



NEW CASTLE COUNTY COUNCIL LAND USE COMMITTEE MEETING

Co-Chair: David Tackett, Eleventh District

Co-Chair: Janet Kilpatrick, Third District

October 15, 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**

REVISED AGENDA

A. Meeting Call to Order

B. Approval of Minutes

C. Review/Discussion of Resolution(s)

R24- : TO TERMINATE DECLARATION OF RESTRICTIONS FOR HUBERS CROSSING, TAX PARCEL NO. 13-013.00-155, LOCATED AT THE SOUTHEAST INTERSECTION OF US ROUTE 13 AND POLE BRIDGE ROAD; COUNCIL DISTRICT 12

Prime Sponsor(s): Mr. Bell

D. Review/Discussion of Ordinance(s)

°24-042: COMPREHENSIVE REZONING - TO REVISE THE NEW CASTLE COUNTY ZONING MAPS IN COUNTY COUNCIL DISTRICT 7 REGARDING THE FOLLOWING TAX PARCELS: NEW CASTLE HUNDRED: 10-017.00-003 (251 CHURCHMANS RD, CHURCHMANS OFFICE COMPLEX)

Prime Sponsor(s): Mr. Smiley

E. Presentations

GIS presentation on new Public Service layers

Pro Housing Grant Opportunity

F. Other

Discussion regarding Agricultural Preservation selections and efforts

Discussion of Ordinance 12-084 (adopted 5/10/2016)

G. Public Comment

H. Adjournment

REVISED AGENDA POSTED: October 11, 2024

AGENDA POSTED: October 8, 2024

*The revised agenda was posted less than 7 days in advance of the meeting to add a discussion under other regarding Ordinance 12-084, adopted by Council in May of 2016. The discussion of the item is time-sensitive and the next Land Use Committee meeting will not take place until 11/19/24 due to the 2024 election cycle.

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.

Prime Sponsor(s): Mr. Bell
Date of Introduction: October 22, 2024

RESOLUTION NO. 24-

**TO TERMINATE DECLARATION OF RESTRICTIONS FOR HUBERS CROSSING,
TAX PARCEL NO. 13-013.00-155, LOCATED AT THE SOUTHEAST INTERSECTION
OF US ROUTE 13 AND POLE BRIDGE ROAD; COUNCIL DISTRICT 12**

WHEREAS, Thomas O. Huber and Charmayne H. Sloan (collectively, the “Original Owner”) caused to be made and recorded that certain Declaration of Restrictions dated October 15, 1993, and recorded in the Office of the Recorder of Deeds in and for the New Castle County, State of Delaware (the “Recorder’s Office”), in Deed Book 1773, Page 57 (the “Declaration”); and

WHEREAS, the Original Owner executed the Declaration to restrict the real property located at the Southeast Intersection of DuPont Parkway (US Route 13) and Pole Bridge Road (2424 North DuPont Parkway), Middletown, New Castle County, State of Delaware, being Tax Parcel No. 13-013.00-155, for the benefit of New Castle County; and

WHEREAS, Huber Developer, LLC, successor-in-interest to the Original Owner (“Declarant”), desires to terminate the Declaration to remove the restriction to allow for the development of the Property pursuant to that certain Record Minor Land Development Plan for Huber’s Crossing, Application No. 2016-0835(S), prepared by Landmark Science and Engineering dated March 25, 2019 of record in the Recorder’s Office in Instrument No. 20190329-0022494 (the “Plan”); and

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

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

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

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

Adopted by County Council of
New Castle County on:

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

SYNOPSIS: Same as title.

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

Tax Parcel Nos.: 13-013.00-155
13-013.00-159

Prepared By and Return To:

Barnes and Thornburg, LLP
Attn: Michael A. DeNote
222 Delaware Avenue, 12th Floor
Wilmington, Delaware 19801

TERMINATION OF DECLARATION OF RESTRICTIONS

THIS TERMINATION OF DECLARATION OF RESTRICTIONS (this “Termination”) is hereby made this ____ day of _____, 2024, by Huber Developer, LLC, a Delaware limited liability company (referred to herein as “Declarant”).

WHEREAS, Declarant is seized in fee simple of certain tracts of land and the improvements erected thereon, situate in St. George’s Hundred, New Castle County, State of Delaware, located 2024 DuPont Parkway, Middletown, consisting of approximately 25.39 acres of land, more or less, being New Castle County Tax Parcel Nos. 13-013.00-155 & 13-013.00-159 (the “Property”); and

WHEREAS, on October 15, 1993 Thomas O. Huber and Charmayne H. Sloan, predecessors in interest to Declarant, caused to be made and recorded that certain Declaration of Restrictions of record in the Office of the Recorder of Deeds in and for the New Castle County, State of Delaware in Deed Book 1773, Page 57 (the “Declaration”); and

WHEREAS, with the consent of New Castle County pursuant to New Castle County Resolution No. 24-____, a copy of which is attached as Exhibit A, Declarant desires to terminate the Declaration.

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

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

WITNESS:

HUBER DEVELOPER, LLC

_____ (SEAL)

Name/Title:

STATE OF DELAWARE)
) SS.
NEW CASTLE COUNTY)

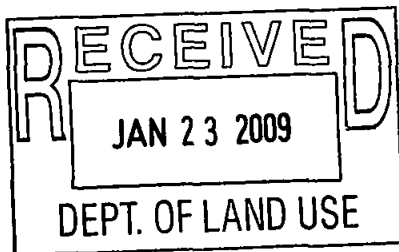
The foregoing instrument was acknowledged before me this _____ day of _____ 2023, by _____, the _____ of Huber Developer, LLC, party to this indenture, known to me personally to be such and acknowledge this Indenture to be his act and deed.

My Commission Expire:

(Printed Signature)

EXHIBIT A

New Castle County Resolution



Tax Parcel No.: 13.013.00-155;
 13-013.00-158 and 13-013.00-159
 Prepared By: Larry J. Tarabicos, Esquire
 Young, Conaway, Stargatt & Taylor
 Rodney Square North, Tenth Floor
 P.O. Box 391
 Wilmington, Delaware 19899

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS (this "Declaration") is hereby made this 15th day of October, 1993, by **THOMAS O. HUBER** and **CHARMAYNE H. SLOAN**, of New Castle County, State of Delaware, (referred to herein as "Declarants"), and states as follows:

WHEREAS, Declarants are seized in fee simple of certain tracts of land situate in St. Georges Hundred, New Castle County, State of Delaware, being located along the Easterly side of the right of way of U.S. Route 13, and being more particularly bounded and described in Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as the "Premises"); and

WHEREAS, Declarants desire to impose upon the Premises certain restrictions and to bind themselves, their heirs, executors, successors and assigns, who may hereafter be the owners of all or part of the Premises.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that Declarants do hereby covenant and declare for themselves, their heirs, executors, successors and assigns, that Declarants shall and do hereby stand seized of the Premises, which said Premises shall henceforth be subject to the following agreements, easements,

RECEIVED FOR RECORDING
 5/17/1994

5/17/1994

covenants, conditions and restrictions ("real covenants"), which real covenants shall be deemed to run with the land in perpetuity and which real covenants are hereby imposed for the benefit of New Castle County, a political subdivision of the State of Delaware, its successors or assigns:

1. No more than sixty thousand (60,000) square feet of building space shall be developed on the Premises until State Route 1 has been completed in its entirety, and opened to use by the general public, within the vicinity of the Premises. Upon completion and opening of the same, full development of the Premises shall be permitted. As used in this paragraph, "the vicinity of the Premises", shall mean from the point that State Route 1 intersects U.S. Route 13, at Tybouts Corner, to a point just south of Smyrna, Delaware.

2. Any office buildings to be developed on the Premises shall have a maximum height of one story.

3. No more than one fast food type restaurant shall be permitted to be developed on the Premises; provided, however, that in the event that a fast food type restaurant is first developed on the adjacent property described in Exhibit "B" attached hereto, no fast food type restaurant shall be permitted to be developed on the Premises.

4. No more than one gasoline service station shall be permitted to be developed on the Premises; provided, however, that in the event that a gasoline service station is first developed on the adjacent property described in Exhibit "B" attached hereto, no

gasoline service station shall be permitted to be developed on the Premises.

5. The Declarant shall not seek any variances from the New Castle County Board of Adjustment to exceed the maximum signage permitted under the New Castle County Code under a C-2 zoning classification.

