



NEW CASTLE COUNTY COUNCIL LAND USE COMMITTEE MEETING

Co-Chair: David Tackett, Eleventh District

Co-Chair: Janet Kilpatrick, Third District

June 17, 2025

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)

R25-_____: TO AMEND A DECLARATION OF RESTRICTIONS FOR CONCORD SQUARE SHOPPING CENTER, NEW CASTLE COUNTY TAX PARCEL NO. 06-040.00-005
Prime Sponsor(s): Ms. Durham

R25-__: PLAN OF THE PLAZA AT BOYDS; ST. GEORGES HUNDRED; NORTHWESTERLY CORNER OF DUPONT PARKWAY AND GREYLAG ROAD; MAJOR LAND DEVELOPMENT PLAN THAT PROPOSES THE CONSTRUCTION OF A 372,506 SQUARE FOOT MIXED-USE DEVELOPMENT CONSISTING OF 288 APARTMENT UNITS, 16,900 SQUARE FEET OF RETAIL GROSS FLOOR AREA, 3,300 SQUARE FEET OF RESTAURANT GROSS FLOOR AREA, 9,838 SQUARE FEET OF OFFICE/AMENITY GROSS FLOOR AREA AND ALL ASSOCIATED SITE IMPROVEMENTS, TO INCLUDE A TITLE SUBDIVISION; CR ZONING; [APPLICATION NO. 2022-0413-S/Z](#); COUNCIL DISTRICT 6
Prime Sponsor(s): Mr. Carter

D. Review/Discussion of Ordinance(s)

°25-001: REVISE ZONING MAP; BRANDYWINE HUNDRED, SOUTH EAST SIDE OF PHILADELPHIA PIKE, 400 FEET NORTH OF THE INTERSECTION OF INTERSTATE 495 AND PHILADELPHIA PIKE; REZONE TAX PARCEL 06-059.00-165 (4150 PHILADELPHIA PIKE, CITISTEEL), TAX PARCEL 06-059.00-171 (4106 PHILADELPHIA PIKE, CITISTEEL), 06-072.00-198 (110 TRANSIT CENTER DR, CITISTEEL), 06-072.00-199 (150 TRANSIT CENTER DR, CITISTEEL), AND TAX PARCEL 06-073.00-001 (5988 PHILADELPHIA PIKE, COLORADO FUEL & IRON), FROM "HI" (HEAVY INDUSTRY) TO "CR" (COMMERCIAL REGIONAL)
Prime Sponsor(s): Mr. Cartier

°25-045: TO AMEND NEW CASTLE COUNTY CODE CHAPTER 40 ("UNIFIED DEVELOPMENT CODE" OR "UDC"), ARTICLE 14 ("IMPACT FEES"), REGARDING IMPACT FEES

Prime Sponsor(s): Ms. Durham, Mr. Caneco, Mr. Carter, Mr. Tackett
Co-sponsor(s): Mr. Cartier, Mr. Toole

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

AGENDA POSTED: June 10, 2025

*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.nccode.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.

RESOLUTION NO. 25-

**TO AMEND A DECLARATION OF RESTRICTIONS FOR
CONCORD SQUARE SHOPPING CENTER, NEW CASTLE COUNTY
TAX PARCEL NO. 06-040.00-005**

1 **WHEREAS**, BC Development Associates caused to be made that certain
2 Declaration of Restrictions, dated July 2, 1991, and of record in the Office of the
3 Recorder of Deeds in and for New Castle County, Delaware (the "Recorder's Office") at
4 Deed Book 1207, Page 261 (the "Original Declaration"), in conjunction with an
5 application to develop a certain parcel of land situate in Brandywine Hundred, New
6 Castle County, State of Delaware (the "Property"), for purposes of the development of
7 as much as 236,500 square feet of commercial retail space to be known as Concord
8 Square Shopping Center ("the Project"); and
9

10 **WHEREAS**, Concord Square Associates, LLC ("CSA") is the present owner of
11 the Property; and
12

13 **WHEREAS**, CSA caused to be made that certain First Amendment to
14 Declaration of Restrictions, dated June 15, 2022, and of record in the Recorder's Office
15 at Instrument No. 20220721-0073700 (the "Amended Declaration"), in conjunction with
16 an application to redevelop a portion of the Property; and
17

18 **WHEREAS**, CSA is proposing to further amend the Amended Declaration by
19 striking a provision requiring any restaurant occupying a pad site on the Property to be a
20 "sit-down" restaurant without the use of a drive thru window to facilitate the addition of a
21 drive thru restaurant with little to no indoor seating, as well as to make minor changes to
22 the signage, buffering and entrance requirements to reflect the recordation of the rezoning
23 and development plan for the adjacent Brandywine Country Club and to facilitate the
24 further development of the Property; and
25

26 **WHEREAS**, the Department of Land Use has concluded that the proposed
27 changes to the Declaration are in the best interests of the parties to the Declaration and
28 are consistent with the planning goals of the County and, therefore, recommends in favor
29 of amending the Declaration currently encumbering the Project, consistent with the
30 purposes stated herein; and
31

32 **WHEREAS**, New Castle County Code Chapter 40, Section 31.130, provides that
33 upon receipt of a recommendation report from the Department of Land Use, County
34 Council shall schedule a hearing and render a decision by resolution. A supermajority
35 vote is required if voting contrary to a Department of Land Use recommendation.

36 **NOW, THEREFORE, BE IT RESOLVED** by the County Council of New Castle
37 County that County Council (a majority of Council members voting in the affirmative)
38 hereby approves the Second Amendment to Declaration of Restrictions, attached
39 hereto as Exhibit “A”, and that the President of Council of New Castle County is hereby
40 authorized to execute the said First Amendment to Declaration of Restrictions,
41 evidencing Council’s approval of the same.

Adopted by County Council of
New Castle County on:

Monique Williams-Johns
President of County Council
of New Castle County

SYNOPSIS: This Resolution would approve a Second Amendment to a Declaration of Restrictions for Concord Square Shopping Center, New Castle County Tax Parcel No. 06-040.00-005 to permit the removal of a restriction requiring “sit down” restaurants without drive-thrus for existing or proposed pad sites on the Property, as well as to make minor changes to the buffering and entrance requirements to reflect the recordation of the rezoning and development plan for the adjacent Brandywine Country Club.

FISCAL IMPACT: There is no discernible fiscal impact upon the adoption of this Resolution.

Tax Parcel No.: 06-040.00-005

Prepared By and Return To:
John E. Tracey, Esquire
Young Conaway Stargatt & Taylor, LLP
1000 N. King Street
Wilmington, DE 19801

SECOND AMENDMENT TO DECLARATION OF RESTRICTIONS

THIS SECOND AMENDMENT TO DECLARATION OF RESTRICTIONS

(this “Second Amendment”) is hereby made this _____ day of _____, 2025, by **CONCORD SQUARE ASSOCIATES, LLC**, a Delaware limited liability company (referred to herein as “Declarant”), which states as follows:

WHEREAS, Declarant is seized in fee simple, pursuant to that certain Deed, of record in the Office of the Recorder of Deeds in and for New Castle County, State of Delaware (the “Recorder’s Office”) at Instrument No. 20061129-0112135, of those certain tracts, pieces or parcels of land situate in Brandywine Hundred, New Castle County, State of Delaware, being located along the eastern side of Concord Pike (U.S. Route 202), consisting of approximately 29.36 acres of land, more or less (hereinafter referred to as “the Premises” or “the Property”). The Premises is more fully described in Exhibit A attached hereto and made a part hereof; and

WHEREAS, the Premises is bound by that certain Declaration of Restrictions dated July 2, 1991, and recorded in the Recorder’s Office in Deed Book 1207, Page 261 (the “Original Declaration”), as amended by that certain First Amendment to Declaration of Restrictions dated June 15, 2022 and of record in the Recorder’s Office in Instrument No.

20220721-0073700 (the Original Declaration and the First Amendment are collectively referred to herein as the “Declaration”); and

WHEREAS, Declarant, as well as its predecessors-in-interest, operates a regional shopping center known as Concord Square on the Premises; and

WHEREAS, the use of the Premises is presently restricted by, among other things, limitations pertaining to the use of drive-thru facilities in conjunction with retail development on the Premises as more fully set forth in the Declaration; and

WHEREAS, the use of the Premises is also presently restricted by, among other things, limitations requiring certain buffering along the eastern property line and certain setbacks from the access road into the shopping center from Concord Pike as more fully set forth in the Declaration; and

WHEREAS, the use of the Premises is also presently restricted by a prohibition against the pursuit of area variances for the size and location of signs to be placed on the Premises; and

WHEREAS, New Castle County consented to and is a beneficiary of the Declaration as provided therein; and

WHEREAS, Declarant desires, to amend the Declaration in order to facilitate the accommodation of drive-thru restaurants with or without seating on the Premises; and

WHEREAS, the Declaration may only be amended, modified, or altered following the submittal of any proposed modifications for consideration and approval to New Castle County; and

WHEREAS, the New Castle County Department of Land Use and the New Castle County Planning Board, following a public hearing on the matter, recommended approval of this proposed Second Amendment to the Declaration; and

WHEREAS, New Castle County Council, pursuant to Resolution 25-____ (attached as **Exhibit B** hereto), has consented to the Second Amendment as required by the Declaration.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the Declaration, with the approval of New Castle County Council, is hereby amended and modified in accordance with the provisions contained hereinafter.

1. Paragraph 2(d) is hereby amended by deleting the phrase “easterly and” from the second line of said paragraph.

2. Paragraph 2(f) is hereby amended by deleting the sentence “No variances for location and size of signs will be sought be declarant or any tenant or lessee.”

3. Paragraph 2(g) is hereby amended by deleting the paragraph in its entirety.

4. Paragraph 5 Uses is hereby amended by deleting the paragraph in its entirety.

5. Except as modified herein, the Declaration shall remain in full force and effect.

6. The real covenants contained in the Declaration, as amended hereby, are hereby imposed for the benefit of New Castle County, a political subdivision of the State of Delaware, its successors and assigns, and the Council of Civic Organizations of Brandywine Hundred, its successors and assigns, and may not be altered, amended or modified, in all or in

part, without the prior approval of the County Council of New Castle County, its successors and assigns.

