Board of Zoning Appeals

Regular Meeting

Cape Charles Civic Center – 500 Tazewell Avenue

December 14, 2021 10:00 A.M.

1. Call to Order
    a. Roll call and establish a quorum

2. Adoption of Agenda

3. Reorganization of Board and Election of Officers
    a. Chairman
    b. Vice-Chairman
    c. Secretary

4. Review and Approval of Minutes
    A. 2/16/2021
    B. 4/21/2021
    C. 7/13/2021
    D. 8/10/2021
    E. 9/14/2021

5. Other
    A. Adoption of Annual Meeting Calendar and Deadline for submission of applications
    B. Final review and adoption of Draft Rules of Procedures for the Board of Zoning Appeals
    C. Annual Report for 2019, 2020 and 2021
    D. Resignation of Tom Weaver, effective November 2021

6. Adjourn

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Board of Zoning Appeals

Public Hearing & Meeting

Cape Charles Civic Center
February 16, 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 Pete Baumann, Delores Blackburn, Jim Holloway, and Tom Weaver. Also, present were Interim Town Planner/Zoning Administrator Katie Nunez, Planning Technician Tracy Outten, and the applicants. Allyson Finchum participated via telephone. There were no members of the public in attendance.

Bill Murphy welcomed and introduced the Interim Town Planner and Zoning Administrator, Katie Nunez and read the public hearing advertisement.

PUBLIC HEARING

A. *Hear public comment for a variance to allow a 3' encroachment into the 5' rear yard setback requirements in Section 4.2.E for a proposed detached accessory structure (garage and office) to be 2' from the alley line at 10 Randolph Avenue – tax map #83A3-2-2-78.*

i. *Zoning Administrator Report*

Allyson Finchum gave a brief history of the lot and read the variance request, the staff report, and the staff analysis. She stated that the main concern was if the setback was granted emergency and utility vehicles would not have adequate access.

Jim Holloway asked if code still required 15' between the main structure and accessory building. Allyson Finchum said that question needed to be answered by the applicants. Lysa and Clayton Newman, applicants, thought there was adequate space to move the accessory building. Tom Weaver agreed that there was enough space to move the structure without a variance.

Tom Weaver would like to know the required dimensions between the alley and a structure to allow for vehicles to pass through. Allyson Finchum no for sure and mentioned that the other building could have been pre-zoning ordinance.

ii. *Applicant Statement*

Lysa and Clayton Newman presented additional photographs. (Please see attached.)
Clayton Newman stated the following: (i) the traffic issues were never brought to his attention; (ii) hardships, legalities, and statutes only presented an issue if a vehicle had to cross on the property; (iii)multiple violations were seen when anyone walked around the town; and (iv) emergency vehicles were not any larger than what was driven through currently.

iii. *Open Public Hearing*

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

iv. *Close Public Hearing*

Motion made by Jim Holloway, seconded by Tom Weaver, 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 to be heard nor any written comments submitted prior to the meeting.

CONSENT AGENDA
Motion made by Pete Baumann, seconded by Tom Weaver, to accept the consent agenda as amended. The motion was approved by majority vote with Delores Blackburn abstaining.

NEW BUSINESS
A. *Zoning variance application – to allow a 3' encroachment into the 5' rear yard setback requirements in Section 4.2.E for a proposed detached accessory structure (garage and office) to be 2' from the alley line at 10 Randolph Avenue – tax map #83A3-2-2-78.*
Bill Murphy gave an overview of the application being presented and explained to the applicant that the board had strict criteria to follow for a variance to be granted.

Discussion and questions were as follows: (i) Bill Murphy said the only future detriment was that if the adjacent lot was built on the house would have to front Peach Street not Jefferson Avenue. He did not see a problem granted the variance; (ii) Delores Blackburn thought the encroachment would be minimal and understood Robert Mack's past agreement; (iii) Allyson Finchum said Robert Mack felt bullied and was not informed of all the details; (iv) Pete Baumann thought granting the variance would help improve the neighborhood; and (v) Tom Weaver agreed with all board member comments. He added that all information was not given to the applicants or the adjacent property owner. Tom Weaver thought Robert Mack wanted to get even for something previously agreed to.

Motion made by Pete Baumann, seconded by Tom Weaver to approve the zoning variance request to allow a 5.5' encroachment into the 25' rear yard setback requirements in the Town of Cape Charles Zoning Ordinance Section 3.2.G.2 at 324 Jefferson Avenue. The motion was approved by unanimous consent.

OTHER BUSINESS
There was no other business to discuss.

Motion made by Tom Weaver, seconded by Jim Holloway, to adjourn the Board of Zoning Appeals Public Hearing and Meeting at 10:42 a.m. The motion was approved by unanimous vote.

Chairman Bill Murphy

Planning Technician

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Board of Zoning Appeals

Public Hearing & Meeting

Cape Charles Civic Center
April 21, 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 Pete Baumann, Jim Holloway, and Thomas Weaver. Delores Blackburn was not in attendance. Also, present were Interim Town Planner/Zoning Administrator Katie Nunez, Planning Technician Tracy Outten, and an applicant representative. Applicant Spencer Custis participated via telephone. There were two members of the public in attendance.

Bill Murphy read the public hearing advertisement.

PUBLIC HEARING

A. *An application for a variance to allow a 3' from the rear yard setback of 25' requirements in Section 4.2 (G) (1) (c) for the construction of a single-family dwelling located at Lots 81 and 84 Strawberry Street (tax map #83A1-1-81A and tax map #83A1-1-84A).*

i. *Zoning Administrator Report*
Katie Nunez gave a narrative of the staff report.

Pete Baumann pointed out that page three of the staff report had three additional questions that created more of a burden for the applicant. Katie Nunez explained that the Code of Virginia requirements were used, and the ordinance was outdated. The board would need to schedule a meeting to go over the changes. Pete Baumann continued by mentioning that a double negative was used on page three letter "f" the word "not" was used in the question and "no" was given for the answer. The answer should be yes.

Bill Murphy thanked Katie Nunez for such a detailed staff report and suggested a quick online meeting to get updated on the variance criteria changes.

ii. *Applicant Statement*
Spencer Custis, applicant, said they tried to design a home that would complement the neighborhood and needed the variance for a code requirement.

iii. *Open Public Hearing*
Tracy Outten read a comment submitted by Michael Vetter. (Please see attached.)

Michael Vetter, 614 Strawberry Street
Mr. Vetter stated that he was opposed to the granting of this variance request, the shape of the proposed house to be built looked odd, and he did not want the value of his home decreasing.

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

B. *An application for a variance to allow a two-story addition of 1,320 sq. ft. and a 220 sq. ft. porch to an existing legal, non-conforming structure (duplex) requirements in the following Sections: 2.5.1 (A) (1); 3.2 (I) (3); 4.2 (F) at 428 Randolph Avenue (tax map #83A3-1-589).*

i. *Zoning Administrator Report*

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Katie Nunez summarized the staff report and added that the total lot coverage exceeded what the zoning ordinance allows in Section 4.2 (E) (6).

ii. Applicant Statement

Edward Eichman, applicant representative, said the supplemental information provided in the application explained why the variance was needed. He clarified the calculated square footage total of 2,580, which would be less than 50% of the lot coverage.

iii. Public Hearing Comments

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

iv. Close Public Hearing

Motion made by Thomas Weaver, seconded by Pete Baumann, to close the public hearing at 10:33 a.m. 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 consent agenda as presented. The motion was approved by unanimous vote.

NEW BUSINESS

A. *An application for a variance to allow a 3' from the rear yard setback of 25'requirements in Section 4.2 (G) (1) (c) for the construction of a single-family dwelling located at Lots 81 and 84 Strawberry Street (tax map #83A1-1-81A and tax map #83A1-1-84A).*

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

Discussion and questions were as follows: (i) Bill Murphy asked if an easement was in place for the existing home encroaching on the lot to stay there. Spen Custis, applicant, answered yes, a permanent easement. Mr. Murphy asked if he knew about this issue when deciding to build a house. Mr. Custis said that he was fully of aware of the situation and consulted with an attorney to do a permanent easement; (ii) Tracy Outten read comments submitted by board member Delores Blackburn. (Please see attached.); (iii) Much discussion ensued on the house that encroached on the property in question. Jim Holloway did not think the board could not make someone move their house. Bill Murphy stated that the only element the board could rule on was variance for the rear yard setback; (iv) Katie Nunez informed the board that if the variance was denied the applicant still had a right to use his property and he could get easements; and (v) Pete Baumann said a decision could not be based on the peculiar design or shape of the proposed house if the house were within the setbacks.

Bill Murphy asked if anyone had any additional comments to add before a motion was made.

Michael Vetter reiterated that he opposed the house being built unless Odessa Sullivan's house was moved. He added that if there was not going to be a driveway this would add more congestion to the street.

