

RECOMMENDATION

Ordinance 07-019 Application 2005-1045-S/Z

La Grange
(Barczewski Farm)

May 1, 2007

DESCRIPTION

Location: North side US 40, west of Glasgow Avenue and east of Pleasant Valley Road

Councilperson: David L. Tackett, District 11

Rezoning: 11.68 acres from S (Suburban) to CR (Commercial Regional) and 3.83 Acres from CR (Commercial Regional) to S (Suburban)

Applicant: La Grange, LLC

ZONING & DEVELOPMENT PATTERN

Composed of three parcels, this 240-acre property is the largest remaining undeveloped tract fronting on US Route 40 in New Castle County. It is the subject of a development proposal that includes a 232-unit residential community in addition to the 54,400 square foot retail shopping center proposed in the subject rezoning application. The applicant is reserving forty-eight acres for future development and, by means of an agricultural subdivision, created a separate parcel on April 17, 2007.¹ Of the total acreage, 239.8 acres are zoned S (Suburban) and 3.83 acres are zoned CR (Commercial Regional). In addition, the entire acreage of the 240-acre parcel is contained within an Historic Zone Overlay District.

The site has over 4,000 feet of frontage on US Route 40. Near the midpoint of that frontage two out-parcels totaling a little over 7 acres are zoned CR and developed with a sandwich shop and the Deer Park Plaza shopping center. The western boundary adjoins a CR-zoned parcel that contains a truck rental and vehicle storage business. Most of the northern parcel boundary is

¹ See: letter from Pamela J. Scott to David M. Culver, dated April 25, 2007. See also: New Castle County Recorder of Deeds, Instrument No. 20070418-0035612.

defined by the meander of Muddy Run. On the opposite side of this stream is the Pencader Corporate Center, which is zoned BP (Business Park). The eastern edge of the parcel backs up to the old crossroads settlement of Glasgow. This row of adjoining properties includes Friendship Baptist Church (S), three small residential parcels zoned NC10, and four small commercial parcels (CR) wrapping around the corner of the road intersection. The historic settlement, also known as the Aikens Tavern Historic District, is listed in the National Register of Historic Places and one of the properties, the Brooks House, is also located within a historic zone overlay district.

The surrounding development pattern is largely defined by the commercial frontage of the US 40 corridor and by the variety of residential development types located farther back. Across the highway from La Grange is an expanse of CR zoning containing Peoples Plaza shopping center, Kohl's department store, and a variety of small retail businesses and restaurants. Also directly across the highway is Springside Plaza (OR), a complex of seven office buildings on 41 acres. The surrounding residential communities exhibit a variety of housing types including apartments, townhouses, and single family dwellings. Zoning categories include NCpud, NCth, NC6.5, NC21, NC 40, and ST. Nearby community amenities and institutional uses include Glasgow Regional Park, Hodgson Vo-Tech School, State Police Troop 2 headquarters, and Glasgow Elementary School.

TECHNICAL ADVISORY AGENCY REVIEW

The following agencies participating on the Technical Advisory Committee (TAC) provided general comments and recommendations for best management practices:

DNREC, Wetlands and Subaqueous Lands Section
DNREC, Site Investigation and Restoration Branch (SIRB)
Delaware Department of Agriculture

The following agencies made requests or determinations regarding the project:

DNREC, Division of Fish and Wildlife noted that a revised bog turtle survey report is still under review and the need for further survey work is, as yet, unknown.

The Delaware Transit Corporation requests two bus stop shelters and accessible pathways to provide access to existing transit service.

The Department of Special Services has indicated that sewer capacity for the project is currently available.

With DelDOT's concurrence, the Department of Land Use granted a TIS (Traffic Impact Study) waiver because the Route 40 corridor has already been studied extensively and the applicant will contribute to transportation improvement projects in the vicinity. The concurrency requirements

in the Unified Development Code can be met with specific requirements that have already been outlined in the Department's review letter for the preliminary plan.

PLUS (Preliminary Land Use Service) review was conducted by the Office of State Planning Coordination and its comments were issued in a letter dated August 23, 2005. The eighteen page letter provided extensive commentary from seven agencies within State government. The primary issues related to the need to identify and preserve historic resources, the need to improve some street design and transportation issues, and the need to address a variety of environmental features including wetlands, riparian corridors, forested areas, water recharge areas, and identification of bog turtle habitat.

BACKGROUND & ANALYSIS

Up to the current time this property has been actively farmed. The applicant's proposal for development of the 240 acres includes 178.4 acres devoted to an open space planned residential community, 11.6 acres proposed for a shopping center, 1.74 acres to be transferred to the adjacent Friendship Baptist Church, and 48.8 acres to be set aside for development at a later date. The subject rezoning relates to the proposed shopping center parcel. Since the shopping center and the rezoning were submitted to the Department as an element of the total development project (App. 2005-1045-S), and since the land development plan and the rezoning application have been reviewed by the Department and presented at public hearings as one project, this recommendation report will also evaluate the rezoning in the context of the total project.

The applicant's design and the Department's review of the land development plan for La Grange have been a challenge due to the abundance of significant natural and historic resources on the property. Watercourses, riparian corridors, and wetlands traverse the site and there is substantial forest cover, as well. Because these natural resources have established protection levels in the County Code, there are parts of the site that are either partially restricted or off limits to development. A diverse array of historic resources are scattered across the parcel in varying concentrations. The property contains both prehistoric and historic archaeological remains, a dwelling built in 1815 with associated outbuildings and farm fields, a segment of a feeder canal designed by Benjamin Latrobe, and remnants of an 18th century road bed that was the original route to Elkton. Some trenches purported to be Revolutionary period earthworks associated with the Battle of Cooches Bridge have been investigated but the results are inconclusive. The dwelling complex and the adjacent farm field are listed in the National Register of Historic Places. In recognition of the array of important historic resources on this property, County Council approved the creation of a historic zoning overlay district in 1982 for 239 acres.

During the land development review process, protection of the identified natural resources has largely been achieved. The preliminary plan TAC report, dated March 8, 2007, identifies a few deficiencies related to the delineation of the riparian buffer areas, clarification of plan notes, and compliance with the drainage code. These minor issues will need to be addressed by the applicant in a revised preliminary plan.

Discussions regarding protection of the historic resources have been ongoing for the past two years. Several issues have been addressed, but a number of important issues remain unresolved. Because the parcel is zoned H (Historic), an overlay zoning district, the plan and the rezoning are subject to review by the Historic Review Board (HRB) in addition to the regular review processes. The purpose of the historic zone overlay is to plan for the long term preservation of historic properties “in a form that is as close to their historic use and character as is consistent with the economic realities of the neighborhoods and County.”² It is the HRB’s responsibility to review applications affecting historic districts to ensure that historic resources are retained, and to ensure that new construction and subdivision of lots in historic districts are compatible with the character of the historic district.³

It should be noted that the applicant initiated discussions with the Historic Review Board several months before submitting the land development plan to the Department in December 2005. One of the activities resulting from those discussions was a commitment on the part of the applicant to engage a consultant to conduct archeological evaluations of the property. The applicant was instructed to have archaeological investigations performed on the property because there were already three known prehistoric sites. In the opinion of the staff archaeologists at the State Historic Preservation Office (SHPO) and the opinion of an archaeologist serving on the HRB, that circumstance increased the probability that additional archaeological sites exist. The archeological research and excavations did reveal a number of prehistoric and historic artifact concentrations on the property. On the sections of the property currently proposed for development, the plan was revised to avoid disturbing important archeological sites. Some other sites were determined to have little historical value or to have been disturbed by plowing or by natural forces.

Forty-eight acres of the property are not currently proposed for development, but the applicant has indicated a development plan for this part of the site is forthcoming. On April 17, 2007, the applicant created a separate parcel for these 48 acres by recording an agricultural subdivision. No consensus has been reached with the applicant and the HRB regarding preservation of the historic resources on this 48-acre parcel.

The above-ground historic resources identified in the historic zoning report and the National Register of Historic Places nomination report include: the 1815 Dr. Samuel H. Black manor house and the associated agricultural outbuildings, the farm field surrounding the manor house, the remains of a feeder canal designed by Benjamin Latrobe, and some trenches thought to be Revolutionary War earthworks. In addition, the remnants of an old road bed from Elkton appear to remain in some of the wooded areas of the property. Members of the public have suggested that this road is important because it illustrates the British troops’ line of march in 1777.

² Section 40.15.000 of the New Castle County Code.

³ Sections 40.15.000.C and 40.15.000.E of the New Castle County Code.

The manor house is an excellent example of federal architecture, but it must be noted that much of the historic significance of this property also has to do with the role it played in improving the condition of agricultural production in Delaware and the region. Dr. Black conducted controlled agricultural experiments on these fields, kept records of his experiments and published the results. As one of the founding members of the New Castle County Agricultural Society his ideas had great influence and helped to establish Delaware as one of the most productive agricultural regions in the nation during the 19th century. The 1982 historic zoning report specifically describes these fields as historically important and worthy of preservation (attached).

The feeder canal was designed by Benjamin Latrobe, a nationally renowned architect and civil engineer. He is best known as the architect of the United States Capitol during the presidency of Thomas Jefferson, but he also designed many other important public buildings and public works projects including the Fairmount Waterworks in Philadelphia. He is acknowledged to be the first professional architect working in the United States.

The authenticity of the trenches as dating to the period of the Revolutionary War has not been established. Research presented by the applicant's consultant and evaluation conducted by the HRB still leaves this question unanswered.

The old road bed from Elkton exists in remnants often difficult to detect on the ground. There has been a difference of opinion between the applicant and the HRB over whether enough of it survives to merit preservation, but the HRB believes enough of it does exist to warrant preserving the alignment as part of a walking trail within the community open space.

These historic resources described above are the ones that have been under discussion by the HRB. Specifically, the prehistoric archeological sites, historic archeological sites, the Dr. Samuel Black house and outbuildings, the agricultural fields, and the segment of the feeder canal are described in the historic zoning report which states: "Because of the wealth of historic and prehistoric resources located on the Barczewski Farm, it is essential that the entire farm be designated as an historic zone." County Council approved the creation of the historic zone overlay district encompassing 239 acres.

The HRB's evaluation of the development plan has focused on identifying the most important historic resources and then determining which areas of the property should be preserved and which areas can be developed. From its initial review of the project the HRB has determined that the Dr. Samuel Black manor house, outbuildings, and farm field form the most historically important part of the property and warrant full preservation. The HRB has emphasized this position at each stage in the review process. The historic buffer determined by the HRB consists of the farm field surrounding the manor house complex and is generally defined by the tree line enclosing the field. This area corresponds to the 48 acre parcel the applicant has subdivided and proposes for future development. Because the purpose of an historic zone overlay district is to engage in long range planning for the protection of historic districts, the plans for the historic zone must be reviewed in their entirety.

The historic status of La Grange and the neighboring Aikens Tavern Historic District played a significant role in the development of the Glasgow area. When DelDOT was designing the new alignment for the upgrade of Route 896 it was required under federal regulations (Section 106 of the National Historic Preservation Act) to consider the effects of the highway project on these historic resources and to plan ways to avoid harming them. This is one of the reasons why the Route 896 bypass of the old intersection takes an eastern route. Given that a State agency was required to incorporate historic planning into a major highway project and that planning effort was successful, the County cannot now ignore the documented historic resources that spared La Grange from being divided by a highway.

Although private development projects are not subject to the federal regulations to which DelDOT was bound, the County historic zone overlay district sets out a similar purpose. Historic Zoning is not intended to absolutely prohibit development or new construction in historic zoning districts, but its purpose is to carefully consider how development should proceed in the context of the historic district. By withholding the development plan for a large section of this historic district, which also happens to be the most important part of the property, this development plan is premature. Planning for the future of this property in piecemeal fashion is contrary to the principles of comprehensive planning. If the County approves what is currently proposed, the potential to preserve the 48 acre parcel will be greatly reduced without a deed restriction for preservation. The Department is concerned about the long term preservation of the manor house and finding a viable use for it.

The HRB's review of the land development plan resulted in a list of ten recommendations regarding the preservation of the manor house complex and farm field, preservation and/or mitigation for archeological sites, preservation of the feeder canal and earthworks, and incorporating the remnants of the road bed into a walking trail.⁴ Four of the ten recommendations have been satisfied by the applicant; these are items relating to the archeological sites. The items relating to preservation of the manor house complex and farm field have not been addressed by the applicant.⁵ The HRB requested that the historic buffer include the entire 48 acre parcel containing the manor house complex, that a preservation plan for the manor house be prepared, and that a note be placed on the development plan stating that the buildings will be preserved and that the parcel will not be further subdivided. The motions passed by the HRB were based on the information in the National Register nomination, the Historic Zoning Overlay District report, its knowledge of Delaware history, reports of the current archaeological investigations, and discussions conducted during its public meetings.

A review of the HRB's meeting minutes reveals that the HRB discussed this project at seven meetings over a two year period from April 2005 to the present. From the earliest discussions the HRB made it clear that the 500 foot circle shown on the land development plan as the historic buffer for the manor house complex was not sufficient. On February 7, 2006, the HRB formalized its evaluation of the historic buffer area by voting to include the agricultural context

⁴ Historic Review Board, transcript of February 7, 2006 business meeting.

⁵ Report titled, "Staff Analysis for the Historic Review Board," dated April 3, 2007.

and archeological sites bounded by the tree line west of the manor house, and the north, east, and south parcel lines. At that meeting the HRB also established its list of ten recommendations noted above.

The Rezoning Application

The rezoning application requests a down zoning of 3.83 acres from CR to S and an upzoning of 11.68 acres from S to CR. The applicant stated this zoning change would enable them to preserve the feeder canal and to locate commercial development on a parcel that contains no important historic resources. It should be noted that this action would triple the amount of commercial acreage on the parcel. The plan associated with this rezoning illustrates a 54,400 square foot retail shopping center towards the rear of the site with a parking lot located in front. The retail space is divided among three buildings: a 35,200 square foot building extending across most of the parcel's width, and two 9,600 square foot buildings on either side. The three buildings are situated to create a U-shaped arrangement with parking in the middle. The proposed parcel for rezoning is bounded by a 100-year floodplain and mature forest buffer that create a physical limit to the size of the development.

In the preliminary plan TAC report, dated March 8, 2007, the Department has determined, pursuant to Section 40.04.110 F of the New Castle County Code, that it is appropriate for the commercial buildings to be constructed at the minimum fifteen (15) foot build-to line and to revise the plan accordingly.

The HRB issued a recommendation stating it has no objection to the downzoning, but it recommends against rezoning 11.68 acres from S to CR due the adverse impact on the surrounding historic district. The nearest significant feature in that district is the agricultural field containing the La Grange manor house and outbuildings. The HRB noted in its recommendation that if the rezoning is approved, it further recommends some design considerations (presented here in summary):

1. That the entire treeline between the rezoned area and the agricultural field to the immediate west of the La Grange Farm complex be preserved and enhanced with vegetative materials to provide an opacity of 1.0 in order to protect the viewshed of the manor house during all seasons of the year.
2. That the commercial area will have a village design compatible with the Aikens Tavern National Register Historic District to the east. Such a village design would break up the square footage into several small buildings with no more than two units to a building; the parking lot would be broken up into smaller landscaped sections and be set back from the road; the buildings would have different facades; the buildings would have pitched, not flat, roofs; the buildings would be no taller than one story; only downlighting would be permitted; and signage would be compatible with the historic character of the area.

Public Hearing – April 4, 2007

At the public hearing, the applicant presented the rezoning in the context of the entire development plan. Three members of the public objected to the development plan citing concerns with overdevelopment in the area, concerns with traffic, and burdens on the school district. Two people objected to the plan out of concern for the preservation of the historic resources.

In correspondence, the attorney for the adjacent owner of commercial property at 2787 Pulaski Highway (Domenic Scarfo et al), which adjoins the western property line of the La Grange property, objected to the down zoning citing incompatibility between CR and S zoning. Related concerns included an inability to interconnect the two parcels if they are zoned differently, and a desire to tie into the sewer line on the La Grange property.

Standards for Zoning Map Amendment - Section 40.31.410 of the New Castle County Code

In determining whether a zoning map amendment should be recommended or approved, all of the following factors shall be considered:

A. Consistency with the Comprehensive Development Plan and the purposes of this Chapter.

The 2002 Comprehensive Plan identifies this property as low density residential with substantial amounts of commercial and office zoning nearby. This is a growth area, but protection of natural resources and proper administration of the historic zone overlay district must also be incorporated into the project. The Comprehensive Plan identifies the preservation and enhancement of historic resources among its core goals and the plan's objectives include the preservation of the unique characteristics of historic landscapes, villages, and roads as the county continues to develop. On the proposed land development plan natural resources are protected, but some major issues relating to historic preservation are not yet resolved and should be before the preliminary plan is advanced and the zoning is considered by County Council.

B. Consistency with the character of the neighborhood.

While the rezoning to commercial may be appropriate in the context of existing commercial properties fronting on Route 40, it must be remembered that this parcel is located within an historic district. The design of the project does not adhere to the HRB's recommendations for implementing village design features that would be compatible with the Aikens Tavern Historic District.

C. Consistency with zoning and use of nearby properties.

This parcel is adjacent to, and across the highway from, existing commercial development. In this context it is consistent with zoning and use of nearby properties. However, it is also

adjacent to significant historic properties and this situation demands that the site design and the architectural design be compatible with the historic character of those properties.

D. Suitability of the property for the uses for which it has been proposed or restricted.

The size of the shopping center is constrained by a 100-year flood plain that borders the sides and rear of the parcel, preventing its expansion in the future. Some natural buffering exists along the floodplain in the form of mature forest, but it primarily consists of deciduous trees. Enhancement of this forest buffer with evergreens would provide greater screening for the adjacent historic property year round.

E. Effect on nearby properties.

The effects on adjacent properties can be mitigated by better site design and preservation of the manor house parcel. Both the Department and the Historic Review Board advocate a minimum build-to line for the retail structures that would bring the buildings closer to the highway and locate parking toward the rear of the site. In addition, the HRB recommends that a village design concept be employed for the shopping center to respect the historic character of the La Grange manor house and the Aiken's Tavern Historic District. Because the parcel is located in a historic zone overlay district, the applicant will be required to obtain the HRB's design approval before obtaining building permits (Section 40.31.280 of the New Castle County Code) and comply with the HRB conditions to preserve the 48 acre manor house parcel.

DEPARTMENT OF LAND USE RECOMMENDATION

The Department has considered the *Standards for Zoning Map Amendment* in Section 40.31.410, A through E, the proposed plan, the analysis and recommendations presented by the Historic Review Board, and comments received from agencies and the public. Based on this analysis the Department is of the opinion that the standards are not met by this proposal, but with some modification the standards could be met.

The Department of Land Use recommends **CONDITIONAL APPROVAL** of Ordinance 07-019, subject to the applicant submitting a revised preliminary plan satisfying the recommendations made to the Department by the Historic Review Board, listed below:

1. Define the required open space buffer around the La Grange manor house complex to include the entire surrounding farm field up to the tree line.
2. Record a deed restriction for the benefit of New Castle County stating the La Grange manor house and outbuildings are to be preserved and that the parcel may not be further subdivided.
3. Submit a preservation plan to the Department for the manor house and outbuildings, subject to approval by the Historic Review Board. The report shall address both the short

