



Kent County

Department of Planning Services Division of Planning

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STAFF RECOMMENDATION REPORT October 5, 2017

Ordinance	:	LC17-22
Application	:	CZ-17-12 Kay-De Did, LLC
Present Zoning & Comprehensive Plan Map Designation	:	AC (Agricultural Conservation) Low Density Residential
Proposed Zoning & Comprehensive Plan Map Designation	:	BG (General Business) Highway Commercial
Area and Location	:	25± acres on east side of Bay Road (DE Rt. 1), and on the south side of Milford Neck Road (Co. Rd. 120), 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:

- The proposed rezoning is located outside of the county's Growth Zone, between Frederica and the City of Milford, south of the recently completed "DE Turf" complex. 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 also existing commercial properties in Frederica and the City of Milford. Both incorporated towns 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.

- 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 subject site and surrounding properties, with the exception of the recently commercially rezoned property to the south, are zoned agricultural. The agricultural zoning and residential uses define the character of the area, particularly south of Milford Neck Road and east of Bay Road. With the existing amount of undeveloped commercial already available in the surrounding area, there does not appear to be a significant change in the character of the neighborhood. The RPC should consider the potential impact additional commercial zoning and uses in the proposed location would have on the surrounding residential properties. Additional rezonings in this area may be a detriment to the existing character and development patterns in the county as a whole, in accordance with recommendations for development to remain within or around existing municipalities.

- 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 low density residential uses. The subject site is located outside of the Growth Zone and is not included within or near the areas that are outlined in the Commercial Areas (Map 2-3), which focuses on future areas that are best suited for commercial uses based on existing infrastructure. Although there is existing BG zoning on the opposite side of the Route 1 corridor, it has remained vacant, leaving the surrounding intensity of the area unchanged.

In addition to nonconformity with Chapter 2 of the Comprehensive Plan, 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. The specific recommendations include:

- *“Create economic centers of business and commerce around existing infrastructure and identify areas designated for industrial and business parks, large scale commercial uses, and neighborhood commercial uses (see Map 6-2 and Map 2-3).”* As discussed in Chapter 2, Land Use, these

areas designated for industrial development would meet the existing requirements for rezoning provided the infrastructure is in place.

- *“Understanding that successful municipalities are imperative to the success of Kent County, support the economic development and re-development efforts of the towns including downtown revitalization efforts as well as redevelopment of existing underutilized shopping centers and hotels.”*
- *“Promote existing cities and towns in an effort to support economic viability of the incorporated areas within the County that have access to existing infrastructure.”*

- 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. Although the property is technically connected to sewer for residential purposes, expansion of sewer facilities outside of the Growth Zone overlay district is not permitted in accordance with §180-21, unless waived by the Public Works Director, after a Technical Feasibility Study is completed, should the request be granted. Compliance with the any proposed storm water 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.*

There is little compatibility between the uses of the property as reclassified, as the subject site is located within a low-density area with agricultural and residential uses. Although there are commercially zoned properties to the south and north site, they remain undeveloped and the overall intensity of the area has not changed to warrant a change in zoning or commercial use at the subject site. The majority of new commercial development and infrastructure are located closer to the municipalities to the north and south, within the Growth Zone. If reclassified to commercial and developed as such, there will be an impact to the rural character of the surrounding area that exists particularly on the east side of the Route 1 corridor.

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 low density residential to highway commercial and rezone the site from AC 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 February 2017. Their review includes recommendations from state agencies including OSPC, DelDOT, DNREC, SHPO, 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. In their review, the OSPC stated from a fiscal responsibility perspective, development of this site is inappropriate, as the cost of providing services to development in rural areas is an inefficient and wasteful use of the State's fiscal resources.
- There has been one previous rezoning on the site: CZ-12-04 rezoned 10,000 sq. ft. of AC to BG in June of 2012. This rezoned area is currently improved with a billboard, approved under conditional use application C-16-02.
- 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-17-11 Walter Zettlemyer is requesting to rezone 5.7± acres of IG 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.

Please note that this site is within a tenth of a mile of a forest block that is included in a Fish and Wildlife Management Area, a State Natural Area, and is designated as Key Wildlife Habitat in the Delaware Wildlife Action Plan. The proposed action to place a billboard outside the Growth Zone Overlay District should not impact these habitats. If other activities are proposed in the future please contact us again for further guidance.

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.
2. A Kent County septic elimination project is currently being installed in this area, with an anticipated completion by February 2018.
3. Depiction of all SS easement, right-of-way and dedication areas.

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 LC17-22
PLUS Review