



Kent County

Department of Planning Services Division of Planning

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STAFF RECOMMENDATION REPORT February 2, 2017

Ordinance	:	LC-17-01
Application	:	CZ-17-01 Hatteras Hills
Present Zoning District	:	AC (Agricultural Conservation)
Present Comprehensive Plan Map Designation	:	Low Density Residential
Proposed Zoning District	:	RS1 (Single Family Residential) & RS5 (Medium Density Residential)
Proposed Comprehensive Plan Map Designation	:	Medium Density Residential
Area and Location	:	97.38± acres (Area to RS1: 90.12± acres, Area to RS5: 7.26± acres) located on west side of Clapham Rd. (Co. Rd. 27) and south side of Sophers Row (Co. Rd. 377), south of Magnolia

I. **STAFF RECOMMENDATION:**

Based on the information presented, the Kent County Code, and the Comprehensive Plan, staff recommends **approval** of the request to amend the Zoning Map and Comprehensive Plan Future Land Use Map. The following are the findings of fact for staff's recommendation of **approval**:

- The proposal will not enable a dramatic change in the landscape from the existing approved Planned Unit Development (PUD) plan.
- The applicant could potentially achieve the same outcome by revising the existing PUD approval including a variety of housing types.

- The property is zoned AC and the majority of the area to the north, east, and west along Sophers Row and Clapham Rd. is zoned either AC or AR (there is a small parcel of BN on Sophers Row). To the south, the properties are zoned RMH (Residential Manufactured Home) that front on Clapham Rd. and Buffalo Rd. These properties are all being used residentially or agriculturally. The subject site is located inside the Growth Zone.
- The Kent County Comprehensive Plan designates most of the surrounding area as Low Density Residential. The area to the south is used as a manufactured home park and is designated as high density residential by the comprehensive plan. To the west of the park is a large farm that is listed as medium density residential.
- Generally medium density residential uses are not compatible with the agricultural and single family residential uses that are located nearby, however the existence of a manufactured home park to the south, that can be considered a medium to high density residential use, may lend credence to an argument that duplexes or townhomes that are allowed in the proposed zoning districts could be compatible with the adjacent use. This argument must outweigh the fact that this community has an entrance onto Sophers Row which only has detached single family dwellings in a low density situation and links internally with an un-built low density single family development.
- The Office of State Planning Coordination has reviewed this application through the PLUS review process. Their comments and the applicant's response are attached to this report. In addition, DelDOT has determined that no Traffic Impact Study will be required.
- The proposed re-zoning does meet the conditions for approval of a zoning change under Section 205-408 B of Kent County Code:
 - A. *There was a mistake in the Zoning Map, or the character of the neighborhood has changed to such an extent that the Zoning Map should be changed.*

There was no mistake in the Zoning Map. This area was vacant at that time and was targeted as a low density residential area. In 1996, the Levy Court approved a rezoning request on the property to the south from AC to RMH. This extended the RMH zoning that was south of Buffalo Rd. This rezoning began a trend of high density residential north of Buffalo Rd. and further from Rt. 1. The Levy Court then continued this pattern in 2010 by rezoning the parcel west of the manufactured home park to RMH and medium density residential. This may be showing a pattern of higher density residential moving north, but the parcel from 2010 has yet to develop.

- B. *The new zoning classification conforms to the Comprehensive Plan for Kent County in relation to land use, number of dwelling units or type and intensity of nonresidential buildings and location.*

The proposed RS1 & RS5 zoning districts do not conform to the Comprehensive Plan in relation to the current land use of most of the surrounding area. The site is an approved single family development and so are the farms to the west and to the north across Sophers Row. Only the two properties to the south would match the number of dwelling units that could be allowed in the proposed zoning district on the subject site.

- C. *Transportation facilities, water and sewerage systems, storm drainage systems, schools and fire suppression facilities adequate to serve the proposed use are either in existence or programmed for construction.*

Many of these facilities are available for the subject site, including central water and sewer service. The current development and any proposed changes would need to be reviewed by the Kent Conservation District for drainage facilities and the State Fire Marshal for compatibility with fire protection. In the PLUS comments, DeIDOT has stated that at a minimum this project must construct a northbound left turn lane on Clapham Rd. There do appear to be facilities proposed or existing that are adequate to serve this use.

- D. *There is compatibility between the uses of the property as reclassified and the surrounding land uses, so as to promote the health, safety and welfare of present and future residents of the county.*

There would be compatibility between the uses of the property as reclassified and the surrounding land uses that would promote the health, safety, and welfare of present and future residents of the county. Even though the majority of the surrounding land uses are low density residential, the requested zoning will match the intensity of the parcels to the south. Since that manufactured home park already exists, there may not be any negative impact to the surrounding area if additional medium density development is located nearby, but that should be determined through the public hearing process if there are concerns from any residents along Sophers Row who are not currently impacted by the medium and high density development.

II. BACKGROUND INFORMATION:

- The site is currently unimproved. There is a 282 unit single family detached residential subdivision recorded on the property. It was part of a larger Planned Unit Development (PUD) that included the farm on the north side of Sophers Row known as Chaselynd Hills (206 single family lots).
- The character of the surrounding area is entirely residential and agricultural in nature. There are active farms located in all directions. Along Sophers Row and Clapham Rd. there are road frontage lots improved with single family dwellings. Also on Sophers Row is the Misty Pines subdivision (56 single family lots). To the south is the Barkers Landing Manufactured Home Park. To the west is another recorded, but un-built, single

family development known as Thornberry Crossing (56 single family lots). This subdivision has two street linkages to Hatteras Hills.

