



New Castle County Unified Development Code Update
Summary of Focus Groups and Listening Sessions
September 13-14, 2016

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Summary of Focus Groups and Listening Sessions

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Introduction

New Castle County is in the process of updating the Unified Development Code (UDC). Technical corrections were discussed under two main themes; Process and Site Design. To facilitate dialog with the participants, story boards were displayed which highlighted 6 sub components for “Process” and 6 sub components for “Site Design”. The goal was to provide an example of each six sub components so we could solicit ideas from the focus group members and public. The 6 sub components under Process included: **Applications; Review; Record Plan Modifications; Common Facilities; Vacating Record Plan / Parcels; and Sunsetting**, and the 6 sub components under “Site Design” include: **Residential Accessory Uses; Open Space Phasing; Landscaping; Streetscape/Subdivision; Parking; and Drive Through / Loading Zone**.

The UDC updates will implement the New Castle County Department of Land Use Action Plan (October 7, 2014)(the “Action Plan”) and Operational Efficiency Study & Implementation Plan (March 17, 2015). These studies follow a series of extensive outreach with civic leaders, businesses, nonprofit groups and other stakeholders since 2015. These amendments will protect neighborhoods, bring jobs to New Castle County, and to streamline the development approval process.

On September 13-14, 2016, the County conducted a series of focus group meetings and a public workshop on technical corrections, administrative changes, and updates that will right-size development standards such as parking and landscaping. This report summarizes the input obtained at those meetings. In order to maintain anonymity, we do not assign comments to speakers, and each comment we received is recorded without commentary. Every stakeholder comment is considered an important contribution to this process, and will be considered in view of the overall project objectives, County policy, and Delaware and federal state law. The comments are reported as stated, and are not checked for factual accuracy or altered other than to summarize them.

During this time period, we conducted 6 focus group meetings and 1 public workshop. These meetings consisted of stakeholder groups with similar interests. They were open to the public and stakeholders from other groups also participated in the meetings. The comments received in this report should not be taken as an official or binding position of any person, group, or entity in the County about the UDC. Instead, they represent the thoughts and insights of the persons who participated in the stakeholder meetings. In addition, the comments do not necessarily reflect the opinions of all persons who attended the meetings, the County, the consultant, or anyone other than the person who made it. While many thoughtful and insightful comments were received. However, they will all be considered when updating the UDC.

Home Builders / Engineers

September 13, 2016, 8:30-9:45am

Where is redevelopment? Answer: Not addressing redevelopment in this phase.

Record Plan Modification –

- Include title subdivisions (e.g. large commercial entity with record plan and want to subdivide into parcels for financing and tax purposes, reviewed as minor plan).
- Eliminate DelDOT and fire review for minor, especially with no traffic impacts.
- Add: traffic notes that become obsolete, uses (e.g. tennis court to dog park).

Sunsetting record plans –

- Concern is the capacity that committed development has. If a plan sunsets, does it's capacity become available, and how does that work with DelDOT (they don't look at it the same, but they are improving).
- 5 years to expiration is reasonable but provide for extensions – county has been cooperative (tie to % complete).
- When should we stop extending plans? – 1-2 cycles is the answer.
- Sunsetting a record plan when is nothing built is different from reservation of capacity for something that is built and becomes vacant – how long before its up for grabs? Improvement of traffic signals in real time, 141 from Kirkwood to 202 reduced travel time by 15% - who gets that capacity? - state the policy. Eg former Chrysler site being redeveloped, GM not being redeveloped, etc that capacity reserved for. When does it become available? Current code doesn't reserve capacity for those, so it penalizes those sites.

Land Development Improvement Agreement (LDIA) –

- \$215M in LDIA bonds, none ever executed. No issues for non-residential. Partial open space takeover may not work because you then have to redo the open space again and can't assess the homeowner, may not be near where homeowners live. So they bond and complete at the 75 or 90% point.
- For bigger open spaces, like 50-100 acres, it's easier to do all at once. Can't turn it over until its done. Could phase if the homeowner's association takes it over. Consider if county is satisfied with progress of open space as project goes forward. How to add flexibility?
- Not all open space and not all projects are the same. The current rules could limit the kind of open space that's planned. One large community had pocket parks finished up front, but would not have done that without phasing and would have had natural open space on edge. Example: in Pennsylvania the rules are usually more flexible, ways to allow phasing of each project. On site by site have flexibility to move the percentage (at a designated percent built require a given percent of open space to be completed). Vary by size of subdivision.

