



NEW CASTLE COUNTY COUNCIL LAND USE COMMITTEE MEETING

Co-Chair: David Tackett, Eleventh District
Co-Chair: Janet Kilpatrick, Third District

September 19, 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)
- D. Review/Discussion of Ordinance(s)

°22-143: REVISE ZONING MAP: NEW CASTLE HUNDRED, SOUTH SIDE OF CHURCHMANS ROAD, 2900 FEET EAST OF CHURCHMANS ROAD; REZONE TAX PARCEL 10-024.00-219, 61.37+ ACRES, FROM S (SUBURBAN) TO I (INDUSTRIAL). (The Exploratory Plan and rezoning for Walker Farm Industrial Development proposes to rezone tax parcel 10-024.00-219, 61.37+ acres, from "S" (Suburban) to "I" (Industrial) to construct 837,200 square feet of warehousing with associated parking, utilities, stormwater management and landscaping improvements. [App. 2022-0335-S/Z](#).) Introduced by: Mr. Smiley

°23-052: REVISE PREVIOUSLY APPROVED PRELIMINARY MAJOR LAND DEVELOPMENT PLAN WITH REZONING FOR STONEGATES RETIREMENT COMMUNITY DIVERSIFIED PLANED UNIT DEVELOPMENT (DPUD); CHRISTIANA HUNDRED; EAST SIDE OF KENNETT, NORTH OF BARLEY MILL ROAD; TAX PARCEL NUMBER 07-026.00-090 (4031 KENNETT PIKE); [APPLICATION NO. 2023-0085-S/Z](#)) COUNCIL DISTRICT 2 (The revised plan for Stonegates Retirement Community proposes to revise the previously approved subdivision to construct 25,554 SF of additional gross floor area, and decrease the open space by 15,000 sf. This new plan will supersede the previously approved preliminary plan and rezoning. UDC Section 40.31.712 requires a new zoning ordinance for revisions to a DPUD plan that result in a decrease of open space. County Council adopted Ordinance 82-148 on December 21, 1982. NCPUD (Neighborhood Conservation Planned Unit Development) zoning district. App. 82-198, MF6681). Introduced by: Ms. Durham

°23-121: (STATUS: TABLED) TO AMEND NEW CASTLE COUNTY CODE CHAPTER 6 ("BUILDING CODE") REGARDING ARTICLE 1 ("GENERAL"), ARTICLE 2 ("DEFINITIONS"), ARTICLE 3 ("ADMINISTRATION"), ARTICLE 4 ("BUILDING CODE"), ARTICLE 5 ("RESIDENTIAL CODE"), ARTICLE 9 ("EXISTING BUILDING CODE"), ARTICLE 10 ("ENERGY CONSERVATION

CODE”), ARTICLE 11 (“SWIMMING POOL AND SPA CODE”), ARTICLE 12 (“VIOLATIONS, ENFORCEMENT, AND PENALTIES”) AND SCHEDULE OF PERMIT AND REVIEW FEES Introduced by: Mr. Bell, Mr. Cartier

E. Presentations

Update on agricultural preservation efforts in New Castle County and discussion on the potential acquisition of an easement for the Dempsey Farm, parcel number [15-021.00-016](#), in partnership with the Delaware Department of Agriculture, as part of Delaware’s Agricultural Lands (Aglands) Preservation Program.

F. Other

G. Public Comment

H. Adjournment

AGENDA POSTED: September 12, 2023
REVISED AGENDA POSTED: September 12, 2023

*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: Mr. Smiley
Date of introduction: November 22, 2022

ORDINANCE NO. 22-143

**REVISE ZONING MAP: NEW CASTLE HUNDRED, SOUTH SIDE OF
CHURCHMANS ROAD, 2900 FEET EAST OF CHURCHMANS ROAD; REZONE TAX
PARCEL 10-024.00-219, 61.37± ACRES, FROM S (SUBURBAN) TO I (INDUSTRIAL).**

(The Exploratory Plan and rezoning for **Walker Farm Industrial Development** proposes to rezone tax parcel 10-024.00-219, 61.37± acres, from “S” (Suburban) to “I” (Industrial) to construct 837,200 square feet of warehousing with associated parking, utilities, stormwater management and landscaping improvements. App. **2022-0335-S/Z.**)

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 Exhibit “A” dated September 16, 2022 and Exhibit “L” dated September 16, 2022, as set forth therein.

Section 2. 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:

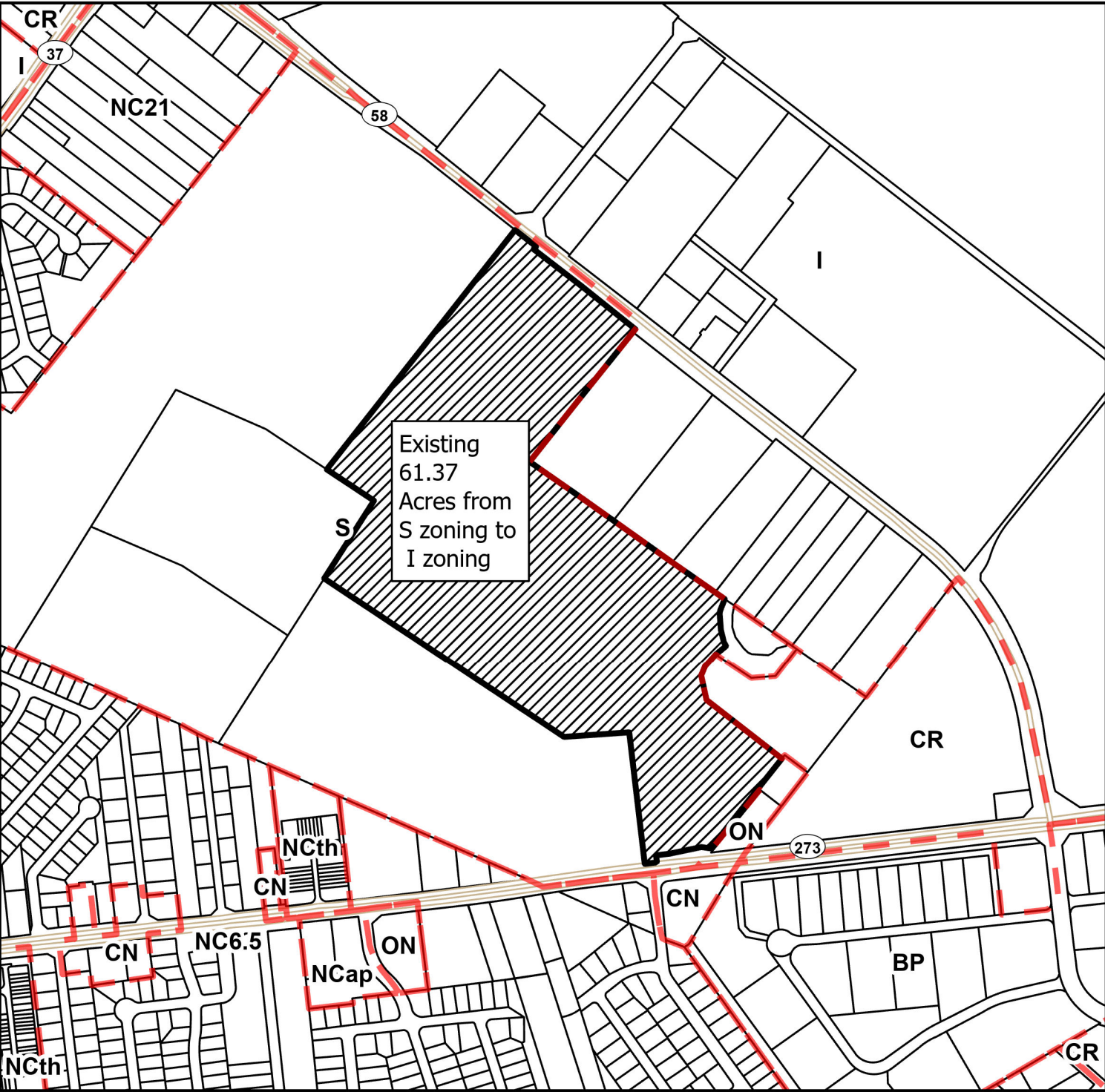
County Executive
New Castle County

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.

APPLICANT: FIRST INDUSTRIAL REALTY TRUST
PROPOSED REZONING: EXISTING S ZONING TO I ZONING

APPLICATION NO. 2022-0335-S/Z
TAX PARCEL NO. 10-024.00-219

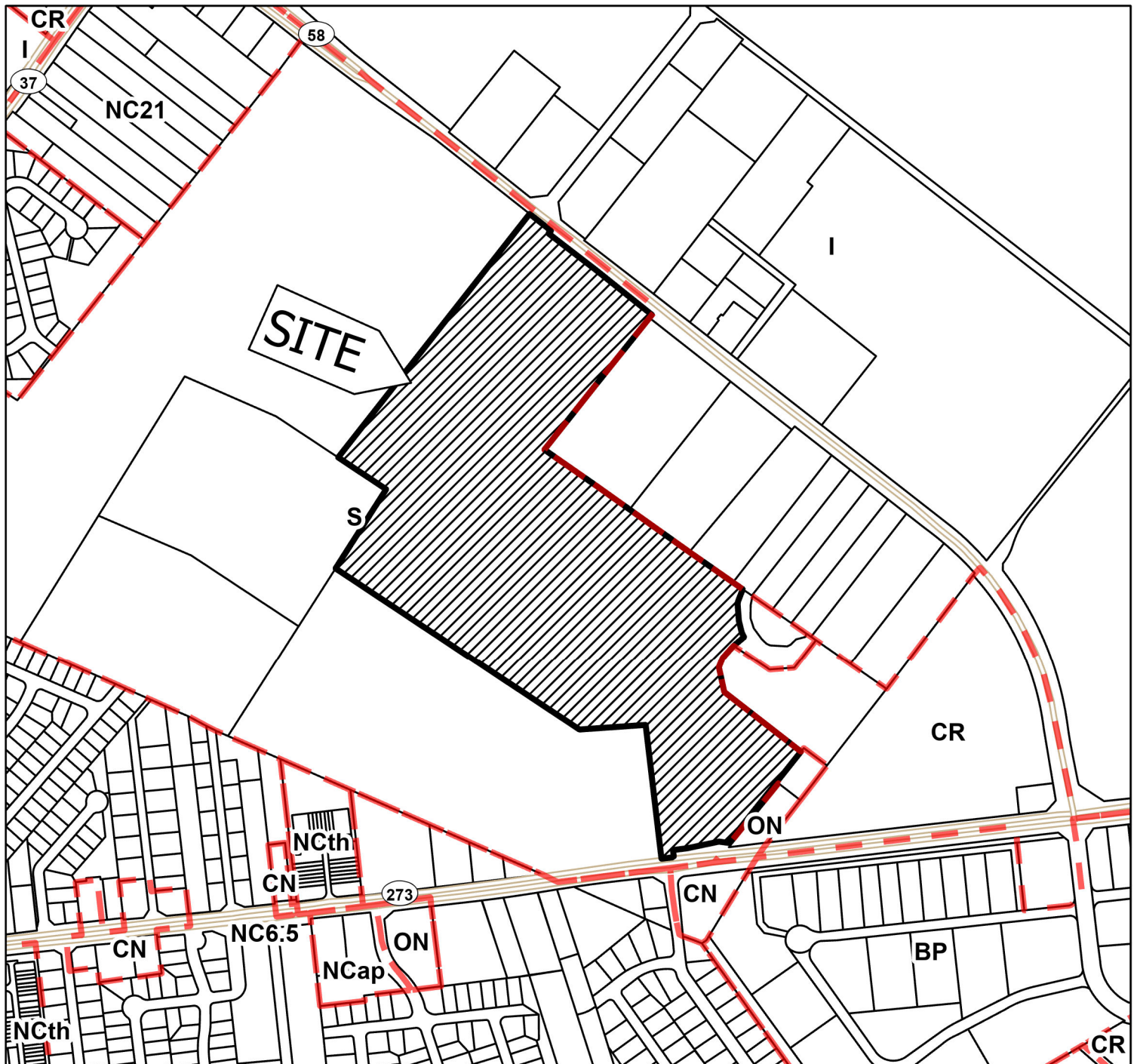


APPLICANT: FIRST INDUSTRIAL REALTY TRUST

APPLICATION NO. 2022-0335-S/Z

TAX PARCEL NO. 10-024.00-219

PROPOSED REZONING: EXISTING S ZONING TO I ZONING



HUNDRED: NEW CASTLE HUNDRED
NEW CASTLE COUNTY, DELAWARE

Scale: 1:8,000

Prepared by: Property.Munsaka

Date: 9/16/2022



PERMANENT ORDINANCE NO. 22-143

Date Adopted by County Council _____

Date Approved by County Executive _____



Department of Land Use

**DEPARTMENT OF LAND USE
RECOMMENDATION REPORT**

**Ordinance 22-143
Application 2022-0335-S/Z
Major Land Development Plan for Walker Farm**

August 15, 2023

Location: South side of Churchmans Road, approx. 2,900 feet northeast of Airport Road

Sponsor: Councilman George Smiley, District 7

Description: Major land development plan with rezoning application to rezone 61.37+ acres of S (Suburban) to I (Industrial) and construct 837,600 square feet of warehouse space with associated site improvements.

Applicant: First Industrial Realty Trust c/o John Hanlon

EXECUTIVE SUMMARY

Located on the south side of Churchmans Road and the north side of Christiana Road, the proposed major land development plan seeks to construct 837,000 square feet of warehouse space across two large industrial buildings on the Walker Farm. The application seeks to rezone the 61.37± acres of the farm from S (Suburban) to I (Industrial) to support the construction of the warehouses and required improvements for the development.

