



**COUNTY COMMISSIONERS HEARING ROOM
400 HIGH STREET
CHESTERTOWN, MARYLAND**

AGENDA

November 2, 2023
1:30 p.m.

Members of the public are welcome to attend meetings in person or via conference call.

Public participation and audio-only call-in number:

1. Dial **1-872-239-8359**
2. Enter Conference ID: **126 592 916#**

Members of the public are asked to mute their phones/devices, until the Commission Chair opens the floor for comment.

MINUTES

October 5, 2023

APPLICATIONS FOR REVIEW

23-53 Humane Society of Kent County Inc./E. Michael Granger – Zoning Text Amendment Rec to BOCC
Adding the adaptive reuse of existing structures as a special exception in the
Agricultural Zoning District (AZD) on parcels under 20 acres

23-57 The Wharf at Handy Point Inc. – Growth Allocation..... Rec to BOCC
Map 19, Parcel 96 and 102 near Worton – Third Election District – Marine (M)

GENERAL DISCUSSION

- Proposed Draft Land Use Ordinance Review – Articles I, II, III, and IV (legal)

STAFF REPORTS

ADJOURN

Meetings are conducted in Open Session unless otherwise indicated. All or part of the Planning Commission meetings can be held in closed session under the authority of the MD Open Meetings Law by vote of the members. Breaks are at the call of the Chairman. Meetings are subject to audio and video recordings.

All applicants will be given the time necessary to assure full public participation and a fair and complete review of all projects. Agenda items are subject to change due to cancellations.

MINUTES

October 5, 2023

1:30 p.m.

An official recording of the Kent County Planning Commission meeting is available for viewing in its entirety on the County's YouTube channel: Kent County Government (<https://www.youtube.com/watch?v=rc3FzppUGfQ>.)

The Kent County Planning Commission met in regular session on Thursday, October 5, 2023, at 1:30 p.m. in the County Commissioners' Hearing Room at 400 High Street, Chestertown, Maryland. The following members were in attendance: Chair F. Joseph Hickman, Vice Chair Paul Ruge, James Saunders, Ray Strong, Paula Reeder, and William Crowding. Cynthia L. McCann, Esquire, Planning Commission Attorney, was in attendance. Staff in attendance were William Mackey, AICP, Director; Carla Gerber, AICP, Deputy Director; Mark Carper, LEED Green Associate, Associate Planner; and Campbell Safian, Planning Specialist.

Chair Hickman called the meeting to order at 1:30 p.m.

MINUTES

Mr. Ruge moved to approve the minutes of September 7, 2023, as presented. Mr. Strong seconded the motion. The motion passed unanimously 6-0.

APPLICATIONS FOR REVIEW

*23-51 Minary's Dream Alliance Inc. – Major Site Plan (Concept)
9155 American Legion Drive – Fourth Election District – Critical Area Residential (CAR)*

Minary's Dream Alliance, Inc. (MDA) is requesting concept review of a proposed site plan that will function as MDA's master plan for projects on the site and would be implemented over the next 10 years as funding allows. If required, building permits will be issued for individual projects.

The proposed site improvements include the creation of a "Sacred Place" sitting area, labyrinth, living shoreline, reconfigured garden, wooden platform for outdoor classroom or performance, and reconfigured entrance/parking area. The site plan in this case must be considered with respect to Judge Murphy's order concerning the legal non-conforming use of the property and as to permitted uses currently allowed within the Critical Area Residential district. The 8.12-acre property is zoned "CAR" Critical Area Residential and is located on American Legion Drive adjacent to Morgan Creek. There are residential uses on either side along the creek and an agricultural field across the road. The property is currently improved with an existing main building, plus accessory buildings used as an office and garage. There is also a camping and picnic area and dock that runs parallel to the shoreline.

The Planning Commission heard from Miles Barnard, ASLA RLA, with South Fork Studio Landscape Architecture, Inc., and G. Mitchell Mowell, Esquire, with the Law Offices of Wadkovsky & Mowell on behalf of Minary's Dream Alliance, Inc.

Mr. Mowell introduced case number C-14-CV-21-44 of the Circuit Court for Kent County, Maryland.

Adopted on [version for review]

Mr. Barnard presented the proposed site plan and site improvements.

Discussion ensued regarding Judge Murphy's ruling that "the implantation of a program that includes any services involved in substance abuse treatment, or the use of the property for sporting events, particularly where that may involve the construction of new facilities for that purpose, or the creation of a new point of access to the Chester River or facilities at that location, or any similar development or use would be an impermissible transmogrification of, and inconsistent with, the nature and character of the established and legal non-conforming use of the property."

Mr. Crowding queried whether a reconfigured entrance would be considered as the creation of a new point of access to the location.

Ms. Reeder asked for clarification whether existing plantings onsite would be removed to accommodate the proposed site plan.

Mr. Barnard stated that the intent is not to remove plantings. Plantings would be relocated, when applicable, and adjustments to the site plan could be made in order to prevent the removal of plantings.

Mr. Saunders spoke in favor of the proposed site improvements. Mr. Saunders expressed that the proposals would improve the property.

Ms. Reeder spoke in agreement with Mr. Saunders.

The following members of the public provided testimony to the Minary's Dream Alliance, Inc., Major Site Plan: Mary McGinnis, Annie Richards, Eric Colliflower, and Nathan Shroyer.

When asked, Ms. McCann stated that the Planning Commission is not charged with making a determination on the non-confirming use of the property. The Zoning Administrator shall determine whether a use is permitted by the Zoning Ordinance. The Planning Commission does not determine uses.

Chair Hickman expressed support for the proposed living shoreline and noted that the proposed site plan will be beneficial to the environment.

Ms. Reeder spoke in favor of the proposed site plan and the addition of the meadows.

Mr. Crowding expressed interest in a condition to limit the period of time that the camping area may be used by a guest, such as two or three nights.

Mr. Ruge and Mr. Strong spoke in favor of a stipulation on the camping area.

*23-41 Lawrence and Donna Miller – Variance – Buffer
10129 Cove Road – Sixth Election District – Critical Area Residential (CAR)*

Lawrence and Donna Miller are requesting a variance to construct a 468 sq. ft. addition to an existing single-family dwelling that is partially located within the Critical Area 100-foot buffer. Of the proposed 468 sq. ft.

addition, 206 sq. ft. will be in the buffer. The net increase in permanent disturbance in the buffer will be 186 sq. ft.

Mr. Carper presented the staff report, recommending approval with conditions.

The Planning Commission heard from Lance Young, Esquire, with MacLeod Law Group, LLC; Buck Nickerson, LS, owner of Extreme Measures, LLC; and Lawrence Miller.

Mr. Young and Mr. Miller presented the case as to the need for the buffer variance. The purpose of the proposed addition is to accommodate the relocation of the laundry facilities from the basement; and provide room for therapy equipment, fitness equipment, and a home-office.

Ms. Reeder moved to send a favorable recommendation to the Board of Appeals finding that granting the variance would be in harmony with the general spirit and intent of the Critical Area Law, the Comprehensive Plan, and the Kent County Zoning Ordinance. The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat. Denial of the application would produce an unwarranted hardship that is not shared by other properties in the same zoning district and the same vicinity. Several neighbors have spoken in favor of granting the variance. The granting of the variance will not be a substantial detriment to adjacent property. The character of the district will not change with the granting of the variance. The recommendation is made with the condition that the applicant receive approval of the buffer management plan. The variance will lapse after the expiration of one year if no substantial construction in accordance with the plans herein presented occurs.