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

WITNESS:

DECLARANT:

CONCORD SQUARE ASSOCIATES, LLC,
a Delaware limited liability company

By: _____ (SEAL)
Print Name: _____
Title: _____

STATE OF DELAWARE)
) SS:
COUNTY OF NEW CASTLE)

BE IT REMEMBERED, that on this ____ day of ____, 2025, personally appeared before me, the Subscriber, a Notary Public for the State and County aforesaid, _____, Manager of Concord Square Associates, LLC, a Delaware limited liability company, party to this Declaration, known to be personally to be such, and acknowledged this Declaration to be his act and deed and the authorized act and deed of said entity.

GIVEN under my Hand and Seal of Office the day and year aforesaid.

Notary Public
Name: _____
My Commission Expires: _____

The foregoing Declaration was approved by Resolution of County Council,
pursuant to Resolution No. 25- ____ the day and year aforesaid.

WITNESS:

The Council of New Castle County

By: _____ (SEAL)
President of Council

EXHIBIT A
(Attach copy of Legal Description)

EXHIBIT B
(Attach Copy of Council Resolution)



New Castle County Department of Land Use

**RECOMMENDATION
DEED RESTRICTION CHANGE**

Application No. 2025-0007-D

Concord Square Shopping Center

April 15, 2025

Location:	East side of Route 202, 1,500 feet north of Silverside Road
Tax Parcel No.:	06-040.00-005
Applicant:	Brandywine Development Group

DESCRIPTION

To eliminate the declarations of restrictions dated July 2, 1991, amended on June 15, 2022, preventing drive-thru uses and relief from the Board of Adjustment for signage on the site. The applicants propose to eliminate the existing restrictions to enable potential future development of the site as proposed by the Concord Square Pad Sites Minor Land Development Plan (App. 2024-0499-S).

BACKGROUND

The Concord Square Shopping Center (formerly known as Fairway Park) has been historically connected with the Brandywine Country Club site throughout its existence. Originally serving an agricultural purpose, the site was developed around 1954 as part of the Brandywine Country Club. Approximately 30 years later, tax parcel 06-040.00-005 was subdivided and rezoned from R-2 (Residential) to C-2 (Commercial) (Ordinance 85-199) to allow for the development of a 210,500 square foot shopping center. The owners provided voluntary assurances through a deed restriction (Book 1206, Page 261) to provide the County and surrounding neighborhoods with confidence regarding the use and scale of the property. The restrictions originally limited the size, form, and landscaping of the development. Additionally, the restrictions prohibited drive-thru uses and any uses seeking relief from the Board of Adjustment concerning signage.

In 2022, as part of the Brandywine Country Club Major Subdivision Plan (App. 2020-0566-S/Z), the County approved amendments to the deed restrictions to increase in the maximum allowable GFA from 236,000 square feet to 241,000 square feet and to increase the amount of pad sites allowed from two (2) to four (4).

On September 6, 2024, the applicants submitted the Concord Square Pad Sites Minor Land Development Plan (App. 2024-0499-S) to construct 12,019 SF of GFA on two pad sites including a restaurant with a drive thru, requiring additional amendments to the existing deed restrictions.

Proposed Changes

The applicant proposes to eliminate existing deed restrictions recorded on dated July 2, 1991, amended on June 15, 2022, regarding drive thru uses and the ability to seek relief from the Board of Adjustment for signage. The request proposes:

- Deleting the phrase “easterly and” from the second line of Paragraph 2(d),
- Deleting the sentence “No variances for location and size of signs will be sought be declarant or any tenant or lessee” from Paragraph 2(f), and
- Deleting Paragraphs 2(g) and 5.

Public Hearing – March 4, 2025

John Tracey, Esq., attorney for the applicants, described the existing deed restrictions, as well as the history of the site. He further described the historical context under which the restrictions were required as well as the rationale for the requested amendments.

In response to the presentation provided by the applicant’s representative, Ms. Gray inquired about the removal paragraph 2(g), which states that “... *Each of these sites will be no closer than two hundred (200) feet from the centerline of the main Route 202 entrance to the Premises.*” Mr. Tracey discussed the restriction with respect to Route 202. He further stated that he’d provide additional information while the record was open. The Board had no additional questions or comments.

Brett Saddler, Executive Director for the Claymont Renaissance Development Corporation (CDRC) discussed an agreement that Claymont had made with a Chipotle to only include a “*Chipotlane*”, where orders are typically accomplished before arrival, through the app.

Steve Kroup, inquired as to why the pictures being depicted during the presentation didn’t match the postings for the Brandywine Country Club Plan.

Sasha Altman, who was in attendance as a class requirement asked if any aspects of the application are considered controversial, and if there were any aspects of the plan that were not able to be changed.

Councilwoman Dee Durham, voiced her support for Mr. Sadlers efforts, as well as her desire to discuss signage with Mr. Tracey. She also requested that Mr. Tracey further discuss how many of the pad sites would have drive-thrus.

During his rebuttal Mr. Tracey agreed to follow up with the Councilwoman regarding signs. He further described changes to the site that were made as part of the Brandywine Country Club Major Subdivision Plan (App. 2020-0566-S/Z) as well as those proposed by the current plan App. 2024-0499-S, offering to send a copy to the Councilwoman. He also explained that signs posted at sites represent the plan as it was initially submitted and do not change throughout the process. He also briefly discussed the controversy of the Brandywine Country Club Major Subdivision Plan.

While the record was open the Department received written correspondence. Mr. Tracey further explained that the two hundred (200) foot setback in paragraph 2(g) was from the centerline of the entrance and not from the centerline of Concord Pike.

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's recommendation for

Application 2021-0229-D, discussed how the restrictions were made within the context of the Concord Pike corridor evolving from largely residential to commercial.

Prohibition for restaurants with “drive-through windows”

Since 1991, Concord Pike (US-202) has developed into a commercial corridor with development patterns and intensity consistent with that proposed for tax parcel 06-040.00-005. While in 1991, drive-thrus were less prevalent along the corridor, nearly all fast-food restaurants have incorporated drive-thru opportunities. The most common impact of drive-thrus is when they have been incorporated into small sites that lack the room to accommodate for adequate stacking of vehicles. This can result in queuing of vehicles into the right-of-way. The UDC includes specific provisions to mitigate this impact, however many sites that developed prior to its adoption may have been adequately designed. At the public hearing, residents discussed the potential to limit a drive-thru to only online orders. The Department questions whether there is an effective way to enforce such a restriction. Additionally, some fast-food locations such as Chick-Fil-A are eschewing order boxes in favor of having employees take orders from customers the que via tablet. Parcel 06-040.00-005 has more than adequate space to provide for queuing of vehicles without impacting traffic flow on Concord Pike.

Prohibition from Seeking Relief for Signage Requirements

The existing deed restrictions prohibit the property owner from pursuing relief from location or size requirements for signage. Additionally, billboards for offsite advertising are not permitted. The Department has consistently voiced concerns with restrictions of this nature depriving the property owner or future owner of prescribed due process considerations for a potential hardship by the Board of Adjustment (established and designated to consider such a request) based on concerns identified more than 30 years ago. Additionally (as evidenced by Variance Application 2009-0619-A for this site), there are depending on the site, and development of a corridor, legitimate hardships for signage to maintain viability of a commercial site.

The County identified Concord Pike as a Type 1 Commercial Corridor Development area, which plays an important role in the quality of life for County residents. Amending the deed restrictions as requested by the applicant will help assure the continued viability this commercial property located on the Concord Pike and is thereby consistent with the planning goals of the County and in the best interest of the County and the property owner.

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 **CONDITIONAL APPROVAL** of the deed restriction change with the condition that, should the property owner/tenant seek to add any additional drive-thru lanes beyond those proposed by Application 2024-0499-S, that dedicated lanes for online or in app be evaluated and considered.

PLANNING BOARD RECOMMENDATION

At a business meeting held on April 15, 2025, 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. Cahill-Krout and seconded by Ms. Gray, the Board voted to recommend **CONDITIONAL APPROVAL** of application 2025-0007-D subject to the conditions recommended by the Department of Land Use.

The motion was adopted by a vote of 6-0-0-2 (In Favor: Cahill-Krout, Cochran, Gray, Snowden, Visvardis; In Opposition: None; Abstention: None; Absent: Daigle, Drake).

Prior to the vote, the following discussion occurred:

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

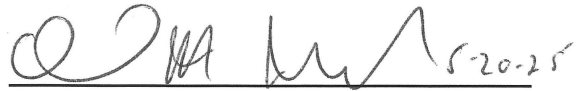
Ms. Visvardis inquired about the potential to create an online ordering lane, and what the submission requirements would be. Mr. Rogers explained that the current plan does not include a specific lane for online orders, and that if they intended to add a lane, they'd have to submit a Resubdivision Plan. Mr. Cantrell asked the Department to further explain the proposed drive thru lane configuration and if there was potential to add an additional lane. Mr. Rogers explained that the current configuration did not lend itself to an additional lane. Ms. Visvardis additionally commented on difficulties faced in another shopping center with a drive thru restaurant.

Mr. Snowden reflected on the number of deed restrictions that have been reviewed that were intended to be held "in perpetuity" but the property owners sought to amend them after 15-20 years. Mr. Cantrell remarked that it reflects the rate of change in those areas. Mr. Snowden emphasized the importance of considering the impact of deed restrictions 20 years into the future. David M. Culver, General Manager for the Department of Land Use, provided historical perspective, explaining that prior to the adoption of the UDC, most rezonings were accompanied

by deed restrictions. He further explained that more recent deed restrictions were the result of developers working with community members during the land development process.

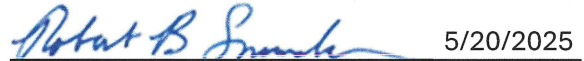
STATUTORY GUIDELINES

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.