The Department of Land Use has considered the Standards for Zoning Map Amendment in Section 40.31.410, A through E of the *Unified Development Code*, the proposed plan, the comments received from the Historic Review Board and outside agencies, and the comments received by the public. Based on this analysis, the Department is of the opinion that the standards are met by this proposal. Therefore, the Department of Land Use recommends **APPROVAL** of the rezoning application.

DESCRIPTION

The subject site is located west of the City of New Castle and fronts the south side of Churchmans Road as well as the north side of Christiana Road, two major thoroughfares accessing US Route 13 and Interstate 95. The plan proposes the construction of two warehouse buildings, identified as Building A and Building B on the plan. Building A is proposed to be 611,520 square feet and Building B is proposed to be 225,680 square feet, totaling 837,000 square feet of warehouse space across the site. The application additionally seeks to rezone 61.37± acres of the Walker Farm from S (Suburban) to I (Industrial).

ZONING & DEVELOPMENT PATTERN

The Walker Farm is situated west of the City of New Castle and spans just under 200 acres of land across four (4), S (Suburban) zoned parcels that border Airport Road to the west, Churchmans Road to the north, and Christiana Road (DE Rt. 273) to the south. Historically, the area surrounding the subject site was largely agrarian in nature until the mid to late twentieth century, when there was a development boom across the County. The existing development pattern surrounding the subject site is characterized by a mix of medium density residential developments, institutional uses, commercial uses, and light industrial uses that largely date to mid to late twentieth century.

North of the subject site is Industrial zoned land consisting of Century Industrial Park, New Castle Airport, and a number of small scale industrial uses. On the northeast corner of the intersection of Christiana Road and Churchmans Road is a distribution center comprised of 1,168,211 square feet that is currently under construction. Southeast of the site adjacent to Churchmans Road is land zoned Commercial Regional consisting of New Castle Square development. Neighboring residential development is located south and west of the subject site. Stratford subdivision (NC6.5) and Pleasantville Elementary School (S) is located to the south while Prestwick subdivision (NC6.5) is located northwest of the subject site and borders the west side of Walker Farm.

BACKGROUND

As noted above, the Walker Farm is the last remaining agricultural operations in the surrounding area dating back to the earliest developments of New Castle County. Therefore, there is no extensive land use history for the subject site. The Department of Land Use received the first submission for the proposed major land development plan in the Spring of 2022. Ordinance 22-143 was introduced at County Council on November 22, 2022. The application proceeded through the State of Delaware's PLUS process in September of 2022.

The plan proposes the construction of 837,000 square feet of warehouse space across two large industrial buildings, has been found to be in general conformance with the requirements of the Unified Development Code. Per the proposed plan, Building A is proposed to be 611,520 square feet and Building B is proposed to be 225,680 square feet for a total of 837,000 square feet of warehouse space. In addition to the two warehouse buildings, the plan proposes to construct a total of 544 parking spaces, 178 trailer parking spaces, and 41 trailer loading spaces to support a distribution center type use. Approximately 4.51± acres of land is reserved for stormwater management facilities and 12.57± acres of land is proposed to be landscaped areas.

PRELIMINARY LAND USE SERVICE (PLUS) REVIEW

The subject application was reviewed at a PLUS meeting held on September 28, 2022. The PLUS Review Letter, dated October 24, 2022, includes comments from various state agencies regarding the proposed rezoning. The letter states that the project is located within a Level 1 investment area, which is consistent with the 2020 Strategies for State Policy and Spending. Investment Level 1 reflects areas that are already developed in an urban and suburban fashion, where infrastructure is existing or readily available, and where future redevelopment or infill projects are expected and encouraged by state policy. The Office of

State Planning indicated that they have no objections to the rezoning and site plan provided it meets the relevant codes and ordinances of New Castle County.

The Delaware Department of Transportation provided general comments regarding DelDOT's Development Coordination Manual and the requirements the plan would be subject to, as well as the development review process required for approval. DART First State noted that a pair of companion bus stops are needed on Christiana Road, and that a shared use path is needed along the frontage of Churchmans Road. DART also noted that pedestrian accessways are needed into the site from Christiana and Churchmans Roads. DelDOT also noted that the applicant should expect the requirement that any substation and or wastewater facilities will be required to have an access from an internal driveway.

The Delaware Department of Natural Resources and Environmental Control (DNREC) provided comments regarding stormwater management and noted that a sediment and stormwater plan must be developed and approved by the appropriate plan review agency prior to leaving disturbing activity. DNREC provided recommendations regarding stormwater management, drainage, electric vehicle facilities, renewable energy, impervious surfaces, and recycling facilities during construction.

Delaware Emergency Management Agency (DEMA) noted that the subject site is within an area of minimal flood concern of 1,000 years or greater and that the parcel is not part of an evacuation zone. DEMA Provided recommendations regarding potential parcel solar panel capabilities and renewable energy.

The Delaware State Historic Preservation Office (SHPO) noted that the historic Bethel Baptist Church and cemetery are located adjacent to the subject site. SHPO noted that There is a potential for historic and prehistoric archaeological resources in the project area based on several environmental factors that are conducive to human habitation and noted that the applicant should be aware of the Unmarked Human Burials and Human Skeletal Remains Law of 1987 in the event that remains are encountered. Finally, the SHPO recommended that the owner and developer have a qualified archaeological consultant investigates project area for the presence of a cemetery on the site.

The Delaware State Fire Marshal provided comments regarding Fire Protection Water requirements and Fire Protection Features of buildings larger than 10,000 square feet. Additionally the Fire Marshal noted the requirements for accessibility, gas piping and system information, and the plan review process.

PLANNING BOARD PUBLIC HEARING – July 5, 2023

*Please note, the below is a summary. A recording and transcripts of the public hearing are available at the Department of Land Use.

Pam Scott, the applicant's attorney, spoke on behalf of the application. Ms. Scott provided a brief description of the proposed project, the existing conditions on the subject site, and the character of the surrounding area. She stated that applicant met with the nearby residential communities after the exploratory plan was submitted to the County in 2022 to discuss the proposed development. Ms. Scott spoke to the landscaping proposed on the subject site, stating that there are significant buffers proposed along adjacent property lines. She spoke to the existing zoning of the subject site as well as the zoning pattern in the surrounding area. She noted that the subject site is in consistent with the Future Land Use Map, which identifies the subject site as a Type 2- Employment-Based Corridor. Ms. Scott spoke to the

Standards of Rezoning in the Unified Development Code and noted how the proposed rezoning met the required standards. She spoke to the architectural design of the buildings to ensure that the buildings compliment the surrounding area to reduce apparent mass per requirements of Article 26 of the UDC. Ms. Scott provided an update on the transportation reviews the applicant is working on, as well and provided pictures of buildings in the surrounding area.

Mr. Snowden inquired about the proposed roofing material. John Hanlon and Jim Knopka from First Industrial, spoke to the building's construction. Mr. Hanlon noted that the roof of the building will be white, which is better for energy efficiency. He noted that the buildings are built to a LEED standard and will have solar capabilities.

Ms. Peterson noted that there was a leaky tank identified on the information provided to the Board members and inquired if it had been taken care of. Mr. Hanlon noted that a full environmental site review has been conducted and anything needed to be remediated would be. Ms. Peterson inquired about drainage issues across the street at Forever Green Landscaping raised by DelDOT. The applicant's traffic engineer, Alex Meitzler, stated that he was unfamiliar with the drainage issue on the nearby site, but noted that the plan would require frontage improvements to Churchmans Road and drainage patterns. He stated that no construction is proposed in that area, however all proposed plans will be reviewed and approved by DelDOT. Ms. Peterson inquired about the proposed stormwater management facilities and asked if the infiltration systems drain or if they infiltrate independently. Victor Ortega, the engineer for the project, stated the underground facilities would not infiltrate into the above-ground facilities. He stated that the plan will meet the County requirements for stormwater management, noting that the final plans for stormwater management are still being developed.

Mark Slaymaker with the Prestwick Maintenance Corporation offered comment on the application and noted his concerns about covering the view of the buildings and noted his desire for landscaping. He inquired about the lighting for the facility and what it would look like at night. He cited concerns about noise levels and traffic flow.

In her rebuttal, Ms. Scott noted there would be a 35ft. bufferyard along the subject site, including along the remainder of the Walker Farm. Mr. Hanlon noted that the lighting will be oriented downward on the site and would have a very little chance of lighting up adjacent nearby properties. He stated that the loading spaces are on the opposite side of the proposed buildings away from nearby development. He stated that the buildings would really only be visible on-site.

Ms. Gray inquired about the intersection with Prangs Lane and Route 273 and asked if there would be any design accommodation for trucks behind the WaWa. Mr. Meitzler stated that the application will create a new signal at Prangs Lane and spoke to the improvement proposed as part of the project.

ANALYSIS

The subject site is situated in an area of the County that has largely been developed since the mid-twentieth century due to its proximity to the major thoroughfares that are Churchmans Road, Christiana Road, and Airport Road. With close proximity to US Route 13, Interstate 95, and the New Castle Airport, the site lends itself to a regional, distribution type use that will further enhance the surrounding businesses and economic centers. Based on development trends through the twentieth and twenty-first

centuries, the rezoning of the subject site to an Industrial zoning district will be consistent with the zoning and development patterns. Finally, as a result of the parcel's unique configuration between Churchmans and Christiana Roads, the subject site allows for additional landscaping and design opportunities that will minimize the visual impact on surrounding residential uses and permit the development to be oriented closer to neighboring industrial uses.

The proposed rezoning is consistent with the New Castle County Comprehensive Plan. The Future Land Use Map identifies the subject site and the surrounding Walker Farm parcels as Type 2- Employment-Based Corridor type uses, which have a regional impact regarding jobs and services. The Comprehensive Plan encourages the rezoning of lands identified in the Future Land Use map to permit Type 2- Employment Based Corridor uses when appropriate and provided the development is sensitive to the context of neighboring residential developments.

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 New Castle County Comprehensive Plan identifies the subject site as a Type 2- Employment-Based Corridor. The plan identifies specific lands where in the next 30 years there would be a significant change in form, function, and use of land, particularly in areas where there is strong commercial potential. The rezoning of the subject site from S (Suburban) to I (Industrial) is consistent with the goals and intent of the Comprehensive Plan.

B. Consistency with the character of the neighborhood.

The subject site is located adjacent to existing nonresidential uses that are industrial in nature. Rezoning of the subject site to permit industrial uses such as a distribution center is consistent with the character of the surrounding neighborhood.

C. Consistency with zoning and use of nearby properties.

The Walker Farm is currently zoned S (Suburban), which was consistent with historic uses on the site and in the surrounding area. Over the last several decades, much of the lands surrounding to the Walker Farm has been rezoned to nonresidential designations including I (Industrial) along Churchmans Road adjacent to the subject site and across the road to the north as well as CR (Commercial Regional) and BP (Business Park) adjacent to the site's frontage along Christiana Road. The proposed rezoning is consistent with the zoning and use of nearby properties.

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

With access to both Christiana Road (DE Rt 273) and Churchmans Road, the subject parcel has access to two major thoroughfares in the County that would support a warehousing operation. The design of the proposed development provides for enhanced buffering from the adjacent farm and nearby residential uses. Should the property be rezoned to I(Industrial), the site will be suitable for the uses proposed.

E. Effect on nearby properties.

The applicant presented testimony discussing the design measures taken to ensure that there will be little to no impact on nearby properties, in particular nearby residential uses. The design improvements coupled with the landscaping proposed on the subject site, and that all tractor trailer parking will be situated behind the buildings opposite of the nearby residential uses will mitigate impact on nearby properties.

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 **APPROVAL** of the rezoning.

PLANNING BOARD RECOMMENDATION

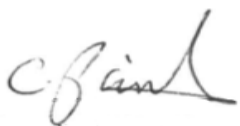
At a business meeting held on August 15, 2023, the Planning Board considered the recommendation offered by the Department of Land Use. On a motion made by Mr. Daigle and seconded by Mr. Cochran, the Board voted to recommend **APPROVAL** of Ord. 22-143.

The motion was adopted by a vote of 7-0-0-2 (In Favor: Cahill-Krout, Cochran, Daigle, Snowden, Visvardis, Peterson; In Opposition: None; Abstention: None; Absent: Drake, Gray).

No 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.



8/25/2023

Charuni Patibanda
General Manager
Department of Land Use

date



8/25/2023

Karen Peterson
Chair
Planning Board

date

ORDINANCE NO. 23-052

**REVISE PREVIOUSLY APPROVED PRELIMINARY MAJOR LAND DEVELOPMENT
PLAN WITH REZONING FOR STONEGATES RETIREMENT COMMUNITY
DIVERSIFIED PLANNED UNIT DEVELOPMENT (DPUD); CHRISTIANA HUNDRED;
EAST SIDE OF KENNETT, NORTH OF BARLEY MILL ROAD;
TAX PARCEL NUMBER 07-026.00-090 (4031 KENNETT PIKE);
APPLICATION NO. 2023-0085-S/Z) COUNCIL DISTRICT 2**

(The revised plan for **Stonegates Retirement Community** proposes to revise the previously approved subdivision to construct 25,554 SF of additional gross floor area, and decrease the open space by 15,000 sf. This new plan will supersede the previously approved preliminary plan and rezoning. UDC Section 40.31.712 requires a new zoning ordinance for revisions to a DPUD plan that result in a decrease of open space. County Council adopted Ordinance 82-148 on December 21, 1982. NCPUD (Neighborhood Conservation Planned Unit Development) zoning district. App. 82-198, MF6681).

