



THE ST. MICHAELS PLANNING COMMISSION

300 Mill Street

P. O. Box 206

St. Michaels, MD 21663

Settled 1670-1680

Incorporated 1804

Telephone 410.745.9535

Facsimile 410.745.3463

RECOMMENDATION

TO: The Commissioners of St. Michaels
FROM: The St. Michaels Planning Commission
DATE: December 15, 2008
RE: Windward Investment, LLC – Chesapeake Reach
Request for Growth Allocation

I. General Information

Owner/Applicant: Windward Investment, LLC

Subject: Request for 130,154 square feet (2.99 acres) of Growth Allocation to reclassify property owned by Windward Investment, LLC, which is generally referred to as Chesapeake Reach, from a Limited Development Area to an Intensely Developed Area.

Project Name: Chesapeake Reach

Location: Immediately North of Canton Street and south of Railroad Avenue, lying easterly along Chesapeake Avenue with one lot lying westerly along said Chesapeake Avenue, consisting of Lots 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28 in Block B and Lots 12 and 13 in Block C, being a part of the Willey's Terrace Subdivision recorded in 1913; identified on Tax Map 200, Grid 21, as Parcels 1783 and 1785 (the "Property").

Existing Zoning: Residential Zone R-1

Total Area of Property: 3.13 Acres/136,423 square feet

Critical Area Designation: Existing LDA 130,154 s.f.
Existing IDA 6,269 s.f.

Area Proposed for Growth Allocation: Limited Development Area (LDA) to
Intensely Developed Area (IDA) – 130,154
s.f.

Existing Project Site Description: Open land with non-tidal wetlands

Project Summary: Subdivision for the purpose of consolidating 16 non-
conforming lots of record in the Critical Area to create 9
residential lots which meet the requirements for lots in the
R-1 Zone as set forth in the Code of the Town of St.
Michaels (“Town Code”), a roadway, and a stormwater
management pond

Water and Sewer: Public

II. Project History and Description

The Property consists of sixteen (16) undeveloped, single-family residential lots of record which do not meet the current zoning requirements for lots in the R-1 zone. The lots were recorded in 1913 as part of the Willey’s Terrace Subdivision and are Lots 15 through 28 in Block B and Lots 12 and 13 in Block C. The Applicant desires to reconfigure the lots to meet current R-1 Zoning requirements.

The Applicant desires to develop the Property with a nine (9) lot residential subdivision, including a stormwater management pond, wetlands mitigation areas, trees and an improved Chesapeake Avenue with a cul-de-sac at the southern end of Applicant’s development in accordance with the Concept Plan submitted with this Application (Exhibit 2).¹ The Property is located in the Town of St. Michaels (the “Town”). The proposed lots would be served by public water and sewer. The Applicant desires to obtain Chesapeake Bay Critical Area Growth Allocation for all but a minor portion of the Property changing its classification within the Critical Area from Limited Development Area to Intensely Developed Area; hence, the subject application. The proposed development will be bordered by property with the LDA and IDA categories. No Resource Conservation Area (RCA) is involved in the project, nor is there any RCA designated property adjacent to the Property. (See, Exhibit 2.) If the Applicant is successful in obtaining the requested Growth Allocation for the Property, the next step toward development of the Property will be commencement of the subdivision process, which will require a much more detailed examination of the development proposal.

¹ All references herein to “Exhibit” are references to the record made before the Planning Commission at the Public Hearing on November 24, 2008.

The Property is in Flood Zones A5, B and C as mapped on the Federal Insurance Rate Maps for Talbot County, Maryland (Panel Map No. 240069 0001 A, 10/15/1981).

III. Analysis of Growth Allocation Request and Findings

Growth Allocation is defined as “the number of acres of land in the Chesapeake Bay Critical Area that the Town may use to create new Intensely Developed and new Limited Development Areas.” Town Code, §340-108. The Growth Allocation process is set forth in Town Code, §340-28 (“§340-28”). Therein, it states that “all applications will be reviewed by the Planning Commission for consistency with the Town of St. Michaels’ Comprehensive Plan, Critical Areas requirements as set out in Chapter 340 “Zoning” of the Code of St. Michaels² and, where applicable, the Subdivision Ordinance.” Town Code, §340-28.D(1) Since Growth Allocation is awarded on a project specific basis, each application for Growth Allocation must be reviewed for consistency with the aforementioned requirements. Prior to making its recommendation, the Planning Commission must conduct a public hearing in accordance with the requirements of §340-28.D. The Planning Commission, after proper notice thereof, conducted a public hearing on the subject request on November 24, 2008 at which it heard a presentation by staff, the Applicant and its consultants, and then accepted public comment. Notice of the public hearing is included in the record. (See Exhibits 15 and 16.)

