

ORDINANCE NO. 10 - 098

**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 OF APPROVED BUT UNBUILT STRUCTURES**

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, to encourage use of existing infrastructure and preserve Greenfields, New Castle County adopted several text amendment to the UDC providing for flexibility of UDC standards for the redevelopment of existing developed: Sub. No. 2 to Ord. 01-098 on April 9, 2002, Sub. No. 1 to ord. 03-069 on October 28, 2003, Sub. No. 1 to Ord. 04-054 on July 13, 2004, Ord. 06-007 on March 28, 2006, and Sub. No. 1 to Ord. No. 08-001 on March 25, 2008; and

WHEREAS, concerns have been raised regarding the use of the redevelopment incentives in developing property subject to a record plan that was approved before the adoption of the UDC, but has little to no existing or pre-existing square footage actually built; and

WHEREAS, absent structures such properties are essentially Greenfields that do not require the large number of variances that would be necessary for built structures; and

WHEREAS, New Castle County has determined that it is desirable to limit use of the redevelopment incentives to legally established square footage that is existing or has existed; 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....

1. *Exception....*
- B. *Nonconforming building, structure or situation.* A nonconforming building, structure or situation may be enlarged, extended or replaced only as provided below.
 1. *Extension or enlargements....*
 2. *Alteration....*
 3. *Restoration....*
 4. *Replacement or repair....*
 5. *Reconstruction....*
 6. *Redevelopment and Brownfields*
 - a. *Purpose...*
 - b. *Applicability.* The standards of this section shall apply only to sites that have been designated as a Brownfield, developed under the former code, developed prior to adoption of New Castle County development regulations, or 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 of this Chapter. 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. For office or commercial sites that are currently used for residential purposes and abut residentially zoned property, the applicant must provide the entire required buffer against the residential land. The redevelopment of a site pursuant to Section 40.08.130(B)(6) permits the continuation of certain nonconforming situations, but prohibits the creation of any new nonconformity or the expansion of an existing nonconformity. Levels of proportional compliance are required to meet or exceed the provisions provided for in Section 40.08.130(B)(6)(e), below. In lieu of this section, an applicant may choose to redevelop the site in full compliance with the UDC.

...

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 limit use of the redevelopment incentives to pre-UDC plans with legally established square footage that is existing or has existed.

FISCAL NOTE: