



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET
STATE PLANNING COORDINATION

January 29, 2007

Parley Hess
McBride & Ziegler, Inc.
2607 Eastburn Center
Newark, DE 19711

RE: PLUS review – PLUS 2006-12-03; North Bay Court Plaza

Dear Mr. Hess:

Thank you for meeting with State agency planners on January 3, 2007 to discuss the proposed plans for the North Bay Court Plaza project to be located on Route 113 adjacent to the existing Bay Court Plaza.

According to the information received, you are seeking site plan approval for a 125,750 sq. foot commercial shopping center.

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 the City of Dover is the governing authority over this land, the developers will need to comply with any and all regulations/restrictions set forth by the County.

Executive Summary

The following section includes some site specific highlights from the agency comments found in this letter. This summary is provided for your convenience and reference. The full text of this letter represents the official state response to this project. *Our office*

notes that the applicants are responsible for reading and responding to this letter and all comments contained within it in their entirety.

State Strategies/Project Location

- This project is located in Investment Level 1 according to the *Strategies for State Policies and Spending*. This site is also located in the City of Dover. Investment Level 1 reflects areas that are already developed in an urban or suburban fashion, where infrastructure is existing or readily available, and where future redevelopment or infill projects are expected and encouraged by State policy. Our office has no objections to the proposed development of this project in accordance with the relevant City codes and ordinances.

Street Design and Transportation

- The proposed development warrants a traffic impact study (TIS).
- Because it will increase traffic at the existing shopping center entrance on Route 113, the proposed development will require an entrance plan and permit, regardless of the results of the TIS.
- DelDOT has six comments regarding the preliminary plat plan presented:
 - a) The plan should provide a wide aisleway, clear of parking spaces, from the site entrance to the buildings that would front on Route 113.
 - b) The plan should provide an easement such that if the Peterson property (Tax Parcel ED-05-077.00-01-08.00-000) is redeveloped, its access can be through the proposed shopping center. Similarly, it should provide easements for extending the north-south aisleways to the Caine property (Tax Parcel ED-05-077.00-01-10.01-000) in case it should be redeveloped with a compatible use.
 - c) The channelizing islands and striping within the existing Bay Court Plaza will need to be changed to provide full turning movements where the proposed development would access the driveway. The west intersection in particular will need to be rebuilt.
 - d) The two aisleways leading into the site from the existing shopping center would be subject to a great deal of cross traffic, which would impede

circulation and promote accidents. The parking layout should be redesigned to correct this situation.

- e) The PLUS application states that all 9 acres of the forest on the site would be removed without any environmental impact. DelDOT understands that the developer is negotiating to reforest another location as mitigation, but that will not address any local impacts of the deforestation. It is recommended that the City require an extensive landscaping plan to mitigate the impact of deforestation on-site as much as possible.

Natural and Cultural Resources

- This project will result in the destruction of an entire woodlot, although small, it does represent habitat for some species of wildlife. These species will have to disperse into the surrounding area to find suitable habitat, although very little exists. DNREC recommends that at least a few connected acres of trees be left intact. The current site plan appears to be comprised of 12 acres of nothing but buildings and pavement. To accomplish preserving a few acres of trees would require a reduction in the footprint of this project or a reduction in the size/number of buildings and thus in the amount of parking required.
- DNREC requests that tree clearing not occur April 1st to July 1st to reduce impacts to nesting birds and other wildlife species that utilize forests for breeding. This clearing recommendation would only protect those species during the breeding season; once trees are cleared the result is an overall loss of habitat.

The following are a complete list of comments received by State agencies:

Office of State Planning Coordination – Contact: David Edgell 739-3090

This project is located in Investment Level 1 according to the *Strategies for State Policies and Spending*. This site is also located in the City of Dover. Investment Level 1 reflects areas that are already developed in an urban or suburban fashion, where infrastructure is existing or readily available, and where future redevelopment or infill projects are expected and encouraged by State policy. Our office has no objections to the proposed development of this project in accordance with the relevant City codes and ordinances.

