

DEPARTMENT OF LAND USE

**RECOMMENDATION**

**Substitute No. 1 to Ordinance 03-041  
Application 03-0491-Z**

**Jester Farm**

June 15, 2004

**DESCRIPTION**

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

Councilperson: Robert S. Weiner, Second District

Rezoning: 1.38 acres from S (Suburban) to S and H (Historic)

Applicant: New Castle County Historic Review Board

Owner: New Castle County

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The original version of this ordinance, which was presented at a joint Department of Land Use/Planning Board public hearing August 5, 2003, proposed to add a historic overlay district to the entire 25.8 acre Jester Farm parcel. In a report dated August 15, 2003, both the Department and the Planning Board recommended denial of the ordinance based on the position that a historic overlay district would give the Historic Review Board (HRB) final design review authority over any future development of the property, superceding the existing park planning process administered by the Department of Special Services. After the negative recommendations were issued, Councilman Weiner, the ordinance sponsor, asked the HRB to reduce the size of the historic overlay boundary to an area that could function as a yard for a future resident of the house. Reducing the boundary is intended to focus on the immediate need to preserve the historic buildings.

On May 12, 2004, the HRB approved the revised 1.38 acre boundary which has 120 feet of frontage on Grubb Road and extends 500 feet back along an existing tree line on the north and along a driveway on the south. This boundary includes the historic house and carriage house and

the mature landscaping surrounding them. The other outbuildings have not been identified as historic and are not included within the revised historic overlay boundary.

The remainder of this report incorporates the background information from the previous recommendation report and provides updated discussion on the comments received at the recent public hearing, the position of the Department of Special Services, and the HRB's design review process.

## **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 non-residential zone is located 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 non-residential 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. In the surrounding area are more residential subdivisions including: 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 original application. The State offered its support for 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 and they continued to occupy the house. For many years the land has been leased to Hy-Point Dairy for grazing part of its dairy herd. Hy-Point still uses the property and the County has recently extended the lease for another five years. It was only a few years ago that the Jester family vacated the house. Special Services then inspected the building and obtained an estimate for structural and maintenance repairs ranging between \$80,000 and \$100,000.

A plan to demolish the house and nearby carriage house was proposed by the Department of Special Services and a demolition permit was filed March 21, 2002. At this point, the Historic Review Board 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 Council that the historic zone overlay be applied to the property. The HRB 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 recognizes 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 County may use to preserve historic buildings and encourage compatible development is the creation of historic zoning overlay districts. 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 how the historic character of a property can be preserved. Specifically, these reviews can include review of exterior renovations to buildings before building permits are issued and review of 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 is precedent for the County incorporating historic preservation into the parks planning process. Six County parks are either fully or partially included in Historic Zoning Overlay districts. At Brandywine Springs Park, Iron Hill Park, and the New Castle and Frenchtown Railroad Right of Way the entire acreage is within a historic overlay district. While there are no historic structures in these three parks the potential for archaeological resources related to the historic function of each site is a consideration in the planning process.

Bechtel Park, Rockwood Mansion Park, and Banning Park each have a historic house where a few surrounding acres is included in a historic overlay district and the remaining acreage is used for active or passive public recreation. Each house has been subject to architectural design review by the Historic Review Board on several occasions. The most well-known is Rockwood Mansion which the County operates as a museum. At Banning Park the house, called Woodstock, was once used as County offices and more recently has been leased to non-profit organizations for office space. The Bechtel House is currently undergoing repairs. In each case, the Historic Review Board and the Department of Land Use historic planners have provided the expertise needed to preserve the historic character of the buildings while the parks planners in the Department of Special Services design the surrounding recreational facilities. It has long been the County's practice to incorporate historic preservation into all aspects of planning.

## **PUBLIC HEARINGS**

At the public hearing for the original ordinance, 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 the opinions of community residents as they lent support to the historic overlay district. 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 agricultural use 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.

At the June 1, 2004 hearing for the substitute ordinance Councilman Weiner and three local residents expressed support for the historic overlay district and requested that the Jester Farm be reclassified as a passive park rather than an active recreational park in the county parks master plan.

