



NEW CASTLE COUNTY COUNCIL LAND USE COMMITTEE MEETING

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

December 7, 2021
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

Approval of Minutes of the November 16, 2021 Land Use Committee Meeting.

C. Review/Discussion of Resolution(s)

R21- : URGING THE DELAWARE GENERAL ASSEMBLY TO ENACT ENABLING LEGISLATION AUTHORIZING NEW CASTLE COUNTY TO CREATE NEIGHBORHOOD IMPROVEMENT DISTRICTS Introduced by: Mr. Cartier, Ms. Diller, Ms. Kilpatrick, Mr. Sheldon

D. Review/Discussion of Ordinance(s)

SUBSTITUTE NO. 1 TO °18-129: REVISE ZONING MAP: MILL CREEK HUNDRED, EAST SIDE VALLEY ROAD, 2100' NORTH OF LIMESTONE ROAD; 701 VALLEY ROAD, TAX PARCEL NO. 08-012.00-032, 1.56 ACRES FROM S (SUBURBAN) TO CN (COMMERCIAL NEIGHBORHOOD) (The Exploratory Minor Land Development Plan for Hockessin Commons proposes to rezone the property to CN for development of an approximately 10,342 square foot medical office building on 1.56 acres. 2018-0076-S/Z). Introduced by: Ms. Kilpatrick

SUBSTITUTE NO. 1 TO °21-009: TO AMEND NEW CASTLE COUNTY CODE CHAPTER 40 (ALSO KNOWN AS THE UNIFIED DEVELOPMENT CODE OR "UDC"), REGARDING ARTICLE 4 ("DISTRICT INTENSITY AND BULK STANDARDS"), ARTICLE 5 ("SITE CAPACITY AND CONCURRENCY CALCULATIONS"), ARTICLE 10 ("ENVIRONMENTAL STANDARDS"), ARTICLE 20 ("SUBDIVISION AND LAND DEVELOPMENT DESIGN PRINCIPLES"), ARTICLE 23 ("LANDSCAPING, TREES, PLANT MAINTENANCE, AND EROSION AND SEDIMENT CONTROL"), ARTICLE 26 ("MODIFICATION OF STANDARDS"), ARTICLE 31 ("PROCEDURES AND ADMINISTRATION"), ARTICLE 33 ("GENERAL DEFINITIONS"), APPENDIX 1

("APPLICATION AND PLAN REQUIREMENTS"), AND APPENDIX 3 ("PLANT LISTS AND PLANTING GUIDANCE FOR NEW CASTLE COUNTY") Introduced by: Mr. Tackett, Ms. Kilpatrick

°21-036: TO AMEND THE 2012 COMPREHENSIVE DEVELOPMENT PLAN UPDATE FOR NEW CASTLE COUNTY TO ESTABLISH A NEW COMMUNITY MASTER PLAN ELEMENT AND AMEND THE SEWER SERVICE AREA MAP AND FUTURE LAND USE MAP FOR SPECIFIC COMMUNITY MASTER PLAN AREAS Introduced by: Mr. Cartier, Ms. Durham, Ms. Kilpatrick

°21-084: REVISE PREVIOUSLY APPROVED EXPLORATORY MINOR LAND DEVELOPMENT PLAN WITH REZONING FOR SCARFO, DOMINIC M.; PENCADER HUNDRED; NORTH SIDE OF PULASKI HIGHWAY, 885 FEET EAST OF PLEASANT VALLEY ROAD; TAX PARCEL NO. [11-026.00-002](#) & [11-026.00-003](#) (2787 PULASKI HIGHWAY) (The revised plan for 2787 Pulaski Highway proposes to revise the previously approved design of the exploratory minor land development plan by combining Tax Parcel No. [11-026.00-002](#) and Tax Parcel No. [11-026.00-003](#) to allow for the development of 89,400 square feet of mini warehouse/self-storage Gross Floor Area. This new plan will supersede the previously approved exploratory minor land development plan and rezoning. [Section 40.31.113](#) of the New Castle County Code requires that the submitted record plan be in general conformance with the development on the approved exploratory plan that was relied upon by County Council when it granted the rezoning. County Council adopted [Ordinance 03-022](#) in June 2003. CR (Commercial Regional) zoning district. [App. 2021-0004-S/Z](#).) Introduced by: Mr. Tackett

°11-073: (STATUS: TABLED) TO REVISE CHAPTER 7 OF THE NEW CASTLE COUNTY CODE (ALSO KNOWN AS THE "PROPERTY MAINTENANCE CODE") REGARDING INSTANT TICKETING Introduced by: Mr. Cartier

E. Presentations

F. Other

Sample Adjusted County Council Meeting Times Discussion


G. Public Comment

H. Adjournment

AGENDA POSTED: November 30, 2021

*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://nccde.org/AgendaCenter/County-Council-1> 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.



NEW CASTLE COUNTY COUNCIL LAND USE COMMITTEE MEETING

Co-Chair: David Tackett, Eleventh District

Co-Chair: Janet Kilpatrick, Third District

November 16, 2021

3:00 PM

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

MINUTES

A. Meeting Call to Order

The meeting was called to order at 03:00 PM. Members present: John Cartier, George Smiley, Janet Kilpatrick, David Tackett, David Carter, Penrose Hollins, Dee Durham, Lisa Diller, Karen Hartley-Nagle, Jea Street, J. William Bell.

B. Approval of Minutes

Minutes of the November 2, 2021, Land Use Committee meeting

Motion by Councilman Smiley, **second** by Councilwoman Kilpatrick, unanimously approved the Minutes of the November 2, 2021, Land Use Committee meeting.

C. Review/Discussion of Resolution(s)

R21-:PLAN OF PLEASANTON; ST. GEORGES HUNDRED; 1405 CEDAR LANE ROAD, EAST SIDE OF ROUTE 301, 4,600 FEET SOUTH OF BOYDS CORNER ROAD; MAJOR LAND DEVELOPMENT PLAN THAT PROPOSES TO SUBDIVIDE TAX PARCELS [13-012.00-039](#) AND [13-012.00-045](#) INTO 237 LOTS FOR SINGLE FAMILY DETACHED DWELLING UNITS WITH ASSOCIATED IMPROVEMENTS UTILIZING THE OPEN SPACE SUBDIVISION, OPTION 2 DEVELOPMENT OPTION AND CREATE A LOT FOR THE EXISTING FARMHOUSE ([HISTORIC OVERLAY ZONE](#), [APPLICATION 2020-0556-H](#)); 180.70 +/- ACRES; S AND H ZONING; [APPLICATION NO. 2020-0210-S/Z](#); COUNCIL DISTRICT 6 Introduced by: Mr. Carter

- The plan of Pleasanton was introduced and a description was given by Councilmember David Carter. The representative for the applicant, Shawn Tucker, gave a presentation.
- Questions and comments regarding the landscape plan and species affected negatively by disease and pests from councilmember David Carter were addressed by landscape architect, Ellen Tracey.
- No questions or comments from members of the public,
- No vote was taken.

D. Other

None

E. Public Comment

Larry Tarabicos complimented the Land Use Department on its excellent customer service and specifically mentioned the manager of licensing, Dave Holsten, on a recent customer engagement and also Janet Vinc, Antoni Sakowski, and Brad Shockley.

F. Adjournment

Motion by Mr. Smiley, **second** by Mr. Carter, to adjourn the **Land Use Committee Meeting**. The motion was approved and the meeting was adjourned at 03:29 PM.

RESOLUTION NO. 21-

**URGING THE DELAWARE GENERAL ASSEMBLY TO ENACT ENABLING
LEGISLATION AUTHORIZING NEW CASTLE COUNTY TO CREATE
NEIGHBORHOOD IMPROVEMENT DISTRICTS**

WHEREAS, creation of neighborhood improvement districts will marshal New Castle County government resources under “one roof” to focus on persistent or “legacy” neighborhood problems, which will improve the chances of successfully resolving systemic neighborhood problems, such as unsanitary conditions and crime, that erode the quality of life in communities; and

WHEREAS, preserving and improving the quality of life in our neighborhoods is critical to the long-term well-being of the State of Delaware and New Castle County; and

WHEREAS, the availability of enhanced services, such as neighborhood-wide snow and trash removal and enhanced public safety, within New Castle County’s neighborhoods would provide another “tool in the toolbox” for the County to improve neighborhood stability and overall quality of life; and

WHEREAS, many cities in the United States and countries around the world, including Philadelphia, Baltimore, Buffalo, and Allentown, among many others, have successfully implemented and witnessed the benefit of such enhanced services through the creation of neighborhood improvement districts; and

WHEREAS, the enhanced services and related programs provided within a neighborhood improvement district are funded by special assessments on properties within each district, which are the primary beneficiaries thereof, and thereby lessens further demands on the already strained public treasury; and

WHEREAS, it is in the best interests of the County and its residents to create, where circumstances warrant, neighborhood improvement districts to promote more attractive and safer neighborhoods; and

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

NOW, THEREFORE, BE IT RESOLVED by and for the County Council of New Castle County that County Council hereby urges the Delaware General Assembly to enact enabling legislation authorizing New Castle County to create neighborhood improvement districts.

Adopted by County Council of
New Castle County on:

President of County Council
of New Castle County

SYNOPSIS: Same as title.

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

SUBSTITUTE NO. 1 TO ORDINANCE NO. 18-129

REVISE ZONING MAP: MILL CREEK HUNDRED, EAST SIDE VALLEY ROAD, 2100' NORTH OF LIMESTONE ROAD; 701 VALLEY ROAD, TAX PARCEL NO. 08-012.00-032, 1.56 ACRES FROM S (SUBURBAN) TO CN (COMMERCIAL NEIGHBORHOOD)

(The Exploratory Minor Land Development Plan for **Hockessin Commons** proposes to rezone the property to CN for development of an approximately 10,342 square foot medical office building on 1.56 acres. **2018-0076-S/Z**).

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

Section 1. The Zoning Map of Mill Creek Hundred, as amended, is hereby further amended by changing the zoning classification of the land shown on attached Exhibits "A" and "L" dated, October 31, 2018, as set forth therein.

Section 2. The 2012 Comprehensive Development Plan Update for New Castle County, as shown amended, is hereby further amended, by changing the land use designation shown on Exhibit "E" dated October 31, 2018 as set forth herein, so as to make such land consistent with the amendment of the zoning map, as per Section 1 above.

Section 3. This Ordinance shall become effective immediately upon passage by New Castle County Council and approval of the County Executive, or as otherwise provided in 9 *Del. C.* § 1156.

Adopted by County Council of
New Castle County on:

President of County Council
of New Castle County

Approved on:

County Executive
New Castle County

SYNOPSIS: The substitute ordinance will revise the purpose of the plan, reference Mill Creek Hundred in Section 1 and add Section 2.

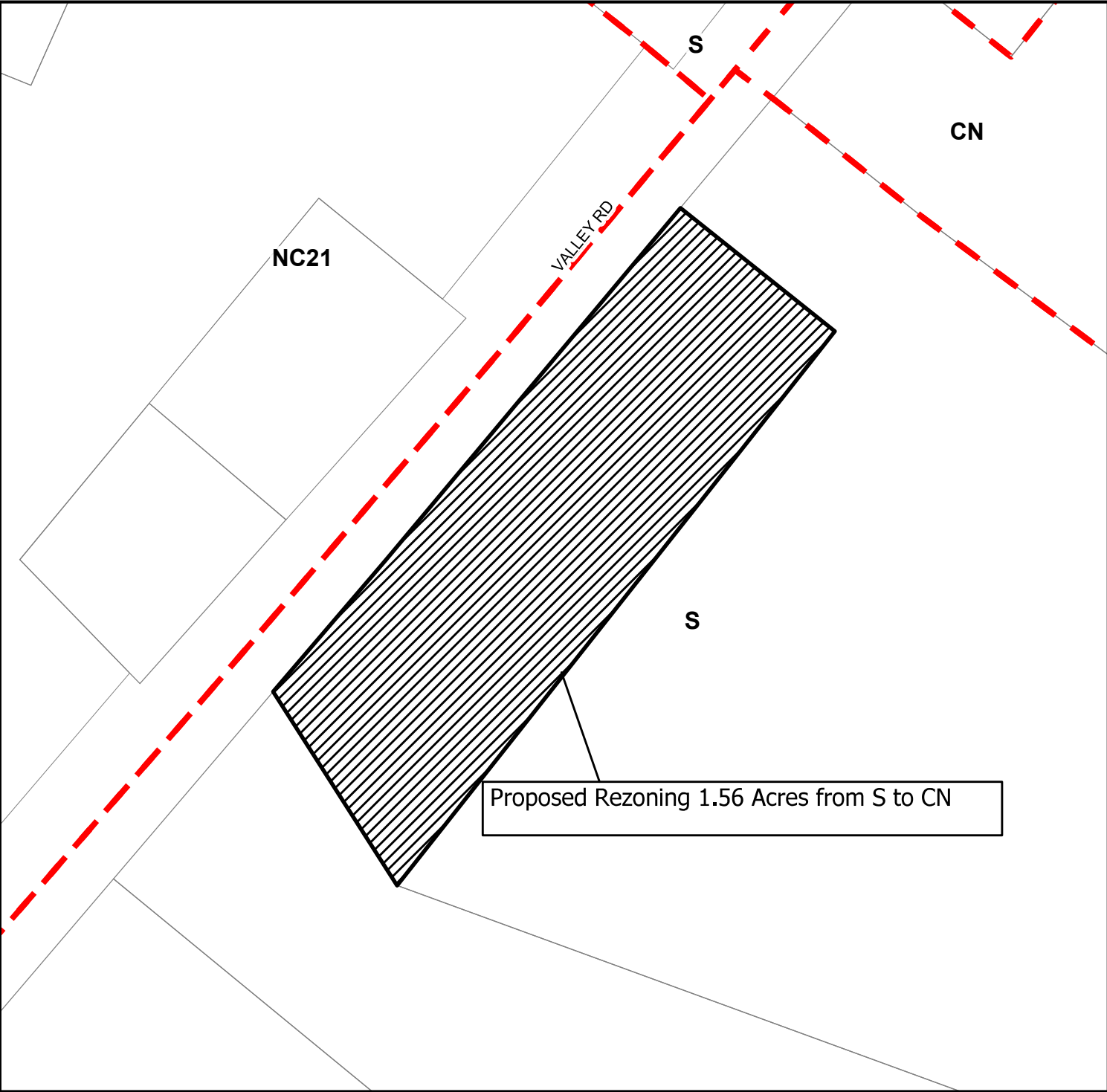
FISCAL IMPACT: This rezoning ordinance will have no immediate discernable fiscal impact on the County, but if the parcel rezoned is developed in accordance with the new rezoning, there may be one or more indirect fiscal effects on New Castle County government, including, but not limited to, an increase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

APPLICANT: Joseph Setting

APPLICATION NO. 2018-0076-S/Z

PROPOSED REZONING: FROM S TO CN

TAX PARCEL NOS. 08-012.00-032

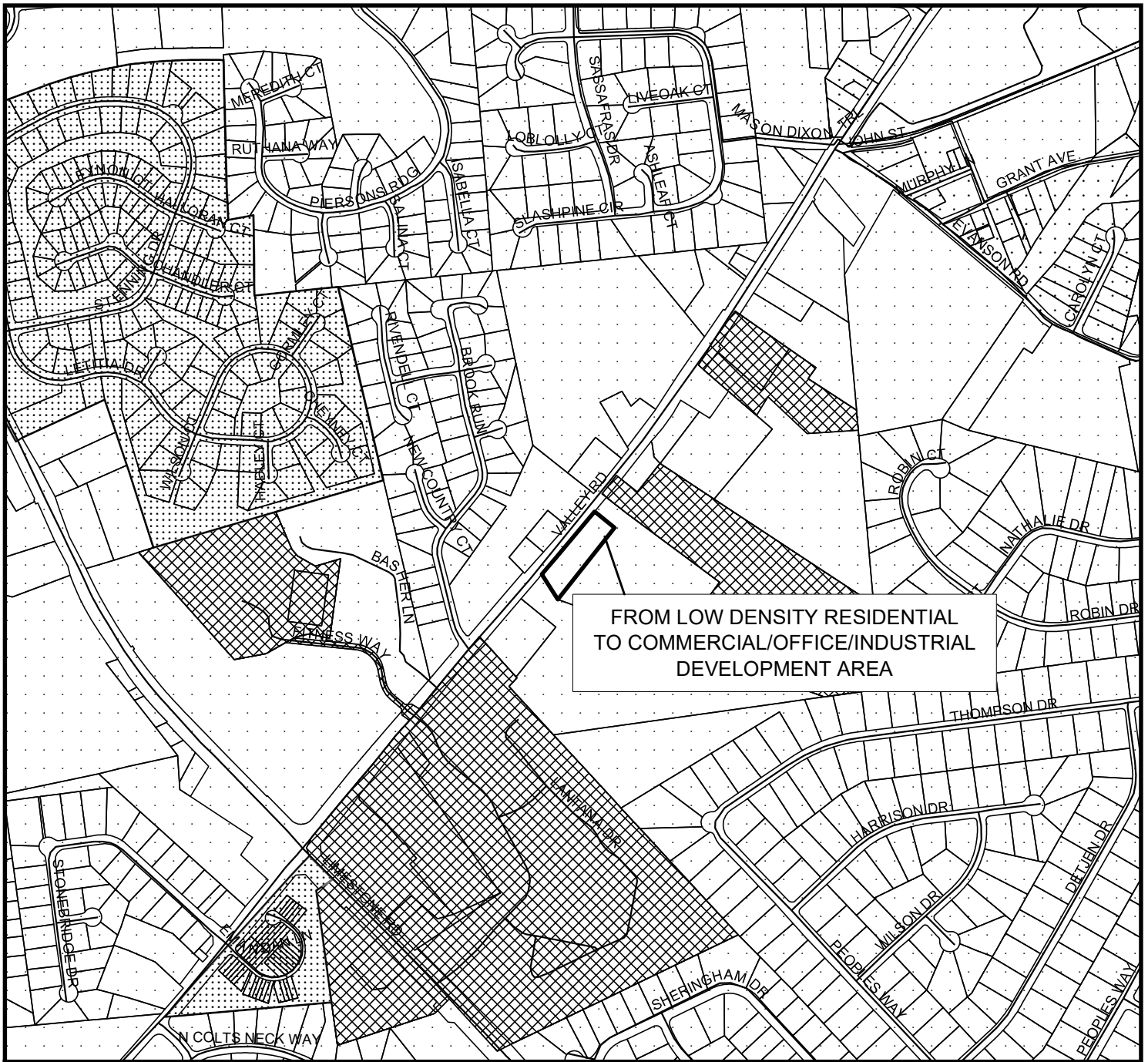


HUNDRED: MILL CREEK
NEW CASTLE COUNTY, DELAWARE

Scale: 1"= 100'
Prepared by: SMB
Date: 10/31/2018



PERMANENT ORDINANCE NO. Sub 1 to 18-129
Date Adopted by County Council _____
Date Approved by County Executive _____



AMENDMENT TO THE 2012 COMPREHENSIVE DEVELOPMENT PLAN
NEW CASTLE COUNTY, DELAWARE



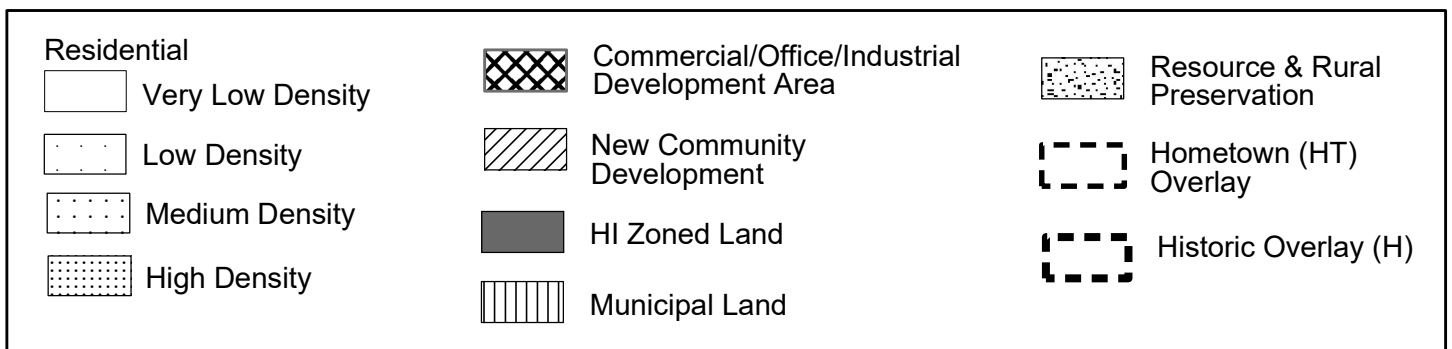
Ordinance No. Sub 1 to 18-129

Exhibit E

App. No. 2018-0076-S/Z

Date: 10/31/2018

Scale: 1" = 800'

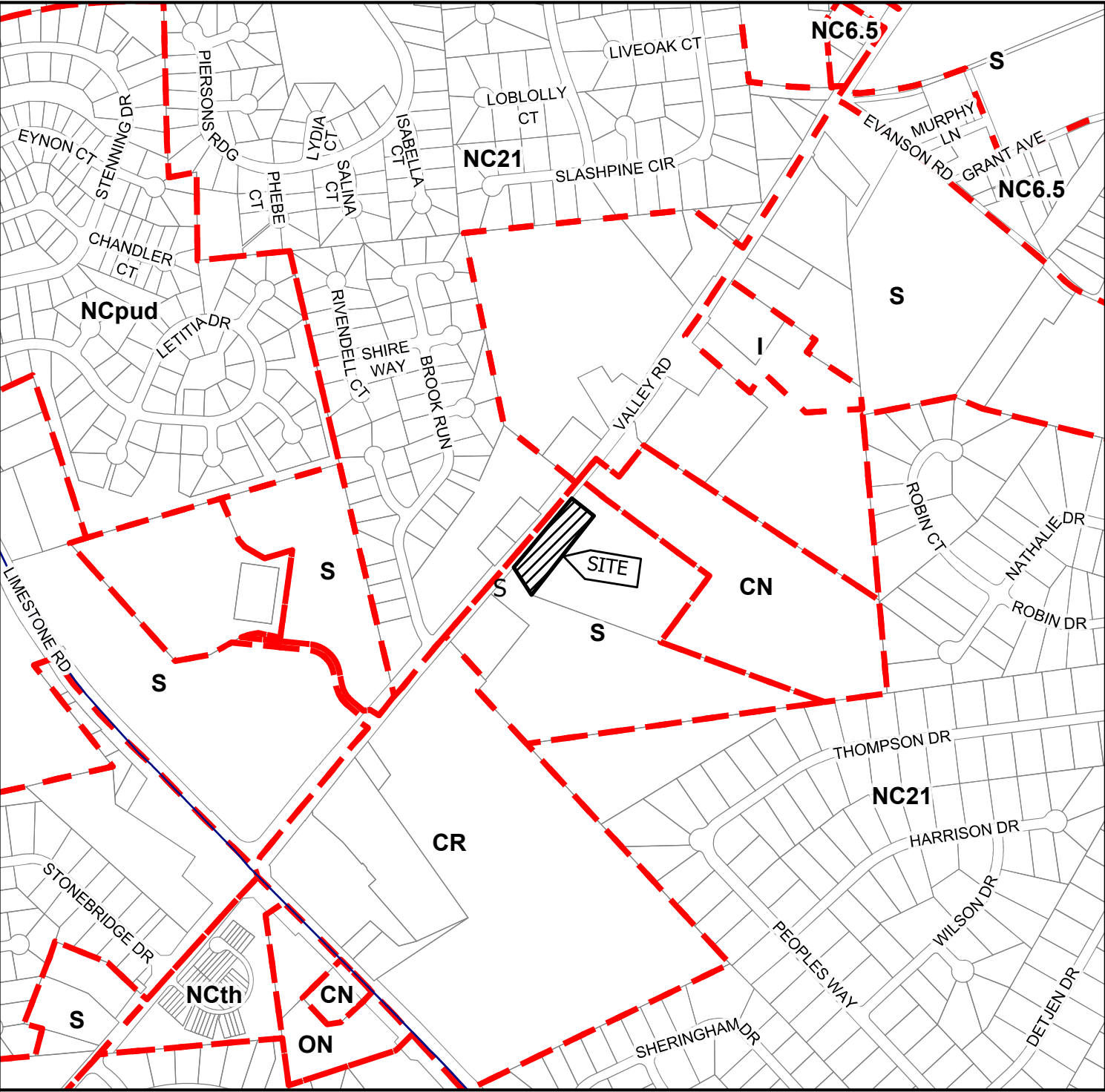


APPLICANT: Joseph Setting

APPLICATION NO. 2018-0076-S/Z

PROPOSED REZONING: From S to CN

TAX PARCEL NOS. 08-012.00-032



HUNDRED: MILL CREEK
NEW CASTLE COUNTY, DELAWARE

PERMANENT ORDINANCE NO. Sub 1 to 18-129
Date Adopted by County Council _____
Date Approved by County Executive _____



Department of Land Use

DEPARTMENT OF LAND USE AND
PLANNING BOARD RECOMMENDATION REPORT

Ordinance 18-129
Application 2018-0076-SZ
Hockessin Commons
October 19, 2021

Location: East side of Valley Road, approximately 2100 feet north of Limestone Road.