Division of Historical and Cultural Affairs – Contact: Alice Guerrant 739-5685

Nothing is known within this parcel. Beers Atlas of 1868 shows the Wm. W. Manlove House here and there may be archaeological remains associated with that house. There is a medium potential for a prehistoric-period archaeological site here as well.

Small, rural, family cemeteries often are found in relation to historic farm complexes, such as the Manlove House, usually a good distance behind or to the side of the house. The developer should be aware of Delaware's Unmarked Human Remains Act of 1987, which governs the discovery and disposition of such remains. The unexpected discovery of unmarked human remains during construction can result in significant delays while the process is carried out, and the developer may want to hire an archaeological consultant to check for the possibility of a cemetery here if this development is approved. The Division of Historical and Cultural Affairs would have to have a copy of any archaeological report done for this purpose. They will be happy to discuss these issues with the developer.

They would like the opportunity to examine the area prior to any tree removal or other ground-disturbing activities, to see if there are in fact any archaeological sites on the parcel and to learn something about their location, nature, and extent.

Department of Transportation – Contact: Bill Brockenbrough 760-2109

- 1) The proposed development warrants a traffic impact study (TIS). Such studies are done by an engineer hired by the developer and reviewed by DelDOT. They typically take one year from the initial meeting to the completion of DelDOT's review. For this reason, the developer's traffic engineer should contact Mr. Todd Sammons of my office to arrange for a scoping meeting as soon as possible. Depending on the results of that study, improvements at the shopping center entrance on Route 113 or beyond may be required. Mr. Sammons may be reached at (302) 760-2134.
- 2) Because it will increase traffic at the existing shopping center entrance on Route 113, the proposed development will require an entrance plan and permit, regardless of the results of the TIS. The developer's site engineer should contact our Subdivision Manager for the City of Dover, Mr. Richard Woodhall, regarding our specific requirements for access. Mr. Woodhall may be reached at (302) 760-2262.
- 3) DelDOT has six comments regarding the preliminary plat plan presented:

- a) The plan should provide a wide aisleway, clear of parking spaces, from the site entrance to the buildings that would front on Route 113.
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- e) The PLUS application states that all 9 acres of the forest on the site would be removed without any environmental impact. DelDOT understands that the developer is negotiating to reforest another location as mitigation, but that will not address any local impacts of the deforestation. It is recommended that the City require an extensive landscaping plan to mitigate the impact of deforestation on-site as much as possible.
- f) DelDOT supports the comments from the Kent Conservation District regarding runoff and stormwater management.

**The Department of Natural Resources and Environmental Control – Contact:
Kevin Coyle 739-9071**

Soils

Based on the Kent County soil survey update, Urban land was mapped in the vicinity of the proposed construction. Urban land is a soil type soil or soil mapping unit that has been subjected to extensive filling and grading activities and does not meet conventional characterization as a naturally-occurring soil type with a common soil drainage class

and/or range of similar soil properties. Consequently, Urban land soil mapping units are likely to have much more site specific soil variability than naturally-occurring soil types.

Wetlands

According to the Statewide Wetland Mapping Project (SWMP) mapping, palustrine forested scrub-shrub wetlands were mapped in the northwestern/west-central portion of this parcel. Wetlands provide water quality benefits, attenuate flooding and provide important habitat for plants and wildlife. The developer should maintain a 100-foot vegetated buffer from the wetlands. There should not be any buildings or associated infrastructure within the buffer.

Impacts to Palustrine wetlands are regulated by the Army Corps of Engineers through Section 404 of the Clean Water Act. In situations where the applicant believes that the delineated wetlands on their parcel are nonjurisdictional isolated wetlands, the Corps must be contacted to make the final jurisdictional assessment. They can be reached by phone at 736-9763.

In addition, individual 404 permits and certain Nationwide Permits from the Army Corps of Engineers also require 401 Water Quality Certification from the DNREC Wetland and Subaqueous Land Section and Coastal Zone Federal Consistency Certification from the DNREC Division of Soil and Water Conservation, Delaware Coastal Programs Section. Each of these certifications represents a separate permitting process.