A. §340-28 Growth Allocation

1. §340-28.C: “Application.” Applications for Growth Allocation must include a subdivision history of parcels designated RCA, with December 1, 1985 being the beginning point of the analysis;³ a concept plan as defined in Chapter 340 (See Exhibit 2); appropriate environmental reports (See Exhibit 9) a schedule of project development; and such other information and documentation as the Planning Commission may require. The Applicant submitted the required items.⁴ Having reviewed the submissions for compliance with the application requirements, the Planning Commission finds that the Application is complete.

One of the submission requirements is a Concept Plan. Town Code, §340-108 defines “Concept Plan” as:

a conceptual rendering, drawn to an approximate scale, that includes, at a minimum, the following information.

² Hereinafter referred to as “Chapter 340”.

³ As stated in Section II above, none of the Property is in the RCA. Accordingly, a subdivision history is not required in this case.

⁴ Regarding the development schedule, the Applicant’s attorney stated at the Public Hearing that infrastructure build out should be completed within 2 years of the official granting of the growth allocation.

- a. Proposed title of the project and the name of the engineer, architect, landscape planner or other designer who prepared it
- b. A preliminary description of the nature of the proposed uses
- c. North arrow, scale, date and approximate boundary of the property
- d. Total number of acres of the land on which the project is to be located
- e. The preliminary layout of all lots and roads
- f. The preliminary location of all proposed open spaces
- g. The critical area boundary, including the 100 foot shoreline development buffer
- h. The proposed number and types of units
- i. Such other information as the Planning Commission or its staff may reasonably require to accomplish the purpose of this process

Upon review of the Concept Plan filed by the Applicant (Exhibit 2), the Planning Commission hereby finds that the Concept Plan, as revised, contains all of the information set forth in the foregoing definition.

Furthermore, §340-28.C. prohibits multiple applications for Growth Allocation. It prohibits the filing of a request for Growth Allocation within 12 months of the withdrawal of a Growth Allocation application for the same land, it prohibits more than one application for Growth Allocation relating to some or all of the same land being actively processed by the Town or on appeal, and it prohibits the filing of a Growth Allocation application within 12 months after the date of a final decision on the merits regarding an application for the award of Growth Allocation involving the same land. The Planning Commission hereby finds, based upon a review of the record, that no other application for the award of Growth Allocation is currently pending for the same property or any portion thereof, nor has one been filed, withdrawn or approved within the last 12 months.

2. §340-28.B. “Guidelines.” Section 340-28.B recognizes that “Growth Allocation is a finite resource and must be managed to address the most meritorious current needs of the Town, and conserved to meet the future needs of the Town.” Accordingly, when locating new Intensely Developed Areas, such as is requested here, the Town must apply certain guidelines. The Guidelines set forth in §340-28.B that are pertinent to the Request

are addressed below. The Guidelines are bold, and the Planning Commission's response follows each one. The Guidelines set forth in §340-28.B are virtually identical to the Guidelines contained in the Annotated Code of Maryland, Natural Resources Article, §8-1808.1,⁵ any deviations will be noted herein. The Planning Commission finds that it is not necessary to address the inapplicable guidelines.

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

The Property is currently designated LDA. The proposed IDA is contiguous on the north and east to land classified as IDA.

b. **New Intensely Developed Areas shall be at least 20 acres in size unless:**

(1) They are contiguous to an existing IDA or LDA; or . . .

The proposed development is contiguous to existing IDA and LDA properties.

c. **Locate a new IDA 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.**

First, the Planning Commission must address whether the new IDA is proposed to be located in a manner that minimizes impacts to a habitat protection area as defined in COMAR 27.01.09. Habitat protection areas "include the buffer, non-tidal wetlands, threatened and endangered species, plant and wildlife habitats, anadromous fish spawning propagation waters and species in need of conservation as defined in COMAR." Town Code, §340-108.

COMAR 27.01.09.01 requires that local jurisdictions establish a minimum 100 Foot Buffer landward from the mean high water line of tidal waters, tributary streams, and

⁵ Several of the Guidelines in both the Town Code and the Natural Resources Article make reference to the Resource Conservation Area designation. Since the Property is not designated RCA and does not abut any property designated RCA, those Guidelines are not addressed as they are inapplicable.

tidal wetlands. A “Buffer” is an existing, naturally vegetated area, or area established in vegetation and managed to protect aquatic wetlands, shoreline and terrestrial environments from man-made disturbances. COMAR 27.01.09.01. The Applicant’s proposal includes the required 100 foot buffer. (See, Exhibit 2.) A One Hundred Foot Buffer has been placed from the mapped tidal wetlands that exist south of Canton Street and it has been expanded to include the intermittent stream, nontidal wetlands and the nontidal wetlands buffers. The Applicant is not proposing any development within the minimum 100 Foot Buffer, except for that disturbance which is associated with creating required or enhanced non-tidal wetlands and other mitigation programs. COMAR further requires that the Buffer be expanded beyond 100 feet to include contiguous, sensitive areas, such as steep slopes, hydric soils, or highly erodible soils, whose development or disturbance may impact streams, wetlands, or other aquatic environments. The proposed Buffer will provide sufficient protection for tidal and non-tidal wetlands, as well as the stream, and enhance water quality. (Exhibit 11.) There are no steep slopes on the Property.