Councilperson: Janet Kilpatrick, District 3

Rezoning: Rezone 1.56 acres from S (Suburban) to CN (Commercial Neighborhood) and amend the 2012 Comprehensive Development Plan consistent therewith.

Applicant: Setting Hockessin LLC

EXECUTIVE SUMMARY

The applicant proposes to rezone property from S to CN to construct a 10,341 square foot one-story medical office building with associated site improvements.

The Department has considered the *Standards for Zoning Map Amendment* in Section 40.31.410 of the UDC, the proposed plan, comments received from other agencies and members of the public. Based on this analysis the Department is of the opinion that the standards are met by this proposal.

The Department of Land Use recommends **CONDITIONAL APPROVAL** of Ordinance 18-129 as introduced.

1. To provide building elevations consistent with what was provided to the Department of Land Use and the Planning Board at the Public Hearing.

DESCRIPTION

Application 2018-0076-SZ proposes to rezone a 1.56-acre property from S to CN to construct a 10,341 square foot one-story medical office building with associated site improvements.

ZONING & DEVELOPMENT PATTERN

The subject parcel is located on the east side of Valley Road, about one mile southwest of the “CN” (Commercial Neighborhood) and “CR” (Commercial Regional) zoned districts of the Village of Hockessin about halfway between Limestone Road and Evanson Road. It is surrounded on three sides by “S” (Suburban) zoning districts. Directly across Valley Road is an “NC21” (Neighborhood Conservation – 21,780 Square Foot minimum lot size) zoning district that includes two residential parcels as well as the Vallebrook residential subdivision. Just north of the subject parcel, on the east side of Valley Road is an “ST” (Suburban Transition) zoned residential community known as Valley Grove. The nearest commercial zones are the “CR” (Commercial Regional) district at Lantana Square shopping center located about 500 feet to the south of the subject site and the “CN” (Commercial Neighborhood) zoned Valley Road Hall located about 100 feet to the northeast of the subject parcel on Valley Road.

Historically, Hockessin was an agricultural area with farms and scattered mushroom growing operations. Today, the development pattern in the Hockessin area is strongly residential with few farms and a few remnants of the mushroom industry remaining. Most of the housing units in the area are in the form of single family detached dwellings. The nearby subdivisions of Vallebrook, Southwood, Hockessin Greene, Hockessin Valley Falls, and Manley, among others are examples of this type of housing. A less typical housing type are townhouses however, they can be found in the communities of Valley Pointe and Gateway. This segment of Valley Road where the subject parcel is located is less densely developed than the surrounding area. Several non-development dwellings line the road.

Commercial uses are located in two concentrated nodes nearby. The first is the eastern quadrant of the Limestone Road/Valley Road intersection contains a regional shopping center. with space to build additional retail units. The second being the village of Hockessin which includes small shopping centers, gasoline stations, as well as freestanding commercial and office buildings along Lancaster Pike. Old Lancaster Pike, where the older section of the village remains, contains smaller scale commercial uses, along with the Hockessin Fire Station and Memorial Hall.

PRELIMINARY LAND USE SERVICE (PLUS) REVIEW

The proposed rezoning was reviewed at a PLUS meeting held on October 31, 2018. The PLUS report, dated December 3, 2018, contains a summary of State Code and permitting requirements as well as general comments from a number of State agencies. The report also notes that the project is located in Investment Level 2, areas according to the *Strategies for State Policies and Spending* that reflect the following: Investment Level 2 (areas where growth is anticipated by local, county, and State plans in the near-term future). State investments will support growth in these areas. All comments were general in nature.

PUBLIC HEARING – September 13, 2021

*Please note that a recording and transcripts of the hearing are available on the Department of Land Use website.

At the September 13, 2021 Planning Board Public Hearing, the applicant's attorney, Peter Yingst, gave a presentation on the application.

In his presentation Mr. Yingst described the proposed rezoning, how this project meets the rezoning standards, and surrounding land uses. Mr. Yingst explained that the project proposes a one-story 10,341 square foot medical office building that includes 51 parking spaces and stormwater management system that includes permeable pavement. Mr. Yingst also stated that the property is located in the Cockeysville Formation and that they have already sought relief from both RPATAC and BOA.

Chairwoman Peterson asked one question of the applicant and that is if a traffic impact study is required. Mr. Yingst replied and stated that a traffic impact study is not required. He further explained that the plan originally proposed a retail use with more square footage prior to going to PLUS. He stated that this change from retail to medical use with the reduced square footage did not trigger a need for the traffic impact study.

Mark Blake, president of the Greater Hockessin Area Development Association (GHADA) spoke on behalf of his organization. Mr. Blake stated that the plan is supported by the community that there is no objection to what is being proposed on this site.

No other Board members or members of the public had any questions or comments for this application.

Written Comment

Michael Hoffman of Tarabicos, Grosso, and Hoffman LLC provided a supplement to their testimony at the public hearing. His letter focused on three points; 1. The proposal predates the current ongoing update to the New Castle Comprehensive Plan process; 2. Through other rezonings that have occurred in the past, this area is considered a transitional area; and 3. Rumors about potential future development and speculative concepts shall not have any effect on the current rezoning proposal.

The Department also received ten (10) public comment letters that were all in favor of the proposed rezoning application.

BACKGROUND AND ANALYSIS

In 2018, the Department received an exploratory plan submission that proposed a one-story retail commercial building, with parking, loading, and stormwater management. The plan eventually changed to propose a smaller building footprint and a use of medical office instead of the initial retail commercial uses. The site is located completely within the Cockeysville Formation and drainage area. Due to the amount of land disturbance proposed by the plan, the applicant was required to seek relief from both the Resource Protection Technical Advisory Committee (RPATAC) and the Board of Adjustment (BOA).

Application 2019-0721 was heard by RPATAC on December 16, 2020. The applicant requested the following relief:

1. Variance from Table 40.10.010 of the Unified Development Code to disturb 1.24 acres (80%) of a Cockeysville Formation (50% protection level required).
2. Relief to allow an impervious surface ratio of 48% per section 40.10.160.B of the Unified Development Code which allows only 20% impervious surface.

The Committee asked questions about the plan, proposed mitigation, as well as alternative site design. The Committee recommended in favor of Application 2019-0721.

Application 2019-0732 was heard in front of the BOA on July 8, 2021. The applicant requested the following variance:

1. Area variances to facilitate the recordation of a Land Development Plan: To disturb 80 percent (1.24 acres) of the Cockeysville Outcrop Formation Water Resource Protection Area/WRPA (50 percent protection level for Cockeysville Outcrop Formation WRPA) see UDC Table 40.10.010.

The Board voted to grant Application 2019-0732.

The proposed rezoning requires a change to the Comprehensive Plan's Future Land Use Map, from Low Density Residential to Commercial/Office/Industrial. The Department notes that application 2018-0076-S/Z was submitted prior to the current/ongoing update to the New Castle Comprehensive Plan process. The 2012 Comprehensive Plan Future Land Use Map indicates that the subject parcel is classified as Low Density Residential. Chapter 9 of the 2012 New Castle County Comprehensive Plan focuses on Economic Development. This Chapter includes projections that Health Care and Social Assistance are among the highest growing job market in Delaware. Objective 3 of Chapter 9 encourages the development of underutilized properties. Specifically, this objective read, "re-use of existing or abandoned properties frequently contributes to a community's financial stability...".

It is the Department's position that the requested rezoning and required change to the Future Land Use Map is within the character of the surrounding area and meets the goals and objectives of the 2012 update to the New Castle County Comprehensive Plan. Additionally, there are ongoing efforts in anticipation for the upcoming update to the New Castle County Comprehensive Plan and the Future Land Use Map as required by State Code. Through these efforts, the Department has found that this segment of Valley Road is in transition and requires further evaluation. This change will be consistent with the analysis and 2022 New Castle County Comprehensive Plan Update process.

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

In determining whether a zoning map amendment should be recommended or approved, all of the following factors shall be considered:

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

The 2012 update to the New Castle Comprehensive Development Plan designates this area as Low Density Residential, which is consistent with the character of the Valley Road corridor between the village of Hockessin and the Lantana Square shopping center. The Department suggests that the Commercial/Office/Industrial designation is appropriate for this site. Furthermore, the Department believes that the character of the area will remain intact.

B. Consistency with the character of the neighborhood.

As residential development has continued in this area there has been no addition of neighborhood commercial and services. Commercial Neighborhood is a scale of commercial development that is appropriate in a residential area. The parcel has a limited capacity for development since it is completely within the Cockeysville Formation. Therefore, potential to expand the amount of commercial development on this parcel does not exist.

C. Consistency with zoning and use of nearby properties.

Although a rezoning to Commercial Neighborhood is requested, the proposed medical office use is a low intensity use that will not generate a lot of traffic. Areas to the north and south of this segment of Valley Road include Commercial Regional zoning districts that have higher intensity commercial uses that generate traffic. Residential properties surround the subject parcel. The proposed use will not be inconsistent with the zoning and use of nearby properties.

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

This is an environmentally sensitive property located entirely within the Cockeysville Formation. The applicant has received relief from both RPATAC and the BOA in order to pursue this project. As proposed, the design of the plan is acceptable, and the use is suitable per the approval of both regulating bodies regarding the Cockeysville Formation.

E. Effect on nearby properties.

The applicant included elevations of the proposed building in their presentation to the Planning Board and Department of Land Use. The elevations provided had a character of a large barn with a peaked roof, which is in character and representative of the rural history of the surrounding community. The use of this property as medical office which will not generate significant traffic; along with the proposed elevation will not have a negative effect on nearby properties.

DEPARTMENT OF LAND USE RECOMMENDATION

The Department has considered the *Standards for Zoning Map amendment* in **Section 40.31.410**, A through E, the proposed rezoning, and comments received from agencies and the public. Based on this analysis the Department is of the opinion that the standards are met by this proposal.

The Department of Land Use recommends **CONDITIONAL APPROVAL** of Ordinance 18-127 as introduced.

1. To provide building elevations consistent with what was provided to the Department of Land Use and the Planning Board at the Public Hearing.

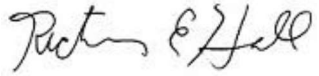
PLANNING BOARD RECOMMENDATION

At its business meeting held on September 27, 2021 the Planning Board considered the recommendation offered by the Department of Land Use. On a motion made by Ms. Gray and seconded by Mr. Daigle, the Board voted to recommend **CONDITIONAL APPROVAL** of Ordinance 18-127 subject to the condition made by the Department of Land Use. The motion was adopted by a vote of 9-0-0-0 (Yes: Cahill-Krout, Cochran, Daigle, Drake, Gray, McGlinchey, Snowden, Visvardis, Peterson; No: none; Abstain: none; Absent: none).

No questions or comments were made by the Board.

STATUTORY GUIDELINES

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



11/8/2021

Richard E. Hall, AICP date
General Manager
Department of Land Use



10/22/2021

Karen Peterson date
Chair
Planning Board

Introduced by: Mr. Tackett,
Ms. Kilpatrick
Date of introduction: January 26, 2021

SUBSTITUTE NO. 1 TO ORDINANCE NO. 21-009

**TO AMEND *NEW CASTLE COUNTY CODE* CHAPTER 40
(ALSO KNOWN AS THE UNIFIED DEVELOPMENT CODE OR “UDC”), REGARDING
ARTICLE 4 (“DISTRICT INTENSITY AND BULK STANDARDS”), ARTICLE 5 (“SITE
CAPACITY AND CONCURRENCY CALCULATIONS”), ARTICLE 10
 (“ENVIRONMENTAL STANDARDS”), ARTICLE 20 (“SUBDIVISION AND LAND
DEVELOPMENT DESIGN PRINCIPLES”), ARTICLE 23 (“LANDSCAPING, TREES,
PLANT MAINTENANCE, AND EROSION AND SEDIMENT CONTROL”), ARTICLE 26
 (“MODIFICATION OF STANDARDS”), ARTICLE 31 (“PROCEDURES AND
ADMINISTRATION”), ARTICLE 33 (“GENERAL DEFINITIONS”), APPENDIX 1
 (“APPLICATION AND PLAN REQUIREMENTS”), AND APPENDIX 3 (“PLANT LISTS
AND PLANTING GUIDANCE FOR NEW CASTLE COUNTY”)**

WHEREAS, New Castle County (“County”) has engaged in a comprehensive review of the Unified Development Code (“UDC”) to identify standards that need revision for technical compliance, internal consistency, or consistency with current development practices; and

WHEREAS, the County has undertaken a public review process with stakeholders including County residents, developers and homebuilders, engineers, and landscape architects; and

WHEREAS, based on a comprehensive review of the UDC by the professional staff in the County’s Department of Land Use, and comments by stakeholders, applicants and local experts in land use issues, the County has developed updated standards for increased forest resource preservation, conservation design standards, subdivision standards, site design, and resource protection definitions; and

WHEREAS, the Department of Land Use has continued to review, interpret, and monitor the continued application of the UDC with regard to land development and has identified additional clarifications, corrections, improvements and changes necessary to further enhance conservation design standards and environmental protection standards; and

WHEREAS, County Council has determined that the provisions of this Ordinance substantially advance, and are reasonably and rationally related to, legitimate government interests, including, but not limited to, the protection and preservation of the public health, safety, prosperity, general welfare, and quality of life.

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

Section 1. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 4 (“District Intensity and Bulk Standards”), Division 40.04.200 (“Landscaping”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Division 40.04.200 Landscaping.

Sec. 40.04.210. Required landscaping.

- A. Landscaping is required . . .
- E. Afforestation landscaping may be required under Table 40.04.241.

Sec. 40.04.231. Landscaping standards for required open space.

All areas of open space shall be landscaped using one (1) of the following landscape treatments:

- A. Areas presently covered with . . .
- C. Areas disturbed, but scheduled to be returned to natural conditions, shall be planted as forest (reforestation or afforestation) or with such other plant material that will return the area to its natural condition. All proposed plant material used must be native.

Sec. 40.04.241 [~~Reserved~~]Afforestation Standards.

Major land development plans and minor nonresidential land development plans must provide afforestation. This Section establishes the requirement for forest or tree cover on sites that are not presently forested or where existing forest or tree cover is less than the afforestation ratio required by the associated zoning district.

- A. The afforestation ratio consists of the ratio of the total forest cover area or tree cover area to the entire site. Table 40.04.241 provides the minimum afforestation ratios for development in corresponding zoning districts. Areas of active cultivation may be excluded from the calculation for this requirement.

Table 40.04.241
AFFORESTATION RATIO

<u>Zoning District*</u>	<u>Minimum Afforestation Ratio</u>
<u>SE; SR; NC2a</u>	<u>0.35</u>
<u>S; NC40</u>	<u>0.30</u>
<u>S*; NC6.5; NC10; NC15; NC21</u>	<u>0.25</u>
<u>ST; TN; NC5; NCsd; NCth; NCga; NCap</u>	<u>0.20</u>
<u>BP; ON; OR; CN; CR</u>	<u>0.15</u>
<u>I; HI</u>	<u>0.10</u>

* S zoned parcels using an Open Space Planned Development option must provide a minimum 0.25 afforestation ratio

- B. Forest cover consists of the area of all existing forest to remain or new forest to be planted. This includes reforestation and afforestation associated with riparian buffers, WRPA's or forest mitigation. Forest cover must be calculated concurrently with a conceptual landscape plan submission.
1. All protected areas shall be maintained in accordance with this Chapter.
 2. Areas of existing forest to remain shall be delineated in accordance with Articles 10 and 33 and Appendix 1.3 of this Chapter.
 3. Areas proposed to be reforested or afforested shall be delineated as new forest area under Section 40.23.240.
- C. Tree cover consists of the total tree protection area based on the critical root zone (CRZ) of existing trees to remain (outside of forest areas). Tree cover must be calculated concurrently with a conceptual landscape plan submission.
1. Proposed afforestation may take credit for tree cover associated with new landscaping plantings to achieve the required afforestation ratio.

2. Tree protection areas shall be measured individually, with areas of overlap (either existing trees or proposed new landscape plantings) excluded from the sum total area.
 3. For new plantings, tree cover is calculated on the afforestation/reforestation requirements under Section 40.23.240.
 4. Green roof plantings may be used to satisfy afforestation requirements.
- D. Afforestation based on existing forest cover or tree cover may be used to satisfy afforestation requirements.
- E. Off-site afforestation may be permitted in the same watershed. A conservation easement must be established to identify maintenance responsibility and prohibit the disturbance of the afforestation area in perpetuity.
- F. The applicant must demonstrate compliance with afforestation standards as part of the final landscape plan and open space certification as applicable.
- G. The maintenance escrow required by Section 40.27.220 must include maintenance funding for five (5) years for the afforestation/reforestation planting requirements.

Section 2. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 5 (“Site Capacity and Concurrency Calculations”), Division 40.05.400 (“Site resource capacity”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Division 40.05.400. Site resource capacity.

Sec. 40.05.420. Calculation for total protected land.

Table 40.05.420 provides . . .

Table 40.05.420
CALCULATION FOR TOTAL PROTECTED LAND

Step 1	Enter gross site area as determined by actual survey.				_____ ac.
	Subtract land within existing roads' ultimate rights-of-way; or land within major utilities' rights-of-way (minimum 50-foot width within subject property).				- _____ ac.
	Subtract land cut off from use by railroad, highway, or waterbody.				- _____ ac.
	Subtract all waterbodies having an area greater than one (1) acre.				- _____ ac.
	Subtract land previously dedicated as open space.				- _____ ac.
	Equals Base Site Area.				= _____ ac.
Step 2	Measure all natural resources in the base site area and enter in the Acres Measured Column 2. If resources overlap, measure only that resource with the highest resource protection ratio. These numbers provide each resource's area of land. Multiply by Resource Protection Ratio for the district Columns 3 or 4, and insert result in column 5.				
	<i>Natural Resource</i>	<i>Acres Measured Column 2.</i>	<i>Multiply Column 2 by Resource Protection Ratio.</i>		<i>Protected Land. Column 5</i>
			<i>CN, CR, ON, OR, BP, I, HI districts Column 3</i>	<i>All other districts Column 4</i>	
	Floodplain/Floodway		1.00	1.00	
	Wetland		1.00	1.00	
	Riparian Buffer		1.00	1.00	
	Drainageways		0.00	0.40	
	Cockeysville Formation – WRPA		0.50	0.50	
	Cockeysville Formation Drainage Area – WRPA		0.50	0.50	
	Sinkhole		1.00*	1.00*	
	Wellhead - WRPA Class A		1.00*	1.00	
	Wellhead - WRPA Class B & C		0.50	0.50	
	Recharge Areas – WRPA		0.50*	0.50	
	Slope or Geologic Sites – CNA		0.90	1.00	
	Steep slopes (< 25%)		1.00	1.00	
	Steep slopes (15-25%)		0.25	0.50	
	Rare Species Site – CNA		1.00	1.00	
	Forests, [Mature]Tier 1 - CNA**		[0.70]0.75	[0.85]0.90	
	Forests, [Mature]Tier 1**		[0.50]0.60	[0.70]0.80	
	Forests, [Young]Tier 2 CNA**		[0.40]0.50	[0.60]0.70	
	Forests, [Young]Tier 2**		[0.20]0.40	[0.50]0.60	
	Forests, Tier 3 CNA**		0.30	0.40	
	Forests, Tier 3**		0.10	0.30	
Other CNA		0.25	0.25		
Historic	See Article 15				
Step 3	Sum of Step 2 column equals Total Resource Land.				
Step 4	Protected Resource Land equals sum of Protected Land column.				

NOTES: * There are other standards of protection which include mandatory mitigation or construction in Article 10.

** Any future developer shall be required to use the original forest cover as set forth in Sections 40.03.301 C and E .

Section 3. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 10 (“Environmental Standards”), Division 40.10.100 (“Resource protection standards”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Division 40.10.100 Resource protection standards.

Sec. 40.10.110. Resource protection standards.

A. The protection of natural resources . . .

Table 40.10.010 RESOURCE PROTECTION LEVELS		
<i>Natural Resource</i>	<i>Resource Protection Levels</i>	
	<i>CN, CR, ON, OR, BP, I, HI Districts</i>	<i>All Other Districts</i>
Floodplain/floodway	1.00	1.00
Wetland	1.00	1.00
Riparian buffer	1.00	1.00
Drainageways	0.00	0.40
Cockeysville Formation - WRPA	0.50	0.50
Cockeysville Formation Drainage Area - WRPA	0.50	0.50
Sinkhole	1.00	1.00
Wellhead - WRPA Class A	1.00	1.00
Wellhead - WRPA Class B & C	0.50	0.50
Recharge areas -WRPA	0.50	0.50
Slope or geologic sites - CNA	0.90	1.00
Steep slopes (> 25%)	1.00	1.00
Steep slopes (15-25%)	0.25	0.50
Rare species site - CNA	1.00	1.00
Forests, [mature]Tier 1 - CNA	[0.70]0.75	[0.85]0.90
Forests, [mature]Tier 1	[0.50]0.60	[0.70]0.80
Forests, [young]Tier 2 - CNA	[0.40]0.50	[0.60]0.70

Table 40.10.010 RESOURCE PROTECTION LEVELS		
<i>Natural Resource</i>	<i>Resource Protection Levels</i>	
	<i>CN, CR, ON, OR, BP, I, HI Districts</i>	<i>All Other Districts</i>
Forests, [young] Tier 2	[0.20] 0.40	[0.50] 0.60
Forests, Tier 3 - CNA	0.30	0.40
Forests, Tier 3	0.10	0.30
Other CNA	0.25	0.25
Historic	See Article 15	

Sec. 40.10.135. Forests.

Where a forest exists within a project boundary that will be disturbed by development or construction activities, a Forest Habitat Value Assessment as set forth in Appendix 1.3 is required.

The forested areas containing the highest habitat value, as determined by the Forest Habitat Value Assessment, will be given the highest priority for preservation. [Trees]Forests may be cut or cleared over a greater area than permitted in Table 40.05.420 only if mitigation is provided and the following standards are met:

- A. A [tree survey of the site's forest shall be conducted by a landscape architect, arborist or forester and submitted to the Department for review and approval. The best forests, in terms of percentage of climax vegetation, tree size, tree health, and habitat value, shall be given the highest priority for preservation]Forest Habitat Value Assessment shall be conducted by a qualified professional landscape architect, forester, arborist, botanist, plant or wildlife ecologist, or other licensed or certified professional in the applicable environmental discipline.
- B. Where landscaping can occur, the protection level given forests after mitigation shall not be less than in Table 40.10.~~[350B]~~135. The acres of mitigation required is expressed as a ratio (acres planted to acres disturbed). In no case shall the increased cutting lead to a revision of the density permitted by the site resource capacity calculation in Division 40.05.400.
- C. Except for CNA forest types, an applicant may be permitted to reduce the protection level with mitigation set forth in Table 40.10.~~[350-B]~~135, provided the mitigation ratio is maintained and the area to be reforested is either on the same parcel or on an adjoining

parcel. Any reduction of this standard shall require the approval of the Department and County Council.

