

Introduced by: Ms. Durham, Mr. Cartier,
Mr. Carter
Date of introduction: June 9, 2020

**SUBSTITUTE NO. 1 TO ORDINANCE NO. 20-071
AS AMENDED BY FLOOR AMENDMENTS NOS. 1, 2 AND 3**

**TO AMEND *NEW CASTLE COUNTY CODE* CHAPTER 6 (“BUILDING CODE”),
REGARDING ARTICLE 2 (“DEFINITIONS”) AND ARTICLE 3
 (“ADMINISTRATION”), *NEW CASTLE COUNTY CODE* CHAPTER 40 (ALSO KNOWN
AS THE UNIFIED DEVELOPMENT CODE OR “UDC”), REGARDING ARTICLE 7
 (“TRANSFERABLE DEVELOPMENT RIGHTS AND BONUSES”), ARTICLE 15
 (“HISTORIC RESOURCES”), AND ARTICLE 33 (“DEFINITIONS”) REGARDING
CODE PROVISIONS RELATING TO HISTORIC RESOURCES**

WHEREAS, New Castle County (“County”) has engaged in a comprehensive review of the *New Castle County Code* (“Code”) to identify opportunities for standards that make it possible for the County to better protect historic resources through new standards and *Code* revisions consistent with UDC standards for technical compliance and internal consistency; and

WHEREAS, based on a comprehensive review of the *Code*, the County has updated certain standards as provided; and

WHEREAS, the Department of Land Use has continued to review, interpret, and monitor the application of the *Code* with regard to historic resources and has identified additional clarifications, corrections, improvements and changes necessary to further enhance the Code's standards; and

WHEREAS, the preservation and protection of buildings, structures, sites, objects, districts and landscape features of historic, architectural, cultural, archeological, educational and aesthetic merit are critical to the character of the County; and

WHEREAS, the lack of maintenance of historic structures warrants attention, and their preservation is encouraged; and

WHEREAS, the current tools for preservation regarding historic resources that are part of a land development plan need strengthening; and

WHEREAS, requiring a preservation program for historic structures as part of a land development plan that addresses measures to help assure that the structural and architectural components are protected and reinforced to stabilize and maintain the essential form of the building or structure is beneficial; and

WHEREAS, demolition by neglect of historic structures identified to be restored as part of the planning process will be further reduced by designation of these properties as Historic overlay zoning districts prior to recordation, by adding requirements for routine maintenance and repair, and by requiring scheduled inspections to ensure properties do not decay or deteriorate to the point of meeting the criteria for condemnation; and

WHEREAS, providing incentives to developers may assist the goal of preservation; and

WHEREAS, New Castle 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 6 (“Building Code”), Article 2 (“Definitions”), Section 6.02.001 (“Definitions”) is hereby amended by adding the material that is underscored, as set forth below:

Sec. 6.02.001. Definitions.

The following words, terms, and phrases, when used in this Chapter . . .

Applicant means an individual or a person who is a . . .

Historic Alteration means new additions, exterior alterations, or new construction that impact the character, massing, size, scale, or architectural features of an historic structure or its cultural setting.

Section 2. *New Castle County Code* Chapter 6 (“Building Code”), Article 3 (“Administration”), Section 6.03.012 (“Permits”) is hereby amended by adding the material that is underscored, as set forth below:

Sec. 6.03.012. Permits.

A. *Required.* Any permit contractor endorsement holder . . .

C. *Work exempt from permit.* Exemptions from permit requirements of this Chapter shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this Chapter or any other laws or ordinances of this jurisdiction. Properties located within an Historic overlay zoning district require review in accordance with Section 40.15.161 of this Code. Permits shall not be required for the following:

Section 3. *New Castle County Code* Chapter 6 (“Building Code”), Article 3 (“Administration”), Section 06.03.020 (“Special guidelines for work done on historic structures”) is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Sec. 6.03.020. Special guidelines for work done on historic structures.

A. [~~*Permits*~~]Review for historic structures.

1. [~~Any person desiring to erect, reconstruct, significantly alter, restore, or relocate any building or structure within a historic zoning district or any property which is eligible to be zoned H (Historic), shall first secure the approval of the Historic Review Board of New Castle County.~~]The Department shall not issue any permit for an exterior historic alteration, demolition, relocation, construction or reconstruction on any historic resource

within, or eligible for, Historic overlay zoning unless first heard by the Historic Review Board (“HRB”). An Historic Resource application must be filed with the Department in order to appear before the Board. Historic Resource applications are reviewed in accordance with Section 40.15.160 and Section 40.15.210 of this Code.

- a. Based upon its public review for properties within an Historic overlay zoning district, the HRB shall provide a written decision in accordance with Section 40.31.370.
 - b. Based upon its public review for properties outside of Historic overlay zoning districts, the HRB shall provide a written recommendation in accordance with Section 40.31.370.
 2. ~~[After approval by the Historic Review Board, the Code Official shall have the authority to require a building permit and a certificate of occupancy or use for the erection, reconstruction, significant alteration, restoration or relocation of any historic building or structure.]~~Once a building permit has become invalid, the applicant must reapply to the ~~[Historic Review Board]~~HRB before a new building permit is issued.
 3. *Failure to comply with permit conditions.*
 - a. If the ~~[Historic Review Board]~~HRB grants approval under this Section, the person seeking to construct or alter any structure or addition shall do so in strict compliance with the features of the ~~[plan]~~construction documents submitted to and approved by the ~~[Historic Review Board]~~HRB. Before any certificate of occupancy is granted to the owner, the Department ~~[staff]~~shall inspect the property to determine if the ~~[structure complies]~~improvements comply with the ~~[plans]~~construction documents and conditions as set forth ~~[in the permit]~~by the HRB. If the ~~[Planner]~~Department finds that the structure does not conform, no certificate shall be issued, and written notification shall be provided to the applicant.
 - b. If within thirty (30) working days of ~~[notification]~~the date of issuance of notice to the applicant that a structure does not conform, the person has made no apparent effort to bring the structure into compliance or arrange for an alternative approval from the ~~[Historic Review Board]~~HRB, the Code Official shall request the County Attorney to institute the appropriate legal proceedings. Failure to comply with the terms of a permit granted under this Section or in violation of a plan approved by the ~~[Historic Review Board]~~HRB, shall constitute a violation.
- B. *Demolition of historic structures.*

1. ~~[The Code Official shall delay for up to twenty (20) working days from receipt of a demolition permit application, the issuance of any demolition permit for any building or structure thought to be over fifty (50) years of age. Within twenty (20) working days of receipt of such permit application, the Code Official shall refer such application to the Historic Review Board for any building or structure thought to be fifty (50) years of age or more, and where the Code Official believes the building or structure demonstrates one or more of the criteria stated in Section 40.15.110 of this Code. If the Historic Review Board determines the building or structure is historically significant, for reasons it shall state in a written opinion to be issued to the Code Official no later than forty five (45) days from the date of referral of the demolition permit application to the Historic Review Board, the~~

~~Historic Review Board may order an additional delay in the issuance of the permit not to exceed nine (9) months from the date the written opinion was provided to the Code Official, during which time alternatives to demolition shall be sought.] A demolition permit shall not be issued until the Department has determined whether the structure is eligible for Historic overlay zoning as defined by the criteria for designation in Section 40.15.110 of this Code. The Department shall determine the eligibility within twenty (20) days of receiving a complete application.~~

- a. Where the resource is found eligible for Historic overlay zoning, the applicant must provide a complete Historic Resource application to the Department, at which time the application shall be scheduled before the HRB at its next available public hearing after required public notice. A demolition permit shall not be issued until the HRB has issued a recommendation or decision on the application.
 - b. Where the resource is not found eligible for Historic overlay zoning, the demolition permit shall be processed by the Department as otherwise provided by the Code.
2. In order to seek mitigation or alternatives to demolition, the HRB may hold the issuance of the demolition permit for a period not to exceed nine (9) months from the date of the HRB written opinion to the Code Official. HRB findings shall be issued to the Code Official in a written recommendation in accordance with Section 40.31.370.
- a. The HRB has the authority to deny demolition permits that are located within an Historic overlay zoning district pursuant to Section 40.15.160 of the New Castle County Code.
 - b. The HRB has the authority to require documentation in accordance with Section 40.15.210.B of this Code prior to the release of a demolition permit for any structure determined eligible for Historic overlay zoning as defined by the criteria for designation listed in Section 40.15.110 of this Code.