- term protection and securing of the buildings and a long range plan for using or adaptively reusing the buildings.
4. Integrate the remnants of the historic road bed into a walking trail as a linear park or greenway.
 5. If no further information comes to light as a result of additional research, place a note on the record plan stating the feeder canal and earthworks are to remain undisturbed with additional open space buffering.
 6. Preserve the entire tree line currently existing between the rezoned 11.68 acre commercial parcel and the agricultural field located west of the La Grange manor house complex and enhance it with vegetative materials providing an opacity of 1.0 in order to protect the viewshed of the manor house during all seasons of the year.
 7. Incorporate village design elements into the commercial parcel to be compatible with the Aikens Tavern Historic District. Such a design will include the following elements:
 - a. The retail structures will be broken up so that no more than two units in any one building will have shared walls, to avoid the appearance of a strip mall.
 - b. Parking shall be arranged away from Route 40 and broken into smaller areas separated by landscaping such as berming and plantings to create a park-like feeling.
 - c. Buildings shall have differing facades.
 - d. Buildings shall have pitched roofs only (no flat roofs).
 - e. Buildings shall be no taller than one story.
 - f. Downlighting only will be permitted.
 - g. Signage shall be compatible with the historic character of the area.

PLANNING BOARD RECOMMENDATION

At a special business meeting held on May 1, 2007, the Planning Board considered the recommendation offered by the Department of Land Use.

The Planning Board agreed with the Department of Land Use analysis and reasoning and on a motion by Mr. Singer, seconded by Ms. MacArtor, voted to recommend **CONDITIONAL APPROVAL** of Ordinance 07-019 with all of the conditions outlined above by the Department. The motion was adopted by a vote of **5-3-1** (YES: *MacArtor, McDowell, McGlinchey, Singer, Walker*; NO: *Anderson, Weinberg, Wilson*; ABSENT: *Maloney*).

In discussion preceding the vote the following comments were offered:

Mr. McDowell asked about Condition No. 3 which requests a plan for using or adaptively reusing the historic buildings. He inquired about the agricultural outbuildings and wanted to know what kind of buildings they are before deciding whether they could be reused for anything else. Mr. Baker explained that decisions regarding reuse of those buildings lie with the Historic Review Board since it controls permitting activity in historic zoning districts.

Mr. Weinberg read a prepared statement (attached) in which he took a strong stand against development of this property due to its historic importance. He explained that he would not support this rezoning because, in his opinion, the proposal is contrary to the policies in the Comprehensive Plan and the regulations in the UDC.

Several board members asked if the Board should be voting on issues that are not specifically a part of the rezoning application. Mr. Starr advised the Board to concern itself only with the rezoning application that was before it for consideration.

Mr. Singer noted that the overall disposition of this parcel has numerous dimensions, only a few of which were on the Planning Board's plate. His perception was that the Board needed to focus on two points in particular:

1. The parcel subject to the rezoning in particular and in relation to the larger parcel as a whole, with some portions residential, some commercial, and some excluded at Applicant's initiative that is beyond a challenge.
2. Whether or not New Castle County is empowered to respond to a rezoning application for parcels therein identified by imposing a requirement on a parcel not included in the rezoning application.

On the first of these points, Mr. Singer noted that the viewpoint expressed by Mr. Weinberg is at one extreme of the spectrum that the HRB regarded as tolerable. The Planning Board needs no free-standing justification for taking a position anywhere in the range between what Mr. Weinberg advocated and what the HRB regarded as tolerable, even if only begrudgingly.

Mr. Singer inquired about a report titled, "Staff Analysis for the Historic Review Board," distributed earlier, encompassing the HRB's April 3, 2007 motion which did not include by reference a ten point consensus that the HRB had expressed on February 7, 2006, and also that ten point consensus. The 2007 motion addresses (mostly) one of the small commercial parcels which are to be rezoned, while the 2006 consensus is more broadly focused. Mr. Singer asked if the design guidelines for the shopping center supersede the HRB's earlier list of recommendations for the entire property. Mr. Baker explained that both sets of recommendations were intended by the HRB to stand.

