



NEW CASTLE COUNTY COUNCIL LAND USE COMMITTEE MEETING

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

September 17, 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)

°23-168: TO AMEND NEW CASTLE COUNTY CODE CHAPTER 40 ("UNIFIED DEVELOPMENT CODE"), ARTICLE 31 ("PROCEDURES AND ADMINISTRATION"), SECTION 40.31.340 ("NOTICE OF PUBLIC HEARINGS") REGARDING NOTICE RELATING TO APPLICATIONS, INCLUDING REZONINGS

Prime Sponsor(s): Ms. Hartley-Nagle, Mr. Toole

°24-040: COMPREHENSIVE REZONING - TO REVISE THE NEW CASTLE COUNTY ZONING MAPS IN COUNTY COUNCIL DISTRICT 5 REGARDING THE FOLLOWING TAX PARCEL: PENCADER HUNDRED: 11-025.00-026 (0 PULASKI HWY OFF, UPPER CHESAPEAKE CORPORATE CTR) Introduced by: Ms. George

°24-041: COMPREHENSIVE REZONING - TO REVISE THE NEW CASTLE COUNTY ZONING MAPS IN COUNTY COUNCIL DISTRICT 5 REGARDING THE FOLLOWING TAX PARCEL: WHITE CLAY CREEK HUNDRED: 09-033.00-038 (475 GENDER RD, BREEZEWOOD SEC III) Introduced by: Ms. George

°24-057: TO AMEND *NEW CASTLE COUNTY CODE* CHAPTER 40 ("UNIFIED DEVELOPMENT CODE" OR "UDC"), ARTICLE 3 ("USE REGULATIONS"), ARTICLE 7 ("TRANSFER OF DEVELOPMENT RIGHTS AND OTHER INCENTIVES AND BONUSES"), ARTICLE 8 ("NONCONFORMING SITUATIONS"), ARTICLE 22 ("DRAINAGE, UTILITIES, SEPTIC SYSTEMS, PARKING, LOADING, AND LIGHTING"), ARTICLE 31 ("PROCEDURES AND ADMINISTRATION") AND ARTICLE 33 ("DEFINITIONS"), REGARDING DEVELOPMENT AND REDEVELOPMENT Introduced by: Mr. Tackett, Ms. Kilpatrick

E. Presentations

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

AGENDA POSTED: SEPTEMBER 10,2024

*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.

ORDINANCE NO. 23-168

TO AMEND *NEW CASTLE COUNTY CODE* CHAPTER 40 (“UNIFIED DEVELOPMENT CODE”), ARTICLE 31 (“PROCEDURES AND ADMINISTRATION”), SECTION 40.31.340 (“NOTICE OF PUBLIC HEARINGS”) REGARDING NOTICE RELATING TO APPLICATIONS, INCLUDING REZONINGS

WHEREAS, a proposed rezoning of a property is an important legal process that can have weighty ramifications; and

WHEREAS, a rezoning of a property, of course, affects the property owner, but also can affect neighbors, in positive and, sometimes, negative ways; and

WHEREAS, it is important that notice of a potential rezoning of a property be provided to anyone who is interested so they may have an opportunity to speak in favor of or against a rezoning; and

WHEREAS, it goes without saying that in order for an interested person to be able to speak up, for or against a proposed rezoning, they must be given notice of proceedings involving a rezoning; and

WHEREAS, County Council believes that robust public notice is in everyone’s best interest; and

WHEREAS, County Council has determined that the provisions of this Ordinance substantially advance and are reasonably and rationally related to legitimate government interests, including, but not limited to, promoting the public health, safety, welfare, and quality of life of present and future inhabitants of New Castle County.

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

Section 1. *New Castle County Code* Chapter 40 (“Unified Development Code”), Article 31 (“Procedures and Administration”), Section 40.31.340 (“Notice of Public Hearings”) is hereby amended by adding the material that is underscored and deleting the material that is stricken, as set forth below.

Sec. 40.31.340. Notice of public hearings.

Except as required below, the Department shall be responsible for ensuring notice of a public hearing through newspapers when required by state State law, online posting, posted notice in public buildings as determined by the Department, and mailed notice for meetings of the Board of Adjustment, Planning Board, Resource Protection Area Technical Advisory Committee, Historic Review Board and Design Review Advisory Committees.

42 A. Contents of Legal Notice.

43 1. Legal notice required under this Section, regardless of form, media, or platform,
44 shall include, at minimum, the following information, which shall be referred to
45 hereinafter as the "Notice Contents":

46 a. The type of application.

47 b. A short description of the proposed action.

48 c. A description of the parcel and the address or approximate street location.

49 d. The location, date, and time of the public hearing.

50 e. Information on where full details of the application may be obtained,
51 including the hours of availability, where applicable, an email address, and
52 a phone number.

53 2. All forms of notice required under this Section shall include the Notice
54 Contents.

55 BA. Text amendments and rezonings. Notice requirements for hearings to consider
56 proposed text amendments and proposed rezonings shall comply with the
57 applicable provisions of State law, including notice in a newspaper of general
58 circulation, as may be amended from time to time. In addition, hearings to
59 consider proposed rezonings shall be subject to the additional notice
60 requirements set forth in this Section, and, thus, notice of proposed rezonings
61 shall be provided by each manner of notice identified in this Section (e.g., via
62 newspaper publication, on the County website, on any social media platform of
63 the New Castle County Department of Land Use, via signage, via certified mail
64 with electronic return receipt, etc.).

65 CB. Additional Notice, and ~~Other~~ other applications.

66 1. Online notice. The Department shall post applicant notice of hearings to
67 consider proposed rezonings and all other applications (e.g., deed restriction
68 changes; subdivision, area, use and floodplain variance requests; beneficial
69 use appeals; appeals of Departmental decisions; major land development
70 plans; Historic Review Board applications; RPATAC applications (Resource
71 Protection Area Technical Advisory Committee); Design Review Advisory
72 Committee applications); and other Planning Board and Board of Adjustment
73 applications on a web page established for legal notices on the County's
74 website. Notice shall be posted on the website appear at least fourteen (14)
75 calendar days prior to the public hearing date, and shall contain the following
76 information:

77 a. The type of application.

78 b. A short description of the proposed action.

79 c. A description of the parcel and the approximate street location or address.

80 d. The location, date, and time of the public hearing.

81 e. Information on where full details of the application may be obtained,
82 including the hours of availability and phone number.

83 2. Notice to owner/ and applicant. For applications not related to a rezoning, The
84 the Department shall notify by First Class Mail mail the owner and/or the

applicant of the date, time, and place of the hearing at least 14 calendar days prior to the hearing. For proposed rezonings only, in addition to satisfying all other notice requirements in this Section, the legal notice shall be served on the applicant by certified mail with electronic return receipt.

3. *Mailed notice.* When a public hearing is required, not involving a proposed rezoning, the Department shall send a copy of the legal notice to the last known address of all property owners within a ~~three hundred (300)~~ foot radius of the property or ~~twelve (12)~~ different property owners in the closest proximity to the property, whichever is greater; no less than ~~ten (10)~~ 14 calendar days prior to the public hearing. A copy of the legal notice for public hearings for all applications shall also be sent to the respective civic organizations registered with the Department of Land Use immediately surrounding the applicant's property and to the area umbrella civic association.

Rezonings – public hearing required. In addition to satisfying other notice requirements set forth in this Section, including provision of the Notice Contents, the Department shall provide notice of the public hearing on the proposed rezoning by certified mail with electronic return receipt to the last known address of all property owners within a 1,000 foot radius of the property to be rezoned or 12 different property owners in the closest proximity to the property to be rezoned, whichever is greater, no less than 14 calendar days prior to the public hearing. The legal notice for the public hearing to consider the proposed rezoning shall also be sent to the respective civic organizations registered with the Department of Land Use immediately surrounding the relevant property and to the area umbrella civic association no less than 14 calendar days prior to the public hearing.

4. *Posted notice.* The applicant shall erect a public hearing posted notice sign on all subject properties, including those proposed to be rezoned, at least ~~ten (10)~~ 14 calendar days in advance of a public hearing, except for residential Board of Adjustment applications and DRAC applications (not including minor and major land development plans) referred by the Department for recommendation. The Department shall post BOA residential variance applications and DRAC applications that are not land development plans.

a. *Location.* The posted sign shall be placed in a prominent conspicuous location, ~~(no greater than seven (7) feet from a residential or local road right-of-way, and no greater than ten (10) feet from a collector or arterial right-of-way);~~ one (1) along each adjacent right-of-way and shall be perpendicular to the street so as to be clearly visible to the public. The Department shall have the discretion to require the applicant to move the posted sign to a more acceptable location if the Department determines ~~it is determined by the Department~~ that the location is inappropriate for public viewing. The Department shall also have the discretion to permit only one (1) posted sign on corner lots of less than one (1) acre.

b. *Size.* The posted sign shall be double-faced and each side shall consist of a ~~four (4) foot by four (4) foot~~ laminated sign with a yellow background with

two (2) inch black lettering in a sans serif typeface. It shall be impermissible for any of the sign or language thereon to be obscured. If a posted sign already exists at the site, the notice for the public hearing may be affixed to the existing sign so long as it is done in a manner that does not obscure any language or material on the sign.

c. *Plan information.* The sign shall depict the lot configuration of residential applications or building footprint with square footage, paving, and landscaping in the case of nonresidential applications. The ~~applicants~~ applicant's name and phone number, the name of the plan, the application number, and the tax parcel number(s) shall be prominently displayed on the plan. In addition, the date, time, location and hearing board shall be clearly visible. The applicant shall be responsible to clean or replace any posted sign (no more than once) which has been defaced, to the extent that the information to be conveyed is no longer legible.

d. *Proof of posting.* The applicant shall provide the Department with photographic proof of posting and a signed affidavit at least 7 calendar days prior to the public hearing. Failure of ~~any~~ such posted notice to remain in place after the notice has been properly posted in an industry acceptable manner shall not be deemed a failure to comply with these standards or be grounds to challenge the validity of any decision made on the application unless the notice was not properly posted, which causes the sign to be displaced, or the notice was removed by the applicant or at his or her direction.

e. *Removal of posted notice.* ~~In addition, the~~ The applicant shall remove the posted notice sign no later than ~~ten (10)~~ 14 calendar days after the public hearing has been held ~~being advertised has been completed~~. If the posted notice sign is serving more than one (1) purpose, that is, other public hearings are pending or the land development plan is yet to be recorded, the posted notice sign shall remain until after recordation, expiration, or withdrawal of the plan.

5. *Social Media.* The Department shall post notice of all public hearings to consider a proposed rezoning or other application on any social media platform used by the Department of Land Use no less than 14 calendar days prior to the public hearing, and such notice shall include at least the Notice Contents.

DG. County Council public hearings.

1. *Text amendments and County-initiated comprehensive rezonings.* Notice requirements for the hearing to consider proposed text amendments and ~~County-initiated comprehensive proposed~~ rezonings need only shall comply with the applicable provisions of State law, ~~as may be amended from time to time,~~ as well as the notice requirements established in this Section.

2. *Other land use applications.* All public hearings held by County Council shall be advertised pursuant to County Council's rules of procedure except as provided in Subsection GD.1.

172 Section 2. The provisions appearing in this proposed Ordinance are prospective
173 in nature.
174

175 Section 3. This Ordinance shall become effective upon its adoption by County
176 Council and approval by the County Executive, or as otherwise provided in 9 *Del. C.* §
177 1156.
178

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: By way of this Ordinance, New Castle County Council proposes to bolster and clarify the legal notice required for consideration of proposed rezonings and other applications. Related thereto, the Ordinance clarifies that legal notice of public hearings relating to proposed rezonings shall be provided by several means, including newspaper publication, on the new Castle County Government website, via certified mail with electronic return receipt, by signage, by inclusion on any social media platform used by the New Castle County Department of Land Use, etc. Finally, the Ordinance makes administrative and conforming changes.

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



Department of Land Use

**DEPARTMENT OF LAND USE
RECOMMENDATION REPORT**

**Ordinance No. 23-168
Application No. 2023-0675-T
Notice Requirements**

August 20, 2024

Sponsor: Councilwoman Hartley-Nagel (Council President), Councilman Toole (District 1)

Description: To amend New Castle County Code, Chapter 40 ("Unified Development Code"), Article 31 ("Procedures and Administration"), Section 40.31.340 ("Notice of Public Hearings") regarding notice relating to applications, including rezonings.

EXECUTIVE SUMMARY

Ordinance 23-168 (Application 2023-0675-T) proposes increased notice requirements with respect to required radius for mailed notice, certification of mailed notices, posting on social media platforms for both County Board and County Council public hearings. The Department of Land Use agrees with the spirit and intent of increased notice requirements, however we also identified significant concerns with Ordinance 23-168 as drafted including:

- The importance of providing increased notice for all land use applications heard by County Boards and County Council.
- That by only increasing notice for rezoning applications it disadvantages the plans required to provide moderately priced dwelling units.
- That there is a significant fiscal impact due to requiring certified mail with a return receipt.
- That the requirement to post notice on all social media platforms does not account for the fact that some platforms are ill equipped to provide the application and hearing information required by the ordinance.
- That there is the potential to unduly delay hearing applications or outright nullify Board or Council decisions if a social media platform is down or if a property owner never signs the return receipt or if the Department is not properly notified when the receipt is returned.
- That the primary sponsor indicated that she intended to remove the requirement for County Council public hearings to provide increased notice.

The General Manager for the Department of Land Use approached the sponsors to coordinate a meeting with the General Manager and staff to address the concerns voiced by the Department and Planning Board at the Planning Board Public Hearing. The cosponsor of the ordinance has met with the Department and worked on potential future legislation that addresses the concerns of the Department and the Delaware State Housing Authority. Regretfully, these changes require at a minimum the introduction of a substitute to Ordinance 23-168 which based on the scope of changes would greatly benefit from a public hearing to solicit public and Planning Board comments and consideration. The primary sponsor of Ordinance 23-168 was informed of the Department's concerns and requested that Ordinance 23-168 be considered as it was introduced and presented. While the Department hopes to work with County Council on future legislation to enhance public notice for all land use applications heard before the County Boards and County Council, that addresses the fiscal and logistical concerns, it has serious concerns with respect to Ordinance 23-168 as drafted.

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 **DENIAL** of Ordinance 23-168.

DESCRIPTION

Ordinance 23-168 (Application 2023-0675-T) is an ordinance to amend the UDC to increase notice requirements for rezoning applications by:

- Increase of the required radius for mailed notices of rezoning applications from 300 feet to 1,000 feet.
- Changes the time applications are required to have mailed and posted notice from 10 days (business days) to 14 calendar days.
- Requires that the Department sends mailed notice via certified mail to the property owner, applicant, and residents within radius requirement.
- Requires posting of applications to social media platforms.
- Requires that County Council comply with the above requirements for notice of Text Amendments and Rezoning applications.
- Changes the maximum time that a sign can remain posted for applications from 10 days (business days) to 14 calendar days.

The ordinance additionally proposes several grammatical changes and reconfigures existing requirements regarding public noticing procedures.

BACKGROUND

On December 31, 1997, New Castle County adopted the Unified Development Code (Ordinance No. 97-172), which consolidated the notice requirements of public hearings into one code section (Section 40.31.340). Previously, rezoning and text amendment requirements were in the Zoning Code, and subdivision requirements were in the Subdivision Regulations. The original notice requirements in the UDC included many of the same provisions that we have today, with the exception that mailed notice was only required for property within 100 feet of the subject property. The following ordinances amended the notification requirements to provide greater notice to residents regarding applications heard at public hearings and to include modern communication mediums:

- Ordinance 00-090 provided greater notification to nearby property owners expanding the radius for mailed notice to 300 feet as well as requiring a minimum of 12 property owners to receive that notice. Additionally, the ordinance enhanced the posted notice requirements to have 4 foot by 4 foot sized signs to be placed no further than 7 feet from a residential or local road or a maximum of 10 feet from an arterial or collector road. Posted signs were also required to post details of the development (lot configuration, improvements etc...). Accompanying this, applicants are required to provide a signed affidavit ensuring that the posting occurred prior to the public hearing.
- Ordinance 01-112, that largely contained refinements to existing language, as well as a requirement that the applicants provide photographic proof of the posted notice.
- Ordinance 03-107 amended the notice requirements to include hearings by Design Review Advisory Committees.
- Ordinance 04-059, included RPATAC hearings to the notice requirements, empowered the Department of Land Use to require better placement of posted notice, and included requirements to remove postings after hearings no later than 10 days after the hearing was completed.
- Ordinance 05-087 added the requirements notice requirements for Major Land Development Plan hearings at the Planning Board.
- Ordinance No. 06-031, further expanded the notice requirements for DRAC hearings.
- Ordinance No. 06-060, made notice requirements for north and South of the Chesapeake and Delaware Canal uniform.¹

¹ Prior to Ord 06-060 all rezonings and major land developments on properties south of the Chesapeake and Delaware Canal, the Department shall send a copy of the legal notice to the last known address of all property owners within a 300-foot radius of the

- Ordinance No. 07-052, consolidated the newspaper notice to only be the News Journal.²
- Ordinance No. 10-113, removed the reference to the Technical Advisory Committee, which became the Preliminary Land Use Service (PLUS).
- Ordinance No. 22-053, added online notice requirements.

Application 2023-0675-T, Ordinance 23-168 – Notice Requirements³

Ordinance 23-168 was introduced on December 12, 2023, proposing changes to noticing requirements in the UDC. Council President Hartley-Nagel has stated that the changes proposed are based on public concern voiced during the public process for Ordinance 23-083 (Comprehensive Rezoning Ordinance).

PLUS REVIEW (Preliminary Land Use Service)

The PLUS Report, dated February 21, 2024, contains comments from several State agencies. The Office of State Planning Coordination reiterated their support for any process that facilitates public participation in land use planning. The Delaware State Housing Authority voiced concern regarding the potential for the ordinance to discourage affordable housing and disproportionately impact disadvantaged communities. All other agencies had no objection to the approval of the ordinance.

PLANNING BOARD PUBLIC HEARING - March 5, 2024

County Council President Hartley-Nagel presented Ordinance 23-168 at the March 5th joint New Castle County Department of Land Use and Planning Board Public Hearing. During her presentation, she discussed the proposed changes to the notice requirements and how the ordinance seeks to address concerns regarding the Comprehensive Rezoning (Ordinance 23-083) and communications she had with members of the public.

Planning Board members had several questions and comments in response to the presentation. Ms. Peterson remarked on the that prior to Ordinance proceeding to County Council for a vote that the sponsors should reach out to the housing authority to address their concern that all applications go through the same standard of review. Ms. Peterson asked Council President

property or twelve (12) different property owners, whichever is greater; and if the property fronts on a rural, non-subdivision street, notice shall be sent to all property owners for one mile in each direction along the rural road abutting the subject property or twelve (12) different property owners, whichever is greater. This expired on December 31, 2004.

² Prior to Ordinance 07-052 the County was required to provide notice in in community newspapers specifically listed in Appendix 6 of the Unified Development Code (UDC).

³ Ordinance 23-168/Application 2023-0675-T <https://www3.newcastlede.gov/Project/details/default.aspx?ProjectKey=785295>

Hartley-Nagel to explain electronic return receipts. Michael Migliore, Counsel to Council stated that he believed that the receipt could be sent either by text message or email as opposed to the green card. Ms. Peterson also discussed with Ms. Hartley-Nagel the timing that County Councilmembers would receive notice. Ms. Peterson voiced concern about the fiscal impact that would result from the ordinance. Ms. Hartley-Nagel stated that there would be a fiscal impact, and that it would be worth it. She also indicated that the cost per letter would be about \$8.00. Ms. Peterson also identified provisions in the ordinance requiring that County Council to abide by the mailed notice requirements. She inquired if this was intended to be for both Committee and Council meetings. Ms. Hartley-Nagel and Mr. Migliore responded that their intent was not to extend the new requirements to County Council hearings. Ms. Peterson also voiced concern that the change for notice to 14 calendar days might not be adequate time for the Department. Matthew Rogers, Planner for the Department of Land Use stated that the change would not materially impact the Department's ability to provide notice and set an agenda. Ms. Gray asked Ms. Hartley-Nagel for clarity on the posted sign size requirements, since it appeared that the number "4" had been struck through. Ms. Hartley-Nagel confirmed that the size would remain 4 ft. X 4 ft.

Matthew Rogers, planner for the Department of Land Use presented the Department's comments and concerns regarding Ordinance 23-168 as drafted. He stated that the Department of Land Use as well as the 2022 New Castle County Comprehensive Development Plan (NCC2050) support expanding notification, thereby broadening the participation and diversity throughout the overall planning processes in the county. He explained that the Department supported expanding the mailed notification radius from 300 ft. to 1,000 ft. for all land use applications that require a public hearing since many of the most impactful applications are not rezoning applications. He also clarified that the proposed 14 calendar days prior to a hearing for mailed notice would essentially the same as the current 10 days (business days). Mr. Rogers also provided 3 examples of fiscal impacts for rezoning applications that had either been before or scheduled to be before the Planning Board, demonstrating an increase in costs by between 33% and 66% more expensive (the most expensive being more than \$760,000). Mr. Rogers also expressed the importance that residents receive mailed notice from the County Council, since in most instances they are the decision-making body. Charuni Patibanda, General Manager for the Department of Land Use discussed outreach initiatives that the Department engages in, including social media, the listserv, and the Department of Land Use newsletter. Ms. Patibanda stated that *"the Department does have concerns about the ordinance as drafted. We will, you know, be happy to work with the sponsors to make changes if requested by the sponsors."*

Ms. Drake inquired about the potential to be noticed of hearings electronically. Mr. Rogers explained that the Department's listserv is available for residents to receive additional notice from the Department.

Public Comment

Support

Nine members of the public spoke in favor of the application: Bob Ellis, Dale Swain, Noel Lavinarious, Alan Griffiths, Julie Lavinarious, Debbie Daley, Donna Wood, Diane Henry, and Krista Milkovics. They all spoke to the need for increased notice for applications as well as concerns regarding notice received for Ordinance 23-083 as well as several other development plans. Some residents commented on the importance of having developers carry the financial burden for expanded notice as opposed to County taxpayers.

Comments received while the record was open

The Department received no additional comments while the record was open.