The Applicant proposes a Buffer Management Plan which includes planted vegetation where necessary to protect, stabilize or enhance the Buffer and limits cutting of trees and the removal of vegetation only where necessary. (Exhibit 11.)

COMAR 27.01.09.02 addresses non-tidal wetlands. The Applicant proposes minor non-tidal wetlands disturbance as defined in its non-tidal wetlands permit application submitted to the Maryland Department of the Environment (MDE). (See Exhibit 11.) The Applicant proposes non-tidal wetlands mitigation in excess of the required amount (17,494 sq. ft. proposed vs. 12,554 required – See Exhibit 2).

COMAR 27.01.09.03 addresses threatened and endangered species and species in need of conservation. There are no rare, threatened, or endangered species within the boundaries of the Property, as confirmed by the Maryland Department of Natural Resources, Wildlife and Heritage Service. (Exhibit 10.)

COMAR 27.01.09.04 addresses Plant and Wildlife Habitat. Some amphibian and very small mammal habitat (e.g., rabbits and muskrat) exist in the stream and wetlands directly adjacent to the stream. Talbot County Critical Area Program Habitat Protection Area Maps do not reflect any other plant or wildlife habitat areas on the Property in need of protection. The Applicant's proposal will result in more forested area and habitat than currently exists on the Property.

It should here be noted that it is impossible to develop Lot 1 and construct the road without impacting plant and wildlife habitat areas. If Growth Allocation were approved, the Applicant would be required, as a condition of Maryland Department of the Environment permit approval, to mitigate for the unavoidable disturbances. The mitigation area as proposed is made a part of Lot H. (See Staff Report)

There are no anadromous fish propagation waters adjacent to the Property. (See Staff Report)

For the reasons set forth above, the Planning Commission finds that the Applicant's proposal to locate an IDA on the Property does so in a manner that minimizes impacts to habitat protection areas as defined in COMAR 27.01.09. However, now the question is whether it does so in an area and in a manner that optimizes benefits to water quality. For the reasons set forth below, the Planning Commission finds that it does.

The Property currently does not have stormwater management facilities. The Property currently drains naturally in a southwesterly fashion into the stream. The stormwater management structures proposed for the Property will collect currently unrestricted stormwater flow from neighboring properties to the east of the easterly lots in the development. The proposed stormwater management will enhance the health of the stream and surrounding area and result in the development meeting applicable State requirements. The proposed stormwater management for the Project will comply with the Critical Area 10% nutrient reduction rule. (Exhibit1.) In so doing, it will improve water quality significantly from existing conditions. It should also be noted that the Applicant proposes to install wastewater management infrastructure, connecting to the

Town's public water and sewerage systems. For all of the reasons set forth hereinabove, the Planning Commission finds that the Applicant has met this guideline.

The development will conform to the Town's program for IDA sites. The development will be served by public water and sewer and will have a density greater than three (3) dwelling units per acre.

- d. **New IDA shall conform to the Town program for such areas, shall be so designated on the Town Zoning Map and shall constitute an amendment to the Town program subject to review and approval by the Town Planning Commission, the Town Commissioners and the Critical Area Commission.**

The Property is zoned R-1. The Applicant proposes 9 single-family residential lots on 2.99 acres, which is in keeping with the density requirements of the Residential Zone, R-1. The minimum lot size in the R-1 Zone is 7,200 square feet. Each of the proposed lots meets or exceeds the minimum lot size requirements of the Zone. Further, the minimum lot width in the R-1 Zone is 50 feet and the minimum depth is 100 feet. The proposed lots meet or exceed the lot width and depth requirements of the R-1 Zone. Finally, the lots are single-family residential lots and a single-family detached dwelling is a permitted principal use in the R-1 Zone.

Additionally, each lot proposes a building envelope which reflects minimum building setbacks required in the R-1 Zone (i.e. front yard of 30'; side yard of 8'; and rear yard of 25'). However, it should be noted that the Concept Plan does not reflect the aggregate side yard setback requirement of 20 feet. The Concept Plan should be amended accordingly. Finally, with respect to impervious lot coverage, lot coverage is limited in the R-1 "to a maximum of 30%." This requirement shall be met, as is noted on the Concept Plan.

