



**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF STATE PLANNING COORDINATION**

May 23, 2011

The Honorable Robert Weiner
Councilman, New Castle County
1211 Larkal Drive
Wilmington, DE 19803

RE: PLUS review – 2011-04-01; Ordinance No. 11-026

Dear Mr. Weiner:

Thank you for meeting with State agency planners on April 27, 2011 to discuss the proposed Ordinance No. 11-026 which is a text amendment to the Unified Development Code to clarify issues related to unbuilt GFA, LOS standards, and the relative importance of certain design improvement elements.

Please note that changes to the ordinance, other than those suggested in this letter, could result in additional comments from the State. Additionally, these comments reflect only issues that are the responsibility of the agencies represented at the meeting.

Code Requirements/Agency Permitting Requirements

There are no code requirements in relation to this proposed amendment.

Recommendations/Additional Information

This section includes a list of site specific suggestions that are intended to enhance the project. These suggestions have been generated by the State Agencies based on their expertise and subject area knowledge. **These suggestions do not represent State code requirements.** They are offered here in order to provide proactive ideas to help the applicant enhance the ordinance, and it is hoped (**but in no way required**) that the applicant will open a dialogue with the relevant agencies to discuss how these suggestions can benefit the project.

Office of State Planning Coordination – Contact Herb Inden 739-3030

- As we stated in our review of the Redevelopment Ordinance sponsored by Councilmen Reda and Tacket: “The Office of State Planning Coordination supports redevelopment efforts especially in cases where properties are in a state of disrepair, are underutilized

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and/or are brownfield redevelopments and infrastructure is present or planned for. Such efforts are generally welcome where they can help alleviate the need to develop in greenfields and areas outside of Levels 1 and 2 of the State Spending Strategies. In that this ordinance meets these objectives, we support it”. These comments apply to this ordinance as well.

- We do want to highlight two issues raised in the DelDOT comment section below that should be taken into consideration if this ordinance moves forward:
 - Attention should be given to the code definition of abandonment which, as written, could create an incentive to let developers keep properties unoccupied for six months or more, and,
 - The removal of the unbuilt provision for outdated record plans: as stated in our comments on the Reda/Tacket ordinance we felt such language in this ordinance was not necessarily related to redevelopment *per se*. We do, however, agree that this situation of outdated record plans is important and should be addressed, probably through separate legislation.

Department of Transportation – Contact Bill Brockenbrough 760-2109

DelDOT recommends the following changes to the proposed definition for “Redevelopment”:

- The first three words, “As used herein,” have no apparent meaning in this context and should be deleted.
- Whereas the current definition refers to Redevelopment as “A process,” the proposed definition refers to it as “code incentives.” For consistency and to avoid possible unintended consequences, we recommend replacing “code incentives” with “a process intended.”
- The requirement that there be “brownfields, blighted properties, extractive use sites or previously-developed structures that are now vacant, abandoned and/or underutilized” has two potential difficulties:
 - Presently the Code defines abandonment as discontinuance of use for six months or more. Therefore this requirement may create an incentive for developers to let their properties sit unoccupied for six or seven months so that they can be declared “abandoned” before redeveloping them. Such a practice would be costly to developers without serving any particular purpose that we can identify.
 - It eliminates the use of this section of the Code for addressing previously recorded but unbuilt developments. Encouraging the replacement of outdated record plans with newer and more viable plans, even for so-called “greenfields,” would seem to

be something that the County would want to encourage. A further Code amendment would be needed in that regard.

For these reasons, DelDOT believes that requirement should be removed.

- The last sentence appears to add nothing and should be removed for clarity. One would expect any project to “utilize consistent professional planning practices and standards.”

In the section on Redevelopment plans, there is an added condition for treatment as a minor redevelopment plan, that the plan does not propose a change in use. In the added language, there is a parenthetical note proposed for clarification. As written that note begins “i.e.” which means “that is.” DelDOT believes it should read “e.g.” which means “for example.”

The proposed changes to Section 40.08.130.B.6.e.6 present several problems:

- The first proposed sentence is overly long. Further, it does not make sense in that it confuses changes in use with changes in size and the phrase “is less than” compares “trips associated with such changed use” to “the previously legally established use.”

DelDOT suggests that it could be better written as follows: “A traffic impact study shall be required for all major plans proposing a change of use or expansion of floor area unless two conditions are met. First, the peak hour, weekend, and total daily average trips associated with the proposed plan must be less than those trips associated with the previously legally established use. Second, none of the six (6) closest intersections to the site operate at LOS E or F.”

- Even with the above changes, the first proposed sentence is problematic in that an overall Level of Service (LOS) cannot be calculated for an intersection where one or more movements do not have to stop or yield. DelDOT sees no simple remedy for this part of the first proposed sentence.

One remedy, consistent with the County’s current practice with regard to concurrency, would be to treat any intersections where one or more movements do not have to stop or yield as operating acceptably. Another remedy would be to specify “the six (6) closest signalized, roundabout or all-way stop-controlled intersections.” Either of these approaches could work reasonably well in an urban or suburban location but may be less satisfactory in rural locations. Whatever approach is used, DelDOT recommends that its application be tested using sample developments to assure that the language used produces acceptable results.

The same problem applies to the third proposed sentence.

- The requirement, in the second proposed sentence, of a traffic operational analysis for all redevelopment plans does not seem sensible to us in that our regulations do not say how to specify a scope for such an analysis. Unlike a traffic impact study, which necessarily

examines all significant intersections and road segments within a development's area of influence, a traffic operational analysis normally examines one or more specific problem areas identified during a plan review. Frequently, a traffic operational analysis does not involve LOS calculations. The proposed requirement presupposes that there will be problems for a traffic operational analysis to address.

- There appears to be a typographical error in the third proposed sentence. DelDOT believes the words “shall issue” should instead read “shall be issued.”

Department of Natural Resources and Environmental Control – Contact Kevin Coyle
739-9071

With respect to the NCC Ordinance, DNREC generally prefers redevelopment to development on greenfields where infrastructure is limited and the impacts on water quality, habitat and air quality are greater. Redevelopment of abandoned or underutilized properties is beneficial to the environment and can also be profitable for the developer and the community. These benefits can be enhanced when properties are developed in a sustainable manner. However, DNREC would not support the rollback of any environmental regulations or ordinances to accommodate redevelopment. To get started on a sustainable redevelopment, consider the following ideas:

1. **“Green Buildings”-like design and certification.** A “Green Building” is a resource efficient building, meaning it minimizes the use of energy, water, and environmentally unfriendly building materials.
2. **Energy reduction and clean energy alternatives.**
3. **Storm water management.** Reducing stormwater runoff from new construction and remodeling protects our waterways and ecosystems.
4. **Environmentally beneficial landscaping and native landscaping.**
5. **Reduction of construction and demolition debris.**
6. **Benefits to the community** (such as mixed uses, recreational areas, walking and biking paths, public transportation and reuse of existing infrastructure).

Thank you for the opportunity to review this ordinance. If you have any questions, please contact me at 302-739-3090.

Sincerely,



Constance C. Holland, AICP
Director, Office of State Planning Coordination

CC: Dave Culver