



STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF  
STATE PLANNING COORDINATION

August 19, 2004

Mr. Gregory T. White  
RD 2, Box 91C  
Dagsboro, DE 19939

RE: PLUS review – PLUS 2004-06-11; Gregory T. White

Dear Mr. White:

Thank you for meeting with State agency planners on August 4, 2004 to discuss the proposed plans for your rezoning request.

According to the information received, you are seeking a rezoning from AR-1 to C-1 for the purpose of building a 17,600 square foot retail building, with six apartments above it and a 5,000 square foot contractor's storage building behind it.

Please note that changes to the plan, other than those suggested in this letter, could result in additional comments from the State. Additionally, these comments reflect only issues that are the responsibility of the agencies represented at the meeting. The developers will also need to comply with any Federal, State and local regulations regarding this property. We also note that as Sussex County is the governing authority over this land, the developers will need to comply with any and all regulations/restrictions set forth by the County.

This office has received the following comments from State agencies:

**Office of State Planning Coordination – Contact: Ann Marie Townshend 739-3090**

The Office of State Planning Coordination notes that this proposal is located primarily in the Investment Level 3 Area according to the draft Strategies for State Policies and Spending, with a portion of the project area in and Investment Level 4 Area. The State Strategies document has been endorsed by the Cabinet Committee on State Planning Issues and is currently awaiting final approval by Governor Minner. This project is also located in the Environmentally Sensitive Developing Area according to the Sussex County Comprehensive Plan.

In general, State policies encourage long-term, well planned development that is sensitive to its natural and agricultural surroundings in Level 3 areas. In Level 4 areas, State policies encourage preservation and natural resource conservation. In relation to this project area, the Level 3, and particularly Level 4, designations reflect the significant environmental constraints on the site.

The Office of State Planning Coordination has concerns about the proposed rezoning and development of this parcel, specifically in light of the concerns raised by DNREC regarding the on-site septic and well suitability of the site and the comment raised by Sussex County that sewer is not currently available to the site. We ask that the applicant work closely with DNREC to resolve these issues prior to proceeding with the application.

**State Historic Preservation Office (SHPO) – Contact: Anne McCleave 739-5685**

It was noted that there is an old house on the property, which will be demolished. You stated that the house is in bad condition and is deteriorating. The SHPO has requested permission to access the property to obtain final documentation of the house before it is demolished. Please contact the SHPO office to schedule a time.

**Department of Transportation – Contact: Bill Brockenbrough 760-2109**

In September 2003, DelDOT recommended to Sussex County that they require a traffic impact study (TIS) prior to acting on this rezoning. Since then, in discussions with Mr. White and his representatives, DelDOT has discussed the possibility of having a deed recorded to restrict the use of the property, to limit the use of the property to ones that generate relatively little traffic. In a telephone conversation on April 7, 2004, Bill Brockenbrough agreed that DelDOT would not recommend a TIS if the uses were restricted to the following: a furniture retail store; a contractor's storage building and office; a home floor covering showroom and retail sales store; a dry cleaning storefront; a bicycle and moped retail sales shop; apartment rental units; a contractor's retail sales store; and a kitchen cabinet showroom/retail store. It is DelDOT's understanding that a deed restriction has been filed but has not been recorded. DelDOT asks that the applicant notify them when it has been recorded so that they can amend our comments to the County.

At the meeting, Mr. White asked whether an ice cream store would constitute a restaurant. He understands that restaurants are among the high traffic uses that might warrant a traffic impact study but he would like to amend the deed restriction so that he could bring in an ice cream store as a tenant. Without directly answering his question, DelDOT would not be opposed to his amending the deed restriction to permit an ice cream store without a drive-through window.

DelDOT has a project under development to improve Route 26 from Clarksville to the Assawoman Canal. Construction is scheduled for 2007 and would consist primarily of adding shoulders to the existing road. However, the project also includes a realignment of the Clarksville intersection (Route 26, Omar Road (Sussex Road 54) and Powell Farm Road (Sussex Road 365)). Because the subject land is so close to that intersection, DelDOT requests that Mr. White contact the project manager for the Route 26 improvements, Mr. Tom Banez, to determine the likelihood of the parcel being affected by the realignment. Mr. Banez may be reached at (302) 760-2363.

