



Kent County

Department of Planning Services Division of Planning

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STAFF RECOMMENDATION REPORT April 6, 2017

Application Number	:	CS-17-02
Site Plan Title	:	Bendelewski, Daniel & Carol
Present Zoning District	:	AC (Agricultural Conservation)
Present Use	:	Residential
Proposed Use	:	Same with Telecommunications Tower
Location	:	On the north side of Cedarfield Rd. (Co. Rd. 378A), approximately 613 ft. east of Pintail Pointe Dr., southwest of Magnolia

I. STAFF RECOMMENDATION:

The staff recommends **APPROVAL** based on the information submitted as the application demonstrates compliance with the conditions for approval as outlined in §205-360 Tower, broadcasting and telecommunications (conditions attached to this report).

The staff offers additional requirements, as follows:

A. Code Requirements:

1. Add the Kent County Planning Services file number CS-17-02 to the title block of the site plan.
2. The final plan must be approved within 18 months of preliminary plan approval and construction shall commence within 18 months of final plan approval.
3. An engineer's report accompanied this submission. After reviewing the report, the information requested in section §205-360.B.(2)(d) must be provided prior to final approval. This requires that a copy of the NEPA Review be submitted.

4. Also from that report, items §205-360.B.(2)(b)[6][a], §205-360.B.(2)(b)[6][c], §205-360.B.(2)(b)[6][g], and §205-360.B.(2)(b)[6][h] §205-360.B.(2)(b)[6][i] were not included. The applicant has stated that these items cannot be determined without a physical examination of towers in the area. Since the closest tower is over a mile away and does not appear to affect the coverage area based on the information provided, the staff is comfortable in these items being excluded from the report.
5. Applications for communication towers shall be submitted to 436 CES and 436 OSS/OSAB when the construction site is within five nautical miles of Dover Air Force Base. The subject site appears to be within this range, and therefore requires approval from Dover Air Force Base prior to final approval.
6. If the waiver request described below is denied, the applicant is aware that they will need to find a different farm that meets the location requirements.

II. ADEQUATE PUBLIC FACILITIES ORDINANCE

The Emergency Medical Services, School, and Central Water Service are not applicable to this application because those standards only apply to residential subdivision and land development.

With respect to the Roads element of the Adequate Public Facilities Ordinance, staff has determined that road capacity exists to serve the proposed development. The Ordinance provides that if a proposed land development meets any one of the following criteria, a Traffic Impact Study shall be conducted:

- a. The proposal exceeds the projected average daily traffic warrants provided in DelDOT's "Rules and Regulations for Subdivision Streets" as amended;
- b. The proposal is projected to generate more than fifty (50) peak hour trips, excluding traffic passing by the subject property, unless the project is located in a DelDOT Special Study Area or District as designated by mutual agreement between Kent County and DelDOT;
- c. The area of influence of the subject property includes roadway segments and intersections currently operating below the level of service D; or
- d. The proposed development causes the total number of dwelling units within the Traffic Analysis Zone (TAZ) to exceed the projected totals set forth in the Dover/Kent County MPO Transportation Improvement Plan.

Paragraph (d) deals with increasing the number of dwelling units within the TAZ. This application will not add any dwelling units to the TAZ and this paragraph is not applicable to this application.

Given that this use is projected to generate approximately one trip in and one trip out per month, this project will not exceed the projected average daily traffic warrants provided in DelDOT's Rules and Regulations for Subdivision Streets (as

amended) nor will the project generate more than 50 peak hour trips. Therefore, no traffic impact study will be required.

III. WAIVER REQUEST:

Section 187-80 states: Where it can be shown that strict compliance with the requirements of this chapter would result in extraordinary hardship to the applicant because of unusual topography or other conditions which are not self-imposed, or that these conditions would result in inhibiting the achievement of the objectives of these regulations, the Commission may modify or waive the requirements so that substantial justice may be done and the public interest secured; provided, however, that such variance, modification or waiver will not have the effect of nullifying the intent and purpose of this chapter or be contrary to the goals and objectives of the Comprehensive Plan for the County.

1. The applicant has submitted a letter requesting a **waiver** from the location requirements for a Telecommunications tower [pursuant to Section 205-360 A (1)(a)(4)]. This section requires that the subject parcel where a tower is located must be of such size that the tower would be located 1,000 feet from all property lines and 1,500 feet from any dwelling located on an adjoining parcel.

The Planning Staff recommends that this waiver be granted **approval**. In this specific case, there is a hardship in meeting the above requirement. The setbacks cannot be met because the farm is wide, but not particularly deep. The farm is over 23 acres and is over 2,400 ft. wide, but is only about 600 ft. at its deepest point. There does not appear to be any negative impact to this or any other lot owner in the area if this is approved as it is primarily surrounded by undeveloped woodlands and farmland. In addition, the applicant submitted a written description of why the other farms in the area would not meet certain specifications and have been rejected by T-Mobile's RF Engineer. Therefore, Staff agrees that there is a practical difficulty for the applicant in attempting to provide adequate coverage to this area and also meet the required conditions of the use.

