

SUBSTITUTE NO. 1 TO ORDINANCE NO. 24-057

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

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

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

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

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

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

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

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

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

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

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

Sec. 40.03.110. Use table.

Table 40.03.110 lists the type...

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

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

Sec. 40.03.318. Mixed uses

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

67 intended to provide convenient shopping, employment and residential opportunities while
68 reducing vehicular trip generation. For all proposed mixed uses, the following apply:
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- 70 A. The mixed use development shall include a minimum of five (5) dwelling units
71 comprising a minimum of twenty-five (25) percent or a maximum of ~~[fifty]~~seventy-
72 five ([50]75) percent of the total gross floor area on the site.
73
- 74 B. In addition to the residential requirements above, mixed use development shall
75 include a minimum of three (3) different uses ~~[from at least two (2) of the following~~
76 ~~land use categories: Commercial retail and service, Section 40.33.240 (E); Office,~~
77 ~~Section 40.33.240 (L); Restaurant, Section 40.33.240 (K); Craft alcohol production~~
78 ~~establishment (CAPE), Section 40.33.240 (M); Institutional neighborhood, Section~~
79 ~~40.33.230 (E); Public Service, Section 40.33.230 (H)]. Gas stations, single use~~
80 ~~(e.g. stand-alone or pad site) restaurants, and restaurants with drive through~~
81 ~~service [shall]must not [be permitted in] exceed ten (10) percent of GFA within a~~
82 ~~mixed use development.~~
83
- 84 C. Residential uses shall provide outdoor areas...
- 85
- 86 D. In the OR and ON zoning districts, ~~[a minimum of sixty-seven (67) percent of the~~
87 ~~nonresidential gross floor area of the mixed use development]~~at least twenty-five
88 percent (25%) of the total gross floor area shall consist of office uses. D
89 evelopments proposing more than twenty-five percent (25%) of the total gross floor
90 area as nonresidential must provide a minimum of fifty percent (50%) of the
91 nonresidential GFA as office use(s).
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- 93 E. A CAPE shall include a tasting room...
- 94
- 95 F. Loading areas shall not be oriented toward a public street...
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- 97 G. In districts where mixed uses are specifically permitted, a density bonus is
98 contained in Table 40.04.110.
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100 ...

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103 **Sec. 40.03.340. Multifamily conversion.**
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105 Multifamily conversions are intended to facilitate and encourage the redevelopment of
106 existing office and commercial sites and increase the diversity in housing opportunities in
107 the county where supporting infrastructure exists. The following requirements apply to all
108 multifamily conversions:
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- 110 A. A multifamily conversion is not permitted on a parcel that is within one thousand
111 (1,000) feet of a Heavy Industry zoned parcel or a parcel with a Heavy Industry
112 Use as defined in Section 40.33.270.C.
113
- 114 B. Excluding mixed use developments, legally existing commercial or office GFA may
115 be converted to apartments or residential condominiums subject to Section
116 40.31.711.
117

- 118 C. A land development application that proposes new GFA as part of a multifamily c
 119 onversion is reviewed under the standards for “other permitted use” in the
 120 underlying zoning district set forth in Table 40.04.110, and is reviewed in
 121 accordance with the process and standards for a Resubdivision Plan, a Minor Land
 122 Development Plans or a Major Land Development Plan.
 123
- 124 D. Multifamily conversion may yield one dwelling unit for every eight hundred (800)
 125 square feet of GFA. The average size of an apartment or residential condominium
 126 unit in a multifamily conversion must be at least eight hundred (800) square feet of
 127 GFA.
 128
- 129 E. At least two hundred (200) square feet of yard space, balcony, deck space or roof
 130 top area for each apartment or residential condominium unit must be provided.
 131
- 132 F. A multifamily conversion is required to provide Moderately Priced Dwelling Units
 133 in accordance with Article 7.
 134