Chesapeake Reach conforms to the requirements of Town Code, §340-27.1(A) in that it will be served by public water and sewer, and the density of the proposed development is greater than three dwelling units per acre. The proposal also conforms to the general policies for IDA as set forth in the Town Code as development will occur in a manner that

will improve water quality and minimize impacts to Habitat Protection Areas. The development will also assist in treating currently untreated storm water through the construction of storm water management controls.

Consistency with the Town's Comprehensive Plan and Subdivision Regulations will be addressed later. However, the Planning Commission finds that the Applicant's proposal meets this guideline.

- e. **In addition to meeting the minimum requirements of the Critical Area regulations, the project design shall enhance the habitat value or improve water quality in the area. For example, afforestation may exceed the fifteen (15) percent requirement, or best management practices for stormwater management may be installed on portions of the site to remain in agricultural use.**

The proposed development will exceed Critical Area requirements for habitat protection and water quality. Afforestation will be greater than that required, as the site is presently 11% forested and the project will result in 31.4% of the site being forested. Upon consideration of the testimony presented at the public hearing and review of the Exhibits, and as is stated hereinabove, the Planning Commission finds that that proposed project design will enhance the habitat value and improve water quality in the area. Accordingly, the Planning Commission concludes that this guideline has been met.

- f. **For residential development, a community pier shall be strongly encouraged rather than individual private piers.**

Chesapeake Reach is not a waterfront development and, therefore, will not have a community pier or any other type of pier for that matter.

- g. **Open space requirements shall be met as specified in the Town Zoning Ordinance, subdivision regulations and/or through the process of concept plan review. Naturally vegetated Buffer is strongly encouraged.**

There are no open space requirements for the Chesapeake Reach project. Vegetated buffers are proposed for the Property, however. See the Concept Plan, Exhibit 2.

3. §340-28.D. Process. Section 340-28.D(1) provides that all applications for Growth Allocation will be reviewed by the Planning Commission for consistency with the Town of St. Michaels' Comprehensive Plan, Critical Area requirements as set out in Chapter 340 (Zoning) of the Code of St. Michaels, and, where applicable, the Subdivision Ordinance. The Planning Commission is required to make a determination of consistency and make additional recommendations concerning conditions of approval.

a. Consistency with the Town of St. Michaels Comprehensive Plan

As is set forth in Ms. Renshaw's Staff Report, the Comprehensive Plan (1998) contains the following relevant provisions.

(i) Page 69 – A vision of the future: As we grow, we will continue our efforts to improve environmental quality in St. Michaels and throughout the region. We will plant trees, protect and create wetlands, reduced air and water pollution and generally beautify our public and private spaces.

(ii) Page 71 Land Use: Establish a policy of in-fill development for vacant areas of the Town.

(iii) Page 75 Environment: Protect and preserve the natural environment in St. Michaels and in areas surrounding Town by ensuring that all development in critical areas, wetlands, and flood plains complies with current environmental regulations.

(iv) Page 89: All new residential development projects must be consistent with Critical area policy as well as with the Comprehensive Plan. Future land use in newly developed areas should be primarily residential in nature and compact residential and comport with the "village character of St. Michaels" as described in the Community character element.

2008 Comprehensive Plan (The 2008 Comprehensive Plan was not adopted at the time of the Planning Commission's public hearing on this matter; however, knowing it was due to be adopted prior to the Town Commissioner's review of

this Application, the Planning Commission considered it as well. The 2008 Comprehensive Plan was adopted by the Town Commissioners on December 4, 2008, subsequent to the Planning Commission's hearing and deliberations regarding this matter, however, prior to the issuance of this Recommendation.)

(i) Chapter 1 Land Use and Growth Management

1.1.3 Review the zoning of the undeveloped area south of Railroad Avenue at Chesapeake and Miles Avenues.

(ii) 1.2.6 Support appropriate infill and mixed-use development projects that are compatible with the existing community fabric.

Additionally, the Applicant stated as follows:

The 1998 Comprehensive Plan

(i) Provides in Figure 20, the Designated Critical Area Growth Allocation Areas map (page 119) areas in Town "which have been remapped for future growth allocation." The Map designates Chesapeake Reach as an "area identified for future growth allocation and suitable for development in both the Talbot County Critical Area Program and the St. Michael's Critical Area Program."

(ii) Indicates that Chesapeake Reach should be awarded Critical Area Growth Allocation in accordance with other Comprehensive Plan objectives and development regulations which would control the design and environmental impacts of the development.

2008 Comprehensive Plan

(i) Chapter 2, "Municipal Growth Element" cites the Talbot County Comprehensive Plan and states that "incorporated towns are the best possible location to focus future growth, be it residential, commercial or industrial. This is due to the presence of existing infrastructure for development, as well as existing opportunities for infill and redevelopment." Chesapeake Reach is an excellent location for future growth as it is in the incorporated Town of St. Michaels and can be easily served by existing infrastructure.

