



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF STATE PLANNING COORDINATION

August 21, 2013

Ms. Jaime Sechler
Davis Bowen and Friedel
23 N Walnut Street
Milford, DE 19963

RE: PLUS review 2013-07-02, Family Dollar

Dear Ms. Sechler,

Thank you for meeting with State agency planners on July 24, 2013 to discuss the proposed plans for the Family Dollar Store. According to the information received, you are seeking a rezoning of 1.45 acres from IG-General Industrial to BN-Neighborhood Business and the review of a site plan for a 8,320 sf retail store, located at the SE corner of Halltown Road and East Street in Kent County.

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 project represents a land development that will result in 8,320 square feet of commercial construction in an Investment Level 4 area according to the *2010 Strategies for State Policies and Spending*. This project is also located outside of the Kent County growth zone. 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. These areas are comprised of prime agricultural lands and environmentally sensitive wetlands and wildlife habitats, which should be, and in many cases have been preserved.

As a result of our discussions at the PLUS meeting, we understand that the site is currently zoned IG (General Industrial). The site has already been developed as a contractor's yard with warehouse, but is now vacant. The property is also in the unincorporated rural

crossroads of Marydel, a place that currently contains a variety of commercial businesses, a bank, and restaurants that serve the surrounding rural community. The *State Strategies* acknowledge that Level 4 areas “. . . also include many unincorporated communities, typically with their own distinctive character and identity.”

Because of the unique nature of this project as the redevelopment of an existing site in an existing rural crossroads community, the State does not object to this rezoning. This project cannot be considered a precedent to influence State comments on other development proposals in Investment Level 4 areas unless the facts surrounding the application are the same.

Code Requirements/Agency Permitting Requirements

State Historic Preservation Office – Contact Terrence Burns 736-7404

- 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. Furthermore, any preconstruction activities without adherence to these stipulations may jeopardize the issuance of any permit or funds. 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 .

Department of Transportation – Contact Bill Brockenbrough 760-2109

- The site entrance must be designed in accordance with DelDOT’s Standards and Regulations for Subdivision Streets and State Highway Access, which is available at http://www.deldot.gov/information/pubs_forms/manuals/subdivisions/pdf/Subdivision_Manual_Revision_1_proposed_060110.pdf.
- In accordance with Section 3.6.5 and Figure 3-3 of the Standards and Regulations for Subdivision Streets and State Highway Access, DelDOT will require dedication of right-of-way along the site’s frontage on Halltown Road (Delaware Route 8 and Kent Road 50) to provide a minimum of 40 feet of right-of-way from the road centerline and on East Street (Kent Road 75) to provide a minimum of 30 feet of

right-of-way from the road centerline. The right-of-way dedication note has been revised to the following, “**An X-foot wide right-of-way is hereby dedicated to the State of Delaware, as per this plat.**”

- In with Section 3.5.7.4 of DelDOT’s Standards and Regulations for Subdivision Streets and State Highway Access, the developer should expect a requirement that cross-access easements be provided to the adjoining parcels from which the subject land is being subdivided.
- In accordance with Section 3.10.2 of DelDOT’s Standards and Regulations for Subdivision Streets and State Highway Access, DelDOT will require the developer to improve Halltown Road to meet DelDOT’s collector road standards, which include 12-foot lanes and 8-foot shoulders, within the limits of the site frontage.

Department of Natural Resources and Environmental Control – Contact Kevin Coyle 735-3495

TMDLs

- The project is located in the Upper Choptank watershed. In the Upper Choptank 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 Upper Choptank 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.

Water Supply

- The project information sheets state that individual on-site well(s) will be used to provide water for the proposed project. DNREC records indicate that the project is not located in an area where public water service is available. Should an on-site Industrial, 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 central sewer lines, 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 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.
- Potential Contamination Sources exist in the area, and any well permit applications will undergo a detailed review that may increase turnaround time and may require site specific conditions/recommendations. In this case, there is an Underground Storage Tank associated with the Doris Market located within 1000 feet of the proposed project.

Sediment and Stormwater Program

- 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. (Title 7, Delaware Code, Chapter 40 and Delaware Regulations, Title 7, Administrative Code, 5101)

Drainage Program

- There is a concern on the condition of the pipe along Halltown Road (RT 8) where the new entrance is proposed.
- This property is located in the Harrington Beaverdam Tax Ditch and is affected by tax ditch rights-of-way. Any change to the location of the tax ditch or existing tax ditch rights-of-way will require a change to the Harrington Beaverdam Tax Ditch court order. The placement of permanent obstructions within tax ditch rights-of-ways is prohibited.
- Please contact Matthew Grabowski, Environmental Program Manager with the Drainage Program in Dover at (302) 739-9921 to discuss the proposal further.