Mr. Strong seconded the motion, and the motion passed unanimously 6-0.

GENERAL DISCUSSION

Rock Hall Comprehensive Plan

Mr. Safian presented the staff report and noted that the Plan seeks to establish conditions more favorable to development and the production of new houses. The Town of Rock Hall Planning Commission will review the proposed Comprehensive Plan at its meeting on Wednesday October 11, 2023.

Mr. Crowding expressed concerns regarding the proposed reduction of land zoned Maritime Water Dependent. Additionally, Mr. Crowding queried whether the proposed Rock Hall municipal growth area aligns with the Kent County Comprehensive Water and Sewage Plan.

Mr. Ruge questioned the feasibility of septic systems in the proposed municipal growth area.

Ms. Reeder requested that the proposed Comprehensive Plan address services and housing for senior citizens.

Millington Draft PUD Process

Mr. Mackey presented the staff report and introduced the Draft Joint Development Review and Approval Process. The process would enable the Kent County Planning Commission and the Town of Millington Planning Commission to have input on projects overseen by the County and eventually annexed into the Town.

Chair Hickman, Mr. Crowding, and Mr. Saunders spoke in favor of a joint review and approval process.

Ms. Christensen-Lewis provided testimony to the Millington Draft PUD Process.

Proposed Draft Land Use Ordinance Review – Articles V, VI, VII

The Planning Commission reviewed Article V “Zoning Regulations” of the Proposed Draft Land Use Ordinance for Review.

Mr. Mackey noted the inclusion of Electronic Message Center (EMC) signs in the proposed Draft Land Use Ordinance. EMC signs will be permitted at gas stations, quasi-public/institutions, and fire companies. Additionally, the Draft Land Use Ordinance proposes that the maximum area of agricultural signs be increased from 16 sq. ft. to 32 sq. ft.

Discussion ensued regarding Article V Section 3 “Signs.”

Mr. Ruge expressed concerns regarding ground-mounted and monument-type signs that are located in close proximity to an intersection of roads.

Chair Hickman inquired about the setback requirements under Article V Section 4.1.6. Chair Hickman questioned whether setbacks shall be measured from the fence line rather than the outermost edge of the nearest solar panel structure.

Discussion ensued regarding Article VI “Environmental Regulations.”

At the November 2 Planning Commission meeting, members will discuss Article I “Enactment”, Article IV “Processes”, and Article VII “Definitions.”

STAFF REPORTS

ADJOURN

Mr. Crowding moved to adjourn the meeting. Mr. Saunders seconded. The meeting adjourned at approximately 4:48 pm.

Francis J. Hickman, Chair

/s/ Campbell Safian
Campbell Safian, Planning Specialist



To: Kent County Planning Commission
From: Bill Mackey, AICP, Director
Meeting: November 2, 2023
Subject: Michael Granger
Zoning Text Amendment – to allow for a new use, “Adaptive reuse of existing structures in AZD, located on parcels under 20 acres,” which is being forwarded from the DRAFT LUO

Executive Summary

Request by Applicant

Michael Granger is requesting that proposed language in the *DRAFT Land Use Ordinance for Review* be brought forward to add “Adaptive reuse of existing structures in AZD, located on parcels under 20 acres.”

Public Process

Per Article XII, Section 6 of the Kent County *Land Use Ordinance* the Planning Commission shall review a proposed amendment, supplement, or change to the *Land Use Ordinance* and make recommendations to the County Commissioners.

Additionally, zoning text amendments that affect agriculture, and specifically those that are related to the Agricultural Zoning District (AZD), are also reviewed by the Kent County Agriculture Advisory Commission. That review has occurred, and a letter addressed to the County Commissioners is attached for reference.

In discussion with the AAC, it was pointed out that the proposed provision in the DRAFT LUO (from which this zoning text amendment is drawn in its entirety) includes an unnecessary provision. It is stricken below.

Adaptive reuse of existing structures in AZD, located on parcels under 20 acres.

- (A) The *site* will have access to a public road adequate for the traffic generated;
- (B) The proposed use will not generate traffic of a type or amount inappropriate for access *roads* and the surrounding area;
- (C) The use does not require road improvements detrimental to the character of the area;
- (D) ~~The number of dwellings will not exceed the density permitted in the district in which the structure is located;~~
- (E) The proposed use does not create an unacceptable impact by way of noise, odor, noxious materials, or other nuisances; and
- (F) Landscaping is in keeping with the character of the *building or location*.
- (G) This may be reviewed via an administrative special exception process.

Summary of Staff Report

The proposed amendment would add a new use to the existing Land Use Ordinance in advance of the new LUO.

The Kent County 2018 Comprehensive Plan recognizes the importance of providing for more diversity in the size, number, and types of businesses by promoting the development of small, locally owned businesses, as well as the ongoing maintenance and reuse of existing structures to eliminate physical blight in unincorporated Kent County.

Staff Recommendation

Staff recommend sending a favorable recommendation to the Kent County Commissioners as amended above.

PRELIMINARY STAFF REPORT

TO: Kent County Planning Commission
SUBJECT: Zoning Text Amendment – to allow for a new use, “Adaptive reuse of existing structures in AZD, located on parcels under 20 acres,” which is being forwarded from the DRAFT LUO
DATE: November 2, 2023

DESCRIPTION OF PROPOSAL

Michale Granger, the purchaser of the site of the former Animal Shelter, has submitted an application to allow for a new use, “Adaptive reuse of existing structures in AZD, located on parcels under 20 acres,” which is being forwarded from the *DRAFT Land Use Ordinance for Review*. Staff recommended this approach to the applicant.

To amend Article V. District Regulations, Sections 1. Agricultural Zoning District (AZD), §1.2 Permitted Principal Uses and Structures, by adding a new # 22, which would read as follows:

Adaptive reuse of existing structures in AZD, located on parcels under 20 acres.

- (A) The *site* will have access to a public road adequate for the traffic generated;
- (B) The proposed use will not generate traffic of a type or amount inappropriate for access *roads* and the surrounding area;
- (C) The use does not require road improvements detrimental to the character of the area;
~~The number of dwellings will not exceed the density permitted in the district in which the structure is located;~~
- (D) The proposed use does not create an unacceptable impact by way of noise, odor, noxious materials, or other nuisances; and
- (E) Landscaping is in keeping with the character of the *building or location*.
- (F) This may be reviewed via an administrative special exception process.

APPLICABLE LAW

Per Article XII. Administrative Procedures, Section 6. Amendments (p. 487), the *Kent County Land Use Ordinance* establishes the standards for the review and approval of a zoning text amendment as follows:

1. The County Commissioners may amend, supplement, or change the boundaries of the districts or the regulations of this Ordinance. Any amendment may be initiated by a resolution of the County Commissioners, the motion of the Planning Commission, or petition of any property owner using forms specified by the Planning Commission.
2. The application for an amendment to the text of the Ordinance shall, at a minimum, state in particular the article section, and paragraph sought to be amended. The application shall contain the language of the proposed amendment and shall recite the reasons for the proposed change in text.

...

4. Before taking any action on any proposed amendment, supplement, or change, the County Commissioners shall submit the proposal to the Planning Commission for review and recommendation. The Planning Commission may hold a hearing on any proposed amendment, supplement, or change before submitting its recommendation to the County Commissioners. The Planning Commission may request any pertinent data and information that it deems necessary. In its recommendation, the Planning Commission shall address:

- a) The public need for the proposed amendment; and
- b) The extent to which the proposed amendment complies with or deviates from the Comprehensive Plan and the Critical Area Law.
- c) When reviewing an amendment to the zoning map, the Planning Commission shall address the suitability of the property in question for the uses permitted under the proposed zoning. The Planning Commission shall not recommend the adoption of the amendment unless it finds that the adoption of the amendment is in the public interest and not solely in the interest of the applicant. Failure of the Planning Commission to report to the County Commissioners within 60 days after its first meeting after the proposal was referred to them, shall be deemed approval.

