

Board of Zoning Appeals

REGULAR MEETING

Cape Charles Civic Center – 500 Tazewell Avenue

July 13, 2021 10:00 A.M.

1. Call to Order
 - a. Roll call and establish a quorum
2. Invocation and Pledge of Allegiance
3. Adoption of Agenda
4. Review & Approval of Minutes: None
5. New Business – Public Hearing
 - A. An application from James Peters for a variance of 8 feet from the rear yard setback of 20 ft. pursuant to the Accawmacke Plantation Planned Unit Development (PUD), which is an appendix to the Cape Charles Zoning Ordinance, Article 4.2(E) (2) for the addition of a 13' x 18' screened-in porch on the rear of an existing house located at 6 American Court (Tax Map # 90-5-19) in the PUD R-2 District.
 - i. Zoning Administrator Report
 - ii. Open Public Hearing
 - iii. Applicant Statement
 - iv. Public Comments
 - v. Close Public Hearing
 - vi. Discussion and Vote by the Board
6. Other: Presentation and Discussion of Draft Rules of Procedures for the Board of Zoning Appeals
7. Adjourn

TOWN OF CAPE CHARLES
Notice of Public Hearing – Variance Request

The Cape Charles Board of Zoning Appeals will hold a public hearing on Tuesday, July 13 at 10:00 am in the Cape Charles Civic Center, 500 Tazewell Avenue, to receive public comment on the following:

- A. An application from James Peters for a variance of 8 feet from the rear yard setback of 20 ft. pursuant to the Accawmacke Plantation Planned Unit Development (PUD), which is an appendix to the Cape Charles Zoning Ordinance, Article 4.2(E) (2) for the addition of a 13' x 18' screened-in porch on the rear of an existing house located at 6 American Court (Tax Map # 90-5-19) in the PUD R-2 District.

The applications are available for public review on our website at www.capecharles.org. Please contact Interim Town Planner/Zoning Administrator Katie Nunez 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.

AD PLACED: Eastern Shore News - Thursday, June 24, 2021 by 12:00 pm

AD TO RUN: Wednesday, June 30, 2021 & July 7, 2021

AD PLACED: Eastern Shore Post – Monday, June 28, 2021

AD TO RUN: Friday, July 2, 2021



BOARD OF ZONING APPEALS STAFF REPORT

Meeting Date: July 13, 2021

Item #: 2b – Variance

Prepared by: Katie H. Nunez, Interim Planning/Zoning Administrator

APPLICANT: James Peters
SITE ADDRESS: 6 American Court

TAX MAP: 90-5-19

LOT SIZE: 11,840 sq. ft.

TYPE OF APPLICATION: Variance
SPECIFIC REQUEST: 8 ft. variance from rear yard setback of 20 ft. for a screened-in porch
ZONING: Accawmacke Plantation Planned Unit Development (PUD) Article 4.2 (E) (2)
CURRENT ZONING: PUD R-2

DATE RECEIVED: May 12, 2021

DATE DEEMED COMPLETE: May 30, 2021

LEGAL DEADLINE (90 Days from Complete Application – Directory, not Mandatory): August 30, 2021

NARRATIVE OF PROPOSAL

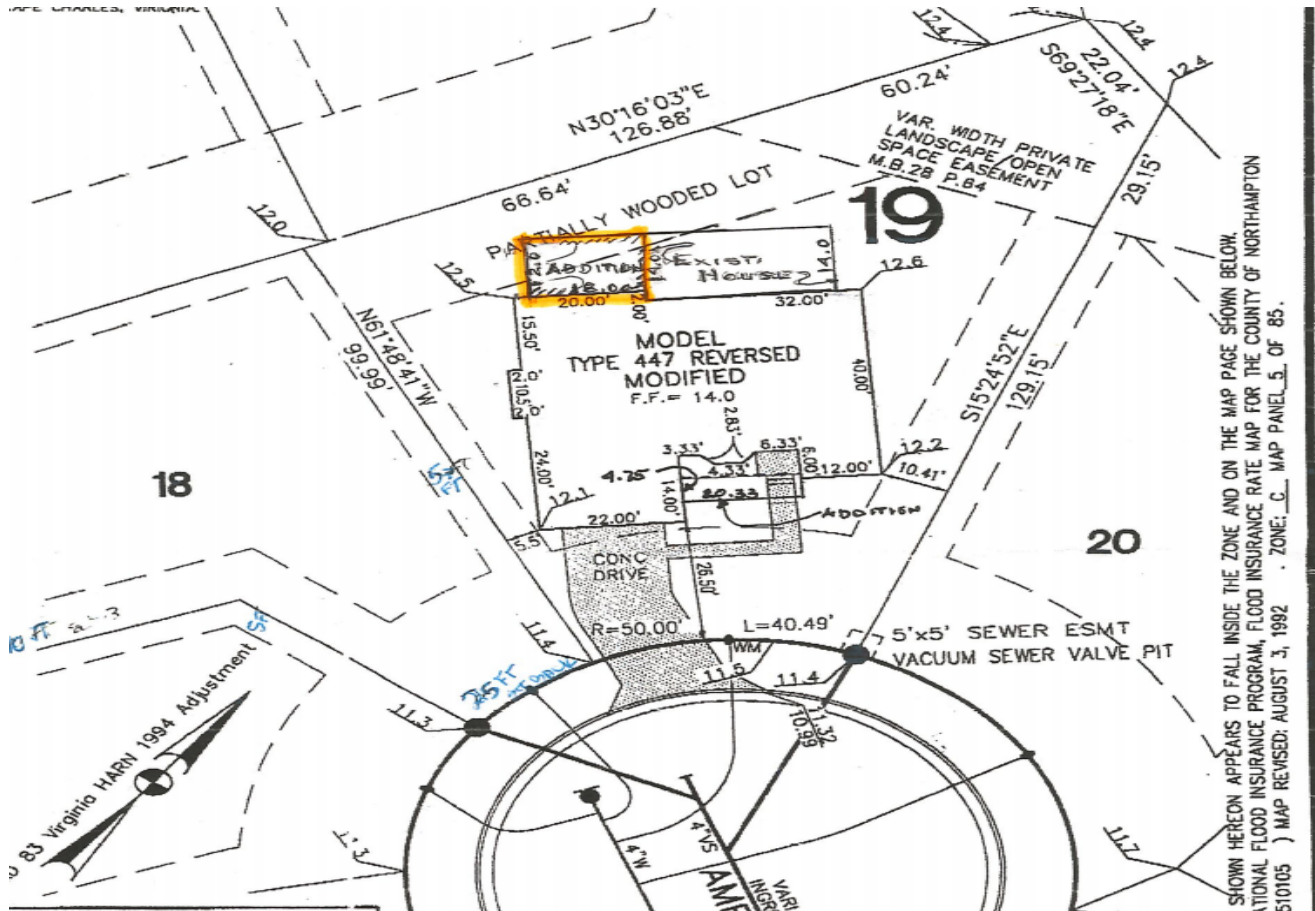
The applicant is seeking to add a screened-in, 13' x 18' porch to the rear of the house which would encroach into the rear setback by 8 feet. This lot is located in The Hollies subdivision within Bay Creek and falls under the Accawmacke Plantation Planned Unit Development (PUD) which is an appendix to the Cape Charles Zoning Ordinance.