135 Section 3. *New Castle County Code* Chapter 40 (“Unified Development Code” or
 136 “UDC”), Article 7 (“Transfer of Development Rights and Other Incentives And Bonuses”),
 137 Division 40.07.500 (“Traditional Neighborhood Housing Program”), is hereby amended
 138 by adding the material that is underscored, as set forth below:
 139

140 **Sec. 40.07.510. Mandatory applicability.**
 141

142 *Required Moderately Priced Dwelling Units (“MPDUs”).* MPDUs shall be required
 143 subject to the following conditions.
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- 145 A. On all rezoning applications ...
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- 147 E. This Section shall not apply to the acreage ...
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- 149 F. On a multifamily conversion application proposing twenty-five (25) or more
 150 residential units, ten (10) percent of all units must be set aside as MPDUs.
 151
- 152 G. On a mixed use or transit oriented development application proposing one hundred
 153 (100) or more residential units, ten (10) percent of all units must be set aside as
 154 MPDUs.

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157 **Sec. 40.07.560. Affordability period and controls.**
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159 MPDUs established by a multifamily conversion, mixed use, or transit oriented
 160 development must remain subject to the restrictions contained in this Division for a fifteen
 161 (15) year affordability period calculated from the date of first sale or rental of each unit.
 162 All other MPDUs shall remain subject to the restrictions contained in this Division for a
 163 ten (10) year affordability period calculated from the date of first sale. All resales during
 164 the affordability period shall be subject to the following restrictions...
 165

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

170 below:

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172 **Division 40.07.600. [~~Infill-d~~Development bonuses.**

173

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

177

178 **Sec. 40.07.610. Eligibility.**

179

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

183

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

187

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

190

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

193

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

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

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

202

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

204

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

210

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

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214 —

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

220

- 221 2. ~~The developer shall calculate the parking ratios for each use and follow~~
222 ~~Section 40.22.616 for reduced parking with mixed uses.~~
223
224 3. ~~The project shall be allowed one (1) additional story to exceed the floor area~~
225 ~~ratio by the area of that floor and to exceed the height requirement of Table~~
226 ~~40.04.110. The floor area increase shall be measured at the top floor.~~
227
228 B. ~~Uses with structured parking.~~
229
230 1. ~~Shall conform to 1 and 2 above.~~
231
232 2. ~~The project shall be allowed two (2) additional stories to exceed the floor~~
233 ~~area ratio by the area of those floors, and to exceed the height requirement~~
234 ~~of Table 40.04.110. The floor area increase shall be measured at the top~~
235 ~~floor.]~~
236

237 **Community Development incentive.**
238

239 Except for uses identified in Section 40.33.270, a land development plan in an area
240 identified as a Community Development Area and consistent with the Community Area
241 Master Plan Key Recommendations in the Comprehensive Plan are eligible for the
242 Community Development incentive. The following apply to land a development plan that
243 includes the Community Development incentive:
244

- 245 A. A nonresidential land development plan is reviewed as a redevelopment plan
246 under Section 40.08.130.B.6 without the requirement to demolish GFA.
247
248 B. The permitted density or floor area ratio is increased by fifteen (15) percent.
249
250 C. The minimum open space ratio or landscape surface ratio in Article 4, Table
251 40.04.110A is reduced to 0.15.
252
253 D. The development must include elements of building design, site design and
254 amenities identified in the applicable Character Area set forth in Appendix 7.
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258 **Sec. 40.07.640. [Infill bonus]Corridor Redevelopment incentive.**
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260 [Infill development may receive an eight (8) percent bonus where the developer uses
261 land that has remained undeveloped for a period of at least twenty-five (25) years, and
262 there are no utility, transportation, or environmental constraints. The Department in
263 coordination with the Historic Review Board shall use the following standards in
264 determining whether to grant the bonus] Corridor Redevelopment occurs on developed
265 nonresidential land identified by the Comprehensive Development Plan as a Type 1
266 Commercial Corridor Development Area. The following apply to land development plans
267 that include the Corridor Redevelopment incentive:
268