Motion made by Pete Baumann, seconded by Thomas Weaver, to grant the zoning variance request to allow 3' from the rear yard setback of 25' requirements in Section 4.2 (G) (1) (c) for the construction of a single-family dwelling located at lots 81 and 84 Strawberry Street (tax map #83A1-1-81A and tax map #83A1-1-84A) with the condition that a copy of the easement be provided to the town stating that it will expire upon any transfer of ownership from Odessa Sullivan and the house must be moved from tax map #83A1-1-84A. The motion was approved by unanimous vote.

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B. *An application for a variance to allow a two-story addition of 1,320 sq. ft. and a 220 sq. ft. porch to an existing legal, non-conforming structure (duplex) requirements in the following Sections: 2.5.1 (A) (1); 3.2 (G) (2) (b); 3.2 (I) (3); and 4.2 (F) at 426 and 428 Randolph Avenue (tax map #83A3-1-589).*
Bill Murphy gave an overview of the application being presented and explained to the applicant that the board had strict criteria to follow for a variance to be granted.

Tracy Outten read comments submitted by board member Delores Blackburn. (Please see attached.)

Jim Holloway asked if this home had expired building permits. Edward Eichman, applicant representative, was unsure because he was not previously involved.

Discussion and questions on the two-story addition were as follows: (i) Bill Murphy said the zoning ordinance did not allow a non-conforming structure to be enlarged but his thoughts were the proposed two-story addition was not increasing the scope; (ii) Jim Holloway said it would be just under the allowable fifty-percent coverage; (iii) Katie Nunez informed the board that the board was only reviewing this application because it was a duplex and she thought the additions would enhance the property; and (iv) Pete Baumann read the zoning ordinance definition of use. He added that if this duplex was a vacation rental it would increase traffic. Katie Nunez did not find that increase to alter the use.

Motion made by Pete Baumann, seconded by Jim Holloway, to approve the zoning variance request to allow a two-story addition of 1,320 square feet and a 220 square feet porch to an existing legal, non-conforming structure (duplex) requirements from the Town of Cape Charles Zoning Ordinance Section 2.5.1 (A) (1) at 428 Randolph Avenue. The motion was approved by unanimous consent.

Motion made by Thomas Weaver, seconded by Jim Holloway, to approve the 5 feet zoning variance request to provide for a 0-foot side yard setback requirement in the Town of Cape Charles Zoning Ordinance Section 3.2 (G) (2) (b) at 428 Randolph Avenue. The motion was approved by unanimous consent.

Jim Holloway asked if the house was over the property line. Bill Murphy explained that the zero-yard setback would remove the center line from the home.

Motion made by Jim Holloway, seconded by Pete Baumann, to approve the zoning variance request to allow the roof pitch of the new addition to match the roof pitch of the existing non-conforming structure which does not meet an 8:12 roof pitch requirement in the Town of Cape Charles Zoning Ordinance Section 3.2 (I) (3) at 428 Randolph Avenue. The motion was approved by unanimous consent.

Motion made by Thomas Weaver, seconded by Jim Holloway, to approve the zoning variance request to allow the primary roof eave extensions for the new addition to extend 3 feet from the east and west boundary lines of said lot requirements in the Town of Cape Charles Zoning Ordinance Section 4.2 (F) at 428 Randolph Avenue. The motion was approved by unanimous consent.

OTHER BUSINESS
There was no other business to discuss.

Motion made by Pete Baumann, seconded by Jim Holloway, to adjourn the Board of Zoning Appeals Public Hearing and Meeting at 11:36 a.m. The motion was approved by unanimous vote.

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Chairman Bill Murphy

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Planning Technician

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Comments Submitted in Writing
April 21, 2021, Board of Zoning Appeals Public Hearing

Delores Blackburn, Member – Board of Zoning Appeals

Per your suggestion, I am forwarding this memo with my comments regarding the two applications for tomorrow's BZA meeting.

Spencer Custis

The applicant seeks a variance for relief from the 25-foot rear yard setback to construct a single-family home. His property has an unusual situation in that a structure/house on the adjacent property encroaches 10 feet into his side yard, a result of a prior subdivision. This encroachment reduces the usable footage on which to construct a house, therefore needing to extend the house into the rear setback by three feet. The applicant's house design allows for the neighbor's house encroachment. This application request is: reasonable; not a detriment to the neighboring properties; a rare case not requiring a general regulation; a permitted use; and relief is not available through another process. I would recommend approving the requested variance.

I would also commend the applicant on a well-thought-out solution to this situation. He stated that he will grant his neighbor an easement for the encroachment for the duration of her ownership of adjacent property rather than seek a lot line adjustment or subdivision.

Huff Sessions/Eichman

As part of the renovation project for the structure on the corner of Plum and Randolph, the applicant seeks variance relief from four ordinances. The structure is a legal non-conforming use; a duplex in a single home residential area. The first request is to extend the size of the structure by 1320 square feet, replacing a former addition on the rear of the structure. Although the addition will increase the size of the structure, it will not increase the non-conforming use; the structure will remain a duplex. I would recommend granting this request.

The remaining three requests relate to the architectural design of the restoration effort. The applicant 's design for the addition incorporates the architecture of the original structure thereby needing relief for the roof pitch, roof eave extensions and side yard setback. Each request is; reasonable, not a detriment to neighbors; does not require a general regulation; other relief not available; and it will continue to be a legal non-conforming use. Additionally, but not part of our approval process, this restoration meets the Historical District overlay.

4-13-2021

Michael Vetter
179 Coal Spring Dr.
Valentines Va 23887

owner - 614 Strawberry St. Cape Charles Va 23310

Dear Katie Nunez and town of Cape Charles.

Received your letter on 4-12-2021 of an application from Spencer Custis for a variance of 3 feet from rear yard setback of 25 ft. at Tax map #83A1-1-81A +84A in R-1 district.

I fully oppose any variance for this property. For the past 2 yrs the town and former planner Zack and Seb have told me that this home Can not be changed from its orginal foot print. Plans were approved when Bill Manning Contractor was to rebuild this home. That was to be a Single story with carport to East side. If I can't be at the meeting I want my letter read at meeting. The rules in Cape Charles for building a home change all the time and it took me a year to get approved. These plans should not be changed.

Thank You
Michael Vetter

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Board of Zoning Appeals

Public Hearing & Meeting

Cape Charles Civic Center
July 13, 2021
10:00 a.m.

At approximately 10:00 a.m. in the Cape Charles Civic Center, Vice-Chairman Pete Baumann called to order the Board of Zoning Appeals Public Hearing and Meeting. In attendance were Board members Delores Blackburn, Jim Holloway, and Thomas Weaver. Bill Murphy was not in attendance. Also, present were, Planning Technician Tracy Outten and the applicants. Interim Town Planner/Zoning Administrator Katie Nunez participated via telephone. There was one member of the public in attendance.

Pete Baumann led the Board in the recitation of the Pledge of Allegiance.

CONSENT AGENDA

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

NEW BUSINESS - PUBLIC HEARING

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.*

i. *Zoning Administrator Report*
Katie Nunez gave a narrative of the staff report.

Pete Baumann was curious about what the Bay Creek Homeowners Association thought. James Peters, applicant, said that the association needed a letter from the neighbors.

ii. *Open Public Hearing*
Pete Baumann read the public hearing advertisement and opened the public hearing.

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

iii. *Applicant Statement*
James Peters, applicant, and homeowner explained that the patio was already graded for stepping out. He was willing to shorten the porch to at least get a place to sit outside without worrying about mosquitoes.

iv. *Public Comments*
There were no comments to be heard nor any written comments submitted prior to the meeting.

v. *Close Public Hearing*

Motion made by Jim Holloway, seconded by Pete Baumann, to close the public hearing at 10:33 a.m. The motion was approved by unanimous consent.

vi. *Discussion and Vote by the Board*
Discussion and questions were as follows: (i) Delores Blackburn did not think it was in the setback and was not concerned with the request. She would approve with the condition that the proposed screen-in porch was approved by the Bay Creek Architectural Review Committee; (ii) Jim Holloway thought that the patio

structure was already in place and a bump out would not be necessary. He added the porch should make a nice addition to the home; (iii) Pete Baumann did not see the hardship and said there was ample space to build a porch in another location without any issues or variances needed; and (iv) There was much discussion about changing the size of the screened-in porch. The applicant would think about it. Thomas Weaver was not sure if reducing the depth would work.

Motion made by Pete Baumann, seconded by Thomas Weaver, to defer 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 until a new set of drawings were submitted by the applicant. The motion was approved by unanimous vote.

OTHER BUSINESS

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

There was no discussion on the Draft Rules of Procedures for the Board of Zoning Appeals.

Motion made by Pete Baumann, seconded by Thomas Weaver, to adjourn the Board of Zoning Appeals Public Hearing and Meeting at 10:46 a.m. The motion was approved by unanimous vote.

