



NEW CASTLE COUNTY COUNCIL LAND USE COMMITTEE MEETING

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

August 27, 2024
3:00 PM

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

AGENDA

A. Meeting Call to Order

B. Approval of Minutes

C. Review/Discussion of Resolution(s)

D. Review/Discussion of Ordinance(s)

°22-152: REVISE PREVIOUSLY APPROVED EXPLORATORY MAJOR SUBDIVISION AND LAND DEVELOPMENT PLAN WITH REZONING FOR BOYDS CORNER FARM LLC; ST GEORGES HUNDRED; NORTHWESTERLY CORNER OF DUPONT PARKWAY AND GREYLAG ROAD; TAX PARCELS 13-013.00-156 AND 13-013.42-091; COUNCIL DISTRICT 6. (The plan for The Plaza at Boyds proposes to revise the previously approved design of the Exploratory Major Land Development Plan with a 341,500 square foot mixed use development consisting of 274 apartment units, 15,000 square feet of retail, 6,480 square feet of office GFA, and 6,040 square feet of amenity GFA with associated site improvements instead of 94,000 square feet of shopping center GFA and 12,500 square feet of office GFA. This new plan will supersede the previously approved Exploratory Major Subdivision and Land Development Plan and rezoning. Section 40.31.113 of the New Castle County Code requires that the submitted record plan be in general conformance with the development on the approved exploratory plan that was relied upon by County Council when it granted the rezoning. County Council adopted Ordinance 11-077 in June 2012. CR (Commercial Regional) zoning district. [App. 2022-0413-S/Z.](#))
Prime Sponsor(s): Mr. Carter

°24-031: AMENDING NEW CASTLE COUNTY CODE CHAPTER 40 ("UNIFIED DEVELOPMENT CODE"), ARTICLE 31 ("PROCEDURES AND ADMINISTRATION") RELATING TO COUNTY COUNCIL REFERRALS
Prime Sponsor(s): Mr. Carter

SUBSTITUTE NO. 1 TO °24-059: TO AMEND NEW CASTLE COUNTY CODE CHAPTER 40 ("UNIFIED DEVELOPMENT CODE"), SECTION 40.03.410 ("ACCESSORY USES, RESIDENTIAL") RELATING TO FENCE STANDARDS
Prime Sponsor(s): Mr. Cartier

- E. Presentations
- F. Other
- G. Public Comment
- H. Adjournment

AGENDA POSTED: August 20, 2024

*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. Carter
Date of introduction: December 13, 2022

ORDINANCE NO. 22-152

**REVISE PREVIOUSLY APPROVED EXPLORATORY MAJOR SUBDIVISION AND
LAND DEVELOPMENT PLAN WITH REZONING FOR BOYDS CORNER FARM
LLC; ST GEORGES HUNDRED; NORTHWESTERLY CORNER OF DUPONT
PARKWAY AND GREYLAG ROAD; TAX PARCELS 13-013.00-156 AND 13-013.42-091;
COUNCIL DISTRICT 6.**

(The plan for **The Plaza at Boyds** proposes to revise the previously approved design of the Exploratory Major Land Development Plan with a 341,500 square foot mixed use development consisting of 274 apartment units, 15,000 square feet of retail, 6,480 square feet of office GFA, and 6,040 square feet of amenity GFA with associated site improvements instead of 94,000 square feet of shopping center GFA and 12,500 square feet of office GFA. This new plan will supersede the previously approved Exploratory Major Subdivision and Land Development Plan and rezoning. Section 40.31.113 of the *New Castle County Code* requires that the submitted record plan be in general conformance with the development on the approved exploratory plan that was relied upon by County Council when it granted the rezoning. County Council adopted Ordinance 11-077 in June 2012. CR (Commercial Regional) zoning district. **App. 2022-0413-S/Z.**)

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

Section 1. The revised plan for The Plaza at Boyds (area shown on Exhibits A and L, dated September 15, 2022) is approved and shall supersede the previously approved exploratory plan associated with the rezoning that was approved in June 2012 by Ordinance 11-077.

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:

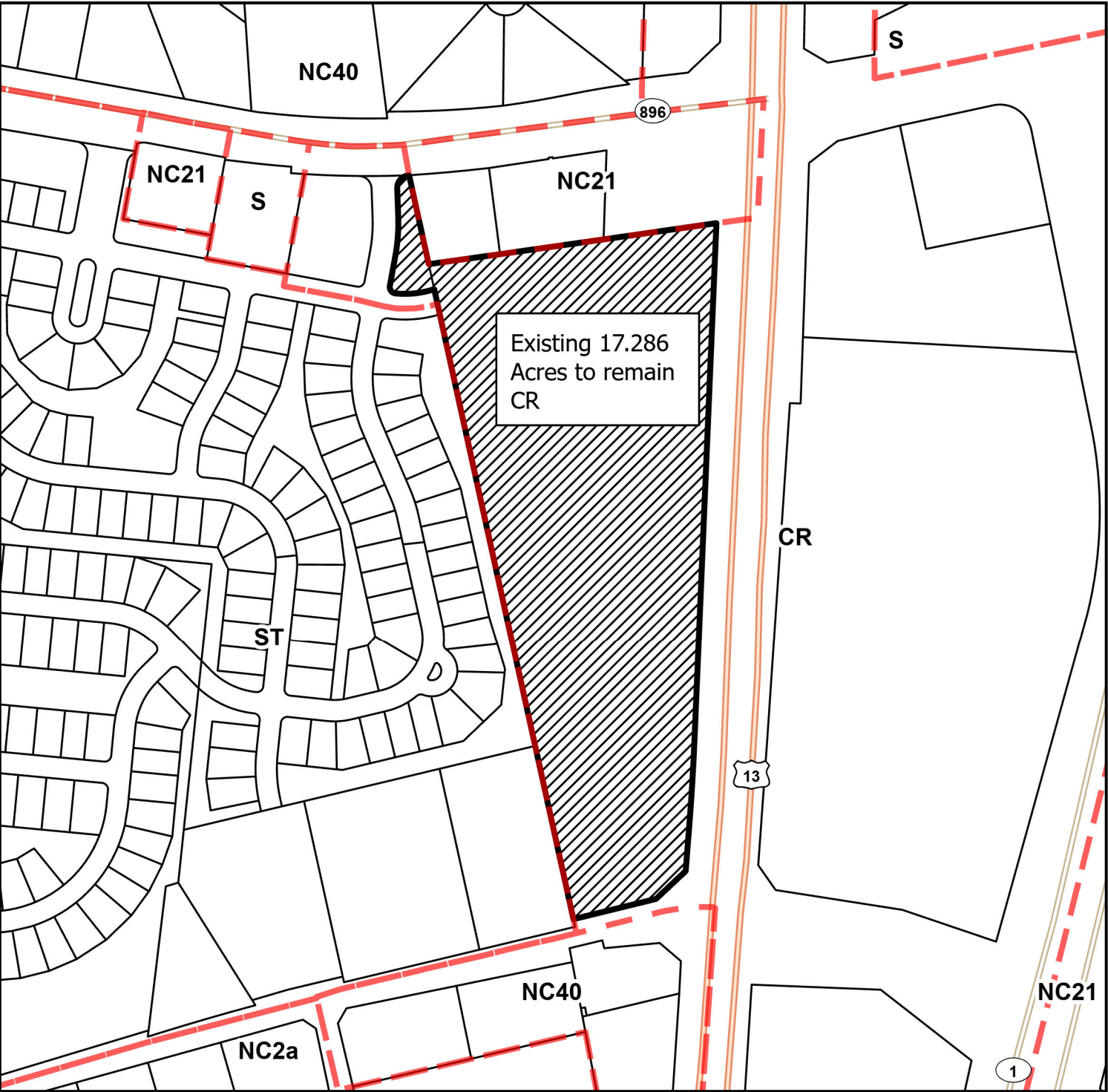
County Executive
New Castle County

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: AZB COMMERCIAL LLC
PROPOSED REZONING: CR TO REMAIN CR

APPLICATION NO. 2022-0413-SZ
TAX PARCEL NO. 13-013.00-156;
13-013.42-091



HUNDRED: ST. GEORGES HUNDRED
NEW CASTLE COUNTY, DELAWARE
Scale: 1:4,000
Prepared by: property.munsaka
Date: 9/15/2022



PERMANENT ORDINANCE NO. 22- 152
Date Adopted by County Council _____
Date Approved by County Executive _____

PROPERTY MAP

EXHIBIT "L"
ZONING ORDINANCE AS INTRODUCED

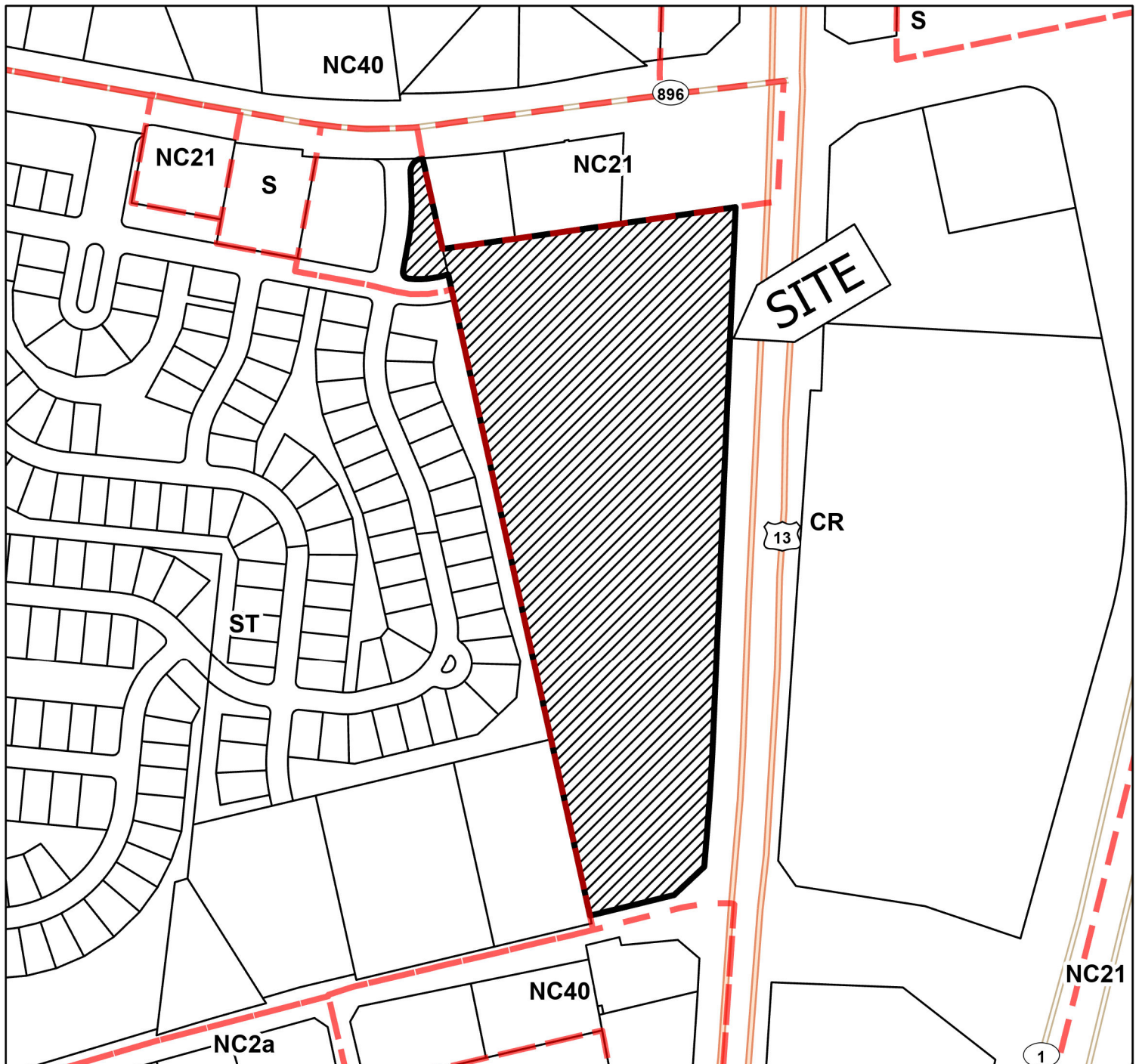
APPLICANT: AZB COMMERCIAL LLC

APPLICATION NO. 2022-0413-S/Z

PROPOSED REZONING: CR TO REMAIN CR

TAX PARCEL NO. 13-013.00-156;

13-013.42-091



HUNDRED: ST. GEORGES HUNDRED
NEW CASTLE COUNTY, DELAWARE

Scale: 1:4,000

Prepared by: property.munsaka

Date: 9/15/2022



PERMANENT ORDINANCE NO. 22- 152

Date Adopted by County Council _____

Date Approved by County Executive _____



Department of Land Use
**DEPARTMENT OF LAND USE
RECOMMENDATION REPORT**

**Ordinance 22-152
Application 2022-0413-S/Z
Plaza at Boyds**

July 16, 2024

Location: Northwesterly corner of DuPont Parkway and Greylag Road

Sponsor: Councilman David Carter, District 6

Description: Confirmation rezoning for the construction of a 423,626 square foot, mixed-use development consisting of 300 apartment units, 19,450 square feet of retail, 14,909 square feet of office / amenity space, and associated site improvements

Applicant: AZB Commercial, LLC

EXECUTIVE SUMMARY

Before the Planning Board for consideration, is a confirmation of a rezoning for a major land development plan known as the Plaza at Boyds. The rezoning and accompanying land development plan (Boyds Corner Farm, App. 2011-0319-S/Z, Ord. 11-077) was approved by New Castle County Council on June 12, 2012. Due to market demand challenges in the decade following the plan's original approval, the construction of the project was not completed. The current plan proposes to construct a mixed-use development consisting of 300 apartment units, 19,450 square feet of retail space, and 14,909 square feet of office / amenity space.

As part of the proposed changes to the recorded plan, Section 40.31.114 *of the New Castle County Code* requires that all subsequent revisions to land development plans with rezonings be in general conformity with the plan that was relied upon by County Council when it granted the zoning. While the current plan is similar in nature to the existing record plan on file and aligns with the permitted uses within the Commercial Regional (CR) zoning district, the current proposal includes changes such as the construction of apartment units, changes to the amount of commercial GFA proposed, and layout / design modifications. Therefore, the provisions of the UDC require that the proposed plan be reevaluated by means of the rezoning process.