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

Section 1. The revised plan for Stonegates Retirement Community (area shown on Exhibits A and L) is approved and shall supersede the previously approved preliminary plan associated with the rezoning that was approved on December 21, 1982, by Ordinance 82-148.

Section 2. This Ordinance shall become effective immediately upon passage by New Castle County Council and approval by 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:

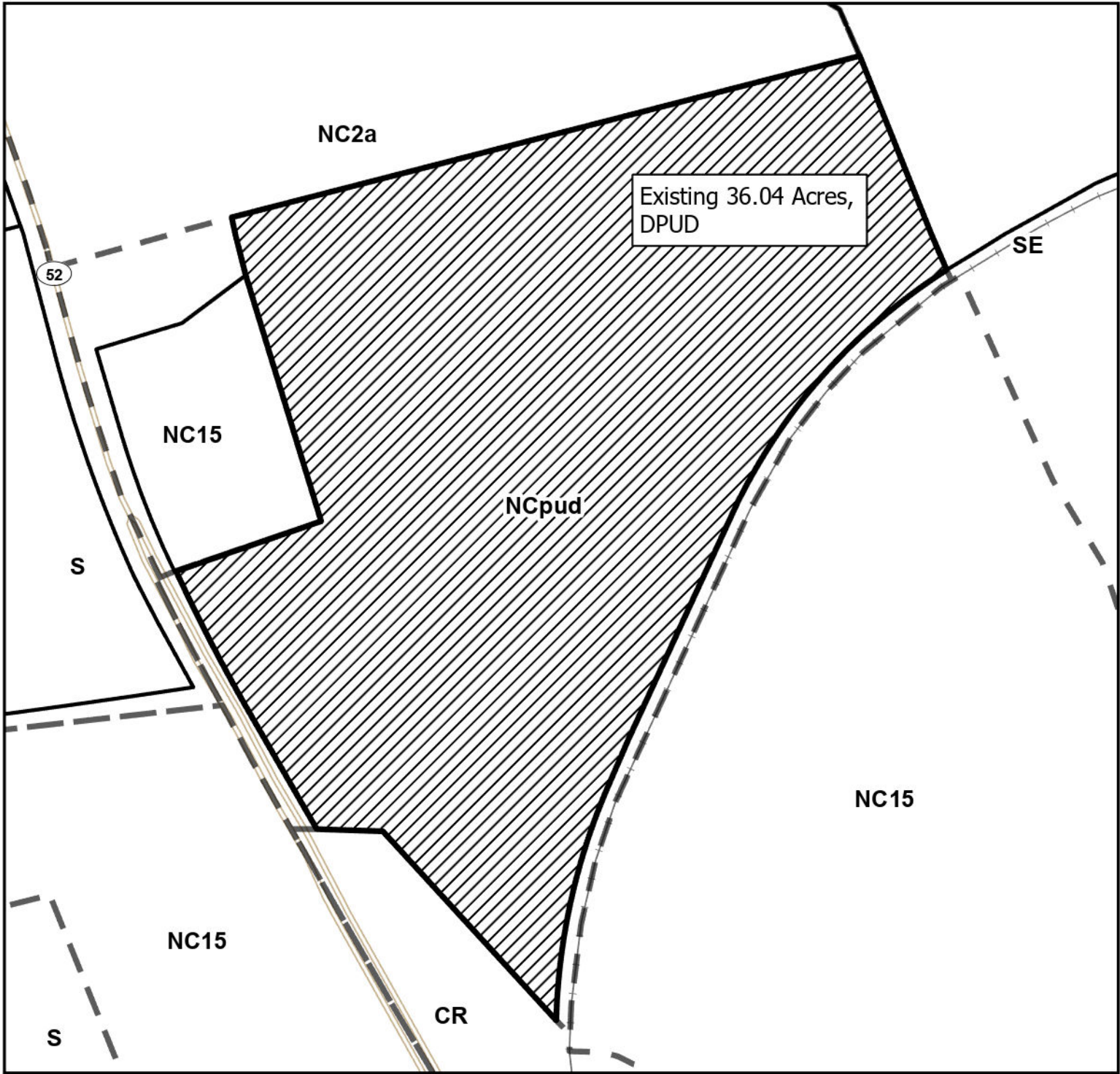
County Executive
New Castle County

SYNOPSIS: Same as title.

FISCAL IMPACT: There is no discernible fiscal impact with the adoption of this resolution.

APPLICANT: GREENVILLE RETIREMENTCOMMUNITY, LLC
PROPOSED REZONING: MODIFICATIONS TO A DIVERSIFIED
PLANNED UNIT DEVELOPMENT (NCPUD)

APPLICATION NO. 2023-0085-S/Z
TAX PARCEL NO. 07-026.00-090



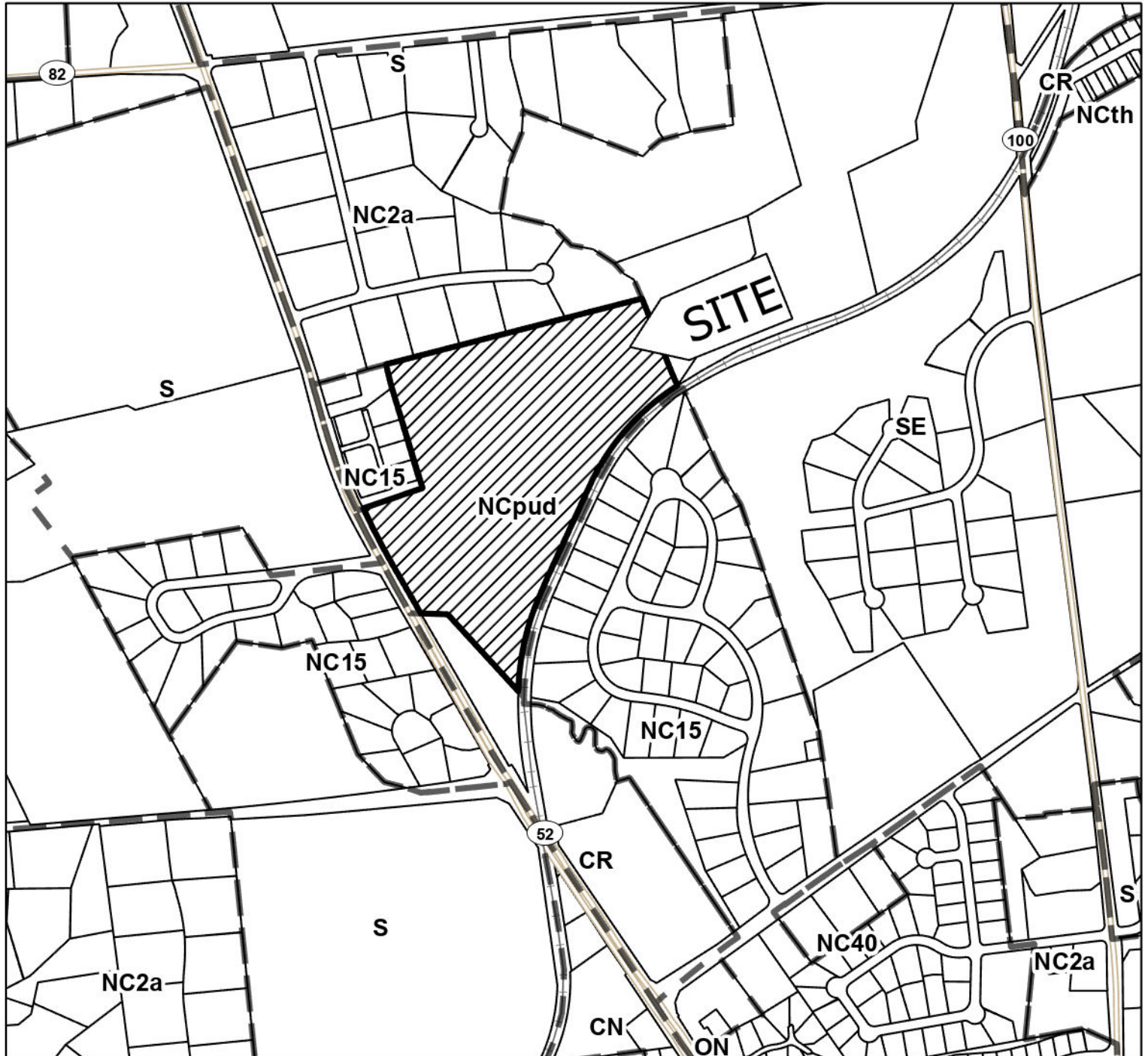
HUNDRED: CHRISTIANA HUNDRED
NEW CASTLE COUNTY, DELAWARE
Scale: 1:3,472
Prepared by: mtrogers
Date: 4/5/2023



PERMANENT ORDINANCE NO. 23-052
Date Adopted by County Council _____
Date Approved by County Executive _____

APPLICANT: GREENVILLE RETIREMENTCOMMUNITY, LLC
PROPOSED REZONING: MODIFICATIONS TO A
DIVERSIFIED PLANNED UNIT DEVELOPMENT (NCPUD)

APPLICATION NO. 2023-0085-S/Z
TAX PARCEL NO. 07-026.00-090



HUNDRED: CHRISTIANA HUNDRED
NEW CASTLE COUNTY, DELAWARE

Scale: 1:8,782

Prepared by: mtrogers

Date: 4/5/2023



PERMANENT ORDINANCE NO. 23-052

Date Adopted by County Council _____

Date Approved by County Executive _____



Department of Land Use

DEPARTMENT OF LAND USE
RECOMMENDATION REPORT

Ordinance 23-052
Application 2023-0085-S/Z
4031 Kennett Pike

July 18, 2023

Location: East side of Kennett Pike about 3,800 feet north of Barley Mill Road

Sponsor: Councilwoman Dee Durham, Council District 2

Description: Rezoning ordinance to revise previously approved preliminary major land development plan for Stonegates Retirement Community Diversified Planned Unit Development (DPUD) to construct 25,554 SF of additional gross floor area and decrease the open space by 15,000 sf.

Applicant: Greenville Retirement Community, LLC

EXECUTIVE SUMMARY

The Stonegates Retirement Community has been an integral and important component of the Greenville area for nearly 40 years. The provisions of the UDC pertaining to Modifications to a Diversified Planned Unit Development ([Section 40.31.712](#)) were established to permit changes to DPUDs, while providing a public process to verify that substantive changes are reviewed by the Department, Planning Board, and County Council to ensure that those modifications are consistent with the vision and intent of the rezoning that accompanied the development. Ordinance 23-052/Application 2023-0085-S/Z proposes a minor increase in approved GFA Department to permit an expansion to the healthcare services unit and a conservatory, and a reduction of site open space by roughly $\frac{1}{3}$ of an acre (15,000 sf), which while enabling the continued viability of the site will likely have no noticeable impact on the surrounding community and being that the new construction is to be integrated behind existing structures will also not impact the Brandywine Valley National Scenic Byway.

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

DESCRIPTION

The property is situated in Greenville, on the northeast side of the Kennett Pike (DE Rt. 52), abutting the Penn Central rail line, just north of the Greenville Shopping Center and northwest of the Greenville Manor development. The site is zoned NC_{PUD} (Neighborhood Conservation Planned Unit Development), which represents land that was developed as a Diversified Planned Unit Development (DPUD) prior to the adoption of the *Unified Development Code* (UDC). Application 2023-0085-S/Z is a minor land development plan that proposes the construction of 25,554 SF of additional gross floor area which will result in the decrease of open space at the site by 15,000 sf. Section 40.31.712 of the UDC requires that when an application to revise a DPUD proposes a decrease in open space that a new rezoning ordinance be considered.

ZONING & DEVELOPMENT PATTERN

The Stonegates Retirement Community is located on the northeast side of Kennett Pike (DE Rt 52), which is a segment of the Brandywine Valley National Scenic Byway extending from Wilmington into Pennsylvania. The development is bordered to the north along the east side of Kennett Pike the low-density residential developments zoned Neighborhood Conservation (NC) of West Farm (NC2_a) and Stone Brook Development (NC15). South and east of the development is the Greenville Manor development (NC15) as well as Applecross (Suburban Estate/SE), and the Greenville Crossing commercial development (Commercial Regional/CR). Opposite the Stonegates Retirements Community on the western side of Kennett Pike are several low density residential developments including the Greenville Development (NC15) and Squirrel Run (NC15).

BACKGROUND

Diversified Planned Unit Development Regulatory Background

The PUD as a development option in the New Castle County Zoning Code was based on design principles of the Pike Creek Valley Master Plan, adopted by the Levy Court of New Castle County.¹ The Planned Unit Development Option was formally adopted into the Zoning Code by Ordinance 70-010 on February 24, 1970. While the underlying regulations related to PUDs changed 13 times between 1970 and 1997², they were permissible in 1997 on sites greater than 50 acres consisting of variety of residential and nonresidential uses.³ The intent of PUDs were to accomplish the following:

- Meet the need for improved housing, commercial, industrial and institutional development and recreational facilities by encouraging innovation, efficiency, flexibility and variety in the design and construction of developments, by encouraging good site planning and design, by encouraging the construction of publicly and privately subsidized housing units and by facilitating conservation of natural resources and open space.