- 269 A. [In no case shall the open space required by Article 5 be reduced] A nonresidential
270 land development plan is reviewed as a redevelopment plan under Section
271 40.08.130.B.6 without the requirement to demolish GFA.
272

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

274

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

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280 **Sec. 40.07.650. Transit oriented infill.**

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

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

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

289

290 a. The ~~[maximum]~~minimum open space in Table 40.04.110 shall be reduced
291 ~~[from twenty-five (25) or thirty-five (35) percent to fifteen (15) or]~~by twenty-
292 five (20)5 percent to accommodate the extra density.

293

294 b. Mixed uses within four hundred (400) feet ...

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296 c. Multi-family developments shall meet

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

300

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

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306 B. Bus transit oriented infill...

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

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314 **Sec. 40.08.130. Alterations, enlargements, or extensions.**

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316 A. *Nonconforming use.* ...

317

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

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322 1. *Extension or enlargement...*

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2. *Alteration.* ...
3. *Restoration.* ...
4. *Replacement or repair.* ...
5. *Reconstruction.* ...
6. *Redevelopment and Brownfields.*

- a. *Purpose.* Redevelopment is intended to facilitate and encourage the continued viability of previously developed land by granting a credit for ~~[both extractive use sites, [and] Brownfields, [; and for sites with legally existing gross floor area (GFA) that has been demolished by more than fifty (50) percent of its GFA. New construction may be configured or located elsewhere on the site although]~~ and nonconforming nonresidential sites. The rehabilitation or restoration of existing structures is highly recommended. [Improvements to select design elements shall be incorporated that acknowledge the unique characteristics of each previously developed site. The record plan shall indicate that the plan has been reviewed and approved according to the redevelopment standards in this section with improvements to design elements noted on plan.] Redevelopment is also intended to facilitate and encourage the improvement of former or existing extractive use or Brownfield sites that may lack any current or prior GFA.~~[A site capacity analysis pursuant to Division 40.05.400 may be required to determine permitted GFA for extractive use sites.]~~
- b. *Applicability.* ~~[The standards of this section are limited to r]~~ Redevelopment [of nonresidential uses and sites [are]is subject to the following: [The standards of this section shall apply only to sites that have been: (i) designated as a Brownfield; (ii) developed under the Former Code; (iii) developed prior to adoption of New Castle County development regulations; or, (iv) are former or existing extractive use sites.]
 - i. The site and all buildings on the site ~~[shall]~~ must be first evaluated for historical significance ~~[pursuant to]~~ under Article 15.
 - ii. The applicant ~~[shall be]~~ is permitted to utilize all ~~[of the]~~ legally established [square footage]GFA for the site ~~[provided that said square footage]~~ if the GFA is existing or has existed on the site. Unbuilt GFA may not be utilized.
 - iii. Except as otherwise provided in Subsection B.6.b.iv below, for Commercial Neighborhood (CN) and Office Neighborhood (ON) zoned sites, at least fifteen (15) percent of built GFA that is not determined to be historically significant must be demolished. For all other zoning districts, at least fifty (50) percent built GFA that is not determined to be historically significant must be demolished.

