

July 23, 2009

**In reply, refer to:**

New Castle County Ord. 09-067 (2009-0392-T)  
Sewer Omnibus Text Amendment

Constance Holland, Director  
Office of State Planning  
122 William Penn Street  
Haslett Armory, Suite 301  
Dover, DE 19901-3636

Dear Ms. Holland:

The New Castle County Department of Land Use is submitting a copy of the above referenced ordinance to you and requesting that a review of this ordinance go through the Office of State Planning for a Preliminary Land Use Service (PLUS) Review and comment.

Ordinance 09-067 will be on the September 1, 2009 New Castle County Planning Board Public Hearing agenda. New Castle County Council will have an opportunity to act on this amendment after the Planning Board Public Hearing.

Please submit the PLUS comments to the Department before the end of business on Friday, August 21, 2009.

If you have questions or concerns about this request, please do not hesitate to call me at 395-5434.

Sincerely,

Kenneth R. Bieri  
Assistant Planning Manager

CC: Nicole Majeski  
David Culver  
George Haggerty

Enclosure

**Preliminary Land Use Service (PLUS)  
Comprehensive Plan Amendments and Municipal Ordinances**

Delaware State Planning Coordination  
122 William Penn Street • Dover, DE 19901 • Phone: 302-739-3090 • Fax: 302-739-6958

<b>Name of Municipality: NEW CASTLE COUNTY</b>	
<b>Address:</b>  87 Reads Way New Castle, DE 19720	<b>Contact Person: David Culver</b>
	<b>Phone Number: 302-395-5463</b>
	<b>Fax Number: 302-395-5983</b>
	<b>E-mail Address: krbieri@nccde.org</b>

**Date of Most Recently Certified Comprehensive Plan: July 31, 2007**

**Application Type:**

**Comprehensive Plan Amendment: NA**

**Text Amendment: Ord. 09 – 067 (2009-0392-T) is a text amendment designed to address several issues determined to be in need of adjustment by the Department of Special Services including plan processing; the installation of dry sewer lines; lot size and unsewered lots; and the distinction between sewer service areas north and south of the C&D Canal.**

**Other: NA**

<b>Comprehensive Plan Amendment or Municipal Ordinance prepared by:</b>	
<b>Address:</b>  Same as above	<b>Contact Person:</b>
	<b>Phone Number:</b>
	<b>Fax Number:</b>
	<b>E-mail Address:</b>

<b>Maps Prepared by: NA</b>	
<b>Address:</b>	<b>Contact Person:</b>
	<b>Phone Number:</b>
	<b>Fax Number:</b>
	<b>E-mail Address:</b>

# Preliminary Land Use Service (PLUS) Comprehensive Plan Amendments and Municipal Ordinances

Delaware State Planning Coordination

122 William Penn Street • Dover, DE 19901 • Phone: 302-739-3090 • Fax: 302-739-6958

## **Please describe the submission:**

The amendment to Section 40.05.320 will stop the processing of any plan where public sewer cannot be provided thereby eliminating any need for further review by the County.

In Section 40.11.210, the amendment combines and condenses the standards for LOS with respect to areas north and south of the C&D Canal. The current language refers to “publicly sewered areas” north of the canal and “identified sewer service areas” south of the canal. Recent amendments to the UDC refer only to sewer service areas with no distinction for north or south of the canal.

The amendment to Section 40.22.340 removes the requirement to install dry sewer lines in new subdivisions proposing individual septic systems. It has been determined through past experience that the existence of dry sewer lines does not provide any benefit to septic elimination projects.

The amendment to Section 40.22.360 A 1 (c) authorizes the Department to grant an administrative variance to residential lots not meeting the minimum lot size for on-lot septic systems where the proposed system has been reviewed and approved by DNREC.

Finally the amendment to Section 40.22.360 A 2 removes language that no longer has any application there are no former code plans under review that are seeking an exception to the new code standards.

See attachment for more detail.

