



Kent County

Department of Planning Services Division of Planning

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STAFF RECOMMENDATION REPORT September 5, 2019

Ordinance	:	LC19-02
Application	:	CZ-19-02 Decktor, Alan
Present Zoning & Comprehensive Plan Map Designation	:	AR (Agricultural Residential) Low Density Residential
Proposed Zoning & Comprehensive Plan Map Designation	:	BG (General Business) Highway Commercial
Area and Location	:	2.88± acres on the west side of South DuPont Highway, approximately 2,400 ft. south of Marsh Branch Road, south of Farmington.

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 outside of the county's Growth Zone, south of the Town of Farmington and north of the Town of Greenwood (Sussex County), on the west side of South DuPont Hwy (U.S. Route 13), and neighbors existing residential properties.
- The 2.88± acre subject parcel is currently zoned Agricultural Residential (AR). The most recent Kent County Comprehensive Plan (2018) does not designate the surrounding area for general business uses. The closest compatible use with the proposed zoning is approximately, 1.4 acres, zoned BG (General Business), located 0.4± miles to the northeast.
- As the need for nonresidential development increases, concentrating development around municipalities not only reduces pressure of 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.

- 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 subject site and surrounding properties are zoned agricultural. With no overwhelming pattern of changing character within the surrounding area of the proposed rezoning, the RPC should consider the potential impact additional commercial zoning and uses in the proposed location would have on the surrounding residential properties. 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 site in the Future Land Use (Map 7-B) is for low density residential uses. The subject site is located outside of the Growth Zone and is not included within or near the areas that are outlined in the Commercial Areas (Map 2-A), which focuses on future areas that are best suited for commercial uses based on existing infrastructure. Although there is existing BG zoning north of the subject site on the Rt. 13 corridor, it has remained vacant, leaving the surrounding intensity of the area unchanged.

In addition to nonconformity with Chapter 7 of the Comprehensive Plan, the proposed rezoning does not conform to specific recommendations included in Chapter 2 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. As stated in Chapter 2, one such specific recommendation includes:

- “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-A and Map 2-B).” As discussed in Chapter 7, Land Use, these areas designated for commercial development would meet the existing requirements for rezoning provided the infrastructure is in place.

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 will require approval from all outside agencies. The nature of business uses calls for an increase of most utilities, including sanitary sewer. The property is currently not connected to County sewer and therefore, sewer will not be available. Compliance with the any proposed storm water management will be handled through the site plan process. Further, the current entrance to the property crosses a 120ft tax ditch buffer that could have implications on the environment and need special approval from various state agencies, including but not limited to DelDOT and DNREC.

- 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 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 there are commercially zoned properties and uses further to the north of the subject site, the overall intensity of the area has not changed to warrant a change in zoning or commercial use at the subject site. The majority of new commercial development and infrastructure are located closer to the municipalities to the north within the Growth Zone. If reclassified to commercial and developed, as such, there will be an impact to the rural character of the surrounding area that exists particularly on the southern section of the Route 13 corridor.

II. BACKGROUND INFORMATION:

- The applicant requests an amendment to the Comprehensive Plan Future Land Use Map (7-B) to revise the area of petition from low density residential to highway commercial and rezone the site from AR to BG.
- The subject site was previously a part of a larger parcel designated as farmland preservation land, with a total area of 25± acres. In 2016, the owner was issued a permit for a 60ft by 40ft agricultural building. After the building was built, the owner decided to subdivide 2.9± acres off to make the current site in question. Recorded date for the minor subdivision was June 15, 2017. This agricultural building is located on the new subdivided lot.
- The subject site is located outside of the Growth-Zone Overlay district.
- There have been no previous rezonings on the site.
- The Delaware Department of Transportation (DelDOT) completed a Support Facilities Report. Because this is a proposed rezoning, a Traffic Impact Study (TIS) is not required at this time.
- There have been five applications in the surrounding area similar to this request. These are described as follows:
 1. Z-99-02 Jay & Beth Green rezoned 2.5± acres from AC to BG. The site is remains unused and is currently vacant. Located outside of the Growth Zone.

2. Z-99-05 Jay & Beth Green rezoned 2.25± acres from AC to BG. The site is remains unused and is currently vacant. Located outside of the Growth Zone.
3. Z-87-57 Madeline Churilla applied to rezone 1.72± acres from AR to BN. This request was later withdrawn. The site was vacant at the time and the proposed use was for a shop. Located outside of the Growth Zone.
4. Z-77-28 Raymond Closer was denied a request to rezone 0.7± acres from AR to BN. The site was vacant at the time and proposed use was for an electronic shop and luncheonette. Located outside of the Growth Zone.
5. Z-74-36 Thomas L. Rose rezoned 2.2± acres from AC to BG. The site is remains unused and is currently vacant. Located outside of the Growth Zone.

III. AGENCY COMMENTS:

A. KENT CONSERVATION DISTRICT (KCD)

Contact: Jared C. Adkins, P.E.

Requirements:

Land disturbing activities in excess of 5,000 square feet are regulated under the Delaware Sediment and Stormwater Regulations. A detailed sediment and Stormwater management plan must be reviewed and approved by the Kent Conservation District prior to any land disturbing activity (i.e. clearing, grubbing, filling, grading, etc.) taking place. The review fee and a completed Application for a Detailed Plan are due at the time of plan submittal to the Kent Conservation District. Construction inspection fees based on developed area and Stormwater facility maintenance inspection fees based on the number of Stormwater facilities are due prior to the start of construction.

Comments:

1. The Kent Conservation District withdraws its previous objection to this Zoning Map/Comprehensive Plan change. The applicant has submitted a concept plan that demonstrates how this site will comply with the Delaware Sediment & Stormwater Regulations.
2. As portion of the gravel parking and the entrance have been constructed within the White Marsh Tax Ditch Right-of-Way. The owner must request and receive a Court Ordered Change to the recorded tax ditch right-of-way.
3. The owner must submit a Sediment & Stormwater plan to the Kent Conservation District for approval prior to the intended use.
4. The following notes must appear on the record plan:
 - i. The Kent Conservation District reserves the right to enter private property for purposes of periodic site inspection.
 - ii. The Kent Conservation District reserves the right to add, modify, or delete any erosion or sediment control measure, as it deems necessary.
 - iii. A clear statement of defined maintenance responsibility for stormwater management facilities must be provided on the Record Plan.
5. Ease of maintenance must be considered as a site design component and a maintenance set aside area for disposal of sediments removed from the basins during the course of

regular maintenance must be shown on the Record Plan for the subdivision.

B. DELAWARE DEPARTMENT OF TRANSPORTATION (DeIDOT)

Contact: Joshua J. Schwartz

Comment:

1. DeIDOT has no comment regarding the change in zoning.
2. The applicant should schedule a meeting with DeIDOT. Entrance review and approval is expected to be required by DeIDOT.

C. KENT COUNTY, DELAWARE DEVELOPMENT ADVISORY COMMITTEE

Kent County Department of Public Works, Engineering Division

Contact: Brian L. Hall

Requirement & Source:

1. N/A

Comment:

1. The Engineering Division grants "Approval".

D. DIVISION OF AIR QUALITY (DOA)

Delaware Department of Natural Resources & Environmental Control (DNREC)

Contact: Valerie A. Gray

Comment:

1. DOA has no comment regarding the change in zoning.

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 LC19-02

Data Sheet

Exhibit A – Location and Zoning map

Exhibit B – Comprehensive Plan Map

Exhibit C- Plot Plan

Support Facilities Report

PLUS Comments 12/3/18