- Lots of communities are stopped, can't figure out how to finish their open space. People buying lots can't go forward because developer hasn't finished open space. Customers accept paying a fee when they occupy their home to go to open space. E.g. bond at 50% and then you bring cash to begin construction, or half upfront then bond / LDIA. Same problem with schools – contractor, only incentive is retainage (e.g. at last 10% of lots, have to drag contractor out).
- In hypothetical where someone buys a lot in their 30's and the clubhouse is not done until they retire – should government be involved in that?

Open Space Requirements

- Why not reduce amount of open space required in subdivision but contribute to regional / subregional parks that are used?

Drive-Through / Loading Zone –

- Example of stacking for multiple orders, banks have same rules as McDonalds (most banks are small and don't need 6 stacking), pharmacies.
- Same issue for loading, smaller residential/commercial need smaller loading zones, they tend to get deliveries in off hours – consider administrative waivers, avoid the preset limits.

Sign Code – started to revise 8 years ago, Board of Adjustment (BOA) dominated by sign variances.

[Note: sign regulations are not being revised during this phase.]

Control which projects are subject to right of way (ROW) taking, can take a ROW plan to a record plan. DelDOT said it was administrative. Can get around that by giving a permanent easement but they don't want to improve those. That slows down / inhibits redevelopment.

Streetscape –

- Goals of Department are worthy but runs into issues with DelDOT and Fire Marshall.
- People like reduced widths and aesthetics but Fire Marshall has to agree (e.g. ok with curb mounting). Need to get DelDOT and Fire Marshall on same page.
- Centerline radius is a huge impediment.

Relocation experts (Commercial brokers – specialists who do this for major employers) say County not a place you want to do business due to traffic issues.

Business Community / Attorneys

September 13, 2016, 10:00-11:15 am

Building elevations –

- Leery of this. Architecture is subjective, and after a plan is recorded the buyer doesn't want brick and wants stone. Developers can commit to something, but the concept and what architect designs may not be practical. By-right approvals versus rezoning, not even regulate at rezoning. Example: Brandywine Town Center was controversial when rezoning approved, gorgeous architectural model attached to deed restrictions. Market changed, opponents seized on that to delay the development.
- Process may already be working – village plans with detailed pattern book (Whitehall); historic overlays; but if showing something to get rezoned its appropriate to tie that to community buy-in and that system is working. If ask for a variance the BOA wants to see visual impact.
- Screening – if neighbor can't see, smell or hear the project, it is no one's business what gets built.
- Flexibility is acceptable, but provide elevations at different places around the parcel – e.g. Odyssey School on Lancaster Pike where architect did CAD renderings, so there is value.
- For a chain you know what it will look like but for a larger project you might need them. Harder with due diligence, upfront cost – drives out small developers.
- To what extent are we asking for rendering – e.g. building transparency, that makes sense, but when we get into materials that can be difficult. E.g. rarely put plants near the building so I put landscaping on periphery. Fluid situation during design process. Stick with mass and scale, address rezoning versus by right projects.

LDIA –

- Why not put as a sheet on plan itself as opposed to a separate document that is signed by multiple Departments?

Sunsetting –

- Not a procedure to draw on the plan. If owner doesn't want to move forward what is downside to letting someone withdraw their plan? Benefit by freeing up capacity.
- 5 years should be more firm and absolute – as laws updated, maybe should reenter process and spend the money.
- Problem is that tying up capacity prohibits others from entering market. Obsolete development tying up employers who are ready to go.
- What happens with concurrency when a plan sunsets? - haven't sunsetted yet, re-review, others they have let it slide somewhat.

Record Plan Modification –

- Currently need resubdivision to change plan note, minimum \$5,000 to just change a note on planning and phasing. Just change by recording a declaration, track by requiring someone to supply all the declarations – recorded, legally binding.

Concept Plan –

- Will this be required? - require for everything (eg Kirkwood, industrial park without residential neighborhood, etc.).
- Fair game anytime you have to persuade people.
- What is public notice? What is the community?
- Compatibility - e.g. breaking a lot into 3 lots, requires variance. Example with big lot in neighborhood broken into 3, no big deal because building scale worked. Example of someone breaking large lot into 4 lots with 2 duplexes, rest of area was single-family.

Residential Accessory –

- In UDC rewrite they pinched in a number of setbacks, older neighborhoods have existing structures within setback, consider an administrative approval for rebuilding inside footprint without a variance.
- Accessory dwelling units.
- Scenic Byway – already looking at ways to protect aesthetics of that area with setbacks, massing, screening, height. Expand the de minimus variance – just don't allow an out where it's punted to the BOA, presumption that variance isn't required.
- Likes administrative process to confirm a nonconforming use. Also: look at what's out there, and consider setback requirements prior to UDC and retroactively apply them.
- Include a document where neighbors consent.
- This is acceptable if new shed beyond current setback but within old setbacks, but not if rebuilding.