Table 40.10.~~[350B]~~135
FOREST MITIGATION PROTECTION AND RATIOS

<i>Forest [Type]Tier (Zone)</i>	<i>Protection Level</i>	<i>Protection with Mitigation</i>	<i>Mitigation Ratio</i>
[Mature] Tier 1 CNA [5] (CN, CR, ON, OR, BP, I, HI districts)	[0.70] 0.75	[0.60] 0.70	1.75:1
[Mature] Tier 1 CNA [5] (all other districts)	[0.85] 0.90	[0.80] 0.85	2.75:1
[Mature] Tier 1 [5] (CN, CR, ON, OR, BP, I, HI districts)	[0.50] 0.60	[0.40] 0.50	1.5:1
[Mature] Tier 1 [5] (all other districts)	[0.70] 0.80	[0.65] 0.70	2:1
[Young] Tier 2 CNA [5] (CN, CR, ON, OR, BP, I, HI districts)	[0.40] 0.50	[0.30] 0.45	1.25:1
[Young] Tier 2 CNA [5] (all other districts)	[0.60] 0.70	[0.50] 0.65	1.75:1
[Young] Tier 2 [5] (CN, CR, ON, OR, BP, I, HI districts)	[0.20] 0.40	[0.10] 0.30	1.25:1
[Young] Tier 2 [5] (all other districts)	[0.50] 0.60	[0.40] 0.50	1.5:1
<u>Tier 3 CNA (CN, CR, ON, OR, BP, I, HI districts)</u>	<u>0.30</u>	<u>0.25</u>	<u>1.25:1</u>
<u>Tier 3 CNA (all other districts)</u>	<u>0.40</u>	<u>0.35</u>	<u>1.75:1</u>
<u>Tier 3 (CN, CR, ON, OR, BP, I, HI districts)</u>	<u>0.10</u>	<u>0.05</u>	<u>1.25:1</u>
<u>Tier 3 (all other districts)</u>	<u>0.30</u>	<u>0.20</u>	<u>1.5:1</u>

Sec. 40.10.136. Standards for mitigation of forests, old fields and meadows.

In ~~[low-quality]~~ forests, old fields and meadows ~~[where over fifty (50) percent of existing plants are listed as "Plants to Avoid" in Appendix 3 to this Chapter[)]~~, mitigation shall be required. The developer shall submit a mitigation plan by a qualified forester or landscape architect. At a minimum, the plan shall provide for the following:

- A. Elimination of invasive ~~[nonnative]~~plant species (see Appendix 3 to this Chapter). . .
- C. Long-term management program including, initial action, follow-up in first three (3) years, and a long-term maintenance plan. This ~~[should]~~shall focus on the ~~[ultimate]~~ eradication of ~~[non-native]~~invasive plant species that interrupt growth of newly-planted stock and will be required prior to final open space approval.

Sec. 40.10.163. Recharge areas and Cockeysville Formation drainage areas.

A. When impervious cover. . . .

B. Those areas of open space not currently forested, shall have a minimum of twenty-five (25) percent of their area reforested pursuant to Section 40.10.351. The Department may reduce this requirement where the applicant prepares an Environmental Impact Assessment Report demonstrating to the satisfaction of the Department that reforestation will result in more than a twenty (20) percent loss in groundwater recharge due to the soils and hydrogeologic conditions of the site. The report shall include an annual water budget compiled on a month by month basis comparing existing and post-development mature forest conditions. Applicants shall submit information regarding the types of trees evaluated, soil conditions (including percolation rates), pH types, assumptions regarding rainfall events, and topography. The report shall also include a water quality analysis comparing the water quality benefits of [~~mature~~]forest cover to the proposed alternative ground cover.

Section 4. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 10 (“Environmental Standards”), Division 40.10.700 (“Compliance”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Division 40.10.700 Compliance.

Sec. 40.10.701. Environmental impact assessment report.

If a proposed use requires an environmental impact assessment report, the applicant shall have such a report prepared and certified by a qualified professional engineer, geologist, landscape architect, environmental consultant, botanist, plant or wildlife ecologist, forester, certified wetlands delineator or other certified professional in the applicable environmental discipline. The report shall contain the following information:

A. *Site character.* . . .

D. *Resource Mitigation.* [~~Submit a plan detailing mitigation activities.~~] A mitigation plan must be submitted that describes the site conditions of the area to be mitigated, the required size of the area of mitigation, detailed plans for monitoring and long-term maintenance, and the mitigation area boundaries.

1. On-site replacement is the most acceptable for of mitigation. However, mitigation can include restoration and enhancement of the existing resource.
2. Mitigation cannot be used where the conflict can be avoided or minimized.
3. Mitigation by replacement on another site shall be at a ratio of two to one (2:1).

4. Mitigation may also include enhancement; this ratio shall be four to one (4:1).

E. *Conservation design*. . . .

G. *Cultural and Scenic Resources*. Prepare an inventory of federal, state or locally identified irreplaceable historical, archaeological, paleontological or scenic resources on site and within five hundred (500) feet of the proposed site, determination of the proposed development's impact on the resources and identification of any mitigation.

Section 5. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 20 (“Subdivision and Land Development Design Principles”), Division 40.20.200 (“Subdivision layout”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Division 40.20.200 Subdivision layout.

Sec. 40.20.230. Streets.

All new streets not intended . . .

J. *Cul-de-sacs*.

1. A cul-de-sac proposed on a residential, commercial, office or mixed-use major land development plan shall be no greater than [~~three hundred (300)~~]two hundred (200) feet in total length when measured from the right-of-way of the intersecting street to the right-of-way at the end of the cul-de-sacs. . .

Section [5]6. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 20 (“Subdivision and Land Development Design Principles”), Division 40.20.500 (“Mapping and monuments”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Division 40.20.500 Mapping and monuments.

Sec. 40.20.510. Mapping criteria.

The following shall be used for mapping natural resources or other features of plans:

A. Streams . . .

G. Measurements of forest area shall be made based on the exterior [~~drip line~~]Critical Root Zone (CRZ) of the trees.

Section [6]7. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 23 (“Landscaping, Trees, Plant Maintenance, and Erosion and Sediment Control”), Division 40.23.200 (“Landscaping installation requirements”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.23.240. Afforestation/Reforestation requirements.

All forest mitigation areas or open spaces to be afforested/reforested shall be planted pursuant to one or a combination of alternatives set forth in Table 40.23.240 using the plant species listed in Appendix 3 to this Chapter.

- A. The area around each tree shall be mulched. The entire area may be mulched or seeded in a perennial grass mix with a minimum thirty (30) percent indigenous herbaceous forest, or grassland species.
- B. Trees shall be selected to provide a diversity of native plants. All plants and trees used for afforestation/reforestation must consist only of species native and indigenous to Delaware. Selected plants and trees may not include cultivars or hybrids of species or State rare or endangered species.
- C. Plants and trees shall be selected and arranged within the afforestation/reforestation area in accordance with site conditions.
- D. Afforestation/r[~~R~~]eforestation plantings shall include a minimum of six (6) species. Where more than two hundred (200) trees are provided, a minimum of eight (8) species shall be used; no one (1) species shall have less than five (5) or more than twenty (20) percent of the total trees.
- E. Appendix 3 to this Chapter provides a list of unacceptable and suggested plant species and afforestation/reforestation planting guidelines.
- F. A plan for perpetual maintenance of any afforestation/reforestation area must be provided with the landscape plan and approved by the Department. The plan must include methodology for removing invasive plants while protecting reforestation plantings and facilitating the establishment of a leaf-litter layer on the ground within the reforestation area.
- G. The survival rate for reforestation areas shall be a minimum of one hundred (100) trees per acre or at least seventy-five (75) percent of the total number of trees planted per acre under the approved plan, whichever is greater. Replanting shall be required to meet this minimum standard for sites where the survival threshold is not met. Infill planting also may be required where planting fails in large contiguous areas, resulting in tree spacing greater than twenty five (25) feet.

Table 40.23.240 AFFORESTATION/REFORESTATION PLANTING RATE ALTERNATIVES PER ACRE	
<i>No. of Trees per Acre</i>	<i>Minimum Size and Approximate Spacing</i>
120*	1-1/2" caliper trees (20' x 20' spacing)
200*	3/4" caliper trees (15' x 15' spacing)
300*	3' to 6' tall whip trees (11' x 11' spacing)
700*	Container or bare root seedling trees** (8' x 8' spacing)
<p>* Includes canopy and understory tree species with understory trees constituting a minimum of 5%, and a maximum of 10% of the total (see Appendix 3).</p> <p>** Seedlings are trees installed at less than 2' tall.</p> <p>Note: spacing indicated does not imply that trees must be planted in a grid pattern.</p>	

Division 40.23.200. Landscaping installation requirements.

Sec. 40.23.250. Existing vegetation.

Where natural vegetation . . .

- A. A tree survey is conducted locating the individual trees to be preserved or, in the case of a forest, trees within fifty (50) feet of the edge of ~~[construction areas]~~the limits of disturbance.
- B. Individual trees described in the tree survey as healthy and intended to count toward the landscaping or afforestation requirements shall count only if sufficient protection is provided as follows:
 1. Trees greater than sixteen (16) inches DBH:
 - a. No area within the ~~[drip line]~~Critical Root Zone(CRZ) shall be disturbed. No topographic change greater than eighteen (18) inches shall occur at the edge of the protected area . . .
 2. Trees between three (3) and less than sixteen (16) inches DBH: No more than thirty (30) percent of the area within the ~~[drip line]~~CRZ shall be disturbed. . . .
- D. Areas classified as ~~[mature or young]~~Tier 1, 2, or 3 forests or defined as forest under the General Definition in Article 33 shall count as meeting the following landscaping requirement provided:
 1. Open Space . . .
 2. Bufferyards.

- a. Where the forested area . . .
- b. Where the forested area width equals or exceeds the minimum bufferyard width of the required opacity that does not include a fence, hedge, or berm (Table 40.23.140), all trees with less than ten (10) percent of their ~~[canopy]~~CRZ undisturbed shall be credited in accordance with Table 40.23.250.

Section [7]8. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 23 (“Landscaping, Trees, Plant Maintenance, and Erosion and Sediment Control”), Division 40.23.300 (“Tree protection”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Division 40.23.300. Tree protection.

Sec. 40.23.310. Preserving specimen trees.

A specimen tree is preserved by protecting one-hundred (100) percent of the area ~~[under the tree's drip line]~~within the tree's CRZ. The following techniques shall be used to preserve the maximum number of specimen trees:

- A. During construction, the ~~[tree's drip line]~~CRZ shall be fenced with five (5) foot temporary fencing, and no earth moving, material storage, vehicular storage or vehicular incursions shall be permitted inside the fenced area. Existing impervious cover within the ~~[drip line]~~CRZ may be removed or altered with limited disturbance, provided measures are taken to minimize root disturbance and soil compaction. This may include recommendations for pruning, fertilization and other means to ensure the tree's survival both during and after completion of construction activities. Only those trees with a high probability of survival may be credited.

Section [8]9. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 26 (“Modification of Standards”), Division 40.26.200 (“Zoning modification”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Division 40.26.200 Zoning modification.

Sec. 40.26.231. Patio and atrium dwelling units.

The wall enclosing these lots may be eliminated or reduced in height or opacity where the unit faces open space. The street yard should be varied to avoid monotony. The following rules govern wall modulation:

- A. Where the wall abuts . . .

Table 40.26.231 PERCENT REDUCTION IN TOTAL AREA OF WALL				
Type of Cover	Width of Open Space			
	30-40 ft.*	41-60 ft.*	61-100 ft.	101 ft.+
Lawn	10%	15%	30%	40%
Old Field	30%	40%	60%	80%
[Young] Tier 3 Forest	50%	70%	90%	100%
[Mature] Tier 1 or Tier 2 Forest	60%	80%	100%	100%
*If a trail or walk is present, add ten (10) feet to width.				

Section [9]10. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 26 (“Modification of Standards”), Division 40.26.300 (“Subdivision standards”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Division 40.26.300. Subdivision standards.

Sec. 40.26.330. Cul-de-sac or block length.

Cul-de-sac length is generally set to avoid unduly long roads where only one (1) means of access exists. Maximum block lengths provide for good circulation. However, ~~[instances may arise where]~~ a longer block length or cul-de-sac length ~~[is justified]~~ may be permitted.

- A. A cul-de-sac's maximum length may be extended ~~[an additional three hundred (300) feet]~~ to serve twenty-four (24) lots provided:
 1. No stub street is possible ~~[on any cul-de-sac whose length would exceed eighteen (18) lots.]; and~~
 2. The average number of lots served by cul-de-sacs in the development is sixteen (16) or less~~[-]; and~~
 3. The cul-de-sac layout and design minimizes natural resource disturbance; and
 4. The cul-de-sac layout and design are in accordance with the standards of the DelDOT Development Coordination Manual.
- B. ~~[Up to twenty-eight (28) lots per block length may be permitted]~~ A block's longest dimension may be extended by twenty-five (25) percent (with proportionate expansion to the maximum block perimeter) where: . . .

Section [40]11. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 31 (“Procedures and Administration”), Division 40.31.100 (“Application review procedures”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Division 40.31.100. Application review procedures.

Sec. 40.31.112. Pre-application sketch plan review/conference.

A. *Applicability.* A pre-application sketch plan review conference is required for all rezoning requests and major [residential subdivisions]land development applications. An applicant may request a pre-application sketch plan review conference for all other major or minor plans at any time. The pre-application sketch plan review conference may be waived by the Department when it is determined, after a review of the submission, that no departmental concerns exist. . . .

Section [40]12. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 33 (“Definitions”), Division 40.33.300 (“General definitions”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Division 40.33.300. General definitions.

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

Afforestation. The establishment of forest cover on areas that are not presently forested, or where forest cover is below the afforestation threshold for the use. . . .

Canopy. The uppermost layer in a forest, formed from a crown of trees. . . .

Critical natural areas report. A report analyzing the impact of a development or subdivision proposal on a CNA located on the site which shall include the following elements:

- A. A statement . . .
- C. A narrative description of the extent to which the [subdivider or developer]applicant proposes land disturbing activities within any critical natural areas which are shown on the scaled plan; and
- D. Any measures . . .

Critical Root Zone (CRZ). The protected area around the base of a tree.

- A. The CRZ is the zone in which the majority of a tree’s roots are found that supply nutrients and water to the tree. In ideal growing conditions, a tree’s roots are often concentrated in the upper 12 to 18 inches of soil.

B. To determine the CRZ utilize one of two methods: The CRZ is delineated by the greater of either:

1. The outer drip line of the tree canopy or;
2. The tree diameter at breast height (DBH), then multiply the diameter by a standard factor of 1.5 feet. For example, an 18-inch diameter tree would have a CRZ of 27 feet (18 inches x 1.5 feet) measured radially from the center of the tree trunk.

Forest. An area covered by a canopy of [woody plants (trees) that qualifies as mature and/or young. It may also be a woodland, woodlot, grove, or stand of trees meeting the specifications of the forest type] trees, covering a contiguous land area of at least 1.0 acre or greater in size. Forests do not include trees planted and grown for commercial purposes, and do not include canopy cover over existing structures.

Forest Cover. Is the total area of a site under the cover of an existing stand of trees or new stand of trees (reforestation or afforestation), meeting the minimum requirement of forest to be preserved and maintained.

~~[Forest, mature. An area or stand of trees whose total combined contiguous canopy covers an area of one (1) acre or more composed of canopies of trees having a DBH of at least eighteen (18) inches or greater covering at least seventy-five (75) percent of that area.]~~

~~[Forest, young. An area or stand of trees whose total combined canopy covers an area of one (1) acre or more, with canopy trees having a DBH of six (6) inches and covering at least sixty (60) percent of the area. However, no trees kept or grown for commercial purposes shall be considered a young forest.]~~

Forester. A person possessing . . .

Forest Habitat Value Assessment. A method or process for determining the area or areas within a forest that contain high habitat value.

Forest Interior. Habitat of high ecological value within the core of the forest located at least 300 feet from the forest edge. . . .

Forest Protection Level:

Tier 1: A forested area or areas with the highest habitat value based on the forest habitat value assessment and a numerical point system. A Tier 1 protection level has 52 or greater habitat value points.

Tier 2: A forested area or areas that has between 26 and 51 habitat value points.

Tier 3: A forested area or areas that has between 1 and 25 habitat value points. . . .

Invasive [~~woody~~] plant[s] species. Trees, [~~and other~~]woody plants, or herbaceous plants, alien to the Mid-Atlantic region, which have a tendency to spread, encroach, or infringe on other plant species, often displacing less hardy plant species. The list of invasive plant species is maintained by the Delaware Invasive Species Council (DISC).

Non-native plants. A species that is not native to North America (north of Mexico). Non-native species are thought to have been introduced by humans, primarily through agricultural or horticultural practices.

Old field. [~~An area historically used for agricultural purposes which has been abandoned and now~~]Lands formerly cultivated, timbered or grazed but later abandoned. The dominant plants include grasses and herbaceous plants, with encroaching woody vegetation, which evidences secondary succession; in particular, areas covered by woody plants eight (8) or more feet in height which either cover forty (40) percent or more of a property or cover eighty (80) percent of a contiguous area one (1) acre or greater in size. . .

Public water supply well. A well from which the water is used to serve a [~~community~~]public water system as defined [by Section 40.22.146 (Public Water Systems)]in the State of Delaware [State] Regulations Governing Public Drinking Water Systems. All classes of public water supply wells are covered by this definition, including Community, Non-transient Non-community, and Transient Non-community as defined and mapped by the State of Delaware Regulations Governing Public Drinking Water Systems. . .

Site analysis plan. For all minor and major [~~residential subdivisions~~]land development applications, the applicant shall be required to submit a site analysis plan as the first phase of the pre-application [~~exploratory~~]sketch or exploratory plan review process. The Department may also require a site analysis plan for any other application type. The site analysis plan shall serve as a basis for the planning process and shall be used to determine the best areas of the site for open space and natural resource preservation, land conservation and development. The site analysis plan allows both the applicant and the Department the opportunity to utilize the natural site conditions to determine how the development of each parcel or tract can be designed to minimize environmental degradation while achieving highest possible community character design standards. . .

Tree. A living perennial woody plant with single or multiple stems that branch into a well-formed crown of foliage and reaching a height of at least fifteen (15) feet under ideal growing conditions.

Tree, canopy. A tree whose [~~leaves~~]foliage would occupy the upper level of a forest [~~in a natural ecological situation~~]. These trees are also called shade trees, and typically reach heights of fifty (50) feet or greater [~~to one hundred (100) feet~~]at maturity under ideal growing conditions.

Tree Cover. Applies to a stand of trees not meeting the minimum requirements of a forest and is the area of existing CRZ or an assumed CRZ after twenty (20) years of growth for newly planted

trees. Tree Cover is an optional substitute for Forest Cover in order to meet minimum afforestation ratio standards.

Tree, small canopy/understory. A tree whose [~~leaves~~]foliage would occupy the intermediate level of a forest[~~in a natural ecological situation~~]. [~~They are also found as dominant species in old field succession. These trees are also called ornamental trees~~] . . .

Wellhead. The wellhead water resource protection areas are surface and subsurface areas surrounding public water supply wells or wellfields where the quantity or quality of groundwater moving toward such wells or wellfields may be adversely affected by land use activity. Such activity may result in a reduction of recharge or may lead to introduction of contaminants to groundwater used for public supply (“wellhead”). Three (3) classes of wellhead water resource protection areas exist in accordance with the following:

- A. *Class A.* The area within a three hundred (300) foot radius circle around all public water supply wells which are classified as [~~community~~]public water systems, as defined [~~by section 40.22.157 (public water systems),~~]in the State of Delaware Regulations Governing Public Drinking Water Systems.
- B. *Class B.* The Glendale . . .

Section [~~12~~]13. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Appendix 1 (“Application and Plan Requirements”) is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

APPENDIX 1. APPLICATION AND PLAN REQUIREMENTS

1. Land Development Application Submission Requirements.

- A. *Pre-application sketch plan (planning and engineering).* . . .
- B. *Exploratory plan.*
 - 1. Planning.
 - a. A completed application . . .
 - n. If not previously completed as part of a Pre-Application Sketch Plan, a Site Analysis plan pursuant to Appendix 1(3)(K).
 - o. A Conceptual Landscape Plan that generally delineates all planting areas and planting requirements in accordance with this Chapter.
 - p. Conceptual architectural renderings of proposed site development shall be required

for all rezonings and major land development plans. . . .

C. Site construction plans.

1. [~~Planning~~]Planning.
 - a. Record check prints . . .
 - b. Final Landscape/Open Space and Site Management Plan. ([4]2 copies) . . .
2. [~~Engineering~~]Engineering. . . .

2. Land Development Plan Requirements. The purpose of this section is to specify the format, data, notes, graphics and information required for subdivision and land development plans submitted in accordance with the Unified Development Code. The level of detail depicted and noted on plans shall be that which is necessary to convey compliance with design details and purpose of the proposed land use action.

Any of the notes and information listed below may be modified as necessary to apply to specific projects. Any notes which are not applicable to the particular plan need not appear on the plan. Additional notes may be required by any regulatory reviewing agency or as proposed by an applicant and approved by the Department of Land Use. Notes, data and/or graphic details should be added to plans whenever necessary to explain or clarify features of the project which are not otherwise self-explanatory.

A. Plan Requirements.

Plan Requirements				
<u>Land Development</u>		<u>Other</u>		
EX - Exploratory plan		S – Site plan		
RE - Record plan		P – Parking plan		
<i>EX</i>	<i>RE</i>	<i>S</i>	<i>P</i>	<i>Specifications and/or Notes</i>
				4. A Certification of Accuracy, Certification of Ownership and Certification of Plan Approval along the bottom edge of the first page.
				a. Certification of Plan Accuracy
				I _____ hereby certify that I am a registered professional engineer with a background in civil engineering in the State of Delaware and that all of the information on this plan is true and correct to the accuracy required by accepted surveying standards and practices and by the New Castle County Unified Development Code.
				<u>Registered Professional land surveyor or registered landscape architect</u> [registered] in the State of Delaware [should] <u>may</u> be substituted for <u>or</u> included with a professional engineer when applicable in accordance with <u>State Code</u> .
				b. Certification of Ownership . . .

3. Other Reports and Applications . . .

A. Floodplain permit application . . .

F. Conceptual and final [L]landscape [P]plans. The landscape plans must be prepared, signed and sealed by a landscape architect registered in the State of Delaware. Landscaping and screening should consist of a variety of deciduous and evergreen trees and shrubs. The utilization of plant species native to northern Delaware is encouraged. Designs that incorporate a single plant type or repetitious layout should be avoided. The landscape plan must include the following:

1. For both conceptual and final landscape plans, the project [A]application number, tax parcel number(s), the owner/developer's signature, [and]the landscape architect's signature and seal, and all relevant base site data from the exploratory or record plan.
2. For each type of bufferyard, its opacity value, length, width, plant unit value per one hundred (100) lineal feet (Table 40.23.140), total number of plant units and plant unit alternative (Table 40.23.110).
 - a. If the computerized bufferyard model is used, the landscape architect shall place the results [supply the Department with a printout]of the model run for each bufferyard proposed on the landscape plan.

b. Bufferyards that include proposed structures (e.g., walls, fences or berms) shall include construction detailing on the final landscape plan.

