



Kent County

Department of Planning Services Division of Planning

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STAFF RECOMMENDATION REPORT September 6, 2018

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| Ordinance | : | LC18-10 |
| Application | : | CZ-18-05 |
| Applicant / Owner | : | MKJ Properties, LLC 9867 S. DuPont Hwy Felton, DE 19943 |
| Present Comprehensive Plan Designation | : | Low Density Residential |
| Proposed Comprehensive Plan Designation | : | Highway Commercial |
| Present Zoning District | : | AC (Agricultural Conservation) |
| Proposed Zoning District | : | BG (General Business) |
| Relation to Growth Zone | : | Inside |
| Area and Location | : | 39.4 acres (of which owner is asking that a 5 acre portion be rezoned BG) on the east side of South DuPont Hwy (Rt. 13), located between Plymouth Rd. and Andrews Lake Rd., north of Felton. |
| Kent County Property Identification Numbers | : | SM-00-12901-01-8500 |

I. STAFF RECOMMENDATION:

Based on the information presented, the Kent County Code, and the Comprehensive Plan, staff recommends **approval** 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 of **approval**:

- The property is currently zoned AC within the Growth Zone, with adjoining parcels west of the subject property between the subject property and South DuPont Highway zoned BG. With the exception of the 17 acre agricultural parcel bordering on the east side of the site the subject property is bordered by residential and commercial parcels.
- The Kent County Comprehensive Plan currently incorporates a portion of the property for future highway commercial uses along South DuPont Highway.
- The applicant is proposing that 5 acres (of the 40 acre parcel) which adjoin his existing BG zoned neighboring parcel on South DuPont Highway be rezoned to BG in order to expand his business.
- Business uses for this property will be compatible with the business uses that are located nearby.
- The Delaware Department of Transportation has noted that Traffic Impact Studies (TIS) are warranted for developments generating more than 500 vehicle trip ends per day, or 50 vehicle trip ends per hour in any hour of the day. If the County approves this rezoning, they will revisit the need for a TIS when the site plan is presented but they do not expect this use to generate that much traffic.
- The proposed re-zoning does 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, but the character of the area has changed in a manner that was unexpected at the time the zoning was contemplated in this area. 20 years ago, this property was under cultivation as part of a much larger agricultural area, with limited residential development surrounding it and sparsely developed business parcels bordering South DuPont Highway to the immediate west of the site.

By 2007 the neighborhood had grown as a commercial area along South DuPont Highway. The remainder of the surrounding area had been improved residentially, as both single family dwellings along Andrews Lake Road, and the Oak Knoll development between the north east border of the property and Plymouth Road were developed. The aerial maps from 2007 show that at that time cultivation of this 40 acre parcel is no longer occurring, and the site is beginning to be occupied by trees. Today the site is covered with mature trees, substantial additional residential

subdivisions have been developed surrounding the site and adjacent agriculture is limited to a few neighboring parcels. These factors show that the neighborhood has changed in a manner that a re-zoning from AC to BG can be supported.

- 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 partially conform to the current 2007 Comprehensive Plan, and the upcoming 2018 Comprehensive plan. The maps include a portion of the 5 acres being requested as potential Highway Commercial zoning. The remaining property is designated for low density residential uses in both plans; however it is in the Growth Zone which Kent County Code Chap. 205-397.2 A. (1) states “encompasses an area that Kent County has determined new development should be encouraged”.

- 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 re-zoning for its current use will alleviate the need for public facilities as the primary use, if approved, shall be the expansion of an existing adjacent business.

If the ownership or use of the property were to change, Kent County Sewage system is nearby and central water service is available from Tidewater Utilities. Any new project would need to be reviewed by the Kent Conservation District for storm water impact and by the State Fire Marshall for fire suppression service.

- 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 would be compatibility between the uses of the property as reclassified and the surrounding land uses that would promote the health, safety, and welfare of present and future residents of the county. There are other business properties to the west of the subject site, and the proposed rezoning would be consistent with the mixed use nature of the surrounding neighborhood. Single family dwellings in the area and residential developments to the immediate north and east of the site would not be adversely affected.

II. BACKGROUND INFORMATION:

- The site currently is an unimproved former farm field. The property owner is currently proposing the creation of a 5 acre parcel zoned BG on this portion of the property. The re-zoned area would need to be added to applicants existing business parcel along Rt. 13.

- The subject site is located within the Growth-Zone Overlay District.
- The character of the surrounding area is entirely residential, agricultural, and commercial in nature. There is an active farm field, located to the east. To the west is commercial development along South DuPont Highway. To the south are single family dwellings along Andrews Lake Rd. To the north are single family dwellings and the Oaknoll development along Plymouth Rd.
- A subdivision that was recorded on the property in 1997 was called “Lonesome Dove South”. It was 38 lots and it was application number SL-97-14. At that time cultivation on the property ceased. No construction had ever commenced and it was expunged in June of 2011.
- There have been previous rezoning applications in the surrounding area:
 - CZ-02-04 (8-00-12901-6900-00001 .6412 Acres rezoned from AC to BG. Approved 11/26/2002)
 - CZ-06-02 (8-00-12900-02-1204-00001 1.853 Acres rezoned from AC to BG. Approved 3/28/2006)
 - Z-88-15 (8-00-12900-02-1204-0001 {formerly SM-129.-02-12.06} rezoned from AC to BG. Approved with conditions by Levy Court June 1988)
- The application was required to go through the **PLUS** process. There is a letter attached with the State Planning Offices comments and the developer’s response to those comments.

III. AGENCY COMMENTS:

A. Reviewing Agency: Delaware Department of Transportation

Contact: Joshua J. Schwartz

1. DelDOT has previously commented to remove the northern right out access to South DuPont Highway.
2. DelDOT has previously commented to make the southern access to South DuPont Highway right in and right out.

B. Reviewing Agency: Kent County Department of Public Works

Contact: Brian L. Hall

1. Property is not “legally” located in KCSDD1.
2. “Technically”, there are no existing Kent County sewer systems in this immediate area/location.

As applicable, please contact this office for further details/information, including possible estimated costs/Code Fees

Comment:

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

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 – C Comprehensive Plan Map & Plot Plan
Plus Process with responses August 16, 2018
Support facilities request response from DelDOT dated August 10, 2018
Ordinance LC-18-10