

**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

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Date of Most Recently Certified Comprehensive Plan: Application Type:
Comprehensive Plan Amendment: July, 31, 2007

Ordinance: Ordinance 11-026

Other: _____

Link to the proposed ordinance:

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Please describe the submission:

The purpose of this text amendment is to clarify issues related to unbuilt GFA, LOS standards, and the relative importance of certain design improvement elements.

ORDINANCE NO. 11-026- Sub. 1

**TO AMEND NEW CASTLE COUNTY CODE CHAPTER 40
 (“UNIFIED DEVELOPMENT CODE” OR “UDC”) REGARDING REDEVELOPMENT**

WHEREAS, New Castle County adopted redevelopment provisions and incentives to encourage and streamline the adaptation and reuse of underutilized, blighted and/or Department of Natural Resources and Environmental Control (DNREC)-certified brownfield properties for the betterment of the County and its citizens; and

WHEREAS, since adoption of these ordinances and incentives, the redevelopment provisions have been perceived to be utilized and/or attempted to be utilized in some instances to build on green space containing a small structure and/or to deem a fully-functioning entity as an underutilized redevelopment project; and

WHEREAS, the County desires to continue to provide incentives to property owners and developers to reuse properties that once were thriving but that now are rundown, abandoned, or not as useful as they could be because of a state of disrepair or functional obsolescence while protecting open spaces and agricultural lands from development; and

WHEREAS, County Council has received broad input from civic, planning and business communities to identify reasonable means of effectuating redevelopment goals while safeguarding neighborhoods and adhering to the original intent of Ordinance 01-098, as later supplemented by Ordinance 08-001 pertaining to extractive uses; and

WHEREAS, New Castle County Council has determined that the provisions of this ordinance substantially advance, and are reasonably and rationally related to, legitimate government interests in promoting the health, safety, morals, convenience, order, prosperity and/or welfare of present and future inhabitants of this County.

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

Section 1. *New Castle County Code* Chapter 40 (“Unified Development Code” or “UDC”) Article 30 (“**County Council and Administrative Bodies**”), Division 40.30.100 (“**Responsibility**”), Table 40.30.110 (“Procedural Responsibilities”) is hereby amended by adding the material that is underscored and deleting the material that is stricken.

**Table 40.30.110
 PROCEDURAL RESPONSIBILITIES**

<i>Type of Action</i>	<i>County Council</i>	<i>Administrative Boards</i>			<i>Administrative Agents</i>		
		<i>Planning Board</i>	<i>Board of Adjustment</i>	<i>Historic Review Board</i>	<i>Department of Land Use</i>	<i>PLUS</i>	<i>RPA – Technical Advisory Committee</i>
General Reviews (see Division 40.31.400 for standards)							
... <u>Major</u> <u>Redevelopment</u> <u>Plan...</u>	<u>HD</u>	<u>HR</u>			<u>R</u>	<u>R</u>	

Section 2. *New Castle County Code* Chapter 40 (“Unified Development Code” or “UDC”), Article 33 (“**Definitions**”), Division 40.33.300 (“**General Definitions**”) is hereby amended by adding the material that is underscored and deleting the material that is stricken.

Division 40.33.300. General definitions.

This Division contains ...

Blighted property. A property which by reason of deterioration of site improvements, unsanitary or unsafe conditions, obsolete platting, defective or inadequate infrastructure, and other factors that endanger life or property, constitutes an economic or social liability or a menace to the public health, safety, morals or welfare in its present condition.

Brownfield. Any vacant, abandoned, or underutilized real property, the development or redevelopment of which may be hindered by the reasonably-held belief that the real property may be environmentally contaminated and as defined under 7 Del. C. ch. 91 (Hazardous Substance Cleanup Act) or its successor. An applicant shall submit documentation from DNREC identifying and confirming the Brownfield site prior to any review. ...

Redevelopment. A process used to identify previously developed land that is now vacant, abandoned or underutilized real property where older structures if they exist are rehabilitated or replaced. As used herein, code incentives to promote and stimulate reuse and development of brownfields, blighted properties, extractive use sites and previously-developed structures that are now vacant, abandoned and/or underutilized where legally existing or previously existing structures have or are to be demolished by more than fifty (50) percent to promote public purposes where the private market is not providing significant economic activity to achieve the desired level of improvement. Redevelopment goals are to conserve land resources by attracting new development to infill, brownfield and blighted sites rather than constructing on previously undeveloped or agriculturally utilized acreage; to take advantage of existing infrastructure where possible rather than requiring the construction of expensive new infrastructure; to improve or restore natural systems; to promote long-term economic sustainability; to address the potential oversupply of land for development; to recycle materials and structures; to conserve energy and other renewable resources; and to adapt historic or culturally-significant existing buildings to new uses. Redevelopment projects shall utilize consistent professional planning practices and standards to carry out redevelopment objectives.