(ii) Chapter 3, “Environmental Resources and Sensitive Areas Protection” discusses Critical Area Growth Allocation as an appropriate mechanism for development keeping with the existing character in the Town. Chesapeake Reach is requesting the appropriate mechanism of Growth Allocation in order to create a development keeping with the existing character of the Town.

(iii) Chapter 10 “Housing” describes St. Michaels as set in its present boundaries except for a few pending development projects and that attention needs to be directed toward ensuring that infill and restorative projects do not create architectural anomalies in their respective neighborhoods. Chesapeake Reach is proposing an infill development in the Town which will be consistent with adjoining housing and not create any architectural anomalies.

The Applicant’s proposal is in-fill development as contemplated by the adopted Comprehensive Plan. Further, it is proposed at a location that is identified as appropriate for growth allocation. The proposed development will improve quality of the environment through the treatment of stormwater runoff, the planting of trees, and the establishment of a pond. Although the Proposed Comprehensive Plan has not yet been approved by the Town, the Commissioners of the Town of St. Michaels are expected to adopt the Proposed Plan prior to its consideration of this matter. Accordingly, the Planning Commission has addressed both the adopted Comprehensive Plan and the Proposed Plan. For all of the reasons set forth in this Section, the Planning Commission finds that the Applicant’s proposal is consistent with the Town of St. Michaels’ Comprehensive Plan.

- b. Consistency with the Critical Area requirements set forth in Chapter 340 of the Town Code.

The Critical Area requirements of the Town Code are set forth in §340-27 through §340-27.9. Many of these sections are addressed above, and, therefore, the Planning Commission incorporates herein its analysis and findings set forth therein as they apply to many of the Critical Area requirements.

§340-27 Critical Area Overlay District⁶. With respect to the General Policies regarding Development in the Critical Area, the Planning Commission notes that the Code anticipates that the Town will be faced with the challenge of accommodating growth in the Critical Area while providing for the conservation of habitat and the protection of water quality. It further notes that future intense development activities, when proposed in the Critical Area, shall be directed towards the Intensely Developed Areas.

(i) §340-27.1 Intensely Developed Areas. This Section of the Town Code specifically addresses development in Intensely Developed Areas. An IDA is an area where residential, commercial, institutional, and/or industrial developed uses predominate and where relatively little natural habitat occurs. At the time of the initial mapping, these areas shall be concentrated in an area of at least 20 adjacent acres or that entire upland portion of the Critical Area within the boundary of a municipality, whichever is less, and have had at least one of the following features:

- a) Housing density equal to or greater than four dwelling units per acre
- b) Industrial, institutional or commercial uses are concentrated in the area; or
- c) Public sewer and water collection and distribution systems are currently serving the area and housing density is greater than three dwelling units per acre.

The proposed IDA is an area adjacent to other IDA designated properties and in an area that satisfies the above mentioned density requirements.

Furthermore, the Property will be served by public water and sewer.

The General Policies established by the Town for development and redevelopment in the IDA are as follows:

New or expanded development or redevelopment shall take place in such a way as to:

⁶ Goals: minimize adverse impacts on water quality, conserve fish, wildlife and plant habitats and establish policies for development in the Critical Area which accommodate growth.

- a) Improve the quality of runoff from developed areas that enters the Chesapeake Bay or its tributary streams;
- b) Accommodate additional development of the type and intensity designated by the Town in this Zoning chapter, provided that water quality is not impaired;
- c) Minimize the expansion of Intensely Developed Areas into portions of the Critical Area designated as Habitat Protection Areas and Resource Conservation Areas under this Zoning Chapter;
- d) Conserve and enhance Habitat Protection Areas to the extent possible within Intensely Developed Areas; and
- e) Encourage the use of retrofitting measures to address existing stormwater management problems.

The Project is clearly new development proposed within IDA. As is stated and discussed hereinabove the Applicant proposes to improve the quality of runoff from developed areas that enter the Bay. Furthermore, the Applicant proposes to enhance the Habitat Protection Areas to the extent possible.

The following are the development standards adopted for Intensely Developed Areas:

- a) All plans shall be assessed for their impacts on water quality and other biological resources.
- b) Alterations in the plans shall be made to mitigate any negative impacts.
- c) Urban best management practices shall be considered and, where appropriate, implemented as part of all plans for development or redevelopment.
- d) Development and redevelopment shall be subject to the Habitat Protection Area requirements described in §§ 340-27.4, 340-27.5, 340-27.7, 340-27.8 and 340-27.9 of this chapter.

As for the development standards applicable in the IDA, the Project will not have a negative effect on the

water quality, as stormwater management techniques will be employed where none have existed previously. Proposals to mitigate any negative impacts have been proffered through non-tidal wetland mitigation at a rate greater than required. The Habitat Protection Area requirements stated above are addressed hereinafter.