ANALYSIS

The Department supports the concept of expanding public notification for all applications heard at public hearings in the County; however, the Department has significant and substantial concerns that were covered at the Planning Board Public Hearing.

Mailed Notification (increasing the notice from 300 ft to 1,000 ft for Rezoning Applications)

Rezoning applications, while important, are not the only impactful applications heard before County boards and committees. Variances (zoning and subdivision), Special Use Permits, deed restriction changes, Major Land Development Plans, and with the adoption of Ordinance 23-104 Large Industrial buildings, are among the most impactful public hearings before County boards and committees. These hearings and meetings are where decisions regarding whether a Heavy Industrial use can be established, if an environmental resource can be disturbed, or if a deed restriction to which the County is party can be amended. Ordinance 23-168 as drafted does not adequately address providing increased notice for these important applications.

Disadvantaging Moderately Priced Dwelling Units

While comments from the Delaware State Housing Authority are wide reaching, Ordinance 23-168, as drafted does disadvantage plans that are required to provide moderately planned dwelling units. The Unified Development Code only mandates moderately priced dwelling units for rezoning applications. Since Ordinance 23-168 only increases notice requirements for rezoning applications, is that it inherently disadvantages the development of Moderately Priced Dwelling Units (MPDU), when compared to by-right development plans.

Fiscal Impact and Logistical Concerns (requiring certified mailing)

Ordinance 23-168 was introduced and presented before PLUS and the Planning Board absent a fiscal analysis by the Department of Finance. The Department demonstrated through several applications that have been before the Planning Board as well as the Comprehensive Rezoning Take 2 initiative, that requiring mailed notice be through certified mail (\$8.26) as opposed to regular mail (\$0.64) could impact individual applications by between 33% and 66%. The Department worked with the Department of Finance, while the record was open, and determined that the general fiscal impact which should carry an increase in Department costs by about \$68,000 (\$65,000 for mailing, \$3,000 additional office supplies) per year.

Requiring certified mail also creates logistical concerns in conducting our public hearings. Certified mail requires a signature from the addressee.⁴ Many New Castle County residents work during the day and likely would not be able to sign and receive notice, potentially resulting in a property owner not receiving notice, which is contrary to the stated intent of the ordinance. A property owner refusing to sign for receipt of the notice, could indefinitely delay a Public Hearing for a rezoning application. Councilman Toole, cosponsor for Ordinance 23-168 proposed at the Planning Board Public Hearing that the Department sign an affidavit that the mailing occurred, which would address the concerns discussed above, but Ordinance 23-168, as drafted does not adequately address these concerns.

Social Media Requirement

The Department, as evidenced by our efforts during the Comprehensive Plan and other Land Use initiatives, embraces extending outreach efforts to contact residents where they are at, whether online through social media, in sewer bills, in the News Journal, the County's website or through our listserv. While the Department recognizes the importance in using social media, not all platforms are appropriate for all types of interaction with the public. Platforms such as YouTube, TikTok, Instagram, X (formerly Twitter), and Snapchat are particularly ill suited for providing notice for public hearing in a useful manner. Since social media is not defined in the County Code, and the definition in Webster's Unabridged Dictionary broad enough to cover sites and platforms that would not be appropriate to provide notice of public hearings consistent with the proposed "Contents of Legal Notice," the Department would likely have to withdraw from most social media platforms, hindering our ability to conduct outreach efforts for events that are appropriate on those sites. Additionally, Ordinance 23-168, as drafted, does not provide direction if a social media platform is down and cannot upload the notice. Such an occurrence could result in the hearing being considered inadequately noticed, potentially nullify a rezoning.

Notice of County Council Hearings

Ordinance 23-168, as drafted, requires that County Council comply with the same notice requirements enumerated for the Department of Land use with regards to text amendments and rezoning applications. The Department of Land Use sees this as an important step in greater

⁴ What is Certified Mail: <https://faq.usps.com/s/article/Certified-Mail-The-Basics> (accessed 3/14/2024)

transparency, broadening meaningful opportunities for public participation at the decision-making stage.

Concerns with Ordinance 23-168 as Drafted

Applications requiring public hearings are an inherently important legal processes that can have weighty ramifications affecting property owner as well as their neighbors, in positive and sometimes negative ways. It is important that notice of these applications is accessible to anyone who is interested providing residents the opportunity to effectively participate in the public process. The 2022 Update to the New Castle County Comprehensive Development Plan calls for the county to enhance and expand public participation in the planning process. The Department supports the intent of Ordinance 23-168, with respect to the need to expand public notice.

The General Manager for the Department of Land Use approached the sponsors to coordinate a meeting with the General Manager and staff to address the concerns voiced by the Department and Planning Board at the Planning Board Public Hearing. The cosponsor of the ordinance has met with the Department and worked on potential future legislation that addresses the concerns of the Department and the Delaware State Housing Authority. Regretfully, these changes require at a minimum the introduction of a substitute to Ordinance 23-168 which based on the scope of changes would greatly benefit from a public hearing to solicit public and Planning Board comments and consideration. The primary sponsor of Ordinance 23-168 was informed of the Department's concerns and requested that Ordinance 23-168 be considered as it was introduced and presented. While the Department hopes to work with County Council on future legislation to enhance public notice for all land use applications heard before the County Boards and County Council, that addresses the fiscal and logistical concerns, it has serious concerns with respect to Ordinance 23-168 as drafted.

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.*

The 2022 Update to the Comprehensive Plan, was the product of extensive public outreach envisioning the continuation of such efforts in the planning process. This intent is reflected in Goal #16: *Participation in planning and development represents the full diversity of the county.*

Objective 16.1 expands on this calling for the County to *Increase diversity of engagement in community planning activities of all county residents regardless of age, race, income, native*

language, abilities, etc. This is bolstered by specific strategies that provide detailed guidance on how to achieve the objective and measure success.

The intent of Ordinance 23-168 is to expand public notice, which is consistent with the goals and objectives of the Comprehensive Plan. While the intent of the ordinance is laudable, as drafted, the Department has serious concerns ranging from fiscal impact to disincentivizing the creation of Moderately Priced Dwelling Units (only required for rezoning applications). These changes could impede the achievement of a number of other goals and objectives in the Comprehensive Plan including, but not limited to Objective # 4.1: *Increase variety and range of price-points of safe, quality housing options, in a diversity of locations.*

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.*

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.*

N/A

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 **DENIAL** of Ordinance No. 23-168.

PLANNING BOARD RECOMMENDATION

At the business meeting held on August 20, 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. Peterson and seconded by Ms. Cahill-Krout, the Board voted to recommend **DENIAL** of Ordinance 23-168.

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

Prior to the vote, the following discussion occurred:

Matthew Rogers read the Department of Land Use recommendation into the record.

Chairwoman Peterson provided background to the Board with respect to the application since the Public Hearing. She explained that the Sponsor had requested that the ordinance be deferred to provide time to draft amendments addressing concerns voiced at the Planning Board Public Hearing. She further explained that the sponsor reached out to her with the request that the ordinance proceed. Ms. Peterson informed her that if there was a substantive change that it should be presented at a Public Hearing to allow the public to weigh in on the proposed changes. The sponsor later requested that it be considered as it was originally presented in March, and that Council will deal with it when it gets to County Council.

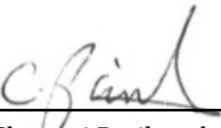
Ms. Visvardis voiced her concerns regarding the requirement to post notice on social media. Chariuni Patibanda, General Manager for the Department of Land Use stated that the Department shared her concern and that social media should be a nonmandatory means for the County to communicate with the public. She also echoed the potential legal concerns voiced by Mr. Rogers when presenting the Department's recommendation. Mr. Cantrell asked if the County feels that there needs to be changes to the notification requirements, not just for rezoning applications? Ms. Patibanda stated that the Department agrees with the community that the 300 foot radius should be increased. She explained that the Department had originally intended on introducing an ordinance, however Ordinance 23-168 was introduced before we could proceed to introduction. She additionally explained that the Department had worked earnestly to improve the ordinance while addressing the significant concerns of the Delaware State Housing Authority. She also stated that the Department is drafting an ordinance that increases public notice while not having the same potential adverse impacts on affordable housing. Mr. Cantrell asked the Department to explain the potential impacts on affordable housing. Ms. Patibanda explained that residential rezoning applications mandate the creation of Moderately Priced Dwelling Units (affordable homes) and that only increasing the notice for those applications disadvantages those applications, since one of the most effective means for deterring affordable housing is negative public sentiment. She further discussed efforts by the Department to work with DSHA to craft an ordinance that does not adversely impact the creation of affordable units, including expanding notice to include renters as opposed to just property owners. She also expressed the need to

increase the notice distance for all public hearings. Ms. Peterson asked if there is a timeline for when new legislation would be ready for introduction. Ms. Patibanda stated that the Department is currently seeking sponsors.

Ms. Peterson voiced two major concerns (1) that we shouldn't take any action that "*backpedals on the County's commitment to affordable housing*" and (2) that the requirement for certified mail may result in potential legal challenges to applications. She further expressed her support for increasing notice (whether through a substitute to the proposed ordinance or the legislation drafted by the Department), and commended the Department on their efforts for transparency. Ms. Visvardis and Ms. Cahill-Krout agreed with Ms. Peterson's concerns.

STATUTORY GUIDELINES

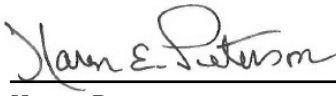
In the phraseology of 9 Delaware Code, Section 2603(a), the Department finds that this text amendment would not promote the convenience, order, and welfare of the present and future inhabitants of this state.



Charuni Patibanda
General Manager
Department of Land Use

8/23/2024

date



Karen Peterson
Chair
Planning Board

8/21/2024

date

Prime Sponsor(s): Ms. George
Requested by: Land Use
Date of introduction: March 26, 2024

ORDINANCE NO. 24-040

**COMPREHENSIVE REZONING - TO REVISE THE NEW CASTLE COUNTY ZONING
MAPS IN COUNTY COUNCIL DISTRICT 5 REGARDING THE FOLLOWING
TAX PARCEL: PENCADER HUNDRED: 11-025.00-026 (0 PULASKI HWY OFF,
UPPER CHESAPEAKE CORPORATE CTR)**

1 **WHEREAS**, County Council adopted Substitute No. 2 to Ordinance No. 22-024 as
2 amended by Floor Amendment No. 1 ("New Castle County Comprehensive Plan" or "the
3 Plan"), on July 26, 2022, and the County Executive approved the Ordinance on August
4 4, 2022; and
5

6 **WHEREAS**, the Future Land Use Element and Map Series of the New Castle
7 County Comprehensive Plan designates proposed future general distribution, location
8 and extent of the uses of land consistent with goals, policies and measurable objectives
9 enumerated in the Plan; and
10

11 **WHEREAS**, the New Castle County Comprehensive Plan guides and encourages
12 sustainable economic development sensitive to the context of neighboring residential
13 developments; and
14

15 **WHEREAS**, the New Castle County Comprehensive Plan guides and encourages
16 preservation efforts to best protect important ecological habitats; and
17

18 **WHEREAS**, 9 *Del. C. § 2660* requires New Castle County to amend its official
19 zoning map within eighteen months of the date of adoption of a revision to the county
20 comprehensive plan "to rezone all lands in accordance with the uses and intensities of
21 uses provided for in the future land use element for the County"; and
22

23 **WHEREAS**, Ordinance No. 23-083 was introduced on June 13, 2023, to amend
24 the official zoning map in accordance with the uses and intensities of uses provided for in
25 the future land use element of the New Castle County Comprehensive Plan; and
26

27 **WHEREAS**, the County can foster more informed participation by the public,
28 including increased opportunities for review, by amending the zoning map in smaller
29 portions, such as by Councilmanic District; and
30

31 **WHEREAS**, this County-initiated rezoning is intended to guide and control future
32 growth consistent with the spirit and intent of the Comprehensive Development Plan as
33 provided by State law; and

34 **WHEREAS**, County Council has determined that the amendments to the zoning
35 map substantially advance, and are reasonably and rationally related to, legitimate
36 government interests (i.e., promoting the health, safety, morals, convenience, order,
37 prosperity and/or welfare of the present and future inhabitants of this State).
38

39 **NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:**
40

41 Section 1. The Zoning Maps of Pencader Hundred and White Clay Creek
42 Hundred, are hereby amended by changing the zoning classification of the land shown
43 on attached Exhibit "A", Map 1 dated 3/13/2024, as set forth therein.
44

45 Section 2. This Ordinance shall become effective immediately upon passage by
46 New Castle County Council and approval of the County Executive, or as otherwise
47 provided in 9 *Del. C.* § 1156.

Adopted by County Council of
New Castle County on:

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

Approved on:

Matthew Meyer
County Executive
New Castle County

SYNOPSIS: Same as title.

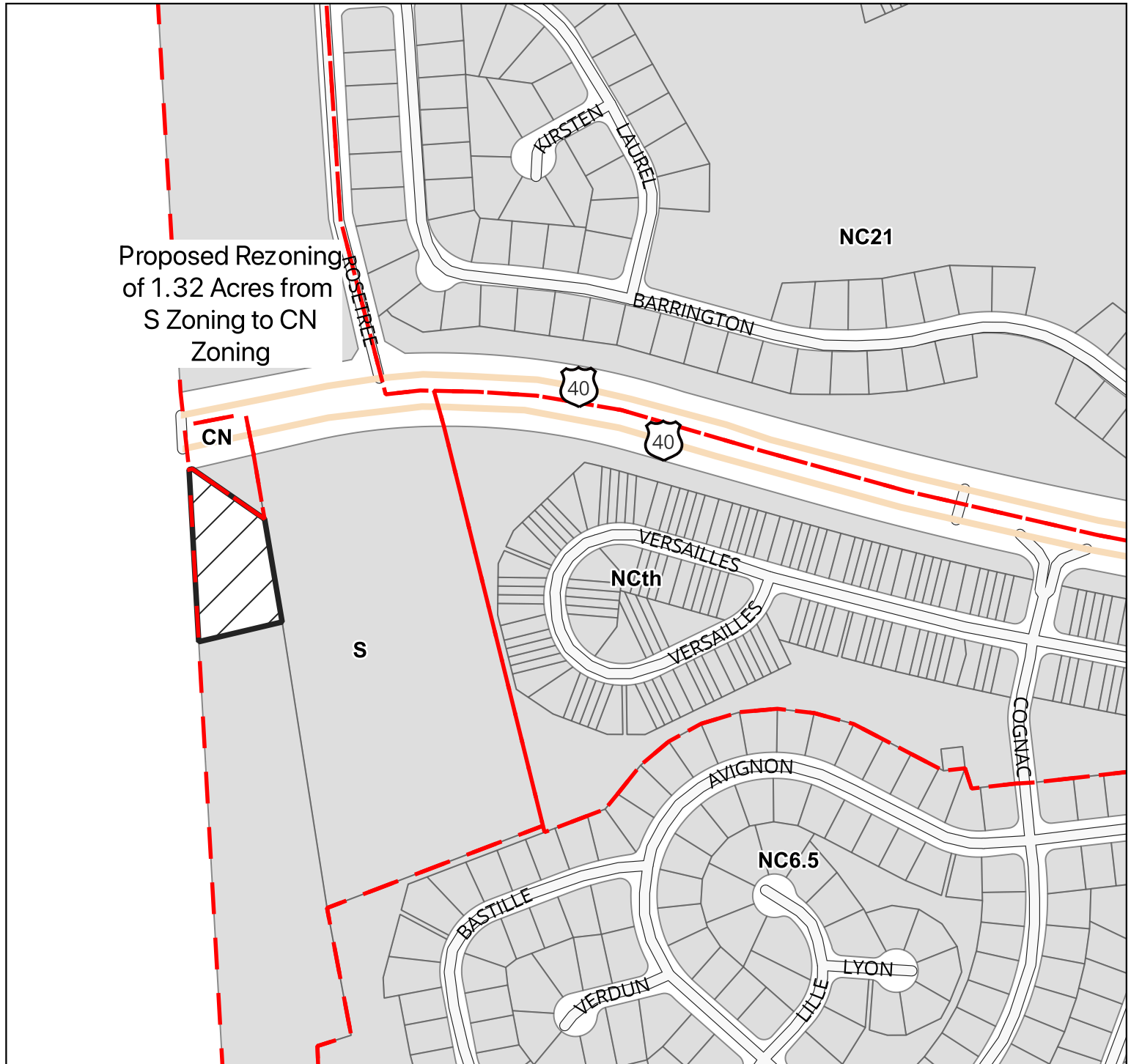
FISCAL IMPACT: There is no discernible fiscal impact with the adoption of this
legislation.

PROPERTY MAP

EXHIBIT A: MAP 1
ZONING ORDINANCE AS INTRODUCED

APPLICANT: NEW CASTLE COUNTY
PROPOSED REZONING: S ZONING TO CN ZONING

APPLICATION NO. 2024-0159-Z
TAX PARCEL NO: 11-025.00-026



HUNDRED: PENCADER
NEW CASTLE COUNTY, DELAWARE

Scale: 1:3883
Prepared by: Matthew Rogers

Date: 3/13/2024



PERMANENT ORDINANCE NO. 24-040
Date Adopted by County Council:
Date Approved by County Executive:



Department of Land Use

**JOINT DEPARTMENT OF LAND USE / PLANNING BOARD
RECOMMENDATION**

**Ordinance No. 24-040
Application No. 2024-0159-Z
Comprehensive Rezoning**

July 16, 2024

Sponsor: Councilwoman George (District 5)

Description: Amend the Zoning Map for County Council District 5 consistent with the Future Land Use Map

EXECUTIVE SUMMARY

The 2022 Update to the New Castle County Comprehensive Development Plan (NCC2050) was the product of more than 2 years of extensive public outreach interacting with thousands of County residents through a variety of virtual and in person meetings.

Ordinance 24-040 proposes to amend the County's official zoning map to rezone lands in County Council District 5 in accordance with the uses and intensities of uses provided for in the Future Land Use Element in the 2022 Update to the New Castle County Comprehensive Development Plan. While the Future Land Use map itself is by Code *not a rezoning*¹ it effectuates future development, preservation, and rezonings in the County.² It further prescribes a range of permissible zoning districts within each designation. The County rezoning process and standards are how the appropriate district for each parcel is designated.

The 2022 Update to the New Castle County Comprehensive Development Plan designates parcel 11-025.00-026 as Business Flex in the Future Land Use Map. This designation described in the Comprehensive Plan as:

These areas include existing preserved lands as well as those appropriate for future preservation. Land within this district includes important environmental and agricultural resources as well as National Scenic Byway areas. Land Use policies shall discourage development and incentivize preservation of these resources.

¹ Del Code, Title 9, Chapter 26, § 2656, New Castle County Code Chapter 28, & NCC2050 Future Land Use Element Page 86.

² Farmers For Fairness v. Kent County Levy Court, 2012 WL 295060: Chancery Court discussed that since no development can occur that is inconsistent with the Land Use Map, that it can be an "effective rezoning"

Rezoning parcel 11-025.00-026, from a nonresidential (Industrial) to residential zoning designation (Suburban) will better preserve and protect these open space, environmental, and historical resources, while discouraging development that could be detrimental.

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 Future Land Use map, comments received from outside agencies, and comments received from 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

Ordinance 24-040 is a rezoning ordinance that rezones parcel 11-025.00-026, from a residential designation to a nonresidential designation consistent with the Future Land Use map and pursuant to Delaware State Law.³

BACKGROUND

The history of the comprehensive rezoning process dates to the 1950s. Subsequent sections examine how State and County codes evolved over time as well as important comprehensive rezonings in New Castle County history.

Establishment of Zoning & the Rezoning Process

The process and set of standards established in Delaware State Code for rezonings has largely been unchanged since 1951. On June 5, 1951, the State of Delaware granted the Levy Court of New Castle County the authority to adopt zoning regulations and provided a process and legal notice requirements for the establishment and amendment of zoning maps. The process required that the Levy Court establish a Zoning Plan, have a public hearing with the Zoning Commission with notice at least 15 days prior to the hearing in the newspaper of general circulation in the County and adoption by the Levy Court. The process for amendments to the zoning map largely mirrored that of establishing zoning, except for reducing the notice requirement to seven days prior to the Zoning Commission hearing.⁴ New Castle County adopted zoning regulations in September of 1954.

³ Ibid.

⁴ Zoning Enabling Legislation: <https://legis.delaware.gov/SessionLaws/Chapter?id=33182> Dillon's Rule additional reading: <https://www.planning.org/planning/2020/mar/tools-legal-lessons/>

*Levy Court to County Executive/Council/Planning Board & Comprehensive Planning*⁵

In 1965, the structure of New Castle County government was reorganized, replacing the Levy Court with a County Executive and County Council. The rezoning regulations were revised to accommodate this change. This legislation also set forth the requirement that the County adopt a Comprehensive Plan to guide future development but provided limited guidance regarding the drafting or utility of the document.

*Quality of Life Act of 1988*⁶

Delaware State government adopted the Quality of Life Act in 1988 to further “*strengthen the existing role, processes, and powers of County governments in the establishment and implementation of comprehensive planning programs to guide and control future development.*” Adoption of the Quality of Life Act largely established and standardized the requirements, elements, and overall utility of the County’s Comprehensive Development Plan that exists today. A key provision in the Quality of Life Act detailed the effect of the adoption of comprehensive plan’s land use maps:

*After a comprehensive plan or element or portion thereof has been adopted by County Council or Levy Court in conformity with this Act, the land use map or map series forming part of the comprehensive plan as required by this Act shall have the **force of law**, and no development, as defined in this Act, shall be permitted except in conformity with the land use map or map series and with land development regulations enacted to implement the other elements of the adopted comprehensive plan.*⁷

The Delaware Chancery Court confirmed that the land use element/map had the force of law, and that no development is permitted that is not in conformity to it.⁸ When the Quality of Life Act was adopted, there was no time requirement for the zoning map to be brought into conformity with the land use map. In 2001, State Code was revised to read:

Within 18 months of the date of adoption of the county comprehensive plan or revisions thereof, New Castle County shall amend its official zoning map(s) to rezone all lands in accordance with the uses and intensities of uses provided for in the future land use element for the county. In the event that the comprehensive plan includes provisions governing the rate of growth of particular planning districts or sub-areas of the county, the County's zoning

⁵ Reorganization Of The Government Of New Castle County And Amending And Repealing Existing Laws Pertaining Thereto: <https://legis.delaware.gov/SessionLaws/Chapter?id=17035>

⁶ Quality of Life Act of 1988: <https://legis.delaware.gov/SessionLaws/Chapter?id=22445>

⁷ Ibid. Emphasis added.

⁸ In *Farmers for Fairness v. Kent County Levy Court*, 2012 WL 295060, the Court of Chancery stated; *The Act is unambiguous. The land use map or map series has “the force of law,” and the County may not permit development contrary to that provided for in the land use map. The statutory language ...is straightforward and uncomplicated. The “force of law” means that any provisions in the land use map or map series have a “legally binding effect.”*

district regulations shall be amended to reflect the timing elements of the comprehensive plan.⁹

Rezoning in New Castle County

Since the adoption of zoning in 1954, all changes to New Castle County's zoning map have fundamentally followed the process that was originally established in 1951, whether for 1 or 100,000 parcels. The utility of these rezonings ranged from larger initiatives, such as the adoption of the UDC, Diversified Planned Unit Developments, Hometown and Historic Overlays to smaller initiatives such as to legalize existing uses or to support the subsequent recordation of a plan that provides for important residential and nonresidential development.

2022 Update to the New Castle County Comprehensive Plan

The 2022 Update to the New Castle County Comprehensive Plan (The Plan) was the product of more than two years of extensive public outreach. During that process, the Department made extensive efforts to reach out and garner public feedback on not only the overall Goals/Objectives/Strategies expressed in the plan, but also the Future Land Use map and Element.

The Future Land Use map prescribed changing designations from residential to nonresidential in instances where property owners believed that development was likely within the next ten years, to avoid repetitive amendments to the Future Land Use map outside of the formal comprehensive planning process.

The Future Land Use map prescribed changing designations from nonresidential to Resource Preservation in recognition of protected open space and to further protect ecological resources such as Critical Natural Areas.

Ordinance 23-083 Comprehensive Rezoning

Ordinance 23-083 was introduced on June 13, 2023, proposing the rezoning 33 parcels from residential zoning designations to nonresidential zoning designations and 61 parcels from nonresidential designations to residential designations consistent with the Future Land Use map and pursuant to Delaware State Law.¹⁰ The Ordinance was reviewed and recommended for approval by the Department of Land Use and the Planning Board, however was subsequently withdrawn on February 13, 2024, by County Council to facilitate the Department pursuing the *Take 2* initiative. This effort includes conducting additional public outreach and dividing rezoning effort by County Council District.

⁹ <https://legis.delaware.gov/SessionLaws/Chapter?id=19151>

¹⁰ Ibid.

Ordinance 24-040 Comprehensive Rezoning County Council District 5

Ordinance 24-040 was introduced on March 26, 2024, proposing to rezone 1 parcel from residential to nonresidential zoning designation:

Parcel 11-025.00-026 - 1.32 acres from Suburban (S) to Commercial Neighborhood (CN)
Owner: Delaware Land Company, LLC
Address: 0 Off Pulaski Hwy.

Take 2 Community Meeting

On May 22, 2024, in coordination with County Councilmembers held a community meeting at the Delaware State Police Troop 2 Building regarding the Group 3 Comprehensive Rezonings (*Ordinances; 24-040, 24-041, 24-042, and 24-043*). Residents had the opportunity to review maps of the proposed rezonings and have their questions answered by Department of Land Use staff.

PLUS REVIEW (Preliminary Land Use Service)

The Rezoning proposed by *Ordinance 24-040* was originally proposed by Ordinance 23-083 and as such the PLUS Report, dated August 23, 2023, contains relevant comments from State agencies. The Office of State Planning Coordination reiterated their support for the 2022 New Castle County Comprehensive Plan and its goals and strategies as well as for the rezonings proposed. No other State agency had any comments.¹¹

PLANNING BOARD PUBLIC HEARING – June 4, 2024

*Please note, the below is a summary. A recording and transcripts of the public hearing are available at the Department of Land Use and hyperlinked below.¹²

Presentation

Matthew Rogers, Planner for the Department of Land Use, presented the *Ordinance 24-040*, discussing the process, outreach, and the site proposed to be rezoned as well as the rationale for the rezoning. There were no questions or comments from the Planning Board following Mr. Rogers' presentation.

Public Comment

There was no public comment on the application at the public hearing.

¹¹ PLUS Report: <https://www3.newcastlede.gov/project/details/default.aspx?ProjectKey=770318>

¹² May 5, 2024, Planning Board Public Hearing:
<https://www3.newcastlede.gov/project/details/default.aspx?ProjectKey=791080>

Written Public Comment:

The Department of Land Use did not receive written public comment while the record was open.

ANALYSIS

Ordinance 24-040 proposes rezoning parcel 11-025.00-026 from a residential zoning designation Suburban (S), to a nonresidential zoning designation Commercial Neighborhood (CN), consistent with the 2022 Update to the New Castle County Comprehensive Plan, which designates the parcel as Business Flex.

Parcel 11-025.00-002, located to the north of the subject property was zoned Residential (R-2), from 1954 until 1999, when it was rezoned to Commercial (C-1) to permit a used clothing store (Martha's Attic). The property was erroneously rezoned to Suburban (S) when the UDC was adopted and was correctively rezoned to Commercial Neighborhood in 2003. The site was acquired by the Delaware Land Company, LLC in 2001 and has served in a commercial capacity since that date.

Parcel 11-025.00-026 has been zoned residential since 1954 (R-2, and Suburban after the adoption of the UDC). The property has remained vacant likely due to being land locked behind parcel 11-025.00-002. The Delaware Land Company, LLC acquired parcel 11-025.00-026, in 2018. Rezoning the property from Suburban to Commercial Neighborhood would permit commercial uses on the property consistent with abutting parcel 11-025.00-002, while not having an adverse impact on the land on the east and south of the property, which are used for Delmarva Power lines. If the parcel is rezoned and consolidated with parcel 11-025.00-002, also owned by The Delaware Land Company, LLC, several nonconformities would be rectified.

The 2022 Update to the New Castle County Comprehensive Development Plan describes land designated as Business Flex as:

These are areas of existing and potential nonresidential development. These areas are essential to the county's continued economic viability, as such, the County Code needs to accommodate changes in form and function of these sites. While the County supports the evolution of these sites to meet future needs, Heavy Industrial uses are not permitted in this District.

Rezoning parcel 11-025.00-026, from residential to a nonresidential zoning designation serves to contribute to the county's continued economic viability.

Standards of Review

Pursuant to Section 40.31.410 of the New Castle County Code, in determining whether an amendment to the zoning map shall be recommended or approved, the following factors shall be considered:

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

Parcel 11-025.00-026 is designated as Business Flex by the Future Land Use Maps. Residential zoning designations are not permissible within this designation. Residential districts such as Commercial Neighborhood are appropriate for the land designated as Business Flex. The County has determined that land use policy for land with the Future Land Use designation of Business Flex, is to represent areas of existing and potential nonresidential development that when considered as a whole are essential to the county's continued economic viability. The rezoning of parcel 11-025.00-026 proposed by Ordinance 24-040 is consistent with the Future Land Use Map, as well as the Comprehensive Development Plan as a whole.

B. Consistency with the character of the neighborhood.

Parcel 11-025.00-026 is located to the rear of parcel 11-025.00-002, which abuts Route 40 and contains a longstanding commercial establishment and is under common ownership with the subject parcel. The subject parcel is also adjacent to nonresidential development to the west of the property in Maryland. The subject property is adjacent to residentially zoned land, however, that land is owned by Delmarva Power and contains Delmarva powerlines. Rezoning this parcel is consistent with the character of their surrounding neighborhoods.

C. Consistency with zoning and use of nearby properties.

Parcel 11-025.00-026 is adjacent to Commercial Neighborhood zoned land (parcel 11-025.00-002) under common ownership. Rezoning parcel 11-025.00-026, from Suburban to Commercial Neighborhood to support commercial uses, is consistent with the zoning and commercial zoning and use of the adjacent parcel.

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

While there is no specific proposed use for parcel 11-025.00-026, it meets the minimum site area and lot size to be zoned Commercial Neighborhood making it suitable, if rezoned for uses permitted in the Commercial Neighborhood district.

E. *Effect on nearby properties.*

The rezoning of parcel 11-025.00-026 to Commercial Neighborhood, to permit commercial uses will likely have little to no impact on nearby properties and could, if consolidated with parcel 11-025.00-002 eliminate existing nonconformities.

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 Future Land Use Map, 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 24-040.

PLANNING BOARD RECOMMENDATION

At a 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 Mr. Cochran, the Board voted to recommend **APPROVAL** of Ordinance 24-040 as recommended by the Department of Land Use.

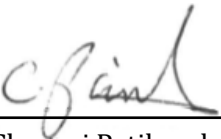
The motion was adopted by a vote of 5-0-0-4 (In Favor:, Cantrell, Cochran, Drake, Gray, Visvardis; In Opposition: None; Abstention: None; Absent: Cahill-Krout, Daigle, Peterson, Snowden).

Prior to the vote the following discussion occurred:

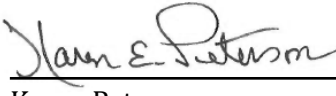
Matthew Rogers read the Department of Land Use recommendation into the record. There were no questions from the Board.

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.


08/12/2024

Charuni Patibanda date
General Manager
Department of Land Use


08/9/2024

Karen Peterson date
Chair
Planning Board

Prime Sponsor(s): Ms. George
Requested by: Land Use
Date of introduction: March 26, 2024

ORDINANCE NO. 24-041

**COMPREHENSIVE REZONING - TO REVISE THE NEW CASTLE COUNTY ZONING
MAPS IN COUNTY COUNCIL DISTRICT 5 REGARDING THE FOLLOWING
TAX PARCEL: WHITE CLAY CREEK HUNDRED: 09-033.00-038 (475 GENDER RD,
BREEZEWOOD SEC III)**

1 **WHEREAS**, County Council adopted Substitute No. 2 to Ordinance No. 22-024 as
2 amended by Floor Amendment No. 1 ("New Castle County Comprehensive Plan" or "the
3 Plan"), on July 26, 2022, and the County Executive approved the Ordinance on August
4 4, 2022; and
5

6 **WHEREAS**, the Future Land Use Element and Map Series of the New Castle
7 County Comprehensive Plan designates proposed future general distribution, location
8 and extent of the uses of land consistent with goals, policies and measurable objectives
9 enumerated in the Plan; and
10

11 **WHEREAS**, the New Castle County Comprehensive Plan guides and encourages
12 sustainable economic development sensitive to the context of neighboring residential
13 developments; and
14

15 **WHEREAS**, the New Castle County Comprehensive Plan guides and encourages
16 preservation efforts to best protect important ecological habitats; and
17

18 **WHEREAS**, 9 *Del. C. § 2660* requires New Castle County to amend its official
19 zoning map within eighteen months of the date of adoption of a revision to the county
20 comprehensive plan "to rezone all lands in accordance with the uses and intensities of
21 uses provided for in the future land use element for the County"; and
22

23 **WHEREAS**, Ordinance No. 23-083 was introduced on June 13, 2023, to amend
24 the official zoning map in accordance with the uses and intensities of uses provided for in
25 the future land use element of the New Castle County Comprehensive Plan; and

26 **WHEREAS**, the County can foster more informed participation by the public,
27 including increased opportunities for review, by amending the zoning map in smaller
28 portions, such as by Councilmanic District; and
29

30 **WHEREAS**, this County-initiated rezoning is intended to guide and control future
31 growth consistent with the spirit and intent of the Comprehensive Development Plan as
32 provided by State law; and

33 **WHEREAS**, County Council has determined that the amendments to the zoning
34 map substantially advance, and are reasonably and rationally related to, legitimate
35 government interests (i.e., promoting the health, safety, morals, convenience, order,
36 prosperity and/or welfare of the present and future inhabitants of this State).
37

38 **NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:**
39

40 Section 1. The Zoning Maps of Pencader Hundred and White Clay Creek
41 Hundred, are hereby amended by changing the zoning classification of the land shown
42 on attached Exhibit "A", Map 1 dated 3/13/2024, as set forth therein.
43

44 Section 2. This Ordinance shall become effective immediately upon passage by
45 New Castle County Council and approval of the County Executive, or as otherwise
46 provided in 9 *Del. C.* § 1156.

Adopted by County Council of
New Castle County on:

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

Approved on:

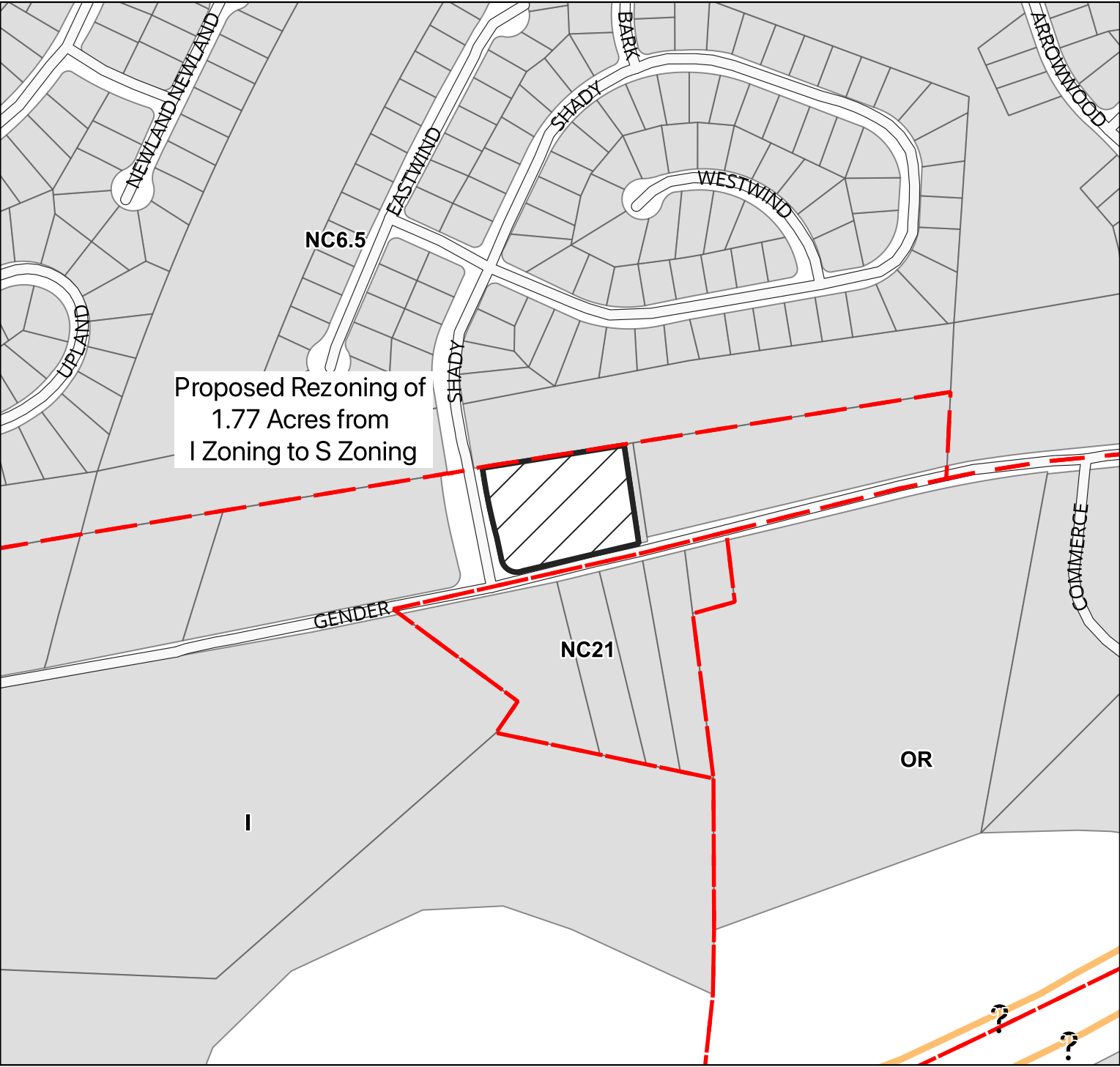
Matthew Meyer
County Executive
New Castle County

SYNOPSIS: Same as title.

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

APPLICANT: NEW CASTLE COUNTY
PROPOSED REZONING: I ZONING TO S ZONING

APPLICATION NO. 2024-0158-Z
TAX PARCEL NO: 09-033.00-038



HUNDRED: WHITE CLAY CREEK
NEW CASTLE COUNTY, DELAWARE

Scale: 1:3864
Prepared by: Matthew Rogers

Date: 3/13/2024



PERMANENT ORDINANCE NO. 24-041
Date Adopted by County Council:
Date Approved by County Executive:



Department of Land Use

**JOINT DEPARTMENT OF LAND USE / PLANNING BOARD
RECOMMENDATION**

**Ordinance No. 24-041
Application No. 2024-0158-Z
Comprehensive Rezoning**

July 16, 2024

Sponsor: Councilwoman George (District 5)

Description: Amend the Zoning Map for County Council District 5 consistent with the Future Land Use Map

EXECUTIVE SUMMARY

The 2022 Update to the New Castle County Comprehensive Development Plan (NCC2050) was the product of more than 2 years of extensive public outreach interacting with thousands of County residents through a variety of virtual and in person meetings.

Ordinance 24-041 proposes to amend the County's official zoning map to rezone lands in County Council District 5 in accordance with the uses and intensities of uses provided for in the Future Land Use Element in the 2022 Update to the New Castle County Comprehensive Development Plan. While the Future Land Use map itself is by Code *not a rezoning*¹ it effectuates future development, preservation, and rezonings in the County.² It further prescribes a range of permissible zoning districts within each designation. The County rezoning process and standards are how the appropriate district for each parcel is designated.

The 2022 Update to the New Castle County Comprehensive Development Plan designates parcel 09-033.00-038 as Resource Preservation in the Future Land Use Map. This designation described in the Comprehensive Plan as:

These areas include existing preserved lands as well as those appropriate for future preservation. Land within this district includes important environmental and agricultural resources as well as National Scenic Byway areas. Land Use policies shall discourage development and incentivize preservation of these resources.

¹ Del Code, Title 9, Chapter 26, § 2656, New Castle County Code Chapter 28, & NCC2050 Future Land Use Element Page 86.

² Farmers For Fairness v. Kent County Levy Court, 2012 WL 295060: Chancery Court discussed that since no development can occur that is inconsistent with the Land Use Map, that it can be an "effective rezoning"

Rezoning parcel 09-033.00-038, from a nonresidential (Industrial) to residential zoning designation (Suburban) will better preserve and protect these open space, environmental, and historical resources, while discouraging development that could be detrimental.

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 Future Land Use map, comments received from outside agencies, and comments received from 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

Ordinance 24-041 is a rezoning ordinance that rezones 1 parcel (09-033.00-038) from a nonresidential designation to a residential designation consistent with the Future Land Use map and pursuant to Delaware State Law.³

BACKGROUND

The history of the comprehensive rezoning process dates to the 1950s. Subsequent sections examine how State and County codes evolved over time as well as important comprehensive rezonings in New Castle County history.

Establishment of Zoning & the Rezoning Process

The process and set of standards established in Delaware State Code for rezonings has largely been unchanged since 1951. On June 5, 1951, the State of Delaware granted the Levy Court of New Castle County the authority to adopt zoning regulations and provided a process and legal notice requirements for the establishment and amendment of zoning maps. The process required that the Levy Court establish a Zoning Plan, have a public hearing with the Zoning Commission with notice at least 15 days prior to the hearing in the newspaper of general circulation in the County and adoption by the Levy Court. The process for amendments to the zoning map largely mirrored that of establishing zoning, except for reducing the notice requirement to seven days prior to the Zoning Commission hearing.⁴ New Castle County adopted zoning regulations in September of 1954.

³ Ibid.

⁴ Zoning Enabling Legislation: <https://legis.delaware.gov/SessionLaws/Chapter?id=33182> Dillon's Rule additional reading: <https://www.planning.org/planning/2020/mar/tools-legal-lessons/>

*Levy Court to County Executive/Council/Planning Board & Comprehensive Planning*⁵

In 1965, the structure of New Castle County government was reorganized, replacing the Levy Court with a County Executive and County Council. The rezoning regulations were revised to accommodate this change. This legislation also set forth the requirement that the County adopt a Comprehensive Plan to guide future development but provided limited guidance regarding the drafting or utility of the document.

*Quality of Life Act of 1988*⁶

Delaware State government adopted the Quality of Life Act in 1988 to further “*strengthen the existing role, processes, and powers of County governments in the establishment and implementation of comprehensive planning programs to guide and control future development.*” Adoption of the Quality of Life Act largely established and standardized the requirements, elements, and overall utility of the County’s Comprehensive Development Plan that exists today. A key provision in the Quality of Life Act detailed the effect of the adoption of comprehensive plan’s land use maps:

*After a comprehensive plan or element or portion thereof has been adopted by County Council or Levy Court in conformity with this Act, the land use map or map series forming part of the comprehensive plan as required by this Act shall have the **force of law**, and no development, as defined in this Act, shall be permitted except in conformity with the land use map or map series and with land development regulations enacted to implement the other elements of the adopted comprehensive plan.*⁷

The Delaware Chancery Court confirmed that the land use element/map had the force of law, and that no development is permitted that is not in conformity to it.⁸ When the Quality of Life Act was adopted, there was no time requirement for the zoning map to be brought into conformity with the land use map. In 2001, State Code was revised to read:

Within 18 months of the date of adoption of the county comprehensive plan or revisions thereof, New Castle County shall amend its official zoning map(s) to rezone all lands in accordance with the uses and intensities of uses provided for in the future land use element for the county. In the event that the comprehensive plan includes provisions governing the rate of growth of particular planning districts or sub-areas of the county, the County's zoning

⁵ Reorganization Of The Government Of New Castle County And Amending And Repealing Existing Laws Pertaining Thereto: <https://legis.delaware.gov/SessionLaws/Chapter?id=17035>

⁶ Quality of Life Act of 1988: <https://legis.delaware.gov/SessionLaws/Chapter?id=22445>

⁷ Ibid. Emphasis added.