Because there is strong evidence that federally regulated wetlands exist on site, a wetland field delineation, in accordance with the methodology established by the Corps of Engineers Wetlands Delineation Manual, (Technical Report Y-87-1) should be conducted. Once complete, this delineation should be verified by the Corps of Engineers through the Jurisdictional Determination process.

In addition, the project needs a State of Delaware Subaqueous Lands Jurisdictional Determination. To find out more about permitting requirements, the applicant is encouraged to attend a Joint Permit Process Meeting. These meetings are held monthly and are attended by federal and state resource agencies responsible for wetland permitting. Contact Denise Rawding at (302) 739-9943 to schedule a meeting.

Impervious Cover

Based on a review of the PLUS application, post-development surface imperviousness is estimated to be about 89 percent. However, given the scope and density of this project, this estimate is likely an underestimate (appears closer to 100%). The applicant's

apparent use of natural areas (wetlands or buffers) and functional amenity areas (stormwater management areas) for meeting the City's open space requirements artificially lowers the amount of this project's post-development projection of surface imperviousness, ultimately underestimating its environmental impacts. Furthermore, the applicant should also realize that all created forms of constructed surface imperviousness (i.e., rooftops, sidewalks, and roads) and their extent should be comprehensively accounted for when calculating surface imperviousness. It is strongly recommended, that the applicant address all of the above-mentioned concerns in their finalized calculation for surface imperviousness.

Studies have shown a strong relationship between increases in impervious cover to decreases in a watershed's overall water quality. It is strongly recommended that the applicant implement best management practices (BMPs) that reduce or mitigate some of its most likely adverse impacts. Reducing the amount of surface imperviousness through the use of pervious paving materials ("pervious pavers") in lieu of asphalt or concrete in conjunction with an increase in forest cover preservation or additional tree plantings are some examples of practical BMPs that could easily be implemented to help reduce surface imperviousness.

TMDLs

Total Maximum Daily Loads (TMDLs) for nitrogen and phosphorus have been promulgated through regulation for the St. Jones watershed. 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 required by federal law, states are charged with developing and implementing standards to support these desired use goals. In the St. Jones watershed, a post-development TMDL reduction level of 40 will be required for nitrogen and phosphorus, respectively.

TMDL Compliance through the Pollution Control Strategy (PCS)

As stated above Total Maximum Daily loads (TMDLs) for nitrogen and phosphorus have been promulgated through regulation for the St. Jones Watershed. The TMDL calls for a 40% reduction in nitrogen and phosphorus from baseline conditions. The Department developed an assessment tool to evaluate how your proposed development may reduce nutrients to meet the TMDL requirements. Additional reductions may be possible through the implementation of Best Management Practices such as wider vegetated buffers along watercourses, increasing passive, wooded open space, and the use of

stormwater management treatment trains. Contact Lyle Jones at 302-739-9939 for more information on the assessment tool.

Water Supply

The project information sheets state water will be provided to the project by The City of Dover via a public water system. Our records indicate that the project is located within the public water service area granted to The City of Dover under Certificate of Public Convenience and Necessity 90-CPCN-07.

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.

Should you have any questions concerning these comments, please contact Rick Rios at 302-739-9944.

Sediment and Erosion Control/Stormwater Management

Requirements

1. 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. Please refer to the fee schedule for those amounts.

2. The following notes must appear on the record plan:
 - The Kent Conservation District reserves the right to enter private property for purposes of periodic site inspection.
 - The Kent Conservation District reserves the right to add, modify, or delete any erosion or sediment control measure, as it deems necessary.
 - A clear statement of defined maintenance responsibility for stormwater management facilities must be provided on the Record Plan.
3. 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.
4. All drainage ways and storm drains should be contained within drainage easements and clearly shown on the plan to be recorded by Kent County.
5. A soils investigation supporting the stormwater management facility design is required to determine impacts of the seasonal high groundwater level and soils for any basin design.