[2]3. Upon verification by the Historic Review Board . . .

Section 4. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 1 (“Title and Applicability”), Division 40.01.100 (“Applicability”) is hereby amended by adding the material that is underscored, as set forth below:

Sec. 40.01.130. Sunsetting of recorded subdivision or land development plans.

A. *Plans recorded after . . .*

D. If construction has . . .

1. Reapprove the record . . .

3. If a rezoning of the property occurred simultaneously with the approval of the preliminary or exploratory plan and the Department has determined that a new revised exploratory plan is required, the zoning of the property shall revert to the previous zoning district. The processing of the revised exploratory plan shall require full compliance with the then current rezoning procedures. Exception: Historic overlay rezoning shall not revert to the

previous zoning designation and shall remain in place notwithstanding the sunset provisions of this Section.

Section 5. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 2 (“Establishment of Zoning Districts”), Division 40.02.200 (“Statement of purpose and intent of districts”) is hereby amended by adding the material that is underscored, as set forth below:

Sec. 40.02.240. Special districts.

A. *Intensive uses.* Two (2) special districts . . .

D. *Overlay zones.* The Historic (H) overlay zoning district is an overlay zone to preserve the County's historic heritage. The Hometown (HT) Overlay district may be used for communities built before zoning regulations were established (pre-1954) and with a unique development pattern that does not conform to existing zoning standards. These districts are established through the rezoning process for amendments to the Zoning Map and shall be considered a new zoning district which provides additional standards to the underlying zoning district.

Section 6. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 7 (“Transfer Development Rights and Other Incentives and Bonuses”), Division 40.07.400 (“Historic preservation bonus”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Sec. 40.07.410. Eligibility.

~~[Properties with]~~Land development applications that contain historic resources meeting the criteria for designation pursuant to Section 40.15.110 of this Chapter are ~~[shall be]~~eligible for bonuses to ensure the preservation of the historic resources.

A. If the preservation of . . .

B. ~~[Where a historic review conducted pursuant to Section 40.31.280 determines that the resource will be difficult to maintain or preserve]~~When a property is rezoned to an Historic overlay zoning district, the Historic Review Board may recommend to the Department that increased density to the development or transfer development rights be permitted. To receive such bonuses the developer-~~[will need to]~~must provide ~~[reports concerning the state of the resource, compiled by a structural engineer, and cost estimates for maintenance or renovation]~~a Preservation Plan in accordance with the provisions of Section 40.15.310.B.

~~[C. In the Historic Overlay District, the Historic Review Board shall make its recommendations. In all other cases the Department shall consult with the Historic Review Board.]~~

Sec. 40.07.430. Historic resources.

Historic resources that are preserved and restored for use shall not be counted as part of the maximum permitted development ~~[if the site is large enough to permit subdivision or increased development]~~as determined by Article 5 of this Chapter.

A. ~~[Detached single-family use. The]~~ A residence that is preserved for detached single-family use shall not be counted as one of the permitted residential lots as determined by Article 5, but shall be a bonus unit if it is preserved and restored.

B. ~~[Large single-family. Where the historic resource was a single family house, but is deemed too large to be effectively maintained as a single family unit, the Department may permit it to be converted to either a duplex or two (2) flat type unit. In this case, neither unit]~~ Historic structures larger than 2,000 square feet in gross floor area, excluding garages, unfinished basements, enclosed mechanical and storage areas, may be converted to a duplex and shall not be counted as one ~~[(4)]~~ of the permitted dwelling units as determined by Article 5.

C. ~~[Multi-family. The r]~~ Residential units that are preserved for multifamily uses shall not be counted towards the permitted units as determined by Article 5, but shall be a bonus for preservation and historic rehabilitation or restoration~~renovation~~.

D. ~~[Nonresidential. The]~~ When structures are preserved for nonresidential uses, the gross floor area of the historic resource ~~[may]~~shall not be counted towards the ~~[units]~~permitted gross floor area as determined by Article 5, ~~[but]~~and shall be a bonus for preservation and historic rehabilitation or restoration~~renovation~~ at a percentage determined by the Historic Review Board and in concurrence with the Department of Land Use. ~~[The Department, after recommendation from the Historic Review Board, shall award the increase if:~~

1. ~~It does not exceed by more than ten (10) percent the Article 5 limit. If necessary, greater height may be permitted on other resources to enable the developer to achieve the floor area.~~
2. ~~The proposed development on the site is designed and landscaped for maximum compatibility with the historic resource.]~~

E. ~~[Open space.]~~ The preservation and historic restoration or rehabilitation~~renovation~~ of ~~[a]~~historic resources determined to be either an open context site or an enclosed context site in accordance with Section 40.15.120, shall be eligible for the following where included in passive open space as approved by the Department~~[also requires the preservation of open space around the historic resource shall be implemented by the following]:~~

1. The ~~[entire]~~open space may be sold ~~[to the user of the building]~~for use as a ~~[building or residential]~~developable lot. The lot ~~[shall]~~must be subject to a conservation easement ~~[. Stipulations in the easement]~~that prevents any ~~[resource or development]~~improvement on the property which would detract from the historic setting~~[shall be approved by the Department]~~.
2. The open space may be split into a lot and ~~[common]~~open space to be maintained by the maintenance organization. The lot and open space ~~[shall]~~must be subject to a conservation easement~~[. Stipulations in the easement]~~ that prevents any ~~[resource or development]~~improvement on the property which would detract from the historic setting~~[shall be approved by the Department]~~.

Sec. 40.07.440. Historic preservation ~~renovation~~ incentive.

~~[A historic resource may require significant expensive renovations and costly maintenance that could be deemed fiscally impossible. The Department, upon a recommendation from the Historic~~

~~Review Board, shall review and consider a bonus for the renovation and long-term maintenance of such historic resources.]A land development plan containing an historic resource meeting the criteria for designation pursuant to Section 40.15.110 may qualify for a bonus when the applicant proposes rehabilitation or restoration of such historic resource. To qualify for consideration, the applicant must submit with the land development application a pro-forma indicating the cost of the historic rehabilitation or restoration versus the fair market value of the restored or rehabilitated property.~~

A. ~~[The Department shall review the pro forma indicating the cost of renovation versus the expected value of the renovated property on the market.]The Historic Review Board may recommend to the Department an appropriate bonus (if any) for the land development plan.~~

B. ~~[A bonus of dwelling units in an open space planned development, additional floor area for nonresidential properties, or transferable development rights may be offered to provide the incentives needed to renovate and preserve the historic resource.]Upon receiving a recommendation from the Historic Review Board, the Department shall consider the following bonuses for the land development application that provide incentives to rehabilitate, restore, and preserve the historic resources:~~

1. Bonus of dwelling units in a major residential land development plan.
2. Additional floor area for nonresidential properties.
3. Transferable development rights.
4. Impact fee reduction.
5. Utilization of an historic Moderately Priced Dwelling Unit(s) (MPDU) in accordance with Section 40.15.320.

Section 7. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 7 (“Transferable Development Rights and Bonuses”), Division 40.07.500 (“Traditional neighborhood housing program”), is hereby amended by adding the material that is underscored, as set forth below:

Sec. 40.07.510. Mandatory applicability.

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

A. On all rezoning applications proposing . . .

E. This Section shall not apply to the acreage associated with the rezoning of historic resources to be preserved in accordance with Division 40.15.300.

Section 8. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 15 (“Historic Resources”), Division 40.15.000 (“Purpose”) is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Division 40.15.000. Purpose.

The preservation and protection of . . .

A. Identify and preserve historic buildings . . .

F. Encourage the historic restoration ~~renovation~~ and rehabilitation of buildings, structures, sites and objects which are designated as historic or which are located within and contribute to the character of districts designated as historic;

G. Promote the use of historic buildings, structures, sites, objects and historic districts for the education, pleasure and welfare of all citizens of the County; ~~[and]~~

H. Encourage public participation in identifying and preserving historical architecture and cultural resources through education programs and general awareness campaigns~~[-];~~ and . . .

Sec. 40.15.010. Applicability.

A. On any building, structure, site, or object within an ~~[h]~~ Historic overlay zone, no person shall undertake exterior alterations, demolitions, relocation, construction or reconstruction unless a permit is first obtained from the Department. The Department shall issue no permit until the Historic Review Board first reviews and approves the application for the permit.

B. No subdivision or land development plan affecting an ~~[h]~~ Historic (H) overlay zoning district or any property which is eligible to be zoned H ~~[(Historic)]~~ may be approved by the Department without the prior review and recommendation of the Historic Review Board. In determining the nature of the review required by this paragraph, the Historic Review Board shall consider all features of the subdivision and/or land development plan, including the landscape plan, building design, scale and location, lot size, proposed signage, relationship to adjacent properties and buildings and archaeological potential to determine whether the subdivision or land development will be in accordance with the interest and purposes of Division 40.15.000.

Section 9. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 15 (“Historic Resources”), Division 40.15.100 (“Designation”) is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, removing the current Figure 40.15.111.B, all of which shall be considered bracketed and stricken, and adding the below Figure 40.15.120.B, which shall be considered underscored in its entirety, as set forth below:

Division 40.15.100. ~~[Designation]~~ Historic (H) overlay zoning districts.

Historic (H) overlay zoning is intended to identify significant historic resources within the County that are worthy of preservation and recognition. Historic overlay zoning provides protection of, as well as incentives for the preservation of, historic resources. Properties within an Historic overlay zoning district are subject to additional review and regulation by the Historic Review Board for alterations, modifications, relocations, and demolitions. Historic overlay zoning district established pursuant to this Code shall be deemed an overlay zoning district on the otherwise applicable zoning district on the County Zoning Maps.

County Council may designate Historic (H) overlay zoning districts that encompass the boundaries of an historic resource's contextual classification in accordance with rezoning procedures in Article 31 of this Chapter.

Sec. 40.15.110. Criteria for designation.

A building, complex of buildings, structure, site, object or district may be designated for preservation as ~~[a historic zone if it can be demonstrated that]~~an Historic overlay zoning district if it is significant to the County as identified in this section. ~~[for its ability to meet one (1) or any combination of the following criteria. In addition, t]~~The resource must be at least fifty (50) years old, or exceptionally important to the County, and meet one (1) or any combination of the following criteria~~[- Buildings, structures, sites, objects, or districts less than fifty (50) years old may be recommended for designation as historic zones only if it can be demonstrated that the historic resource is exceptionally important to the County. Criteria for designation]:~~

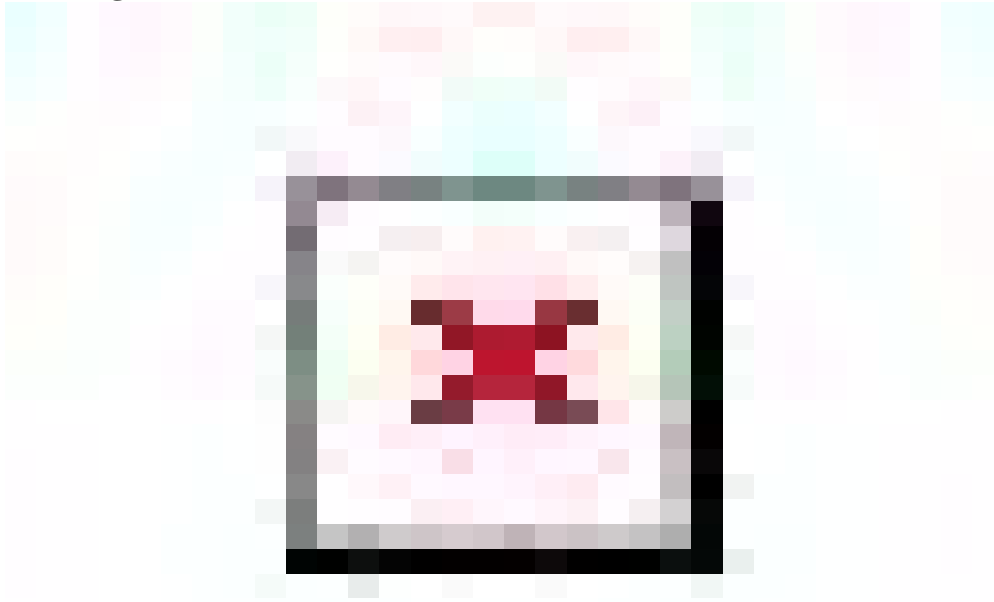
Sec. 40.15.~~[111]~~120. Contextual [C]classification of historic resources.

~~[These categories have been identified to enable the County to provide a certain predictability for developers in relation to properties of historic significance. By defining what is determined to be significant, the County indicates to developers those properties that require further consideration.]~~The resource proposed for [h]Historic overlay zoning [shall]must be classified into one [(4)] of the following categories as part of the rezoning process.~~[at the time of designation. These standards also will be applied to other historic resources within the County. These classifications will enable the County to grant bonuses based upon the implementation of historic preservation objectives.]~~ Historic resources are classified by their viewing area as determined by their context (parcel size, vegetation, topography, and surrounding development). The goal is to preserve landscapes that are part of the view into and out of historic resources. Figure 40.15.~~[111]~~120 illustrates the four (4) classifications.

A. *Villages and small nucleated settlements . . .*

D. *Small lot site . . .*

Figure 40.15.[111]120. Contextual classification of historic resources.



Sec. 40.15.[120]130. Written report.

All recommendations ~~[for]~~relating to ~~[h]~~Historic overlay zoning ~~[designations]~~applications ~~[shall]~~must be accompanied by a written report[s] prepared by the ~~[County]~~Historic Review Board.~~[explaining which of the qualities]~~ Such report shall explain if the resource possesses qualities listed in Section 40.15.110 and 40.15.[111]120 that warrant designation of such buildings, structures, sites, objects or districts as an an [h]Historic overlay zoning district. Boundary exhibits, photographs, video, drawings or other supporting data shall be included in the report.

Sec. 40.15.140. Uses.

A. Permitted Uses. All uses permitted in the underlying zoning district shall be permitted in the Historic overlay zoning district except as specified in this Section. In addition, the Department may permit additional uses in any zoning district in accordance with the adaptive reuse provisions of Section 40.15.150.

B. Prohibited Uses. All uses prohibited in the underlying zoning district are prohibited in the Historic overlay zoning district, notwithstanding the provisions of this Division. In addition, the Department may prohibit any use or rehabilitation of the resource that eliminates one or more of the characteristics that led to the property's designation.

Sec. 40.15.150. Adaptive reuse.

Within an Historic overlay zoning district, any significant historic resource may be converted or adapted into one of the following uses, provided it conforms to the following standards and procedures, and all other provisions of this Chapter.

A. Standards.

1. The building/structure shall have a minimum gross floor area of at least one thousand five hundred (1,500) square feet.
2. Structural or decorative alterations or additions that change the exterior character and/or historical or architectural significance of the structure are prohibited.
3. The gross floor area of any addition to the converted building/structure should not be greater than fifty (50) percent of the existing gross floor area unless determined appropriate by the Historic Review Board.
4. Proposed uses must be located and take access from an arterial or collector street. At its discretion and with DelDOT concurrence, the Department may permit such uses to locate, expand or rebuild taking access from other streets where vehicular and pedestrian safety is not compromised and the local neighborhood is not adversely impacted.
5. The lot upon which the structure and any permitted addition is situated must meet the minimum lot size for “other permitted use” in the underlying zoning district pursuant to Table 40.04.110 of this Chapter.