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

- 426 (a) The plan proposes GFA...
- 427
- 428 (b) The plan proposes credit ...
- 429
- 430 (c) The creation of a business park or industrial park regardless
- 431 of the number of lots or square footage [~~unless it is in conflict~~
- 432 ~~with Subsection B.6.e.7].~~
- 433
- 434 ii. Major redevelopment land development —With net increase.
- 435
- 436 [~~(a)~~] The plan proposes credit for legally established GFA plus
- 437 additional new GFA of greater than fifty thousand (50,000)
- 438 square feet but not to exceed the permitted FAR in Table
- 439 40.04.110 and provided no special studies are needed.
- 440
- 441 [~~(b)~~] ~~Major land development plans that are not subject to a~~
- 442 ~~rezoning may proceed directly to record plan submission~~
- 443 ~~following exploratory plan approval. A PLUS hearing shall be~~
- 444 ~~scheduled during the exploratory plan review stage.]~~
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- 447 d. *Review process...*
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- 449 e. *Design element improvements.* Improvements toward further code
- 450 compliance...
- 451
- 452 i. The exploratory sketch plan [~~shall~~]must identify ...
- 453
- 454 ii. The Department may require ...
- 455
- 456 iii. For a Brownfield site, [T]the applicant [shall submit]must provide
- 457 documentation from DNREC identifying and confirming the status [
- 458 Brownfield]of the site as part of the exploratory plan submission [prior
- 459 to review].
- 460
- 461 iv. [~~A site resource capacity analysis need not be conducted (see~~
- 462 ~~Section 40.05.050 A-).]~~
- 463
- 464 [~~v-]~~ The redevelopment of a Brownfield site in a floodplain [~~shall~~]must
- 465 comply ...
- 466
- 467 v[i]. [~~All i]~~Impact fees [as]are only required for GFA that exceeds existing
- 468 legally established GFA on the site [by Article 14 shall be waived]
- 469 (see Article 14 [Table 40.14.210]).
- 470
- 471 vi[i]. An operational analysis or a traffic impact study [~~shall be~~]is required
- 472 if requested by DeIDOT or the Department. Proposed development
- 473 that exceeds the legally approved GFA is subject to DeIDOT
- 474 transportation impact standards, and the County may limit or restrict
- 475 development to less GFA if that is recommended by DeIDOT. As a
- 476 result, DeIDOT may require transportation improvements as a
- 477 condition of its letter of no objection. For major plans or rezonings, [

478 I] if an existing Level of Service (LOS) is A, B, C, or D, the proposed
479 development may not cause that LOS to become E or F. If the
480 existing LOS is E, the proposed development may not cause that
481 LOS to become F.
482

483 vii[i]. The redevelopment of a site within six hundred sixty (660) feet ...
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485 f. *Permitted uses for Brownfields.* The I (Industrial) zoning district office use
486 restriction of Section 40.03.321 shall not apply. General office uses will be
487 permitted without limitation. ~~[Mixed use development shall be permitted in~~
488 ~~the I zoning district subject to the same standards for mixed use in the OR~~
489 ~~zoning district including Section 40.03.318 and Tables 40.04.110 and 111.]~~
490 In the HI [D]district, the applicant may utilize the standards for lot size and
491 setbacks from the I district. All uses permitted in the I district ~~[except for~~
492 ~~mixed use]~~, including office use as enumerated above, shall be permitted in
493 the HI district.
494

495 g. *Density bonuses.* A redevelopment density bonus in any zoning district not
496 to exceed twenty-five (25) percent of the maximum nonresidential GFA or
497 multifamily dwelling density allowed in Table 40.04.110 A or twenty-five (25)
498 percent of the legally established nonresidential GFA or multifamily dwelling
499 density on the site, whichever is greater, ~~[shall be]~~is permitted. Any
500 redevelopment project that includes a density bonus as provided for in this
501 Section shall be reviewed and evaluated ~~[pursuant to Section 40.25.410]~~
502 under Appendix 7, Guiding Principles.
503