6. The foregoing real covenants are hereby imposed for the benefit of New Castle County, its successors and assigns, and may not be altered, amended or modified, in whole or in part, without the approval of the County Council of New Castle County, its successor and assigns.

IN WITNESS WHEREOF, Declarants have caused this Declaration to be executed and sealed the day and year first above written.

WITNESS:

<u>Charmayne H. Sloan</u>	<u>Thomas O. Huber</u> (SEAL)
	Thomas O. Huber
<u>Thomas O. Huber</u>	<u>Charmayne H. Sloan</u> (SEAL)
	Charmayne H. Sloan

STATE OF DELAWARE)
) SS.
NEW CASTLE COUNTY)

The foregoing instrument was acknowledged before me, this
15th day of October, 1993, by Thomas O. Huber and Charmayne
H. Sloan.

Phyllis C. C. Hickley
PHYLLIS C. C. HICKLEY
NOTARY PUBLIC-DELAWARE
My commission expires May 19, 1997
Printed Name of Notary Public



CIVIL AND SITE ENGINEERING SPECIALISTS

ONE CORPORATE COMMONS • SUITE 101

100 WEST COMMONS BOULEVARD • NEW CASTLE, DE 19720

TELEPHONE (302) 323-9377 • FAX (302) 323-9461

August 31, 1993

BK 1773 0060

EXHIBIT "A"

Page 1 of 1

C 309

DESCRIPTION FOR
LANDS ABOUT TO BE REZONED
U.S. ROUTE 13 AND COUNTY ROAD 420
ST. GEORGE'S HUNDRED, NEW CASTLE COUNTY, DELAWARE

BEGINNING at a corner cut joining the easterly side of U.S. Route 13 with the southerly side of County Road 420.

THENCE, along County Road 420, the following four (4) courses and distances:

1. N $41^{\circ} 23' 13''$ E, 80.36' to a point;
2. N $78^{\circ} 19' 21''$ E, 284.28' to a point;
3. N $10^{\circ} 50' 42''$ W, 7.96' to a point; and,
4. N $79^{\circ} 09' 18''$ E, 557.52' to a point.

THENCE, S $02^{\circ} 27' 06''$ W, 2302.64' to a point.

THENCE, along lands of Evergreen Partnership N $87^{\circ} 32' 54''$ W, 884.50' to a point.

THENCE, along U.S. Route 13, the following three (3) courses and distances:

1. N $04^{\circ} 40' 06''$ E, 342.85' to a point;
2. By an arc of a circle curving to the left, an arc distance of 223.25' (R = 5770.57') to a point; and,
3. N $02^{\circ} 27' 06''$ E, 1468.97' to the first mentioned point and place of beginning.

CONTAINING within said metes and bounds 43.77± acres.

Beginning at a point on the northerly side of McDonough Road, said point being the intersection of the westerly side of the Route 1 Relief Route with the northerly side of McDonough Road.

Thence from the point of beginning, along the northerly side of McDonough Road, S 88 13'26" W, 309.65' to a point, a corner for lands of others.

Thence by the same, the following (2) courses and distances:

1. N 4 34'24" E, 107.92' to a point.
2. N 85 25'36" W, 119.75' to a point, on the easterly side of DuPont Highway.

Thence by the same, N 4 34'24" E, 917.99' to a point, a corner for lands now or formerly of Charmayne H. Sloan.

Thence by the same, S 85 25'36" E, 339.66' to a point, on the westerly side of the U.S. 1 Relief Route.

Thence by the same, the following (2) courses and distances:

1. S 42 36'04" E, 273.30' to a point.
2. S 12 40'57" W, 798.28' to the first mentioned point or place of beginning.

Containing within said metes and bounds 10.6149+/- acres.

080189

BK1773PG0057

Tax Parcel No.: 13-013.00-155;
13-013.00-158 and 13-013.00-159
Prepared By: Larry J. Tarabicos, Esquire
Young, Conaway, Stargatt & Taylor
Rodney Square North, Tenth Floor
P.O. Box 391
Wilmington, Delaware 19899

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS (this "Declaration") is hereby made this 15th day of October, 1993, by THOMAS C. HURR and CHARMAYNE H. SLOAN, of New Castle County, State of Delaware, (referred to herein as "Declarants"), and states as follows:

WHEREAS, Declarants are seized in fee simple of certain tracts of land situate in St. Georges Hundred, New Castle County, State of Delaware, being located along the Easterly side of the right of way of U.S. Route 13, and being more particularly bounded and described in Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as the "Premises"); and

WHEREAS, Declarants desire to impose upon the Premises certain restrictions and to bind themselves, their heirs, executors, successors and assigns, who may hereafter be the owners of all or part of the Premises.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that Declarants do hereby covenant and declare for themselves, their heirs, executors, successors and assigns, that Declarants shall and do hereby stand seized of the Premises, which said Premises shall henceforth be subject to the following agreements, easements,

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5/17/20

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covenants, conditions and restrictions ("real covenants"), which real covenants shall be deemed to run with the land in perpetuity and which real covenants are hereby imposed for the benefit of New Castle County, a political subdivision of the State of Delaware, its successors or assigns:

1. No more than sixty thousand (60,000) square feet of building space shall be developed on the Premises until State Route 1 has been completed in its entirety, and opened to use by the general public, within the vicinity of the Premises. Upon completion and opening of the same, full development of the Premises shall be permitted. As used in this paragraph, "the vicinity of the Premises", shall mean from the point that State Route 1 intersects U.S. Route 13, at Tybouts Corner, to a point just south of Smyrna, Delaware.

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4. No more than one gasoline service station shall be permitted to be developed on the Premises; provided, however, that in the event that a gasoline service station is first developed on the adjacent property described in Exhibit "B" attached hereto, no

BK 1773PG0059

gasoline service station shall be permitted to be developed on the Premises.

5. The Declarant shall not seek any variances from the New Castle County Board of Adjustment to exceed the maximum signage permitted under the New Castle County Code under a C-2 zoning classification.

6. The foregoing real covenants are hereby imposed for the benefit of New Castle County, its successors and assigns, and may not be altered, amended or modified, in whole or in part, without the approval of the County Council of New Castle County, its successor and assigns.

IN WITNESS WHEREOF, Declarants have caused this Declaration to be executed and sealed the day and year first above written.

WITNESS:

Thomas O. Ruber (SEAL)
Thomas O. Ruber
Charmayne H. Sloan (SEAL)
Charmayne H. Sloan

STATE OF DELAWARE)
NEW CASTLE COUNTY) SS.

The foregoing instrument was acknowledged before me this 5th day of October, 1993, by Thomas O. Ruber and Charmayne H. Sloan.

Phyllis C. C. [Signature]
Phyllis C. C. [Signature] Public
NOTARY PUBLIC-DELAWARE
Printed Name of Notary Public

WV003/0001/197/0007/1119-1



CIVIL AND SITE ENGINEERING SPECIALISTS

ONE CORPORATE COMMONS - SUITE 101
100 WEST COMMONS BOULEVARD - NEW CASTLE, DE 19770
TELEPHONE (302) 323-8877 - FAX (302) 323-9401
August 31, 1993

BK1773PG0060

EXHIBIT "A"

Page 1 of 1

C 309

DESCRIPTION FOR
LANDS ABOUT TO BE RESEDED
U.S. ROUTE 13 AND COUNTY ROAD 420
ST. GEORGE'S HUNDRED, NEW CASTLE COUNTY, DELAWARE

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and place of beginning.

CONTAINING within said metas and bounds 43.77± acres.

EX 1773P60061
Description of Lands
for remeasuring

EXHIBIT "B"

Beginning at a point on the northerly side of McDonough Road, said point being the intersection of the westerly side of the Route 1 Relief Route with the northerly side of McDonough Road.

Thence from the point of beginning, along the northerly side of McDonough Road, S 88 13'36" W, 309.63' to a point, a corner for lands of others.

Thence by the same, the following (2) courses and distances:

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2. N 83 25'36" W, 119.75' to a point, on the easterly side of DuPont Highway.

Thence by the same, N 4 34'24" E, 917.99' to a point, a corner for lands now or formerly of Charmayne E. Sloan.

