



**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF STATE PLANNING COORDINATION**

June 21, 2010

Mr. Mario Gangemi
Duffield Associates
5400 Limestone Road
Wilmington, De 19808

RE: PLUS review – 2010-05-02; Piendak Red Lion

Dear Mr. Gangemi:

Thank you for meeting with State agency planners on June 23, 2010 to discuss the proposed plans for the Piendak Red Lion project to be located at 2504 Red Lion Road in New Castle County.

According to the information received, you are seeking a rezoning from NC 6.5 to CR for a 4,025 sq. ft. retail building.

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 New Castle 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.**

Strategies for State Policies and Spending

This project is located in Investment Level 2 according to the *State Strategies for Policies and Spending*. This site is also located in the New Castle County Growth Zone. Investment Level 2 reflects areas where growth is anticipated by local, county, and State plans in the near term future. State investments will support growth in these areas. Our office has no objections to the proposed rezoning of this parcel in accordance with the relevant County codes and ordinances. We offer the following information regarding any future development on the site.

Code Requirements/Agency Permitting Requirements

State Historic Preservation Office – Contact Terrence Burns 736-7404

- It is important that the developer be aware of the Delaware Unmarked Human Remains Act of 1987, outlined in Chapter 54 of Title 7 of the Delaware Code, which pertains to 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.

Therefore, prior to any demolition or ground-disturbing activities, the developer may want to consider hiring an archaeological consultant to examine the parcel for archaeological sites, including a cemetery or unmarked human remains

Department of Transportation – Contact Bill Brockenbrough 760-2109

- The site access must be designed in accordance with DelDOT's Standards and Regulations for Subdivision Streets and State Highway Access. Versions of this manual are available on-line at http://www.deldot.gov/information/pubs_forms/manuals/subdivisions/pdf/standards_and_regulations_031108.pdf and <http://regulations.delaware.gov/documents/February2010c.pdf>. Please note that there are slight differences between the two versions. Section references in these comments refer to the version on the DelDOT website, which is correct in most cases. However, where the versions differ, the version in the Register of Regulations is correct. We are in the process of updating the version on our website.
- As proposed, the subject development would meet DelDOT's volume warrants for a traffic impact study (TIS), as contained in Section 2.3.1 of DelDOT's Standards and Regulations. However, as discussed in Section 2.3.2, the developer would also be eligible to pay the Area-Wide Study Fee in lieu of doing that TIS. Based on the estimated daily traffic volume shown on the PLUS application, 842 vehicles per day, the fee would be \$8,420. The fee would be due at the same time as the initial stage fee, which is paid when plans are submitted to obtain a letter of no objection. The fee is not an impact fee and payment of it does not exempt the developer from having to make off-site road improvements as determined by DelDOT. In accordance with Section 3.10.2 of DelDOT's Standards and Regulations, all required off-site improvements, and the schedule for their construction, must be specified by notes on the record plan.
- Delaware Route 71 is classified as a Collector, which per Section 3.6.5 of DelDOT's Standards and Regulations requires an 80-foot right-of-way (40-feet from centerline of right-of-way). Therefore, in accordance with the section just cited, additional right-of-way shall be dedicated to public use in order to obtain the required 40-feet from centerline along the entire property frontage. The right-of-way dedication note shall read

as follows, “**A 40’ wide strip of right-of-way from the centerline is hereby dedicated to public use as per this plat.**”

- Preliminary calculations indicate that a right turn lane is warranted at the site entrance in accordance with Section 5.2.2.1 of the Standards and Regulations.

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

- **TMDLs.** The project is located in the greater Delaware River and Bay drainage area, specifically within the C & D Canal and Red Lion Creek watersheds. In the Red Lion Creek watershed, the State of Delaware has developed specific Total Maximum Daily Load (TMDL) pollutant reduction targets for nutrients (e.g., nitrogen, phosphorus), and bacteria (under the auspices of Section 303(d) of the Federal Clean Water Act). 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 State water quality standards (e.g., dissolved oxygen, nutrients, and bacteria; *State of Delaware Surface Water Quality Standards, as amended July 11, 2004*) to the extent necessary to support use goals such as, swimming, fishing, drinking water and shell fish harvesting. The TMDL for the Red Lion Creek watershed calls for a 40 percent reduction in nitrogen and phosphorus from baseline conditions. The TMDL also calls for a 38 percent reduction in bacteria from baseline conditions. Although a TMDL has not been developed for the C&D Canal watershed to date, the TMDL developed for the Red Lion Creek will apply to the entirety of the project area. *John Martin, Watershed Assessment Section, (302) 739-9939, John.Martin@state.de.us*
- **Water Supply** 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. Ricardo Rios - (302) 739-9944, Ricardo.Rios@state.de.us

- **Sediment and Stormwater Program.** 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 project application meeting to discuss the sediment and erosion control and stormwater management components of the plan as soon as practicable. 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 New Castle County Dept. of Land Use Engineering Section. Contact Dept. of Land Use at (302) 395-5470 for details regarding submittal requirements and fees (Delaware Code, Title 7, Chapter 40; Delaware Regulations, Administrative Code, Title 7, 5101). *James Sullivan* - (302) 739-9921, James.Sullivan@state.de.us

- **Hazardous Waste Sites.** If it is determined by the Department that there was a release of a hazardous substance on the property in question, it is required that the guidelines and provisions of 7 Del.C. Chapter 91, Delaware Hazardous Substance Cleanup Act and the Delaware *Regulations Governing Hazardous Substance Cleanup* be followed.