⁸ In *Farmers for Fairness v. Kent County Levy Court*, 2012 WL 295060, the Court of Chancery stated; *The Act is unambiguous. The land use map or map series has “the force of law,” and the County may not permit development contrary to that provided for in the land use map. The statutory language ...is straightforward and uncomplicated. The “force of law” means that any provisions in the land use map or map series have a “legally binding effect.”*

district regulations shall be amended to reflect the timing elements of the comprehensive plan.⁹

Rezoning in New Castle County

Since the adoption of zoning in 1954, all changes to New Castle County's zoning map have fundamentally followed the process that was originally established in 1951, whether for 1 or 100,000 parcels. The utility of these rezonings ranged from larger initiatives, such as the adoption of the UDC, Diversified Planned Unit Developments, Hometown and Historic Overlays to smaller initiatives such as to legalize existing uses or to support the subsequent recordation of a plan that provides for important residential and nonresidential development.

2022 Update to the New Castle County Comprehensive Plan

The 2022 Update to the New Castle County Comprehensive Plan (The Plan) was the product of more than two years of extensive public outreach. During that process, the Department made extensive efforts to reach out and garner public feedback on not only the overall Goals/Objectives/Strategies expressed in the plan, but also the Future Land Use map and Element.

The Future Land Use map prescribed changing designations from residential to nonresidential in instances where property owners believed that development was likely within the next ten years, to avoid repetitive amendments to the Future Land Use map outside of the formal comprehensive planning process.

The Future Land Use map prescribed changing designations from nonresidential to Resource Preservation in recognition of protected open space and to further protect ecological resources such as Critical Natural Areas.

Ordinance 23-083 Comprehensive Rezoning

Ordinance 23-083 was introduced on June 13, 2023, proposing the rezoning 33 parcels from residential zoning designations to nonresidential zoning designations and 61 parcels from nonresidential designations to residential designations consistent with the Future Land Use map and pursuant to Delaware State Law.¹⁰ The Ordinance was reviewed and recommended for approval by the Department of Land Use and the Planning Board, however was subsequently withdrawn on February 13, 2024, by County Council to facilitate the Department pursuing the *Take 2* initiative. This effort includes conducting additional public outreach and dividing rezoning effort by County Council District.

⁹ <https://legis.delaware.gov/SessionLaws/Chapter?id=19151>

¹⁰ Ibid.

Ordinance 24-041 Comprehensive Rezoning County Council District 5

Ordinance 24-041 was introduced on March 26, 2024, proposing to rezone 1 parcel from residential to nonresidential zoning designation:

Parcel 09-033.00-038- 1.77 acres from Industrial (I) to Suburban (S)
Owner: New Castle County
Address: 475 Gender Road

Take 2 Community Meeting

On May 22, 2024, in coordination with County Councilmembers, the Department held a community meeting at the Delaware State Police Troop 2 Building regarding the Group 3 Comprehensive Rezonings (*Ordinances; 24-040, 24-041, 24-042, and 24-043*). Residents had the opportunity to review maps of the proposed rezonings and have their questions answered by Department of Land Use staff.

PLUS REVIEW (Preliminary Land Use Service)

The Rezoning proposed by *Ordinance 24-041* was originally proposed by Ordinance 23-083 and as such the PLUS Report, dated August 23, 2023, contains relevant comments from State agencies. The Office of State Planning Coordination reiterated their support for the 2022 New Castle County Comprehensive Plan and its goals and strategies as well as for the rezonings proposed. No other State agency had any comments.¹¹

PLANNING BOARD PUBLIC HEARING – June 4, 2024

*Please note, the below is a summary. A recording and transcripts of the public hearing are available at the Department of Land Use and hyperlinked below.¹²

Presentation

Matthew Rogers, Planner for the Department of Land Use, presented the *Ordinance 24-041*, discussing the process, outreach, and the site proposed to be rezoned as well as the rationale for the rezoning. There were no questions or comments from the Planning Board following Mr. Rogers' presentation.

Public Comment

There was no public comment on the application at the public hearing.

¹¹ PLUS Report: <https://www3.newcastlede.gov/project/details/default.aspx?ProjectKey=770318>

¹² May 5, 2024, Planning Board Public Hearing:
<https://www3.newcastlede.gov/project/details/default.aspx?ProjectKey=791079>

Written Public Comment:

The Department of Land Use did not receive written public comment while the record was open.

ANALYSIS

Ordinance 24-041 proposes rezoning parcel 09-033.00-038 from a nonresidential designation Industrial (I), to a residential zoning designation Suburban (S), consistent with the 2022 Update to the New Castle County Comprehensive Plan, which designated the parcel as Resource Preservation.

Parcel 09-033.00-038 was originally rezoned from Residential (R-2) to Manufacturing (M-1) in 1968 (Ord. 68-028) as part of the Breezewood development. New Castle County acquired the property in 1987, and it has served as open space since that date. In 1997, with the adoption of the Unified Development Code the property was zoned Industrial. Parcel 09-033.00-038 is adjacent to Neighborhood Conservation zoned land to the north and south and Industrial zoned land to the east and west. The Unified Development Code does not permit rezoning land to Neighborhood Conservation, and since the site is within the Sewer Service Area, Suburban is the appropriate residential zoning designation.

The 2022 Update to the New Castle County Comprehensive Development Plan describes land designated as Resource Preservation as:

These areas include existing preserved lands as well as those appropriate for future preservation. Land within this district includes important environmental and agricultural resources as well as National Scenic Byway areas. Land Use policies shall discourage development and incentivize preservation of these resources.

Rezoning parcel 09-033.00-038, from nonresidential to a residential zoning designation serves to better preserve and protect these open space, environmental, and historical resources, while discouraging development that could be detrimental.

Standards of Review

Pursuant to Section 40.31.410 of the New Castle County Code, in determining whether an amendment to the zoning map shall be recommended or approved, the following factors shall be considered:

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

Parcel 09-033.00-038 is designated as Resource Preservation by the Future Land Use Maps. Nonresidential zoning designations are not permissible within this designation. Residential districts such as Suburban are appropriate for the land designated as Resource Preservation.

The County has determined that land use policy for land with the Future Land Use designation of Resource Preservation, is to encourage the preservation of environmental, agricultural, and historic resources and would permit development consistent and sensitive to existing community character. The rezoning of parcel 09-033.00-038 proposed by Ordinance 24-041 is consistent with the Future Land Use Map, as well as the Comprehensive Development Plan as a whole.

B. Consistency with the character of the neighborhood.

Parcel 09-033.00-038 has served as open space adjacent to the Breezewood Sec III development, owned by New Castle County, for nearly 40 years, and is to remain in that capacity. Rezoning this parcel is consistent with the character of their surrounding neighborhoods.

C. Consistency with zoning and use of nearby properties.

Parcel 09-033.00-038 has served as open space for nearly 40 years, rezoning it from Industrial to Suburban is consistent with neighboring residential uses. While parcel 09-033.00-038 is adjacent to Neighborhood Conservation zoned land, the Unified Development Code does not permit rezoning land to Neighborhood Conservation. Since it is within the Sewer Service Area, Suburban is the appropriate residential zoning designation.

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

Parcel 09-033.00-038 serves as open space and the rezoning of this parcel is consistent with the current and future use of the property.

E. Effect on nearby properties.

The rezoning of parcel 09-033.00-038 to Suburban, discouraging development and encouraging preservation of the land will not have a negative impact on nearby properties, and will be consistent with their current use and that of 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 of the *Unified Development Code*, the Future Land Use Map, 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 24-041.

PLANNING BOARD RECOMMENDATION

At a 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 Mr. Cantrell, the Board voted to recommend **APPROVAL** of Ordinance 24-041 as recommended by the Department of Land Use.

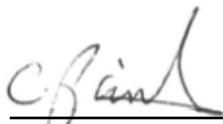
The motion was adopted by a vote of 5-0-0-4 (In Favor: Cantrell, Cochran, Drake, Gray, Visvardis; In Opposition: None; Abstention: None; Absent: Cahill-Krout, Daigle, Peterson, Snowden).

Prior to the vote the following discussion occurred:

Matthew Rogers read the Department of Land Use recommendation into the record. There were no questions from 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.


08/12/2024

Charuni Patibanda date
General Manager
Department of Land Use


08/9/2024

Karen Peterson date
Chair
Planning Board

SUBSTITUTE NO. 1 TO ORDINANCE NO. 24-057

TO AMEND NEW CASTLE COUNTY CODE CHAPTER 40 (“UNIFIED DEVELOPMENT CODE” OR “UDC”), ARTICLE 3 (“USE REGULATIONS”), ARTICLE 7 (“TRANSFER OF DEVELOPMENT RIGHTS AND OTHER INCENTIVES AND BONUSES”), ARTICLE 8 (“NONCONFORMING SITUATIONS”), ARTICLE 22 (“DRAINAGE, UTILITIES, SEPTIC SYSTEMS, PARKING, LOADING, AND LIGHTING”), ARTICLE 31 (“PROCEDURES AND ADMINISTRATION”) AND ARTICLE 33 (“DEFINITIONS”), REGARDING DEVELOPMENT AND REDEVELOPMENT

WHEREAS, County Council adopted Substitute No. 2 to Ordinance No. 22-024 as amended by Floor Amendment No. 1 (“New Castle County Comprehensive Plan” or “the Ordinance”), on July 26, 2022, and the County Executive approved the Ordinance on August 4, 2022; and

WHEREAS, the Concord Pike (US 202) Corridor Master Plan and the New Castle County Comprehensive Plan identify the need for revisions to the redevelopment provisions in the Unified Development Code and recommend context sensitive development design that is consistent with the Guiding Principles for Development; and

WHEREAS, the New Castle County Comprehensive Plan encourages redevelopment of industrial land, strip malls, office parks, and other “greyfields” to strengthen community cohesion, environmental quality, fiscal productivity, and quality of life; and

WHEREAS, the New Castle County Comprehensive Plan calls on the County to enact land use policies and regulations that incentivize infill and redevelopment in and around job centers; and

WHEREAS, the New Castle County Comprehensive Plan guides development and redevelopment to be sensitive to the context of neighboring residential development; and

WHEREAS, existing redevelopment provisions in the Unified Development Code are not applicable for developments that require variances, thereby reducing potential economic and design improvements in the County; and

WHEREAS, the County recognizes the importance of updating its development regulations to be consistent with, and implement, the New Castle County Comprehensive Plan; and

WHEREAS, County Council has determined that the provisions of this Ordinance substantially advance, and are reasonably and rationally related to, legitimate government interests (i.e., promoting the health, safety, morals, convenience, order, prosperity and/or welfare of the present and future inhabitants of this State).

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

Section 1. *New Castle County Code* Chapter 40 (“Unified Development Code or “UDC”), Article 3 (“Use Regulations”), Division 40.03.100 (“Use Regulations”), is hereby amended by adding the material that is underscored, as set forth below:

Sec. 40.03.110. Use table.

Table 40.03.110 lists the type...

Table 40.03.110 A GENERAL USE TABLE										Table 40.03.110 B GENERAL USE TABLE							Table 40.03.110 C GENERAL USE TABLE	
Zoning District (Urban and Suburban- Transition Character) Y=permitted, N=prohibited, L=limited review, S=special use review, A=accessory,										Zoning District (Suburban and Special Character)							Additional Standards (all districts)	
Land Use	* TN	S T	M M	ON	OR	C R	B P	I	C N	*** S	S E	** N C	HI	EX	S R	Parking	Limited & Special Use Standards	
Commercial										Commercial							Commercial	
...Mixed use	L	N	N	L	L	L	N	N	L	N	N	N	N	N	N	Table 40.03.522	Section 40.03.318, Division 40.25.200	
Multifamily conversion	<u>L</u>	<u>N</u>	<u>N</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>N</u>	<u>N</u>	<u>L</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>Table 40.03.522</u>	<u>Section 40.03.340</u>	
Restaurants...	L	N	N	N	L	Y	L	L	Y	N	N	N	N	N	N	Table 40.03.522	Table 40.03.210, Division 40.25.200	
Public interest and special events	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	Table 40.03.522	Section 40.03.330	
Temporary miscellaneous sales	L	N	N	N	N	L	N	N	L	N	N	N	N	N	N	Table 40.03.522	Table 40.03.210, Section 40.03.331	
NOTES: * Refer to Article 25 for design standards for TN District. ** Refer to Section 40.02.241 for identification of permitted residential uses by specific NC zoning district. *** See Division 40.25.100 for Village and Hamlet Standards.																		

Section 2. *New Castle County Code* Chapter 40 (“Unified Development Code” or “UDC”), Article 3 (“Use Regulations”), Division 40.03.300 (“Additional limited and special use standards”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Sec. 40.03.318. Mixed uses

[All mixed uses shall meet the following requirements] Mixed use is intended to facilitate development that is planned, designed and managed as an integrated development comprised of residential and nonresidential uses oriented to a pedestrian precinct and

intended to provide convenient shopping, employment and residential opportunities while reducing vehicular trip generation. For all proposed mixed uses, the following apply:

- A. The mixed use development shall include a minimum of five (5) dwelling units comprising a minimum of twenty-five (25) percent or a maximum of ~~[fifty]~~seventy-five (~~[50]~~75) percent of the total gross floor area on the site.
- B. In addition to the residential requirements above, mixed use development shall include a minimum of three (3) different uses ~~[from at least two (2) of the following land use categories: Commercial retail and service, Section 40.33.240 (E); Office, Section 40.33.240 (L); Restaurant, Section 40.33.240 (K); Craft alcohol production establishment (CAPE), Section 40.33.240 (M); Institutional neighborhood, Section 40.33.230 (E); Public Service, Section 40.33.230 (H)]~~. Gas stations, single use (e.g. stand-alone or pad site) restaurants, and restaurants with drive through service ~~[shall]~~must not ~~[be permitted in]~~ exceed ten (10) percent of GFA within a mixed use development.
- C. Residential uses shall provide outdoor areas...
- D. In the OR and ON zoning districts, ~~[a minimum of sixty-seven (67) percent of the nonresidential gross floor area of the mixed use development]~~at least twenty-five percent (25%) of the total gross floor area shall consist of office uses. Developments proposing more than twenty-five percent (25%) of the total gross floor area as nonresidential must provide a minimum of fifty percent (50%) of the nonresidential GFA as office use(s).
- E. A CAPE shall include a tasting room...
- F. Loading areas shall not be oriented toward a public street...
- G. In districts where mixed uses are specifically permitted, a density bonus is contained in Table 40.04.110.
- ...

Sec. 40.03.340. Multifamily conversion.

Multifamily conversions are intended to facilitate and encourage the redevelopment of existing office and commercial sites and increase the diversity in housing opportunities in the county where supporting infrastructure exists. The following requirements apply to all multifamily conversions:

- A. A multifamily conversion is not permitted on a parcel that is within one thousand (1,000) feet of a Heavy Industry zoned parcel or a parcel with a Heavy Industry Use as defined in Section 40.33.270.C.
- B. Excluding mixed use developments, legally existing commercial or office GFA may be converted to apartments or residential condominiums subject to Section 40.31.711.

- C. A land development application that proposes new GFA as part of a multifamily conversion is reviewed under the standards for “other permitted use” in the underlying zoning district set forth in Table 40.04.110, and is reviewed in accordance with the process and standards for a Resubdivision Plan, a Minor Land Development Plans or a Major Land Development Plan.
- D. Multifamily conversion may yield one dwelling unit for every eight hundred (800) square feet of GFA. The average size of an apartment or residential condominium unit in a multifamily conversion must be at least eight hundred (800) square feet of GFA.
- E. At least two hundred (200) square feet of yard space, balcony, deck space or roof top area for each apartment or residential condominium unit must be provided.
- F. A multifamily conversion is required to provide Moderately Priced Dwelling Units in accordance with Article 7.

Section 3. *New Castle County Code* Chapter 40 (“Unified Development Code” or “UDC”), Article 7 (“Transfer of Development Rights and Other Incentives And Bonuses”), Division 40.07.500 (“Traditional Neighborhood Housing Program”), is hereby amended by adding the material that is underscored, as set forth below:

Sec. 40.07.510. Mandatory applicability.

Required Moderately Priced Dwelling Units (“MPDUs”). MPDUs shall be required subject to the following conditions.

- A. On all rezoning applications ...
- E. This Section shall not apply to the acreage ...
- F. On a multifamily conversion application proposing twenty-five (25) or more residential units, ten (10) percent of all units must be set aside as MPDUs.
- G. On a mixed use or transit oriented development application proposing one hundred (100) or more residential units, ten (10) percent of all units must be set aside as MPDUs.

...

Sec. 40.07.560. Affordability period and controls.

MPDUs established by a multifamily conversion, mixed use, or transit oriented development must remain subject to the restrictions contained in this Division for a fifteen (15) year affordability period calculated from the date of first sale or rental of each unit. All other MPDUs shall remain subject to the restrictions contained in this Division for a ten (10) year affordability period calculated from the date of first sale. All resales during the affordability period shall be subject to the following restrictions...

Section 4. *New Castle County Code* Chapter 40 (“Unified Development Code” or “UDC”), Article 7 (“Transfer of Development Rights and Other Incentives And Bonuses”), Division 40.07.600 (“Infill development bonus”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth

below:

Division 40.07.600. ~~[Infill-d]~~Development bonuses.

This Division provides incentives for ~~[infill and mixed-use type]~~ developments that combat sprawl, enhance the viability of older ~~[neighborhoods]~~commercial areas, provide employment opportunities, or encourage transit use.

Sec. 40.07.610. Eligibility.

~~[Areas designated by the Department for infill]~~ The following development types shall be eligible for a development bonus. [The infill development shall be for one (1) of five (5) types:]

A. ~~[Mixed uses development. Mixed uses sites are zoned CR, ON, OR, BP, or I. The frontage adjoining the site must be in nonresidential use for a total distance of one thousand (1,000) feet including the site.~~

B. ~~Redevelopment. Refer to Subsection 40.08.130.B.6 for qualification standards and the process for review and approval of redevelopment sites.]~~

Community Development. These sites are located in areas identified by the Comprehensive Plan as Community Development Areas.

~~[C]B.~~[Infill]Corridor Redevelopment. These sites are ~~[zoned S, ST, or TN. Individual properties shall have a site size able to accommodate twenty-five (25) dwelling units at the open space planned development]~~nonresidential zoned sites located in Type 1 Commercial Corridor Development Areas.

~~[D]C.~~Transit oriented infill. ...

~~[E]D.~~Employment infill. ...

Sec. 40.07.620. ~~[Mixed use bonus.~~

~~A mixed use development in a generally nonresidential area shall be permitted subject to an increase in the floor area as a result of permitting. In districts where mixed uses are specifically permitted, a bonus is contained in Table 40.04.110. If mixed uses are not permitted in the district, they shall be permitted as a bonus to encourage infill development.~~

A. ~~Uses with at grade parking. If the use incorporates at grade parking, the following shall be used to calculate the new intensity of use.~~

1. ~~The landscaped surface ratio shall be reduced by multiplying by eighty-five hundredths (0.85), while keeping the landscape planting requirements at the same number of plants as would have been the case without the area reduction. The reduced landscape surface ratio cannot be less than that required to protect natural resources, Table 40.05.420.~~

2. ~~The developer shall calculate the parking ratios for each use and follow Section 40.22.616 for reduced parking with mixed uses.~~

3. ~~The project shall be allowed one (1) additional story to exceed the floor area ratio by the area of that floor and to exceed the height requirement of Table 40.04.110. The floor area increase shall be measured at the top floor.~~

B. ~~Uses with structured parking.~~

1. ~~Shall conform to 1 and 2 above.~~

2. ~~The project shall be allowed two (2) additional stories to exceed the floor area ratio by the area of those floors, and to exceed the height requirement of Table 40.04.110. The floor area increase shall be measured at the top floor.]~~

Community Development incentive.

Except for uses identified in Section 40.33.270, a land development plan in an area identified as a Community Development Area and consistent with the Community Area Master Plan Key Recommendations in the Comprehensive Plan are eligible for the Community Development incentive. The following apply to land a development plan that includes the Community Development incentive:

A. A nonresidential land development plan is reviewed as a redevelopment plan under Section 40.08.130.B.6 without the requirement to demolish GFA.

B. The permitted density or floor area ratio is increased by fifteen (15) percent.

C. The minimum open space ratio or landscape surface ratio in Article 4, Table 40.04.110A is reduced to 0.15.

D. The development must include elements of building design, site design and amenities identified in the applicable Character Area set forth in Appendix 7.

...

Sec. 40.07.640. [Infill bonus]Corridor Redevelopment incentive.

[Infill development may receive an eight (8) percent bonus where the developer uses land that has remained undeveloped for a period of at least twenty-five (25) years, and there are no utility, transportation, or environmental constraints. The Department in coordination with the Historic Review Board shall use the following standards in determining whether to grant the bonus] Corridor Redevelopment occurs on developed nonresidential land identified by the Comprehensive Development Plan as a Type 1 Commercial Corridor Development Area. The following apply to land development plans that include the Corridor Redevelopment incentive:

A. [In no case shall the open space required by Article 5 be reduced] A nonresidential land development plan is reviewed as a redevelopment plan under Section 40.08.130.B.6 without the requirement to demolish GFA.

272 B. ~~[The site shall meet all capacity constraints of Article 5.]~~

273
274 ~~[C.]The development [scale, design, and landscaping is compatible and enhances the~~
275 ~~character of the neighborhood]must include elements of building design, site~~
276 ~~design and amenities identified in the applicable Character Area set forth in~~
277 ~~Appendix 7.~~
278

279 **Sec. 40.07.650. Transit oriented infill.**

280 A bonus for transit oriented development shall be provided as follows:

281
282 A. Rail transit oriented infill shall receive a bonus of up to thirty (30) percent to be
283 granted pursuant to the rules of this Section.

284
285 1. The development shall be zoned and built to Suburban Transition (ST),
286 Commercial Neighborhood (CN), or Commercial Regional (CR) standards,
287 except:

288
289 a. The ~~[maximum]~~minimum open space in Table 40.04.110 shall be reduced
290 ~~[from twenty-five (25) or thirty-five (35) percent to fifteen (15) or]by twenty-~~
291 ~~five (2[0]5) percent to accommodate the extra density.~~

292
293 b. Mixed uses within four hundred (400) feet ...