COMPREHENSIVE PLAN

The proposed text amendment is consistent with multiple goals and strategies within the Kent County 2018 Comprehensive Plan. A selection is provided below related to promoting and expanding business opportunities.

- Expand and provide more diversity in the size, number, and type of businesses – promote development of small locally owned businesses (p. 10).
- Investigate techniques to encourage the maintenance and reuse of existing structures to eliminate physical blight (p. 27).

STAFF COMMENTS

The Planning Commission considers public need for an amendment and its consistency with the Comprehensive Plan and Land Use Ordinance. A suggested public need for this amendment would be to encourage the expansion and promotion of small businesses throughout Kent County and the maintenance and reuse of existing structures.

STAFF RECOMMENDATION

Staff recommend sending a favorable recommendation to the Kent County Commissioners as amended above.





Agriculture Advisory Commission
Department of Planning, Housing, and Zoning

September 6, 2023

The Honorable Ronald H. Fithian, President
Kent County Board of County Commissioners
400 High Street
Chestertown MD 21620

RE: Zoning Text Amendment regarding new use: Adaptive Re-use in AZD

Dear President Fithian:

At its meeting on September 6, 2023, the Agriculture Advisory Commission reviewed an application for a zoning text amendment to amend the Kent County Land Use Ordinance to add a new special exception for an adaptive re-use in the Agricultural Zoning District. This use is currently in the *Proposed DRAFT Land Use Ordinance for Review*.

Following discussion, Agriculture Advisory Commission recommended for approval of the new use as proposed.

If you have any questions, kindly contact a team member within the Department of Planning, Housing, and Zoning.

Sincerely,

Jennifer Debnam

Jennifer Debnam, Chair

c: Shelley L. Heller, County Administrator

**APPLICATION FOR TEXT AMENDMENT TO THE
KENT COUNTY LAND USE ORDINANCE
KENT COUNTY, MARYLAND**

Kent County Department of Planning, Housing and Zoning

Kent County Government Center
400 High Street • Chestertown, MD 21620
410-778-7423 (phone) • 410-810-2932 (fax)

Pursuant to Article XII, "Administrative Procedures" Section 6, "Amendments", of the Kent County Land Use Ordinance, I/We Edward Michael Granger

Applicant's Name

of 10720 Augustine Herman Highway, Chestertown, MD 21620

240-538-8468

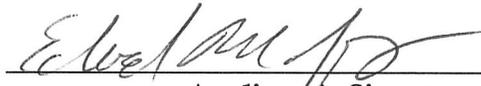
Address

Telephone Number

hereby petition the Kent County Commissioners to amend the Land Use Ordinance of Kent County, Maryland, as follows: Amend Article V, District Regulations, Section 1 Agricultural Zoning District and Article VII Special Exceptions to add adaptive reuse of existing structures in AZD, parcels under 20 Acres. See attached.

The purpose of the proposed amendment is to permit: _____

Home Improvement business to operate out of 10720 Augustine Herman Highway, Chestertown, MD 21620



Applicant's Signature

September 13, 2023

Date

Please Note: The application for an amendment to the text of this Ordinance shall, at a minimum state in particular, the Article, Section, and paragraph sought to be amended. The application shall contain the language of the proposed amendment.

Instructions: The application shall be accompanied by \$500.00 filing fee, payable to the County Commissioners of Kent County.

For Office Use Only:

File Number _____
Date Filed _____
Date Referred to Planning Commission _____
Date Recommend. Rec'd from Plan. Comm. _____
County Comm. Public Hearing Date _____
County Commissioners Action _____
Date of Action _____
Property Posted _____

Adaptive reuse of existing structures in AZD, located on parcels under 20 acres.

- (A) The *site* will have access to a public road adequate for the traffic generated;
- (B) The proposed use will not generate traffic of a type or amount inappropriate for access *roads* and the surrounding area;
- (C) The use does not require road improvements detrimental to the character of the area;
- (D) The number of *dwellings* will not exceed the *density* permitted in the district in which the *structure* is located;
- (E) The proposed use does not create an unacceptable impact by way of noise, odor, noxious materials or other nuisances; and
- (F) Landscaping is in keeping with the character of the *building or location*.
- (G) This may be reviewed via an administrative special exception process.



To: Kent County Planning Commission
From: Carla Gerber, AICP, Deputy Director and Bill Mackey, AICP, Director
Meeting: November 2, 2023
Subject: Wharf at Handy's Point, Inc. (WHPI) – Growth Allocation Application

Executive Summary

Request by the Applicant

The Wharf at Handy's Point, Inc. (WHPI) is requesting growth allocation for the remainder of the marina parcel, which was determined to be incorrectly mapped via ministerial error at the prior comprehensive rezoning in 2002.

Public Process

Per the Kent County Growth Allocation Policy, the Planning Commission shall review and make recommendations to the County Commissioners on the granting of growth allocation.

Summary of the Staff Report

In July, the applicant requested a determination by the Kent County Commissioners related to a ministerial error in 2002 regarding the drafting of the zoning map. It was determined that the entirety of Parcel 102 was intended to be zoned Marine. The granting of growth allocation by the Kent County Commissioners and approval by the Critical Area Commission is required to make the zoning correction effective. Upon approval, the applicant will move forward with installation of a new septic system and site plan review for new out-of-water boat storage.

Note: Staff are working with applicant's representatives to confirm the exact size of the parcel in 2002. Over time, the property has increased in size by consolidations with other, adjacent parcels. The property today is not the same size as it existed legally in 2002. The accurate area of record in 2002 for Map 19, Parcel 102 will be confirmed.

Staff Recommendation

Staff recommends forwarding a favorable recommendation to the Kent County Commissioners to grant a potential maximum of 52 acres of growth allocation to allow designation of Map 19, Parcel 102 as an Intense Development Area (IDA). The Planning Commission's recommendation would address the public need for the proposal and the extent to which the proposal complies with or deviates from the Comprehensive Plan and Critical Area Law.

PRELIMINARY STAFF REPORT

TO: Kent County Planning Commission
SUBJECT: Wharf at Handy’s Point, Inc. - Growth Allocation Application
DATE: October 25, 2023

DESCRIPTION OF PROPOSAL

In July, the applicant requested a determination by the Kent County Commissioners related to a ministerial error in 2002 regarding the drafting of the zoning map. It was determined that the entirety of Parcel 102 was intended to be zoned Marine. The granting of growth allocation by the Kent County Commissioners and approval by the Critical Area Commission is required to make the zoning correction effective. Upon approval, the applicant will move forward with installation of a new septic system and site plan review for new out-of-water boat storage.

The Wharf at Handy’s Point Marina, 23200 Green Point Road, is located in the Marine zoned portion of the property. The Land Use Ordinance identifies the Marine district as an Intense Development Area (IDA) and the Resource Conservation District as a Resource Conservation Area (RCA) of the Chesapeake Bay Critical Area. In order for the zoning correction to become effective, an application for growth allocation must be approved by the County, which then must be forwarded for review and approval by the Critical Area Commission. The change in designation from an RCA to an IDA will require twice the number of acres being redesignated, as the allocated area must go from an RCA to a Limited Development Area (LDA) to an IDA. Based on current surveys of Parcel 102, there are 10.611 acres zoned Marine and 25.679 acres zoned RCD. Therefore, 52 acres of growth allocation is the maximum amount that would be needed since the area in 2002 appears to have been less than the area today.

