



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

October 24, 2007

Mr. Tom Bartosiewicz  
Meridian Architects and Engineers  
26412 Broadkill Road  
Milton, DE 19968

RE: PLUS review – PLUS 2007-09-01; Peninsula Square

Dear Mr. Bartosiewicz:

Thank you for meeting with State agency planners on September 26, 2007 to discuss the proposed plans for the Peninsula Square project to be located on the west side of John J. Williams Highway near Millsboro.

According to the information received, you are seeking a rezoning from AR-1 to C-1 for a 14,564 sq. ft. pharmacy.

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.

**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**

- The Office of State Planning and Coordination recognizes the proposed parcel is requesting a zoning change from Sussex County from the existing Agriculture / Residential 1 (AR-1) to Commercial 1 (C-1) as defined within the 2003 Sussex County Comprehensive Land Use Plan. This office has no objections to the proposed rezoning and encourages the developer to work with Sussex County to address their concerns regarding the request. Finally, as the project moves beyond the zoning application process and into formal development, this office would encourage the developer to work closely with Del-Dot to address the growing traffic management concerns along Delaware Router 24. If you have any questions for this office please call.

### **Street Design and Transportation**

- Autumn Road is classified as a local road and Route 24 is classified as a collector road. DelDOT's policy is to require dedication of sufficient land to provide minimum right-of-way widths of 30 feet from the centerline on local roads and 40 feet from the centerline on collector roads. Therefore DelDOT will require right-of-way dedication along the frontage to provide any additional width needed from this project.
- DelDOT will require the developer to provide a 15-foot wide permanent easement along the property frontage on both roads for a 10-foot wide shared use path. Depending on the timing of the development of the rest of the parcel, they may or may not require construction of the path as part of the pharmacy development.
- The plan presented with the PLUS application is a portion of a previous concept plan for a larger commercial development on the subject land. For that reason, it does not show an entrance location. On August 14, 2007, DelDOT issued a Letter of No Objection pertaining to the entrance locations. A copy is enclosed, but in relevant part the letter indicates that the pharmacy should be served through the shopping center entrances. Separate access, designed for the pharmacy alone, will not be permitted.
- On May 24, 2007, DelDOT wrote to Sussex County to indicate that they do not recommend that a traffic impact study be required for the proposed rezoning.

That is still our position. However, they do anticipate requiring the developer to enter a signal agreement pertaining to the intersection of Delaware Route 24, Autumn Road (Sussex Road 299) and Bay Farm Road (also Sussex Road 299) and to make improvements to Autumn Road as part of their entrance construction.

- Given that the sketch plan accompanying the PLUS form showed a relatively tight site design, it is recommended that the applicant explore the issues identified above now, while their rezoning application is pending, and if necessary amend their application to include additional area to offset what they will be required to dedicate.

### **Natural and Cultural Resources**

- The PLUS application form states the outlet location for this project as Guinea Creek. The Drainage Program is aware of existing drainage concerns between the proposed project and Guinea Creek. Please contact the Sussex Conservation District to discuss the probability of a downstream analysis for this project.
- Because of the parcel's location in an impaired watershed and the amount of impervious surface, consider incorporating more green technology BMPs and low impact development practices to reduce stormwater flow and to meet water quality goals.

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

#### **Office of State Planning Coordination – Contact: Bryan Hall 739-3090**

The Office of State Planning and Coordination recognizes the proposed parcel is requesting a zoning change from Sussex County from the existing Agriculture / Residential 1 (AR-1) to Commercial 1 (C-1) as defined within the 2003 Sussex County Comprehensive Land Use Plan. This office has no objections to the proposed rezoning and encourages the developer to work with Sussex County to address their concerns regarding the request. Finally, as the project moves beyond the zoning application process and into formal development, this office would encourage the developer to work closely with Del-Dot to address the growing traffic management concerns along Delaware Router 24. If you have any questions for this office please call.

