

OF

DORCHESTER COUNTY, MARYLAND

BILL NO. 2023-4

AN ACT OF THE COUNTY COUNCIL OF DORCHESTER COUNTY TO AMEND THE OFFICIAL CRITICAL AREA MAP OF DORCHESTER COUNTY TO CHANGE THE CRITICAL AREA DESIGNATION OF A PORTION OF A 7.66 ACRE PARCEL OF LAND OWNED BY DAVID W. NICKERSON, TRUSTEE OF THE DAVID W. NICKERSON REVOCABLE TRUST, LOCATED AT 6305 SUICIDE BRIDGE ROAD, HURLOCK, MARYLAND AND SHOWN ON TAX MAP 12 AS PARCEL 16 FROM RESOURCE CONSERVATION AREA (“RCA”) TO LIMITED DEVELOPMENT AREA (“LDA”) PURSUANT TO § 68-12 OF THE DORCHESTER COUNTY CODE.

WHEREAS, pursuant to Md. Code Ann., Natural Resources § 8-1809 and Code of Maryland Regulations (“COMAR”) Title 27, Subtitle 1, the County Council of Dorchester County (the “County Council”) is authorized to enact a Critical Area Program for Dorchester County (the “County”) and to designate land within the Chesapeake Bay Critical Area (the “Critical Area”) located within the County as either RCA, LDA, or Intensely Developed Area (“IDA”); and

WHEREAS, pursuant to the foregoing authority, the County Council has adopted a Critical Area program (the “Program”) for the County codified as Chapter 68 of the Dorchester County Code (the “County Code”) and an Official Critical Area Map (the “Map”) designating all land in the County within the Critical Area as RCA, LDA, or IDA; and

WHEREAS, pursuant to § 68-12(B) of the County Code, the County’s original growth allocation acreage was 2,900 acres and the remaining growth allocation is 1,486 acres; and

WHEREAS, Section 68-12 of the County Code provides the requirements pursuant to which the County Council may use its remaining growth allocation acreage, including the standards for establishing new LDAs and IDAs; and

WHEREAS, David W. Nickerson, Trustee of the David W. Nickerson Revocable Trust (the “Owner”), is the fee simple owner of certain real property located at 6305 Suicide Bridge Road, Hurlock, Maryland and shown on Tax Map 12 as Parcel 16 (the “Property”); and

WHEREAS, the Property is designated as RCA on the Map; and

WHEREAS, 0.80 acres of the Property is mapped as tidal wetlands, wherein development activity is prohibited; and

WHEREAS, the Property is improved with a 11,353± square foot gravel parking area that is used by the Suicide Bridge Restaurant for overflow parking and is also improved with a single-family residential dwelling and an accessory structure; and

WHEREAS, the Owner has requested that 6.86 acres of the Property be reclassified from RCA to LDA using 6.86 acres of the County's allotted growth allocation; and

WHEREAS, on September 7, 2022, the Dorchester County Planning Commission held a duly advertised public hearing on the Owner's request to reclassify a portion of the Property from RCA to LDA, after which it recommended that the County Council approve the request; and

WHEREAS, the County Council held a public hearing on the Owner's request to reclassify a portion of the Property from RCA to LDA on April 18, 2023 and received testimony and evidence regarding the same; and

WHEREAS, the County Council has determined that the Owner has met the requirements set forth in § 68-12 of the County Code to permit reclassification of 6.86 acres of the Property from RCA to LDA using 6.86 acres of the County's allotted growth allocation; and

WHEREAS, the County Council has made certain findings of fact that are set forth in Exhibit A which is attached hereto and incorporated herein by reference.

NOW THEREFORE, the County Council of Dorchester County, Maryland hereby ordains as follows:

SECTION 1: The above recitals are not merely prefatory but are a substantive part of this Bill.

SECTION 2: The Official Dorchester County Critical Area Map is hereby modified as follows:

The Critical Area designation of a 6.86 acre portion of the property located at 6305 Suicide Bridge Road, Hurlock, Maryland and shown on Tax Map 12 as Parcel 16 and more fully shown on Exhibit B, attached hereto and incorporated herein by reference, is changed from Resource Conservation Area to Limited Development Area.

SECTION 3: The Official Critical Area Zoning Map of Dorchester County shall be amended and signed by the County Council to reflect the change in the Critical Area designation of the property herein described from RCA to LDA as set forth herein.

