



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

July 13, 2010

Mr. Mark Davidson  
DC Group, LLC  
18072 Davidson Drive  
Milton, DE 19968

RE: PLUS review – 2010-06-01; Workmans Store

Dear Mr. Davidson:

Thank you for meeting with State agency planners on June 23, 2010 to discuss the proposed rezoning of the Workmans Store property located at the northwest intersection of Hardscrabble Road and Shortly road.

Upon review of the information presented at the recent meeting and discussion with Sussex County Planning and Zoning Staff; it is this offices understanding that the applicant seeks to rezone the .057 acres from AR-1 to B-1 to reuse the existing the Workman's Store to allow for minor retail, restaurant, feed house, etc. use on the site. As the applicant is aware the rezoning is at the discretion at the County and as the applicant moves forward with the rezoning process; they should consider the following information provided by Sussex County which may impact the rezoning and reuse of this site:

- The Workmans store property and its varying uses pre-existed Sussex County zoning.
- At the time when the County developed its first Comprehensive Zoning Map, the Commission chose not to rezone every little business that existed; as they felt that those businesses that they did not zone would someday be removed.
- If these non-zoned businesses were to become active again, than the owner could apply for rezoning or Conditional Use to expand; or apply to the Board of Adjustment to expand for up to 25% in size maximum.
- Also, if a business that is not zoned for the use is abandoned, it cannot be reopened for that use after being vacated for 2 years.

Based upon this additional information this office and other State agencies will provide comments based upon the current State Strategies for Policy and Spending and expects the applicant to coordinate their activities with the County. Please note that any changes to the

desired rezoning request with supporting site plan, other than those suggested in this letter, may 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.**

### **Strategies for State Policies and Spending**

This proposal is located in Investment Level 4 according to the *Strategies for State Policies and Spending*, and is within the Low Density area according to the Sussex County certified comprehensive plan.

Investment Level 4 indicates where State investments will support agricultural preservation, natural resource protection, and the continuation of the rural nature of these areas. New development activities and suburban development are not supported in Investment Level 4 areas. While we understand that the current lot is not big enough to hold additional buildings, we would be concerned about rezoning the property as it could result in future commercial development if additional lands are acquired. The State has no objections to the reuse of the existing building but would object to further development of this parcel or the surrounding parcels for commercial development.

### **Code Requirements/Agency Permitting Requirements**

#### **State Historic Preservation Office – Contact Terrence Burns 736-7404**

- It is a possibility that there may be potential historic-period or prehistoric-period archaeological sites have not been found or are not yet studied, but may contain important information about Delaware's history. With this in mind, 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 reason for this is because the unexpected discovery of unmarked human remains during construction can result in significant delays while the process is carried out.

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

- Because the subject land is located in a Level 4 area, development of it as proposed is inconsistent with the *Strategies for State Policies and Spending*. As part of our commitment to support the *Strategies*, DelDOT refrains from participating in the cost of any road improvements needed to support this development and is opposed to any road improvements that will substantially increase the transportation system capacity in this area. DelDOT will only support taking the steps necessary to preserve the existing transportation infrastructure and make whatever safety and drainage related

improvements are deemed appropriate and necessary. It is recognized that this project is intended to re-use the site in a manner similar to its previous commercial use.

- The site access and subdivision streets must be designed in accordance with DeIDOT's Standards and Regulations for Subdivision Streets and State Highway Access. This manual is available on-line at:

[http://www.deldot.gov/information/pubs\\_forms/manuals/subdivisions/pdf/Subdivision\\_Manual\\_Revision\\_1\\_proposed\\_060110.pdf](http://www.deldot.gov/information/pubs_forms/manuals/subdivisions/pdf/Subdivision_Manual_Revision_1_proposed_060110.pdf).