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 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 Ordinance 22-152.

DESCRIPTION

The subject site is situated on the west side of DuPont Parkway (US Rt 13), just south of the intersection with Boyds Corner Road. The current plan (App. 2022-0413-S/Z) proposes to construct a mixed-use development consisting of 300 apartments over 389,267 square feet, 19,450 square feet of retail space, and 14,909 square feet of office / amenity space. Due to the proposed redesign of the overall development and the shift from commercial uses to primarily multi-family residential, the plan is not in general conformance with the existing record plan for the site. The Department and Planning Board are charged with evaluating the revised plan and the requested reconfirmation of rezoning in accordance with Standards for Map Amendment in Section 40.31.410 of the UDC.

ZONING & DEVELOPMENT PATTERN

The 17.29± acre site fronts DuPont Parkway (US Rt 13) near the intersection with Boyds Corner Road. The surrounding area is largely characterized by a mix of commercial uses (primarily along DuPont Parkway, US Rt 13) and medium-density residential developments. Directly to the west of the subject site is the Boyds Corner Farm subdivision (zoned Suburban Transition), which is comprised of medium density residential development that includes both single-family units and townhomes. Development to the north and south of the subject site is comprised of medium-density, single-family developments that are zoned Neighborhood Conservation (NC21, NC40, NC2a). Directly to the east of the site on the opposite side of DuPont Parkway (US Rt 13), the Hubers Crossing shopping center, Commercial Regional (CR) is currently under construction.

BACKGROUND

The development for the Plaza at Boyds was initially tied to the Boyds Corner Farm development, which proposed 116 single-family residential units as well as 146,800 square feet of retail, office, and restaurant space on parcel 13-013.00-156. While construction of the residential component of Boyds Corner Farm commenced, there has been no progress for the construction for the retail, office, and restaurant portion of the plan. The current proposal seeks to modify the plans for parcel 13-013.00-156 construct a mixed-use development consisting of 300 apartments over 389,267 square feet, 19,450 square feet of retail space, and 14,909 square feet of office / amenity space. Based on the testimony provided by the applicant's attorney at the public hearing, following the economic changes brought on by the COVID-19 pandemic, the property owner commissioned a market-study to determine whether the previously proposed would be viable. According to the applicant's consultant, there was limited demand for commercial construction in the area but instead a higher demand for multi-family residential units due to limited supply in the immediate area. The applicant indicated that their goal was to achieve a balance of commercial / office uses with residential uses to provide for a more walkable community with supporting amenities for the development.

PRELIMINARY LAND USE SERVICE (PLUS) REVIEW

The subject application was reviewed at a meeting held on October 24, 2022. The PLUS Review Letter, dated October 24, 2022, includes comments from various state agencies regarding the proposed land development plan. The letter states that the project is situated within a Level 2 investment area, which is consistent with the 2020 Strategies for State Policy and Spending. Investment Level 2 areas are comprised of lands where growth is anticipated by local, county, and State plans in the near-term future. The Office of State Planning indicated that they have no objections to the proposed application.

The Delaware Department of Transportation noted that all entrances must meet the standards in the Development Coordination Manual (DCM). DelDOT provided general comments regarding DelDOT's DCM and the requirements the plan would be subject to, as well as the development review process required for approval. The Delaware Department of Natural Resources and Environmental Control (DNREC) provided comments regarding the amount of disturbance proposed by the development and noted that the plan would be subject to Delaware Sediment and Stormwater Regulations. DNREC also noted that the site is impacted in its entirety by a Water Resource Protection Area (WRPA); therefore, the plan must follow all applicable WRPA regulations. Delaware Emergency Management Agency (DEMA) noted that the parcel is located within an area of minimal flood concerns of 1,000 years or greater. The Delaware Division of Historic and Cultural Affairs (DHCA) noted that there was no record of any archaeological resources present on the property; however, the potential for archaeological resources is high. For these reasons, DHCA recommended the applicant consult with an archaeologist prior to ground disturbance. The Delaware State Fire Marshall's Office provided general comments regarding Fire Protection Water Requirements, Fire Protection Features, and Accessibility. The letter also includes general recommendations from the State agencies.

PLANNING BOARD PUBLIC HEARING – June 4, 2023

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

John Tracey, the applicant's attorney, and Seth Shapiro, the applicant's design professional, and Dev Sitaram, the applicant's engineer, spoke on behalf of the application. Mr. Tracey began his presentation by providing a brief background of the project's history. He stated that the current record plan with rezoning was approved in 2012 and called for the construction 106,000 square feet of commercial and office space. He stated that following the recordation of the land development plan at the time, the market stalled as did the construction of the project. Mr. Tracey stated that following the COVID-19 pandemic, the property owner consulted a financial expert to conduct a market study of the subject site, which resulted in a recommendation that there was a limited appetite for commercial construction over the construction of multi-family housing. He stated in order to find a balance uses for the development; the applicants decided to pursue a mixed-use project that had a full redesign of the site. Mr. Tracey also noted that the plan had received a recommendation of approval from the Board of Adjustment regarding three variances dealing with landscaping and mixed-use parking requirements. He stated that the plan

still falls below the maximum density permitted under the Commercial Regional (CR) zoning district and seeks to establish placemaking aspects that provide for a walkable community.

Mr. Shapiro spoke to the proposed design of the community and the relationship of the proposed apartment buildings and commercial buildings on the site. He stated that the plan was designed to provide a pedestrian scale in order to provide a transition between nearby commercial and residential uses. He spoke to the architectural design of the three-story apartment buildings, the four-story, mixed use building, and the one-story, commercial structures. He noted that the plan also calls for the construction of one-story, garage buildings as well to support the residents of the community.

Following the presentation regarding the design of the proposed development, Mr. Tracey spoke to the Standards for Zoning Map Amendments required by the Code. He noted how the plan was in compliance with the 2022 Comprehensive Plan given the Business Flex designation on the Future Land Use Map. He noted how the plan remains consistent with the character of the surrounding community, fronting a major corridor that has similar mixed-use projects. He spoke to the consistency with surrounding zoning as well as how the property remains suitable for a mixed-use development. Mr. Tracey spoke to the traffic figures that were generated for the plan and stated that the plan generates fifty (50) percent less than what the currently approved shopping center would generate. He stated that the plan will have an updated TID agreement in place.

Ms. Peterson inquired about Note 42 on the proposed plan, which refers to eight and a half acres of impervious cover transfer. Mr. Tracey stated that the prior project had a WRPA component, which utilized the transfer of development rights to preserve properties in other areas of the County. He clarified that the current proposal preserved additional farmland within a WRPA to provide for development of the subject site. Ms. Peterson inquired if there was any community outreach completed. Mr. Tracey stated that there were not any community meetings held, but that the applicant had several conversations with the district councilman. He stated that the previous two public hearings that had been held regarding the current application had not generated a significant amount of public comment. Ms. Peterson inquired if there was a plan to utilize solar or geothermal energy. Mr. Tracey stated that it was something the applicant would consider.

