



Board of Zoning Appeals

Public Hearing & Meeting

Cape Charles Civic Center

August 10, 2021
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 Dolores Blackburn, Jim Holloway, Pete Baumann, and Thomas Weaver. Also, present were, Interim Town Planner/Zoning Administrator Katie Nunez and Planning Technician Tracy Outten. The applicants participated via telephone. There were five members of the public in attendance.

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

CONSENT AGENDA

Motion made by Jim Holloway, seconded by Dolores Blackburn, to accept the consent agenda as presented. The motion was approved by unanimous vote.

OLD BUSINESS

- A. *An application from James Peters for a variance of 8 feet from the rear yard setback of 20 feet 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.*

Pete Baumann gave a summary of the August meeting and added that the board thought a variance of 20' was too much and a hardship could not be found. He continued by stating that the property was supposed to have the hardship not the person and Bay Creek had cookie cutter lots and were not odd shaped like those in the Historic District.

Katie Nunez informed Pete Baumann that this was a variance from setbacks in the PUD R-2 District and had nothing to do with the Historic District.

Katie Nunez read the email from the applicant stating that they did not wish to make any changes to their previously submitted application.

Discussion and questions were as follows: (i) Dolores Blackburn said the hardship was the owners wanted a screened-in porch and couldn't build one. She still didn't see any problem with the request; (ii) Thomas Weaver didn't see a problem with adding walls to an existing concrete pad. He said the problem was giving the applicant an inch and they took a mile therefore setting a precedent for the board; (iii) Bill Murphy said there was an existing concrete pad and asked if a variance was needed because the use was changing. Katie Nunez answered yes, patios can extend out per the PUD but the proposal was now making this space into a room so it would be encroaching into the setbacks and a variance was needed; and (iv) Bill Murphy wanted to know if the Bay Creek Architectural Review Committee had approved the project; no, a variance was needed first.

Motion made by Thomas Weaver, seconded by Jim Holloway, to approve the application for a variance of 8 feet from the rear yard setback of 20 feet pursuant to the Accawmacke Plantation Planned Unit Development an appendix to the Cape Charles Zoning Ordinance Article 4.2 (E) (2) for the addition of a 13' by 18' screened-in porch on the rear of the existing house at 6 American Court as submitted contingent upon notification being provided by the Bay Creek Architectural Review Committee. The motion was approved by unanimous vote.

NEW BUSINESS - PUBLIC HEARING

A. *An application from Tom and Katie Austin, proposed contract purchases, for a variance of 6 automobile parking spaces from Section 4.5 (B) (3) (g) (3) of the parking requirements which requires 20 parking spaces and to substitute 12 golf cart parking spaces for a proposed mini-golf business at Tax Map #83A4-1-B-26, 27, 28, & 29 on Randolph Avenue, directly across from Heritage Acres Court, in the C-3 District. Said application is being filed with consent from the property owners (John F. & Loraine A. Huchler and Daniel C. Dabinett).*

i. *Zoning Administrator Report*

Katie Nunez gave a narrative of the staff report and explained the approval processes the applicants still need to obtain. She added that the BZA should send a letter of recommendation to the Planning Commission asking them to consider reviewing and revising the parking regulations to accommodate for golf cart parking as well as motor vehicles parking.

There was much discussion about the existing golf cart path being eliminated. Jim Holloway thought the reason for the lowered speed limit was so the path would no longer be needed.

After some questions about the exact placement of certain items such as parking spaces and trash cans, Katie Nunez reminded the board that this was only a conceptual site plan.

ii. *Open Public Hearing*

Bill Murphy read the public hearing advertisement and opened the public hearing.

iii. *Applicant Statement*

Katherine Trettin thought this would be a positive and beautiful addition to this part of town.

iv. *Public Comments*

Susan Eidam, 646 Tazewell Avenue

Ms. Eidam was concerned about the citizens who lived at Myrtle Landing and would like the town representatives to try to maintain a quality of life for citizens not just visitors. She thought a mini-golf course was a nice idea but in a different location.

Diane D'Amico, 602 Jefferson Avenue

Ms. D'Amico referred to Cape Charles Zoning Ordinance Section 2.6 (2) (B); and her thoughts were as follows: (1) a mini-golf course was not at all appropriate for this location; (2) the ordinance needed to be rewritten to include golf cart parking; and (3) the parking variance should be denied.

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

v. *Close Public Hearing*

Chairman Bill Murphy closed the public hearing.

vi. *Discussion and Vote by the Board*

Bill Murphy explained to the board that some valid points were heard but, their purview was discussing and voting on an application for a parking variance not on what the location would be used for. He added that he agreed with the public comments made that the zoning ordinance could use some work.

Discussion and questions were as follows: (i) Thomas Weaver asked why this needed a variance for golf cart parking. Katie Nunez answered that golf cart parking was not in the zoning ordinance. He thought this would just be putting a band-aid on the problem and that the ordinance needed to be updated; (ii) Katie Nunez explained why the applicant was obtaining a Conditional Use Permit; (iii) The board encourages golf cart usage but did have safety concerns for them driving on Stone Road and Randolph Avenue even with the lowered speed limit. The lower speed just increased traffic for both modes of transportation; (iv) Dolores Blackburn said golf cart parking spaces were mentioned in the ordinance but not as a substitution for automobile parking spaces. She was sorry this had not been discussed before by the Town Council and

Planning Commission because her vote would have been yes. Bill Murphy agreed and said they need to take a hard look at this; (v) Bill Murphy liked to work with the applicants and try to have situations a win-win but did not want to set a precedent and this needed to be changed in the zoning ordinance. He did not think a variance was absolutely necessary; (vi) Katie Nunez explained that whether or not this was approved golf carts would park in the spaces. She suggested the board write a memorandum or letter of recommendation to include automobile and golf cart spaces in the zoning ordinance; and (vii) Thomas Weaver was concerned about the need for twenty parking spaces. Katie Nunez stated this was the required amount and that either parking space would cut into the space used of the golf course. She did not think golf cart spaces would increase cart traffic.