294
295 c. Multi-family developments shall meet

296
297 2. ~~The minimum parking for[The] mixed use, higher density, attached or multi-~~
298 ~~family units [shall have structured parking] is reduced by 12%.~~

299
300 3. The rail transit station ~~[shall]~~may have structured parking ~~[and may]~~
301 ~~incorporated [it] into a mixed use building. The Department may modify the~~
302 ~~mixed use requirements to provide the needed commercial and residential~~
303 ~~parking in close proximity to the station.~~

304
305 B. Bus transit oriented infill...

306
307
308 Section 5. *New Castle County Code* Chapter 40 ("Unified Development Code" or
309 "UDC"), Article 8 ("Nonconforming Situations"), Division 40.08.100 ("General
310 Regulations"), is hereby amended by adding the material that is underscored and deleting
311 the material that is bracketed and stricken, as set forth below:

312
313 **Sec. 40.08.130. Alterations, enlargements, or extensions.**

314
315 A. *Nonconforming use.* ...

316
317 B. *Nonconforming building, structure, or situation.* A nonconforming building, structure
318 or situation other than a nonconforming use may be enlarged, extended or replaced only
319 as provided below:

320
321 1. *Extension or enlargement...*

2. *Alteration.* ...

3. *Restoration.* ...

4. *Replacement or repair.* ...

5. *Reconstruction.* ...

6. *Redevelopment and Brownfields.*

a. *Purpose.* Redevelopment is intended to facilitate and encourage the continued viability of previously developed land by granting a credit for ~~[both extractive use sites, [and] Brownfields, [; and for sites with legally existing gross floor area (GFA) that has been demolished by more than fifty (50) percent of its GFA. New construction may be configured or located elsewhere on the site although] and nonconforming nonresidential sites.~~ The rehabilitation or restoration of existing structures is highly recommended. [Improvements to select design elements shall be incorporated that acknowledge the unique characteristics of each previously developed site. The record plan shall indicate that the plan has been reviewed and approved according to the redevelopment standards in this section with improvements to design elements noted on plan.] Redevelopment is also intended to facilitate and encourage the improvement of former or existing extractive use or Brownfield sites that may lack any current or prior GFA.~~[A site capacity analysis pursuant to Division 40.05.400 may be required to determine permitted GFA for extractive use sites.]~~

b. *Applicability.* ~~[The standards of this section are limited to r]~~ Redevelopment [to] of nonresidential uses and sites [are] is subject to the following: [The standards of this section shall apply only to sites that have been: (i) designated as a Brownfield; (ii) developed under the Former Code; (iii) developed prior to adoption of New Castle County development regulations; or, (iv) are former or existing extractive use sites.]

i. The site and all buildings on the site ~~[shall]~~ must be first evaluated for historical significance ~~[pursuant to]~~ under Article 15.

ii. The applicant ~~[shall be]~~ is permitted to utilize all ~~[of the]~~ legally established [square footage] GFA for the site ~~[provided that said square footage]~~ if the GFA is existing or has existed on the site. Unbuilt GFA may not be utilized.

iii. Except as otherwise provided in Subsection B.6.b.iv below, for Commercial Neighborhood (CN) and Office Neighborhood (ON) zoned sites, at least fifteen (15) percent of built GFA that is not determined to be historically significant must be demolished. For all other zoning districts, at least fifty (50) percent built GFA that is not determined to be historically significant must be demolished.

- iv. Legally existing GFA on extractive use, Brownfield, or nonresidential sites identified by the Comprehensive Plan as either a Community Development Area or Type 1 Commercial Corridor Development Area need not be demolished for the site to be eligible for redevelopment.
- v. For ~~[office or commercial]~~nonresidential zoned sites that are currently used for residential purposes and abut residentially zoned property, the applicant must provide the entire required buffer against the residential land.
- vi. The redevelopment of a site ~~[pursuant to]~~under Subsection 40.08.130 B.6. permits the continuation of certain nonconforming situations, but prohibits the creation of any new nonconformity or the expansion of an existing nonconformity. In the event a plan proposes development that does not otherwise comply with this Chapter ~~[resulting in an application for a variance, the provisions of Subsection 40.08.130 B.6. shall not be applicable and the owner/developer shall instead apply for all variances necessary to develop the property.]~~, the applicant may submit a variance application, if the plan includes elements of building design, site design and amenities identified in the applicable Character Area set forth in Appendix 7.
- vii. Levels of proportional compliance are required to meet or exceed the provisions provided for in Subsection B.6.e. In lieu of this section, an applicant may choose to redevelop the site in full compliance with the UDC.
- viii. For sites requiring fifty (50) or more parking spaces, the maximum parking permitted for a redevelopment plan is one hundred and fifteen (115) percent of the minimum parking required by this Chapter.
- ix. For land identified by the Comprehensive Development Plan as a Corridor Area, the property owner must include elements of building design, site design and amenities identified in the applicable Character Area set forth in Appendix 7.
- x. Excluding parking structures, Commercial Regional (CR) zoned land within one thousand (1,000) feet of a parcel with a passenger rail station can only be redeveloped as a permitted or limited use.
- xi. The record plan must indicate that the plan has been reviewed and approved according to the redevelopment standards in this section with improvements to design elements noted on plan.
- c. *Redevelopment plans.* Redevelopment plans shall be reviewed as minor or major land development plans as defined in Article 33 unless the following criteria apply:
- i. Minor redevelopment land development.

- (a) The plan proposes GFA...
- (b) The plan proposes credit ...
- (c) The creation of a business park or industrial park regardless of the number of lots or square footage ~~[unless it is in conflict with Subsection B.6.e.7].~~
- ii. Major redevelopment land development —With net increase.
- ~~[(a)]~~ The plan proposes credit for legally established GFA plus additional new GFA of greater than fifty thousand (50,000) square feet but not to exceed the permitted FAR in Table 40.04.110 and provided no special studies are needed.
- ~~[(b)]~~ ~~Major land development plans that are not subject to a rezoning may proceed directly to record plan submission following exploratory plan approval. A PLUS hearing shall be scheduled during the exploratory plan review stage.]~~
- d. *Review process...*
- e. *Design element improvements.* Improvements toward further code compliance...
- i. The exploratory sketch plan ~~[shall]~~must identify ...
- ii. The Department may require ...
- iii. For a Brownfield site, [T]the applicant [shall submit]must provide documentation from DNREC identifying and confirming the status ~~[Brownfield]~~of the site as part of the exploratory plan submission ~~[prior to review].~~
- iv. ~~[A site resource capacity analysis need not be conducted (see Section 40.05.050 A).]~~
- ~~[v.]~~ The redevelopment of a Brownfield site in a floodplain ~~[shall]~~must comply ...
- v[i]. [All-i]Impact fees [as]are only required for GFA that exceeds existing legally established GFA on the site [by Article 14 shall be waived] (see Article 14 [Table 40.14.210]).
- vi[i]. An operational analysis or a traffic impact study ~~[shall be]~~is required if requested by DeIDOT or the Department. Proposed development that exceeds the legally approved GFA is subject to DeIDOT transportation impact standards, and the County may limit or restrict development to less GFA if that is recommended by DeIDOT. As a result, DeIDOT may require transportation improvements as a

condition of its letter of no objection. For major plans or rezonings, [I]
if an existing Level of Service (LOS) is A, B, C, or D, the proposed
development may not cause that LOS to become E or F. If the
existing LOS is E, the proposed development may not cause that
LOS to become F.

vii[i]. The redevelopment of a site within six hundred sixty (660) feet ...

f. *Permitted uses for Brownfields.* The I (Industrial) zoning district office use restriction of Section 40.03.321 shall not apply. General office uses will be permitted without limitation. ~~[Mixed use development shall be permitted in the I zoning district subject to the same standards for mixed use in the OR zoning district including Section 40.03.318 and Tables 40.04.110 and 111.]~~ In the HI ~~[D]~~district, the applicant may utilize the standards for lot size and setbacks from the I district. All uses permitted in the I district ~~[except for mixed use]~~, including office use as enumerated above, shall be permitted in the HI district.

g. *Density bonuses.* A redevelopment density bonus in any zoning district not to exceed twenty-five (25) percent of the maximum nonresidential GFA or multifamily dwelling density allowed in Table 40.04.110 A or twenty-five (25) percent of the legally established nonresidential GFA or multifamily dwelling density on the site, whichever is greater, ~~[shall be]~~is permitted. Any redevelopment project that includes a density bonus as provided for in this Section shall be reviewed and evaluated ~~[pursuant to Section 40.25.410]~~ under Appendix 7, Guiding Principles.

h. *Annual report.* The Department ~~[and the Redevelopment Office]~~ shall provide County Council with an annual report on the use and effectiveness of the redevelopment section which shall be discussed at a Council Committee Meeting open to the public. The annual report may also recommend amendments to this Division and this Chapter based upon the success or failure of redevelopment plans to meet stated goals and objectives.

7. *Bridge reconstruction...*

TABLE 40.08.130 B Work Table to Calculate Value of Individual Design Element Improvements and Total Aggregate Percent Improvement for Redevelopment Land Development Plans					
(a) <i>Improvement Design Elements (at least four (4) separate design element improvements shall be made.)</i>	(b) <i>UDC Site Specific Requirements and Standards</i>	(c) <i>Current or Existing Situation</i>	(d) <i>Proposed Improvement to Existing Situation</i>	(e) <i>Percent Improvement (d/b)</i>	(f) <i>Comments</i>
Parking					
Number of required spaces...					
* Architectural					
** Guiding Principles					
* Energy efficient design					
Other					
Other					
Other					
<i>Total Aggregate Percent Improvement (column e), must exceed four hundred (400) percent =</i>					
<i>* Maximum allowable percent improvement for these elements is 50%.</i> <i>** Not applicable for plans subject to Sections 40.08.130.B.6.b.vi and ix.</i>					

Section 6. *New Castle County Code* Chapter 40 (“Unified Development Code” or “UDC”), Article 22 (“Drainage, Utilities, Septic Systems, Parking, Loading, and Lighting”), Division 40.22.610 (“Parking and Loading”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Sec. 40.22.615. Parking Reduction

Where a unique situation is proposed or exists which will not generate the need for as many parking spaces as required by this Article, the applicant may petition the Department to authorize such reduction. The request for a parking reduction shall include a parking demand and needs analysis (PDNA) as described in this subsection which shall be submitted to the Department for review and approval. The Department

shall be authorized to grant a reduction to the parking requirements when a PDNA shows that the requirements, as applied to the particular use, would exceed the minimum necessary to conveniently serve the customers, clients, visitors and employees. ~~The components of a~~ A PDNA must include ~~[at least]~~ the following components:

- A. A narrative discussion ...
- D. Proposed means of parking/traffic mitigation ...
- E. With the exception of plans where the Comprehensive Plan identifies a site as being in either a Type 1 Commercial Corridor Development or Community Development Area, and includes elements of building design, site design and amenities identified in the applicable Character Area set forth in Appendix 7, ~~[T]he number of required parking spaces reduced by an approved PDNA, [no longer required as a result of the PDNA analysis and the uses proposed]~~ must ~~[still]~~ be shown on-site as potential parking to accommodate future parking needs. ~~[should]~~ If the proposed uses identified in the PDNA change ~~[and]~~ the reductions granted will no longer be applicable.

Section 7. *New Castle County Code* Chapter 40 ("Unified Development Code" or "UDC"), Article 31 ("Procedures and Administration"), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Sec. 40.31.320. Applications generally.

- A. *Forms...*
- E. *Withdrawal of application. ...*
- F. *Public notice of land development plans.*
 - 1. *Online notice.* The Department shall post the receipt of all major and minor land development plans and Resubdivision Plans on a web page established for legal notices on the County's website within five (5) days of the receipt of a completed application.
 - 2. *Posted notice.* The applicant shall erect a posted notice sign for all major and minor land development plans and Resubdivision Plans within ten (10) days of submission of a completed initial exploratory sketch plan to the Department. ...

Sec. 40.31.711. Resubdivision plan.

Proposed revisions to previously recorded plans and previously platted parcels that will not result in any new lots or additional gross floor area shall be considered resubdivisions and shall be reviewed as minor plans for any of the following purposes:

- A. Lot line changes....
- F. Amendments to notes...

580
581 G. Multifamily conversions proposed under Section 40.03.340.B.
582 ...
583

584 **Sec. 40.31.716. Record plan modification.**
585

586 The General Manager of the Department shall have the authority to approve record
587 plan modifications to correct errors and to allow minor revisions to previously-recorded
588 plans.
589

590 A. A record plan modification shall be permitted for any of the following purposes.
591

- 592 1. To correct typographical errors or missing or incorrect bearings and distances
593 or building restriction lines.
594
595 2. To adjust lot lines to correct surveying errors or omissions.
596
597 3. To adjust plan phasing for plans that are of a single use category, with the
598 exception of mixed use projects.
599
600 4. To correct site data and plan notes that were made in error.
601
602 5. To eliminate or relocate any private easements depicted on a record plan.
603
604 6. Making changes to open space or common facilities by maintenance
605 organizations, condominium or third-party conservancies (Section
606 40.27.540.B).
607
608 7. Relocating nonresidential accessory structures, waste storage, and HVAC
609 equipment (Section 40.03.430 and Section 40.03.431).
610
611 8. Converting temporary outdoor restaurant seating established in Section
612 40.03.329 to permanent outdoor seating.
613
614
615

616 B. Record plan modifications shall be reviewed as minor plans. ...
617

618 **Sec. 40.31.820. Land Development Improvement Agreement (LDIA).**
619

620 Except for minor residential subdivisions or plans for which a governmental entity is
621 the applicant or property owner, all improvements contemplated in minor or major land
622 development plans as required by this Chapter for sewer, drainage and detention, as
623 well as for other improvements such as stormwater management facilities, parking,
624 curbing, paving, sidewalks, open space improvements and common facilities, property
625 monuments, earthwork, lighting, landscaping and bufferyards (except for replacement of
626 on-lot residential landscaping), and any other improvements required by this Chapter
627 ("the Improvements") shall be subject to a performance guarantee.
628

629 A. The developer's engineer shall submit an itemized cost estimate for [~~water,~~
630 ~~sewer, storm drainage, detention, lighting, any off-site~~] the I[i]mprovements, [and
631 any other improvements required by this Chapter]. The designers of the

~~[landscapes, buffers, and/or other i]~~Improvements shall submit cost estimates. Valid bids from contractors may be substituted for cost estimates. The Department shall review all bids, checking for consistency with similar bids or public bids to ensure they are reasonable.

B. In the alternative, ~~[the]~~a formula as established by the Department may be used in lieu of cost estimates.

C. The developer ~~[shall]~~ must establish a performance guarantee acceptable to the County to guarantee and warrant the costs of constructing ~~[and/]~~or reconstructing all improvements shown on the record plan. The performance guarantee shall be provided in one ~~[(1)]~~of two ~~[(2)]~~ ways:

1. The developer may submit the performance guarantee prior to plan recordation. In accordance with the construction phasing plan, the performance guarantee may be tied to the cost of the ~~[i]~~Improvements for phases of the minor or major land development plans, as shown on such plans, in which case a surety in the amount of one hundred twenty (120) percent for a particular phase ~~[shall]~~must be available upon recordation of the record plan and subsequent phase sureties posted at the time of pre-construction request or building permit; or

2. In lieu of Subsection C.1, the developer ~~[shall]~~must, prior to plan recordation, submit a performance guarantee in the sum of five thousand dollars (\$5,000.00). The developer shall then submit the full performance guarantee under Subsection C.1., prior to the preconstruction meeting or building permit application. An annual administrative fee ~~[of two hundred fifty dollars (\$250.00) shall be]~~ is required in an amount set forth in Appendix 2 until the full performance guarantee is provided.

D. The performance guarantee ~~[shall]~~must remain posted with the Department until such time that all open space and common facilities have been inspected and receive final approval and in accordance with the construction phasing plan. The amount of the surety shall be required ~~[and determined]~~ by the Department in the amount of one hundred twenty (120) percent of the ~~[cost estimates and/or the cost of completing the open space and common facilities and in accordance with the construction phasing plan]~~dollar amount calculated under Subsection A or B above.

1. ~~[The surety shall be reduced to the amount of the maintenance guarantee as outlined below and the remainder returned to the developer after the completed work has been]~~ After all open space and common facilities have been constructed and approved by the Departments of Public Works and Land Use, the surety may be reduced or released.

2. [The]A maintenance guarantee is required in an amount [will be] equal to twenty (20) percent of the [cost of constructing the stormwater management facilities] performance guarantee provided under Subsection A or B above. [and shall serve as the maintenance guarantee that a]All [i]Improvements [are]except for landscaping must be free from defects for a minimum [of five (5) years]period of time after the date of the Department of Public Works' inspection and acceptance of the final

improvement to be constructed. For non-residential projects, the minimum period is three (3) years; for residential projects, five (5) years. The Department of Public Works may extend the maintenance guarantee period as deemed necessary by the General Manager as defects are discovered. The purpose of this surety is to ensure that the facilities are constructed as designed and ~~constructed to~~ function as intended.

3. All reductions in the amount or releases of the letter of credit or other surety ~~[shall]~~ must be approved by the General Manager of the Department of Public Works.
- E. Each ~~[surety]~~ performance guarantee provided prior to plan recordation ~~[shall]~~ must be for a period of not less than three (3) years, unless a longer time is requested by the Department.
- F. The bond, letter of credit or other surety ~~[shall]~~ must be executed by the applicant and a corporate surety or financial institution licensed to do business in the State that is not associated with the developer.
- G. Prior to the approval of a minor or major land development plan, the LDIA must be reviewed and approved by the County and recorded in the Office of the Recorder of Deeds.

Section 8. *New Castle County Code* Chapter 40 (Unified Development Code or "UDC"), Article 33 ("Definitions"), Division 40.33.300 ("General definitions"), is hereby amended by adding the material that is underscored, as set forth below:

Division 40.33.300. General definitions.

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

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

Minor land development. A plan that proposes one (1) or more of the following:

- A. A subdivision of land resulting in five (5) lots or less and not creating new street rights-of-way.
- B. Except for single-family dwellings and accessory structures ...
- C. Any major utility except electric power generating facilities. ...
- D. A minor utility that is...
- E. Large scale solar energy systems.

Motor vehicle. For purposes of Section 40.03.440...

Mulch operations. A process that results in a product ...

734 *Multifamily Conversion.* The conversion of office or commercial GFA to apartments or
735 residential condominium units.

736
737 *Multi-modal transportation.* The availability or use of more than one ...

738
739 *National Geodetic Vertical Datum (NGVD).* Elevations referenced ...

740
741 Section 9. Consistent with Comprehensive Development Plan. New Castle County
742 Council finds that the provisions of this Ordinance are consistent with the spirit and intent
743 of the New Castle County Comprehensive Development Plan.

744
745 Section 10. Inconsistent Ordinances and Resolutions Repealed. All ordinances or
746 parts of ordinances and all resolutions or parts of resolutions that may be in conflict
747 herewith are hereby repealed except to the extent they remain applicable to land use
748 matters reviewed under previous Code provisions as provided in Chapter 40 of the *New*
749 *Castle County Code*.

750
751 Section 11. Severability. The provisions of this Ordinance shall be severable. If
752 any provision of this Ordinance is found by any court of competent jurisdiction to be
753 unconstitutional or void, the remaining provisions of this Ordinance shall remain valid,
754 unless the court finds that that the valid provisions of this Ordinance are so essentially
755 and inseparably connected with, and so dependent upon, the unconstitutional or void
756 provision that it cannot be presumed that County Council would have enacted the
757 remaining valid provisions, without the unconstitutional or void one, or unless the court
758 finds that the remaining valid provisions, standing alone, are incomplete and incapable of
759 being executed in accordance with the County Council's intent. If any provision of this
760 Ordinance or any zoning map or portion thereof is found to be unconstitutional or void, all
761 applicable former ordinances, resolutions, zoning maps or portions thereof shall become
762 applicable and shall be considered as continuations thereof as not as new enactments
763 regardless if severability is possible.

764
765 Section 12. Effective Date. This Ordinance shall become effective immediately
766 upon its adoption by County Council and approval by the County Executive or as
767 otherwise provided in 9 *Del. C.* § 1156 and shall only apply to Land Use applications
768 submitted after such date(s) unless the applicant by written request agrees to submit to
769 the provisions of this Ordinance.

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

Sec. 40.03.110. This amendment establishes which zoning districts permit Multifamily Conversions.

Sec. 40.03.318. This amendment clarifies that the density bonus for mixed use development is located in Table 40.04.110, allows ten percent of a mixed use development to gas stations, single use (e.g. stand-alone or pad site) restaurants, and restaurants with drive through service, adjusts the minimum percent of nonresidential gross floor area from 67% to 50%, and requires a minimum of 25% of GFA to consist of office uses in the OR and ON zoning districts.

Sec. 40.03.340. This amendment establishes Limited Use standards for Multifamily Conversions.

Sec. 40.07.510. This amendment requires 10% of all units be MPDUs on any multifamily conversion application proposing 25 or more residential units.

Sec. 40.07.560. This amendment sets an affordability period for MPDUs established by a Multifamily conversion to be 15 years.

Sec. 40.07.610. This amendment eliminates redundant language regarding Mixed Use and Redevelopment bonuses, establishes eligibility for density bonuses associated with community development and replaces the infill bonus with the Type 1 Commercial Corridor Development Area bonus.

Sec. 40.07.620. This amendment eliminates mixed use bonus language that is addressed elsewhere in the code. This amendment also establishes a bonus and standards for development in areas identified a Community Development Area and consistent with the Community Area Master Plan Key Recommendations in the Comprehensive Plan.

Sec. 40.07.640. This amendment redefines the Infill bonus to be the Corridor Redevelopment incentive. This amendment also establishes review standards and limits the bonus locations to the Type 1 Commercial Corridor Development Areas identified in the Comprehensive Plan.