3. Plant units per parking space . . .

6. In certain protected resource areas, even though undisturbed, reforestation of native species and control or eradication of invasive [vegetation]plants may be required by [~~Chapter 40,~~ Article 10 and~~/or~~ Article 23.

7. A table or plant list . . .

12. Integration of the proposed site development with both existing natural resources and the surrounding area context.

13. Delineate all proposed planting areas, planting requirements and site features in accordance with this Chapter.

G. *Deed restriction change application (maintenance declaration)* . . .

K. *Site analysis plan.* For all minor or major [residential-subdivisions]land development applications, the applicant shall be required to submit a site analysis plan as the first phase of the [~~exploratory~~]pre-application sketch or exploratory plan review process. The Department may also require a site analysis plan for any other application type. The site analysis plan shall serve as a basis for the planning process and shall be used to determine the best areas of the site for open space and natural resource preservation, land conservation and development. The site analysis plan allows both the applicant and the Department the opportunity to utilize the natural site conditions to determine how the development of each parcel or tract can be designed to minimize environmental degradation while achieving highest possible community character design standards. The site analysis plan must include:

1. Existing topography and site features and structures;

2. Pre-development drainage patterns and local watershed information; . . .

6. All existing and proposed transportation access points (including multi-modal options), facilities, easements and rights-of-way on or within 500 linear feet of the parcel or tract; . . .

8. Graphic scale, not to exceed one (1) inch equals two hundred (200) feet on parcels or tracts 50 acres or larger or one (1) inch equals one hundred (100) feet on parcels or tracts less than 50 acres and a north arrow.

L. *Natural resources [~~area~~]management plans.*

1. *Resource analysis plan.* The following must be submitted:

a. The site analysis plan as a base map with the following additions~~[-]~~:

- i. Wetlands delineation. A wetlands report/jurisdictional determination.
 - ii. Forest survey. In accordance with Article 10 of this Chapter, [A]a [general] description of the condition and location of the forest stands on-site [~~identifying the dominant canopy, understory and herbaceous species if possible~~], as well as contiguous forested areas and corridors located off-site.
 - iii. [~~A description of the dominant native species present.~~]Tree survey. The identification of all individual or groups of trees not located within forest areas to include species type, DBH, specimen tree status, condition, the location of both the center of the tree trunk and the CRZ delineation.
 - iv. Floodplain or floodway areas.
 - v. WRPA, which includes Cockeysville Formation/Drainage areas.
 - vi. Steep slope areas.
 - vii. Water bodies, streams or drainageways with top of bank.
 - viii. Riparian buffer areas; Zone 1 and Zone 2.
 - ix. All other resources as defined in Article 10 of this Chapter.
2. Open space or site [M]management plan. The following must be submitted:
- a. A narrative description of the goals and objectives based on the findings of the resource analysis plan.
 - b. Limit of disturbance and natural resource protection measures.
 - c. Non-native, [I]invasive plant species identified on-site, with a control or eradication plan describing specific practices and areas to be treated.
 - d. Planting details describing where and how any reforestation, meadow creation or other plantings will occur[-] and are to be maintained, including proper methodologies and long-term schedules for:
 - i. Irrigation or watering;
 - ii. Mulching (e.g., mulch shall not be piled onto trunks of trees);
 - iii. Pruning, shearing or thinning;
 - iv. Soil amendments or fertilization --both initial and long-term;
 - v. Grass or herbaceous plant mowing, cutting, control or removal;

- vi. Soil aeration.
- e. Wetland features to be protected, created or enhanced.
- f. A project time[-]line to include a proposed long-term maintenance ~~[eyele]~~program.
- g. A [P]project cost estimate that[(-)]includ[ing]es itemized entries and provisions for long-term maintenance needed to implement the plan [until completion]in perpetuity[(-)].
- h. Native, [N]naturally occurring non-invasive weeds are permissible within the natural resource areas.

N. *Property Line Adjustment . . .*

O. Forest Habitat Value Assessment.

1. Criteria.

- a. A forest habitat value assessment must be conducted when existing forested areas are disturbed within (50) feet of the edge of the drip line. Drip line delineation is determined during peak foliage.
- b. A forest habitat value assessment is not required when the existing forested areas within the project boundaries are less than 0.5 acres (21,780 square feet) in size.
- c. A forest habitat value assessment is not required when the existing forested area and the fifty (50) feet within the edge of the dripline remains 100% undisturbed.

2. Initial Forest Investigation.

- a. When developing a site analysis or natural resource management plan, aerial imagery and GIS data (e.g., soil and wetland maps) should be used to initially analyze and delineate the forest types for study.
- b. Any variations in forest types observed must be identified and delineated on a base map.
- c. Interpreting aerial imagery over various years may help to delineate forest types and generally discern where forests have continuously existed. For example, if imagery over many years show that a site has been in continuous forest cover, then there is a high probability that existing on-site forest is mature.
- d. Forest types may also be identified and delineated in the field. The following shall be recorded on a base map, if observed:
 - i. Breaks or changes from one forest type to another;

- ii. Changes to the dominant tree species in the canopy (e.g. maple to oak/hickory);
- iii. Differences in tree trunk diameters;
- iv. Changes in the density of trees;
- v. Areas with a high-percentage of native plant species;
- vi. Areas with a high-percentage of non-native plant species.

3. Methodology.

- a. Number of Plots to Sample. Potential habitat value is measured by sampling plots that are 0.1 acres in size. The following number of plots are required based on the size of the forest type to be sampled. For every two acres of increase from three acres of forest, the number of plots required to sample increases by one. For example:

0.5 to 2.99 acres = 1 plot

3 to 4.99 acres = 2 plots

5 to 6.99 acres = 3 plots

7 to 8.99 acres = 4 plots

9 to 10.99 acres = 5 plots

11 to 12.99 acres = 6 plots

13 to 14.99 acres = 7 plots

15 to 16.99 acres = 8 plots

17 to 18.99 acres = 9 plots

19 to 20.99 acres = 10 plots

21 and greater...

- b. Sample Plot Location. To best represent the full range of habitat within a forest type, sample plots should be located away from field edges, canopy gaps, clear-cuts, roadsides and other human disturbed areas. It is important to place the plot in habitat that is floristically and structurally homogeneous and that represents the overall forest area that is being sampled.
- c. Sample Plot Delineation. When plot location(s) have been determined for sampling within a forest type, the perimeter of each plot is delineated as follows: the center point

of each plot is positioned with a GPS unit and from the center point, the plot perimeter is established by creating a circle that has a radius of 37.2 feet (0.1 acres in size).

d. Sample Plot Point Values. Once sampling of plots within a forest type is completed, data will then be summarized and analyzed. Habitat value is determined through a numerical value point system. Each habitat attribute to be measured is given points based on the data collected within the sample plot. If more than one plot is sampled within a forest type, then the total habitat value points from each plot within the forest type are averaged, giving an overall habitat value for that forest type. The forest type with the highest number of habitat value points is given the highest level of protection.

i. Protection levels are separated into three tiers: Tier 1, Tier 2 and Tier 3. A range of habitat value points have been calculated that relate to each level of protection as follows:

Tier 1 > 51 habitat value points

Tier 2 = 26-51 habitat value points

Tier 3 = 1-25 habitat value points

ii. A forest type with a Tier 3 protection level may have the lowest habitat value relative to the other forest types, but still provides value in ecosystem benefits. A project boundary might contain only Tier 1 forest.

4. Protection Standards.

a. A forest type identified as either Tier 1, 2, or 3, is subject to a protected Critical Root Zone (CRZ). The protection extends to the edge of the CRZ for each tree that occurs around the perimeter or edge of the forest type to be retained.

b. Disturbance of Forest Interior areas identified within a project's boundary should be limited to the greatest extent possible.

c. The fragmentation of contiguous forested areas and corridors (both on-site and on adjacent properties) should be avoided where feasible.

d. If state rare or federally listed plant or animal species as determined by the Delaware Department of Natural Resources and Environmental Control (DNREC) are discovered within the project boundaries, then a representative from DNREC should be contacted to confirm its presence and offer recommendation(s).

5. Scoring Sample Plots.

a. High value forested habitat is an area that contains any of the following attributes. Included with each attribute is the required method for sampling and ranking.

i. **Large diameter trees.** Large diameter trees are an indication of a mid-to-late successional, maturing or mature forest. A mature forest ecosystem provides key environmental values and services and can support a high degree of biodiversity.

Methods and scoring:

(a). All trees within the plot that are 18 inches or greater in diameter (measured at 4.5 feet from the base of the tree), are to be measured and recorded. An individual 18-19 inch diameter tree receives 1 value point. For every 2-inch increase in diameter, an additional value point is added for each individual tree. For example: an 18-19 inch diameter tree qualifies as 1 point; 20-21 inch diameter tree qualifies as 2 points.

(b). Round to the nearest inch for trunk diameter. For example, a 19.5-19.9 inch tree qualifies as a 20 inch tree and 2 value points.

(c). If any tree 18 inches or greater in diameter qualifies as a “value tree” below, then that tree receives an additional point. For example, if an 18-19 inch diameter tree is a native oak species, a native hickory species or an American beech, then that tree receives 1 extra value point. For an individual tree with multiple trunks, where the trunks are 18 inches or greater in diameter, the tree is recorded as the larger of the trunks.

ii. **Floristic Quality Index:** The Floristic Quality Index (FQI) is a quantitative measure to determine the ecological quality of a natural area or site by recording all the native and non-native species observed within the sample plot. The FQI has been shown to be a reliable means of assessing quality with minimal data collection and allows for the comparison of floristic quality among many sites. Coefficient of Conservatism ranks (C-values) are used to determine the FQI of a specific site or plant community. C-values range from 0 to 10 and represent an estimated probability that a plant is likely to occur in a habitat that is relatively unaltered from what is believed to be a pre-settlement condition.

C-values for each species are based on the observed behavior of a species within the State of Delaware as follows:

(a). All non-native plant species are assigned a C-value of 0.

- (b). Plants with a wide range of ecological tolerances are assigned C-values of 1, 2, or 3.
- (c). Plants with an intermediate range of ecological tolerances are assigned C-values of 4, 5, 6 or 7.
- (d). Plant with a narrow range of ecological tolerances are assigned C-values of 8, 9 or 10. In addition, state rare or uncommon plant species are given C-values of 8 to 10.

C-values are applied to the entire known flora of Delaware (See Flora of Delaware Online Database Advanced Search – <https://www.wrc.udel.edu/de-flora>).

Methods and Scoring: All native and non-native plants within the plot are recorded and the C-values for each species applied. All C-values are added together and the sum is then divided by the number of species recorded, which provides the FQI for a given plot. The calculated FQI is the number of habitat value points assigned to the plot.

- iii. **Presence of valued tree species:** Most species of trees provide a variety of benefits to wildlife; however certain species are considered to be highly valued by wildlife. To ensure that the forest is a relatively stable ecosystem in the long term and that dead or dying valued trees are being replaced, it is critical that valued tree species be found in multiple layers of the forest, from the canopy as mature trees, to the herbaceous layer as seedlings.

Methods and Scoring: All valued tree species (see Appendix 3.3.A Trees) within the plot are recorded in the following forest layers: Herbaceous/Groundcover (0'-1.99'), Low Shrub (2'-5.99'), Tall Shrub (6'-11.99'), Sub-canopy (12' to the beginning of the tree crown), Canopy (the tree crown). If all five layers are represented in the plot with a valued tree species, then 5 value points are assigned. If four layers are represented, then 4 points are assigned, and so on. In addition, extra value points are assigned if more than one species of a valued tree genus is represented.

For example, if the value tree white oak (*Quercus alba*) occurs in the canopy, then 1 habitat value point is assigned for that layer. If value tree black gum (*Nyssa sylvatica*), mockernut hickory (*Carya tomentosa*), sweet birch (*Betula lenta*) and American beech (*Fagus grandifolia*) also occur in the canopy, then 4 additional value points are added for a total of 5 value points for that forest layer.

- iv. **Forest interior:** The forest interior is habitat deep within woodlands, away from the influence of forest edges and open habitats. Forest interior is of high ecological value. Many species of wildlife are dependent on forest interior habitat for their survival.

Methods and Scoring: Determining forest interior of a forest type is a GIS exercise. Identify the forest edge related to the sample plot that is being assessed (which may be off-site on an adjacent property) and measure 300 feet inward. If 0.2 acres or more of a forest type is within the forest interior, then it receives 5 value points.

- v. **Mature Forest Potential:** The biodiversity and environmental values of a forest ecosystem increases with age, meaning that a mature forest will be able to support a greater variety and number of plants and animals as time progresses.

Methods and Scoring: Determining mature forest potential of a sample plot is a GIS exercise. Historical aerial imagery from 1937, 1954, 1961, 1968, 1992, 1997, 2002, 2007, 2012, 2017 and 2019 is available on New Castle County ParcelView to identify potential areas of mature forest. If imagery from each year since 1937 to present day shows that a site has been in continuous forest cover, then there is a high probability that the site is mature. If 0.2 acres or more of a forest type is within a potential mature forest area, then it receives 5 value points.

6. *Summation and reporting standards.*

A report on the forest habitat value assessment shall be submitted to the Department and shall include the following: results of the assessment (including scoring data) and maps depicting sample plot boundaries, location and coordinates, and the locations of Tier 1, Tier 2 and Tier 3 forests.

4. **Required Professional Licensure/Certification**

The submittal matrix below identifies the licensed or certified professional who is permitted to submit each plan, study or report type.

SUBMITAL MATRIX

<u>Professional Licensure</u>	<u>Civil Engineer (PE)</u>	<u>Land Surveyor (PLS)</u>	<u>Landscape Architect (RLA)</u>	<u>Certified Planner (AICP)</u>	<u>Architect (RA)</u>
<u>Pre-Exploratory Sketch Plan</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Exploratory Plan</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>N</u>	<u>L</u>

<u>Professional Licensure</u>	<u>Civil Engineer (PE)</u>	<u>Land Surveyor (PLS)</u>	<u>Landscape Architect (RLA)</u>	<u>Certified Planner (AICP)</u>	<u>Architect (RA)</u>
<u>Construction Plan</u>	<u>Y</u>	<u>Y</u>	<u>L</u>	<u>N</u>	<u>N</u>
<u>Record Plan</u>	<u>Y</u>	<u>Y</u>	<u>L</u>	<u>N</u>	<u>N</u>
<u>Parking/Site Plan</u>	<u>Y</u>	<u>Y</u>	<u>L</u>	<u>N</u>	<u>N</u>
<u>Conceptual/ Final Landscape Plan¹</u>	<u>N</u>	<u>N</u>	<u>Y</u>	<u>N</u>	<u>N</u>
<u>Floodplain Permit/ Study Application²</u>	<u>Y</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>
<u>Wetland Delineation and Report³</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>
<u>Critical Natural Area (CNA) Report⁴</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>N</u>	<u>N</u>
<u>Site Analysis Plan⁵</u>	<u>Y</u>	<u>L</u>	<u>Y</u>	<u>N</u>	<u>L</u>
<u>Natural Resources Management Plan⁶</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>N</u>
<u>Boundary/ Topographic Survey</u>	<u>L</u>	<u>Y</u>	<u>N</u>	<u>N</u>	<u>N</u>
<u>Forest Habitat Value Assessment⁷</u>	<u>L</u>	<u>L</u>	<u>Y</u>	<u>L</u>	<u>N</u>
<u>Traffic Impact Study⁸</u>	<u>Y</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>
<u>Environmental Impact Assessment Report (EIA)⁹</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>N</u>

Y – Yes

N – No

L – Limited (item provided for Department review shall be submitted by a qualified professional in accordance with Title 24 of the Delaware State Code)

Section [13]14. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Appendix 3 (“Plant Lists and Planting Guidance for New Castle County”), is hereby amended by adding the material that is underscored, as set forth below.

¹ See Appendix 1.3.F

² See Appendix 1.3.A

³ See Article 33, “Wetland Delineation and Report” definition and Appendix 1.3.D

⁴ See Article 33, “Critical natural areas report” definition and Appendix 1.3.E

⁵ See Article 33, “Site analysis plan” definition and Appendix 1.3.K

⁶ See Article 33, “Natural resource management plan” definition and Appendix 1.3.L

⁷ See Section 40.10.135.A and Article 33, “Forest habitat value assessment” definition

⁸ See Section 40.11.130.A

⁹ See Section 40.10.701 and Article 33, “Environmental Impact Assessment Report” definition

1. **Recommended Plant List** - Plant species generally suitable for ...
3. **Native Plant Species of Special Interest** - Plant species listed below in this Section or annotated in Section 1 with an asterisk (*) encountered on site may require additional protections per Articles 5, 10 and 23. They may be considered rare, valued, or endangered species within the State of Delaware or require additional arboricultural and botanical information as requested by the Department.

A. Trees

Botanical Name	Common Name	Notes
<u><i>Amelanchier arborea</i></u>	<u>Downy Shadbush</u>	<u>Valued tree species</u>
<u><i>Amelanchier canadensis</i></u>	<u>Eastern Shadbush</u>	<u>Valued tree species</u>
<u><i>Amelanchier laevis</i></u>	<u>Smooth Shadbush</u>	<u>Valued tree species</u>
<i>Asimina triloba</i>	Common Pawpaw	Edible fruit
<u><i>Carya cordiformis</i></u>	<u>Bitternut Hickory</u>	<u>Valued tree species</u>
<u><i>Carya glabra</i></u>	<u>Pignut Hickory</u>	<u>Valued tree species</u>
<i>Carya lacinosa</i>	Shellbark Hickory	
<u><i>Carya ovata</i></u>	<u>Shagbark Hickory</u>	<u>Valued tree species</u>
<i>Carya pallida</i>	Sand Hickory	Tolerates dry, upland, sandy soils.
<u><i>Carya tomentosa</i></u>	<u>Mockernut Hickory</u>	<u>Valued tree species</u>
<u><i>Diospyros virginiana</i></u>	<u>Persimmon</u>	<u>Valued tree species</u>
<u><i>Fagus grandifolia</i></u>	<u>American Beech</u>	<u>Valued tree species</u>
<i>Fraxinus nigra</i>	Black Ash	
<i>Juglans cinera</i>	Butternut	Found along well-drained stream banks.
<u><i>Magnolia virginiana</i></u>	<u>Sweetbay Magnolia</u>	
<i>Malus coronaria</i>	Wild Crabapple	
<u><i>Nyssa sylvatica</i></u>	<u>Blackgum</u>	<u>Valued tree species</u>
<u><i>Pinus taeda</i></u>	<u>Loblolly Pine</u>	<u>Valued tree species</u>
<u><i>Prunus serotina</i></u>	<u>Wild Black Cherry</u>	<u>Valued tree species</u>

<i>Prunus virginiana</i>	Choke Cherry	
<u><i>Quercus alba</i></u>	<u>White Oak</u>	<u>Valued tree species</u>
<u><i>Quercus bicolor</i></u>	<u>Swamp White Oak</u>	<u>Valued tree species</u>
<u><i>Quercus coccinea</i></u>	<u>Scarlet Oak</u>	<u>Valued tree species</u>
<u><i>Quercus falcata</i></u>	<u>Southern Red Oak</u>	<u>Valued tree species</u>
<i>Quercus laurifolia</i>	Laurel Oak	
<i>Quercus lyrata</i>	Overcup Oak	Tolerates poorly-drained bottomland soils.
<u><i>Quercus michauxii</i></u>	<u>Swamp Chestnut Oak</u>	<u>Valued tree species</u>
<u><i>Quercus montana</i></u>	<u>Chestnut Oak</u>	<u>Valued tree species</u>
<u><i>Quercus phellos</i></u>	<u>Willow Oak</u>	<u>Valued tree species</u>
<u><i>Quercus rubra</i></u>	<u>Northern Red Oak</u>	<u>Valued tree species</u>
<i>Quercus stellata</i>	Post Oak	Tolerates dry, upland, sandy soils.
<u><i>Quercus velutina</i></u>	<u>Black Oak</u>	<u>Valued tree species</u>

B. Wood Shrubs, Vines and Groundcovers...

Section [14]15. New Castle County Council finds that the provisions of this Ordinance are consistent with the spirit and intent of the New Castle County Comprehensive Development Plan.

Section [15]16. All ordinances or parts of ordinances and all resolutions or parts of resolutions that may be in conflict herewith are hereby repealed except to the extent they remain applicable to land use matters reviewed under previous Code provisions as provided in Chapter 40 of the *New Castle County Code*.

Section [16]17. The provisions of this Ordinance shall be severable. If any provision of this Ordinance is found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that County Council would have enacted the remaining valid provisions without the unconstitutional or void one, or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with County Council's intent. If any provision of this Ordinance or any zoning map or portion thereof is found to be unconstitutional or void, all applicable former ordinances, resolutions, zoning maps or portions thereof shall become applicable and shall be considered as continuations thereof and not as new enactments regardless if severability is possible.

Section [17]18. This Ordinance shall become effective immediately upon passage by New Castle County Council and signature of the County Executive or as otherwise provided in 9 Del. C § 1156 and shall only apply to Land Use applications submitted after such date unless the applicant by written request agrees to submit to the provisions of this Ordinance.

Adopted by County Council of
New Castle County on:

President of County Council
of New Castle County

Approved on:

County Executive
New Castle County

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

Sec. 40.04.210. This amendment provides for landscaping associated with afforestation.

Sec. 40.04.231. This amendment clarifies that plant material in required open space must be native species.

Sec. 40.04.241. This amendment requires major and minor plans to address afforestation.

Sec. 40.05.420. This amendment updates the forest resource protection standards used for site capacity calculations for determining development potential of a site.

Sec. 40.10.110. This amendment updates the resource protection levels for forest resources and introduces new forest classifications.

Sec. 40.10.135. This amendment replaces the requirement for a tree survey with the requirement for a Forest Habitat Value Assessment and clarifies forest mitigation protection and ratios.

Sec. 40.10.136. This amendment removes the reference to low quality forests.

Sec. 40.10.163. This amendment removes the reference to mature forests.

Sec. 40.10.701. This amendment clarifies terms and expands the professions permitted to prepare and certify an Environmental Impact Assessment Report, clarifies resource mitigation and cultural and scenic resources.

Sec. 40.20.230. This amendment revises the maximum cul-de-sac length to reflect DelDOT's requirements.

Sec. 40.20.510. This amendment replaces the term drip-line with Critical Root Zone (CRZ).

Sec. 40.23.250. This amendment revises the requirements for existing vegetation to be credited towards specific landscaping requirements.

Sec. 40.23.310. This amendment revises the techniques used to preserve specimen trees.

Sec. 40.26.231. This amendment introduces new forest classifications.

Sec. 40.26.330. This amendment revises the subdivision standards regarding cul-de-sac and block length.

Sec. 40.31.112. This amendment requires a pre-application sketch plan review/conference for all major land development applications and rezonings.

Sec. 40.33.130. This amendment adds and revises several definitions.

Sec. 40.33.130. This amendment removes definitions for terms “Forest, mature”, and “Forest, young”.

Appendix 1.1.B.1. This amendment revises the land development application requirements for the exploratory and construction plan submission to the Planning Section.

Appendix 1.2.A. This amendment revises the land development plan requirements to allow registered landscape architects in the State of Delaware to certify plans and to include the requirement of a conceptual landscape plan as part of the exploratory plan submission.

Appendix 1.3. This amendment outlines the requirements for the conceptual/final landscape plan, site analysis plan, natural resources management plan and forest habitat value assessment.

Appendix 1.4. This amendment establishes a professional licensure/certification matrix for different submission items.

Appendix 3.3.A. This amendment revises native plant species of special interest to include valued tree species.

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

Section 40.04.241 This section is revised to be consistent with existing reforestation standards. Five years of maintenance funding for afforestation/reforestation planting must be incorporated into the maintenance escrow.

Section 40.23.240. This section is revised to include the term “afforestation” throughout the section.

Section 40.26.330. This section is revised to be consistent with DelDOT’s Development Coordination Manual.

Section 40.26.330. This section is revised to be consistent with DelDOT’s Development Coordination Manual.

