

November 22, 2012

Mr. Kevin Minnich

250A Camden Wyoming Avenue

Camden, DE 19934

RE: PLUS review – 2012-10-03; Lands of Rose Krokenberger

Dear Mr. Minnich:

Thank you for meeting with State agency planners on October 26, 2012 to discuss the proposed plans for the rezoning of 3.8 acres from AC to BG for an internet sales business. It is our understanding that this business would be run out of the existing house and no additional buildings are expected.

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 commercial rezoning that will result in new commercial use(s) in an Investment Level 4 area according to the *Strategies for State Policies and Spending*. This project is also located outside of a designated growth area in Kent County's certified comprehensive plan. 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 commercial development in rural areas is an inefficient and wasteful use of the State's fiscal resources. The project as proposed in an area where the State has no plans to invest in infrastructure upgrades or additional services. To provide some examples, the State government funds 100% of road maintenance and drainage improvements for the transportation system, 100% of paratransit services, and 100% of the cost of police protection in the unincorporated

portion of Kent County where this development is proposed. Over the longer term, the unseen negative ramifications of this development will become even more evident as the community matures and the cost of maintaining infrastructure and providing services increases.

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

The proposed rezoning would create an isolated commercial district in an area where there are no similar uses, either existing or planned. If the County finds the specific use proposed to be appropriate in rural, predominantly agricultural, areas, we would recommend that they consider adding it to the list of Conditional Uses allowed in AC zoning district, and grant the proposed use by that means instead of by rezoning.

While we understand there are no additional buildings planned at this time, a rezoning would allow future development of this land as permitted in the Kent County zoning code for this designation.

With that said, the State would offer the following comments regarding development of the property, now or in the future:

Code Requirements/Agency Permitting Requirements

State Historic Preservation Office – Contact Terrence Burns 736-7404

- As you are aware, this parcel is in a Level-4 area, and the Division of Historical & Cultural Affairs does not support, nor approve of any type of rezoning or development project 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 heritage, such as 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 cemetery, burial site or unmarked human remains. With this information in mind, the owner should be aware the Delaware's Unmarked Human Burials and Human Skeletal Remains Law, which is outlined in Chapter 54 of Title 7 of the Delaware Code.

The owner/applicant of this project is aware of the delicate nature of the Level 4 area and as a result, intends to have a low impact project with a residential use on the portion of the parcel to be rezoned.

- Abandoned or unmarked family cemeteries are very common in the State of Delaware, and often they are either on or near a historic farm site, 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 re-drawn 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 in reference to cemeteries, burial grounds or unmarked human remains, please go to the following websites for additional information: www.history.delaware.gov/preservation/umhr.shtml and www.history.delaware.gov/preservation/cemeteries.shtml.

There is an existing graveyard on the parcel which will not be part of the rezoning and will be fenced and left undisturbed.

- There are also a couple of know historic resources near the parcel, towards the corner of Westville Road and Morgans Choice Road, and they are as follows: a 19th-century house (K-6907), and the Union Church Site (K-826), which was there, but is no longer standing. The Pomeroy and Beers Atlas of 1868 (which is a 19th-century historic map) did show and indicate that the Union Church Site (K-826) was near the Westville Road and Morgans Choice Road, and the USGS Topographic Map of 1931 also indicated this as well.

So noted by the owner and applicant.

- Prior to any demolition or ground disturbing activities, 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.

The owner will review the website and take this into consideration should the project proceed to Site Plan review and approval.

Department of Transportation – Contact Bill Brockenbrough 760-2109

- If the proposed rezoning is granted, then in accordance with Section 6.3 of DelDOT's Standards and Regulations for Subdivision Streets and State Highway Access, the applicant will need to obtain a commercial entrance permit, which will in turn require preparation of an entrance plan. We recommend that the applicant have their engineer contact Mr. Cliff Mumford, the DelDOT Subdivision Manager for this part of Kent County, for further information in this regard. Mr. Mumford may be reached at (302)760-2571.

Should the project proceed to Site Plan review and approval, a Site Plan and Entrance Plan will be submitted to the Department of Transportation with all applicable checklists, forms, and fees for their review and approval.

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

Wetlands

- State regulated wetlands ARE NOT located on this property based on a review of the State wetland maps. State regulated wetlands are those wetlands identified on the State's official State Regulated Wetland Maps. Additional information about State regulated wetlands is available by contacting the Wetlands and Subaqueous Lands Section at (302) 739-9943 or on line at <http://www.dnrec.delaware.gov/wr/Services/Pages/WetlandsAndSubaqueousLands.aspx>.

The presence of wetlands will be determined by an environmental consultant as the project progressed to Site Plan.

- State regulated subaqueous lands ARE NOT likely to be located on this property based on a review of aerial photographs, SWMP maps, Soil Surveys and USGS topographic maps. State subaqueous lands include all tidal waters (up to the mean high water line), most non-tidal rivers, streams, lakes, ponds, bays and inlets (up to the ordinary high water line), most perennial streams and ditches and many intermittent streams and ditches. Additional information about State regulated subaqueous lands is available by contacting the Wetlands and Subaqueous Lands Section at (302) 739-9943 or on line at <http://www.dnrec.delaware.gov/wr/Services/Pages/WetlandsAndSubaqueousLands.aspx>.