This rear porch would require relief of 8 ft from the rear yard setback of 20 ft to allow for a 12-ft. setback to the rear property line, pursuant to PUD Article 4.2 (E) (2).

AERIAL MAP



Based upon the survey provided by the applicant, it is clear that the porch would encroach into the rear setback (see below).



ORDINANCE REQUIREMENTS TO BE CONSIDERED:

- (a) Does the evidence show that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance? The lot is legally sized per the PUD and there is a house which was constructed in 2001. The applicant is seeking to add a 234 sq. ft porch to the rear of the house of which approximately 80 sq. ft would be in the rear setback. The lot has not been restricted from being developed with a single-family dwelling. The addition of exterior, seasonal living space is being sought approximately 20 years after the house was constructed which was not part of the original house plan. The addition of a seasonal porch area is not an unreasonable request for an older home; the only limitation is the space on the lot available for the placement of this seasonal porch.

- (b) **Was the property interest for which the variance is being requested acquired in good faith and any hardship was not created by the applicant for the variance?** The property has been owned by the applicant since 2003.
- (c) **Will the granting of the variance not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area?**
The variance would not be of detriment to adjacent property and nearby properties.
- (d) **Is the condition or situation of the property concerned not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance?**
This appears to be a fairly rare case and does not support the consideration of the formulation of a general regulation to the ordinance.
- (e) **Does the granting of the variance result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property?**
The addition of a screened-in porch is appropriate and legal per the ordinance.
- (f) **Is the relief or remedy sought by the variance application not available through a special exception process that is authorized in the ordinance or the process for modification of a zoning ordinance at the time of the filing of the variance application?**
No. The variance is necessary.

DISCUSSION POINTS:

1. Does the Board feel that allowing the variances requested is reasonable?

BZA REVIEW:

Some items that the BZA may wish to consider in its review:

1. *Is the application complete and does it contain sufficient information and detail for the BZA to make a defensible ruling?*
2. *Is on its face, is the proposal, a sound and well thought out one that has taken into account potential downsides as well as upsides?*
3. *Are there compelling reasons to approve or deny the request, beyond the fact that no one has spoken in opposition to it or that some are opposed to it?*

STAFF RECOMMENDATION:

Staff recommends that the BZA consider the items that have been raised in this report and consider the request at hand. The staff would recommend that the application be approved based upon the points raised in this staff report, specifically in the section called “ORDINANCE REQUIREMENTS TO BE CONSIDERED”.

PROPOSED MOTION FOR CONSIDERATION:

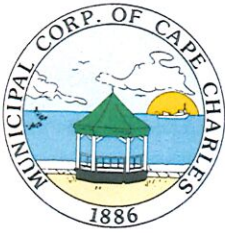
Staff offers the following motion for the Board's consideration and is prepared to assist to amend or alter the motion based upon the public hearing and discussion of the Board:

After careful consideration of the application and the staff report, the Board of Zoning Appeals votes to approve the Variance Application from James Peters at 6 American Court (Tax Map #90-5-19) for an 8 ft. variance to the rear yard setback requirement of 20 ft. pursuant to Accawmacke Plantation PUD Article 4.2 (E) (2) for a screened-in porch based upon the reasons outlined in the Staff Report "Ordinance Requirements to be Considered".

Attachments:

Attachment 1 – Application and Documents

Attachment 2 – Cape Charles Zoning Ordinance Appendix - Accawmacke Plantation PUD Article 4.2 (E) (2)



VARIANCE APPLICATION

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

RECEIVED

05/13/2021

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: #6 AMERICAN CT. BAY CREEK
Property Address: #6 AMERICAN CT. BAY CREEK CAPE CHARLES VA
Brief Description of Project: REMOVE A SCREEN PORCH IN REAR OF PROPERTY
Zoning District: _____ Current Use: HOME/RATIO Proposed Use: SAME WITH SCREENED PORCH

OWNER INFORMATION

Name and Company: JAMES PETERS
Mailing Address: 6955 GREEN JAC ST. NW WASH DC 20015
Phone Number: 202 486 6955 Email: R. BARNES PETERS AT VERIZON.NET

APPLICANT INFORMATION

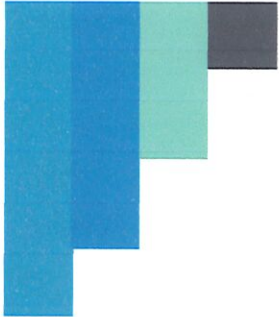
☒ check here if applicant is owner

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: James Peters Date: 5-12-21



May 13, 2021

Ms. Tracey Outten, CMC
Planning Technician
Town of Cape Charles
2 Plum Street
Cape Charles, VA 23310

Dear Ms. Outten,

I am requesting a variance to add a screen porch to the rear of my house located at 6 American Court. The porch shall be 13 ft by 18 ft or less if required. The porch will be attached to the existing house on the north and east side. The roof will match in size and slope of the existing roof. I own lot #18 and 19, lot #20 another owner is not impacted by the porch. The addition will be over the existing patio area. The original drawing and plot is with your building department.

