



# Kent County

## Department of Planning Services Division of Planning

SARAH E. KEIFER, AICP  
Director of Planning Services

Phone: 302/744-2471  
FAX: 302/736-2128

KRISTOPHER S. CONNELLY, AICP  
Assistant Director of Planning Services

### STAFF RECOMMENDATION REPORT July 5, 2018

<b>Ordinance</b>	:	LC18-07
<b>Application</b>	:	CZ-18-04
<b>Applicant / Owner</b>	:	Ching, LLC 1973 Bay Road Milford, DE 19963
<b>Present Comprehensive Plan Designation</b>	:	Low Density Residential
<b>Proposed Comprehensive Plan Designation</b>	:	Highway Commercial
<b>Present Zoning District</b>	:	AR (Agricultural Residential)
<b>Proposed Zoning District</b>	:	BG (General Business)
<b>Relation to Growth Zone</b>	:	Inside
<b>Area and Location</b>	:	26.63± acres on the west side of Bay Road (DE Rt. 1), located between the intersections with Old Cemetery Road (Co. Rd. 402) and Cicada Lane (Co. Rd. 403), north of Milford
<b>Kent County Property Identification Numbers</b>	:	MD-00-152.00-01-44.00-000, MD-00-152.00-01-44.03-000, MD-00-152.00-01-53.00-000 & MD-00-152.00-01-67.00-000

#### **I. STAFF RECOMMENDATION:**

Based on the information presented, the Kent County Code, and the Comprehensive Plan, staff recommends the **denial** of the request to amend the Zoning Map and Comprehensive Plan Future Land Use Map.

- The proposed rezoning is located between Frederica and the City of Milford, south of the recently completed “DE Turf” sports complex. While the completion of the new regional sports complex may drive the need for economic development, there are 19.5± acres of vacant commercial lands directly to the north of the subject site that has yet to be developed. Given the amount of vacant commercial land along Route 1 between Frederica and Milford, there does not yet appear to be significant development pressures to warrant additional 26.63± acres of commercial zoning. Furthermore, 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 affected by a significant amount of environmental impacts, including wetlands and a blue line stream. In fact, parcel 67.00 is entirely covered with wetlands and approximately 5-6 acres of the entire project are considered wet which does not include the 25 ft. required buffer from wetlands and 100 ft. buffer from streams. More importantly, the buffers overlap near the entrance portion of parcel 53.00 meaning any development of this site will have an impact on the existing wetlands and waterway. Given the environmental impacts within the area of petition, the subject site is not conducive to 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.
- It fails to meet all the conditions of approval of reclassification under Section 205-408 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 AR & AC, with some smaller parcels along Route 1 (particularly the east side of the highway) that are zoned BG. To the north of Old Cemetery Road, there is a 19.5± acre parcel that is zoned BG and currently remains vacant. The character of the surrounding area is low density in nature, with farms and single-family dwellings to the south and west, and some small-scale commercial uses along the highway corridor. The area of petition is currently being utilized for residential purposes.

Although there have been recent rezoning applications approved in the surrounding area, the landscape and physical character of the area has not changed in use or character to such an extent to warrant an additional 26.63± acres of commercial zoning.

- 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 district does not conform to the current 2007 Comprehensive Plan, nor the upcoming 2018 Comprehensive plan scheduled to be adopted this month. The property is designated for low density residential uses in both plans. The subject site is not included within areas that are outlined in the Commercial Areas (Maps 2-3), which focuses on areas that are best suited for future commercial uses based on existing infrastructure. Although there is commercial zoning on the opposite side of the Route 1 corridor, the overall intensity of the area has remained 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 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 to the subject site will require approval from all outside agencies. The nature of commercial uses calls for an increase in the use of most utilities. Additional improvements will require approval

from Kent County Public Works during the required site plan process, should the request be granted and a site plan be required. Compliance with stormwater management will be handled through the site plan process as well. It appears that there may be adequate area on site to handle stormwater management. There are significant environmental impacts on the subject site, including a blue-line stream and wetlands. Prior to development, a wetlands delineation will be required.

Per DeIDOT's review of the proposed application in the PLUS process, the subject property, if developed, will not be permitted to obtain access from Delaware Route 1, as it has a reasonable alternative access to a secondary road (Old Cemetery Road). Should the subject site be developed with commercial improvements, Old Cemetery Road would see a significant rise in traffic conflicts.

- 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 on the west side of Route 1, which is primarily defined by farmland and low-density residential uses. Farmlands border the wooded properties to the west, while single-family dwellings and small-scale businesses front Old Cemetery Road and Cicada Lane. Although there are businesses along this portion of the highway such as a radio station and a laser tone shop, the subject site is clearly set apart from the small-scale uses along the highway. This is due to its wooded nature and configuration in relation to farmlands on the west side of the highway.

There is little compatibility between the uses of the property as reclassified and surrounding land uses, as the majority of new commercial development and infrastructure are located closer to the municipalities to the north and south. If reclassified, the rezoning and potential development may promote undesirable, sprawl-like development patterns along the Route 1 corridor; which, in turn, may have an impact on the health, safety, and welfare of present and future residents of the county.

## **II. BACKGROUND INFORMATION:**

- The applicant is requesting 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 parcels from AR to BG.
- The subject site is located within the Growth-Zone Overlay District.
- The Office of State Planning and Coordination (OSPC) have reviewed the application through the PLUS process on February 28, 2018. Their review includes recommendations from state agencies, including OSPC, DeIDOT, DNREC, SHPO, etc. The OSPC states that this project is located within Investment Level 3, which reflects areas where growth is anticipated by local, county, and state plans in the longer term future, or areas that may have environmental or other constraints to development. State investments may support

future growth in these areas, but it has been advised that the State has other priorities for the near future. Finally, the OSPC encouraged that any site development be designed with respect for the environmental features present on the property. The applicant's response to the PLUS comments appears inadequate and does not address any of the issues that were raised by the state agencies.

### **III. AGENCY COMMENTS:**

#### **A. KENT COUNTY, DELAWARE DEVELOPMENT ADVISORY COMMITTEE**

**Reviewing Agency: Kent County Department of Public Works, Engineering Division**

**Contact: Brian L. Hall, Engineering Project Manager II**

**Requirement & Source:**

1. Two of the parcels are "legally" located in KCSDD1, Spring Hill Area. The two other properties are not.
2. Adherence to the requirements of the accepted TFS, the Levy Court approved Preliminary Report and applicable sections of the Kent County Code, specifically Chapters 128 and 180.
3. Providing sanitary sewer (SS) service to all existing strip lots in accordance with Kent County Code, Chapter 187.
4. Depiction of all SS easement, right-of-way and dedication areas.
5. Adherence to Kent County's Bulk Utility Standards, Chapter 187, as applicable.

**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 – Zoning and Location Map

Exhibit B - Comprehensive Plan Map

Exhibit C – Plot Plan

Exhibit D – LiDar Elevation

Ordinance LC18-07

Response to PLUS Comments from 4/9/18