

Board of Zoning Appeals

Public Hearing & Meeting Agenda

Cape Charles Civic Center – 500 Tazewell Avenue

August 26, 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 for a 7' encroachment into the 10' rear yard setback requirements of Section 3.6(E)(4) for a proposed attached structure to be 3' from the rear property line and Section 2.5.1 Continuation of Non-Conforming Uses and Permits to allow a non-conforming building to be further extended into a setback at 730 Randolph Ave (tax map # 83A4-5-B).
 - 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
5. New Business
 - a. An application for a variance for a 7' encroachment into the 10' rear yard setback requirements of Section 3.6(E)(4) for a proposed attached structure to be 3' from the rear property line and Section 2.5.1 Continuation of Non-Conforming Uses and Permits to allow a non-conforming building to be further extended into a setback at 730 Randolph Ave (tax map # 83A4-5-B).
6. Adjourn

Notice of Public Hearing

The Cape Charles Board of Zoning Appeals will hold a public hearing on Wednesday, August 26, 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 for a 7' encroachment into the 10' rear yard setback requirements of Section 3.6(E)(4) for a proposed attached structure to be 3' from the rear property line and Section 2.5.1 Continuation of Non-Conforming Uses and Permits to allow a non-conforming building to be further extended into a setback at 730 Randolph Ave (tax map # 83A4-5-B). 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/Zoning Administrator 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 26, 202

0 Item #: 2i

Prepared By: Allyson Finchum, Zoning Administrator
Site Address: 730 Randolph Avenue #83A4-5-B
Applicant: Andrew McCoy, MLT Enterprises LLC
Owner: MLT Enterprises
Proposed Development: An application for a variance for setbacks
Current Zoning: Commercial District (C-1); Historic District Overlay

Site Description:

The applicant owns a developed parcel containing an attached structure and paved parking area. An adjacent parcel between the referenced parcel and Randolph Avenue contains the other part of the attached structure and provides access through the parking lot. The referenced lot #83A4-5-B has a total lot area of 9,396 square feet +/-.

The existing principal structure exists within the current setbacks, 6 inches from the western side property line and 3' 9" from the rear property line. Further research has not been conducted to determine if this structure is legally non-conforming, however, this variance request is not based on non-conforming status.

Description of Proposed Project:

The applicant is requesting;

- Encroachment into the rear setback to locate a 3' x 5' attached shed for a fire suppression shut-off valve enclosure

Staff Analysis:

The property is located in the Commercial District C-1. The Town of Cape Charles Zoning Ordinance Section 3.6, Commercial District C-1 states, "the intent of this zoning district is to preserve and enhance the traditional mixed use urban nature of Cape Charles commercial districts, to encourage

the location of regional and local business and professional activities, to facilitate the development of buildings in keeping with its largely National Historic District character, and to protect against destruction of or undesirable encroachment on these areas.

Area regulations specify the minimum lot size shall be 5,600 square feet. Setbacks for the side yard are 5 and 10 feet and for the rear yard are 10 feet or prevailing if less. The front entrance of the structure faces the side yard (east property line).

Throughout the years, a variety of uses, including commercial, occupied the structure on this property. A conditional use permit was received for change of use to residential. The new residential use requires fire suppression which can be contained either inside or outside, per the Building Official.

State law provides the framework for an ordinance. The local ordinance reflects the requirements.

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.

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 HARSHIP 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 existing structure and parking area, constructed prior to the current ownership, occupy almost the entire parcel creating difficulty in placement of the addition on the exterior. There appears to be insufficient property unoccupied by the existing structure and parking use. Detaching the proposed structure and placing it further from the existing structure causes interference with the parking spaces and might be assumed to cause the owner unreasonable costs in removing then reinstalling concrete and asphalt.

As well, the property is located within the historic district and this addition must be approved by the Historic District Review Board. Attaching the structure to the front façade which is visible from the street, will cause additional scrutiny and concern when applying local historic regulations and standards.

The equipment could be placed inside the structure at additional cost to the owner who must convince the Board it is unreasonable to do so.