B. Uses.

1. Office Uses.
2. Commercial Retail and Service Uses, not exceeding 10,000 GFA.
 - a. Permitted Uses
 - i. Retail bakeries.
 - ii. Furniture and home furnishing stores.
 - iii. Hardware stores.
 - iv. Food and beverage stores.
 - v. Health and personal care stores.
 - vi. Clothing and accessory stores.
 - vii. Sporting goods, hobbies, books and music stores.
 - viii. Postal service, local office only.
 - ix. Couriers and messengers, local office only.
 - b. Prohibited Uses

- i. Outside storage of materials and finished products is prohibited.
 - ii. Drive-in facility.
3. Restaurant Uses, not exceeding 5,000 GFA.

In the instance that such use requires Special Use approval pursuant to Table 40.03.110, Board of Adjustment approval shall be sought as required by Section 40.31.430.

C. Parking Standards. To preserve and enhance the historic nature and minimize impact on surrounding context:

1. Parking may be reduced up to 20% of the minimum parking requirements in this Chapter.
2. The maximum number of parking spaces shall not exceed 115% of the minimum parking requirements in this Chapter.
3. These parking standards do not apply for a temporary or special event that has received approval in accordance with Section 40.03.330 of this Chapter.

D. Signage.

1. General Sign Practices. Sign usage should be reduced to avoid sign clutter and to minimize, to the greatest extent practicable, the amount of signage in the district.
2. Prohibited Signs. In addition to the prohibitions outlined in Section 40.06.040, the following signs are prohibited in an Historic overlay zoning district:
 - a. Electronic Variable Message Signs (EVMS), and
 - b. Off-premises advertising. No off-premises advertising, billboards, and other off-premises signage shall be permitted.
3. Size. All signs requiring a permit associated with a non-residential use in the Historic overlay zoning district shall be limited to fifty (50) percent of the sign area permitted in the underlying zoning district.
4. Height. All signs requiring a permit in the Historic overlay zoning district will be limited in height to fifteen (15) feet, or one-half of the maximum sign height permitted in the underlying zoning district, whichever is less.
5. Lighting. If lit, the light source shall be exterior to the sign using shielded, low wattage, and diffuse white light. Back-lit and internally illuminated signs are prohibited.
6. Advertising installed on the interior of window surfaces shall be considered a wall sign in the district, and shall cover no more than twenty (20) percent of the window on which it is located. Interior hung panels are permitted.
7. Temporary signs shall be permitted in the Historic overlay zoning district in compliance with the provisions of Section 40.06.040.C of the Unified Development Code.

8. Signs existing at the time of the adoption of this Article are considered nonconforming. If any nonconforming sign is hereafter relocated, replaced, removed, altered, or modernized in any way, the sign loses all nonconforming protection afforded under County law.

E. An Historic overlay zoning district must be in place prior to establishment of the use and issuance of any permit associated with the proposed use.

F. Further subdivision of the parcel is permitted in accordance with this Chapter provided that the site's contextual classification is retained.

Sec. 40.15.160. Permits within Historic overlay zoning districts.

No person shall undertake exterior historic alteration, demolition, relocation, construction or reconstruction on any building, structure, site, or object within an Historic overlay zoning district unless approval is first obtained from the Department.

A. The Department shall issue no permit within an Historic overlay zoning district until an Historic Resources application has been reviewed and approved by the Historic Review Board (HRB).

1. An Historic Resource application must be filed with the Department in order to be considered by the HRB.
2. The Department shall schedule the application for the next HRB public hearing.

B. The HRB shall approve or deny the issuance of the permit within seventy-five (75) working days after the Department's receipt of a complete Historic Resources application, whenever practicable. Failure of the HRB to make a determination within this time period shall be deemed to constitute an approval of the application, provided at least one regular meeting of the HRB, at which a quorum is present, is conducted within that time period.

1. Where the HRB denies the Historic Resources application, the Department shall not issue the permit.
2. Where the HRB approves the Historic Resources application, the Department shall grant the permit subject to the requirements of any applicable sections of this Chapter or this Code.
3. Where the HRB approves the Historic Resources application, but its approval is subject to conditions (e.g. documentation, archaeological investigation, design standards, building materials, etc.), the Department shall grant the permit subject to any conditions of the HRB, which may include the following:
 - a. Appropriate documentation, standards for which include, but are not limited to, the Historic American Buildings Survey (HABS), the Historic American Engineering Record (HAER), or the Historic American Landscape Survey (HALS) guidelines.

- b. Archaeological investigations, which must be completed in accordance with the Delaware Division of Historic and Cultural Affairs' guidelines for Archaeological Survey in Delaware.
 - i. The investigation must be completed by a Registered Professional Archaeologist (RPA) in consultation with the Delaware Division of Historic and Cultural Affairs.
 - ii. A report regarding the investigation must be provided to the HRB prior to any ground disturbance proposed for the project.
 - iii. The HRB may require certain measures, such as data recovery or avoidance, to protect significant archaeological values identified in the report which may be encountered in the area of the permitted activity.
- c. Architectural controls to preserve and restore the character of the historic resource(s).
- d. Lighting standards that provide for lighting fixtures that imitate the brightness and style of the building's historic period. The brightness and illumination shall be in keeping with the historic nature and of the lowest levels associated with the building's use.

C. When the HRB reviews an application for a permit required under this Section, it shall consider the following factors before reaching its decision on the application:

- 1. The purposes of this Article.
- 2. The historical, architectural, archaeological or aesthetic significance of the building, structure, site or object.
- 3. The effect of the proposed work on the building, structure, site or object and its appurtenances.
- 4. The design and compatibility of the proposed work with the character of the Historic overlay zoning district or with the character of its site, including the effect of the proposed work on neighboring structures.
- 5. The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings or other similar criteria.
- 6. For demolitions, the HRB shall consider whether the building, structure or object can be used for any purpose for which it is or may be reasonably adapted. To that end, the applicant must demonstrate that the sale of the property is impracticable (as documented per 7(h) below), that rental cannot provide a reasonable rate of return (as documented per 7(h) below), and that other potential uses of the property are not feasible or available. In no event will a sale be deemed impracticable, rental returns unreasonably low or other uses not feasible if the reason is deterioration of the property due to the owner, lessee, or person in charge's own intentional or gross negligence in maintaining the property.

7. Where an application for exterior alteration, relocation, construction or reconstruction is based on financial hardship, the Historic Review Board may lessen its requirements if the applicant can demonstrate the extent of the economic hardship. In examining a claim of economic hardship, the Board will look beyond the relationship of the cost of repairs and the purchase price or the "as is" value to sort out the extent to which an economic hardship is attributable to the owner's actions or inactions, or to circumstances beyond the owner's control that would have existed in any event. When a claim of undue economic hardship is made, the owner and/or parties in interest must provide evidence during the hearing upon the claim, describing the circumstances of the hardship. Minimum evidence shall include:
- a. Nature of ownership (individual business or nonprofit) or legal session, custody or control.
 - b. Financial resources of the owner or parties in interest.
 - c. Cost of repairs to the subject property.
 - d. Real estate taxes on the property in question for the prior two (2) years.
 - e. Market value, as established by an appraisal prepared by a professional appraiser qualified to do business in the State of Delaware.
 - f. Amount paid for the property, date of purchase, and party from whom purchased, including a description of the relationship between the seller and purchaser or other means of acquisition of title, such as by gift or inheritance.
 - g. For income-producing property only, itemized operating and maintenance expenses for the subject property, and annual cash flow, for the prior two (2) years.
 - h. Any and all listings of the property for sale or rent, price asked, and offers received for the prior two (2) years.
 - i. Annual gross income on the subject property for the prior two (2) years.
 - j. Annual debt service paid, if any, in the prior two (2) years.