#### **Division of Historical and Cultural Affairs – Contact: Terrance Burns 739-5685**

According to the historical resources and documents at the State Historic Preservation Office, there are no historic features, such as a National Register property, or

Archaeological sites on or within this parcel. However, there is one particular CRS site nearby but not too close, and it is the Lydia Clark Grave site (S-263). This grave site is located a 1/2 mile west of Road 299, due west of first bend after crossing Route 24. In addition, 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.

Because of the nature of where this parcel is located there is a possibility that there still could be an un-discovered prehistoric or historic archaeological site on this parcel, or nearby. If any construction proceeds on this parcel, the State Historic Preservation Office of the Division of Historical & Cultural Affairs would like the opportunity to examine the area prior to any demolition or ground-disturbing activities, to see if there are any archaeological sites on it, in order to learn more information about this area in detail. If you would like to discuss this information or other issues further, contact the State Historic Preservation Office Division of Historical & Cultural Affairs at (302) 744-7400 ext.25, and they will be more than happy to assist you.

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

- 1) Autumn Road is classified as a local road and Route 24 is classified as a collector road. DelDOT's policy is to require dedication of sufficient land to provide minimum right-of-way widths of 30 feet from the centerline on local roads and 40 feet from the centerline on collector roads. Therefore DelDOT will require right-of-way dedication along the frontage to provide any additional width needed from this project.
- 2) DelDOT will require the developer to provide a 15-foot wide permanent easement along the property frontage on both roads for a 10-foot wide shared use path. Depending on the timing of the development of the rest of the parcel, they may or may not require construction of the path as part of the pharmacy development.
- 3) The plan presented with the PLUS application is a portion of a previous concept plan for a larger commercial development on the subject land. For that reason, it does not show an entrance location. On August 14, 2007, DelDOT issued a Letter of No Objection pertaining to the entrance locations. A copy is enclosed, but in relevant part the letter indicates that the pharmacy should be served through the shopping center entrances. Separate access, designed for the pharmacy alone, will not be permitted.

- 4) On May 24, 2007, DelDOT wrote to Sussex County to indicate that they do not recommend that a traffic impact study be required for the proposed rezoning. That is still our position. However, they do anticipate requiring the developer to enter a signal agreement pertaining to the intersection of Delaware Route 24, Autumn Road (Sussex Road 299) and Bay Farm Road (also Sussex Road 299) and to make improvements to Autumn Road as part of their entrance construction. While a final determination has not been made, these improvements could include the construction of a right turn lane approaching Route 24 to separate the right-turn and through movements. To the extent possible, any needed rights-of-way for those improvements would have to come from the subject development.
- 5) DelDOT has a project under development to improve Delaware Route 24 from Delaware Route 30 to Love Creek. Presently, that improvement is scheduled for construction in 2013. DelDOT anticipates requiring the developer to dedicate right-of-way along their frontage as necessary for that improvement. For more information on this project, the Developer may contact the DelDOT project manager, Mr. Mark Harbeson. Mr. Harbeson may be reached at (302) 760-2346.
- 6) Given that the sketch plan accompanying the PLUS form showed a relatively tight site design, it is recommended that the applicant explore the issues identified above now, while their rezoning application is pending, and if necessary amend their application to include additional area to offset what they will be required to dedicate.
- 7)
- 8) If the rezoning is approved, the developer's site engineer should continue to coordinate with our Subdivision Manager for eastern Sussex County, Mr. John Fiori, regarding our specific requirements for access and off-site improvements. Mr. Fiori may be reached at (302) 760-2260.

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

### **Soils**

Based on the Sussex County soil survey update, Fort Mott, Ingleside, Pepperbox and Klej were mapped in the immediate vicinity of the proposed construction. Fort Mott and Ingleside are, generally, well-drained upland soils that have few limitations for development. Pepperbox is a moderately well-drained soil of low-lying uplands that has moderate limitations for development. Klej is a somewhat poorly-drained transitional soil that is likely to contain both wetland (hydric) and upland soil components.

### **Impervious Cover**

Based on information provided by the applicant in the PLUS application, this project's post-development surface imperviousness is estimated to reach 73 percent. However, given the scope and density of this project (i.e., as viewed from the conceptual project layout) this estimate appears to be a significant underestimate.

