



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

February 23, 2011

Ring Lardner  
23 North Walnut Street  
Milford, DE 19963

RE: PLUS review – 2011-01-01; D.A. Burton Rezoning

Dear Mr. Lardner:

Thank you for meeting with State agency planners on November 26, 2011 to discuss the proposed plans for D.A.Burton rezoning. According to the information received, you are seeking to rezone 19.2 acres from AC to GB to expand the existing car dealership by approximately 60,000 square feet.

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 Kent 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 parcel is located within a Level 1 and 2 according to the Strategies for State Policies and Spending. This site is also located in the Kent County growth zone. Investment Levels 1 & 2 reflect 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 rezoning of this parcel in accordance with the relevant County codes and ordinances.

If this rezoning is approved, a comprehensive plan amendment will be required. Comprehensive plan amendments must go through the PLUS process. Please contact our office regarding the procedures for submitting the comprehensive plan amendment for PLUS review.

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

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

- There are no cultural or historic resources such as an archaeological site or National Register listed property on this parcel (property). However there is a medium to high potential for prehistoric-period archaeological sites in the field next to the woods. There are also two historic properties within sight of this parcel, a late-19th-century agricultural complex (K04809) and a historic church (K04808) across the field on Tubmill Pond Rd. Such farmsteads often had a family cemetery associated with them. 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, because the unexpected discovery of unmarked human remains during construction can result in significant delays while the process is carried out.

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, such as a cemetery or unmarked human remains.

- 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 any known or potential historic or cultural resources.

### **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. 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). While we understand that the land to be rezoned would be used for the expansion of an existing car dealership, and that the applicant might therefore propose no new access, the existing access points would still need to be evaluated for adequacy given the expected increase in traffic using them.
- As proposed, the subject development can be expected to generate more than 50 additional trips during the weekday peak hour. Therefore, it 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. If the developer would like to proceed with the TIS, they should contact Mr. Troy Brestel of the DelDOT Development Coordination Section to arrange for a scoping meeting. Mr. Brestel may be reached at (302) 760-2167.
- From the description on the PLUS application, i.e. a 60,000 square foot expansion of an existing car dealership, it appears that the subject development would generate about 2,000 trips per day and about 104 trips during the weekday peak hour. Our volume-based criteria for allowing a developer to pay the Area-Wide Study Fee, addressed in Section

2.3.2 of the Standards and Regulations, are that the development generate less than 2,000 trips per day and less than 200 trips during the weekday peak hour. If the developers are willing to file a deed restriction to that effect that their trip generation would be less than those criteria (a small reduction in floor area would be necessary) we would be willing to accept payment of the Area-Wide Study Fee, in lieu of a TIS.

DelDOT is concerned that 19.27 acres of commercial space, if created, could then accommodate a by-right development generating much more traffic than the proposed car dealership would. A restriction of the type discussed above would address that concern, and DelDOT would not recommend that a TIS be required for the rezoning application. However, to their knowledge it would not exempt the developer from County requirements for a TIS in association with their site plan.

The Area-Wide Study Fee, calculated as \$10 per daily trip, would be payable when the site plan is submitted for issuance of a Letter of No Objection. Payment of it would exempt the developer from the need to do a TIS but would not exempt them from participation in off-site improvements or the need to do a Traffic Operational Analysis if one is required in the review of their entrance plans. If the developers would like to pay the fee in lieu of doing a TIS, they should contact me at (302) 760-2109.

- DelDOT anticipates that Kent County will require a “Letter of No Objection” from the Department for this project. Per Section 3.4 of the Standards and Regulations, the developer must submit **three (3) signed and sealed paper copies and one electronic (pdf) copy** of the **record plan**, with an Initial Stage Fee Calculation Form and the Initial Stage Fee. Please make all submissions to our Subdivision Manager for southern Kent County, Ms. Diane Calloway. Ms. Calloway may be reached at (302) 760-2571.

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, specifically within the Mispillion River watershed. In this watershed, the State of Delaware has developed specific Total Maximum Daily Load (TMDL) pollutant reduction targets for nitrogen, phosphorus, and bacteria (under the auspices of Section 303(d) of the 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 Mispillion River watershed calls for a 57 percent reduction in nitrogen and phosphorus from baseline conditions. The TMDL also calls for an 87 percent reduction in bacteria from baseline conditions.

## **Water Supply**

- The information provided indicates that the City of Milford will provide water to the proposed projects through a public water system. DNREC files reflect that the City of Milford does not currently hold a Certificate of Public Convenience and Necessity (CPCN) to provide public water in these areas. They will need to file an application for a CPCN with the Public Service Commission, if they have not done so already. Information on CPCN requirements and applications can be obtained by contacting the Public Service Commission at 302-736-7547.
- Should an on-site 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 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 Regulations Governing the Construction and Use of Wells. A well construction permit must be obtained prior to constructing any wells.
- 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.

## **Sediment and Stormwater Program**

- If the owner/applicant plans to expand the existing dealership, the following comments are applicable.

A detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on the site. It is strongly recommended that the owner and consultant contact the Kent Conservation District to schedule a project application meeting to discuss the sediment and erosion control and stormwater management components of the plan. The site topography, soils mapping, pre- and post-development runoff, and proposed method(s) and location(s) of stormwater management should be brought to the meeting for discussion. The plan review and approval as well as construction inspection will be coordinated through the Kent Conservation District. Contact Jared Adkins, Program Manager, at the Kent Conservation District at (302) 741-2600, ext. 3 for details regarding submittal requirements and fees (Delaware Code, Title 7, Chapter 40; Delaware Regulations, Administrative Code, Title 7, 5101).

**Tank Management Branch.** Please be aware:

- 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 two (2) inactive LUST project facilities located within a quarter mile of the project site:
  - Milford Motors Toyota, Facility: 1-000006, Project: K9608149 (Inactive)
  - Shore Stop #237, Facility: 1-000218, Project: K1002015 (Inactive), K9602035 (Inactive)
- 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.”

**Air Quality**

The applicant shall comply with all applicable Delaware air quality regulations. Please note that the following regulations in Table 1 – Potential Regulatory Requirements may apply:

<b>Table 1: Potential Regulatory Requirements</b>	
<b>Regulation</b>	<b>Requirements</b>
<b>7 DE Admin. Code 1106</b> - Particulate Emissions from Construction and Materials Handling	<ul style="list-style-type: none"> <li>• Use dust suppressants and measures to prevent transport of dust off-site from material stockpile, material movement and use of unpaved roads.</li> <li>• Use covers on trucks that transport material to and from site to prevent visible emissions.</li> </ul>
<b>7 DE Admin. Code 1113</b> – Open Burning	<ul style="list-style-type: none"> <li>• Prohibit open burns statewide during the Ozone Season from May 1-Sept. 30 each year.</li> <li>• Prohibit the burning of land clearing debris.</li> <li>• Prohibit the burning of trash or building materials/debris.</li> </ul>
<b>7 DE Admin. Code 1135</b> – Conformity of General Federal Actions to the State Implementation Plan	<ul style="list-style-type: none"> <li>• Require, for any “federal action,” a conformity determination for each pollutant where the total of direct and indirect emissions would equal or exceed any of the de minimus levels (See Section 3.2.1)</li> </ul>

<b>7 DE Admin. Code 1141</b> – Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products	<ul style="list-style-type: none"> <li>• Use structural/ paint coatings that are low in Volatile Organic Compounds.</li> <li>• Use covers on paint containers when paint containers are not in use.</li> </ul>
<b>7 DE Admin. Code 1144</b> – Control of Stationary Generator Emissions	<ul style="list-style-type: none"> <li>• Ensure that emissions of nitrogen oxides (NO<sub>x</sub>), non-methane hydrocarbons (NMHC), particulate matter (PM), sulfur dioxide (SO<sub>2</sub>), carbon monoxide (CO), and carbon dioxide (CO<sub>2</sub>) from emergency generators meet the emissions limits established. (See section 3.2).</li> <li>• Maintain recordkeeping and reporting requirements.</li> </ul>
<b>7 DE Admin. Code 1145</b> – Excessive Idling of Heavy Duty Vehicles	<ul style="list-style-type: none"> <li>• Restrict idling time for trucks and buses having a gross vehicle weight of over 8,500 pounds to no more than three minutes.</li> </ul>

For a complete listing of all Delaware applicable regulations, please look at our website:

<http://www.awm.delaware.gov/AQM/Pages/AirRegulations.aspx>.

*Deanna Morozowich, (302) 739-9402, [Deanna.Morozowich@state.de.us](mailto:Deanna.Morozowich@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 for a Mercantile sites, the infrastructure for fire protection water shall be provided, including the size of water mains for fire hydrants and sprinkler systems.

**Fire Protection Features:**

- All structures over 10,000 Sq. Ft. aggregate will require automatic sprinkler protection installed. The location of the Fire Department Connection (must be within 300 feet of fire hydrant), must be shown and the details as shown in the Delaware State Fire Prevention Regulations must be provided.
- Buildings greater than 10,000 sqft, 3-stories or more, over 35 feet, or classified as High Hazard, are required to meet fire lane marking requirements. The Fire Lanes and Sign Detail as indicated in Delaware State Fire Prevention Regulations must be shown.

## **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.
- 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.

## **Gas Piping and System Information:**

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

## **Required Notes:**

- Provide a note on the final plans submitted for review to read “ All fire lanes, fire hydrants, and fire department connections shall be marked in accordance with the Delaware State Fire Prevention Regulations”
- Proposed Use
- Alpha or Numerical Labels for each building/unit for sites with multiple buildings/units
- Square footage of each structure (Total of all Floors)
- National Fire Protection Association (NFPA) Construction Type
- Maximum Height of Buildings (including number of stories)
- Note indicating if building is to be sprinklered
- Name of Water Provider
- Letter from Water Provider approving the system layout
- Provide Lock Box Note (as detailed in DSFPR) if Building is to be sprinklered

- Provide Road Names, even for County Roads

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

### **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**

- The developer should also be aware the Kent County may require a landscaped barrier between commercial and agricultural areas in order to block any adverse noise or visual effects on historic properties that are nearby. If you have any questions, concerns, or would like to discuss these issues further, please contact Mr. Terrence Burns at 302-736-7404.