SECTION 4: With respect to the substantive provisions of this Bill set forth in Sections 2 and 3 and the Findings of Fact attached hereto as Exhibit A, language added after the date of introduction is shown in bold, underlined font and language deleted after the date of introduction is crossed out with a strikethrough.

SECTION 5: If any provision of this Bill or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, such invalidity does not affect other provisions or any other application of this Bill that can be given effect without the invalid provision or application, and for this purpose, the provisions of this Bill are declared severable.

SECTION 6: The Publishers of the Dorchester County Code, the Dorchester County Attorney, and the Dorchester County Department of Planning & Zoning, in consultation with and subject to the approval of the County Manager, shall be authorized to make non-substantive corrections to codification, style, capitalization, punctuation, grammar, spelling, and any internal or external reference or citation to the Dorchester County Code that is incorrect or obsolete, with no further action required by the County Council. All such corrections shall be adequately referenced and described in an editor's note following the section affected.

SECTION 7: The title and summary of this Bill shall be published promptly at least once in a newspaper of general circulation in Dorchester County following its passage in accordance with § 308 of the Charter of Dorchester County, Maryland (the "Charter").

SECTION 8: Pursuant to § 68-12(G)(6) of the County Code, this Bill shall be sent to the Maryland Critical Area Commission as a request to utilize a portion of the County's allotted growth allocation.

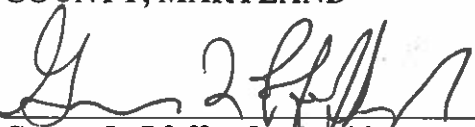
SECTION 9: In accordance with § 306 of the Charter, this Bill shall take effect sixty (60) days from the date of its passage.

ATTEST:

**THE COUNTY COUNCIL OF DORCHESTER
COUNTY, MARYLAND**



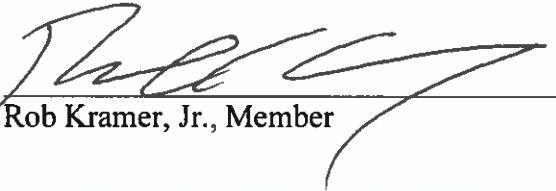
Jeff Powell, Interim County Manager



George L. Pfeffer, Jr., President



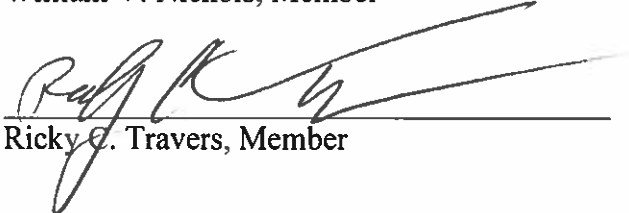
Mike Detmer, Vice President



Rob Kramer, Jr., Member

Abstain

William V. Nichols, Member



Ricky C. Travers, Member

EXHIBIT A TO BILL NO. 2023-4**FINDINGS OF FACT OF
THE COUNTY COUNCIL OF DORCHESTER COUNTY****APPLICATION FOR GROWTH ALLOCATION ON LANDS OWNED BY
DAVID W. NICKERSON, TRUSTEE OF THE DAVID W. NICKERSON REVOCABLE TRUST****I. BACKGROUND**

The Suicide Bridge Restaurant, Inc. (the “**Applicant**”), owned by David W. Nickerson, amended its Application for Growth Allocation to include an adjacent lot or parcel of land, also owned by Mr. Nickerson as Trustee of the David W. Nickerson Revocable Trust, and described as Tax Map 12, Parcel 16, with an address of 6305 Suicide Bridge Road, Hurlock, Maryland 21643 (the “**Property**”). The Property is 7.66 acres, more or less, currently zoned AC-RCA, and classified as Resource Conservation Area (“**RCA**”). The Property is improved with a 11,353 s.f. +/- gravel parking area that is used by the Suicide Bridge Restaurant for overflow parking. The Property is also improved with a single-family residential dwelling and an accessory structure. The Applicant proposes to reclassify 6.86 acres of the Property from RCA to Limited Development Area (“**LDA**”) in order to allow the continued use of the overflow parking area. The proposed Growth Allocation of 6.86 acres is depicted in YELLOW (“Parcel 16 Proposed RCA to LDA 6.86 Acre”) on a certain map entitled “Proposed Growth Allocation of the Lands of Suicide Bridge Restaurant”, prepared by Rauch, Inc., dated June 2022 and attached hereto as Exhibit A-1. The proposed growth allocation is less than the full 7.66 acres comprising the parcel because tidal wetlands on the Property are deducted from the Growth Allocation request per Dorchester County Code § 68-12 F(2)(c). The Applicant has also submitted an Application to Rezone a portion of the Property from AC-RCA to B-2 in connection with the proposed Growth Allocation.