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

General research appears to indicate that most parcels in the C-1 zoning district have available land area outside the side and rear setbacks on their parcels to locate small additions.

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 small addition will be located between the existing structure and the rear setback. It is screened from the right-of-way and visible from an easement, open space, and the railroad tracks. Placing the proposed structure in any other location potentially causes detriment to the adjacent property and character of the district.

Staff Recommendation:

If the Board of Zoning Appeals finds that placement of the equipment on the interior of the building is unreasonable, staff recommends the request is **APPROVABLE** for a variance to encroach into the required setback to build a 3' x 5' attached shed for required mechanical equipment in the requested location shown on the left elevation rendering submitted with the application.

Attachments:

Attachment 1 – Application and Documents

730 Randolph Avenue

Cape Charles, Virginia

Zoning Variance request

We respectfully submit the following pages as a guide for our proposed zoning variance request at 730 Randolph Avenue in Cape Charles, VA. We understand that it is the zoning official and zoning board's responsibility to decide whether our proposed variance is appropriate for the property based on the zoning designation of Commercial C-1.

Prior to our purchase of the property, the original owner was approved for constructing the building within the current setback limits of the zoning. As a result, the rear (**west**) wall of the building is 6 inches from the neighboring property line and the side (**south**) wall of the building is 3 foot 9 inches from the property line. The neighboring property on the **south** side is a Town right-of-way for utilities that will not contain buildings. Further, the Town approved a zoning variance for residential use in C1 prior to our purchase of the property (see attached letter). Finally, property contains 2 underground fuel tanks that serve Dr. Selph's heating system—these are deeded into our sale, belong to Dr. Selph while on our property and we cannot disturb them.

As a residential property 6 inches from the neighboring property, we agreed to install a fire suppression (sprinkler) system. The fire suppression system requires a 4 inch water supply line to branch directly off of the Town's water supply and housed into a concrete slab (due to pressure). This line then contains a valve that attaches to the fire suppression system for the building. The valve and fire suppression system require access for annual maintenance and servicing. Further, it is not recommended (by the utility contractor) that the 4 inch supply line be placed within the building itself in case of possible future leaks that could flood the building. We also are restricted in our ability to bring the lines across the site due to the underground fuel tanks of Dr. Selph.

Finally, the existing Town water main (supply) is located in the southwest corner of the building. Please see the attached page 1 of 4 for a layout of the site and plat.

Therefore, we are requesting a zoning variance for a 3 foot (deep) by 5 foot (wide) shed to house the fire suppression valve. This shed structure is illustrated on attached pages 2 through 4 (of 4). It would extend off of the south side of the building 3 feet, within the property line. It will rest on a concrete slab that we will also use to hold the 4 HVAC condenser units for the building's mechanical system. We will place a door on the south side for access- this door will face the Town's right-of-way where no buildings will be built in the future.

We request this zoning variance based on the following sections of the zoning ordinance as well:

- **Section 2.5 Non-Conforming Uses-** *we have a non-conforming property which was previously approved to encroach on the current zoning setback requirements (i.e. we are already within the zoning setback limits due to the building's siting on the property)..*
- **Section 3.6 Commercial District C-1-** *therefore, the setbacks do not apply to our property since it is not considered new development and setbacks are not applicable to our property's arrangement.*
- **ARTICLE IV General Regulations Applicable to All Districts; Section 4.2 Exceptions to the Regulations-** *our proposed fire suppression water supply shed meets the intent of this exception with the fire supply shutoff valve. The adjacent property does not contain any buildings upon which we would be encroaching.*

Current Zoning Guidelines

Below are excerpts from the current zoning guidelines and requirements for your reference:

Section 2.5 Non-Conforming Uses

Section 2.5.1 Continuation of Existing Non-Conforming Uses and Permits

A. Any legal use, building, or structure existing at the time of adoption of this ordinance or any amendment thereto may be continued even though such use, building, or structure may not conform with the provisions of this ordinance for the district in which it is located. Such use, building, or structure shall be deemed a "Non-Conforming Use." **A non-conforming use, building, or structure may be continued provided by the following.**

1. No such non-conforming use, building, or structure **shall be enlarged or increased or extended to occupy a greater area of land** than was occupied at the effective date of the adoption of this ordinance, unless said enlargement does not result in an increase in nonconformity or result

in a change to a use permitted in the district.