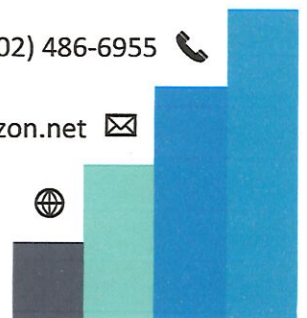
Sincerely,

James P. Peters, III
6 American Court
Cape Charles, VA 23310

(202) 486-6955 

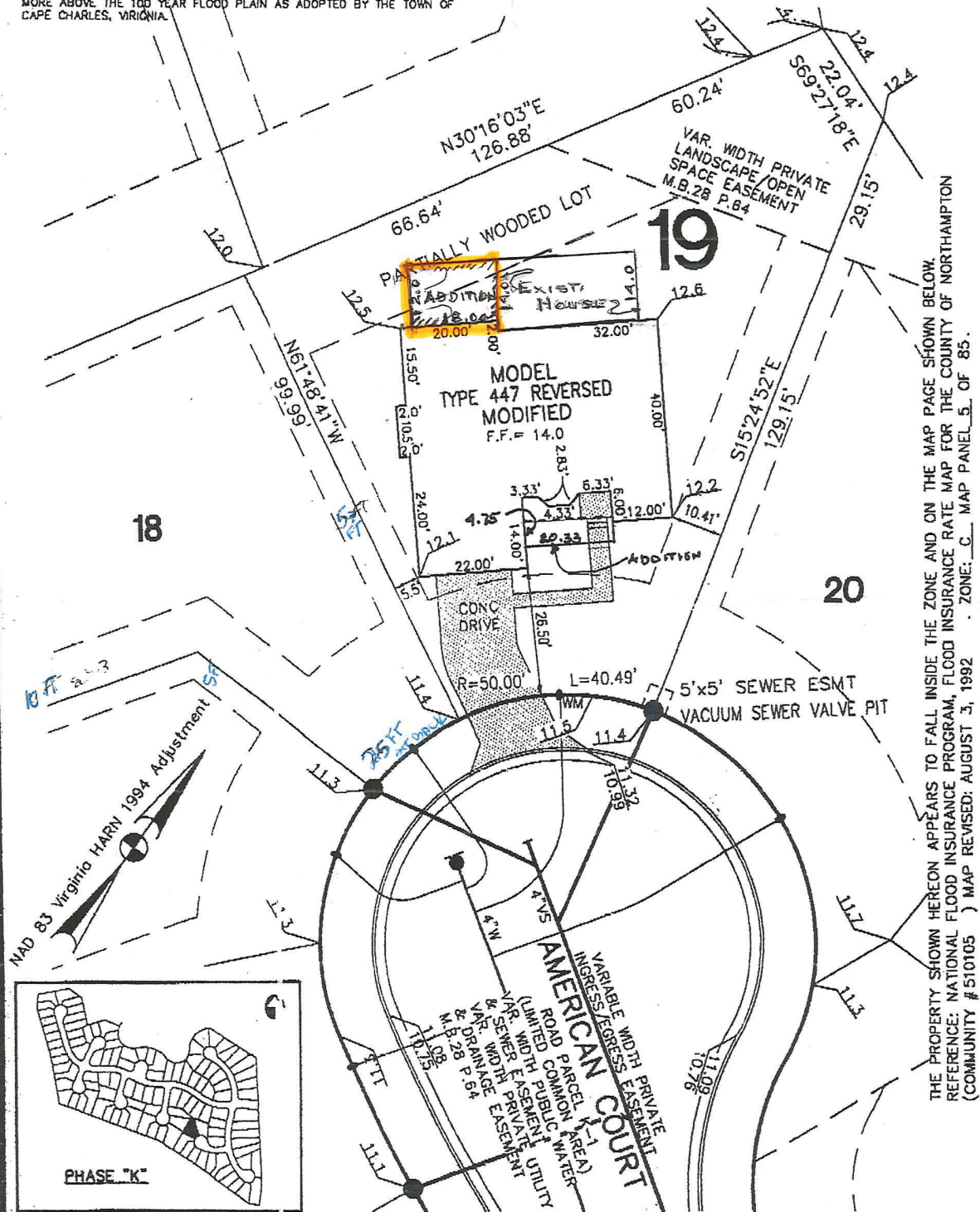
rbarnespeters@verizon.net 


(202) 363-0310 



GENERAL NOTES:

1. THE ELEVATIONS SHOWN HEREON ARE BASED ON NAVD83 DATUM.
2. AFTER BUILDING PERMIT IS ISSUED, THE TAF GROUP ASSUMES THAT THE BUILDER APPROVES THE LOCATION OF THE HOUSE SHOWN.
3. ALL DIMENSIONS SHOWN ON THE BUILDING ARE TO BE VERIFIED BY THE BUILDER PRIOR TO CONSTRUCTION.
4. LOT IS SERVED BY SEWER AND WATER.
5. ANY EASEMENTS, DEED RESTRICTIONS OR COVENANTS WHICH MAY AFFECT THE POSITIONING OF IMPROVEMENTS SHALL BE PROVIDED BY THE BUILDER PRIOR TO SITE PLAN PREPARATION.
6. THE LOWEST FINISHED FLOOR ELEVATION SHOWN IS ONE FOOT (1') OR MORE ABOVE THE 100 YEAR FLOOD PLAIN AS ADOPTED BY THE TOWN OF CAPE CHARLES, VIRGINIA.
7. THE LOT GRADING ON THIS PLAN IS IN ACCORDANCE WITH THE LATEST SUBDIVISION CONSTRUCTION PLAN SUBMITTED TO AND APPROVED BY THE TOWN OF CAPE CHARLES.
DATE OF APPROVAL: 3/22/00
8. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT.
9. THIS SITE PLAN WAS PREPARED FROM THE APPROVED CONSTRUCTION PLANS. NO FIELD SURVEY WAS PERFORMED.
10. IMPERVIOUS AREA = 2,802 Sq.Ft.