¹ Pike Creek Valley Master Plan, Zoning Petition No. 823-Z (December 8, 1964), Zoning Petition No. 1146-Z (December 13, 1966), & Zoning Petition No. 1331-Z/Ord. 69-75 (December 23, 1969)

² Ordinances: 73-146, 73-147, 74-054, 74-121, 74-195, 74-307, 75-168, [76-030](#), [76-085](#), [77-125](#), [77-133](#), [87-025](#), and [92-122](#)

³ Section 40-179, *Former Code*, December 31, 1997: Office and Commercial uses were limited to sites greater than 100 acres.

- ☐ Provide a variety of residential facilities, so as to offer a range of housing types, site planning layouts and rental and purchase prices.
- ☐ Establish sound administrative standards and procedures to facilitate the achievement of such purposes.
- ☐ Generally, improve the environmental quality of new development.⁴

In 1997, with the adoption of the Unified Development Code, the County eliminated PUDs as a development option as well as the formal provisions to revise PUD plans. New Castle County readopted the standards to modify DPUDs found in the *Former Code*, requiring a rezoning ordinance for revisions that propose the following ([Section 40.31.712 of the UDC](#)):

- ☐ An increase in overall density.
- ☐ An increase in the number of units of any dwelling unit type by fifteen (15) percent or more.
- ☐ A decrease in open space.
- ☐ Major changes in the location of use types on the site which amend the concepts or original intent of the design represented by the exploratory sketch plan.⁵

Stonegates Retirement Community Background

In 1982, the former Greenville Elementary School site was rezoned from Residential (R-1-B) to Planned Unit Development (PUD) to permit the development of the Stonegates Retirement Community.⁶ The development was a retirement community consisting of a mix of single family dwelling units (88), apartments (52 units in newly constructed in new structures/23 units in the Manor House), and a 30 bed nursing home under the PUD development option discussed above.⁷ The development was subsequently revised to increase the number of apartment units by 1 and to increase the number of nursing home beds from 30 to 50.⁸ On February 24, 2023 the Application 2023-0085-S/Z was submitted to the Department proposing an increase in about 26,000 sf of additional GFA to permit an expansion to the healthcare services unit and a conservatory, while reducing the site's open space by roughly 15,000 sf. Since the plan proposes a reduction of open space a rezoning ordinance was required pursuant to the standards in Section 40.31.712 of the UDC. Ordinance 23-052 was introduced on April 25, 2023 to accompany the application.

PRELIMINARY LAND USE SERVICE (PLUS) REVIEW

A PLUS hearing was not required for this application.

PLANNING BOARD PUBLIC HEARING – June 5, 2023

*Please note, the below is a summary. A recording and transcripts of the public hearing are available at the Department of Land Use.

⁴ Section 40-178(b), *Former Code*, December 31, 1997

⁵ [Ord. 18-020](#), Adopted 7/10/2018

⁶ Application 2099-Z, [Ord. 82-148](#), December 29, 1982.

⁷ Application 82-198, [Resolution 82-371](#), [Resolution 83-064](#), Recorded 3/23/83

⁸ [Resolution 84-028](#), Adopted 2/14/84

Michale Hoffman, Esq. representing the applicant (Greenville Retirement Community, LLC) provided a brief presentation discussing the history of DPUD legislation, the development and changes of the site as well as the improvements proposed by the application. He also discussed how the application meets the standards for a zoning map amendment ([Section 40.31.410](#)).

Ms. Cahill-Krout inquired about the size of the memory care portion of the facility in comparison to the healthcare portion. Kathleen Neylan, explained that the memory care portion will consist of 6 beds out of the healthcare facility, intended for residents only. There were no other questions from the Planning Board nor were there any comments from the public at the Public Hearing.

The Department did not receive any public comment while the record was open regarding this application.

ANALYSIS

The Stonegates Retirement Community has been an integral and important component of the Greenville area for nearly 40 years. The provisions of the UDC pertaining to Modifications to a Diversified Planned Unit Development ([Section 40.31.712](#)) were established to permit changes to DPUDs, while providing a public process to verify that substantive changes are reviewed by the Department, Planning Board, and County Council to ensure that those modifications are consistent with the vision and intent of the rezoning that accompanied the development. Application 2023-0085-S/Z proposes a minor increase in approved GFA by about 25,500 sf, with a de minimis reduction of open space when compared to the entirety of the development by roughly $\frac{1}{3}$ of an acre to permit the use approved by the original plan to expand to meet the current needs for the use and residents of the Stonegates community. The Department has evaluated the plan, and have determined that the proposed improvements will likely have no noticeable impact on the surrounding community and being that the new construction is to be integrated behind existing structures will also not impact the Brandywine Valley National Scenic Byway.

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

Applications for rezonings must be evaluated against the criteria for zoning map amendments that is listed in Section 40.31.410 of the Unified Development Code.

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

The New Castle Comprehensive Plan identifies the area east of Kennett Pike, including the subject site, as “Residential Developed”, lands that are designated for residential and institutional uses. The rezoning ordinance to modify the Diversified Planned Unit Development, NC_{DPUD} (Neighborhood Conservation Planned Unity Development), to permit the proposed improvements to the retirement community and nursing facilities is consistent with the New Castle County Comprehensive Plan and would not result in a change of the future land use designation.

B. Consistency with the character of the neighborhood.

The character of the neighborhood surrounding the subject site is largely characterized by very low

to low density developments as well as the Greenville Crossing commercial development. While the development is along the Brandywine Valley National Scenic Byway, the proposed improvements are behind existing structures and will not have an impact on the character of the byway. The current use of the site as a retirement community with a nursing facility remains consistent with the mix of commercial and low density residential uses that define the character of the surrounding area.

C. Consistency with zoning and use of nearby properties.

The Stonegates Retirement Community located in the Greenville area, that is largely comprised of a mix of Neighborhood Conservation, Suburban Estate, and Commercial Regional zoning districts. The NC_{PUD} designation to permit the continued use and expansion of the healthcare facilities and site amenities is consistent with the zoning and use of the nearby properties.

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

As noted in the background, the use and zoning of the Stonegates Retirement Community site has been consistent for roughly 40 years. The rezoning ordinance will permit a modest expansion of the use and will have no impact on the suitability of the property for existing use.

E. Effect on nearby properties.

Based on the extent, scope and design of the proposed improvements, the plan will likely have no noticeable impact on nearby properties and being that the new construction is to be integrated behind existing structures will also not impact the Brandywine Valley National Scenic Byway.

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 of the *Unified Development Code*, the comments received from outside agencies, and the comments received by the public.

Based on this analysis, the Department is of the opinion that the standards are met by this proposal and recommends **APPROVAL** of Ordinance 23-052/Application 2023-0085-S/Z.

PLANNING BOARD RECOMMENDATION

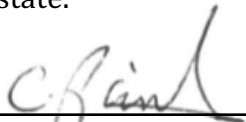
At a business meeting held on July 18, 2023, the Planning Board considered the recommendation offered by the Department of Land Use. On a motion made by Ms. Visvardis and seconded by Mr. Snowden, the Board voted to recommend **APPROVAL** of Ord. 23-052.

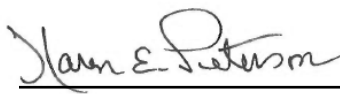
The motion was adopted by a vote of 5-0-0-3 (In Favor: Drake, Gray, Snowden, Visvardis, Peterson; In Opposition: None; Abstention: None; Absent: Cahill-Krout, Cochran, Daigle).

No 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.


8/15/2023
Charuni Patibanda date
General Manager
Department of Land Use


8/13/2023
Karen Peterson date
Chair
Planning Board

Introduced by: Mr. Bell, Mr. Cartier
Date of introduction: August 29, 2023

ORDINANCE NO. 23-121

TO AMEND *NEW CASTLE COUNTY CODE* CHAPTER 6 (“BUILDING CODE”) REGARDING ARTICLE 1 (“GENERAL”), ARTICLE 2 (“DEFINITIONS”), ARTICLE 3 (“ADMINISTRATION”), ARTICLE 4 (“BUILDING CODE”), ARTICLE 5 (“RESIDENTIAL CODE”), ARTICLE 9 (“EXISTING BUILDING CODE”), ARTICLE 10 (“ENERGY CONSERVATION CODE”), ARTICLE 11 (“SWIMMING POOL AND SPA CODE”), ARTICLE 12 (“VIOLATIONS, ENFORCEMENT, AND PENALTIES”) AND SCHEDULE OF PERMIT AND REVIEW FEES

WHEREAS, New Castle County is charged with the responsibility of ensuring the health, safety, and welfare of the citizens of New Castle County by administering and enforcing the regulations of the building industry; and

WHEREAS, by the adoption of this Ordinance the New Castle County Executive and County Council intend: (1) to update Chapter 6 of the *New Castle County Code* consistent with the *International Building Code, 2021 edition*, *International Residential Code, 2021 edition*, the *International Existing Building Code, 2021 edition*, the *International Swimming Pool and Spa Code, 2021 edition*, and the *State Energy Conservation Code* (also known as the *International Energy Conservation Code, 2018 edition*) as may be amended herein; and (2) to otherwise update, clarify, and strengthen the administrative provisions of Chapter 6 of the *New Castle County Code*; and

WHEREAS, based on a comprehensive review of Chapter 6 of the *New Castle County Code* by the professional staff in the New Castle County Department of Land Use and comments by stakeholders, applicants and local experts in building code issues, New Castle County has developed updated standards for buildings and structures and has identified additional clarifications, corrections, improvements and changes necessary to further administer and enforce the regulations of the building industry; and

WHEREAS, New Castle County Council finds that the provisions of this Ordinance are rationally and reasonably related to, substantially advance, and are narrowly tailored to achieve its goal of protecting and preserving 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 6 (“Building Code”), Article 1 (“General”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

ARTICLE 1. GENERAL.

Sec. 6.01.001. General.

A. *Title...*

B. *Purpose.* The purpose of this Chapter is to establish minimum requirements for a reasonable level of life safety, health, property protection and general welfare through regulations that provide for structural strength, means of egress, stability, sanitation, light and ventilation, and energy conservation. This Chapter shall apply to the unincorporated territory of New Castle County, Delaware, and may apply to incorporated municipalities if by appropriate action of its governing body, any such governing body elects to be included in its application. Such jurisdictions are defined in Appendix 6 of this Chapter.

C. *Scope...*

D. *Appendices...*

E. *Existing structures.* The legal occupancy of any structure existing on the date of adoption of this Chapter shall be permitted to continue without change, except as is specifically covered in this Chapter, the International Existing Building Code, the property maintenance code provisions, or other provision of this Code, or as is deemed necessary by the Code Official for the general safety and welfare of the occupants and the public. Additions, alterations or repairs to any structure shall conform to the requirements for a new structure without requiring the existing structure to comply with the requirements of this Chapter, unless otherwise stated. Additions, alterations, repairs and relocations shall not cause an existing structure to become less compliant with the provisions of this Chapter than the existing building or structure was prior to the addition, alteration or repair.

F. *Moved pools and spas...*

Section 2. *New Castle County Code* Chapter 6 (“Building Code”), Article 2 (“Definitions”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

ARTICLE 2. DEFINITIONS

Sec. 6.02.001. Definitions.

The following words, terms, and phrases, when used in this Chapter shall have the meaning ascribed...

Contractor license means...

Contributing resource means a structure or property which is a historic resource within, or eligible for, Historic overlay zoning or is a contributing element to a Historic overlay zoning district.

County means ...

Third party inspector...

Third party plan reviewer means a business entity that performs plan reviews at the direction of the Code Official but whose employees are not employed by New Castle County.

Violation notice...

Section 3. *New Castle County Code* Chapter 6 (“Building Code”), Article 3 (“Administration”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

ARTICLE 3. ADMINISTRATION

Sec. 6.03.004. Unlicensed contractors.

- A. It shall be a violation ...
- B. Licensed contractors who violate this Section...
 - 1. For the first offense...
 - 2. For the second and subsequent offenses, violators shall be subject to administrative penalties and fees established in this Chapter and/or revocation of his or her contractor license or permit contractor endorsement for up to [~~three (3)~~]two (2) years.
- C. Unlicensed contractors ...

Sec. 6.03.010. Regulations for sanitary sewer contractors.

- A. *Sewer and drain cleaner...*
 - 1. *Required equipment.* Any applicant who desires to clean sewer laterals shall have appropriate sewer lateral and drain cleaning equipment, as required by the Department of Public Works, including but not limited to, rodding equipment capable of passing three-inch to six-inch cutter through a sewer lateral.
 - 2. *Equipment approval letter...*
- B. *Outside utility connector...*
 - 1. *Conditions...*
 - 2. Violation of any condition set forth in subsection (B)(1) of this Section shall result in the revocation of the contractor license for a period of up to [~~five (5)~~]two (2) years subject to the reinstatement provisions of this Chapter.

Sec. 06.03.012. Permits.

- A. *Required.* Any permit contractor endorsement ...

3. *Owner-occupier single-family dwelling permit...*

[4. *Demolition permits.* An owner or non-permit endorsed contractor may make application for demolition permit when the applicant intends to complete all work covered by the permit.]