2. No such non-conforming use, building, or structure **shall be moved** in whole or in part to any portion of the lot or parcel other than that occupied by such use, building, or structure at the effective date of adoption of this ordinance or amendment of this chapter, unless such move results in decreasing the degree of nonconformity with the requirements of this district.

3. **No additional structures** which do not conform to the requirements of this ordinance shall be erected in connection with such non-conforming use of land. No additional uses of a nature which would be prohibited generally in the district involved shall be permitted.

4. Any non-conforming use may be extended throughout any parts of the building which were manifestly arranged or designed for such use at the time of adoption or amendment of this ordinance.

5. When any non-conforming use is superseded by a permitted use, the use shall thereafter conform to the regulations for the district, and no nonconforming use shall thereafter be resumed with the exception of existing duplexes specifically designed as such.

6. If any such non-conforming use or structure ceases for any reason for a period of more than two years, except when government action impedes access to the premises, any subsequent use of such land or structure shall conform to the regulations specified by this chapter for the district in which such land or structure is located with the exception of existing duplexes specifically designed as such.

B. The rights pertaining to a non-conforming use, building, or structure shall be deemed to pertain to the use or building itself, regardless of the ownership of the land or the building on or in which such non-conformity is conducted or of such non-conforming building or the nature of the tenure of the occupancy thereof.

Section 3.6 Commercial District C-1

C. Conditional Uses: Single family and multi-family dwellings provided that no such dwelling is located at street level and all dwelling units have direct access to the street level (not access through commercial establishment on the first level).

D. Height Regulations: Buildings may be erected up to 40 feet in height from the adjacent ground elevations.

E. Area Regulations: The following area regulations shall apply as minimums for **new** development in this district:

- | | |
|---------------------------------|------------------------------------|
| 1. Lot width at setback line | 40 |
| 2. Area requirements (40 x 140) | 5,600 |
| 3. Side yard | 0; 5 and 10 feet in Route 184 area |
| 4. Rear yard | 10 or prevailing rear yard if less |

5. Front setback shall be determined by the average setback of the existing built up commercial area. Front setback along Route 184 (aka Randolph Avenue extended; Old Stone Road) where existing VDOT right of way is 70 feet shall be measured at 80 feet from the center of the right of way.

DEVELOPMENT means the division of a parcel of land into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any mining, excavation, landfill, or land disturbance; any use or extension of the use of land. [Section 2.9 Definitions]

ARTICLE IV

General Regulations Applicable to All Districts

Section 4.2 Exceptions to the Regulations

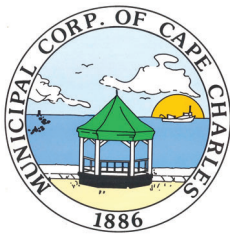
F. Projections Allowed in Required Setbacks. No building or structure, or addition thereto, shall extend into a required setback area or yard area, **except chimneys, heating and cooling equipment, structures less than sixteen (16) inches in height as measured from finished ground elevations, and steps may extend into such setback or yard area other than front yard setback.** The following unenclosed uses may extend no more than four feet, but not nearer than five feet to any property line: balconies, eaves, trims, fascia boards, and similar architectural features, platforms, and terraces. In Commercial District C-1, no building or structure, or addition thereto, shall extend into the required front setback area or yard area except for the following: above street floor level balconies, porches, and terraces may extend therein. Support members for these structures may extend to the ground as required by the building and maintenance code. No part of any foundation for these support members shall extend above the ground or grade level. The following unenclosed structures located above the first floor level may extend to the front lot line: porches, balconies, terraces.

In conclusion, we want to finally thank you for considering our request. We are looking forward to hearing from you.

