

Board of Zoning Appeals

Public Hearing & Meeting Agenda

Cape Charles Civic Center – 500 Tazewell Avenue

August 13, 2020 10:00 A.M.

1. Call to Order
 - a. Roll call and establish a quorum
2. Public Hearing
 - a. An application for a variance to allow a boundary line adjustment resulting in reduction in size of a parcel to 4,560 sq. ft. from the minimum lot size requirements in Section 3.2.F.1 on lot 337 on Tazewell Avenue (tax map # 83A3-1-337).
 - i. Zoning Administrator Report
 - ii. Applicant Statement
 - iii. Open Public Hearing
 - iv. Close Public Hearing
3. Invocation and Pledge of Allegiance
4. Consent Agenda
 - a. Approval of agenda format
 - b. Approval of minutes
5. New Business
 - a. An application for a variance to allow a boundary line adjustment resulting in reduction in size of a parcel to 4,560 sq. ft. from the minimum lot size requirements in Section 3.2.F.1 on lot 337 on Tazewell Avenue (tax map # 83A3-1-337).
6. Adjourn

Notice of Public Hearing

The Cape Charles Board of Zoning Appeals will hold a public hearing on Thursday, August 13, 2020 at 10:00 am in the Cape Charles Civic Center, located at 500 Tazewell Avenue, to receive public comment on a request for a variance to allow a boundary line adjustment resulting in reduction in size of a parcel to 4,560 sq. ft. from the minimum lot size requirements of Article III, District Regulations, Section 3.2(F)(1) Single-Family Residential District (R-1) where the minimum lot size is 5600 sq. ft. on lot 337 on Tazewell Avenue, tax map # 83A3-1-337. The Board of Zoning Appeals will hold a meeting immediately following the public hearing to consider the request. The application is available for public review on our website at www.capecharles.org. Please contact Town Planner Allyson Finchum at 757-331-2036, or by email at planner@capecharles.org if you have any questions or require additional information. Anyone interested in attending and needing special assistance please contact the Town at least 48 hours before the hearing.



BOARD OF ZONING APPEALS

STAFF REPORT

Meeting Date: August 13, 2020

Item #: 2Ai

Prepared By:	Staff
Site Address:	Lots 336 and 337 Tazewell Avenue
Applicant:	John and Sarah Severs
Owner:	John and Sarah Severs
Proposed Development:	An application for a variance for lot size changes due to requested lot boundary line changes
Current Zoning:	Single-Family Residential (R-1); Historic District Overlay

Site Description:

The applicants own five properties on Tazewell Avenue (Lots 333, 336, 337, 335B and 338B). Lots 333, 336 and 337 are the typical 40' x 140' lots fronting Tazewell with an alley at the rear. Lots 335B and 338B are small sized parcels at the rear of Lots 336 and 337, roughly 40' x 18' each. The house (629 Tazewell) currently exists on Lots 333 and 336 and contains a driveway extending from street to the rear on the west side of the house, starting on Lot 336 and eventually overlapping a portion of Lot 337 to provide access to the rear alley.

The properties associated with this variance are limited to Lots 336 and 337, 40' x 140' each. With the intent to sell Lot 337 and in order to continue access from street to the rear alley from Lot 336, the applicants are proposing to alter boundary lines by making Lot 337 smaller (both in width and depth) than the typical 5600 sq. ft. lot found in the historic district. This would then allow the enlarged Lot 336 to envelop the entire driveway with continue access to the rear alley.

There is an existing easement that allows these applicants access to the alley across adjacent Lots 339B and 342B owned by others.

Description of Proposed Project:

The applicant is requesting;

- Moving Lot 336 western boundary line further west by two feet making Lot 337 only 38 feet in width.

- Moving Lot 337 rear boundary line 20 foot south making Lot 337 only 120 feet deep. This 38' x 20' area would be added to Lot 336.

Staff Analysis:

These properties are located in the Single-Family Residential District R-1. Per ordinance Section 3.2, this district was *"created in recognition of the existence of developed areas where single-family and duplex dwelling currently exist on lots of 5,600 square feet and where the characteristics of the neighborhood include both permanent as well as seasonal residents."* Area Regulations specify ***"The minimum lot size shall be 5,600 square feet. Dwelling units existing on lots at the time of adoption of this ordinance which are generally on lots 40 feet by 140 feet are considered to be conforming lots. However, new construction taking place within this district shall meet all standards and requirements of this district."*** The ordinance does recognize that there were existing non-conforming lots at time of ordinance approval, and established setbacks accordingly.

Per Section 2.6.2 of the Zoning Ordinance, no variance shall be authorized by the board unless it finds all of the following conditions exist:

1. That the strict application of the ordinance would procure undue hardship.
2. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
3. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

In review of the past 6+ years of BZA meetings, there were no petitions or decisions made regarding the creation of a non-conforming lot.

That such strict application of the ordinance would procure undue hardship.

A variance's purpose is to solve hardship problems inherent in the piece of land and not created by the current owners. Per the Town's ordinance **HARDSHIP** means *"a restriction on property so unreasonable that it results in an arbitrary and capricious interference with basic property rights, and that which relates to the physical characteristics of the property, not the personal, financial, or self-imposed circumstances of the owner or user."* The applicants currently own both these involved lots and want the ability to sell Lot 337 with reduced dimensions while having sufficient property to retain the driveway currently starting at the street on Lot 336. This request does not meet the definition of a hardship, but is rather considered a special privilege or convenience sought by the applicants. The requested change in lot sizes is not considered a hardship and would produce a non-conforming lot (Lot 337) in this zoning district and neighborhood.

Three alternatives to changing boundary lines could be available;

1. Relocate the driveway closer to the house. This would require perhaps landscaping changes.
2. Relocate the driveway to the east side of the house.

3. An easement instrument could be used for the purposes of continued use of the driveway for access to the rear alley while leaving lot sizes in a conforming configuration. An easement is currently used by the applicants on other adjacent property (lots 339B and 342B) for required access to the alley (Attachment 2). Since the owners currently own both parcels under review, such an easement could be put into effect prior to putting lot 337 up for sale.

That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.

In reviewing other properties within this block, all parcels were originally sized as 40' x 140' lots. Some houses were built straddling two lots. There are other driveways as noted below, some of which included boundary adjustments;

- 611 Tazewell – Driveway is contained within the 80 ft width of the property although it does not extend to the rear alley.
- 630 Tazewell – This is a configuration of three properties with combined total width of 84 feet. A portion of the driveway does start on the third parcel (4' x 140') and traverses towards the house centered on the other two parcels. There is no alley. In this case, there is one owner for all three parcels with this parcel strip created on or before 1990.
- 638 Tazewell - This is a configuration of three properties with approximate total width of 80 feet. The house is situated on the first two parcels and the driveway extending into the property appears to be contained within the second parcel. This third parcel strip was created on or before 1990 as an exchange in land with owners of 630 Tazewell and 646 Tazewell.

Similar in nature to the subject property under review (i.e., multiple lots owned by one entity), these three examples are homes with driveways situated on combined lots with a total area of greater than 5,600 sq ft. Even with the creation of these two strip parcels (4' x 140' each) creating non-conforming lots sizes, each owners' combined lots exceeded the minimum 5,600 sq ft in size. In the case of the property under review, a non-conforming lot (337) will be created to be sold off as a lot not meeting the minimum 5,600 sq ft requirements.

This situation is considered shared by other properties (namely 630 Tazewell) in the same zoning district and the same vicinity. However, in the case of 630 Tazewell, land parcel boundaries were adjusted to accommodate the driveway in such a fashion while still maintaining the minimum 5,600 sq ft in owner combined parcels.

That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

The authorization of a variance to lot sizes could be considered detrimental to adjacent property even though the applicants currently own both affected properties. Considering the possibility of a future sale of Lot 337 in a non-conforming condition (4,560 sq ft), this could impact future owners of

this property in the following ways, each of which or in combination could be considered substantially detrimental;

1. Per ordinance, non-conforming lots have setback requirements that are similar to conforming lots. [3.2.G.2] Assuming additional variances are not granted, this change could impact the size and footprint of the home built there. With the required minimum porch depth of 6 feet, there is a reduction in available housing footprint (sq ft) of approximately 30% which could be considered substantial.
2. There could be an impact should the future owners consider building an accessory building;
 - Setbacks shall not be closer than 2 feet to rear lot line and not closer than 15 feet from the main building. The sum of the footprint square footage of all buildings on the lot shall be less than 50% of the total square footage. With the reduction of total lot size of 18%, this could impact the size of the accessory building considered.
 - An additional requirement would be imposed on this property: Non-conforming lots smaller than 5,600 square feet in the R-1 District the total footprint area of all accessory building lot coverage shall not exceed 10%. [3.2.F.4]
3. The future owners of Lot 336 would not have access rights to the rear alley. This would prevent owners from vehicle access for parking at the rear of the property.
4. Garbage pickup would not be available in the alley as other houses along the alley have.

In assessing impact to the neighborhood, the reduction of property width by two feet would not necessarily alter the character of the street and the rear property line change would not be seen from the street.

Staff Recommendation:

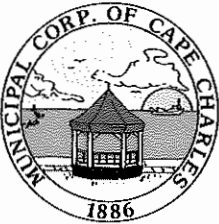
Staff recommends **DENIAL** for a variance to change boundary lines for Lot 337 based on all three conditions outlined above not being met.

The Zoning Administrator has reviewed and approved this report.

Attachments:

Attachment 1 – Application and Documents

Attachment 2 – Deed of Easement for Ingress and Egress for Joint Driveway (October 21, 2015)



VARIANCE APPLICATION

Town of Cape Charles
2 Plum Street
Cape Charles, VA 23310
757-331-2036 Fax: 757-331-4820
planner@capecharles.org

PERMIT CHECKLIST - all documents can be emailed to the above email

- | | |
|--|---|
| ☒ Completed application | ☒ Photos/elevations of existing structure |
| ☒ Letter of intent clearly explaining project | ☒ Photos/elevations of proposed project |
| ☒ Existing site plan or survey | ☒ Payment of fees (single-family detached |
| ☒ Proposed site plan or survey (if applicable) | \$450, all others \$750, each additional variance |
| | request on same application \$50) |

PROJECT INFORMATION

Name of Project: Lot Line Variance request

Property Address: Lot 337, TBD Tazewell Ave. Cape Charles, VA

Brief Description of Project: to dissolve current lot lines and re-establish new ones

Zoning District: R-1 Current Use: empty lot Proposed Use: homesite

OWNER INFORMATION

Name and Company: John and Sarah Severs

Mailing Address: 113Buckingham Place, Waynesboro, VA 22980

Phone Number: 540-470-7026 Email: stsevers4@gmail.com

APPLICANT INFORMATION

☒ check here if applicant is owner

Name: _____

Mailing Address: _____

Phone Number: _____ Email: _____

CERTIFICATION OF APPLICANT

I hereby certify that I have the authority to make the foregoing application, that the information given is true and correct, and that the construction or improvements will conform to the regulations in the Virginia Statewide Building Code, all pertinent Town Ordinances, including fire, sewer and water ordinances, and private building restrictions, if any, which may be imposed on the property by deed. Furthermore, I certify that the changes to the improvement before or during construction will be provided to the Zoning Administrator and Building Official before such changes are constructed.

Signature of Applicant: John M. Severs Date: 5/28/20
Sarah J. Severs

Town of Cape Charles Planning & Zoning Department
2 Plum St. • Cape Charles, VA 23310 • 757-331-2036 • capecharles.org

To: Cape Charles Zoning and Appeals Board

From: John and Sarah Severs

RE: Lot line variance request for TBD Tazewell Ave.

Date: 5/27/2020

Dear Board Members,

Thank you in advance for taking the time to meet and review our request for a lot line variance for our property at 629 Tazewell Ave. We know it is a busy time for all so taking time to deliberate on this is so appreciated.

We purchased 629 Tazewell Avenue in Feb. of 2015. It was a financial investment that would allow our large family (4 adult children and 13 grandchildren!) a place to come to relax and vacation together in a house that would actually hold us all ! 629 Tazewell (we call BayPlace) is the majestic home with the huge front porch with beautiful white railings. We have loved every minute of being homeowners here and feel so incredibly blessed every time we pull into the driveway! We love and respect Cape Charles and the local people who live here. We currently reside in Waynesboro, VA but come to Cape Charles as much as we can. I am a school teacher and my husband works for Hershey Chocolate of Virginia.

The purpose of this letter is to explain why we are requesting a lot line variance to lot 337 TBD Tazewell Ave. (Plat included as Attachment D) The details are as follows:

We have a full size lot (40' X 140") to the west of our home at 629 Tazewell Ave that we want to sell and currently have a buyer for. However, after having the lot surveyed by Marshall Parks, (area surveyor), we discovered that the lot line runs partially down our current driveway on the east side of the lot and to the west side of our home (see attachment A), extending all the way to the middle of the alley at the north end of the lot (see attachment B). The close proximity of the driveway to our physical house does not allow the driveway to be moved over to accommodate the vehicular use of the driveway. We have a deeded ingress, egress and regress for the alley which states that the alley has to remain open for our family and guests to use as long as that deeded access remains in effect(attachment C shows the alley). The current lot line area that we wish to remain in possession of (north end of lot 337), is 1,040 Sq feet according to the attached survey (see attachment D). Beyond that lot to the west is the continuation of the alley in which we have deeded access to Nectarine St. . We are asking that the 1,040 sq ft be added to lot 336 (owned by 629 Tazewell Ave) as well as a 2ft relocation to the west of the east lot line of lot 337 to allow for continued unrestricted vehicle movement in the driveway and give room for people to maneuver the exiting/entering of their cars. The request of this lot line variance will reduce the minimum required subdivision lot from 5,600 sq ft to 4,560 sq ft. During the rental season, we have as many as 19 guests at our home at times which results in an abundance of cars needing a parking space on Tazewell Ave, which has limited parking as is. The ability to offer off street parking is rare in Cape Charles and is a real positive solution for parking options at our rental home. We are anxious protect that parking solution.

I understand that your decision will be based on 3 conditions which I would like to address below.

1. That the strict application of the ordinance would produce an undue hardship:

*A hardship would be placed upon those guests needing to find parking within a reasonable vicinity of 629 Tazewell Ave.

*A hardship would be placed upon the Severs family (current owners of lot 337, 336 and 338B to sell the current lot 337 with the contingency that the buyers forgo the use of a considerable amount of land that is currently a part of Lot 337 for the easement rights by the seller.

* A financial hardship would be placed upon the Severs to hire an attorney to write the official deeded access and easements should the lot variance not be approved. The Severs have already spent \$800 to have the land surveyed.

*An undo hardship would be placed upon buyers of Lot 337 with 1,280 sq ft. of property they could not legally make changes to but would have to pay taxes on and maintain under an easement contingency. However, the sellers would take the burden of taxes and continued property maintenance with the ownership of the property if the lot variance is approved. The current potential buyers are in possession of and have reviewed the proposed plat and are in agreement with the lot size and the square footage of the house that can be built on the newly proposed Lot 337.

2. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.

*There is not another instance in our area, that we are aware of, that has a deeded access to the alley or even alley use. We believe our situation is very unique and we have no others to compare it to. We realize this access is a rare privilege in Cape Charles and one that adds much to alleviate the parking issue for our guests as well as value to our property.

3. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by granting the variance.

*On the contrary, we have a young couple who is wanting to buy our property at the lot line variance of 38' X 120' as they do not want to pay taxes on and maintain land they cannot control if an easement was to be put into the contract. They are anxious to have the lot lines officially re-established so a contract with the new lot size can be written and the sale can proceed. We want to do all we can to move quickly as to not lose the sale. The potential

buyers would like to close next month and begin to build their first home (married in Dec 2019) and to start their family.

*No changes will be made to the property, the character of the property will remain the same as the use of a driveway and an alley through way to Nectarine St. There will be no noticeable difference in the property, nor will it be used for any other purposes than it is currently used for so as to not be a detriment in any way to the adjoining property owners.

I hope that we have met all the conditions for the approval of the request for dissolving the current lot lines of Lot 337 and re-establishing the new ones. We hope you will feel that our reasons are valid and if the variance is approved will result in a win- win for everyone.

Thank you so very much for your time spent in consideration of our request.

Stay well!

John and Sarah Severs, Owners

629 Tazewell Ave. (Lots 336, 337, 338 B)

540-470-7026

stsevers4@gmail.com

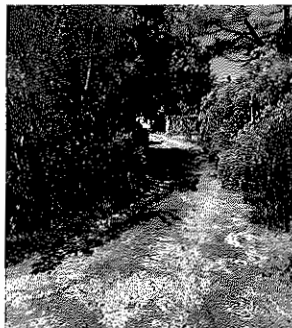
Attachment A:



Attachment B:



Attachment C



Attachment D: Plat (separate sheet)



OWNERS CONSENT AND DEDICATION.

THE PROPERTY LINE VACATION & RELOCATION
AS SHOWN HEREON IS WITH THE FREE CONSENT
AND IN ACCORDANCE WITH THE DESIRE OF THE UNDERSIGNED OWNERS.
ALL STATEMENTS AFFIXED TO THIS PLAT ARE TRUE AND CORRECT TO THE
BEST OF MY KNOWLEDGE.

JOHN M. SEVERS

COUNTY OF _____, STATE OF _____, TO WIT:

I, _____, A NOTARY PUBLIC IN, AND FOR

THE COUNTY AND STATE AFORESAID, DO HEREBY CERTIFY THAT
JOHN M. SEVERS WHOSE NAME IS SIGNED TO THE FOREGOING WRITING,
BEARING DATE ON THE _____ DAY OF _____, 20____,
HAS ACKNOWLEDGED THE SAME BEFORE ME IN MY COUNTY
AND STATE AFORESAID, GIVEN UNDER MY HAND THIS _____
DAY OF _____, 20____.

NOTARY PUBLIC

MY COMMISSION EXPIRES:

SARAH T. SEVERS

COUNTY OF _____, STATE OF _____, TO WIT:

I, _____, A NOTARY PUBLIC IN, AND FOR

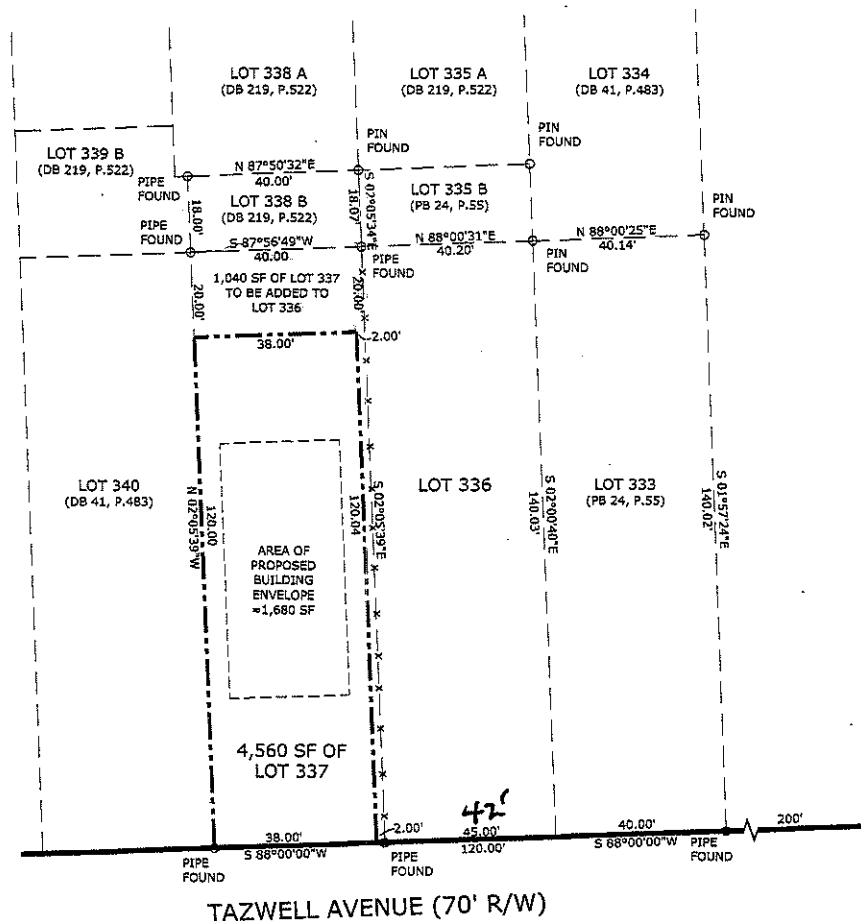
THE COUNTY AND STATE AFORESAID, DO HEREBY CERTIFY THAT
SARAH T. SEVERS WHOSE NAME IS SIGNED TO THE FOREGOING WRITING,
BEARING DATE ON THE _____ DAY OF _____, 20____,
HAS ACKNOWLEDGED THE SAME BEFORE ME IN MY COUNTY
AND STATE AFORESAID, GIVEN UNDER MY HAND THIS _____
DAY OF _____, 20____.

NOTARY PUBLIC

MY COMMISSION EXPIRES:

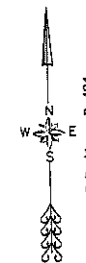
APPROVALS

TOWN OF CAPE CHARLES _____ DATE: _____



GENERAL NOTES:

1. OWNERS: JOHN M. SEVERS & SARAH T. SEVERS
2. TAX PARCEL: 83A3-1-336, 83A3-1-337, & 63A3-1-338B
3. SOURCE OF TITLE: INST #160000374
4. A SURVEY WAS PERFORMED ON THIS PROPERTY IN NOVEMBER 2019 WITH A BOUNDARY CLOSURE WHOSE PRECISION EXCEEDS 1:10,000
5. THIS SURVEY WAS PERFORMED WITH THE BENEFIT OF A CURRENT TITLE REPORT AND MAY NOT SHOW ANY/ALL EASEMENTS OR RESTRICTIONS THAT MAY AFFECT SAID PROPERTY AS SHOWN OR WETLANDS, UNDERGROUND HAZARDS, CEMETERIES AND UNDERGROUND STRUCTURES NOT OBSERVED DURING THE COURSE OF THE SURVEY.
6. ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY (F.E.M.A.) FLOOD INSURANCE RATE MAP COMMUNITY PANEL NO. 51131C0295F, DATED 03-02-15, THE PROPERTY SHOWN HEREON LIES IN FLOOD ZONE X. FLOOD ZONE DETERMINATION IS BASED ON THE FLOOD INSURANCE RATE MAP AND DOES NOT IMPLY THAT THIS PROPERTY WILL OR WILL NOT BE FREE FROM FLOODING OR DAMAGE. FLOOD ZONE INFORMATION SHOWN HEREON IS NOT GUARANTEED AND WAS APPROXIMATELY SCALED FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY (F.E.M.A.) FLOOD INSURANCE RATE MAPS. FOR FURTHER INFORMATION AND TO CONFIRM THE FLOOD ZONE FOR THIS PROPERTY, CONTACT THE LOCAL COMMUNITY FLOOD OFFICIAL.
7. PLAT REFERENCES:
D.B. 41, P. 484 (PLAT)
PLAT BOOK 24, PAGE 85
DEED BOOK 219, PAGE 522
DEED BOOK 184, PAGE 174
8. TOWN OF CAPE CHARLES ZONING
- ZONED: R-1 SINGLE FAMILY RESIDENTIAL
- BUILDING SETBACKS:
SIDE - 5'
REAR - 25'
FRONT - 35' OR PREVAILING
MINIMUM BUILDING ENVELOPE - 960 SF



20 0 20 40 60
GRAPHIC SCALE - FEET



ACCOMACK-NORTHAMPTON
SURVEYING & MAPPING PLLC

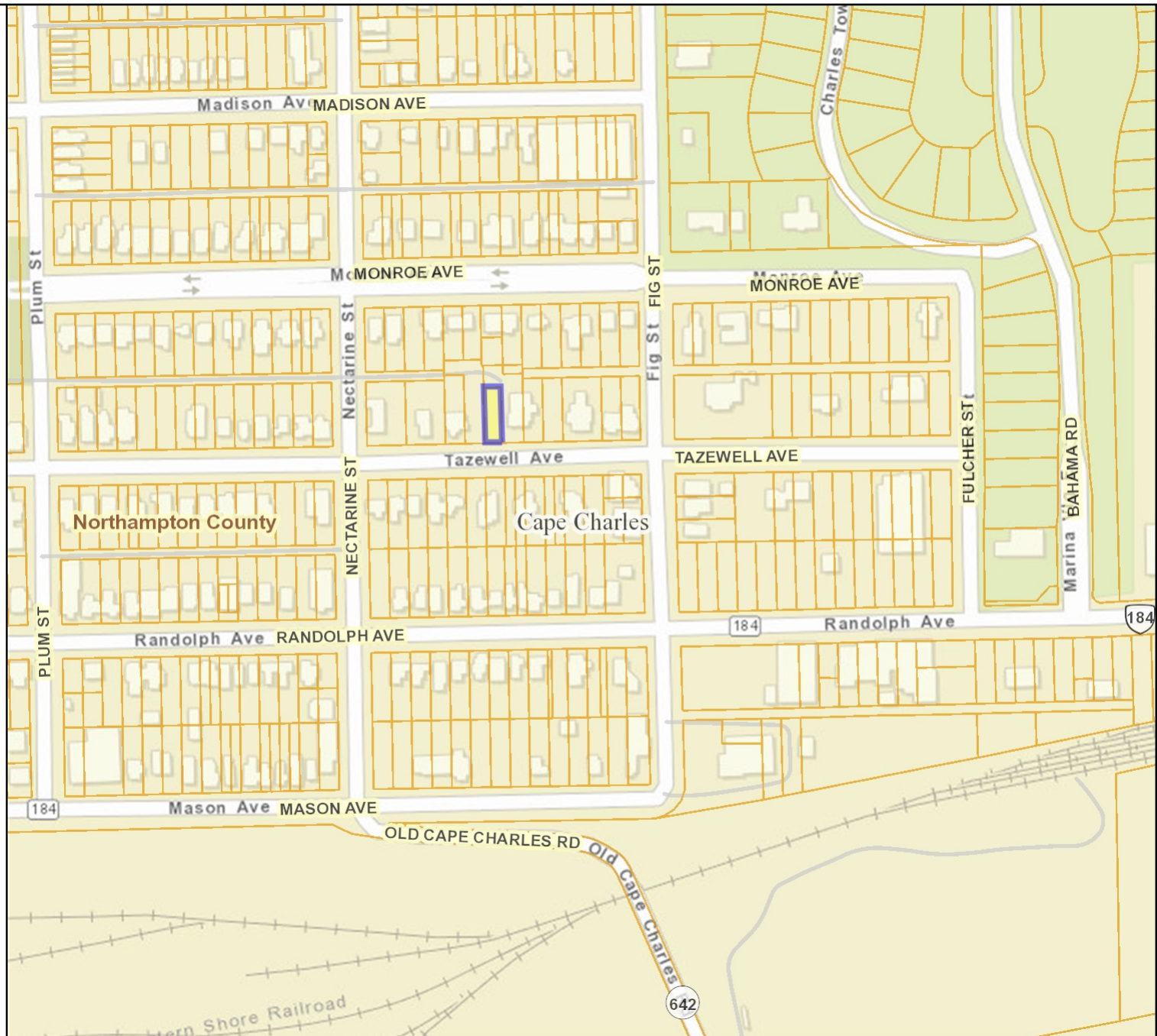
36308 Lankford Highway, Belle Haven, Virginia 23306
Mail Address: 11403 Heron Drive, Machipongo, Virginia 23405
Phone: (757) 709-4192

DRAWN BY: 2995	SCALE: 1" = 20'
CHKD BY: JBL	BACK TRAV. BY: MBP
FIELD BOOK:	JOB NUMBER: 989

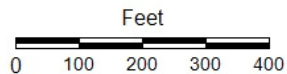
Northampton County, Virginia

Legend

- County Boundaries
- Town Names
- Route Numbers
- Road Labels
- Parcels
- Driveways