Sec. 40.08.130. This amendment clarifies the section caption, clarifies that nonconforming uses are not included among the nonconforming situations that may be

expanded, clarifies that enlargements less than 1,000 square feet GFA must comply with this Chapter, provides that enlargements in certain districts greater than 5,000 square feet GFA must be brought into proportional compliance, expands the use of redevelopment provisions to CN and ON sites demolished more than fifteen percent of GFA, and breaks up large paragraphs into subparagraphs. Paragraph B.6 clarifies that nonresidential sites rendered nonconforming may also qualify for redevelopment, that extractive use and brownfield sites without demolished GFA may qualify, that—when required—only fifteen percent of GFA must be demolished in CN and ON zoned sites, that the percentage of GFA to be demolished is determined exclusive of historically significant GFA to promote historic preservation, provides that redevelopment plans may now seek variances if the plan complies with Appendix 7 with respect to design principles for the Character Area, and establishes a parking maximum. Table 40.08.130 is expanded to include Guiding Principles and energy efficient design. Additionally, this amendment clarifies that GFA proposed by a redevelopment plan exceeding the legally approved GFA is subject to traffic impact standard, and that DelDOT may require transportation improvements for major plans or rezonings that decrease Level of Service to a certain extent.

Sec. 40.22.615. This amendment provides that parking spaces eliminated as a result of the PDNA analysis on a nonresidential development plan need not be depicted on a plan where certain requirements are met.

Sec. 40.31.320. This amendment expands online and posted notification requirements to include Resubdivision Plans.

Sec. 40.31.711. This amendment identifies multifamily conversions proposed under Section 40.03.340.B as Resubdivision Plans.

Sec 40.31.820. This amendment clarifies that 20% of the performance guarantee is to be reserved as a maintenance guarantee, that the developer may either reduce its surety or provide a new surety to serve as the maintenance guarantee, references Appendix 2 for the annual fee and provides minor edits for readability.

Sec. 40.33.300. This amendment defines multifamily conversions and revises the definition for Minor Land Development to include Large Scale Solar Energy Systems.

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

Sec. 40.03.318. This amendment clarifies that in the OR and ON zoning districts, at least twenty-five percent (25%) of the total gross floor area must consist of office uses. For mixed use developments proposing more than twenty-five percent (25%) of the total gross floor area as nonresidential a minimum of fifty percent (50%) of the nonresidential GFA must consist of office uses.

Sec. 40.07.510. This amendment requires 10% of all units be MPDUs on any mixed use and transit oriented development proposing 100 or more residential units.

Sec. 40.07.560. This amendment sets an affordability period for MPDUs established by a mixed use or transit oriented development to be 15 years.

Sec. 40.07.650. This amendment revises the transit oriented infill bonus for rail transit oriented development to be allowed in Commercial Neighborhood (CN) and Commercial Regional (CR) zoned land. This amendment reduces the minimum open space requirement for TOD development by 25%. This amendment also removes the requirement rail transit oriented development with mixed use, higher density, attached or multi-family units have structured parking and reduces the minimum parking requirements by 12% for those types of developments.

Sec. 40.08.130. This amendment requires that the redevelopment of Commercial Regional (CR) zoned parcels greater than fifteen (15) acres in size, and within two thousand (2,000) feet of a passenger rail station must be developed as mixed use.

Sec 40.31.716. This amendment allows maintenance organizations, condominium or third-party conservancies to make changes to open space or common facilities through the recordation of a Record Plan Modification. This amendment also allows nonresidential uses to relocate accessory nonresidential structures and convert temporary seating through the recordation of a Record Plan Modification

Sec 40.31.820. This amendment sets the minimum maintenance guaranteed period for nonresidential projects at 3 years.

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

ORDINANCE NO. 24-057

TO AMEND NEW CASTLE COUNTY CODE CHAPTER 40 (“UNIFIED DEVELOPMENT CODE” OR “UDC”), ARTICLE 3 (“USE REGULATIONS”), ARTICLE 7 (“TRANSFER OF DEVELOPMENT RIGHTS AND OTHER INCENTIVES AND BONUSES”), ARTICLE 8 (“NONCONFORMING SITUATIONS”), ARTICLE 22 (“DRAINAGE, UTILITIES, SEPTIC SYSTEMS, PARKING, LOADING, AND LIGHTING”), ARTICLE 31 (“PROCEDURES AND ADMINISTRATION”) AND ARTICLE 33 (“DEFINITIONS”), REGARDING DEVELOPMENT AND REDEVELOPMENT

WHEREAS, County Council adopted Substitute No. 2 to Ordinance No. 22-024 as amended by Floor Amendment No. 1 (“New Castle County Comprehensive Plan” or “the Ordinance”), on July 26, 2022, and the County Executive approved the Ordinance on August 4, 2022; and

WHEREAS, the Concord Pike (US 202) Corridor Master Plan and the New Castle County Comprehensive Plan identify the need for revisions to the redevelopment provisions in the Unified Development Code and recommend context sensitive development design that is consistent with the Guiding Principles for Development; and

WHEREAS, the New Castle County Comprehensive Plan encourages redevelopment of industrial land, strip malls, office parks, and other “greyfields” to strengthen community cohesion, environmental quality, fiscal productivity, and quality of life; and

WHEREAS, the New Castle County Comprehensive Plan calls on the County to enact land use policies and regulations that incentivize infill and redevelopment in and around job centers; and

WHEREAS, the New Castle County Comprehensive Plan guides development and redevelopment to be sensitive to the context of neighboring residential development; and

WHEREAS, existing redevelopment provisions in the Unified Development Code are not applicable for developments that require variances, thereby reducing potential economic and design improvements in the County; and

WHEREAS, the County recognizes the importance of updating its development regulations to be consistent with, and implement, the New Castle County Comprehensive Plan; and

WHEREAS, County Council has determined that the provisions of this Ordinance substantially advance, and are reasonably and rationally related to, legitimate government interests (i.e., promoting the health, safety, morals, convenience, order, prosperity and/or welfare of the present and future inhabitants of this State).

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

Section 1. *New Castle County Code* Chapter 40 (“Unified Development Code or “UDC”), Article 3 (“Use Regulations”), Division 40.03.100 (“Use Regulations”), is hereby amended by adding the material that is underscored, as set forth below:

Sec. 40.03.110. Use table.

Table 40.03.110 lists the type...

Table 40.03.110 A GENERAL USE TABLE										Table 40.03.110 B GENERAL USE TABLE							Table 40.03.110 C GENERAL USE TABLE		
Zoning District (Urban and Suburban- Transition Character) Y=permitted, N=prohibited, L=limited review, S=special use review, A=accessory,										Zoning District (Suburban and Special Character)							Additional Standards (all districts)		
Land Use	* TN	S T	M M	ON	OR	C R	B P	I	C N	*** S	S E	** N C	HI	EX	S R	Parking	Limited & Special Use Standards		
Commercial										Commercial							Commercial		
...Mixed use	L	N	N	L	L	L	N	N	L	N	N	N	N	N	N	Table 40.03.522	Section 40.03.318, Division 40.25.200		
<u>Multifamily conversion</u>	<u>L</u>	<u>N</u>	<u>N</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>N</u>	<u>N</u>	<u>L</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>Table 40.03.522</u>	<u>Section 40.03.340</u>		
Restaurants...	L	N	N	N	L	Y	L	L	Y	N	N	N	N	N	N	Table 40.03.522	Table 40.03.210, Division 40.25.200		
Public interest and special events	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	Table 40.03.522	Section 40.03.330		
Temporary miscellaneous sales	L	N	N	N	N	L	N	N	L	N	N	N	N	N	N	Table 40.03.522	Table 40.03.210, Section 40.03.331		
NOTES: * Refer to Article 25 for design standards for TN District. ** Refer to Section 40.02.241 for identification of permitted residential uses by specific NC zoning district. *** See Division 40.25.100 for Village and Hamlet Standards.																			

Section 2. *New Castle County Code* Chapter 40 (“Unified Development Code” or “UDC”), Article 3 (“Use Regulations”), Division 40.03.300 (“Additional limited and special use standards”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Sec. 40.03.318. Mixed uses

[All mixed uses shall meet the following requirements] Mixed use is intended to facilitate development that is planned, designed and managed as an integrated development comprised of residential and nonresidential uses oriented to a pedestrian precinct and

intended to provide convenient shopping, employment and residential opportunities while reducing vehicular trip generation. For all proposed mixed uses, the following apply:

- A. The mixed use development shall include a minimum of five (5) dwelling units comprising a minimum of twenty-five (25) percent or a maximum of ~~[fifty]~~seventy-five (~~[50]~~75) percent of the total gross floor area on the site.
- B. In addition to the residential requirements above, mixed use development shall include a minimum of three (3) different uses ~~[from at least two (2) of the following land use categories: Commercial retail and service, Section 40.33.240 (E); Office, Section 40.33.240 (L); Restaurant, Section 40.33.240 (K); Craft alcohol production establishment (CAPE), Section 40.33.240 (M); Institutional neighborhood, Section 40.33.230 (E); Public Service, Section 40.33.230 (H)]~~. Gas stations, single use (e.g. stand-alone or pad site) restaurants, and restaurants with drive through service ~~[shall]~~must not ~~[be permitted in]~~ exceed ten (10) percent of GFA within a mixed use development.
- C. Residential uses shall provide outdoor areas...
- D. In the OR and ON zoning districts, ~~[a minimum of sixty-seven (67) percent of the nonresidential gross floor area of the mixed use development]~~at least 25 percent (25%) of the total gross floor area and at least 50 percent (50%) of the nonresidential gross floor area of the mixed use development shall consist of office uses.
- E. A CAPE shall include a tasting room...
- F. Loading areas shall not be oriented toward a public street...
- G. In districts where mixed uses are specifically permitted, a density bonus is contained in Table 40.04.110.
- ...

Sec. 40.03.340. Multifamily conversion.

Multifamily conversions are intended to facilitate and encourage the redevelopment of existing office and commercial sites and increase the diversity in housing opportunities in the county where supporting infrastructure exists. The following requirements apply to all multifamily conversions:

- A. A multifamily conversion is not permitted on a parcel that is within one thousand (1,000) feet of a Heavy Industry zoned parcel or a parcel with a Heavy Industry Use as defined in Section 40.33.270.C.
- B. Excluding mixed use developments, legally existing commercial or office GFA may be converted to apartments or residential condominiums subject to Section 40.31.711.

- C. A land development application that proposes new GFA as part of a multifamily conversion is reviewed under the standards for "other permitted use" in the underlying zoning district set forth in Table 40.04.110, and is reviewed in accordance with the process and standards for a Resubdivision Plan, a Minor Land Development Plans or a Major Land Development Plan.
- D. Multifamily conversion may yield one dwelling unit for every eight hundred (800) square feet of GFA. The average size of an apartment or residential condominium unit in a multifamily conversion must be at least eight hundred (800) square feet of GFA.
- E. At least two hundred (200) square feet of yard space, balcony, deck space or roof top area for each apartment or residential condominium unit must be provided.
- F. A multifamily conversion is required to provide Moderately Priced Dwelling Units in accordance with Article 7.

Section 3. *New Castle County Code* Chapter 40 ("Unified Development Code" or "UDC"), Article 7 ("Transfer of Development Rights and Other Incentives And Bonuses"), Division 40.07.500 ("Traditional Neighborhood Housing Program"), is hereby amended by adding the material that is underscored, as set forth below:

Sec. 40.07.510. Mandatory applicability.

Required Moderately Priced Dwelling Units ("MPDUs"). MPDUs shall be required subject to the following conditions.

- A. On all rezoning applications ...
- E. This Section shall not apply to the acreage ...
- F. On a multifamily conversion application proposing twenty-five (25) or more residential units, ten (10) percent of all units must be set aside as MPDUs.

...

Sec. 40.07.560. Affordability period and controls.

MPDUs shall remain subject to the restrictions contained in this division for a ten (10) year affordability period calculated from the date of first sale. MPDUs established by a multifamily conversion must remain subject to the restrictions contained in this division for a fifteen (15) year affordability period calculated from the date of first sale or rental of each unit. All resales during the affordability period shall be subject to the following restrictions...

Section 4. *New Castle County Code* Chapter 40 ("Unified Development Code" or "UDC"), Article 7 ("Transfer of Development Rights and Other Incentives And Bonuses"), Division 40.07.600 ("Infill development bonus"), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Division 40.07.600. ~~[Infill-d]~~Development bonuses.

This Division provides incentives for ~~[infill and mixed-use type]~~ developments that combat sprawl, enhance the viability of older ~~[neighborhoods]~~commercial areas, provide employment opportunities, or encourage transit use.

Sec. 40.07.610. Eligibility.

~~[Areas designated by the Department for infill]~~ The following development types shall be eligible for a development bonus. [The infill development shall be for one (1) of five (5) types:]

- A. ~~[Mixed uses development. Mixed uses sites are zoned CR, ON, OR, BP, or I. The frontage adjoining the site must be in nonresidential use for a total distance of one thousand (1,000) feet including the site.~~
- B. ~~Redevelopment. Refer to Subsection 40.08.130.B.6 for qualification standards and the process for review and approval of redevelopment sites.]~~

Community Development. These sites are located in areas identified by the Comprehensive Plan as Community Development Areas.

~~[G]B.~~[Infill]Corridor Redevelopment. These sites are ~~[zoned S, ST, or TN. Individual properties shall have a site size able to accommodate twenty-five (25) dwelling units at the open space planned development]~~nonresidential zoned sites located in Type 1 Commercial Corridor Development Areas.

~~[D]C.~~Transit oriented infill. ...

~~[E]D.~~Employment infill. ...

Sec. 40.07.620. ~~[Mixed use bonus.~~

~~A mixed use development in a generally nonresidential area shall be permitted subject to an increase in the floor area as a result of permitting. In districts where mixed uses are specifically permitted, a bonus is contained in Table 40.04.110. If mixed uses are not permitted in the district, they shall be permitted as a bonus to encourage infill development.~~

- A. ~~Uses with at-grade parking. If the use incorporates at-grade parking, the following shall be used to calculate the new intensity of use.~~

- 1. ~~The landscaped surface ratio shall be reduced by multiplying by eighty-five hundredths (0.85), while keeping the landscape planting requirements at the same number of plants as would have been the case without the area reduction. The reduced landscape surface ratio cannot be less than that required to protect natural resources, Table 40.05.420.~~

- 2. ~~The developer shall calculate the parking ratios for each use and follow Section 40.22.616 for reduced parking with mixed uses.~~

3. ~~The project shall be allowed one (1) additional story to exceed the floor area ratio by the area of that floor and to exceed the height requirement of Table 40.04.110. The floor area increase shall be measured at the top floor.~~

~~B. Uses with structured parking.~~

1. ~~Shall conform to 1 and 2 above.~~

2. ~~The project shall be allowed two (2) additional stories to exceed the floor area ratio by the area of those floors, and to exceed the height requirement of Table 40.04.110. The floor area increase shall be measured at the top floor.]~~

Community Development incentive.

Except for uses identified in Section 40.33.270, a land development plan in an area identified as a Community Development Area and consistent with the Community Area Master Plan Key Recommendations in the Comprehensive Plan are eligible for the Community Development incentive. The following apply to land a development plan that includes the Community Development incentive:

- A. A nonresidential land development plan is reviewed as a redevelopment plans under Section 40.08.130.B.6 without the requirement to demolish GFA.
- B. The permitted density or floor area ratio is increased by fifteen (15) percent.
- C. The minimum open space ratio or landscape surface ratio in Article 4, Table 40.04.110A is reduced to 0.15.
- D. The development must include elements of building design, site design and amenities identified in the applicable Character Area set forth in Appendix 7.

...

Sec. 40.07.640. [Infill bonus]Corridor Redevelopment incentive.

~~[Infill development may receive an eight (8) percent bonus where the developer uses land that has remained undeveloped for a period of at least twenty-five (25) years, and there are no utility, transportation, or environmental constraints. The Department in coordination with the Historic Review Board shall use the following standards in determining whether to grant the bonus]~~ Corridor Redevelopment occurs on developed nonresidential land identified by the Comprehensive Development Plan as a Type 1 Commercial Corridor Development Area. The following apply to land development plans that include the Corridor Redevelopment incentive:

- A. ~~[In no case shall the open space required by Article 5 be reduced]~~ A nonresidential land development plan is reviewed as a redevelopment plan under Section 40.08.130.B.6 without the requirement to demolish GFA.
- B. ~~[The site shall meet all capacity constraints of Article 5.]~~

~~[C.]The development [scale, design, and landscaping is compatible and enhances the character of the neighborhood]must include elements of building design, site design and amenities identified in the applicable Character Area set forth in Appendix 7.~~

Section 5. *New Castle County Code* Chapter 40 (“Unified Development Code” or “UDC”), Article 8 (“Nonconforming Situations”), Division 40.08.100 (“General Regulations”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Sec. 40.08.130. Alterations, enlargements, or extensions.

A. Nonconforming use. ...

B. Nonconforming building, structure, or situation. A nonconforming building, structure or situation other than a nonconforming use may be enlarged, extended or replaced only as provided below:

1. *Extension or enlargement...*

2. *Alteration.* ...

3. *Restoration.* ...

4. *Replacement or repair.* ...

5. *Reconstruction.* ...

6. *Redevelopment and Brownfields.*

a. *Purpose.* Redevelopment is intended to facilitate and encourage the continued viability of previously developed land by granting a credit for ~~[both] extractive use sites, [and] Brownfields, [; and for sites with legally existing gross floor area (GFA) that has been demolished by more than fifty (50) percent of its GFA. New construction may be configured or located elsewhere on the site although]~~ and nonconforming nonresidential sites. The rehabilitation or restoration of existing structures is highly recommended. [Improvements to select design elements shall be incorporated that acknowledge the unique characteristics of each previously developed site. The record plan shall indicate that the plan has been reviewed and approved according to the redevelopment standards in this section with improvements to design elements noted on plan.] Redevelopment is also intended to facilitate and encourage the improvement of former or existing extractive use or Brownfield sites that may lack any current or prior GFA. ~~[A site capacity analysis pursuant to Division 40.05.400 may be required to determine permitted GFA for extractive use sites.]~~

b. *Applicability.* ~~[The standards of this section are limited to r]~~ Redevelopment [te]of nonresidential uses and sites [are]is subject to the following:[-. The standards of this section shall apply only to sites that have been: (i) designated as a Brownfield; (ii) developed under the Former Code; (iii)

developed prior to adoption of New Castle County development regulations;
or, (iv) are former or existing extractive use sites.]

- i. The site and all buildings on the site ~~[shall]~~ must be first evaluated for historical significance ~~[pursuant to]~~ under Article 15.
- ii. The applicant ~~[shall be]~~ is permitted to utilize all ~~[of the]~~ legally established ~~[square footage]~~ GFA for the site ~~[provided that said square footage]~~ if the GFA is existing or has existed on the site. Unbuilt GFA may not be utilized.
- iii. Except as otherwise provided in Subsection B.6.b.iv below, for Commercial Neighborhood (CN) and Office Neighborhood (ON) zoned sites, at least fifteen (15) percent of built GFA that is not determined to be historically significant must be demolished. For all other zoning districts, at least fifty (50) percent built GFA that is not determined to be historically significant must be demolished.
- iv. Legally existing GFA on extractive use, Brownfield, or nonresidential sites identified by the Comprehensive Plan as either a Community Development Area or Type 1 Commercial Corridor Development Area need not be demolished for the site to be eligible for redevelopment.
- v. For ~~[office or commercial]~~ nonresidential zoned sites that are currently used for residential purposes and abut residentially zoned property, the applicant must provide the entire required buffer against the residential land.
- vi. The redevelopment of a site ~~[pursuant to]~~ under Subsection 40.08.130 B.6. permits the continuation of certain nonconforming situations, but prohibits the creation of any new nonconformity or the expansion of an existing nonconformity. In the event a plan proposes development that does not otherwise comply with this Chapter ~~[resulting in an application for a variance, the provisions of Subsection 40.08.130 B.6. shall not be applicable and the owner/developer shall instead apply for all variances necessary to develop the property].~~ the applicant may submit a variance application, if the plan includes elements of building design, site design and amenities identified in the applicable Character Area set forth in Appendix 7.
- vii. Levels of proportional compliance are required to meet or exceed the provisions provided for in Subsection B.6.e. In lieu of this section, an applicant may choose to redevelop the site in full compliance with the UDC.
- viii. For sites requiring fifty (50) or more parking spaces, the maximum parking permitted for a redevelopment plan is one hundred and fifteen (115) percent of the minimum parking required by this Chapter.

- ix. For land identified by the Comprehensive Development Plan as a Corridor Area, the property owner must include elements of building design, site design and amenities identified in the applicable Character Area set forth in Appendix 7.
- x. The record plan must indicate that the plan has been reviewed and approved according to the redevelopment standards in this section with improvements to design elements noted on plan.
- c. *Redevelopment plans.* Redevelopment plans shall be reviewed as minor or major land development plans as defined in Article 33 unless the following criteria apply:
- i. Minor redevelopment land development.
- (a) The plan proposes GFA...
- (b) The plan proposes credit ...
- (c) The creation of a business park or industrial park regardless of the number of lots or square footage ~~[unless it is in conflict with Subsection B.6.e.7].~~
- ii. Major redevelopment land development —With net increase.
- ~~[(a)]~~ The plan proposes credit for legally established GFA plus additional new GFA of greater than fifty thousand (50,000) square feet but not to exceed the permitted FAR in Table 40.04.110 and provided no special studies are needed.
- ~~[(b)]~~ ~~Major land development plans that are not subject to a rezoning may proceed directly to record plan submission following exploratory plan approval. A PLUS hearing shall be scheduled during the exploratory plan review stage.]~~
- d. *Review process...*
- e. *Design element improvements.* Improvements toward further code compliance...
- i. The exploratory sketch plan ~~[shall]~~must identify ...
- ii. The Department may require ...
- iii. For a Brownfield site, [T]the applicant [shall submit]must provide documentation from DNREC identifying and confirming the status ~~[Brownfield]~~of the site as part of the exploratory plan submission ~~[prior to review].~~
- iv. ~~[A site resource capacity analysis need not be conducted (see Section 40.05.050 A).]~~

[v.] The redevelopment of a Brownfield site in a floodplain ~~[shall]~~must comply ...

v[i]. ~~[All-i]~~Impact fees ~~[as]~~are only required for GFA that exceeds existing legally established GFA on the site ~~[by Article 14 shall be waived]~~ (see Article 14 ~~[Table 40.14.210]~~).

vi[i]. An operational analysis or a traffic impact study ~~[shall be]~~is required if requested by DelDOT or the Department. Proposed development that exceeds the legally approved GFA is subject to DelDOT transportation impact standards, and the County may limit or restrict development to less GFA if that is recommended by DelDOT. As a result, DelDOT may require transportation improvements as a condition of its letter of no objection. For major plans or rezonings, [I] if an existing Level of Service (LOS) is A, B, C, or D, the proposed development may not cause that LOS to become E or F. If the existing LOS is E, the proposed development may not cause that LOS to become F.

vii[i]. The redevelopment of a site within six hundred sixty (660) feet ...

f. *Permitted uses for Brownfields.* The I (Industrial) zoning district office use restriction of Section 40.03.321 shall not apply. General office uses will be permitted without limitation. ~~[Mixed use development shall be permitted in the I zoning district subject to the same standards for mixed use in the OR zoning district including Section 40.03.318 and Tables 40.04.110 and 111.]~~ In the HI ~~[D]~~district, the applicant may utilize the standards for lot size and setbacks from the I district. All uses permitted in the I district ~~[except for mixed use]~~, including office use as enumerated above, shall be permitted in the HI district.

g. *Density bonuses.* A redevelopment density bonus in any zoning district not to exceed twenty-five (25) percent of the maximum nonresidential GFA or multifamily dwelling density allowed in Table 40.04.110 A or twenty-five (25) percent of the legally established nonresidential GFA or multifamily dwelling density on the site, whichever is greater, ~~[shall be]~~is permitted. Any redevelopment project that includes a density bonus as provided for in this Section shall be reviewed and evaluated ~~[pursuant to Section 40.25.410]~~ under Appendix 7, Guiding Principles.

h. *Annual report.* The Department ~~[and the Redevelopment Office]~~ shall provide County Council with an annual report on the use and effectiveness of the redevelopment section which shall be discussed at a Council Committee Meeting open to the public. The annual report may also recommend amendments to this Division and this Chapter based upon the success or failure of redevelopment plans to meet stated goals and objectives.

