

DEPARTMENT OF LAND USE

RECOMMENDATION

**Ordinance 03-041
Application 03-0491-Z**

Jester Farm

August 19, 2003

DESCRIPTION

Location: 2818 Grubb Road (West side Grubb Road, south of Naamans Road;
Brandywine Hundred)

Councilperson: Robert S. Weiner, Second District

Rezoning: 25.8 acres from S (Suburban) to S and H (Historic)

Applicant: New Castle County Historic Review Board

Owner: New Castle County

ZONING PATTERN

The surrounding zoning pattern is entirely residential consisting primarily of various densities of NC zoning, as this is a section of the county that was mostly built up a couple of decades ago. Immediately adjoining the parcel are NC6.5, NC10, NC15, and NC21 zones. A few nearby S-zoned properties are the locations of public schools. The nearest nonresidential zone is at the intersection of Naamans and Ebright Roads, about one-quarter mile away where a liquor store operates in a CN zone. The next nearest nonresidential zone is Brandywine Town Center, a CR zone located one-half mile away, and the commercial and office corridor along Concord Pike.

DEVELOPMENT PATTERN

The Jester Farm fronts on Grubb Road. South of the entrance driveway is a string of eight houses facing Grubb Road with rear yards adjoining the Jester Farm. The Jester parcel is bounded on the north by Country Gates subdivision, on the west by Chalfonte subdivision, and on the south by Hanby Junior High School and more of the Chalfonte subdivision. Other nearby residential subdivisions include: Kimberly Chase, Brandon, Wexford, Chapelcroft and others. The area is almost entirely composed of single family, detached dwellings in both development and non-development settings. An exception is the Londonderry townhouse community at the corner of Shipley and Naamans Roads. In addition to the neighboring Hanby School, Brandywood Elementary School and Concord High School are nearby. In general, this is an area of the county that, for the most part, is built out. Development activity tends to focus on residential infill and redevelopment of existing commercial zones.

TECHNICAL ADVISORY AGENCY REVIEW

Pursuant to the requirements of the State Land Use Planning Act (LUPA) the Office of State Planning was asked to comment on the application. The State supports the addition of the Historic overlay on this property.

Because this rezoning application does not include a land development plan, no comments were sought from the Technical Advisory Committee.

BACKGROUND & ANALYSIS

The County purchased the Jester Farm in 1973 and two adjacent parcels shortly thereafter, with the intention of eventually developing an active recreation district park. The Department of Special Services identifies this section of Brandywine Hundred as underdeveloped in terms of recreational areas. The purchase of this land was part of a long-range plan to remedy that situation.

At the time of purchase, the Jester family was given a life estate interest in the property. For many years the land has been leased to Hy-Point Dairy for its dairy herd. Hy-Point still uses the property, and the County is currently in negotiations to extend the lease. The Jester family vacated the house a few years ago. Special Services then inspected the building and discovered structural problems that are estimated to cost in excess of \$100,000 to repair.

A plan to demolish the house and nearby carriage house was proposed and a demolition permit filed on March 21, 2002. At this point, the Historic Review Board (HRB) became aware of the situation, and as one of its duties is to review demolition permit applications began hearings in May 2002. At a public meeting on November 13, 2002, the HRB determined that the Jester Farm meets the criteria for designation as a historic zoning district and voted to recommend to County Council that the historic zone overlay be applied to the property. The Board determined

that the Jester Farm meets the age requirement and criteria B, D, E, J, K, and L as set forth in Section 40.15.110 of the UDC.

The HRB recognized the Jester House as a well-preserved example of the moderately sized farmsteads that once characterized most of Brandywine Hundred. Few of these farmhouses survive. And fewer still, survive with any amount of surrounding acreage larger than a half-acre subdivision lot. At 25.8 acres for the main parcel associated with the Jester Farm, it is an unusual survival in the context of the surrounding development.

One tool the Historic Review Board may use to preserve historic buildings and encourage compatible development is the creation of Historic Zoning Overlay districts to County Council. Such districts do not prohibit buildings from being renovated or adapted to modern uses, nor do they prohibit land from being developed. Instead, creation of the overlay district adds a step to existing review processes for considering the how the historic character of a property can be preserved. Specifically, these reviews can include final design decisions of exterior renovations to buildings before building permits are issued and design decisions on new construction, landscaping, signs, and lighting when land is developed. Typical concerns relating to building renovation are the use of materials and products that are suitable to the style and time period of the building. When surrounding land is developed discussions often focus on maintaining a sufficient distance between the historic resources and new construction, creating landscape buffers to protect views, and choosing lighting and sign styles that do not interfere with the design and function of the historic property.

