



# Toward a comprehensive program for historic preservation in New Castle County

New Castle County Department of Land Use | May 2020

## INTRODUCTION

New Castle County is committed to historic preservation and is encouraged to see renewed interest in historic preservation policies. New policies are needed, focusing on a few, productive updates to provisions across the entire County Code that deal with the protection and use of historic resources, as well as the Historic Review process. The New Castle County Department of Land Use is preparing a comprehensive approach that will strengthen key elements of the code for historic preservation.

In addition to the Draft Comprehensive Update to County Code to Protect Historic Resources, concurrently, there are an unprecedented number of other historic preservation-oriented pieces of legislation under development or in progress:

- Ordinance 20-015, Requirements for Major Land Developments with historic resources (Councilman Carter)
- Draft Scenic Byway Ordinance (NCC Land Use)
- NCC Historic Structure Marker program proposal (Councilwoman Durham)
- Draft Ordinance to tighten the inspection process for H Zoned properties (Councilwoman Durham)
- Draft ordinance requiring H Zoning on parcels where owner is seeking tax exempt status (Councilwoman Durham)
- Draft ordinance to mandate that any property eligible for H zoning which the County acquires through the Sheriff's Sale process be placed under H Zoning (Councilwoman Durham)

Legislative efforts are an important step in protection and preservation of our County's valuable historic resources. However, their collective effectiveness is not determined by the volume of individual ordinances, but rather in their cohesion and integration within broader code and policy.

Furthermore, for success in protecting and preserving valuable historic resources in the County, effective legislation must be complemented by other robust efforts, which include public-private partnerships, financial resources, community involvement, and incentives for preservation.

Policy must also be considerate of and in balance with economic development, market realities, and other local factors.



The Department has worked hard to evaluate current code as well as the other proposals. An overview of the comprehensive update to New Castle County Code is provided below as well as a brief overview of other proposed legislation along with the Department of Land Use’s perspective and most recent comments provided by the Historic Review Board as provided in their meeting minutes.

## **OVERVIEW OF COMPREHENSIVE UPDATE TO COUNTY CODE TO PROTECT HISTORIC RESOURCES**

The Department of Land Use has undertaken a thorough review and update to code provisions across the entire County Code, which has resulted in draft legislation to comprehensively strengthen County law to protect historic resources.<sup>1</sup> Provisions to strengthen the code comprehensively address preservation and maintenance of historic resources in the Major Land Development process, incentives for adaptive reuse, clarification regarding Historic overlay zoning districts and the establishment of an official Historic Review Board application. Language was added, and existing code sections were reorganized, to provide clarity relating to the procedures and powers of the Historic Review Board and the Department of Land Use. This update includes additional incentives for historic preservation within Historic overlay zoning districts. Definitions related to historic resource terms, including historic renovation and historic structure are proposed to be added or modified for clarity and consistency with the UDC and the Secretary of Interior standards.

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<sup>1</sup> The draft ordinance is currently being reviewed with the Office of Law and should be ready for introduction within a few weeks. Most up-to-date changes to the draft ordinance are reflected in the Enhanced Fact Sheet available at: [https://nccde.org/DocumentCenter/View/37769/Historic-Framework-Enhanced-Fact-Sheet\\_05012020](https://nccde.org/DocumentCenter/View/37769/Historic-Framework-Enhanced-Fact-Sheet_05012020)  
Updates posted at: <https://www.nccde.org/1888/Legislation-and-Initiatives>

**Summary of proposed updates:**

Updates to Chapter 6 (Building Code), of the New Castle County Code:

Provides updates and clarification regarding review (and timing) of historic building permits and demolitions, including an historic documentation requirement.

Updates to Unified Development Code, Chapter 40

Article 7 (Transfer of Development Rights and Other Incentives and Bonuses)

Updates and reorganization of the provisions for historic preservation bonuses to provide clarification, consistency with other sections and to establish a standard for a bonus where a historic resource is renovated and maintained.

Article 15 (“Historic Resources”):

Reorganization of existing language and establishment of a new divisions specifically for Historic overlay zoning districts, standards for the Historic Review Board to follow when reviewing applications and how historic resources identified on record plans should be labeled and treated.

One of the more significant updates addresses the maintenance of historic resources on record plans and provides for an expanded and enhanced maintenance provisions suggested in other concepts. The updates in the proposed new section provide additional clarity for applicants preparing a maintenance plan for historic resources. This new section is purposefully located in an appropriate and enforceable portion of Article 15. Additionally, staff is exploring methods of surety to be included in the new Section, further strengthening this policy.

Other: Appendix

Minimum submission requirements were added to the appendix for all applications appearing before the Historic Review Board. These requirements are intended to codify items commonly requested by the Historic Review Board for consideration. This component will be updated separate from the legislative process required for the above.

## SUMMARY AND STATUS OF OTHER HISTORIC PRESERVATION LEGISLATIVE EFFORTS

The following six legislative efforts associated with historic preservation are in various stages of development. The primary author is noted in parentheses.