HISTORY

When the marina was built in 1987, approximately 4.7 acres of the almost 7.985-acre parcel were zoned Limited Marine. In 2002, the owners requested a rezoning of a 29.587-acre parcel during the last comprehensive rezoning. The maps were drawn to expand the Marine zoned area to the current 10.611 acres. Multiple lot line adjustments have been approved over the years. On a recent plat that was recorded in 2002, the area is shown as 36.290 acres.

GROWTH ALLOCATION

In 1985, Kent County had 1,399.41 acres of growth allocation available. To date, approximately 85.75 acres of growth allocation have been granted to the Towns, and 156.58 acres were used for marinas and other business uses in conjunction with the adoption of the 2002 Land Use Ordinance. Leaving Kent County with 1,193.08 acres of Growth Allocation remaining. This request would require a maximum of 52 acres. Upon clarification, an area to the third decimal point (thousandths of an acre) would be utilized in the County’s request for growth allocation to the Critical Area Commission by the Kent County Commissioners, if the Commissioners approve this application.

RELAVENT ISSUES

- I. GROWTH ALLOCATION CRITERIA
 - A. *Comprehensive Plan:* Work cooperatively with Federal, State, and non-profit organizations to achieve to the habitat goals set forth in the Chesapeake Bay Critical Area and the current Chesapeake Bay agreement.
 - B. *Applicable Law:* Article III, Section 1 of the Kent County Land Use Ordinance establishes districts within the County. The Marine district is listed within the Intense Development Area of the Critical Areas.

Article II, Section 2 of the Kent County Growth Allocation Policy establishes standards to govern growth allocation applications in the County. Growth allocation may be granted in the unincorporated area of Kent County only for the development of desirable employers or quality amenities as identified in the

Kent County Comprehensive Plan. These projects must have a positive impact on the County's economy and make a positive net fiscal contribution to the County's budget.

C. *Staff Comments:*

- The Comprehensive Plan supports the improvement and expansion of facilities, services and activities that support natural resource-based economic development. The rezoning of the remainder of Parcel 102, as it existed in 2002, will allow the marina to update and modernize facilities and install a new septic system to replace the existing failing systems.
- The new septic system will increase the distance between the shoreline and the drain field which will reduce potential negative impacts to water quality.
- The new septic system will utilize BAT (best available technology).
- At this time, the applicant is not proposing mitigation over and above what would be required to mitigate potential negative effects caused by higher intensity development than normally allowed.
- The applicant submitted a letter from the Maryland Department of Natural Resources, Wildlife and Heritage Services that indicates there are no official State or Federal records for listed plant or animal species within the area.
- This application is for the expansion of an existing IDA and is related to an existing marine use. The area of expansion is potentially a maximum of 25.679 acres, which will be clarified prior to finalization.
- The applicant has outlined additional findings in *Supplement and Narrative to Application for Growth Allocation of The Wharf at Handy's Point, Inc.*, as to how this project is consistent with the goals and intent of the Kent County Comprehensive Plan, Land Use Ordinance, and the Critical Area Program.

II. APPLICATION PROCEDURE IN THE UNINCORPORATED TERRITORY OF KENT

A. *Applicable Law:* Article III of the Kent County Growth Allocation Policy addresses the application procedure and application requirements in the unincorporated territory of Kent County.

B. *Staff Comments:*

- The Comprehensive Plan has a goal to maintain and strengthen natural resources and working lands-based industries and a strategy to promote Kent County as a boating center.
- There is a public need to support accessibility to the water by residents and tourists. In addition, to a new septic system, a portion of the expanded Marine zoned land will be used for out-of-water boat storage, which will require a separate site plan review. The marina currently allows trailer parking for a small fee by users of the Green Point Public Landing. An expanded boat storage area may allow additional use of this landing.
- The proposal is consistent with Critical Area Law.
- The applicant's *Supplement and Narrative to Application for Growth Allocation of The Wharf at Handy's Point, Inc.* outlines in detail how the request complies with the application requirements of the Growth Allocation Policy and the applicable standards for submittals to the Critical Area Commission for the Coastal and Chesapeake Bays as found in Natural Resources Article 8-J 808.1(c) and COMAR 27.01.02.06 through .06-4.

STAFF RECOMMENDATION

Staff recommends forwarding a favorable recommendation to the Kent County Commissioners to grant a potential maximum of 52 acres of growth allocation to allow designation of Map 19, Parcel 102 as an Intense Development Area (IDA). The Planning Commission's recommendation would address the public need for the proposal and the extent to which the proposal complies with or deviates from the Comprehensive Plan and Critical Area Law.

APPLICATION FOR GROWTH ALLOCATION

Kent County Department of Planning, Housing, and Zoning

Kent County Government Center
400 High Street • Chestertown, MD 21620
410-778-7423 (phone) • 410-810-2932 (fax)

**IN THE MATTER OF THE APPLICATION OF:
(Name, Address and Telephone Number of Applicant)**

The Wharf at Handy's Point, Inc.
23153 Green Point Rd., Worton, MD 21678
PH: 410-778-4363 Email: cmaier@greepointfarms.com

For Office Use Only:

Case Number: _____
Date Filed: _____
Filed by: _____
Applicant: _____
Date of Hearing: _____
Parties Notified: _____
Notice in Paper: _____
Property Posted: _____

TO THE DEPARTMENT OF PLANNING, HOUSING AND ZONING:

In accordance with Article _____ Section _____ of the Kent County Land Use Ordinance, as amended, request is hereby made for Growth Allocation.

DESCRIPTION OF PROPERTY INVOLVED:

Located on: (Name of Road, etc.). 23153 Green Point Rd., Worton, MD 21678

In the _____ Election District of Kent County.

Size of lot or parcel of Land: _____

Map: 19__ Parcel: 102__ Gross Area of Project _____
Current Zoning M__ Proposed Zoning _____ Growth Allocation Requested _____

Current Critical Area Designation (Circle One): **RCA** LDA

Proposed Critical Area Designation (Circle One): RCA LDA **IDA**

Current Use of Property: Marine (Marina)/RCD. The property is split zoned. The County Commissioners determined, by vote at the Commissioner's vote on July 25, 2023, that the property was mistakenly split zoned during the 2002 Comprehensive rezoning and that the entire property should have been zoned Marine and granted growth allocation at the time Applicant requests a growth allocation refinement so that the property may be included as an IDA, along with all other Marine zoned properties in Kent County.

Proposed Use of Property: Marine (Marina)

Reason for Requesting Growth Allocation: Property was split zoned. By vote of the Kent County Commissioners, the property has been rezoned Marine in its entirety. The Applicant requests growth allocation so that the entire property may be designated IDA as consistent with all other Marine zoned properties in Kent County.

Project Net Fiscal Contribution to Kent County' Budget: _____

Explain how the project will have a positive impact of Kent County's Economy: _____
Surveyor or Engineer: _____ Telephone: _____ Address _____

Attorney or Agent: Lance M. Young
Telephone: 410-810-138. Address: 110 N. Cross St., Chestertown, MD 21620

Present owner of property: The Wharf at Handy's Point, Inc. _____ Telephone: 410-778-4363

If Applicant is not owner, please indicate your interest in this property: _____

Has property involved ever been subject to a previous application? The property was partially given growth allocation under the 2002 Comprehensive Rezoning.