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Thence by the same, the following (2) courses and distances:

1. S 43 36'04" E, 273.30' to a point.
2. S 12 40'57" W, 798.28' to the first mentioned point or place of beginning.

Containing within said notes and bounds 10.6149+/- acres.

NEW CASTLE COUNTY COUNCIL LAND USE COMMITTEE MEETING

Huber's Crossing

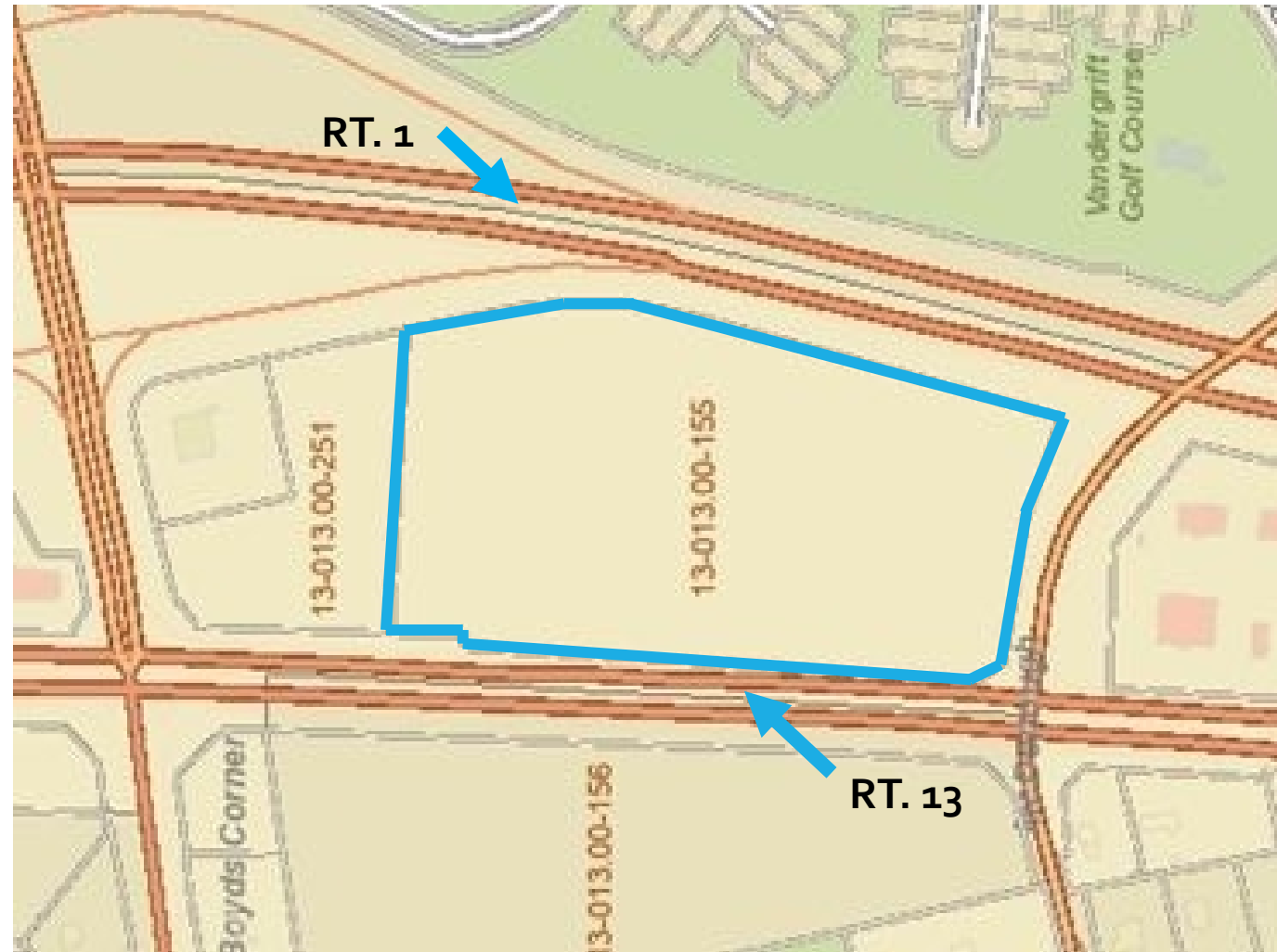
October 15, 2024

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Aerial View

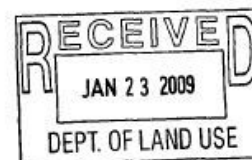


Parcel View 25.39 Acres



Declarations of Restrictions

080189 BK 1773 PG 0057



Tax Parcel No.: 13.013.00-155;
13-013.00-158 and 13-013.00-159
Prepared By: Larry J. Tarabicos, Esquire
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P.O. Box 391
Wilmington, Delaware 19899

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WHEREAS, Declarants desire to impose upon the Premises certain restrictions and to bind themselves, their heirs, executors, successors and assigns, who may hereafter be the owners of all or part of the Premises.

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OCT 19 1993

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Declarations of Restrictions

BK 1773 PG 0058

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Declarations of Restrictions

⑤. The Declarant shall not seek any variances from the New Castle County Board of Adjustment to exceed the maximum signage permitted under the New Castle County Code under a C-2 zoning classification.

6. The foregoing real covenants are hereby imposed for the benefit of New Castle County, its successors and assigns, and may not be altered, amended or modified, in whole or in part, without the approval of the County Council of New Castle County, its successor and assigns.

Planning Department's
Recommendation on
Ordinance's 93-073,
93-074 and 93-086



In summary, the Department is of the opinion that the three subject sites, taken as a whole, could provide for the commercial needs for the surrounding area, which has seen and is projected to see increased residential development. This recommendation should not be taken as a signal that all Route 1 interchanges can support significant levels of non-residential development. The existing commercial zoning on-site and the highly defined and bordered nature of this site enhance its commercial development potential. The Department supports the application, with the assurances that development be limited until the completion of Route 1.

PLANNING DEPARTMENT RECOMMENDATION

The Department recommends the adoption of the three subject rezoning ordinances, subject to the applicant volunteering assurances that no more than 60,000 sq. ft. of commercial development on either current or proposed commercially zoned land occupied prior to the completion of State Route 1 in its entirety.

Planning Board's
Recommendation



PLANNING BOARD RECOMMENDATION

Same as Planning Department recommendation. Vote: 5-0 (Holman absent, 1 vacancy) at the Regular Business Meeting of July 20, 1993.

Record Minor Land Development Plan

APPLICATION NO. 2016-0835(S)
RECORD MINOR LAND DEVELOPMENT PLAN
 FOR
HUBER'S CROSSING
 ST. GEORGE'S HUNDRED - NEW CASTLE COUNTY
 DELAWARE

LOCATION MAP 1" = 800'

KEY MAP 1" = 500'

