



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

July 24, 2012

Ms. Ann McClean  
Cedar Creek Retail  
604 N. Jackson Street  
Arlington, VA 22201

RE: PLUS review – 2012-06-03; Cedar Creek Retail

Dear Ms. McClean

Thank you for meeting with State agency planners on June 27, 2012 to discuss the proposed plans for the Cedar Creek Retail to be located at 3357 Lighthouse Road near Slaughter Beach.

According to the information received, you are seeking a rezoning of 1.82 acres from GR to Marine to change the use from RV storage with bait and tackle shop to unknown an unknown retail allowable in the Marine zoning district.

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.**

**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. While we would normally object to development in a Level 4 area, the State recognized that a retail establishment that supports the marine business in this area may be acceptable. The State has no comments or objections to the rezoning, however, if additional building is planned for the site, now or in the future, the state has the following comments from State agencies:

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

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

- There are no known historic resources on or within this parcel. If there is going to be any proposed development or construction activities on this parcel, it is still very important that the developer be aware of Delaware's Unmarked Human Burials and Human Skeletal Remains Law, which is outlined in Chapter 54 of Title 7 of the Delaware Code.

Abandoned or unmarked family cemeteries are very common in the State of Delaware, and often they are on or near a historic farm site, but usually they in rural areas or open space lands. Disturbing unmarked burials triggers Delaware's Unmarked Human Burials and Human Skeletal Remains Law (Delaware Code Title 7, Chapter 54), and such remains or discoveries can result in substantial delays while the procedures required under this law are carried out. The Division of Historical & Cultural Affairs recommends that owners and/or developers have a qualified archaeological consultant investigate their project area for the presence of such a cemetery. If a cemetery is discovered, it is very costly to have it archaeologically excavated and the burials moved. In the event of such a discovery, the Division of Historical & Cultural Affairs recommends that the plans be redrawn to leave the cemetery on its own parcel or in the open space area of the development, with the responsibility for its maintenance lying with a homeowners association or development. If you need or would like to read more information that pertains to cemeteries or unmarked human remains, please go to the following websites for additional information at [www.history.delaware.gov/preservation/umhr.shtml](http://www.history.delaware.gov/preservation/umhr.shtml) and [www.history.delaware.gov/preservation/cemeteries.shtml](http://www.history.delaware.gov/preservation/cemeteries.shtml).

Prior to any demolition, ground-disturbing or construction activity, the developer should consider hiring an archaeological consultant to examine the parcel for archaeological sites, such as a cemetery or unmarked human remains.

- Furthermore, 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 cultural or historic resources. Owners and developers who may plan to apply for an Army Corps of Engineers permit or for federal funding, such as HUD or USDA grants, should be aware of the National Historic Preservation Act of 1966 (as amended). Regulations promulgated for Section 106 of this Act stipulate that no ground-disturbing or demolition activities should take place before the Corps or other involved federal agency determines the area of potential effect of the project undertaking. These stipulations are in place to allow for comment from the public, the Delaware State Historic Preservation Office, and the Advisory Council for Historic Preservation about the project's effects on historic properties. Any preconstruction activities without adherence to these stipulations may jeopardize the issuance of a permit or receipt of funding if it is determined that such

opportunity to comment has been foreclosed. If you need further information or additional details pertaining to the Section 106 process and the Advisory Council's role, please review the Advisory Council's website at [www.achp.gov](http://www.achp.gov).

Department of Transportation – Contact Bill Brockenbrough 760-2109

- On June 5, 2012, DelDOT responded to a Request for Service Level Evaluation from Sussex County with regard to the subject application. A copy of the response is available on request. Most significantly, DelDOT recommended that the County not require a Traffic Impact Study before acting on the application.

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

**Wetlands**

- It was noted from the application form that the wetlands on-site had been delineated. In a letter from Scott Figurski, Wetlands and Subaqueous Lands Section (WSLS), dated June 15, 2012, Mr. Figurski wrote:

“On June 1, 2012 the WSLS and the U.S. Army Corps of Engineers conducted a joint inspection of the above-referenced property. The purpose of the inspection was to evaluate the status of the tidal wetlands impacted by the placement of fill and the construction of the pole building which constituted the wetlands violation and determine if the vegetation had recolonized to the point that the WSLS could deem voluntary compliance has been achieved and this violation case can be closed. It was determined at the site inspection that the area of disturbance has recolonized to the point that the WSLS has determined that voluntary compliance has been satisfactorily met. The WSLS is closing this violation and no further civil or administrative enforcement action will be taken regarding this matter.”