If so, please give Application Number and Date: _____

Please provide the email of the one person who will be responsible for responding to comments. Only this person will be contacted by staff and will be the person responsible for forwarding the comments or requests for additional information to any other interested parties. EMAIL: lyoung@mlg-lawyers.com

BY SIGNING THIS APPLICATION I GRANT THE DEPARTMENT OF PLANNING, HOUSING AND ZONING THE RIGHT TO ENTER ONTO THE PROPERTY FOR THE PURPOSE OF VIEWING THE SITE OF THE APPLICATION.

Lance M. Young
Signature of Owner/Applicant/Agent or Attorney

10-16-23
Date

Please file this form at 400 High Street, Chestertown, MD 21620 accompanied by **\$500.00** filing fee made payable to the County Commissioners of Kent County. If you have any questions, contact the Kent County Department of Planning, Housing and Zoning.

NOTICE: The Department of Planning, Housing, and Zoning is not required to make out this application. Application should be filled in by Applicant or its agent. If the Planning Department assists you, it cannot be held responsible for its contents.

Supplement and Narrative to Application for Growth Allocation of The Wharf at Handy's Point, Inc.

The Wharf at Handy's Point, Inc. ("WHPI") submits this supplement and narrative with its Application for Growth Allocation. This Application is not project specific, however, as explained further below, WHPI has a need to modernize the septic system of the marina with a state of the art, non-polluting septic system. It also has a need to transfer off-season boat storage further away from Worton Creek. Both goals will benefit the Chesapeake Bay and its tributaries but neither can be accomplished without growth allocation.

WHPI submits this narrative to assist the Commissioners in adopting findings of fact in support of the designation for growth allocation.

Background:

The Wharf at Handy's Point is a marina that was built in 1987. It consists of 70 slips, parking and storage areas, an office building, workshops, and bath houses.

The relevant parcel is Parcel 102. When the marina was built in 1987, only approximately 4.7 acres were zoned Marine. The balance was zoned Resource Conservation. In 2002, the owner petitioned to rezone the remainder of parcel 102 for Marine use. That petition was approved by the County Commissioners. However, when the zoning maps were re-drawn, the approved new zoning boundary was not accurately reflected on the new map. This mistake was unknown to the owner for several years.

WHPI requested, and the Kent County Commissioners granted, a correction of that mapping error. The Commissioners voted to correct the mistake by redrawing the zoning line by vote on July 25, 2023. In order for the parcel to be utilized for Marine purposes, it must also obtain growth allocation.

In 2003 the County made a blanket application for Growth Allocation to reclassify all of the Marine zoned parcels in the County to IDA. Because of the mistake in drawing the zoning map for Parcel 102, only a part of Parcel 102 was changed to IDA. A refinement is now necessary to include the remainder of Parcel 102 within Kent County's Marine zoned, IDA designated properties.

In 2021, the Wharf at Handy's Point, Inc. purchased the adjacent Green Point Marina at a foreclosure sale. Green Point Marina consists of 64 slips, storage yards, parking areas, workshops, office and bathhouse. Both marinas are now under common ownership and consist of 39.299 acres overall. Going forward, the marinas will be operated as one consolidated marina, on one consolidated parcel. The marinas had separate septic systems. Both are in need of repair.

Prompt growth allocation is necessary so that WHPI can install a modern septic system. The purpose of a new septic system would be to make the system conforming and *reduce the environmental impact of existing activity* on the consolidated marina using modern, nitrogen reducing technology and the ability to move all septic fields much further away from Worton Creek. The area where the system must be placed is on the portion of Parcel 102 that does not currently have IDA designation.

WHPI also desires to transfer its boat storage away from Worton Creek and onto the upland portion of the marina that does not currently have IDA designation. The transfer of boat storage away from the water will move activities and impacts related to boat storage away from Worton Creek.

The Kent County Growth Allocation Policy requires that the Applicant address certain requirements. Applicant addresses those requirements below.

1. *The application for growth allocation shall, at a minimum:*

a. *Specify the map and parcels receiving growth allocation.*

Response: Map 19, Parcel 102.

b. *The current and proposed use of the parcels.*

Response: The current use of the property is Marine (Marina). The property will continue to be used as a Marina. Until the County Commissioners voted to rezone the entire property Marine, it was partially zoned RCD. The RCD portion of the property has been useless for decades. The zoning correction and growth allocation will permit more of the property to be used as marina.

c. *The current and proposed zoning classifications.*

Response: Pursuant to the County Commissioner's July 25, 2023 vote, the entire parcel is Marine and may be designated as such by the Kent County Office of Planning and Zoning with growth allocation. The parcel has historically been split zoned as Marine/RCD.

d. *The current and proposed Critical Area Designation.*

Response: The portion of Parcel 102 that requires growth allocation is designated RCA. This Application requests IDA designation for the entire parcel.

e. *The reason requesting growth allocation.*

Response: See Background narrative above.

f. *Renderings of all primary buildings and each type of accessory buildings.*

Response: This information is provided in the Applicant's Site Plan included with this Application.

g. *A preliminary plan which identifies existing and proposed features including but not limited to: the proposed layout of buildings, parking, open space, driveways and roads, 100-year floodplains, watercourses, buffers, wetlands (tidal and non-tidal), slopes in excess of 15%, forest and woodland areas, scenic or historic structures or areas, existing buildings, existing easements, zoning and critical area boundaries and habitat protection area.*

Response: This information is provided in the Applicant's Site Plan included with this Application.

- h. *Site statistics including but not limited to: gross area of the project, growth allocation requested and purpose of growth allocation, area of each proposed use, area in each zoning and critical area classification, and forested areas.***

Response: This information is provided in the Applicant's Site Plan included with this Application.

- 2. *The application for growth allocation shall comply with the standards for submittals to the Critical Area Commission for the Coastal and Chesapeake Bays as found in Natural Resources Article 8-1808.1(c) and COMAR 27.01.02.06 through .06-4.***

Md. Natural Resources Code § 8-1808.1(c)(1):

In paragraphs (3)(i) and (4)(i) of this subsection, "consistent with" or "consistency with" a jurisdiction's comprehensive plan means that a standard or factor will further, and not be contrary to, the following items in the plan:

- (i) Policies;*
- (ii) Timing of the implementation of the plan;*
- (iii) Timing of development;*
- (iv) Timing of rezoning;*
- (v) Development patterns;*
- (vi) Land uses; and*
- (vii) Densities or intensities.*

Response: A refinement of Kent County's growth allocation to provide IDA status to a Marine zoned property is consistent with Kent County's Comprehensive Plan because it is the County's policy to provide IDA status to all Marine zoned properties in the County.

In 2003 the County made a blanket application for Growth Allocation to reclassify all of the Marine zoned parcels in the County to IDA. Because of the mistake in drawing the zoning map for Parcel 102, only a part of Parcel 102 was changed to IDA. The Kent County Commissioners granted a correction of that mapping error, by vote on July 25, 2023, where all of Parcel 102 should have been included in that designation during the 2003 Comprehensive Rezoning.

Md. Natural Resources Code § 8-1808.1(c)(2):

When locating new intensely developed or limited development areas, local jurisdictions shall use the following standards:

- i. Locate a new intensely developed area in a limited development area or adjacent to an existing intensely developed area;*

Response: The new IDA will be adjacent to an existing IDA within the same parcel.