DelDOT agreed with other agencies at the meeting which stated that a sidewalk along the project's road frontage would be desirable.

Mr. White's engineer should continue to coordinate with the DelDOT Subdivision Manager for Sussex County, Mr. John Fiori, regarding their requirements with regard to the design of the site entrance. Preliminarily, they would expect those requirements to include a single access point rather than the separate in and out driveways proposed. Mr. Fiori may be reached at (302) 760-2260.

**The Department of Natural Resources and Environmental Control – Contact: Kevin Coyle 739-3091**

### **Soils**

According to the recent soil survey update, the soils in the vicinity of the proposed construction are mapped as Henlopen, Runclint and Zekiah-Longmarsh. Both Henlopen and Runclint are well-drained upland soils; whereas, Zekiah-Longmarsh is poorly to very poorly drained (HYDRIC SOILS).

Although some of the soils on subject parcel are well drained, they have limitations associated with rapidly permeable sandy surface and/or subsurface horizons. Such soils are conducive to nutrient leaching via groundwater or surface runoff into the surrounding watershed. In soils containing shallow water tables, these impacts are greatly intensified.

### **Wastewater**

Obtaining an approved site evaluation may be difficult due the wet soils and the developer must meet all existing septic regulations.

### **ERES Waters**

This project is located adjacent to receiving waters of Inland Bays designated as waters having Exceptional Recreational or Ecological Significance (ERES). ERES waters are recognized as special assets of the State, and shall be protected and/ or restored, to the maximum extent practicable, to their natural condition. Provisions in Section 11.5 of Delaware's "Surface Water Quality Standards" (as amended August 11, 1999), specify

that all designated ERES waters and receiving tributaries develop a “pollution control strategy” to reduce non-point sources of nutrient runoff through implementation of Best Management Practices (BMPs). Best Management Practices as defined in subsection 11.5(e) of this section, expressly authorizes the Department to provide standards for controlling the addition of pollutants and reducing them to the greatest degree practicable, or where attainable, a standard requiring no discharge of pollutants.

## **TMDLs**

With the adoption of Total Maximum Daily Loads (TMDLs) as a “nutrient-runoff-mitigation strategy” for reducing nutrients in the Inland Bays Watershed, reduction of nitrogen and phosphorus loading will be mandatory. A TMDL is the maximum level of pollution allowed for a given pollutant below which a “water quality limited water body” can assimilate and still meet water quality standards to the extent necessary to support use goals such as, swimming, fishing, drinking water and shell fish harvesting. Although TMDLs are authorized under federal code, states are charged with developing and implementing standards to support those desired use goals. The Jurisdictional authority for attaining these use goals will fall under the auspices of Section 11.5 of the State of Delaware’s Surface Water Quality Standards (as amended August 11, 1999), and will be achieved via nutrient reductions referred to as “pollution control strategies.”

Nutrient reductions prescribed under TMDLs are assigned on basis of water quality concerns – that is, the those regions deemed to be of greatest environmental concern will require correspondingly higher levels of nutrient reduction than those regions deemed less environmentally sensitive. In this watershed, these regions are demarcated as high and low reduction zones. The high reduction zone corresponds to the western portion of the watershed, and requires a reduction of nitrogen and phosphorus by 85 and 65 percent, respectively. The low reduction zone corresponds to the eastern portion of the watershed, and requires a reduction of nitrogen and phosphorus by 40 percent. **This project is proposed within the low nutrient reduction zone.**

**In order for the applicant to verify compliance with the TMDL mandate, a full nutrient accounting process known as a nutrient budget should be required.** This nutrient budget shall assess and compare contemporary nutrient loading rates from current land use(s), with those projected for the changed land use(s). Under the current TMDL nutrient reduction criterion for the Inland Bays watershed, all lands bounded by said watershed must demonstrate nutrient reductions that meet or exceed those percentage reduction level(s) prescribed for that reduction zone (e.g., high or low reduction zone). **It should also be noted that a portion of the subject parcel is forested. Forested lands have been consistently shown to be far more effective agents for adsorbing nutrients and other pollutants than impervious paved surfaces interspersed with patches of non-native turf grasses. Therefore, removal of forest cover will almost certainly increase pollutant loading into the Inland Bays and make it more difficult for Delaware to comply with TMDL nutrient load reduction requirements.**

To ensure that the desired reductions are consistent with said TMDL, the nutrient budget should employ relevant scientifically defensible assumptions from peer-reviewed research conducted in a geologic setting similar to that of the coastal plain of Delaware.

