



# Kent County

## Department of Planning Services Division of Planning

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### STAFF RECOMMENDATION REPORT September 5, 2019

<b>Ordinance</b>	:	LC19-16
<b>Application</b>	:	CZ-19-05 Piecuski, Raymond
<b>Present Zoning / Comprehensive Plan Map Designation</b>	:	BG (General Business) / Highway Commercial AR (Agricultural Residential) / Low Density Residential
<b>Proposed Zoning / Comprehensive Plan Map Designation</b>	:	BG (General Business) / Highway Commercial
<b>Area and Location</b>	:	0.355± acre (Area of Petition: 0.15± acre) on the south side of Forrest Ave., approx. 1,002' west of Nault Rd., west of Dover

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#### 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, as the proposed re-zoning meets the conditions for approval of a reclassification under Section 205-408 of the 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 existing BG and AR split-zoning of the parcel is the original zoning. It is presumed that in 1972 when the zoning maps were created that the front 0.2± acre of the parcel was utilized by a business and the rear 0.15± acre of the parcel was not, which could explain the split-zoning. Based on the 1990 rezoning of the adjacent parcel to the west for commercial use, as well as the commercial zoning of the adjacent parcel to the east and the commercial parcel located across Forrest Avenue from the subject site, the character of the neighborhood has changed since the Zoning Map was created in 1972.

- 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 2018 Comprehensive Plan. The front portion of the parcel is zoned BG and designated for Highway Commercial use, while the remainder of the parcel is zoned AR and designated for low density residential use. Based on the parcel's limited size, it is not feasible that the rear 0.15± acre could be utilized as low density residential. Further, the existing 0.2± acre currently zoned BG and utilized as an auto repair facility has limited site area and no room for expansion without a rezoning of the rear portion of the site.

- 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.*

Since the proposed area of rezoning is only 0.15± acre, it is unlikely that approval of this request would have any impact on infrastructure or support facilities.

Delaware Route 8, commonly known as Forrest Avenue, is a heavily traveled minor arterial road that is designed to handle commercial traffic. The applicant already has a legal nonconforming business on this road and transportation facilities have adequately served the existing commercial zoning and use. Further, DeIDOT has noted that any expansion of the existing use will likely trigger additional entrance requirements which may be difficult to comply with given the current configuration of the building on the property. Based on DeIDOT's comments, expansion of the existing use on this parcel is unlikely, further minimizing any impact on transportation facilities.

The property is not located in the Kent County Sewer District and does not have an onsite septic system. Approval of this rezoning request without an expansion of or change in use will not impact the County's wastewater facilities. The applicant, however, has stated that there is a port-a-potty inside the existing building that is serviced by RPJ Sanitation. If this rezoning is approved and the applicant later proposes to expand or change the use, a site plan may be required and will need to be reviewed by DNREC, who may impose regulations regarding wastewater disposal.

Likewise, since there is no existing stormwater infrastructure on this parcel, any future site plan application will require the approval of a stormwater management plan by Kent Conservation District.

Notice of the rezoning application was sent to the Capital School District, the Dover Fire District, and the State Fire Marshal's office; none of which submitted comments regarding this rezoning proposal. Therefore, it is presumed that the existing schools and fire suppression facilities are adequate to continue serving this existing use, as well as the proposed zoning change.

- 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. An approval of this request would reduce residential zoning in a high traffic area. In addition, commercial development along established transportation corridors and near established residential areas helps reduce trips to major commercial areas for consumer needs. The change of zoning should not have a negative impact on the remaining residential uses in the area, particularly since the rear of the property is already screened by a vinyl fence, minimizing the visual impact on the only adjacent residential parcel.

## II. BACKGROUND INFORMATION:

- The proposed rezoning is located west of the City of Dover, outside of the County's Growth Zone, and is currently being utilized as an auto repair facility. The parcel is split-zoned with the northern 0.2± acre fronting on Forrest Avenue zoned BG (General Business) and containing the garage and office for the auto repair facility. The southern rear 0.15± acre zoned AR (Agricultural Residential) is currently improved with an open-air metal carport and a vinyl fence running along the western side property line from the front of the carport to the rear of the parcel, and along the rear property line. The applicant is requesting to rezone the southern 0.15± acre located in the rear of the parcel to BG (General Business), so that the entire parcel is within the same zoning district.
- The adjacent parcels to the east and west, as well as the parcel located directly across Forrest Avenue, are commercially zoned. In addition, there is commercial zoning located approximately a quarter mile west of the subject site at the intersection of Forrest Avenue and Winding Creek Road, and there is one commercially zoned parcel approximately a quarter mile east of the subject site at the intersection of Forrest Avenue and Nault Road. The remaining surrounding area is residential / agricultural in use.
- There have been no previous rezoning requests on the subject site.
- There have been 6 rezoning applications similar to this request located within a 0.25 mile radius of the subject site along Forrest Avenue, described as follows:
  - Z-83-06 **approved** the rezoning of 0.2763 acres from AR to BN in 1983 on the adjacent parcel to the east of the subject site. Z-87-11 **denied** the rezoning of 0.2763 acres from BN to BG in 1987 on the same adjacent parcel. **This site remains residential in use.**
  - Z-90-26 **approved** the rezoning of 0.25 acres from AR to BG in 1990 on the adjacent parcel to the west of the subject site. **This site remains residential in use.**
  - Z-86-09 **denied** the rezoning of 0.33 acres from BN to BG in 1986 located at the southwest corner of Forrest Avenue and Nault Road.
  - CZ-17-05 **approved** the rezoning of 3.6 acres from AR to BN in 2017 located at the northwest corner of Forrest Avenue and Winding Creek Road. **This is the future site of a Dollar General retail store.**