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Vice-Chairman Pete Baumann

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Planning Technician

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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 Delores 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 Delores 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) Delores 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 remined 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-aide 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/Randolph Avenue even with the lowered speed limit. The lower speed just increased traffic for both modes of transportation; (iv) Delores 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

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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 Delores 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.

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Chairman Bill Murphy

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Planning Technician

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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.

DRAFT

Board of Zoning Appeals

Work Session

Cape Charles Civic Center
September 14, 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 Work Session. In attendance were Board members Delores Blackburn, Jim Holloway, Pete Baumann, and Thomas Weaver. Also, present were, Interim Town Planner/Zoning Administrator Katie Nunez and Planning Technician Tracy Outten. There were no members of the public in attendance.

ORDER OF BUSINESS

A. *Other: Presentation and Discussion of Draft Rules of Procedures for the Board of Zoning Appeals*
Katie Nunez read through the rules.

Discussion and questions were as follows: (i) Delores Blackburn and Pete Baumann asked about not being able to engage with the public during comments because they may have question. Katie Nunez said this procedure can be adjusted for this board since they were quasi-legislative so questions and comments could be addressed; (ii) Bill Murphy liked the layout for Article VII. He asked about the swearing in. Katie Nunez said it could just ask "Do you swear to tell the truth?"; and (iii) Thomas Weaver suggested using a stop light method for time keeping.

Katie Nunez informed the board there would not be a meeting in October.

Motion made by Jim Holloway, seconded by Thomas Weaver, to adjourn the Board of Zoning Appeals Public Hearing and Meeting at 10:41 a.m. The motion was approved by unanimous vote.

_____
Chairman Bill Murphy

_____
Planning Technician

DRAFT

2022 Board of Zoning Appeals Complete* Application Deadline	
***A Complete application is defined as a submittal, (1 Hard Copy & 1 Digital Copy), of all documents listed under the Permit Checklist on the Variance Application including payment and a completed Application for Zoning Clearance**	
Pre-Application and Complete Application Deadlines	**Regular Meetings**
Tuesday, December 7, 2021*	Tuesday, January 11, 2022
Tuesday, January 4, 2022*	Tuesday, February 8, 2022
Tuesday, February 1, 2022*	Tuesday, March 8, 2022
Tuesday, March 1, 2022*	Tuesday, April 12, 2022
Tuesday, April 5, 2022*	Tuesday, May 10, 2022
Tuesday, May 3, 2022*	Tuesday, June 14, 2022
Tuesday, June 7, 2022*	Tuesday, July 12, 2022
Tuesday, July 7, 2022*	Tuesday, August 9, 2022
Tuesday, August 2, 2022*	Tuesday, September 13, 2022
Tuesday, September 6, 2022*	Tuesday, October 11, 2022
Tuesday, October 4, 2022*	Tuesday, November 8, 2022
Tuesday, November 1, 2022*	Tuesday, December 13, 2022
*End of business day (4:30 p.m.)	

TOWN OF CAPE CHARLES
BOARD OF ZONING APPEALS
RULES OF PROCEDURE

Reviewed: July 2021
August 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 three (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 three (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 reach. 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. Public Comments will adhere to the "Guidelines for Citizen Participation" adopted by Town Council on 7/19/2021 and attached as Appendix A.

d. No member present shall abstain from voting unless such member has a conflict of interest in the matter being voted upon. A "conflict of interest" shall exist when there is an actual conflict: 1) pursuant to the Virginia State and Local Government Conflict of Interests Act (§ 2.2-3100 et. seq. of the Code of Virginia, or 2) pursuant to Town of Cape Charles Code of Ethics & Meeting Rules of Order, adopted by Town Council on July 22, 2021, and which is affixed as Appendix B to these Rules of Procedure or 3) as stated by the Board member unless objected to by a majority vote of the members of the Board with such member asserting such conflict of interest not permitted to vote on such matter.

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

Pursuant to the 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.

Town of Cape Charles
Guidelines for Citizen Participation

Town Council meetings are open to the public, except when the Council invokes the provisions of the Virginia Freedom of Information Act to discuss an authorized topic under a closed (Executive) session. A period of Public Comment shall be provided as part of the Agenda for the Council's regular monthly meetings. The Public Comment period is an obligation of the Council to provide members of the public an opportunity to address the Council on legitimate matters of town business. This period shall be governed by the following provisions:

Eligibility

Only those citizens with standing in the Town of Cape Charles will be provided the opportunity to provide input during the Public Comment period. Citizens with standing include full-time residents, property owners, and business owners within the corporate boundaries of the Town of Cape Charles. State, federal, and county officials representing/serving the Town of Cape Charles are also eligible. When eligibility is called into question, input may be provided upon affirmative vote of the Council.

Registering

Persons having an interest in making in-person comments to the Town Council during the Public Comment period must register on a sign-up sheet, including their name and basis for standing, indicating the item or topic on which they wish to speak. The sign-in sheet is available at the main entrance to the Council meeting and must be completed prior to the start of the meeting. The Mayor will recognize speakers at the appropriate time.

Persons having an interest in providing written comments to the Town Council during the Public Comment period must provide such comments to the Town Clerk no later than 60 minutes prior to the start of the meeting. Written comments must include a full name, basis for standing, and the agenda item or topic on which they wish to comment. The Clerk will read authorized comments into the record following all in-person speakers during the Public Comment period.

Members of Council are not permitted to sign-up and make comment during the Public Comment period unless an agenda item being considered has a direct impact upon the Council member or his/her interests, they have declared a potential conflict of interest, and the remaining Council members have voted to excuse that Council member from official action on the related item.

Regulations:

Cell Phone and Recordings

- Ringers on cell phones or pagers shall be turned off during the time that persons are at a Town Council meeting.
- The taking of photographs and video or audio recordings of a speaker or the activities during a meeting of Town Council shall be no closer than the front row of seating or other location designated by the Mayor or presiding officer to avoid disruption to the meeting and to promote public safety. The photographer or recorder shall take steps to avoid obstructing the aisles or other areas for any length of time in such a manner as to prevent other citizens from taking photographs, or to block the view of other citizens attending the meeting. No flashes or lighting devices may be used by photographers or operators of video recording equipment.

Speaking

When a speaker is called by the Mayor or presiding officer, the following is required:

- Speakers shall speak into the microphone to ensure that their name and remarks are heard and recorded as a part of the record of the meeting.
- Speakers shall state their full name and basis for standing and topic to which they are speaking.
- If a speaker represents a group or organization, the speaker shall indicate the name of the organization and the speaker's relationship to the group or organization. Speakers may ask others from their group or organization to stand at their seats to be recognized while the group's or organization's name is announced, but non-speakers or individual members are not permitted to stand with the speaker at the podium and for safety reasons, no members of the group or organization are permitted to stand in the aisles or doorways at Town Council meetings. Those members of a group or organization who do stand when the name of the group or organization is announced shall then be seated.
- Speakers shall address remarks to the Mayor and members of Council and not to the audience.
- Speakers shall state their position, give the facts to substantiate their position, and relate the concerns they believe the Town Council should consider.
- Speaker's comments will be made part of the record and a written copy should be delivered to the Town Clerk for inclusion. If other supportive material is available, it should also be delivered to the Town Clerk for the record.
- Speakers shall refrain from campaigning for public office, personal attacks upon members of the Town Council, Town employees or officials, or any other person.
- Speakers shall refrain from words or statements which, from their usual construction and common acceptance, are construed as insults or which have a tendency to cause an act of violence or a breach of the peace.
- Speakers shall refrain from abusive language, obscenity, vulgarity, and profanely cursing or swearing.
- Speakers shall refrain from actions that would interrupt the public meeting.
- All comments must come directly from the speaker.

Time limitations for remarks

- In-person speakers shall confine their remarks to no more than three (3) minutes. Speakers will be advised when their three (3) minutes have concluded.
- Persons providing written input must limit their comments to no more than can be read by the Town Clerk within three (3) minutes. Written comments provided beyond what can be read during the allotted time will not be entered into the record.
- Speakers cannot "yield," "transfer" or "designate" their time to another speaker in an effort to provide another speaker more than the allotted three (3) minutes.
- The Mayor or other presiding officer shall have the right to limit redundant remarks, as well as the overall time provided for remarks based on consideration of the time available and the need to complete the meeting efficiently.
- After a speaker has concluded his or her remarks, the speaker shall be seated.

Decorum and order

- For safety reasons, petitioning, picketing, displaying signs or posters, solicitation, demonstrating, pamphlet distribution, conducting polls, and blocking of the entryway shall not be permitted at a Town Council meeting or within one hundred (100) feet of any doorway to the meeting location.
- These guidelines do not preclude speakers, when addressing the Town Council, from delivering to the Council members by way of the Town Clerk written materials including reports, statements, exhibits, letters, or signed petitions. Nor do these guidelines preclude those addressing the Town Council from using a chart or graph during their remarks.
- Speakers and members of the audience shall be respectful of others, even if they do not agree with others' comments.
- The Mayor or other presiding officer shall preserve decorum and shall decide all questions of public order.
- At the request of the Mayor or Town Manager, one or more persons, including Town police officers shall act as sergeant-at-arms or sergeants-at-arms at all Town Council meetings. The sergeant-at-arms or sergeants-at-arms shall, under the direction of the Mayor or other presiding officer, have charge of the Council meeting location, and shall prevent disorder or interruption of the business of Town Council.
- Applause shall be permitted only during awards and presentations. Flash photography will be permitted at this time.
- Violation of these rules by speakers or members of the audience shall enable the Mayor or other presiding officer to rule the speaker or member of the audience out of order and by directive to have the speaker or member of the audience removed from the meeting, if necessary, and to take such other steps the Mayor or other presiding officer deems appropriate. The Mayor's or other presiding officer's decision to remove or rule a speaker or member of the audience out of order shall be final. One (1) warning will be given and if not heeded, the speaker or member(s) of the audience shall be escorted from the meeting.
- Any citizen is welcome to address their concerns informally with the Mayor, Town Council or Town Manager at any time outside of a Town Council meeting.

Town Council Response

Council members or Town employees shall not respond to questions posed nor address or rebut speaker's statements made during the Public Comment period. The Council, at its discretion, may direct matters raised during the Public Comment period be placed on the Agenda of a future meeting.

The Town Council hopes these Guidelines will encourage the greatest possible participation by citizens in the Town Government.

Applicability

While these guidelines reference the Town Council specifically, they shall also apply to all Town boards, commissions, and committees as appropriate.

Thank you for your interest and participation in your Town Council meeting. The Mayor and Town Council invite and encourage you to attend whenever possible because good, responsive government depends on the interest and involvement of all citizens.

Town of Cape Charles
Code of Ethics & Meeting Rules of Order

Adopted July 22, 2021

Preamble

The citizens and businesses of the Town of Cape Charles, Virginia, are entitled to have fair, ethical and accountable local government, which has earned the public's full confidence for integrity. The effective functioning of representative government requires that public officials, both elected and appointed, comply with both the letter and spirit of the laws and policies affecting the operations of government; that public officials be independent, impartial, and fair in their judgment and actions; that public office be used for the public good, not for personal gain; and that public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, the Town of Cape Charles Town Council has adopted this Code of Ethics and Rules of Order for members of the Town Council and of the Town's boards, commissions, and committees to assure public confidence in the integrity of local government and its effective and fair operations.

Code of Ethics

1. Act in the Public Interest

Recognizing that stewardship of the public interest must be their primary concern, members will work for the common good of the people of the Town of Cape Charles and not for any private or personal interest, and they will assure fair and equitable treatment of all persons, claims, and transactions coming before the Town of Cape Charles Town Council, boards, commissions, and committees.

2. Comply with the Law

Members shall comply with the laws of the nation, the Commonwealth of Virginia, and the Town of Cape Charles in the performance of their public duties. These laws include but are not limited to the United States and Virginia Constitutions; the Charter of the Town of Cape Charles; laws pertaining to conflicts of interest, election campaigns, employer responsibilities, open processes of government; and Town ordinances and policies.

3. Conduct of Members

The professional and personal conduct of members must be above reproach and avoid even the appearance of impropriety. Members shall refrain from abusive conduct or language, personal charges or verbal attacks upon the character or motives of other members of the Town Council, boards, commissions, committees, the staff, or the public.

4. Respect for Process

Members shall perform their duties in accordance with the processes and Rules of Order established by the Town Council; they shall respect the deliberation of public policy issues of other bodies, the meaningful involvement of the public, and the Town staff's implementation of policy decisions of the Town Council.

5. Conduct of Public Meetings

Members shall prepare themselves for public business; listen courteously and attentively to all public discussions before the body; and focus on the issues at hand. They shall refrain from interrupting other speakers; making personal comments not germane to the business of the body; or otherwise interfering with the orderly conduct of meetings.

6. Decisions Based on Merit

Members shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations.

7. Communication

Members shall publicly share substantive information that is relevant to a matter under consideration by the Town Council or boards, committees, and commissions, which they may have received from sources outside of the public decision-making process.

8. Gifts and Favors

A member should never accept for himself or herself or for family members, gifts, favors, or benefits under circumstances which might be construed by reasonable persons as influencing the performance of governmental duties.

9. Confidential Information

Members shall respect the confidentiality of information concerning the property, personnel, or affairs of the Town. They shall neither disclose confidential information without proper legal authorization, nor use such information to advance their personal, financial, or other private interests.

10. Use of Public Resources

Members shall not use public resources that are not available to the public in general, such as Town staff time, equipment, supplies, or facilities, for private gain or personal purposes.

11. Advocacy

Members shall represent the official polices or positions of the Town Council, boards, commissions, or committees to the best of their ability when designated as delegates for this purpose. When representing their individual opinions and positions in any venue, members shall explicitly state they do not represent their body of Town of Cape Charles, nor will they allow the inference that they do.

12. Policy Role of Members

The Town Council determines the policies of the Town with the advice, information, and analysis provided by the public boards, commissions, committees, and Town staff. The Town Council delegates authority for the administration of the Town to the Town Manager.

Members, therefore, shall not interfere with the administrative functions of the Town or the professional duties of Town staff, nor shall they impair the ability of staff to implement Town Council policy decisions. Inquiries to staff shall be made through the Town Manager or the appropriate department manager or director as authorized by the Town Manager.

13. Independence of Town Council and Commissions

Because of the value of the independent advice of boards, committees, and commissions to the public decision-making process, members of the Town Council shall refrain from using their positions to unduly influence the deliberations or outcomes of board, committee, or commission proceedings.

14. Positive Workplace Environment

Members shall support the maintenance of a positive and constructive workplace environment for Town employees, citizens, and businesses dealing with the Town. Members shall recognize their special role in dealings with Town employees and in no way create the perception of inappropriate direction to staff. All requests for staff resources must be approved by the Town Manager.

15. Implementation

Ethical standards shall be included in the regular orientations for candidates for the Town Council, applicants to boards, committees, commissions, and newly elected and appointed officials. Members entering office shall sign a statement affirming they have read and understood the Town of Cape Charles Code of Ethics and Rules of Order. In addition, the Town Council, boards, committees, and commissions, shall annually review the Code of Ethics and Rules of Order, and the Town Council shall consider recommendations from boards, committees, and commissions to update it as necessary.

16. Compliance and Enforcement

The Town of Cape Charles Code of Ethics expresses standards of ethical conduct expected of Members of the Town of Cape Charles Town Council, boards, committees, and commissions. Members themselves have the primary responsibility to assure that ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of government.

The chairs of boards, committees, and commissions and the Mayor of the Town of Cape Charles have the additional responsibility to intervene when actions of Members that appear to be in violation of the Code of Ethics are brought to their attention.

A violation of this Code of Ethics shall not be considered a basis for challenging the validity of a Town Council, board, committee, or commission decision. However, it may be considered when the Town Council is determining the suitability of any person to serve in any appointed position.

Conflict of Interest

In order to assure their independence and impartiality on behalf of the common good, members shall not use their official positions to influence government decisions in which they have a material financial interest and shall disclose any substantial organizational responsibility or personal business relationship to the parties in any matter coming before them. In accordance with the law, members shall disclose investments, interests in real property, sources of income, and gifts; and they shall abstain from participating in deliberations and decision-making where conflicts are determined to exist. This paragraph is not intended to unduly restrict members who have minor business or professional dealings with clients whose matter comes before them.

1. Abstention

As elected or appointed officials, members have a duty/obligation to represent their constituents in all public matters coming before their body. It is not appropriate for individual members to decide in which matters they should abstain. If a member believes they have a conflict of interest on any matter before their body, they are REQUIRED to disclose it before deliberations on that business begins. However, it shall be up to the remaining members of that body to determine if an actual conflict exists and if the member disclosing the potential conflict can be excused from participating in the business. If the body votes to allow the member to recuse him/herself, that member will not participate in any of the discussions or vote related to that business. Failing a vote to allow recusal, the member shall participate as normal.

2. Representation of Third-Party Interests

In keeping with their role as stewards of the public interest, members of the Town Council shall not appear on behalf of the private interests of third parties before the Town Council or any board, committee, commission, or proceeding of the Town; nor shall members of boards, committees, or commissions appear before their own bodies or before the Town Council on behalf of the private interests of third parties on matters related to the areas of service of their bodies. This provision should not unduly restrict a member's participation who is associated with, but not representing, community or non-profit organizations serving the Town, whose matter comes before them.

Meeting Rules of Order

The following rules of order are to serve as a non-binding guide to the conduct of business. It is the duty of the Mayor or other presiding officer to conduct meetings in accordance with the Code of Virginia, the Town Charter, applicable Bylaws, and in a manner intended to promote open, civil, and fair discussion of all issues.

1. Meeting Types

All meetings of the Town of Cape Charles fall under the provisions of the Virginia Freedom of Information Act (FOIA). All members will receive training on VA FOIA requirements upon initial appointment, as well as periodic refreshers. The Town Clerk will ensure FOIA training is completed, and that all records of the training are maintained. This document is not to be considered a substitute for FOIA training and offered only as a summary overview.

The public must be provided notice and access to all Town meetings.

- Regular Meeting: Meetings required by Charter or Bylaws to occur on a regular interval to conduct the primary business of the body. These meetings are conducted more formally, with established procedure. The Mayor or presiding officer will enforce these procedures to ensure proper decorum and efficient flow of business. Agendas will include a public comment period on any topic in accordance with public comment procedures established by the Town Council.

- Special Meeting: Meetings to conduct official business of the body that are deemed necessary in addition to Regular Meetings. Special Meetings are also conducted formally but may not include all Regular Meeting agenda items. Public comments will be permitted but limited to only business items on the agenda. Special meetings may be called by the Mayor, Chairperson, Town Manager, or any three members of a body.

- Work Session: Informal meetings of the body that allow for relaxed procedure enabling freer flowing discussion. No official action may be taken during a work session, however determining consensus on items to be brought forward to a Regular or Special meeting is appropriate. Work Sessions are generally used for (but not limited to) brainstorming, information gathering, planning efforts, budget review, or when more time is needed on a particular item than is typically afforded during formal meetings. The public must be permitted the opportunity to observe work sessions but are not typically permitted an opportunity to provide comments. The Mayor or presiding officer may on special circumstance, allow public comment. Work sessions may be called by the Mayor, Chairperson, Town Manager, or any three members of a body.

- Closed Session: Closed Sessions (Executive Sessions) are authorized by FOIA to discuss certain confidential matters limited to specific purposes, while using very specific procedures. Though a portion of this meeting is closed to the public, other portions are open. The public must be permitted to be observe the motion to go into Closed Session as well as the certification upon leaving the Closed Session.

- Public Hearing: Public Hearings are intended to solicit public feedback on specific topics. These topics will be advertised in advance. Input may be made in person or in writing. All comments will adhere to the Town Council approved guidelines. Comments will be directed to the body and not to any individual. Members shall not respond to questions posed nor address or rebut speaker's statements made during the Public Hearing.

- Town Hall Meeting: An informal meeting where no official action is taken. A Town Hall Meeting is essentially a Work Session that involves the public. These meetings are typically focused on one or two topics and encourages dialog between members and the public. A primary goal of a Town Hall meeting is to provide decision makers with in-depth public perspectives prior to taking an official action.

- Social or Community Events: These are gatherings where no official business is conducted, but where Town issues may be informally discussed. If more than two members will be present in their capacity as a Town official, the gathering should be posted. There are no agendas or minutes associated with these functions.

2. Motions

- Unanimous Consent: Routine business is typically conducted by unanimous consent. This is an informal process that allows business to be conducted expeditiously. The procedure is for the presiding officer to ask whether anyone objects to a particular action and then to state, "Hearing no objection the action will be taken by unanimous consent." Note that even when a member is not in favor of a particular action the member may chose not to object in the interest of moving the agenda forward. In other words, unanimous consent does not mean that everyone was actually in favor of the action. If anyone objects, then the action must be addressed with a formal motion and vote.

- Main Motion: This is the motion that brings business before the council or other body. Such motions should be stated in a concise form and should generally be in writing to avoid misunderstandings. It must be seconded and when voted upon will ordinarily require a simple majority vote. There are circumstances where a super majority may be required. such as in the disposition of real estate. Before voting on the motion the presiding officer should call for discussion. The presiding officer should allow for discussion until it terminates by *unanimous consent* or is formally terminated by a subsidiary motion (discussed below).

  When the motion is ripe for a vote the presiding officer should call for "all in favor" and then "all opposed." The presiding officer should then clearly state either the "motion passes" or the "motion fails." Generally, in the event of a tie the presiding officer may cast the deciding vote. The Town Charter expressly allows the Mayor to vote in the event of a tie. Any member may request a roll call vote.

- Subsidiary Motions:

  - Motion to Postpone Indefinitely (sometimes incorrectly called a motion to table): Normally used to putaside business that is not ripe for consideration. such as when further study is required. It requires a second. is debatable and is not amendable.

  - Motion to Amend: This is a motion to amend the wording and sometimes the meaning of the main motion. It requires a second and is debatable. It is also amendable *one time.* Note that a vole to adopt theamendment is not a vote on the main motion. Once the motion to amend is adopted the amended main motion must then be voted on as well. Often. simple motions to amend are adopted by unanimous consent. Also. note that whether the member that offered the original motion is willing to accept the proposed amendment or not is irrelevant. It must still be seconded and voted upon or adopted by unanimous consent.

- Motion to Refer: This is a motion to refer a matter to a committee or other body for action. In effect. when the motion is to refer the matter to a "workshop. it is a motion to refer the matter to a committee comprised of the entire council or other body (a committee of the whole). It requires a second and is debatable.

- Postpone to a Certain Time: Used when a matter is best considered at a different time to allow for the orderly conduct of business. It requires a second and is debatable.

- Motion to Limit Debate: Used to put a limit on the time permitted for debate of a motion. It requires a second. is not debatable and traditionally requires a two-thirds vote. Since the Town Charter allows forbusiness to be conducted based on a majority vote. if a motion to limit debate does not pass by a two- thirds vote. then after further debate for a reasonable time the motion shall require only a majority vote.

- Motion of the Previous Question (often referred to as “a motion to call the question" or “motion to bring the matter to a vote"): Used to end debate and bring the pending motion to a vote. It requires a second. is not debatable. and traditionally requires a two-thirds vote. Since the Town Charter allows for business to be conducted based on a majority vote. if a motion of the previous question does not pass by a two-thirds vote. then after further debate for a reasonable time the motion shall require only a majority vote.

- Motion to Lay on the Table (often confused with a motion to postpone indefinitely): Used to temporary interrupt pending business so that another matter can be considered first. It requires a second and is notdebatable. This is often done by unanimous consent to move business forward.

- Motion to Recess: This is a motion to take a short break in the proceeding. It requires a second and is notdebatable.

- Motion to Adjourn: This motion closes the meeting. It requires a second and is not debatable.

3. <u>Agenda</u>

The presiding officer should make a reasonable effort to conduct business in accordance with a consent agenda. The agenda should be organized to promote the orderly conduct of business. If the members cannot agree on the agenda, it should be presented by motion and subject to a vote. Keep in mind that even after an agenda is approved it can be amended. Often that is done by unanimous consent at the suggestion of the presiding officer to expedite the meeting. The procedure is for the presiding officer to state. '"Is there any objection to amending the agenda [explain]. Hearing no objection, the agenda is so amended by unanimous consent."

4. Other Issues

- Mayor's Veto: The Town Charter provides the Mayor with "the power of veto over the ordinances and resolutions of the council, but such ordinances and resolutions may be passed over such veto by a two-thirds vote of the members of the town council present and meeting." With a six-member council the override requires a vote of four members if all are present and voting.

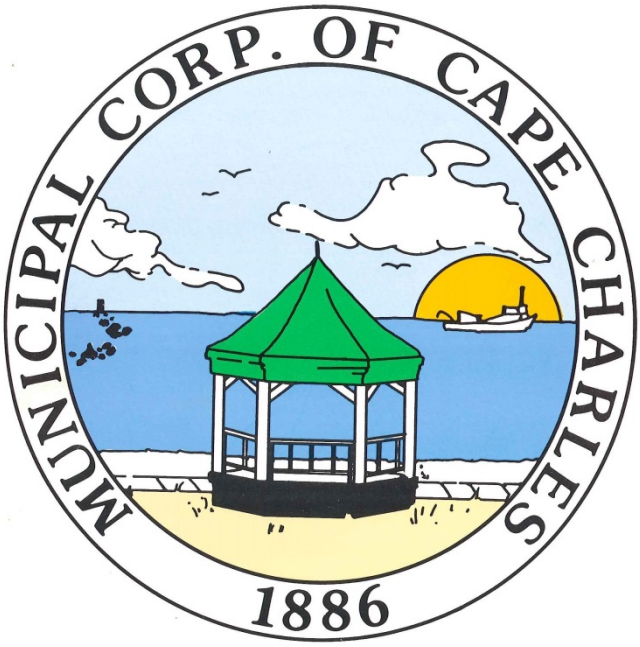
- Quorum: The Town Charter provides that "four members of the town council shall constitute a quorum for the transaction of business at any meeting." The bylaws of other bodies establish the number of members required for a quorum. The Code of Virginia provides that if a member is disqualified due to a conflict of interest "the remaining member or members shall constitute a quorum for the conduct of business and have authority to act for the agency by majority vote, unless a unanimous vote of all members is required by law, in which case authority to act shall require a unanimous vote of remaining members.'' 2.2-3112.C.