7. *Bridge reconstruction...*

TABLE 40.08.130 B Work Table to Calculate Value of Individual Design Element Improvements and Total Aggregate Percent Improvement for Redevelopment Land Development Plans					
(a) <i>Improvement Design Elements (at least four (4) separate design element improvements shall be made.)</i>	(b) <i>UDC Site Specific Requirements and Standards</i>	(c) <i>Current or Existing Situation</i>	(d) <i>Proposed Improvement to Existing Situation</i>	(e) <i>Percent Improvement (d/b)</i>	(f) <i>Comments</i>
Parking					
Number of required spaces...					
* Architectural					
** Guiding Principles					
* Energy efficient design					
Other					
Other					
Other					
Total Aggregate Percent Improvement (column e), must exceed four hundred (400) percent =					
<i>* Maximum allowable percent improvement for these elements is 50%.</i> <i>** Not applicable for plans subject to Sections 40.08.130.B.6.b.vi and ix.</i>					

Section 6. *New Castle County Code* Chapter 40 (“Unified Development Code” or “UDC”), Article 22 (“Drainage, Utilities, Septic Systems, Parking, Loading, and Lighting”), Division 40.22.610 (“Parking and Loading”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Sec. 40.22.615. Parking Reduction

Where a unique situation is proposed or exists which will not generate the need for as many parking spaces as required by this Article, the applicant may petition the Department to authorize such reduction. The request for a parking reduction shall include a parking demand and needs analysis (PDNA) as described in this subsection which shall be submitted to the Department for review and approval. The Department

shall be authorized to grant a reduction to the parking requirements when a PDNA shows that the requirements, as applied to the particular use, would exceed the minimum necessary to conveniently serve the customers, clients, visitors and employees. ~~[The components of a]~~A PDNA must include ~~[at least]~~ the following components:

- A. A narrative discussion ...
- D. Proposed means of parking/traffic mitigation ...
- E. With the exception of plans where the Comprehensive Plan identifies a site as being in either a Type 1 Commercial Corridor Development or Community Development Area, and includes elements of building design, site design and amenities identified in the applicable Character Area set forth in Appendix 7, ~~[T]he number of required parking spaces reduced by an approved PDNA, [no longer required as a result of the PDNA analysis and the uses proposed]~~ must ~~[still]~~be shown on-site as potential parking to accommodate future parking needs. ~~[should]~~If the proposed uses identified in the PDNA change ~~[and]~~ the reductions granted will no longer be applicable.

Section 7. *New Castle County Code* Chapter 40 ("Unified Development Code" or "UDC"), Article 31 ("Procedures and Administration"), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Sec. 40.31.320. Applications generally.

- A. *Forms...*
- E. *Withdrawal of application. ...*
- F. *Public notice of land development plans.*
 - 1. *Online notice.* The Department shall post the receipt of all major and minor land development plans and Resubdivision Plans on a web page established for legal notices on the County's website within five (5) days of the receipt of a completed application.
 - 2. *Posted notice.* The applicant shall erect a posted notice sign for all major and minor land development plans and Resubdivision Plans within ten (10) days of submission of a completed initial exploratory sketch plan to the Department. ...

...

Sec. 40.31.711. Resubdivision plan.

Proposed revisions to previously recorded plans and previously platted parcels that will not result in any new lots or additional gross floor area shall be considered resubdivisions and shall be reviewed as minor plans for any of the following purposes:

- A. Lot line changes....

F. Amendments to notes...

G. Multifamily conversions proposed under Section 40.03.340.B.

...

Sec. 40.31.820. Land Development Improvement Agreement (LDIA).

Except for minor residential subdivisions or plans for which a governmental entity is the applicant or property owner, all improvements contemplated in minor or major land development plans as required by this Chapter for sewer, drainage and detention, as well as for other improvements such as stormwater management facilities, parking, curbing, paving, sidewalks, open space improvements and common facilities, property monuments, earthwork, lighting, landscaping and bufferyards (except for replacement of on-lot residential landscaping), and any other improvements required by this Chapter ("the Improvements") shall be subject to a performance guarantee.

- A. The developer's engineer shall submit an itemized cost estimate for ~~[water, sewer, storm drainage, detention, lighting, any off-site]~~ the [i]mprovements, ~~[and any other improvements required by this Chapter]~~. The designers of the ~~[landscapes, buffers, and/or other i]~~ mprovements shall submit cost estimates. Valid bids from contractors may be substituted for cost estimates. The Department shall review all bids, checking for consistency with similar bids or public bids to ensure they are reasonable.
- B. In the alternative, ~~[the]~~ a formula as established by the Department may be used in lieu of cost estimates.
- C. The developer ~~[shall]~~ must establish a performance guarantee acceptable to the County to guarantee and warrant the costs of constructing ~~[and/]or~~ reconstructing all improvements shown on the record plan. The performance guarantee shall be provided in one ~~[(1)]~~ of two ~~[(2)]~~ ways:
 1. The developer may submit the performance guarantee prior to plan recordation. In accordance with the construction phasing plan, the performance guarantee may be tied to the cost of the ~~[i]~~ mprovements for phases of the minor or major land development plans, as shown on such plans, in which case a surety in the amount of one hundred twenty (120) percent for a particular phase ~~[shall]~~ must be available upon recordation of the record plan and subsequent phase sureties posted at the time of pre-construction request or building permit; or
 2. In lieu of Subsection C.1, the developer ~~[shall]~~ must, prior to plan recordation, submit a performance guarantee in the sum of five thousand dollars (\$5,000.00). The developer shall then submit the full performance guarantee under Subsection C.1., prior to the preconstruction meeting or building permit application. An annual administrative fee ~~[of two hundred fifty dollars (\$250.00) shall be]~~ is required in an amount set forth in Appendix 2 until the full performance guarantee is provided.
- D. The performance guarantee ~~[shall]~~ must remain posted with the Department until such time that all open space and common facilities have been inspected and

receive final approval and in accordance with the construction phasing plan. The amount of the surety shall be required ~~[and determined]~~ by the Department in the amount of one hundred twenty (120) percent of the ~~[cost estimates and/or the cost of completing the open space and common facilities and in accordance with the construction phasing plan]~~ dollar amount calculated under Subsection A or B above.

1. ~~[The surety shall be reduced to the amount of the maintenance guarantee as outlined below and the remainder returned to the developer after the completed work has been]~~ After all open space and common facilities have been constructed and approved by the Departments of Public Works and Land Use, the surety may be reduced or released.
2. The maintenance guarantee amount will be equal to twenty (20) percent of the ~~[cost of constructing the stormwater management facilities]~~ performance guarantee provided under Subsection A or B above and ~~[shall]~~ will serve as the maintenance guarantee that all improvements are free from defects for a minimum of five (5) years after the date of the Department of Public Works' inspection and acceptance of the final improvement to be constructed. The Department of Public Works may extend the maintenance guarantee period as deemed necessary by the General Manager as defects are discovered. The purpose of this surety is to ensure that the facilities are designed and constructed to function as intended.
3. All reductions in the amount or releases of the letter of credit or other surety ~~[shall]~~ must be approved by the General Manager of the Department of Public Works.

- E. Each ~~[surety]~~ performance guarantee provided prior to plan recordation ~~[shall]~~ must be for a period of not less than three (3) years, unless a longer time is requested by the Department.
- F. The bond, letter of credit or other surety ~~[shall]~~ must be executed by the applicant and a corporate surety or financial institution licensed to do business in the State that is not associated with the developer.
- G. Prior to the approval of a minor or major land development plan, the LDIA must be reviewed and approved by the County and recorded in the Office of the Recorder of Deeds.

Section 8. *New Castle County Code* Chapter 40 (Unified Development Code or "UDC"), Article 33 ("Definitions"), Division 40.33.300 ("General definitions"), is hereby amended by adding the material that is underscored, as set forth below:

Division 40.33.300. General definitions.

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

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

Minor land development. A plan that proposes one (1) or more of the following:

- 644
- 645 A. A subdivision of land resulting in five (5) lots or less and not creating new
- 646 street rights-of-way.
- 647
- 648 B. Except for single-family dwellings and accessory structures ...
- 649
- 650 C. Any major utility except electric power generating facilities. ...
- 651
- 652 D. A minor utility that is...
- 653
- 654 E. Large scale solar energy systems.
- 655

656 *Motor vehicle.* For purposes of Section 40.03.440...

657

658 *Mulch operations.* A process that results in a product ...

659

660 *Multifamily Conversion.* The conversion of office or commercial GFA to apartments or

661 residential condominium units.

662

663 *Multi-modal transportation.* The availability or use of more than one ...

664

665 *National Geodetic Vertical Datum (NGVD).* Elevations referenced ...

666

667 Section 9. Consistent with Comprehensive Development Plan. New Castle County

668 Council finds that the provisions of this Ordinance are consistent with the spirit and intent

669 of the New Castle County Comprehensive Development Plan.

670

671 Section 10. Inconsistent Ordinances and Resolutions Repealed. All ordinances or

672 parts of ordinances and all resolutions or parts of resolutions that may be in conflict

673 herewith are hereby repealed except to the extent they remain applicable to land use

674 matters reviewed under previous Code provisions as provided in Chapter 40 of the *New*

675 *Castle County Code.*

676

677 Section 11. Severability. The provisions of this Ordinance shall be severable. If

678 any provision of this Ordinance is found by any court of competent jurisdiction to be

679 unconstitutional or void, the remaining provisions of this Ordinance shall remain valid,

680 unless the court finds that that the valid provisions of this Ordinance are so essentially

681 and inseparably connected with, and so dependent upon, the unconstitutional or void

682 provision that it cannot be presumed that County Council would have enacted the

683 remaining valid provisions, without the unconstitutional or void one, or unless the court

684 finds that the remaining valid provisions, standing alone, are incomplete and incapable of

685 being executed in accordance with the County Council's intent. If any provision of this

686 Ordinance or any zoning map or portion thereof is found to be unconstitutional or void, all

687 applicable former ordinances, resolutions, zoning maps or portions thereof shall become

688 applicable and shall be considered as continuations thereof as not as new enactments

689 regardless if severability is possible.

690

691 Section 12. Effective Date. This Ordinance shall become effective immediately

692 upon its adoption by County Council and approval by the County Executive or as

693 otherwise provided in 9 *Del. C.* § 1156 and shall only apply to Land Use applications

694 submitted after such date(s) unless the applicant by written request agrees to submit to
695 the provisions of this Ordinance.

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

Sec. 40.03.110. This amendment establishes which zoning districts permit Multifamily Conversions.

Sec. 40.03.318. This amendment clarifies that the density bonus for mixed use development is located in Table 40.04.110, allows ten percent of a mixed use development to gas stations, single use (e.g. stand-alone or pad site) restaurants, and restaurants with drive through service, adjusts the minimum percent of nonresidential gross floor area from 67% to 50%, and requires a minimum of 25% of GFA to consist of office uses in the OR and ON zoning districts.

Sec. 40.03.340. This amendment establishes Limited Use standards for Multifamily Conversions.

Sec. 40.07.510. This amendment requires 10% of all units be MPDUs on any multifamily conversion application proposing 25 or more residential units.

Sec. 40.07.560. This amendment sets an affordability period for MPDUs established by a Multifamily conversion to be 15 years.

Sec. 40.07.610. This amendment eliminates redundant language regarding Mixed Use and Redevelopment bonuses, establishes eligibility for density bonuses associated with community development and replaces the infill bonus with the Type 1 Commercial Corridor Development Area bonus.

Sec. 40.07.620. This amendment eliminates mixed use bonus language that is addressed elsewhere in the code. This amendment also establishes a bonus and standards for development in areas identified a Community Development Area and consistent with the Community Area Master Plan Key Recommendations in the Comprehensive Plan.

Sec. 40.07.640. This amendment redefines the Infill bonus to be the Corridor Redevelopment incentive. This amendment also establishes review standards and limits the bonus locations to the Type 1 Commercial Corridor Development Areas identified in the Comprehensive Plan.

Sec. 40.08.130. This amendment clarifies the section caption, clarifies that nonconforming uses are not included among the nonconforming situations that may be expanded, clarifies that enlargements less than 1,000 square feet GFA must comply with this Chapter, provides that enlargements in certain districts greater than 5,000 square feet GFA must be brought into proportional compliance, expands the use of redevelopment provisions to CN and ON sites demolished more than fifteen percent of GFA, and breaks up large paragraphs into subparagraphs. Paragraph B.6 clarifies that nonresidential sites rendered nonconforming may also qualify for redevelopment, that extractive use and brownfield sites without demolished GFA may qualify, that—when required—only fifteen percent of GFA must be demolished in CN and ON zoned sites, that the percentage of GFA to be demolished is determined exclusive of historically significant GFA to promote historic preservation, provides that redevelopment plans may now seek variances if the plan complies with Appendix 7 with respect to design principles for the Character Area, and establishes a parking maximum. Table 40.08.130 is expanded to include Guiding Principles and energy efficient design. Additionally, this amendment clarifies that GFA proposed by a redevelopment plan exceeding the legally approved GFA is subject to traffic impact standard, and that DelDOT may require transportation improvements for major plans or rezonings that decrease Level of Service to a certain extent.

Sec. 40.22.615. This amendment provides that parking spaces eliminated as a result of the PDNA analysis on a nonresidential development plan need not be depicted on a plan where certain requirements are met.

Sec. 40.31.320. This amendment expands online and posted notification requirements to include Resubdivision Plans.

Sec. 40.31.711. This amendment identifies multifamily conversions proposed under Section 40.03.340.B as Resubdivision Plans.

Sec 40.31.820. This amendment clarifies that 20% of the performance guarantee is to be reserved as a maintenance guarantee, that the developer may either reduce its surety or provide a new surety to serve as the maintenance guarantee, references Appendix 2 for the annual fee and provides minor edits for readability.

Sec. 40.33.300. This amendment defines multifamily conversions and revises the definition for Minor Land Development to include Large Scale Solar Energy Systems.

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



Department of Land Use

**DEPARTMENT OF LAND USE
RECOMMENDATION REPORT**

**Ordinance No. 24-057
Application No. 2024-0225-T
Development and Redevelopment**

July 16, 2024

Sponsor: Councilman Tackett (District 11), Councilwoman Kilpatrick (District 3)

Description: To Amend New Castle County Code Chapter 40 (also known as the Unified Development Code or "UDC) Regarding Development and Redevelopment

EXECUTIVE SUMMARY

When the County adopted the Unified Development Code (Ordinance 97-172) on December 31, 1997, it substantially altered its zoning scheme, creating nonconforming situations along many of its vital commercial corridors. Over the last nearly 27 years, the County has adopted 8 ordinances to create a balanced approach to repurposing existing nonresidential sites in a manner that is sensitive to neighboring communities. The County furthered that commitment during the public planning process for the 2022 Update to the New Castle County Comprehensive Development Plan, and in subsequent outreach efforts in the 2 years since its adoption. The result of this outreach is Ordinance 24-057 which amends the redevelopment provisions and incentives in the UDC to:

- Guide development in the State Strategy Level 1 and 2 areas through expanding redevelopment opportunities in a manner that is sensitive to the context of neighboring communities,
- Encourage and incentivize the implementation of the Community Area Master Plans,
- Guide development to be more sustainable through repurposing existing sites,
- Diversify housing opportunities through encouraging mixed-use development and repurposing of vacant office and retail space for multifamily dwellings (apartments), and
- Expanding quality rental affordable housing opportunities in the County.

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. 24-057, with the condition that County Council consider amending the ordinance to:

- A. Revise the existing transit-oriented infill incentive with respect to rail transit-oriented infill (Section 40.07.650.A) as follows:
1. The development shall be zoned and built to Suburban Transition (ST), Commercial Neighborhood (CN) or Commercial Regional (CR) standards, except;
 - a. The maximum open space
 - b. Mixed uses within four hundred (400) feet ...
 - c. Multi-family developments shall...
 2. The minimum parking for[T] mixed use, higher density, attached or multi-family units [shall have structured parking] is reduced by 12%.
 3. The rail transit station ~~[shall]~~ may have structured parking ~~[and may]~~ incorporated ~~[it]~~ into a mixed-use building. The Department may modify the mixed-use requirements to provide the needed commercial and residential parking in close proximity to the station.
- B. Amend Section 40.31.820 to better clarify the purpose of the maintenance guarantee including improvements other than landscaping and provides a three-year maintenance period for non-residential projects.

DESCRIPTION

Ordinance 24-057 (Application 2024-0225-T) is an implementation product of the Concord Pike Master Plan and the 2022 New Castle County Comprehensive Plan. The ordinance proposes the following primary objectives:

- Guide development in the State Strategy Level 1 and 2 areas through expanding redevelopment opportunities in a manner that is sensitive to the context of neighboring communities,
- Encourage and incentivize the implementation of the Community Area Master Plans,
- Guide development to be more sustainable through repurposing existing sites,
- Diversify housing opportunities through encouraging mixed-use development and repurposing of vacant office and retail space for multifamily dwellings (apartments), and
- Expanding quality rental affordable housing opportunities in the County.

BACKGROUND

With the adoption of the Unified Development Code (Ordinance 97-172) on December 31, 1997, the County substantially altered its zoning scheme, thereby creating nonconforming situations along many of its vital commercial corridors. During the first couple of years after adoption, the County saw a significant number of plans requiring variances to retain existing nonconformities, resulting in projects that were not in line with the intent of the UDC. County Council recognized

the importance of incentivizing the redevelopment of existing sites, while improving on their design.

Adoption of Redevelopment Provisions - Ordinance 01-098

On April 9, 2002, the County adopted its first redevelopment provisions to facilitate the repurposing of existing nonresidential sites that had been rendered nonconforming by the adoption of the UDC (Ord. 01-098). One of the primary concerns was that the development provisions in the UDC resulted in many existing sites needing “*numerous zoning and/or subdivision variances*” and that the granting of those variances resulted in the lack of “*substantial improvement*” of those properties. Ordinance 01-098 allowed nonresidential development predating the adoption of the UDC to receive credit for existing gross floor area (GFA), provided that the plan included 400% improvement on the site as listed in Table 40.08.130.B. Redevelopment Plans were to be reviewed as Minor or Major Land Development Plans, with the differentiation being a 20,000 net increase in GFA. Additionally, all redevelopment plans required a public hearing with the Planning Board.

Brownfields - Ordinances 03-069 & 04-054

On October 28, 2003, the County adopted Ordinance 03-069 to expand redevelopment opportunities to Brownfield sites. While expanding the applicability of the provisions it also established specific submission requirements and limitations of permitted uses, most of which exist in the code today.

On July 13, 2004, the County adopted Ordinance 04-054 further incentivizing the redevelopment of Brownfield sites by making the creation of business or industrial parks on Brownfields a minor redevelopment plan regardless of the number of lots or GFA proposed. It also increased the threshold for being considered a major redevelopment plan from a net increase of 20,000 sf to 50,000 sf of GFA.

Redevelopment Process - Ordinance 06-007

On March 28, 2006, the County adopted Ordinance 06-007, revising the processing of redevelopment plans. The primary changes in this ordinance exempted redevelopment plans that required rezonings from the triannual rezoning dates, consolidated the redevelopment bonuses originally listed in Article 7 with the provisions of Article 8, and increased the density bonus from 15% to 25%.

Extractive Uses - Ordinance 08-001

On March 25, 2008, the County adopted Ordinance 08-001 with the primary purpose of incorporating the repurposing of extractive use sites into the redevelopment provisions. The ordinance also, importantly, quantified the amount of the existing structure to be demolished

(50%), whereas, prior to the adoption of Ordinance 08-001, the UDC only required that the existing structure be “partially or in whole” demolished.

County Code Republication - Ordinance 10-113

On January 18, 2011, the County adopted Ordinance 10-113, a full republication of the County Code. Changes to the redevelopment provisions included replacing references to the Technical Advisory Committee (TAC) with Preliminary Land Use Service (PLUS), and eliminating the triannual rezoning reference.¹

Variances and Redevelopment Ordinance 11-020

On July 26, 2011, the County adopted Ordinance 11-020, which had two important impacts on the processing of redevelopment plans. It clarified the traffic requirements for redevelopment plans with respect to Level of Service and traffic impact studies, and it removed plans requiring variances from being eligible for redevelopment.

Redevelopment and Scenic Byways - Ordinance 22-072

On October 11, 2022, the County adopted Ordinance 22-072, which provided protection of designated scenic byways. The ordinance required compliance with the new byway protection provisions for redevelopment plans within 660 feet of the right-of-way of a designated byway.