The applicant should realize that all forms of constructed surface imperviousness (i.e., rooftops, sidewalks, stormwater management structures, and roads) should be included in the calculation for surface imperviousness; it was unclear from the submittal whether constructed surface imperviousness was comprehensively considered. Nonetheless, it is strongly recommended that the applicant include all of aforementioned forms of surface imperviousness in their finalized calculation for surface imperviousness. This will ensure a realistic assessment of this project's likely post-construction environmental impacts.

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.

### **ERES Waters**

This project is located adjacent to receiving waters of the 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 5.6 of Delaware's "Surface Water Quality Standards" (as amended July 11, 2004), specify that all designated ERES waters and receiving tributaries develop a "pollution control strategy" to reduce non-point sources of pollutants through implementation of Best Management Practices (BMPs). Best Management Practices as defined in subsection 5.6.3.5 of this section, expressly authorizes the Department to provide standards for controlling the addition of pollutants and reducing them to the greatest degree achievable and, where practicable, implementation of a standard requiring no discharge of pollutants.

## **TMDLs**

Total Maximum Daily Loads (TMDLs) for nitrogen and phosphorus have been promulgated through regulation for the Inland Bays 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. This project is located in the **low** nutrient reduction area requiring a 40 percent reduction in nitrogen and phosphorus, respectively. Additionally, 40 percent reduction in bacteria will also be required.

## **Compliance with TMDLs through the PCS**

As stated above Total Maximum Daily Loads (TMDLs) for nitrogen and phosphorus have been promulgated through regulation for the Inland Bays Watershed. The TMDL calls for a 40 percent reduction in nitrogen and phosphorus from baseline conditions. Additionally, a 40 percent reduction in bacteria will also be required from baseline conditions. A Pollution Control Strategy (PCS) will provide the regulatory framework for achieving them. Additional nutrient reductions may be possible through the implementation of Best Management Practices that reduce surface imperviousness (i.e., pervious pavers), and the use of green-technology stormwater management technologies.

The Department has developed an assessment tool to evaluate how your proposed development may reduce nutrients to meet the TMDL requirements. 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 Tidewater Utilities via a public water system. Our records indicate that the project is located within the public water service area granted to Public Water Supply (a.k.a. Tidewater Utilities) under Certificate of Public Convenience and Necessity 87-WR-04.

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**

A detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on the site. Contact the reviewing agency to schedule a pre-application meeting to discuss the sediment and erosion control and stormwater management components of the plan as soon as practicable, particularly to discuss the feasibility of your proposal for a regional/oversized pond. 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. The plan review and approval as well as construction inspection will be coordinated through the Sussex Conservation District. Contact Jessica Watson at the Sussex Conservation District at (302) 856-7219 for details regarding submittal requirements and fees.

Because of the parcel's location in an impaired watershed and the amount of impervious surface, consider incorporating more green technology BMPs and low impact development practices to reduce stormwater flow and to meet water quality goals.

The Sediment and Stormwater Management Program ensures sediment and erosion control plans and stormwater plans comply with local land use ordinances and policies, including the siting of stormwater management facilities. However, we do not support placement in resource protection areas or the removal of trees for the sole purpose of placement of a stormwater management facility/practice.

### **Drainage**

The PLUS application form states the outlet location for this project as Guinea Creek. The Drainage Program is aware of existing drainage concerns between the proposed project and Guinea Creek. Please contact the Sussex Conservation District to discuss the probability of a downstream analysis for this project. 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.

For questions or clarifications, please contact Jim Sullivan at (302) 739-9921.