504 h. *Annual report.* The Department ~~[and the Redevelopment Office]~~ shall
505 provide County Council with an annual report on the use and effectiveness
506 of the redevelopment section which shall be discussed at a Council
507 Committee Meeting open to the public. The annual report may also
508 recommend amendments to this Division and this Chapter based upon the
509 success or failure of redevelopment plans to meet stated goals and
510 objectives.
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512 7. *Bridge reconstruction...*
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TABLE 40.08.130 B					
<i>Work Table to Calculate Value of Individual Design Element Improvements and Total Aggregate Percent Improvement for Redevelopment Land Development Plans</i>					
(a)	(b)	(c)	(d)	(e)	(f)
<i>Improvement Design Elements (at least four (4) separate design element improvements shall be made.)</i>	<i>UDC Site Specific Requirements and Standards</i>	<i>Current or Existing Situation</i>	<i>Proposed Improvement to Existing Situation</i>	<i>Percent Improvement (d/b)</i>	<i>Comments</i>
Parking					
Number of required spaces...					
* <u>Architectural</u>					
** <u>Guiding Principles</u>					
* <u>Energy efficient design</u>					
Other					
Other					
Other					
<i>Total Aggregate Percent Improvement (column e), must exceed four hundred (400) percent =</i>					
<i>* Maximum allowable percent improvement for these elements is 50%.</i>					
<i>** Not applicable for plans subject to Sections 40.08.130.B.6.b.vi and ix.</i>					

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

Sec. 40.22.615. Parking Reduction

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

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

- 534
- 535 A. A narrative discussion ...
- 536
- 537 D. Proposed means of parking/traffic mitigation ...
- 538
- 539 E. With the exception of plans where the Comprehensive Plan identifies a site as
540 being in either a Type 1 Commercial Corridor Development or Community
541 Development Area, and includes elements of building design, site design and
542 amenities identified in the applicable Character Area set forth in Appendix 7, [
543 ∓]the number of required parking spaces reduced by an approved PDNA, [no-
544 longer required as a result of the PDNA analysis and the uses proposed] must [
545 still]be shown on-site as potential parking to accommodate future parking needs.
546 [should]If the proposed uses identified in the PDNA change [and] the reductions
547 granted will no longer be applicable.
- 548

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

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554 **Sec. 40.31.320. Applications generally.**

- 555
- 556 A. *Forms...*
- 557
- 558 E. *Withdrawal of application. ...*
- 559
- 560 F. *Public notice of land development plans.*
- 561
- 562 1. *Online notice.* The Department shall post the receipt of all major and minor land
563 development plans and Resubdivision Plans on a web page established for legal
564 notices on the County's website within five (5) days of the receipt of a completed
565 application.
- 566
- 567 2. *Posted notice.* The applicant shall erect a posted notice sign for all major and
568 minor land development plans and Resubdivision Plans within ten (10) days of
569 submission of a completed initial exploratory sketch plan to the Department. ...

570

571 **Sec. 40.31.711. Resubdivision plan.**

572

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

- 576
- 577 A. Lot line changes....
- 578
- 579 F. Amendments to notes...

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G. Multifamily conversions proposed under Section 40.03.340.B.

...

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Sec. 40.31.716. Record plan modification.

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

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

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1. To correct typographical errors or missing or incorrect bearings and distances or building restriction lines.

2. To adjust lot lines to correct surveying errors or omissions.

3. To adjust plan phasing for plans that are of a single use category, with the exception of mixed use projects.

4. To correct site data and plan notes that were made in error.

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5. To eliminate or relocate any private easements depicted on a record plan.

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6. Making changes to open space or common facilities by maintenance organizations, condominium or third-party conservancies (Section 40.27.540.B).

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7. Relocating nonresidential accessory structures, waste storage, and HVAC equipment (Section 40.03.430 and Section 40.03.431).

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8. Converting temporary outdoor restaurant seating established in Section 40.03.329 to permanent outdoor seating.