Motion made by Dolores Blackburn, seconded by Pete Baumann, to approve the application for a variance of 6 automobile parking spaces from Section 4.5 (B) (3) (g) (3) of the parking requirements which requires 20 parking spaces and to substitute 12 golf cart parking spaces for a proposed mini-golf business at Tax Map #83A4-1-B-26, 27, 28, & 29 on Randolph Avenue, directly across from Heritage Acres Court, in the C-3 District. The motion was denied with the vote as follows: Peter Baumann, Nay; Delores Blackburn, Yea; Jim Holloway, Yea; Bill Murphy, Nay; Thomas Weaver, Nay.

Bill Murphy said based on the evidence he questioned why the variance should be granted.

Katie Nunez would send a memorandum to council with a recommendation from this board to update the Town of Cape Charles Zoning Ordinance to include golf cart parking spaces.

OTHER BUSINESS

Presentation and Discussion of Draft Rules of Procedures for the Board of Zoning Appeals.

Katine Nunez read the by-law updates.

Some discussion ensued on the procedures.

Motion made by Jim Holloway, seconded by Thomas Weaver, to adjourn the Board of Zoning Appeals Public Hearing and Meeting at 11:41 a.m. The motion was approved by unanimous vote.

Chairman Bill Murphy

Planning Technician

August 10, 2021 Board of Zoning Appeals Public Hearing Comments

From Susan Eidam
646 Tazewell Avenue
Cape Charles, VA

I appear today to respectfully request denial of the petition for the variance to the parties seeking to close a proposed sale by securing non-conforming uses in the C3 corridor which was specifically intended to protect the corridor into the historic district; on the basis that it does not meet the C3 Zone: I quote our District Regulation 3.A.3

"to encourage quality construction and design recognizing the importance of the district's impact on drivers entering Cape Charles."

This is a legal zoning and quality of life issue.

My family live close enough to the crossroads of Randolph & Fig that I can see Rayfield's Pharmacy, and hear social activity at Myrtle Landing Housing which is directly opposite the proposed Mini-Golf, for which you are being asked to make a zoning exception today.

On most nights between April and September - and weekends the rest of the year – our porch sitting afternoons and evenings once brought the peaceful chirp of crickets and children's outdoor play; all too often now the sirens of police cars chasing down golf carts blasting loud music and the inebriated howls of revelers to and from the Oyster Farm and Brewery.

The development of the Stone Rd corridor should be carefully balanced; commercial districts there and further down Mason Avenue are divided by residential neighborhoods who bear the burden of traffic to and from the rising number of alcohol-based activities that are the focus of many a national magazine and property search TV shows. The residents who support our town should be of the highest consideration as you deliberate the domino effect of Zoning By Convenience for sellers of property to secure profitable land sale contracts in exchange for securing your approval for non-conforming land use. While you have a buyer and seller before you to consider, it is your responsibility to the best interests of the entire town for which you must advocate.

A variance is needed when we attempt to put a square peg in a round hole.

Our ordinances provide comprehensively planned, and legally appropriate commercial zones for miniature golf; Harbor District, and General Business Light Industrial both specifically articulate this type of outdoor recreational entertainment:

Section 3.9 Harbor District (revised 11-21-19)

A. Statement of Intent. The intent of this zoning district is to encourage a vibrant working waterfront area that is both a strong economic benefit to the Town with compatible new industry and employment uses, and a strong public and recreational value, with public gathering places and access to the water, a place for people to conduct business and to live, meet, relax, encounter nature, and learn of Cape Charles' working maritime and rail heritage and its strong historic traditions. Any new development shall provide and encourage public access to the water's edge as well as emphasize the pedestrian environment throughout the harbor.

The south side of Mason Avenue shall provide a visually inviting connection to the harbor via continuous environments for multi-modal means of transportation and connect to the other existing and future links to Cape Charles and environs. This zoning district is also intended to implement the Cape Charles Harbor Area Conceptual Master Plan and Design Guidelines as an overall guide to the future development and redevelopment of the harbor area.

3.9.5. Recreational, cultural, and entertainment uses of the following types:

- a. Art galleries and art studios
- b. Athletic clubs
- c. Conference centers
- d. Health and fitness facilities
- e. Libraries and galleries
- f. Museums and cultural centers
- g. Outdoor recreational uses
- h. Parks

3.9.E. Conditional Uses.

The following uses may also be permitted, subject to securing a conditional use permit as provided for in this ordinance:

- 1. Marine-related uses of the following types:
 - a. Boat and marine engine repair shops
 - b. Boatels
 - c. Marine and sports equipment consignment stores
- 2. Markets of the following types:
 - a. Crafts markets
 - b. Farmers' markets
 - c. Watermen's markets
- 3. Recreational, cultural, and entertainment uses of the following types:
 - a. Assembly halls
 - b. Auditoriums
 - c. Commercial recreational uses
 - d. Entertainment establishments
 - e. Theaters

Section 3.10 General Business/Light Industrial GBI

D. Accessory Uses. Within the GBI District the following accessory uses shall be permitted:

- 1. Those uses customarily associated and clearly incidental and subordinate to the principal uses and structures and temporary licensed uses such as festivals, displays, outdoor entertainment, outdoor gatherings, performances, and outdoor open-air markets.