- ii. Locate a new limited development area adjacent to an existing limited development area or an intensely developed area;*

Response: N/A

- iii. *Locate a new limited development area or an intensely developed area in a manner that minimizes impacts to a habitat protection area as defined in COMAR 27.01.09, and in an area and manner that optimizes benefits to water quality;*

Response: The IDA designation will benefit water quality and lessen impacts within the Critical Area Buffer. The IDA designation will allow for the installation of a septic system, with Best Available Technology and *reduce the environmental impact of existing activity* on the consolidated marina using modern, nitrogen reducing technology and move all septic fields much further from Worton Creek.

The IDA designation will also allow the marina to utilize upland portions of the property for boat storage, further away from Worton Creek and the Critical Area Buffer. There are no new proposed activities on the property. The IDA designation will merely allow the Marina to use the entire parcel instead of consolidating its Marine activities close to the water's shoreline.

- iv. *Locate a new intensely developed area or a limited development area in a resource conservation area at least 300 feet beyond the landward edge of tidal wetlands or tidal waters, unless the local jurisdiction proposes, and the Commission approves, alternative measures for enhancement of water quality and habitat that provide greater benefits to the resources;*

Response: The IDA designation will be consistent with all other designations in Marine Zones in Kent County.

- v. *Locate new intensely developed areas and limited development areas in a manner that minimizes their impacts to the defined land uses of the resource conservation area;*

Response: As stated herein, the new designation will minimize impacts on the parcel as a whole by allowing a septic system and boat storage to be located further away from Worton Creek.

- vi. *Except as provided in item (viii) of this paragraph, no more than one-half of the expansion allocated in the criteria of the Commission may be located in resource conservation areas;*

Response: The designation is a refinement to correct an error during the 2003 Comprehensive Rezoning process. Kent County submitted a blanket application for growth allocation in Marine zoned properties and a portion of Parcel 102 was mistakenly not included in that allocation.

- vii. *New intensely developed or limited development areas involving the use of growth allocation shall conform to all criteria of the Commission and shall be designated on the comprehensive zoning map submitted by the local jurisdiction as part of its application to the Commission for program approval or at a later date in compliance with Section 8-1809(g) of this subtitle; and*

Response: This requirement does not require a response from Applicant.

viii. *In Calvert, Caroline, Cecil, Charles, Dorchester, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester counties, if the county is unable to utilize a portion of the growth allocated to the county in items (i) and (ii) of this paragraph within or adjacent to existing intensely developed or limited development areas as demonstrated in the local plan approved by the Commission, then that portion of the allocated expansion which cannot be so located may be located in the resource conservation area in addition to the expansion allocated in item (vi) of this paragraph. A developer shall be required to cluster any development in an area of expansion authorized under this paragraph.*

Response: N/A

Md. Natural Resources Code § 8-1808.1(c)(3):

A local jurisdiction may use a standard that varies from the standards required under paragraph (2)(i) and (ii) of this subsection if:

- i. The alternative standard is consistent with the jurisdiction's adopted comprehensive plan; and*
- ii. The Commission has approved the alternative standard as part of the local program.*

Response: The designation is consistent with the Comprehensive Plan policies and timing of implementation.

Md. Natural Resources Code § 8-1808.1(c)(4):

In reviewing map amendments or refinements involving the use of growth allocation, the Commission shall consider the following factors:

(i) Consistency with the jurisdiction's adopted comprehensive plan and whether the growth allocation would implement the goals and objectives of the adopted plan;

Response: The refinement is consistent with the Comprehensive Plan and will be consistent with all other Marine zoned properties in the County, which all have IDA designation.

(ii)

1. For a map amendment or refinement involving a new intensely developed area, whether the development is:
A. To be served by a public wastewater system;

Response: The area will not be served by a public wastewater system. A significant reason for granting the growth allocation is so that the property owner can install a better, non-polluting system.

B. To have an allowed average density of at least 3.5 units per acre, as calculated under § 5-7B-03(h) of the State Finance and Procurement Article;

Response: The parcel complies with density requirements.

C. For a new intensely developed area that is greater than 20 acres, to be located in a priority funding area, as described under §§ 5-7B-02(1) and 5-7B-03 of the State Finance and Procurement Article; and

Response: N/A

D. To have a demonstrable economic benefit to the area; and

Response: The Wharf at Handy's Point is a fully operational marina that provides economic benefit to Kent County including supporting existing businesses and promoting resource based tourism.

(iii) The use of existing public infrastructure, where practical;

(iv) Consistency with State and regional environmental protection policies concerning the protection of threatened and endangered species and species in need of conservation that may be located on- or off-site;

(v) Impacts on a priority preservation area, as defined under § 2-518 of the Agriculture Article;

(vi) Environmental impacts associated with wastewater and stormwater management practices and wastewater and stormwater discharges to tidal waters, tidal wetlands, and tributary streams; and

(vii) Environmental impacts associated with location in a coastal hazard area or an increased risk of severe flooding attributable to the proposed development.

Response: The IDA designation will benefit water quality and lessen impacts within the Critical Area Buffer. The IDA designation will allow for the installation of a septic system, with Best Available Technology and reduce the environmental impact of existing activity on the consolidated marina using modern, nitrogen reducing technology.

The IDA designation will also allow the marina to utilize upland portions of the property for boat storage, further away from Worton Creek and out of the Critical Area Buffer. There are no new proposed activities on the property. The IDA designation will merely allow the Marina to use the entire parcel instead of consolidating its Marine activities close to the shoreline of Worton Creek.

Md. Natural Resources Code § 8 1808.1(c)(5)

The Commission shall ensure that the standards and factors in paragraphs (2), (3), and (4) of this subsection have been applied in a manner that is consistent with the purposes, policies, goals, and provisions of this subtitle, and all criteria of the Commission.

Response: Granting Growth Allocation is consistent with Section 8-1808.1(c) (2)-(4) for locating new intensely developed areas. The growth allocation grant will refine the 2003 blanket application for Marine zoned properties in Kent County and is similarly consistent with the purposes, policies, goals, and provisions of this subtitle, and all criteria of the Commission.

COMAR 27.01.02.06 through .06-4

The applicable sections of COMAR 27.01.02.06 through 27.01.02.06-4 are cited below and the Applicant's Response appears beneath each criterion.

27.01.02.06

.06 Growth Allocation — Minimum Local Program Requirements

- A. A local jurisdiction shall calculate its growth allocation based on 5 percent of the total resource conservation area in its critical area at the time of original approval of the local jurisdiction's program by the Commission, excluding:
 - (1) Tidal wetlands; and*
 - (2) Land owned by the federal government.**
- B. A county shall coordinate future expansions of intensely developed areas and limited development areas in coordination with affected municipalities.*
- C. A local jurisdiction shall require an application for new intensely developed or limited development areas to be:
 - (1) In conformance with the requirements of this subtitle; and*
 - (2) Designated on the locally approved Critical Area map that is submitted by the local jurisdiction as part of its application to the Commission for growth allocation approval.**
- D. If a local jurisdiction has within its territorial limits an area that is subject to the Chesapeake Bay Critical Area program and an area that is subject to the Atlantic Coastal Bays Critical Area program, the growth allocation for that jurisdiction may be utilized within either critical area in accordance with Natural Resources Article, §8-1808.1(d), Annotated Code of Maryland.*
- E. As part of an approved growth allocation by the Commission, the local jurisdiction shall enforce:
 - (1) A buffer management plan;*
 - (2) A habitat protection plan; and*
 - (3) Other applicable conditions of approval as determined by the Commission at the time of project approval.**

Response: Kent County has calculated its growth allocation and coordinated location of IDA's with affected municipalities. The communities of Chestertown, Worton, and Fairlee are within close proximity to the property and receive a direct economic benefit from the marina, just as these municipalities and other municipalities in the County do from the existing marinas that were granted the IDA status. This application is in conformance with the applicable regulations in this subtitle of COMAR, as well as applicable state and local criterion for approval. Upon approval of this application, WHPI requests that the Kent County transmit a critical area map reflecting the proposed growth allocation.