II. LEGAL CONTEXT

The Chesapeake Bay Critical Area Program was enacted by the Maryland General Assembly in 1984 in response to growing concern over the decline of the quality and productivity of the waters of the Chesapeake Bay and its tributaries. The General Assembly enacted the Critical Area Act for the following purposes:

1. to establish a resource protection program for the Chesapeake Bay and Atlantic Coastal Bays and their tributaries by fostering more sensitive development activity for certain shoreline areas so as to minimize impacts to water quality and natural habitats; and
2. to implement a 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 criteria and oversight.

The goals of the Critical Area Program are to accomplish the following:

1. minimize adverse impacts on water quality resulting from land uses and practices;
2. conserve fish, wildlife, and plant habitat; and
3. establish land use policies that accommodate growth and address environmental impacts caused by human activities.

The program is implemented through local land use regulations, with oversight by the State Critical Area Commission. In Dorchester County, the Critical Area Program is implemented through local zoning ordinances and subdivision regulations.

As required by State law, Dorchester County classifies 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 categories based on the land uses that existed as of 1985. These categories, Resource Conservation (RCA), Limited Development (LDA), and Intensely Developed (IDA), each specify land use policies and regulations that permit increasing intensities of land uses. Some types of new development within areas designated as RCA or LDA require a higher land use classification. The process and area by which the location and/or uses of these areas may be expanded or intensified are known as “growth allocation”.

III. FINDINGS OF FACT – GROWTH ALLOCATION STANDARDS AND FACTORS

The Growth Allocation Standards and Factors (the “**Standards and Factors**”) refer to those standards and factors under which the Critical Area Commission and Dorchester County review the Applicant’s growth allocation request. The Standards and Factors are set forth in State law in Natural Resources Article § 8-1808.1 and COMAR 27.01.02.06-3 and are implemented at the local level in Dorchester County Code § 68-12. The County Council of Dorchester County (the “**County Council**”) hereby makes the following Findings of Fact with respect to the Standards and Factors:

GROWTH ALLOCATION STANDARDS

The statutory requirements for growth allocation organized under COMAR 27.01.02.06-3, *Requirements for New Intensely Developed Areas and Limited Development Areas*:

1. *A new intensely developed area shall be at least 20 acres.*

This Standard is not applicable. The proposed 6.86-acre reclassification is from RCA to LDA.

2. *A local jurisdiction may not use more than ½ of its total allotted growth allocation acreage to convert an RCA into a new LDA or IDA, except in Calvert, Caroline, Cecil, Charles, Dorchester, Kent, Queen Anne’s, St. Mary’s, Somerset, Talbot, and Worcester Counties. If these counties are unable to utilize a portion of their growth allocation under this regulation then these counties may use a standard that varies from that above if the standard is consistent with the County’s adopted comprehensive plan, the Critical Area Commission has approved the*

alternative standard as part of a local jurisdiction's program, and the local jurisdiction requires an applicant for growth allocation to cluster development in the growth allocation area.¹

The proposed 6.86-acre LDA growth allocation is within the 50% RCA threshold. According to the Dorchester County Code, the County was allocated 2,900 acres of growth allocation. *See* Dorchester County Code § 68-12 B. Fifty percent of this is 1,450 acres. To date, 1,416 acres have been awarded or used, leaving 34 acres remaining until the threshold has been met. *Id.* Therefore, the proposed growth allocation falls within the 50% threshold.

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

This Standard is not applicable. The proposed 6.86-acre reclassification is from RCA to LDA.

4. *Locate a new Limited Development Area adjacent to an existing Limited Development Area or an Intensely Developed Area.³*

The proposed 6.86-acre LDA growth allocation area will be adjacent to an existing LDA area (the Suicide Bridge Restaurant parcel), which is currently seeking an award of Growth Allocation to be reclassified as IDA.