There are six County parks that are either fully or partially included in Historic Zoning Overlay districts. These districts were all created 20 to 25 years ago shortly after the County first adopted historic zoning. It has long been the County's practice to incorporate historic preservation into all aspects of planning. It is also important to note the County's park planning process has evolved since that time and there is now extensive community involvement and ultimately decisions by the County Executive and County Council before park improvements are made.

PUBLIC HEARING (August 5, 2003)

At the public hearing held August 5, 2003, twelve members of the public spoke in favor of adding the Historic Zoning Overlay to the Jester Farm. Three of those speakers mentioned circulating petitions and polling opinions of community residents as they lent support to Historic Zoning. Four main points were raised by the public: 1) a desire to preserve a piece of local history, 2) a request to establish a resident curator program to preserve the Jester House, 3) a preference for the Jester property to remain in its current circumstances with grazing cows, and 4) a strong aversion to the park being used for soccer fields.

A few speakers mentioned the importance of preserving this house as an example of the history of the common farmer in Brandywine Hundred and as the last vestige of agriculture in this suburban area. Others mentioned the importance of preserving an agricultural property for the benefit of children in the area. Several speakers suggested creation of a resident curator program as a way to renovate and preserve the Jester house.

Many speakers expressed opposition to the Jester Farm being used for soccer fields, citing concerns about parking needs and traffic that local roads cannot handle. Apparently the community is aware that a local soccer league is looking for a new home and took this opportunity to tell the County they do want the fields located at Jester Park.

One speaker pointed out that there are other adjacent parcels owned by the County that are not addressed in this proposal for the Historic Zoning Overlay district. In follow up to this comment, an examination of the county parcel maps shows two County-owned parcels totaling 5.5 acres along the southern border of the main Jester parcel ¹ are cleared land, and a 0.98 acre parcel adjoining the northern border ² is designated as the public open space associated with the Country Gates development.

At the hearing Tracey Surles, Senior Manager for the Department of Special Services, explained that the Department did not support the Historic Zone Overlay application because the process for park development will include significant contact with the public in an effort to determine what types of recreational facilities and opportunities will be developed. The public process will identify the most important features of the property that must be protected. There is concern by Special Services that historic zoning will inhibit the park planning process and the decisions of elected officials in that regard.

County Executive Gordon has decided that the house will not be demolished. The nine-month wait on the demolition permit ended in December 2002, but because of the County Executive's decision, Special Services has not obtained the demolition permit.

Ms. Surles also announced that the Department of Special Services has approved the concept of a resident curator program and the Jester House would be one of the first participating properties. Further, she noted that although there were many comments made about soccer fields, no one has formerly contacted the Department about creating soccer fields at the Jester Farm and there are no negotiations underway.

Standards for Zoning Map Amendment - UDC Section 31.410

In determining whether a zoning map amendment should be recommended or approved, all of the following factors shall be considered:

A. Consistency with the Comprehensive Development Plan and the purposes of this Chapter.

The 2002 Comprehensive Development Plan promotes the integration of all branches of the planning process. Preserving local heritage and historic resources is identified as a way of protecting community character. There are also Comprehensive Plan objectives for

¹ Parcels 06-031.00-315 and 06-031.00-334.

² Parcel 06-021.00-035.

providing active and passive recreational facilities for the residents. The imposition of historic zoning may inhibit the recreational planning process for this property in the future.

B. Consistency with the character of the neighborhood.

These historic buildings have been identified by the Historic Review Board and by local residents as tangible reminders of Brandywine Hundred history. This property is owned by New Castle County for the express purpose of providing the community with recreational opportunities. The ownership of this property for the purposes of a park is consistent with the character of the community.

C. Consistency with zoning and use of nearby properties.

As an overlay zone, historic zoning does not change the base zoning of the property. Any uses permitted under its current Suburban zoning will still be permitted. However, the adoption of historic overlay zoning imposes additional review and leaves the final design decisions in the hands of the HRB. Currently, County park planning involves public meetings, an evaluation of historic assets, and budgetary considerations that are finally decided by the County Executive and County Council. This zoning proposal has the potential of taking the final park planning decisions out of the hands of the public and elected officials and placing them in the hands of an administrative board.

D. Suitability of the property for the uses for which it has been proposed or restricted.

The buildings on this parcel meet the criteria for designation as a historic zone pursuant to Section 40.15.110 of the UDC. In addition, the Department of Special Services is developing a resident curator program to encourage renovation of the house. The issues regarding the preservation of historic character under historic zoning are the same issues that would be the focus of a resident curator lease. The proposed use of this property for active or passive recreation has been long established and is the reason the County obtained the property.

E. Effect on nearby properties.

The property is permanently owned as public open space. The adoption of the historic overlay zoning will neither decrease nor increase the fact that this property will remain as public open space. The effect on nearby properties is negligible.

