

**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

Name of Municipality: New Castle County Land Use Department	
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Date of Most Recently Certified Comprehensive Plan: June 11, 2012

Application Type:
Comprehensive Plan Amendment: Not applicable

Ordinance: Ord. 13-097 Regarding On-site Wasterwater Treatment (Septic) Systems. A text amendment to Chapter 40 (“UDC”), Article 22 (“Drainage, Utilities, Septic Systems, Parking, Loading, and Lighting of the New Castle County Code.

Other: _____

Comprehensive Plan Amendment or Municipal Ordinance prepared by:	
Address: ---- same as above ----	Contact Person:
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Maps Prepared by: NA.	
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Please describe the submission:

The purpose of this text amendment is to recognize the ability of DNREC to administer its new on-site wastewater treatment and disposal regulations which are comprehensive and incorporate all of the most recent innovative and alternative on-site wastewater disposal techniques and alternatives. DNREC currently administers the septic approval process in New Castle County subject to several local conditions. The amendment removes several remaining New Castle County standards and conditions for the installation of individual on-site wastewater treatment systems; including the requirement for the installation of dual alternating disposal fields and the minimum lot size requirements for unsewered lots (currently one acre for unsewered lots served by private wells and three-quarters of an acre for unsewered lots served by public or community water supply systems). DNREC regulations require one-half acre minimum lots.

See attached Ordinance 13-097.

Introduced by: Mr. Sheldon, Mr. Powers
Date of introduction: November 26, 2013

ORDINANCE NO. 13 – 097

TO REVISE CHAPTER 40 OF THE *NEW CASTLE COUNTY CODE* (ALSO KNOWN AS THE UNIFIED DEVELOPMENT CODE – UDC), ARTICLE 22 (DRAINAGE, UTILITIES, SEPTIC SYSTEMS, PARKING, LOADING, AND LIGHTING) REGARDING ON-SITE WASTEWATER TREATMENT (SEPTIC) SYSTEMS

WHEREAS, on December 31, 1997, New Castle County Council adopted and the County Executive approved Chapter 40 of the *New Castle County Code*, commonly referred to and known as the Unified Development Code or “UDC”; and

WHEREAS, the General Assembly of the State of Delaware, through the Department of Natural Resources and Environmental Control (“DNREC”), has continued to improve and enhance its rules and regulations for review, permitting, enforcement and inspection of on-site wastewater treatment and disposal systems, otherwise known in the UDC as on-lot septic systems; and

WHEREAS, County Council has determined that DNREC comprehensively regulates and controls the use of on-site wastewater treatment and disposal systems and the provisions contained in the UDC relating to on-lot septic systems are no longer necessary or desirable; 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 22 (“Drainage, Utilities, Septic Systems, Parking, Loading, and Lighting”), Division 40.22.300 (“Sanitary sewer”), Sections 40.22.330 (“Use of on-site wastewater disposal (“septic”) systems”), 40.22.340 (“Standards”), 40.22.350 (“Maintenance and notification”), and 40.22.360 (“Lot size and density requirements for all unsewered lots”) are hereby amended by adding the material that is underscored and deleting the material that is stricken and bracketed, as set forth below:

Sec. 40.22.330. Use of on-site wastewater disposal (“septic”) systems.

Where discharge to a sanitary sewer system is not required in accordance with Section 40.22.320, septic systems may be utilized subject to the applicable regulations of [the] DNREC [~~and this Article~~]. All septic systems used in the County shall be systems that have been approved by DNREC [~~and the Department. The Department may grant an exception to the on-lot septic system standards in section 40.22.340 when an alternative system is approved by DNREC.~~

When the Department does not approve an alternative on-lot septic disposal system which has been approved by DNREC, the applicant may appeal the Department decision to the Planning Board].

Sec. 40.22.340. [Standards] Reserved.

~~[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 on the native soil within each lot on which the disposal fields are proposed to be located to determine the type of septic system that may be permitted.~~
- ~~2. *Disposal fields.* All septic systems shall be installed with one (1) active disposal field. Sufficient ground must be reserved for the later installation of a replacement disposal field.~~
- ~~3. *Protection from soil compaction.* Prior to commencement of any construction on a lot, the area of the lot approved for the placement of disposal fields shall be fenced in or otherwise sectioned off from the construction site in order to prevent the compaction of the soil by construction equipment or material during the construction of the principal building.~~
- ~~4. *Timing of installation.* The applicant shall either install such septic system or shall require, by deed restriction or otherwise, as a condition of the sale of each lot or parcel within the subdivision, that a septic system shall be installed by the purchaser of a lot at the time that a principal building is constructed thereon.~~
- ~~5. *Size and shape of lots.* Each lot served shall be of a size and shape to accommodate the necessary length of the fields at a safe distance from the proposed buildings.~~
- ~~6. *Reserved.*~~
- ~~7. *Backfilling.* Backfilling of excavations made for sanitary sewer lines within dedicated street rights of way shall comply with DelDOT standards.~~