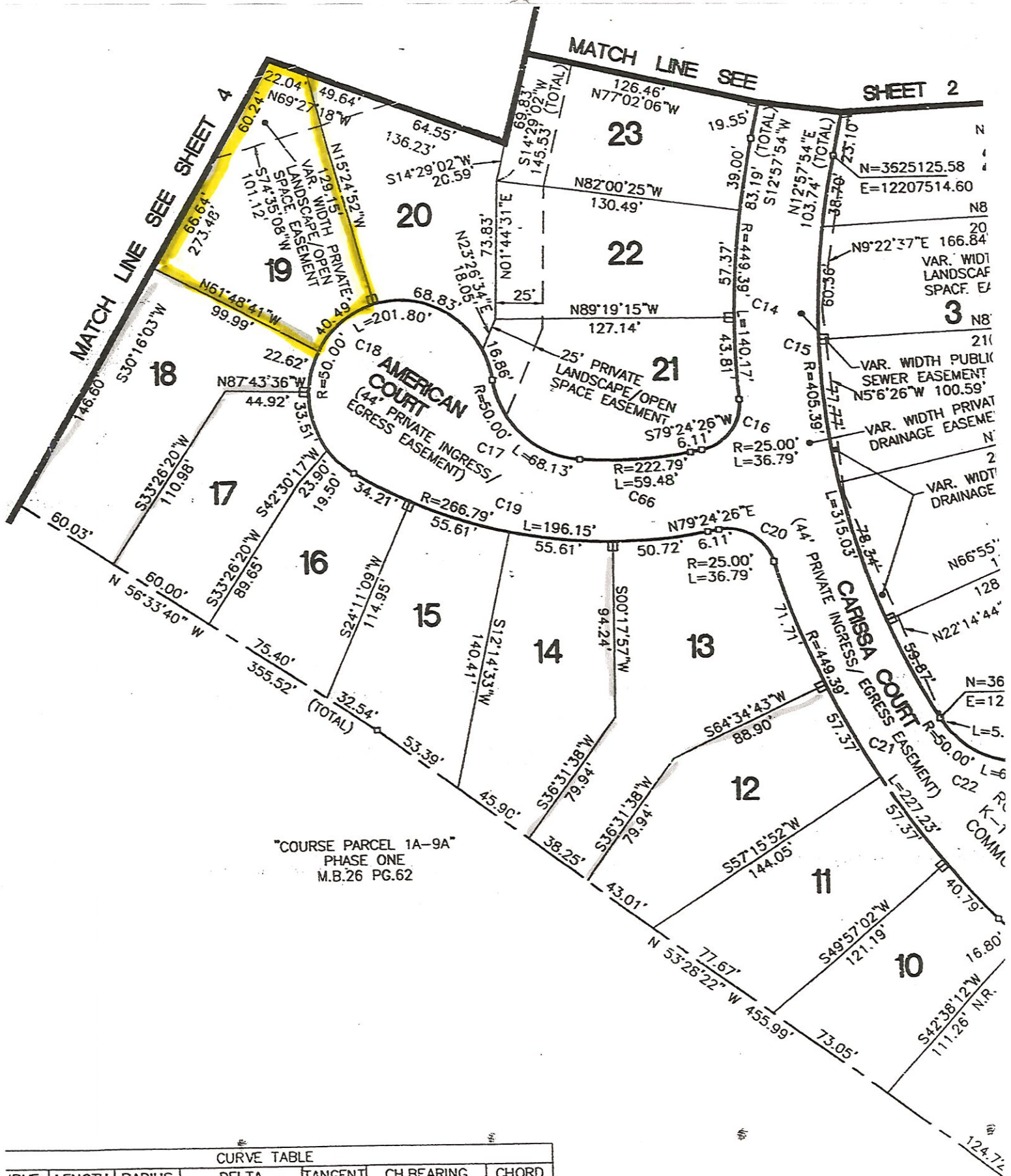
THE PROPERTY SHOWN HEREON APPEARS TO FALL INSIDE THE ZONE AND ON THE MAP PAGE SHOWN BELOW.
REFERENCE: NATIONAL FLOOD INSURANCE PROGRAM, FLOOD INSURANCE RATE MAP FOR THE COUNTY OF NORTHAMPTON
(COMMUNITY #510105) MAP REVISED: AUGUST 3, 1992 . ZONE: C MAP PANEL 5 OF 85.



ARCHITECTURE • ENGINEERING • CONSTRUCTION • SURVEYING
100 LANDMARK SQUARE • VIRGINIA BEACH, VA 23452
PHONE: (757) 340-5055 • FAX: (757) 422-3790