David M. Culver
General Manager
Department of Land Use

date



Robert Snowden
Acting Chair
Planning Board

date

Prime Sponsor(s): Mr. Carter
Requested by: Department of Land Use
Date of introduction: June 24, 2025

RESOLUTION NO. 25-0

**PLAN OF THE PLAZA AT BOYDS; ST. GEORGES HUNDRED; NORTHWESTERLY
CORNER OF DUPONT PARKWAY AND GREYLAG ROAD; MAJOR LAND
DEVELOPMENT PLAN THAT PROPOSES THE CONSTRUCTION OF A 372,506
SQUARE FOOT MIXED-USE DEVELOPMENT CONSISTING OF 288 APARTMENT
UNITS, 16,900 SQUARE FEET OF RETAIL GROSS FLOOR AREA, 3,300 SQUARE
FEET OF RESTAURANT GROSS FLOOR AREA, 9,838 SQUARE FEET OF
OFFICE/AMENITY GROSS FLOOR AREA AND ALL ASSOCIATED SITE
IMPROVEMENTS, TO INCLUDE A TITLE SUBDIVISION; CR ZONING;
APPLICATION NO. 2022-0413-S/Z; COUNCIL DISTRICT 6**

1 **NOW, THEREFORE, BE IT RESOLVED**, by and for the County Council of
2 New Castle County that County Council hereby approves the following major
3 land development plan, The Plaza at Boyds (Application No. 2022-0413-S/Z) as
4 heretofore approved by the Land Use Department, and the President of County
5 Council is hereby authorized to endorse her approval upon the following plan.

**THE PLAZA AT BOYDS
St. Georges Hundred**

Adopted by County Council of
New Castle County on:

Monique Williams-Johns
President of County Council
of New Castle County

SYNOPSIS: Same as title

FISCAL IMPACT: This will have no immediately discernible fiscal impact on the County but, if the parcel is developed in accordance with this record plan, there may be one or more fiscal effects on New Castle County government including, but not limited to, an increase in the assessed value of the property with the resultant increase in taxes collectible thereon and an increased demand for County services.



New Castle County Department of Land Use

MEMORANDUM

TO: Council President
Members of County Council
Counsel to Council
Clerk of County Council

FROM: David Culver

RE: Application Number 2022-0413-S/Z
The Plaza at Boyds
Record Major Land Development and Title Subdivision Plan

DATE: June 2, 2025

Enclosed for Council's review and consideration of approval are paper prints of the above-referenced plan. The Department has determined that this proposal complies with all applicable requirements of the New Castle County Code.

A suggested title and synopsis are attached.

cc: Marcus Henry, County Executive
Mona Parikh, Chief Administrative Officer

Plan of The Plaza at Boyds; St. Georges Hundred; Northwesterly corner of DuPont Parkway and Greylag Road; Major Land Development Plan that proposes the construction of a 372,506 s.f. mixed-use development consisting of 288 apartment units, 16,900 s.f. of retail GFA, 3,300 s.f. of restaurant GFA, 9,838 s.f. of office/amenity GFA and all associated site improvements, to include a title subdivision.; CR zoning; Council District 6.

Synopsis: Same as title

Fiscal Note: This will have no immediately discernible fiscal impact on the County but, if the parcel is developed in accordance with this record plan, there may be one or more fiscal effects on New Castle County government including, but not limited to, an increase in the assessed value of the property with the resultant increase in taxes collectible thereon and an increased demand for County services.

Prime Sponsor(s): Mr. Cartier
Requested by: Land Use
Date of introduction: January 14, 2025

ORDINANCE NO. 25-001

**REVISE ZONING MAP; BRANDYWINE HUNDRED, SOUTH EAST SIDE OF
PHILADELPHIA PIKE, 400 FEET NORTH OF THE INTERSECTION OF INTERSTATE
495 AND PHILADELPHIA PIKE; REZONE TAX PARCEL 06-059.00-165 (4150
PHILADELPHIA PIKE, CITISTEEL), TAX PARCEL 06-059.00-171 (4106
PHILADELPHIA PIKE, CITISTEEL), 06-072.00-198 (110 TRANSIT CENTER DR,
CITISTEEL), 06-072.00-199 (150 TRANSIT CENTER DR, CITISTEEL), AND TAX
PARCEL 06-073.00-001 (5988 PHILADELPHIA PIKE, COLORADO FUEL & IRON),
FROM “HI” (HEAVY INDUSTRY) TO “CR” (COMMERCIAL REGIONAL)**

1 (The purpose of this County Initiated Rezoning is to rezone tax parcel 06-059.00-
2 165 (31.72 acres), tax parcel 06-059.00-171 (2.38 acres), 06-072.00-198 (12.36 acres),
3 06-072.00-199 (4.71 acres), and tax parcel 06-073.00-001 (258.38 acres), from “HI”
4 (Heavy Industry) to “CR” (Commercial Regional) to permit commercial, retail and service
5 uses including Mixed Use consistent with the Future Land Use Map in the 2022 Update
6 to the New Castle County Comprehensive Development Plan.)
7
8

9 **NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:**
10

11 Section 1. The Zoning Map of Brandywine Hundred, as amended, is hereby further
12 amended by changing the zoning classification of the land shown on attached Exhibits
13 “A” and “L” dated December 26, 2024, as set forth therein.
14

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

Adopted by County Council of
New Castle County on:

Monique Williams-Johns
President of County Council
of New Castle County

Approved on:

Marcus Henry
County Executive
New Castle County

SYNOPSIS: Same as title.

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

PROPERTY MAP

EXHIBIT A

ZONING ORDINANCE AS INTRODUCED

APPLICANT: NEW CASTLE COUNTY
PROPOSED REZONING: HI TO CR

APPLICATION NO. 2025- -Z
TAX PARCEL NO: 06-059.00-165,
06-059.00-171, 06-072.00-198,
06-072.00-199, 06-073.00-001



HUNDRED: BRANDYWINE HUNDRED
NEW CASTLE COUNTY, DELAWARE

Scale: 1:12131
Prepared by: Matthew Rogers

Date: 12/26/2024



PERMANENT ORDINANCE NO. 25-001
Date Adopted by County Council:
Date Approved by County Executive:

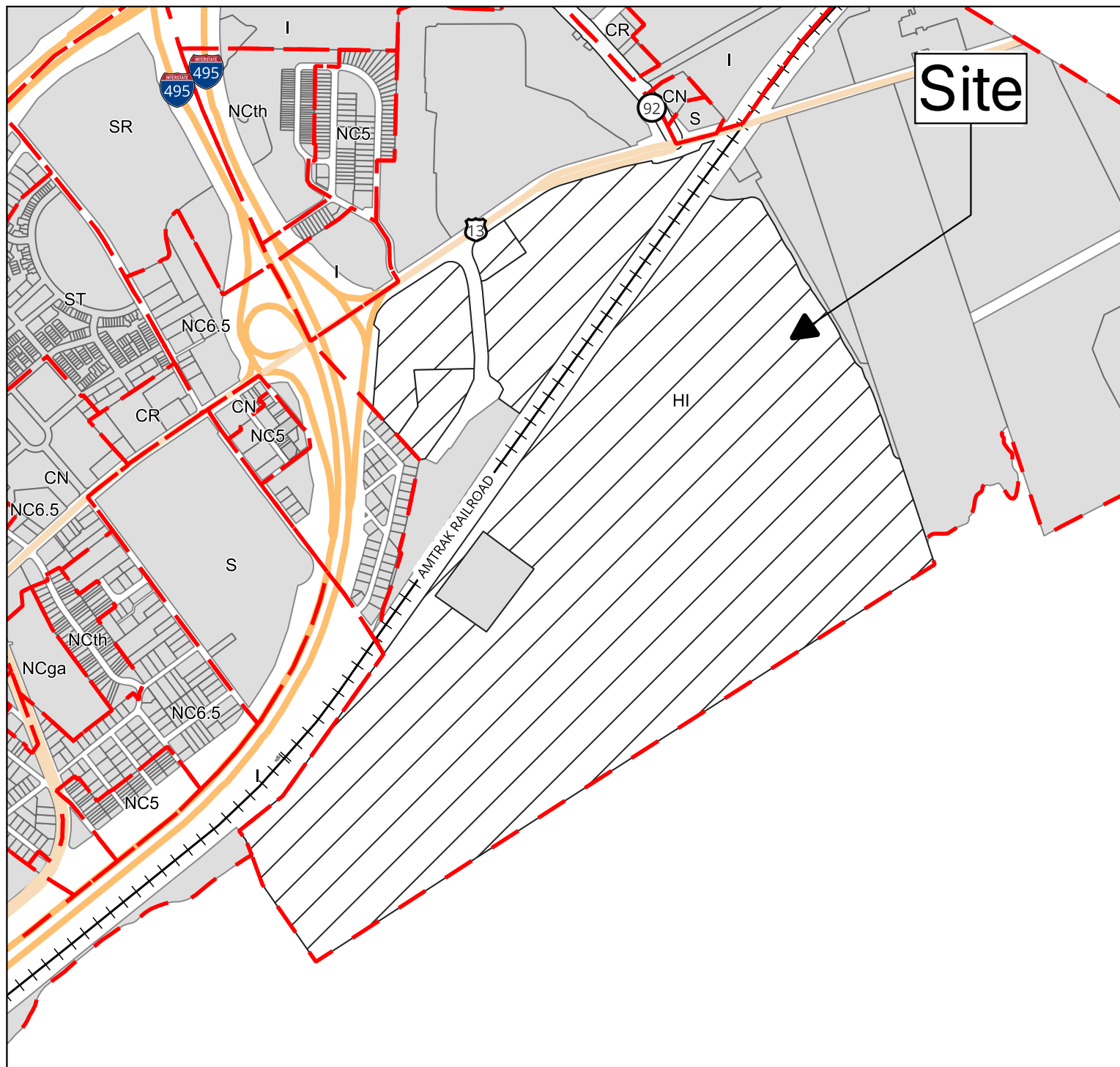
PROPERTY MAP

EXHIBIT L

ZONING ORDINANCE AS INTRODUCED

APPLICANT: NEW CASTLE COUNTY
PROPOSED REZONING: HI TO CR

APPLICATION NO. 2025- -Z
TAX PARCEL NO: 06-059.00-165,
06-059.00-171, 06-072.00-198,
06-072.00-199, 06-073.00-001



HUNDRED: BRANDYWINE HUNDRED
NEW CASTLE COUNTY, DELAWARE

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PERMANENT ORDINANCE NO. 25-001
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New Castle County Department of Land Use