Stormwater is required to be addressed in the IDA in accordance with the following provisions:

- a) The Town shall require, at the time of development or redevelopment, that technologies as required by applicable state and local ordinances be applied by anyone undertaking development activities in order to minimize adverse impacts to water quality caused by stormwater. The technologies shall be developed in accordance with the guidelines published by the Chesapeake Bay Critical Area Commission and those contained within the Town of St. Michaels Stormwater Management Plan.
- b) In the case of redevelopment, if these technologies do not reduce pollutant loadings measured by use of the keystone pollutant method by at least 10% below the level of pollution on the site prior to redevelopment, then offsets shall be provided.
- c) In the case of new development, offsets as determined by the Town shall be used if they reduce pollutant loadings by at least 10% of the predevelopment levels.
- d) Offsets should be provided on site. However, if the applicant demonstrates that, due to site constraints, on-site application is not achievable, then compliance with the above provisions may be accomplished by utilizing off-site drainage areas, offsets located off site or the collection of fee-in-lieu monies. These alternatives shall only be considered provided that water quality benefits are equivalent, that the benefits are obtained within the same watershed, and that the benefits can be determined through the use of modeling, monitoring or other computation of mitigation measures as specified in the manual prepared for the Commission entitled "Critical

Area 10% Rule Guidance Manual," dated Fall 2003, and as may be subsequently revised or amended. The fee-in-lieu amount shall be based on current mitigation rates determined by the Town. All funds collected by the Town shall be held in a dedicated stormwater bank account, until future stormwater use. Funds should be used in the watershed of impact, to the extent feasible.

- e) If practicable, permeable areas shall be established in vegetation and, whenever possible, redevelopment shall reduce existing levels of pollution.
- f) Areas of public access to the shoreline, such as footpaths, scenic drives and other public recreational facilities, should be maintained and, if possible, encouraged to be established within Intensely Developed Areas.
- i) To the extent practicable, future development in the Critical Area shall use cluster development as a means to reduce impervious areas and to maximize areas of natural vegetation
- j) When the cutting or clearing of trees in forests and developed woodland areas is associated with current or planned development activities, the following shall be required:
 - i) Participation in zoning ordinances established by the Town for the enhancement of forest and developed woodland resources such as zoning ordinances for urban forestry (for example, street tree planting, gardens, landscaping, Buffer planting);
 - ii) Development activities shall be designed and implemented to minimize destruction of forest and woodland vegetation; and
 - iii) Development activities shall address the protection of existing forests and developed woodlands identified as Habitat Protection Areas in the habitat protection section of this chapter. Editor's Note: See § 340-27.4, Habitat protection.

The Planning Commission finds that the Applicant's proposal improves the quality of runoff and maintains existing areas of natural habitat, to the extent practicable, for all those reasons articulated hereinbefore. Furthermore, the Planning Commission finds that the Applicant's proposal is of an intensity that conforms to the water quality.

(ii). Compliance with §§340-27.4 Habitat Protection, 340-27.5 One Hundred Foot Buffer, 340-27.7 Threatened and endangered species in need of conservation, 340-27.8 Plant and wildlife habitat and nontidal wetlands protection and 340-27.9 Anadromous fish propagation waters are all addressed in Section III.A.2.c. above.

The required 100 foot Buffer is proposed and will be established in natural vegetation including areas of the Buffer which are planted to protect the watershed. There will be no community owned Buffer area in the proposed development. Although the Buffer was not required to be expanded to encompass hydric soils as the only hydric soils on site are within the wetlands mitigation area, the Buffer was expanded to include contiguous non-tidal wetlands. It should be noted that there are no steep slopes on site.

The Applicant has identified all unavoidable impacts to the HPAs and has provided mitigation for these impacts.

(iii) The Planning Commission finds that the Applicant's proposal does not involve an intrafamily transfer of land, commercial timber harvesting, agriculture, or surface mining in the Critical Area.

(iv) The Planning Commission further notes that there are no known areas within the Critical Area of the Town identified and designated as a natural heritage area.

For the reasons set forth hereinabove, the Planning Commission finds that the Applicants proposal is consistent with the Critical Area requirements as set out in Chapter 340 (Zoning) of the Code of St. Michaels.

c. Consistency with the Town Subdivision Regulations

The Town's subdivision regulations are set forth in Chapter 281 of the Town Code. Based upon the evidence presented, and as is more fully explained below, the Planning Commission finds that the Applicant's proposal is

consistent with the Subdivision regulations of the Town Code.

During the public hearing regarding this Growth Allocation application, several issues were raised that will have to be addressed during the subdivision process. However, the Planning Commission is charged with finding consistency, not exact conformance with, the Subdivision regulations. The Planning Commission finds that the Property is appropriate for development and is suitable for building purposes and human habitation. The proposal coordinates existing and proposed streets. It will also protect wetlands, and plant and wildlife habitats within the Town's Critical Area, all as explained hereinabove. Water service will be provided through a connection to the existing water line in Railroad Avenue, constructed in Chesapeake Avenue and connected to the existing water line in Canton Street. See Exhibit 2. Pressure sewer service will be connected to the existing sewer line in Railroad Avenue and will be constructed in Chesapeake Avenue.

