

**IN THE MATTER OF THE APPLICATION * BEFORE THE COUNTY
OF SONNY SCHULZ BOULEVARD, LLC * COMMISSIONERS OF
FOR A CRITICAL AREA REDESIGNATION * QUEEN ANNE'S COUNTY**

*** * * * ***

FINDINGS AND DECISION

A hearing was held on June 25, 2019 by the County Commissioners of Queen Anne's County with respect to the Petition of Sonny Schulz Boulevard, LLC to amend part of Parcel 221, Lot 7 located on official Critical Area Overlay Map No. 56 to redesignate 2.122 acres from Limited Development Area (LDA) to Intensely Developed Area (IDA). Petition requested the use of Queen Anne's County's growth allocation to accomplish this redesignation.

The Petition had been the subject of a hearing before the Queen Anne's County Planning Commission and received a favorable recommendation. The County Commissioners held a prior public hearing on this matter on February 12, 2019 and gave conceptual approval. The State of Maryland Chesapeake Bay Critical Area Commission reviewed the request, treated the same as a refinement to the County's Critical Area Program and recommended approval of the same subject to five (5) conditions set forth in a letter to Michael Wisnosky, Director of Planning and Zoning date May 3, 2019.

The County Commissioners reviewed the Petition, prior proceedings and recommendations of the Planning Commission and Critical Area Commission. They adopt as the findings required by Title 8, Subtitle 18 of the Natural Resources Article of the Annotated Code of Maryland, Chapter 14:1 of the Code

of Public Local Laws of Queen Anne's County and C.O.M.A.R. 27.01.02, the "Growth Allocation Standards" submitted by Petitioner and attached hereto and incorporated herein as "Exhibit A".

The request for redesignation of 2.122 acres of land, a portion of Lot 7 of the Matapeake Professional Park through use of growth allocation be and is hereby APPROVED subject to the conditions imposed by the Chesapeake Bay Critical Area Commission and the recapture provisions of Section 14:1-77H(2) of the Code of Public Local Laws of Queen Anne's County.

WITNESS the hands and seals of the County Commissioners of Queen Anne's County this 9 day of July, 2019.

ATTEST:

THE COUNTY COMMISSIONERS
OF QUEEN ANNE'S COUNTY

Margie Houck
Margie Houck

[Signature]
James J. Moran

[Signature]
Stephen Wilson

[Signature]
Jack N. Wilson, Jr.

Philip L. Dumenil

[Signature]
Christopher M. Corchiarino

**GROWTH ALLOCATION STANDARDS
AS APPLIED TO
LOT 7, MATAPEAKE PROFESSIONAL PARK
SONNY SCHULZ BOULEVARD, LLC**



I. INTRODUCTION

Sonny Schulz Boulevard, LLC ("Applicant") has applied for Chesapeake Bay Critical Area Growth Allocation (Growth Allocation) to reclassify 2.772 acres of the Critical Area portion of Lot 7 in the Matapeake Professional Park (the "Property") from Limited Development Area (LDA) to Intensely Developed Area (IDA). The property that is subject to this application is shown and depicted on a plat titled "GROWTH ALLOCATION CONCEPT SITE PLAN LOT 7, MATAPEAKE PROFESSIONAL PARK" prepared by Lane Engineering, LLC., dated February 13, 2018.

The Application proposes to apply the Growth Allocation to reclassify 2.122 acres of critical area lands within the Property from LDA to IDA. The purpose of this reclassification is to facilitate development consistent with the County's Comprehensive Plan as well as the Suburban Industrial (SI) Zoning District.

II. LEGAL AND REGULATORY BACKGROUND

The Chesapeake Bay Critical Area law was enacted by the Maryland General Assembly for the following purpose:

- (1) To establish a Resource Protection Program for the Chesapeake and Atlantic Coastal Bays and their tributaries by fostering more sensitive development activity for certain shoreline areas so as to minimize damage to water quality and natural habitats; and
- (2) To implement the Resource Protection Program on a cooperative basis between the State and affected local governments, with local governments establishing and implementing their programs in a consistent and uniform manner subject to State and local leadership, criteria and oversight.