Sec. 40.15.161. Work exempt from a permit within an Historic overlay zoning district.

If the property is in an Historic overlay zoning district, and proposed work is exempt from permit pursuant to Section 6.03.012 of the Code, the property owner must still submit an Historic Resources application to the Department describing the proposed work. If the Department determines that the proposed work does not follow the New Castle County Historic and Cultural Resource Design Guidelines, the application must be heard by the Historic Review Board (HRB). The HRB shall then determine what, if any, conditions are to be imposed upon the proposed work.

Sec. 40.15.170. Demolition by neglect.

The Department, consistent with Chapter 7 of the Code, will inspect properties within Historic overlay zoning districts annually to ensure compliance with the Property Maintenance Code and to ensure demolition by neglect does not occur. The Historic Review Board (HRB) and County

Council shall receive an annual summary report on these inspections and details on any property within an Historic overlay zoning district which is found to be noncompliant in order to ascertain whether demolition by neglect as defined in Chapter 7 of the Code is occurring. The owner of the property will be provided an opportunity to be heard as set forth in the Code and HRB rules and regulations before a determination is made in accordance with the process outlined in Section 7.01.002, PM 102.6.1. The Department will notify all known owners of a property in an Historic overlay zoning district on an annual basis that the historic property will be subject to periodic inspection to ensure compliance with this section.

Section 10. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 15 (“Historic Resources”), Division 40.15.200 (“Uses”) is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Division 40.15.200. ~~[Uses]~~Historic Review Board review standards.

Sec. 40.15.210. ~~[Permitted uses]~~Building and demolition permit review.

~~[The historic zone established pursuant to this Code shall be deemed an overlay zone on the otherwise applicable zoning district on the County Zoning Map. All uses permitted in the underlying zoning district shall be permitted in the historic zone except as specified in Section 40.15.220.]~~Pursuant to Section 6.03.020 of the *New Castle County Code*, the Historic Review Board (HRB) is responsible for reviewing permit applications and associated historic resource applications for properties that are eligible for Historic overlay zoning. The following standards and procedures shall apply to the HRB’s review:

A. Building permits. The HRB makes recommendations to the applicant regarding building permits subject to Section 6.03.020.A. of the *New Castle County Code*. The HRB may consider various aspects when providing advice on building permits and may consider impacts to the landscape and historic context of the surrounding area.

1. Items to consider for evaluation:

- a. The significance and historic context of the resource on an individual and district level;
- b. Material integrity of the resource in relation to the period of significance;
- c. Level of deterioration of the resource; and
- d. Potential presence of archaeological resources.

2. Impact to historic character of a resource

- a. Compatibility with the historic character of the resource regarding style, materials, scale, or location;
- b. Impact to historic objects, sites, or structures as defined in Section 40.33.300. of this Chapter;

- c. The protection, preservation, and enhancement of the character-defining features of the resource; and
- d. Proposed use of the resource.

B. Demolition permits. The HRB shall review demolition permits for historic resources that the Department has determined to meet the criteria for designation included in Section 40.15.110. The HRB may hold a demolition permit for nine (9) months in accordance with Chapter 6, during which time alternatives to demolition shall be sought. In addition to the criteria for designation, the HRB shall consider factors such as the following when reviewing demolition applications.

1. State of the resource.

- a. Level of deterioration and modification to original fabric of the resource.
- b. Reasons for deterioration which may include lack of maintenance, vacancy, loss of material integrity, or an act of God.
- c. Structural integrity as determined by a registered design professional licensed in the State of Delaware.

2. Cost of rehabilitation and financial hardship.

- a. Nature of ownership (e.g., individual, for profit business, or nonprofit).
- b. Cost of repairs to the subject property demonstrated through a third-party independent cost estimate to perform the proposed work.
- c. Fair market value of the land and improvements.
- d. Amount paid for the property, date of purchase, and party from whom purchased, including a description of the relationship between the seller and purchaser or other means of acquisition of title, such as by gift or inheritance.
- e. For income-producing property only, itemized operating and maintenance expenses for the property for the prior two (2) years and annual cash flow, for the prior two (2) years.
- f. Any and all listings of the property for sale or rent, price asked, and offers received for the prior two (2) years.

3. Documentation of the resource may be required at the discretion of the HRB prior to the Department's release of a demolition permit. Such documentation shall be in accordance with the Historic American Buildings Survey (HABS) and the Historic American Engineering Record (HAER) guidelines and may include the following:

- a. Written historical narrative. Such narrative shall include a general history of the resource, an analysis of its relationship to its surrounding environment, and the persons and events associated with its establishment and development, if applicable.

- b. Field documentation including measured drawings and digital photography.
- c. State of Delaware Cultural Resource Survey (CRS) forms.

Sec. 40.15.220. ~~[Standards for review]~~Land development plan review and historic resources.

~~[In reviewing the property, the Historic Review Board may impose:~~

- ~~A. Architectural controls to preserve and restore the character of the historic resource(s).~~
- ~~B. Sign restrictions in terms of size, height, lettering, lighting, and style that are stricter than the maximum of the district to be consistent with the historic character.~~
- ~~C. Lighting standards that provide for lighting fixtures that imitate the brightness and style of the building's historic period. The brightness and illumination shall be in keeping with the historic nature and of the lowest levels associated with the building's use.~~
- ~~D. Exterior storage is prohibited, except where deemed appropriate.]~~

The Historic Review Board (HRB) shall consider the following (as applicable) when making recommendations in accordance with Section 40.15.010.B on land development applications:

- A. Historic context in relation to past themes, time periods, geography, events, and cultural values.
- B. Surrounding environment and landscape:
 - 1. A conceptual landscape plan showing proposed plantings that enhance, or mitigate impact to, an historic resource and its historic context.
 - 2. Site context as defined by features such as a parcel size, vegetation, topography, surrounding character and proximity to nearby development.
 - 3. Potential for archaeological resources.
- C. State of extant historic resources:
 - 1. Level of deterioration and modification to original fabric of the resource.
 - 2. Reasons for deterioration which may include lack of maintenance, vacancy, loss of material integrity, or an act of God.
 - 3. Structural integrity as determined by a registered design professional licensed in the State of Delaware.
- D. Compatibility of the proposed development with extant historic resources:
 - 1. Consistency with exterior style and features of surrounding resources, as well as preservation and enhancement of character-defining attributes.

2. Harmony between existing and proposed structures regarding massing, proportions, scale, and building orientation.
3. Suitability of the proposed development's location and siting regarding sensitivity to historic resources.

Sec. 40.15.221. Archaeological resources.

The Historic Review Board (HRB) has the authority to require background and comparative research to assess for the potential of archeological resources. Research must be completed in accordance with the Delaware Division of Historic and Cultural Affairs' guidelines for Archaeological Survey in Delaware. Findings of the evaluation must be completed by a Registered Professional Archaeologist and shall be in the form of a report presented to the HRB. Based on the findings of the archaeological evaluation, the HRB may recommend the following to the Department:

- A. Additional archaeological testing to further define areas of archaeological potential.
- B. Design the proposed development to avoid areas of archaeological potential.

Sec. 40.15.230. ~~[Prohibited uses]~~ National Register nominations.

~~[All uses prohibited in the underlying district are prohibited in the historic district. In addition, the Department may prohibit any change in use that meets the following criteria:-~~

- A. ~~Requires the building to be expanded to an extent that its historic character and style are lost.~~
- B. ~~Renovations or expansions to the use that alter the exterior so as to destroy one (1) of the characteristics that led to the property's designation.]~~

The Historic Review Board (HRB) shall review nominations to the National Register of Historic Places. Upon submittal of a nomination form, the HRB shall hear a presentation by the applicant at a scheduled public hearing and consider public testimony on the nomination. At the following business meeting, the individual members of the HRB shall identify which criteria the nomination satisfies prior to voting on the nomination.