The Planning Commission has evaluated, Section 511, Standards for Development in the "O" Critical Area Overlay District of the Subdivision regulations and finds that as is required of all subdivision of land located within the Critical Area Overlay District, a buffer of at least 100 feet is being proposed, and no development is proposed in the buffer.

Land to be subdivided shall be designed and improved in reasonable conformity to existing topography, in order to minimize grading, cuts and fill, and to retain, insofar as possible, the natural contours, minimize storm water run-off and conserve the natural cover and soil. So far as one can tell at a conceptual level, the Property appears to be so designed. The Planning Commission finds that the Applicant also proposes to increase natural vegetation through afforestation and landscaping.

In accordance with the Subdivision Regulations, the Property is taken up in lots, street and other uses such that no landlocked areas are being created. The floodplain designations are reflected on the Concept Plan. The Town Engineer has reviewed the road layout and cross-section and has confirmed that the standards appear to be that required in the R-1 Zone. All lots abut on a street.

As advised by Staff, at subdivision the Applicant, if this request is approved, would be required to address, to the Planning Commission's satisfaction, all of the applicable subdivision requirements, including, but not limited to, streets, forests, stormwater management, soil and sediment erosion control, and Buffer Management Plans. A finding of consistency by the Planning Commission for purposes of Growth Allocation in no way constitutes a finding of approval of the requirements for subdivision.

d. Lot Consolidation and Reconfiguration, Town Code, §340-27.19

Recently adopted House Bill 1253 requires that the Town adopt provisions establishing standards for the consolidation and reconfiguration of lots prior to January 1, 2009. Accordingly, the Town adopted Town Code, §340-27.19 "Consolidation or Reconfiguration of Existing Lots of Record in the Critical Area" which reads as follows:

An applicant for development activity that involves the consolidation or reconfiguration, or adjustment of parcel boundaries of existing lots of record in the Critical Area that are not individually owned shall design and implement the project to bring the lands into conformance with the Town's Critical Area Program to the maximum extent possible and to minimize adverse impacts to water quality and fish, wildlife, and plant habitat. The following performance standards for these projects shall be used to assess the project relative to the goals of the Critical Area Program. At a minimum, all applications must fully address the following factors:

- (1) The Applicant must demonstrate that the proposed consolidation or reconfiguration of existing lots of record in the Critical Area results in an overall reduction in the number of lots and that all of the existing lots were considered legally buildable at the time of recordation.
- (2) The Applicant must demonstrate that the proposed consolidation or reconfiguration of existing lots does not result in an increase in the

number of waterfront development rights or an intensification of development activity at the shoreline or within the 100-foot Buffer.

- (3) The Applicant must demonstrate that the proposed consolidation or reconfiguration of existing lots does not create any additional development rights within the Resource Conservation Area.
- (4) The Applicant must demonstrate that the proposed consolidation or reconfiguration of existing lots will be served by public water and sewer services at the time of building permit issuance and that the existing public water and sewer infrastructure has adequate capacity to accommodate the proposed development.
- (5) The Applicant must identify proposed impacts to Habitat Protection Areas (HPAs) related to the recorded and legally buildable lots of record as well as identify proposed measures to minimize impacts to HPAs related to the reconfigured lots. Where impacts to HPAs are proposed in conjunction with the reconfigured lots, the applicant must identify measures to mitigate for the impacts.
- (6) The Applicant must demonstrate how the proposed consolidation or reconfiguration of existing lots will exceed the Town's stormwater management requirements. This may be accomplished by providing onsite secondary or tertiary treatment, or by treating offsite areas such as existing roads, parking areas, or public community facilities within the same sub-watershed.
- (7) The Applicant must demonstrate how the proposed consolidation or reconfiguration of existing lots will result in less overall lot coverage as compared to the amount of overall lot coverage that would have resulted from the existing lot configuration.
- (8) The Applicant must demonstrate that proposed mitigation plantings are provided to offset any impacts to forested areas, resulting in the creation of new habitat such that no net loss of forest or developed woodland cover is achieved.
- (9) The Applicant must demonstrate that a minimum of 15% forested or developed

woodland cover is provided where none otherwise exists.

- (10) The Applicant must demonstrate how the proposed stormwater treatment will provide habitat as well as water quality benefits by using stormwater treatment practices such as stormwater ponds, stormwater wetlands or bioretention, and rain gardens.