Enhancing the Redevelopment Provisions and Large Industrial Buildings - Ordinances 23-053 and 23-104

Ordinance 23-053 was introduced on April 25, 2023, to both provide greater public participation opportunities and to address the impact of large industrial buildings. It also proposed important updates to the redevelopment provisions in the UDC including:

- Allowing applicants to apply to the Board of Adjustment for variances if a project includes Guiding Principal elements from the Comprehensive Plan.
- Reducing the percentage of GFA required to be demolished for ON and CN zoned land from 50% to 15%.
- Requiring redevelopment plans along Corridor Areas designated by the Comprehensive Plan to include Guiding Principles elements.
- Enhancing parking requirements for redevelopment plans based on a parking demands analysis.
- Excluding historically significant structures from the gross floor area required to be demolished to encourage preservation.

¹ The trannual rezoning limitation for rezoning applications was eliminated elsewhere in the UDC with Ordinance 09-006.

- Providing redevelopment credit for plans that include elements of energy efficient design, such as: green roof technology, white roofing, solar panels, etc.
- Clarifying that existing GFA on Extractive Use or Brownfield sites need not be demolished to pursue redevelopment.

During the public process it was determined that the best course of action to ensure that the impact of large industrial buildings and redevelopment were evaluated on their own merits was to split the ordinance into two new ordinances addressing each topic individually. This approach permitted significant improvements to both. Large industrial structure development was addressed in Ordinance 23-104, which was adopted in January of 2024, which provided enhanced design and buffering standards from what was proposed in Ordinance 23-053.

Targeted Redevelopment and Affordable Housing Opportunities - Ordinance 24-057

The Department of Land Use, in coordination with County Council, commenced efforts to craft an ordinance that included the important changes proposed by Ordinance 23-053, while refining and enhancing the provisions to better encourage development consistent with community area plans such as the North Claymont Master Plan and the Route 9 Master Plan. Additionally, the Department explored opportunities to repurpose vacant office and retail space for multifamily dwelling units, with a requirement for a portion of the units to be Moderately Priced Dwelling Units (MPDUs).

The Department of Land Use took great efforts to ensure a comprehensive and inclusive approach to crafting the ordinance through outreach and coordination with the public, business community, government agencies and presentations at a variety of monitoring committees (Concord Pike, Churchmans Crossing, Route 9, and Claymont). The Department also hosted three public workshops in the Fall of 2023:

1. Brandywine Hundred Library - September 27
2. Newark Free Library - October 4
3. Bear Library - October 11

The Department incorporated feedback from these outreach efforts, and in coordination with Councilman Tackett and Councilwoman Kilpatrick drafted Ordinance 24-057, which includes significant improvements from what was proposed in Ordinance 23-053, specifically addressing:

- Community Development Area Incentives (Route 9 and North Claymont)
- Corridor Redevelopment (Concord Pike, Kirkwood Highway, Philadelphia Pike, etc...)
- Repurposing Vacant and Under-utilized Office and Retail Spaces

Ordinance 24-057 also provides refinements to recommended changes to the redevelopment provisions proposed in Ordinance 23-053. Ordinance 24-057 was introduced at County Council on April 9, 2024.

PLUS REVIEW (Preliminary Land Use Service)

The PLUS Report, dated June 21, 2024, contains comments from several State agencies. The Office of State Planning Coordination reiterated their support for the 2022 New Castle County Comprehensive Plan and its goals and strategies and commended the County's efforts to make infill development and redevelopment a priority. They further stated that the ordinance will help increase development activity in Investment Level 1 and 2 areas consistent with State Strategies.

The Department of Natural Resources and Environmental Control (DNREC) commended the County for:

"not only for addressing Delaware's shortage of affordable housing but also doing so in a way that improves Delaware's natural environment. DNREC reviewers hope that this redevelopment ordinance can also serve as a model for local municipalities to adopt similar language for lands within their own jurisdiction."

DNREC further provided additional recommendations for reference purposes that will be helpful in considerations of future legislation.

The Delaware State Housing Authority (DHSA) supported the ordinance stating that it:

"is excellent and would increase opportunities for successful redevelopment while addressing multiple objectives of the County's Comprehensive Plan (NCC2050) – such as the creation of a variety of attractive housing options, including moderately-priced housing."

DHSA specifically identified support for the following:

- Required MPDUs for the Multifamily Conversion Development Option
- The incentives for Community Development Areas and Type 1 Corridors in potentially increasing redevelopment activity and the availability of affordable housing.
- The inclusion of Guiding Principles for Redevelopment Plans as being critical in ensuring redevelopment will result in cohesive, vibrant, mixed-use communities where families can thrive.
- The importance of separating Heavy Industry from affordable housing units

All other agencies had no objection to the approval of the ordinance.

Planning Board Public Hearing - July 2, 2024

Matthew Rogers, Planner for the Department of Land Use presented Ordinance 24-057 at the July 2nd New Castle County Department of Land Use and Planning Board Public Hearing. During his

presentation, he discussed how the ordinance was derived from recommendations of the New Castle County Comprehensive Plan, public workshops and working with the business community.

Planning Board members had several questions and comments in response to the presentation. Mr. Cantrell inquired about the 1,000-foot separation distance requirement from Heavy Industry, with respect to Multifamily Conversions. Mr. Rogers explained that the 1,000-foot distance was chosen based on an evaluation of the distance between existing commercial corridors and location of Heavy Industrially zoned land, with the intent of providing adequate protection for newly created affordable housing units, while not foreclosing on the opportunity to redevelop too many sites. He stated that the Department, consistent with the recommendations of the Delaware State Housing Authority, would continue to monitor if the distance is adequate and propose an increase should it be needed. Charuni Patibanda, General Manager for the Department of Land Use further explained that the Department let DHSA know that we are open to making changes if they had a better buffering requirement.

Support

At the Public Hearing seven (7) members of the public spoke in favor of Ordinance 24-057: (1) Councilman Cartier, (2) Frederick Mitsdarfer, III, Esq. (3) Councilman Carter, (4) Stephanie Rizzo, (5) Dale Swain, (6) Jamie Kegerlie, and (7) Elizabeth Heller. Councilman Cartier expressed his strong support for the ordinance but asked that the Department consider revisions to section 40.07.650 to better address transit-oriented development adjacent to the Claymont train station. Frederick Mitsdarfer, III, representing Tarabiccios Grosso, LLP voiced support for the ordinance, recommending that the maximum percentage of residential be increased to 85-90% and that additional restrictions be added to drive thru sites. He also voiced his concerns regarding the required yard space for Multifamily Conversions and made recommendations regarding parking plans. Councilman Carter voiced support for the ordinance, however had concerns about pollution burden with respect to HI uses. Stephanie Rizzo, New Castle County Community Services, Administrator for the Inclusionary Housing Program, voiced support for the ordinance and the potential impact that it could have on affordable housing. Elizabeth Heller, Committee of 100 voiced support for Ordinance 24-057, however asked that the Department consider changes requested in their written support letter.

Opposition

There were no comments in opposition to the ordinance.

Rebuttal

After the public comment period Mr. Rogers provided a rebuttal for the Department of Land Use. He committed to work with Councilman Cartier to revise the incentives for transit-oriented infill. He explained that the ordinance would not preclude redevelopment of Heavy Industrial sites, however they would not be eligible for the Multifamily Conversion option. He also discussed the

requests made by the Committee of 100 including: reconfiguration of existing space (Commercial Fitout - internal, or Resubdivision Plan- external), eligibility for JobsNow (JobsNow is a policy and shouldn't be in an ordinance), and clarifications regarding nonconforming situations and uses (would merit its own ordinance if considered).

Comments received while the record was open

The Department of Land Use received written correspondence supporting Ordinance 24-057 from the Committee of 100, Jerome Heisler Jr., and the New Castle County Housing Advisory Board.

Analysis

Ordinance 24-057 (Application 2024-0225-T) is an implementation product of substantial outreach and public feedback regarding economic development and affordable housing received during and after the comprehensive planning process. During the public planning process it was apparent that New Castle County faces many of the same concerns faced in the years just after the adoption of the UDC. Although there are incentives in the existing redevelopment provisions of the UDC, the inability to receive a variance and utilize the redevelopment provisions has restricted the repurposing of existing sites and limited the ability of the County to guide good site design, consistent with objectives of the Unified Development Code and Comprehensive Plan. It also, in many cases, disadvantages redevelopment in favor of greenfield development.

Ordinance 24-057 is the product of extensive work and feedback with the public, business community, State agencies and the New Castle County Housing Advisory Board. From the feedback that was received, the ordinance was written with the following objectives:

1. Expand the opportunity for the well-designed redevelopment of sites where the plan includes elements of building design, site design and amenities.
2. Better encourage the rehabilitation of existing structures on low intensity commercial and office sites.
3. Ensure that redevelopment occurring along major commercial and employment corridors is well designed and sensitive to the context of adjacent residential neighborhoods.
4. Reduce adverse groundwater and climate impacts including the creation of heat islands and impacts of redevelopment resulting from excessive parking.
5. Encourage the preservation of historic resources on redevelopment sites.
6. Further encourage redevelopment of extractive use or Brownfield sites.
7. Enable the repurposing of vacant retail and office space to expand affordable housing opportunities.

Redevelopment

Ordinance 24-057 proposes many important changes to the redevelopment provisions in the UDC (Section 40.08.130.B.6) that will help achieve the objectives of the ordinance. It will increase the number of developments eligible to be reviewed as Redevelopment Plans, while requiring them to include improvements consistent with the Guiding Principles. This requirement better ties redevelopment to good site and building design, that is sensitive to adjacent residential developments regardless of whether a development receives variances. Since development design is essential to good corridor design, the ordinance also requires redevelopment in the Corridor Areas identified in the Comprehensive Plan to be consistent with the Guiding Principles.

Ordinance 24-057 encourages more sustainable redevelopment in the County in several ways. For small scale commercial and office sites, it reduces the required percentage of GFA to be demolished from 50-15%, thereby allowing more of the existing structure to be reused. Additionally it removes the requirement for demolishing GFA on Redevelopment Plans for areas identified as Type 1 Commercial Corridors and for Community Development Areas. Ordinance 24-057 also caps parking on redevelopment plans to 115% of the minimum parking for the site. It expands opportunities for sites in Type 1 Commercial Corridors and for Community Development Areas to utilize parking needs and demand analysis studies in order to support site designs providing only the parking that the site needs, thereby reducing impervious surface areas, and heat islands.

Ordinance 24-057 permits existing GFA of historical structures to remain and be used to reduce the required GFA to be demolished. It clarifies that existing GFA on Extractive Use and Brownfield sites is not required to be demolished in order to be processed as a Redevelopment plan.

Targeted Development Incentives

The Comprehensive Development Plan identifies Type 1 Commercial Corridors and Community Development Areas (North Claymont and Route 9) as areas in vital need for redevelopment. These are areas in Level 1 and 2 State Strategy investment areas, meaning that they have existing infrastructure to support development. As discussed above, Ordinance 24-057 does not require that existing GFA be demolished in those areas to be reviewed as a Redevelopment Plan, provided that the plan includes improvements consistent with the Guiding Principles. In addition to this, in Community Development Areas the proposed plan needs to be consistent with the adopted Community Area Master Plan, and not be an industrial use. Redevelopment Plans in Community Development Areas that meet those requirements would be eligible for a 15% increase in GFA or density coupled with a reduction of the Landscape Surface Area Ratio to 15%.

Councilman Cartier aptly pointed out that there is a need to revise the Transit Oriented Development (TOD) incentives with respect to rail stations in order to facilitate development adjacent to the Claymont Train Station that is consistent with the vision of the North Claymont Master Plan. The Department has committed to providing recommended changes to Section

40.07.650 that will incentivize well designed TOD for the North Claymont Train Station area and other passenger rail stop locations.

Affordable Housing/Repurposing Vacant Office and Retail Space

The 2022 Update to the New Castle County Comprehensive Plan identifies the need for the County to diversify housing stock, increase affordable housing opportunities and address vacant office and retail space. Ordinance 24-057 creates a new development option that permits existing office or commercial retail GFA to either be redeveloped or repurposed for multifamily dwelling units (apartments or condominiums). These plans can be reviewed as either a Resubdivision or Land Development Plan as provided for in the UDC. The units must have an average size of 800 sf, with 200 sf of yard space per unit. Improvements to the development must be consistent with the Guiding Principles, and not within 1,000 ft of Heavy Industry zoned land to prevent constructing affordable housing near heavy industry. Additionally, 10% of the dwelling units are required to be Moderately Priced Dwelling Units for a minimum of 15 years.

Effectiveness of the Proposed Changes – Does it Work?

The Department recognized the importance of knowing the potential impact that updating the redevelopment provisions in the UDC would have, and as such enlisted the help of 4Ward planning to evaluate Ordinance 24-057. The firm was presented with several sites under evaluation in the current master planning effort in the Claymont area. The Department provided scenarios built on the provisions proposed in Ordinance 24-057, tied to the redevelopment the identified sites. 4Ward Planning evaluated the scenarios, market, and if they were viable. Their conclusions were as follows:

- All the scenarios modeled are deemed feasible, with respect to build-out.
- All redevelopment scenarios subject to the proposed zoning and based on the mixed-use square footage ratio identified above exhibited positive and relatively strong financial return rates.
- Ordinance 24-057 significantly improves the ability of property owners to fully utilize their site areas.
- The scenarios are in line with the residential unit capture estimate identified in 4ward Planning's market study.
- Each of the mixed-use development yields are deemed market receptive – that is, likely to be absorbed in a reasonable period if built.
- Ordinance 24-057 provides property owners with a better ability to increase their capital investment return than current regulations

The importance of this analysis is that the requirements and incentives both have the potential to make important impacts and are fiscally viable considering the existing market and the measures proposed.

Additionally, Ordinance 24-057 includes clerical changes to the LDIA requirements and other provisions in the Code.

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.

While previous Comprehensive Plans have recommended incentivizing strong economic development and redevelopment policies, the 2022 Update to the New Comprehensive Development Plan wholistically ties these to existing and planned infrastructure (State Strategy Levels 1 & 2), sensitivity to neighboring communities, and affordable housing. Ordinance 24-057, through both incentives and regulation will be an important step in achieving balanced development and redevelopment.

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

As discussed above, Ordinance 24-057 includes important changes and incentives in the UDC that serve to:

- Guide development in the State Strategy Level 1 and 2 areas through expanding redevelopment opportunities in a manner that is sensitive to the context of neighboring communities,
- Encourage and incentivize the implementation of the Community Area Master Plans,
- Guide development to be more sustainable through repurposing existing sites,
- Diversify housing opportunities through encouraging mixed-use development and repurposing of vacant office and retail space for multifamily dwellings (apartments), and
- Expanding quality rental affordable housing opportunities in the County.

Within those broader objectives there are important changes that will reduce impervious surfaces as a result of reduced parking on redevelopment sites. As such, Ordinance 24-057 is an important step in achieving a multitude of goals in the 2022 New Castle County Comprehensive Development Plan, by incentivizing context sensitive repurposing of existing sites and structures along our major corridors. Additionally, it includes a new development option that further diversifies our housing stock and increases the quantity of affordable housing, while bringing viability to vacant commercial and office sites. This will help the County achieve Goals 2, 4, 5, and 10:

Goal 2 - The natural environment of the county continues to be a distinguishing characteristic of our community, and the quality of our natural resources— air, water, land, ecosystems (plants and animals)—are continually improving and meeting the needs of present and future generations. Development/redevelopment patterns that consume less unbuilt “greenfields” and resource lands support conservation of our important natural resources.

2.2. Objective: Improve surface water quality and reduce stormwater runoff from developed lands, with recognition that community revitalization and stream/ecosystem restoration are linked.

2.2.1. Strategy: Eliminate parking minimums for certain smaller buildings and in town centers; establish parking caps.

2.2.2. Strategy: Discourage development in areas that lack water and/or sewer service.

Goal 4 - Healthy, safe housing options throughout the County are diverse, meeting needs of people of all incomes, ages, abilities, and races, while maintaining design and form of the built environment that integrates with existing communities.

4.1. Objective: Increase variety and range of price points of safe, quality housing options, in a diversity of locations.

4.1.3. Strategy: Enable and pursue innovative housing types to help meet demand now and in the future.

4.2. Objective: Increase proximity of quality housing to other daily needs throughout the county, especially jobs and quality education, to support overall cost of living affordability. Better balance of jobs and housing can support residents and their access to both quality/affordable living and living-wage jobs as well as employers and their workforce.

4.2.1. Strategy: Incentivize mixed-use development areas that balance jobs, housing, shopping and services at varying income levels.

4.2.2. Strategy: Support the creation and enhancement of transit-oriented development and mixed income development, such as by allowing multi- family housing within a distance of all transit centers/stations and specific transit lines.

Goal 5 - New Castle County is a strong, resilient hub of the regional economy that provides a range of jobs and services to County residents.

5.3. Objective: Increase the percentage of jobs located in Delaware Level 1 State Strategies Investment Areas, ensuring job centers are located near inclusive transit options and existing infrastructure/services.

5.3.1. Strategy: Encourage redevelopment of industrial land, strip malls, office parks, and other “greyfields” to strengthen community cohesion, environmental quality, fiscal productivity, and quality of life

5.3.2. Strategy: Enact land use policies and regulations that incentivize infill and redevelopment in and around job centers

Goal 8 - All New Castle County residents will have safe, efficient, inclusive access to employment, retail services, parks, and other daily needs including walking, bicycling, public transit, and emerging modes. The transportation and land use systems are integrated and support each other to create livable places and a vibrant county.

8.2.6. Strategy: Incentivize mixed-use and transit oriented/supportive development areas that balance mix of jobs, housing, and other uses that support access to daily needs.

Goal 10 - Land uses, transportation, and other infrastructure complement each other, and neighborhoods and areas across the county are distinctive, attractive, functional, comfortable, and human scale. The physical environment is high quality, inclusively designed, retains value, and is fiscally sustainable.

10.1. Objective: Redevelop and infill key areas of the county (identified in Community Plans and other studies/analyses) and struggling industrial land, strip malls, office parks, and other “greyfields” to achieve connected places, continuity of design, and sense of place.

10.1.1. Strategy: Incentivize/encourage growth and redevelopment in those targeted areas through public investment and flexible policies that work toward achieving other goals (e.g. preservation, environmental enhancements, watershed improvements, placemaking, walkability/ bikeability, etc.).

10.1.4. Strategy: Ensure that as change occurs, communities and neighborhoods evolve intentionally toward the community’s vision; change aligns with local needs as well as part of the broader countywide vision

10.1.5. Strategy: Focus on implementation in areas where sub-area plans exist (master plan, corridor plan, etc.)

10.2. Objective: Increase compact development in places where it is appropriate and will support the range of community goals (like transit, affordable housing/lifestyles, non-motorized accessibility, enhancement of place, etc.).

10.2.2. Strategy: Support the creation and enhancement of transit-oriented development.

10.2.3. Strategy: Direct residential development in and around existing job centers in a manner that is complementary with county and municipal development patterns.

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

While Ordinance 24-057 proposes important changes to redevelopment, they are applicable for all plans processed as redevelopment plans. Incentives included in the ordinance are additionally consistent with incentives provided for other development types.

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

N/A

E. Flexibility in meeting the objectives of this Chapter.

The intent of the Unified Development Code, as stated in Section 40.01.015 is:

“to protect the interests of both current and future County residents and neighbors from the potential adverse impacts of land uses...”

“to encourage greater flexibility and more development options while minimizing development impact on current property owners and the environment...”

Section 40.01.015.A expands on these principles:

Economic development. In order to provide for desirable growth and employment opportunities, this Chapter is intended to:

- Encourage development of an economically stable and healthy community; and
- Encourage and assist in the facilitation, attraction, and retention of economic activities that provide desirable employment, expand the tax base, and serve to meet the goals of the Comprehensive Development Plan.

Affordable housing. This Chapter is intended to:

- Ensure that there is adequate affordable housing;
- Provide options for special housing types that provide affordable housing that are consistent with the character of the area; and
- Provide bonuses to developers willing to provide affordable housing.

As discussed above Ordinance 24-057 will expand and enhance the redevelopment provisions in the UDC, while requiring the incorporation of improvements consistent with the Guiding Principles, leading to better overall designed sites and buildings. Additionally, the ordinance includes a new development option for repurposing existing retail or office sites for multifamily dwellings, with the requirement that development includes affordable housing units.

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.

N/A

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. 24-057, with the condition that County Council consider amending the ordinance to:

- A. Revise the existing transit-oriented infill incentive with respect to rail transit oriented infill (Section 40.07.650.A) as follows:
 1. The development shall be zoned and built to Suburban Transition, Commercial Neighborhood or Commercial Regional standards, except;
 - d. The maximum open space
 - e. Mixed uses within four hundred (400) feet ...
 - f. Multi-family developments shall...

2. The minimum parking for~~[T]~~he mixed use, higher density, attached or multi-family units ~~[shall have structured parking]~~ is reduced by 12%.
 3. The rail transit station ~~[shall]~~ may have structured parking ~~[and may]~~ incorporated ~~[it]~~ into a mixed use building. The Department may modify the mixed use requirements to provide the needed commercial and residential parking in close proximity to the station.
- B. Amend Section 40.31.820 to better clarify the purpose of the maintenance guarantee including improvements other than landscaping and provides a three-year maintenance period for non-residential projects.

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. Gray and seconded by Ms. Visvardis, the Board voted to recommend **CONDITIONAL APPROVAL** of Ordinance 24-057 pursuant to the rationale and conditions recommend by the Department of Land Use.

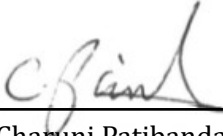
The motion was adopted by a vote of 6-0-0-3 (In Favor: Peterson, Cantrell, Cochran, Drake, Gray, Visvardis; In Opposition: None; Abstention: None; Absent: Cahill-Krout, Daigle, Snowden).

Prior to the vote, the following discussion occurred:

Matthew Rogers read the Department of Land Use recommendation into the record.

STATUTORY GUIDELINES

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



Charuni Patibanda
General Manager
Department of Land Use

8/16/2024

date



Karen Peterson
Chair
Planning Board

8/16/2024

date