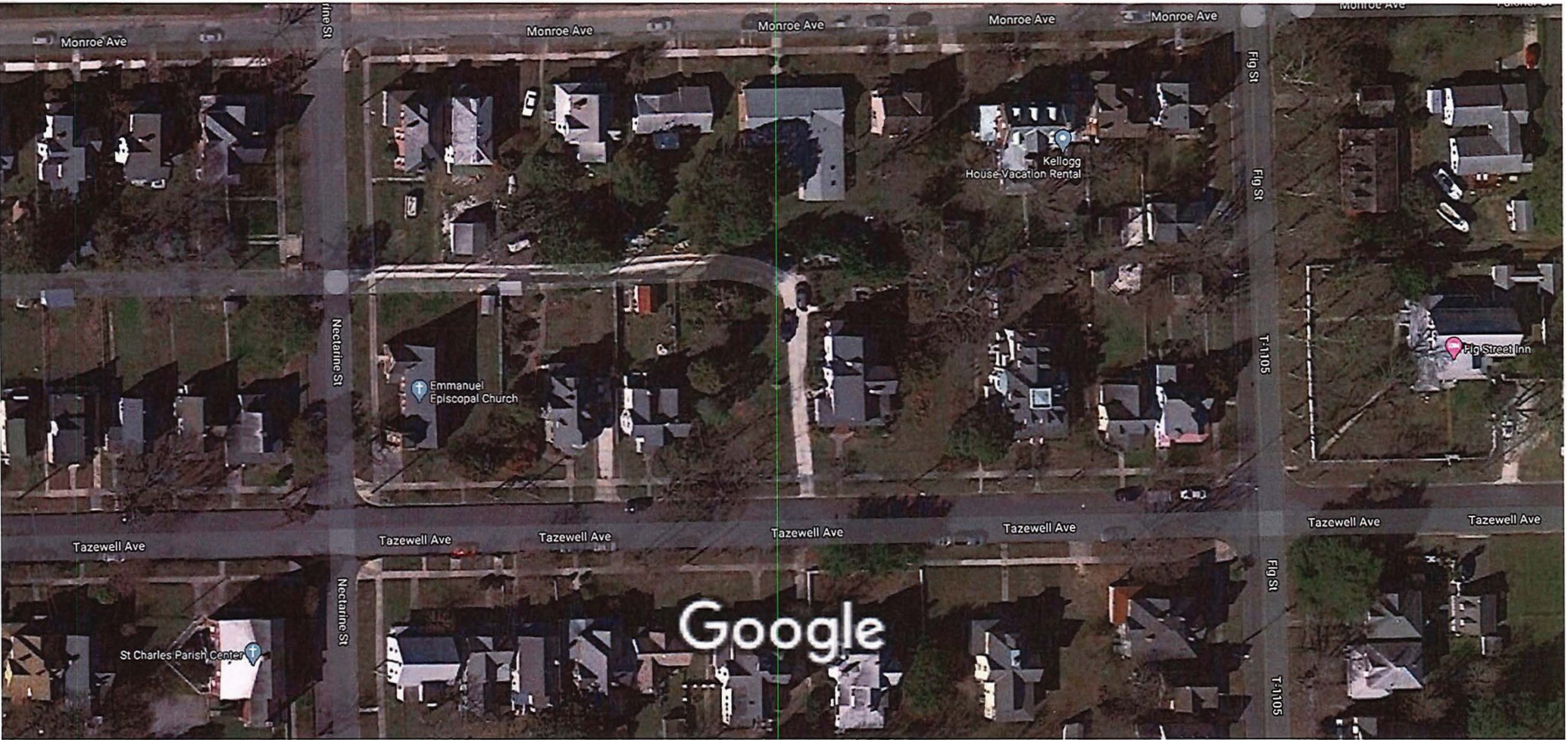
Map Printed from Northampton
<http://northampton.mapsdirect.net/>



Title: Property Map

Date: 8/5/2020

DISCLAIMER: This drawing is neither a legally recorded map nor a survey and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources, and Northampton County is not responsible for its accuracy or how current it may be.



Aerial Map

Circuit Court Deed Calculation for Northampton Circuit

Court uses its own cover sheet. Please contact the court for instructions.

Deed Type:	DE --> DEED (EASEMENT/RIGHT OF WAY)
Grantor Exempt:	N
Grantee Exempt:	N
Consideration Amount:	\$0.00
Assume/Value Amount:	\$0.00
Locality Percent:	100.000000%
Pages:	5
Names:	0
O/P:	0
Date:	2/25/2016

<u>Fee</u>	<u>Amount</u>
Clerk Recording and Indexing Fee (301)	\$ 14.50
VSLA (145)	1.50
Technology Trust Fund (106)**	5.00
State Grantee Tax (039)	0.00
Local Grantee Tax (213)	0.00
State Grantor Tax (038)	0.00
Local Grantor Tax (220/223)	0.00
Transfer Fee (212)	0.00
Regional Congestion Relief Fee (014)	0.00
Virginia Outdoors Foundation (035)	1.00
Processing Fee (036)*	0.00
Copy Fee (236)	0.00
Total:	\$ 22.00

*Clerk and Deed Processing Fees do not apply to any agency of the Commonwealth of Virginia.
 **The Technology Trust Fund fee does not apply to any federal, state, or local government.

Account No.

THIS DEED OF EASEMENT FOR INGRESS AND EGRESS AND MAINTENANCE AGREEMENT FOR JOINT DRIVEWAY made this October 21, 2015, by **DAVID H. GOMER** and **VIRGINIA B. GOMER**, husband and wife, Grantor and Grantee for indexing purposes, ("Owner1"), and **JOHN M. SEVERS** and **SARAH T. SEVERS**, husband-and-wife, Grantor and Grantee for indexing purposes ("Owner2"),

RECITALS

R.1. "Owner1" is the owner of that certain parcel of real property with the improvements thereon located in Cape Charles, County of Northampton, Virginia, ("Lot1"), briefly described as:

ALL THAT certain lot, piece or parcel of land, with the buildings and improvements thereon, and the easements and appurtenances thereto belonging, lying, situate and being in Cape Charles, County of Northampton, Virginia, being known, numbered and designated as the Lots 339B and 342B, as shown on that certain plat entitled, "Plat of Survey Various Parcels of Land (lots 332, 333, 335B, 336, 337, 338B, 339B, 340, 342B) to be conveyed from Edward A. Parry, Jr. & Pamela L. Parry, to Owen Michael Jones, Located in Cape Charles, Capeville District, Northampton County, Virginia" which said plat is duly recorded in the Clerk's Office of the Circuit Court of Cape Charles, County of Northampton, Virginia in Map Book 24, at page 55 and as further described on the attached survey entitled "Plat of Survey, Lots 333, 336, 337, 335B & 338B to be conveyed from David H. Gomer & Virginia B. Gomer to John M. Severs & Sarah T. Severs", dated January 28, 2016, surveyed and prepared by Shore Engineering Company, Inc., attached as Exhibit "A".

IT BEING the same property conveyed to Owner1 by Deed from R. Gary LeBlanc and Ann R. LeBlanc, dated September 19, 2001, and recorded in the Clerk's Office aforesaid as Deed Book 338 at page 195.

R.2. "Owner2" is the owner of that certain parcel of real property with the improvements thereon located in Cape Charles, County of Northampton, Virginia, ("Lot2"), briefly described as:

ALL THAT certain lot, piece or parcel of land, with the buildings and improvements thereon, and the easements and appurtenances thereto belonging, lying, situate and being in, being known, numbered and designated as the Lots 333, 335B, 336, 337, 338B, as shown on that certain plat

entitled, "Plat of Survey Various Parcels of Land (lots 332, 333, 335B, 336, 337, 338B, 339B, 340, 342B (to be conveyed from Edward A. Parry, Jr. & Pamela L. Parry, to Owen Michael Jones, Located in Cape Charles, Capeville District, Northampton County, Virginia" which said plat is duly recorded in the Clerk's Office of the Circuit Court of the Cape Charles, County of Northampton, Virginia in Map Book 24, at page 55 and as further described on the attached survey entitled "Plat of Survey, Lots 333, 336, 337, 335B & 338B to be conveyed from David H. Gomer & Virginia B. Gomer to John M. Severs & Sarah T. Severs", dated January 28, 2016, surveyed and prepared by Shore Engineering Company, Inc., attached as Exhibit "A".

IT BEING the same property conveyed to Owner2 by Deed from David H. Gomer and Virginia B. Gomer, dated October 28, 2015 and recorded in the Clerk's Office aforesaid immediately prior as Instrument No. _____.

R.3. Owner1 desires to create non-exclusive perpetual ingress and egress easement over the portions of Lot1 owned by them for the benefit of Lot2 as described below and pursuant to the provisions herein set out.

WITNESSETH:

NOW THEREFORE, for and in consideration of the mutual promises set forth herein, the parties hereto do agree as follows:

1. *Grant of Easement.* Owner1 does hereby grant and convey unto Owner 2, and do reserve unto themselves, a 10 foot-15 foot variable width non-exclusive perpetual ingress and egress easement which shall be appurtenant to Lot2 and is over and across that certain area designated and described as "soil and shell drive" Proposed 10 Foot-15 Foot Variable Width Non-Exclusive Perpetual Ingress and Egress Easement over Existing Soil & Shell Drive as described on the attached survey entitled "Plat of Survey, Lots 333, 336, 337, 335B & 338B to be conveyed from David H. Gomer & Virginia B. Gomer to John M. Severs & Sarah T. Severs", dated January 28, 2016, surveyed and prepared by Shore Engineering Company, Inc., attached as Exhibit "A".