- There have been no previous rezoning applications on the subject site, but there have been three in the surrounding area. Z-96-04 and Z-96-17 were approved for the parcel to the south of the subject site where Barkers Landing MHP currently exists. This rezoned 54± acres from AC to RMH and is now designated in the Comprehensive Plan as High Density Residential. Z-10-01 was approved on the farm to the west of Barkers Landing and south of the subject site. This rezoned 48± acre from AC/AR to RMH with a Comprehensive Plan designation of Medium Density Residential. This land is currently unimproved.

III. AGENCY COMMENTS:

A. KENT COUNTY DEPARTMENT OF PUBLIC WORKS –

Requirement & Source:

1. Adherence to the requirements of the accepted TFS, the Levy Court approved Preliminary Report and applicable sections of the Kent County Code, specifically Chapters 128 and 180.
2. Additionally, if this proposal is approved (more units), then an updated TFS may be warranted.
3. Providing sanitary sewer (SS) service to all existing strip lots in accordance with Kent County Code, Chapter 187.
4. Depiction of all SS easement, right-of-way and dedication areas (existing and/or proposed).
5. Adherence to Kent County's Bulk Utility Standards, Chapter 187, as applicable.
6. Section 187-53 H. (4) requires that trash districts be created in major subdivisions unless specifically not required by the Commission. (This does not apply to apartments, club houses or commercial sections).
7. Section 187-53 H. (1) requires that streetlight districts be created for any subdivision with over 50 lots and with a density of 2.5 units per acre or greater. In addition, the entrance to the subdivision must be lighted.

Comment:

The Engineering Division grants "Conditional Approval".

B. KENT CONSERVATION DISTRICT –

Requirements:

1. The Kent Conversation District has no objection to the proposed rezoning of the above referenced property.

Comments:

1. If at any time expansion or earth disturbing activity (clearing, grubbing tree clearing etc.) takes place and exceeds 5000 square feet a detailed Sediment and Stormwater management Control plan must be submitted and approved to the Kent Conversation District.

C. STATE OF DELAWARE, DNREC, SIRS

Regulations/Code Requirements

DNREC's Site Investigation and Restoration Section (SIRS) have reviewed the proposed project.

- If it is determined by the Department that there was a release of a hazardous substance on the property in question, it is suggested that the guidelines and provisions of 7 Del.C. Chapter 91, Delaware Hazardous Substance Cleanup Act and the Delaware *Regulations Governing Hazardous Substance Cleanup* be followed.
- There are no SIRS sites found within a ½-mile radius of the proposed project.

Suggestions

- SIRS strongly recommends that the land owner perform environmental due diligence of the property by performing a Phase I Environmental Site Assessment (**including a title search to identify environmental covenants**) in accordance to Section 9105(c) (2) of the Delaware Hazardous Substance Cleanup Act (HSCA). While this is not a requirement under HSCA, it is good business practice and failure to do so will prevent a person from being able to qualify for a potential affirmative defense under Section 9105(c) (2) of HSCA.
- Additional remediation may be required if the project property or site is re-zoned by the county or state.
- Should a release or imminent threat of a release of hazardous substances be discovered during the course of development (e.g., contaminated water or soil), construction activities should be discontinued immediately and DNREC should be notified at the 24-hour emergency number (800-662-8802). SIRS should also be contacted as soon as possible at 302-395-2600 for further instructions.

D. STATE OF DELAWARE, DNREC, Delaware Division of Fish and Wildlife –

To protect the function and integrity of the wetlands that border the project parcel to the north, it would be best to leave a minimum 100ft buffer between the project and the wetlands. This recommendation is based on literature that shows that an adequately-sized

buffer that effectively protects wetlands and streams is about 100-foot in width. Lot lines, roadways, and infrastructure should not be placed within this buffer zone. Buffers are an integral component of aquatic and wetland habitats, reducing the amount of sediments, pollutants, and other non-point source material that may affect the function and integrity of habitat and the condition and survivability of aquatic organisms.

Wet ponds created for stormwater management purposes may attract resident Canada geese and mute swans that will create a nuisance for community residents. High concentrations of waterfowl in ponds create water-quality problems, leave droppings on lawn and paved areas and can become aggressive during the nesting season. Short manicured lawns surrounding ponds provide attractive habitat for these species.

To deter waterfowl from taking up residence in these ponds, we recommend planting the surrounding open space with a mix of native wildflower plantings (to be planted in accordance with the Sediment and Stormwater Plan approval agency requirements). It is best to mow the open space area surrounding the pond only once a year, either in February or March. If mowing must occur more often, it would be helpful to leave a minimum buffer of 15-30 ft. in width to be mowed annually. This area would be necessary to adequately deter the waterfowl from inhabiting the area (when the view of the surrounding area from the pond is blocked, geese can't scan for predators and are less likely to reside and nest in the area of the pond). In addition to deterring nuisance waterfowl, the native wildflower mix will also serve to attract bees, butterflies, and other pollinators, and reduce run-off, which can contain oil and other pollutants that homeowners may use on their lawns and driveways.

Our program botanist, Bill McAvoy would gladly assist in drafting a list of plants suitable for this site. Bill can be contacted at (302) 735-8668 or William.McAvoy@state.de.us.

This recommendation is offered without the benefit of public testimony and is based on the information presented when the application was received by the Department of Planning Services. The Regional Planning Commission shall give considerable weight to public testimony received during public hearing in considering its recommendation to Levy Court in this matter.

ENC: Data Sheet

Exhibit A – Location and Zoning map

Exhibit B – Comprehensive Plan Map

Exhibit C – Plot Plan

Ordinance LC17-01

Response to PLUS Comments from 11/29/16

Service Level Evaluation Request response from DelDOT dtd. 1/23/17