

ORDINANCE NO. 11 - 020

**TO REVISE ARTICLE 8 (NONCONFORMING SITUATIONS) OF CHAPTER 40
OF THE NEW CASTLE COUNTY CODE (ALSO KNOWN AS THE
UNIFIED DEVELOPMENT CODE OR “UDC”)
REGARDING REDEVELOPMENT**

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

WHEREAS, the adoption of the UDC rendered many pre-UDC developed properties nonconforming making the redevelopment of such properties expensive and time-consuming based upon the large number of variances needed; and

WHEREAS, New Castle County adopted Ord. 01-098 on April 9, 2001 to provide flexibility of UDC standards for the redevelopment of existing property and has adopted additional amendments to further clarify and improve the process; and

WHEREAS, other additional issues have been raised regarding the use of the redevelopment option with respect to recorded and unbuilt gross floor area, level of service standards, and the relative importance of certain improvement design elements; and

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 or “UDC”), Article 8 (“Nonconforming situations”), Division 40.08.100 (“General regulations”), Section 40.08.130 (“Alteration/enlargement/extension”) is hereby amended by adding the material that is underscored and deleting the material that is bracketed, as set forth below:

Sec. 40.08.130. Alteration/enlargement/extension.

A. *Nonconforming use.* Nonconforming use of a building or structure....

B. *Nonconforming building, structure or situation.* A nonconforming building, structure or situation may be enlarged, extended or replaced only as provided below:

1. *Extensions and enlargements....*

2. *Alteration...*

3. *Restoration....*

4. *Replacement or repair....*

5. *Reconstruction....*

6. *Redevelopment and Brownfields.*

- a. *Purpose.* Redevelopment is intended to facilitate and encourage the continued viability of previously developed land by granting a credit for both extractive use sites and Brownfields; ~~and~~ for sites with legally existing gross floor area (GFA) that has been demolished by more than fifty (50) percent of its GFA; and for previously recorded plans which have unbuilt GFA. New construction may be configured or located elsewhere on the site although rehabilitation or restoration of existing structures is highly recommended. Improvements....
- b. *Applicability.* The standards of this section shall apply only to sites that have been: (i) designated as a Brownfield[.]; (ii) ~~developed~~ recorded under the former Code[.]; (iii) developed prior to adoption of New Castle County development regulations[.]; or, (iv) are former or existing extractive use sites. The site and all buildings on the site shall be first evaluated for historical significance pursuant to Article 15. The applicant shall be permitted to utilize all of the legally established square footage for the site ~~[provided that said square footage is existing or existed (or was approved for the site) on the site].~~ When a site is proposing to utilize recorded but unbuilt GFA, the minimum total aggregate percent improvement on Table 40.08.130 B shall be increased by the percentage of unbuilt GFA on the record plan. (e. g. if a plan has 50% unbuilt GFA, the total aggregate percent improvement required shall increase by 50% or 400 to 600%)

For office or commercial sites

The redevelopment of a site pursuant to Subsection B.6 permits the continuation of certain nonconforming situations, but prohibits the creation of any new nonconformity or the expansion of an existing nonconformity. In the event a plan proposes development that does not otherwise comply with this Chapter resulting in an application for a variance, the provisions of Subsection B.6 shall not be applicable and the owner/developer shall instead apply for all variances necessary to develop the property.

Levels of proportional compliance....

- c. *Redevelopment plans....*

- d. *Review process....*
- 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.
 - i. 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 is 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 a limited effect may not be counted in the final aggregate improvement total.
 - ii. The Department may require other site design improvements....
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 - vii. An operational analysis [~~may be required for major plans. A~~] or a traffic impact study shall only be required if requested by DelDOT. Proposed development is subject to DelDOT transportation impact standards[~~, and the County may limit or restrict development to less GFA if that is recommended by DelDOT~~]. As a result, DelDOT may [also] require transportation improvements as a condition of its letter of no objection. If existing LOS is between A and D, proposed development may not reduce acceptable LOS below D. If existing LOS is below D, the LOS may not be made worse.
- f. *Permitted uses for Brownfields....*
- g. *Density bonuses....*
- h. *Annual report....*

TABLE 40.08.130 B
Work Table to Calculate Value of Individual Design Element Improvements and Total Aggregate Percent Improvement for Redevelopment Land Development Plans

(a)	(b)	(c)	(d)	(e)	(f)
<i>Improvement Design Elements (at least four (4) separate design element improvements shall be made.)</i>	<i>UDC Site Specific Requirements and Standards</i>	<i>Current or Existing Situation</i>	<i>Proposed Improvement to Existing Situation</i>	<i>Percent Improvement (d/b)</i>	<i>Comments</i>
Parking					
Number of required spaces					
* Bicycle parking					
* Handicap spaces					
Landscape area					
Plant units					
* Curbing					
Bufferyards					
Opacity					
- Street yard					
- Buffer width					
- Plant units					
- Rear yard					
- Buffer width					
- Plant units					
- Side Yard(s)					
- Buffer width					
- Plant units					
Parking buffer					
On-lot landscaping					
Landscape surface ratio					
* Street trees					
Reforestation and mitigation					
Additional standards for limited uses (Table 40.03.210)					

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<i>Improvement Design Elements (at least four (4) separate design element improvements shall be made.)</i>	<i>UDC Site Specific Requirements and Standards</i>	<i>Current or Existing Situation</i>	<i>Proposed Improvement to Existing Situation</i>	<i>Percent Improvement (d/b)</i>	<i>Comments</i>
Riparian buffer area vegetation					
Mitigation and restoration of other natural resources					
Off-site transportation improvements and/or capacity					
Stormwater quantity management					
Stormwater quality management					
Historic preservation buffer					
Building setbacks					
- Street yard					
- Rear yard					
- Side yard					
Paving setbacks					
- Street yard					
- Rear yard					
- Side yard					
* Architectural					
Other					
Other					
Other					
<i>Total Aggregate Percent Improvement (column e), must <u>equal or</u> exceed four hundred (400) percent =</i>					
* <u>Maximum allowable percent improvement for these elements is 50%</u>					

7. *Bridge Reconstruction....*

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 upon passage by New Castle County Council and signature of 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

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.