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

**Ordinance No. 25-001
Application No. 2025-0002-Z
Claymont Steel Rezoning**

April 15, 2024

Sponsor: Councilman Cartier (District 8)

Description: Revise Zoning Map; Brandywine Hundred, south east side of Philadelphia Pike, 400 feet north of the intersection of Interstate 495 and Philadelphia Pike; Rezone Tax Parcel 06-059.00-165 (4150 Philadelphia Pike, Citisteel), Tax Parcel 06-059.00-171 (4106 Philadelphia Pike, Citisteel), 06-072.00-198 (110 Transit Center Dr, Citisteel), 06-072.00-199 (150 Transit Center Dr, Citisteel), and Tax Parcel 06-073.00-001 (5988 Philadelphia Pike, Colorado Fuel & Iron), from "HI" (Heavy Industry) TO "CR" (Commercial Regional)

EXECUTIVE SUMMARY

The Claymont McDowell Transportation Center, is a well-planned and intentional investment in Claymont's future. The community vision expressed during the North Claymont Area Master Plan process was a transformation of the former Claymont Steel site from its industrial past into a vibrant hub that complements the train station. In recent years the County has implemented deliberate incentives to encourage development that aligns with this vision. Previous Comprehensive Plan recognized the value of the redevelopment of these parcels as either ST, high density housing, or as mixed use project.

Rezoning parcels 06-059.00-165, 06-059.00-171, 06-072.00-198, 06-072.00-199, and 06-073.00-001 to Commercial Regional will allow and incentivize transit-oriented development adjacent to the passenger rail station while reducing the risk of uses that would be detrimental to its continued viability. As such, this rezoning will allow for a well-planned mixed use development that will benefit the Claymont Renaissance.

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 25-001 proposes rezoning tax parcels 06-059.00-165, 06-059.00-171, 06-072.00-198, 06-072.00-199, and 06-073.00-001, from "HI" (Heavy Industry) TO "CR" (Commercial Regional) to support future development consistent with the North Claymont Area Master Plan and the New Castle County Comprehensive Development Plan.

BACKGROUND

Claymont Steel History

For nearly a century, the Claymont Steel site served as a primary manufacturing hub and a defining characteristic of the Claymont region. Founded in the mid-19th century in Elkton, Maryland, the Worth Steel Company subsequently expanded to Coatesville, Pennsylvania. In 1915, the Worth Steel Company divested its assets to the Midvale Steel & Ordnance Company and relocated to Claymont in 1917. The Worth Steel Company played a significant role as a supplier of high-quality steel plates and pipes utilized in the construction of tanks and ships during World War II, as evidenced by their receipt of the Army-Navy "E" Award (2 Stars). The award was only granted to 5% of eligible plants that supported the war effort. In addition to being evaluated as excellent in quality and quantity of other areas considered were:

- Overcoming of production obstacles,
- Low rate of absenteeism,
- Avoidance of work stoppages,
- Maintenance of fair labor standards,
- Training of additional labor forces,
- Effective management,
- Record on accidents, health, sanitation, and plant protection,
- Utilization of sub-contracting facilities
- Cooperation between management and labor as it affected production; and
- Conservation of critical and strategic materials.¹

In the years following World War II, until operations ceased in 2014, ownership changed hands seven times, the most recent of which was to the Evraz Group, a Russian Steel company, in 2007. In June of 2014, Evraz officially declared the site a discontinued operation.² In 2015, demolition permits were issued for the buildings on the site.

¹ Press Release, 1945: *Army-Navy E Award Termination War Department Circular*, 1942: *Army-Navy Production Award*: <https://www.history.navy.mil/research/library/online-reading-room/title-list-alphabetically/a/army-navy-e-award.html#circ> (4/8/2025)

² *Claymont Steel Timeline*,

North Claymont Area Master Plan and the Claymont Train Station

The shuttering of operations at the Claymont Steel site was emblematic of economic changes faced in County with the offshoring of manufacturing operations. The Northern portion of Claymont, with its high concentration of manufacturing uses and jobs, was particularly impacted. Additionally, changes to the retail landscape in the same geographical region that impacted subregional malls impacted the viability of the Tri-State Mall.

Recognizing those trends and the potential for redevelopment in the area, New Castle County, DelDOT, and WILMAPCO embarked on a two-year public planning effort (2015-2017). The plan examined several land use and transportation scenarios considering the potential evolution of the area. As with all plans, some aspects of the plan have come to fruition, while others have not fully been realized. One such success was the construction of the Claymont McDowell Transportation Center (Claymont Train Station) in late 2023.

Spurred by revitalization opportunities and efforts including the Darley Green development, the Claymont Station Improvement Project plan was completed and approved in 2008. It recommended both significant improvements to the station and relocation of the existing facilities.³ In 2019, approval for and construction of the new Claymont Train Station was announced with an anticipated opening date in the fall of 2021.⁴ The station was dedicated to Senator McDowell in November of 2023, and opened on December 4, 2023.⁵

Accompanying the train station, the North Claymont Area Master Plan envisioned the redevelopment of the surrounding land with a mix use development that included residential, nonresidential, and recreational uses and opportunities. This would serve as a transit-oriented development with the train station as a central focus.

2022 Update to the New Castle County Comprehensive Development Plan and Redevelopment Ordinance (Substitute No. 1 to Ord. 24-057)

New Castle County adopted the *2022 Update to the New Castle County Comprehensive Development Plan* in July of 2022. The *North Claymont Area Master Plan* was incorporated update to the Comprehensive Development Plan in the Community Planning and Design element as well in the overall goals, objectives and strategies. Additionally, the area was designated in the Future Land Use Map as a Community Development Area which are:

...areas that have been studied by the completion of a Community Area Master Plan which prescribed guidance for land use policies for Claymont and Route 9. ...

³ *Claymont Station Improvement Project*, WILMAPCO, [https://www.wilmapco.org/Claymont/Claymont%20 Station_Plan_Final.pdf](https://www.wilmapco.org/Claymont/Claymont%20Station_Plan_Final.pdf) (Accessed 4/09/2025)

⁴ *New Claymont Train Station Project to Begin in Spring 2019*, Delaware News, Delaware Transit Corporation, <https://news.delaware.gov/2019/02/21/new-claymont-train-station-project-to-begin-in-spring-2019/>, (Accessed 4/9/2025)

⁵ *New Claymont Transportation Center*, SEPTA, <https://www.septa.org/news/claymontstation/>, (Accessed 4/9/2025)

The Future Land Use Element further states that:

The Claymont Plan envisioned the redevelopment of the area to create a place that centers on built form, walkability, and other nonautomotive forms of transportation. The train station will serve as an important anchor for future development. Any development and redevelopment along the corridor should focus on achieving these goals. Any Land Development Plan, Rezoning, Variance or Special Use within the study area should consider the impact and effect on creating a corridor that has appropriate built form and multimodal transportation opportunities of the request.

In 2024, New Castle County adopted Ordinance 24-057 which, in addition to updating the redevelopment provisions of the UDC, included incentives for developing consistent with the community plans in the Community Development Areas and for transit-oriented development as well as placed restrictions for redevelopment adjacent to passenger rail stations.

Ordinance 25-001 (Formerly Ord. 24-136)

Councilman John Cartier introduced Ordinance 25-001 on January 14, 2025, proposing to rezone just over 300 acres of Heavy Industry (HI) zoned land to Commercial Regional (CR) to facilitate potential development that would be consistent with the vision of North Claymont Area Master Plan. The rezonings proposed by Ordinance 25-001 were originally considered by PLUS under Ordinance 24-136, however, modifications to the title of the ordinance as well as the removal of the DELMARVA property required the introduction of a new ordinance.

PLUS REVIEW (Preliminary Land Use Service)

The Rezoning proposed by *Ordinance 25-001 (Formerly Ord. 24-136)* received comments in a PLUS Report, dated November 22, 2024, containing relevant comments from State agencies. The Office of State Planning Coordination reiterated their support for ordinance as the proposed rezoning is located within a Level 1 & 2 Investment Area which is consistent with the 2020 Strategies for State Policies and Spending. The Department of Natural Resources and Environmental Control (DNREC) was supportive of the proposed rezoning with the intent to preserve environmental resources on site and mitigate environmental hazards. The Delaware State Housing Authority expressed support for the rezoning encouraging a development of diverse housing types. The State Historic Preservation Office noted the proximity of the site to historic resources. No other State agency had comments.⁶

⁶ PLUS Report:

<https://www3.newcastlede.gov/PDFDocument/default.aspx?DocumentID=80:FC40FF5826FBF7107D10260598B6C0724428DD1196872F86C5E68CE881F951C206B3729EB9960855EBF6561CE9D00943&x=temp.pdf>

PLANNING BOARD PUBLIC HEARING – March 4, 2025

*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.⁷

Presentation

Matthew Rogers from the Department of Land Use presented the application for Claymont Steel Rezoning. He proceeded to detail the history of zoning and use of the site. He referenced the North Claymont Area Master Plan from 2017 which had a vision for the site to be a mixed-use development and led to the classification of the site as a Community Development Area in the Future Land Use Map as part of the 2022 Comprehensive Plan. Mr. Rogers explained the reasoning behind the proposed rezoning of the site as well as the background on the Claymont train station project. He mentioned that while redevelopment would be granted incentives within the CR zoning, more intensive uses such as logistics would not be able to occur within 1,000 feet of the train station.

