



STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF STATE PLANNING COORDINATION

August 21, 2013

Mr. Tim Metzner  
Davis Bowen & Freidel  
23 N Walnut Street  
Milford, DE 19963

RE: PLUS review 2013-07-03, Bylers Office

Dear Mr. Metzner,

Thank you for meeting with State agency planners on July 24, 2013 to discuss the proposed plans for the Bylers Office. According to the information received, you are seeking the review of a rezoning of 1 acre from AR to BN for office use for the construction of a 2,627 sf addition, located on the E side of Rose Valley School Road 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 rezoning that will result in 2,627 sf of commercial land use in an Investment Level 4 area according to the *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.

From a fiscal responsibility perspective, development of this site is likewise inappropriate. The cost of providing services to development in rural areas is an inefficient and wasteful use of the State's fiscal resources. Over the longer term, the unseen negative ramifications of this development will become even more evident as the cost of maintaining infrastructure and providing services increases.

At the PLUS meeting, it was explained that this rezoning will enable the use of an existing house as office space in support of the operations of Byler's Store, and that no additional development of the site is being requested. Our office has to consider this rezoning as if any of the permitted uses could someday be constructed on the site, potentially allowing a redevelopment project that far exceeds the impact of office use in an existing residential structure. Because the rezoning is inconsistent with the *Strategies for State Policies and Spending*, the State is opposed to this proposed rezoning

Later in this letter under "Recommendations" you will see that the Delaware Economic Development Office (DEDO) has written a comment in favor of the rezoning in order to support the continued viability of the Byler's Store business. We note that this comment assumes that the office use is confined to the existing structure and no redevelopment occurs. DEDO's comments should be viewed in that context. However, we encourage the County to consider the future long term implications of this rezoning decision.

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

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

- This parcel is in Level-4 area, and the Division of Historical & Cultural Affairs does not support, nor approve of any proposed development or construction project, or the rezoning of any kind in a Level 4 Area. In Delaware, there is a strong historic heritage, and intruding on these areas may affect the cultural or historic resources associated with Delaware's past, such as architectural or archeological sites, which have not yet been found or studied, but may contain important information about Delaware's history, such as cemetery, burial site or unmarked human remains. With this in mind, the developer should 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. They are usually in rural or open space areas, and sometimes near or within the boundary of an historic farm site. Even a marked cemetery can frequently have unmarked graves or burials outside of the known boundary line or limit. Disturbing unmarked graves or 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. If there is a discovery of any unmarked graves, burials or a cemetery, it is very costly to have them archaeologically excavated and the burials moved. The Division of Historical & Cultural Affairs recommends that owners and/or developers have a qualified archaeological consultant investigate their project area, to the full extent, to see if there is any unmarked cemetery, graves, or burial sites. In the event of such a discovery, the Division of Historical & Cultural Affairs also recommends that the plans be re-drawn to leave the full extent of the cemeteries or any burials on its own parcel or in the open space area of the development, with the responsibility for its maintenance lying with the landowner association or development. If you would like to know more information that pertains to unmarked human remains or cemeteries, please check the following websites for additional information:

[www.history.delaware.gov/preservation/umhr.shtml](http://www.history.delaware.gov/preservation/umhr.shtml)  
[www.history.delaware.gov/preservation/cemeteries.shtml](http://www.history.delaware.gov/preservation/cemeteries.shtml) .

and

- 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. 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](http://www.achp.gov) .

Department of Transportation – Contact Bill Brockenbrough 760-2109

- If the proposed rezoning is approved, the developer's engineer should contact DeIDOT Subdivision Manager for the north part of Kent County, Mr. Julio Seneus, to discuss the site plan. Mr. Seneus may be reached at (302) 760-2145.
- As DeIDOT presently understands it, the rezoning is to accommodate an existing office use now located in the existing store. The PLUS application states that the building would generate only 12 vehicle trip ends per day. DeIDOT believes that it would be closer to 20 vehicle trip ends per day.
- An entrance plan and permit will be required per Section 1.1 of the Standards and Regulations for Subdivision Streets and State Highway Access regardless of the trip generation. However, DeIDOT should be able to expedite review under DeIDOT's new Existing Commercial Project Process for 199 ADT or Less. If an expansion or change of the site's use is contemplated, a more rigorous review may be necessary. Following is a link to an explanation of how this determination would be made.