Acknowledgement

I _____ (printed name), a sitting member of _____ (body), hereby certify that I have been given a copy, read, understand, and will abide by the above Town of Cape Charles Code of Ethics & Meeting Rules of Order, adopted on July 22, 2021.

_____ (signature)

_____ (date)



Town of Cape Charles
Board of Zoning Appeals

2019, 2020 & 2021 Annual Report
(January 1, 2019-December 31, 2019)
(January 1, 2020 – December 31, 2020)
(January 1, 2021 – December 31, 2021)

Bill Murphy
Chairman

Pete Baumann
Vice-Chairman

2019 Board of Zoning Appeals Members

Bill Murphy, Chairman
Pete Baumann, Vice-Chairman
Jim Holloway
Jay Wiegner
Tom Weaver (appointed November 2019)

2020 Board of Zoning Appeals Members

Bill Murphy, Chairman
Pete Baumann, Vice-Chairman
Delores Blackburn (appointed November 2020)
Jim Holloway
Tom Weaver
Jay Wiegner (resigned March 2020)

2021 Board of Zoning Appeals Members

Bill Murphy, Chairman
Pete Baumann, Vice-Chairman
Delores Blackburn
Jim Holloway
Tom Weaver (resigned November 2021)

2019 - 2021 Staff

Zachary Ponds, Town Planner (December 2018 - February 2020)
Allyson Finchum, Town Planner (July 2020 – February 2021)
Katie Nunez, Interim Town Planner/Zoning Administrator (February 2021 to present)
Tracy Outten, Deputy Clerk (January 2019 – July 2020)
Tracy Outten, Planning Technician (August 2020 to present)

Introduction

Section 15.2-2308.C of the Code of Virginia states the following, "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."

Board and Staff Updates

Board Membership 2019 – 2021:
Jim Holloway was appointed as BZA representative to the Planning Commission in June 2019.

Tom Weaver joined the Board in November 2019 and served until November 2021 when he resigned due to health reasons.

Jay Wiegner resigned in March 2020 and the term was filled by Delores Blackburn in November 2020.

STAFF CHANGES 2019 - 2021:
Zachary Ponds left the position of Town Planner in early 2020 so the end of year administrative duties did not get completed, including the Annual Report. Town Councilman Paul Grossman provided temporary assistance as Zoning Administrator due to his experience and knowledge with the Town Zoning Ordinance and his affiliation with the Board of Zoning Appeals and Planning Commission until the position could be permanently filled.

Allyson Finchum was hired in July 2020 and departed in February 2021. Again, end of year administrative duties did not get completed, include the Annual Report.

Katie Nunez was hired in February 2021 as Interim Planning/Zoning Administrator and has continued in this role to allow the department to handle the backlog of work and is working on a staffing plan for the department.

Tracy Outten has been a continued source of continuity for the department since she served as clerk to the Board for the last three years. In August 2020, she transferred from the Town Clerk's office to the Planning & Zoning Department as a full time Planning Technician.

VARIANCE AND EXCEPTIONS

2019

The Board of Zoning Appeals held 5 meetings in which 7 applications were brought to public hearing. They are listed below by type and the decision is listed. Three applications were denied because they had not met the hardship criteria for a variance and accommodations could be met either in the placement on the lot or in the design of the structure in order to come into compliance with the zoning ordinance.

SINGLE FAMILY DWELLING			
Conforming Lot	600 Pine Street	Rear Yard Setback from 25 ft requirement (Section 3.2.G.1.c)	Approved
	652 Randolph Avenue	Rear Year Setback from 25 ft requirement (Section 3.2.G.1.c)	Denied
Non-Conforming Lot	623 Jefferson Avenue	Side Setback from 5 ft requirement (Section 3.2.G.2.b)	Approved
	Lot 83N Washington Avenue	Side Setback from 5 ft requirement (Section 3.2.G.2.b) & Rear yard Setback (Section3.2.G.2.c)	Approved
FENCES			
	420 Randolph Avenue	Height of Fence in Side Yard greater than 4 feet (Section 4.2.G.1)	Denied
ACCESSORY STRUCTURES			
	Lot 82 & 83 Strawberry Street	Allow accessory structure to be located in the side yard (Section 4.2.E.1)	Approved
	509 Nectarine Street	Request for variance from rear yard setback from alley for accessory structure Section 4.2.E.2	Approved
	509 Nectarine Street	Request to exceed Height Requirement for an Accessory Structure by 3 feet Section 4.2.E.10	Denied

Code Review

2019

The Board reviewed the existing zoning definitions of hardship and variance and discussed whether any changes should be recommended to the Planning Commission and Town Council. The Board decided that the definitions were appropriate and confirmed that variances, once approved, run with the land. (See Attachment A – BZA 07-15-2019 Staff Report Text Amendment)

In 2021 the Board reviewed and revised their Rules & Procedures which aligned them to the Town Council Code of Ethics and Meeting Rules of Order. Final approval of this document is scheduled for their next meeting. (See Attachment B - BZA Rules & Procedures FINAL 2021-12-14)

ATTACHMENTS

Attachment A – BZA 07-15-2019 Staff Report Text Amendment
Attachment B – BZA Rules & Procedures FINAL 2021-12-14

ATTACHMENT A

BOARD OF ZONING APPEALS
STAFF REPORT

Meeting Date: July 2, 2019
Item #: 7A

Item Specifics:

All proposed amendments of the zoning ordinance shall be referred by the Town Council to the Town's Planning Commission for its recommendations after at least one advertised public hearing (Section 2.7.2). Staff has identified the following two definitions that pertain to the Board of Zoning Appeals process, and would like the Board to review the proposed definitions prior to taking it to Planning Commission and Town Council for adoption:

Hardship: 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.

Variance: A modification of the specific provisions of this zoning ordinance granted when strict enforcement of the ordinance would cause undue hardship owing to circumstances unique to the individual property on which the variance is granted.

Recommendation:

Following discussion, recommend changes, if any, to the proposed definitions.

Attachments:

None

ATTACHMENT B

TOWN OF CAPE CHARLES
BOARD OF ZONING APPEALS
RULES OF PROCEDURE

Reviewed: July 2021
August 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 three (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 three (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 reach. 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. Public Comments will adhere to the "Guidelines for Citizen Participation" adopted by Town Council on 7/19/2021 and attached as Appendix A.

d. No member present shall abstain from voting unless such member has a conflict of interest in the matter being voted upon. A "conflict of interest" shall exist when there is an actual conflict: 1) pursuant to the Virginia State and Local Government Conflict of Interests Act (§ 2.2-3100 et. seq. of the Code of Virginia, or 2) pursuant to Town of Cape Charles Code of Ethics & Meeting Rules of Order, adopted by Town Council on July 22, 2021, and which is affixed as Appendix B to these Rules of Procedure or 3) as stated by the Board member unless objected to by a majority vote of the members of the Board with such member asserting such conflict of interest not permitted to vote on such matter.

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.

Town of Cape Charles
Guidelines for Citizen Participation

Town Council meetings are open to the public, except when the Council invokes the provisions of the Virginia Freedom of Information Act to discuss an authorized topic under a closed (Executive) session. A period of Public Comment shall be provided as part of the Agenda for the Council's regular monthly meetings. The Public Comment period is an obligation of the Council to provide members of the public an opportunity to address the Council on legitimate matters of town business. This period shall be governed by the following provisions:

Eligibility

Only those citizens with standing in the Town of Cape Charles will be provided the opportunity to provide input during the Public Comment period. Citizens with standing include full-time residents, property owners, and business owners within the corporate boundaries of the Town of Cape Charles. State, federal, and county officials representing/serving the Town of Cape Charles are also eligible. When eligibility is called into question, input may be provided upon affirmative vote of the Council.

Registering

Persons having an interest in making in-person comments to the Town Council during the Public Comment period must register on a sign-up sheet, including their name and basis for standing, indicating the item or topic on which they wish to speak. The sign-in sheet is available at the main entrance to the Council meeting and must be completed prior to the start of the meeting. The Mayor will recognize speakers at the appropriate time.

Persons having an interest in providing written comments to the Town Council during the Public Comment period must provide such comments to the Town Clerk no later than 60 minutes prior to the start of the meeting. Written comments must include a full name, basis for standing, and the agenda item or topic on which they wish to comment. The Clerk will read authorized comments into the record following all in-person speakers during the Public Comment period.