Public Comment

Councilman John Cartier spoke in favor of the rezoning highlighting the importance of high density, mixed-use development around the Claymont train station. Brett Sadler spoke in favor of the rezoning stressing the importance of redevelopment of the site. Bernadette Coglum-Walsh read in a statement from Messer LLC, owner of a neighboring property. Roby Anstett highlighted the environmental concerns of the surrounding area in Claymont. Sasha Altman asked if the development of affordable housing on this site would impact the property values of the surrounding housing. Maria Mejia posed two questions pertaining to environmental remediation and protection of wildlife.

Rebuttal

In his rebuttal, Mr. Rogers explained that the ordinance is for a County Initiated rezoning and is not accompanied by a plan. He further explained that any future plan for the site would be subject to buffering, environmental resource protection standards, and brownfield cleanup requirements.

Written Public Comment:

Charlie Weymouth detailed his concerns over the vision of the site and development concerns. Messer LLC issued a statement regarding their proximity to the site and buffering.

⁷ August 6, 2024, Planning Board Public Hearing: <https://www.newcastlede.gov/agendacenter>

ANALYSIS

The North Claymont Area is a microcosm of the challenges and impacts of deindustrialization and the rise of e-commerce faced nationally. Unlike other areas facing these challenges, North Claymont's location and existing transportation infrastructure have opened opportunities for redevelopment. The former Tri-State Mall as well as 400 Naamans Rd (First State Crossing – Parcel 1) are developing as fulfillment/distribution and cold storage facilities taking advantage of easy access to the Interstate 95 & 495 corridor.

The relocation and construction of the Claymont McDowell Transportation Center represents a well-planned, intentional investment into the future viability of Claymont. The North Claymont Area Master Plan envisioned a potential shift of the former Claymont Steel site from its storied industrial past to one that complements the train station through a mix of residential, commercial, and recreational uses. To facilitate this the County has adopted deliberate incentives to encourage development consistent with this vision; however, such development is not permitted in the Heavy Industry zoning district. While there are opportunities to achieve the vision in the North Claymont Area Master Plan through a combination of nonresidential (Commercial Neighborhood or Commercial Regional) and residential (Suburban Transition) zoning designations, the proposed zoning of parcels 06-059.00-165, 06-059.00-171, 06-072.00-198, 06-072.00-199, and 06-073.00-001 to Commercial Regional will allow and incentivize transit-oriented development adjacent to the passenger rail station while not permitting uses that would be detrimental to its continued viability.

While the record was open, concerns were voiced regarding protection of environmental resources, brownfield clean-up, and buffering from existing industrial uses. It is important to note that this application is only to rezone the property to permit potential development of the site in a manner consistent with the North Claymont Area Master Plan and the Comprehensive Development Plan. Future development of the site occurs through the land development plan review process and will be subject to all County, State, and Federal environmental protection and brownfield remediation requirements. Additionally, any development or redevelopment of the site would be subject to the buffering and distancing requirements from mixed-use to Heavy Industry zoned land and uses. Redevelopment particularly provides opportunities to enhance buffering and protections exceeding existing standards.

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.*

The Future Land Use Map designates parcels 06-059.00-165, 06-059.00-171, 06-072.00-198, 06-072.00-199, and 06-073.00-001 as Community Development Area which are *“areas that have been studied by the completion of a Community Area Master Plan which prescribed guidance for land use policies for Claymont and Route 9.* The Future Land Use Element further stresses the importance of the future built form and complimentary development of the land surrounding the train station

Objective 10.1 recommends that the County *redevelop and infill key areas of the county (identified in Community Area Master Plans and other studies/analyses)...*, including strategies to support the creation and enhancement of transit-oriented development and to achieve optimal balance of land use mix, as well as to implement when possible the community area plans. Additionally, the Comprehensive Plan *“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.”*

Additionally, Appendix F includes objectives common with the Noarth Claymont Area Master Plan including:

- Promote the creation of a multimodal attractive walkable, transit-oriented environment with the Claymont Regional Transportation Center as a centerpiece.
- Include development of housing for a variety of incomes and in variety of types, including mixed-use.
- Plan for new residential areas with views of the waterfront and protect existing views.

Heavy industrial uses and zoning on the land immediately adjacent to the train station is inconsistent with the Goals, Objectives, and Strategies in the North Claymont Area Master Plan and the 2022 Update to the New Castle County Comprehensive Development Plan. Rezoning parcels 06-059.00-165, 06-059.00-171, 06-072.00-198, 06-072.00-199, and 06-073.00-001 to Commercial Regional will permit redevelopment of the former Claymont Steel site will allow, encourage, and incentivize development that is consistent with the North Claymont Area Master Plan and the 2022 Update to the New Castle County Comprehensive Development Plan.

B. Consistency with the character of the neighborhood.

The North Claymont area consists of a mix of medium density residential developments such as Knollwood, Analine Village, Addicks Estates, and several townhome developments near the site. Additionally, the area has a mix of recreational, commercial, office and industrial uses as well as the Claymont train station. Rezoning parcels 06-059.00-165, 06-059.00-171, 06-072.00-198, 06-072.00-199, and 06-073.00-001 to Commercial Regional will permit redevelopment of the former Claymont Steel site permitting a commercial, residential and recreational mix of uses that would complement the train station and be consistent with the character of the neighborhood.

C. Consistency with zoning and use of nearby properties.

While there is significant land on the north side of Naamans Road zoned Commercial Regional parcels 06-059.00-165, 06-059.00-171, 06-072.00-198, 06-072.00-199, and 06-073.00-001 are together more than 309 acres in size and therefore exceed the Minimum Site Area set by Table 40.04.110 to establish a Commercial Regional zoning district (minimum of 5-10 acres depending on use).

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

The rezoning of parcels 06-059.00-165, 06-059.00-171, 06-072.00-198, 06-072.00-199, and 06-073.00-001 is not associated with a land development application. Any future development will be reviewed and considered for consistency with the provisions of the UDC. The Department encourages the redevelopment of this site as a mixed use development that encapsulates the transient oriented development that is noted in numerous study documents.

E. Effect on nearby properties.

Rezoning parcels 06-059.00-165, 06-059.00-171, 06-072.00-198, 06-072.00-199, and 06-073.00-001 from Heavy Industry to Commercial Regional will not have an immediate effect on nearby properties, it will enable complimentary transit oriented development near the train station and facilitate and enable redevelopment clean-up of the site.

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. The Department does note that previous Comprehensive Plans that these parcels could be zoned ST – High Density and did not object to ST zoning. The current Comprehensive Plan, in order to help facilitate the North Claymont Area Master Plan Study, noted that mixed use CR would also appropriate. The Department finds that, while we cannot mandate compliance with the desires of the North Claymont Area Master Plan, nor can restrict the site without a site plan or voluntary deed restrictions, that a mixed use development is highly desirable and therefore, the Department of Land Use recommends **APPROVAL** of Ordinance 25-001.

PLANNING BOARD RECOMMENDATION

At a business meeting held on April 15, 2025, 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. Cahill-Krout and seconded by Ms. Gray, the Board voted to recommend **APPROVAL** of Ordinance 24-172 as recommended by the Department of Land Use.

The motion was adopted by a vote of 7-0-0-1 (In Favor: Cahill-Krout, Cochran, Drake, Gray, Snowden, Visvardis; In Opposition: None; Abstention: None; Absent: Daigle).

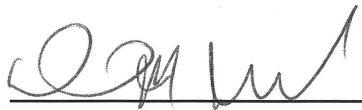
Prior to the vote, the following discussion occurred:

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

Mr. Cantrell asked about the Messer property and the impact that they'd have on a potential residential neighborhood. Mr. Rogers explained that the Messer property is home to a long standing industrial use. He further explained that any development of the Claymont Steel site would have to meet the buffering requirements of the UDC. He additionally stated that in addition to the buffering requirements, the existing environmental resources would likely create a greater buffer distance than the minimum required by code. Mr. Cantrell also commented on the recent Delaware News Journal article regarding SEPTA's potential discontinuation of services to the Claymont train station. Mr. Culver stated that the Department was aware of the potential change and is also aware of a potential to extend service to Washington DC. Ms. Visvardis asked if train service should impact the Board's recommendation. Mr. Cantrell commented that it shouldn't. Mr. Snowden spoke briefly to the financial contribution that DelDOT makes to Septa for train service.

STATUTORY GUIDELINES

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

 5-20-25

David M. Culver date
General Manager
Department of Land Use

 5/20/2025

Robert Snowden date
Acting Chair
Planning Board

Prime Sponsor(s): Ms. Durham, Mr. Caneco
Mr. Carter, Mr. Tackett
Co-sponsor(s): Mr. Cartier, Mr. Toole
Date of introduction: April 22, 2025

ORDINANCE NO. 25-045

**TO AMEND NEW CASTLE COUNTY CODE CHAPTER 40 ("UNIFIED
DEVELOPMENT CODE" OR "UDC"), ARTICLE 14 ("IMPACT FEES"),
REGARDING IMPACT FEES**

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

6 **WHEREAS**, the New Castle County Comprehensive Plan recommends re-
7 evaluating the impact fee provisions to ensure the monies levied from new development
8 adequately address the impact of increased demand for parks, libraries, and fire, EMS
9 and police expansion and service; and
10

11 **WHEREAS**, the New Castle County Comprehensive Plan recommends removing
12 impact fees for affordable housing units and calls for incentivizing context sensitive
13 development; and
14

15 **WHEREAS**, New Castle County imposes impact fees to pay for a portion of
16 additional public services needed as the result of new development for which the County
17 would bear the additional or increased costs; and
18

19 **WHEREAS**, impact fees, when accurately maintained, can be an effective tool for
20 ensuring adequate infrastructure to accommodate future growth where and when it is
21 anticipated and preferred; and
22

23 **WHEREAS**, the Development Impact Fee Study conducted for the County by the
24 Rossi Group and Century Engineering (published June 13, 2023), together with support
25 from the strategic plan of the County Open Space Advisory Board, a new impact fee to
26 boost County funding available for open space and natural land protection is desired to
27 be further studied; and
28

29 **WHEREAS**, impact fees have not been adjusted regularly to account for inflation
30 and cost of construction; and
31

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

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

37
38 **Section 1.** *New Castle County Code* Chapter 40 (Unified Development Code or
39 “UDC”), Article 14 (“Impact Fees”), Division 40.14.200 (“Impact Fees”), is hereby
40 amended by adding the material that is underscored and deleting the material that is
41 bracketed and stricken, as set forth below:

42
43 **Division 40.14.200. Impact fees.**

44
45 **Sec. 40.14.210. Impact fees.**

46
47 Impact fee amounts are provided in Table 40.14.210.