Md. Code Ann. Natural Resources Article § 8-1808(b).

The Program is implemented through local regulations with oversight by the State Critical Area Commission ("CAC"). In both Queen Anne's County and the Town, the Critical Area law is implemented through local zoning ordinances and subdivision regulations. As required by state law, both jurisdictions classify lands located within 1,000 feet landward of the Chesapeake Bay, its tributaries to the head of tide, and tidal wetlands into one of three land use classifications: Resource Conservation (RCA), Limited Development Area (LDA) or Intensely Developed Areas ("IDA"). These classifications correspond to the definitions and criteria established by State regulations and are based on the land uses that existed in the mid 1980's. Certain types of new development within areas designated as RCA or LDA require higher or more intense land use classification. The process by which the Critical Area classification may be changed to permit new or intensified areas of development is referred to as "growth allocation." State, county and municipal laws establish the criteria and factors to be considered when deciding whether to award growth allocation for a specific area.

Queen Anne's County has adopted the Queenstown Critical Area Program, which is set forth in the Queen Anne's County Code (QACC), Chapter 14, Article XV. The minimum design standards of the QACC are to:

- (1) All applicable requirements of the Queen Anne's County Zoning Code, the Subdivision Regulations and the Queen Anne's County Chesapeake Bay Critical Area Program and Act have been met.
- (2) A land management classification change has been approved by the County Commissioners and the Critical Area Commission.

(3) The design of the development enhances the water quality and resource and habitat values of the area, e.g., results in additional planting of forest cover in the Buffer or implementation of best management practices on portions of the site to be retained in agriculture use.

(4) The development incorporates the comments and recommendations of the County and the Maryland Fish, Heritage and Wildlife Administration in the project design.

(5) The developer executes restrictive covenants that guarantee maintenance of any required open space areas.

Chesapeake Bay Critical Area Act, Chapter 14:1-76E.

The County's growth allocation process is set forth in QACC Chapter 14:1-76 and 77, whereby the County Commissioners may reclassify certain LDA land to IDA.

III. FACTUAL AND PROCEDURAL BACKGROUND

A. PROPERTY INFORMATION

The Property consists of Lot 7, Parcel 221 on Queen Anne's County Tax Map 56. The total acreage of the Property is approximately 5.035 acres, of which 2.772 acres is located in the Critical Area and presently designated as LDA.

The Property is currently vacant, but located within the Matapeake Professional Park, which is a 7 lot business park developed by Queen Anne's County on part of the land that housed the Chesapeake Bay Hydraulic Model but was deconstructed in early 2000s. Much of the former Chesapeake Bay Hydraulic Model property was acquired by the County and developed as a business park. There is light industrial development on the west and north sides of Lot 7, Maryland Route 8 to the east, and vacant land which is part of the Matapeake Professional Park open space to the south. Thus, the portion of the Lot 7 that is nearest to residential development is open space.

B. PLANNING AND ZONING HISTORY

The Property has been identified as a County Planning Area, Priority Funding Area, and is in an Enterprise Zone. The Property has been zoned Suburban Industrial (SI) since 1987. Beginning in 2010 through 2013 the County subdivided and then resubdivided approximately 50 acres of land (formally part of the Chesapeake Bay Hydraulic Model) property in 7 lots as well as open space areas. Several of the lots have been conveyed from the County and improved with light industrial uses.

C. GROWTH ALLOCATION APPLICATION

The Applicant submitted a Concept Plan and supporting documents for Growth Allocation to the Planning Commission requesting growth allocation to classify 2.122 acres of Critical Area land from LDA to IDA. In compliance with COMAR 27.01.02.06.-1, the Application included the following:

1. A conceptual site development plan which includes: Environmental Features Map, and Growth Allocation Plan.
2. Stormwater Management Concept Plan
3. Environmental Assessment

D. DEVELOPMENT CONCEPT

The Applicant intends for the Property to be developed with a 45,000 light industrial facility that will house its scaffolding sales and distribution business; a rigging and contracting business; as well as provide light industrial space for prospective tenants.

