



Kent County

Department of Planning Services Division of Planning

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STAFF RECOMMENDATION REPORT October 5, 2017

Ordinance	:	LC17-21
Application	:	CZ-17-11 Zettlemyer, Walter
Present Zoning & Comprehensive Plan Map Designation	:	IG (General Industrial) Industrial
Proposed Zoning & Comprehensive Plan Map Designation	:	BG (General Business) Highway Commercial
Area and Location	:	5.7± acres on east side of Milford Neck Road (Co. Rd. 120), approx. 524 ft. east of Bay Road (DE Rt. 1), southeast of Frederica

I. STAFF RECOMMENDATION:

Based on the information presented, the Kent County Code, and the Comprehensive Plan, the following are the findings of fact for the proposed rezoning:

- The proposed rezoning is located outside of the county's Growth Zone, between Frederica and the City of Milford, directly adjacent to the recently completed "DE Turf" complex and Kent County Sewage Treatment Plant. The subject site is currently zoned IG, and is surrounded by nonresidential uses. Therefore, the proposed change from IG to BG is not considered a "down-zoning" as BG is also considered a higher-intensity, nonresidential zoning district.
- While the completion of the new regional sports complex may drive the need for economic development, there are 36.55± acres of vacant, commercially zoned properties on the west side of Route 1 and 21± acres of vacant commercial land on the east side of Route 1 near the subject site. There are existing also vacant commercial properties in the Town of Frederica and the City of Milford. Both municipalities have existing infrastructure, including public sewer and water, to successfully sustain commercial development.

- As the need for nonresidential development increases, concentrated development around municipalities not only reduces pressure on rural areas in the County through the reduction of sprawl, but allows for growth opportunities for those municipalities. The RPC should consider the potential impact commercial uses in the proposed location would have on development patterns in the County.
- Based on Kent County GIS, the subject site is impacted by wetlands. Should the site be developed, a wetlands delineation will be required and any applicable buffers must be maintained.
- 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 subject site is surrounded by properties that are zoned agricultural and used for nonresidential purposes, and the subject site's current zoning differs from the surrounding parcels to the north and east. There have been similar rezoning requests in the nearby area, which may or may not reflect a change in character in the area; however, aside from the recently completed DE Turf Sports Complex, there have been no new development plans submitted for the surrounding area. The county is currently updating its Comprehensive Plan. The proposed rezoning would be more appropriate as part of the Comprehensive Plan process, once a sub-area plan can be completed. Such plan will take transportation infrastructure, environmental concerns, community design, and additional services required to sustain such development into account.

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 BG zoning does not conform to the Comprehensive Plan, as the current land use designation for the subject site in the Future Land Use (Map 2-2) is for industrial uses. Although the proposed BG does not conform to the Comprehensive Plan's specific recommendation for zoning, the existing and proposed zoning may be compatible with the surrounding intensity of nonresidential uses on the same side of Bay Road / Milford Neck Road.

The proposed rezoning does not conform to specific recommendations included in Chapter 6 Economic Development. These recommendations focus on the importance of developing areas within incorporated areas, as they already have the required infrastructure necessary to support economic development in the County.

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, with any additional improvements, will require approval from all outside agencies. The nature of commercial uses calls for an increase of most

utilities, including sanitary sewer. The property is not located within the sewer district, and expansion of sewer facilities outside of the Growth Zone overlay district is not permitted in accordance with §180-21 unless a waiver is granted from the Public Works Director. Should the waiver request be granted, a Technical Feasibility Study shall be required. Compliance with the any proposed stormwater management will be handled through the site plan process.

- 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.*

The subject site is located directly adjacent to nonresidential uses, including the DE Turf Sports Complex and Kent County Sewage Treatment Plant. Therefore, there is some compatibility between the uses of the property as reclassified and the surrounding land uses. This compatibility is further defined by the subject site's location in relation to Bay Road and Milford Neck Road and the subject site's distance from residential uses in the area.

II. BACKGROUND INFORMATION:

- The applicant requests an amendment to the Comprehensive Plan Future Land Use Map (2-2) to revise the area of petition from Industrial to Highway Commercial and a rezoning of the subject site from IG to BG.
- The subject site is located outside of the Growth Zone overlay district.
- The Office of State Planning Coordination (OSPC) has reviewed the application through the PLUS process in August 2008. Their review includes recommendations from state agencies including OSPC, DelDOT, DNREC, State Fire Marshal's Office, Public Service Commission, Department of Education and the Department of Agriculture. The OSPC states that this project is located within Investment Level 4, where agricultural preservation and natural resource protection is supported, while development activities and suburban development is not.
- There have been no previous rezonings on the site.
- The Department of Transportation recommended that the proposed rezoning be considered with without a TIS and evaluate the need for a TIS when a subdivision or land development plan is proposed.
- There have been seven applications in the surrounding area similar to this request. These are described as follows:
 1. Z-72-37 Wilkins Realty Co. rezoned 0.99± acres from AC to BG. The site is remains unused and is currently vacant. Located outside of the Growth Zone.
 2. Z-86-11 Samuel R. & Patricia M. Masten were denied a request to rezone 1.00± acres of AC to BG. Located outside of the Growth Zone.
 3. Z-91-25 Malcom K. & Carolyn E. McKown were denied a request to rezone 1.00+ acres of AC and AR to BG. Located inside of the Growth Zone.
 4. Z-95-04 Henry D. & K. Anne and Robert W. Meding were denied a request to rezone 1.00 acres from AC to BG. Located inside of the Growth Zone.

5. CZ-06-16 Kay-de-did, LLC rezoned 3.988± acres of AC to BG. The site remains vacant, tilled farmland. Located inside of the Growth Zone.
6. CZ-08-08 Meding Family, LLC rezoned 1.00± acres of AC to BG. The site remains vacant, tilled farmland. Located inside of the Growth Zone.
7. CZ-12-04 Kay-de-did, LLC rezoned 32.53± acres of AC to BG. The site remains vacant, tilled farmland on the west side of Route 1 and is improved with a billboard on the east side of Route 1. Located inside of the Growth Zone.
8. CZ-17-07 Robert & Catherine Murphy rezoned 20.5+ acres of AC to BG. The site remained undeveloped. Located outside of the Growth Zone.
9. CZ-17-12 Kay-De-Did, LLC is proposing to rezone 25+ acres of AC to BG.

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. We do recommend minimizing tree clearing to the greatest extent possible, and retaining at minimum 100 ft. buffers surrounding any forested wetlands on site. 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.

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

Requirement & Source:

1. If Kent County sanitary sewer is proposed, then all applicable and current Code requirements must be addressed, in order to satisfy the legal, financial, and technical requirements.

Comment:

1. The Engineering Division grants “Conditional Approval”.

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 LC17-13

Support Facilities Report
PLUS Review & Email from OSPC