**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. Since an on-site Industrial, Public/Miscellaneous Public well will be needed, a minimum isolation distance of 150 feet is required between the well and any potential source of contamination, such as a central sewer lines, septic tank and sewage disposal area. 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.

### **Sediment and Stormwater Program**

- A detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on the site. Please 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 the Sussex Conservation District. Contact Jessica Watson at the Sussex Conservation District at (302) 856-2105 for details regarding submittal requirements and fees. (Title 7, Delaware Code, Chapter 40 and Delaware Regulations, Title 7, Administrative Code, 5101)

### **Flood Management**

- Any new structures placed on the site will have to comply with the Sussex County floodplains regulations. Please contact the Planning and Zoning Office at (302) 855-7878 for additional information.

### **Hazardous Waste Sites\**

- DNREC's Site Investigation and Restoration Section (SIRS) has reviewed the proposed project. If it is determined by the Department that there was a release of a hazardous substance on the property in question and the Department requires remediation pursuant to the Hazardous Substance Cleanup Act, the provisions of 7 Del.C., Chapter 91, Delaware Hazardous Substance Cleanup Act and the Delaware Regulations Governing Hazardous Substance Cleanup shall be followed.

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

If a release of a Regulated Substance occurs at the proposed 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.

The following confirmed leaking underground storage tank (LUST) projects and aboveground storage tank (LAST) project are located within the proposed project area:

- Cedar Creek Bait & Tackle, Facility: 5-000459, Projects:
  - S9909191 (Inactive)— 2,000-gallon GASOLINE UST REMOVED; NFA ISSUED 9/23/99
  - S0508083 (Inactive) — 2,000 gallon gasoline UST removed. Database indicates detection of BTEX, GRO, and DRO, but no environmental impacts are mentioned. Project listed as inactive.
- Cedar Creek Boat Launch, Facility: 8-000319, Project:
  - S0907062—over-excavation of contaminated materials performed; residual contamination still exists. Project is currently being addressed under state-lead corrective action. For further information, please contact Patrick Boettcher at 302-395-2500.
- No environmental impact is anticipated; however, 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 Section by calling 302-395-2500.

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:

- **Fire Protection Water Requirements:**
  - Since the structures are served by individual on-site wells (No Central or Public Water System within 1000' of property), set back and separation requirements will apply.
- **Fire Protection Features:**
  - For commercial buildings greater than 5000 sq. ft., a fire alarm signaling system which is monitored off-site is required
- **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 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)
  - Provide Road Names, even for County Roads
- **NFPA Standards:**
  - Additionally, where marine refueling is to take place, the criteria established in National Fire Protection Ass'n Standard #30-A shall be followed.

### **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.

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

- If the County approves the subject rezoning, DeIDOT recommends that the applicant have their site engineer contact our Subdivision Manager for this part of Sussex County, Mr. Derek Sapp, to discuss our requirements with regard to site and entrance plans. Mr. Sapp may be reached at (302) 760-4803.

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

### **Additional information on hazardous waste sites**

- There is one SIRS site found within a ½-mile radius of the proposed project. Fort Saulsbury (DE-0298) is located 0.22 miles south of the proposed project. The Site is a former military fort has been in existence since World War I. An Environmental Assessment was performed on the Site in April of 1991 at the request of the Army Corp of Engineers. The assessment found that there was no evidence of potential contamination. The Site was recommended for a No Further Action designation at the end of 2000.

SIRS strongly recommends that the land owner perform environmental due diligence of the property by performing a Phase I Environmental Site Assessment (including a title search to identify environmental covenants) 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 remediation may be required if the project property or site is re-zoned by the county.

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.

**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 TMS. If any ASTs greater than 12,500 gallons are installed, they are also subject to installation approval by the TMS.

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](http://www.statefiremarshal.delaware.gov), technical services link, plan review, applications or brochures.

**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: Sussex County