A. Where the HRB finds the nomination acceptable, the Department of Land Use shall forward the nomination, signed by the County Executive, to the Delaware State Review Board for Historic Preservation for consideration.

B. Where the HRB finds the nomination unacceptable, it shall provide feedback to the nominator regarding necessary changes, if applicable, to meet the required criteria.

[Sec. 40.15.240. Historic building/structure, adaptive reuse.

In any zoning district, an historical and/or architecturally significant building/structure may be converted or adapted into an office use. The application shall include: (1) construction plans if an

addition or alteration is planned; and (2) a site plan showing parking areas, accessways, buffers, landscaping, signs, lighting structures, the relationship of the proposed conversion to adjacent residential properties, and the present and proposed location and use of any accessory structure. The conversion shall conform to the following standards:

A. ~~The building/structure shall have a minimum gross floor area of at least two thousand five hundred (2,500) square feet and shall have been constructed at least fifty (50) years before the date of application for conversion and shall meet one (1) or more of the criteria for historic zoning designation. An application for historic zoning shall be filed with the Department and the H Zoning District Overlay shall be in place prior to issuing a building permit or establishing the use.~~

B. ~~Structural or decorative alterations or additions that change the exterior character and/or historical or architectural significance of the structure are prohibited. The gross floor area of any addition to the converted building/structure shall not be greater than fifty (50) percent of the existing gross floor area and the converted building/structure and proposed addition shall comply with all other provisions of this Chapter. No structured (deck) parking facilities are permitted.~~

C. ~~Access to the lot and buildings/structures from an arterial or collector roadway is required. The Department may permit access from a street, other than an arterial or collector street, when in the opinion of the Department the proposed access will not have an adverse impact on the surrounding properties also taking access from this street. An applicant which proposes access from a minor street shall show this on a plan to be advertised and discussed at the Historic Review Board public hearing and the Planning Board public hearing, prior to the Department's determination in the historic rezoning recommendation.~~

D. ~~The lot upon which the structure and any permitted addition is situated shall be classified as an open context or enclosed context site as defined in Subsection 40.15.111.B or C. Except as provided below, the lot shall be at least three (3) acres and shall contain a minimum of sixty (60) percent open space. A lot may be less than three (3) acres where said lot is at least fifty (50) percent larger than all adjacent lots, and, further provided, that the use shall then be limited to office uses which do not rely on customers or clients on-site. No existing or proposed buildings, parking and loading areas, access drives or other impervious cover, excluding areas of impervious cover that are contributing elements to the historic content of the resource, shall be part of any open area.~~

E. ~~Upon the use of the provisions in this section, no further subdivision of the lot shall be permitted.]~~

Section 11. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 15 (“Historic Resources”), Division 40.15.300 (“Preservation of historic resources on record plans”) is hereby established by adding the material that is underscored as set forth below:

Division 40.15.300. Preservation of historic resources on record plans.

This Division discusses procedures for the Preservation Plan.

Sec. 40.15.310. Preservation of historic resources on major land development plans.

Where a major land development application has an historic resource that has been, or is subsequently, determined eligible for Historic (H) overlay zoning pursuant to the criteria for designation included in this Article, the following conditions or procedures must be met:

A. The parcel containing the historic resource must be rezoned H prior to recordation of the plan. For the purposes of this Division, a parcel containing the historic resource may be subdivided to a minimum lot size not smaller than the historic context as determined in Section 40.15.120, and in accordance with this Chapter.

B. A detailed Preservation Plan must be submitted to the Department that describes the measures to be taken for the historic rehabilitation or restoration, and preservation, of the historic resource. The Department shall review the Preservation Plan and obtain recommendations and approval of the proposed plan from the Historic Review Board. After Department approval, a note referencing the Preservation Plan must be memorialized on the record plan. The Preservation Plan must:

1. Contain an executive summary that describes the contents of the plan and the historic resource(s) to be managed. The ownership of resource(s) must also be identified.
2. Identify existing conditions and describe the historic resources on-site and their context. The description shall be in accordance with the Historic American Buildings Survey (HABS), the Historic American Engineering Record (HAER), or the Historic American Landscape Survey (HALS) guidelines for Historical Reports.
3. Identify the goals and objectives for managing the historic resource(s) on site. Such objectives must be established along with methods of measuring implementation to ensure that the goals are met.
 - a. Short-term maintenance. The Preservation Plan must outline any emergency repairs and work necessary to address the resource's structural integrity, weather tightness, and protection from the elements, and the schedule for performing the short-term maintenance. Examples of short-term maintenance are roof, siding, exterior paint, and foundation repairs.
 - b. Restoration measures. The Preservation Plan must outline a strategy and schedule to bring the resource(s) to a state of habitable condition that is ready for use. The plan should also identify methods or materials to be used to restore the resource(s), including architectural elements, forms, and character defining features specific to its Period of Significance.
 - c. Long-term maintenance. The Preservation Plan must establish a schedule of maintenance measures that ensure the resource(s) remain in good condition consistent with the Property Maintenance Code.
4. Identify a dollar amount, acceptable to the Department, which will be equivalent to the cost of the short-term maintenance and restoration of the historic resource(s). The cost must be based upon a third-party estimate, or other basis acceptable to the Department. The developer must provide twenty (20) percent of this aggregate amount to the Department as a performance guarantee. The performance guarantee must be in the form of a letter of credit, or immediately available funds to be held in escrow by the County.
5. Identify any proposed incentives or bonuses, as further discussed below in Section 40.15.320.

C. After the Department approves the Preservation Plan, it must be recorded in the Office of the Recorder of Deeds and noted on the record plan.

D. The developer shall complete the short-term maintenance obligations contained in the Preservation Plan prior to the Department issuing the first dwelling unit permit. The developer must complete the restoration obligations contained in the plan prior to the issuance of fifty (50) percent of the dwelling unit permits.

E. The performance guarantee may be used by the Department if the developer fails to comply with its short-term maintenance or restoration obligations. The Department shall provide the developer with written notice of non-compliance, and a minimum of thirty (30) days to correct the items identified in the notice. Thereafter, the Department may draw down upon the performance guarantee in an amount necessary for the County to address the identified items.

F. Upon completion of the short-term maintenance and restoration obligations contained in the Preservation Plan, the developer may request release of the performance guarantee by certifying to the Department that those obligations have been satisfied. The Department shall inspect the resource(s) and identify in writing any deficiencies. When the Department determines there has been compliance with those obligations, the Department shall release the performance guarantee.

G. If the developer transfers ownership of a parcel subject to this Division, after the new owner has in place a new performance guarantee acceptable to the Department, the developer may request a complete release of its performance guarantee.

Sec. 40.15.320. Incentives for preservation.

The developer may propose one or more incentives in connection with its land development application and Preservation Plan, including adaptive reuse, historic preservation bonus, and Transferable Development Rights. Applications using the provisions of this Division are also eligible for reduced impact fees and special considerations regarding Moderately Priced Dwelling Unit (MPDU) provisions.

A. Impact fee reduction. The Preservation Plan may propose that some or all of the impact fees relating to libraries, parks and special facilities, and county facilities be waived by the County. In no event shall the total economic value of the impact fee reduction exceed the aggregate amount cost estimate discussed in this Division.

B. Historic Moderately Priced Dwelling Unit(s) (MPDU). The Preservation Plan may propose that an historic resource be used as one or more MPDUs (Division 40.07.500.). Historic resources can be converted into any housing unit type permissible under the development option chosen, with the approval of the Historic Review Board.

Section 12. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 31 (“Procedures and Administration”), Division 40.31.200. (“Miscellaneous application and other reviews”) is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Sec. 40.31.280. Historic permits[and demolition by neglect].