Also noted by the owner and applicant.

- Waters of the U.S. regulated by the U.S. Army Corps of Engineers ARE likely to be located on this property based on a review of aerial photographs, SWMP maps, Soil Surveys and USGS topographic maps. According to our GIS SWMP maps, there are considerable wetlands regulated by the U.S. Army Corps of Engineers. We suggest contacting them for an on-site inspection. Waters of the United States include the following: navigable waters of the United States; wetlands; tributaries to navigable waters of the United States, including adjacent wetlands and lakes and ponds; interstate waters and their tributaries, including adjacent wetlands; and all other waters of the United States not identified above, such as isolated wetlands, intermittent streams, and other waters that are not part of a tributary system to interstate waters or to navigable waters of the United States, where the use, degradation or destruction of these waters could affect interstate or foreign commerce. The extent of Federal jurisdiction over Waters of the United States is determined by the U.S. Army Corps of Engineers and is based on site specific conditions. Therefore, an on-site inspection by an environmental consultant is recommended to determine if Waters of the U.S. are located on the property and the limits of Federal jurisdiction. The U.S. Army Corps of Engineers can be contacted at (215) 656-6728 or online at <http://www.nap.usace.army.mil/cenap-op/regulatory/regulatory.htm>.

An on-site inspection of the site would be provided with the use of an environmental consultant during the Site Plan stage of the project as noted above.

TMDLs

- The project is located in the greater Chesapeake Bay drainage, specifically within the upper Choptank 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 Upper Choptank River watershed calls for maintaining existing baseline conditions for nitrogen, while requiring a 40 percent reduction from baseline conditions for phosphorus. The TMDL also calls for a 28 percent reduction in bacteria from baseline conditions.

All conditions to meet the TMDL requirements will be instituted during Site Plan design.

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. 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 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).

Any well permits will be applied for by the well driller following septic design approval. All well permits will meet all domestic and public well isolation distances and requirements.

- 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.

So noted by the owner and applicant.

- 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.

So noted by the owner and applicant.

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 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)

A Sediment and Stormwater Management Plan will be formulated for the project when the project is submitted for Site Plan review through Kent County. This plan would address all stormwater management concerns at this time.

Drainage Program

- This property is located in the Beachy-Neidig 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 Beachy-Neidig Tax Ditch Court Order. The placement of permanent obstructions within tax ditch rights-of-ways is prohibited.

The property owner will have to seek a letter of no objection from the DNREC, Drainage Program prior to constructing within the tax ditch right of way. The right of way must remain free of permanent structures, including but not limited to fences, houses, sheds, driveways, etc.

For further information on restrictions within the tax ditch right-of-way, please contact Matthew Grabowski, Environmental Program Manager with the Drainage Program in Georgetown at (302) 855-1930. (Title 7, Delaware Code, Chapter 41)

At this time, the owner/developer does not have any plans of infringing on the existing tax ditch right-of-ways. Should this situation arise, we will contact your department.

Hazardous Waste Sites

- 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.

So noted by the owner and applicant.

Delaware State Fire Marshall's Office – Contact Duane Fox 739-4394

- **Fire Protection Water Requirements:**
 - Since the dwellings of the subdivision are proposed to be served by individual on-site wells (No Central or Public Water System within 1000' of property), set back and separation requirements will apply.

This is understood by the owner and applicant.

- **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. This means that the access road to the subdivision from the main thoroughfare must be constructed so fire department apparatus may negotiate it. If a “center island” is placed at an entrance into the subdivision, it shall be arranged in such a manner that it will not adversely affect quick and unimpeded travel of fire apparatus into the subdivision.

Accessibility should not be problem and a center island is not proposed for the proposed use of the property.

- 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.

This requirement will be met in the final Site Plan design.

- Any dead end road more than 300 feet in length shall be provided with a turn-around or cul-de-sac arranged such that fire apparatus will be able to turn around by making not more than one backing maneuver. The minimum paved radius of the cul-de-sac shall be 38 feet. The dimensions of the cul-de-sac or turn-around shall be shown on the final plans. Also, please be advised that parking is prohibited in the cul-de-sac or turn around.

The design of the Site Plan is preliminary at this time, however no cul-de-sacs are proposed at this time. Access to any buildings would be through fire lanes if required at a width of 24 feet or more.

- The use of speed bumps or other methods of traffic speed reduction must be in accordance with Department of Transportation requirements.

Speed bumps will not be a part of the final Site Plan design.

- 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.

This comment is understood by the owner and applicant.

Gas Piping and System Information:

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

This requirement will be shown on the Site Plan submittal.

- **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
- National Fire Protection Association (NFPA) Construction Type
- Maximum Height of Buildings (including number of stories)
- Provide Road Names, even for County Roads

All required notes for Site Plan submittal will be provided on the Site Plan as required along with the application and fee.

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
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