DEPARTMENT OF LAND USE RECOMMENDATION

County Council must consider the future impacts on this property and its eventual development as county parkland if an H-overlay zone is approved. While there is no argument that the house and history of the property is worth preserving, there is concern over the granting of final park design authority to the HRB. No one can say for certain today exactly what the future recreational needs of this area of Brandywine Hundred will be. Any future park planning

process for this property will need to balance the recreation and historic preservation needs of the community. The future park plan should still be reviewed by the HRB, but the final design decision should rest with the public and their elected officials.

New Castle County has committed to the establishment of a residential curator program for the Jester house to help preserve the home and to consider some sort of interpretive program for the public to appreciate this past way of life. The County has committed to trying to save these structures where there is an historic zoning overlay or not.

The Department has considered the *Standards for Zoning Map Amendment* in UDC Section 31.410, A through E, the proposed plan, and comments received from agencies and the public. Based on this analysis the Department is of the opinion that the standards are met by this proposal. The Department of Land Use recommends **denial** of Ordinance 03-041.

PLANNING BOARD RECOMMENDATION

At its business meeting held on August 19, 2003 the Planning Board considered the recommendations offered by the Department of Land Use and the Historic Review Board.

The Planning Board concurred with the Department of Land Use analysis and reasoning, and on a motion by Mr. Maloney and seconded by Ms. Anderson voted to recommend **denial** of Ordinance 03-041. The motion to deny was adopted by a vote of 7-1-1 (YES: *Anderson, MacArtor, Maloney, McDowell, Singer, Tackett, Wilson*; NO: *Weinberg*; ABSENT: *Walker*)

In discussion preceding the vote, the following comments were offered:

Mr. Maloney noted that he believes the Historic Review Board must make a better effort to communicate with other County departments and the owners of property. He believes it is a mistake to add the H-overlay to this property. Other members of the Board including Ms. MacArtor, Mr. Tackett and Ms. Anderson agreed and added that the public process for any future park planning would incorporate all public and historic issues prior to any final decisions. The HRB authority is not necessary to insure the preservation of the house. While the property to date has been off-limits to the majority of all nearby residents, the property is public land and must be planned to provide for more general public use. Board members believe the HRB acted too quickly to propose the H-overlay. Several members suggested that the HRB needs to be more interactive with property owners and that better communication in this instance could have produced the same results without the public controversy.

Mr. Weinberg agrees that the area is poorly served by public recreational facilities; however, he feels that the guaranteed protection of the house with the H-overlay zone is critical to preserving this past way of life. He does not believe the extra level of review will add any roadblocks to the eventual construction of a park at this site that will benefit all residents of the Brandywine Hundred. He notes that while the recreational needs of the community are important, the residents have clearly indicated that preservation in this instance may be more important to them than a public park.

The Department was asked to clarify the review activities available to the HRB. Mr. Baker noted that the HRB has three major duties; (1) is to review all subdivision plan submissions and to recommend changes to protect and preserve historic resources; (2) is to review all demolition permits and may delay demolition for a period not to exceed nine months; and (3) is to make recommendations for historic overlay zoning. If the H-overlay zoning is adopted, the HRB then has final design review authority over the future development of the property. The H-Overlay gives the HRB great control over the final design and layout of the area within the H-overlay zone.

The Department also clarified that the UDC does not require the HRB to gain the property owner's approval prior to introducing the ordinance. They identify a property, hold a hearing, and then make a recommendation to a member of County Council. The Council member can then decide to introduce the rezoning ordinance. Once introduced, the planning board hearing process and subsequent recommendations by the Planning Board and Department are automatic.

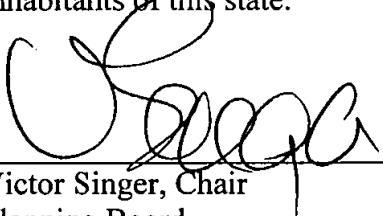
Several board members reiterated that the proposal is premature and that with better communication between the HRB, the public and the county that perhaps the overlay zone is unnecessary. Park planning incorporates historic review, but retains the final decision of the ultimate design of the public park with elected officials.

COMPREHENSIVE DEVELOPMENT PLAN

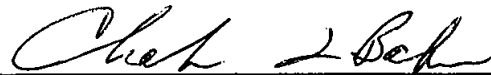
The 2002 New Castle County Comprehensive Plan identifies this property as open space and it will remain as open space regardless of this rezoning proposal.

STATUTORY GUIDELINES

In the phraseology of 9 Delaware Code Section 2603 (a), the Department of Land Use finds that this rezoning would not promote the convenience, order, and welfare of the present and future inhabitants of this state.



Victor Singer, Chair
Planning Board



Charles Baker, General Manager
Department of Land Use