C.O.M.A.R. 27.01.02.06-3 Requirements for New Intensely Developed Areas and Limited Development Areas.

A. Definition. In §§E, F, and G(1) of this regulation, “consistency with” or “consistent with” a jurisdiction’s adopted comprehensive plan means that a standard or factor will further, and not be contrary to:

(1) For a growth allocation application that is to be located in a priority funding Area, in accordance with State Finance and Procurement Article, §§5-7B-02 and 5-7B-03, Annotated Code of Maryland, the following items in the plan:

(a) Policies; *The growth allocation request is consistent with the Comprehensive Plan policies in that Lot 7 is part of the County development Matapeake Professional Park, and identified for institutional and industrial uses consistent with IDA densities.*

(b) Timing of the implementation of the plan; *The growth allocation request is consistent with the Comprehensive Plan timing of implementation in that Lot 7 is part of the County development Matapeake Professional Park, which has been improved with roads, access, and public sewer and water facilities. Institutional and industrial uses consistent with IDA densities have been constructed within the Matapeake Professional Park.*

(c) Timing of development; *The development of the Matapeake Professional Park has been ongoing since 2010. The use of growth allocation for light industrial development for Lot 7 is consistent with the timing of development for the Matapeake Professional Park area.*

(d) Timing of rezoning; and *No rezoning is necessary in Lot 7 is currently zoned SI.*

(e) Development patterns; or *Lot 7 is one of 7 lots within a business park. The development west of Lot 7 is light industrial and institutional; the property to the north is also light industrial; to the east is open space and Maryland Route 8; and to the south are residential uses. The pattern of development in this area is general institutional, public uses and light industrial.*

(2) For a growth allocation application that is not to be located in a priority funding area, the following items in the plan: *The Matapeake Professional Park is a priority funding area.*

(a) All of the items under §A(1) of this regulation; *NA*

(b) Land uses; and *NA*

(c) Densities or intensities. *NA*

B. Except as authorized under Regulation .03B(2) of this chapter, a new intensely developed area shall be at least 20 acres. *(See Queen Anne’s County Growth Allocation Standard D.5(b) response below)*

C. Except as provided in §D of this regulation, a local jurisdiction may not use more than 1/2 of its total allotted growth allocation acreage to convert a resource conservation area into a new limited development area or a new intensely developed area. *The area for requested growth allocation is currently designated LDA.*

D. 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 its growth allocation in accordance with §C of this regulation then these counties may use a standard that varies from §C of this regulation if: *NA*

(1) The alternative standard is consistent with the county’s adopted comprehensive plan; *NA*

(2) The Commission has approved the alternative standard as part of the county’s program; and *NA*

(3) The county requires an applicant for growth allocation to cluster development in the growth allocation area. *NA*

E. A local jurisdiction shall use the following standards when locating new intensely developed areas or limited development areas:

(1) Locate a new intensely developed area in a limited development area or adjacent to an existing intensely developed area; *The new IDA will be in an existing LDA.*

(2) Locate a new limited development area adjacent to an existing limited development area or an intensely developed area; *This guideline only applies to LDA growth allocation requests and is not applicable here.*

(3) Locate in a manner that:

(a) Minimizes impacts to a habitat protection area as defined in COMAR 27.01.01.01; *COMAR 27.01.09 identifies the following as habitat protection areas: 100' Buffer, Nontidal Wetlands, Threatened and Endangered Species and Species in Need of Conservation, Plant and Wildlife Habitat (including colonial water bird nesting sites), and Anadromous Fish Propagation Waters. As noted below, there are no state or federal records for rare, threatened or endangered species with the boundaries of the project site as delineated. The entire Property is outside of the 100' and 300' buffers.*

(b) Optimizes benefits to water quality; *The new IDA is located on the landward edge of the Critical Area, and will utilize ESD to the MEP as required by State and County law. Stormwater management will also implement the Critical Area 10% water quality improvement requirements, and*