2. *Purpose of Easement.* The easement shall be for the use and benefit of the owners, guests, invitees, tenants and their successors and assigns of Lot2 as a driveway for ingress and egress, including by vehicles and pedestrians, to and from Nectarine Street, Cape Charles, Virginia, and the Lot2 properties.

3. *Easement Not Public.* No person or entity shall as a result of this Declaration, acquire any right, title or interest in any portion of the Property other than as set forth

herein, and nothing contained herein shall be construed as creating any right in or for the benefit of the general public.

4. *Maintenance of Easement.* The parties hereby agree on behalf of themselves, their heirs, personal representatives, successors, and assigns, to maintain said road and to perform repairs so as to maintain the road in good and safe condition in accordance with standards set forth below. The parties hereby agree to share in the cost of such maintenance equally provided, however, that in the event a party's agent or business or professional invitee causes damages to the road other than ordinary wear and tear, said party shall be required to repair such damage and bear the cost thereof exclusively; provided further, in the event of further subdivision of the above-listed lots, each of the resulting lots so created that have an easement or right of use of the road shall share in the cost and maintenance and repair on a pro rata basis with all of the other lots.

The terms "*maintenance*" and "*repair*" shall include, but not be limited to, repairing the road surface, adding stone, clearing obstructions, grading or scraping the road as necessary, cleaning or recutting ditches as necessary, trimming brush along the roadside, removing snow, unplugging or opening culverts or drainpipes, and performing any and all other necessary work required to maintain the road in a condition that will allow for reasonable and safe access of standard passenger vehicles.

5. *No Obligation to Upgrade.* There shall be no obligation on the undersigned to upgrade the road to a superior condition than exists on the date hereof unless a majority of the parties obligated hereunder to maintain the road agree to such upgrade in writing; provided, however, that any party shall have the right to upgrade said road to a superior condition at such party's sole expense.

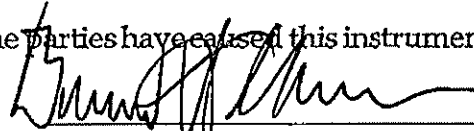
6. *Temporary Construction Easement.* Each party hereby grants to the other parties hereto a temporary construction easement across the lot owned by such party for the purpose of maintaining, repairing, or upgrading the road, as provided for in this agreement.

7. *Covenants Run with the Land.* The covenants set forth in this road maintenance agreement shall run with the land described above and owned by the parties hereto and shall be binding on the heirs, personal representatives, successors, and assigns of the parties hereto.

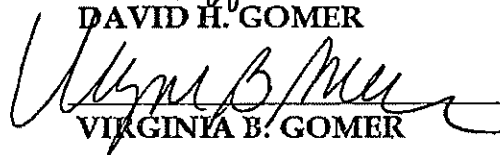
8. *Entire Agreement.* This road maintenance agreement contains the entire agreement between the parties hereto and shall be construed and interpreted according to the laws of the Commonwealth of Virginia.

9. *Subject to Existing Title.* The Easements and Reservations created hereby are subject to the easements, reservations and restrictions of record prior hereto.

IN WITNESS WHEREOF, this the parties have caused this instrument to be executed.

 (SEAL)

DAVID H. GOMER

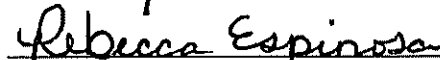
 (SEAL)

VIRGINIA B. GOMER

STATE OF VIRGINIA

CITY OF Northampton, to wit:
County

The foregoing instrument was acknowledged before me by DAVID H. GOMER and VIRGINIA B. GOMER this 9th day of February, 2016.

 (SEAL)

Notary Public

My Commission Expires: 03/31/2017
Notary registration number: 7574596

I was commissioned as Rebecca Kingsley Boole.



 (SEAL)

JOHN M. SEVERS

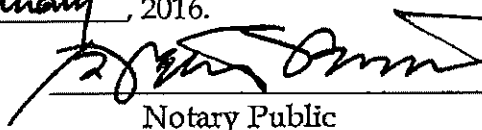
 (SEAL)

SARAH T. SEVERS

STATE OF VIRGINIA

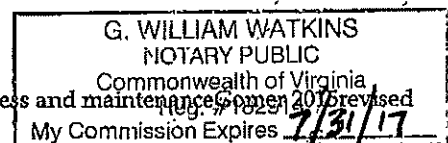
CITY OF Weynesboro, to wit:

The foregoing instrument was acknowledged before me by John M. Severs and Sarah T. Severs this 25th day of February, 2016.

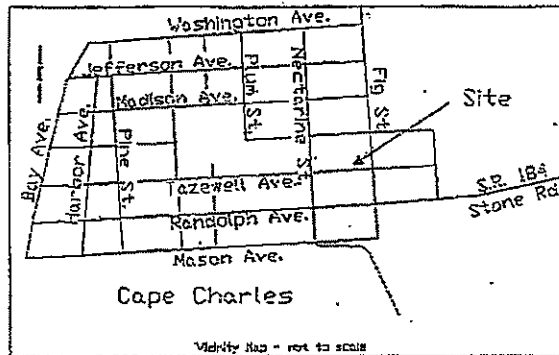
 (SEAL)

Notary Public

My Commission Expires: 7/31/17
Notary registration number: 182914



Bill \ easement \ declaration of easement for joint driveway ingress, egress and maintenance



Notes:

Sources of Title: Deed Book 135, page 343 & Deed Book 219, page 520.

Previous or adjacent surveys:

"Plat of a Survey of Two Parcels of Property in Cape Charles, Northampton County, Va. to be exchanged between Edward A. Parry, Jr. and E. J. Harrison, Jr. Survey by John E. Chubb, C.L.S., dated Feb. 1976."

"Plat of a Survey of Parts of Lots 339 & 342 in the Town of Cape Charles, Northampton County, Va. belonging to Edward A. Parry, Jr. to be conveyed as a single lot. Survey by John E. Chubb, C.L.S., dated Feb. 1974."

"Plat of Physical Survey. This Parcel of land was surveyed at the request of Edward A. III & Julie S. Parry. Located in the Town of Cape Charles, Capeville District, Northampton County, Virginia. Survey by Grenville F. Hogg, dated June 8, 1989."

"Map of the Town of Cape Charles in Northampton County, Virginia" Recorded in Deed Book 41, pages 493-495.

"Plat of Various Parcels of Land (lots 332, 333, 335B, 336, 337, 338B, 339B, 342B) to be conveyed from Edward A. Parry, Jr. & Pamela L. Parry, to Owen Michael Jones. Located in Cape Charles, Capeville District, Northampton County, Virginia. Survey by Shore Engineering Co., Inc. dated April 15, 2016."

County Tax Map: Sec. 83A3-01-00-333, 336, 337, 335B & 338B

Flood Zone: FIRM 51131C0295 Y, dated March 2, 2015, Zone X

911 No.: 829 Tazewell Avenue

This Plat is based on a current field survey.

No Title Report furnished.

Except as specifically stated or shown on this plat, this survey does not purport to reflect any of the following which may be applicable to the subject real estate: easements; building setback lines; restrictive covenants; subdivision restrictions; zoning or other land use regulations; and any other facts that an accurate and current title search may disclose.