At both hearings considerable discussion focused on whether the County will approve a resident curator program, an option that could be used to repair and maintain the Jester House. This type of program, already active in a few other states, would allow people to live in County-owned historic buildings rent free in exchange for the residents repairing and restoring the buildings

with their own money. Resident curator programs create a way for buildings not needed by a government agency to be improved and maintained with private funds. At the first hearing Special Services said a resident curator program was close to being approved and that the Jester House would be the first property where it would be employed. At the second hearing ten months later, Special Services stated that a resident curator program still had not been approved.

It should be noted that the decision to be made regarding the subject rezoning ordinance is whether to add a historic overlay district to 1.38 acres at the Jester Farm. The resident curator program is not an element of this ordinance. While it may eventually prove to be a useful tool for preserving historic buildings owned by the County, whether it is approved and how it will be administered will be discussed by others in a different forum.

The Department of Special Services has opposed both proposals to create a historic overlay district at the Jester Farm. It opposed the original 25 acre boundary because it thought that the HRB design review process would restrict Special Services' ability to plan and design recreational features for the proposed park. In response to that concern the boundary has been substantially reduced. Special Services also opposes the revised 1.38 acre boundary because it wants to wait until a resident curator program is approved before deciding whether to add a historic zone overlay district.

***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 Update 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. If a resident curator program is approved it would provide another way to preserve historic properties.

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. Maintaining this property as parkland is consistent with 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 reviews on plans to improve the

property. The Department of Special Services, the department responsible for maintaining the property, prefers not to have any restrictions placed on it while it decides what to do with the buildings and what type of park to development for the local residents.

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 has indicated a possibility of establishing a resident curator program to encourage renovation of the house. The issues regarding the preservation of historic character under historic zoning are same issues that would be the focus of a resident curator lease. The proposed use of this property for active or passive recreation has long been 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 historic overlay zoning will neither decrease nor increase the fact that the 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 any element of 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 is discussing the establishment of a resident 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 intends to save these structures whether 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 not met by this proposal.

The Department of Land Use recommends **denial** of Ordinance 03-041.

## HISTORIC REVIEW BOARD RECOMMENDATION

At a public meeting held November 13, 2002, the Historic Review Board 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 at 2818 Grubb Road.** 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.

## PLANNING BOARD RECOMMENDATION

At its business meeting held June 15, 2004, the Planning Board considered the recommendations offered by the Department of Land Use and the Historic Review Board.

The Planning Board agreed with the Department of Land Use analysis and reasoning to deny the rezoning. On a motion by Mr. Maloney, seconded by Ms. Anderson, the board voted to recommend **denial** of Ordinance 03-041. The motion was adopted by a vote of **6-2** (YES: *Anderson, Maloney, McDowell, Singer, Walker, Wilson*; NO: *MacArtor, Weinberg*).

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

Mr. McDowell suggested the cost of rehabilitating the Jester House could be prohibitive. He noted the estimated \$100,000 for repairs and said that did not include plumbing, electric, and other repairs that may be necessary.

Mr. Maloney stated he has a problem with the concept of the resident curator program. He does not believe that public property should be turned over private entities.

Mr. Weinberg disagreed with Mr. Maloney, saying that the resident curator program is not relevant to this rezoning application. He focused on the fact that there is precedent for historic resources in County parks to be included in historic overlay districts and that the Jester House is a stronger example for preservation than some of the other park properties. He said there is also precedent for the Department of Special Services wanting to demolish the Jester House. He strongly disagreed with the Department of Land Use recommendation by saying he is appalled that the County would go against its own policies and practices regarding historic preservation.

Mr. Wilson asked if historic overlay zones sunset. The Department explained that historic zones, like all other zoning classifications, can only be changed or eliminated by an ordinance approved by County Council.

Mr. Singer criticized a June 3, 2004 letter from the Historic Review Board. He said the HRB's statement - that the cost of repairs is irrelevant - is absurd. He pointed out that the structural consultant's report and repair estimate only dealt with what was visible on the building and then suggested that the cited deteriorations make obvious that rehabilitation costs will grow if the finished ceilings and walls conceal comparable deteriorations. He further noted that since the

consultant failed to say whether or not the house is in imminent danger of collapse, what he views as the more fundamental premise - that rehabilitation is feasible - cannot be assumed.