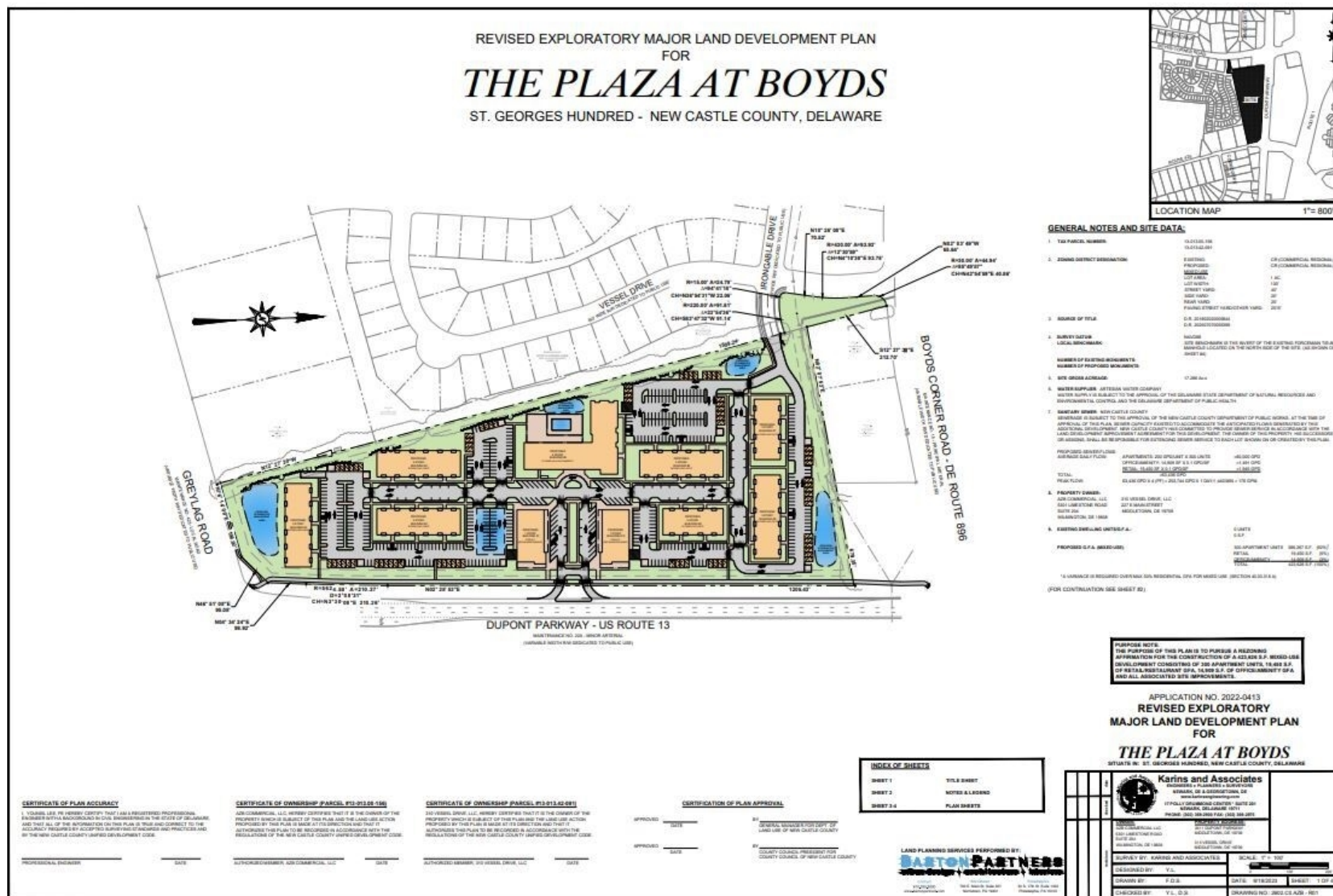
LEGEND

- 1" = 200'
- 1" = 500'
- 1" = 1000'
- 1" = 2000'
- 1" = 4000'
- 1" = 8000'
- 1" = 16000'
- 1" = 32000'
- 1" = 64000'
- 1" = 128000'
- 1" = 256000'
- 1" = 512000'
- 1" = 1024000'
- 1" = 2048000'
- 1" = 4096000'
- 1" = 8192000'
- 1" = 16384000'
- 1" = 32768000'
- 1" = 65536000'
- 1" = 131072000'
- 1" = 262144000'
- 1" = 524288000'
- 1" = 1048576000'
- 1" = 2097152000'
- 1" = 4194304000'
- 1" = 8388608000'
- 1" = 16777216000'
- 1" = 33554432000'
- 1" = 67108864000'
- 1" = 134217728000'
- 1" = 268435456000'
- 1" = 536870912000'
- 1" = 1073741824000'
- 1" = 2147483648000'
- 1" = 4294967296000'
- 1" = 8589934592000'
- 1" = 17179869184000'
- 1" = 34359738368000'
- 1" = 68719476736000'
- 1" = 137438953472000'
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- 1" = 664613997892457936451903530140172288000'
- 1" = 1329227995784915872903807060280344576000'
- 1" = 2658455

Current Record Plan

1. 38,000 SF Super Market
2. 58,000 SF Retail
3. 4,500 SF Bank
4. 7,000 SF Restaurant
5. 7,000 SF Restaurant
6. 5,000 SF Fast Food Restaurant

The Plaza at Boyd's



Section 40.31.130(D)

- Determine if a change is in the best interests of the parties to the restrictions and is consistent with the planning goals of the County

1. Rt. 1 Completed ✓
2. Updated Record Plan (3/29/19) ✓
3. Additional Commercial Uses needed to support Residential Development in the area ✓
4. Level 2 Designation – Support and encourage a wide range of uses and densities ✓
5. The Department of Land Use and Planning Board recommended in favor of lifting Deed Restrictions ✓

Matthew S. Meyer
County Executive



Charuni Patibanda
General Manager

Department of Land Use

RECOMMENDATION DEED RESTRICTION CHANGE

Application No. 2024-0471-D

Huber's Crossing

October 15, 2024

Location:	Southeast corner of the intersection of Dupont Highway and Pole Bridge Road.
Tax Parcel No.:	13-013.00-155
Applicant:	Huber Developer, LLC

DESCRIPTION

To eliminate the declarations of restrictions dated October 15, 1993, by Thomas O. Huber and Charamayne H. Sloan restricting uses on the property in excess to the standards for a Commercial (C-2, now CR) zoned property. The applicants propose to eliminate the existing restrictions to enable potential future development of the site.

BACKGROUND

Located at the Southeast corner of the intersection of Dupont Highway and Pole Bridge Road parcel 13-013.00-155 had until recently served in an agricultural capacity. Prior to 1951, the site had few improvements acting as a family farm owned by several families. In 1951 the property was sold by the Morris family to Evergreen Acres, Inc. (Deed Book Y-50, Pages 253-254). Operations expanded significantly as indicated by the number size of structures constructed adjacent to DuPont Highway. In 1961 (Zoning Petition 633-Z) the New Castle County Levy Court the rezoning of 2.73 acres from Residential (R-2) to Commercial (C-2) encompassing structures constructed since 1951, including an antique store. Between 1961 and 1993 little changed on the site, except for the construction of a structure at the southern end of the property.

In 1993, New Castle County considered 3 County initiated rezonings Ordinances 93-073, 93-074, and 93-086. Ordinances 93-073, 93-074 proposed rezoning land that is now bound by DuPont Highway (West), Pole Bridge Road (North), Rt. 1 (East) and Greylag Road (South) from

Residential (R-2) to Commercial (C-2). Ordinance 93-086 proposed rezoning land immediately south of the land that is immediately south of the intersections of Greylag Road and Rt. 1 as well as DuPont Highway. These rezonings were considered in anticipation of the construction of Rt. 1 and included a joint traffic study for potential development on the sites. This was reviewed by both DelDOT and the Department of Planning (now Department of Land Use). The study indicated a failing level of service along DuPont Highway. The Department and Planning Board recommended in favor of the rezonings with the condition that the applicant provide *voluntary assurances* (deed restriction) that commercial development would be limited to 60,000 SF prior to the completion of Rt. 1. The applicant recorded the deed restrictions for the property on October 15, 1993, County Council approved the 3 rezoning requests on October 29, 1993. In addition to the voluntary assurance conditioned by the Department and Planning Board The deed restrictions included the following additional restrictions:

- Any office buildings to be developed on the Premises shall have a maximum height of one story.
- No more than one fast food type restaurant shall be permitted to be developed on the Premises; provided, however, that in the event that a that a fast food type restaurant is first developed on the adjacent property described in Exhibit "B" attached hereto, no fast food type restaurant shall be permitted to be developed on the Premises.
- No more than one gasoline service station shall be permitted to be developed on the Premises; provided. However, that in the event that a gasoline service station is first developed on the adjacent property described in Exhibit "B" attached hereto, no gasoline service station shall be permitted to be developed on the Premises.
- The declarant shall not seek any variances from the New Castle County Board of Adjustment to exceed the maximum signage permitted under the New Castle County Code under a C-2- zoning classification.

In subsequent years Rt. 1 was completed, and land development plans were completed for the Odessa Fire Hall Substation (TP: 13-013.00-158), Bayview Crossing (TP: 13-013.40-107) and Huber's Crossing (TPs: 13-013.00-155 and 13-013.00-251). While development occurred at Bayview Crossing and the Odessa Fire Hall Substation, outside of the demolition of structures and groundwork, Huber's Crossing has remained undeveloped. In 2019, Lot 1 was subdivided from 13-013.00-155 (Inst. 201903290022494), and subsequently acquired by New Castle County for the home of a future public safety building.

Proposed Changes

The applicant proposes to eliminate the existing deed restrictions recorded on October 15, 1993, with respect to parcel 13-013.00-155.

