



Kent County

Department of Planning Services Division of Planning

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STAFF RECOMMENDATION REPORT April 4, 2019

Ordinance	:	LC19-03
Application	:	CZ-19-03 Bradley, Roger
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	:	2.688± acres known as 12793 South Dupont Highway, located on the east side of South Dupont Highway, approx. 530' north of Killens Pond Road, south of Felton

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:

- The proposed rezoning is located south of the Town of Felton and north of the Town of Harrington, inside of the County's Growth Zone. There is existing commercial zoning in both incorporated towns with infrastructure, including public sewer service and water, to successfully sustain commercial development.
- 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 surrounding area is primarily zoned agricultural. The subject site is bounded on the north and east by lands zoned AC (Agricultural Conservation), including 100± acres of farmland. The lands located directly across South Dupont Highway to the west of the subject site are also zoned AC (Agricultural Conservation), and include 101± acres of farmland. The character of the surrounding area has not changed to such an extent to warrant further commercial zoning, presumably because there is existing commercial zoning in both incorporated towns to the north and south of the subject site. 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 parcel remains low density residential on the Future Land Use Map (Map 7B). Although the subject site is located inside of the Growth Zone, it is not included within or near the commercial areas that are designated in the Land Use Strategies Map (Map 7C), which outlines future areas that would be best suited for commercial uses based on existing infrastructure. Further, the Comprehensive Plan provides for future highway commercial uses closer to the boundaries of incorporated areas.

In addition to nonconformity with Chapter 7 of the Comprehensive Plan (Land Use), the proposed rezoning does not conform to the policy emphasis or recommendations included in Chapter 2 (Economic Development) as outlined on the Economic Development Areas Map (Map 2A). These recommendations focus on the importance of creating economic centers of business and commerce around existing infrastructure, further noting that zoning and land development standards should emphasize the use of master planning in designated areas. This particular parcel is not contemplated in a Potential Commercial Area as seen on Map 2A.

- C. *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 the adjacent parcel to the south is zoned commercially and there are sporadic commercially zoned properties and uses further to the north and south 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 agricultural and residential uses. The majority of new commercial development and infrastructure is located closer to the municipalities to the north

and south. 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:

- The surrounding area is primarily zoned agricultural, with the exception of the following located within a 0.5 mile radius of the subject site (See Zoning Exhibit A):
 - 6 parcels zoned BG (General Business), of which 1 parcel remains residential in use;
 - 3 parcels zoned BN (Neighborhood Business), of which 2 parcels remain residential in use;
 - 5 parcels zoned IG (General Industrial), of which 29.3± acres remain agricultural in use; and
 - 2 parcels zoned RMH (Residential Manufactured Housing) containing 2 legal non-conforming mobile home parks.

- There have been no previous rezoning requests on the subject site.

- There have been 13 additional rezoning applications similar to this request located within a 0.5 mile radius of the subject site (See Zoning Exhibit A), described as follows:
 - CZ-08-07 Manzoor and Joyce Alam rezoned 0.91 acres from AC to BG in 2008. **The site remains undeveloped.**
 - CZ-04-17 Richard and Sandra Brittingham rezoned 2.67 acres from AC to BN in 2005. **The site remains residential in use.**
 - Z-99-01 Robert C. Parnell **denied** a request to rezone 6.016 acres from AC to BG in 1999.
 - Z-98-03 Charles D. Murphy Assoc., Inc. rezoned 5 acres from AC to BG in 1998. The site is currently utilized as an equipment supply business.
 - Z-90-33 Evelyn N. Hyland rezoned 1.36 acres from AC to BN in 1990. The site is currently utilized as a limousine rental company.
 - Z-87-59 John E. O'Brien rezoned 7.31 acres from AC to BG in 1988. The site is currently utilized as Alban Tractor for the heavy equipment facility and storage.
 - Z-87-16 William Kornrumpf rezoned 4.44 acres from AC to BG in 1987. The site is currently utilized as a gas station/truck stop.
 - Z-86-34 Myers Building Corporation and Z-86-35 Simpler Lumber & Coal Co. rezoned two adjoining parcels totaling 6.2 acres from AC to BG in 1986. **The parcels were later rezoned from BG to IG in 1989.** The site is currently utilized as secondary access to heavy equipment facility and storage.
 - Z-83-29 E. B. Warrington Jr. Inc. and CZ-08-06 Felton Real Estate Management LLC rezoned a portion of two adjoining parcels totaling 2.6 acres from AC to BG in 1983 and 2008. The site is currently utilized as a car dealership.
 - Z-79-01 Ollie and Naomi Truitt rezoned 0.39 acres from AC to BN in 1979. **The site remains residential in use.**
 - Z-73-55 James D. McGinnis **denied** a request to rezone 13 acres from AC to BG in 1973. 10 acres of the parcel was later rezoned from AC to IG in 1984. The site is currently utilized for as First State Crane rental company.

- The applicant requests an amendment to the Comprehensive Plan Future Land Use Map (Map 7B) 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 inside of the Growth-Zone Overlay District.
- The Office of State Planning Coordination (OSPC) has reviewed the application through the PLUS process in December 2018. Their review includes the following recommendation from DelDOT:
Tax maps suggest that the property owner immediately east of the subject land is preparing to develop a subdivision street that would extend north from Killens Pond Road (Kent Road 384). That street could also serve to provide the subject land with access to Killens Pond Road. DelDOT recommends that the applicant contact that property owner to determine if they can work together in that regard.

The applicant's response to this recommendation is as follows:

Department of Transportation recommendation of connecting this parcel upon Commercial rezoning to the land immediately east of 12793 S. Dupont Hwy. Felton DE 19943 has been received and is under consideration and incorporating into the project. At this time, we would like to move forward and pursue the project of proposed zoning classification of BG by Kent County Department of Planning Services.

- The Department of Transportation completed a Support Facilities Report. Because this is a proposed rezoning, a Traffic Impact Study (TIS) is not required at this time, but may be required at the time of proposed development.

III. AGENCY COMMENTS:

A. KENT COUNTY, DELAWARE DEVELOPMENT ADVISORY COMMITTEE

Kent County Department of Public Works, Engineering Division

Contact: Brian L. Hall, Engineering Project Manager II

Requirement & Source:

1. Property is "legally" located in KCSDD1, Felton Area.
2. "Technically", there is an existing 4 in forcemain (FM), pressurized main, located at the rear of the property in an easement area.
3. Proposal must proceed in accordance with all applicable requirements of the Kent County Code, specifically Chapter 128 (Fees) and Chapter 180 (Standards).

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: Ordinance LC19-03
Data Sheet
Exhibit A – Location and Zoning map
Exhibit B – Comprehensive Plan Map
PLUS Review
Support Facilities Report