As is required in Town Code, §340-27.19, the proposed consolidation/reconfiguration will result in a reduction in the number of legally buildable lots in the IDA from 16 to 9 lots. A letter from Debbie Renshaw, identified as Exhibit 3, confirms the legally buildable status of the 16 non-conforming lots. Since the Property does not have any water frontage, the proposed consolidation will not create any new waterfront development rights. It should also be noted that the project will not intensify development activity at the shoreline or within the 100 foot Buffer. Since the Property is currently designated LDA and is not surrounded by any RCA land, the proposed consolidation will not create any additional development rights within the RCA. As is set forth in greater detail elsewhere herein, the Property will be served by public water and sewer, which is available to the Property. As to the impacts on the HPA's, the Applicant proposes to greatly exceed the required mitigation and create 17,494 (as opposed to 12,554) square feet of non-tidal wetland in the Mitigation Area labeled on the Concept Plan. Furthermore, if the existing lots were developed, it would result in more square footage of HPAs being adversely affected as compared to the proposed reconfigured lots.

The Town's stormwater management requirements will be met through the use of a stormwater management pond and the use of eight two foot wide swales in between the property lines, and one swale that will run along the back of Lots B-H as reflected on the Concept Plan. The Applicant submitted a Stormwater Management Report fully outlining the stormwater management provisions. As explained by the Applicant, the development of the existing lots of record with an LDA designation would be allowed 25% lot coverage and would result in 25,223 square feet of lot coverage, whereas, the proposed configuration (9 lots in the IDA with 30% lot coverage) results in 21, 131 square feet

of lot coverage. The proposed configuration results in less overall lot coverage. As explained hereinabove, there are unavoidable impacts to the forested areas of the Property; however, they will be mitigated through planting to offset the impacts. The Property will have greater forested area once developed in accordance with the concept plan. A minimum of 31.4% forested or developed woodland cover will be provided, well in excess of the 15% required. Finally, with respect to stormwater management, the proposed stormwater management treatment will provide habitat and water quality through the use of the stormwater management pond and the planting that surround the pond and the shallows inside of the pond which will establish an aquatic habitat.

e. Miscellaneous

i. The Town has a balance of 24 acres of growth allocation which can be utilized for conversion of LDA to IDA. See Staff Report, Exhibit 3. Since the Application is for 3 acres, should the request be approved, the Town will still have 21 remaining acres for future conversion. The Planning Commission hereby further finds that the Town has available Growth Allocation for this request and that there will remain sufficient Growth Allocation to meet the future needs of the Town. The Planning Commission additionally finds that the project is capable of being completed within two years of the award of Growth Allocation, as is required.

ii. Section 340-28.D.6 requires that the Town Commissioners make certain findings. To assist the Town Commissioners the Planning Commission considered these items as well. The Planning Commission finds that the change in the Town's population as a result of this development would be in keeping with what is anticipated in the Comprehensive Plan. Assuming, as the Applicant does, 2.3 persons per household, the proposed subdivision would add approximately 21 persons to the Town's population. Additionally, with a reduction in the number of lots from 16 to 9, the development will generate less persons than originally contemplated. The Talbot County Comprehensive Water and Sewer Plan designates the Property as W-1/S-1. The Applicant's assertion that public schools have adequate capacity was unchallenged. The Applicant also noted that the Property would be served by

Town police and the Volunteer Fire Department. Finally, the Planning Commission notes that minimal traffic will be

generated by the proposed development. Finally, the Project is designed to be consistent with the Residential R-1 Zone and compatible with the density of adjoining residential development.

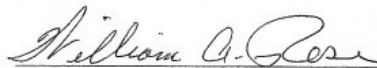
IV. Recommendation

Based upon the Planning Commission's review of the exhibits submitted in connection with this matter, and consideration of the testimony received at the public hearing, the Planning Commission finds, for the reasons stated hereinabove, that, subject to the conditions outlined below, the Applicant's request for Growth Allocation is consistent with the Town's Comprehensive Plan, the Critical Area requirements as set out in Chapter 340 of the Code of the Town of St. Michaels and the Subdivision Ordinance. Accordingly, the Planning Commission recommends, upon a unanimous vote of all those present that the Town Commissioners approve the Applicant's request for Growth Allocation for 2.99 Acres of IDA from the LDA, subject to the following conditions:

1. Note 4 on the Concept Plan shall be amended to reflect the aggregate side yard setback requirements for the R-1 Zone (20 feet).
2. Prior to granting of subdivision approval, a detailed stormwater management plan shall be approved by the Town Commissioners.
3. The Applicant shall provide documentation to the Critical Areas Commission at the time it reviews the request for Growth Allocation establishing the process to be followed in order to achieve a 10% reduction in phosphorus.
4. The Applicant shall pursue all necessary Federal, State and local approvals required for development in accordance with the proposed Concept Plan.

Respectfully submitted,

The St. Michaels Planning Commission


William Rose