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.
- The following underground storage tank (UST) facility is located directly on the proposed project parcel:
 - UL Harman, Inc., Facility: 1-000323. 10,000-gallon gasoline UST closed in 1991. No LUST project associated with this facility
- The following confirmed leaking underground storage tank (LUST) projects are located within a quarter mile from the proposed project area:
 - Marydel Volunteer Fire Co, Facility: 1-000642, Project: K9808133, K0112122 (Inactive)
 - Doris Market, Facility: 1-000337, Project: K9411242 (Inactive)
- No environmental impacts are 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 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 to your project:

Table 1: Potential Regulatory Requirements	
Regulation	Requirements
7 DE Admin. Code 1106 - Particulate Emissions from Construction and Materials Handling	<ul style="list-style-type: none"> • Use dust suppressants and measures to prevent transport of dust off-site from material stockpile, material movement and use of unpaved roads. • Use covers on trucks that transport material to and from site to prevent visible emissions.
7 DE Admin. Code 1113 – Open Burning	<ul style="list-style-type: none"> • Prohibit open burns statewide during the Ozone Season from May 1-Sept. 30 each year. • Prohibit the burning of land clearing debris. • Prohibit the burning of trash or building materials/debris.

7 DE Admin. Code 1135 – Conformity of General Federal Actions to the State Implementation Plan	<ul style="list-style-type: none"> 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)
7 DE Admin. Code 1141 – Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products	<ul style="list-style-type: none"> Use structural/ paint coatings that are low in Volatile Organic Compounds. Use covers on paint containers when paint containers are not in use.
7 DE Admin. Code 1144 – Control of Stationary Generator Emissions	<ul style="list-style-type: none"> Ensure that emissions of nitrogen oxides (NO_x), non-methane hydrocarbons (NMHC), particulate matter (PM), sulfur dioxide (SO₂), carbon monoxide (CO), and carbon dioxide (CO₂) from emergency generators meet the emissions limits established. (See section 3.2). Maintain recordkeeping and reporting requirements.
7 DE Admin. Code 1145 – Excessive Idling of Heavy Duty Vehicles	<ul style="list-style-type: none"> Restrict idling time for trucks and buses having a gross vehicle weight of over 8,500 pounds to no more than three minutes.

For a complete listing of all Delaware applicable regulations, please look at our website:
<http://www.awm.delaware.gov/AQM/Pages/AirRegulations.aspx>.

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.

Delaware Economic Development Office – Contact Jeff Stone 739-4271

While DEDO does not usually support rezoning from industrial uses, nor support the development of specific retail projects, it seems apparent, based on its location, that this parcel’s highest and best use is commercial / retail. We recognize that the proposed rezoning is not compatible with the existing comprehensive plan bit it is small in area and complementary to the existing uses and will bring a much needed new investment to that area of Kent County, create a number of new employment opportunities, and provide the residents with a shopping opportunity not currently available. It may also attract spending from nearby Maryland residents.

Department of Transportation – Contact Bill Brockenbrough 760-2109

- A pre-submittal meeting was held with the applicant on April 9, 2013. DelDOT will adhere to the notes from that meeting and will expect the developer to do the same.

- The developer should anticipate additional comments once the entrance plans are submitted for review.

Department of Natural Resources and Environmental Control – Contact Kevin Coyle 735-3495

Soils Assessment

- According to the NRCS soil survey update, Mullica (MmA) is the most environmentally sensitive soil mapping unit mapped on subject parcel. Mullica is a very poorly-drained wetland associated (hydric) soil that has severe limitations for development (Figure 1). We do not recommend building in the Mullica soil map unit because of the increased potential for future on-site and off-site flooding possibilities.