[http://www.deldot.gov/information/business/subdivisions/Ex\\_Commercial\\_Project\\_Process\\_199\\_ADT\\_or\\_Less.pdf?06-27-2013](http://www.deldot.gov/information/business/subdivisions/Ex_Commercial_Project_Process_199_ADT_or_Less.pdf?06-27-2013)

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

#### **Investment Level 4 Policy Statement**

- This project is proposed for an Investment Level 4 area as defined by the *Strategies for State Policies and Spending* and is also located outside of a designated growth area in the relevant municipal and County certified comprehensive plans. According to the *Strategies*, this project is inappropriate in this location. In Investment Level 4 areas, the State's investments and policies, from DNREC's perspective, should retain the rural landscape and preserve open spaces and farmlands. Open space investments should emphasize the protection of critical natural habitat and wildlife to support a diversity of species, and the protection of present and future water supplies. Open space investments should also provide for recreational activities, while helping to define growth areas. Additional State investments in water and wastewater systems should be limited to existing or imminent public health, safety or environmental risks only, with little provision for additional capacity to accommodate further development.
- With continued development in Investment Level 4 areas, the State will have a difficult, if not impossible, time attaining water quality (e.g., TMDLs) and air quality (e.g., non-attainment areas for ozone and fine particulates) goals. Present and future investments in green infrastructure will be threatened. DNREC strongly supports new development in and around existing towns and municipalities and in areas designated as growth zones in certified Comprehensive Plans. DNREC encourages the use of transfer of development rights where this growth management tool is available.
- This particular development certainly compromises the integrity of the State Strategies and the preservation goals inherent in many of DNREC's programs. While mitigating measures such as conservation design, central wastewater systems instead of individual on-site septic systems, and other best management practices may help mitigate impacts from this project, not doing the project at all is the best avenue for avoiding negative impacts. As such, this project will receive no financial, technical or other support of any kind from DNREC. Any required permits or other authorizations for this project shall be considered in light of the project's conflict with our State growth strategies.

#### **TMDLs**

- The project is located in the greater Delaware River and Bay drainage, specifically within the St. Jones 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 St. Jones River watershed calls for a 40 percent reduction in nitrogen and phosphorus from baseline conditions. The TMDL also calls for a 90 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.

### **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)

### **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 we recognize that the proposed rezoning is not compatible with the existing comprehensive plan, it is small in area, complementary to the existing uses, and will support a long established and well respected business. The proposal is an expansion of the existing BN (Neighborhood Business) Zoning District to enable the conversion of an adjacent house once occupied by the Byler family to their corporate office and will not create additional traffic or impact the surrounding properties as it will house employees already working at Bylers. This new facility is needed to support their continued growth here.

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

##### **Soils Assessment**

Based on soils survey mapping update, Fallsington (FaA) is the most environmentally-sensitive soil mapping unit mapped in the vicinity of the proposed project. Fallsington is a poorly-drained wetland associated (hydric) soil that has severe limitations for development (Figure 1). DNREC strongly recommends the applicant avoid development in Fallsington soils.

- The Statewide Wetland Mapping Project (SWMP) often uses the soil survey as the basis for mapping and delineating wetlands. The presence of a hydric soil is one of three key parameters that must be met in order to meet jurisdictional wetland requirements (as specified by the USACOE). The other parameters are hydrophytic vegetation and hydrology. Hence the presence of hydric soils is a correlate with wetland presence. Although the removal of hydrophytic vegetation may change the jurisdictional status of a wetland to a non-wetland, it does not mitigate the environmental consequences of such actions. That is, building on hydric soils (e.g., Fallsington) may increase the potential for future on-site and off-site flooding events, while increasing the volume of pollutant-laden surface water runoff and discharge to surface water bodies (streams, ponds, and ocean) and groundwater.



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

#### **Additional information on TMDLs and water quality**

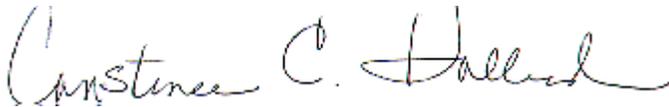
- Although a Pollution Control Strategy (PCS) to achieve the required TMDL nutrient and bacterial load reduction requirements has been established for the St. Jones watershed, attainment of said load reduction(s) is hampered by the fact that the strategies in the St. Jones PCS are entirely voluntary in nature. The web link for the St. Jones PCS strategies is as follows:  
<http://www.dnrec.delaware.gov/swc/wa/Pages/WatershedManagementPlans.aspx>
- Until said PCS strategies gain regulatory support, DNREC strongly encourages the applicant reduce nutrient and bacterial pollutants through voluntary implementation of the following recommended BMPs:
  - DNREC encourages the applicant to consider additional native tree or herbaceous cover plantings wherever possible.
  - 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 additional impervious surface that will increase the probability for pollutant load runoff draining to the adjoining stream and wetlands, we strongly encourage the use of

- pervious paving materials (instead of conventional asphalt and concrete) to mitigate the negative impacts from pollutant runoff.
- 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.
  - 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. DNREC strongly encourages the applicant/developer use this protocol to help them design and implement the most effective BMPs. Please contact Jen Walls at 302-739-9939 for more information on the protocol.

**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, Office of State Planning Coordination

CC: Kent County