There is one SIRB site found within a ½-mile radius of the proposed project:

- 2440 Red Lion Road Site (DE-1449) is adjacent to the north portion of the project area.
- The site is a certified Brownfields. The site is currently being investigated.

Should a release or imminent threat of a release of hazardous substances be discovered during the course of development (e.g., contaminated water or soil), construction activities should be discontinued immediately and DNREC should be notified at the 24-hour emergency number (800-662-8802). SIRB should also be contacted as soon as possible at 302-395-2600 for further instructions. *Krystal Stanley* - (302) 395-2644, Krystal.Stanley@state.de.us

- **Tank Management Branch.** If a release of a Regulated Substance occurs at the project site, compliance with 7 Del.C. Chapter 60, 7 Del.C., Chapter 74 and DE Admin. Code 1351, State of Delaware *Regulations Governing Underground Storage Tank Systems* (the UST Regulations) is required.

There are is one LUST project located within a quarter mile of the rezoning site:

- H & R Auto Repair Inc, Facility: 3-001826, Project: N0502018, N0709094

Per the **UST Regulations: Part E, § 1. Reporting Requirements:**

“Any indication of a Release of a Regulated Substance that is discovered by any Person, including but not limited to environmental consultants, contractors, utility companies, financial institutions, real estate transfer companies, UST Owners or Operators, or Responsible Parties shall be reported within 24 hours to:

- The Department’s 24-hour Release Hot Line by calling 800-662-8802; and
- The DNREC, Tank Management Branch by calling 302-395-2500.”

- When contamination is encountered, PVC pipe materials should be replaced with ductile steel and nitrile rubber gaskets in the contaminated areas.
- If any aboveground storage tanks (ASTs) less than 12,500 gallons are installed, they must be registered with the TMB. If any ASTs greater than 12,500 gallons are installed, they are also subject to installation approval by the TMB.
- Should the municipality anticipate being more restrictive than Delaware's Regulations Governing Underground Storage Tank Systems or Delaware's Regulations Governing Aboveground Storage Tanks, please be aware that the municipality shall be responsible for enforcing the more restrictive rules.

Elizabeth Wolff - (302) 395-2500, Elizabeth.Wolff@state.de.us

Delaware State Fire Marshall's Office – Contact Duane Fox 739-4394

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):

- **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 Mercantile sites, the infrastructure for fire protection water shall be provided, including the size of water mains for fire hydrants and sprinkler systems.\
- **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 thoroughfare 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.

- 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.

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

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

d. **Required Notes:**

- 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

Recommendations/Additional Information

This section includes a list of site specific suggestions that are intended to enhance the project. These suggestions have been generated by the State Agencies based on their expertise and subject area knowledge. **These suggestions do not represent State code requirements.** They are offered here in order to provide proactive ideas to help the applicant enhance the site design, and it is hoped (**but in no way required**) that the applicant will open a dialogue with the relevant agencies to discuss how these suggestions can benefit the project.

State Historic Preservation Office – Contact Terrence Burns 736-7404

- There does not appear to be any known historic or cultural resources, such as an archaeological site or listed National Registered property on this parcel (property). However, there is a late 19th-century commercial building (N-5025) next to this parcel that is part of the Historic Resources of Red Lion Hundred (N-5940), and is listed in the National Register of Historic Places.

- Since there is a listed National Register property nearby, there is a possibility that there could be potential archaeological sites on this parcel that have not been discovered, but may contain important information associated with that property.
- The developer should also provide some landscaping along the borders of the parcel in order to lessen the visual effects on the listed and other surrounding properties.
- If there is any federal involvement with the project, in the form of licenses, permits, or funds, the federal agency, often through its client, is responsible for complying with Section 106 of the National Historic Preservation Act (36 CFR 800) and must consider their project's effects on or in reference to historic or cultural resources.