- Z-02-13 **approved** the rezoning of 1.57 acres from AR to BG in 2002 located on the south side of Forrest Avenue, west of Winding Creek Road. **This site remains residential in use.**
- The Office of State Planning Coordination (OSPC) reviewed the application through the PLUS process in April 2019. Their review includes the following comments from DelDOT:
  - *The present site access does not meet the standards in DelDOT's Development Coordination Manual. While Kent County's approval of the rezoning application would not trigger a review of the site access, a significant change in the use of the site or an expansion of the shop area would do so. In that event, DelDOT would require that the access be improved to meet those standards.*
  - *If the proposed rezoning is approved, the business owner will need to file a Permit Application before changing the use of the property. DelDOT will conduct a cursory review and respond within three weeks as to what further action, if any, is required. The major changes that DelDOT foresees are that the parking spaces along the building front and the ability to drive directly into the garage door from Forrest Avenue (DE Rte. 8) would be lost.*

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

*On April 20, 2019, you allowed me the opportunity to discuss my case. I have read over the letter I received and understand the content set forth.*

- 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. ADVISORY COMMENTS:**

The 0.15± acre rear portion of the site appears to be utilized for the storage of automobiles, which is **not** permitted within the AR zoning district. Rezoning the rear portion of the parcel to BG would allow the existing auto repair business to legally utilize the entire parcel **only if** the applicant can demonstrate compliance with the provisions of Kent County Code §205-169. Automobile, truck or bus sales, rental, service, storage or repair, but no auto salvage, is permitted in the BG zoning district, provided it meets all of the following conditions:

1. The operation is conducted at least 20 feet from any adjacent property line.
2. The minimum distance of any building from a residential district or residential property line shall be 50 feet.
3. The minimum distance from access to any church, library, school, college, nursing home, hospital, or similar use shall be 200 feet, measured along the same street line in the same block.
4. Hydraulic hoists, pits and all lubricating, greasing, washing and repair facilities shall be entirely enclosed within buildings, in accordance with Delaware Department of Natural Resources and Environmental Control regulation.

5. A solid fence, wall or landscape screen, a minimum of six feet in height, shall be erected along all property lines separating the site from any lot zoned for residential use.
  6. Off-street parking shall be provided in accordance with requirements for manufacturing uses in Article XVII, Parking.
  7. Any major repair or storage of equipment or materials or damaged vehicles shall be inside a completely enclosed building.
- If the rezoning request is **approved**, the stored automobiles currently located within the AR zoning district may remain onsite if they are tagged and undamaged. Any untagged or damaged vehicles must be stored inside a completely enclosed building. Alternatively, if this rezoning request is **denied**, the owner must remove the stored automobiles from the site.
  - It is important to note DeIDOT's comments from the PLUS review which state that an expansion of the shop area would trigger a review of the site's access. DeIDOT further commented that if the only change proposed is the storage shed mentioned in the PLUS application, that the project may (but is not guaranteed) to qualify for DeIDOT's Letter of No Contention / Permit Entrance Construction process. Applicant is advised that any proposal to increase impervious coverage of the parcel, such as the construction of a new building, may trigger a Site Plan application which will require review and approval of an engineered site plan by Kent County Department of Planning Services, Kent County Regional Planning Commission, DeIDOT, DNREC, Kent Conservation District, and the State Fire Marshal's Office, among other agencies, prior to the issuance of a commercial building permit.
  - Applicant is advised that any proposed expansion of the existing use or any site plan application on the parcel may require review by DNREC, and specifically may require the installation of an onsite wastewater system.
  - Applicant is also advised that the property must comply with Article XVIII of the Kent County Code in regard to signage. Specifically:
    - §205-227(C) states that only one permitted-type sign shall be allowed for each street frontage;
    - §205-235(A)(1) allows one single-faced wall mount sign or one architectural canopy sign for each business which fronts on a State or County road. Such sign shall be no larger than 10% of the area of the building front which each business occupies.
    - §205-230(C) states that temporary signs, such as banners or pennants, may be placed for a period of not more than 15 days, not more than twice a year.

Failure to comply with the provisions of Article XVIII may result in a code enforcement violation on the parcel.

**IV. 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. N/A

**Comment:**

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

**B. DELAWARE DEPARTMENT OF TRANSPORTATION**

**Contact: Joshua J. Schwartz**

**Comment:**

1. No objection to the zoning map change.

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 LC19-16

Data Sheet

Exhibit A – Location and Zoning Map

Exhibit B – Comprehensive Plan Map

Exhibit C – Rezoning Areas

PLUS Review

Support Facilities Report