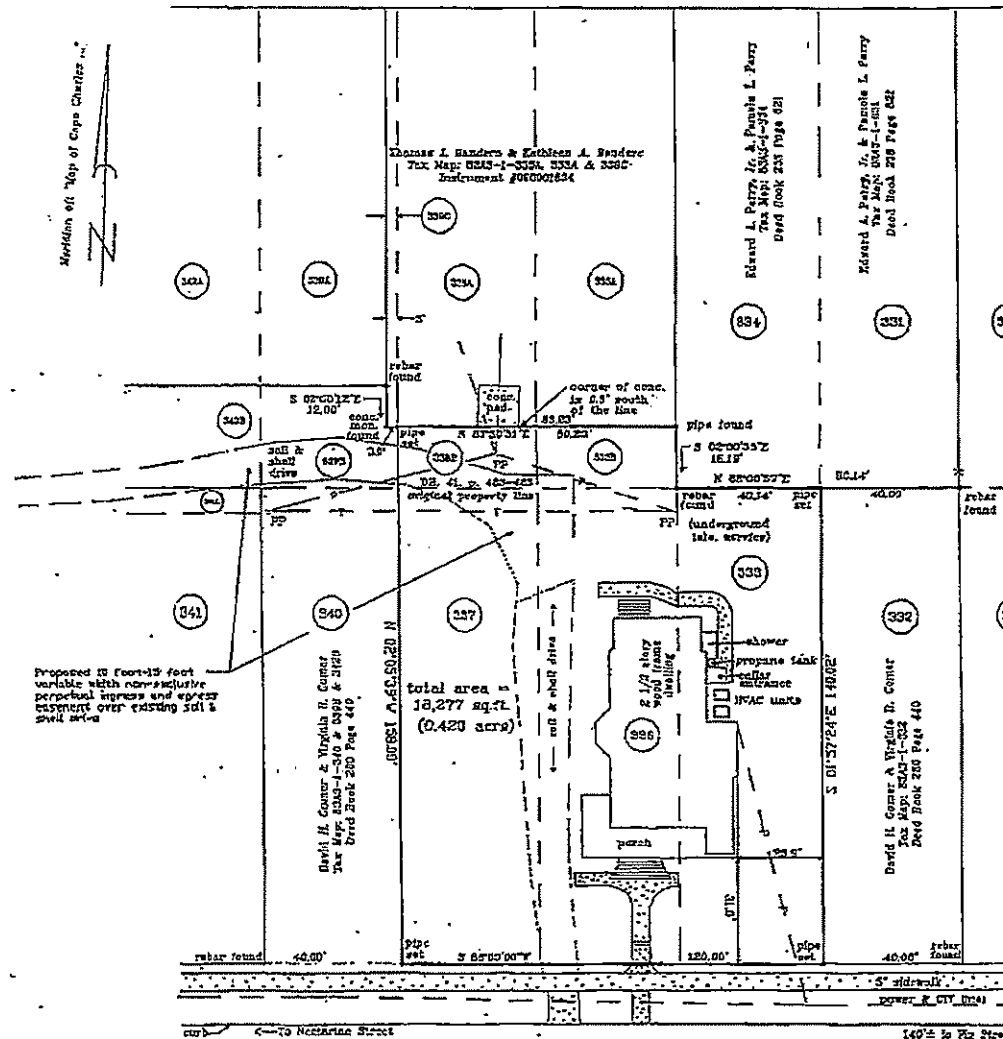
PLAT OF SURVEY

Lots 333, 336, 337, 335B & 338B to be conveyed from David H. Gomer & Virginia B. Gomer to John M. Severs & Sarah T. Severs. Located in Cape Charles, Capeville District, Northampton County, Virginia.

SHORE ENGINEERING CO., INC. DATE Jan. 25, 2016
ENGINEERS - SURVEYORS
P.O. BOX 354, MELFA, VA. 23410
804-797-2773

SCALE 1" = 25'
105# 2-0116-S

Monroe Avenue 100' R/W



Tazewell Avenue 70' R/W



INSTRUMENT #160000307
RECORDED IN THE CLERK'S OFFICE OF
NORTHAMPTON COUNTY ON
FEBRUARY 26, 2016 AT 04:10PM

TRACI L. JOHNSON, CLERK
RECORDED BY: SBS



DRAFT
Board of Zoning Appeals
Public Hearing & Meeting
Cape Charles Civic Center
March 3, 2020
10:00 a.m.

At approximately 10:00 a.m. in the Cape Charles Civic Center, Chairman Bill Murphy called to order the Board of Zoning Appeals Public Hearing and Meeting. In attendance were Board members Jim Holloway, Tom Weaver and Jay Wiegner. Pete Baumann arrived after roll call. Also present were Councilman Paul Grossman, Deputy Clerk Tracy Outten, and the applicants. There were no members of the public in attendance.

Bill Murphy read the public hearing advertisement.

PUBLIC HEARING

- A. *Hear public comment on proposed zoning variance from the side yard setback requirements for a proposed single-family detached home in the Residential – 1\Historic District on lots 169D and 172D Plum Street.*

There were no comments to be heard nor any written comments submitted prior to the meeting.

- B. *Close public hearing*

Motion made by Jay Wiegner, seconded by Jim Holloway, to close the public hearing. The motion was approved by unanimous consent.

Bill Murphy led the Board in the recitation of the Pledge of Allegiance.

PUBLIC COMMENTS

There were no comments.

CONSENT AGENDA

Motion made by Jay Wiegner, seconded by Jim Holloway, to accept the agenda format as presented. The motion was approved by unanimous consent.

The Board reviewed the minutes from the December 17, 2019 Public Hearing and Meeting.

Motion made by Jay Wiegner, seconded by Tim Weaver, to approve the minutes from the December 17, 2019 Public Hearing and Meeting as presented. The motion was approved by unanimous consent.

NEW BUSINESS

- A. *Zoning variance application – to allow variance from the side yard setback requirements for a proposed single-family detached home in the Residential – 1\Historic District on lots 169D and 172D Plum Street.*

Bill Murphy gave an overview of the application being presented and explained to the applicant that the board had strict criteria to follow in order to grant a variance.

Discussion and questions were as follows: (i) Jim Holloway asked where was the 8' alley way. Bill Murphy answered the alley way could have been on an old county map; and (ii) Jay Wiegner said if the variance was granted there would be a 1' encroachment and wanted to know if this would be an issue if one of the lots were sold. Barry Gabler, applicant, said the buyers would be given this information.

After reviewing the application and discussing the conditions that needed to exist, the board agreed with the staff recommendation that the application met the criteria as follows: (i) procured undue hardship;

(ii) the hardship was not shared generally by other properties in the same zoning district and vicinity; and (iii) the authorization of such variance would not be a substantial detriment to adjacent property and that the character of the district would not be changed by granting the variance.

Motion made by Jim Holloway, seconded by Jay Wiegner, to approve the zoning variance from the side yard setback requirements for a proposed single-family detached home in the Residential - 1\Historic District on lots 169D and 172D Plum Street as submitted. The motion was approved by unanimous consent.

OTHER BUSINESS

Jay Wiegner informed the board that he was resigning from the Board of Zoning Appeals.

Motion made by Tom Weaver, seconded by Jim Holloway, to adjourn the Board of Zoning Appeals Public Hearing and Regular Meeting at 10:20 a.m. The motion was approved by unanimous consent.