27.01.02.06-1

.06-1 Growth Allocation Submittal Requirements.

- A. The Commission may not accept for processing a growth allocation request unless all of the [requirements listed in COMAR 27.01.02.06-1] are provided at the time of submittal:*

- (1) *All information and documentation relevant to the local jurisdiction's determination that the project meets the standards listed under Natural Resources Article, §8-1808.1(c)(2), Annotated Code of Maryland, and Regulation .06-3 of this chapter;*
 - (2) *All information and documentation that addresses the factors to be considered by the Commission under Natural Resources Article, §8-1808.1(c)(4), Annotated Code of Maryland, and Regulation .06-3 of this chapter;*
 - (3) *A conceptual site development plan;*
 - (4) *An environmental features map;*
 - (5) *In accordance with Regulation .06-2 of this chapter, an environmental report that demonstrates that the project has been designed and will be constructed in compliance with all requirements of the proposed Critical Area land classification;*
 - (6) *For the following resources, as appropriate for the project site and each government agency, a preliminary review and comment from the Department of the Environment, Department of Natural Resources, Maryland Historical Trust, and U.S. Army Corps of Engineers regarding:*
 - (a) *Threatened and endangered species, and species in need of conservation;*
 - (b) *Forest interior dwelling birds and colonial nesting water birds;*
 - (c) *Anadromous fish and their propagation waters and other aquatic species located on-site;*
 - (d) *Plant and wildlife habitat and waterfowl staging and concentration areas;*
 - (e) *Submerged aquatic vegetation;*
 - (f) *Riparian forests and tidal and nontidal wetlands; and*
 - (g) *Natural heritage areas and other historical and cultural resources;*
 - (7) *A map that shows the land area where the local jurisdiction proposes a change to a Critical Area land classification; and*
 - (8) *Verification that the amount of proposed growth allocation indicated on the map submitted under §A(7) of this regulation is accurate and equal to the amount of growth allocation to be deducted from the local jurisdiction's existing total allotment of growth allocation.*
- B. The conceptual site development plan and environmental features map required under §A(3) and (4) of this regulation shall each include:*
- (1) *The name of the project and its street address;*
 - (2) *Tax map information that includes, as applicable, the:*
 - (a) *Tax map number;*
 - (b) *Block number;*
 - (c) *Parcel number; and*
 - (d) *Lot number;*
 - (3) *A site plan with a scale provided at 1"=10', 1"=20', 1"=30', 1"=40', 1"=50', 1"= 60', or 1"=100';*
 - (4) *Orientation;*

- (5) *A vicinity map with the project site clearly identified;*
- (6) *Existing parcel and tract boundaries or lot lines;*
- (7) *The project boundary;*
- (8) *The limits of disturbance;*
- (9) *A proposed development envelope;*
- (10) *All Critical Area boundaries, including existing and proposed land classifications and the land classification of all lots or parcels adjacent to the project site;*
- (11) *The boundaries of the 100-year floodplain;*
- (12) *The field-run topography;*
- (13) *Vegetative cover information by acre or square footage, including:*
 - (a) *Field determination of existing forest and developed woodland cover;*
 - (b) *Location of proposed forest and developed woodland clearing;*
and
 - (c) *As applicable, location of proposed afforestation and reforestation areas;*
- (14) *Soil features of the project and where each soil type is located;*
- (15) *Field determination of each intermittent stream and each perennial stream;*
- (16) *A delineation of the 100-foot buffer as measured from the mean high water line of tidal waters or the landward boundary of a tidal wetland or a tributary stream;*
- (17) *As applicable and in accordance with the requirements of COMAR 27.01.09.01E or the local program, a delineation of an expanded buffer that is necessary because of a contiguous slope of 15 percent or greater or the presence of a hydric soil, highly erodible soil, or a nontidal wetland;*
- (18) *When converting from a resource conservation area to a limited development area or an intensely developed area, the location and extent of the 300-foot setback;*
- (19) *Unless the Commission determines an otherwise acceptable period of time, a field-delineated location and description of the extent of a nontidal wetland that is less than 2 years old, including the 25-foot buffer from that nontidal wetland.*
- (20) *Unless the Commission determines an otherwise acceptable period of time, a field-delineated location and description of the extent of a tidal wetland that is less than 2 years old, including the delineation of State and private tidal wetland boundaries;*
- (21) *Identification and location of all wildlife habitat and plant habitat, including a nesting site of colonial nesting water birds, a waterfowl staging and concentration area, a riparian habitat, a habitat of forest interior dwelling birds, a locally significant habitat, and a natural heritage area;*
- (22) *Identification and location of habitat of threatened and endangered species, and species in need of conservation;*
- (23) *Identification and location of anadromous fish propagation waters;*

- (24) Location of existing and proposed area of lot coverage, including identification of a building, road, parking lot, and any other area that contributes to lot coverage;
- (25) Location of any other proposed development feature, including an outlot, storm drain and outfall, utility connection, septic system, stormwater management system, shore erosion control measure, and pier;
- (26) Location of a path or walkway, including those exempt from lot coverage requirements;
- (27) Location of an existing or proposed mitigation area that is required because of an impact on forest, developed woodland, wetland, buffer, or other habitat protection area; and
- (28) If applicable:
 - (a) The identification and location of agricultural land, a surface mining site, natural park, dredging activity, and dredge material disposal area; and
 - (b) The boundary and area of an existing easement, the identity of the easement holder, and any restriction on development as a result of the easement.

Response: The Applicant has satisfied the submittal requirements cited above with information provided in this narrative and the Applicant's site plan.

27.01.02.06-2
 .06-2 Environmental Report.

Response: This report contains the information outlined under COMAR 27.01.02.06-2, entitled "Environmental Report." In accordance with Regulation .06-2, this report demonstrates that the marina is and will be designed and will be constructed in compliance with all requirements of the proposed Critical Area land classification.

A. The environmental report required under Regulation .06-1.A(5) of this Chapter shall include:

1. A project description

Response: This Application is not project specific, however, as explained further below, WHPI has a need to modernize the septic system of the marina with a state of the art, non-polluting septic system. It also has a need to transfer off-season boat storage further away from Worton Creek. Both goals will benefit the Chesapeake Bay and its tributaries but neither can be accomplished without growth allocation. The Applicant's site plan depicts the placement of the Best Available Technology septic system and proposed boat storage area.

The application requests Growth Allocation for the Resource Conservation Area (RCA) to Intensely Developed Area (IDA).

The Wharf at Handy's Point is not proposing to intensify its operations. No new slips will be created and there are no plans to increase human activity of the site. Septic disposal for both marina properties will be consolidated.

Currently, sewage is pumped through two systems. Both systems are in dire need of repair with one of the systems being a failing system. Without the ability to install a modern, state of the art, septic system, the systems will likely be a cause of pollution into the Chesapeake Bay.

The marina does not seek to add additional boat storage. It seeks to move boat storage away from the Critical Area Buffer to an upland portion of the marina property. This will no doubt be a benefit to the Critical Area.