**Draft Scenic Byway Ordinance (NCC Land Use)** – we have worked with the Scenic Byways Working Group and other stakeholders on a draft ordinance and it is now being reviewed by the Office of Law.

- For more information see:  
<https://nccde.maps.arcgis.com/apps/MapSeries/index.html?appid=6d567d42230342c7a43caa5e31f6802d>
- Related information can be found at: <https://nccde.org/176/Area-and-Special-Studies>

**NCC Historic Structure Marker program proposal (Councilwoman Durham)** – The Historic Review Board has reviewed the proposed program and did not have an objection. The Historic Review Board has requested that they be involved with the design of the marker and be updated with any information on the program prior to adoption. The Department of Land Use agrees with this position and will help to facilitate discussions with Councilwoman Durham regarding this program.

**Ordinance 20-015 Requirements for Major Land Developments with historic resources (Councilman Carter)** – This ordinance proposes changes the Historic Resources Article in the UDC to require that residential major land development plans containing an historic resource determined eligible for Historic Overlay zoning must first rezone the resource prior to recordation and also requires maintenance plan to prevent demolition by neglect.

The Department is incorporating the concept proposed in ordinance 20-015 into its comprehensive update (explained above), to ensure functionality and integration in the land development process. Enhancements include further clarity for applicants preparing a maintenance plan for historic resources, as well as specific guidelines for short-term and long-term maintenance, and methods of surety. This provision will be located in a more appropriate and enforceable portion of Article 15.

**Draft Ordinance to tighten the inspection process for H Zoned properties (Councilwoman Durham)** - There are currently less than 50 designated Historic Overlay Districts (approximately 89 properties, except for La Grange major subdivision). These properties are inspected routinely by the Department. The majority of these properties are in good condition, while five have been identified as having code enforcement issues. Three of the structures are County-owned, which the Dept. of Public Works is working on addressing. The other two, the Weldin House and Everett Johnson House, have both recently been through the Historic Review Board Process (in 2019) and are slated for repairs.

When issues arise, the Department engages the owner regarding the requirements of the Property Maintenance Code and Section 40.31.280 of the New Castle County Code. Please note, inspections of properties are only permitted to be taken from the public right of way, as Historic overlay zoning does not give the Department right of entry without due cause. Because the Department is aware of the current status of the resources, we currently do not feel that additional inspections and reports would offer substantial benefits. Rather than focus on these additional inspections, we prefer to focus our resources on other important tasks related to historic properties. Because the Department and Historic Review Board are already actively engaged in this process, the Department does not see a significant need for this ordinance.

**Draft ordinance requiring eligible owners of any parcel that is seeking tax exempt status where there is an eligible historic resource to rezone the property to Historic (Councilwoman Durham)**

The draft language for this ordinance was shared with the Historic Review Board in October 2019. The minutes from the meeting regarding this concept are summarized below and generally the Department of Land Use agrees with the HRB on this issue:

- Concern that the ordinance would seemingly penalize a nonprofit, organizations that historically have monetary struggles, and are often required to spend money on their missions only rather than outside of a mission's purview.
- Concerns over a nonprofit purchasing a property, finding out it is historic and then being required to place an Historic overlay on the property. Nonprofits may not be able to afford the high-quality materials associated with NCC Design Guidelines and Secretary of Interior Standards, further deterring nonprofits from pursuing an historic house and seeking a tax exemption.
- This requirement would only encourage historic preservation-based nonprofits to pursue an historic structure.
- The Board felt there should be an incentive to place Historic overlay zoning on a property in addition to a tax exemption.
- Incentives should be provided for Historic overlay zoning in order to discourage the perception that Historic overlay zoning is ominous.

**Draft ordinance to mandate that any property eligible for H zoning which the County acquires through the Sheriff's Sale process be placed under H Zoning (Councilwoman Durham)** - The New Castle County Vacant Housing Working Group, the Monition Review team, as well as the NCC Vacant Housing Acquisition and Disposition team, reviews properties with buildings or structures thought to be over fifty (50) years of age or exceptionally important to the history of the County. They can be recommended to be rezoned for an Historic overlay zoning district Designation. However, as has been demonstrated in the past, this designation usually only gets recommended with consent of the property owner and in most instances, the County does not

become the property owner after Sheriff's Sale. Therefore, the approach to forcing Historic overlay zoning on properties going through the Sheriff's sale process could be problematic.

An example of this would be the property on Mt. Lebanon Road in which the currently property owner paid off the outstanding debt and acquired the property from the previous (delinquent) owner outside of the Sheriff sale process. The new owner has now proposed to rezone the parcel to H overlay due to the incentive for adaptive reuse they can utilize through this zoning designation. Additionally, it is important to note that even if the current property owner had not paid the back taxes, etc., the property had received a third-party purchaser bid at Sheriff's sale so the County would not have become the property owner. The County has no control over who the property will be owned by in a Sheriff's sale.