Thank You,



Andrew P. McCoy, MLT Enterprises LLC



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 \$450, all others \$750, each additional variance request on same application \$50) |
| ☒ Proposed site plan or survey (if applicable) | |

PROJECT INFORMATION

Name of Project: 730 Randolph Avenue
Property Address: 730 Randolph Avenue Cape Charles, VA
Brief Description of Project: 4 unit residential condominium complex
Zoning District: C1 Current Use: Residential Proposed Use: Same

OWNER INFORMATION

Name and Company: Andrew P. McCoy, MLT Enterprises LLC
Mailing Address: 1364 Air Rail Avenue Virginia Beach, VA 23455
Phone Number: 540. 449-1861 Email: andrewpmccoy@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: Andrew McCoy Digitally signed by Andrew McCoy
Date: 2020.08.04 17:29:40 -04'00' Date: 8.4.2020

730 Randolph Avenue

Zoning Variance Application

August 5th, 2020

730 Randolph Avenue Condominiums

Existing Town water main: 6"

HVAC condenser units:
4 each needed

Fire suppression shut-off valve enclosure:
3'x5' attached shed

Existing side setback: 3'-9"

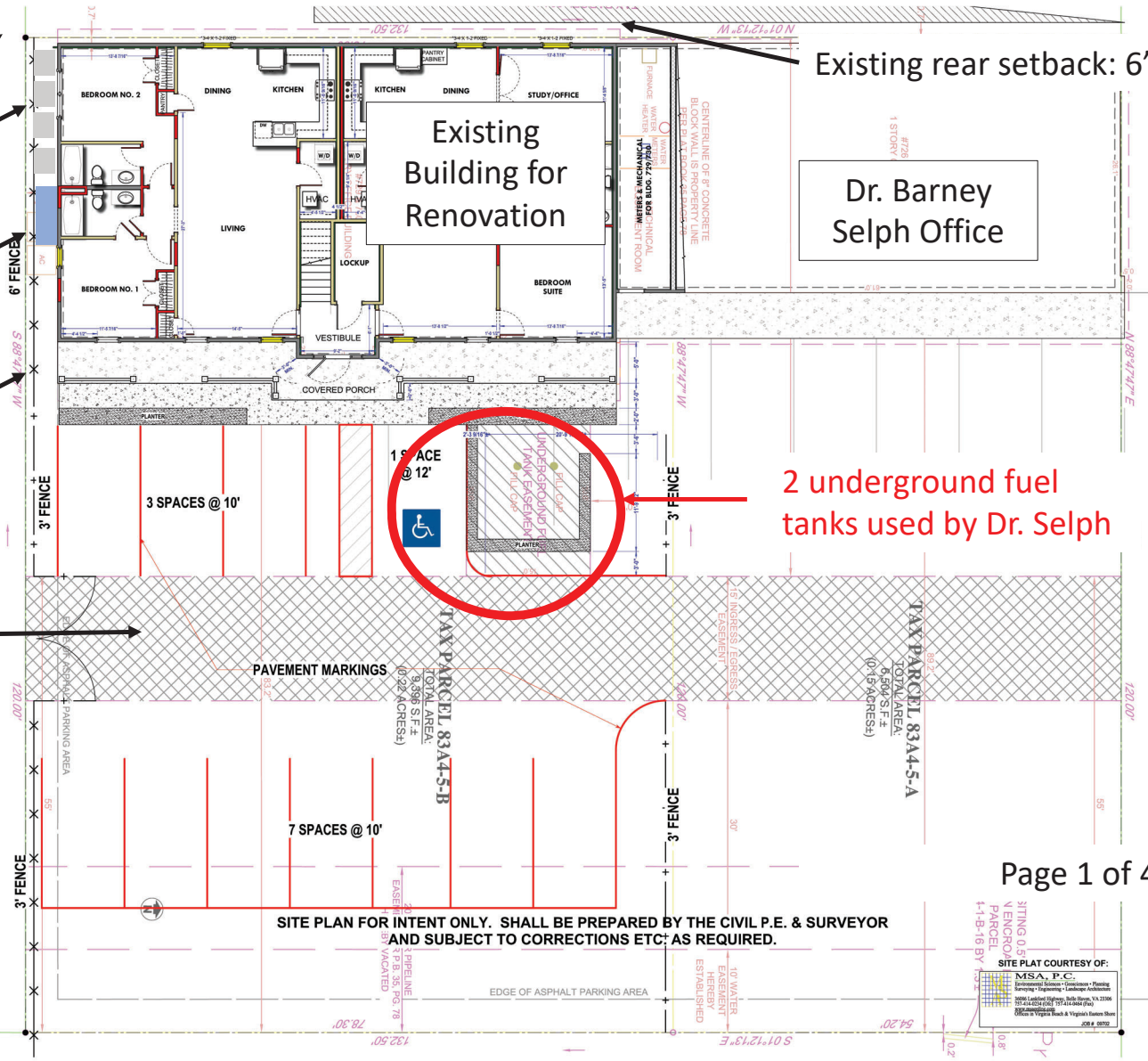
Town right-of-way (no buildings)

Parking



N OF C-RE CHARTERS
LAT CONSIDERING OF DUE
M OF CAPE, PARCELS, AND MAY BE ADMITTED TO THE LAND RECORDS OF THE
SAND COUNT

15.5' ALLEY



Existing rear setback: 6"

Dr. Barney Selph Office

2 underground fuel tanks used by Dr. Selph

SITE PLAT COURTESY OF:
MSA, P.C.
Surveying & Engineering & Planning
10000 Lee Highway, Suite 100, Fairfax, VA 22030
(703) 261-1100
www.msa-pc.com

730 Randolph Avenue Condominiums



HVAC condenser units:
4 each needed

LEFT ELEVATION
Scale: 1/4" = 1'-0"
(South elevation)

Fire suppression shut-
off valve enclosure:
3'x5' attached shed

730 Randolph Avenue Condominiums



Fire suppression shut-off valve enclosure:
3'x5' attached shed

FRONT ELEVATION

Scale: 1/4" = 1'-0"

(East elevation)

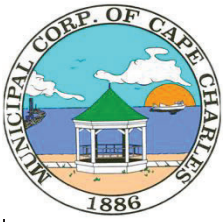
730 Randolph Avenue Condominiums



Fire suppression shut-off valve enclosure:
3'x5' attached shed

(South/East elevation)

Actual Images



***Municipal Corp. of
Cape Charles***

December 21, 2018

Mr. Howard Markwith
300 Fulcher
Cape Charles, VA 23310

Delivered by regular mail and email

Dear Mr. Markwith,

Your application for conditional use permit for residential units in the Commercial - 1 District (729\730 Randolph Avenue\tax map # 83A4 – 5 – B) was approved by the Cape Charles Town Council at their regular monthly meeting held on December 20, 2018. This letter serves as formal notification and is a follow up to the email I sent you on December 21, 2018 informing you of that Council action.

You are now able to apply for plan review and other permit applications for any work at the approved residential unit. Understand that the Conditional Use Permit is time limited to twelve (12) months and will become null and void on December 26, 2019 if the Conditional Use Permit is not acted upon.

According to Article IV Section 4.3.D of the Town Zoning Ordinance
To be considered acted upon one (1) or more of the following is required:

- 1. The procurement of a Cape Charles Building Permit*
- 2. Payment of Water and Wastewater Connection and Facility Fees*
- 3. Completed Plans stamped by a Virginia Licensed Professional*

The Town Council may make additional one-year extensions for good cause. If the provisions of the Zoning Ordinance or the requirements of the conditional use permit are not met, then the Town Council may revoke the conditional use permit provided that ten days written notice is given to you.

