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Date of Introduction: November 18, 2003

SUBSTITUTE NO. 3
ORDINANCE NO. 03 - 107

TO REVISE CHAPTER 40 OF THE NEW CASTLE COUNTY CODE (ALSO KNOWN AS THE UNIFIED DEVELOPMENT CODE – UDC) REGARDING ARTICLE 2 ("ESTABLISHMENT OF ZONING DISTRICTS"), ARTICLE 26 ("MODIFICATIONS OF STANDARDS"), ARTICLE 30 ("COUNTY COUNCIL AND ADMINISTRATIVE BODIES"), AND ARTICLE 31 ("PROCEDURES AND ADMINISTRATION"), TO CREATE A HOMETOWN OVERLAY ZONING DISTRICT AND COMMUNITY PLANNING PROCEDURES

WHEREAS, New Castle County has determined and identified many unique and diverse communities exist that have previously established themselves apart from the common form of suburban development that characterizes much of the county, and;

WHEREAS, current land use and development code provisions do not adequately recognize this distinction or the needs of these communities to sustain and enhance their development patterns, and;

WHEREAS, modifications are needed to promote the viability and economic health of these communities as desirable places to live and facilitate infill and redevelopment within these communities, 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. Chapter 40 of the *New Castle County Code* is hereby revised by the addition of the underlined text and the deletion of the text contained within brackets as set forth in **"Exhibit A"** attached hereto, and made a part hereof as if fully set forth herein.

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 Inconsistent Ordinances and Resolutions Repealed.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or parts of ordinances and all resolutions or parts of resolutions that may be in conflict herewith are hereby repealed except to the extent they remain applicable to land use matters reviewed under previous Code provisions as provided in Chapter 40 of the *New Castle County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 its adoption by County Council and approved 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: Although New Castle County is often characterized by recent suburban growth, many unique and diverse communities exist in the County. These communities have previously established themselves apart from our current growth trends. However, New Castle County has determined that current land use and development provisions cannot adequately recognize their distinction or the needs of these communities to sustain and enhance their traditional development patterns. This Ordinance establishes an overlay zoning district that identifies these areas and provides an alternative planning mechanism that will allow for the modification of code provisions which threaten their perpetual existence. Public and community involvement is important to the success of these areas and is built into the process by requiring input not only during the planning process, but also during County review of projects within these areas.

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

EXHIBIT A

Sec. 40.02.240. Special districts.

Four (4) [Three (3)] of the special districts are applied to existing development areas and two (2) of the special districts were created to allow a limited amount of Heavy Industry (HI) and Extraction (EX). The Neighborhood Conservation (NC) district applies to neighborhoods or planned areas whose character is already set by existing uses and lotting, and which should be protected or conserved. The Diversified Planned Unit Development (DPUD) district is only for existing DPUD developments. The Historic (H) District is an overlay district to preserve the County's historic heritage. The Hometown (HT) Overlay district may be used for communities built before zoning regulations were established (pre-1954) and with a unique development pattern that does not conform to existing zoning standards.

Sec. 40.02.245. Hometown (HT) Overlay District.

The Hometown Overlay District is intended to perpetuate and enhance the character of early settlement areas, hamlets, villages, and pre-World War II subdivisions. Many of these communities have unique characteristics that do not conform to modern zoning standards, but still possess qualities making them viable and attractive places to live and work. The purpose of the overlay district is to ensure that infill, redevelopment, and changes to the zoning pattern are compatible with the existing community. Each district will require its own community redevelopment plan that may address such issues as land use, dimensional characteristics, protected resources, and amenities, and other features, as appropriate. Future development will conform to the established character of the community as defined in the plan instead of adhering strictly to modern zoning standards. Communities in the unincorporated areas of the county identified in Chapter 10 of the 1997 New Castle County Comprehensive Development Plan Update as well as Claymont; and, incorporated areas regulated by the UDC shall be eligible for the overlay district.

Division 40.26.400. Modifications for development in designated Hometown (HT) Overlay Districts.

Sec. 40.26.410. Purpose.

The purpose of the Hometown overlay district is to perpetuate and enhance the character of communities built before the creation of zoning and land development codes. The creation of the overlay districts is intended to foster investment and redevelopment in these communities by preventing the need for variances in order to maintain existing patterns and characteristics, and to prevent the lack of harmony that results from strict adherence to existing zoning standards. Nearly three centuries of development were already in place when the first zoning code was established in 1954. The zoning code, and amendments, created standards for new development, but failed to recognize the unique qualities of existing communities and how they would evolve. The diversity of our older communities include settlements that grew around mill seats, ports, railroad stations, crossroads, agricultural trading centers, trolley lines, and adjoining cities. Many are designed with street systems, lot sizes, dimensional relationships, and patterns of use that do not conform to existing zoning districts, yet are viable, attractive communities that offer an alternative to modern development. The urban style density, setbacks, and mixed uses in

some older communities are not permitted in the standard zoning districts. A community redevelopment plan for each overlay district will define unique characteristics that infill projects, redevelopment, and zoning patterns will perpetuate.

Sec. 40.26.420. Designation.

