



# 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 September 5, 2019

<b>Ordinance</b>	:	LC19-17
<b>Application</b>	:	CZ-19-06 FAM Investments
<b>Present Zoning &amp; Comprehensive Plan Map Designation</b>	:	BN (Neighborhood Business) Neighborhood Commercial
<b>Proposed Zoning &amp; Comprehensive Plan Map Designation</b>	:	AR (Agricultural Residential) Low-density Residential
<b>Relation to Growth Zone</b>	:	Outside
<b>Area and Location</b>	:	0.44± acres located on the north side of Forrest Ave, approx. 176' east of Sharon Hill Rd., west of Dover

---

#### **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 recommendations:

- The subject site is located outside of the Growth Zone Overlay District west of the City of Dover. The majority of parcels in the surrounding area are zoned AR, with the exception of an adjoining parcel currently zoned BN. In 2009 the property was granted Conditional Use approval for a Child Care Center, which is no longer operating on the site.
- The applicant is proposing that the property be re-zoned to more adequately reflect its current usage which is residential with the potential for a home based business.
- The Kent County Comprehensive Plan designates the majority of the surrounding area as Low Density Residential.

- The Department of Transportation has indicated that a Traffic Impact Study will not be required at the time of rezoning but may be applicable during the site plan phase of the project.
- The Office of State Planning deemed this downzoning request to be exempt from review under the PLUS process, as it meets the following criteria:
  - a. *The rezoning is of a unique circumstance and cannot set a precedent for other lands in the vicinity.*

The Petition is on a BN zoned property with only one other BN property located to the east with the remaining surrounding property zoned AR in the immediate vicinity west of the City of Dover. The application states that if the rezoning is approved, the existing building would be utilized for a residential use. Since this property is surrounded by other residential uses in a residential zoning district, we are of the opinion that the proposal does not set an undesirable precedent.
  - b. *The relative size of the rezoning or the variation from the land use recommended by the Comprehensive Plan is so minor that it would have no impact on the goals and objectives of the Comprehensive Plan.*

As mentioned above, the proposed rezoning represents a down-zoning from BN to the AR District and remains residential in nature. The subject area consists of 0.44 Acres +/- and would be compatible with the adjoining land uses
  - c. *The proposed rezoning is adjacent to or in the immediate vicinity of other similarly zoned lands and would not be divergent from the predominant pattern of development in the area.*

As stated above, the rezoning would be consistent with other zonings in the area and consistent of the residential use existing on this property.
- 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 not a mistake in the Zoning Map. Changing the zoning from BN (Neighborhood Business) to AR (Agricultural Residential) would be more consistent with both the current utilization of the subject property and the current utilization of the surrounding parcels.
  - 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 AR zoning district does not conform to the recently adopted 2018 Comprehensive plan which proposes “Neighborhood Commercial” for the subject property, however it is consistent with the existing single family dwelling on the

property and the zoning for the surrounding properties which are either AR or AC and identified as Low Density Residential.

- 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 to AR (Agricultural Residential) would not adversely impact transportation facilities, water and sewerage systems, storm drainage systems, schools and fire suppression facilities currently in place. Rather it would more accurately reflect the current utilization of the site as a single family residential property serviced by on site sewer and water and may decrease the future usage of other services on the property.

- 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. The proposed rezoning would be consistent with the agricultural and residential nature of the surrounding neighborhood. Single family dwellings in the area north and west of the site would not be adversely affected.

## **II. BACKGROUND INFORMATION:**

- The 0.44± acre site currently improved with a single family dwelling zoned BN outside the Growth Zone and is in close proximity to the City of Dover municipal boundary. The majority of the surrounding area is zoned AR with some AC zoning southwest of the subject site with the exception of an adjoining parcel which is zoned BN.
- The character of the surrounding area is a mix of residential and agricultural use and one business on an adjoining property to the east. On the opposite side of road, or south of the subject parcel, there are open fields. Both of the fields on the opposite side of the road of the subject site are in the city limits of Dover. In the center of the field southeast of the subject parcel, there is a church.
- There has been one previous application on the property, a conditional use with site plan (CS-09-05) approved 7/21/2009 for a Child Care Center.
- There have been several rezoning applications in the surrounding area:
  - Z-74-24 (2-00-075.00-01-28.00-00001 12.7 acres rezoned from AC to AR. Denied 5/28/1974)
  - Z-85-05 (2-00-075.00-01-28.04-00001 1.033 acres rezoned from AC to BG. Approved 2/26/1985)
  - CZ-04-15 (2-00-075.00-01-28.03-00001 1.6 acres rezoned from AC to BG. Denied 12/21/2004)
  - Z-86-55 (2-00-075.02-01-14.00-00001 1.5 acres rezoned from AR to BG. Denied 12/23/1986)

- Z-78-22 (2-00-075.02-01-13.00-00001 .56 acres rezoned from AR to BG. Approved 6/27/1978)

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

#### **A. Reviewing Agency: Delaware Department of Transportation**

**Contact: Joshua J. Schwartz**

1. No objection to the zoning map change.
2. The developer and engineer should contact DelDot to discuss the project.

#### **B. Reviewing Agency: Kent County Department of Public Works**

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

**Requirement & Source:**

1. N/A

**Comment:**

2. 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: Ordinance LC19-17

Data Sheet

Exhibit A – Zoning and Location Map

Exhibit B -Comprehensive Plan Map

Exhibit C – Rezoning Areas

Plus letter dtd. 7/16/19

Support facilities request response from DelDOT dtd 7/29/2019