Ms. Visvardis inquired about the amount of parking provided on the project. Mr. Tracey stated that there were 560 spaces provided after receiving approval from the Board of Adjustment regarding the amount of parking. He noted that the reduction of parking would also result in less impervious cover within the WRPA on the site. Mr. Tracey stated that the applicant did an analysis of similar communities in the surrounding area and stated that the study found that many extra parking spaces remain unused.

Ms. Gray inquired about the dumpster enclosure. Mr. Tracey noted that the comments regarding the dumpster enclosure maneuvering brought up by the Department would be addressed in construction review.

Public Comment

There were no public comments at the Planning Board Public Hearing.

Comments received while the record was open

The Department of Land Use received written correspondence from David Thomas, Steven and Mary Burns in opposition to Ordinance 22-152. Their concerns ranged from potential decrease in property value, wildlife, and trash.

ANALYSIS

When the previous plan, Boyd Corner Farm, was considered, it was noted that the DuPont Parkway and Boyds Corner intersection was an area where there was a significant amount of anticipated growth and that a mixed-use development consisting of both residential and commercial uses supported by Commercial Regional (CR) zoning was appropriate. While there have been economic and market shifts due to the COVID-19 pandemic, the DuPont Parkway (US Rt 13) corridor has continued to be characterized by commercial, mixed use, and residential development. The 2022 New Castle County Comprehensive Plan designates the subject site as Business Flex, which are areas that have existing and potential for nonresidential development under districts such as Commercial Neighborhood (CN), Commercial Regional (CR), Office Neighborhood (ON), and Office Regional (OR).

Based on the existing zoning and land development pattern in the surrounding area, the current proposal for a mixed-use development and the accompanying Commercial Regional (CR) zoning remains relevant in the present day. While the plan for the subject site has shifted from a strictly non-residential development to a mixed-use development, the intention of the plan is to have a multi-family housing units supported by retail and office spaces. In their presentation at the public hearing, the applicant presented the architectural concepts for the buildings, which include seven, three-story apartment buildings, a centralized, four-story apartment building, and two, one-story, multi-tenant commercial buildings. The overall community design of the development appears to be in character with other surrounding residential developments and appears it will be compatible with nearby single-family 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 2022 New Castle County Comprehensive Plan classifies the subject site as Business Flex, which are areas existing and potential nonresidential development options. These areas are essential to the continued economic viability of the County. Confirmation of the existing rezoning is in conformance with the current Comprehensive Plan.

At the time of its initial approval, the Boyd Corner Farm plan was consistent with the 2007 Comprehensive Plan, which designated the site as a New Community Development Area.

B. Consistency with the character of the neighborhood.

The character of the surrounding neighborhood is comprised of a mix of medium-density residential developments and commercial developments that primarily front DuPont Parkway (US Rt 13). The proposed design of the community presented at the hearing appears to be compatible with surrounding residential development while also providing supporting multi-tenant, commercial buildings appropriate for the scale of the neighborhood. Therefore, the confirmation of the existing Commercial Regional (CR) zoning is appropriate with the character of the surrounding neighborhood.

C. Consistency with zoning and use of nearby properties.

Based on the existing zoning pattern of the surrounding area, the site remains adjacent to other Commercial Regional (CR) zoning fronting DuPont Parkway (US Rt 13). Due to the site's proximity to this major corridor and Boyd's Corner Road, which is characterized by medium-density residential zoning, Commercial Regional (CR) zoning continues to be an appropriate district for the subject site.

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

The revised plan includes a significant modification from the previous proposal, which was strictly commercial in nature on the proposed parcel. However, the proposed multi-family housing adjacent to existing medium-density developments to the east and the Hubers Crossing shopping center to the east makes the subject property a suitable location for a mixed-use development in accordance with the provisions of the Commercial Regional (CR) zoning district.

E. Effect on nearby properties.

As noted above, the proposed design of the community has been prepared in a sensitive nature to be compatible with surrounding residential developments. The mixed-use nature of the property will also provide for a more natural transition between the commercial uses fronting DuPont Parkway and the Boyds Corner Farm subdivision.

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 proposed plan, 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. Therefore, the Department of Land Use recommends **APPROVAL** of the rezoning application.

PLANNING BOARD RECOMMENDATION

At the business meeting held on July 16, 2024, the Planning Board considered the recommendation provided by the Department of Land Use as well as comments from outside agencies and the public.

On a motion made by Ms. Drake and seconded by Ms. Gray, the Board voted to recommend **APPROVAL** of Ordinance 22-152 as recommended by the Department of Land Use.

The motion was adopted by a vote of 5-0-0-4 (In Favor: Cantrell, Cochran, Drake, Gray, Visvardis; In Opposition: None; Abstention: None; Absent: Cahill-Krout, Daigle, Peterson, Snowden).

Prior to the vote, the following discussion occurred:

Matthew Rogers read the Department of Land Use recommendation into the record. Ms. Gray remarked about the need for commercial uses in the corridor.



7/22/24

Charuni Patibanda

General Manager

Department of Land Use

date



07/22/2024

Karen Peterson

Chair

Planning Board

date

ORDINANCE NO. 24-031

**AMENDING NEW CASTLE COUNTY CODE CHAPTER 40 ("UNIFIED
DEVELOPMENT CODE"), ARTICLE 31 ("PROCEDURES AND ADMINISTRATION")
RELATING TO COUNTY COUNCIL REFERRALS**

1 **WHEREAS**, an orderly and predictable process for the review of plans is critically
2 important to land use decision making; and
3

4 **WHEREAS**, the current requirement for scheduling of action on a response to a
5 Council technical compliance referral is fluid and, consequently, depending on the
6 circumstances, may not provide adequate notice to Council, the plan applicant, or the
7 community to ensure adequate time for review and thoughtful engagement prior to a
8 final hearing and vote before County Council; and
9

10 **WHEREAS**, the general advance notice provided for many actions by County
11 Council and the State of Delaware is 7 days; and
12

13 **WHEREAS**, making the change proposed herein will afford a reasonable time to
14 review the findings and recommendations by the Department of Land Use, and is not
15 burdensome for Council or the Department, but, on the other hand, does help to ensure
16 a predictable and orderly process, which the law favors.
17

18 **NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:**
19

20 Section 1. *New Castle County Code* Chapter 40 ("Unified Development Code"),
21 Article 31 ("Procedures and Administration"), Section 40.31.114 ("Record Plan Review
22 Stage") is hereby amended by adding the material that is underscored and by deleting
23 the material that is stricken as set forth below.
24

25 **Division 40.31.114. Record plan review stage.**
26

27 ...

28 **D. Council consent.**

- 29 1. For major plans, the record plan shall be forwarded to County Council for its
30 consent. Upon receipt of the plan, County Council shall schedule the matter
for its next public hearing, and may take one (1) of the following actions:

- 31 a. Adopt a resolution approving the record major plan; or
32 b. Table and refer the plan back to the Department, no more than twice,
33 with specific questions relating to technical compliance with this
34 Chapter, State or federal constitutional requirements or any other
35 statute or ordinance for which compliance is required. Upon receipt of
36 a Department recommendation reaffirming approval of the plan,
37 County Council shall adopt the resolution of approval, unless a second
38 referral is made because of additional questions or concerns. Upon
39 receipt of the Department's recommendation reaffirming approval of
40 the plan after review of any additional concerns raised by County
41 Council, Council shall adopt the resolution of approval.