A. County Council may establish Hometown (HT) Overlay zoning districts that encompass the boundaries of communities and neighborhoods that will be subject to a modification of dimensional standards as set forth herein and by an approved Community redevelopment plan. Hometown Overlay rezonings shall be processed in accordance with the tri-annual hearing process in Section 40.31.111.

B. Adoption of a Hometown Overlay District shall amend the Comprehensive Development Plan to be consistent therewith.

C. The description and identification of these communities shall be through civic initiative and public input to determine the unique qualities, landscapes, land use, development patterns, amenities, road network and transit facilities, community uses, public spaces and other assets that define and characterize that community. The delineation of a community shall not be comprised of only one land use type. Communities are composed of a variety of uses that include residential, commercial, employment, recreational and institutional uses. While not all communities have each of these categories, all communities do exhibit a variety of land uses that together contribute to the identity and function of the community.

D. All proposed land development applications reviewed by the Department shall comply with a Community Redevelopment Plan and/or Design Guidelines adopted for a community.

Sec. 40.26.430. Community redevelopment plan.

A. With adoption of the Hometown Overlay Zoning District Ordinance, County Council shall at the same time, by resolution, approve a Community Redevelopment Plan with design guidelines.

1. At a minimum, the Plan shall include a purpose, goals, and description of the land uses, community character, architectural or design themes, streetscape and landscape concepts, transportation objectives, considerations for building envelope, mixed use opportunities, parking/loading and accessory uses.

2. The Community Redevelopment Plan must describe how development is intended to be compatible with the community character or in harmony with the existing community fabric. It should encourage maintaining the rhythm of the existing developed community by recognizing streetscape contexts involving building, scale, mass, door and window openings and spacing, building height, setbacks, materials, texture and relief of facades. However, the Plan should not merely act

to replicate architectural styles that would result in an unintended monotony and blandness or a contrived, artificial appearance.

3. The Community Redevelopment Plan shall identify those properties that warrant a different zoning designation and County Council shall consider these rezonings concurrently with the adoption of the overlay zone.

4. An illustrative plan and narrative report shall address proposed dimensional, character, design and other standards to supplant or supplement other provisions within the UDC. These standards and criteria may be incorporated in the Community Redevelopment Plan or within a separate "Design Guidelines" manual.

B. The Community Redevelopment Plan shall result from public meetings to determine community goals and objectives (sometimes referred to as a visioning process). It is imperative that these public meetings, held pursuant to the public notification process of Section 40.31.340 of this chapter, comprise broad-based support with representation by diverse community interests and bona fide community groups.

C. Amendment or revision to the Community Redevelopment Plan may be initiated by the community, Design Review Advisory Committee (DRAC), or by the Department, and approved through a resolution of County Council.

D. An applicant seeking a variance(s) to the dimensional standards and design guidelines identified in the Community Redevelopment Plan or Design Guidelines manual shall apply to the New Castle County Board of Adjustment. A recommendation from the DRAC and the Department shall be submitted to the Board prior to a decision.

Sec. 40.26.440. Design review advisory committee (DRAC).

A Design Review Advisory Committee shall be established pursuant to Section 40.30.450 for each Hometown Zoning Overlay District created.

Sec. 40.26.450. Variation from UDC standards.

A. All UDC standards shall remain in effect within the designated community including zoning districts as depicted on the Zoning Map. The standards established by the Community Redevelopment Plan/Design Guidelines manual that may conflict or contradict those of the UDC shall supersede those of the UDC as identified and determined by the Department during plan review.

B. UDC requirements may be modified to adjust density, landscaping, buffers or open space areas, parking, building and paving setbacks, building heights, and sign standards to insure that the proposed development will conform to the goals and objectives of the Community Redevelopment Plan and/or Design Guidelines manual.

C. Exceptions:

1. All protected resources as identified in Article 10 shall be preserved.

2. The Community Redevelopment Plan/Design Guidelines manual shall not replace historic preservation measures found in Article 15 of this Chapter.

D. The Department may initiate proactive rezoning of land within the overlay zone to facilitate proposed development that conforms to the Community Redevelopment Plan and/or Design Guidelines Manual.

Sec. 40.26.460. Land development reviews.

A. Any proposed land development application within a Hometown Overlay zone shall follow the procedures of Article 31 of this Chapter with the addition of a review by the (DRAC).

B. Upon submission of an application, the Department shall notify the appropriate DRAC of the application and schedule a public meeting for the next regularly scheduled monthly meeting in compliance with legal notice requirements. Both the applicant and the Department shall be responsible for public notification in accordance with Section 40.31.340.

C. The Department shall prepare a preliminary report for the DRAC prior to the public meeting. The Department's preliminary report shall include a discussion of the appropriateness of the application in relation to the Community Redevelopment Plan and/or Design Guidelines manual and the UDC.

D. A public meeting for review of the application shall be held by the DRAC and the Department. The applicant shall be present to provide a brief description of the project and answer questions by the Committee and those in attendance. Based upon its public review, the DRAC shall provide a written recommendation to the Department within ten (10) days of the public meeting. If the DRAC fails to submit a recommendation within those ten (10) days, the Department shall proceed with its review of the application.