Introduced by: Joseph Reda and  
David Tackett  
Date of introduction: July 28, 2009

**ORDINANCE NO. 09 - 067**

**TO REVISE CHAPTER 40 OF THE *NEW CASTLE COUNTY CODE* (ALSO KNOWN AS THE UNIFIED DEVELOPMENT CODE – UDC) REGARDING ARTICLE 5 (SITE CAPACITY AND CONCURRENCY CALCULATIONS), ARTICLE 11 (TRANSPORTATION IMPACT), AND ARTICLE 22 (DRAINAGE, UTILITIES, SEPTIC SYSTEMS, PARKING, LOADING, AND LIGHTING)**

**WHEREAS**, on December 31, 1997, New Castle County Council adopted and the County Executive approved the Unified Development Code (UDC); and

**WHEREAS**, the New Castle County Department of Land Use and the New Castle County Council have adopted and approved several subsequent omnibus text amendments to the UDC to further clarify, expand and improve upon certain provisions of the original UDC; and

**WHEREAS**, the Department of Land Use and Special Services has continued to review, interpret and monitor the continued application of the UDC with regard to sewer issues; and

**WHEREAS**, more specifically *New Castle County Code*, Section 40.22.340.A.6 currently requires the installation of dry sewer lines within new subdivisions that are located within a County recognized sewer service area but for which sewer capacity or sewer trunk lines do not yet exist and for which individual private septic systems are currently proposed;

**WHEREAS**, through implementation of these regulations, it has become apparent that dry sewer lines will not benefit future septic elimination projects due to a lack of foreknowledge concerning future sewer service plans; and

**WHEREAS**, New Castle County desires to remove current requirements which mandate that a new subdivision proposing individual septic systems must install dry sewer lines.

**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”), Article 5 (“Site Capacity and Concurrency Calculations”), Division 40.05.300 (“Water and Sewer Capacity”), Section 40.05.320 (“Sewer capacity calculation”) is hereby amended by adding the material that is underlined, as set forth below:

**Sec. 40.05.320. Sewer capacity calculation.**

Prior to receiving a rezoning or record subdivision or land development final plan approval from the Department, the developer must obtain verification from the Department of Special Services that sewer capacity is available or will be available at the time of the proposed development. If at any time during the processing of land development plan, the applicant is notified by letter from Special Services that sanitary sewer capacity is not and will not be available for the proposed development, the processing of the land development plan shall cease.

**Section 2.** *New Castle County Code*, Chapter 40 (“Unified Development Code”), Article 11 (“Transportation Impact”), Division 40.11.200 (“Adequate Level of Service”), Section 40.11.210 (“Level of service standards”) is hereby amended by deleting the material that is bracketed and adding the material that is underlined, as set forth below:

**Sec. 40.11.210. Level of service standards.**

~~[A.—*North of the C & D Canal.*]~~ The minimum acceptable peak hour level of service to be achieved and maintained on all roadway segments and intersections within the area of influence of the proposal ~~[and located north of the C&D Canal]~~ shall be as follows.

1. *Sewer service areas.* Level of service D within any identified sewer service area or publicly sewered area, except that for roadway segments and intersections located within a sewered area or an existing developed area or designated infill area operating at an existing level of service E, the minimum acceptable peak hour level of service shall be E, provided that level of service D will be attained through transportation and/or transit projects currently under construction or for which contracts for construction have been awarded by DeIDOT to ensure completion; or,
2. *Outside sewer service areas.* The existing level of service with no roadway segments and intersections exceeding level of service C.

~~[B.—*South of the C & D Canal.* The minimum acceptable peak hour level of service to be achieved and maintained on all roadway segments and intersections within the area of influence of the proposal and located south of the C&D Canal shall be as follows.]~~

- [1. ~~Sewer service areas. Level of service D within any identified sewer service area, except that for roadway segments and intersections located within a sewer area operating at an existing level of service E, the minimum acceptable peak hour level of service shall be E, provided that level of service D will be attained through transportation and/or transit projects currently under construction or for which contracts for construction have been awarded by DelDOT to ensure completion; or,~~
- [2. ~~Outside sewer service areas. The existing level of service with no roadway segments or intersection exceeding level of service C.~~]
- [a. ~~Exception. Applicants of subdivision plans being processed pursuant to Former Code provisions that have opted for three quarter (3/4) acre lots pursuant to Section 40.22.360 (A)(2)(B), may meet the level of service standards applicable to the Sewer Service Area south of the C&D Canal as provided for in Section 40.11.210(B)(1).~~]