- 42 2. County Council may use any one (1) or more of the above options subject to
43 the limitations contained in each subparagraph.
44

45 *E. Action upon receipt of County Council referral.* Upon receipt of specific questions
46 from County Council, the Department shall respond with its findings and a
47 recommendation. The recommendation shall be one (1) of the following:

- 48 1. That the plan be approved, in which case County Council shall adopt the
49 resolution of plan approval at its next scheduled meeting which provides
50 Council with at least 7 days' notice of the Department's findings and
51 recommendation, unless a second referral is made, in which case Council
52 shall adopt the resolution of plan approval at its next scheduled meeting
53 following the second approval which provides Council with at least 7 days'
54 notice of the Department's findings and recommendation.
- 55 2. That the Department has rescinded its previous approval of the plan for
56 noncompliance, in which case County Council shall withdraw the resolution of
57 plan approval.
58

59 Section 2. This Ordinance shall become effective immediately upon its adoption
60 by County Council and approval by County Executive, or as otherwise provided in 9 Del.
61 C. § 1156.

Adopted by County Council of
New Castle County on:

Karen Hartley-Nagle
President of County Council
of New Castle County

Approved on:

Matthew Meyer
County Executive
New Castle County

SYNOPSIS: This Ordinance ensures that County Council and the public have adequate notice and time for consideration of the findings and recommendation of the Department of Land Use, when recommending approval of a plan, by establishing that the Department's response to a referral by Council under Section 40.31.114 must be provided to County Council in such manner as to provide it with at least 7 days' notice of the Department's findings and recommendation before the resolution may be considered by Council.

FISCAL NOTE: There is no discernible fiscal impact with the adoption of this ordinance.

**DEPARTMENT OF LAND USE
RECOMMENDATION REPORT**

**Ordinance No. 24-031
Application No. 2024-0264-T
County Council Referrals**

July 16, 2024

Sponsor: Councilman David Carter (District 6)

Description: To amend New Castle County Code, Section 40.31.114 (“Record Plan Review Stage”) relating to refferrals

EXECUTIVE SUMMARY

Ordinance 24-031 (Application 2024-0264-T) proposes changes to Section 40.31.114 of the New Castle County Code to require the Department of Land Use provide County Council with at least 7 days’ notice Department findings and recommendations upon receipt of referrals from County Council. Currently, Section 40.31.114 of the New Castle County Code does not set a deadline for this process.

Based on the analysis above and the Standards included in **Section 40.31.420 of the New Castle County Code**, the Department of Land Use recommends **APPROVAL** of Ordinance 24-031 (Application 2024-0264-T) as written to require a minimum of 7 days’ between receiving notice of the Department’ findings and recommendation and County Council consideration as outlined in Section 40.31.114 of this Chapter.

DESCRIPTION

Ordinance 24-031 proposes changes to Section 40.31.114 of the New Castle County Code to require the Department of Land Use provide County Council with at least 7 days’ notice of Department findings and recommendations upon receipt of referrals from County Council.

BACKGROUND

Ordinance 97-172 Unified Development Code

On December 31, 1997, New Castle County adopted the Unified Development Code (UDC) (Ordinance 97-172). At the time of UDC adoption, Section 40.31.114 stated the requirement of the Department to provide findings and recommendations to County Council referrals with no set deadline prior to the next County Council meeting.

Ordinance 24-031 County Council Referrals

The proposed ordinance (24-031) sets a 7 days' notice regarding Department of Land Use findings and recommendations to County Council referrals prior to the next County Council meeting.

PLUS REVIEW

The PLUS Report dated June 21, 2024, contains comments from State agencies. The Office of State Planning and Coordination (OSPC) had no concerns of objections to the proposed ordinance stating "This ordinance is to amend an internal process between the New Castle County Land Use Department and the County Council to ensure proper notice before land use decisions are made. The amendment provides for 7 days' notice before a scheduled County Council meeting which is in line with other County and State procedures." There were no additional comments from other State agencies.

PLANNING BOARD PUBLIC HEARING – July 2, 2024

Councilman Carter presented Ordinance 24-031 at the July 2, 2024, joint New Castle County Department of Land Use and Planning Board Public Hearing. During his presentation, Councilman Carter summarizes the County Council referral process and states that currently the UDC does not set a deadline on Department of Land Use notice to County Council referrals. He mentions similar processes have a 7 days' notice and the proposed ordinance would make the County Council referrals process consistent with these other notices.

Neal Cantrell asks if better decisions could be made at 14 days or 30 days. Councilman Carter affirms that more time would be welcome, however the proposed 7 days' notice would be consistent with other processes.

Public Comment

During the public comment period two residents spoke in favor of the ordinance: (1) Dale Swain, and (2) Alison West. Mr. Swain expressed support for the ordinance, noting that a 7 days' notice would allow for sufficient public review and notice regarding an upcoming County Council meeting. Ms. West expressed support for the ordinance, noting that the 7 days' notice would allow for the public to speak their concerns to their County Council representative prior to a meeting.

Written Public Comment

There was no written public comment.

ANALYSIS

As stated in the background section of this report, Section 40.31.114 has not been updated regarding County Council referrals since the adoption of the *Unified Development Code* in 1997. As stated in the sponsors testimony, County Council may need time to compile inquiries of the Department of Land Use prior to the approval and recordation of a land development plan. The Department of Land Use concurs that a 7 days' notice will provide County Council with sufficient time for review prior to a Council meeting.

Standards of Review

Pursuant to **Section 40.31.420 of the New Castle County Code**, in determining whether a text amendment shall be recommended or approved, all of the following factors shall be considered:

A. *Implementation of a new portion of the Comprehensive Development Plan.*

N/A

B. *Implementation and achievement of the Comprehensive Plan's goals and objectives.*

N/A

C. *Consistency with the provisions of this Chapter and the standards for similar uses.*

N/A

D. *Necessity to respond to State and/or Federal legislation.*

N/A

E. *Flexibility in meeting the objectives of this Chapter.*

N/A

F. *Changes to conditions, interpretations, and/or clarifications to existing language for new uses.*

N/A

G. *Consideration of specific problems found in this Chapter.*

Ordinance 24-031 seeks to address an issue where County Council referrals and Department of Land Use response may not provide adequate review time for County Councilmembers to review prior to a Council meeting.

DEPARTMENT OF LAND USE RECOMMENDATION

Based on the analysis above and the Standards included in **Section 40.31.420 of the New Castle County Code**, the Department of Land Use recommends **APPROVAL** of Ordinance 24-031 (Application 2024-0264-T) as written to require a minimum of 7 days' between receiving notice of the Department' findings and recommendation and County Council consideration as outlined in Section 40.31.114 of this Chapter.

PLANNING BOARD RECOMMENDATION

At the business meeting held on July 16, 2024, the Planning Board considered the recommendation provided by the Department of Land Use as well as comments from outside agencies and the public.

On a motion made by Mr. Cantrell and seconded by Ms. Visvardis, the Board voted to recommend **APPROVAL** of Ordinance 24-031 as recommended by the Department of Land Use.