- As proposed, the subject development would meet DeIDOT's volume warrants for a traffic impact study (TIS), as contained in Section 2.3.1 of DeIDOT's Standards and Regulations for Subdivision Streets and State Highway Access. However, as discussed in Section 2.3.2, they would also be eligible to pay the Area-Wide Study Fee in lieu of doing that TIS. Because the developer applied for their rezoning before February 15, 2010, the fee would be equal to \$5 per daily trip. DeIDOT has yet to agree on an estimate of the site's Average Daily Traffic. 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. In accordance with Section 3.10.2 of DeIDOT's Standards and Regulations for Subdivision Streets and State Highway Access, all required off-site improvements, and the schedule for their construction, must be specified by notes on the record plan. Discussions of such improvements to date have centered around the provision of a concrete island on the northwest corner of Route 20 and Shortly Road similar, perhaps identical, to the one shown.
- Delaware Route 20 is classified as a Major Collector and Shortly Road is classified as a local road, which per Section 3.6.5 of DeIDOT's Standards and Regulations for Subdivision Streets and State Highway Access requires an 80-foot right-of-way (40-feet from centerline of right-of-way) on Route 20 and a 60-foot right-of-way (30-feet from centerline of right-of-way) on Shortly Road. Therefore, in accordance with the section just cited, additional right-of-way should be dedicated to public use in order to obtain the required rights-of-way along the entire property frontage. The right-of-way dedication notes should read as follows, "A 40' strip of right-of-way from the road centerline Delaware Route 20 is hereby dedicated to public use as per this plat," and "A 30' strip of right-of-way from the road centerline of Shortly Road is hereby dedicated to public use as per this plat."
- In accordance with Section 5.2 of DeIDOT's Standards and Regulations for Subdivision Streets and State Highway Access, DeIDOT anticipates requiring improvements along the site frontage, perhaps similar to those shown on the Rezoning Site Plan. They are still evaluating alternatives, trying to find one that provides for access and parking without creating a safety hazard.

- DelDOT anticipates that Sussex County will require a “Letter of No Objection” from the Department for this project. Per Section 3.4 of DelDOT’s Standards and Regulations for Subdivision Streets and State Highway Access, the developer must submit **three (3) signed and sealed** copies of the **record plan**, with an Initial Stage Fee Calculation Form and the Initial Stage Fee. The review fee will be based on the number of lots within the subdivision. Please make all submissions to Mr. Derek Sapp, Subdivision Manager. The entrance plan will not be reviewed until after the “Letter of No Objection” has been issued.
- As specified in Section 4.1 of DelDOT’s Standards and Regulations for Subdivision Streets and State Highway Access, when the entrance construction plans are submitted for review, the developer must submit **two (2) copies** of the construction plans, one copy of the record plan, an Initial Stage Fee Calculation Form, a Construction Stage Fee Calculation Form, a Construction Stage Review Fee, an application for highway entrance permit and a signed and sealed commercial entrance design checklist for review and approval. Be advised that the Department will not review the entrance plan until it has signed off on the record plan. Please make all submissions to Mr. Derek Sapp, Subdivision Manager.

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

- **TMDLs.** The project is located in the greater Inland Bays drainage area, specifically within the area delineated as the “high reduction zone” of the Indian River Bay watershed. In this watershed, the State of Delaware has developed specific Total Maximum Daily Load (TMDL) pollutant reduction targets (under the auspices of Section 303(d) of the 1972 Clean Water Act) for nutrients (e.g., nitrogen, phosphorus), and bacteria. 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 High Reduction zone of the Inland Bays watershed calls for an 85 and 65 percent reduction in nitrogen and phosphorus from baseline conditions. The TMDL also calls for a 40 percent reduction in bacteria from baseline conditions.
- **The adopted Inland Bays Pollution Control Strategy regulation was published in the Delaware Register of Regulations on November 11, 2008 and is now an enforceable regulatory directive.** A Pollution Control Strategy (PCS) is an implementation strategy that identifies the actions necessary to systematically reduce the pollutant loading to a given water body, and meet the TMDL reduction requirements specified for that water body. These regulations can be reviewed at:

<http://regulations.delaware.gov/documents/November2008c.pdf>

Background information, guidance documents, and mapping tools can be retrieved from:

[http://www.dnrec.state.de.us/water2000/Sections/Watershed/ws/ib\\_pcs.htm](http://www.dnrec.state.de.us/water2000/Sections/Watershed/ws/ib_pcs.htm).