5. *Locate a new Intensely Developed Area in a manner that minimizes impacts to habitat protection areas as defined in COMAR 27.01.09, and in an area and manner that optimizes benefits to water quality and impacts to the defined land uses of the Resource Conservation Areas.⁴*

This Standard is not applicable. The proposed 6.86-acre reclassification is from RCA to LDA.

6. *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.⁵*

The proposed growth allocation will provide alternative measures for enhancement of water quality and habitat to offset the reclassification of the 300' setback from RCA to LDA. The Applicant proposes to mitigate the gravel parking area, which is located within the 300' setback, through a 4:1 planting mitigation within the 300' setback and the 100' buffer. The total planting requirement to mitigate the gravel parking lot is 45,412 sq. ft. and will be combined with the

¹ Dorchester County Code § 68-12 C(4).

² Dorchester County Code § 68-12 C(1).

³ Dorchester County Code § 68-12 C(2).

⁴ Dorchester County Code §§ 68-12 C(5)-(6).

⁵ COMAR 27.01.02.06-3 E(4).

required mitigation from the growth allocation request for the Restaurant parcel. In addition, the Applicant has proposed to use micro-bioretenion practices to treat both quantity and quality of stormwater runoff from the gravel parking area. In the LDA, there is no requirement to treat for nutrients when managing stormwater, but the micro-bioretenion practice offers a higher phosphorous removal efficiency than other management practices. The Applicant also proposed removal of invasive phragmites and replacement with native species as shown on the Buffer Management Plan attached hereto (see Section IV, below). The County Council hereby proposes and approves of these alternative measures for enhancement of water quality and habitat protection.

GROWTH ALLOCATION FACTORS

In accordance with Natural Resources Article § 8-1808.1(c)(4) and COMAR 27.01.02.06-3(G), the Commission shall consider the following factors when reviewing a map amendment or refinement involving the use of growth allocation.

1. *Consistency with the jurisdiction's adopted comprehensive plan and whether the growth allocation would implement the goals and objectives of the adopted plan.*⁶

The proposed 6.86-acre reclassification supports the County's Economic Development goals set forth in the Comprehensive Plan, including:

- Create and retain quality jobs, raise local incomes and increase tax revenue base.
- Preserve and enrich the County's natural beauty and cultural heritage while strengthening the economy through increased nature-based heritage tourism opportunities.
- Support resource-based industries, including seafood and aquaculture.

See Comprehensive Plan, at p. 10-3. The proposed reclassification will allow additional customers to use the Restaurant via the overflow parking area, which will help create and retain jobs; promote the sightseeing activities through the Restaurant's riverboat tours by providing additional customer parking; and, support the seafood industry by promoting demand for seafood products.

In addition to being consistent with the policies of the Comprehensive Plan, the proposed growth allocation is consistent with timing of the implementation of the plan, development, and rezoning; development patterns; land uses; and densities and intensities. The Suicide Bridge Restaurant has been a longstanding fixture of the community, predating the County's adoption of its Critical Area program. The restaurant and marina uses are consistent in terms of size and scale with other, similar establishments throughout the region. The timing of the growth allocation is appropriate given that the Restaurant and parking area already exist, and the continued use of the Property for overflow parking will not alter the nature and character of existing land uses or development patterns in the area.

⁶ Dorchester County Code § 68-12 D(1).

2. For a new Intensely Developed Area, whether the development will:

- (a) Be served by a public wastewater system.⁷**

This Factor is not applicable. The proposed 6.86-acre reclassification is from RCA to LDA.

- (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.**

Not applicable. See above.

- (c) For a new intensely developed area that is greater than 20 acres, be located in a priority funding area.**

Not applicable. See above.

- (d) Have a demonstrable economic benefit to the area.**

Not applicable. See above.

3. For a new limited development area, whether the development will be served by a public wastewater system or septic system that uses best available nitrogen removal technology, complete an existing subdivision, expand an existing business, or be clustered.⁸

The subject Property will not be served by public sewer. However, the Dorchester County Council adopted Resolution No. 645, which authorizes the Restaurant parcel to connect to the Town of Secretary/Twin Cities wastewater treatment plant.

4. 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 onsite or offsite.⁹

No impacts to threatened or endangered species in need of conservation are proposed by this amended Application.

5. Impacts on a priority preservation area, as defined under Agriculture Article, § 2-518, Annotated Code of Maryland.¹⁰

The subject Property is not designated a priority preservation area.