The motion was adopted by a vote of 6-0-0-3 (In Favor: Peterson, Cantrell, Cochran, Drake, Gray, Visvardis; In Opposition: None; Abstention: None; Absent: Cahill-Krout, Daigle, Snowden).

Prior to the vote, the following discussion occurred:

Alec Davis read the Department of Land Use recommendation into the record. Ms. Gray asked if not requiring a 7-days' notice would inhibit County Council in performing its duties. Charuni Patibanda clarified that the ordinance addresses part of the administrative approval process, and the proposed changes are to the referral components of this process. She explained that the current process requires County Council to take up a Department of Land Use response immediately at the next County Council meeting, and that the proposed ordinance sets a 7-days' buffer between Department of Land Use response and the next County Council meeting. Mr. Cantrell posed a hypothetical scenario regarding the Department of Land Use and the timeline for when it would be heard by County Council, to which Ms. Patibanda responded. t. explained Mary Jacobson asked if the Department of Land Use has a specified amount of time to provide a response. Ms. Patibanda explained that while the Unified Development Code does not have a set timeline, there are response time requirements in State of Delaware Code.



7/22/24

Charuni Patibanda date
General Manager
Department of Land Use



07/22/2024

Karen Peterson date
Chair
Planning Board

SUBSTITUTE NO. 1 TO ORDINANCE NO. 24-059

TO AMEND NEW CASTLE COUNTY CODE CHAPTER 40 ("UNIFIED DEVELOPMENT CODE"), SECTION 40.03.410 ("ACCESSORY USES, RESIDENTIAL") RELATING TO FENCE STANDARDS

WHEREAS, well maintained fences provide security and privacy to neighbors; and

WHEREAS, fences, if not properly constructed and maintained, can become an eyesore or, worse, cause injury to the public; and

WHEREAS, it is important that New Castle County adopt clear fence regulations in residential areas to ensure the safety and welfare of the residents of New Castle County; and

WHEREAS, it is in the best interests of New Castle County and its residents that the County regulate various aspects of fences in residential areas to ensure the safety, welfare, and visual integrity of New Castle County.

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

Section 1. *New Castle County Code* Chapter 40 ("Unified Development Code"), Section 40.03.410 ("Accessory Uses, Residential") is hereby amended by adding the material that is underlined and deleting the material with strikethroughs, as set forth below.

Sec. 40.03.410. - Accessory uses, residential.

Residential uses may have accessory buildings and accessory uses provided they conform to the following standards:

...

~~E. **Fences.** Fences may be permitted in all yards and all yard setbacks and shall be constructed of materials specifically designed for fences and may not include barbed or razor wire. Fence panels and fence materials may not exceed six (6) feet in height. To account for installation on sloping ground and any necessary space between the ground and the bottom of the fence panels or materials, the top of the fence panels, materials, and posts may not exceed seven (7) feet in height when measured from the ground, except as permitted in Subsection G.~~

E. **Fences.** Fences are permissible in all yards and all yard setbacks, subject to the following regulations.

1. **Maximum height.** Fences must be no more than 6' in height, except as otherwise set forth herein. In zoning designations NC5, NC6.5, NC10, and NC15, the maximum permissible fence height in the street yard is 4'.

- 38 2. **Approved fencing material.** Fences must be constructed of approved
39 materials, including: wood, brick, decorative masonry, stone, wrought iron,
40 manufactured vinyl, aluminum, and PVC fence material.
- 41 3. **Prohibited fencing material.** No fence shall be constructed of sheet or
42 corrugated metal, plywood, concrete masonry unit block (with the exception
43 of use for a retaining wall), or other materials not manufactured or designed
44 for the primary purpose of fence construction. Furthermore, metal prongs or
45 spikes not designed and manufactured as part of a fence section are
46 prohibited. Barbed or razor wire is prohibited for fence construction.
- 47 4. **Installation.** When constructed on sloping ground, a fence may be installed on
48 an incline or in stepped sections. To account for installation on sloping ground
49 and any necessary space between the ground and the bottom of the fence
50 panels or materials, the top of the fence panels, materials, and posts may not
51 exceed 7' in height when measured from the ground, except as permitted in
52 Subsection G.
- 53 5. **Maintenance.** Fences must be maintained in good condition, structurally sound
54 and safe, and shall not by reason of age, decay, accident, or otherwise be
55 allowed to become and remain in a state of disrepair so as to be a nuisance or
56 cause blight, or present a potential injury or threat to the public;
- 57 a. **Dilapidated fences shall be repaired or replaced in accordance with**
58 provisions of this Division.
- 59 b. **The property owner shall maintain each fence, including any fence existing**
60 prior to adoption of this section, at all times, in a state of good repair, safe
61 and secure condition, with all braces, bolts, nails, supporting frames and
62 fastenings free from deterioration, termite infestation, rot, rust, or loosening,
63 and able to withstand at all times the wind pressure for which they were
64 designed.
- 65 6. **Visibility triangle.** All walls and fences located on a corner lot shall comply
66 with any applicable visibility sight triangles as provided for in this Chapter.
- 67 7. **Floodplains.** Fences proposed in a floodplain must comply with the
68 requirements in Article 10, including the requirement to obtain a floodplain
69 permit.
- 70 8. **Nothing in this Section waives any restrictions otherwise applicable under the**
71 New Castle County Code including Chapter 7 (Property Maintenance Code)
72 and Chapter 40 (Unified Development Code). Moreover, the regulations set
73 forth herein do not override validly adopted deed restrictions.

74 Section 2. This Ordinance shall become effective immediately upon its adoption by
75 County Council and approval by the County Executive, or as otherwise provided in 9 Del.
76 C. § 1156.

Adopted by County Council of
New Castle County on:

Karen Hartley-Nagle
President of County Council
of New Castle County

Approved on:

Matthew Meyer
County Executive
of New Castle County

SYNOPSIS: This Ordinance amends *New Castle County Code*, Section 40.03.410 (“Accessory Uses, Residential”) to provide clarity regarding standards applicable to fences in residential areas, including permitted and prohibited fence materials and maintenance.

Substitute No. 1 to the original Ordinance to require that fences located within a floodplain must comply with Article 10, including the requirement to obtain a floodplain permit.

FISCAL NOTE: There is no discernible fiscal impact with the adoption of this Ordinance.

ORDINANCE NO. 24-059

**TO AMEND NEW CASTLE COUNTY CODE CHAPTER 40 ("UNIFIED
DEVELOPMENT CODE"), SECTION 40.03.410 ("ACCESSORY USES,
RESIDENTIAL") RELATING TO FENCE STANDARDS**

WHEREAS, well maintained fences provide security and privacy to neighbors; and

WHEREAS, fences, if not properly constructed and maintained, can become an eyesore or, worse, cause injury to the public; and

WHEREAS, it is important that New Castle County adopt clear fence regulations in residential areas to ensure the safety and welfare of the residents of New Castle County; and

WHEREAS, it is in the best interests of New Castle County and its residents that the County regulate various aspects of fences in residential areas to ensure the safety, welfare, and visual integrity of New Castle County.

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

Section 1. *New Castle County Code* Chapter 40 ("Unified Development Code"), Section 40.03.410 ("Accessory Uses, Residential") is hereby amended by adding the material that is underlined and deleting the material with strikethroughs, as set forth below.