~~[A. No person shall undertake exterior alterations, demolitions, relocation, construction or reconstruction on any building, structure, site, or object within a historic overlay zoning district unless a permit is first obtained from the Department. If the Board or the Department is aware of the conduct of such work without a permit, the Department and/or the Board, as the case may be, and the Law Department, will be advised for pursuit of legal remedies.~~

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

~~C. The Department shall forward the permit application, together with all attachments, to the Historic Review Board for its review within five (5) days of receipt of an application for a permit required under Subsection A.~~

~~D. At the time of application for a permit required under Subsection A, the applicant shall submit the plans and specifications of the proposed work, including the plans and specifications for any construction proposed after demolition.~~

~~E. The Historic Review Board shall hold a hearing on the application within forty five (45) days after its receipt of an application for a permit required under Subsection A. The applicant shall be given a minimum of ten (10) days notice of the time and place of the hearing.~~

~~F. The Historic Review Board shall determine whether it has any objection to the issuance of the permit within seventy five (75) days after its receipt of an application for a permit required under Subsection A. Failure of the Historic Review Board to make a determination within this time period shall be deemed to constitute an approval of the application, provided at least one (1) regular meeting of the Historic Review Board, at which a quorum is present, is conducted within that time period.~~

- ~~1. Where the Historic Review Board has an objection, the Department shall deny the permit.~~
- ~~2. Where the Historic Review Board has no objection, the Department shall grant the permit subject to the requirements of any applicable sections of this Chapter or this Code.~~
- ~~3. Where the Historic Review Board approves the application for a permit but its approval is subject to conditions, the Department shall grant the permit subject to any conditions of the Historic Review Board.~~
- ~~4. When the Historic Review Board agrees to the demolition of a building, structure or object, it may require that the building, structure or object be recorded, at the applicant's expense, according to the documentation standards of the Historic American Buildings Survey and the Historic American Engineering Record (HABS/HAER), with such written, drafted and photographic documentation being deposited with the Historic Review Board and any other historical agency as it deems necessary. For a demonstrated economic hardship, a less stringent form of documentation may be prescribed by the Historic Review Board.~~

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

- ~~1. The purposes of Article 15.~~

2. ~~The historical, architectural, archaeological or aesthetic significance of the building, structure, site or object.~~
3. ~~The effect of the proposed work on the building, structure, site or object and its appurtenances.~~
4. ~~The design and compatibility of the proposed work with the character of the historic district or with the character of its site, including the effect of the proposed work on neighboring structures.~~
5. ~~The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings or other similar criteria.~~
6. ~~For demolitions, the Historic Review Board shall consider whether the building, structure or object can be used for any purpose for which it is or may be reasonably adapted. To that end, the applicant must demonstrate that the sale of the property is impracticable (as documented per 7(h) below), that rental cannot provide a reasonable rate of return (as documented per 7(h) below), and that other potential uses of the property are not feasible or available. In no event will a sale be deemed impracticable, rental returns unreasonable or other uses not feasible if the reason is deterioration of the property due to the owner, lessee, or person in charge's own intentional or gross negligence in maintaining the property.~~
7. ~~Where an application for exterior alteration, relocation, construction or reconstruction is based on financial hardship, the Historic Review Board may lessen its requirements if the applicant can demonstrate the extent of the financial hardship. In examining a claim of economic hardship, the Board will look beyond the relationship of the cost of repairs and the purchase price or the "as is" value to sort out the extent to which an economic hardship is attributable to the owner's actions or inactions, or to circumstances beyond the owner's control that would have existed in any event. When a claim of undue economic hardship is made, the owner and/or parties in interest must provide evidence during the hearing upon the claim, describing the circumstances of the hardship. Minimum evidence shall include:~~
 - a. ~~Nature of ownership (individual business or nonprofit) or legal session, custody or control.~~
 - b. ~~Financial resources of the owner or parties in interest.~~
 - c. ~~Cost of repairs to the subject property.~~
 - d. ~~Real estate taxes on the property in question for the prior two (2) years.~~
 - e. ~~Assessed value of the land and improvements.~~
 - f. ~~Amount paid for the property, date of purchase, and party from whom purchased, including a description of the relationship between the seller and purchaser or other means of acquisition of title, such as by gift or inheritance.~~

- ~~g. For income-producing property only, itemized operating and maintenance expenses for the subject property for the prior two (2) years and annual cash flow, if any, for the prior two (2) years.~~
- ~~h. Any and all listings of the property for sale or rent, price asked, and offers received for the prior two (2) years.~~
- ~~i. Annual gross income on the subject property for the prior two (2) years.~~
- ~~j. Annual debt service, if any, received in the prior two (2) years.~~

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

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

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

~~K. Every decision of the Historic Review Board shall be in writing and shall state the reasons for the decision. The decision shall contain the findings of fact that constitute the basis for the decision. The Historic Review Board shall furnish the applicant with a copy of its decision, together with a copy of any recommendations it may have for changes necessary before it will reconsider the application.]~~An Historic permit shall be required for all proposed construction or other development in any Historic overlay zoning district pursuant to Section 40.15.160 of the New Castle County Code. Appendix 1 to this Chapter contains application requirements.

Section 13. *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 . . .

Historic object. The term "object" is used to ~~[distinguish from buildings and structures those constructions]~~identify those resources that are primarily artistic in nature or are relatively small in scale and simply constructed. Although it may be, by nature or design, movable, an object is associated with a specific setting or environment.

Historic renovation. The treatment of an historic resource through rehabilitation, restoration, or reconstruction as defined by the Secretary of the Interior's Standards for the Treatment of Historic Properties.

Historic resource. Any building, structure, object, site or historic district that is important historically, architecturally or archaeologically in the history of the County, the State or the nation. These may be determined by the following criteria:

A. Listed in or determined to be eligible for the National Register of Historic Places as provided in the National Historic Preservation Act of 1966, 16 U.S.C. 470. Historic resources may be listed individually or as part of a district[;].

B. Designated or determined to be eligible for designation as an ~~an~~ [h]Historic overlay zoning district according to the provisions of this Chapter.

~~[C. Certified or preliminary determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district.]~~

Historic structure. The term "structure" is used to ~~[distinguish from buildings those functional constructions made usually for purposes other than creating human shelter.]~~identify buildings and other man-made features designed and constructed for purposes other than human habitation, such as silos, water towers, gazebos, bandstands, grain elevators, kilns, stone walls, and windmills. Man-made alterations to the landscape such as canals, dams, earthworks, water control systems, irrigation systems, drainage ditches, marsh dikes and breakwaters may also be considered historic structures.

Period of Significance. The length of time when a property was associated with important events, activities, or persons, or attained the characteristics which qualify it for Historic overlay zoning. These associations may include important contributions to the history, architecture, archaeology, engineering, or culture of the County, State or the nation.

Preservation Plan. A document describing the measures to be taken in the historic restoration or rehabilitation and preservation of an historic resource. See Section 40.15.310.

Section 14. 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. 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 6 and Chapter 40 of the *New Castle County Code*.

Section 16. 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. 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 effective 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: 10/27/20

President of County Council
of New Castle County

Approved on:

County Executive
of New Castle County

SYNOPSIS: This proposed Ordinance aims to provide a comprehensive update of historic preservation provisions in the *New Castle County Code*. Language is proposed to be added, and existing *Code* sections are proposed to be reorganized, to provide clarity relating to the procedures and powers of the Historic Review Board and the Department of Land Use. This update includes additional incentives for historic preservation within Historic overlay zoning districts.