Table 40.14.210
IMPACT FEES (DOLLARS)

Service	Parks & Special Facilities	Libraries	County Facilities	EMS	Fire and Rescue	Law Enforcement	Total
Residential Per Housing Unit							
Single-family detached	\$492.00[328.00]	\$207.00[138.00]	\$168.00[112.00]	\$10.50[7.00]	\$765[510].00	\$93.00[62.00]	\$1,736.00[1,157.00]
Single-family attached	\$456.00[304.00]	\$194.00[129.00]	\$158.00[105.00]	\$9.00[6.00]	\$663[442].00	\$87.00[58.00]	\$1,566.00[1,044.00]
All other housing†	\$338.00[225.00]	\$143.00[95.00]	\$116.00[77.00]	\$7.50[5.00]	\$476[317].00	\$65.00[43.00]	\$1,143[762].00
Nonresidential Per 1,000 Square Feet‡							
Commercial/shopping center (less than 60,000 sf. GFA)	na.	na.	\$191.00[27.00]	\$12.00[8.00]	\$315.00[210.00]	\$63.00[42.00]	\$581.00[387.00]
Commercial/shopping center (60,000 sf. to 200,000 sf. GFA)	na.	na.	\$143.00[95.00]	\$9.00[6.00]	\$245.00[163.00]	\$50.00[33.00]	\$446.00[297.00]
Commercial/shopping center (greater than 200,000 sf. GFA)	na.	na.	\$114.00[76.00]	\$7.50[5.00]	\$221.00[147.00]	\$42.00[28.00]	\$384.00[256.00]
Office/institutional (less than 10,000 sf. GFA)	na.	na.	\$264.00[176.00]	\$16.50[1.00]	\$168.00[112.00]	\$36.00[24.00]	\$485.00[323.00]
Office/institutional (10,000 sf. to 50,000 sf. GFA)	na.	na.	\$225.00[150.00]	\$15.00[10.00]	\$431.00[287.00]	\$24.00[16.00]	\$695.00[463.00]
Office/institutional (greater than 50,000 sf. GFA)	na.	na.	\$213.00[142.00]	\$13.50[9.00]	\$408.00[272.00]	\$21.00[14.00]	\$656.00[437.00]
Business park	na.	na.	\$180.00[120.00]	\$12.00[8.00]	\$348.00[232.00]	\$21.00[14.00]	\$561.00[374.00]
Light industrial	na.	na.	\$132.00[88.00]	\$7.00[5.00]	\$255.00[170.00]	\$10.50[7.00]	\$405.00[270.00]
Warehousing	na.	na.	\$71.00[47.00]	\$4.50[3.00]	\$141.00[94.00]	\$6.00[4.00]	\$222.00[148.00]
Manufacturing	na.	na.	\$105.00[70.00]	\$6.00[4.00]	\$197.00[131.00]	\$4.50[3.00]	\$364.00[208.00]
† Due to similar square footage, small single-family dwelling units (as defined in Division 40.33.300. - General definitions) and single-wide mobile homes will be included under the "All other housing" designation.							
‡ When building or expanding a nonresidential building, the first 1,000 square feet are exempt from the assessment of impact fees. [For all impact fees except sewer impact fees required by this Article, the Department shall waive the applicant's responsibility to pay said fees for redevelopment or Brownfields. As a condition of such waiver, the Department may require that an alternative funding source be identified to pay the applicable impact fee.]							

51 **Sec. 40.14.220. Payment of fees....**

52
53 **Sec. 40.14.230. Other necessary adjustments.**

54
55 A. All costs in the impact fee calculations are given in current dollars with no assumed
56 inflation rate over time. Necessary cost adjustments will be made as part of an
57 annual the periodic evaluation by the Office of Finance which shall be reported to
58 County Council by February 1 of each year and include any proposed
59 corresponding update of impact fees utilizing the Consumer Price Index since the
60 most recent adjustments or another professionally recognized and documented
61 method or study. Any impact fee adjustments shall be implemented upon approval
62 by New Castle County Council.

63
64 B. Impact fees will be adjusted for inflation in construction costs] as reflected in the
65 Engineering News Record (ENR) index and upon approval by New Castle County
66 Council. Any impact fee based in part upon land cost shall be reviewed periodically
67 by the Departments of Land Use and Finance and adjusted to account for any
68 significant change in the cost of land upon approval of County Council.] Starting in
69 January 2027 and no more than every five (5) years thereafter, the Office of finance
70 in coordination with the Department of Land Use, shall prepare or have prepared, a
71 study to review all impact fees. Such studies may propose any new or revised
72 impact fees needed to provide services to support new development, to reflect the
73 higher costs of development in State Strategy Levels 3 and 4, or to protect natural
74 resources. Any proposed new impact fee shall be reviewed for adherence to the
75 methodology in this Article and shall be implemented upon approval by New Castle
76 County Council.

77
78 **Sec. 40.14.240. Parkland requirement. ...**

79
80 **Sec. 40.14.241. Exemptions from Impact Fees[Reserved].**

81
82 The following are exempt from the impact fee requirements of this Article:

83
84 A. Workforce dwelling units developed under the former workforce housing
85 incentives.

86
87 B. Moderately Priced Dwelling Units as noted in this Chapter.

88
89 C. Low income housing (<100% AMI as determined by the Department of
90 Community Services or any qualified units built using the IRS Low Income
91 Housing Tax Credit (IRS Section 42) or participating in the Delaware State
92 Housing Authority/Cinnaire Catalyst Fund.)

93
94 D. Redevelopment or Brownfields as per Section 40.08.130

95
96 E. Development on land in the Publicly Conserved Lands & Parks (P) District
97

98 **Section 2. Consistent with Comprehensive Development Plan.** New Castle
99 County Council finds that the provisions of this Ordinance are consistent with the spirit
100 and intent of the New Castle County Comprehensive Development Plan.
101

102 **Section 3. Inconsistent Ordinances and Resolutions Repealed.** All
103 ordinances or parts of ordinances and all resolutions or parts of resolutions that may be
104 in conflict herewith are hereby repealed except to the extent they remain applicable to
105 land use matters reviewed under previous Code provisions as provided in Chapter 40 of
106 the *New Castle County Code*.
107

108 **Section 4. Severability.** The provisions of this Ordinance shall be severable. If
109 any provision of this Ordinance is found by any court of competent jurisdiction to be
110 unconstitutional or void, the remaining provisions of this Ordinance shall remain valid,
111 unless the court finds that that the valid provisions of this Ordinance are so essentially
112 and inseparably connected with, and so dependent upon, the unconstitutional or void
113 provision that it cannot be presumed that County Council would have enacted the
114 remaining valid provisions, without the unconstitutional or void one, or unless the court
115 finds that the remaining valid provisions, standing alone, are incomplete and incapable
116 of being executed in accordance with the County Council's intent. If any provision of this
117 Ordinance or any zoning map or portion thereof is found to be unconstitutional or void,
118 all applicable former ordinances, resolutions, zoning maps or portions thereof shall
119 become applicable and shall be considered as continuations thereof as not as new
120 enactments regardless if severability is possible.
121

122 **Section 5. Effective Date.** This Ordinance shall become effective July 1, 2025.
123 immediately upon its adoption by County Council and approval by the County Executive
124 or as otherwise provided in 9 Del. C. § 1156.

Adopted by County Council of
New Castle County on:

Monique Williams-Johns
President of County Council
of New Castle County

Approved on:

Marcus A. Henry
County Executive of 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. 40.14.210. This amendment adjusts impact fees for inflation based on the
Consumer Price Index (CPI).

Sec. 40.14.230. This amendment requires that the Office of Finance advise County Council annually what adjustments, if any, to impact fees are needed based on the Consumer Price Index. Additionally, this amendment requires that the Office of Finance advise County Council of any new impact fees needed for County services to support new development. This amendment also requires that the Department of Land Use review new fees for adherence to the methodologies in Article 14.

FISCAL NOTE: (attached separately)



New Castle County Department of Land Use

**DEPARTMENT OF LAND USE
RECOMMENDATION REPORT**

**Ordinance No. 25-045
Application No. 2025-0219-T
Impact Fees**

May 27, 2025

Sponsor: Councilwoman Dee Durham (District 2), Councilman Kevin Caneco (District 12), Councilman David Carter (District 6), Councilman David Tackett (District 11)

Description: To amend New Castle County Code, Article 14 to update Impact Fees based on inflation, clarify and update the process and periodicity for reviewing and updating fees, and provide exemptions from impact fees for affordable housing.

EXECUTIVE SUMMARY

Ordinance 25-045 (Application 2025-0219-T) proposes changes to Article 14 of the New Castle County Code, updating the Impact Fee table to account for inflation, and requiring future updates to Impact Fees be adjusted based on the Consumer Price Index, evaluated annually, and studied every 5 years (the first study to take place by January 2027). Additionally, the ordinance includes important exemptions for:

- Workforce dwelling units
- Moderately Priced Dwelling Units
- Low Income Housing (<100% AMI)
- Redevelopment or Brownfield Development
- Development on land in the Publicly Conserved Lands & Parks (P) zoning district.

The Department of Land Use has worked with the Ordinance's sponsors and supports the intent of the provisions. Based on analysis, public comment and the Standards included in Section 40.31.420 of the *New Castle County Code*, the Department of Land Use recommends **CONDITIONAL APPROVAL** of Ordinance 25-045 (Application 2025-0219-T) with the condition that Section 40.14.230 be revised to eliminate the references to increased cost of development in State Strategy Areas 3 & 4 as well as protection of natural resources. The Department recommends that County Council considers revising Section 40.14.230 to read as follows:

Sec. 40.14.230. Other necessary adjustments.