Appendix 1 is revised by replacing the term Professional Landscape Architect with Registered Landscape Architect

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



Department of Land Use

Department of Land Use
and
Planning Board Recommendation

August 17, 2021

Ordinance 21-009
Application 2021-0063-T

EXECUTIVE SUMMARY

Ordinance No. 21-009 proposes an amendment to the Unified Development Code that will enhance and improve forest protection and resource preservation. The Department of Land Use recommends **CONDITIONAL APPROVAL of Ordinance 21-009** with the condition to include the following revisions to modify and clarify the proposed language in Ordinance 21-009 to address comments, concerns, and recommendations from public comment:

1. Revise the afforestation sections to utilize the methodology currently established in the reforestation section of the UDC. These provisions will provide the applicant more options to meet afforestation standards.
2. Revise afforestation language regarding the determination of the Critical Root Zone (CRZ) for existing tree cover.
3. Establish a maintenance escrow which includes maintenance funding for a 5-year period regarding afforestation/reforestation planting requirements.
4. Amend Professional Landscape Architect (PLA) to be Registered Landscape Architect (RLA).
5. Revise the ordinance so that cul-de-sac layout and design are in accordance with the standards of the DelDOT Development Coordination Manual.

DESCRIPTION

This amendment proposes changes to seven (7) Articles and two (2) Appendices of Chapter 40 of the *New Castle County Code (UDC)* to enhance and improve upon the UDC regulations and standards regarding forest protection and resource preservation. The ordinance will establish a forest habitat value assessment, requirements for afforestation, Critical Root Zone (CRZ), and generally improve forest delineation and protection standards. In addition, the ordinance modifies the standards for professional certification which will allow for a broader array of professionals who may submit technical documents. This ordinance also includes language to amend the current code regarding cul-de-sacs to reflect DelDOT standards.

BACKGROUND AND ANALYSIS

Chapter 40 of the *New Castle County Code* was adopted on December 31, 1997 and represented a comprehensive effort to completely rewrite the former zoning and subdivision regulations. Over the years, the County has continued to modify and improve the UDC through lessons learned while processing thousands of subdivision and land development plans, rezonings, and building permits.

The Department continues to solicit and receive comments, opinions, and suggestions from a variety of sources including the local development community (engineers, surveyors, builders, and attorneys), the public (local and umbrella civic groups, environmental groups, and others), and local governments (County Council and the State).

GreeNCC Initiative

GreeNCC is County Executive Matt Meyer's environmental initiative, which leads by example and educates the public about environmentally green practices. This environmental initiative includes several legislative initiatives that will protect water quality, promote open space, and preserve the character of New Castle County.

Ordinance 21-009 is part of the GreeNCC environmental initiative. The focus of these amendments are as follows: forest protection, resource preservation and enhancement, with an emphasis on the protection of forested areas that contain the highest habitat value and conservation design. This legislation includes requirements for afforestation (planting of new trees/forest) and updated methods of defining areas for protection and enhancement. The Department of Land Use has worked with stakeholders to strengthen protections of valuable forests, trees, and habitat in the development process.

Afforestation Standards

To ensure adequate forest or planting coverage, afforestation establishes the requirement for forest cover on parcels or development areas that are not presently forested or where existing forest cover is below the afforestation ratio in accordance with the associated zoning district. The Department developed afforestation ratios based on the zoning districts as defined in the UDC. The afforestation ratio is satisfied by calculating the total forest cover area or tree cover area as a percentage of the entire parcel or development area. The required afforestation standards can receive credit for the preservation of existing forest on-site, proposed landscaping, and other bufferyard requirements for a given project.

Forest cover consists of the area of all existing forest to remain or new forest to be planted on a parcel or development. This includes reforestation associated with riparian buffers, WRPA's, forest mitigation, etc.

Tree cover consists of the total tree protection area based on the Critical Root Zone (CRZ) of existing trees to remain (outside of forest areas) or proposed new landscape plantings. The CRZ is the zone in which the majority of a tree's roots are found that supply nutrients and water to the tree.

The afforestation ratio shall be calculated concurrently with the required landscape plan and shall maintain all protected areas, delineate existing forest and any area proposed to be reforested/afforested.

Critical Root Zone (CRZ)

The CRZ is the zone in which the majority of a tree's roots are found that supply nutrients and water to the tree.

Current tree protection standards focus protection on the "Drip Line" or a tree's widest branching point. The proposed standards will enhance the previous drip line protections by incorporating them into the proposed CRZ.

Protecting the CRZ will provide increased protection of tree health and increased survival rates by avoiding damage to tree roots. The proposed ordinance outlines requirements to protect trees during construction including fencing requirements and removal of impervious surface within a CRZ.

Forest Habitat Value Assessment

Where forests exist within a project boundary that are impacted by development or construction activities, a Forest Habitat Value Assessment shall be required. Based on best practices of other jurisdictions and peer comments from subject matter experts, the Department developed a methodology for assessing forest habitat value. This assessment determines the health and longevity of forest systems and serves as the basis for enhancement and protection standards for forests. Forested areas containing the highest habitat value shall be given the maximum priority for preservation.

Tiers vs. Mature/Young Forests

The UDC currently classifies forests into two groups, young and mature forests. These classifications are based on tree diameter within the tree canopy area. This type of system neglects to identify the habitat value of native plants and animals. The standards as proposed by this ordinance are based on a three-tier system with the emphasis on protection of forests with the highest habitat value. This value is determined by the Forest Habitat Value Assessment. Tier 1 is the forested area with the highest habitat value, Tier 2 is the forested area with the second highest habitat value, and Tier 3 is the forested area with the third highest habitat value. This tier system with the focus on habitat value will

better protect forests based on the existing health and habitat. This is important as the focus of protection will be based on the evaluation of forest habitat.

Professional Licensure/Certification

The UDC requires that documents, such as plans or reports, must be prepared and submitted by specific licensed or certified professionals, limiting the ability of other qualified professionals to submit documents. The proposed ordinance includes a submittal matrix that allows for a broader array of professionals to submit these types of documents. The matrix includes a list of different submittal documents and the associated professionals that may submit the document. By allowing a broader array of professionals to submit documents for review, the Department will be afforded the opportunity to consider and review submissions that provide additional, different perspectives on land planning and site design, thus potentially providing the County with increased design options for land development.

Native Plant Species

This ordinance also focuses on broadening the list of Native Plant Species of special interest. These types of plantings are important as they will encourage the health and permanency of the afforested or reforested areas. Those species added may be considered rare, valued, or endangered by the State of Delaware.

Department Analysis

The Department believes that the amendments to the UDC as proposed by this ordinance meets the goals of the New Castle County Comprehensive Plan. Furthermore, the proposed ordinance meets the goals and intentions of the GreeNCC initiative by including language to enhance the protection of forests with a focus on forest habitat.

PLUS REVIEW (Preliminary Land Use Service)

The PLUS review letter dated March 24, 2021 contains comments primarily from the Department of Natural Resources and Environmental Control (DNREC) and the Department of Transportation (DelDOT). DelDOT commented on cul-de-sac length and stated that the maximum length is 200 feet according to the Design Coordination Manual. DelDOT noted that the proposed ordinance indicates that the maximum length for cul-de-sacs is 300 feet and asked that this be corrected to mitigate contradictory code. DNREC had specific comments and suggestions including concerns about the cost for the Critical Root Zone analysis requirement. Other comments from DNREC were in support of the requirement to use Native Plant Species and provided a list of recommended plant species to include in the ordinance. The Department reviewed and agrees with most comments made and will address these comments in revisions to Ordinance 21-009. All other comments made were general in nature.

Planning Board Public Hearing – May 4, 2021

Mark Wolanski, Planner III of the Department of Land Use presented Ordinance 21-009 at the May 4, 2021 joint New Castle County Department of Land Use and Planning Board Public Hearing. During his presentation, he discussed the specifics of this ordinance, existing UDC language vs. proposed language, and provided a tentative timeline for the ordinance.

Karen Peterson, Chair of the Planning Board asked Mr. Wolanski about a comment found in the PLUS report made by DelDOT regarding cul-de-sacs. Ms. Peterson stated that the comment was referencing the proposed language to Section 40.26.330 of the New Castle County Code regarding cul-de-sac length and explained that DelDOT stated that the proposed language contradicted the DelDOT Coordination Manual. Ms. Peterson asked if this comment would be addressed. Mr. Wolanski explained that the Department will revise the ordinance to address this comment.

Ms. Peterson also referenced a comment from the Committee of 100 regarding maintenance cost for afforestation and reforestation. She expressed that in the matters of landscaping whether it be along a roadway, within a subdivision, or on a commercial property, there always seems to be an issue where the planting and trees go into disarray. Sharing the concerns of the Committee of 100, Ms. Peterson asked how the Department was going to address this issue of maintenance cost. Mr. Wolanski responded that this issue generated several public comments regarding this ordinance; Mr. Wolanski stated that the Department engaged the development community and other community stakeholders regarding this issue and that the Department is working to determine what the maintenance cost would be and who should be responsible.

Janet Vinc, Acting Planning Manager of the Department of Land Uses added that this ordinance is not likely to be heard at the May Planning Board Business Meeting due to the number of comments that were made by the public regarding maintenance costs. She explained that the Department would like to thoughtfully respond, address, and consider amendments to the ordinance based on public comment received. Ms. Vinc also stated that the proposed ordinance would be also reviewed by the Resource Protection Technical Advisory Committee (RPATAC) for their input.

Board Member Robert Snowden stated that he hoped that the comments regarding maintenance costs would be addressed and that the principles and goals of the ordinance would be maintained. He explained that the cost issue should just be a matter of who pays and not diluting the requirements.

No other comments were made by the Board Members or members of the public.

Other Public Comment and Department response:

Ordinance 21-009 was presented to RPATAC at their May 26, 2021 meeting. The committee members were generally supportive of the proposed ordinance however they expressed maintenance responsibility concerns, similar to other public and Planning Board comments received by the Department. The Department intends to address these concerns as outlined below.

The Committee of 100, Shane Minner from Blenheim Homes, and Foresite Associates all submitted letters with general comments and suggestions for different aspects of Ordinance 21-009. The Committee of 100 made specific comments regarding the maintenance costs for the afforestation/reforestation requirement as well as the method for analyzing Critical Root Zone (CRZ). Shane Minner from Blenheim Homes shared the same concern regarding maintenance costs. The Department intends to address the maintenance costs and CRZ analysis concerns as follows:

1. Revise the afforestation sections to utilize the methodology currently established in the reforestation section of the UDC. These provisions will provide the applicant more options to meet afforestation standards.
2. Revise afforestation language regarding the determination of the CRZ for existing tree cover.
3. Establish a maintenance escrow which includes maintenance funding for a 5-year period regarding afforestation/reforestation planning requirements.

Foresite Associates commended the Department for the proposed expansion of professionals that may submit documents, specifically Registered Landscape Architects. They noted the language in the proposed ordinance states “Professional Landscape Architect (PLA)” where it should state “Registered Landscape Architect (RLA)”. The Department intends to address this change as follows:

1. Amend Professional Landscape Architect (PLA) to be Registered Landscape Architect (RLA).

In their PLUS comments, DelDOT noted that the proposed ordinance states that cul-de-sacs have a maximum length of 300 feet however, the DelDOT Coordination Manual states that the maximum length is 200 feet. The Department intends to address this change as follows:

1. Revise the ordinance so that cul-de-sac layout and design are in accordance with the standards of the DelDOT Development Coordination Manual.

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.

This section does not apply.

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

This Ordinance strives to enhance and improve the resource protection standards for forests which is in-line with the goal and objectives of Chapter 6 of the New Castle County Comprehensive Plan. The first goal listed in Chapter 6 of the Comprehensive Plan is to "continue to preserve and enhance the quality and variety of the County's natural and environmental resources (water, land, flora, fauna and habitats)". The intent of Ordinance 21-009 will help achieve this goal as it will require that developers meet these standards prior to final approval of a plan.

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

This section does not apply.

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

This section does not apply.

E. Flexibility in meeting the objectives of this Chapter.

This section does not apply.

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

This section does not apply.

G. Consideration of specific problems found in this Chapter.

This section does not apply.

DEPARTMENT OF LAND USE RECOMMENDATION

The Department has considered the *Standards of Text Amendment* in Section 40.31.420 of the *New Castle County Code* and comments received from the public and other agencies. Based on this analysis, the Department recommends **CONDITIONAL APPROVAL of Ordinance 21-009** with the condition to include the following revisions to modify and clarify the proposed language in Ordinance 21-009 to address comments, concerns, and recommendations from public comment:

1. Revise the afforestation sections to utilize the methodology currently established in the reforestation section of the UDC. These provisions will provide the applicant more options to meet afforestation standards.

2. Revise afforestation language regarding the determination of the CRZ for existing tree cover.
3. Establish a maintenance escrow which includes maintenance funding for a 5-year period regarding afforestation/reforestation planting requirements.
4. Amend Professional Landscape Architect (PLA) to be Registered Landscape Architect (RLA).
5. Revise the ordinance so that cul-de-sac layout and design are in accordance with the standards of the DelDOT Development Coordination Manual.

PLANNING BOARD RECOMMENDATION

At its business meeting held on August 17, 2021 the Planning Board considered the recommendation offered by the Department of Land Use. On a motion made by Ms. Cahill-Krout and seconded by Ms. Drake, the Board voted to recommend **CONDITIONAL APPROVAL** of Ordinance 21-009 subject to the condition made by the Department of Land Use. The motion was adopted by a vote of 8-0-0-1 (Yes: Cahill-Krout, Cochran, Daigle, Drake, Gray, Snowden, Visvardis, Peterson; No: none; Abstain: none; Absent: McGlinchey).

In discussion preceding the vote, the following comments were offered:

Chairperson Peterson commented on the conditions and noted that they address the concerns that were brought up at the Public Hearing. Ms. Peterson asked a question to the Department regarding County Council and if a supermajority would be required if they voted to approve the Ordinance without the conditions made by the Department of Land Use. Mr. Hall responded that a supermajority vote is only required for rezoning applications and stated that the normal voting rules would apply.

No other questions or comments were made by the Board.

STATUTORY GUIDELINES

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

 08/26/2021

Richard E. Hall, AICP date
General Manager
Department of Land Use

 08/26/2021

Karen Peterson date
Chair
Planning Board

Introduced by: Mr. Cartier, Ms. Durham,
Ms. Kilpatrick
Date of introduction: March 23, 2021

ORDINANCE NO. 21-036

**TO AMEND THE 2012 COMPREHENSIVE DEVELOPMENT PLAN UPDATE FOR
NEW CASTLE COUNTY TO ESTABLISH A NEW COMMUNITY MASTER PLAN
ELEMENT AND AMEND THE SEWER SERVICE AREA MAP AND FUTURE LAND
USE MAP FOR SPECIFIC COMMUNITY MASTER PLAN AREAS**

WHEREAS, New Castle County (“County”) is responsible for land use planning and regulation in New Castle County; and

WHEREAS, the Quality of Life Act (9 *Del C.* §2651 *et seq.*) requires comprehensive planning for New Castle County; and

WHEREAS, the Quality of Life Act invests in the County the power and responsibility to plan for future development and growth, and to adopt and amend comprehensive plans to guide the future development and growth of the County (9 *Del C.* §2653); and

WHEREAS, the Quality of Life Act requires that the County comprehensive plan include a future land use plan element and map; and

WHEREAS, the New Castle County Comprehensive Plan includes such a plan element and map; and

WHEREAS, the County comprehensive plan may include other elements “as may be peculiar to and/or necessary for the area concerned” (9 *Del C.* §2656 (h)); and

WHEREAS, the Community Master Plans for North Claymont, Route 9, Concord Pike (US 202) and Southern New Castle County developed collaboratively, allowing community members and stakeholders to provide input; and

WHEREAS, the Community Master Plans for North Claymont, Route 9, Concord Pike (US 202) and Southern New Castle County identify a shared vision to address specific local challenges and opportunities that community and Master Plan partners will work together to implement; and

WHEREAS, the North Claymont Community Area Master Plan, the Route 9 Community Area Master Plan, the Concord Pike (US 202) Community Area Master Plan were endorsed by the Wilmington Area Planning Council, as was the Transportation Element of the Southern New Castle County Master Plan; and

WHEREAS, the New Castle County Comprehensive Plan’s vision is given effect through the Future Land Use Map, and the Sewer Service Area Map is an important graphical manifestation of the Plan’s recommendations.

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

Section 1. The 2012 Comprehensive Development Plan Update for New Castle County, as amended, is hereby further amended by adding the Community Area Master Plan Element set forth in “Exhibit A” which is attached hereto and made a part hereof as if fully set forth herein, all of which shall be considered underlined.

Section 2. The 2012 Comprehensive Development Plan Update for New Castle County, as amended, is hereby further amended by adding the Community Revitalization District and Community Revitalization Mixed Use District, and Hamlet and Village District for Community Master Plan Areas to the Future Land Use Map as set forth on “Exhibit B1,” “Exhibit B2,” and “Exhibit B3,” which are attached hereto and made a part hereof as if fully set forth herein, and by revising Map 5-1 (“Sewer Service Areas”) as set forth on “Exhibit C,” all of which shall be considered underlined.

Section 3. This Ordinance shall become effective immediately upon passage by New Castle County Council and approval of the County Executive, or as otherwise provided in 9 *Del. C. § 1156*.

Adopted by County Council of
New Castle County on:

President of County Council
of New Castle County

Approved on:

County Executive
New Castle County

SYNOPSIS: This Ordinance adds a Community Master Plan element to the Comprehensive Development Plan, including specific plans for the North Claymont, Route 9, Concord Pike (US 202) and Southern New Castle areas associated amendments to the Future Land Use Map and an associated amendment to Sewer Service Areas (Map 5-1).

FISCAL IMPACT: There is no discernable fiscal impact.

RECOMMENDATION

**Ordinance No. 21-036
(Application No. 2021-0163-T)**

**Title: *To Amend 2012 Update to the Comprehensive Development Plan Regarding
Community Area Master Plans***

October 19, 2021

EXECUTIVE SUMMARY

Ordinance 21-036 proposes the creation of a new chapter in the 2012 New Castle County Comprehensive Plan to incorporate the four Community Area Master Plans. The ordinance also proposes amendments to the Future Land Use Map and Sewer Service Area Map consistent with the recommendations in the plans. ***The Department recommends tabling this ordinance because of the timing between it and the County-wide comprehensive plan (i.e., NCC2050), available resources, simplicity, and misunderstanding about the impacts of one of the four plans.*** Because the county-wide, state-mandated plan is nearing completion and only a few months behind the sub-area plans in terms of timing of the legislative process and formal adoption, we recommend concentrating our limited resources on the county-wide plan. The sub-area plans will still be a resource and aspects of them are expected to be incorporated into the county-wide plan.

Comprehensive, long-range planning gives the community a chance to broadly assess existing and emerging challenges and opportunities and come together to define how we can best put forth our collective resources in the face of change. An up-to-date, long-range community or comprehensive plan provides the shared roadmap that stakeholders and the public can rely on to help us proactively take action in the coming years. It also helps us respond in a more coordinated way when unexpected challenges or opportunities arise. In more concrete terms, the comprehensive plan provides a basis for land use and development decision-making, such as rezoning requests and planning and construction of roads and sewers. Without good plans that look out multiple decades and define goals, key milestones, and actions to achieve how we want our transportation, environmental, recreational, and other integrated systems to function, the shorter-term projects and day to day actions will less consistently align and, therefore, have less efficacy/sustainability.

Notably, a comprehensive plan is a basis for decision-making, but it's vision and goals are achieved through subsequent adoption of policies and update of codes. It is the zoning and subdivision regulations that exist at the time a development proposal is submitted that defines what is permitted and what gets built.

New Castle County Council has required for more than 25 years, that the comprehensive development planning process be an “ongoing and evolving process”, providing the County with the ability to be nimble and adjust to economic and land use events.¹ While large scale comprehensive planning efforts like that of the forthcoming comprehensive plan, NCC@2050, address important issues, it is imperative that we continue smaller scale planning efforts and when appropriate, incorporate them, into the Comprehensive Development Plan.

For many decades, New Castle County has also used more localized, fine grain planning efforts. Previous sub-area plans are incorporated into the New Castle County Comprehensive Development plan as Special Study Areas (1997) and Sub-Regional Corridor Plans (2012). These plans have been an essential tool for guiding land use decisions for nearly 25 years. The most recent sub-area planning efforts, which have taken place roughly over the last five years, are important continuation of this long-standing practice. The resultant Community Area Master Plans cover the following four areas of the county: *North Claymont, Route 9, Concord Pike (US 202), and Southern New Castle County*. The content of these plans put forth through this ordinance to be incorporated into the Comprehensive Plan address important issues evaluated during the planning process including:

- Social and environmental justice
- Hazard mitigation
- Redevelopment
- Historic preservation
- Agricultural preservation
- Placemaking
- Responsible growth

The joint public hearing on this ordinance, hosted by the Planning Board members and the Department, had over 300 participants. Public comment offered on these four plans have been reviewed and considered and several themes of issues are commented on in the body of this report. Most of the comments received were associated with the southern part of the County. What is clear is the prudent action for the Southern New Castle County Master Plan is to allow additional time to continue dialog with a recently engaged group. The 2050 County wide comprehensive plan is scheduled to have a draft available by the end of 2021. The logical thought would be to move the essential elements of the plans and any other findings into the county-wide comprehensive plan effort. Tabling this ordinance provides the opportunity for the efforts of these master plans and the Countywide plan to be merged while giving recently engaged voices opportunity to be considered in the dialog.

¹ New Castle County Code, Section 28.01.003.A:
https://library.municode.com/de/new_castle_county/codes/code_of_ordinances?nodeId=PTIICO_CH28PL_S28.01.03CODEPL

The Department of Land Use has considered the Standards for Text Amendment in Section 40.31.420 of the *New Castle County Code* and comments received from other agencies and the public. Based on this analysis and in consideration of the timing of the countywide comprehensive plan, NCC@2050, being drafted and expected to be introduced for adoption in the next six months, the Department recommends Ordinance No. 21-036 be **TABLED**.

DESCRIPTION

[Application 2021-0163-T](#) (Ord. 21-036) proposes the creation of a new chapter in the 2012 New Castle County Comprehensive Plan to incorporate the essential elements of the Community Area Master Plans to achieve their visions. It also proposes amendments to the Future Land Use Map and Sewer Service Area Map consistent with the recommendations in the plans.

BACKGROUND

Performed on a decennial basis, the comprehensive development plan is a long-range planning effort that is intended to ensure infrastructure and development are coordinated, resources are used efficiently, a community vision is defined and there is coordination for achieving outcomes. The Community Area Master planning effort started more than six years ago and includes four plans, North Claymont, Route 9, Southern New Castle County and US 202 (Concord Pike). It sought to provide a community-based, finer grained planning approach in four specific geographical areas within the county that are currently experiencing population growth or need significant revitalization. In places as socially, economically, and geographically diverse as New Castle County, conducting long-range sub-area planning is especially important to address issues and land use at a localized level sensitive to the area's context and conditions.

Notably, the planning process is a key component of success—the process enables critical issues to emerge, be vetted, and ideas get developed and refined. However, plan products are also imperative to establish meaningful policy and achieve plan goals, like sewer service area map and future land use map. This ordinance particularly focuses on the latter—to formalize the extensive and robust effort by hundreds of people across four communities to adopt the key recommendations from the plans as policy under the current countywide comprehensive plan and guide subsequent decision making.

New Castle County has an assortment of land use issues and development types, ranging from older urban areas, post-World War II subdivisions and shopping centers to newer development, some scattered in previously rural areas. Much of the County has been developed, particularly above the C & D Canal. Trends show an emerging interest in and need for concentrating new suburban growth, redeveloping older developed areas, and repurposing of economic centers and former industrial sites that are no longer supported in today's economy. The County's planning efforts are also focused on improving the quality of new and existing development, planning for infill, redevelopment, and revitalization/repurposing where appropriate.