A general summation of the individual proposed revisions, per Section, follows:

- | | |
|-----------|---|
| 6.02.001 | This amendment defines the term "Historic Alteration." |
| 6.03.012 | This amendment clarifies that work that is exempt from permit in an Historic overlay zoning district may require review. |
| 6.03.020 | This amendment clarifies the process for the issuance of building permits on historic structures. The amendment also empowers the Historic Review Board to delay of issuance of a demolition permit of an historic resource not to exceed nine (9) months from the date of the initial public hearing. The amendment also empowers the HRB to require historic documentation for any structure determined to be eligible for Historic overlay zoning. |
| 40.01.130 | This amendment clarifies that despite a plan sunseting Historic overlay rezonings do not revert. |

- 40.02.240 This amendment clarifies that overlay zones are new zoning districts that provide additional standards to the underlying zoning district.
- 40.07.410 This amendment clarifies that land development applications containing historic structures are eligible for bonuses. The amendment also requires that the property is rezoned to an Historic overlay zoning district and that the applicant provide a Preservation Plan to be eligible for increased density or to transfer development rights to facilitate preserving historic resources.
- 40.07.430 This amendment clarifies the preservation and restoration of a historic resource is not considered when calculating site capacity regardless of the proposed residential dwelling type. The amendment further clarifies that open context site or an enclosed context sites can be considered as open space whether the lot is maintained by a maintenance organization or sold as a lot.
- 40.07.440 This amendment clarifies that land development plans containing historic resources are eligible for preservation incentives. The amendment also lists the incentives available to those properties.
- Article 15 Changes to Article 15 include a reorganization of existing language as well as the establishment of a new divisions specifically for Historic overlay zoning districts, standards for the Historic Review Board to follow when reviewing applications and historic resources identified on record plans should be labeled and treated.
- 40.15.000 This amendment clarifies that purpose of this Division is to encourage restoration and rehabilitation historic resources.
- 40.15.010 This amendment makes non-substantive, clarifying edits.
- 40.15.100 This introduces a new division for Historic overlay zoning, which includes reorganized language from the existing Article 15, as well as new provisions clarifying the establishment and operation of Historic overlay zoning districts.
- 40.15.110 This amendment clarifies the criteria for designation of an Historic resource.
- 40.15.120 This amendment revised the section reference number from Section 40.15.111., eliminates unnecessary language and updates graphics for the contextual classification of historic resources.
- 40.15.130 This amendment revised the section reference number from Section 40.15.120. amends language to be more clear, concise, consistent. The amendment also requires that the Historic Review Board prepare the written report.
- 40.15.140 This amendment revised the section reference number from Division 40.15.200. (“Uses”) in order to clarify includes language clarifying that the establishment of an Historic overlay zoning district alone does not alter the permitted or prohibited uses on a property.
- 40.15.150 This amendment revised the section reference number from Section 40.15.240. and include revised language to be consistent with other provisions in the Unified Development Code. The amendment also includes additional uses permitted as an adaptive reuse, as well as parking and signage standards for adaptive reuses.

- 40.15.160 This amendment relocates and reorganizes provisions from Section 40.31.280. to be consistent with the structure of other provisions in the UDC. The amendment also prevents the Department of Land Use from issuing a permit within an Historic overlay zoning district until the HRB approves an Historic Resources application. The amendment requires that the HRB approve or deny the issuance of the permit within seventy-five (75) working days after the Department's receipt of a complete Historic Resources application, whenever practicable. The amendment also clarifies considerations that the HRB are required to make when reviewing applications.
- 40.15.161 This amendment clarifies that regardless of whether a permit is required by Chapter 6 of the *County Code*, the property owner must still submit an Historic Resources application to the Department of Land Use when work is performed in an Historic overlay zoning district.
- 40.15.170 This amendment relocates and reorganizes provisions from Section 40.31.280. regarding demolition by neglect clarifying the Department of Land Uses and Historic Review Board's responsibilities.
- 40.15.200 This amendment eliminates language relocated to Section 40.15.140. and renames the division to Historic Review Board review standards
- 40.15.210 This amendment includes guidance and direction for the Historic Review Board to follow when reviewing building and demolition permits. The amendment also empowers the HRB to require documentation of a resource prior to the Department of Land Use releasing a demolition permit.
- 40.15.220 This amendment eliminates language relocated to Section 40.15.160. and includes review standards for land development applications with historic resources.
- 40.15.221 This amendment empowers the HRB to require a Phase IA archeological evaluation and based on those findings make recommendations to the Department of Land Use.
- 40.15.230 This amendment relocates language from Section 40.15.140. and includes procedures for processing National Register Nominations.
- 40.15.240 This amendment eliminates language relocated to Sections 40.15.160. and 40.15.170.
- 40.15.300 This amendment includes a new division for processing plans with historic resources.
- 40.15.310 This amendment requires that all Major Land Development Plans with structures that are eligible for Historic overlay zoning create a parcel, to be reasoned H, that is no smaller than its historic context. This amendment also requires that the applicant submit a Preservation Plan, to be approved by the Department of Land Use, that establishes measures to rehabilitate, restore, reconstruct, and preserve the

historic resource(s), including a performance guarantee. The amendment also requires that the restoration of the historic resource(s) prior to the issuance of 50 percent of dwelling units in a development.

- 40.15.320 This amendment establishes new incentives for preserving historic resources that include MPDU credits and a reduction in impact fees across a development.
- 40.31.280 This amendment eliminates language that was relocated to Sections 40.15.160. and 40.15.170.
- 40.33.300 This amendment revises existing definitions for clarity and consistency. The amendment also includes definitions for “Historic renovation,” “Period of Significance” and “Preservation Plan.”

In addition, this Substitute No. 1 to Ordinance No. 20-071 proposes certain limited revisions to the original Ordinance as follows:

- 40.07.440 This revision is intended to clarify that historic structures can be utilized toward one or more of the required Moderately Priced Dwelling Units (MPDUs) in Division 40.07.500. as part of a Preservation Plan, addressed in Division 40.15.300.
- 40.15.150 This change revises the allowable percentage of additional square footage from 50% to 20%, consistent with the recommendation of the Delaware State Historic Preservation Office to mirror the federal tax credit requirements with flexibility granted to the Historic Review Board.
- 40.15.160 This modification is intended to clarify the archaeological process within Historic overlay districts, including but not limited to necessary professional qualifications and interaction with the Delaware Division of Historical and Cultural Affairs. This modification is in accordance with the State Historic Preservation Office comments received during the PLUS process.
- 40.15.170 This amendment clarifies, as requested during Council deliberations on Ordinance No. 20-063, that H property inspections shall be undertaken annually and that the annual summary report provided to the HRB shall also be sent to County Council.
- 40.15.221 This change includes updated language regarding the archaeological process to provide consistency with the Delaware Division of Historical and Cultural Affairs Guidelines to Archaeological Survey in Delaware. This modification is in accordance with the comments of the State Historic Preservation Office during the PLUS process.
- 40.15.230 This section includes updated language regarding the National Register Nomination procedures in accordance with the Certified Local Government Program agreement between New Castle County and the Delaware Division of Historical and Cultural Affairs. This modification is in accordance with the

comments of the State Historic Preservation Office as provided during the PLUS process.

- 40.15.310 This amendment regarding H-eligible resources involved in major record plan proposals adds minor plans only to the extent that Historic overlay must be completed on the H-eligible property, but does not require the Preservation Plan component.
- 40.15.320 This change is intended to clarify that the incentive regarding Moderately Priced Dwelling Units (MPDUs) is not meant to eliminate the requirement, rather to allow the use of an historic resource as one or more of any MPDUs required by Article 7. Historic MPDUs must meet standards required in Division 40.07.500.
- 40.33.300 This revision simplifies a definition, as subset A already addressed the eligibility of an historic resource. Moreover, this modification is in accordance with the State Historic Preservation Office's comments that were received during the PLUS process.

Floor Amendment No. 1 clarifies the term from "Historic Overlay District" to "Historic overlay zoning district" for consistency and clarity across the ordinance.

Floor Amendment No. 2 clarifies that the gross floor area of any addition to an adaptive reuse building/structure shall not be greater than fifty (50) percent of the existing gross floor area

Floor Amendment No 3. clarifies that the requirement of H zoning is applicable to major land development plans only.

FISCAL NOTE: This Ordinance, if approved, would create between 2-3 incentives per decade based on data from the last decade. Based on the 2-3 incentives, it is estimated that a reduction to impact fees of approximately \$28,000 would be recognized per occurrence.