The Department attempted to clarify the intent of the HRB's comment regarding irrelevance of the cost of repairs: Typically the HRB views the question of determining the historic significance of a property as something separate from assessing the feasibility of repair. Mr. Singer noted that the HRB letter does not actually make that distinction as it should have if that was the intent.

Further, Mr. Singer disagreed with the HRB's explanation of how the Jester House meets several of the UDC criteria for rezoning, particularly Criteria B and D. He said that economic realities relevant when construction was contemplated affected virtually everything else built in the surrounding neighborhoods and offered his conclusion that if the HRB's notion were true - that such realities are irrelevant to decisions on how, or whether, to rehabilitate - it would be grossly out of character with the surrounding community.

On these several thoughts, Mr. Singer expressed his intent to agree with the Department of Land Use recommendation to deny the rezoning.

Mr. Weinberg noted that on all other rezoning applications that have come before the Planning Board, decisions focus on the appropriateness of the proposed land use, not on the economic viability of the projects. He said it would be a disservice to residents of the county to deny a rezoning based on one general estimate of project cost. In addition, he informed his fellow board members that the State of Delaware has created a resident curator program.

Ms. MacArtor said the expense associated with repairing the buildings bothers her. But, she fears the buildings will be demolished if they are not placed in a historic overlay district now. That is why she intends to vote in favor of the rezoning.

Ms. Anderson said she has a problem with County property not being accessible to the public. The County-owned farmland surrounding the Jester House is already in private use by Hy-Point Dairy.

Mr. MacDowell pointed out that the basis of the Department's recommendation for denial is a desire to wait until the issues regarding repair and the creation of a resident curator program are resolved.

Mr. Maloney stated he is in favor of historic zoning on the Jester Farm, but not until those issues are resolved.

Mr. Weinberg attempted to offer some balance to the discussion on the cost of repair. He said it is not unreasonable to invest \$100,000 to repair a building when some other houses in this area of Brandywine Hundred are selling for \$600,000. He fears it may be too late to preserve the Jester House if the County waits to resolve all of the questions now being raised.



Ms. Anderson observed that the carriage house on the property is in very bad condition and asked if it would be okay to simply let it fall down. She thought that buildings in historic zones could not be torn down. The Department explained that historic zoning does not expressly allow or prohibit any specific actions. The review process that occurs when changes are proposed in historic zoning districts focuses on the unique circumstances of each property and the proposal at hand. This is the time when the appropriateness and the feasibility of a project are evaluated. Demolition of historic buildings is sometimes approved, but only after careful consideration of all options. An illustrative example occurred at Bechtel Park several years ago. The carriage house in that historically zoned County property was so structurally deficient that it had begun leaning to one side. After examining the extent of deterioration and considering the threat to public safety, the HRB approved the Parks Department's request to tear the building down.

Mr. Singer said the expenditure of funds to rehabilitate the building should be consciously made. He would rather see the legislators make a decision to commit a specified pool of money for this purpose.

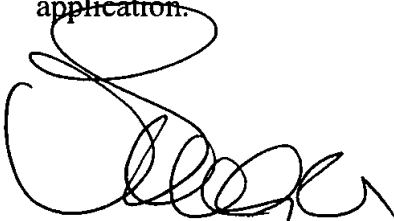
## **COMPREHENSIVE DEVELOPMENT PLAN**

The 2002 New Castle County Comprehensive Plan identifies this property as open space.

## **STATUTORY GUIDELINES**

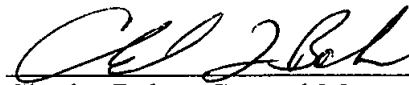
In the phraseology of 9 Delaware Code Section 2603 (a), the Department of Land Use finds that this rezoning would not promote the convenience, order, and welfare of the present and future inhabitants of this state.

**NOTE:** It is the applicant's responsibility to coordinate with the Clerk of County Council and the sponsor of the ordinance as to the date and time of the County Council hearing on this application.



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Victor Singer, Chair  
Planning Board



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Charles Baker, General Manager  
Department of Land Use