Comments:

1. The designer is encouraged to consider the conservation design approach and limit the amount of tree clearing required for the development of the site including the stormwater management facilities shown in the wooded areas.
2. Access to the proposed stormwater facility must be provided for periodic maintenance. This access should be at least 12 feet wide to leading to the facility and around the facility's perimeter.
3. It is recommended that the stormwater management areas be incorporated into the overall landscape plan to enhance water quality and to make the stormwater facility an attractive community amenity.
4. A letter of no objection to re-recording will be provided once the detailed Sediment and Stormwater Management plan has been re-approved.
5. Proper drainage of developed lots and active open space should be considered in the development of the grading plan for this subdivision.

6. Based on the site characteristics, a pre-application meeting is suggested to discuss stormwater management and drainage for this site.

Drainage

The Drainage Program requests that the engineer take precautions to ensure the project does not hinder any off site drainage upstream of the project or create any off site drainage problems downstream by the release of on site storm water. The Drainage Program requests that the engineer check existing downstream ditches and pipes for function and blockages prior to the construction. Notify downstream landowners of the change in volume of water released on them.

The Drainage Program does not support the removal of trees for the creation of stormwater management areas. However, the Drainage Program recognizes that tree removal is unavoidable in some cases. Where practical, plant native trees and shrubs to compensate for the loss of nutrient uptake and stormwater absorption the removed trees provided.

Have all drainage easements recorded on deeds and place restrictions on obstructions within the easements to ensure access for periodic maintenance or future re-construction.

Forest Preservation

This project will result in the destruction of an entire woodlot, although small, it does represent habitat for some species of wildlife. These species will have to disperse into the surrounding area to find suitable habitat, although very little exists. DNREC recommends that at least a few connected acres of trees be left intact. The current site plan appears to be comprised of 12 acres of nothing but buildings and pavement. To accomplish preserving a few acres of trees would require a reduction in the footprint of this project or a reduction in the size/number of buildings and thus in the amount of parking required.

DNREC requests that tree clearing not occur April 1st to July 1st to reduce impacts to nesting birds and other wildlife species that utilize forests for breeding. This clearing recommendation would only protect those species during the breeding season; once trees are cleared the result is an overall loss of habitat.

State Fire Marshal's Office – Contact: John Rudd 739-4394

The location of this project is situated in the City of Dover, which is outside of the jurisdiction of the State Fire Marshal. The developer should contact the appropriate City officials regarding fire requirements.

Department of Agriculture - Contact: Scott Blaier 698-4500

The Delaware Department of Agriculture has no objections to the proposed application. The project is located within the City of Dover, and the *Strategies for State Policies and Spending* encourages environmentally responsible development in Investment Level 1 areas.

Right Tree for the Right Place

The Delaware Department of Agriculture Forest Service encourages the developer to use the “Right Tree for the Right Place” for any design considerations. This concept allows for the proper placement of trees to increase property values in upwards of 25% of appraised value and will reduce heating and cooling costs on average by 20 to 35 dollars per month. In addition, a landscape design that encompasses this approach will avoid future maintenance cost to the property owner and ensure a lasting forest resource.

Native Landscapes

The Delaware Department of Agriculture and the Delaware Forest Service encourages the developer to use native trees and shrubs to buffer the property from the adjacent land-use activities near this site. A properly designed forested buffer can create wildlife habitat corridors and improve air quality to the area by removing six to eight tons of carbon dioxide annually and will clean our rivers and creeks of storm-water run-off pollutants. To learn more about acceptable native trees and how to avoid plants considered invasive to our local landscapes, please contact the Delaware Department of Agriculture Plant Industry Section at (302) 698-4500.

Tree Mitigation

The Delaware Forest Service encourages the developer to implement a tree mitigation program to replace trees at a 1:1 ratio within the site and throughout the community. This will help to meet the community's forestry goals and objectives and reduce the environmental impacts to the surrounding natural resources. To learn more, please contact our offices at (302) 349-5754.

Public Service Commission - Contact: Andrea Maucher 739-4247

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.

Department of Education – Contact: John Marinucci 739-4658

This proposed development is within the Capital School District. This is a commercial/industrial development with no apparent impact on educational infrastructure, capacity or demand. The DOE has no objections or comments regarding this commercial/industrial rezoning and development proposal.

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.

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".

Constance C. Holland, AICP
Director

CC: City of Dover