(c) Minimizes impacts to the defined land uses of the resource conservation area; *The proposed new IDA is located so as to minimize the impacts of the defined land uses of the remaining Resource Conservation Areas (RCA). As set forth on the Growth Allocation Concept Plan, the new IDA will be located on the landward edge of the Critical Area and does not abut any RCA designated land.*

(4) Locate a new intensely developed area or limited development area in a resource conservation area at least 300 feet beyond the landward boundary 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; and *The proposed IDA is located outside of both the 100' and 300' buffers.*

(5) For a growth allocation application for a residential subdivision, comply with the requirements and procedures under Environment Article, §9-206, Annotated Code of Maryland, and Land Use Article, Title 1, Subtitle 5, and §5-104, Annotated Code of Maryland. *No residential development is proposed on Lot 7, nor does the SI zoning district permit residential development.*

F. A local jurisdiction may use a standard that varies from §E(1) and (2) of this regulation if:

(1) The alternative standard is consistent with the local jurisdiction's adopted comprehensive plan; and *NA*

(2) The Commission has approved the alternative standard as part of the local program. *NA*

G. When reviewing a map amendment or refinement involving the use of growth allocation, the Commission shall consider the following factors:

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

(2) For a new intensely developed area, whether the development will:

(a) Be served by a public wastewater system; *The Property is served by the KNS&G Waste Water facilities*

(b) Have an allowed average density of at least 3.5 units per acre, as calculated under State Finance and Procurement Article, §5-7B-03(h), Annotated Code of Maryland; *NA, there is no residential development proposed or permitted on Lot 7.*

(c) For a new intensely developed area that is greater than 20 acres, be located in a priority funding area; and *The Property is located within a Priority Funding Area.*

(d) Have a demonstrable economic benefit to the area; *,The Applicant is a subsidiary on one of the regions largest scaffolding companies which involves both sales and distribution. Upright Scaffold USA, LLC, currently located in Preston, MD, imports scaffold from Ireland and sells that product throughout the US and will be relocated to Stevensville, where it will have significant growth potential. Upright employs 3 individuals; however, the number is expected to double in the next 2-4 years. Upright would occupy approx. 25% of the developed space. East Coast Rigging & Contracting Co., Inc. ("ECR"), is based in Laurel, Maryland currently employs approx. 44 individuals. ECR will move its hoist and swing stage operation to Matapeake Professional Park. This division would require the employment of 3-4 full time individuals. ECR would occupy approx. 25% of the developed space. The Applicant intends to lease out the remaining 50% of the developed space to local businesses.*

(3) For a new limited development area, whether the development will:

(a) Be served by a public wastewater system or septic system that uses the best available nitrogen removal technology; *NA*

(b) Complete an existing subdivision; *NA*

(c) Expand an existing business; or *NA*

(d) Be clustered; *NA*

(4) The use of existing public infrastructure, where practical; *The Property is serviced by public water and sewer.*

(5) 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-site or off-site; *There are no rare, threatened or endangered species in need of conservation identified on Lot 7.*

(6) Impacts on a priority preservation area, as defined under Agriculture Article, §2-518, Annotated Code of Maryland; *None.*

(7) Environmental impacts associated with wastewater and stormwater management practices and wastewater and stormwater discharges to tidal waters, tidal wetlands, and tributary streams; and *The proposed development associated with the Growth Allocation request for classification to IDA will minimize environmental impacts associated with wastewater and stormwater management practices and wastewater and stormwater discharges to tidal waters, tidal wetlands, and tributary streams. The conceptual stormwater management plan for the proposed development and included with the Growth Allocation application, states the proposed stormwater management devices will meet the requirements of the Queen Anne's County Stormwater Management Ordinance and the Critical Area Commission, 10% pollution reduction requirements. The proposed application of best management practices satisfies this criterion as concerns stormwater.*

With respect to wastewater discharge, the recently completed waste water transmission system will serve the Property and treat effluent KNS&G Waste Water facility.

(8) Environmental impacts associated with location in a coastal hazard area or an increased risk of severe flooding attributable to the proposed development. *The Property is not located within the 1% flood zone (100 year floodplain).*

Queen Anne's County Growth Allocation Standard QACC 14:1-74 D. and E.

