

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

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

**Application Type:**

**Comprehensive Plan Amendment:** Not applicable

**Ordinance:** Ord. 11-115, Text Amendment Chapter 40 UDC

**Other:** \_\_\_\_\_

<b>Comprehensive Plan Amendment or Municipal Ordinance prepared by:</b>	
<b>Address:</b>  ---- same as above ----	<b>Contact Person:</b>
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2011-0673-T

Introduced by: Ms. Kilpatrick  
Date of introduction: November 22, 2011

**ORDINANCE NO. 11- 115**

**TO AMEND THE *NEW CASTLE COUNTY CODE* CHAPTER 40  
(ALSO KNOWN AS THE UNIFIED DEVELOPMENT CODE OR "UDC") REGARDING  
INSITUTIONAL RESIDENTIAL USES (TYPE II)**

**WHEREAS**, institutional residential uses, Type II (NAICS 623) is a broad use category that includes nursing and residential care facilities (NAICS 6231), residential mental health and substance abuse facilities (NAICS 6232), community care facilities for the elderly (NAICS 6233), and other residential care facilities (NAICS 6239), and;

**WHEREAS**, institutional residential uses, Type II are classified as a limited use in residential zoning districts because such uses usually have a minimal impact on the surrounding area due to the high amount of open space preserved and the low amount of traffic generated; and

**WHEREAS**, it is typical for many institutional residential uses, Type II to also include areas within the facility for office space, conference rooms and community use areas that provide places for doctors, therapists, administration and management, consultants, and residents and their families to meet and discuss care and the like, and;

**WHEREAS**, it may also be desirable by certain institutional residential uses, Type II to provide on-site space to incorporate a larger administrative, managerial and clerical presence in the facility to oversee and operate other satellite facilities and other related care operations, where specific site design criteria can be provided that will protect adjacent and nearby residential uses from any adverse impacts, and;

**WHEREAS**, it has been determined that the gross floor area (GFA) of institutional residential uses, Type II in residential zoning districts should be controlled to limit any adverse impacts on the residential community when the facility also houses employees that manage and operate off-site and satellite facilities and services; and;

**WHEREAS**, County Council has determined that the provisions of this Ordinance substantially advance, and are reasonably and rationally related to, legitimate government interests, including, but not limited to, the protection and preservation of the public health, safety, prosperity, general welfare, and quality of life.

**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”), Section 40.03.110 (“Use table”), Table 40.03.110 (“General Use Table”) is hereby amended by the deletion of the text in brackets and with strikethroughs and the addition of the underlined text as set forth below:

**Sec. 40.03.110. Use table.**

Table 40.03.110 lists the type of uses permitted in each district. Refer....

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	ST	MM	ON	OR	CR	BP	I		CN	*** S	SE	** NC	HI	EX	SR	Parking	Limited & Special Use Standards
Agricultural																		
.....																		
Institutional																		
.....																		
Institutional, residential (Type II)	L	L	N	N	N	<u>Y</u> ( <del>L</del> )	N	N		<u>Y</u> ( <del>L</del> )	L	L	L	N	N	L	Table 40.03.522	Table 40.03.210 and Section 40.03.320
.....																		

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 40.03.200 (“Limited and special uses”), Section 40.03.210 (“Buffering, location, bulk, and scale standards”), Table 40.03.210 (“Limited and Special Use Standards”) is hereby amended by the deletion of the text in brackets and with strikethroughs and the addition of the underlined text as set forth below:

**Sec. 40.03.210. Buffering, location, bulk, and scale standards.**

Table 40.03.210 provides standards that increase the degree of...

Table 40.03.210 LIMITED AND SPECIAL USE STANDARDS						Table 40.03.210 LIMITED AND SPECIAL USE STANDARDS						
Part A – Buffer Standards						Part B – Locational or Dimensional Standards Part C – Additional Standards						
Land Use	Buffer Yards			Separation		Minimum				Maximum		Other Additional Standards
	Location	Increase Opacity or Width	Fence or Berm	Use Protected	Distance from Use to Protected Parcel	Spacing	Site Area	Road Access	Open Space	Lot Area	Height	
Agricultural												
....						....						
Institutional uses												
...						...						
Institutional residential (Type II)							5 acs.	collector				<u>Section 40.03.320</u>
.....						....						

**Section 3.** *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”), Section 40.03.320 (“Institutional residential uses”) is hereby amended by the deletion of the text in brackets and with strikethroughs and the addition of the underlined text as set forth below:

**Sec. 40.03.320. [~~Reserved~~] Institutional residential (Type II) uses.**

Institutional residential (Type II) uses, as defined in Section 40.33.230 F.1 and F.2 shall be permitted to include certain administrative functions in addition to use as a residential in-patient facility, provided the following criteria can be met:

- A. Access to the site shall be on a collector or arterial road only, with no secondary access permitted via any minor road.
- B. Setbacks and buffer yards standards for structures and parking spaces shall be increased by fifty (50) percent.
- C. When the gross floor area of the institutional residential use, Type II facility is proposed to be in excess of twenty-five hundred (2,500) square feet per bed, the project will require a Special Use permit by the Board of Adjustment.

**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 7. Effective Date.** This Ordinance shall become effective immediately upon passage by New Castle County and approval by the County Executive or as otherwise provided in 9 *Del. C.* § 1156.

Adopted by County Council of  
New Castle County on:

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

Approved on:

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

**SYNOPSIS:** This amendment will require a Special Use permit for institutional residential uses, Type II when the proposed facility exceeds twenty-five hundred (2,500) square feet per bed of total GFA. The Board of Adjustment will review the application with respect to Section 40.31.430, Section 40.31.432, and Section 40.31.433 of the *New Castle County Code*. These sections provide standards, conditions and restrictions for the BOA to consider when reviewing such application. The twenty-five hundred (2,500) square foot per bed threshold has been determined to adequately accommodate on-site administration and operation needs.

**FISCAL NOTE:** This ordinance will have no discernible fiscal impact.