**Section 3.** *New Castle County Code*, Chapter 40 (“Unified Development Code”), Article 22 (“Drainage, Utilities, Septic Systems, Parking, Loading and Lighting”), Division 40.22.300 (“Sanitary Sewer”), Section 40.22.340 (“Standards”) is hereby amended by deleting the material in brackets, as set forth below:

**Division 40.22.340. Standards.**

- A. Standards for all septic systems permitted by this Article and located within a County recognized sewer service area for which sewer capacity or sewer trunk lines do not yet exist.
1. *Site evaluations.* Site evaluations shall be conducted....
- [6. ~~Dry sewer line. Dry sanitary sewer lines including house connections and lines necessary to connect the development to the sanitary sewer system trunk line shall be installed by the developer. The location and all standards for the dry sanitary sewer line shall be determined by the Department of Special Services.~~]

**Section 4.** *New Castle County Code*, Chapter 40 (“Unified Development Code”), Article 22 (“Drainage, Utilities, Septic Systems, Parking, Loading and Lighting”), Division 40.22.300 (“Sanitary Sewer”), Section 40.22.360 (“Lot size and density requirements for all unsewered lots”) is hereby amended by deleting the material in brackets, as set forth below:

**Sec. 40.22.360. Lot size and density requirements for all unsewered lots.**

- A. On any subdivision lot where a septic system is permitted by this Article to be used, the minimum lot area shall be as follows:

1. *Lot size for unsewered lots.* Only the area within the property lines of the lot shall be considered in calculating lot size:
  - a. For unsewered residential lots served by private wells, the minimum lot size shall be no less than one (1) acre.
  - b. For unsewered residential lots served by a public or community water supply system, the minimum lot size shall be not less than three-quarters (3/4) of an acre.
  - c. The Department may grant an administrative variance to the minimum lot size requirements for a residential lot where the applicant has received DNREC review and approval of a proposed on-lot septic disposal system.

~~[2. *Exceptions.* Applicants of subdivision plans being processed pursuant to former Code provisions that are located within the Southern Sewer Service Area, that are serviced by public or community water supply system, and that have not expired, may apply to the Department to re-subdivide the property under applicable former Code provisions with the following lot sizes provided the attached conditions are met.]~~

~~[a. Lot sizes no smaller than one-half (1/2) of an acre so long as the applicant agrees to install a temporary community sewage treatment system acceptable to DNREC and the Department and all dry sewer lines necessary to connect the community system to the future County sewer system trunk line as determined by the Department of Special Services. Upon completion and acceptance by the Department of Special Services, the temporary community sewage treatment system and all dry lines shall be owned and operated by the Department of Special Services. All property owners connected to the system shall be considered County sewer users and shall be assessed the normal County sewer service bill on a yearly basis. If sewer service is available at the time of application pursuant to this exception, then the applicant shall not be permitted to install a community sewage treatment system but must provide all necessary lines for connection to the County sewer system as determined by the Department of Special Services. The applicant must also pay all impact fees required by Article 14.]~~

~~[b. Lot sizes no smaller than three quarters (3/4) of an acre serviced by individual septic fields so long as the applicant agrees to install all dry sewer lines necessary to connect the community system to the future County sewer system trunk line as determined by the Department of Special Services. Upon completion and acceptance~~