B. *Transfer of permit...*

C. *Work exempt from permit...*

1. *Building, Residential and Swimming Pool and Spa.*

~~[a. One-story detached residential accessory structures used as tool and storage sheds, playhouses, free-standing gazebos and non-habitable similar uses, provided the floor area does not exceed two hundred (200) square feet (18.58 m²) and with an eave height of ten (10) feet (3048 mm) or less. This exemption shall not apply to garages or structures capable of storing motor vehicles.~~

~~b. Fences.~~

~~c. Retaining walls which are not over four (4) feet (1219 mm) in exposed height, unless supporting a surcharge or impounding Class I, II, or III-A liquids.——~~

~~d. Water tanks supported directly upon grade if the capacity does not exceed five thousand (5,000) gallons (18,925 L) and the ratio of height to diameter or width does not exceed 2:1.~~

~~e. Sidewalks and driveways.~~

~~f. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.~~

~~g. Exterior siding or the replacement of roof covering that does not involve the repair or replacement of more than twenty-five (25) percent of the sheathing. This exemption shall not apply to exterior masonry, adhered masonry veneer, or plaster (stucco) work.~~

~~h. Temporary motion picture, television and theater stage sets and scenery.~~

~~i. Shade cloth structures not exceeding two hundred (200) square feet or constructed for nursery or agricultural purposes, not including service systems.~~

~~j. Swings and other playground equipment.~~

~~k. Window awnings supported by an exterior wall which do not project more than fifty-four (54) inches (1372 mm) from the exterior wall and do not require additional support.~~

~~l. Non-fixed and moveable fixtures, cases, racks, counters, and partitions not over five (5) feet nine (9) inches (1753 mm) in height.~~

- ~~m. Decks not exceeding two hundred (200) square feet in area, that are not more than thirty (30) inches (762 mm) above grade at any point and are not adjacent to, or attached to, a one- or two-family dwelling.~~
- ~~n. Patio and decorative hardscaping not more than thirty (30) inches above grade at any point.~~
- ~~o. Flotation tank systems intended for sensory deprivation therapy.~~
- ~~p. Temporary modular ramps, constructed of light frame materials, serving a one- or two-family dwelling where the height of the entrance served by the ramp is not more than thirty (30) inches (762 mm) above grade at any point. This exemption shall not apply to ramps constructed from wood products.~~
- ~~q. Replacement of windows and doors with others of the same size, and in the same location when the structural frame of the opening is not altered.~~
- ~~r. Steps not exceeding thirty (30) inches above grade at any point and accessory to a one- or two-family dwelling.]~~
- a. Non-fixed and moveable fixtures, cases, racks, counters, and partitions not over five (5) feet nine (9) inches (1753 mm) in height.
- b. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
- c. Window awnings supported by an exterior wall which do not project more than fifty-four (54) inches (1372 mm) from the exterior wall and do not require additional support.
- d. Exterior siding replacement that does not involve the repair or replacement of more than twenty-five (25) percent of the sheathing. This exemption shall not apply to anchored stone and masonry, adhered masonry veneer, or plaster (stucco) work.
- e. Roof covering replacement that does not involve the repair or replacement of more than twenty-five (25) percent of the sheathing.
- f. Replacement of windows and doors with others of the same size, and in the same location when the structural frame of the opening is not altered.
- g. Fences.
- h. Retaining walls which are not over four (4) feet (1219 mm) in exposed height, unless supporting a surcharge or impounding Class I, II, or III-A-liquids. Two adjacent walls separated by less than 2x the horizontal distance of the lower elevation wall height shall be considered a single wall.
- i. Non-structural concrete slabs, patio and decorative hardscaping not more than thirty (30) inches above grade at any point.
- j. Sidewalks and driveways.

- k. Water tanks supported directly upon grade if the capacity does not exceed five thousand (5,000) gallons (18,925 L) and the ratio of height to diameter or width does not exceed 2:1.
 - l. Temporary motion picture, television and theater stage sets and scenery.
 - m. Shade cloth structures (i) not exceeding 200 square feet or; (ii) constructed for nursery or agricultural purposes, not including service systems.
 - n. Swings and other playground equipment.
 - o. Flotation tank systems intended for sensory deprivation therapy.
2. For one- and two-family dwellings only regulated by the Residential Code. The following exemptions are in addition to work identified in Sec. 06.03.012.C.1.
- a. One-story detached residential accessory structures used as tool and storage sheds, playhouses, pergolas, free-standing gazebos and non-habitable similar uses, provided the floor area does not exceed two hundred (200) square feet (18.58 m²) and with an eave height of ten (10) feet (3048 mm) or less and a maximum overall height of twenty (20) feet (6096 mm). This exemption shall not apply to garages or structures capable of storing motor vehicles.
 - b. Decks not exceeding two hundred (200) square feet in area, that are not more than thirty (30) inches (762 mm) above grade at any point and are not adjacent to, or attached to, a one- or two-family dwelling.
 - c. Carports and patio covers, provided they are free-standing and pre-fabricated, and do not exceed two hundred (200) square feet (19 m²) that are accessory to a one- and two-family dwelling. Carports not open on at least two sides shall be considered a garage and this exemption shall not apply to garages.
 - d. Steps and landings, accessory to a one- and two-family dwelling, not exceeding 16 square feet (1.5 m²) in area that are not more than thirty (30) inches above grade at any point and do not serve the exit door required by R311.4 of this Chapter.
 - e. Temporary modular ramps, constructed of light-frame materials, serving a one- or two-family dwelling where the height of the entrance served by the ramp is not more than thirty (30) inches (762 mm) above grade at any point. This exemption shall not apply to ramps constructed from wood products.

[2]3. *Gas:...*

[3]4. *Mechanical:...*

[4]5. *Plumbing:...*

Sec. 06.03.013. Submittal documents

A. *General.* Submittal documents consisting of construction documents, statement of special inspections, structural observation programs, investigation and evaluation reports, and other data shall be submitted ~~[in three (3) sets]~~ with each application for a permit or in ~~[an electric format as required]~~ a digital format where allowed by the Code Official. The construction documents shall be prepared by a registered design professional licensed in the State of Delaware. Where special conditions exist, the Code Official is authorized to require additional construction documents to be prepared by a registered design professional at applicant's expense....

B. *Construction documents...*

1. *Information on construction documents...*

a. *Minimum design requirements for non-residential construction documents...*

1. *Code data...*

3. *Exterior wall envelope...*

4. *Exterior balconies and elevated walking surfaces.* Where balconies or other elevated walking surfaces have weather-exposed surfaces, and the structural framing is protected by an impervious moisture barrier, the construction documents shall include details for all elements of the impervious moisture barrier system. The construction documents shall include manufacturer's installation instructions.

b. *Minimum design requirements for Residential documents...*

c. *Minimum design requirements for swimming pools...*

d. *Minimum design requirements for non-residential Mechanical documents...*

1. Plans must be drawn to scale...

2. For projects over ten thousand (10,000) square feet, the construction documents shall bear the signature and seal of a Delaware registered design professional.

3. Equipment schedules to...

Sec. 6.03.016. Fees.

A. *Payment of fees...*

B. *Schedule of permit fees.* ~~[On buildings, structures, swimming pools and spas, gas, mechanical, and plumbing systems or alterations requiring a permit]~~ Where a permit is required, a fee for each permit shall be paid as required and in accordance with the Schedule of Permit Fees.

C. *Permit valuations...*

D. *Work commencing before permit issuance.* Any person who commences any work ~~[on a building, structure, swimming pool and spa, gas, mechanical, or plumbing system]~~ before obtaining the necessary permits shall be subject to administrative penalties and fees established by the Code Official in addition to the required permit fees. Any such work that includes an historic alteration on a contributing resource shall also be subject to provisions in Sec. 06.03.020.

E. *Related fees...*

Sec. 6.03.018 Inspections.

A. *General*

F. *Final inspection...*

G. *Who is eligible to perform inspections required by the County.* All County required inspections shall be performed by a County employee duly authorized by the Code Official. Upon approval by the Code Official an approved inspection agency, or a design professional [~~licensed by the State of Delaware~~] may perform required inspections as a third party inspector. [~~Employees of approved inspection agencies, architects, and engineers are independent contractors (herein referred to as third party inspectors) and are not employees of New Castle County.~~] Employees of inspection agencies must affirm their work under penalty of perjury.

1. *Inspection agencies.* The Code Official is authorized to accept reports of approved inspection agencies on construction requiring a building permit, provided the Code Official, after sufficient investigation, determines that such agencies are qualified and reliable. Inspections must be conducted under the direct supervision of a design professional.

2. *Design Professionals...*

H. *Third party inspections.*

1. *Regulations for third party inspections...*

3. *Third party inspector responsibilities.*

a. *Current copy of adopted codes...*

b. *Verification prior to performing inspection...*

c. *Report required.* Third party inspectors shall maintain written records of all on-site inspections. An inspection report, or other required inspection checklists, shall be prepared that indicate at the time of inspection, the construction, installation, or modification meets the minimum requirements of the applicable Codes for that phase of the project. The approved inspector shall submit reports certified by a design professional, to the Permit Holder and to the Code Official. Discrepancies shall be brought to the immediate attention of the contractor for correction. If they are not corrected, the discrepancies shall be brought to the attention of the Code Official prior to the completion of that phase of the work.

Sec. 6.03.019. Certificates of approval.

A. *Certificates required...*

C. *Certificate issued.* Upon completion of the final inspection and correction of all outstanding violations and discrepancies of this Chapter, the approved plans, the permits, or other provisions

of this Code are corrected and all directives of the Code Official are satisfied, the Code Official shall issue a certificate of occupancy indicating the completion of the work for which the permit was issued. The certificate shall contain the following:

1. The certificate issue date.
2. The [~~building~~]permit number.
3. The tax identification number and address of the structure.
4. The name and address of the owner.
5. A description of that portion of the structure for which the certificate is issued.
6. A statement that the described portion of the structure has been inspected for compliance with the requirements of this Chapter for the occupancy and division of occupancy and the use for which the proposed occupancy is classified.
7. The signature of the Code Official.
8. The edition of the code under which the permit was issued.
9. [~~If~~]Where an automatic sprinkler system is provided and whether the sprinkler system is required.
10. Any special stipulations and conditions of the building permit.
11. Recognition as a green building, if applicable.

D. *Temporary occupancy...*

Sec. 6.03.020. Special guidelines for work done on historic structures.

A. *Review for historic structures...*

1. The Department shall not issue any permit for an exterior historic alteration, demolition, relocation, construction or reconstruction on any historic or contributing resource within, or eligible for, Historic overlay zoning unless first heard by the Historic Review Board (“HRB”). An Historic Resource application must be filed with the Department in order to appear before the [~~Board~~]HRB. Historic Resource applications are reviewed in accordance with Section 40.15.160 and Section 40.15.210 of this Code.
 - a. Based upon its public review for properties within an Historic overlay zoning district, the HRB shall provide a written decision in accordance with Section 40.31.370 of this Code.
 - b. Based upon its public review for properties outside of Historic overlay zoning districts, the HRB shall provide a written recommendation in accordance with Section 40.31.370 of this Code.
2. Once a building permit...

B. *Demolition of historic structures...*

1. A demolition permit shall not be issued until the Department has determined whether the structure is a contributing resource or eligible for Historic overlay zoning as defined by the criteria for designation in Section 40.15.110 of this Code. The Department shall determine the eligibility within the twenty (20) days of receiving a complete application.
 - a. Where the resource...
 - b. Where the resource...
2. In order to seek mitigation or alternatives to demolition, the HRB may hold the issuance of the demolition permit for a period not to exceed nine (9) months from the date of the HRB written opinion to the Code Official. HRB findings shall be issued to the Code Official in a written recommendation in accordance with Section 40.31.370 of this Code.
 - a. The HRB has the authority to deny demolition permits that are located within an Historic overlay zoning district pursuant to Section 40.15.160 of ~~[the New Castle County Code]~~this Code.
 - b. The HRB has the authority to require documentation in accordance with Section 40.15.210.B of this Code prior to the release of a demolition permit for any structure determined a contributing resource or eligible for Historic overlay zoning as defined by the criteria for designation listed in Section 40.15.110 of this Code.
3. Upon verification by the Historic Review Board that a building or structure of historic significance or a contributing resource has been demolished prior to issuance of a demolition permit, the Code Official shall initiate administrative enforcement proceedings pursuant to Sec. 6.12.002(C) and request the County Attorney to take immediate action to prosecute those responsible for the demolition. In addition, the Code Official may withhold building permits for that parcel for one to three (3) years, such determination to be made by the Code Official in writing to the legal owner of the property.

Sec. 6.03.021. Emergency measures.

A. *Authority to disconnect service utilities.* The Code Official shall have the authority to authorize disconnection of utility service to the building, structure, or system regulated by this Chapter and the referenced codes and standards set forth in Section 06.01.001 in case of emergency where necessary to eliminate an immediate hazard to life or property. The Code Official shall notify the serving utility, and wherever possible, the owner or the owner's authorized agent and occupant of the building, structure, or service system of the decision to disconnect prior to taking such action. If not notified prior to disconnecting, the owner or occupant of the building, structure, or service system shall be notified as soon as practical thereafter.

B. *Imminent danger...*

C. *Restoration.* ~~[The structure or equipment determined to be unsafe by the Code Official is permitted to be restored to a safe condition]~~The Code Official is authorized to order the owner, the owner's authorized agent, operator or occupant of a structure, premises or equipment of the building or structure to restore the unsafe structure or equipment to a safe condition. To the extent

that repairs, alterations, or additions are made or a change of occupancy occurs during the restoration of the structure, such repairs, alterations, additions or change of occupancy shall comply with the requirements of this Chapter and of this Code.

D. Temporary safeguards...

Section 4. *New Castle County Code* Chapter 6 (“Building Code”), Article 4 (“Building Code”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

ARTICLE 4. BUILDING CODE

Sec. 6.04.001. Adoption of the International Building Code.

That certain document, on file with the office of the Clerk of the County Council, being marked and designated as the International Building Code, [2018]2021 edition, as published by the International Code Council, be and is hereby adopted as the Building Code of New Castle. All the regulations, provisions, conditions, and terms of the International Building Code, [2018]2021 edition, and any supplements, referenced codes, and standards, are hereby referred to, adopted and made part of this Chapter, as if fully set out in this legislation, with the additions, insertions, deletions and changes prescribed in Sec. 6.04.002.