If you have any questions please do not hesitate to call or email me at 757-331-3259, ext. 12 or townmanager@capecharles.org

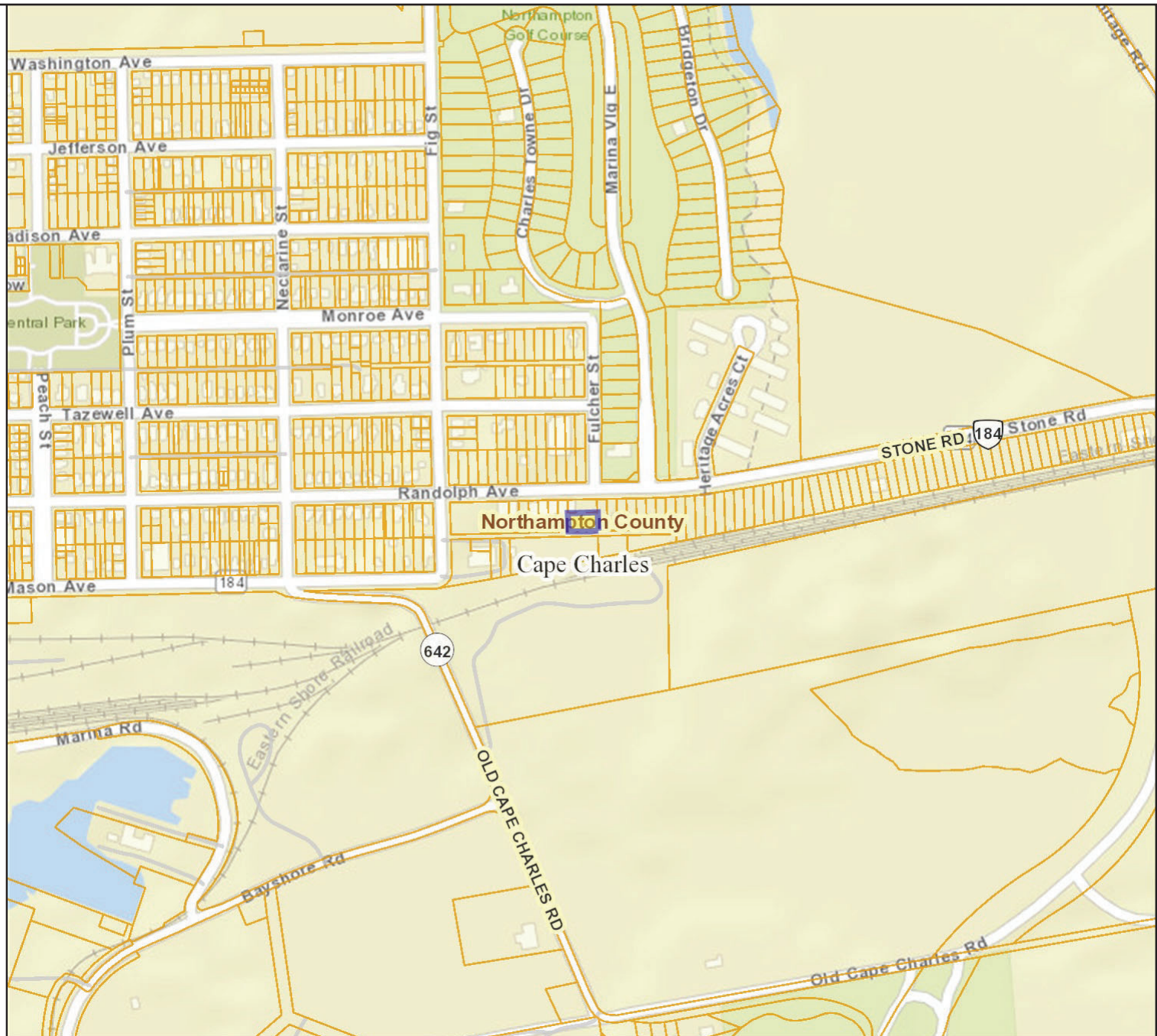
Lawrence DiRe

Town Manager\zoning administrator

Northampton County, Virginia

Legend

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



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

Feet
0 200 400 600 800

Title: 730 Randolph Ave TM#83A4-5-B

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.