



Kent County

Department of Planning Services Division of Planning

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STAFF RECOMMENDATION REPORT June 7, 2018

Application Number : CS-18-03
Site Plan Title : Greenwood Site #1DE0001
Present Zoning District : IG (General Industrial)
Present Use : Hot Mix Production Facility
Proposed Use : Same with Telecommunications Tower
Location : On the west side of S Dupont Hwy. (US Rt. 13)
approx. 150' north of Nine Foot Rd. (Co. Rd. 62),
south of Farmington

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-18-03 to the title block of the site plan.
2. A certification area for a landscape architect to sign the plan will need to be added.
3. The final plan must be approved within 18 months of preliminary plan approval and construction shall commence within 18 months of final plan approval.

4. 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.
5. The engineer's report must also include the information required under §205-360.B.(2)(b)[6] which is the detail of existing towers within a 5-mile radius. The report states that there are no towers within the radius, but there appear to be four that have gone through the conditional use process in Kent County and could be more in Sussex County. Generally this report does not contain items [c], [g], and [h] since they cannot be determined without a physical examination of towers. 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. The remaining information must be provided prior to final approval.
6. §205-360.B.(2)(c)[5] requires the Number and types (i.e., cellular, PSC, etc.) of allowable collocates on proposed tower. At least two are required by code. A separate letter from the engineer discusses this issue, but please include it in the actual report. Also, §205-360.B.(2)(c)[13] Type of coverage (i.e., single or system) must be listed in the report. This information must be provided in the engineer's report prior to final approval.
7. §205-360.B.(2)(b)[3] requires that the ground elevation in feet above mean sea level (AMSL) is listed. The engineering report list the ground elevation as 59 feet but the Aeronautical study has different heights listed. Please clarify differences and correct where necessary.
8. If the waiver request for location described below is denied, the applicant is aware that they will need to find a different parcel that meets the location requirements.

B. Recommendations

1. The proposed tower type is of the lattice variety and the staff has concerns on the visible impact this will have on the rural nature of this part of the county. The 2007 Comprehensive Plan mentions in the Community Design Chapter Overview the following statement:

“Regarding rural areas, design features should preserve viewscales.”

Rt. 13 is a highly traveled route and the staff recommends the least visually impactful design possible. We recommend that the Commission consider requiring that this tower be constructed in the monopole variety or within a masking structure that resembles what would normally be seen in an agricultural area.

2. The Aeronautical Study submitted with the application is not requiring that the tower be lit, but due to the proximity of the tower to a local airport (located less

than 2 miles to the west) the staff recommends that the tower be lighted in accordance with any FAA guidelines.

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 every four to six weeks, 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 parcel is approx. 1,000 ft. wide and 1,000 ft. deep, so it would be impossible to meet the requirements on a parcel of this size. The applicant has stated they will present testimony on other properties within the search ring and why they weren't viable for this use. The staff understands that it is difficult to find suitable parcels within the targeted area of coverage. If the applicant can show that they have explored all possible options of code compliant properties in the area, then there is a practical difficulty for the applicant in attempting to provide adequate coverage and also meet the required conditions of the use.

2. The applicant is also requesting a waiver from the siting or setback requirements for a telecommunications tower (§205-360.A (2)(b)(2)). The section requires a setback of 500 feet from any dwelling not located on the subject parcel.

The proposed location of the tower is 470 feet from the nearest dwelling. This home is located to the south of the subject site and takes access off Nine Foot Rd. The staff recommends **denial** of the waiver from the setback to an adjacent dwelling. The site is over 20 acres in size so there are multiple locations on this lot that will be able to meet the required 500 ft. setback. There appear to be areas on the western side of the parcel closest to the railroad tracks for this compound that will not interfere with the asphalt plant operation. The applicant is stating that the existing berm will protect the adjacent home owner, but the tower will extend about 185 ft. above the height of the berm so the visual protection being provided is minimal. The applicant has not presented any specific hardship in being unable to meet the code requirements for the site and therefore the request for this waiver is entirely self-imposed.

IV. BACKGROUND INFORMATION:

- The Kent County Comprehensive Plan recommends that the subject property be utilized for industrial purposes. The property is zoned IG (General Industrial). The code provides for a telecommunications tower as a conditional use upon approval by the Levy Court through the Conditional Use/Site Plan process in all zoning districts.

If approved, this plan will comply with the Comprehensive Plan and the IG zoning district requirements.

- The 22.6 ± acres subject site is currently improved with a hot mix production facility. The character of the surrounding area is both residential and agricultural in nature although the subject site and the property immediately to the north are both industrial uses. The remaining area is mostly open farm land, some of which have homes, and a few small road front lots also exist in the area.
- 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.
- This site will be accessed by an existing entrance on South Dupont Hwy., which will be shared with the hot mix facility.
- The subject area is an 86.5 foot by 65 foot fenced compound (5,622.5 square feet) located in the southeastern portion of the property. The compound will be surrounded by a 6 foot tall chain link fence topped with barbed wire. Within the compound will be a 195 foot lattice tower, a cable bridge, a 7500W DC generator, a 120 gallon propane tank, and a concrete pad with equipment.
- They will be planting 6' evergreen trees on three sides of the compound. The fourth side is up against the 10' berm and plantings that were done for the hot mix facility. This combination does appear to meet the visual screening requirements of §205-360.E.
- There have been two previous land use applications on the subject site:
 - Z-85-01 rezoned 42.7 acres from AR to IG. This was approved by the Levy Court in January of 1985 for Nanicoke Homes Inc. This zoning area includes the subject site and the parcel to the north that is currently operating a waste transfer station.
 - CS-08-18 was approved by the Levy Court in February of 2010 to allow a Hot Mix Production Facility on the subject site. The business has been built and is operational.
- The Levy Court may add any necessary conditions to protect the health, safety, and welfare of the citizens of Kent County.

V. AGENCY COMMENTS:

A. DNREC – Delaware Division of Fish and Wildlife, Species Conservation and Research Program

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. DELAWARE DEPARTMENT OF TRANSPORTATION, Aeronautics Office -

In the preliminary plan for CS-18-03, the site plan indicates that the tower to be constructed will be plus or minus 200 feet. In accordance with 2 Del. C. § 602, any structure greater than 200 feet in height above ground area or constituting an obstruction as to the operation of aircraft as those terms are defined by Federal Aviation Regulation (FAR) Part 77 will not be issued a permit until such time as the Department of Transportation through the Office of Aeronautics has reviewed and approved the application. We strongly advise that the applicant begin this process by completing the Proposed Construction/ Alteration in Airport Zones form. This form can be found at https://www.deldot.gov/Programs/aviation_svcs/pdfs/aviation_obstruction_review_form.pdf. We strongly advise that the applicant begin a Part 77 Review with the Federal Aviation Administration, if this process has not already been started. This review is important due to the close proximity of the proposed tower to Chorman Airport (D74), located approximately 1.9 miles to the west. The DelDOT Office of Aeronautics is available to help as needed, and can be reached at 302-760-2174.

C. KENT COUNTY – Department of Public Works, Division of Engineering –

The Engineering Division grants “Approval With No Objection To Recordation”.

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.

Exhibit B – Plot Plan (Cropped)
Preliminary Site Plan
Engineer’s Report dtd. 5/2/18
Letter from Engineer dtd. 4/9/18
Addendum “A” discussing Site Plan and Waivers dtd. 4/10/18
Aeronautical Study dtd. 6/21/17
Title Report, Deed, and Lease Agreement for subject site
§205-360 Tower, broadcasting and telecommunications