A lengthy discussion ensued among the Planning Board members, their counsel Kristopher Starr, and Mr. Baker concerning the relationship of the rezoning application to the total land development project. (The rezoning pertains to two proposed parcels totaling 15.5 acres while the remaining lands total 224.5 acres.) Some Board members expressed a level of discomfort with the knowledge that many items requested by the Historic Review Board over a two year period have not been addressed by the applicant.

Mr. Baker explained that the Department's position to condition the rezoning on the preservation of the historic resources elsewhere on the 240 acre project area, is based on the Department's responsibility to evaluate applications for their effect on the entire 240 acre historic zoning district (Section 40.15.000 of the New Castle County Code) and the requirement that the Department consider the effects of a rezoning on nearby properties (Section 40.31.410.E of the New Castle County Code). Although the rezoning only deals with a small portion of the total historic district, it impacts the remainder of the district and affects future plans for the district. Mr. Baker said the Department supports the Historic Review Board's position on the need to preserve the proposed 48 acre parcel containing the La Grange manor house and historic resources elsewhere in the project area, and that design standards should be applied to the proposed shopping center to ensure compatibility with the character of the Aikens Tavern Historic District.

The recent agricultural subdivision creating a separate parcel for the 48 acres surrounding the La Grange manor house was also discussed. Some board members wondered if that action would prevent any consideration of that parcel in its recommendation on the rezoning application. Mr. Baker explained that creating the parcel does not separate it from the historic district and the Standards for Zoning Map Amendment in Section 40.31.410.E of the New Castle County Code require the Department to consider the effects of a rezoning on nearby properties. Ms. Anderson said what she found confusing was the applicant's statement that the 48 acres are no longer a part of the land development application. She felt this statement negated the applicant's proposal.

Mr. Singer returned to points raised earlier, that the REZONING application demands a Planning Board recommendation one way or the other, conditioned if the Board so chooses. That application applies only to the commercial parcels. The Board needn't comment on the preliminary plan for the rest of the parcel, before it only as hosts for the TAC review. Further, the Planning Board needn't agree with the HRB's judgments but is constrained to recognize the HRB's authority.

On the second of the above-cited focal points, the Planning Board had been advised that New Castle County's legal authorities, obligated to defend the requirements (thus far sparsely defined) that Land Use seeks to impose on a parcel not included in the rezoning application, are confident that the requirements are defensible. The Planning Board need only recognize that both before and after the requirements for the parcel not included in the rezoning are fleshed out and argued, the requirements *for the parcels proposed to be rezoned* will continue to apply once the rezoning is enacted.

COMPREHENSIVE DEVELOPMENT PLAN

The New Castle County Comprehensive Development Plan map classifies this property as “low density residential.” This rezoning, if approved, would require amendment of the plan to “commercial.”

STATUTORY GUIDELINES

In the phraseology of 9 Delaware Code Section 2603 (a), the Department of Land Use finds that this rezoning as proposed **would not** promote the convenience, order, and welfare of the present and future inhabitants of this state.

NOTE: The applicant is advised that pursuant to Section 40.31.113 F of Chapter 40 of the New Castle County Code (UDC), the preliminary plan associated with this rezoning cannot proceed to County Council until it addresses all the issues identified in the TAC Report and TAC report letter dated March 8, 2007, and the conditions noted in this recommendation report. The preliminary plan must be deemed “approvable” by the Department of Land Use prior to County Council action.

NOTE: It is the applicant’s responsibility to coordinate with the Clerk of County Council and the sponsor of the ordinance as to the date and time of the County Council hearing on this application.

[SIGNED 05/09/2007]

Victor Singer, Chair
Planning Board

[SIGNED 05/10/2007]

Charles Baker, General Manager
Department of Land Use

Attachments: Historic Zoning Report (1982)
Staff Analysis for the Historic Review Board (04/03/2007)
Remarks on Application 05-1045-S/Z – La Grange (Mark Weinberg 04/17/2007)
Email from Arthur Wilson, Planning Board member (05/02/2007)