Sec. 6.04.002. Amendments to the International Building Code.

The following sections of the International Building Code, [2018]2021 edition, are revised as follows. All code references including text and lines are based on the 2021 International Building Code, second printing: September 2021. Note: Although the International Building Code does not identify sections with a “B” designation, such a designation is utilized to avoid any confusion as to which Code the amendment relates.

References to the International Fire Code, [2018]2021 edition, as published by the International Code Council, are not specifically adopted. Provisions of the International Fire Code are addressed through the adoption of the National Fire Prevention Association (NFPA) Codes and Standards and the Delaware Fire Prevention Regulations as adopted by the Delaware State Fire Marshal’s Office.

CHAPTER 1. ADMINISTRATION...

CHAPTER 3. USE AND OCCUPANCY CLASSIFICATION

Section B308.5.4...

Section B310.4, Residential Group R-3, is amended in the [seventh]eighth line by deleting the word “persons” and substituting the phrase “adults or twelve or fewer children”.

Section B310.4.1...

CHAPTER 10. MEANS OF EGRESS

Section B1023.9...

Section B1025.1, General, is amended in the second and third lines by deleting the phrase “high-rise buildings” and substituting the phrase “buildings having three (3) or more stories above or below the level of exit discharge” and in the third line by deleting the phrase “or R-1” and substituting the phrase “, R-1 or R-2”.

CHAPTER 11. ACCESSIBILITY

~~[Section B1105, Accessible entrances, is amended by adding the following subsection:~~

~~*B1105.2. Requirements for newly constructed places of public accommodation.* All buildings which are constructed after January 1, 2011, and intended for use as places of public accommodation as defined by this Chapter and 6 Del. C. ch. 45 (“Equal Accommodations”), must be equipped with automatic doors at each entrance that is intended to be a main entrance and is accessible by the general public.]~~

~~*B1105.1.1, Automatic doors*, is amended in the first line by deleting the phrase “facilities with the occupancies and building occupant loads indicated in Table 1105.1.1” and substituting the phrase “places of public accommodations as defined by this Chapter” and in the fifth line by adding the phrase “as in accordance with 6 Del. C. ch. 45 (“Equal accommodations”).” to the end of the first sentence.~~

~~*Table B1105.1.1, Public entrance with power-operated door*, is amended by deleting the table in its entirety.~~

CHAPTER 13. ENERGY EFFICIENCY...

CHAPTER 16. STRUCTURAL DESIGN

Section B1612.2...

Section B1612.3, Established of flood hazard areas, is clarified to depict that the effective date of the most recent FIRM maps for New Castle County is ~~[February 4, 2015]~~January 22, 2020 and encompasses Map Number 10003C0025J through and including Map Number 10003C0475J and all revisions defined by FEMA FIRM maps.

Section B1612.3.2...

CHAPTER 18. SOILS AND FOUNDATIONS

~~[Section B1803.5, Investigated conditions, is amended by adding the following subsection:~~

~~*Section 1803.5.13. Subsidence areas.* All applications in subsidence areas shall include a report, prepared by a professional geologist or a professional geotechnical engineer registered in the State of Delaware, evaluating the vulnerability of the subsurface of subsidence (sinkholes). The application and report shall be sufficient to establish to the satisfaction of the Code Official after consulting with the Delaware Geological Survey, that the construction methods to be employed will be adequate to minimize the potential for subsidence. A soils report shall not be required for one and two family dwellings unless~~

field inspections indicate questionable soils or conditions or it is located in a subsidence area.]

Section 1803.5.2, Questionable soil, is amended by adding the following sentence to the end of the section: “All applications in subsidence areas shall include a report, prepared by a professional geologist or a professional geotechnical engineer registered in the State of Delaware, evaluating the vulnerability of the subsurface (sinkholes).”

Section B1805.4.3...

Table B1807.1.6.2, Concrete foundation walls, is amended by adding the following ~~[footnote]~~ sentence to the end of footnote a:

“~~[f.]~~In the absence of soil data, the following ratings shall be used for the lateral soil load: 60 PSF/FT for basement walls; 45 PSF/FT of depth for retaining walls; and 200 PSF/FT of depth for passing pressure.”

Table B1807.1.6.3(1), Plain masonry foundation walls, is amended by adding the following ~~[footnote]~~ sentence to the end of footnote a:

“~~[g.]~~In the absence of soil data, the following ratings shall be used for the lateral soil load; 60 PSF/FT for basement walls; 45 PSF/FT of depth for retaining walls; and 200 PSF/FT of depth for passing pressure.”

Table B1807.1.6.3(2), 8-inch masonry foundation walls with reinforcement where $d \geq 5$ inches, is amended by adding the following sentence to the end of footnote a:

“In the absence of soil data, the following ratings shall be used for the lateral soil load; 60 PSF/FT for basement walls; 45 PSF/FT of depth for retaining walls; and 200 PSF/FT of depth for passing pressure.”

Table B1807.1.6.3(3), 10-inch masonry foundation walls with reinforcement where $d \geq 6.75$ inches, is amended by adding the following sentence to the end of footnote a:

“In the absence of soil data, the following ratings shall be used for the lateral soil load; 60 PSF/FT for basement walls; 45 PSF/FT of depth for retaining walls; and 200 PSF/FT of depth for passing pressure.”

Table B1807.1.6.3(4), 12-inch masonry foundation walls with reinforcement where $d \geq 8.75$ inches, is amended by adding the following sentence to the end of footnote a:

“In the absence of soil data, the following ratings shall be used for the lateral soil load; 60 PSF/FT for basement walls; 45 PSF/FT of depth for retaining walls; and 200 PSF/FT of depth for passing pressure.”

Section B1809.5, Frost Protection, Number 1...

CHAPTER 23. WOOD

Section B2304.12, Protection against decay and termites, is amended by adding the following subsection:

~~[B2304.12.2.7]~~*B2304.12.2.9, Foundation sill plates.* All sill plates anchored to foundation walls shall be of approved naturally durable or preservative treated wood.

Section B2304.12, Protection against decay and termites, is amended by adding the following subsection:

~~[B2304.12.2.8]~~*B2304.12.2.10, Wood in contact with masonry or concrete.* All wood against masonry or concrete must be approved naturally durable, preservative treated wood, or protected in an approved manner.

CHAPTER 24. GLASS AND GLAZING

Section B2403.1, Identification...

~~[CHAPTER 25. — GYPSUM BOARD, GYPSUM PANEL PRODUCTS AND PLASTER~~

~~Section B2510.6, Water-resistive barriers, Exception Number 1, is amended is the sixth line by deleting the phrase “or drainage space” and substituting “and integrated with a continuous designed drainage space (a gap) that allows moisture to drain freely to the exterior of the assembly.~~

~~A drainage space shall be, but not limited to, a space formed by the use of any non-corrodible furring strips, drainage mat, or drainage board which allows for the continuous flow of moisture. Such products and designs must adhere to this section and those requirements outlined in Section 06.03.011(N) “Alternative materials, design, and methods of construction and equipment”.”]~~

CHAPTER 27. ELECTRICAL...

Section 5. *New Castle County Code* Chapter 6 (“Building Code”), Article 5 (“Residential Code”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

ARTICLE 5. RESIDENTIAL CODE

Sec. 6.05.001. Adoption of the International Residential Code

That certain document, on file with the office of the Clerk of the County Council, being marked and designated as the International Residential Code, [2018]2021 edition, including [Appendix E]Appendices AE and AJ, as published by the International Code Council, be and is hereby adopted as the Residential Code of New Castle County. All the regulations, provisions, conditions, and terms of the International Residential Code, [2018]2021 edition, and any supplements, referenced codes, and standards, are hereby referred to, adopted and made part of this Chapter, as if fully set out in this legislation, with the additions, insertions, deletions and changes prescribed in Sec. 6.05.002.

Sec. 6.05.002. Amendments to the International Residential Code.

The following sections of the International Residential Code, [2018]2021 edition, are revised as follows. All code references including text and lines are based on the 2021 International Residential Code, second printing: November 2021. Note: Although the International Residential Code does not identify sections with a “R” designation, such a designation is utilized to avoid any confusion as to which Code the amendment relates.

References to the International Fire Code, 2021 edition, as published by the International Code Council, are not specifically adopted. Provisions of the International Fire Code are addressed through the adoption of the National Fire Prevention Association (NFPA) Codes and Standards and the Delaware Fire Prevention Regulations as adopted by the Delaware State Fire Marshal’s Office.

CHAPTER 3. BUILDING PLANNING

Table R301.2(1), Climatic and Geographic Design Criteria, is filled in as follows:

[GROUND SNOW LOAD	WIND DESIGN				SEISMIC DESIGN CATEGORY	SUBJECT TO DAMAGE FROM			Winter Design Temp	Ice Barrier Underlayment Required	Flood Hazards	Air Freezing Index	Mean Annual Temp
	Speed	Topographic effects	Special Wind region	Wind-borne debris zone		Weathering	Frost line depth	Termite					
25 lbs./sq.ft.	115 mph	No	No	No	B	Severe	32"	Yes	14°F	No	10/05/2000 2/04/2015	596	54°F
MANUAL J DESIGN CRITERIA													
Elevation		Latitude		Winter heating		Summer cooling		Altitude correction factor		Indoor design temperature		Design temperature cooling	
78 ft		39°		14°F		89°F		1.0		72°F		75°F	
Cooling temperature difference		Wind velocity heating		Wind velocity cooling		Coincident wet bulb		Daily range		Winter humidity		Summer humidity	
14°F		15 mph		7.5 mph		74		M		50%		50%]	

<u>GROUND SNOW LOAD^a</u>	<u>WIND DESIGN</u>				<u>SEISMIC DESIGN CATEGORY^f</u>	<u>SUBJECT TO DAMAGE FROM</u>			<u>Ice Barrier Underlayment Required^h</u>	<u>Flood Hazards^g</u>	<u>Air Freezing Indexⁱ</u>	<u>Mean Annual Temp</u>
	<u>Speed^d (mph)</u>	<u>Topographic effects^e</u>	<u>Special wind region^l</u>	<u>Wind-borne debris zone^j</u>		<u>Weathering^a</u>	<u>Frost line depth^b</u>	<u>Termite^c</u>				
<u>25 lbs./sq.ft.</u>	<u>115 mph</u>	<u>No</u>	<u>No</u>	<u>No</u>	<u>B</u>	<u>Severe</u>	<u>32"</u>	<u>Yes</u>	<u>No</u>	<u>10/05/2000 2/04/2015</u>	<u>596</u>	<u>54°F</u>
<u>MANUAL J DESIGN CRITERIA</u>												
<u>Elevation</u>	<u>Altitude correction factor^e</u>		<u>Coincident wet bulb</u>		<u>Indoor winter design dry-bulb temperature</u>		<u>Indoor winter design dry-bulb temperature</u>		<u>Outdoor winter design dry-bulb temperature</u>		<u>Heating temperature difference</u>	
<u>79 ft</u>	<u>1.0</u>		<u>74</u>		<u>72</u>		<u>72</u>		<u>16</u>		<u>56°F</u>	

<u>Latitude</u>	<u>Daily range</u>	<u>Indoor summer design relative humidity</u>	<u>Summer design gains</u>	<u>Indoor summer design dry-bulb temperature</u>	<u>Outdoor summer design dry-bulb temperature</u>	<u>Cooling temperature difference</u>
<u>40a</u>	<u>M</u>	<u>50%</u>	<u>38</u>	<u>75</u>	<u>89</u>	<u>14</u>

Table R301.2(1), Flood hazards, is clarified to depict that the effective date of the most recent FIRM maps for New Castle County is ~~[February 4, 2015]~~January 22, 2020 and encompasses Map Number 10003C0025J through and including Map Number 10003C0475J and all revisions defined by FEMA FIRM maps.

Figure R301.2(6), Ground snow loads for the United States...

Section R303.4, Mechanical ventilation...

~~[Section R303.6, Outside opening protection, is amended by deleting the subsection in its entirety.]~~

Section R303.11, Prohibited connections...

Section R309.1, Floor surface...

~~[Section R310.6, Alterations or repairs of existing basements, is amended in the first and third lines by deleting the phrase “Alterations or” from both.]~~

~~[Section R316.6, Alterations or repairs of existing structures, Exception, is amended in the first line by adding the phrase, “habitable space or” after the word “new”.]~~

Section R310.7, Alterations or repairs of existing basements, is amended in the second line by adding the phrase “and alternations” after the word “rooms” and in the fourth and fifth lines by deleting the phrase “Other than sleeping rooms, w” and substituting “W” and by deleting the phrase “alterations or”.

~~[Section R311.2, Egress door, is amended by deleting the fourth sentence and substituting “All interior doors and openings in the path of egress shall have a minimum width of 2 feet 6 inches and a minimum height of 6 feet 6 inches. Doors to bathrooms or powder rooms may have a width of 2 feet 4 inches.”]~~

~~[Section R311.3.1, Floor elevations at the required egress doors, exception, is amended in the second and third lines deleting the phrase “the top of the threshold” and substituting “in the interior floor”.]~~

~~[Section R311.3.2, Floor elevations for other exterior doors, is amended in the fourth lines by deleting the phrase “top of the threshold” and substituting “interior floor”.]~~

Section R311.7.5.1, Risers, Exception, is amended by adding the following as exception number three:

3. Where the bottom or top riser adjoins a sloping public way, walkway or driveway having an established grade and serving as a landing, the bottom or top riser is permitted to be

reduced along the slope to less than 4 inches (102 mm) in height with the variation in height of the bottom or top riser not to exceed one unit vertical [F]in 12 units horizontal (8-percent slope) of stairway width.

