



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF STATE PLANNING COORDINATION

September 25, 2013

Mr. Eugene Bayard
Morris James Wilson Halbrook & Bayard
PO Box 690
107 W Market Street
Georgetown, DE 19947

RE: PLUS review 2013-08-07, Demeno Property

Dear Mr. Bayard,

Thank you for meeting with State agency planners on August 28, 2013 to discuss the proposed plans for the Demeno Property. According to the information received, you are seeking review of a rezoning from AR-1 to B-1 for the addition of a day spa.

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. **The comments in this letter are technical, and are not intended to suggest that the State supports this development proposal. This letter does not in any way suggest or imply that you may receive or may be entitled to permits or other approvals necessary to construct the development you indicate or any subdivision thereof on these lands.**

This project represents a land development that will result in a property zoned B-1 in an Investment Level 4 area according to the *2010 Strategies for State Policies and Spending* and is within the Low Density area according to the Sussex County certified comprehensive plan. Investment Level 4 indicates where State investments will support agricultural preservation, natural resource protection, and the continuation of the rural

nature of these areas. New development activities and suburban development are not supported in Investment Level 4 areas. 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.

Because the development is inconsistent with the *Strategies for State Policies and Spending*, the State is opposed to this proposed rezoning.

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 historic architectural or archeological sites, or potential archeological sites, which have not been found or studied, but may contain important information about Delaware's history, such as a cemetery, burial site or unmarked human remains. With this in mind, it is also important that the developer be aware of the 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 the 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 and
www.history.delaware.gov/preservation/cemeteries.shtml .

Therefore, prior to any demolition or ground-disturbing activities, the developer should consider hiring an archaeological consultant to examine the parcel for potential historic or cultural resources, such as a potential archaeological site, 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 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

- Per Section 2.3.1 of the Standards and Regulations for Subdivision Streets and State Highway Access, Traffic Impact Studies (TIS) are warranted for developments generating more than 400 vehicle trip ends per day or 50 vehicle trip ends per hour. However, Section 2.3.2 provides that for developments generating less than 2,000 vehicle trip ends per day and less than 200 vehicle trip ends per hour, DelDOT may accept an Area Wide Study Fee of \$10 per daily trip in lieu of a TIS.

As discussed below, DelDOT does not recommend that a TIS be required for the proposed rezoning. Before it can be determined whether a TIS will be needed as part of the site plan review, DelDOT will need to have a better understanding of how much traffic the site generates now and how much traffic would increase with the addition of the day spa. However, DelDOT believes that a TIS will not be warranted and that if a TIS is warranted, the applicant would qualify to pay the Area Wide Study Fee instead. To obtain a scope of work for a TIS, the applicant may have their engineer contact Mr. Troy Brestel of this office. Mr. Brestel may be reached at (302) 760-2167.

Preliminarily, DelDOT believes that payment of the Area Wide Study Fee would be acceptable. If the developer chooses this option, payment would be due when the site plan is submitted for review. Payment of the fee would not relieve the developer of responsibility for making off-site improvements or contributing to DelDOT capital projects. In accordance with Section 3.10.2 of DelDOT's Standards and Regulations for Subdivision Streets and State Highway Access, needed off-site improvements or contributions would need to be shown on the record plan by illustration or note.

- Regarding the trip generation, DelDOT has noted:
 - The response to Item 25 on the PLUS application (concerning trip generation of the proposed development) referred the reader to an enclosed DelDOT Support Facilities Report (SFR). DelDOT did not receive that report with the PLUS application, but having issued an SFR for this project on July 23, 2013, has revisited that report. The intent of the trip generation calculations in an SFR is to examine the maximum potential trip generation permitted if the subject application is approved. Therefore, one would typically expect the trip generation on an SFR for a rezoning to be high for the specific use proposed.

Complicating matters, DelDOT has found an error in this particular SFR, such that the trip generation shown is incorrect even relative to the site's maximum potential. DelDOT's regulations provide that for non-residential rezoning applications without an accompanying subdivision or land development plan DelDOT will recommend that the rezoning be considered without a Traffic Impact Study (TIS) and further recommend that the need for a TIS be evaluated when a subdivision or land development plan is proposed. Accordingly, the SFR recommended that a TIS not be required for this rezoning application. Because correcting the numbers would not change our recommendation, we do not plan to send a revised SFR. However, using the trip generation in the SFR would almost certainly overstate the amount of traffic in and out of the site. DelDOT recommends that the applicant work with their engineer to develop a more reasonable estimate of their expected traffic.