The regulations address establishing a buffer zone sediment and stormwater controls for new development projects, and additional measures and standards for onsite wastewater treatment and disposal systems. Additionally, a map of water features identifies the specific primary and secondary water features that require buffers; this can be reviewed at:

<http://maps.dnrec.delaware.gov/inlandbayspcs93/> .

The regulations require that buffers of a specified width be established for State-regulated wetlands, tidal waters, primary and secondary water features. The width may be reduced when combined with advanced sediment and stormwater controls and upon the creation of a development-wide nutrient management plan. Buffers must be placed in common open space and be clearly demarcated, designated and recorded on final plans or plat. Buffers must be maintained in perpetuity and must have boundary signs or markers or distinctive vegetation identifying the upland edge of the buffer.

The regulations also require that permanent sediment and stormwater management plans be designed and implemented to include design criteria to further reduce nutrient contributions. Compliance with this provision can be through any of the options below.

For properties with primary and secondary water features:

- Implement standard width buffers
- Implement reduced buffer widths in conjunction with the creation and use of a development-wide nutrient management plan (NMP), and the implementation of at least one advanced stormwater treatment control method.

For properties without primary or secondary water features (the option most likely to apply to this project), or for those properties with primary and secondary water features that employ a reduced-width buffer (including the required NMP), select from at least one of the following advanced stormwater treatment control methods:

- Reduce nutrients by the TMDL percentage
  - Reduce nutrients to irreducible concentration levels
  - Implement three practices within a treatment train
  - Establish 30% of the project parcels as forest in common open space (See appendix L in the PCS regulations for planting requirements).
- The applicant should also note that a nutrient management plan (NMP) is also required when electing to pursue a reduced buffer width for their project. An NMP is also

required for those properties without primary or secondary water features. The Nutrient Management Program link can be retrieved at [http://dda.delaware.gov/nutrients/nm\\_cert.shtml](http://dda.delaware.gov/nutrients/nm_cert.shtml).

The project's consultants may want to contact Lyle Jones at 302-739-9939 to discuss using the Nutrient Budget Protocol. The Nutrient Budget Protocol is an assessment tool to help evaluate whether the proposed project will meet the TMDL nutrient reduction requirements. *John Martin, Watershed Assessment Section, (302) 739-9939, [John.Martin@state.de.us](mailto:John.Martin@state.de.us)*

- **Water Supply.** The project information sheets state that individual on-site well(s) will be used to provide water for the proposed project. Our records indicate that the project is not located in an area where public water service is available. **Should an on-site Public/Miscellaneous Public well be needed, a minimum isolation distance of 150 feet is required between the well and any potential source of contamination, such as a septic tank and sewage disposal area, and it must also be located at least 150 feet from the outermost boundaries of the project.** 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 current Regulations Governing the Construction and Use of Wells. A well construction permit must be obtained prior to constructing each and every 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. *Ricardo Rios, (302) 739-9944, [Ricardo.Rios@state.de.us](mailto:Ricardo.Rios@state.de.us)*
- **Sediment and Stormwater Program.** It is unclear how much area will be disturbed on this site therefore a detailed sediment and stormwater plan may be required prior to any land disturbing activity taking place on the site. Contact the Sussex Conservation District to schedule a pre-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 Sussex Conservation District. Contact Jessica Watson at the Sussex Conservation District at (302) 856-2105 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](mailto:James.Sullivan@state.de.us)

- **Tank Management Branch.** If a release of a Regulated Substance occurs at the proposed project site, compliance of 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 no LUST projects located within a quarter mile of the project site; however, the following UST facilities are within the property boundaries of the rezoning project parcel:  
  
Gene's Gulf (5-000179)  
Workman's Store (5-000650)
- 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."

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

- In the event that the building experiences a change in occupancy (Use), a formal submittal will be required and the applicant shall provide a completed application, fee, and three sets of plans in accordance with the Delaware State Fire Prevention Regulation for review and approval by the Office of the State Fire Marshal.

**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.**

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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 printed name and title.

Constance C. Holland, AICP

Director

CC: Sussex County