

**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).

**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...

Table 40.03.110 A GENERAL USE TABLE										Table 40.03.110 B GENERAL USE TABLE							Table 40.03.110 C GENERAL USE TABLE		
Zoning District (Urban and Suburban- Transition Character) Y=permitted, N=prohibited, L=limited review, S=special use review, A=accessory,										Zoning District (Suburban and Special Character)							Additional Standards (all districts)		
Land Use	* TN	S T	M M	ON	OR	C R	B P	I	C N	*** S	S E	** N C	HI	EX	S R	Parking	Limited & Special Use Standards		
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 c onversion</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.																			

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

intended to provide convenient shopping, employment and residential opportunities while reducing vehicular trip generation. For all proposed mixed uses, the following apply:

- A. The mixed use development shall include a minimum of five (5) dwelling units comprising a minimum of twenty-five (25) percent or a maximum of ~~[fifty]~~seventy-five (~~[50]~~75) percent of the total gross floor area on the site.
- B. In addition to the residential requirements above, mixed use development shall include a minimum of three (3) different uses ~~[from at least two (2) of the following land use categories: Commercial retail and service, Section 40.33.240 (E); Office, Section 40.33.240 (L); Restaurant, Section 40.33.240 (K); Craft alcohol production establishment (CAPE), Section 40.33.240 (M); Institutional neighborhood, Section 40.33.230 (E); Public Service, Section 40.33.230 (H)]~~. Gas stations, single use (e.g. stand-alone or pad site) restaurants, and restaurants with drive through service ~~[shall]~~must not [be permitted in] exceed ten (10) percent of GFA within a mixed use development.
- C. Residential uses shall provide outdoor areas...
- D. In the OR and ON zoning districts, ~~[a minimum of sixty-seven (67) percent of the nonresidential gross floor area of the mixed use development]~~at least twenty-five percent (25%) of the total gross floor area shall consist of office uses. D  
evelopments proposing more than twenty-five percent (25%) of the total gross floor area as nonresidential must provide a minimum of fifty percent (50%) of the nonresidential GFA as office use(s).
- E. A CAPE shall include a tasting room...
- F. Loading areas shall not be oriented toward a public street...
- G. In districts where mixed uses are specifically permitted, a density bonus is contained in Table 40.04.110.

...

#### **Sec. 40.03.340. Multifamily conversion.**

Multifamily conversions are intended to facilitate and encourage the redevelopment of existing office and commercial sites and increase the diversity in housing opportunities in the county where supporting infrastructure exists. The following requirements apply to all multifamily conversions:

- A. A multifamily conversion is not permitted on a parcel that is within one thousand (1,000) feet of a Heavy Industry zoned parcel or a parcel with a Heavy Industry Use as defined in Section 40.33.270.C.
- B. Excluding mixed use developments, legally existing commercial or office GFA may be converted to apartments or residential condominiums subject to Section 40.31.711.

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

Section 3. *New Castle County Code* Chapter 40 (“Unified Development Code” or “UDC”), Article 7 (“Transfer of Development Rights and Other Incentives 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 ...
- E. This Section shall not apply to the acreage ...
- F. On a multifamily conversion application proposing twenty-five (25) or more residential units, ten (10) percent of all units must be set aside as MPDUs.
- G. On a mixed use or transit oriented development application proposing one hundred (100) or more residential units, ten (10) percent of all units must be set aside as MPDUs.

...

**Sec. 40.07.560. Affordability period and controls.**

MPDUs established by a multifamily conversion, mixed use, or transit oriented development must remain subject to the restrictions contained in this Division for a fifteen (15) year affordability period calculated from the date of first sale or rental of each unit. All other MPDUs shall remain subject to the restrictions contained in this Division for a ten (10) year affordability period calculated from the date of first sale. All resales during the affordability period shall be subject to the following restrictions...

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

below:

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

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

**Sec. 40.07.610. Eligibility.**

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

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

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

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

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

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

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

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

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

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

—

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

- 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.  
255  
256 ...  
257

258 **Sec. 40.07.640. [Infill bonus]Corridor Redevelopment incentive.**  
259

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

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

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

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

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

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

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

a. The ~~[maximum]~~minimum open space in Table 40.04.110 shall be reduced ~~[from twenty-five (25) or thirty-five (35) percent to fifteen (15) or]by twenty-five (2[0]5) percent to accommodate the extra density.~~

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

c. Multi-family developments shall meet ....

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

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

B. Bus transit oriented infill...

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

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

A. *Nonconforming use.* ...

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

1. *Extension or enlargement...*

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 [to] 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.



- 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.

