

**Department of Land Use  
and Planning Board Recommendation**

**Ordinance No. 07-127  
(Application No. 2007-0917-T)**

To Revise Chapter 40 of the *New Castle County Code* (also known as the Unified Development Code or “UDC”), Article 33 (Definitions) Regarding a Revision to the Definition of Office Uses

October 16, 2007

**DESCRIPTION**

This text amendment will modify the definition of the term ‘research and development facilities’ as this use is classified under the broader use category of office uses. More specifically, it will remove language that currently prohibits research and development facilities where a finished product is manufactured.

**BACKGROUND & ANALYSIS**

Office uses as defined by Section 40.33.240 L of the *New Castle County Code* includes a wide range of more specific office-type uses including data processing, real estate, business and trade schools, banks, insurance and financial firms, lawyers, doctors, engineering services, medical offices, and the like. The visual and site characteristics and impacts from these uses is similar and generally compatible with most other land uses (including residential) when appropriate buffers, setbacks and landscaping standards are in place.

Table 40.03.110 (General Use Table) of the *New Castle County Code* permits office uses by right in the ON, OR, CN, CR, and BP zoning districts and as a limited use in the I and HI zoning districts. Table 40.04.110 (District and Bulk Standards) and Table 40.04.111 (Use Standards) provide for additional outdoor storage limitations and appropriate buffer and landscaping standards to reduce or eliminate the potential for negative impacts on adjacent residential land uses.

The research and development use with prohibitions on the manufacturing of a product was first added to the general office category in December 1999 by Ordinance 99-075. The intent at the time was to permit those R&D facilities that more closely resemble office complexes to operate as permitted by right uses in more than just the industrial zoning districts (BP, I and HI). Since that time, the Department has become much more familiar with the purpose and effectiveness of the variety of protective criteria, such as outdoor storage limitations, landscaping, buffering and opacity standards that successfully protect adjacent properties.

Karl Kalbacher, Director of the New Castle County Redevelopment Office noted at the Planning Board Public Hearing that the amendment is proposed to provide additional opportunities for new industries in New Castle County and is consistent with the 2007 New Castle County Comprehensive Development Plan where it encourages the simplification of certain employment uses and to permit them in a wider range of zoning districts. The County is in need of advantages it can gain to attract new industries to the area and to provide for a wide range of locational opportunities for these new industries. The removal of the criteria that no finished product can be manufactured at the site is unlikely to cause any adverse impacts on surrounding properties given the protection devices described earlier. And, the Department still has discretion as to whether the proposed facility will resemble an office development. Outdoor storage for the general use category of offices is limited in the ON, OR, CN and CR districts to 5 percent of the site; and, the buffer, landscaping and opacity standards are more than adequate to create an effective screening of the use.

While no members of the public spoke to the issue at the public hearing, Planning Board member Mr. Weinberg noted he was not convinced that this amendment should be described as a minor change and that no adverse impacts should be expected. He is concerned that a manufacturing facility in an area zoned ON, OR, CN or CR may have a very real negative impact on the surrounding neighborhood. Mr. Kalbacher noted that with the Department discretion to insure that the use generally resembles an office development and with the buffer, opacity and landscaping protection standards already in place, that this amendment should be a good step in the right direction to providing more opportunities for employment industries. *(Charlotte NC has research districts which permit manufacturing of products, but limits the uses to electronics, communications and computing. We might want to consider clarifying to allow only "clean industries", but as technology changes this is more and more difficult to identify).*

Pursuant to Section 40.31.240 of the *New Castle County Code*, in determining whether a text amendment shall be recommended or approved, all of the following factors shall be considered:

A. *Implementation of a new portion of the Comprehensive Development Plan.*

The amendment is intended to address at least one element of the 2007 Plan Update that encourages a simplification of industrial and office type uses and to allow these uses a broader location range. The other elements of Chapter 40 of the *New Castle County Code*, including the buffering, landscaping, opacity and outdoor storage criteria will provide the appropriate protection to adjacent properties.

B. *Implementation and achievement of the Comprehensive Plan's goals and objectives.*

This amendment as proposed is consistent with several of the goals and objectives in Section VI (Economic Development) of the 2007 Plan Update. More specifically to promote a strong and sustainable economy, to ensure the availability of sufficient land for employment growth in the a variety of industry sectors, to promote redevelopment of

existing and underutilized properties, to encourage the growth and development of high-technology businesses, and to re-evaluate and redefine existing permitted industrial uses to better suit recent technological advances in the industry.

C. *Consistency with the provisions of this Chapter and the standards for similar uses.*

This section does not apply.

D. *Necessity to respond to State and/or Federal legislation.*

This standard does not apply.

E. *Flexibility in meeting the objectives of this Chapter.*

This section does not apply.

F. *Changes to conditions, interpretations, and/or clarifications to existing language for new uses.*

This section does not apply.

