

Julie Bruno, a resident of Hickory Hill, provided written comments that opposed the project. She expressed concerns over the increased traffic that will occur as a result of this property being developed. She also explains that Valley Road needs to be widened into a 2-lane road in each direction and that there needs to be a traffic light at Evanson Road. Ms. Bruno expressed concerns with the public advertising as required by County Code. She stated that the News Journal is not effective and that the County needs to use email, Facebook, Instagram, and Twitter instead.

Mr. Tucker provided supplemental written testimony addressing points of concern identified by the public which included protected resources and how this project achieves the protection as required by the New Castle County Code as well as how it will improve these resources, and the historic resource which the applicant agreed to save and rehabilitate with an additional of the historic overlay for continued protection. He addressed how this project meets the goals of the 2012 comprehensive plan. Mr. Tucker also spoke about the traffic study and expressed that DelDOT has approved the Traffic Impact Study (TIS). A copy of the approval letter as well as the TIS was included for ease of access.

ANALYSIS

In accordance with Title 9, Chapter 26, Subchapter II, Section 2659 (The Quality of Life Act) of the Delaware Code, because this project was submitted prior to the adoption of the 2022 update to the New Castle County Comprehensive Plan, it is therefore required to be processed and evaluated under the 2012 update to the New Castle County Comprehensive Plan, which was in effect when the application was accepted for review.

Section 2659. Legal status of comprehensive plan.

(c) Any application for a development permit filed or submitted prior to adoption or amendment under this subchapter of a comprehensive plan or element thereof shall be processed under the comprehensive plan, ordinances, standards, and procedures existing at the time of such application...

Standards for Zoning Map Amendment – Section 40.31.410 of the New Castle County Code

A. Consistency with the Comprehensive Development Plan and the purposes of this Chapter.

The proposed rezoning requires a change to the 2012 New Castle County Comprehensive Plan's Future Land Use Map, from Low Density Residential and Commercial/Office/Industrial to the Medium Density Residential future land use category. Objective 11 of Chapter 3 is to "Continue to encourage redevelopment and infill projects that complement and enhance existing neighborhood...". The proposed development consists of residential infill of reduced density that is compatible with the surrounding residential development in the area that will serve a residential market that is in high demand and incorporate moderately priced dwelling units.

The plan also includes interconnecting walking paths within the development which allows for walkable access between this neighborhood to nearby residential communities, parkland and commercial hubs such as Lantana Square which supports the goals of Chapter 3 of the New Castle County 2012 update to the Comprehensive Plan.

The 2012 update to the New Castle Comprehensive Plan also views historic resources as significant contributors to community character, sustainable development, and livable communities. The plan encourages the use of Historic overlay zoning to promote the preservation of historic properties.

B. Consistency with the character of the neighborhood.

The Hockessin area has already transitioned from a rural to suburban landscape, and this property is one of the last remaining infill parcels on the east side of Valley Road. The surrounding neighborhoods are predominately low density residential. Recognizing that this project is within reasonable walking and biking distance to existing commercial centers in either direction, the slightly higher density is appropriate.

C. Consistency with zoning and use of nearby properties.

The project is consistent with the County's goals for infill parcels, which is to make adequate use of the property while also respecting the character of surrounding

communities. The surrounding residential area is largely zoned in varying densities of Neighborhood Conservation, indicating this suburban pattern was established before 1998.

D. Suitability of the property for the uses for which it has been proposed or restricted.

The design for this development succeeds in preserving the site's natural resources and places them into the open space and part of a conservation easement.

Pursuant to Section 40.15.110 of the New Castle County Code, the HRB has determined the subject property meets Criteria for Designation as an historic zoning district. Based on these criteria, and the property's significations on the local level, the Robinson House site is suitable for historic overlay zoning.

E. Effect on nearby properties.

The project requires a large amount of open space 38.18 acres (65.47%) which is designed on the site in such a way that provides a substantial landscape buffer for adjoining residential properties.

Properties that are zoned H (Historic) are required to go through an additional design review process as prescribed in Article 15 of the New Castle County Code. Nearby properties will have minimal to no impact from this design review process. Additionally, the site is not proposed for adaptive reuse as pervaded in Article 15 of the New Castle County Code.