- (a) The plan proposes GFA...
- (b) The plan proposes credit ...
- (c) The creation of a business park or industrial park regardless of the number of lots or square footage ~~[unless it is in conflict with Subsection B.6.e.7].~~
- ii. Major redevelopment land development —With net increase.
- ~~[(a)]~~ The plan proposes credit for legally established GFA plus additional new GFA of greater than fifty thousand (50,000) square feet but not to exceed the permitted FAR in Table 40.04.110 and provided no special studies are needed.
- ~~[(b)]~~ ~~Major land development plans that are not subject to a rezoning may proceed directly to record plan submission following exploratory plan approval. A PLUS hearing shall be scheduled during the exploratory plan review stage.]~~
- d. *Review process...*
- e. *Design element improvements.* Improvements toward further code compliance...
- i. The exploratory sketch plan ~~[shall]~~must identify ...
- ii. The Department may require ...
- iii. For a Brownfield site, [T]he applicant [shall submit]must provide documentation from DNREC identifying and confirming the status [Brownfield]of the site as part of the exploratory plan submission [prior to review].
- iv. ~~[A site resource capacity analysis need not be conducted (see Section 40.05.050 A).]~~
- ~~[v.]~~ The redevelopment of a Brownfield site in a floodplain ~~[shall]~~must comply ...
- v[i]. [All i]Impact fees [as]are only required for GFA that exceeds existing legally established GFA on the site [by Article 14 shall be waived] (see Article 14 [Table 40.14.210]).
- vi[i]. An operational analysis or a traffic impact study ~~[shall be]~~is required if requested by DeIDOT or the Department. Proposed development that exceeds the legally approved GFA is subject to DeIDOT transportation impact standards, and the County may limit or restrict development to less GFA if that is recommended by DeIDOT. As a result, DeIDOT may require transportation improvements as a 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 ...  
484

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.  
511

512 7. *Bridge reconstruction...*  
513

<p align="center"><b>TABLE 40.08.130 B</b>  <b>Work Table to Calculate Value of Individual Design Element Improvements</b>  <b>and Total Aggregate Percent Improvement for Redevelopment Land</b>  <b>Development Plans</b></p>					
(a) <i>Improvement Design Elements (at least four (4) separate design element improvements shall be made.)</i>	(b) <i>UDC Site Specific Requirements and Standards</i>	(c) <i>Current or Existing Situation</i>	(d) <i>Proposed Improvement to Existing Situation</i>	(e) <i>Percent Improvement (d/b)</i>	(f) <i>Comments</i>
Parking					
Number of required spaces...					
* Architectural					
** Guiding Principles					
* Energy efficient design					
Other					
Other					
Other					
<p><i>Total Aggregate Percent Improvement (column e), must exceed four hundred (400) percent =</i></p>					
<p><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></p>					

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

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

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

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

#### **Sec. 40.31.320. Applications generally.**

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

#### **Sec. 40.31.711. Resubdivision plan.**

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

- A. Lot line changes....
- F. Amendments to notes...

580  
581 G. Multifamily conversions proposed under Section 40.03.340.B.  
582 ...  
583

584 **Sec. 40.31.716. Record plan modification.**  
585

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.  
589

- 590 A. A record plan modification shall be permitted for any of the following purposes.  
591  
592 1. To correct typographical errors or missing or incorrect bearings and distances  
593 or building restriction lines.  
594  
595 2. To adjust lot lines to correct surveying errors or omissions.  
596  
597 3. To adjust plan phasing for plans that are of a single use category, with the  
598 exception of mixed use projects.  
599  
600 4. To correct site data and plan notes that were made in error.  
601  
602 5. To eliminate or relocate any private easements depicted on a record plan.  
603  
604 6. Making changes to open space or common facilities by maintenance  
605 organizations, condominium or third-party conservancies (Section  
606 40.27.540.B).  
607  
608 7. Relocating nonresidential accessory structures, waste storage, and HVAC  
609 equipment (Section 40.03.430 and Section 40.03.431).  
610  
611 8. Converting temporary outdoor restaurant seating established in Section  
612 40.03.329 to permanent outdoor seating.  
613  
614  
615

- 616 B. Record plan modifications shall be reviewed as minor plans. ...  
617

618 **Sec. 40.31.820. Land Development Improvement Agreement (LDIA).**  
619

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

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

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

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

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

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

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

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

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

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

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

3. All reductions in the amount or releases of the letter of credit or other surety ~~[shall]~~must be approved by the General Manager of the Department of Public Works.
- E. Each ~~[surety]~~performance guarantee provided prior to plan recordation ~~[shall]~~must be for a period of not less than three (3) years, unless a longer time is requested by the Department.
- F. The bond, letter of credit or other surety ~~[shall]~~must be executed by the applicant and a corporate surety or financial institution licensed to do business in the State that is not associated with the developer.
- G. Prior to the approval of a minor or major land development plan, the LDIA must be reviewed and approved by the County and recorded in the Office of the Recorder of Deeds.

Section 8. *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, as set forth below:

**Division 40.33.300. General definitions.**

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

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

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

- A. A subdivision of land resulting in five (5) lots or less and not creating new street rights-of-way.
- B. Except for single-family dwellings and accessory structures ...
- C. Any major utility except electric power generating facilities. ...
- D. A minor utility that is...
- E. Large scale solar energy systems.

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

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



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:

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

Approved on:

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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 DelDOT 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.