Section 3. *New Castle County Code* Chapter 40 (“Unified Development Code” or “UDC”), **Article 8** (“Nonconforming situations”), **Division 40.08.100** (“General regulations”), **Sec. 40.08.130** (“Alteration/enlargement/extension”) is hereby amended by deleting the material that is stricken and by adding the material that is underscored, as set forth below.

Sec. 40.08.130. Alteration/enlargement/extension...

B. Nonconforming building, structure or situation. A nonconforming...

6. *Redevelopment, Blighted Properties and Brownfields...*

a. *Purpose.* Redevelopment is intended to effectuate the purposes set forth in the Redevelopment definition set forth in *New Castle County Code* Division 40.33.300. to facilitate and encourage the continued viability of previously developed land by granting a credit for both extractive use sites and brownfields; and [sic] for sites with legally existing gross floor area (GFA) that has been demolished by more than fifty (50) percent of its GFA. Any additional GFA allowed beyond that which was previously constructed on a site qualifying for treatment as a redevelopment shall be contiguous to previously constructed structures. Existing or formerly existing building footprints shall be used for new square footage. A reconfiguration or relocation of square footage for new construction will be allowed as an exception to the foregoing only if the protection of view sheds, historic, or natural resources will thereby be enhanced. Otherwise, previously undeveloped land shall remain undeveloped. ~~Although~~ ~~Rehabilitation or restoration of existing~~ ~~if or historically significant~~ structures is highly recommended. Improvements to select design elements shall be incorporated that acknowledge the unique characteristics of each previously-developed site and the character of the surrounding community. The record plan shall indicate that the plan has been reviewed and approved according to the redevelopment standards in this section, Division 40.33.300 and Table 40.30.110 with improvements to design elements noted on the 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:

1. Minor redevelopment land development.

- a. The plan proposes GFA that does not exceed legally-established GFA on the site and does not propose a change of use (i.e., legally existing office redeveloped for use as retail) from the type of development formerly legally established on the site. The credit for legally established GFA may exceed the permitted floor area ratio (FAR) in Table 40.04.110.
- b. The plan proposes credit for legally established GFA plus new additional GFA in the same use category as the previously existing GFA not exceeding fifty thousand (50,000) square feet provided the site does not exceed the permitted FAR in Table 40.04.110.
- 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 Table 40.08.130(B) so long as an adequate visual buffers for nearby residential areas is provided.

2. 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 and no change in use is proposed.

- b. Major land development plans that are not subject to a rezoning may proceed directly to record plan submission following exploratory sketch plan approval after Planning Board recommendation as to compliance as with all redevelopment objectives and criteria is made. A PLUS hearing shall be scheduled during the exploratory plan review stage.
 - c. The Planning Board shall hold a public hearing as to whether it should recommend in favor of the plan as complying with both redevelopment objectives and criteria for all major plans.
- d. *Review process.* All major redevelopment plans, including sites that qualify as a Brownfield and any plan that is also requesting a rezoning as part of the submission shall follow the review procedures of Article 31, except that all minor redevelopment plans shall be approved by the General Manager of the Department pursuant to Section 40.31.114.B. All minor redevelopment plans shall be approved by the General Manager of the Department pursuant to Section 40.31.114.B. All major redevelopment plans shall be required to obtain a Planning Board recommendation for approval or the plan shall not be approved without a two thirds (2/3) vote to approve by certification followed by County Council approval as part of the record plan review pursuant to Section 40.31.114.C.
- e. *Design element improvements.* Improvements toward further code compliance shall be made to design elements such as, but not limited to, parking, buffers, landscaping, access, setbacks, stormwater management, impervious cover, off-site transportation improvements/capacity, or mitigation of damage to or enhanced protection for existing natural/environmental resources. Improvements may also be proposed to the architecture of the structure. Emphasis shall be placed on improved landscaping and buffers particularly around parking lots and abutting conflicting land uses. In recognition of existing site conditions, the Department may require specific improvements to the development where they are most needed, are appropriate, and can be physically accommodated. These specific improvements may result in a total aggregate percent improvement greater than the minimum required.
1. The exploratory sketch plan shall identify and quantify all of the existing nonconformities on a property. The property owner must propose improvements in selected design elements listed above, such that in totaling the individual design element improvements, the aggregate shall be equal to or greater than a four hundred (400) percent improvement (or greater if unbuilt GFA are being considered). The applicant shall use Table 40.08.130.B to calculate the percent improvements proposed. Unless specific

deficiencies are identified that warrant attention, a variety of improvements should be proposed throughout the site. Improvements that have only limited effect may not be counted in the final aggregate improvement total.