IV. BACKGROUND INFORMATION:

- The Kent County Comprehensive Plan recommends that the subject property be utilized for low density residential purposes. The property is zoned AC (Agricultural Conservation). This zoning district provides for a telecommunications tower as a conditional use upon approval by the Levy Court through the Conditional Use/Site Plan process. If approved, this plan will comply with the Comprehensive Plan and the AC zoning district requirements.
- The 23.0 ± acres subject site is currently improved by a single-family dwelling. The character of the surrounding area is both residential and agricultural. There are some individual residential lots fronting along the county road in the immediate

vicinity, while the neighboring properties further removed from the county road appear to be undeveloped woodlands and farmland.

- The applicant met with a member of the Planning Staff in a pre-application meeting to review this land use application. The conditions, which must be met as part of the Conditional Use/Site Plan approval process, were discussed. The plan meets these minimal requirements, minus the item discussed above.
- An engineering report was submitted by the applicant as required by §205-390 (attached). The staff reviewed this report and has made comments on it in section I above.
- The Levy Court may add any necessary conditions to protect the health, safety, and welfare of the citizens of Kent County.
- This site will be accessed by an existing entrance on Cedarfield Rd., which is currently used for the existing home.
- The subject site is a 50 foot by 50 foot fenced compound (2,500 square feet). The compound will be surrounded by a 7 foot tall chain link fence topped with barbed wire. Within the compound will be a 125 foot monopole tower, a cable bridge, and a 10 ft. by 20 ft. concrete pad with equipment.
- The proposed location of the telecommunications tower is within a wooded area, which does appear to meet the visual screening requirements of §205-360.E; therefore, no additional landscaping is required.
- There have been no previous land use applications on the subject site and none in the surrounding area similar to this request.

V. AGENCY COMMENTS:

A. DNREC, Division of Fish & Wildlife – Contact: Kate Fleming, Wildlife Biologist/Environmental Review Coordinator

The forest on this property is mapped as key wildlife habitat in the Delaware Wildlife Action Plan because it is part of a large forest block that can support an array of plant and animal species. It also provides an important buffer to Double Run. We recommend minimizing any tree clearing to the greatest extent practicable.

B. Kent Conservation District – Contact: David C. Cahill

The reasons and conditions applied to this project and their sources are itemized below

Source: 2014 Delaware Sediment and Stormwater Regulations

Requirements:

1. Land disturbing activities in excess of 5,000 square feet are regulated under the Delaware Sediment and Stormwater Regulations. A sediment and Stormwater management plan must be reviewed and approved by the Kent

Conservation District prior to any land disturbing activity (i.e. clearing, grubbing, filling, grading, etc.) taking place. A completed application and fee for a standard Plan are due at the time of plan submittal to the Kent Conservation District.

Comments:

1. The Kent Conversation District has no objection to the proposed conditional use of the above referenced property.
2. The site will require at a minimum a standard plan. Please contact me at the above referenced phone number for details.

C. Delaware Department of Transportation – Contact: Joshua J. Schwartz

Comments:

1. The property frontage requires 30’ of Right-Of-Way from the centerline of the road along Cedarfield Road.
2. The security gate placement shall be a minimum of 50’ off the edge of the travel lanes to allow vehicles navigate without backing onto Cedarfield Road.

D. KENT COUNTY – Department of Public Works, Division of Engineering – Contact: Brian L. Hall, Engineering Project Manager II

Requirement & Source:

1. N/A

Comment:

1. The Engineering Division grants “Approval with No Objection to Recordation.”

E. DNREC, Division of Air Quality – Contact: Ronald A. Amirikian, Planning Branch Manager

Based on air quality projections, the inclusion of a Telecommunications Tower in the location of the abovementioned project is not forecasted to have a significant impact on Kent County’s air quality levels. DAQ encourages land use decisions that take into consideration Delaware’s Air Quality including those that promote sustainable development, smart growth and include offsets to development where applicable. This includes generating mixed-use developments that are walkable, bikeable, and livable to lessen dependence on vehicular travel. DAQ has no additional commentary on this application at this time.

VI. OWNER/DEVELOPER:

The owner/developer shall be aware of and be prepared to comply with all comments regarding this project stated in this report. All comments must be addressed in the final

plan prior to final approval. Final approval of the plan must occur within 18 months from the date of preliminary plan approval. Failure to obtain final approval shall nullify the plan. Once the plan receives final approval, construction in accordance with the plan must occur within 18 months of final approval or the plan shall be deemed null and void. Letters of “No Objection to Final Approval” from the following agencies will be required prior to final approval:

1. DelDOT, Division of Highways
2. Kent Conservation District
3. Office of the State Fire Marshal

This recommendation was made 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 – Plot Plan (Cropped)

Preliminary Site Plan

Engineer’s Report dtd. 10/26/16

Engineer’s Report dtd. 3/16/17

Waiver Request Letter dtd. 2/8/17

FCC Radio Station Authorization & Licensing info dtd. 11/29/06

Proposed Coverage Map submitted with application

Eco-Site Inventory info within 5 miles submitted with application

RF Emissions Compliance Report dtd. 11/29/16

TOWAIR Determination Results dtd. 11/4/16

§205-360 Tower, broadcasting and telecommunications