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

- As specified in Section 4.1 of the Standards and Regulations, when the entrance construction plans are submitted for review, the developer must submit **two (2) paper copies and one electronic (pdf) copy** 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. Please make all submissions to Ms. Calloway.

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

### **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 Mispillion watershed has not been formally completed to date. In 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:

- The applicant should maximize open space by establishing maintaining and/establishing additional tree cover on this parcel.
- If wetlands, water bodies, streams, or ponds occur within 100 feet of the proposed project boundary, we strongly recommend a 100-foot upland buffer (planted with native vegetation) be established from wetlands or water bodies.
- The applicant should calculate post-construction surface imperviousness with all forms of created surface imperviousness (e.g., rooftops, driveways, parking lots, sidewalks, open-water storm water management structures, and roads) included in the calculation.
- Since this project will create large amounts of impervious cover that will contribute additional pollutant loads that will negatively impact adjoining streams and wetlands, we strongly encourage the use of pervious paving materials (instead of conventional asphalt and concrete) to mitigate said impacts.
- We strongly encourage the use of rain gardens, and green-technology storm water management structures (in lieu of open-water management structures) as BMPs to reduce nutrient pollutant impacts.
- The applicant should voluntarily assess nutrient and bacterial pollutant loading at the preliminary project design phase. To this end, the Watershed Assessment Section has developed a methodology known as the “Nutrient Load Assessment protocol.” The protocol is a tool used to assess changes in nutrient loading (e.g., nitrogen and phosphorus) that result from the conversion of individual or combined land parcels to a different land use(s), while providing applicants with quantitative information about their project’s impact(s) on baseline water quality. We strongly encourage the applicant/developer use this protocol to help them design and implement the most effective BMPs. Please contact Lyle Jones at 302-739-9939 for more information on the protocol.

#### **Additional information on tank management**

- 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.

**Additional information on air quality**

- Businesses may emit, or cause to be emitted, air contaminants into Delaware’s air, which will negatively impact public health, safety and welfare. These negative impacts are attributable to:
  - Emissions that form ozone and fine particulate matter; two pollutants relative to which Delaware currently violates federal health-based air quality standards,
  - The emission of greenhouse gases which are associated with climate change, and
  - The emission of air toxics.
- Air emissions generated from new homes include emissions from the following activities:
  - Area sources such as painting, maintenance equipment and the use of consumer products like roof coatings and roof primers.
  - The generation of electricity needed to support your business, and
  - Car and truck activity associated with a new business.
- The area and electric power generation emission components for this project could not be quantified, however, based on daily trip data presented and data taken from the ITE Trip Generation Manual, 8<sup>th</sup> Edition, the mobile air emissions were quantified in Table 2 and represent the actual impact the Burton Rezoning project may have.

Emissions Attributable to DA Burton Rezoning (Tons per Year)	Volatile Organic Compounds (VOC)	Nitrogen Oxides (NOx)
Mobile Emissions	6.64	8.76

Note that emissions associated with the actual construction of the project, including automobile and truck traffic from working in, or delivering products to the site, as well as site preparation, earth moving activities, road paving and other miscellaneous air emissions, are not reflected.

Measures may be taken to substantially reduce the air emissions. These measures include:

- **Constructing with only energy efficient products.** Energy Star qualified products are up to 30% more energy efficient. Savings come from building envelope upgrades, high performance windows, controlled air infiltration, upgraded heating and air conditioning systems, tight duct systems and upgraded water-heating equipment. Every percentage of increased energy efficiency translates into a percent reduction in pollution. The Energy Star Program is excellent way to save on energy costs and reduce air pollution.

- **Offering geothermal and/or photo voltaic energy options.** These systems can significantly reduce emissions from electrical generation, and from the use of oil or gas heating equipment.
- **Providing tie-ins to the nearest bike paths and links to any nearby mass transport system.** These measures can significantly reduce mobile source emissions.

Additionally, the following mitigation measures will reduce emissions associated with the actual construction phase of the project:

- **Using retrofitted diesel engines during construction.** This includes equipment that are on-site as well as equipment used to transport materials to and from site.
- **Using pre-painted/pre-coated flooring, cabinets, fencing, etc.** These measures can significantly reduce the emission of VOCs from typical architectural coating operations.
- **Planting trees at residential units and in vegetative buffer areas.** Trees reduce emissions by trapping dust particles and by replenishing oxygen. Trees also reduce energy emissions by cooling during the summer and by providing wind breaks in the winter, whereby reducing air conditioning needs by up to 30 percent and saving 20 to 50 percent on fuel costs.

This is a partial list, and there are additional things that can be done to reduce the impact of the pharmacy. The applicant should submit a plan to the DAQ which address the above listed measures, and that details all of the specific mitigation measures that will be incorporated into the Burton rezoning project.

**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,



Constance C. Holland, AICP  
Director, Office of State Planning Coordination

CC: Kent County