D. Review criteria. The following review criteria will guide the selection of projects that may be assigned growth allocation:

(1) Proposed development projects using growth allocation must be determined to be consistent with the Queen Anne's County Comprehensive Plan and Queen Anne's County Critical Area Program and the Growth Subarea Plans. *Lot 7, the property subject to the growth allocation request, located within the Matapeake Professional Park, which is a 7 lot business park developed by Queen Anne's County on part of the land that housed the Chesapeake Bay Hydraulic Model. There is light industrial development on the west and north sides of the Property, Maryland Route 8 to the east, and vacant land which is part of the Matapeake Professional Park open space to the south.*

When the Chester Stevensville Community Plan was adopted in 2007, Lot 7 (and the entire Matapeake Professional Park) was all part of the state Chesapeake Bay Hydraulic Model. Thereafter the County acquired much of the Chesapeake Bay Hydraulic Model property from the state, invested public funds for planning, design and infrastructure, developing the area for the business park. The entire Matapeake Professional Park is located within the "Planning Area" identified in the 2007 Chester Stevensville Community Plan.

The 2010 County Comprehensive Plan identifies the Matapeake Professional Park within the "County Planning Area" and is identified on map LU-7B as "Institutional Uses" which is likely reflective of the fact that the land housed the Chesapeake Bay Hydraulic Model.

There is no mention of the Matapeake Professional Park in the 2007 or 2010 Plans due to the opportunity to create the publicly owned business park arose after the Plans were complete. Nonetheless the significant public investment in planning and installing infrastructure and the significant build out of the Matapeake Professional Park make it clear that the area has been planned for light industrial uses consistent with an IDA classification.

Importantly, the majority of the Matapeake Professional Park (as well as the Chesapeake Bay Hydraulic Model is within the Critical Area as it abuts the Chesapeake Bay. That western section of the Matapeake Professional Park has been designated IDA since the initial Critical Area program development. It is only the easternmost portion of the Matapeake Professional Park that is LDA, as it is within 1,000 of Warehouse Creek.

(2) Proposed development projects that implement specific development or redevelopment objectives of the Comprehensive Plan or a Growth Subarea Plan shall be given priority for growth allocation, and growth allocation is set aside for implementation of these projects in the Growth Management Pool.

(3) Proposed development projects determined by the County to be of substantial economic benefit and located in a designated growth area shall be given priority for growth allocation, and growth allocation is set aside for implementation of these projects in the Growth Management Pool.

The Applicant is a subsidiary on one of the regions largest scaffolding companies which involves both sales and distribution. Upright Scaffold USA, LLC, currently located in Preston, MD, imports scaffold from Ireland and sells that product throughout the US and will be relocated to Stevensville, where it will have significant growth potential. Upright employs 3 individuals; however, the number is expected to double in the next 2-4 years. Upright would occupy approx. 25% of the developed space. East Coast Rigging & Contracting Co., Inc. ("ECR"), is based in Laurel, Maryland currently employs approx. 44 individuals. ECR will move its hoist and swing stage operation to Matapeake Professional Park. This division would require the employment of 3-4 full time individuals. ECR would occupy approx. 25% of the developed space. The Applicant intends to lease out the remaining 50% of the developed

space to local businesses. There is substantial economic benefit to the community through the build out of the Matapeake Professional Park.

(4) Proposed development projects located outside of designated growth areas may be assigned growth allocation if they are a commercial, industrial, residential or institutional project determined to be of substantial economic benefit to residents of the County and/or meet a recognized public need. Growth allocation for implementation of these projects may be from either the General Pool or the Growth Management Pool. *NA*

(5) When locating new intensely developed or limited development areas, proposed development projects may be assigned growth allocation subject to the requirements of COMAR § 27.01.02, and Natural Resources Article § 8-1801.1 and shall use the following location criteria:

(a) Locate a new intensely developed area in a limited development area or adjacent to an existing intensely developed area; *The portion of Lot 7 proposed for growth allocation is in existing LDA.*