G. *Consideration of specific problems found in this Chapter.*

The current restriction to prohibit R&D facilities which manufacture a product to be permitted along with other office uses was based on past familiarities with the raw product and by-product of former industrial and manufacturing facilities. Noise, dirt, smoke, hazardous odors, large areas of outdoor storage of raw products, the manufactured product and other by-products were common nuisances. The Department is confident that the protective criteria found in Chapter 40 of the New Castle County Code has and will continue to be a very effective way to screen and block impacts from adjacent property owners.

## **DEPARTMENT OF LAND USE RECOMMENDATION**

The Department has considered the *Standards for Text Amendment* in Section 40.31.420 of the *New Castle County Code* and comments received from the public and other agencies. Based on this analysis, the Department recommends **APPROVAL** of Ordinance No. 07-127 as introduced.

## **PLANNING BOARD RECOMMENDATION**

At its business meeting held October 16, 2007 the Planning Board considered the recommendation offered by the Department of Land Use. On a motion by Ms. MacArtor and seconded by Mr. Maloney the Board voted to concur with the Department of Land Use analysis and reasoning and recommends **APPROVAL** of Ordinance 07-127 as introduced. The motion was adopted by a vote of **5-4-0-0** (*YES: MacArtor, McDowell, Singer, Walker, Weinberg; NO: Anderson, Maloney, McGlinchey, Wilson; NOT VOTING: none; ABSENT: none*).

Prior to the vote on the motion, the following discussion occurred.

Ms. MacArtor noted that she had read the transcript from the public hearing and was prepared to discuss and vote on the issue.

Mr. Maloney expressed his concern that the R&D definition as amended could also include chemical and radioactive type facilities and that perhaps the definition should be modified to apply only to “clean” technologies or that more safeguards should be added. The Department noted that the R&D can be for any type of industrial use.

Mr. Singer suggests that DNREC already has significant safeguards for any industry that operates with hazardous materials and that the County is not likely prepared to regulate this area. The Department agreed that the State is the appropriate entity to regulate and enforce the use and storage of hazardous materials.

Mr. Wilson considers this proposed change to be a big public safety issue. He is concerned about the quantities being manufactured, what is being manufactured, and what kind of by-products might be produced. He thinks the I and HI zoning districts are adequate to handle the finished product manufacturing end of any R&D facility. There are too many unknowns when it is permitted in the office and commercial zoning districts and adjacent to residential areas. He reminds everyone that we have continued to put non-industrial uses in the industrial zoning districts and now we find the need to expand industrial uses into the office and commercial districts. He also suggested that this amendment is not consistent with 2007 Update to the Comp Plan.

Mr. Culver noted that the amendment is very consistent with the recently adopted 2007 Update to the Comp Plan which has suggested that the County look for more ways to encourage industry to locate and remain in New Castle County. The amendment will provide opportunities for start-up companies to begin as an R&D facility and to then move to the full manufacturing phase if and when the product appears profitable. The R&D facility is already building the product as a pilot type program. This amendment will not permit an industry to occupy an office building and convert it to a full-scale manufacturing facility. Chapter 40 of the UDC provides significant protection to adjacent properties and the five (5) percent outdoor storage limitation will protect against an industrial appearance.

Mr. Wilson suggests that despite that many safeguards suggested by the Department there may be the need for added trucks for shipping and receiving purposes and other equipment in the area that might create a more industrial use atmosphere. He remains opposed to the change.

Mr. Singer suggests that the County has an opportunity with this amendment to create advantages for R&D operations and to permit what is akin to a pilot plant operation. Lacking this opportunity, many companies will choose to locate elsewhere.

Mr. Culver agreed and suggested that most if not all new R&D facilities will be of a “clean” technology nature and that the dirty, smoky industrialized plants of the past are just that.

Mr. Maloney indicated that while he does not have a problem with the use he is still concerned about the materials used and what happens to any waste produced.

Mr. Singer responded that to implement the safeguards suggested by Mr. Maloney the County would need to bar R&D facilities. The R&D facility is already permitted to operate and to manufacture a limited amount of the finished product. The materials and waste or by-products produced are already on-site. It is not necessary to force the operation to then move to another facility. The distinction between a pilot plant operation and a full scale manufacturing is the issue and in many situations today that distinction can be invisible.

Mr. Weinberg also agreed that the scale of the operation and production is important to the success of many R& D facilities. A pilot plant operation will allow the product to be initially marketed to determine if there is a real interest. The proposed amendment will allow an R&D facility a greater amount of flexibility to determine the success of the product.

Mr. McGlinchey is concerned that no plan and no review is to be required to make the switch from an R&D facility to full scale manufacturing. He also remains concerned about scale and the risk of a by-product from the operation.

The Department reminds the Board that limited manufacturing is already permitted at the R&D facility and that a full scale conversion eliminating the R&D portion of the operation is not permitted. The facility must always remain an R&D facility with a manufacturing component.

## **STATUTORY GUIDELINES**

In the phraseology of 9 Delaware Code, Section 2603(a), the Department finds that this text amendment would promote the convenience, order, and welfare of the present and future inhabitants of this state.

[SIGNED 10/19/07]

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Charles L. Baker  
General Manager  
Department of Land Use

[SIGNED 10/19/07]

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Victor Singer  
Chair  
Planning Board