Members of Council are not permitted to sign-up and make comment during the Public Comment period unless an agenda item being considered has a direct impact upon the Council member or his/her interests, they have declared a potential conflict of interest, and the remaining Council members have voted to excuse that Council member from official action on the related item.

Regulations:

Cell Phone and Recordings

- Ringers on cell phones or pagers shall be turned off during the time that persons are at a Town Council meeting.
- The taking of photographs and video or audio recordings of a speaker or the activities during a meeting of Town Council shall be no closer than the front row of seating or other location designated by the Mayor or presiding officer to avoid disruption to the meeting and to promote public safety. The photographer or recorder shall take steps to avoid obstructing the aisles or other areas for any length of time in such a manner as to prevent other citizens from taking photographs, or to block the view of other citizens attending the meeting. No flashes or lighting devices may be used by photographers or operators of video recording equipment.

Speaking

When a speaker is called by the Mayor or presiding officer, the following is required:

- Speakers shall speak into the microphone to ensure that their name and remarks are heard and recorded as a part of the record of the meeting.
- Speakers shall state their full name and basis for standing and topic to which they are speaking.
- If a speaker represents a group or organization, the speaker shall indicate the name of the organization and the speaker's relationship to the group or organization. Speakers may ask others from their group or organization to stand at their seats to be recognized while the group's or organization's name is announced, but non-speakers or individual members are not permitted to stand with the speaker at the podium and for safety reasons, no members of the group or organization are permitted to stand in the aisles or doorways at Town Council meetings. Those members of a group or organization who do stand when the name of the group or organization is announced shall then be seated.
- Speakers shall address remarks to the Mayor and members of Council and not to the audience.
- Speakers shall state their position, give the facts to substantiate their position, and relate the concerns they believe the Town Council should consider.
- Speaker's comments will be made part of the record and a written copy should be delivered to the Town Clerk for inclusion. If other supportive material is available, it should also be delivered to the Town Clerk for the record.
- Speakers shall refrain from campaigning for public office, personal attacks upon members of the Town Council, Town employees or officials, or any other person.
- Speakers shall refrain from words or statements which, from their usual construction and common acceptance, are construed as insults or which have a tendency to cause an act of violence or a breach of the peace.
- Speakers shall refrain from abusive language, obscenity, vulgarity, and profanely cursing or swearing.
- Speakers shall refrain from actions that would interrupt the public meeting.
- All comments must come directly from the speaker.

Time limitations for remarks

- In-person speakers shall confine their remarks to no more than three (3) minutes. Speakers will be advised when their three (3) minutes have concluded.
- Persons providing written input must limit their comments to no more than can be read by the Town Clerk within three (3) minutes. Written comments provided beyond what can be read during the allotted time will not be entered into the record.
- Speakers cannot "yield," "transfer" or "designate" their time to another speaker in an effort to provide another speaker more than the allotted three (3) minutes.
- The Mayor or other presiding officer shall have the right to limit redundant remarks, as well as the overall time provided for remarks based on consideration of the time available and the need to complete the meeting efficiently.
- After a speaker has concluded his or her remarks, the speaker shall be seated.

Decorum and order

- For safety reasons, petitioning, picketing, displaying signs or posters, solicitation, demonstrating, pamphlet distribution, conducting polls, and blocking of the entryway shall not be permitted at a Town Council meeting or within one hundred (100) feet of any doorway to the meeting location.
- These guidelines do not preclude speakers, when addressing the Town Council, from delivering to the Council members by way of the Town Clerk written materials including reports, statements, exhibits, letters, or signed petitions. Nor do these guidelines preclude those addressing the Town Council from using a chart or graph during their remarks.
- Speakers and members of the audience shall be respectful of others, even if they do not agree with others' comments.
- The Mayor or other presiding officer shall preserve decorum and shall decide all questions of public order.
- At the request of the Mayor or Town Manager, one or more persons, including Town police officers shall act as sergeant-at-arms or sergeants-at-arms at all Town Council meetings. The sergeant-at-arms or sergeants-at-arms shall, under the direction of the Mayor or other presiding officer, have charge of the Council meeting location, and shall prevent disorder or interruption of the business of Town Council.
- Applause shall be permitted only during awards and presentations. Flash photography will be permitted at this time.
- Violation of these rules by speakers or members of the audience shall enable the Mayor or other presiding officer to rule the speaker or member of the audience out of order and by directive to have the speaker or member of the audience removed from the meeting, if necessary, and to take such other steps the Mayor or other presiding officer deems appropriate. The Mayor's or other presiding officer's decision to remove or rule a speaker or member of the audience out of order shall be final. One (1) warning will be given and if not heeded, the speaker or member(s) of the audience shall be escorted from the meeting.
- Any citizen is welcome to address their concerns informally with the Mayor, Town Council or Town Manager at any time outside of a Town Council meeting.

Town Council Response

Council members or Town employees shall not respond to questions posed nor address or rebut speaker's statements made during the Public Comment period. The Council, at its discretion, may direct matters raised during the Public Comment period be placed on the Agenda of a future meeting.

The Town Council hopes these Guidelines will encourage the greatest possible participation by citizens in the Town Government.

Applicability

While these guidelines reference the Town Council specifically, they shall also apply to all Town boards, commissions, and committees as appropriate.

Thank you for your interest and participation in your Town Council meeting. The Mayor and Town Council invite and encourage you to attend whenever possible because good, responsive government depends on the interest and involvement of all citizens.

Town of Cape Charles
Code of Ethics & Meeting Rules of Order

Adopted July 22, 2021

Preamble

The citizens and businesses of the Town of Cape Charles, Virginia, are entitled to have fair, ethical and accountable local government, which has earned the public's full confidence for integrity. The effective functioning of representative government requires that public officials, both elected and appointed, comply with both the letter and spirit of the laws and policies affecting the operations of government; that public officials be independent, impartial, and fair in their judgment and actions; that public office be used for the public good, not for personal gain; and that public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, the Town of Cape Charles Town Council has adopted this Code of Ethics and Rules of Order for members of the Town Council and of the Town's boards, commissions, and committees to assure public confidence in the integrity of local government and its effective and fair operations.

Code of Ethics

1. Act in the Public Interest

Recognizing that stewardship of the public interest must be their primary concern, members will work for the common good of the people of the Town of Cape Charles and not for any private or personal interest, and they will assure fair and equitable treatment of all persons, claims, and transactions coming before the Town of Cape Charles Town Council, boards, commissions, and committees.

2. Comply with the Law

Members shall comply with the laws of the nation, the Commonwealth of Virginia, and the Town of Cape Charles in the performance of their public duties. These laws include but are not limited to the United States and Virginia Constitutions; the Charter of the Town of Cape Charles; laws pertaining to conflicts of interest, election campaigns, employer responsibilities, open processes of government; and Town ordinances and policies.

3. Conduct of Members

The professional and personal conduct of members must be above reproach and avoid even the appearance of impropriety. Members shall refrain from abusive conduct or language, personal charges or verbal attacks upon the character or motives of other members of the Town Council, boards, commissions, committees, the staff, or the public.

4. Respect for Process

Members shall perform their duties in accordance with the processes and Rules of Order established by the Town Council; they shall respect the deliberation of public policy issues of other bodies, the meaningful involvement of the public, and the Town staff's implementation of policy decisions of the Town Council.

5. Conduct of Public Meetings

Members shall prepare themselves for public business; listen courteously and attentively to all public discussions before the body; and focus on the issues at hand. They shall refrain from interrupting other speakers; making personal comments not germane to the business of the body; or otherwise interfering with the orderly conduct of meetings.

6. Decisions Based on Merit

Members shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations.

7. Communication

Members shall publicly share substantive information that is relevant to a matter under consideration by the Town Council or boards, committees, and commissions, which they may have received from sources outside of the public decision-making process.

8. Gifts and Favors

A member should never accept for himself or herself or for family members, gifts, favors, or benefits under circumstances which might be construed by reasonable persons as influencing the performance of governmental duties.

9. Confidential Information

Members shall respect the confidentiality of information concerning the property, personnel, or affairs of the Town. They shall neither disclose confidential information without proper legal authorization, nor use such information to advance their personal, financial, or other private interests.

10. Use of Public Resources

Members shall not use public resources that are not available to the public in general, such as Town staff time, equipment, supplies, or facilities, for private gain or personal purposes.

11. Advocacy

Members shall represent the official polices or positions of the Town Council, boards, commissions, or committees to the best of their ability when designated as delegates for this purpose. When representing their individual opinions and positions in any venue, members shall explicitly state they do not represent their body of Town of Cape Charles, nor will they allow the inference that they do.

12. Policy Role of Members

The Town Council determines the policies of the Town with the advice, information, and analysis provided by the public boards, commissions, committees, and Town staff. The Town Council delegates authority for the administration of the Town to the Town Manager.