Ordinance 21-036, the Community Area Master Plan element consists of essential components of each Master Plan finalized for implementation and adopted as part of the County-wide Comprehensive Plan. Development of these Community Area Master Plans has been a collaborative effort between our residents, community stakeholders, regulatory partners, and the Department of Land Use occurring over the past several years.

The Community Area Master Planning Process has included more than 20 public workshops and meetings having nearly 2,000 attendees, social media outreach, surveys and other outreach efforts:

North Claymont, (2015-2017)– Adopted by WILMAPCO Council (January 2017)

*More than 340 attendees participated in the public workshops and through the outreach efforts.

- Market assessment
- Public process
 - 3 public workshops – 340 attendees
 - 3 advisory committee meetings
 - Facebook / web pages
 - Community Coordination
 - DRAC
 - Community update meetings

Route 9, (2015-2017) – Adopted by WILMAPCO Council (May 2017)

*More than 250 attendees participated in the public workshops and through the outreach efforts.

- Real estate / economic analysis
- Public process,
 - Steering Committee
 - 2 public workshops -140 attendees
 - Series of interactive community sessions
 - Community presentations
 - Webpage/Facebook/online survey
 - Route 9 Corridor Monitoring Committee – Continued public participation

Southern New Castle County, (2018-2020) – Adopted by WILMAPCO Council (September 2020)

*More than 425 attendees participated in the public workshops and through the outreach efforts.

- Public process
 - Public meetings and workshops (in person and virtual)
 - Public Information Session - 50 attendees
 - Community Visioning Sessions: 170 + attendees
 - In person Public Workshops: about 160 + attendees
 - Virtual Public Workshop - 45 attendees

- Advisory Committee
- Land Use Dept. & NCC General Websites
- Social media (Facebook, Twitter, Instagram)
- Newspaper advertisement
- Surveys
- Listservs notifications, emails, cross promotion

Concord Pike (US 202), (2018-2020) – Adopted by WILMAPCO Council (November 2020)

**More than 750 attendees participated in the public workshops and through the outreach efforts.*

- Jan. 2017 Market Assessment
 - Plan process
 - Kickoff July 2018 – 200 attendees
 - 5 public workshops
 - 3 in person - 325 attendees
 - 2 virtual – 227 attendees
 - 2 online surveys
 - Monitoring Committee commences this fall

APPLICATION 2021-0163-T, ORDINANCE 21-036

On March 23, 2021, County Council introduced Ord. 21-036, proposing the creation of a new chapter in the 2012 Update to the New Castle County Comprehensive Development Plan incorporating the 4 Community Area Master Plans. Additionally, the ordinance proposes amendments to the Sewer Service Area and Future Land Use Map consistent with the recommendations of the plans.

PLUS REVIEW (Preliminary Land Use Service)

The PLUS Report dated May 25, 2021, provides support for incorporating the Community Area Master Plans into the 2012 Comprehensive Plan from all state agencies.

Planning Board Public Hearing – September 13, 2021

Andrea Trabelsi, Assistant General Manager for the Department of Land Use presented Ordinance 21-036 discussing the planning process for each of the community area master plans as well as potential revisions to be included in a substitute ordinance to address changes in the North Claymont area and public feedback that the Department has received.

Karen Peterson, New Castle County Planning Board, Chairwoman discussed how the requirement for a public hearing for an amendment to the Comprehensive Plan was being met with the Planning Board public hearing. No other members of the Planning Board provided comments.

Public Comment

At the Planning Board Public Hearing, 14 residents spoke in opposition to Ord. 21-036: (1) Melissa Heller, (2) Senator Stephanie Hansen, (3) Anne Chisholm, (4) Tracy Chamblee, (5) Councilman David Carter, (6) Councilman Bill Bell, (7) Amy Solomon, (8) Frederick Heller, (9) Josie Robinson, (10) Nancy Willing (President of the Civic League), (11) Amy Patterson, (12) Sandra Burke, (13) Jen Connors and (14) Thomas McGuire. Concerns were voiced regarding, the public process, already submitted land development plans, transfer of development rights (TDRs), traffic, school capacity, lack of hospitals, EMS, fire, and police service.

Shawn Tucker & Bill Rhodunda attorneys representing clients in the Claymont area and in southern New Castle County provided general comments with Mr. Tucker discussing a potential future logistic center development in the East Wing and Mr. Rhodunda voicing concerns regarding the North Claymont portion of the ordinance. Andrea Trabelsi had discussed potential revisions to the ordinance that would address these concerns during her presentation.

Rebuttal

Richard Hall, General Manager for the Department of Land Use, gave the Department's response to public comment. He noted that the vast majority of comments were from residents who asserted that the Southern New Castle County Master Plan would lead to more growth and, further, many of the comments focused on opposition to actions associated with two development plans that will not be affected by the Southern NCC Master Plan. He explained that the plan reduces the growth area in southern New Castle County. He also stated that the process that the ordinance is following is consistent with guidance that the Department received from the State. Mr. Hall further explained that the TDR provisions have been in place since 1997 and that the maps depicting changes to the Sewer Service Area and Future Land Use Map can be found in the master plans and in the documents provided to the public and planning board.

Public Comment

At the September 13, 2021, Planning Board Public Hearing, the Planning Board voted to keep the public record open for 20 days. This was extended to 30 days (October 13, 2021) based on communication from the Department to the public. All written comments received since the ordinance's introduction through October 13, 2021, were entered into the record, posted on the website and considered. The Department received 55 letters in opposition and 5 letters in favor of the proposed ordinance. These documents have been forwarded to the Planning Board for consideration, entered into the record and posted on the County's website.

Analysis

The Route 9, North Claymont, US 202 and Southern New Castle County Master Plans are the products of extensive and inclusive planning processes, approved by the WILMAPCO Council And led by WILMAPCO, DelDOT and New Castle County.² Through the public planning process, the Department had received widespread support for all four plans. Each plan was processed and approved through WILMAPCO Council to guide regional planning and transportation programming. These plans, for reasons expressed in the background, also are valuable resources to guide community/stakeholder coordination as well as formal policy and decision making in each of these specific sub-areas of the county. Adoption of the recommendations of these sub-area plans into the existing comprehensive plan (2012) is a positive step toward defining a community-driven vision and guide for action and coordination to be used by the respective communities and the public sector. As the countywide comprehensive plan--NCC@2050 plan (update to 2012)—proceeds, these plans should also be integrated with relevant broader, countywide policy issues.

The following sections summarize the comments received and the Department's recommendation for addressing any concerns raised relative to each of the sub-area plans. Notably, the final section presents important corrections and clarifications to statements submitted which are misconstrued or inaccurate.

North Claymont:

The North Claymont Plan evaluated the relationship between redevelopment, built form and transit orientated development with the construction of the new train station. While Bill Rhodunda's assertion is correct that conditions have changed in the plan area, including recent land development and the spine road no longer being a proposed improvement, the central planning principles explored by the plan are still relevant and important for future development in the study area. The Department recommends the ordinance be revised to remove references to

² WILMAPCO Council consists of nine representatives from public agencies in the region responsible for transportation and land use policies and services including: the State of Delaware, the State of Maryland, DelDOT, the Delaware Transit Corporation New Castle County, City of Wilmington, Cecil County and the municipalities of Cecil County. All four Community area Master Plans were approved by the council for funding and subsequently adopted. <http://www.wilmapco.org/wilmapco-council/>

the spine road and remove the zoning specific land use plan which overly limited potential redevelopment.

Route 9:

The Route 9 Corridor Master Plan addresses several important issues including Social Justice Environmental Justice and neighborhood revitalization. The Route 9 Monitoring Committee submitted written comments in support with several clarifying and content recommendations for the ordinance including additional objectives and strategies regarding public engagement, Social Justice, Environmental Justice, and multifamily housing. The Route 9 Monitoring Committee has recommended several minor amendments to the Department including (but not limited to)

- Remove references to senior housing
- Addition of a process to evaluate the appropriateness of existing industrial activities with community engagement
- Support closer engagement and collaboration between DNREC and the Route 9 community on understanding and addressing environmental health concerns.
- Undertake a “Mechanisms for Fair Community Relocation Study,” as proposed in the Route 9 Master Plan, to determine the most equitable strategies for any potential future housing relocations in Eden Park and Hamilton Park specifically, along with other New Castle County communities.
- Explore implementing land use and zoning strategies, including designating industrial uses affecting local air quality as conditional/special uses, including chemical manufacturing facilities and facilities that store, crush, and/or process concrete, and establishing air quality mitigation and air monitoring measures as requirements for conditional/special use approval.
- On a case-by-case basis and with community support, explore implementing land use and zoning strategies to phase out existing industrial uses and/or conflicts located within 2500 ft. of residential or other sensitive uses (such as schools, daycares, playgrounds, hospitals, apartment buildings, nursing homes, etc.), or introduce buffering so as to widen the gap between the conflicting uses beyond 2500 ft. on an expeditious timeframe that improve quality of life, advances equity, and protects public health.

The Department believes that it is of upmost importance that these concerns be addressed in the New Castle County Comprehensive Development Plan, whether through amendments to Ordinance 21-036 or in the 2022 New Castle County Comprehensive Plan.

Concord Pike (US 202):

The Concord Pike Plan evaluated potential redevelopment of major commercial corridor, focusing on transportation improvements, built form, as well as historic and neighborhood preservation. The Department did not receive public comment specific to this sub area while the record was open. However, we look forward to participating in the Route 202 Monitoring

Committee and considering their forthcoming recommendations into our comprehensive planning efforts.

Southern NCC:

The Southern New Castle County Master Plan evaluated numerous important principles including agricultural and resource preservation, responsible development where infrastructure supports, placemaking and corridor development. While the record was open the Department of Land Use heard concerns from residents, which largely arose from misconceptions regarding the plan. Issues raised include traffic; school capacity; lack of hospitals, and EMS, fire, and police service. While the issues raised in general are valid and the plan, in fact, addresses these issues, the specific comments reflect misunderstanding about processes and other important details.

The Department, had prior to the public hearing for Ordinance 21-036, reached out and conducted a virtual meeting with community members (MOT Alliance/Formerly West Wing Alliance) via Microsoft Teams on September 8th, 2021, to clarify misconceptions, answer questions and differentiate between the two plans being processed under the current Comprehensive Plan and UDC and the recommendations in the Southern New Castle County Master Plan. Since these concerns persist, the subsequent analysis focuses on addressing these concerns and providing clarity as to the planning process and recommendations of the Southern New Castle County Master Plan.

A. Carter Farm (App. 2021-0285-S) and Country Club Estates Developments (App. 2021-0287-S) and subsequent potential development in the West Wing

When reviewing public comments, the majority of concerns relate specifically to Carter Farm (App. 2021-0285-S) and Country Club Estates Developments (App. 2021-0287-S). These are two by-right subdivision plans that will be unaffected by the SNCC plan. These two proposed subdivisions are located in areas planned and zoned for development.

1. What is the relationship between current development proposals in the West Wing and the Southern New Castle County Master Plan?

There is no relationship between the proposed developments and the Southern New Castle County Master Plan. The growth zone and sewer service area has included the Central Core and Upper West Wing since the adoption of the 1997 New Castle Comprehensive Development Plan, which was the product, in part of the *Wastewater Needs Evaluation and Plan for Southern New Castle County (commonly referred to as the Weston Study, 1992), Southern New Castle County Land Use Study (1996)*.³ The development options being employed as well as transfer of development rights provisions have been in place since the adoption of the Unified Development Code (Ord. 97-172, adopted December 31, 1997).

³ 1996 Comprehensive Development Plan 6-13 to 6-19, Figure 14.5 & 14.7

If the Southern New Castle County Master had been implemented prior to submission of these plans, the community had better clarity regarding future potential development in that:

- a. The plan recommends a cap on acreage for each development type in the Suburban District making future development more predictable.
- b. The sewer service area is reduced to that of the 1997 Comprehensive Development Plan's Growth Zone and Sewer Service Area. This is consistent with the planned phasing of sewer infrastructure, providing better predictability for residents of Southern New Castle County.

B. Traffic Concerns

Residents are concerned that the Southern New Castle County Master Plan did not adequately analyze or consider transportation impacts of future development in the West Wing.

1. How does the Southern New Castle County Master Plan address traffic?

The Southern New Castle County Master Plan evaluated a likely future (pop., jobs., distribution of trips, and transportation solutions to be implemented over time) to make sure that the infrastructure will be sufficient to accommodate future demand. As such three scenarios were developed, based on the 2018 adopted projections by the Delaware Population Consortium, as required by Delaware State Code. In crafting the scenarios, a Phase 1 transportation analysis was completed, accounting for the potential impact of changing the Future Land Use Map in the East Wing and just North of Middletown to Rural Resource Preservation and that of the moratorium on major land development plans on septic on both the Central Core and the Upper West Wing. The public supported a hybrid of Scenarios 2 & 3 which accounted for household projections through 2050 with additional jobs and housing growth within the Towns of Middletown and Townsend above and beyond the projections for 2050.

For the supported scenario a Phase 2 analysis looks in more detail at eight individual intersections that were selected based on potential impacts from future land use changes associated with the preferred scenario. The purpose is to identify the need for road or intersection improvements that are not already included in DelDOT's Capital Transportation Program (CTP), WILMAPCO's Long Range Plan, or an existing Transportation Improvement District (TID) agreement. Twenty-three other locations already have recommended improvements identified. Twenty-seven additional intersections are currently being studied separately under the TID program for potential improvements. It is important to note that accounting for projected growth in southern New Castle County should both the planned and additional transportation improvements proposed by the Southern New Castle County Master Plan be constructed none of the 8

intersections evaluated by the Phase 2 analysis will have a failing LOS. While discussed in the Land Use Element of the Plan, it is further explained in detail in the Transportation Element approved by WILMAPCO Council in 2020.⁴

2. What if the 2018 projections are incorrect?

There is always the potential that projections, can be incorrect as a result of local and global events and trends. The Delaware Population Consortium conducts projections on an annual basis to help mitigate this, but even then, there is the potential for error. That is why a Traffic Impact Study (TIS) is required for plans that have the potential to generate significant traffic impacts:

1. The proposal exceeds 2,000 projected average daily trips ("ADT")
2. The proposal is projected to generate more than fifty (50) peak hour trips, including trips that are diverted from existing traffic.
3. The subject property is located near roadway segments and intersections, which are operating below the level of service specified in Section 40.11.210.
4. The proposed development causes the total development within the area traffic analysis zone and the adjacent zones to exceed the totals in the WILMAPCO Regional Transportation Plan or a Land Use and Transportation Plan or master development plan prepared in accordance with Division 40.11.300.
5. The proposed development will impact roadways that are not capable of providing adequate and safe circulation, or adequate stopping sight distances, or that contain other geometric deficiencies that would result in safety problems if the development were built.⁵

Areas within the Sewer Service Area “minimum acceptable peak hour level of service to be achieved and maintained on all roadway segments and intersections within the area of influence” of “Level of Service D” → a plan cannot be approved that results in a failing level of service without the approval of Level of Service Waiver approved by New Castle County Council.⁶ A Transportation Improvement District is another tool, examined by the plan as well by DelDOT and WILMAPCO efforts to address future transportation

⁴ Southern New Castle County Master Plan – Transportation Element:
<http://www.wilmapco.org/SNCC%20Transportation%20Element%20DRAFT.pdf>

⁵ Unified Development Code: Section 40.11.120.C:
https://library.municode.com/de/new_castle_county/codes/code_of_ordinances?nodeId=CH40UNDECO_ART11TRIM_S40.11.120NETRAN

⁶ Ibid., Sections 40.11.210.A.1.a & 40.11.230
https://library.municode.com/de/new_castle_county/codes/code_of_ordinances?nodeId=CH40UNDECO_ART11TRIM_S40.11.210LESEST &
https://library.municode.com/de/new_castle_county/codes/code_of_ordinances?nodeId=CH40UNDECO_ART11TRIM_S40.11.230LESELOWATRMITMAG

improvements in the area, that has specific regulations in the UDC to provide a transparent process that protects residents.⁷

C. Location of Hospitals and Medical Services

Residents voiced concerns regarding health care services including, hospitals and urgent care facilities. While there are a number of health care facilities in downtown Middletown including Christiana Hospital and a ChristianaCare-GoHealth Urgent care facility (opened the summer of 2021) the County needs to work with these private companies to continue to expand their services when and where available. The Southern New Castle County Master Plan facilitates and enables the expansion of health care facilities through:

1. Expanding the Commercial/Office/Industrial area adjacent to Summit Bridge Road and Churchtown Road
2. Designating areas for the Hamlet and Village provisions, which may provide area in the nonresidential portion for more urgent care facilities
3. Accounted for the potential that such a facility could locate in Middletown by evaluating an increase in jobs above and beyond what the Population Consortium projected

It is important to reiterate, that while these changes provide options for a healthcare facility to locate in Southern New Castle County, businesses including hospitals will only locate if there is adequate clientele to be viable.

D. Concerns Regarding School Capacity

Quality educational services for our children is an essential factor in quality of life. This includes not only in-class conditions, but also the time students spend in transit from home to school. Where the County has a role in planning for land use, permitting, and the transportation system as a whole as discussed above, bussing and school capacity are a function of State government, under the Delaware State Department of Education.⁸ That said both the Southern New Castle County Master Plan as well as current planning efforts on the 2022 New Castle County Comprehensive Plan (NCC@2050) have sought out and received participation and feedback from the Department of Education. The Southern New Castle County Master Plan also supports new facilities in the West Wing for the Appoquinimink School District. Additionally, the UDC requires that:

In accordance with 9 Del. C. § 2661 (c)(1) (Adequate Capacity; Voluntary School Assessment), **prior to recording a major record subdivision plan**, the applicant shall provide certification to the Department from the Secretary of the Department of

⁷ Ibid., Section 40.11.310:

https://library.municode.com/de/new_castle_county/codes/code_of_ordinances?nodeId=CH40UNDECO_ART11TRIM_S40.11.310TRIMDI

⁸ Delaware State Code, Title 14: <https://delcode.delaware.gov/title14/index.html>

Education after consultation with the superintendent of the appropriate individual school district that the school district has adequate capacity for the proposed development.⁹

If the superintendent of a school district does not agree that adequate capacity exists a development **cannot record**.

E. Police, EMS, and Fire Services

Residents voiced concern regarding adequate Police, EMS and Fire Services in Southern New Castle County. These concerns were also voiced during the Southern New Castle County Master Planning process and addressed in the plan. The Southern New Castle County Master Plan commits us to:

Work toward adequate capacity and facilities for emergency and police services. As the population grows in the planning area, the demand for emergency and police services will grow. Currently, there is no police station in southern New Castle County. To ensure the safety of residents and visitors, the County will monitor the need for a station on a regular basis. Once it has been determined that a police station is needed, the location should be determined based on maximized response time and visibility. Police and other emergency service stations are an integral part of a community.

Ensure emergency and police services capacity and funding is available as population grows in southern New Castle County. Impact fees are payments that developers must make to the County to cover the costs of services, such as public safety and parks and recreation, that will be more in demand due to their development. Current impact fees should be evaluated to ensure the monies levied from new development adequately address the impact of increased demand.

Fire protection is provided through volunteer services, and while not administrated by county government, relies heavily on impact fees from new development to construct fire stations and acquire equipment such as fire trucks, modern firefighting gear and tools. Updating the impact fees, as recommended by the Southern New Castle County Master Plan will have an important, measurable impact on the readiness of firefighters in Southern New Castle County.

F. Development Size and TDRs

The Southern New Castle County Master Plan does not propose an increase in density or expansion of the sewer service area beyond what has been planned for since 1997. The Department of Land Use, Planning Board and County Council has been consistent for more than 25 years (See “A” above) regarding land use planning and sewer infrastructure planning in the

⁹ Unified Development Code: Section 40.05.200:

https://library.municode.com/de/new_castle_county/codes/code_of_ordinances?nodeId=CH40UNDECO_ART5SICACOCA_DIV40.05.200SCCA

Central Core and Upper West Wing, as reaffirmed by long standing zoning regulations in the UDC and four updates to the New Castle County Comprehensive Plan.

1. What does Development on Sewer in the Suburban District Look Like?

The Unified Development Code's **Suburban District** is defined as a residential district designated for growth areas in the Comprehensive Development Plan. The district is intended primarily for moderate density (Gross Density: 0.67-1.56 dwelling units per acre) with a high-quality suburban character, and significant areas of open space and/or landscaping maintaining the balance between green space and buildings. The district also permits hamlets and villages, which are planned communities (e.g. Whitehall) having a greater range of permitted uses and higher residential densities by employing Smart Code techniques.¹⁰

Gross Density requirements result in each dwelling unit consuming between 0.64 acres and 1.49 acres. Age-Restricted development, Historic Preservation and TDRs can result in an increase of gross density, as has been endorsed by four Comprehensive Plans and long-standing zoning regulations. Net Density permits clustering of dwelling units and therefore allowing for preservation larger contiguous ecological habitats and the creation of better planned recreational open space in new developments. **In no instance does Net Density allow for development to exceed Gross Density limitations.**¹¹

2. Transfer of Development Rights (TDRs)

The Southern New Castle County Master Plan, previous Comprehensive Plans and the Delaware State Code identify and encourage TDRs as a potential important tool in preserving ecological habitats, agricultural land as well protecting land potentially impacted by sea level rise. Delaware State Code dictates that sending and receiving parcels be in the same planning district.¹² The southern New Castle County area is defined as the MOT Planning District, therefore, TDRs are limited to within that area. During the Comprehensive Planning process, we have identified the advantages of being able to transfer development rights from Southern New Castle County to planning districts north of the C&D Canal to preserve resource and agricultural land, noting that it will require an amendment to the State Code. The success of a TDR program relies heavily on countywide economics, the real-estate market and land use policy.

¹⁰ Unified Development Code: Section 40.02.232 & Table 40.04.110:
https://library.municode.com/de/new_castle_county/codes/code_of_ordinances?nodeId=CH40UNDECO_ART2ESZ_ODI_S40.02.232SUDI &
https://library.municode.com/de/new_castle_county/codes/code_of_ordinances?nodeId=CH40UNDECO_ART4DII_NBUST_S40.04.110DIBUST

¹¹ Ibid., Division 40.05.400:
https://library.municode.com/de/new_castle_county/codes/code_of_ordinances?nodeId=CH40UNDECO_ART5SIC_ACOCA_DIV40.05.400SIRECA

¹² Delaware State Code, Title 9, Chapter 26, § 2653: <https://delcode.delaware.gov/title9/c026/sc02/index.html>

G. Process and Expectations

The Department has received the following comments from Councilman Carter:

1. That the ordinance proposes “change in code to incorporate several disparate master plans”; “we should formalize a process and share it with the public at the start of these efforts” “The incorporation by reference into the Comprehensive Plan established under 9 Del. Code 2651 is a deceptive, misleading, and a non-transparent process.”
 - a. Ordinance 21-036 does not propose an amendment to New Castle County Code to incorporate the community area master plans, nor would one be needed. The incorporation of these plans has long existed in the New Castle County Comprehensive Development Plan dating back at least to 1997. The amount of detail provided has varied from the **Special Study Areas** (Churchman’s Crossing, Central Pencader and Southern New Castle County) in 1997 Update to the Comprehensive Development Plan to the **Sub-Regional Corridor Plans** in the 2012 Update to the Comprehensive Plan (East Middletown Master Transportation Plan, Westtown Master Plan, Claymont US 13 (Philadelphia Pike) Transportation Study, Churchman’s Crossing Transportation Study, US Route 40 20-year Transportation Plan, Southern New Castle County Infrastructure Master Plan and the US Route 301 Project). Special Study Areas are described in depth while the Sub-Regional Corridor Plans are only referenced thereby requiring that the reader obtain the actual plans to understand their recommendations and content. It is important to note that both sections are components of the New Castle County Comprehensive Development Plan¹³ Working with the County Council sponsors of Ordinance 21-036 the Department decided to follow the approach of the **Special Study Areas** to provide greater transparency and understanding by the public.
 - b. Ordinance 21-036 followed the same process that County Council has affirmed 28 times since the adoption of the 2012 Update to the New Castle County Comprehensive Development Plan, albeit with **significantly more public outreach, communication, and holistic consideration of the impact of the amendments countywide.**
2. “During the public process, it was not shared with the public that these plans would be adopted as part of a comprehensive plan.”

