

Introduced by: Mr. Tackett
Mr. Reda
Date of introduction: July 24, 2012

ORDINANCE NO. 12-087

TO AMEND *NEW CASTLE COUNTY CODE* CHAPTER 40 (“UNIFIED DEVELOPMENT CODE”) REGARDING COUNCIL RECORD PLAN REVIEW

WHEREAS, New Castle County Council believes that it is in the best interests of the applicant and the public to clarify the procedures for Council review of record plans; and

WHEREAS, once a property is properly zoned and the record plan is deemed by the Department of Land Use to meet the requirements of the subdivision code and all other legal requirements, the Courts have determined that County Council’s approval of the plan is ministerial (“by-right”); the Courts also have determined that property owners are entitled to know, with a reasonable degree of certainty, the legal rules and regulations, processes and procedures governing the use of their property; and

WHEREAS, current law provides that County Council may table such a plan for and refer the plan back to the Department of Land Use for questions of legal compliance up to two times (for initial and additional questions), but must pass the plan if the Department certifies it is compliant the first and/or second time, as the case may be; and

WHEREAS, this ordinance clarifies that Council is entitled to a response(s) to its question(s), along with the Department’s reaffirmance of compliance or its rescission of its previous approval for noncompliance; and

WHEREAS, this ordinance also clarifies that Council shall schedule plan consideration upon receipt of the Land Use Department’s response to its question(s) and recommendation, rather than in advance and/or anticipation thereof, to allow sufficient time for Council and the applicant to review the responses (rather than receiving the same immediately before the meeting to consider the plan, for example); and

WHEREAS, this ordinance makes clear that any additional tablings shall occur only upon initiation of such a request by the applicant, rather than by the Executive or Legislative branch, for an unusual and specific reason such as a scheduling conflict.

Section 1. *New Castle County Code* Chapter 40 (“Unified Development Code”), Article 31 (“Procedures and Administration”), Division 40.31.100 (“Application review procedures”), Section 40.31.114 (“Record plan review stage”) is hereby amended by adding the material that is underscored and deleting the material that is stricken, as set forth below.

Sec. 40.31.114. Record plan review stage...

D. *Council consent.*

1. For major plans, the record plan shall be forwarded to County Council for its ~~consent~~ consideration. Upon receipt of the plan, County Council shall schedule the matter for its next public hearing, and may take only one (1) of the following actions:

- a. Adopt a resolution approving the record major plan; or
- b. Table and refer the plan back to the Department, no more than twice, with specific questions relating to technical compliance with this Chapter, State or ~~f~~Federal constitutional requirements or any other statute or ordinance for which compliance is required. Upon receipt of a Department response to the specific questions raised and a recommendation, Council shall schedule the matter for its next public hearing. ~~Upon receipt of a Department recommendation reaffirming~~ If the Department reaffirms approval of the plan after responding to questions of technical compliance, County Council shall adopt the resolution of approval, unless a second referral is made because of additional questions or concerns relating to technical compliance with this Chapter, State or Federal constitutional requirements, or any other statute or ordinance for which compliance is required. Upon receipt of the Department's responses to the additional questions and recommendation reaffirming approval of the plan ~~after review of any additional concerns raised by County Council~~, Council shall adopt the resolution of approval.
- c. If the Department determines after reference back by Council for questions of legal compliance that the plan is noncompliant, and the Department rescinds its previous approval of the plan for legal noncompliance, the procedure shall be as set forth in subsection E(2).

2. County Council may use any one (1) or more of the above options subject to limitations contained in each paragraph; there shall be no tabling of plans other than as contained in this subsection D, except for a tabling initiated by the applicant, rather than the County Executive or Legislative branch, due to unforeseen circumstances such as a scheduling issue.

E...

Section 2. 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 that they remain applicable to land use matters reviewed under prior *Code* provisions as provided in *New Castle County Code* Chapter 40.

Section 3. The provisions of the ordinance shall be severable. If any provision of this ordinance is found by a 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(s) that it cannot be assumed that County Council would have enacted the remaining valid provisions without the unconstitutional or void provision(s), 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.

Section 4. This ordinance shall become effective upon passage by New Castle County Council and signature of 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
of New Castle County

Approved on:

County Executive of
New Castle County

SYNOPSIS: This ordinance clarifies the procedures relevant to Council approval of major plans as more specifically set forth in the whereas clauses.

FISCAL NOTE: