

STAFF REPORT
Stoney's Banquet Facility Growth Allocation Findings

January 29, 2010

APPLICANT: Calvert County

PROPOSAL: CAMA 09-10. For Stoney's Banquet Facility in Broomes Island, change the Critical Area Overlay from Limited Development Area (LDA) to Intense Development Area (IDA) using Growth Allocation

COMMISSION ACTION: Approve Growth Allocation Request

STAFF RECOMMENDATION:

STAFF:

**APPLICABLE LAW/
REGULATIONS:** COMAR 27.01.02.06 – Location and Extent of Future Intensely Developed and Limited Development Areas

DISCUSSION:

Calvert County is requesting growth allocation to convert the Stoney's Banquet Facility (Parcel 15, Tax Map 38C, 1.49 acres) in Broomes Island from Limited Development Area (LDA) to Intense Development Area (IDA). The current zoning is Marine Commercial with an LDA Critical Area overlay. This parcel is adjacent to the Stoney's Restaurant which is zoned Marine Commercial and designated LDA. All the other adjacent parcels are residential and designated LDA.

The site was previously occupied by the Warren Denton & Company (around 1926), the largest oyster packing house on the Patuxent River. The property & its facilities were expanded over time in part because the business refuse (oyster shells) were tossed outside the buildings and became the compacted substrate supporting the buildings, parking & areas used for business. Many of the structures existed in the 100-ft and even 50-ft Buffers and there was little to no native vegetation on the site (See figure of 2003 aerial). Warren Denton & Company operated until 2001 at which time, the property was sold. Tropical Storm Isabel in 2003 rendered the building unusable and a safety hazard at which point the building structure was razed leaving the foundation slab in place.

The proposed use is a commercial banquet facility (see attached development plan). The proposed structures were built without required permits. A mitigation plan including a combination of plantings within the 50 ft buffer and paying fees-in-lieu for the remaining mitigation requirement is being developed as part of the requirements for Board of Appeals approval and final site plan approval. If the site is designated SBMA, a variance will be required for the structures in the 50 ft buffer, for the boardwalk and pavers along the shoreline and for

multiple accesses to the shoreline. Sewage disposal is proposed using portable sanitary facilities during banquet events. The Health Department has approved this approach. The previous use was the Denton Oyster House, a shellfish processing and distribution center. The current LDA designation will prevent the property owners from using the property as a banquet facility. Growth allocation can be granted to this parcel even though it is less than 20 acres as it meets conditions "a" and "b" in Section 8-1.06.B.1. The parcel meets condition "a" as it is surrounded by LDA and it meets condition "b" as it was a grandfathered commercial use when Calvert County originally adopted its Critical Area Program.

Calvert County held a joint public hearing on November 3, 2009, to receive comments on the proposed growth allocation request. The Board of County Commissioners of Calvert County and the Calvert County Planning Commission hosted the hearing. On December 8, 2009, the Board of County Commissioners upon receiving recommendations from the Planning Commission unanimously approved use of the proposed 1.49 acres of growth allocation to change the designation from LDA to IDA.

Growth Allocation Criteria

Section §8-1808.1 of the Natural Resources Article (Growth Allocation) requires the Critical Area Commission to ensure that the following standards have been applied in a manner that is consistent with the purposes, policies, goals, and provisions of the Critical Area Law and Criteria:

1. *Locate a new Intensely Developed Area (IDA) in a Limited Development Area (LDA) or adjacent to an existing Intensely Developed Area.*

This site is adjacent to properties that are designated LDA including the Stoney's Restaurant immediately to the northeast and residential properties.

2. *Locate a new Limited Development Area adjacent to an existing Limited Development Area or an Intensely Developed Area.*

This standard is not applicable for this growth allocation request.

3. *Locate a new Intensely Developed Area in a Limited Development 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.*

This property will be required to meet the 10% Phosphorus reduction requirements for properties designated Intensely Developed Area. The adjacent Stoney's Restaurant property is designated as a Special Buffer Management Area (SBMA) and application has been made to designate the subject property as a SBMA. The SBMA status indicates that the Buffer does not sufficiently fulfill the functions found in COMAR 27.01.09.01.B. The existing property consists of structures and mostly oyster shells. The removal of structures and other impervious areas that has already occurred (without permits) and the planting of the 50-ft. Buffer as part of the requirements for Board of Appeals approval and final site plan approval will enhance the function of the Buffer. Other than the Buffer there are no other habitat protection areas. In addition to planting the buffer, the development will reduce the existing impervious area (lot coverage) in excess of what is necessary to meet the 10% Pollutant Reduction requirement.

4. *Locate new Intensely Developed Area or Limited Developed Area in a Resource Conservation Area at least 300 feet beyond the landward edge of tidal wetlands, 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;
This standard is not applicable for this growth allocation request.

5. *Locate new Intensely Developed Areas and Limited Development Areas in a manner that minimizes impacts to the defined land uses of the Resource Conservation Area.*

This site is surrounded by LDA designated properties in Broomes Island and is not adjacent to any RCA properties.

6. *Except in Calvert, Caroline, Cecil, Charles, Dorchester, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester, no more than one-half of the expansion allocated in the criteria of the Commission may be located in Resource Conservation Areas.*
This standard is not applicable for this growth allocation request.

7. *New Intensely Developed or Limited Development Areas [to be located in the Resource Conservation Area] involving the use of growth allocation shall conform to all criteria of the Commission for Intensely Developed or Limited Development Areas 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)*

This standard is not applicable for this growth allocation request.

8. *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 (1) and (2) above 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 (5) above. A developer shall be required to cluster any development in an area of expansion authorized under this paragraph.*

This standard is not applicable for this growth allocation request.

The Code of Maryland Regulations provides the following additional instructions for growth allocation requests from local jurisdictions in COMAR 27.01.02.06, which include the following that are applicable to this project:

9. *The area of expansion of Intensely Developed or Limited Development Areas, or both, may not exceed an area equal to 5 percent of the county's portion of the Resource Conservation Area lands that are not tidal wetland or federally owned.*

Calvert County has sufficient growth allocation. The granting of this growth allocation request (1.49 acres) will not result in Calvert County exceeding its total growth allocation allotment.

In accordance with §8-1808.1(c) (3), the Commission shall consider the following factors when reviewing a map amendment involving a new Intensely Development Area:

1. *Consistency with the jurisdiction's adopted comprehensive plan and whether the growth allocation would implement the goals and objectives of the adopted plan.*

The County updated their Comprehensive Plan in 2004. This project is consistent with the goals of this plan, as this site is zoned marine commercial and the proposed use is consistent with marine commercial zoning. It should be noted that Action I-39 of the CC Comprehensive Plan states "Allow maximum utilization of areas zoned Marine Commercial (MC) without causing significant adverse effects on aquatic resources, visual aesthetics, or neighboring residential uses"...The proposed use, though intense at times, is significantly less detrimental to Island Creek, more visually aesthetic and less intense than the previous use.

2. *Whether the development is served by a public wastewater system;*

The proposed use is a commercial banquet facility. Sewage disposal is proposed using portable sanitary facilities during banquet events. The Health Department has approved this approach.

3. *Whether the development is 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;*

The proposed use is commercial.

4. *For a new Intensely Developed Area (IDA) that is greater than 20 acres, to be located in a priority funding area, as described under §5-7B-02(1) and §5-7B-0 of the State Finance and Procurement Article;*

This standard is not applicable for this growth allocation request (parcel less than 20 acres).

5. *To have a demonstrable economic benefit to the area;*

Under the current LDA designation, the property owners would be unable to develop the site as a banquet facility due to lot coverage limits. The granting of this growth allocation will permit the owners to develop the banquet facility that will provide a reinvestment in existing properties. The public will be able to rent the facility for weddings and banquets, which will provide jobs to local citizens, increase tourism and taxes to the County.

6. *Use of existing public infrastructure where practical;*

The County road is the only public infrastructure serving the property. Sewage disposal is proposed using portable sanitary facilities during banquet events. The Health Department has approved this approach.

7. *Consistency with State and regional environmental protection policies regarding the protection of threatened and endangered species and species in need of conservation;*

The east and south sides of the site are bordered by Waterfowl Concentration and Staging areas. Any proposed future construction of marine facilities such as piers or offshore erosion control would be prohibited during winter months (date restrictions would be determined by DNR, see attached Figure). There are no other habitat protection areas associated with the site.

8. *Impacts of a priority preservation area;*

The site is not and is not adjoining a priority preservation area.

9. *Environmental impacts associated with wastewater and stormwater practices and discharges;*

Sewage disposal is proposed using portable sanitary facilities during banquet events and thus will be transported off the site and disposed of at a sewage treatment facility. Much of the 50 ft. buffer will be planted in native vegetation reducing stormwater runoff. The 10% reduction in pollutants will have to be addressed at site plan review. There are no other proposed discharges.

10. *Environmental impacts associated with location in a coastal hazard area or increased flooding attributed to the proposed development.*

The site is not located in a coastal hazard area. No increased flooding is expected from the development. The largest structure is a tent over a slab which will allow flood waters to pass over the slab and through the tent. Other structures are rather small and if required, will be appropriately vented. All development will be consistent with the Calvert County Floodplain Ordinance.