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

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

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

629
630
631

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

632 ~~landscapes, buffers, and/or other i]~~Improvements shall submit cost estimates.
633 Valid bids from contractors may be substituted for cost estimates. The
634 Department shall review all bids, checking for consistency with similar bids or
635 public bids to ensure they are reasonable.
636

637 B. In the alternative, ~~[the]~~a formula as established by the Department may be used
638 in lieu of cost estimates.
639

640 C. The developer ~~[shall]~~ must establish a performance guarantee acceptable to the
641 County to guarantee and warrant the costs of constructing ~~[and/]~~or reconstructing
642 all improvements shown on the record plan. The performance guarantee shall be
643 provided in one ~~[(4)]~~of two ~~[(2)]~~ ways:
644

645 1. The developer may submit the performance guarantee prior to plan
646 recordation. In accordance with the construction phasing plan, the
647 performance guarantee may be tied to the cost of the ~~[i]~~Improvements for
648 phases of the minor or major land development plans, as shown on such
649 plans, in which case a surety in the amount of one hundred twenty (120)
650 percent for a particular phase ~~[shall]~~must be available upon recordation of
651 the record plan and subsequent phase sureties posted at the time of pre-
652 construction request or building permit; or
653

654 2. In lieu of Subsection C.1, the developer ~~[shall]~~must, prior to plan
655 recordation, submit a performance guarantee in the sum of five thousand
656 dollars (\$5,000.00). The developer shall then submit the full performance
657 guarantee under Subsection C.1., prior to the preconstruction meeting or
658 building permit application. An annual administrative fee ~~[of two hundred~~
659 ~~fifty dollars (\$250.00) shall be]~~ is required in an amount set forth in
660 Appendix 2 until the full performance guarantee is provided.
661

662 D. The performance guarantee ~~[shall]~~must remain posted with the Department until
663 such time that all open space and common facilities have been inspected and
664 receive final approval and in accordance with the construction phasing plan. The
665 amount of the surety shall be required ~~[and determined]~~ by the Department in the
666 amount of one hundred twenty (120) percent of the ~~[cost estimates and/or the~~
667 ~~cost of completing the open space and common facilities and in accordance with~~
668 ~~the construction phasing plan]~~dollar amount calculated under Subsection A or B
669 above.
670

671 1. ~~[The surety shall be reduced to the amount of the maintenance guarantee~~
672 ~~as outlined below and the remainder returned to the developer after the~~
673 ~~completed work has been]~~ After all open space and common facilities
674 have been constructed and approved by the Departments of Public Works
675 and Land Use, the surety may be reduced or released.
676

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

684 improvement to be constructed. For non-residential projects, the minimum
685 period is three (3) years; for residential projects, five (5) years. The
686 Department of Public Works may extend the maintenance guarantee
687 period as deemed necessary by the General Manager as defects are
688 discovered. The purpose of this surety is to ensure that the facilities are
689 constructed as designed and [constructed to-]function as intended.
690

691 3. All reductions in the amount or releases of the letter of credit or other
692 surety ~~[shall]~~must be approved by the General Manager of the Department
693 of Public Works.
694

695 E. Each ~~[surety]~~performance guarantee provided prior to plan recordation [
696 shall]must be for a period of not less than three (3) years, unless a longer time is
697 requested by the Department.
698

699 F. The bond, letter of credit or other surety ~~[shall]~~must be executed by the applicant
700 and a corporate surety or financial institution licensed to do business in the State
701 that is not associated with the developer.
702

703 G. Prior to the approval of a minor or major land development plan, the LDIA must
704 be reviewed and approved by the County and recorded in the Office of the
705 Recorder of Deeds.
706

707 Section 8. *New Castle County Code* Chapter 40 (Unified Development Code or
708 “UDC”), Article 33 (“Definitions”), Division 40.33.300 (“General definitions”), is hereby
709 amended by adding the material that is underscored, as set forth below:
710

711 **Division 40.33.300. General definitions.**

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

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

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

715 A. A subdivision of land resulting in five (5) lots or less and not creating new
716 street rights-of-way.

717 B. Except for single-family dwellings and accessory structures ...

718 C. Any major utility except electric power generating facilities. ...

719 D. A minor utility that is...

720 E. Large scale solar energy systems.

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

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

723

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

736

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

738

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

740

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

744

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

750

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

764

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

Adopted by County Council of
New Castle County on:

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

Approved on:

Matthew Meyer
County Executive
New Castle County

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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