2. *The subdivision and development history:*

- a. *Between December 1, 1985 and the date of growth allocation application in the Chesapeake Bay Critical Area; and***
- b. *Between June 1, 2002 and the date of growth allocation application in the Atlantic Coastal Bays Critical Area;***

Response: No subdivisions have occurred on this property since December 1, 1985. The property has been consolidated with Parcel 96.

For decades, two separate commercial marinas co-existed on either side of Green Point Road.

Parcel 96 – Green Point Marina. To the North, Green Point Marina has been in existence since the 1940's. It consists of 64 slips, storage yards, parking areas, workshops, office and bathhouses. The septic disposal system is primitive and is classified as a failing system. The system was poorly maintained for years. There is no suitable area on Parcel 96 to replace the failing system.

Parcel 102 – The Wharf at Handy's Point. To the South of Green Point Road, is the Wharf at Handy's Point. That marina was built in 1987. It consists of 70 slips, parking and storage areas, an office building, workshops, and bath houses. Construction permits were issued based on a septic field located on adjacent agricultural land. That system has needed repairs during its 35 years of use.

With regard to the relevant Parcel 102, when the marina was built in 1987, only approximately 4.7 acres were zoned Marine. The balance was zoned Resource Conservation. In 2002, the owner petitioned to rezone the remainder of parcel 102 for Marine use. That petition was approved by the County Commissioners. However, when the zoning maps were re-drawn, the approved new zoning boundary was not accurately reflected on the new map. This mistake was unknown to the owner for several years. The mistake was corrected by vote of the Kent County Commissioners on July 25, 2023.

3. *A brief narrative that describes:*

- a. *The type of project;***
- b. *The proposed change of Critical Area land classification;***

Response: See response to Item #1 above.

a. How the growth allocation would support the jurisdiction's overall planning goals, including reference to the relevant sections of the local jurisdiction's adopted comprehensive plan, water and sewer plan, and adopted zoning ordinance;

Response: Kent County has granted IDA designation to all Marine zoned properties in the County. Adding IDA designation to this property, which the Commissioners voted to zone Marine in its entirety, is consistent with the County's goals and Comprehensive Plan. Water and sewer on the property are not supplied by the County.

4. Total acreage in the Critical Area and total acreage for which Critical Area designation is proposed to be changed;

Response: The total area within the Critical Area is 39.299 acres. The existing acres with IDA designation are 13.621. The existing acres with RCA designation are 25.678. The proposal is to convert the entire area to IDA with a total of 39.299 acres designated IDA.

5. Total forest, developed woodland, and vegetated area proposed to be cleared;

Response: There are no forest, woodland, or vegetative areas that are proposed to be cleared within the Critical Area.

6. Method and description of proposed stormwater management, including all qualitative and quantitative management measures;

Response: To the extent stormwater management mitigation is required for the movement of boat storage away from Worton Creek, it will be addressed through site plan review.

7. In the intensely developed area, the preliminary plan for compliance with the 10 percent pollutant reduction rule, including all worksheets and all supporting documentation;

Response: To the extent stormwater management mitigation is required for the movement of boat storage away from Worton Creek, it will be addressed through site plan review and will comply with the 10 percent reduction rule. The activities that are proposed move development away from the Critical Area Buffer, which will significantly reduce runoff pollution into Worton Creek.

8. Measures proposed for soil erosion and sediment control, including implementation strategy;

Response: To the extent soil erosion and sediment control are required, it will be addressed through site plan review. The activities that are proposed move development away from the Critical Area Buffer, which will significantly reduce runoff pollution into Worton Creek.

9. In the limited development area and resource conservation area, existing and proposed lot coverage information, calculated by square feet of coverage for each lot and total area of lot coverage within the limited

development area and the total area of lot coverage within the resource conservation area.

Response: See Applicant's site plan.

10. Mitigation required for clearing of forest area, developed woodland, or vegetation in accordance with the requirements of COMAR 27.01.05 or the local program;

Response: No clearing of forest area, developed woodland or vegetation within the 100-ft buffer is proposed.

11. If applicable, the proposed afforestation area:
a. In the Chesapeake Bay Critical Area, in the limited development area and the resource conservation area; and
b. In the Atlantic Coastal Bays Critical Area, in all land classifications;

Response: Not Applicable (N/A)

12. Identification of the local zoning district and that district's defining characteristics;

Response: The area proposed for IDA designation was currently rezoned Marine by the Kent County Commissioners. The purpose of the Marine zone is to "to provide for full service marinas, including out-of-water boat storage, repair, and other services normally associated with marinas. Marine industrial uses, including boat building, are permitted in appropriate locations subject to applicable sanitation and pollution laws and ordinances.. See Land Use Ordinance, Article V, Section 13. The Marine use is consistent and complementary to the existing marina use of the property, and promotes the responsible use and enjoyment of the Chesapeake Bay.

13. A buffer management plan, consistent with Section B of this regulation if:
a. It is a condition of development that the buffer be established on the development site;
b. A proposed development activity impacts the buffer;
c. The removal of trees or vegetation in the buffer, including invasive species, is proposed;

Response: N/A

14. If the proposed development will impact an identified habitat protection area, a habitat protection plan that is consistent with Section C of this regulation

Response: N/A

B. If §A(13) of this regulation is applicable, the local jurisdiction shall require the developer to prepare a buffer management plan in accordance with COMAR 27.01.09.01-3.

Response: N/A

27.01.02.06-3

.06-3 Requirements for New Intensely Developed Areas and Limited Development Areas.

Response: The above cited criteria from COMAR is addressed above at the Applicant's comment on satisfaction of County Code Article III, Section 2 addressing the criteria of Article 8-1808.1(c).

27.01.02.06-4

.06-4 Deduction of Growth Allocation Acreage.

Response: N/A

Conclusion:

The Wharf at Handy's Point seeks growth allocation in order to effectuate the vote of the Kent County Commissioner rezone Parcel 102 to Marine in its entirety. The Commissioners voted to rezone the property because of a mistake in the zoning line that was drawn during the 2003 Comprehensive Rezoning. The property was supposed to be zoned Marine at that time. It should also have been included in the blanket application for growth allocation of Marine zones in Kent County during the 2003 Comprehensive Rezoning. This application should result in a refinement to correct that mistake.



Larry Hogan, Governor
Boyd Rutherford, Lt. Governor
Jeannie Haddaway-Riccio, Secretary
Allan Fisher, Deputy Secretary

December 15, 2022

Mr. Robert Nickerson
Extreme Measures Land Surveyors
23680 Ricauds Branch Road
Chestertown, MD 21260

RE: Environmental Review for 23200 Green Point Road, Worton - The Wharf at Handy's Point Marina Expansion, Kent County, Maryland.

Dear Mr. Nickerson:

The Wildlife and Heritage Service has determined that there are no State or Federal records for rare, threatened or endangered species within the boundaries of the project site as delineated. However, we would like to point out that the open waters that are adjacent to or part of the site are known historic waterfowl concentration areas. If there is to be any construction of water-dependent facilities please contact Josh Homyack of the Wildlife and Heritage Service at (410) 827-8612 x100 or josh.homyack@maryland.gov for further technical assistance regarding waterfowl.

Thank you for allowing us the opportunity to review this project. If you should have any further questions regarding this information, please contact me at lori.byrne@maryland.gov or at (410) 260-8573.

Sincerely,

Lori A. Byrne,
Environmental Review Coordinator
Wildlife and Heritage Service
MD Dept. of Natural Resources

ER# 2022.1631.ke
Cc: J. Homyack, DNR
C. Jones, CAC