Sec. 40.03.410. - Accessory uses, residential.

Residential uses may have accessory buildings and accessory uses provided they conform to the following standards:

...

~~E. **Fences.** Fences may be permitted in all yards and all yard setbacks and shall be constructed of materials specifically designed for fences and may not include barbed or razor wire. Fence panels and fence materials may not exceed six (6) feet in height. To account for installation on sloping ground and any necessary space between the ground and the bottom of the fence panels or materials, the top of the fence panels, materials, and posts may not exceed seven (7) feet in height when measured from the ground, except as permitted in Subsection G.~~

E. **Fences.** Fences are permissible in all yards and all yard setbacks, subject to the following regulations.

1. **Maximum height.** Fences must be no more than 6' in height, except as otherwise set forth herein. In zoning designations NC5, NC6.5, NC10, and NC15, the maximum permissible fence height in the street yard is 4'.

- 38 2. **Approved fencing material.** Fences must be constructed of approved
39 materials, including: wood, brick, decorative masonry, stone, wrought iron,
40 manufactured vinyl, aluminum, and PVC fence material.
- 41 3. **Prohibited fencing material.** No fence shall be constructed of sheet or
42 corrugated metal, plywood, concrete masonry unit block (with the exception
43 of use for a retaining wall), or other materials not manufactured or designed
44 for the primary purpose of fence construction. Furthermore, metal prongs or
45 spikes not designed and manufactured as part of a fence section are
46 prohibited. Barbed or razor wire is prohibited for fence construction.
- 47 4. **Installation.** When constructed on sloping ground, a fence may be installed on
48 an incline or in stepped sections. To account for installation on sloping ground
49 and any necessary space between the ground and the bottom of the fence
50 panels or materials, the top of the fence panels, materials, and posts may not
51 exceed 7' in height when measured from the ground, except as permitted in
52 Subsection G.
- 53 5. **Maintenance.** Fences must be maintained in good condition, structurally sound
54 and safe, and shall not by reason of age, decay, accident, or otherwise be
55 allowed to become and remain in a state of disrepair so as to be a nuisance or
56 cause blight, or present a potential injury or threat to the public;
- 57 a. **Dilapidated fences shall be repaired or replaced in accordance with**
58 provisions of this Division.
- 59 b. The property owner shall maintain each fence, including any fence existing
60 prior to adoption of this section, at all times, in a state of good repair, safe
61 and secure condition, with all braces, bolts, nails, supporting frames and
62 fastenings free from deterioration, termite infestation, rot, rust, or loosening,
63 and able to withstand at all times the wind pressure for which they were
64 designed.
- 65 6. **Visibility triangle.** All walls and fences located on a corner lot shall comply
66 with any applicable visibility sight triangles as provided for in this Chapter.
- 67 7. Nothing in this Section is intended to waive any restrictions otherwise
68 applicable under Ch. 7 (Property Maintenance Code). Moreover, the
69 regulations set forth herein are not intended to override validly adopted deed
70 restrictions.

71 Section 2. This Ordinance shall become effective immediately upon its adoption by
72 County Council and approval by the County Executive, or as otherwise provided in 9 Del.
73 C. § 1156.

Adopted by County Council of
New Castle County on:

Karen Hartley-Nagle
President of County Council
of New Castle County

Approved on:

Matthew Meyer
County Executive
of New Castle County

SYNOPSIS: This Ordinance amends *New Castle County Code*, Section 40.03.410 (“Accessory Uses, Residential”) to provide clarity regarding standards applicable to fences in residential areas, including permitted and prohibited fence materials and maintenance.

FISCAL NOTE: There is no discernible fiscal impact with the adoption of this Ordinance.

**DEPARTMENT OF LAND USE
RECOMMENDATION REPORT**

**Ordinance No. 24-059
Application No. 2024-0226-T
Fences Ordinance**

July 16, 2024

Sponsor: Councilman John Cartier (District 8)

Description: To amend New Castle County Code, Section 40.03.410 (“Accessory Uses, Residential”) relating to fence standards.

EXECUTIVE SUMMARY

Ordinance 24-059 (Application 2024-0226-T) proposes changes to Section 40.03.410 of the New Castle County Code to require additional fence design standards within New Castle County. Currently, Section 40.03.410 of the New Castle County Code does not address universal fence design and addresses fence design and construction with ambiguity. Ordinance 24-059 seeks to address fence design, construction, maintenance, and related safety concerns.

The Department of Land Use has considered the Standards for Text Amendment in Section 40.31.420 of the *New Castle County Code* and comments received from other agencies and the public. Based on this analysis, the Department recommends **CONDITIONAL APPROVAL** of Ordinance No. 24-059, with the condition that County Council consider amending the ordinance to:

- Clarify that all fences must meet requirements set forth in this New Castle County Code including the requirement to obtain a flood plain permit, if located in a floodplain.

DESCRIPTION

Ordinance 24-059 proposes revisions to Section 40.03.410 of the New Castle County Code to provide additional fence design standards within New Castle County. In summary, the ordinance seeks to revise the following:

- Set a height limitation of 4 feet within the street yard within the NC5, NC6.5, NC10, and NC15 zoning districts.
- Define a list of approved and prohibited fencing materials.

- Provide installation and maintenance standards.
- Prohibit installation of fences within visibility triangles.

BACKGROUND

Ordinance 97-172 Unified Development Code

On December 31, 1997, New Castle County adopted the Unified Development Code (UDC) (Ordinance 97-172). Residential fences were limited to six (6) feet in height with accompanying restrictions on chain-link fences in street yards. Walls on patios and atrium units were exempted from these regulations.

Ordinance 98-080 Amendment of the Unified Development Code

On September 22, 1998, the County adopted Ordinance 98-080 revising various articles of the Unified Development Code. With respect to fences, the ordinance enacted prohibitions on razor wire and barbed wire fences on residential properties. The ordinance also permitted fencing and privacy walls in all setbacks. Additionally, previous restrictions on fencing materials were removed.

Ordinance 18-021 Amendment of the Unified Development Code

On July 10, 2018, the County adopted Ordinance 18-021 (Design) revising various articles of the Unified Development Code. The ordinance revised the residential fence regulations to permit fences located on sloping ground to be seven (7) feet in height for fence panels, materials and posts.

Ordinance 24-059 Amendment of the Unified Development Code

The proposed amendment (Ordinance 24-059) would enact a 4-foot height limitation within the street yard in the NC5, NC6.5, NC10, and NC15 zoning districts, clearly define fence material, construction, and maintenance standards, and prohibit installation of fences within visibility triangles.

PLUS REVIEW

The PLUS Report dated June 21, 2024, contains comments from State agencies. The Office of State Planning and Coordination (OSPC) noted the subject ordinance will “clarity to the residents of New Castle County on the installation, permitted materials and maintenance requirements of fencing in residential areas.” There were no additional comments from other State agencies.

PLANNING BOARD PUBLIC HEARING – July 2, 2024

Councilman Cartier presented Ordinance 24-059 at the July 2, 2024, joint New Castle County Department of Land Use and Planning Board Hearing. During his presentation, he discussed the need for limiting fence heights in front yards on smaller properties along with several proposed changes to fence building and maintenance standards.