Public Hearing – October 1, 2024

Shawn Tucker, Esq., attorney for the applicants, described the existing deed restrictions, with and the history of the site. He further described how the restrictions have limited the viability of the site as well as the ability to sell the property to developers seeking to improve the site.

In response to the presentation provided by the applicant's representative, the Planning Board Chair, Karen Peterson identified potential typographical errors and posed several questions. She inquired about the change in acreage from the original deed restriction and that discussed in the current submission. Mr. Tucker explained that the original land restricted included the land acquired by New Castle County for the public safety building (Lot 1). Ms. Peterson further remarked that usually when a property owner enters into deed restrictions, they are offered in exchange for something. She inquired if the applicants were aware of what was offered in exchange for the restrictions. Mr. Tucker indicated that the restrictions not requested by the County appeared to have been the result of outreach to residents. Ms. Peterson expressed her concerns regarding applicants entering into deed restrictions and then requesting 10 years later to have the restrictions lifted. Mr. Snowden inquired about the reason that the existing deed restriction refers to 3 parcels, where the proposed document only referred to 2. Mr. Tucker described the consolidation and other changes to the original parcels. Mr. Denote, also representing the applicants indicated that parcel 158 was assigned to the Odessa Fire Hall Substation and 159 is not currently assigned to any parcel. Mr. Snowden and Mr. Tucker discussed the applicability of the existing restrictions, specifically the practicality in removing the restriction of signage limitations.

Dale Swain voiced support for eliminating the existing restrictions citing the need for commercial development to support the residential growth that has occurred in the area. Commerce Price, additionally voiced support for the elimination of the restrictions echoing much of Mr. Swain's sentiment and discussing the commercial entities that have also closed over the years. Larry Tarabicos, Esq., attorney who represented Mr. Huber when the retractions were established, described the rationale for the restrictions as being rooted in concern that the original site was intended to be the sole commercial site serving the area.

While the record was open the Department received written correspondence from Heather Chelpathy supporting the elimination of the existing deed restrictions for parcel 13-013.00-155.

Department Analysis

In considering whether or not to support an amendment to a deed restriction to which the County is a party to, Section 40.31.130.D of the UDC identifies two (2) areas of evaluation; (1) are the proposed change in the best interests of the parties to the restrictions and (2) are they consistent with the planning goals of the County? When evaluating whether an amendment to a deed restriction is appropriate, it is important to understand the historical context under which the agreements were made.

Rezoning and Deed Restrictions

The Unified Development Code provides unambiguous universal standards for when an amendment to the zoning map is appropriate (Section 40.31.410). These standards evaluate on large scale if a proposed rezoning is consistent with the Comprehensive Development Plan as

well as the potential impacts that uses permitted by the rezoning would have on the surrounding community. Dating back to 1967, Delaware State Code (9 Del C. § 4902(b)) has required that:

All such regulations **shall be uniform** for each class or kind of buildings throughout any district, but the regulations in 1 district may differ from those in other districts.

The Department is cautious when recommending that a property owner enter into deed restrictions as part of the consideration so as to avoid the perception of contract zoning or inconsistency with the above two code provisions. The Department and the Planning Board recommended limitations be placed on the property that would limit development while road improvements were completed (Rt.1), after which time the restriction extinguished. This restriction was appropriate based on the traffic study and the fact that the improvements were funded. Today the Unified Development Code better restricts development on roads with a failing level of service. The remaining restrictions, while not a factor in the consideration for the rezoning, based on County records and testimony appear to have been the voluntarily to work with the community.

GFA Limitation until the completion of Rt.1

As discussed at the public hearing and above, the existing deed restrictions limit development on the site to 60,000 SF of building space until the completion of State Route 1. State Route 1 has long been completed, and as such this restriction is no longer needed.

Bulk and Use Limitations

The existing restrictions on the site include significant limitations on the height and types uses permitted on the site. While these may have been valid concerns at the time that the owner voluntarily restricted the property, there have been a number of significant changes in County Code as well as development in the area that render them unnecessary and in some cases undesirable. Development and growth in Southern New Castle County have been extensively studied since 1993 including: *Southern New Castle County Land Use Study (1996)*, *Southern New Castle County Master Plan (2020)*, and *the 2022 Update to the New Castle County Comprehensive Plan (NCC2050)*. The County has additionally adopted and revised the Unified Development Code, which contains enhanced environmental resource protections and uniformed standards informed by changes in economic sectors.

The existing restrictions limit office buildings to 1 story in height. The restrictions are not clear on what is defined as an office building. Does the restriction only apply to structures entirely designated for office uses? Would this restrict the office component of a mixed use development? What happens if a building was originally constructed for commercial use but is later converted to an office building? The Department believes that the existing standards in the UDC provide for a more cohesive site design consistent with commercial development along the corridor. Additionally, this restriction limits potential economic development that would be consistent with Comprehensive Plan.

The existing restrictions also include limitations on the number of *fast food type restaurants*. Since 1993, *fast food type restaurants* have evolved to include more *fast casual restaurants* such as Chipotle and Panera. It is also important to consider that the UDC does not define a fast-food restaurant, only referring to the term with respect to parking. The Unified Development Code, does, as discussed above include uniform standards within the CR zoning district for restaurants. It further includes appropriate use limitations restaurants with a drive thru, mixed use, and shopping center development.

The existing restrictions limit the number of gasoline service stations on the site, which under the Former Code (pre UDC) may have been appropriate, considering that the site is entirely with a recharge area. That said, the UDC has long prohibited the storage of petroleum, as a use, in protected resources including recharge areas (Section 40.10.600), as such this restriction is unnecessary.

Prohibition from Seeking Relief for Signage Requirements

The existing deed restrictions prohibit the property owner from pursuing relief from signage requirements under a C-2 zoning classification. The Department has several concerns with this restriction. First it deprives the property owner or future owner of due process for a potential hardship from the Board established and designated to consider such a request. Additionally, while Mr. Tucker's reference of the table translating C-2 and CR requirements exist, and that many provisions have remained unaltered from the Former Code, some changes nonetheless have occurred. The regulations for electronic variable message signage have changed several times since the adoption of the UDC. Additionally, it is arguable that this restriction was rendered void with the adoption of the UDC since while the UDC references C-2 zoning, any variance would be from the requirements and standards for CR zoning.

DEPARTMENT OF LAND USE RECOMMENDATION

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

PLANNING BOARD RECOMMENDATION

At the business meeting held on October 15, 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 Leah Gray and seconded by Leone Cahill-Krout, the Board voted to recommend **APPROVAL** of deed restriction change as recommended by the Department of Land Use.

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

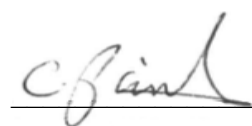
Prior to the vote, the following discussion occurred:

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

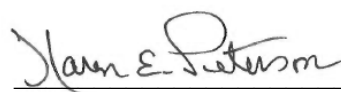
Ms. Gray inquired about the impact of eliminating the height restrictions of the existing deed restrictions. Mr. Rogers and Ms. Patibanda explained that if the restrictions were eliminated the property would be subject to the same use restrictions as other Commercial Regional zoned land regarding height which set by the use. Ms. Gray also inquired about the impact of eliminating the prohibition from pursuing a variance from the C-2 sign regulations. Mr. Rogers explained that the current restrictions prohibit the property owner from pursuing relief based on a hardship, as provided for under State Code. Mr. Rogers and Ms. Patibanda further explained that the signage permitted on the site would be subject to the same limitations as other Commercial Regional zoned parcels, with the ability to seek relief from the Board of Adjustment.

STATUTORY GUIDELINES

In the phraseology of 9 Delaware Code Section 2603(a), the Department finds that this deed restriction change will promote the convenience, order and welfare of the present and future inhabitants of this State.

 10/15/2024

Charuni Patibanda Date
 General Manager
 Department of Land Use

 10/15/2024

Karen Peterson Date
 Chair
 Planning Board

NOTE: The applicant is responsible to coordinate with the resident County Council person and the County Council Clerk to schedule this deed restriction change. This recommendation is forwarded to the applicant, the resident council person, and the clerk of County Council when it is finalized. A resolution must be prepared by the applicant for County Council use and submitted to County Counsel for review.

