



Kent County

Department of Planning Services Division of Planning

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STAFF RECOMMENDATION REPORT June 1, 2017

Ordinance	:	LC17-11
Application	:	CZ-17-06 Street
Present Zoning & Comprehensive Plan Map Designation	:	RS1 (Single Family Residential) Medium Density Residential
Proposed Zoning & Comprehensive Plan Map Designation	:	AR (Agricultural Residential) Low Density Residential
Area and Location	:	1.2± acres located on the east end of Lake St., situated between Roxann Ave. and Lake St., being lots 3-4 & 11-12 of the Colmar Manor subdivision, section B, surrounded by Smyrna, inside the Growth Zone overlay

I. **STAFF RECOMMENDATION:**

Based on the information presented, the Kent County Code, and the Comprehensive Plan, staff recommends **DENIAL** 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:

- The proposed rezoning is located within a residentially developed neighborhood and centrally to the Town of Smyrna in a more heavily populated area of the County. A down zoning to a low density residential zoning district, is not warranted based on the character of the area and existing development trends in close proximity to the area of petition.
- Should the request be granted, a number of uses currently prohibited within the RS1 zoning district would become permitted either by conditions or by right based on the current regulations for the AR zoning district including, but not limited to:
 - A multitude of agricultural uses, with no acreage restrictions
 - Commercial recreational facilities
 - Horse training facilities
 - Home-based contractor establishments, no outdoor storage
 - Manufactured homes on individual lots

The permissible uses between the RS1 and AR zoning districts appear to be significantly different and further supports that the area of petition remain within the RS1 zoning district based on the existing residential development surrounding the area of petition.

- The proposed re-zoning does not 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. The surrounding area is primarily zoned for residential use; however, there is a significant amount of surrounding area located within the jurisdiction of the Town of Smyrna. These properties appear to be residentially developed, or slated for future residential development, based on parcel identification on Kent County GIS. The character of the area has remained residential and more heavily populated in nature over the years than a majority of areas located within the AR zoning district. The subject site is located within the Colmar Manor subdivision, established in 1964. With no apparent pattern of changing character of the area, the RPC should consider the implications of spot zoning the area of petition within an established residential community based on the AR purpose statement:

“To provide for a wide range of agricultural use and farm related services while providing for low-density residential development in areas that are rural in character and where farming may not be the optimum land use activity.”

- 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 down zoning to the AR zoning district does not conform to the Comprehensive Plan. The subject site and surrounding properties to the north and southwest have been identified as medium density residential in the Future Land Use (Map 2-2), which is to be expected based on the residential growth patterns anticipated inside of and directly adjacent to the Town of Smyrna. Although there is AC zoning further southwest of the subject site, these properties are further removed from the Town of Smyrna and are therefore further removed from existing infrastructure, making this a reasonable zoning for this area. However, the overall intensity and character of the area surrounding the Town of Smyrna has remained unchanged since the completion of the 2008 Comprehensive Plan and therefore does not support the proposed zoning request.

- 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.*

The proposed rezoning does not appear to require any additional infrastructure as the area of petition is currently residentially developed with both a two-story single family dwelling and a second dwelling unit within a detached garage. There is no county sewer available at the subject site.

- 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 is little compatibility between the uses of the property as reclassified and the surrounding land uses, as the subject site is located within the vicinity of medium density residential developments and no agricultural use. Surrounding parcels, also within the Colmar Manor subdivision, all appear to be residentially developed and would not benefit from a spot zoning of AR within the development. Additionally, the purpose of the AR zoning district does not appear to be compatible with the surrounding RS1 as it is to provide for a “wide range of agricultural use and farm related services.” If reclassified to a low density, agricultural zoning district, there may be significant future impacts to the existing subdivision and surrounding area.

II. BACKGROUND INFORMATION:

- The site is currently developed residentially with a two-story single family dwelling and a detached garage with a second dwelling unit. The character of the area is medium density residential in nature, consisting of several approved residential subdivisions and the Town of Smyrna. While properties within the Town of Smyrna located southwest and east of the subject site remain undeveloped, it appears that these areas are slated for residential development as well based on the parcel identification information shown in the Kent County GIS.
- The applicant applied for a building permit for a detached 52x48 pole building on or around 3/9/17. During the zoning review process, it was found that the building was not for personal use, but for the use of housing equipment associated with an existing contractor establishment operated by the owner and applicant.
- On or around 3/10/17, Planning Staff contacted the applicant to inform the applicant that the business itself must be legalized and could be done so through a Home-Based Contractor Establishment, No Outdoor Storage application. The applicant was then instructed on how to proceed with this application.
- The applicant submitted an application on or around 3/15/17 for a Home-Based Contractor Establishment, No Outdoor Storage with all applicable fees and supporting documentation.
- Planning Staff later contacted the applicant on or around 3/23/17 to inform him that staff had made an error and this type of application is not a permitted use within the RS1 zoning district. Upon discussing options with the applicant, he then decided upon a re-zoning to the AR zoning district in order to pursue legalization of the existing business through the Home-Based Contractor Establishment, No Outdoor Storage application.

- Planning Staff submitted an exemption letter to the State Planning Office requesting the applicant be exempted from the PLUS process for the reasons as stated above as well as the fact that the subject site is currently developed residentially.
- There have been no applications in the surrounding area similar to this request.

III. AGENCY COMMENTS:

A. STATE OF DELAWARE, DNREC, Delaware Division of Fish and Wildlife – Contact: Kate Fleming

A review of our database indicates that there are currently no records of state-rare or federally listed plants, animals or natural communities at this project site.

B. KENT COUNTY, DELAWARE DEVELOPMENT ADVISORY COMMITTEE Kent County Department of Public Works, Engineering Division Contact: Brian L. Hall

Requirement & Source:

1. Please contact the City of Smyrna as to the feasibility of central utilities (e.g. – water, sewer,...)

Comment:

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

C. 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. 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.

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 LC17-11
Support Facilities Report
PLUS Exemption Letter