~~[Section R313.1, Townhouse automatic fire sprinkler systems, is amended in the second line by deleting the word “shall” and substituting the word “may.”]~~

Section R313.1, Townhouse automatic fire sprinkler systems, is amended in the first line by adding the phrase “Effective January 1, 2025,” to the beginning of the sentence.

~~[Section R313.1, Townhouse automatic fire sprinkler system, Exception is amended by deleting the exception in its entirety.]~~

~~[Section R313.1.1, Design and installation, is amended in the third line by deleting the phrase “Section P2904 or”.]~~

~~[Section R313.2, One- and two-family dwellings automatic fire sprinkler systems, is amended in the second line by deleting the word “shall” and substituting the word “may.”]~~

Section R313.2, One- and two-family dwellings automatic fire sprinkler systems, is amended in the second line by adding the phrase “Effective January 1, 2025,” to the beginning of the sentence.

~~[Section R313.2, One- and two-family dwellings automatic fire sprinkler systems, is amended by deleting the exception in its entirety.]~~

~~[Section R313.2.1, Design and installation, is amended in the third line by deleting the phrase “Section P2904 or”.]~~

~~[Section R314.2.2, Alterations, repairs and additions, is amended by adding the following exception number three:~~

- ~~3. Minor interior renovations to dwellings require the installation of battery operated smoke alarms as required by the International Residential Code.]~~

~~[Section R315.2.2, Alterations, repairs and additions, is amended by adding the following exception number three:~~

- ~~3. Minor interior renovations to dwellings require the installation of battery operated carbon monoxide alarms as required by the International Residential Code.]~~

~~[Section R317.1, Location required, Number 2, is amended in the second and third line by deleting “and are less than 8 inches (203 mm) from exposed ground.”]~~

Section R322.1.4.2, Determination of impacts, is amended in the [eighth and]ninth line[s] by deleting the phrase “1 foot (305 mm)” and substituting the phrase “0.1 foot”.

Section R322.2.1, Elevation requirements, Number 1...

Section R322.2.1, Elevation requirements, Number 2, is amended in the [~~fifth and~~]sixth line[s] by deleting the phrase “1 foot (305 mm)” and substituting “18 inches (457 mm).”

Section R322.2.1, Elevation requirements, Number 3...

Section R322.3.2, Elevation requirements, Number 1...

Section R322.3.2, Elevation requirements, [~~Number 4~~]Number 5, is amended in the second line by adding the phrase “not to exceed 20 cubic yards on a single lot,” after the word “fill,”.

Section [~~R328~~]R331, Construction Sanitation, is added as a new section as follows:

Section [~~R328~~]R331, Construction sanitation.

Section [~~R328.1~~]R331.1, Facilities Required. Sanitary facilities shall be provided during construction, remodeling or demolition activities in accordance with the Statewide Plumbing Code.

Section [~~R328.2~~]R331.2, Storage of construction and demolition waste. Construction and demolition waste may be stored upon the land where actual construction or demolition is in progress; provided, however, that such waste shall not be stored for a period exceeding ninety (90) days and all other waste not stored in a dumpster shall not be stored for periods exceeding thirty (30) days.

Section [~~R328.3~~]R331.3, Handling and storage of construction and demolition waste, trash, and litter. During all construction activities, the lot(s) shall be kept neat of trash and building materials. All construction sites shall be required to obtain and maintain on the site a container of suitable size and design to hold and confine trash, scraps, and other construction and demolition waste created or accumulated on the site, which might be blown from the site. All such construction refuse shall be maintained in a closed container, or a container of sufficient depth to prevent construction and demolition waste from blowing out of the container, at all times, until transferred to a landfill. Containers may be placed in setback areas, provided that the placement of the container does not obstruct the view of motorists and thereby create traffic hazards. It shall be a violation to permit accumulated debris, litter, or trash attributable to the construction site and the construction activity to blow or scatter onto adjoining properties, including the public street or to accumulate on the site outside of the container, or in transit to a landfill or dump. The owner or contractor shall service the container as frequently as needed to prevent trash from over-flowing.

Section [~~R328.4~~]R331.4, Final Inspection. A final clean-up is required, including the removal of all building debris, stumps, portable toilets, etc. within five (5) days after the final inspection on that parcel.

Exception: Stumps located outside of the limit of disturbance that are not required to be removed by any plan approved by the Department are not subject to this section.

Section [R328.5]R331.5, Enforcement. Any person who fails to comply with the requirements found in this Section shall be subject to the penalty and enforcement provisions provided in this Chapter.

Section R329.2, Installation, is amended in the fourth line by deleting the phrase “Chapters 34 through 43” and substituting the phrase “the Statewide Fuel Gas Code”.

CHAPTER 4. FOUNDATION

Table R403.1(3), Minimum width and thickness for concrete...

R403.1.1, Minimum size, is amended in the fifth line by deleting the phrase “6 inches (152 mm)” and substituting the phrase “8 inches (203 mm)”.

Figure R403.1(3), Permanent wood foundation crawl space section, is amended by deleting the phrase “6 IN. and substituting the phrase “8 IN.” as defined in R403.1.1.

Section R405.1, Concrete or masonry foundations...

CHAPTER 5. FLOORS

Table R507.3.1, Minimum footing size for decks...

~~[*Table R507.3.1, Minimum footing size for decks, footnote c., is amended by deleting the phrase “6 inches” and substituting the phrase “8 inches”.*]~~

Section R507.3.3, Frost protection, is amended in the first line by adding the phrase “adjacent to, or” after the word “are”.

CHAPTER 7. WALL COVERING

Section R703.7, Exterior plaster (stucco)...

~~[*Section R703.7.3, Water-resistive barriers, is amended in the fifth line after the word “paper” by adding the phrase “and integrated with a continuous designated drainage space (a gap) that allows moisture to drain freely to the exterior of the assembly.”*]~~

~~[*Section R703.7.3, Water-resistive barriers, Exception, is amended by deleting the exception it in its entirety and substituting:*~~

~~*Exception: Where the water-resistive barrier that is applied over wood-based sheathing has a water-resistive equal to or greater than that of a 60-minute Grade D paper and is separated from the stucco by an intervening, substantially nonwater-absorbing layer and integrated with a continuous designed drainage space (a gap) that allows moisture to drain freely to the exterior of the assembly.*~~

~~A drainage space shall be, but not limited to, a space formed by the use of any non-corrodible furring strips, drainage mat or drainage board which allows for the continuous flow of moisture. Such products and designs must adhere to this section and those requirements~~

outlined in Section 06.03.011(N) “Alternative materials, design, and methods of construction and equipment”.]

CHAPTER 12. MECHANICAL ADMINISTRATION through and including CHAPTER 43...

Section M1201 through and including Section E4304.5, together with all tables and figures contained therein, are amended by deleting the chapters in their entirety with the following modification: Subsection P2904, Dwelling unit fire sprinkler systems within Chapter 29, Water supply and distribution, is hereby adopted.

APPENDIX AE. MANUFACTURED HOUSING USED AS DWELLINGS

Appendix AE. Manufactured housing used as dwellings, is adopted with the following modifications: Subsection AE102.5[~~and~~], section[s ~~AE305, AE505~~]AE104 through and including section AE112 and section AE117 are hereby deleted.

APPENDIX AJ. EXISTING BUILDINGS AND STRUCTURES

Appendix AJ. Existing building and structures, is adopted in its entirety.

Section 6. *New Castle County Code* Chapter 6 (“Building Code”), Article 9 (“Existing Building Code”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

ARTICLE 9. EXISTING BUILDING CODE

Sec. 6.09.001. Adoption of the International Existing Building Code.

That certain document, on file with the office of the Clerk of the County Council, being marked and designated as the International Existing Building Code, [2018]2021 edition, including Appendix A and Appendix B, as published by the International Code Council, be and is hereby adopted as the Existing Building Code of New Castle County. All regulations, provisions, conditions, and terms of the International Existing Building Code, [2018]2021 edition, and any supplements, referenced codes, and standards, are hereby referred to, adopted and made part of this Chapter, as if fully set out in this legislation, with the additions, insertions, deletions and changes prescribed in Sec. 6.09.002.

Sec. 6.09.002. Amendments to the International Existing Building Code.

The following sections of the International Existing Building Code, [2018]2021 edition, are revised as follows. All code references including text and lines are based on the 2021 International Existing Building Code, first printing: December 2020. Note: Although the *International Existing Building Code* does not identify sections with an “E” designation, such a designation is utilized to avoid any confusion as to what Code the amendment relates.

CHAPTER 2. DEFINITIONS

Section E202, General definitions, Existing Building, is amended in the third line by deleting the [definition of Existing Building and substituting the following:] phrase “building permit” and substituting the phrase “certificate of occupancy”.

~~[Existing Building. A building erected prior to the date of adoption of the appropriate code, or one for which a legal certificate of occupancy has been issued.]~~

Section E202, General definitions, Existing Structure, is amended in the third line by deleting the phrase “building permit” and substituting the phrase “certificate of occupancy”.

Section E202, General definitions...

CHAPTER 3. PROVISIONS FOR ALL COMPLIANCE METHODS

Section E301 is amended by adding the following subsection:

Section ~~[E301.6]~~E301.5 Building Evaluation. The Code Official is authorized to require an existing building to be investigated and evaluated by a registered design professional to determine the existence of any potential nonconformance with the provisions of this Chapter.

CHAPTER 8. ALTERATIONS – LEVEL 2

Section ~~[E807]~~E806, Electrical, is amended by deleting the subsection in its entirety.

Section 7. *New Castle County Code Chapter 6 (“Building Code”), Article 10 (“Energy Conservation Code”),* is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

ARTICLE 10. ENERGY CONSERVATION CODE

Sec. 6.10.002. Amendments of the Statewide Energy Conservation Code.

The following sections of the International Energy Conservation Code, 2018 Edition, (IECC) are revised as follows. All code references including text and lines are based on the 2018 International Energy Conservation Code, fifth printing: November 2021. Note: Although the IECC does not identify sections with the designations that follow, to avoid any confusion, commercial provisions are provided with a “C” designation and residential provisions are provided with an “R” designation.

IECC – COMMERCIAL PROVISIONS...

Section 8. *New Castle County Code Chapter 6 (“Building Code”), Article 11 (“Swimming Pool and Spa Code”),* is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

ARTICLE 11. SWIMMING POOL AND SPA CODE

Sec. 6.11.001. Adoption of the International Swimming Pool and Spa Code.

That certain document, on file with the office of the Clerk of the County Council, being marked and designated as the International Swimming Pool and Spa Code, [2018]2021 edition, as published by the International Code Council, be and is hereby adopted as the Swimming Pool and Spa Code of New Castle County. All regulations, provisions, conditions, and terms of the International Swimming Pool and Spa Code, [2018]2021 edition, and any supplements, referenced codes, and standards, are hereby referred to, adopted and made part of this Chapter, as if fully set out in this legislation, with the additions, insertions, deletions and changes prescribed in Sec. 6.11.002.

Sec. 6.11.002. Amendments to the International Swimming Pool and Spa Code.

The following sections of the International Swimming Pool and Spa Code, [2018]2021 edition, are revised as follows. All code references including text and lines are based on the 2021 International Swimming Pool and Spa Code, second printing: June 2021. Note: Although the International Swimming Pool and Spa Code does not identify sections with an “SP” designation, such a designation is utilized to avoid any confusion as to what Code the amendment relates.

CHAPTER 3. GENERAL COMPLIANCE

~~[Section SP302.1, Electrical, is amended by adding the following subsection:~~

~~Section SP302.1.1, Overhead wires. No public or private swimming pool shall be constructed below any overhead utility wires unless in accordance with the latest edition of the National Electrical Code. The location of any overhead utility wires relative to the placement and operation of any public or private swimming pool shall be in compliance with the latest edition of the National Electrical Code.]~~

Section [SP302.6]SP302.1 through and including Section SP321.4, are amended by deleting all references to the phrase “Section 102.7.1” and substituting “this Chapter”.

Section SP305.4, Structure wall as a barrier...

~~[Section SP305.4, Structure wall as barrier, Number 3, is amended by deleting it in its entirety and substituting “3. The pool shall be equipped with a pool alarm that complies with ASTM F-2208.”]~~

Section SP305.4, Structure wall as barrier, Number 6, is amended by deleting it in its entirety and substituting [after item number three by adding]the following:

Exception: An approved means of protection, such as self-closing doors with self-latching devices, provided that the degree of protection afforded is not less than the protection afforded in Items 1, 2, ~~[or 3]~~and 5.

Section SP305.5, Onground residential pool structure as a barrier...

CHAPTER 4. PUBLIC SWIMMING POOLS

~~[Section SP401, General, is amended by adding the following section:~~

~~SP401.7, Equipment installations. Pumps, filters and other mechanical and electrical equipment for public swimming pools shall be enclosed in such a manner as to provide access only to authorized persons and not the bathers. Construction and drainage shall be arranged to avoid the entrance and accumulation of water in the vicinity of electrical equipment.]~~

Section SP406.2, Pool perimeter access...

Section 9. *New Castle County Code* Chapter 6 (“Building Code”), Article 12 (“Violations, Enforcement, and Penalties”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

ARTICLE 12. VIOLATIONS, ENFORCEMENT, AND PENALTIES

Sec. 6.12.002. Enforcement.