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

ORDINANCE NO. 24-042

COMPREHENSIVE REZONING - TO REVISE THE NEW CASTLE COUNTY ZONING MAPS IN COUNTY COUNCIL DISTRICT 7 REGARDING THE FOLLOWING TAX PARCELS: NEW CASTLE HUNDRED: 10-017.00-003 (251 CHURCHMANS RD, CHURCHMANS OFFICE COMPLEX)

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 **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
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 New Castle Hundred, are hereby amended by
42 changing the zoning classification of the land shown on attached Exhibit "A", Map 1 dated
43 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:

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

Approved on:

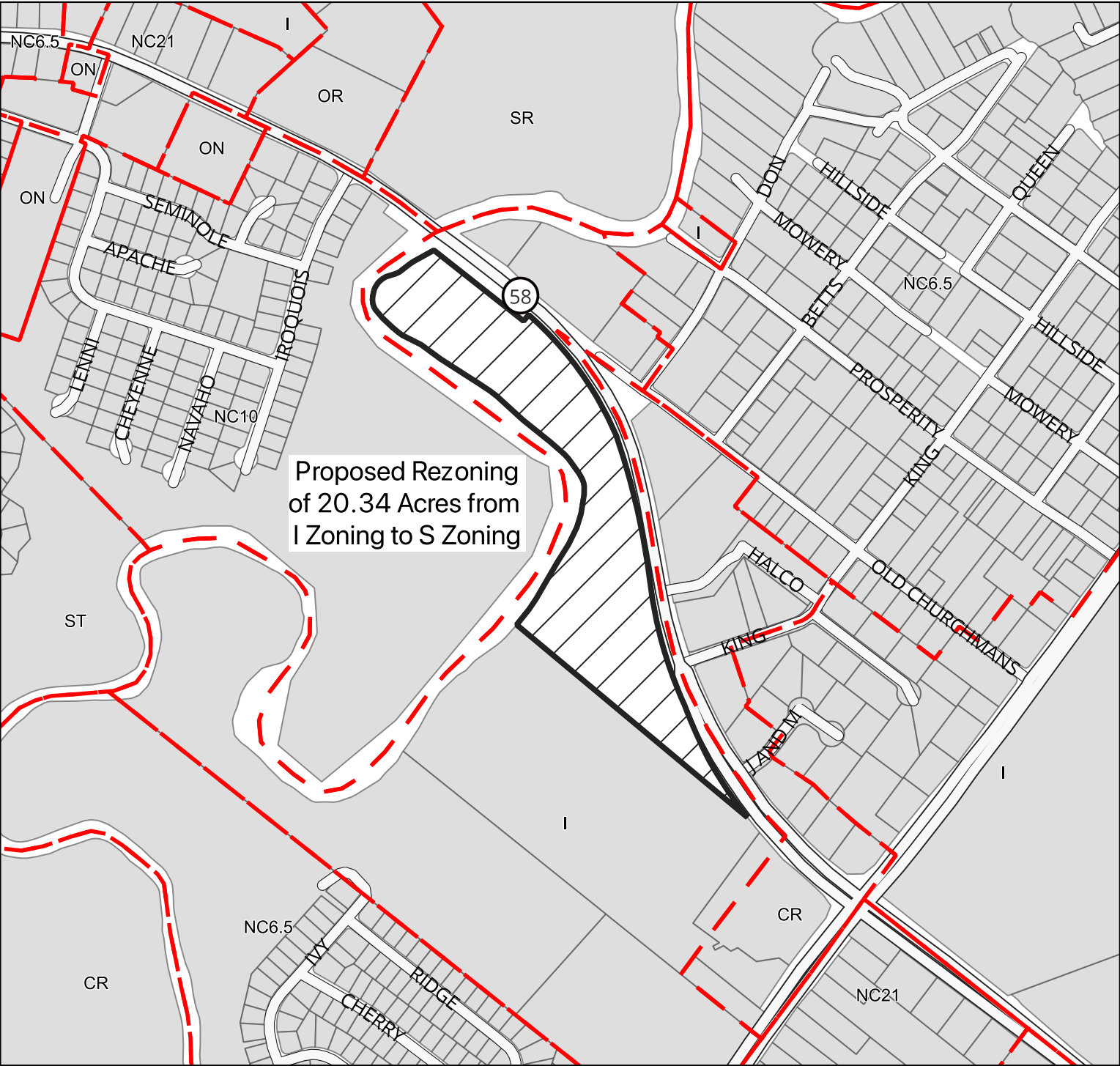
Matthew Meyer
County Executive
New Castle County

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. 2024-0134-Z
TAX PARCEL NO: 10-017.00-003



HUNDRED: NEW CASTLE
NEW CASTLE COUNTY, DELAWARE

Scale: 1:7389
Prepared by: Matthew Rogers
Date: 3/13/2024



PERMANENT ORDINANCE NO. 24-042
Date Adopted by County Council:
Date Approved by County Executive:



Department of Land Use

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

**Ordinance No. 24-042
Application No. 2024-0134-Z
Comprehensive Rezoning**

July 16, 2024

Sponsor: Councilman Smiley (District 7)

Description: Amend the Zoning Map for County Council District 7 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 24-042 proposes to amend the County's official zoning map to rezone lands in County Council District 7 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 10-017.00-003 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 10-017.00-003, 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 24-042 is a rezoning ordinance that rezones parcel 10-017.00-003 from a nonresidential designation (Industrial) to a residential designation (Suburban) 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 Planning⁵

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 1988⁶

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 24-042 Comprehensive Rezoning County Council District 7

Ordinance 24-042 was introduced on March 26, 2024, proposing to rezone 1 parcel from residential to nonresidential zoning designation:

Parcel 10-017.00-003 – 20.34 acres from Industrial (I) to Suburban (S)
Owner: New Castle County
Address: 251 Churchmans 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 24-042* 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 24-042*, 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 24-042 proposes rezoning parcel 10-017.00-003 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 designates the parcel as Resource Preservation.

Parcel 10-017.00-003 was originally rezoned from Residential (R-1-C) to Office (O-2) in 1983 (Ord. 82-064). In 1997, with the adoption of the Unified Development Code the property was zoned Industrial. New Castle County acquired the property in 2004, and it has served in an open space capacity as the Anderson Property Park for the last 20 years. Located on the north side of the White Clay Creek, parcel 10-017.00-003 is adjacent to the open space for the Woods Section II development zoned Neighborhood Conservation, and to the south, east and west by non-residential development. 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 10-017.00-003, 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 10-017.00-003 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 10-017.00-003 proposed by Ordinance 24-042 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 10-017.00-003 has served as open space as the Anderson Property Park, owned by New Castle County, for 20 years, and is to remain in that capacity. Rezoning this parcel is consistent with the character of the surrounding neighborhoods.

C. Consistency with zoning and use of nearby properties.

Parcel 10-017.00-003 has served as open space for 20 years, rezoning it from Industrial to Suburban is consistent with neighboring residential uses. While parcel 10-017.00-003 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 10-017.00-003 serves as a park 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 10-017.00-003 to Suburban, discouraging development and encouraging preservation of the land will not have a negative impact on nearby properties, and will be consistent with the 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 24-042.

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 24-042 as recommended by the Department of Land Use.

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

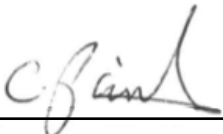
Prior to the vote the following discussion occurred:

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

Ms. Drake confirmed with the Department that parcel 10-017.00-003 is intended to remain as open space. Mr. Rogers confirmed the intention for the property to remain as open space and that the rezoning would not impact it serving in that capacity. Ms. Visvardis asked if the property could later be sold and developed. Mr. Rogers stated that typically there are restrictions against that from happening. There were no additional 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

Introduced by: Mr. Cartier
Ms. Diller
Mr. Tackett Ms.
Kilpatrick, *Mr. Sheldon*
Date of introduction: July 10, 2012

**SUBSTITUTE NO. 3 TO
ORDINANCE NO. 12-084**

**TO AMEND NEW CASTLE COUNTY CODE CHAPTER 7 ("PROPERTY
MAINTENANCE CODE") AND CHAPTER 40 ("UNIFIED DEVELOPMENT
CODE") ARTICLES 15 ("HISTORIC RESOURCES"), 30 ("COUNTY COUNCIL
AND ADMINISTRATIVE BODIES") AND 31 ("PROCEDURES AND
ADMINISTRATION") TO PREVENT THE DEMOLITION BY NEGLECT OF
PROPERTY LOCATED IN A HISTORIC OVERLAY ZONING DISTRICT
AND TO DESIGNATE \$200,000 OF THE HISTORIC PRESERVATION PROPERTY
MAINTENANCE REVOLVING FUND FOR EMERGENCY REPAIRS FOR THESE
HISTORIC PROPERTIES**

WHEREAS, this ordinance is intended to preserve properties located in historic overlay zoning districts from inadvertent or deliberate neglect that results in severe deterioration, potentially beyond the point of repair; this ordinance would effectuate Strategy No. 9 in the 2012-2022 Comprehensive Plan Update for historic preservation); and

WHEREAS, it is the further intent of this preservation ordinance to require affirmative maintenance of properties located in historic overlay zoning districts and to provide the Historic Review Board and the Department of Land Use Code Enforcement with collaborative and adequate remedies and enforcement authority to safeguard these important properties within our County; and

WHEREAS, New Castle County believes that the preservation and protection of historic sites and properties are critical to the character of the County; Council thus has adopted law calling for the establishment of historic overlay zoning districts and encouraging the renovation and rehabilitation of buildings, structures, sites and objects which are designated as historic or which are located within, and contribute to, the character of districts designated as historic (*New Castle County Code* Division 40.15.000); and

WHEREAS, the first two charges of the County's Historic Review Board are to develop a comprehensive inventory of buildings, structures, sites, objects, districts, landscapes and/or scenic landmarks of historical and other benefit, and to delineate the boundaries of, and recommend to Council for confirmation, districts meriting historic designation (*New Castle County Code* Section 40.30.330(A) and (B)); and

WHEREAS, the Property Maintenance Code provides that nothing therein will override laws on historic structures provided that said structures are maintained in good repair and are not a threat to the health, welfare and safety of the occupants of the premises or the general public (*New Castle County Code* Chapter 7 "Property Maintenance Code," Section 7.01.002 "Amendments to the International Property Maintenance Code," Section PM 102.6 "Historic buildings"); further, the Code Official is authorized to placard any unsafe building (Section PM 109 "Emergency

Measures") and may employ necessary labor and materials to effect emergency repairs, with the costs charged against the real estate upon which the structure is located and a lien placed against the real estate (Section PM 109.4 "Emergency repairs"); the County Attorney additionally may institute appropriate action against the owner of the premises where the unsafe structure is or was located for cost recovery (Section PM 109.5—"Cost of emergency repairs"); and

WHEREAS, in strengthening the affirmative maintenance provisions for properties located in historic overlay zoning districts, Council recognizes the importance of coordination between the Historic Review Board and Code Officials to identify and correct deferred maintenance problems before they reach the point of demolition by neglect; in fact, the Code in Section 40.30.330(J) already requires this collaboration to identify illegal demolition or demolition by neglect; and

WHEREAS, Council proposes to designate \$200,000 from the Historic Preservation Property Maintenance Revolving Fund to effectuate repairs that would halt demolition by neglect; and

WHEREAS, the County also already has incentivized historic preservation via the adoption of bonuses and incentives (*New Castle County Code* Division 40.07.400) and a tax exemption program for historic properties (*New Castle County Code* Chapter 14, Article 12); and

WHEREAS, New Castle County Council finds that the provisions of this ordinance further the public's interest in protecting and encouraging the preservation of buildings, structures, objects and sites that reflect our shared heritage for generations to come; and

WHEREAS, New Castle County Council further finds that this ordinance is warranted to achieve the purposes of the Comprehensive Plan.

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

Section 1. *New Castle County Code* Chapter 7 ("Property Maintenance Code"), Section 7.01.002 ("Amendments to the International Property Maintenance Code"), is hereby amended by adding the material that is underscored and deleting the material that is stricken, as set forth below.

Section PM 102.6, Historic buildings. The provisions of this code shall not be mandatory for existing buildings or structures designated as historic buildings when such buildings or structures are judged by the code official to be safe and in the public interest of health, safety and welfare, and when the code provisions would otherwise affect the historic integrity of the structure, as determined in conjunction with the Historic Review Board.

Nothing contained in this Chapter shall be construed to override statutes, laws, ordinances, rules or regulations with respect to the architectural or design integrity of buildings which have been designated as historic structures or which have historical significance, provided that such structures are maintained in good condition and repair and are not a threat to the health, welfare or safety of the occupants of the premises or the general public. This is to be read and enforced in conjunction with the provisions of Section PM 102.6.1.

Section PM 102.6.1. Maintenance of property in historic overlay zoning districts - demolition by neglect. The owner, lessee, or other person in charge of a structure or property in historic overlay zoning districts shall comply with all applicable codes, laws and regulations governing the maintenance of property, with the exception set forth in 102.6 above. No officially-designated historic structure or contributing structure on property within an historic overlay zoning district shall be allowed to deteriorate due to neglect by the owner, lessee or other person in charge. Demolition by neglect shall include any one or more of the following courses of action or inaction: a) deterioration of the structure's exterior to the extent that it creates or permits a hazardous or unsafe condition; b) deterioration of exterior walls or other vertical supports, roofs, chimneys, horizontal members, exterior wall elements including, but not limited to, wooden walls, brick, plaster or mortar to the extent that it adversely affects the character of the historic structure or could lead to irreversible damage to the structure; c) defective or insufficient weather protection for the exterior walls roofs foundations, doors and windows, including broken windows or doors and including lack of paint or other protective covering on exterior walls; d) or other appropriate property maintenance standards. The Code Official shall proactively inspect all properties subject to this subsection, twice annually, or as determined by the Code Official, from a list provided by the Historic Review Board, cite all violations as customary or as required in conjunction with the Historic Review Board as set forth above and promptly submit a written report on each violation with photographic documentation on each inspection to the Historic Review Board.

SECTION PM 109. EMERGENCY MEASURES

Section PM 109.1. Imminent Danger....

Section PM 109.1.2. Imminent danger of demolition by neglect of designated historic structures or contributing structures in historic overlay zoning districts. If it is determined by the code official after consultation with, and a decision by, the Historic Review Board, that there is imminent danger of the loss of a designated historic structure or contributing structure or a feature that contributes to the historic integrity of a structure within a historic overlay zoning district via demolition by neglect, and after prior required notice and an opportunity to cure as set forth elsewhere in this chapter and in Chapter 40, the Office of Law may be requested to seek injunctive relief deemed necessary and appropriate to preserve the structure and/or to pursue emergency repairs as set forth in Section PM 109.4-5.

Section 2. *New Castle County Code* Chapter 40 ("Unified Development Code"), Article 15 ("Historic Resources"), Division 40.15.000 ("Purpose"), is hereby amended by adding the material that is underscored, as set forth below.

Division 40.15.000. Purpose....

The preservation and protection of buildings, structures...

The purposes of this Division are to:

A. Identify and preserve historic buildings, structures...

I. Prevent the demolition by neglect, as defined in Chapter 7 ("Property Maintenance Code"), of a building, complex of buildings, structure, site, object or district designated for preservation as a historic overlay zoning district pursuant to this Article.

Section 3. *New Castle County Code* Chapter 40 ("Unified Development Code"), Article 30 ("County Council and Administrative Bodies"), Table 40.30.110 ("Procedural Responsibilities") is hereby amended by adding the material that is underscored as set forth below.

Table 40.30.110 PROCEDURAL RESPONSIBILITIES							
Type of Action	County Council	Administrative Boards			Administrative Agents		
		Plan- ning Board	Board of Adjust- ment	Historic Review Board	Department of Land Use	PLUS	RPA - Technical Advisory Committee
General Reviews (see Division 40.31.400 for standards)							
Zoning text amendment	HD	HR			R		
...							
Historic <u>overlay</u> zoning district map amendment	HD	HR		R	R		
....							
<u>Demolition by Neglect</u>				<u>HD</u>	<u>R</u>		
Historic permit	A			HD	R		
Zoning variance			HD		R, D*		R**
....							

Section 4. *New Castle County Code* Chapter 40 ("Unified Development Code), Article 30 ("County Council and Administrative Bodies"), Division 40.30.300 ("Administrative boards"), Section 40.30.330 ("Historic Review Board"), is hereby amended by adding the material that is underscored and deleting the material that is stricken, as set forth below.

Sec. 40.30.330. Historic Review Board.

The Historic Review Board shall consist of nine (9) members....The Historic Review Board shall have the following powers and duties:

A. Delineate the boundaries of and recommend to County Council for confirmation

B. Conduct and maintain an ongoing survey of the County...

...

E. Make recommendations to the County Executive and County Council, and to the Department and the Planning Board, concerning the use of grants, gifts and budgeting appropriations to promote the preservation of buildings, structures, sites, etc., of historic importance to the citizens of the County. The Historic Review Board shall make recommendations to the County Executive and County Council that the County purchase buildings, structures, sites or objects of historical significance ~~where private preservation is not feasible~~ when deemed appropriate. The Historic Review Board shall also make recommendations, as appropriate, that the County acquire facade easements, conservation easements, development rights or any other property interest that would promote preservation.

F. Advise the public on preservation when technical assistance...

....

J. The Historic Review Board shall be responsible for identification and/or confirmation of demolition by neglect, in conjunction with the code official, as defined in Chapter 7 and as based on each inspection report and/or recommendation of the code official on properties in historic overlay zoning districts as required in Chapter 7 or an illegal demolition of a building, structure or object located within a historic district or meeting the criteria to be included in a historic district pursuant to Article 31 and the procedures set forth in this Chapter and the Board's rules. Review of inspection reports and recommendations on potential demolition by neglect shall be added to each agenda when received.

K. The Historic Review Board will work collaboratively with the code official to effectuate the goals of Chapter 7 and the 2012 Comprehensive Development Plan regarding properties located in a historic overlay zoning district.

Section 5. *New Castle County Code* Chapter 40 ("Unified Development Code"), Article 31 ("Procedures and Administration"), Division 40.31.200 ("Miscellaneous application reviews"), is hereby amended by adding the material that is underscored and deleting the material that is stricken, as set forth below.

Division 40.31.200. Miscellaneous application and other reviews.

Sec. 40.31.280. Historic permits and demolition by neglect.

A. No person shall undertake exterior alterations, demolitions, relocation, construction or reconstruction on any building, structure, site, or object within a historic overlay zoning district unless a permit is first obtained from the Department. If the Board or the Department is aware of

the conduct of such work without a permit, the Department and/or the Board, as the case may be, and the Law Department, will be advised for pursuit of legal remedies.

B. The Department shall issue no permit required under Subsection A until the Historic Review Board first reviews and approves the application for the permit.

....

G. When the Historic Review Board reviews an application for a permit required under Subsection A, it shall consider the following factors before reaching its decision on the application:

1. The purposes of the Article 15.
2. The historical, architectural, archaeological....
6. For demolitions, the Historic Review Board shall consider whether the building, structure or object can be used for any purpose for which it is or may be reasonably adapted. To that end, the applicant must demonstrate that the sale of the property is impracticable (as documented per 7(h) below), that rental cannot provide a reasonable rate of return (as documented per 7(h) below), and that other potential uses of the property are not feasible or available. In no event will a sale be deemed impracticable, rental returns unreasonable or other uses not feasible if the reason is deterioration of the property due to the owner, lessee, or person in charge's own intentional or gross negligence in maintaining the property.
7. Where an application for exterior alteration, relocation, construction or reconstruction is based on financial hardship, the Historic Review Board may lessen its requirements if the applicant can demonstrate the extent of financial hardship. In examining a claim of economic hardship, the Board will look beyond the relationship of the cost of repairs and the purchase price or the "as is" value to sort out the extent to which an economic hardship is attributable to the owner's actions or inactions, or to circumstances beyond the owner's control that would have existed in any event. When a claim of undue economic hardship is made, the owner and/or parties in interest must provide evidence during the hearing upon the claim, describing the circumstances of the hardship. Minimum evidence shall include:
 - a. Nature of ownership (individual business or nonprofit) or legal session, custody or control.
 - b. Financial resources of the owner or parties in interest.
 - c. Cost of repairs to the subject property.
 - d. Real estate taxes on the property in question for the prior two (2) years.

- e. Assessed value of the land and improvements.
- f. Amount paid for the property, date of purchase, and party from whom purchased, including a description of the relationship between the seller and purchaser or other means of acquisition of title, such as by gift or inheritance.
- g. For income-producing property only, itemized operating and maintenance expenses for the subject property for the prior two (2) years and annual cash flow, if any, for the prior two (2) years.
- h. Any and all listings of the property for sale or rent, price asked, and offers received for the prior two (2) years.
- i. Annual gross income on the subject property for the prior two (2) years.
- j. Annual debt service, if any, received in the prior two (2) years.

H. The Historic Review Board shall consider inspection reports on properties within historic overlay zoning districts to ascertain whether Demolition by Neglect as defined in Chapter 7 is occurring. The owner, lessee or person in charge will be provided an opportunity to be heard as set forth in this Code and Historic Review Board rules and regulations before a determination is made.

I. The Department and the Historic Review Board will notify all owners, lessees or persons in charge of properties in historic overlay zoning districts that their historic properties will be subject to periodic inspection to insure compliance with this section.

H. J. The Historic Review Board may require that the archaeological potential be examined prior to any permit required by Subsection A being issued for work on or around a designated or potential historic site or district which would involve ground disturbance. Such examination may be done in conjunction with an archaeologist from the State Historic Preservation Office prior to the issuance of any permit. The Historic Review Board may require certain measures, such as data recovery or avoidance, to protect significant archaeological values which may be encountered in the area of the permitted activity.

I. K. Every decision of the Historic Review Board shall be in writing and shall state the reasons for the decision. The decision shall contain the findings of fact that constitute the basis for the decision. The Historic Review Board shall furnish the applicant with a copy of its decision, together with a copy of any recommendations it may have for changes necessary before it will reconsider the application.

Section 6. Council hereby designates \$200,000 from the Historic Preservation Property Maintenance Revolving Fund to effectuate repairs that would halt demolition by neglect upon the procedures set forth in this Ordinance, as set forth in Exhibit A.

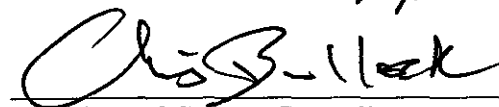
Section 7. The County Council and the County Executive believe that the preservation of our County's historic resources promotes the health, prosperity, quality of life and welfare of

all citizens and future citizens of New Castle County.

Section 8. The provisions of this ordinance shall be severable. If any provision of this ordinance is found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this ordinance shall remain valid, unless the court finds that the valid provisions of this ordinance are so essentially and inseparably connected with, and so dependent upon the unconstitutional or void provision that it cannot be presumed that County Council would have enacted the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with Council's intent. If any provision of this ordinance is found to be unconstitutional or void, all applicable former ordinances and code provisions shall become applicable and shall be considered as continuations thereof and not as new enactments regardless of severability if possible.

Section 9. This ordinance shall become effective immediately upon its adoption by New Castle County Council and approval by the County Executive, or as otherwise provided in 9 Del. C. Section 1156.

Adopted by County Council
of New Castle County on: 5/10/16



President of County Council
of New Castle County

Approved on: 5/18/16



County Executive New Castle
County

SYNOPSIS: This ordinance encodes affirmative maintenance provisions for properties with historic zoning overlays or zoned historic to address situations in which a property owner (frequently intentionally) allows a historic property to suffer severe deterioration, sometimes beyond the point of repair. It also equips the Historic Review Board and Land Use Department Code Officials with adequate remedies and enforcement authority to address this situation in collaboration. New Castle County believes that the preservation and protection of historic sites and properties are critical to the character of the County and its current and future inhabitants. This ordinance also will designate \$200,000 from the Historic Preservation Property Maintenance Revolving Fund to effectuate repairs that would halt demolition by neglect. This is in addition to the historic preservation bonuses and incentives currently encoded. The 2012-2022 Comprehensive Plan update, prepared by the Department of Land Use, includes as a key strategy for historic preservation the creation of additional legislation to protect against demolition by neglect.

FISCAL NOTE:

This ordinance anticipates using \$200,000 in funding from the Historic Preservation Property

Maintenance Revolving Fund.

The program will be administered as a revolving fund after the initial \$200,000 in funding. The initial \$200,000 in funding was previously recognized in FY 2012.

Additional legislation will be needed to authorize spending of the \$200,000 to the Historic Preservation Property Maintenance Revolving Fund and transfer funds from the General Fund – Historic Properties General Ledger Account.