SITE PLAN
OF
LOT 19, AMERICAN COURT
SUBDIVISION OF
BAY CREEK
AT CAPE CHARLES
PHASE K
M.B.28 P.64
FOR
JAY HOMES

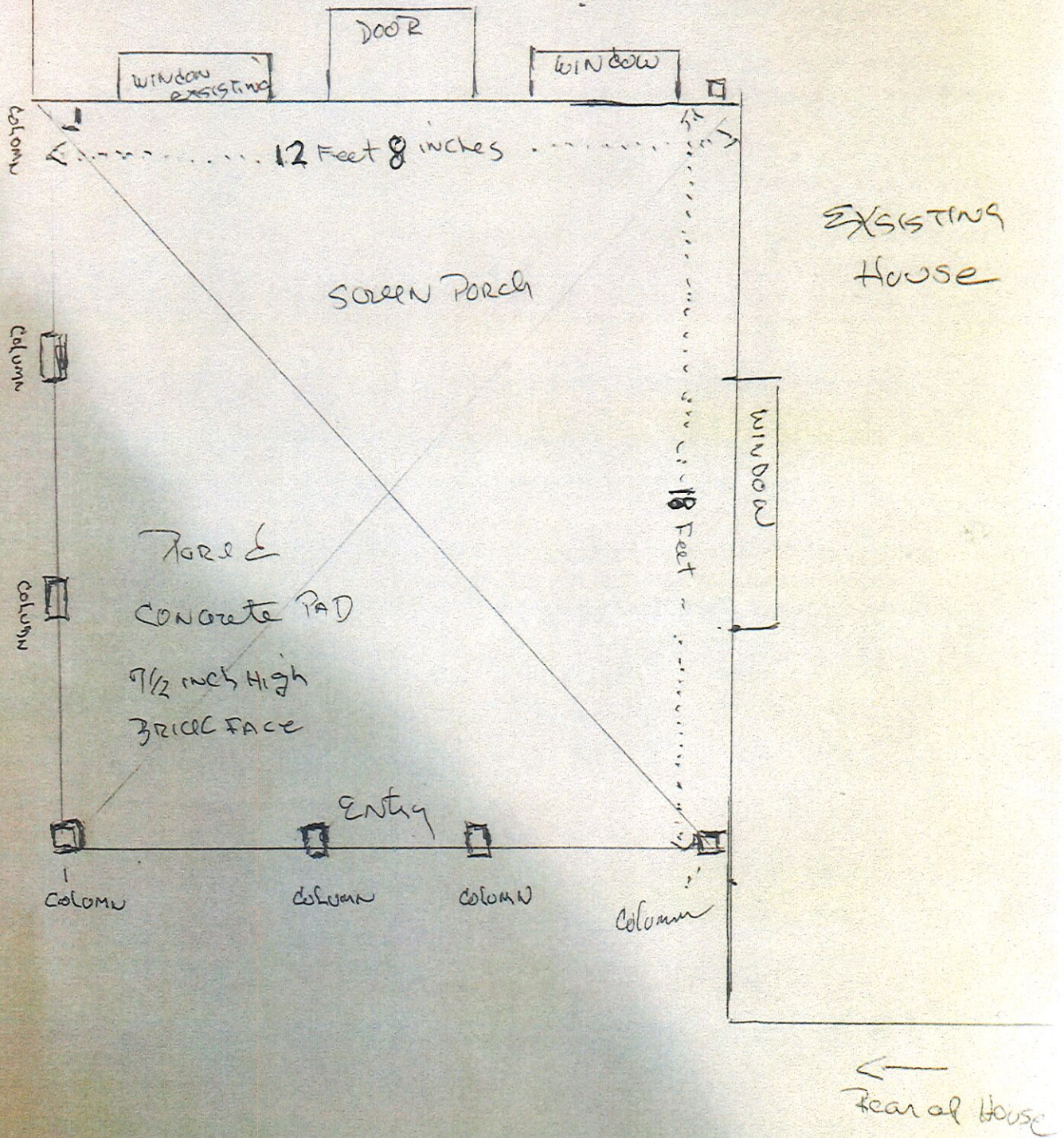


CRVE	LENGTH	RADIUS	DELTA	TANGENT	CH. BEARING	CHORD
C14	140.17'	449.39'	17°52'19"	79.66'	S04°01'44"W	139.61'
C15	315.03'	405.39'	44°31'31"	165.95'	S09°17'52"E	307.16'
C16	36.79'	25.00'	84°18'51"	22.63'	N37°15'00"E	33.56'
C17	68.13'	50.00'	78°04'24"	40.54'	S46°15'30"E	62.98'
C18	201.80'	50.00'	231°14'44"	104.25'	S57°09'20"W	90.17'
C19	196.15'	266.79'	42°07'32"	102.75'	S79°31'48"E	191.77'
C20	36.79'	25.00'	84°18'51"	22.63'	N58°26'09"W	33.56'

LEGEND

- PIN (SET)
- PIN (FOUND)
- MONUMENT (SET)
- MONUMENT (FOUND)
- PIPE (SET)
- PIPE (FOUND)

EXISTING HOUSE



#6 AMERICAN CT









8 FT

15 feet to sidewalk. SIDEWALK IS 4 FT

4 FT

5/6/18



21351 South Bayside Rd, P.O. Box 1090, Cheriton, VA 23316, (757) 708-6404

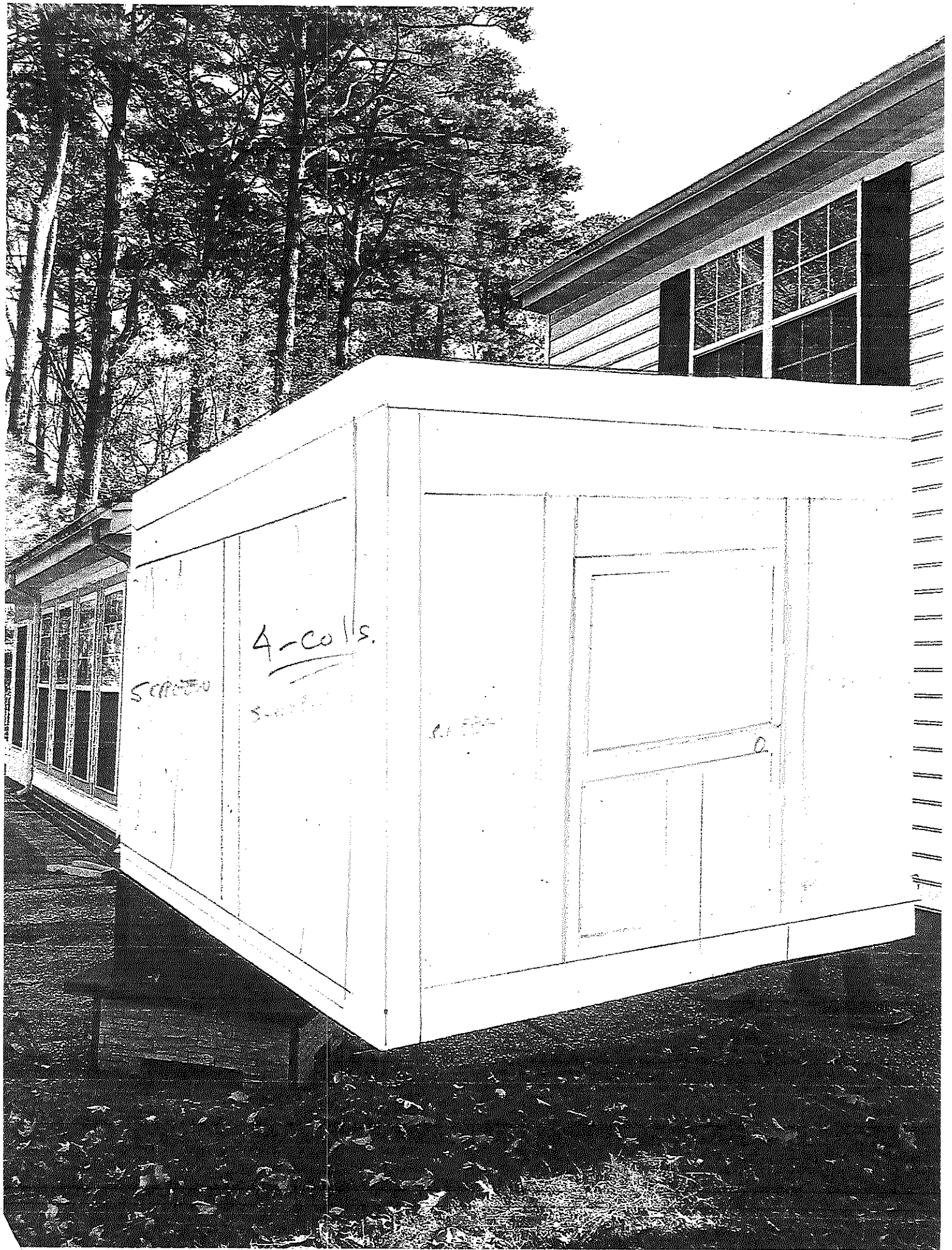
Contractor's License #2705 142263A (Class A)
Expiration Date: 08/31/2021

Job Location: 6 American Ct, Cape Charles, VA 23310

Owner's Name, Address, and Phone: James and Rozenna Peters, 6 American Ct, Cape Charles, VA 23310

Job Description:

Build new screen in porch at rear of home approximately 12x16'.
Change master bedroom window to be shorter and allow for roofline. Repair wall and paint in bedroom.
Remove areas of existing concrete for new footing, brick edging and concrete pad.
Build new roof similar to existing, Azek covered columns, azek beaded ceiling, vinyl screen door and screeneeze screen system and fiberglass screen.
Paint all white.
Wire for and install up to 6 outlets, 4 recess lights and 2 ceiling fans.