DEPARTMENT OF LAND USE RECOMMENDATION

The Department of Land Use has considered the Standards for Zoning Map Amendment in Section 40.31.410, A through E, the proposed plan, and the comments received from the outside agencies and the public. Based on this analysis, the Department is of the opinion that the standards are met by this proposal.

The Department of Land Use recommends **CONDITIONAL APPROVAL** of the subject application with the following conditions:

1. Comply with the recommendations made by the Historic Review Board at the May 3, 2022, Business Meeting:
 - A. Provide an interpretive sign a minimum of 2'x2' in size along the shared use pathway adjacent to Valley Road that is accessible to the public regarding the historic significance of the site as it relates to the Belton (Bulah) v. Gebhart case.

- B. The owner is encouraged to refurbish the barn structure. If the barn structure is demolished and an accessory structure is to be constructed, it shall be required to be built with similar location, materials and design to the Phase I Block of the existing barn. In addition, the spigot shall be placed in its original position, which is at the barn.
 - C. Provide measured drawings and documentation of the existing complex structures, including the dwelling interior, in accordance with the Historic American Buildings Survey (HABS) as required by Section 40.15.310.B.2 of the New Castle County Code.
 - D. Provide a schedule for long term maintenance that includes the frequency of inspections to be completed by the property owner as required by Section 40.15.310.B.3.c of the New Castle County Code.
 - E. Provide a landscape design that provides an open view of the house and site from the shared use pathway and the road.
2. To provide architectural elevations consistent with what was presented by the Applicant at the November 1, 2022, Planning Board public hearing.

PLANNING BOARD RECOMMENDATION

At its business meeting held on December 20, 2022, the Planning Board considered the recommendation offered by the Department of Land Use. On a motion made by Ms. Cahill-Krout and seconded by Mr. Snowden, the Board voted to recommend **CONDITIONAL APPROVAL** of Ordinance 22-128 subject to the conditions made by the Department of Land Use. The motion was adopted by a vote of 8-0-0-1 (Yes: Cahill-Krout, Daigle, Drake, Gray, McGlinchey, Peterson, Snowden, Visvardis; No: none; Abstain: none; Absent: Cochran).

In discussion preceding the vote, the following comments were offered:

Mr. McGlinchey asked if the applicant had been made aware of the conditions. Mr. Gibbons responded that the conditions were made at the Historic Review Board meeting, so they have been aware of these conditions for a while. Mr. McGlinchey also asked who is considered the “owner” as referenced in the condition regarding the long-term maintenance plan. Ms. Vinc responded that the long-term maintenance plan will be created by the current owner which is the developer and then at the time that the property is bought, the long-term maintenance plan will then be turned over to the new owners. Ms. Peterson asked if this would then become a private dwelling. Ms. Vinc responded that the property is intended to be sold as a private dwelling.

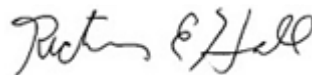
Ms. Visvardis asked if the new owners will be responsible for the long-term maintenance plan. Ms. Vinc stated that at the time of sale, the new owners will be made aware of the maintenance

plan. Ms. Visvardis explained that sometimes when maintenance documents are handed over from developers to the community, the responsibilities get lost over time. Ms. Cahill-Krout asked if the long-term maintenance plan will be recorded at the Recorder of Deeds, and if so, will show up in a title search as deed restrictions. Ms. Vinc responded that the long-term maintenance plan is required to be recorded at the Recorder of Deeds. Ms. Peterson asked if the restoration of the barn along with the restoration of the spigot is required as part of the maintenance plan. Ms. Vinc explained that if the owners choose to refurbish the barn or build a new accessory structure, it shall be built according to the preservation plan. Ms. Peterson asked where the spigot will be located. Ms. Vinc responded that the spigot will be located close to the right-of-way to allow the public to see the spigot as well as read the required interpretive signage.

No other questions or comments were made by the Board.

STATUTORY GUIDELINES

In the phraseology of 9 Delaware Code Section 2603 (a), the Department of Land Use finds that this rezoning would promote the convenience, order, and welfare of the present and future inhabitants of this state.

 12/21/2022

Richard E. Hall, AICP date
General Manager
Department of Land Use

 12/21/2022

Karen Peterson date
Chair
Planning Board