**Such a model is currently being developed by the Department. The developer/consultant should contact Lyle Jones in the Department's Watershed Assessment Section for further information. It should also be noted that since a significant portion of this parcel is wooded, it may be difficult to achieve the desired nutrient reductions required under the TMDL program.**

### **Water Supply**

The Division of Water Resources will consider applications for the construction of on-site wells provided the wells can be constructed and located in compliance with all requirements of the Regulations Governing the Construction and Use of Wells. A well construction permit must be obtained prior to constructing any well(s).

Should dewatering points be needed during any phase of construction, a dewatering well construction permit must be obtained from the Water Supply Section prior to construction of the well points. In addition, a water allocation permit will be needed if the pumping rate will exceed 50,000 gallons per day at any time during operation.

All well permit applications must be prepared and signed by licensed water well contractors, and only licensed well drillers may construct the wells. Please factor in the necessary time for processing the well permit applications into the construction schedule. Dewatering well permit applications typically take approximately four weeks to process, which allows the necessary time for technical review and advertising.

Potential Contamination Sources do exist in the area, and any well permit applications will undergo a detailed review that may increase turnaround time and may require site specific conditions/recommendations.

Should you have any questions concerning these comments, please contact Rick Rios at 302-739-3665.

### **Stormwater Management**

A detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on the site. The plan review and approval as well as construction inspection will be coordinated through Sussex Conservation District. Contact Jessica Watson, Program Manager, at (302) 856-7219 for details regarding submittal requirements and fees.

It is strongly recommended that you contact Sussex Conservation District to schedule a preapplication meeting to discuss the sediment and erosion control and stormwater

management components of the plan. The site topography, soils mapping, pre and post development runoff, and proposed method(s) and location(s) of stormwater management should be brought to the meeting for discussion.

A Notice of Intent (NOI) for Stormwater Discharges Associated with Construction Activity must be submitted to DNREC Division of Soil and Water Conservation along with the \$195 NOI fee prior to plan approval.

Each stormwater management facility should have an adequate outlet for release of stormwater. Discharges to the tax ditch or the DelDOT right-of-way require the approval of the tax ditch association or DelDOT. Any drainage conveyed onto this site from neighboring properties must be adequately conveyed through the site to the discharge point without interruption.

The ditch on the site is the St. Georges Tax Ditch with a 25 foot right-of-way from the top of bank of the ditch. The location of the building proposed for the rear of the property appears to fall within the right-of-way (the sketch is not drawn to scale).

A Certified Construction Reviewer (CCR) may be required for the site during construction. You should contact Sussex Conservation District for details regarding the CCR requirement.

### **Rare/Threatened/Endangered Species**

The proposed project lies within five miles of a known Delmarva fox squirrel (*Sciurus niger cinereus*) population at the Assawoman Wildlife Area. Delmarva fox squirrels were listed as federally endangered in 1967 and are protected by the Endangered Species Act. They generally inhabit mature forests with open understories and wet woodlands, but can be opportunistic in their habitat choice. The proposed project area contains potential habitat for Delmarva fox squirrels and the following is required prior to any project activities:

- Contact Trevor Clark (410-573-4527) of the US Fish and Wildlife Service for proper procedures prior to beginning work. A conference with the Service is required for any projects that will directly or indirectly impact habitat within 5 miles of the Assawoman Wildlife Area fox squirrel locations;

### ***AND/OR***

- Contact Trevor Clark (410-573-4527) of the US Fish and Wildlife Service for proper procedures prior to beginning work. Have surveys conducted to determine if Delmarva fox squirrels are present. In accordance with Delaware's fox squirrel site survey procedures, surveys must be conducted by a State approved fox squirrel surveyor two times between September and May: once in the fall, and again between March 15 and May 30. A list of qualified surveyors is available upon request. Please

note that surveys may confirm the presence of fox squirrels but cannot confirm absence.