ACCAWMACKE PLANTATION PUD
Adopted February 9, 2003 & subsequently amended

ARTICLE 4.2

R-2 LAND USE CLASSIFICATION (MEDIUM DENSITY RESIDENTIAL)

A. Purpose. The purpose of the R-2 Land Use Classification is:

1. To provide for quiet, livable medium-density residential neighborhoods of one and two-family dwellings situated on lots having an area of 6,000 square feet or more.

B. Permitted Uses. Within the R-2 Land Use Classification, the following permitted uses shall be allowed:

1. Duplex Dwellings.
2. Single Family and Patio Dwellings.
3. Zero Lot Line Dwellings.
4. Retention Areas; Streets
5. Model dwelling units may be used as a sales office until such time as 90% of the dwelling units have been sold in that subdivided or platted area.
6. Utility Installations.

C. Conditional Uses. Within the R-2 Land Use Classification, the following conditional uses may be allowed:

1. Elementary, middle or high school or institution of higher learning (but not a trade or business school), provided that the lot is at least 5 acres in size, and that no structure or parking area is placed within 100 feet of any property line.
2. Church, synagogue or similar place of worship, provided that the lot is at least 3 acres in size, that no structure or parking area is placed within 100 feet of any property line, and that such use be placed on a lot facing only on a collector street.
3. Equestrian facilities provided that the lot is at least 10 acres in size and that no structure or parking area shall be located within 100 feet from a property line.
4. Child Care Facility provided that such is conducted in a church, synagogue or similar place of worship or elementary, middle or high school or institution of higher learning.

D. Accessory Uses. Within the R-2 Land Use Classification, the following accessory uses shall be allowed:

1. Swimming Pools with or without Pool House.
2. Tennis Courts.
3. Private Garages.
4. Docks or Piers.
5. Gazebos
6. Home Occupations provided:
 - a. There is no signage or visible or audible indications of the business including, but not limited to parking and deliveries.
 - b. No one is employed at the dwelling other than members of the family residing in the dwelling and no business invitees are permitted.
 - c. Public sale of products, merchandise, or services is prohibited from the dwelling or premises.

- d. No changes are made to the exterior residential structure due to the home occupation activities including, but not limited to, parking and deliveries.

E. Lot, Yard, Height and Coverage Requirements. Within the R-2 Land Use Classification, the following standards shall apply to each category below:

1. Minimum Lot Requirements.

	Single Family Dwelling	Patio Dwelling	Duplex Dwelling	Zero Lot Line Dwelling
Lot area (sq. ft.)	6,000	6,000	10,000	6,000
Lot width (feet)	50	50	60	50
Lot depth (feet)	85	85	85	85

2. Minimum Yard Requirements.

Front yard (feet)	25	25	25	25
Side yard (feet)	5 & 10	5*	10	0 & 10
Side yard-corner (feet)	20	10*	20	0 & 20
Rear yard (feet)	20	20	20	20

**modified January 14, 2003*

3. Maximum Building Height.

Vertical measure (feet)	40	40	40	40
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4. Bufferyards. Where R-2 Land Use Classifications adjoin R-1 Land Use Classifications within the PUD, bufferyards are required as follows:

- a. When a zoning lot within an R-2 Land Use Classification adjoins an R-1 Land Use Classification, the following shall be required along all lot lines within the R-2 Land Use Classification adjoining the R-1 Land Use Classification:
 - i) A 50 foot separation of road right-of-way, golf, lake, drainage easement, or natural feature; or
 - ii) A 50 foot bufferyard exclusive of any other yard requirements, landscaped by a Category I landscape screening in accordance with Appendix A.

5. Building Coverage. No more than 50% of the lot may be covered by the principal and accessory buildings.

6. Dwelling Size. Each single-family dwelling and single-family patio dwelling shall have a minimum habitable area of 1,000 square feet. Each duplex shall have a minimum habitable area of 850 square feet.

**TOWN OF CAPE CHARLES
BOARD OF ZONING APPEALS
RULES OF PROCEDURE**

Reviewed: July 2021

Adopted: _____

ARTICLE 1 – OBJECTIVES

- 1-1. The Cape Charles Board of Zoning Appeals, hereinafter called “Board” or “BZA”, established pursuant to Cape Charles Zoning Ordinance Section 2.6.1 and Code of Virginia §15.2-2308, as amended, has adopted these rules of procedure in order to properly exercise its powers and fulfill its duties in accordance with the Cape Charles Zoning Ordinance and the Code of Virginia §15.2-2309, as amended.

ARTICLE II – MEETINGS

- 2-1. *Annual meeting.* The meeting in January of each year shall be known as the annual meeting. At the annual meeting, the BZA shall establish the day, time, and place for regular meetings of the BZA for that year, and shall elect the Chair, Vice-Chair, and Secretary.
- 2-2. *Regular meetings.* A regular meeting of the Board of Zoning Appeals for the hearing of cases shall be held on the 2nd Tuesday of each month, starting at 10:00 a.m., at the Cape Charles Civic Center located at 500 Tazewell Avenue, unless no cases or other matters are pending – in which instance, no meeting shall be held. If the Chair, or Vice-Chair in his or her absence, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting, the meeting shall be continued until the 3rd Tuesday of that month. All matters properly advertised to be heard at such meeting shall be conducted at the next available meeting after fulfilling the advertising requirements for each public hearing. Notice of all meetings must be in accordance with Code of Virginia §2.2-3707 (C), posted at least three (3) working days prior to the meeting and be posted in the Cape Charles Town Offices and the town website.
- 2-3. *Special Meetings.* Special meetings may be called by the Chairman, provided that at least three days’ notice under the circumstances of such meeting is given to each member and notice is contemporaneously provided to the public when the members of the public body are notified. Notice of all meetings must be in accordance with Code of Virginia §2.2-3707 (C) and be posted in the Cape Charles Town Offices and the town website.
- 2-4. *Quorum.* The Board of Zoning Appeals has five members who are appointed by the Northampton County Circuit Court judge each for a term of five years, pursuant to Cape Charles Zoning Ordinance Section 2.6.1. A quorum shall consist of a majority of the members of the Board, which is deemed to be three members. If less than a majority of the members are present, no action can be taken and the meeting shall be adjourned.