Chairman Bill Murphy

Deputy Clerk

This Public Hearing and Special Meeting of the Cape Charles Board of Zoning was held by video conference in accordance with Code of Virginia § 2.2-3708.2, subsection A.3, resulting from Governor Northam's March 12, 2020 declaration of a state of emergency for the Commonwealth of Virginia arising from the Novel Coronavirus (COVID-19) pandemic. It was deemed impractical and unsafe to assemble physically due to the highly contagious nature of COVID-19.

The purpose of this meeting was to review an application for a variance from the rear yard setback requirements. An audio recording was made of the meeting, and the meeting was also live-streamed on Facebook, as well as video-taped for viewing from the Town's website after processing. Public comments were accepted in writing prior to the meeting. Viewers could also submit their comments via Facebook Live, emails to the clerk and by calling the clerk's office and leaving a voicemail during the public hearing.

At approximately 6:00 p.m., Chairman Bill Stramm, having established a quorum, called to order the Public Hearing and Special Meeting of the Planning Commission. Physically present at the Civic Center were Town Clerk Libby Hume and Deputy Clerk Tracy Outten. In attendance via Zoom were Diane D'Amico, Paul Grossman, Jim Holloway, Dennis McCoy, Michael Strub, Code Official Jeb Brady, and the applicants. There was one vacancy on the board. There were no members of the public physically in attendance.

PUBLIC HEARING PUBLIC COMMENTS:

Bill Stramm read the Notice of Public Hearing and staff analysis.

Dennis McCoy pointed out that the applicant's name was misspelled on first page of the staff report and the application did not have a signature.

There were no public comments to be heard nor any written comments submitted prior to the public hearings.

Motion made by Michael Strub, seconded by Dennis McCoy, to close the public hearing portion of the Planning Commission meeting at 6:07 p.m. The motion was approved by unanimous vote.

PUBLIC COMMENTS RE: Agenda Items Only

There were no public comments to be heard nor any written comments submitted prior to the meeting.

SPECIAL ORDER OF BUSINESS:

- A. *Application for a conditional use permit to allow a residential dwelling unit above a commercial use in the C-1 zoning district located at 325 Mason Avenue – tax map #83A3-1-610 - recommendation to Town Council.*



DRAFT
Board of Zoning Appeals
Public Hearing & Meeting
Cape Charles Civic Center
June 16, 2020
10:00 a.m.

This Public Hearing and Special Meeting of the Cape Charles Board of Zoning was held by video conference in accordance with Code of Virginia § 2.2-3708.2, subsection A.3, resulting from Governor Northam's March 12, 2020 declaration of a state of emergency for the Commonwealth of Virginia arising from the Novel Coronavirus (COVID-19) pandemic. It was deemed impractical and unsafe to assemble physically due to the highly contagious nature of COVID-19.

The purpose of this meeting was to review an application for a variance from the rear yard setback requirements. An audio recording was made of the meeting, and the meeting was also live-streamed on Facebook, as well as video-taped for viewing from the Town's website after processing. Public comments were accepted in writing prior to the meeting. Viewers could also submit their comments via Facebook Live, emails to the clerk and by calling the clerk's office and leaving a voicemail during the public hearing.

At approximately 10:00 a.m. in the Cape Charles Civic Center, Chairman Bill Murphy called to order the Board of Zoning Appeals Public Hearing and Meeting. Physically present at the Civic Center were Town Clerk Libby Hume and Deputy Clerk Tracy Outten. In attendance via Zoom were Jim Holloway, Tom Weaver, Code Official Jeb Brady, and the applicants. Pete Baumann joined via Zoom after roll call. There was one vacancy on the board. There was one member of the public physically in attendance and 21 viewers on Facebook Live.

Bill Murphy read the public hearing advertisement.

PUBLIC HEARING

- A. *Hear public comment on proposed zoning variance from the rear yard setback requirements for a proposed single-family detached home in the Residential – 1\Historic District on lot 198B on Madison Avenue (tax map # 83A1-1-198B).*

There were no comments to be heard nor any written comments submitted prior to the meeting.

- B. *Close public hearing*

Motion made by Jay Wiegner, seconded by Jim Holloway, to close the public hearing. The motion was approved by unanimous consent.

Bill Murphy led the Board in the recitation of the Pledge of Allegiance.

CONSENT AGENDA

Motion made by Jim Holloway, seconded by Pete Baumann, to accept the agenda format as presented. The motion was approved by unanimous consent.

SPECIAL ORDER OF BUSINESS:

- A. *Zoning variance application – to allow variance from the rear yard setback requirements for a proposed single-family detached home in the Residential – 1\Historic District on lot 198B on Madison Avenue (tax map # 83A1-1-198B).*

Bill Murphy gave an overview of the application being presented and explained to the applicant that the board had strict criteria to follow to grant a variance.

Discussion and questions were as follows: (i) Bill Murphy asked Jeb Brady about conforming lots. Jeb Brady answered that once the home was built, the interior lot would be a non-conforming lot and explained that the applicants also owned the neighboring lots; (ii) Jeffrey and Linda Schroeder, the applicants, said they were not aware of the setback requirements when the property was purchased. Jeffrey Schroeder added that others had built close to the setback requirements; (iii) Tom Weaver asked the applicants if the front porch could be eliminated. Linda Schroeder explained that during this whole design process the only thing her husband asked for was a front porch; (iv) Jim Holloway reminded the board that they requested another applicant to redesign their home. He continued by informing the applicants that they could have a back porch; (v) Bill Murphy agreed that there was space for a porch behind the house. He added that the ordinance gave leeway for non-conforming lots and given the size of the lot the undue hardship may be having to give up a front porch and a redesign could be costly. The applicants said the house was designed with the future in mind. Jeb Brady said the house could be redesigned to meet the current setbacks and it was hard for him to make a case for undue hardship; (vi) Bill Murphy said that because of the lot size the hardship was not shared by other properties in the same zoning district. Tom Weaver and Jim Holloway agreed that other properties did not share this hardship; (vii) All agreed that authorization of this variance would not be of substantial detriment to adjacent property and that the character of the district would not be changed; (viii) Pete Baumann thought that the hardship was the size of the lot which was half the size of others and the application met all conditions for a variance; (ix) Tom Weaver said encroachments on the setbacks were an undue hardship but still thought that the plans could be modified. Jim Holloway agreed that the plans could be modified; (x) After much discussion regarding whether the lot size was an undue hardship, Bill Murphy said all criteria had to be met to grant a variance. He added that this was a tough call and thought that because this was a non-conforming lot that it could be a hardship. Pete Baumann agreed and reiterated that the lot was small compared to others; (xi) The applicants felt that asking for a couple of feet was not much; and (xii) Pete Baumann said in his opinion the house was small already and because it did not meet the requirements of the ordinance it needed a variance and thought that was the undue hardship. Tom Weaver and Jim Holloway agreed with Pete Baumann.

After reviewing the application and discussing the conditions that needed to exist, the board agreed that the application met the criteria as follows: (i) procured undue hardship; (ii) the hardship was not shared generally by other properties in the same zoning district and vicinity; and (iii) the authorization of such variance would not be a substantial detriment to adjacent property and that the character of the district would not be changed by granting the variance.

Motion made by Jim Holloway, seconded by Pete Baumann, to approve the zoning variance from the rear yard setback requirements in the Cape Charles Zoning Ordinance Section 3.2.G.1.c to allow the proposed single-family detached home in the Residential - 1\Historic District on lot 198B on Madison Avenue to be set into the setback 7' as submitted. The motion was approved by unanimous consent.

Motion made by Jim Holloway, seconded by Tom Weaver, to adjourn the Board of Zoning Appeals Public Hearing and Special Meeting at 10:50 a.m. The motion was approved by unanimous consent.

Chairman Bill Murphy

Deputy Clerk