- A. All costs in the impact fee calculations are given in current dollars with no assumed inflation rate over time.

- B. Impact fees will be reviewed annually by the Office of Finance in coordination with the Department of Land Use and will report to County Council by February 1 of each year any proposed adjustments to the Impact Fees, based on the Consumer Price Index. Starting in January 2027 and then every five (5) years thereafter, the Office of Finance, in coordination with the Department of Land Use, shall prepare, or have prepared, a study to review all impact fees. This study may propose additional impact fees if new services are necessary as a result of new development, as well as advise County Council of adjustments needed to account for land acquisition, construction cost and inflation based on the Consumer Price Index.
- C. Any new impact fee shall be reviewed for adherence to the methodology in this Article and shall be implemented upon approval by New Castle County Council.

DESCRIPTION

Ordinance 25-045 (Application 2025-0219-T) proposes changes to Article 14 of the New Castle County Code, updating the Impact Fee table to account for inflation, and requiring future updates to Impact Fees be adjusted based on the Consumer Price Index, evaluated annually, and studied every 5 years (the first study to take place by January 2027). Additionally, the ordinance includes important exemptions for:

- Workforce dwelling units
- Moderately Priced Dwelling Units
- Low Income Housing (<100% AMI)
- Redevelopment or Brownfield Development
- Development on land in the Publicly Conserved Lands & Parks (P) zoning district

BACKGROUND

The collection of impact fees in New Castle County began with the adoption of the Unified Development Code (UDC) in 1997. Since the adoption of the UDC, the County has consistently considered changes and updates to the structure / methodology of impact fees to account for development and changing economies.

1998 New Castle County Impact Fee Study

Between 1997 and June of 1998, New Castle County conducted an impact fee study with Tischler & Associates. The study recommended both a methodology and fee structure for new development in the county that the legal standards established by the U.S. Supreme Court in *Nollan v. California Coastal Commission* (483 U.S. 825, 1987)¹ and *Dolan v. City of Tigard* (512 U.S. 687, 1994).² For an impact fee

¹Nollan v. California Coastal Commission 483 U.S. 825 (1987):

<https://supreme.justia.com/cases/federal/us/483/825/>

² Dolan v. City of Tigard 512 U.S. 687, (1994): <https://supreme.justia.com/cases/federal/us/512/374/>

to be legal it must meet two standards; (1) there must be a “*rationale nexus*”³ between the imposition of the fee and the achievement of a legitimate public purpose, and (2) the amount of the fee must be “*roughly proportionate*”⁴ to the impact of the proposed development.

The report recommended three specific methodologies to determine impact fees; (1) plan based, (2) incremental expansion, and (3) buy-in approach. The plan-based approach was proposed for libraries, because they have specific capital improvement plans. The incremental expansion method was recommended for parks, public facilities and equipment, EMS, fire/rescue and law enforcement, and are derived by comparing the current level of service (LOS) to what is projected to be needed to expand or provide additional facilities, to accommodate new development.⁵ The buy-in approach was recommended for parks under the rationale that new development is paying for its share of the useful life and remaining capacity of existing facilities.

Ordinance 97-172 Unified Development Code

On December 31, 1997, New Castle County adopted the Unified Development Code (UDC) (Ordinance 97-172). Among the many changes brought by the UDC was the enactment of the first impact fee structure in Article 14. Since the Impact Fee Study (1998), was still in production, the updated UDC only included specific fees related to providing sewer service to the Southern Service Area. Fees for this were based on the *Wastewater Needs Evaluation and Plan for Southern New Castle County (1992)* and *Southern New Castle County Land Use Study (1996)* as well as the *1996 New Castle County Comprehensive Development Plan*.

Ordinance 98-130 Impact Fees on New Development

With the Impact fee study complete in June of 1998, Ordinance 98-130 was adopted on January 12, 1999. Ordinance 98-130 revised the UDC to include the methodology and fee structure in the 1998 study. Services that received impact fees included:

- Libraries
- Fire
- Emergency Medical Services (EMS)
- Police
- Parks & Special Facilities
- Sewers
- County Facilities
- Schools

Most of the fee values and services receiving impact fees have remained largely consistent since the adoption of Ordinance 98-130.

³ Established by *Nollan v. California Coastal Commission* 483 U.S. 825 (1987)

⁴ Established by *Dolan v. City of Tigard* 512 U.S. 687 (1994)

⁵ The County cannot use the funds for maintenance or replacement of existing facilities.

Ordinances 99-042 & 01-112 Impact Fees and Schools

Ordinance 99-042 (adopted on June 22, 1999) & Ordinance 01-112 (adopted March 12, 2002) removed the impact fee provisions related to school capacity, in favor of relying on certification by the school district that adequate capacity exists (Voluntary School Assessment, VSA) in the school district to support development. The ordinances additionally made minor clerical revisions to the impact fee provisions.

Ordinance 06-042

Ordinance 06-042 was adopted on July 25, 2006, shifting the method for recovering sewer service expansion from an impact fee to a capital recovery fee.

2006 Fire Impact Fee Study and Ordinance 06-047

New Castle County conducted an update to the 1998 Impact Fee Study with TischlerBise (formerly Tischler & Associates) to revise fees collected, to support expanded fire services that were needed to accommodate the increased development trends. The study commenced in 2005 and was completed on January 26, 2006. The recommended changes from the study were adopted on August 22, 2006.

Draft 2009 Impact Fee Study and the Great Recession

New Castle County initiated a comprehensive update to the 1998 Impact Fee Study with TischlerBise to update fees collected and to support expanded fire services needed to accommodate the increased development trends in 2009. A draft of the study was completed on December 28, 2009. The study was never finalized and recommendations from the draft study were not pursued due in part to concerns related to the Great Recession and the effect increasing fees would have on the housing market.

2023 Development Impact Fee Study

Following the New Castle County Audit Report (May 2020), which recommended the County consider reviewing current impact fee amounts, the Rossi Group and Century Engineering were contracted to look at best practices. The *2023 Development Impact Fee Study* proposed that the County consider specific changes to the impact fee structure based on best practices by the American Planning Association, neighboring jurisdictions, and nation-wide trends. Based on this analysis, the study includes six key recommendations:

1. Utilization of the Delaware State Strategies Map to assess a surcharge impact fee to cover additional costs associated with developments in Levels 3 and 4.
2. Expansion of the uses included in the Impact Fee Table (Table 40.15.210)⁶.

⁶ Impact Fee Table

3. Incentivizing low-income housing through the potential exemption or reduction of impact fees for Moderately Price Dwelling Units (MPDU's).
4. Graduated fee increases based on the ENR CCI, whether it be annual indexing adjustments or phased increases over time.
5. Creation of an impact fee for open space.
6. Consideration of impact fees for certain redevelopment proposals that may require additional services.

The 2023 *Development Impact Fee Study* recommendations were obtained via an online survey presented at a public workshop held on December 13, 2022. Some recommendations were more favored than others and were considered as part of the final report.

While there were several recommendations in the memorandums that made up the report, it is important to note that the report did not evaluate the necessary data to assure that changes in fees were “roughly proportionate” to the impact from the development:

... Thorough documentation of the current practices along with best practices and case studies will allow the County and its residents to determine needs and opportunities to refine impact fees to align with the County's long-range plans and achieve a sustainable source of revenue.⁷

Ordinance 24-008 Impact Fee Adjustments

Ordinance 24-008 proposed an amendment requiring the updating of impact fees annually, with a deadline for the initial update set for January 1, 2025. The Department concurred with the five-year periodicity as an appropriate update cycle, but expressed reservations regarding the requirement that a comprehensive fee adjustment occur no later than January 1, 2025. This timeframe was deemed insufficient to conduct a thorough study as recommended by the 2023 *Development Impact Fee Study*. Another area of concern raised by the Department pertains to the linkage of future increases in impact fees to the Construction Cost Index. While this index may serve as a suitable approximation of capital costs associated with construction, it overlooks crucial capital expenses unrelated to construction, such as computers, fire hoses, fire trucks, radios, and other non-construction-related expenses frequently requested by fire departments.

Furthermore, the Department expressed apprehension about the potential negative consequences of escalating impact fees on affordable housing units.

Based on those concerns the Department of Land Use recommended DENIAL of the ordinance, and the Planning Board additionally voted to recommend DENIAL of the ordinance by a vote of 7-0 (2 absences). County Council voted to approve the Text Amendment; however, the ordinance was subsequently VETOED. County Council failed to override the veto on January 14, 2025.

⁷ 2023 Development Impact Fee Study, Memo 1, Page 5 of 5

Ordinance 25-045

Councilwoman Durham and Councilman Carter worked with the Department of Land Use to draft Ordinance 25-045 to address concerns voiced during the review of Ordinance 24-008. Ordinance 25-045 was introduced on April 22, 2025, proposing an increase in impact fees based on the Consumer Price Index (CPI), and requiring a study every five (5) years. The ordinance also includes exemptions from impact fees for Workforce Dwelling Units, Moderately Priced Dwelling Units, Low Income Housing (<100% AMI), Redevelopment or Brownfield development (consistent with requirements in Article 8), and development on the newly created Publicly Conserved Lands & Parks (P) zoning district.

PLANNING BOARD PUBLIC HEARING – May 6, 2025

Councilwoman Durham & Councilman Carter discussed the background and drafting of the ordinance. Matthew Rogers, Planner for the Department of Land Use presented Ordinance 25-045, discussing the history of impact fees in New Castle County as well as the scope and intent of the ordinance.

Public Comment

During the public comment period one resident spoke in favor of the ordinance. Dale Swain expressed support for the ordinance stressing the importance of the fees specifically south of the C&D Canal. Mr. Swain additionally provided a written summary expanding on his support for the ordinance.