- 2-5. *Conduct.* The conduct of business at all regular meetings of the Board shall follow these Rules of Procedure and hereby embrace Robert's Rules of Order for Small Organizations to specify rules of order as the procedural determinant in cases where both the Code of Virginia, as amended, and these Rules of Procedure are silent. Robert's Rules of Order for Small Organizations are less formal.
- 2-6. *Adjournment.* The Board may adjourn a regular meeting once all applications or appeals are duly disposed of and the Chair has called for a motion to adjourn.
- 2-7. *Postpone/Continuance.* If all applications or appeals cannot be properly disposed of on the date set, the meeting shall be postponed/continued to a date set and announced by the BZA. No further public notice shall be necessary for a postponement/continuation of such meeting.

ARTICLE III – OFFICERS

- 3-1. *Chair.* At its annual meeting, the BZA shall elect a Chair who, if present, shall preside at all meetings and hearings of the Board; he or she shall decide all points of order or procedure and shall appoint any committees that are found to be necessary. On any application or appeal, the Chair may administer oaths and compel the attendance of witnesses.
- 3-2. *Vice-Chair.* At its annual meeting, the BZA shall elect a Vice-Chair who, if present shall assume the duties of the Chair in his or her absence or disability.
- 3-3. *Secretary.* At its annual meeting, the BZA shall elect a Secretary. The Secretary, who need not be a member of the Board pursuant to Code of Virginia §15.2-2308 (C), shall handle all official correspondence necessary for the execution of the duties and functions of the BZA. The Secretary shall keep the minutes of the Board's proceedings, shall keep a file on each case which comes before the Board, and perform other such duties as these rules may provide and the BZA may, from time to time, assign.

The Secretary of the Board shall notify the court at least thirty (30) days in advance of the expiration of any term of office and shall also notify the court promptly if any vacancy occurs, pursuant to Code of Virginia §15.2-2308 (A) and Cape Charles Zoning Ordinance Section 2.6.1 (A).

- 3-4. *Term of Office.* The Chair and Vice-Chair shall be elected for one-year terms and shall serve until their respective successors take office. Either or both officers may be elected to one or more successive terms.
- 3-5. *Vacancies in Office.* Vacancies in office shall be filled as soon as practicable using the election procedures as set forth in this Article.

- 3-6. *Absence of Chair and Vice-Chair.* In the event that the Chair and Vice-Chair are both absent from any meeting, a member present shall be chosen to act as Chair.
- 3-7. Technical assistance may be provided by Town staff as needed.

ARTICLE IV – ORDER OF BUSINESS

- 4-1. *Agenda.* The agenda for each regular meeting will be established by the Secretary; the Secretary shall consult with the Chair when determining the order of cases to be heard.
- 4-2. *Organization of the Agenda.* The agenda for each regular meeting shall substantially follow the order listed below, unless a change is requested by the Chair and approved by consent of the Board.
- A) Call to order
 - 1. Members Present and Absent
 - 2. Determination of a Quorum
 - B) Invocation and Pledge of Allegiance
 - C) Adoption of Agenda
 - D) Minutes - review and approve minutes of previous meeting(s)
 - E) Old Business/Matters Deferred from Previous Meetings
 - F) New Business – Scheduled Hearings
 - 1. Special Exceptions aka Special Use Permits
 - 2. Variances
 - 3. Appeals of Zoning Determinations
 - 4. Interpretations of the District Zoning Map
 - G) Other Matters
 - H) Adjournment

ARTICLE V – QUORUM

- 5-1. A majority of the five (5) members of the BZA shall constitute a quorum for any regular meeting of the Board, which shall be three (3) members. A majority of the members present at the time and place established for any regular or special meeting shall constitute a quorum for the purpose of adjourning the meeting.

If, during the course of a meeting, less than a majority of the membership of the BZA remains present, no action may be taken except to adjourn the meeting. If, prior to adjournment, a quorum is again established, the meeting shall continue.

ARTICLE VI – APPLICATIONS TO THE BZA

6-1. The BZA shall establish, and make publicly available, a deadline for receipt of completed applications.

6-2. *Appeals.* Appeals to the BZA may be taken by any person aggrieved or by any office, department, board or bureau of the Town or municipality affected, by any decision of the Zoning Administrator pursuant to Cape Charles Zoning Ordinance Section 2.6.2 (A) and the VA Code §15.2-2311. Such appeal shall be taken within 30 days after the decision appealed from by filing with the zoning administrator and with the board, a notice of appeal specifying the grounds thereof.

An application for appeal, filed according to this procedure utilizing any forms promulgated by the Town for applications for appeals, shall be given a case number within five (5) working days. Applications for appeals will be assigned for hearing in the order in which they are received. The appeal shall be heard based upon the established calendar for receipt of completed applications and the proposed BZA meeting hearing date and in compliance with all advertising and public notifications as prescribed in VA Code §15.2-2204.

The hearing will be conducted in accordance with the prescribed Procedure for Hearing Cases in Article VII below.

The BZA's decision on any appeal shall be based on the Board's judgment of whether the administrative officer was correct (VA Code §15.2-2309). Said decision will be issued within sixty (60) days of the hearing. In exercising its powers, the Board may reverse or affirm, wholly or partly, or may modify any order, requirement, decision, or determination appealed from.

6-3. *Special Exceptions/Special Use Permits.* Applications for special exceptions/special use permits may be made by any person, property owner, tenant, governmental official, department, board, or bureau. Such applications shall be made to the zoning administrator in accordance with department policy and on forms prescribed by the department. Completed Applications for Special Exceptions/Special Use Permits will be assigned for hearing in the order in which they are received.

The special exceptions/special use permits application shall be heard based upon the established calendar for receipt of completed applications and the proposed BZA meeting hearing date and in compliance with all advertising and public notifications as prescribed in VA Code §15.2-2204.