### **Underground Storage Tanks**

There is one inactive and one active LUST sites located near the proposed project:

Fuzzy's Tire Center, Facility # 5-000147, Project # S9112285

Fuzzy's Tire Center, Facility # 5-000147, Project # S9910205

No environmental impact is expected from the above inactive/active LUST site(s). However, should any underground storage tank or petroleum contaminated soil be discovered during construction, the Tank Management Branch must be notified as soon as possible. It is not anticipated that any construction specifications would be need to be changed due to petroleum contamination. However, should any unanticipated contamination be encountered and PVC pipe is being utilized, it will need to be changed to ductile steel in the contaminated areas.

### **Site Investigation and Restoration**

The Department of Natural Resources and Environmental Control- Site Investigation and Restoration Branch (DNREC) has searched its database and has found that there are no Superfund sites within a one mile radius that have had a confirmed or suspected release of a hazardous substance that warranted an investigation or cleanup by SIRB. If during construction activities, hazardous substances are encountered the applicant is required to report such findings pursuant to Title 7, Delaware Code, Section 6028, to DNREC at (302) 395-2600.

### **State Fire Marshal's Office – Contact: Duane Fox 856-5298**

These comments are intended for informational use only and do not constitute any type of approval from the Delaware State Fire Marshal's Office. At the time of formal submittal, the applicant shall provide; completed application, fee, and three sets of plans depicting the following in accordance with the Delaware State Fire Prevention Regulation (DSFPR):

- a. **Fire Protection Water Requirements:**
  - Water distribution system capable of delivering at least 1500 gpm for 2-hour duration, at 20-psi residual pressure is required. Fire hydrants with 800 feet spacing on centers.
  - Where a water distribution system is proposed for (Storage/Industrial/Mercantile) sites, the infrastructure for fire protection water shall be provided, including the size of water mains for fire hydrants and sprinkler systems.

b. **Fire Protection Features:**

- All structures over 10,000 Sq. Ft. aggregate will require automatic sprinkler protection installed.
- Buildings greater than 10,000 sq.ft., 3-stories of more or over 35 feet, or classified as High Hazard, are required to meet fire lane marking requirements.
  - Primary (24') fire lanes are required along the “front” of the building if there are two “fronts” of the building then both shall have primary fire lane coverage. Primary fire lanes prohibit parking between the fire lane and the building. Fire lanes can not be closer then 10' to the building.
  - Secondary (16') fire lanes can have one row of parking between the fire lane and the building.
- Show Fire Department Connection location (Must be within 300 feet of fire hydrant), and detail as shown in the DSFPR.
- Show Fire Lanes and Sign Detail as shown in DSFPR

c. **Accessibility**

- All premises which the fire department may be called upon to protect in case of fire, and which are not readily accessible from public roads, shall be provided with suitable gates and access roads, and fire lanes so that all buildings on the premises are accessible to fire apparatus. This means that the access road to the subdivision from Route 26 must be constructed so fire department apparatus may negotiate it.
- Fire department access shall be provided in such a manner so that fire apparatus will be able to locate within 100 ft. of the front door.
- Any dead end road more than 300 feet in length shall be provided with a turn-around or cul-de-sac arranged such that fire apparatus will be able to turn around by making not more than one backing maneuver. The minimum paved radius of the cul-de-sac shall be 38 feet. The dimensions of the cul-de-sac or turn-around shall be shown on the final plans. Also, please be advised that parking is prohibited in the cul-de-sac or turn around.
- If the use of speed bumps or other methods of traffic speed reduction must be in accordance with Department of Transportation requirements.

d. **Gas Piping and System Information:**

- Provide type of fuel proposed, and show locations of bulk containers on plan.

e. **Required Notes:**

- Provide a note on the final plans submitted for review to read “ All fire lanes, fire hydrants, and fire department connections shall be marked in accordance with the Delaware State Fire Prevention Regulations”
- Proposed Use

- Alpha or Numerical Labels for each building/unit for sites with multiple buildings/units
- Square footage of each structure (Total of all Floors)
- National Fire Protection Association (NFPA) Construction Type
- Maximum Height of Buildings (including number of stories)
- Note indicating if building is to be sprinklered
- Name of Water Provider
- Letter from Water Provider approving the system layout
- Provide Lock Box Note (as detailed in DSFPR) if Building is to be sprinklered
- Provide Road Names, even for County Roads

Preliminary meetings with fire protection specialists are encouraged prior to formal submittal. Please call for appointment. Applications and brochures can be downloaded from our website: [www.delawarestatefiremarshal.com](http://www.delawarestatefiremarshal.com), technical services link, plan review, applications or brochures.

