



Kent County

Department of Planning Services Division of Planning

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STAFF RECOMMENDATION REPORT April 5, 2018

Ordinance	:	LC18-02
Application	:	CZ-18-02 Murphy, Robert & Catherine
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	:	25.32± acres (Area of Petition: 4.82± acres) on south side of Milford Neck Rd. (Co. Rd. 120), adjacent to the intersection with Pritchett Road (Co. Rd. 422), southeast of Frederica

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:

- In July of 2017, the subject site was part of application CZ-17-07, which received conditional approval to rezone 20.5± acres from AC (Agricultural Conservation) to BG (General Business). The conditions of approval required that the area of petition be subdivided from the approved BG area. Upon the completion of the minor subdivision, the plan was required to be recorded with revised deed descriptions for both parcels. The deed for the area of petition (the remaining AC zoned area) must include a restriction prohibiting a commercial entrance for the 20.5± acre parcel. Reasons for the conditions were based on public testimony and concern over a potential commercial entrance location adjacent to a primarily residential area instead of adjacent to the new interchanges currently undergoing construction along Route 1.

- 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 approximately 21± acres of vacant commercial land on the east side of Route 1. Additionally, there is existing commercial zoning in Frederica and the City of Milford. Both incorporated towns have existing infrastructure, including public sewer service and water, to successfully sustain commercial development.
- The area of petition is primarily comprised of delineated wetlands and contains a blue line stream. Given the environmental impacts within the area of petition, the subject site is not conducive to commercial development without the proper Army Corps of Engineers permits to fill the wetland area.
- As the need for nonresidential development increases, concentrated development around municipalities not only reduces pressure of 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 area of petition was conditioned by the Levy Court to remain AC and restricted from serving as a commercial entrance as part of the previous rezoning application due to the subject site’s proximity to a primarily residential area. Given the amount of existing commercial zoning that remains vacant in the surrounding area, the character has not changed to such an extent to warrant further commercial zoning. Although DE Turf may drive eventual need for supporting commercial uses, there does not appear to be commercial development pressures requiring additional commercial zoning in the subject area. The agricultural zoning and residential uses particularly define the character along the east side of the divided highway and from the character of the west side of the highway, which has over 34± acres of vacant commercial land. With no overwhelming pattern of changing in character of the surrounding area, the RPC should consider the potential impact additional commercial zoning and uses in the proposed location could 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 area of petition remained low density residential on the Future Land Use (Map 2-2) based on the previous rezoning application. 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. Furthermore, the 2018 Comprehensive Plan Draft does not call out the subject area for future commercial uses. The draft plan does call for highway commercial uses closer to the Route 1 corridor; however, the subject area is recommended to remain low density residential due to the existing residential character along Milford Neck and Pritchett Roads. Although there is BG zoning on the subject site and 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 in permitted in accordance with §180-21.C.

Per DeIDOT's review of the proposed application, the property, if developed, will be permitted to only have rights of ingress from Route 1, with rights of egress by way of the local road system, or Milford Neck Road. Based on the topography and wetlands designation shown along the frontage of Milford Neck Road, it appears that egress is infeasible without the certification from a certified soil scientist or a permit from the Army Corps of Engineers.

- 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 a portion of the subject parcel is zoned commercially and there are commercially zoned properties and uses further to the north of the subject site, the overall intensity of the area has not changed to warrant a change in zoning or commercial use, particularly in regard to the area of petition and its proximity to residential uses. 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.

II. BACKGROUND INFORMATION:

- There has been one rezoning request on the subject site:
 - **CZ-17-07** received **conditional approval** to rezone 20.5± acres from AC (Agricultural Conservation) to BG (General Business). See approval letter with exhibit attached.
- 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, DeIDOT, 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.

- The Department of Transportation completed a Support Facilities Report. Because this is a proposed rezoning, a TIS is not required at this time, but at the time of proposed development.
- There have been eight additional 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 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. Located inside of the Growth Zone.
 8. CZ-17-12 Kay-de Did, LLC requested to rezone 25 acres of AC to BG. The application was withdrawn.

III. AGENCY COMMENTS:

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

The proposed project is adjacent to the boundary of Milford Neck State Wildlife Area managed by the Division of Fish and Wildlife, DNREC. The forest between these two parcels should remain intact to ensure that activities on the property don't negatively impact the wildlife area. The developer should be aware that people using the property in question could be subject to the effects of legal hunting activities in the Wildlife Area, such as firearm noise or dogs barking when pursuing game.

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

Requirement & Source:

1. The property is "legally" located in KCSDD1, Milford Neck Area (a septic elimination project).

2. The actual “technical” service is currently being installed and is scheduled to be completed in April 2018.
3. Proposal must proceed in accordance with the Kent County Code and specifically all applicable provisions of Chapters 128 & 180, including but not necessarily limited to, preparation of an updated Technical Feasibility Study (TFS).
4. Depiction of all SS easement, right-of-way and dedication areas.

Comment:

1. The Engineering Division grants “Conditional Approval”.

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
CZ-17-07 Approval Letter & Exhibit
Ordinance LC18-02
Support Facilities Report
PLUS Review