Institutions / Non-Profits

September 13, 2016, 1:00-2:15pm

PLUS – school has to go through PLUS but county doesn't have to sit down with them. They get comments from all state agencies – would county be willing to sit in meeting? Would like to know issues before they buy the land. Happens before they buy the property.

Open Space –

- Consideration allowing schools being constructing in required open space as a credit toward the open space requirement. Growth exploding. School anticipated in Whitehall and 300 acres in last referendum, will be looking for land again. Would benefit if schools could be done in open space (i.e. credit toward open space) – but schools generate a lot of traffic.
- Voluntary assessment where each house pays a set amount – if open space provided in development then the assessment could be waived or reduced if land donated. Brennan Estates, Whitehall, that have size to accommodate it. School would have athletic facilities, playgrounds, etc. – churches, soccer programs, etc. Minimum requirements from state (high – 70-80, middle 40, elementary 30). Schools have playgrounds, if school, playground and park are close.
- Middletown always tied annexation to donation for schools.
- Why does county require open space in new development?

Notice -

- Notice to neighbors – now you just see signs. What other notice? Could we modify signs? Maybe saying that standard sign is ok if there is a shoulder to park on – bigger if not? Size is fine, just copy.

Record Plan Modification -

- Fairview campus – recorded sf but didn't know exact size – now will come in with exact size, conversation with applicant as to exact size – simplify without restarting process.

Sunset –

- Fairview, as unable to find sewer capacity and was only able to find it because a development folded.

Landscaping – county has listened over the years, most not applicable to schools. Whitehall will have some applicability.

Sewer fee – Middletown charges after 6 months of usage. Used to be 15 gallons per capita per day (gpcd), now around 7, use 3.5 gpcd today in practice.

Building Elevations – Whitehall, issue with setbacks on front porch. County disapproved townhomes in Whitehall even though complied with pattern book. Thompson Homes example.

Residential Accessory –

- Is there a way to do this with the age of neighborhood?
- Look at how big the accessory structures are on the lots – e.g. neighbor build 1000 sf structure and could have done more.
- Maintain neighborhood integrity and property values, avoid crazy things. Address scale and placement.
- Accessory Dwelling Unit – ok if within primary square footage, not same square footage unless 1-2 acres.

Parking – at Whitehall there is shared parking? Both onstreet is counted and shared civic required.

Prohibition on parking in grass for open house.

Environmental / Agriculture

September 13, 2016, 2:30-3:45pm

PLUS and Environmental review –

- Where there are unregulated resources (e.g. heritage on federally listed species, conservation concern but not state or federal list) – the Delaware Department of Natural Resources and Environmental Control (DNREC) provides comments. They ask to review the site, and if landowner says no the county asks for comments they can't provide. Developers are only interested in what is needed to comply with the regulations and permits, and not forest / wetland if following regulations. Under the natural areas program, if suggest site design that impacts a forest, the developer ignores if they comply with the regulations. From oversight or process there is frustration because they are ignored, and there are boilerplate comments.
- Suggest resources to require changes in UDC to make engineer or developer look at yjr land before designing site – Art 10 required a natural resource survey to make them look at land, identify resource before project design. Mature forest protection area and method to identify mature forests, no consistent scientific methodology to identify, just 1938 aerials. They proposed an amendment that is not hard to do, and if developer stays out of area they get a density bonus.
- Info on mitigation changes for clarity, protocols and follow up for Environmental Impact Analysis (EIA) report.
- Preserving specimen trees – not changing mature forest definition, just a way to identify what is there.
- Internal discussions needed with county to improve their comments.
- Parts of UDC allow county agents to go onto property but there is no desire to implement it. Have had a few meetings –state scientist concern is that code section for property access not being used.
- DNREC should step up with regulations for things like golf courses – e.g. Greenville Overlook, contaminated, DNREC allows digging up only worst part and churning it over the site to get it to acceptable standards. Ok when leaving it industrial – build on safe soil.
- Hercules big question, application for Greenville Overlook 2, 3 and 4, research center for air permitting with spraying and drying, 9 tons / year of potentially toxic materials. Bordering parcel originally part of field tested plot, dispute with DNREC over remediation plan, things pointed out at public hearing were ignored. Agreed to withdraw if gave 2 test points. 5 compounds that exceed EPA standards, same samples split in half. Hercules was supplier of 24D and 245T to make agent orange. We need a detailed soils analysis where there is possibility of contamination. APC-2017-0044. Petnero remedial action a plan = DE-1392.
- County has a 200 year history with chemical industry – Hercules, Dupont, Astrazenica, waste material to subcontractors, 3 superfund sites.