Written Public Comment

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

ANALYSIS

As outlined in the purpose statement of Article 14 (Impact Fees), the primary objective of the collection of impact fees is to address the facilities and services provided by New Castle County, which are affected by population growth and new development. Article 14 (Impact Fees) of the UDC contains a comprehensive methodology, a cost-of-service determination, and an Impact Fee Table that provide detailed guidance to the County regarding the collection of impact fees and the subsequent management of funds. Recognizing the anticipated changes and growth trends in New Castle County, the County recognized the necessity for updates to the fee structure through the most recently completed impact study.

Following the completion of the *2023 Development Impact Fee Study*, Ordinance 24-008 sought to provide a path to updating New Castle County's Impact Fees, however, was vetoed based on the rationale provided by the Department. There were three specific concerns voiced by the Department during the review process:

1. January 1, 2025, was too short of a time period to conduct an adequate impact fee study

2. Basing the increase in impact fees on the Consumer Cost Index over emphasized the importance of construction costs, where many of the fees are used for non-construction related expenditures
3. Concerns about the impact on affordable housing

The sponsors of Ordinance 25-045 have worked with the Department and have addressed the concerns voiced during the review of Ordinance 24-008.

1. Updates and Study

Ordinance 25-045 updates Impact Fees based on the Consumer Price Index upon adoption and includes an annual evaluation by the Office of Finance to determine if adjustments are needed based on inflation. Additionally, the Office of Finance in coordination with the Department of Land Use would produce a study that evaluates if adjustments to the value and type of services that receive Impact Fees are needed to support future development every five (5) years, starting in 2027. The measures proposed provide a needed increase in impact fees to account for inflation over the last 19 (Fire Impact Fees) to 26 (all other Impact Fees) years, while providing sufficient time for the Office of Finance to evaluate and conduct a study to determine where and if additional fees are needed.

2. Inflationary Adjustments

The existing provisions in Article 14 (Section 40.14.230) as well as those in Ordinance 24-008 tied periodic updates of impact fees to the inflation in construction costs to the Engineering News-Record (ENR) index, formally the Construction Cost Index (CCI). The CCI evaluates:

- Common labor at the 20-city average of common labor rates;
- The cost of 25 hundredweight (CWT) of standard structural steel shapes at the mill price prior to 1996 and the fabricated 20-city price from 1996;
- The cost of 1.128 tons of Portland cement at the 20-city price; and
- 1,088 board-ft of 2 x 4 lumber at the 20-city price.⁸

While the CCI does an admirable job of accounting for increases to construction costs, it is ill equipped to account for increases in cost based on general inflation for products such as fire hoses, computers and fire engines. The Bureau of Labor Statistics evaluates inflationary costs, adjusting for a wider variety of goods and services in the Consumer Price Index, which better reflecting many of the capital expenditures where impact fees are used. The Department supports this change and finds that the CPI is better for evaluating short term changes to the Impact Fees, than the CCI. Ordinance 25-045 does require (as discussed above) that the Office of Finance in coordination with the Department of Land Use produce a study that evaluates potential new services that could receive impact fees as well as additional adjustments to the fees to ensure that they are adequate to support services needed for new development. This study is an opportunity to consider changes to the CCI and cost of land acquisition and compare that impact to general inflationary trends and adjust fees when merited.

⁸ Construction Economics: Construction Cost Index History; <https://www.enr.com/economics> (Accessed 5/12/2025)

3. Impacts on Affordable Housing

During the review of Ordinance 24-008, the Department voiced concerns regarding the relationship of increased impact fees and affordable housing. Ordinance 25-045 includes important exemptions from impact fees for affordable housing that will serve as an incentive for building affordable housing including:

- Workforce dwelling units
- Moderately Priced Dwelling Units
- Low Income Housing (<100% AMI)

The Department has evaluated the ordinance, and supports the provisions proposed, however recommend that Section 40.14.230 be revised to eliminate the references to increased cost of development in State Strategy Areas and protection of natural resources (which are currently protected by Article 10). The Department recommends that County Council considers revising Section 40.14.230 to read as follows:

Sec. 40.14.230. Other necessary adjustments.

- A. All costs in the impact fee calculations are given in current dollars with no assumed inflation rate over time.
- B. Impact fees will be reviewed annually by the Office of Finance in coordination with the Department of Land Use and will report to County Council by February 1 of each year any proposed adjustments to the Impact Fees, based on the Consumer Price Index. Starting in January 2027 and then every five (5) years thereafter, the Office of Finance, in coordination with the Department of Land Use, shall prepare, or have prepared, a study to review all impact fees. This study may propose additional impact fees if new services are necessary as a result of new development, as well as advise County Council of adjustments needed to account for land acquisition, construction cost, and inflation based on the Consumer Price Index.
- C. Any new impact fee shall be reviewed for adherence to the methodology in this Article and shall be implemented upon approval by New Castle County Council.

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.

Goal 17 of the Comprehensive Plan calls on the County to conduct a study of impact fees and other economic cost-benefit analysis to ensure sustainability of community infrastructure and services over time, with a commitment to commence the study by 2022. Furthermore, Strategy 17.4.2 calls for the County to ensure emergency and police services, capacity and funding are available as population grows by re-evaluating impact fees to ensure that monies levied from new development adequately address the impact of increased demand for fire, police and EMS expansion and service.

Increasing impact fees consistent with the Consumer Price Index (CPI), as proposed by Ordinance 25-045 is an important step in meeting the goals and strategies of the Comprehensive Plan. The annual evaluation and 5-year studies required by the ordinance will help ensure that appropriate adjustments to Impact Fees are made to account for variations in inflation, construction costs, and acquisition of land.

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

The proposed changes are consistent with existing provisions in Article 14 Impact Fees, providing both greater clarity and accountability for the collection Impact Fees. Additionally, the ordinance increases to Impact Fees consistent with the CPI which is consistent with the intent of Section 40.14.230 to make "necessary cost adjustments will be made as part of the periodic evaluation and update of impact fees" ...

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

N/A

E. Flexibility in meeting the objectives of this Chapter.

Section 40.01.015.A.10 sets the land use patterns and community character objective to "preserve life styles of an area, visual aspects, image and historical/cultural area by" ... "providing an adequate supply of affordable housing for County residents." Ordinance 25-045 incentivizes affordable housing by exempting workforce housing units, moderately priced dwelling units, and other affordable housing from impact fees.

Additionally, increasing impact fees consistent with inflationary trends, and establishing clear provisions for their continued future evaluation will the public infrastructure objective (Section 40.01.015.D):

In order to provide and maintain public facilities and services that keep pace with the demands of new development, this Chapter is intended to:

1. Ensure the provision of adequate public facilities including transportation, public utilities, and **public services by providing that development does not exceed the carrying capacity of these facilities or systems, or requiring impact fees to offset the cost of the improvements; ...**
8. **Provide adequate infrastructure to accommodate existing, committed and future development;**
9. Provide open spaces for a healthy community, conservation, **and recreation, including regional parks, playgrounds and athletic fields and facilities; ...**

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

N/A

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

Ordinance 25-045 addresses the nearly two-decade time lapse since the last update to the impact fees collected by the County by adjusting fees consistent with inflation based on the Consumer Price Index. The Ordinance provides clear and deliberate provisions to ensure that impact fees remain in line with inflation and the costs of providing services for new development. Specifically, it requires that impact fees be evaluated annually and that a study be conducted every five years, commencing with a study in January 2027.

DEPARTMENT OF LAND USE RECOMMENDATION

Based on the analysis above and the Standards included in Section 40.31.420 of the *New Castle County Code*, the Department of Land Use recommends **CONDITIONAL APPROVAL** of Ordinance 25-045 (Application 2025-0219-T) with the condition that Section 40.14.230 be revised to eliminate the references to increased cost of development in State Strategy Areas 3 & 4 as well as protection of natural resources. The Department recommends that County Council considers revising Section 40.14.230 to read as follows:

Sec. 40.14.230. Other necessary adjustments.

- A. All costs in the impact fee calculations are given in current dollars with no assumed inflation rate over time.
- B. Impact fees will be reviewed annually by the Office of Finance in coordination with the Department of Land Use and will report to County Council by February 1 of each year any proposed adjustments to the Impact Fees, based on the Consumer Price Index. Starting in January 2027 and then every five (5) years thereafter, the Office of Finance, in coordination with the Department of Land Use, shall prepare, or have prepared, a study to review all impact

fees. This study may propose additional impact fees if new services are necessary as a result of new development, as well as advise County Council of adjustments needed to account for land acquisition, construction cost, and inflation based on the Consumer Price Index.

- C. Any new impact fee shall be reviewed for adherence to the methodology in this Article and shall be implemented upon approval by New Castle County Council.

PLANNING BOARD RECOMMENDATION

At a business meeting held on May 27, 2025, 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 **CONDITIONAL APPROVAL** of Ordinance 25-045 as recommended by the Department of Land Use. The motion was adopted by a vote of 6-0-0-2 (In Favor: Cantrell, Daigle, Drake, Gray, Snowden, Visvardis; In Opposition: None; Abstention: None; Absent: Cahill-Krout, Cochran).

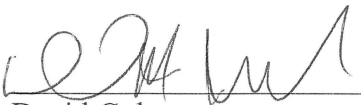
Prior to the vote, the following discussion occurred:

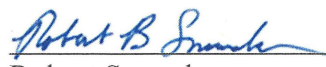
Antoni Sekowski read the Department of Land Use recommendation into the record.

Ms. Gray inquired about the inclusion of impact fees within the Capital Budget and whether the proposed increase in fees will cover the cost of services. David Culver elaborates that the proposed ordinance covers fee increases through 2023, and any changes and additional proposed fees would be recommended based off a new study in 2027. He proceeded to mention adjustments that could be made regarding the impact fee tables being located within the Appendices to allow the Departments of Land Use and Finance to adjust the impact fees along with the Capital Budget on an annual basis.

STATUTORY GUIDELINES

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

 5-28-25
David Culver date
General Manager
Department of Land Use

 5/28/25
Robert Snowden date
Acting Chair
Planning Board