¹³ New Castle County Code Section 28.01.003.B – The components of the New Castle County Comprehensive Development Plan include the 1988 Comprehensive Development Plan and the 1997, 2002, 2007 and 2012 updates to the Comprehensive Development Plan.
https://library.municode.com/de/new_castle_county/codes/code_of_ordinances?nodeId=PTIICO_CH28PL_S28.01.003CODEPL

- a. It can be argued that at the beginning of the planning process for Route 9 and North Claymont it wasn't clearly stated that recommendations from those plans may be incorporated into the Comprehensive Plan. The Department has worked with County Council members for those areas, landowners and continue to work with groups such as the Route 9 Monitoring Committee to assure that they approve of this process.
- b. The Concord Pike (US 202) Master Plan and Southern New Castle County Master Plan planning processes were clear throughout the process that to achieving their vision may require changes to land use policy and/or regulation.

Councilman Carter is correct in stating that “meaningful comprehensive planning is defined by activities that set out deliberately to think about what the collective community(s) is, what it may or should be, and how its evolution may be steered in different directions.” Recommendations for the plan should not be predetermined or decided at the beginning of the planning process, but as the plan progresses. Effective planning is a “negotiated effort to determine how best to shape and reshape the community affected;” and as such all the plans presented a variety of scenarios that had implications on land use regulations and policy, which were explained to the public in person and on the web. The Southern New Castle County Master Plan, in its presentation of scenarios was clear that amendments to the Comprehensive Plan would be needed to change the sewer service area and Future Land Use Map dating back to the Southern NCC Master Plan Scenario Development Workshop held on June 24, 2019, as well as the Southern NCC Master Plan Rough Draft **published in November of 2019**.

3. “State Code should be amended to clarify if and how a master plan should be incorporated into a Comprehensive Plan under 9 Del. Code 2651”
 - a. While the *Quality of Life Act of 1988 (9 Del. Chapter 26)* provides the intent and State-required elements/components for Comprehensive Plans, it is not intended be all inclusive. As with the inclusion of Social Justice, Environmental Justice and Hazard Mitigation as elements in the Comprehensive Plan (Ordinance 20-101)¹⁴, it is important not to limit innovative planning methods to the baseline requirements of the Delaware State Code.
 - b. As discussed above master plans have been a component of the New Castle County Comprehensive Plan dating back at least 24 years, through 4 adopted updates to the Comprehensive Plan therefore both New Castle County and the State of Delaware have determined the appropriateness of their inclusion.

¹⁴ Ordinance 20-101

<https://www3.newcastlede.gov/PDFDocument/default.aspx?DocumentID=80:FC40FF5826FBF7107D10260598B6C0724428DD1196872F86735C7182B4706D8542A9A45CE6DF9EE7245CBE07C8F6FA11&x=temp.pdf>

4. “Significant parts of them out of date, may limit the more thoughtful consideration of planning options benefiting citizens county-wide”
 - a. The Department disagrees that significant portions are out of date. However, we have identified in the Planning Board Public Hearing a number of potential amendments and discussed with sponsors of the ordinance to address changes that have occurred since the completion of these plans.
 - b. Councilman Carter has identified a significant challenge in planning; conducting a transparent and inclusive process inherently takes time and land use can change and evolve. For this reason, the Department has relentlessly stressed the importance of continued public participation in the community area master planning process, the Comprehensive Plan and legislative process.
5. “Several communities covered by the Master Plans completed several years ago have had time to review and understand these plans, and others like Southern New Castle County have not.”
 - a. The Southern NCC Master Plan Rough Draft **was published in November 2019**, nearly 2 years ago. The Department continued to make revisions on the document, based on public input, for nearly a year when the final document was published in **September 2020**.
 - b. The Department agrees with the sentiment that the longer incorporation of a plan is delayed “significant parts of them” may become “out of date” as a result of land development and economic conditions. Therefore, it is essential that “the comprehensive development planning process for the County has been and shall continue to be an ongoing and evolving process conducted by the Department of Land Use with the participation of the County Council, the County Executive, the Planning Board and citizen committees.”¹⁵

Since 2015 New Castle County has embarked on an ambitious planning effort that started with the community area master plans and continues through the planning process for NCC@2050. The analysis above largely serves to dispel misconceptions that have propagated regarding this effort. The community area master planning effort is a *comprehensive development planning process* which we consider *to be an ongoing and evolving process*.¹⁶ Not all planning efforts merit inclusion in the New Castle County Comprehensive Plan, however these plans much like the Special Study Areas do. These plans address several important issues including:

¹⁵ New Castle County Code, Section 28.01.003.A:

https://library.municode.com/de/new_castle_county/codes/code_of_ordinances?nodeId=PTIICO_CH28PL_S28.01.03CODEPL

¹⁶ New Castle County Code Section 28.01.003:

https://library.municode.com/de/new_castle_county/codes/code_of_ordinances?nodeId=PTIICO_CH28PL_S28.01.03CODEPL

- Social Justice,
- Environmental Justice,
- Hazard mitigation,
- Redevelopment,
- Historic preservation,
- Agricultural preservation,
- Placemaking, and
- Responsible growth.

These issues were examined at a detail and, and with more public participation than what currently is present in the 2012 Update to the New Castle County Comprehensive Development Plan. New Castle County Council has wisely required for more than 25 years, that the comprehensive development planning process be an ongoing and evolving process, providing the County with the ability to be nimble and adjust to changes that occur.¹⁷ While large scale comprehensive planning efforts like NCC@2050 evaluate important issues, it is imperative that we continue smaller scale planning efforts and when appropriate, incorporate them, into the New Castle Comprehensive Development Plan.

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 the following factors shall be considered:

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

Ordinance 21-036 proposes the incorporation of 4 community area master plans into a new chapter of the 2012 Update to the New Castle County Comprehensive Development Plan. The ordinance also recommends amendments to the Sewer Service Area Map and Future Land Use Map thereby implementing recommendations consistent with the new chapter.

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

Ordinance 21-036 proposes adoption and implementation of the community area master plans which several important goals and objectives of the Comprehensive Plan including:

1. Chapter 3, Objective 1: Continue to manage new growth consistent with Smart Growth Principles that require adequate facilities and concurrency as well as protection of important resources - *North Claymont, Route 9, Southern New Castle County, Concord Pike (US 202)*

¹⁷ Ibid.

2. Chapter 3, Objective 3: Continue to support new residential development strategies of the incorporated areas and municipalities to help guide new growth to cities and towns - *Southern New Castle County*
3. Chapter 3, Objective 4: Continue to guide mixed use, mobility-oriented growth and infill into the Commercial/Office/Industrial Development Areas - *North Claymont, Route 9, Southern New Castle County, Concord Pike (US 202)*
4. Chapter 3, Objective 5: Continue to support infill and growth in the Existing Community Areas - *North Claymont, Route 9, Southern New Castle County, Concord Pike (US 202)*
5. Chapter 3, Objective 7: Continue to guide new residential development in Southern New Castle County to the designated growth areas and Southern New Castle County incorporated areas - *Southern New Castle County*
6. Chapter 3, Objective 9: Continue to minimize new development within New Castle County in the Resource and Rural Preservation Area through preservation programs - *Southern New Castle County*
7. Chapter 3, Objective 11: Continue to encourage redevelopment and infill projects that complement and enhance existing neighborhoods and restore older commercial centers as vital components in the community - *North Claymont, Route 9, Concord Pike (US 202)*
8. Chapter 3, Objective 12: Continue to encourage the use of design guidelines to complement and enhance the area and surrounding community - *North Claymont, Route 9, Southern New Castle County, Concord Pike (US 202)*
9. Chapter 3, Objective 13: Continue to provide support and assistance to distressed communities in the Existing Community Area and reduce the number of vacant or under-maintained residential properties in the Existing Community Area - *Route 9*
10. Chapter 4, Goal 1: Continue to facilitate mobility, accessibility and transportation alternatives to provide for safe, efficient, and environmentally sensitive movement of people and goods - *North Claymont, Route 9, Southern New Castle County, Concord Pike (US 202)*
11. Chapter 4, Goal 2: Work closely with WILMAPCO to support their efforts to meet the goals established within the 2040 Regional Transportation Plan - *North Claymont, Route 9, Southern New Castle County, Concord Pike (US 202)*
12. Chapter 4, Objective 4: Continue working to improve transportation system performance - *North Claymont, Route 9, Southern New Castle County, Concord Pike (US 202)*
13. Chapter 4, Objective 6: Continue to promote accessibility, mobility and transportation alternatives - *North Claymont, Route 9, Southern New Castle County, Concord Pike (US 202)*

14. Chapter 4, Objective 10: Promote walking and bicycling as forms of transportation by enhancing pedestrian and bicycle connections throughout the County - *North Claymont, Route 9, Southern New Castle County, Concord Pike (US 202)*
15. Chapter 5, Goal 1: Continue to provide efficient and cost effective sanitary sewer service in the existing sewer district and to new users through expansion of the sewer system - *Southern New Castle County*
16. Chapter 5, Objective 9: Continue efforts to establish a definitive strategy and policy for the provision of sanitary sewerage within the “Southern Sewer Service Areas” south of the Chesapeake & Delaware Canal - *Southern New Castle County*
17. Chapter 9, Objective 3: Continue to promote redevelopment of existing or underutilized properties *North Claymont, Route 9, Concord Pike (US 202)*
18. Chapter 10, Goal 1: Promote design which is compatible with the community and its surroundings - *North Claymont, Route 9, Southern New Castle County, Concord Pike (US 202)*
19. Chapter 10, Objective 1: Create compact mixed-use development opportunities in areas appropriate for such development, especially within urban and urban-transition areas - *North Claymont, Route 9, Southern New Castle County, Concord Pike (US 202)*
20. Chapter 10, Objective 2: Promote environmentally and economically sustainable growth - *North Claymont, Route 9, Southern New Castle County, Concord Pike (US 202)*
21. Chapter 11, Objective 2: Facilitate development of mixed-use centers, including non-residential uses, in growth areas that will increase the amount of non-residential contribution to property - based school taxes *North Claymont, Route 9, Southern New Castle County, Concord Pike (US 202)*

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

N/A

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

N/A

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

Ordinance 21-036 proposes several important implementation recommendations that if adopted would provide flexibility in meeting the objectives of the UDC in addressing redevelopment, land preservation, responsible growth and placemaking.

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

N/A

G. Consideration of specific problems found in this Chapter.

N/A

DEPARTMENT OF LAND USE RECOMMENDATION

The Department of Land Use has considered the Standards for Text Amendment in Section 40.31.420 of the *New Castle County Code* and comments received from other agencies and the public. Based on this analysis and in consideration of the timing of the countywide comprehensive plan, NCC@2050, being drafted and expected to be introduced for adoption in the next six months, the Department recommends Ordinance No. 21-036 be **TABLED**.

PLANNING BOARD RECOMMENDATION

At a public meeting held on October 19, 2021, the Planning Board considered the Department of Land Use recommendation. The Planning Board voted on a motion by Ms. Gray and seconded by Mr. Daigle, to recommend **DENIAL** of Ordinance No. 21-036 by a **VOTE of 9-0-0-0** (YES: Cahill, Cochran, Daigle, Drake, Gray McGlinchey, Peterson, Snowden, Visvardis; NO: none; Recused: none; ABSTAIN: none; ABSENT: none)

In discussion preceding the vote, the following comments were offered:

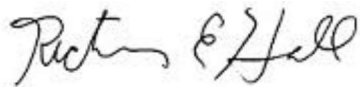
Chairwoman Peterson stated that the Board is obligated by the UDC is to either approve or deny proposed amendments to the Comprehensive Plan. She inquired that if the ordinance was recommended to be tabled, yet County Council chooses to proceed with the ordinance, would Council be voting without a recommendation from the Department? Mr. Hall stated while the sponsor may choose to move forward without a recommendation from the Department, it was unlikely. He stated that the Department feels that the most prudent approach is to pause or table this effort and incorporate the important elements into the 2022 Comprehensive Plan.

Chairwoman Peterson expressed reservations about approving the Ordinance as proposed. She voiced concerns about the Southern New Castle County Master Plan regarding specifically those addressed by Councilman Carter and Senator Hansen. She also stated that she does not feel that recommending tabling is the correct approach being that the Board would be abdicating their weigh in on the merits of the Ordinance.

The Board had an extensive discussion regarding procedure regarding the motion as well as the abilities of the Board as provided by the UDC and State code.

STATUTORY GUIDELINES

In the phraseology of 9 Delaware Code, Section 2603(a), the Department finds that this text amendment would promote the convenience, order, and welfare of the present and future inhabitants of this state, however recommended that the application be **tabled** to provide time for additional consideration.



11/4/21

Richard Hall, AICP date
General Manager
Department of Land Use



10/22/21

Karen Peterson date
Chairwoman
Planning Board

ORDINANCE NO. 21-084

**REVISE PREVIOUSLY APPROVED EXPLORATORY MINOR LAND
DEVELOPMENT PLAN WITH REZONING FOR SCARFO, DOMINIC M.;
PENCADER HUNDRED; NORTH SIDE OF PULASKI HIGHWAY, 885 FEET EAST OF
PLEASANT VALLEY ROAD; TAX PARCEL NO. 11-026.00-002 & 11-026.00-003 (2787
PULASKI HIGHWAY)**

(The revised plan for **2787 Pulaski Highway** proposes to revise the previously approved design of the exploratory minor land development plan by combining Tax Parcel No. 11-026.00-002 and Tax Parcel No. 11-026.00-003 to allow for the development of 89,400 square feet of mini warehouse/self-storage Gross Floor Area. This new plan will supersede the previously approved exploratory minor land development plan and rezoning. Section 40.31.113 of the *New Castle County Code* requires that the submitted record plan be in general conformance with the development on the approved exploratory plan that was relied upon by County Council when it granted the rezoning. County Council adopted Ordinance 03-022 in June 2003. CR (Commercial Regional) zoning district. App. 2021-0004-S/Z.)

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

Section 1. The revised plan for 2787 Pulaski Highway (area shown on Exhibits A and L, dated April 9, 2021) is approved and shall supersede the previously approved exploratory plan associated with the rezoning that was approved in June 2003 by Ordinance 03-022.

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

Adopted by County Council of
New Castle County on:

President of County Council
of New Castle County

Approved on:

County Executive
New Castle County

SYNOPSIS: Same as Title.

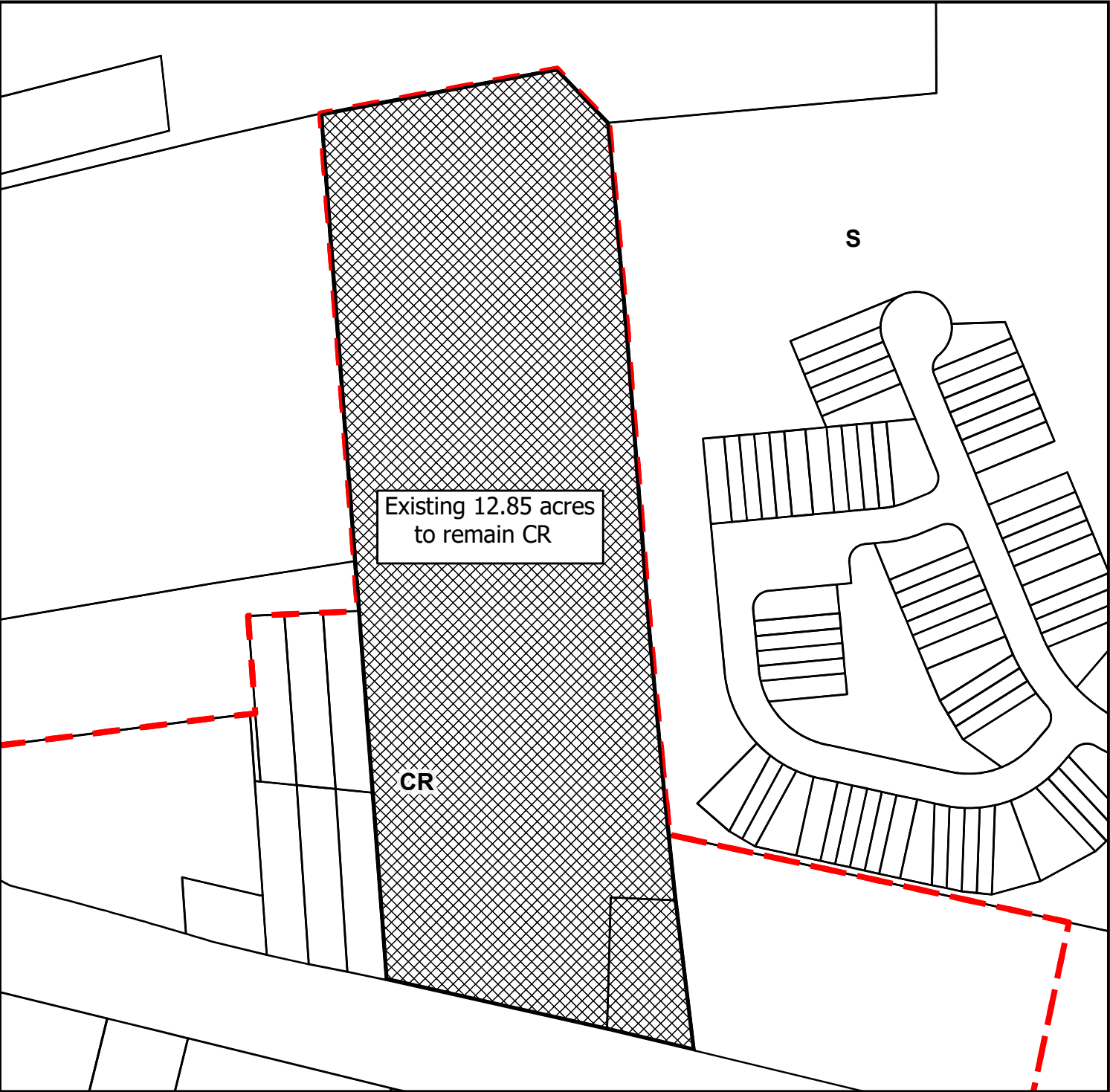
FISCAL IMPACT: This rezoning ordinance will have no immediate discernable fiscal impact on the County, but if the parcel rezoned is developed in accordance with the new rezoning, there may be one or more indirect fiscal effects on New Castle County government, including, but not limited to, an increase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

APPLICANT: Dominic M Scarfo

APPLICATION NO. 2021-0004-S/Z

PROPOSED REZONING: Existing CR to remain CR

TAX PARCEL NO. 11-026.00-002 &
11-026.00-003



HUNDRED: PENCADER
NEW CASTLE COUNTY, DELAWARE

PERMANENT ORDINANCE NO. 21-084

Date Adopted by County Council _____

Date Approved by County Executive _____

Scale: 1"= 2500'
Prepared by: SRH
Date: 04/09/2021

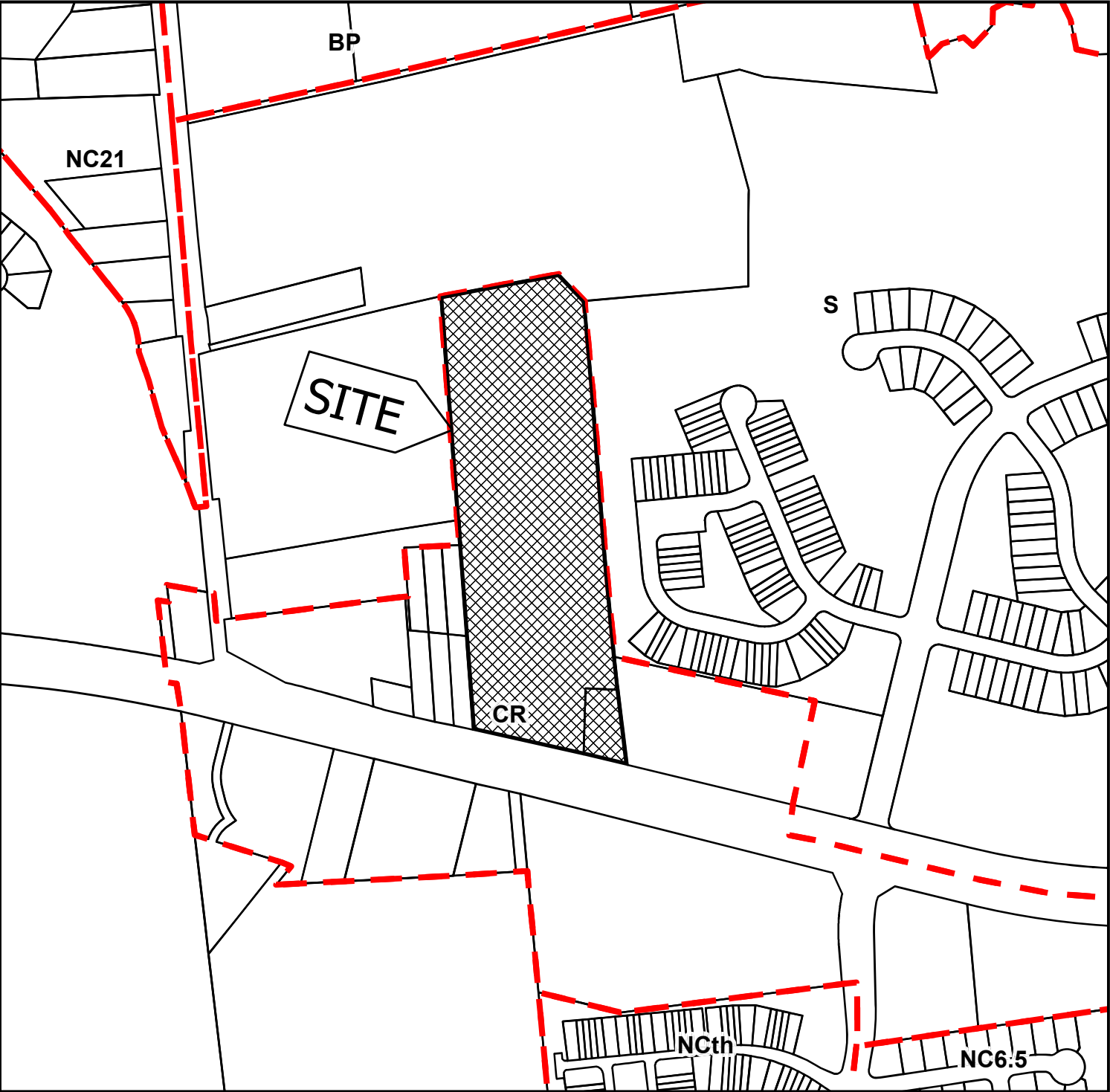


APPLICANT: Dominic M Scarfo

APPLICATION NO. 2021-0004-S/Z

PROPOSED REZONING: Existing CR to remain CR

TAX PARCEL NO. 11-026.00-002 &
11-026.00-003



HUNDRED: PENCADER
NEW CASTLE COUNTY, DELAWARE

PERMANENT ORDINANCE NO. 21-084
Date Adopted by County Council _____
Date Approved by County Executive _____

Scale: 1"= 5000'
Prepared by: SRH
Date: 04/09/2021





Department of Land Use

DEPARTMENT OF LAND USE AND
PLANNING BOARD RECOMMENDATION REPORT

Ordinance 21-084
Application 2021-0004-SZ
2787 Pulaski Highway
September 27, 2021

Location: North side of Pulaski Highway, 885 feet east of Pleasant Valley Road.