~~B. Standards for all septic systems permitted by this Article and installed outside of a County-recognized sewer service area.~~

- ~~1. *Site evaluations.* Site evaluations shall be conducted on the native soil within each lot on which the disposal fields are proposed to be located to determine the type of septic system that may be permitted.~~
- ~~2. *Disposal fields.* All septic systems shall be installed with dual alternating disposal fields. Sufficient ground must be reserved for the later installation of a single field replacement system. Should there not be adequate ground available to accommodate the dual field~~

~~primary system, then an area shall be reserved for a single field replacement system and the primary system shall consist of a single disposal field that has been expanded to the greatest possible extent to permit the various laterals to be alternated.~~

- ~~3. *Protection from soil compaction.* Prior to commencement of any construction on the lot, the area of the lot approved for the placement of the disposal fields shall be fenced in or otherwise sectioned off from the construction site in order to prevent the compaction of the soil by construction equipment or material during the construction of the principal building.~~
- ~~4. *Timing of installation.* The applicant shall either install such septic system or shall require, by deed restriction or otherwise, as a condition of the sale of each lot within the subdivision, that such septic system shall be installed by the purchaser of a lot at the time that a principal building is constructed thereon.~~
- ~~5. *Size and shape of lots.* Each lot served shall be of a size and shape to accommodate the necessary length of the fields at a safe distance from the proposed buildings.~~

~~C. Standards for all replacement septic systems on lots not subject to the mandatory connection requirements of this Article.~~

~~1. *Replacement system site evaluations.* Site evaluations shall be conducted on the native soil in the area of each lot in which the disposal fields are proposed to be located to determine the type of septic system that may be permitted.]~~

Sec. 40.22.350. [~~Maintenance and notification~~] Reserved.

~~[Maintenance and notification requirements for all existing, future and replacement septic systems.~~

- ~~A. *Maintenance.* All septic systems shall be inspected and maintained in accordance with DNREC's on-site wastewater treatment and disposal regulations.~~
- ~~B. *It shall be the responsibility of the homeowner to rotate the disposal fields of a dual field system on a monthly basis.*~~
- ~~C. *Failed systems.* DNREC shall be notified immediately by any property owner of the failure of a septic system.]~~

Sec. 40.22.360. [~~Lot size and density requirements for all unsewered lots~~] Reserved.

~~[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. For existing lots of record, the Department may grant an administrative variance to the minimum lot size requirements of a residential lot where the applicant has received DNREC approval of the septic design.~~

~~2. *Exception for sample homes.* The applicant of any subdivision plan in any sewer service area who has entered into a sewer agreement with the 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 Subsection A.1, 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.~~

~~C. For any nonresidential facilities for which a septic system will be used the following standards shall apply:~~

~~1. The minimum size of the area to be developed shall be established by dividing the projected design flow by five hundred (500) gallons per day per acre and shall be based on the net pervious area (i.e., unpaved, without structures) available for groundwater recharge after total project completion. For lots located within any water resource protection area, the projected design flow shall be divided by two hundred fifty (250) gallons per day per acre. Impervious areas can be used in calculating minimum lot sizes if stormwater runoff is recharged on-site.]~~

Section 2. 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 3. 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 4. 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 5. 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.

Approved on:

Adopted by County Council of
New Castle County on:

County Executive

President of County Council
New Castle County

SYNOPSIS: The purpose of this text amendment is to recognize the ability of DNREC to administer its new on-site wastewater treatment and disposal regulations which are comprehensive and incorporate all of the most recent innovative and alternative on-site wastewater disposal techniques and alternatives. DNREC currently administers the septic approval process in New Castle County subject to several local conditions. The amendment removes several remaining New Castle County standards and conditions for the installation of individual on-site wastewater treatment systems; including the requirement for the installation of dual alternating disposal fields and the minimum lot size requirements for unsewered lots (currently one acre for unsewered lots served by private wells and three-quarters of an acre for unsewered lots served by public or community water supply systems). DNREC regulations require one-half acre minimum lots.

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