2. The Department of Land Use may require other site design improvements....
 3. The applicant shall submit....
 4. A site resource capacity analysis....
 5. The redevelopment of a Brownfield....
 6. A traffic impact study shall be required for all major plans proposing a change of use from existing, legally established floor area unless the peak hour, weekend, and total daily average trips associated with such changed use is less than the previously legally established use and none of the six (6) closest intersections to the site operate below LOS D. A traffic operational analysis shall be required for all redevelopment plans. No certificates of occupancy shall issue for a redevelopment project until improvements have been made to at least cause the three (3) closest intersections to operate at LOS D or better. An operational analysis may be required for major plans. A traffic impact study shall only be required if requested by DeIDOT. Proposed development also is subject to DeIDOT transportation impact standards, and the County may limit or restrict development to less GFA if that is recommended by DeIDOT. DeIDOT may also require transportation improvements as a condition of its letter of no objection.
 7. All impact fees
 8. An operational analysis
- f. *Permitted uses for Brownfields...*
- g. *Density bonuses...*
- h. *Annual report...*

Section 4. 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 5. 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 6. 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 6. Effective Date. This ordinance becomes effective immediately upon passage by New Castle County Council and approval by the County Executive or as otherwise provided by 9 *Del. C.* Section 1156.

Adopted by County Council of
New Castle County on:

President of County Council

Approved on:

County Executive

SYNOPSIS: The purpose of this text amendment is to clarify issues related to unbuilt GFA, LOS standards, and the relative importance of certain design improvement elements.

FISCAL NOTE: This ordinance will have no discernable fiscal impact.

COMPARISON OF CURRENT LAW AND 2 NEW REDEVELOPMENT PROPOSALS

Requirements	Land Use Proposal	Current Law	Weiner Proposal
Paper Redevelopment Allowed	Yes—100% credit for previously recorded but unbuilt SF	No—has to be at least 50% demolition of existing GFA, but with credit for unbuilt GFA	No—existing structures must be vacant, blighted, abandoned existing gross floor area or former legally existing gross floor area demolished by at least 50%
Sunsetting of Plans	No—any <u>recorded</u> plan eligible for paper redevelopment regardless of whether it has otherwise sunsetted (i.e., no longer effective)	Yes—a plan must not have sunsetted in order to be eligible for redevelopment, but would either have to be a minor or some physical implements made	Yes, same as current law
Site Improvement Required?	Yes—in an amount equal to the percentage of approved but unbuilt GFA—as determined by Department	Proportional compliance required of at least 400%	Proportional compliance required of at least 400% or more if some GFA unbuilt
Traffic Study	No, DelDOT can't require a TIS for redevelopment plans under MOU between DelDOT and NCC.	No	Yes—for all major plans proposing a change in use or increasing GFA
Traffic Improvements	No, unless DelDOT requires, even if intersection is E or F	No, except to site itself (i.e. entrance).	Yes—no nearby intersections can operate below LOS “D” upon issuance of a certificate of occupancy
Traffic Standards	Just can't make intersections “worse”; no way to tell where intersections operating now without TIS and no deadline to implement required improvements	No	Intersections have to operate at D or better. Standards pegged at LOS, not the loose “worse” LU standard
Community Character concurrently	No	No	Must be accounted for in plans
Process/Public Input	No public hearing for any paper redevelopment which is processed as a minor plan. No public hearing on whether a plan proposing all unbuilt GFA plus 50,000 more meets all criteria for redevelopment	General Manager signature only for minors, normal plan review process for others. Major plans skip from exploratory to record, so no Planning Board hearing. Unbuilt GFA plus 50,000 more GFA still qualifies as a minor	Plans proposing changes in use are major plans. Planning Board must hold a public hearing and decide if the plan properly qualifies as “redevelopment.” Unbuilt GFA does not qualify a plan as “minor”

Requirements	Land Use Proposal	Current Law	Weiner Proposal
New GSF allowed	No GSF reduction based on DelDOT recommendation	All established SF plus 50,000 subject to reduction if DelDOT recommends.	No, unless it is in the same use category as the existing square footage or processed as a major plan