The BZA shall issue a decision within a reasonable timeframe of the closing of the hearing, pursuant to Cape Charles Zoning Ordinance Section 2.6.3

- 6-4. *Variances.* Applications for variances may be made by any person, property owner, tenant, governmental official, department, board, or bureau. Such applications shall be made to the zoning administrator in accordance with department policy and on forms prescribed by the department. Completed Applications for Variances will be assigned for hearing in the order in which they are received.

The variance application shall be heard based upon the established calendar for receipt of completed applications and the proposed BZA meeting hearing date and in compliance with all advertising and public notifications as prescribed in VA Code §15.2-2204.

The BZA shall issue a decision within a reasonable timeframe of the closing of the hearing, pursuant to Cape Charles Zoning Ordinance Section 2.6.3 and VA Code §15.2-2309 (2), as amended.

ARTICLE VII – PROCEDURE FOR HEARING CASES

- 7-1. Cases shall be heard in the order in which they appear on the agenda, except a case may be advanced for hearing by order of the Board upon good cause shown.
- 7-2. At the hearing, the order shall be as follows:
- a. Presentation of case and explanation and/or report by Zoning Administrator or his/her designee.
 - b. Open public hearing, announce that each person speaking during the public hearing will need to state their name & address and will be sworn in by the Chairman to provide testimony during the public hearing
 - i. Statement of Applicant or his representative; the applicant may make a presentation which is limited to ten (10) minutes, unless additional time is granted by the Chair. If the applicant wishes to present a PowerPoint presentation, it must be provided to staff at least twenty-four (24) hours in advance for review for appropriateness.
 - ii. Statements of other persons in favor. All comments are limited to four (3) minutes. The Secretary will state if any correspondence has been received in support of the application and will enter it into the record.
 - iii. Statements by persons in opposition of the application. All comments are limited to four (3) minutes. The Secretary will state if any correspondence has been received in opposition of the application and will enter it into the record.
 - iv. Applicant's rebuttal, limited to five (5) minutes, unless additional time is granted by the Chair.
 - v. The Chair opens the floor to the members of the BZA to ask any questions of the applicant and/or their representative and to Town staff to clarify items raised during the hearing.
 - vi. The Chair will close the public hearing.
 - vii. The Chair will call for the Board to consider the case and to call for motions. If the Board decides that it is not sufficiently informed, it may continue the case and may request further information.

- viii. The final disposition of any appeal shall be in the form of a motion sustaining, reversing, varying or modifying the order, requirement or determination appealed from.

The final disposition of an application for a variance or special exception/special use permit shall be in the form of a motion approving, approving with conditions, modifying or denying the application. Said motion shall refer specifically to the applicable provision in the Town Zoning Ordinance and shall set forth facts and finding in the case on which the decision is based, which shall be consistent with the requirements of the law.

If a motion fails to receive a second, the motion has died and the application or appeal will be carried over for another motion until a final disposition is reached. The vote of each member present on each motion shall be recorded with the motion.

- c. *General Conduct by all participants at the public hearing.* All persons addressing the Board of Zoning Appeals will stand behind the lectern, state their name and address and affirm by oath that they are providing truthful testimony for the matter at hand. No person shall use inappropriate language or verbally attack any BZA member or any member of the public or the Town staff. Signs and placards are not allowed inside the meeting room. Any person whose behavior is disruptive shall be asked by the Chair to leave the meeting room. Persons may not question individual BZA members or staff members without the consent of the Chair. Comments must be limited to the public hearing matter at hand.

ARTICLE VIII – REHEARING/RECONSIDERATION OF A VOTE

- 8-1. No rehearing/reconsideration of any decision by the Board shall be had except on motion by a member of the Board who previously voted on the prevailing side of the decision, which shall be made not later than the first regular meeting succeeding the meeting at which the motion was acted on; such motion shall be to reconsider the vote, and shall be carried by not less than three affirmative votes.
- 8-2. No motion for a rehearing/reconsideration shall be entertained unless new evidence is submitted, which could not reasonably have been presented at the original hearing. In all cases, the request for rehearing shall be in writing, reciting the reasons for the request, and shall be accompanied by the necessary information, including a recitation of all evidence, which could not reasonably have been presented at the original hearing.
- 8-3. If a rehearing/reconsideration is granted, the case shall be put on the agenda for a rehearing/reconsideration after complying with all notice requirements.

ARTICLE IX – VOTING PROCEDURES

- 9-1. Each decision by the BZA shall be made by approval of a majority of the members present and voting on a motion properly made by a member and properly seconded by any other member. Any motion not properly seconded shall not be further considered.

ARTICLE X – ANNUAL REPORT

- 10-1. The board shall keep a full public record of its proceedings and shall submit a report of its activities to the governing body or bodies at least once each year, pursuant to the Code of Virginia §15.2-2308 (C).

ARTICLE XI – SUSPENSION OF RULES

- 11-1. These rules may be suspended in whole or in part, only upon the unanimous vote of the entire Board.

ARTICLE XII – AMENDMENTS

- 12-1. These rules may be amended or modified by the affirmative vote of four members of the Board.

ATTACHMENT A

STANDARDS/CRITERIA FOR REVIEW OF EACH TYPE OF APPLICATION

VARIANCES

Pursuant to the Code of Virginia §15.2-2309 (2), variance applications shall be evaluated and reviewed based upon the following criteria:

- (a) Does the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance?;
- (b) Was the property interest for which the variance is being requested acquired in good faith and any hardship was not created by the applicant for the variance?;
- (c) Will the granting of the variance not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area?;
- (d) Is the condition or situation of the property concerned not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;
- (e) Does the granting of the variance result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property?;
- (f) Is the relief or remedy sought by the variance application not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A 4 of § 15.2-2286 at the time of the filing of the variance application?

SPECIAL USE PERMITS/SPECIAL EXCEPTIONS Town Zoning Ordinance § 2.6.2 (F)

- (a) Hear and decide applications for special exceptions as may be authorized in the ordinance & may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee to ensure that the conditions imposed are being will continue to be complied with.

APPEAL OF ADMINISTRATIVE OFFICER DETERMINATION

Pursuant to the Code of Virginia §15.2-2309 (1), appeals of administrative officer determinations shall be based on the board's judgment of whether the administrative officer was correct. The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The board shall consider any applicable ordinances, laws, and regulations in making its decision. For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special.