~~by the Department of Special Services, all dry lines shall be owned and operated by the Department of Special Services. The applicant shall be exempt from sewer impact fees, but must pay all applicable service impact fees. Upon septic system failure, the user shall hook up to the County southern sewer system after paying all applicable capital recovery and connection fees as determined by the Department of Special Services. The applicant shall be able to utilize the UDC level of service standards applicable to the Sewer Service Area South of the C&D Canal as provided for in Section 40.11.210(B)(1) so long as the applicant provides an amount of open space at least ten (10) times greater than the amount required under applicable former Code provisions (i.e., one (1) acre of open space per three (3) units instead of one (1) acre of open space per thirty (30) units) and pays the voluntary school assessment pursuant to 9 Del. C. § 2661(c), or its successor. At the time the contract of sale is entered into with a prospective buyer who intends to build a home on the lot, the seller shall notify the prospective buyer, in writing, that the buyer shall be fully responsible for all costs and fees associated with the mandatory future sewer connection. The prospective buyer shall acknowledge this notification by signing the document. The seller shall then record the document in the New Castle County Office of the Recorder of Deeds at the time of closing to give such notice to all future purchasers of the home.]~~

- [3]2. *Exception for sample homes.* The applicant of any subdivision plan in any sewer service area who has entered into a sewer agreement with New Castle County may apply to the Department to build up to six (6) sample homes on septic systems. The samples may be built on any size lot so long as they are each surrounded by and adjoined to vacant lots such that each sample shall effectively be on a minimum of a one (1) acre lot if on a well or three-quarter (3/4) of an acre if on public water. The septic tank and disposal field may be located on any of the lots. The samples may be used as sales and field offices, but may not be resided in until the septic system has been properly abandoned and the house connection to the sanitary sewer system as provided in the sewer agreement. When permitted by DNREC, the septic systems may be combined into one (1) or more community septic systems, however, the acreage requirements of this paragraph shall still apply.

B. The minimum overall development density for all subdivision plans shall be as follows:

1. *Overall development density permitted for subdivisions.* In addition to the requirements of (A)(1) above, the gross density of the subdivision shall not exceed one (1) dwelling unit per one (1) acre excepting that, for subdivisions or portions thereof located in any water resource protection area district the gross density shall not exceed one (1) dwelling unit per two

(2) acres. [~~However, this subparagraph shall not apply to cases for which an exception was granted pursuant to Section 40.22.360(A)(2) of this Article.~~]

C. For any nonresidential facilities....

**Section 5. Consistent with Comprehensive Development Plan.** New Castle County Council finds that the provisions of this Ordinance are consistent with the spirit and intent of the New Castle County Comprehensive Development Plan.

**Section 6. Inconsistent Ordinances and Resolutions Repealed.** All ordinances or parts of ordinances and all resolutions or parts of resolutions that may be in conflict herewith are hereby repealed except to the extent they remain applicable to land use matters reviewed under previous Code provisions as provided in Chapter 40 of the *New Castle County Code*.

**Section 7. Severability.** The provisions of this Ordinance shall be severable. If any provision of this Ordinance is found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that County Council would have enacted the remaining valid provisions without the unconstitutional or void one, or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with County Council's intent. If any provision of this Ordinance or any zoning map or portion thereof is found to be unconstitutional or void, all applicable former ordinances, resolutions, zoning maps or portions thereof shall become applicable and shall be considered as continuations thereof and not as new enactments regardless if severability is possible.

**Section 8. Effective Date.** This Ordinance shall become effective immediately upon its adoption by County Council and approval by the County Executive.

Approved on:

Adopted by County Council of  
New Castle County on:

\_\_\_\_\_  
County Executive

\_\_\_\_\_  
President of County Council  
New Castle County

**SYNOPSIS:** The amendment to Section 40.05.320 will stop the processing of any plan where public sewer cannot be provided thereby eliminating any need for further review by the County.

In Section 40.11.210, the amendment combines and condenses the standards for LOS with respect to areas north and south of the C&D Canal. The current language refers to “publicly sewer service areas” north of the canal and “identified sewer service areas” south of the canal. Recent amendments to the UDC refer only to sewer service areas with no distinction for north or south of the canal.

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The amendment to Section 40.22.360 A 1 (c) authorizes the Department to grant an administrative variance to residential lots not meeting the minimum lot size for on-lot septic systems where the proposed system has been reviewed and approved by DNREC.

Finally the amendment to Section 40.22.360 A 2 removes language that no longer has any application there are no former code plans under review that are seeking an exception to the new code standards.

**FISCAL NOTE:** This Ordinance has no discernible fiscal impact.