**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):

**This Agency has no objection to re-zoning requests. The information provided below shall be considered when plans are being designed.**

a. **Fire Protection Water Requirements:**

- Water distribution system capable of delivering at least 1500 gpm for 2-hour duration, at 20-psi residual pressure OR at least 1000 gpm for 1-hour duration, at 20-psi residual pressure, depending on the proposed occupancy, is required. Fire hydrants with 800 feet spacing on centers.
- Where a water distribution system is proposed for the site, 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 or more, over 35 feet, or classified as High Hazard, are required to meet fire lane marking requirements
- 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 the main thoroughfares 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.
- The use of speed bumps or other methods of traffic speed reduction must be in accordance with Department of Transportation requirements.
- The local Fire Chief, prior to any submission to our Agency, shall approve in writing the use of gates that limit fire department access into and out of the development or property.

d. **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(s) is/are 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: Scott Blaier 698-4500**

The Delaware Department of Agriculture has no objections to the proposed project. The *Strategies for State Policies and Spending* encourages environmentally responsible development in Investment Level 2 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. Please feel free to contact the Delaware Forest Service at (302) 698-4500 for more information.

*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.

**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 735-4055**

This proposed development is within the Indian River School District. This is a commercial/industrial rezoning request with no apparent impact on educational infrastructure, capacity or demand. DOE has no comments or objections to this rezoning request.

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

Per page 15 of the Comprehensive Plan, "any increased density by rezoning should only be permitted with proper environmental safeguards." Because this project is situated in an Environmentally Sensitive Development Area, the required report should include how this requirement and the PLUS comments have been addressed and how the plan has been revised accordingly. Use of Low Impact Design principals and Green Technology could help address the environmental issues.

All sidewalks and trails within the development and any constructed at the request of DelDOT should tie together internally and with adjacent development so that persons using wheelchairs or pushing strollers can navigate without hindrance.

Article IV of the Subdivision Ordinance requires that the Preliminary Plat of the subdivision "show the general plan for the ultimate development of the property, including as much of the surrounding area as may be necessary for an adequate consideration of the land to be subdivided." The plan should be revised to show that context.

The Sussex County Zoning Ordinance Section 115-166 C states, "Parking within front yard setback shall be discouraged and subject to site plan review." The developer should be aware that the Planning and Zoning Commission is reluctant to approved parking in the front setback and so the design should show compliance with the setback requirement. Landscaping should also be shown.

The Sussex County Engineer Comments:

The application proposes a rezoning to commercial to construct a 14,564 square foot pharmacy on a 2-acre portion of a larger parcel. The site is located southwest of the intersection of Routes 24 and 299.

The project is in the Environmentally Sensitive Developing Area (ESDA) and the Inland Bays Planning Area for sewer service. The study for the Inland Bays Planning Area for sewer service is near completion. The study will specify options for sewer service and make a recommendation.

A 600-foot wide strip of frontage of the larger parcel along Route 24 is in the Environmentally Sensitive Developing Area. Sewer service for that portion of the site is contained in the planning area for the Long Neck Sanitary Sewer District (LNSSD) and connection to the system is required. Sewer lines have not been extended to the parcel at this time, and Sussex County does not have a set schedule to do so. The developer at his

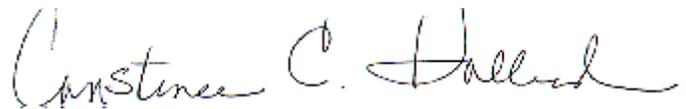
expense will be required to install pipelines from the project to an approved connection point. In addition, it appears that improvements will be necessary to the regional transmission system. The scope of said improvements will be specified at a later date.

Sussex County requires design and construction of the collection and transmission system to meet Sussex County sewer standards and specifications. A sewer concept plan must be submitted to the Sussex County Engineering Department for review and approval prior to a request for annexation into the LNSSD and design of the sewer system. The study has allocated 4.0 EDUs per acre in considering sewer service to the portion of the parcel within the ESDA. The portion of the parcel in the ESDA is estimated to be approximately 15.64 acres. The concept plan to be submitted must address sewer service to the entire portion of the parcel in the ESDA and must be in accordance with overall plans for sewer service to the area. Attached is a checklist for preparing sewer concept plans. All costs associated with extending sewer service will be the sole responsibility of the developer. One-time system connection charges will apply. Please contact Ms. Stephanie Lynch or Ms. Christine Fletcher at 302 855-7719 for additional information on charges. For questions regarding these comments, contact Rob Davis, Sussex County Engineering Department at (302) 855-7820.

**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: Sussex County

Attachment: DelDOT No Objection Letter dated 8/14/2007