Councilperson: David L. Tackett, District 11

Rezoning: Reconfirm the previously approved rezoning of 9.971 acres from S (Suburban) to CR (Commercial Regional)

Applicant: 2787 Pulaski Highway LLC

EXECUTIVE SUMMARY

The applicant proposes to reconfirm the previously approved rezoning of the property from S (Suburban) to CR (Commercial Regional) and to construct 89,400 square feet of mini storage with associated improvements.

The Department has considered the *Standards for Zoning Map Amendment* in Section 40.31.410 of the UDC, the proposed plan, comments received from other agencies and members of the public. Based on this analysis the Department is of the opinion that the standards are met by this proposal.

The Department of Land Use recommends **CONDITIONAL APPROVAL** of Ordinance 21-084 with the following conditions:

1. To provide a solid 8-foot vinyl fence designed to blend with the landscaping as depicted on Exhibit B which shall be maintained by the owner; noting that the required bufferyard opacity shall be met exclusive of the vinyl fence.
2. To provide landscaping as depicted on Exhibit B subject to the approval of the Department of Land Use; and
3. To provide building elevations for buildings A and B which are along Route 40 consistent with what was provided to the Department of Land Use and the Planning Board at the Public Hearing.

DESCRIPTION

Application 2021-0004-SZ proposes to combine tax parcels 11-026.00-002 and 11-026.00-003 into one parcel to construct 89,400 square feet of warehouse with associated improvements and to reconfirm the CR zoning approved by County Council in June 2003 by Ordinance 03-022. Section 40.31.113.G of the New Castle County Code requires that any record plan submitted after County Council adopts a rezoning shall be in general conformance with the development depicted on the approved plan that was relied upon by County Council when it granted the rezoning.

ZONING & DEVELOPMENT PATTERN

The subject property is located on Pulaski Highway, east of Pleasant Valley Road. In the immediate vicinity of the commercial corridor are a few small, independent businesses as well as a Kohls department store and Wawa convenience store with gas pumps. Some commercially zoned parcels remain undeveloped. Further east in the median between the Route 40 travel lanes, are a string of retail and service businesses and several fast-food restaurants. The commercial strip ends at the intersection of Old Route 896 with the Peoples Plaza shopping center.

Adjoining the eastern side of the subject parcel is the S (Suburban) and H (Historic) zoned LaGrange Subdivision. Further east next to the LaGrange subdivision is a commercial strip which abuts the recently recorded LaGrange Center, both of which are zoned CR (Commercial Regional). Adjoining the subject parcel to the north and west are additional S-zoned parcels and further north is a large BP (Business Park) zoning district developed as the Pencader Corporate Center. On the south west side of Route 40 is the St. Margaret of Scotland Parish church and school complex. The surrounding area includes several NC zoned parcels, developed as single-family homes, townhouses, as well as the S-zoned Cascades Age-Restricted subdivision that is currently under construction.

PRELIMINARY LAND USE SERVICE (PLUS) REVIEW

The proposed rezoning was reviewed at a PLUS meeting held on February 24, 2021. The PLUS report, dated March 23, 2021, contains a summary of State Code and permitting requirements as well as general comments from a number of State agencies. The report also notes that the project is located in Investment Level 1 & 2, areas, that according to the *Strategies for State Policies and Spending* reflect the following: Investment Level 1 (areas that are already developed in an urban or suburban fashion, where infrastructure is existing or readily available, and where future redevelopment or infill projects are expected and encouraged by State policy) and Investment Level 2 (areas where growth is anticipated by local, county, and State plans in the near term future). State investments will support growth in these areas. The Delaware Department of Transportation (DelDOT) made several general comments which also included a comment that stated that a Traffic Impact Study would not be required for this project. The Delaware Department of Natural Resources and Environmental Control (DNREC) commented that this project location has been considered a Brownfield site due to the pre-existing landfill and that the

applicant shall work with the agency throughout construction. Other comments made by DNREC general regarding Wetlands, Riparian buffers, and septic systems. All other comments were general in nature.

PUBLIC HEARING – August 3, 2021

*Please note that a recording and transcripts of the hearing are available on the Department of Land Use website.

At the August 3, 2021 Planning Board Public Hearing, the applicant's attorney, Bill Rhodunda, gave a presentation on the application.

In his presentation Mr. Rhodunda described the proposed reconfirmation of rezoning, how the project meets the rezoning standards, the surrounding land uses, and how this plan fixes a long-standing code enforcement violation. The violation was a record plan violation as the previous owner had established new gravel areas that were never legally established per the previous record plan. Mr. Rhodunda explained that with this plan, his client will remove the illegal gravel area and replace this with a stormwater facility. He also explained that the Councilman of this area as well as the surrounding community exhibited concern for the proposed development of the property in close proximity to the neighboring residential neighborhood. In response to this concern, the applicant proposed two different scenarios to mitigate any protentional impact to the neighboring residential property. Mr. Rhodunda explained that one option is to place the landscaping along the building close to La Grange, which is the bottom building on the plan, and make it a nicer looking building than what you might expect to see for a mini storage, or the other option is to put an eight-foot fence along the property line of La Grange, alongside the aforementioned building, and putting some landscaping on the La Grange side of that fence. Mr. Rhodunda restated the above two options and stated that his client is happy to do whatever the neighboring property prefers between the two options. He showed the Board what the improved building renderings might look like and then concluded his presentation.

Chairwoman Peterson asked whether the proposed development was going to be on sewer or septic as it didn't appear to be clear which type of water treatment system was proposed with the plan. Mr. Rhodunda responded and stated that there is a legal easement to connect to sewer onto the adjacent property.

Board member Mr. Cochran had a number of questions for the applicant. He stated that Mr. Rhodunda had mentioned that there was storage of recreational vehicles on the property and asked if a Brownfield study has been conducted in case any contamination of oil or other material from the storage of these vehicles had occurred. Mr. Rhodunda responded that part of the property was a landfill site for the City of Newark and explained that trash was buried as part of the landfill. He explained that pillars will be required instead of a full concrete foundation as the applicant does not propose to remove any trash from the landfill. As for the oil, Mr. Rhodunda stated that as part of the investigation, surface oil was not found to be an issue and added that this is a Brownfield program site by DNREC. Mr. Cochran followed up by asking if any trash from the landfill had gone into the creek in the back of the property. Mr. Rhodunda responded that the landfill had not gone that far back and did not affect the creek. The last

question Mr. Cochran had for the applicant was how many storage units were proposed. The engineer, Mr. Anderson, answered this question by explaining that they don't have an exact number of storage units because they are varying sizes as some will be, 10 x 20, 5 x 10, etc. So, there is no final number at this time because it will vary depending on final building plans and what type of units are the most desirable for the market at that time.

Board Member Ms. Grey stated that there appears to be a lot of parking proposed on site and asked if a large volume of traffic would be an issue since there is only a 24-foot space between two buildings. Mr. Anderson stated that the site is not expected to have a lot of traffic and that if two RV's do happen to be there at one time, one entering the other exiting, then they should be able to pass each other through that 24-foot space between the two buildings.

Mr. Bob Cilio who is one of the Board of Directors for the LaGrange Community stated that he didn't believe that the community had enough time to review the proposal and asked that the Board table the application to a later date so that the community can work with the applicant to address their concerns. Mr. Cilio explained that there are concerns about the buffering between the mini-storage development and the LaGrange Community and that he believes that the applicant should work with his community to discuss fence and landscaping material to ensure an adequate buffer.

Mr. Johnnie Crowder who is also a member of the LaGrange Board of Directors echoed the concerns of Mr. Cilio. He added that he had a few specific questions for the applicant. He stated that his concerns are with the runoff for the contaminated soil as the site was identified as a brownfield. Another concern was traffic on Route 40 which tends to be a fast road, so how does the plan propose exiting and entering from Route 40. The last concern from Mr. Crowder was about lighting and what type of lighting would the applicant be providing and how will that affect the homes along the property line.

Councilman Tackett echoed the concerns of Mr. Cilio and stated that the community did not have enough time to have a productive conversation with the applicant about the proposed development and asked the Board to consider Mr. Cilio's request to table the application to a later date.

Chairwoman Peterson asked the Department of Land Use for clarification that because this is a reconfirmation of rezoning that public comment would be left open for a 30-day period of time. Mr. Sekowski on behalf of the Department of Land Use stated that the record will remain open 30 days from the public hearing which will allow the applicant and the public an opportunity to provide additional comments and maybe give them enough time to meet if they choose to do so.

Mr. Rhodunda restated that the application would not be able to be heard at the August business meeting since it is a rezoning. He continued and explained that because the record will remain open for an additional 30 days that he and his client will have time to meet with the public. Mr. Rhodunda stated that a lot of the questions that were raised would be better suited for discussion

at the meeting with the LaGrange community and that he would submit an update after that meeting.

No other Board members or members of the public had any questions or comments for this application.

Written testimony:

On September 2, 2021 Mr. Rhodunda submitted a supplemental letter with a proposed landscape plan (Exhibit B) along with building renderings (Exhibit C). The letter explained that the applicant met with the community, Councilman Tackett, Senator Hansen, and Representative Morrison via Zoom. The meeting prompted the developer to propose the following conditions for the plan:

1. To provide a solid 8-foot vinyl fence as depicted on Exhibit B which shall be maintained in perpetuity of the plan;
2. To provide landscaping as depicted on Exhibit B subject to the approval of the Department of Land Use; and
3. To provide building elevations consistent with what was provided to the Department of Land Use.

The letter also clarified that the plan as proposed will keep the existing wooded buffer which is rather substantial and that the proposed landscaping and fence will minimize visibility. The letter also answered Mr. Crowder's question on lighting by stating that the lighting will be wall mounted/downlighting and will be designed to prevent light impact onto neighboring properties.

Mr. Rhodunda concluded his letter by stating that the project will improve a property that has had many negative impacts on top of the site previously being used as a landfill, there had also been illegal paving encroachments, damage to riparian buffer, as well as the site being utilized illegally from what was previously approved. This plan will address the illegal paving encroachment and damage to the riparian buffer. The plan also proposes to improve the property by adding substantial landscaping and a vinyl fence along the LaGrange community.

BACKGROUND AND ANALYSIS

The subject parcel had been split-zoned since the original zoning maps were created in 1954. The old zoning maps shows the property zoned C-2 in the front and R-2 in the rear. The original C-2 zone was as a strip with 1,500 feet of frontage along Route 40 and a 200-foot depth on both sides of the road. The zoning lines were drawn without regard to the property boundaries. With the adoption of the UDC and new zoning map in 1997, the parcel remained split-zoned using the equivalent new zoning classification: CR and S. The CR portion of the property was enlarged slightly at that time because in redrawing the zoning map, one general goal was to align zoning district lines more closely with parcel lines. At the time, the subject parcel was comprised of two

parcels. The large residential parcel in the rear had the outline of a flag lot so it had dedicated access from Route 40.

In 1999, the applicant extinguished the parcel line and the access to the S parcel as part of a land development plan for a shopping center and car wash. The plan proposed 5,340 square feet of retail space, 3,680 square feet devoted to the car wash, and 35 parking spaces. However, the approved plan was never implemented, and a 2002 major land development plan proposed to extinguish the shopping center/car wash plan.

Application 2002-0125-Z (Ord. 03-022) appeared before the Planning Board on April 15, 2003. The purpose of the application was to rezone 9.971 acres from S (Suburban) to CR (Commercial Regional) and to utilize the property for storage of recreation vehicles and associated site improvements. This rezoning application was approved by County Council in June 2003 by Ord. 03-022.

The rear quarter of the parcel cannot be developed due to the presence of Muddy Run and its associated wetlands and steep slopes. The UDC requires a fifty-foot riparian buffer around the wetlands, and the prohibitive steep slopes may not be disturbed. These buffer requirements pertain to any use of development of the property regardless of the zoning classification.

Another potential limit to developing the property is its former use as a landfill. The City of Newark used the property to dispose of bulk waste such as tires, tree trimmings, household appliances, furniture, and other types of rubbish. In 1984 the site was inspected by an Environmental Protection Officer and was later placed on the State superfund list because its potential danger was unknown. Testing revealed the presence of some heavy metals and other contaminants in the groundwater. In 1987 the Environmental Protection Agency recommended no further action since the landfill was composed of inert material and no hazardous constituents were detected. Closure of the landfill was conducted by DNREC Solid Waste Branch by covering the area with two feet of soil; the landfill materials remain underground. In 1994 the landfill was removed from the superfund list. According to DNREC records the area of the landfill is about two acres. An investigation undertaken during application 2002-0125-Z done by the applicant's environmental consultant at the time suggested that the landfill is much larger. An interview with the former owner of the property and an examination of historic aerial photographs led to this conclusion that the landfill occupies about ten acres. Although the size of the landfill is not verified, it is certain the landfill is still in place and is considered clean fill.

In evaluating the existing zoning pattern in the area, the Department observes that the application proposes to reconfirm the total rezoning of the subject site i.e., about a 1,350-foot depth from Route 40. Examining the Route 40 corridor, other properties which have a similar depth to the subject site with Commercial Regional zoning is People's Plaza shopping center, Fox Run shopping center, and Governors Square shopping center, these are major commercial nodes intended to serve the surrounding region. The Department does not advocate the creation of a major commercial node at the intersection of Route 40 and Pleasant Valley Road and believes

that the lower intensity use of mini-storage and warehousing is a more appropriate use for this area.

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

In determining whether a zoning map amendment should be recommended or approved, all of the following factors shall be considered:

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

The 2012 update to the New Castle Comprehensive Development Plan states this parcel has a future land use designation Commercial/Office/Industrial which is consistent with the proposed reconfirmation of rezoning of Commercial Regional zoning.

B. Consistency with the character of the neighborhood.

The proposed commercial use of the property for mini storage is consistent with the existing commercial corridor along US Route 40. The project proposes to keep the existing buffer that is in place and to add additional landscaping and fencing along the LaGrange side of the development.

C. Consistency with zoning and use of nearby properties.

The reconfirmation of the Commercial Regional (CR) zoning expansion is consistent with other properties with like zoning along the US Route 40 corridor. It should be noted that while the CR zoning district does allow for more intensive commercial uses that would not be consistent with the surrounding zoning and use of nearby properties; the use of mini storage at the subject property as proposed should have low impact on nearby properties.

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

The site is considered a Brownfield site by DNREC as a large portion of the property is a pre-existing capped landfill. Due to the existence of the capped landfill, unobtrusive nonresidential uses should be considered thereby the former Suburban zoning would not be applicable.

E. Effect on nearby properties.

A reconfirmation of rezoning to Commercial Regional extending into a former residential area and historic area, the proposed use has the potential to adversely affect adjacent residential properties. However, if the property is developed consistent with what has been submitted on the exploratory plan along with added landscape buffers then the effect will remain minimal.

DEPARTMENT OF LAND USE RECOMMENDATION

The Department has considered the *Standards for Zoning Map amendment* in **Section 40.31.410**, A through E, the proposed rezoning, and comments received from agencies and the public. Based on this analysis the Department is of the opinion that the standards are met by this proposal.

The Department of Land Use recommends **CONDITIONAL APPROVAL** of Ordinance 20-084 with the following conditions:

1. To provide a solid 8-foot vinyl fence designed to blend with the landscaping as depicted on Exhibit B which shall be maintained by the owner; noting that the required bufferyard opacity shall be met exclusive of the vinyl fence.
2. To provide landscaping as depicted on Exhibit B subject to the approval of the Department of Land Use; and
3. To provide building elevations for buildings A and B which are along Route 40 consistent with what was provided to the Department of Land Use and the Planning Board at the Public Hearing.

PLANNING BOARD RECOMMENDATION

At its business meeting held on September 27, 2021 the Planning Board considered the recommendation offered by the Department of Land Use. On a motion made by Ms. Gray and seconded by Mr. Daigle, the Board voted to recommend **CONDITIONAL APPROVAL** of Ordinance 21-084 subject to the condition made by the Department of Land Use and to add "...maintained and cleaned by the owner..." as part of Condition 1. The motion was adopted by a vote of 9-0-0-0 (Yes: Cahill-Krout, Cochran, Daigle, Drake, Gray, McGlinchey, Snowden, Visvardis, Peterson; No: none; Abstain: none; Absent: none).

In discussion preceding the vote, the following comments were offered:

Chairwoman Peterson recalled that there were several members of the public who attended the public hearing who explained that there was not adequate review or time for discussion between the neighboring development and the applicant and that they had asked that the Board continue the application to allow for the two entities to meet. Chairwoman Peterson stated that it is her understanding that since the public hearing, the community and the applicant did meet. Mr. Gibbons reaffirmed that the applicant did meet with the neighboring community and their state representatives on August 25, 2021 and that the applicant provided a supplement which included the findings of that discussion. Chairwoman Peterson stated that the supplement indicated that the community wanted a condition of landscaping that meets the bufferyard opacity and an 8-foot vinyl fence. Mr. Gibbons reaffirmed that this was a condition that was requested by the community per the supplement that the applicant provided.

Mr. Snowden explained that the supplement also included a condition on required maintenance to retain a clean and maintained appearance of the fence. He continued and asked how that would be enforced. Mr. Gibbons replied the property maintenance code requires maintenance of a fence be kept in good condition. He also explained that if the fence is not kept in good condition that it may become a record plan violation since the fence is depicted on the record plan. Antoni Sekowski, from the Department of Land Use added that the property maintenance code required the fence to be maintained but does not speak to the requirement that the fence would need to be cleaned. He also stated that if the Board would like the condition that the fence required to be cleaned then the Board can certainly impose that as part of its condition. Mr. Snowden asked that if the LaGrange community did call code enforcement then how would code enforcement know to check the record plan to check what the maintenance requirements are. Mr. Sekowski stated that it would be difficult and there would be no way of knowing unless there was a condition that would be an added note to the landscape plan that would state the requirement for cleaning. Chairwoman Peterson stated that the recommended condition by the Department generally states that the fence be maintained but does not specifically state “cleaning”, would the Board need to add this if they want it as a condition. Mr. Sekowski explained that there must be general maintenance of the fence and stated that if the Board wanted it to specifically state cleaning that the Board would need to be make it a condition as part of their motion.

Chairwoman Peterson asked the Board if they would like to add “clean” as part of one of their conditions. Several Board members stated that they do believe that this should be included as part of the condition.

Chairwoman Peterson asked if the fence that is being referenced is an existing fence or if it is a new fence. Mr. Gibbons explained that the fence refenced is the proposed new fence to be installed.

No other questions or comments were made by the Board.

STATUTORY GUIDELINES

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



Richard E. Hall, AICP date
General Manager
Department of Land Use



10/19/2021

Karen Peterson date
Chair
Planning Board

Introduced by: Mr. Cartier
Date of introduction: 6/28/11

ORDINANCE NO. 11-073

TO REVISE CHAPTER 7 OF THE *NEW CASTLE COUNTY CODE* (ALSO KNOWN AS THE “PROPERTY MAINTENANCE CODE”) REGARDING INSTANT TICKETING

WHEREAS, New Castle County adopted a new Property Maintenance Code, which became effective on June 7, 2005; and

WHEREAS, in July of 2008, New Castle County adopted Substitute No. 1 to Ordinance No. 08-073, which amended the Property Maintenance Code to authorize the use of instant ticketing as a method of administrative enforcement; and

WHEREAS, Arden, Ardencroft and Ardentown are incorporated areas that have opted to receive County Code Enforcement services, and parking on the grass and tree debris are customarily found within The Ardens; and

WHEREAS, the leaseholders in all three incorporated municipalities voted to support changes to the Property Maintenance Code that would make it legal in The Ardens to park vehicles on a non-hardened surface and to have broken tree limbs on residential properties, and those changes are required to preserve the character of these historic villages; and

WHEREAS, New Castle County Council finds that the provisions of this Ordinance are rationally and reasonably related to legitimate government interests including, but not limited to, the protection and preservation of the public health, safety, prosperity, general welfare, and quality of life.

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

Section 1. *New Castle County Code* Chapter 7 (“Property Maintenance Code”), Section 7.01.002 (Amendments to the International Property Maintenance Code”), Chapter 3 (“General Requirements”) is hereby amended by the addition of the underlined text as set forth below:

CHAPTER 3. GENERAL REQUIREMENTS

...

SECTION 302. EXTERIOR PROPERTY AREAS

...

Section PM 302.8.5.3 Less than two (2) Acres . . .

Section PM 302.8.6, Parking of vehicles, in any residential zoning district, the parking or storage of any vehicle, recreational vehicle, or off-highway vehicle is prohibited, unless it is parked or stored on a hardened surface constructed of material treated or covered with brick, block, pavers, stone, concrete, asphalt or crushed decorative rock. The surface must completely extend the entire length of the vehicle. This subsection is subject to the following exceptions:

Section PM 302.8.6.1, When such vehicles are parked . . .

Section PM 302.8.6.2, Construction vehicles, provided they are . . .

Section PM 302.8.6.3, the provisions of Section PM 302.8.6 do not apply to Arden, Ardentown and Ardencroft.

Section PM 302.9, Graffiti, The exterior of all structures . . .
...

Section PM 302.10, Outside storage of household items . . .

Section PM 302.11, Outside storage or accumulation of debris, Except during active construction the outside storage or accumulation of debris, including but not limited to, garbage, trash, rubbish, refuse, rock, rubble, broken concrete, piping and other building materials, wood (excluding stacked firewood), tires or automotive parts (irrespective of age or condition), is prohibited in any residential zoning district.

Section PM 302.11.1, Exception, fallen tree limbs and branches shall not be considered debris in Arden, Ardentown and Ardencroft.

Section PM 302.12, Responsibility to keep shrubs and trees trimmed . . .

...

Section 2. Inconsistent ordinances and resolutions repealed. All ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict herewith are hereby repealed upon the effective date of this ordinance.

Section 3. Continuation of existing ordinances and resolutions. The sections appearing in this ordinance, so far as they are in substance the same as those ordinances and resolutions adopted and included in the *New Castle County Code*, shall be considered as continuations thereof and not as new enactments.

Section 4. Severability. It is hereby declared to be the intention of the County Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional or invalid by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance. If any provision of this ordinance

is found to be unconstitutional or void, the applicable former ordinance provisions shall become effective and shall be considered as continuations thereof and not as new enactments regardless if severability is possible.

Section 5. Other laws. The provisions of this Chapter shall not be deemed to nullify any provisions of local, state, or federal law.

Section 6. Effective Date. This ordinance shall become effective immediately upon its adoption by County Council and approval by the County Executive or as otherwise provided in 9 *Del. C.* §1156.

Approved on:

Adopted by County Council of
New Castle County on:

County Executive
New Castle County

President of County Council

SYNOPSIS: This ordinance amends the Chapter 7 Property Maintenance Code to clarify that, within the three Ardens (Arden, Ardentown and Ardencroft), vehicles may be parked on non-hardened surfaces and fallen tree branches and limbs shall not be ticketable as debris.

FISCAL NOTE: There will be a minimal fiscal impact upon the adoption of this legislation.

NEW CASTLE COUNTY COUNCIL MONTHLY SCHEDULE

Via Zoom Webinar &
1st Floor Council Chambers
800 N. French Street; City/County Building
Wilmington, DE 19801

November 2021
(Subject to change)

Live and archived feeds of all County Council meetings can be viewed at:
<https://www.nccde.org/2080/Live-Video-and-Video-Archive>

Tuesday, November 23, 2021	3:00 p.m. 3:30 p.m. 4:00 p.m. 4:30 p.m.	Executive Committee Community Services Finance Committee Council Meeting
Tuesday, December 7, 2021	2:00 p.m. 2:30 p.m.	Public Works Land Use Committee
Tuesday, December 14, 2021	3:00 p.m. 3:30 p.m. 4:00 p.m. 4:30 p.m.	Executive Committee Public Safety Finance Committee Council Meeting

****Under Title 29, Section 10006A of *Delaware Code*, New Castle County Council is holding this meeting as a telephone and video conference, utilizing **zoom** 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://nccde.org/AgendaCenter/County-Council-1>

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.

SAMPLE ONLY SMILEY