Department of Transportation – Contact Bill Brockenbrough 760-2109

- DelDOT recommends that the developer's engineer contact the Subdivision Manager for this part of New Castle County, Mr. Joshua Schwartz, to schedule a pre-submittal plan review meeting. Mr. Schwartz may be reached at (302) 760-2768.
- It appears that the site's trip generation was estimated by applying an equation from the Institute of Transportation Engineers' Trip Generation report, specifically the equation for estimating the trip generation of shopping centers based on floor area. Predicting the trip generation of a development like the one proposed is always difficult in that it depends largely on the tenant. For example, a piano showroom will typically generate much less traffic than a sandwich shop. If the tenant is known, it is recommended that the developer's engineer interview them regarding their expected trip generation and use that information to estimate the site's trip generation.
- According to the plan submitted, the developer also owns the adjoining parcel (Tax Parcel No. 12-018.00-014) to the north. DelDOT's preference is that the developer combine the two parcels and construct one signalized entrance opposite Howell School Road (New Castle Road 54) to serve both parcels. If it can be shown why that cannot be done, DelDOT would permit a single access point at the south end of the parcel frontage. In that event, however, they likely could not permit some otherwise possible uses of the site, as there would be no room for a right turn lane.
- Due to the volume of traffic on Delaware Route 71, the entrance construction for this development would warrant Level II construction inspection, as described in Section 6.6.3 of the Standards and Regulations. This means the developer would need to hire an engineer registered with DelDOT to perform construction inspection on the entrance. Because Section 6.6.3 presently applies only to off-site improvements, rather than entrances, DelDOT will provide construction inspection, if necessary, as resources permit. However, DelDOT recommends that the developer consider hiring an engineer to avoid construction delays. Duffield is certified in this regard.

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

- **Hazardous Waste Sites:** SIRB strongly recommends that the land owner perform environmental due diligence of the property by performing a Phase I Assessment in accordance to Section 9105(c) (2) of the Delaware Hazardous Substance Cleanup Act (HSCA). While this is not a requirement under HSCA, it is good business practice and failure to do so will prevent a person from being able to qualify for a potential affirmative defense under Section 9105(c) (2) of HSCA.
- **Additional information on TMDLs.** A Pollution Control Strategy (PCS) is the regulatory directive requiring the implementation of various best management practices (BMPs) that help reduce transport of nutrient and bacterial pollutant runoff from all waters draining into a “greater” common watershed, with the ultimate objective of achieving the obligatory TMDL reduction requirements for that watershed. However, the PCS for the C&D Canal and Red Lion Creek watersheds have not been formally completed to date. In the absence of a current PCS, the applicant is strongly urged to reduce nutrient and bacterial pollutants through the voluntary commitment to the implementation of the following recommended BMPs:
 - Please maximize open space by maintaining the existing tree cover and/or planting additional native tree and native herbaceous plant cover on this parcel.
 - DNREC strongly recommends that the applicant calculate post-construction surface imperviousness with all forms of created (or constructed) surface imperviousness (e.g., rooftops, driveways, parking lots, sidewalks, open-water storm water management structures, and roads) included in the calculation. 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 via the application/use of pervious paving materials (“pervious pavers”) in lieu of asphalt or concrete in conjunction with an increase in forest cover preservation (or establishment of additional forest cover acreage) are some examples of practical BMPs that could easily be implemented to help reduce surface imperviousness.
 - Since this project is a commercial project likely to generate large amounts of created surface imperviousness that will almost certainly increase the volume of pollutant-laden water ultimately draining to the Delaware River and Bay, we strongly urge the applicant to voluntarily limit paved surface imperviousness through substitution of pervious paving materials in lieu of conventional paving materials (e.g., asphalt and concrete) for at least 50% of their project’s total paved surface area(s).
 - Additionally, DNREC strongly recommends the use of rain gardens, and green-technology storm water management structures (in lieu of open-water

management structures) as BMPs to mitigate or reduce nutrient and bacteria pollutant runoff impacts from the constructed forms of surface imperviousness.

The Department has also developed an assessment tool to evaluate how your proposed development may reduce nutrients and bacteria to help meet the TMDL requirements. Please contact Lyle Jones at 302-739-9939 for more information on the assessment tool. *John Martin, Watershed Assessment Section, (302) 739-9939, John.Martin@state.de.us*

Delaware State Fire Marshall's Office – Contact Duane Fox 739-4394

- 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.statefiremarshal.delaware.gov, technical services link, plan review, applications or brochures.

Division of Public Health – Contact Michelle Eichinger 744-1011

To help facilitate active living and healthy eating for chronic disease prevention, environmental changes in a community is necessary. The Division of Public Health recommends the following:

Amenities to support active transportation

- Ensure sidewalks are within the site plan for pedestrian access.
- Designate a bike trail or lanes and install bike racks to promote and support bikability.
- Ensure safe connectivity, through sidewalk connections, crosswalks, and clearly marked bike lanes, within the site and between properties to facilitate active transportation both in walkability and bikability. Although the application indicates no opportunity for connection to a larger bike or pedestrian network, future opportunities may exist and providing the amenities now will help in and support further community planning.

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: New Castle County