Open Space and Site Design

- Opportunity for plan that is within their rights but removing important resources, e.g. Hamlet 7 at Whitehall, where developer complies but removing resources - can they alter site design and move to agricultural land at beginning of project.
- Steep slopes, forest (mature and new growth), wetlands, geologic and historic resources. Has the state rank ordered the resources? If we can alter site design to protect the mature forest does county require them to alter site design? DNREC should catalogue the resources.

Landscaping

- Quantitative value for herbaceous material (perennials, grasses, ornamental – stormwater management and green tech can count in buffer but herbaceous doesn't count). Model, opacity, hierarchy, work well but getting to end point comes down to a plant unit. But there is another layer where someone wants beautification and plant types have different weights. 6 different units – doesn't account for ornamentals. Native requirements – plant list allows some non-native, 90% are native.
- Existing parking lot requirements are reasonable and work.

Drive-throughs –

- challenges with carbon monoxide when screen, 3-4' is effective screening height and allows better air circulation than 6-8'.

Sunsetting –

- applicants don't have to do much to extend their time periods. Prefers voiding them and starting over.
- Some re-up their plan under new regulations – when record they stay forever or if not intentional you can't stockpile capacity. One project years ago that knocked down a tree to say they started. Vista Red Line – went into litigation.
- Vacation of easements / changing easements – make it an easier process.

LDIA –

- does money include closing out a project if they walk away? They are health safety welfare not performance bonds – e.g. can repair a sediment trap if developer walks away.

Transportation

September 14, 2016, 8:30-9:45 am

Concept Plans –

- Used to take concept plans to Planning Board – many developers meet with community in advance already, pre-meet with DelDOT. Example: LeGrange.
- Reach out to local council person if project is remote. Best applicants reach out – delDOT recommends pre-submittal meetings but don't require it.

Record Plan Modification –

- LONC (delDOT letter of no contention) for minor plan amendments. Lot line adjustment for delDOT is 3 week review + \$100. If lot line adjustment changes entrance they would review.
- There are categories for delDOT review versus notification.

What is county/state doing to put onus on private developer to deal with stormwater management? Adequate conveyance regulations. We are only jurisdiction in state that deals with this.

Streets – delDOT connectivity criteria, works well with new projects but harder with connectivity to existing subdivisions. Politics interfere with connectivity. State failure to provide secondary road system. Stop direct commercial access to state highway system.

Modelling of Transportation / Concurrency

- DelDOT communication – county staff invited to plan reviews. Tried to do LONC, email of no impact, minor adjustment processed quickly, etc.
- Site design – issues with drive through capacity, parking (levels of parking that impact road system – if large shopping center consider sharing or reductions, but maybe not on a constrained site, variances after the fact for drive throughs followed by delDOT site design review).
- County and delDOT communication has improved significantly. County has started e-plan process to submit electronically.
- WILMAPCO – technology for all projects not just 141, discuss LOS.
- How will bike capacity and push for biking affect this? Working on off-road plan, complete streets, etc. Insight project example of where this was discussed.
- 141 study was remarkable – Kirkwood to 202 with electronic capital plan for data collection for real time adjustment of signalization, freed up capacity by 15%.

Civic

September 14, 2016, 10:00-11:15am

Plat vacation –

- Does plat vacation occur automatically? Warren and Lester plat extended. That was litigation, part of settlement was that plan would not expire if they developed within a certain period of time.
- County has not vacated any subdivision plans to date because they haven't figured out logistics – utility easements, etc.
- Does original zoning come into place?

Sunsetting –

- Any consideration of extending should be traded off with something else. E.g. tap into sewer by year 3, lay first transformer on network.
- Brandywine Country Club by code can be used for single-family housing. But it has been there for 40-50 years – reconsider that if putting a property back on the market.

Site design –

- Height, setback, signs are the big issues, mixed use.

Landscaping –

- Are we adding or changing some species that like Bartlett pears. Doug Tallamy at University of Delaware has recommendation on native plants – consider those (see Tallamy, *Bringing Nature Home: How Native Plants Sustain Wildlife in Our Gardens* (Timber Press, 2007)).
- Developers will put concepts in plans and they get through, but at end it's not the plan and just a concept. Can we get a commitment earlier in the process? E.g. Kirkwood Highway library.
- In parking lots, you see islands of weeds, trees, supposed to make the parking lot more friendly but impedes snow removal and makes it more difficult to park, clip fenders. Clutters parking with trees. Snow removed needs to be put somewhere. If put it in residential areas, they push it back. Regulated snow removal, allow consolidation of spaces.