Chairwoman Peterson asked Councilman Cartier if any existing fencing that does not meet the proposed standards would be “grandfathered”. Councilman Cartier confirmed that existing fences will be grandfathered under the previous standards. Ms. Drake asked for clarification on the Ordinance’s proposed 4-foot height limitations for the front yard and whether that limitation would apply to the side yards as well. Councilman Cartier responded stating that only fences within the front yard would be subject to the 4-foot limitation. Ms. Visvardis asked about the effect the Ordinance would have on deed restrictions and community guidelines regarding fencing design. Councilman Cartier confirms that this ordinance will not supersede the restrictions and regulations put in place by a community. Ms. Gray inquired about if the 4-foot height limitation would apply to certain types of fencing material. Councilman Cartier clarified that the limitation would apply for all fencing types.

Public Comment

There was no public comment.

Written Public Comment

There was no written public comment.

ANALYSIS

Historically, fencing has been utilized to mark a boundary or provide a sense of privacy to property owners. Fencing regulations have always hinged on balancing the freedom of the landowner to protect and screen their property and setting standards to create a more uniform neighborhood character and sense of place. Neighborhood character is lost when privacy fencing is blocking the view of the front yard. As referenced in the background of UDC amendments above, fencing standards have not clearly addressed fencing material, construction, and maintenance with the current code stating “...shall be constructed of materials specifically designed for fences...” per Section 40.03.410.E of the UDC. The Department concurs with the sponsor that the proposed changes would better define these standards eliminating areas of confusion for both residents and the County.

Standards of Review

Pursuant to **Section 40.31.420 of the New Castle County Code**, in determining whether a text amendment shall be recommended or approved, all of the following factors shall be considered:

- A. *Implementation of a new portion of the Comprehensive Development Plan.*

N/A

- B. *Implementation and achievement of the Comprehensive Plan's goals and objectives.*

N/A

- C. *Consistency with the provisions of this Chapter and the standards for similar uses.*

One of the six themes in the 2022 Update to the New Castle County Comprehensive Development Plan is "Thriving Places and Community Character":

The places we live, work and play are well designed, accessible, and vibrant, with active locations for people to gather. Our communities reflect important aspects of our past and are places in which we take pride.

Restricting residential fence height in the Street Yard helps foster a built environment that both instills pride in communities, and helps Code Enforcement and Fire Companies to safely provide their services.

- D. *Necessity to respond to State and/or Federal legislation.*

N/A

- E. *Flexibility in meeting the objectives of this Chapter.*

N/A

- F. *Changes to conditions, interpretations, and/or clarifications to existing language for new uses.*

N/A

G. Consideration of specific problems found in this Chapter.

Ordinance 24-059 addresses ambiguity with respect to fencing standards that have existed since the adoption of the *Unified Development Code* along with addressing neighborhood street frontage characteristics and safety concerns. The Ordinance requires a standardization of fencing materials, construction, and maintenance in addition to limiting fence height within smaller residential zoning districts. The Department has no objection to the proposed changes as it resolves gray areas found within the current code.

DEPARTMENT OF LAND USE RECOMMENDATION

The Department of Land Use has considered the Standards for Text Amendment in Section 40.31.420 of the *New Castle County Code* and comments received from other agencies and the public. Based on this analysis, the Department recommends **CONDITIONAL APPROVAL** of Ordinance No. 24-059, with the condition that County Council consider amending the ordinance to:

- Clarify that all fences must meet requirements set forth in this New Castle County Code including the requirement to obtain a flood plain permit, if located in a floodplain.

PLANNING BOARD RECOMMENDATION

At the business meeting held on July 16, 2024, the Planning Board considered the recommendation provided by the Department of Land Use as well as comments from outside agencies and the public.

On a motion made by Mr. Gray and seconded by Mr. Cantrell, the Board voted to recommend **APPROVAL** of Ordinance 24-059 as recommended by the Department of Land Use.

The motion was adopted by a vote of 6-0-0-3 (In Favor: Peterson, Cantrell, Cochran, Drake, Gray, Visvardis; In Opposition: None; Abstention: None; Absent: Cahill-Krout, Daigle, Snowden).

Prior to the vote, the following discussion occurred:

Alec Davis read the Department of Land Use recommendation into the record.

Ms. Visvardis asked if pallet fences are allowed . Antoni Sekowski stated that the New Castle County Code does not currently regulate fence material, however the proposed ordinance would clarify the types of fence material and construction allowed. Ms. Gray expressed concern over the 4-foot height restriction, may impact some property owner's specific uses of their property . Matthew Rogers noted that a variance may be requested to

the Board of Adjustment by the property owner under those circumstances. Ms. Drake expressed concern that the ordinance might be too restrictive with respect to the height limitation. Charuni Patibanda clarified that Councilman Cartier's concerns are not limited to access but also first responder and code enforcement's visibility of front yards. Mary Jacobson requested that the Department clarify current New Castle County Code restrictions on location of fences. Matthew Rogers confirmed that the Unified Development Code, allows a resident to build a fence, or wall, 6-feet in height along all property lines encircling a property. He further clarified the definition of the street yard and how it relates to the street lot line and the home. Mary Jacobson proceeded to inquire about the impact on corner lots. Mr. Rogers stated that where multiple street lot lines exist, street yards are established along those frontages. Mary Jacobson asked if the Department of Land Use had ever considered prohibiting fences within the street yard. Matthew Rogers stated that the Department of Land Use has not investigated prohibiting fences within street yards citing the property owners right to have a fence versus the uniformity of neighborhoods and safety concerns. Ms. Jacobson asked if currently she could place a 6-foot stockade fence on her property so long as there are no deed restrictions. Mr. Rogers confirmed that currently that is what the code allows. Ms. Visvardis states that a lot of communities have deed restrictions that currently prohibit fences within the street yard. Mr. Rogers explained a variety of reasons why a property owner would want a fence within their street yard. Ms. Patibanda remarked that if street yard fences were completely prohibited, a variance from the Board of Adjustment would be required for all street yard fencing creating a burden for residents of New Castle County. Chairwoman Peterson asked about enforcement and permitting with respect to fencing. Ms. Patibanda explained that the Department of Land Use does not issue permits for fences as well as the fact that code enforcement is largely complaint driven. The Department further discussed code enforcement process including due process requirements. Ms. Patibanda described recent changes to the County Code allowing code enforcement violation financial penalties to be applied to County tax bills. Mr. Cantrell inquired about how a resident would know the fence restrictions for their property. Mr. Rogers described existing resources on the County's website that summarize fencing restrictions. He also stated that residents can contact the Department of Land Use directly with any questions regarding fencing. Ms. Patibanda added that if the proposed ordinance be adopted, the Department of Land Use would display the changes on their website as prominently as possible. Ms. Gray asked if existing fencing on a property does not meet the requirements, if it would be considered "grandfathered.". Mr. Rogers confirmed that for those fences, they would be considered nonconforming and could remain, however should the fence be removed or replaced, the new fences would need to comply with the all provisions of the County Code.



7/22/24

Charuni Patibanda

date

General Manager

Department of Land Use



07/22/2024

Karen Peterson

date

Chair

Planning Board