**Department of Agriculture - Contact: Mark Davis 739-4811**

Per relevant County codes, a forested buffer is required between the proposed subdivision and all adjacent properties in active agricultural use. In addition, a forest buffer should be maintained for those pre-existing residential properties and along all streams, wetlands, and river that border the proposed subdivision.

The developer should consider a diverse landscape plan that uses Delaware native tree and shrub species and encourages the “Right Tree for the Right Place” concept.

**Public Service Commission - Contact: Andrea Maucher 739-4247**

The project information sheets state that individual on-site wells will be used to provide water for the proposed project. A small portion of the project falls within a Public Water Supply (Tidewater) certificated area. If public water is desired, a water utility will need to apply to the Commission for a CPCN to provide services to those areas outside of the certificated area.

Any expansion of natural gas or installation of a closed propane system must fall within Pipeline Safety guidelines. Contact: Malak Michael at (302) 739-4247.

Recent legislation (Senate Bill 99) placed non-governmental companies providing wastewater services to 50 or more customers (in the aggregate) under the regulatory control of the PSC. While rules are not yet in place, governmental agencies offering wastewater services must file data with the Commission regarding its service areas. Contact: Kevin Neilson at (302) 739-4247.

**Delaware State Housing Authority – Contact Karen Horton 739-4263**

The applicant indicated that the apartments would be targeted for moderate-income households and that the style would be a beach-looking complex. We support this proposal because the 2003 Statewide Housing Needs Assessment indicates that much of the housing in the coastal resort area is outside the affordability level of low- and moderate-income households. This proposal would provide much needed housing opportunities for those that work in nearby service and retail establishments. In addition, the style of the units would integrate affordable housing into the existing architectural theme of the area.

**Delaware Emergency Management Agency – Contact: Don Knox 659-3362**

No significant impact to public safety is foreseen by implementation of this project; however, the developer should notify the police, fire service, and emergency medical response organization serving this portion of Sussex County, to keep them apprised of all development activities. Also be aware that this area is within the inundation zone of a hurricane or major coastal storm, should one strike the Delaware coastline. Routes 26 and 113 are both coastal storm evacuation routes during a coastal storm event.

**Sussex County – Contact Richard Kautz 855-7878**

The applicant should take a close look at the various comments from State agencies along with his proposed uses and the limitations of the site and decide what actually can be accomplished. The unusual configuration of the site, the setbacks, easements and the tax ditch can impact the layout of the desired uses. Depending on the results of that analysis the applicant may be able to achieve the desired result with a Conditional Use in the AR-1 district. If not, he should proceed with the C-1 zoning request with the stipulations agreeable to DeDOT. Also, depending on the scale of the proposed development, the application may need to be accompanied with the Report required by the overlaying Environmentally Sensitive Development District.

The Sussex County Engineering Department stated: The Sussex County Engineering Department opposes this project due to the Change of Zone request. This project is within the boundaries of the Vines Creek Planning Area. The County has no schedule to provide service to this parcel at this time. For questions regarding these comments, contact Chris Calio, Sussex County Engineering Department at (302) 855-7839.

**Following receipt of this letter and upon filing of an application with the local jurisdiction, the applicant shall provide to the local jurisdiction and the Office of State Planning Coordination a written response to comments received as a result of the pre-application process, noting whether comments were incorporated into the project design or not and the reason therefore.**

PLUS – 2004-06-11 Gregory White

August 19, 2004

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Thank you for the opportunity to review this project. If you have any questions, please contact me at 302-739-3090.

Sincerely,

A handwritten signature in cursive script that reads "Constance C. Holland". The signature is written in black ink and is positioned above the typed name.

Constance C. Holland, AICP  
Director

CC: Sussex County