E. The DRAC's written recommendation shall advise the Department of the project's conformance with the goals, objectives and standards of the Community Redevelopment Plan and/or Design Guidelines manual. The Committee may make suggestions or recommendations for desired revisions to further enhance the project or to correct deficiencies.

F. Upon receipt of the DRAC recommendation, the Department shall issue a final report to the applicant. In doing so, the Department shall give due consideration to the public meeting comments and DRAC recommendation in determining conformance with the Community Redevelopment Plan and/or Design Guidelines manual. A revised exploratory plan or land development application may be required to incorporate the

proposed changes identified in the final report. Architectural details, elevations and other design-related elements shall be shown on a landscape plan or on a separate plan. The Department will subsequently respond to the applicant as part of its review in accordance with *New Castle County Code*. Dimensional UDC standards varied by this process and other Community Redevelopment Plan and/or Design Guideline manual elements shall be noted and depicted on all subsequent plan and/or application submissions.

G. The Department may refuse acceptance of plans that are in substantial noncompliance with the UDC or Community Redevelopment Plan and/or Design Guidelines manual and may require subsequent reviews by the DRAC upon submission of revised plans.

Sec. 40.30.450. Design Review Advisory Committee (DRAC).

A DRAC shall be established for each Hometown Overlay District. The Department shall be the professional staff for each Committee.

A. Purposes and duties of each Committee shall be:

1. The Committee shall review plans for land development applications for compliance with the Community Redevelopment Plan and/or Design Guidelines manual and make recommendations to the Department.

2. The Committee shall review the community standards and make recommendations for revisions and updates to the Community Redevelopment Plan and/or Design Guidelines manual.

3. Any other purpose provided in Division 40.26.400.

B. The Committee shall adopt bylaws and rules in accordance with Article 30 of this Chapter. Each Committee shall comply with the following:

1. All public meetings shall be open to the public.

2. A majority of the Committees' members shall constitute a quorum necessary to take action and transact business. All actions shall require a simple majority of the quorum.

3. In the event that any member is no longer a resident of the County; is convicted of a felony or an offense involving moral turpitude; violates rules of the board; fails to attend any three (3) consecutive, regularly scheduled meetings except where such absence is deemed by the chairman to be due to illness, incapacity, or a family crises; or, has three (3) unexcused absences in one (1) year, that member shall forfeit his/her membership on such committee. "Regularly scheduled meeting" shall mean a meeting at which a committee member is expected to be present. The chairman of each committee shall forward a letter to the County Executive stating that a vacancy exists on the board and the name of the member

who held the forfeited position. The County Executive shall terminate the appointment of such person with the consent of the County Council.

C. *Members*. Community representatives shall make recommendations to the County Executive who shall appoint members subject to County Council consent. The County Executive shall appoint members subject to the following guidelines:

1. The minimum number of members shall be five (5) and the maximum number shall be nine (9). The chairperson shall be appointed and serve at the pleasure of the County Executive. The Vice-chairperson is appointed by the Chairperson. The Chairperson shall be in charge of all proceedings, and take such action as necessary to preserve order and integrity of all proceedings..

2. Each committee shall, with the exception of the chairperson, be comprised equally of business and homeowner/residential interests.

3. The committee shall be comprised of residents or property owners of the area affected by the overlay district and the surrounding area identified in the Community Redevelopment Plan, except that one (1) registered landscape architect and one (1) registered architect who resides outside of the community may be appointed to the committee.

4. Each committee member shall be appointed for a term of three (3) years. Initial appointments shall be staggered as one (1), two (2) and three (3) year appointments, with each subsequent appointment to be three (3) years. An individual may serve until replaced and may be reappointed any number of times.

Sec. 40.31.340. Notice of public hearings.

Except as required below, the Department shall be responsible for ensuring notice of a public hearing through newspapers, posted notice in public buildings as determined by the Department of Land Use, and mailed notice for meetings of the Board of Adjustment, Planning Board, [and the] Historic Review Board and Design Review Advisory Committees.

A. *Text amendments and County-initiated comprehensive.....*

B. *Other applications*.

1. *Notice in newspaper*. The Department shall advertise all other applications (e.g., deed restriction changes; applicant rezonings; subdivision, area, use, and floodplain variance requests; beneficial use appeals; appeals of Departmental decisions; major land development plans (Technical Advisory Committee (TAC)); Historic Review Board applications; RPATAC applications (Resource Protection Area Technical Advisory Committee); Design Review Advisory Committee applications; and other Planning Board and Board of Adjustment applications in the legal notice section of the Saturday issue of the News Journal

published in Delaware and in community newspapers specifically listed in Appendix 6 of the Unified Development Code (UDC). The Department of Land Use shall maintain and amend, as may be necessary from time to time, a list of New Castle County newspapers of general circulation and community newspapers, contained in UDC Appendix 6, in which public hearings and applications are to be advertised. Publication in the News Journal shall be deemed to satisfy the legal notice requirements in this section. Notice shall appear at least fourteen (14) calendar days prior to the public hearing date and shall contain the following information.

a. The type of application.....

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2. *Notice to owner/applicant*.**…**

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