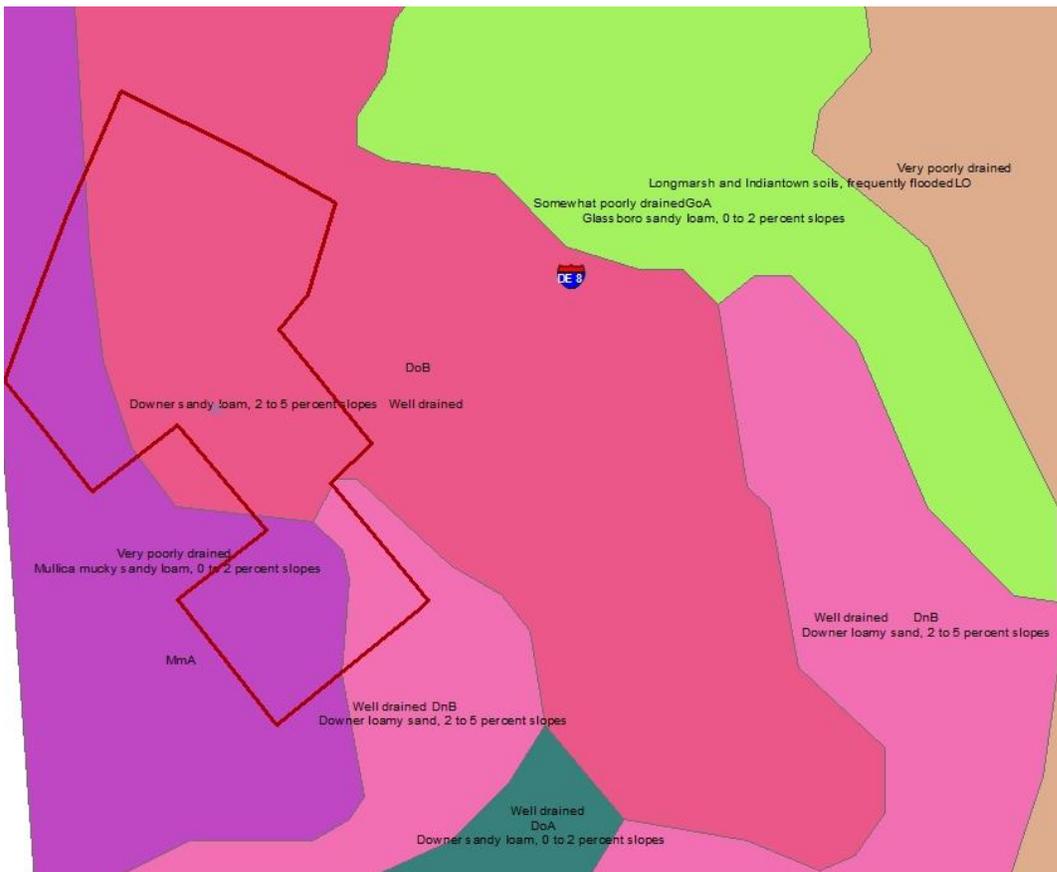


Figure 1: NRCS soil survey mapping update in the immediate vicinity of the proposed project

Additional information on TMDLs and water quality

- In response to concerns about the need for reducing nonpoint source nutrient (nitrogen and phosphorus) and bacterial pollutants to levels sufficient to meet the prescribed Upper Choptank watershed TMDL reduction requirements, a

multifaceted and comprehensive process known as a Pollution Control Strategy (PCS) has been developed to attain said TMDL reductions. Specifically, a PCS is a combination of best management practices and control technologies that reduce nutrient and bacterial pollutant runoff loading in waters of a given watershed to level(s) consistent with the TMDL(s) reduction levels specified for that watershed. The PCS for the Upper Choptank watershed consists of 24 recommendations from the following three areas: Agriculture, Storm water, and Wastewater. Although implementation of a Pollution Control Strategy (PCS) is necessary for attaining the TMDL nutrient and bacterial load reduction requirements, its' implementation is hampered by the fact that the strategies in the Upper Choptank PCS are entirely voluntary in nature. Additional information about Upper Choptank PCS is available from the follow web link:

<http://www.dnrec.delaware.gov/swc/wa/Pages/WatershedManagementPlans.aspx>

The applicant is strongly urged to reduce nutrient and bacterial pollutants through voluntary commitment to the implementation of the following recommended BMPs:

- Maximize open space by retaining as much of the existing native tree cover as possible. DNREC strongly recommends the planting of additional native trees and /or native herbaceous cover, wherever possible.
- A United States Army Corps of Engineers (USACE) approved field wetlands delineation is strongly recommended before commencing any development activities on this parcel. The USACE can be reached by phone at 736-9763. According to information presented in the PLUS application, a USACE approved wetlands delineation has not been conducted. It should also be noted that compliance with USACE regulations does not preclude compliance with State wetland-regulatory requirements.
- 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.
- Wherever practicable, DNREC strongly encourages 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 Jen Walls or John Martin 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 TMS. If any ASTs greater than 12,500 gallons are installed, they are also subject to installation approval by the TMS.

Additional information on air quality

- DNREC encourages developers and builders to consider all sustainable growth practices in their design, but we believe, however, that the air quality impacts associated with the project should be completely considered. New 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 the new homes, and
 - All transportation activity.
- DNREC encourages sustainable growth practices that:
 - Control sprawl;
 - Preserve rural and forested areas;
 - Identify conflicting land use priorities;
 - Encourage growth on previously developed sites and denser communities while at the same time protect our diminishing land base;
 - Coordinate transportation, housing, environment, and climate protection plans with land use plans; and

- Demonstrate that communities can achieve the qualities of privacy, community, and contact with nature without degrading the natural environment or generating unacceptable environmental costs in terms of congestion, use of natural resources, or pollution.
- Additional measures may be taken to substantially reduce the air emissions identified above. 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 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. For every vehicle trip that is replaced by the use of a sidewalk, a bike path or mass transit, 7 pounds of VOC and 11.5 pounds of NOx are reduced each year.
 - **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 in vegetative buffer areas.** Trees reduce energy emissions by cooling during the summer and by providing wind breaks in the winter, thereby 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 development. The applicant should submit a plan to the DNREC DAQ which address the above listed measures, and that details all of the specific emission mitigation measures that will be incorporated into this 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,

A handwritten signature in cursive script that reads "Constance C. Holland". The signature is written in black ink and is positioned above the typed name and title.

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

CC: Kent County