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

- If the site would generate more than 200 vehicle trip ends per day, a Traffic Operational Analysis may be required as part of the site plan review, in accordance with Section 2.14 (formerly 3.9) of the Standards and Regulations. If the developer performs a TIS, the work involved in a TOA would be included therein. Payment of the Area Wide Study Fee does not exempt the developer from providing a TOA if one is found to be necessary.
- 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](http://www.deldot.gov/information/pubs_forms/manuals/subdivisions/pdf/Subdivision%20Manual%20Revision%201%20proposed%20060110.pdf).
- In accordance with Section 3.4.1.2 of the Standards and Regulations for Subdivision Streets and State Highway Access, the Record Plan should show all existing entrances (residential/commercial) within 400 feet of the proposed site entrance.

- 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 Route 9 to provide a minimum of 50 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 accordance with Section 3.6.5 of the Standards and Regulations for Subdivision Streets and State Highway Access, DelDOT will require the establishment of a 15-foot wide permanent easement across the property frontage on Route 9 for a future 10-foot wide pedestrian/bike path. The location of the easement shall be outside the limits of the ultimate right-of-way. The easement area can be used as part of the open space calculation for the site. The following note is required, **"A 15-foot wide permanent easement for a future 10-foot wide multi-use path is hereby established, as per this plat."**
- As specified in Section 3.4.1.1 of the Standards and Regulations for Subdivision Streets and State Highway Access, a traffic generation diagram is required on the Record Plan.
- US Route 9, between Lewes and Georgetown, is served by DART First State. Therefore, in accordance with Section 3.5.5.5 of the Standards and Regulations for Subdivision Streets and State Highway Access, the Delaware Transit Corporation (DTC) will need to determine whether a bus stop will be required for this project and, if so, what if any amenities it may need to have. As necessary, the developer may contact Mr. Wayne Henderson, a Senior Planner at DTC in this regard. Mr. Henderson may be reached at (302) 576-6063.
- In accordance with Section 3.4 of the Standards and Regulations for Subdivision Streets and State Highway Access, a record plan shall be prepared prior to issuing "Letter of No Objection". The following information will be required for the "Letter of No Objection" review:

- Copy of the Initial Stage Fee Calculation Form
- Copy of the Initial Stage Review Fee
- Gate-Keeping Checklist – Site Plan
- Design Checklist – Record Plan*
- Owners and Engineer's name and e-mail address
- Sight Distance Spreadsheet
- Auxiliary Lane Spreadsheet
- Three (3) paper sets of the Record Plan
- Conceptual Entrance Plan
- CD with a pdf of the Site Plan
- Submission of the Area-Wide Study Fee (if applicable)

*For the design checklist for the site plan, please refer to the Standards and Regulations for Subdivision Streets and State Highway Access, Appendix D, Plan Review Checklist, page D-2 and D-3.

- Referring to the Standards and Regulations for Subdivision Streets and State Highway Access, Chapter 1 – Introduction, Section 1.4: Review Fees, page 1-8, the Construction Stage review fee shall be assessed to this project.
- Referring to the Standards and Regulations for Subdivision Streets and State Highway Access, Chapter 4 – Construction Plans, Section 4.3: Subdivision Construction Plan Checklist or Section 4.4: Commercial Entrance Plan Checklist, an entrance plan shall be prepared prior to issuing entrance approval. The following information will be required for Subdivision/Entrance Plan review;

Copy of the Construction Stage Fee Calculation Form
Copy of the Construction Review Fee
Gate-Keeping Checklist – Entrance Plan
Design Checklist – Entrance Plan**
Three (3) paper sets of the Entrance Plan
SWM Report and Calculations (If applicable)
CD with a pdf of the Entrance Plan

**For the design checklist for the entrance plan, please refer to the Standards and Regulations for Subdivision Streets and State Highway Access, Appendix D, Plan Review Checklist, page D-9 and D-13.

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) (**Plans are required since project comprises a change in the occupancy classification of the building in question**)

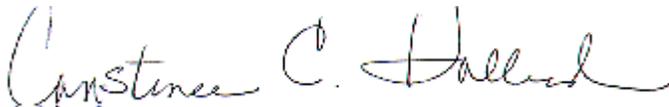
- **Fire Protection Water Requirements:**
 - Water distribution system capable of delivering at least 1000 gpm for 1-hour duration, at 20-psi residual pressure is required. Fire hydrants with 800 feet spacing on centers.
 - Where a water distribution system is proposed for (business/educational/assembly/healthcare/multi-family) sites, the infrastructure for fire protection water shall be provided, including the size of water mains for fire hydrants and sprinkler systems.
- **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.
 - 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.
- **Required Notes:**
 - 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)
 - Name of Water Provider
 - Letter from Water Provider approving the system layout
 - Provide Road Names, even for County Roads

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