(b) A new intensely developed area shall be at least 20 acres or adjacent to an existing intensely developed area that together equals at least 20 acres. A new intensely developed area may be less than 20 acres if it is:

[1] Located in an existing growth area; and *Lot 7 is located within the Matapeake Professional Park, within the "Planning [growth] Area."*

[2] Currently served by public sewer; and *Matapeake Professional Park is served by both public sewer and water.*

[3] Consistent with the goals and objectives of the adopted County Comprehensive Plan; and *See D. 1 above.*

[4] Has an overall economic benefit to the community. *See D. 3 above.*

(c) Locate a new limited development area adjacent to an existing limited development area or intensely developed area; *NA*

(d) Locate a new intensely developed area or a limited development area in a manner that minimizes impacts to habitat protection areas as defined in COMAR § 27.01.09 and in an area and in a manner that optimizes benefits to water quality; *COMAR 27.01.09 identifies the following as habitat protection areas: 100' Buffer, Nontidal Wetlands, Threatened and Endangered Species and Species in Need of Conservation, Plant and Wildlife Habitat (including colonial water bird nesting sites), and Anadromous Fish Propagation Waters. As noted below, there are no state or federal records for rare, threatened or endangered species with the boundaries of the project site as delineated. The entire Property is outside of the 100' and 300' buffers.*

(e) Locate a new intensely developed area and limited development areas in a manner that minimizes their impacts to the defined land uses of the resource conservation area; *The proposed new IDA is located so as to minimize the impacts of the defined land uses of the remaining Resource Conservation Areas (RCA). As set forth on the Growth Allocation Concept Plan, the new IDA will be located on the landward edge of the Critical Area and does not abut any RCA designated land.*

(f) Locate a new intensely developed area or a limited development area in the resource conservation area at least 300 feet beyond the landward edge of tidal wetlands or tidal waters, unless the Critical Area Commission approves an alternative measure(s) proposed by the County for enhancement of water quality and habitat that provide greater benefits to the resources. *The proposed IDA is located outside of both the 100' and 300' buffers.*

(6) No more than 1/2 of the total growth allocation of the County may be located in resource conservation areas, except as provided in Subsection D(6)(b) of this section; *NA*

(a) 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 County as part of its application to the Commission for program approval or at a later date in compliance with § 8-1809(g) of the Environmental Article of the Annotated Code of Maryland; and *NA*

(b) If the County is unable to utilize a portion of the growth allocated in Subsection D(5)(a), (b) and (c) of this section within or adjacent to existing intensely developed or limited development areas, then that portion of growth allocation which cannot be so located may be located in the resource conservation area upon recommendation by the Planning Commission, conceptual approval by the County Commissioners and award of growth allocation. A developer shall be required to cluster any residential development in an area of expansion in order to minimize impacts. *NA*

(c) Location criteria that varies from the criteria required under Subsection D(5)(a), (b) and (c) of this section may be utilized to meet a public need for emergency or medical services including any facility that supports such services. *NA*

[1] The area of proposed IDA growth allocation may be less than 20 acres. *NA*

[2] No more than 20% of the growth allocation from the General Pool may be utilized by this nonadjacency standard. *NA*

E. Minimum mandatory design standards. Once the maximum permitted density of development has been determined, the proposed project must demonstrate that it will meet or exceed the following design standards in order to be approved:

(1) All applicable requirements of the Queen Anne's County Zoning Code, the Subdivision Regulations and the Queen Anne's County Chesapeake Bay Critical Area Program and Act have been met.

(2) A land management classification change has been approved by the County Commissioners and the Critical Area Commission.

(3) The design of the development enhances the water quality and resource and habitat values of the area, e.g., results in additional planting of forest cover in the Buffer or implementation of best management practices on portions of the site to be retained in agriculture use.

(4) The development incorporates the comments and recommendations of the County and the Maryland Fish, Heritage and Wildlife Administration in the project design.

(5) The developer executes restrictive covenants that guarantee maintenance of any required open space areas.