Any person who violates a provision of this Chapter...

A. *Criminal enforcement...*

C. *Administrative enforcement...*

1. *Code violations – health, safety, welfare of public not in jeopardy...*

2. *Stop work order – Health, safety, welfare of public in jeopardy...*

a. *Stop work order...*

b. *Form of order.* The stop work order shall be in writing and shall be given to the person to whom the permit was issued, the owner, or the person responsible for the property. Upon issuance of a stop work order, the cited work shall immediately cease. All notices shall: (i) be in writing; (ii) contain the address of the property or a description of the property sufficient for identification; (iii) include a clear statement of the reason or reasons why the order is being issued; (iv) state the conditions under which work will be permitted to resume; and (v) shall require the person notified to appear within no more than ten (10) days at a specified time in the Office of the Code Official, to show cause why the work should be allowed to continue.

Exception: *Emergencies.* Where an emergency exists, the Code Official shall not be required to give a written notice prior to the stopping of work. The Code Official shall be required to give verbal notice prior to stopping the work and provide subsequent written notice as soon as practically possible.

c. *Stop work applicable to subdivision...*

d. [~~Unlawful continuance~~]*Failure to comply.* Any person who shall continue any work in or about the building or structure after having been served with a stop work order, except such work as that person has been directed to

perform to remove a violation of an unsafe condition, shall be considered to be in violation of this Chapter.

e. *Post-deprivation show cause hearing...*

3. *Unsafe buildings, structures, and equipment...*

a. Unsafe [C]conditions. Buildings, structures, or existing equipment that are or hereafter become unsafe, unsanitary, or deficient because of inadequate means of egress facilities, inadequate light and ventilation, or which constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or which involve illegal or improper occupancy or inadequate maintenance, shall be deemed an unsafe condition. Unsafe structures shall be taken down, removed, or made safe as the Code Official deems necessary and as provided for in this section and Sec. 06.03.021, Emergency measures. A vacant structure that is not secured against unauthorized entry shall be deemed ~~[to be]~~ unsafe.

b. *Notice...*

4. *Method of service...*

6. *Prosecution of violation...*

7. *Removal of placard.* Any person who defaces or removes a violation notice, stop work order, or any other notice posted on a building, structure, or equipment by the Code Official, shall be considered to be in violation of this Chapter and is subject to a fine of up to one thousand dollars (\$1,000.00) per occurrence.

8. *Costs.* The owner of the property or person responsible for the building or structure shall be responsible for all costs associated with the enforcement of this Chapter and the investigation, removal, remediation, or abatement of code violations including the costs of reports, studies, and opinions, prepared by design professionals, the institution and maintenance of temporary safeguards, restoration of unsafe buildings, structures or equipment, demolition, and reasonable attorney fees associated with the above. ~~[The costs shall be liens on the property to the extent permitted by Title 25, Chapter 29 of the Delaware Code]~~ Any unpaid costs may be considered a tax lien and collected in the same manner as other County real estate taxes.

9. *Penalties provisions...*

a. *Administrative fines.* Notwithstanding any other section of this Chapter, any person who is found to have violated any provision of this Chapter, permit, certificate, license, approved plan, or directive of the Code Official, in addition to any expense incurred by the County for the removal or abatement of such violation, will be assessed an administrative fine of up to one thousand dollars (\$1,000.00) for each day the violation continues. [If

~~the fines are not paid within 30 days of the date of assessment, the fines may result in liens on the property to the extent permitted by Title 25, Chapter 29 of the Delaware Code]~~Any unpaid fine that is final and non-appealable may be considered a tax lien and collected in the same manner as other County real estate taxes.

- b. *Refusal to issue any further building permits, inspections, and certificates of occupancy.* The Code Official may refuse to grant any further building permits, inspections or certificates of occupancy to the violator, to any corporation, partnership, joint venture, or other legal entity with which the violator has a controlling interest, or to any business entity formed by the violator in an attempt to circumvent the effect of this penalty. Note: The Code Official is authorized to withhold additional permits only ~~[under]~~until the permit, license, or certificate holder remedies outstanding Code violations.
- c. *Institution of remedial action...*

Section 10. *New Castle County Code* Chapter 6 (“Building Code”), Schedule of Permit and Review Fees, is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

SCHEDULE OF PERMIT AND REVIEW FEES

Building Permit...

Demolition Permit

<u>Per structure fee:</u>	
<u>Residential structure, other than single family dwelling</u>	\$80.00
<u>Single family dwelling and non-residential structures</u>	\$130.00
<u>Historic review fee: 10% of permit valuation fee</u>	
<u>Residential structure, other than single family dwelling</u>	\$8.00
<u>Single family dwelling and non-residential structures</u>	\$13.00

Mechanical or Plumbing Permit...

Expired permit fine...

Working without a permit

For residential work, except demolition permit work, performed by exempt owner defined in Sec. 06.03.012(A):

.....Permit fee plus additional fee equal to the valuation fee or, permit fee if valuation is inapplicable

For work, except demolition permit work, performed by all others:

Permit fee plus additional fee equal to the valuation fee or, permit fee if valuation is inapplicable

Minimum fee.....	\$300.00
<u>For all demolition permit work performed:</u>	
<u>Permit fee plus additional per structure fee</u>	<u>\$300.00</u>
<u>A person found in violation of demolition permit work performed on a historic contributing resource is subject to administrative penalties pursuant to Sec. 6.12.002(C)(9)</u>	

Section 11. Certain documents on file in the office of the Clerk of County Council, being marked and designated as the *International Building Code, 2021 edition, International Residential Code, 2021 edition, International Mechanical Code, 2021 edition, International Plumbing Code, 2021 edition, International Fuel Gas Code, 2021 edition, International Existing Building Code, 2021 edition, International Swimming Pool and Spa Code, 2021 edition, and International Energy Conservation Code, 2018 edition*, all published by the International Code Council, are hereby adopted as the Building Code of New Castle County for the control of buildings and structures as provided in this Chapter. All the sections, conditions and terms of the above referenced International Codes are hereby referred to, adopted and made a part of this Chapter as if fully set out in this section, with the additions, insertions, deletions, and changes prescribed in this ordinance.

Section 12. Inconsistent ordinances and resolutions repealed. All ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict herewith are hereby repealed upon the effective date of this Ordinance.

Section 13. Effective date of the provisions of the Ordinance. The provisions of this Ordinance shall become effective on January 1, 2024.

Section 14. Continuation of existing ordinances and resolutions. The sections appearing in this Ordinance, so far as they are in substance the same as those ordinances and resolutions adopted and included in the *New Castle County Code*, shall be considered as continuations thereof and not as new enactments.

Section 15. Continuation of existing institutions, rights, and liabilities. The revisions of prior ordinances, resolutions, rules and regulations, provided for in this Ordinance, shall not affect any act done, or any cause of action accruing or accrued or established, or any suit or proceeding had or commenced in any civil action, nor any plea, defense, bar or matter existing before the time when such revisions shall take effect; but the proceedings in every such case shall conform with this ordinance to the extent applicable.

All the provisions of ordinances, resolutions, rules and regulations revised by this Ordinance shall be deemed to have remained in force from the time when they began to take effect, so far as they may apply to any department, agency, office or trust, or of any transaction or event of any limitation or any right or obligation or the construction of any contract already affected by such ordinances, resolutions, rules and regulations, notwithstanding the revisions of such provisions.

No offense committed and no penalty or forfeiture incurred, under any of the ordinances, resolutions, rules and regulations revised by this Ordinance and before the time when such revisions shall take effect shall be affected by such revisions.

No action or prosecution, pending the effective date of the revisions provided in this Ordinance, for any offense committed or for the recovery of any penalty or forfeiture incurred under any of the ordinances, resolutions, rules and regulations revised herein shall be abated or affected by such revisions, except that the proceedings in such action or prosecution shall conform with this Ordinance if applicable.

The provisions in this Ordinance shall not be construed to abolish or impair existing remedies available to New Castle County or its officers or agencies relating to the remediation of any dangerous, unsafe, or unsanitary condition.

Section 16. Severability. It is hereby declared to be the intention of the County Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional or invalid by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance. If any provision of this Ordinance is found to be unconstitutional or void, the applicable former ordinance provisions shall become effective and shall be considered as continuations thereof and not as new enactments regardless if severability is possible.

Section 17. Other laws. The provisions of this Ordinance shall not be deemed to nullify any provisions of local, state, or federal law except as stated in Section 11 above.

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* Article or Section number.

Sec. 6.01.001. This amendment aligns Chapter Six with the 2021 International Codes, including adding language to the Chapter purpose and existing structures subsections.

Sec. 6.02.001. This amendment adds definitions for Contributing Resource and Third Party Plan Reviewer.

Sec. 6.03.004. This amendment aligns the license revocation penalty with Administrative Enforcement provisions in Section 6.12.002.C.9.d.1.

Sec. 6.03.010. This amendment defines NCC Public Works as the agency approving equipment and aligns the license revocation penalty with Administrative Enforcement provisions in Section 6.12.002.C.9.d.1.

Sec. 6.03.012. This amendment removes non-permit endorsed contractors from obtaining demolition permits; creates a separate subsection for residential work exempt from a permit; clarifies exemptions for roofing, stucco, concrete slabs and shade structures; and adds pergolas, carports and patio covers to residential work exempt from a permit.

Sec. 6.03.013. This amendment aligns with the 2021 International Codes for submittal document requirements related to digital format and minimum design requirements for non-residential exterior balconies and elevated walking surfaces.

Sec. 6.03.016. This amendment aligns Chapter Six fees language with the 2021 International Codes and restricts the ability of a person to work without a permit on historic alterations.

Sec. 6.03.018. This amendment clarifies the third party inspector language including: removes third party inspector definition already in Article 2; defines that agency work relates to required building permit inspections and clarifies the responsibilities related to design professional supervision.

Sec. 6.03.019. This amendment aligns Chapter Six with the 2021 International Codes with respect to data defined on Certificates.

Sec. 6.03.020. This amendment corrects references to the HRB and Chapter 40 of the NCC Code. The newly defined contributing resource language for historic structures is incorporated and states the Code Official will initiate administrative enforcement for demolition without a permit

Sec. 6.03.021. This amendment aligns Chapter Six with the 2021 International Codes related to an owner's authorized agent and restoration of unsafe structures.

Sec. 6.04.001. This amendment adopts the 2021 International Building Code (IBC) as the building code for New Castle County.

Sec. 6.04.002. This amendment relates to IBC code specific amendments, including: defines the IBC code version used for Chapter Six amendments; adds automatic doors requirements for public spaces defined by *Del. C. ch. 45* “Equal Accommodations”; adds subsidence areas reference in the questionable soils section of the IBC; defines standard lateral soil data in the absence of such data; and removal of unnecessary code amendments due to IBC revisions.

Sec. 6.05.001. This amendment adopts the 2021 International Residential Code (IRC) as the residential code for New Castle County.

Sec. 6.05.002. This amendment relates to IRC code specific amendments, including: defines the IRC code version used for Chapter Six amendments; exclusion from adoption of the International Fire Code in favor of retention of the fire prevention regulations adopted by the State Fire Marshal’s Office; updates climatic and geographic design criteria; mandates the installation of automatic sprinklers effective January 1, 2025; removes previous sprinkler design and installation criteria amendments as IRC now recognizes both P2904 and NFPA 13D; recognizes the Statewide Fuel Gas Code; amends the existing minimum footing thickness from 6 inches to 8 inches in IRC table references; clarifies the adoption of Appendix AE and AJ appendices; and includes subsection renumbering and removal of unnecessary code amendments due to IRC revisions.

Sec. 6.09.001. This amendment adopts the 2021 International Existing Building Code (IEBC) as the existing building code for New Castle County.

Sec. 6.09.002. This amendment relates to IEBC code specific amendments, including: defines the IEBC code version used for Chapter Six amendments; clarifies the definition for existing building and existing structure; and renumbering to align with IEBC revisions.

Sec. 6.10.002. This amendment defines the Statewide Energy Conservation Code (IECC) version used for Chapter Six amendments.

Sec. 6.11.001. This amendment adopts the 2021 International Swimming Pool and Spa Code (ISPSC) as the swimming pool and spa code for New Castle County.

Sec. 6.11.002. This amendment relates to ISPSC code specific amendments, including: defines the ISPSC code version used for Chapter Six amendments; removal of unnecessary code amendments due to ISPSC revisions; and modifies structure wall as barrier provisions that are not less restrictive due to ISPSC revisions.

Sec. 6.12.002. This amendment relates to administrative enforcement amendments, including: aligns Chapter Six with 2021 International Codes related to emergency exception for form of order, subsection titles and unsafe conditions; adds collection of unpaid fines through the existing property lien process with language used in Chapter 40 and Chapter 7; and defines the fine for removal of stop work order placard.

Schedule of Permit and Review Fees. This amendment establishes a historic review fee for demolition permits and defines that all demolition permit work without a permit is subject to a per structure fee.

FISCAL NOTE: This ordinance, if approved, would mandate the installation of residential sprinklers, effective Jan. 1, 2025. The Department of Land Use would be required to create a new permitting process resulting in an additional 1,000 – 1,200 sprinkler plan reviews and an equal number of field inspections. Land Use would need two (2) new positions (one (1) Plan Examiner and one (1) Code Inspector position) to cover this increase in workload. This would increase the salary and benefits expenses by \$64,676 in FY2025 and an additional \$67,416 in FY2026 (net increase of \$132,092). There will also be an increase in revenue of \$7,000 per year due to the addition of two historic review fees for residential and commercial structures.