Concept Plans –

- At least one neighborhood association already has developers at meetings.
- Some of the best projects are where developer seeks community input and really listens and responds (Waggoners Row, etc). Would like to see it formalized and required. Make neighborhoods and civic associations aware.

Parking –

- Shared parking is a myth – residents don't go away. People who have more cars – require more parking if do this.
- Parking – helpful to go in direction of not putting parking everywhere. Shared parking comes up in land use committee meetings of county. One well considered plan shared between a church and a professional building (Limestone Presbyterian and physician medical). If church had a festival, there would be an issue. Can't manufacture more spaces when you do that.
- Can we insist that if a business exceeds a designated size you need a multi-level parking area?
- Brandywine 100 – Concord Mall, Naimans Road/Concord Pike, most parking is empty.

Site Design, Generally

- Mixed use in nonurban setting is instant slums. Take hard look at nonurban.
- Pike Creek – current plan for Linden Hill Station redevelopment. Went to BOA with list of variances. Civic held its breath but cautiously accepted it because under one management. Preferred multi use to WaWa. What if it becomes a slum – all rental? Adjusted parking, trash receptacles, small lawn, alleys, limited parking for guests.

Building elevations –

- Just show bulk or also materials.
- Inherent assumptions – e.g. if a proposal is similar to the buildings already there its fine, if dissimilar it's not.
- How do you do something different, separation between those? Examples: Fallingwater, Phillip Johnson's Connecticut house example. Uses with comparable bulk, height fit and should be respected. Maybe tie it to building height (e.g., over 2 stories).
- Westgate Farms, Odyssey – 3 perspectives were provided, third perspective made it look 20 stories tall, so it helped.

Traffic review –

- Disconnect between state / traffic impact study (TIS) and county process. No accountability. E.g. TIS during recession and building empty, versus now where roads filled up. Remnants of Three Little Bakers golf course because of interpretations and lack of clarity.
- Linden Square multi use, will it work well here? Mill Town square – community involved, better but not perfect – commercial access doesn't work well.
- DelDOT integration should have more public input. Include as part of process or secondary process to make the two agencies have a caveat where the community has input and traffic impact at 100% of capacity.

Open Space -

- Timing – issue where county had to hold building permit at 75% to get developer to finish open space.
- Larger development with more of a community infrastructure like a clubhouse, understand need for phasing but important that open space for each phase completed and in good condition before moving to next phase. If have communities with large clubhouse, swimming pools, etc. you can't wait to last phase, maybe at 50% those things are completed.
- Pike Creek – many townhouses weren't started until country club up and running, didn't finish buildout until 1980s but club done in 1974.

Adaptive reuse requires a 2500 square foot minimum requirement – preclude good redevelopment?

Rationale is that it allows reuse of a historic building that is obsolete due to size, road now a highway, etc. Only allows office in residential. There is a parcel acreage requirement. Anything in UDC for historic village overlay?

Process – our processes work, appreciates communications, notices, Department of Land Use and council are approachable, etc. Don't throw out baby with bathwater.

Public Workshop

September 14, 2016, 7:00-9:00 pm

A public workshop was held on Wednesday, March 14, 2016. Boards were provided for each of the major issues under the Process and Site Planning topics. The public was invited to review the board, and to discuss their issues with Department of Land Use staff. Workshop participants provided their comments on sticky notes, which are displayed on the Department's website at <http://www.nccde.org/1067/UDC-Revisions>.

One attendee submitted the following written comments:

“Cautionary tale about changes, especially utility

When the developer for village of Manley in Hockessin filed the plan, a small triangular piece of property was left over on Mill Creek Road. The developer planned to subdivide this and sell it to the buyers of the adjacent lots. The buyers declined to purchase of this “extra” land.

In the meantime, the utility companies, anticipating a continuation of the utility easement between lots and along the back lines put the 2 electric underground lines and the gas and phone lines across the middle of the “extra” property and between 2 lots into the development (from Mill Creek Road) instead of following the road into the entrance.

The developer subsequently sold the “extra” property to someone who built a house on it, getting approval because an old chicken coop was on the property.

Upshot-a nonconforming property has all the utility lines running across the middle of it with no records and no utility easement.

Make sure subdivisions and utility easements are in place before allowing changes.”