⁷ Dorchester County Code § 68-12 D(3)(a).

⁸ Dorchester County Code § 68-12 D(2).

⁹ Dorchester County Code § 68-12 D(5).

¹⁰ Dorchester County Code § 68-12 D(6).

6. *Environmental impacts associated with wastewater and stormwater management practices and wastewater and stormwater and stormwater discharges to tidal waters, tidal wetlands, and tributary streams.*¹¹

The site's wastewater and stormwater practices have been designed and implemented based on the current regulatory requirements and are expected to be approved by the appropriate agencies.

7. *Environmental impacts associated with location in a coastal hazard area or an increased risk of severe flooding attributable to the proposed development.*¹²

The proposed development is not located in a coastal hazard area and will not cause any increased risk of severe flooding.

ADDITIONAL STATUTORY AND REGULATORY REQUIREMENTS

In addition to the Growth Allocation Standards and Growth Allocation Factors discussed above, a statute must also address the following requirements for growth allocation:

1. *Intensely Developed or Limited Development Areas 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).*¹³

Upon approval of the proposed LDA growth allocation, Dorchester County would submit a revised comprehensive zoning map to the Commission.

2. *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.*¹⁴

Dorchester County's original growth allocation was 2,900 acres, representing 5% of the 58,000 acres classified as RCA at the time the County's Critical Area Program was adopted. Since that time, 1,416 acres have been awarded or used, leaving 1,486 acres remaining for growth allocation. The proposed 6.86-acre LDA growth allocation for the Property would leave the County with ample remaining growth allocation.

¹¹ Dorchester County Code § 68-12 D(7).

¹² Dorchester County Code § 68-12 D(8).

¹³ Dorchester County Code § 68-12 C(8).

¹⁴ Dorchester County Code § 68-12 A.

IV. FINDINGS OF FACT – ADDITIONAL CONSIDERATIONS

BUFFER MANAGEMENT PLAN

This Growth Allocation Request incorporates a Buffer Management and Mitigation Plan to address buffer establishment and mitigation on the Subject Property. The proposed plantings are shown on a certain plan titled “Suicide Bridge Buffer Management Plan (BMP) of the Lands of Suicide Bridge Restaurant, Inc.”, prepared by Rauch, Inc., dated July 2022, and attached hereto as Exhibit A-2.

STORMWATER MANAGEMENT

This Growth Allocation Request also incorporates a proposed Stormwater Management Plan to address stormwater runoff from the gravel parking area in compliance with applicable law. The proposed stormwater management features are depicted on a certain plan entitled “Proposed SWM of the Lands of Suicide Bridge Restaurant, Inc.”, prepared by Rauch, Inc., dated February 2022, and attached hereto as Exhibit A-3.

UNDERLYING ZONING & ZONING MAP AMENDMENT

The Property is zoned Agricultural Conservation-Resource Area Conservation (“AC-RCA”). The Applicant has submitted a zoning map amendment to remap 1.431 acres± on the Subject Property from AC-RCA to General Business District (“B-2”), including the gravel parking area. The B-2 District permits restaurant uses. The proposed growth allocation is consistent with the purpose of the B-2 zone and by facilitating the continued use of the gravel parking area to support the Restaurant.

V. CONCLUSION

In consideration of the information submitted by the Applicant, the testimony and evidence presented at the County Council’s hearing on the proposed growth allocation, and the balance of the record, the County Council for Dorchester County hereby adopts the Findings of Fact set forth herein and grants an award of growth allocation to redesignate 6.86 acres of the Property from RCA to LDA.

PUBLIC HEARING


Having been posted and notice of the time, date, and place of hearing, and the title of Bill No. 2023-4 having been published, a public hearing was held on April 18, 2023 at 6:04 p.m. in the Council Chambers, Room 110, County Office Building, 501 Court Lane, Cambridge, Maryland 21613.

PASSED THIS 18th DAY OF April, 2023.

ATTEST:

COUNTY COUNCIL OF DORCHESTER
COUNTY, MARYLAND

By: 
Jeff Powell, Interim County Manager

By: 
George L. Pfeffer, Jr., President

Pfeffer - Aye

Detmer - Aye

Kramer - Aye

Nichols -

Travers - Aye

EFFECTIVE DATE: June 17, 2023