Members, therefore, shall not interfere with the administrative functions of the Town or the professional duties of Town staff, nor shall they impair the ability of staff to implement Town Council policy decisions. Inquiries to staff shall be made through the Town Manager or the appropriate department manager or director as authorized by the Town Manager.

13. Independence of Town Council and Commissions

Because of the value of the independent advice of boards, committees, and commissions to the public decision-making process, members of the Town Council shall refrain from using their positions to unduly influence the deliberations or outcomes of board, committee, or commission proceedings.

14. Positive Workplace Environment

Members shall support the maintenance of a positive and constructive workplace environment for Town employees, citizens, and businesses dealing with the Town. Members shall recognize their special role in dealings with Town employees and in no way create the perception of inappropriate direction to staff. All requests for staff resources must be approved by the Town Manager.

15. Implementation

Ethical standards shall be included in the regular orientations for candidates for the Town Council, applicants to boards, committees, commissions, and newly elected and appointed officials. Members entering office shall sign a statement affirming they have read and understood the Town of Cape Charles Code of Ethics and Rules of Order. In addition, the Town Council, boards, committees, and commissions, shall annually review the Code of Ethics and Rules of Order, and the Town Council shall consider recommendations from boards, committees, and commissions to update it as necessary.

16. Compliance and Enforcement

The Town of Cape Charles Code of Ethics expresses standards of ethical conduct expected of Members of the Town of Cape Charles Town Council, boards, committees, and commissions. Members themselves have the primary responsibility to assure that ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of government.

The chairs of boards, committees, and commissions and the Mayor of the Town of Cape Charles have the additional responsibility to intervene when actions of Members that appear to be in violation of the Code of Ethics are brought to their attention.

A violation of this Code of Ethics shall not be considered a basis for challenging the validity of a Town Council, board, committee, or commission decision. However, it may be considered when the Town Council is determining the suitability of any person to serve in any appointed position.

Conflict of Interest

In order to assure their independence and impartiality on behalf of the common good, members shall not use their official positions to influence government decisions in which they have a material financial interest and shall disclose any substantial organizational responsibility or personal business relationship to the parties in any matter coming before them. In accordance with the law, members shall disclose investments, interests in real property, sources of income, and gifts; and they shall abstain from participating in deliberations and decision-making where conflicts are determined to exist. This paragraph is not intended to unduly restrict members who have minor business or professional dealings with clients whose matter comes before them.

1. Abstention

As elected or appointed officials, members have a duty/obligation to represent their constituents in all public matters coming before their body. It is not appropriate for individual members to decide in which matters they should abstain. If a member believes they have a conflict of interest on any matter before their body, they are REQUIRED to disclose it before deliberations on that business begins. However, it shall be up to the remaining members of that body to determine if an actual conflict exists and if the member disclosing the potential conflict can be excused from participating in the business. If the body votes to allow the member to recuse him/herself, that member will not participate in any of the discussions or vote related to that business. Failing a vote to allow recusal, the member shall participate as normal.

2. Representation of Third-Party Interests

In keeping with their role as stewards of the public interest, members of the Town Council shall not appear on behalf of the private interests of third parties before the Town Council or any board, committee, commission, or proceeding of the Town; nor shall members of boards, committees, or commissions appear before their own bodies or before the Town Council on behalf of the private interests of third parties on matters related to the areas of service of their bodies. This provision should not unduly restrict a member's participation who is associated with, but not representing, community or non-profit organizations serving the Town, whose matter comes before them.

Meeting Rules of Order

The following rules of order are to serve as a non-binding guide to the conduct of business. It is the duty of the Mayor or other presiding officer to conduct meetings in accordance with the Code of Virginia, the Town Charter, applicable Bylaws, and in a manner intended to promote open, civil, and fair discussion of all issues.

1. Meeting Types

All meetings of the Town of Cape Charles fall under the provisions of the Virginia Freedom of Information Act (FOIA). All members will receive training on VA FOIA requirements upon initial appointment, as well as periodic refreshers. The Town Clerk will ensure FOIA training is completed, and that all records of the training are maintained. This document is not to be considered a substitute for FOIA training and offered only as a summary overview.

The public must be provided notice and access to all Town meetings.

- Regular Meeting: Meetings required by Charter or Bylaws to occur on a regular interval to conduct the primary business of the body. These meetings are conducted more formally, with established procedure. The Mayor or presiding officer will enforce these procedures to ensure proper decorum and efficient flow of business. Agendas will include a public comment period on any topic in accordance with public comment procedures established by the Town Council.

- Special Meeting: Meetings to conduct official business of the body that are deemed necessary in addition to Regular Meetings. Special Meetings are also conducted formally but may not include all Regular Meeting agenda items. Public comments will be permitted but limited to only business items on the agenda. Special meetings may be called by the Mayor, Chairperson, Town Manager, or any three members of a body.

- Work Session: Informal meetings of the body that allow for relaxed procedure enabling freer flowing discussion. No official action may be taken during a work session, however determining consensus on items to be brought forward to a Regular or Special meeting is appropriate. Work Sessions are generally used for (but not limited to) brainstorming, information gathering, planning efforts, budget review, or when more time is needed on a particular item than is typically afforded during formal meetings. The public must be permitted the opportunity to observe work sessions but are not typically permitted an opportunity to provide comments. The Mayor or presiding officer may on special circumstance, allow public comment. Work sessions may be called by the Mayor, Chairperson, Town Manager, or any three members of a body.

- Closed Session: Closed Sessions (Executive Sessions) are authorized by FOIA to discuss certain confidential matters limited to specific purposes, while using very specific procedures. Though a portion of this meeting is closed to the public, other portions are open. The public must be permitted to be observe the motion to go into Closed Session as well as the certification upon leaving the Closed Session.

- Public Hearing: Public Hearings are intended to solicit public feedback on specific topics. These topics will be advertised in advance. Input may be made in person or in writing. All comments will adhere to the Town Council approved guidelines. Comments will be directed to the body and not to any individual. Members shall not respond to questions posed nor address or rebut speaker's statements made during the Public Hearing.

- Town Hall Meeting: An informal meeting where no official action is taken. A Town Hall Meeting is essentially a Work Session that involves the public. These meetings are typically focused on one or two topics and encourages dialog between members and the public. A primary goal of a Town Hall meeting is to provide decision makers with in-depth public perspectives prior to taking an official action.

- Social or Community Events: These are gatherings where no official business is conducted, but where Town issues may be informally discussed. If more than two members will be present in their capacity as a Town official, the gathering should be posted. There are no agendas or minutes associated with these functions.

2. Motions

- Unanimous Consent: Routine business is typically conducted by unanimous consent. This is an informal process that allows business to be conducted expeditiously. The procedure is for the presiding officer to ask whether anyone objects to a particular action and then to state, "Hearing no objection the action will be taken by unanimous consent." Note that even when a member is not in favor of a particular action the member may chose not to object in the interest of moving the agenda forward. In other words, unanimous consent does not mean that everyone was actually in favor of the action. If anyone objects, then the action must be addressed with a formal motion and vote.

- Main Motion: This is the motion that brings business before the council or other body. Such motions should be stated in a concise form and should generally be in writing to avoid misunderstandings. It must be seconded and when voted upon will ordinarily require a simple majority vote. There are circumstances where a super majority may be required. such as in the disposition of real estate. Before voting on the motion the presiding officer should call for discussion. The presiding officer should allow for discussion until it terminates by *unanimous consent* or is formally terminated by a subsidiary motion (discussed below).

  When the motion is ripe for a vote the presiding officer should call for "all in favor" and then "all opposed." The presiding officer should then clearly state either the "motion passes" or the "motion fails." Generally, in the event of a tie the presiding officer may cast the deciding vote. The Town Charter expressly allows the Mayor to vote in the event of a tie. Any member may request a roll call vote.

- Subsidiary Motions:

  - Motion to Postpone Indefinitely (sometimes incorrectly called a motion to table): Normally used to putaside business that is not ripe for consideration. such as when further study is required. It requires a second. is debatable and is not amendable.

  - Motion to Amend: This is a motion to amend the wording and sometimes the meaning of the main motion. It requires a second and is debatable. It is also amendable *one time.* Note that a vole to adopt theamendment is not a vote on the main motion. Once the motion to amend is adopted the amended main motion must then be voted on as well. Often. simple motions to amend are adopted by unanimous consent. Also. note that whether the member that offered the original motion is willing to accept the proposed amendment or not is irrelevant. It must still be seconded and voted upon or adopted by unanimous consent.

- Motion to Refer: This is a motion to refer a matter to a committee or other body for action. In effect. when the motion is to refer the matter to a "workshop. it is a motion to refer the matter to a committee comprised of the entire council or other body (a committee of the whole). It requires a second and is debatable.

- Postpone to a Certain Time: Used when a matter is best considered at a different time to allow for the orderly conduct of business. It requires a second and is debatable.

- Motion to Limit Debate: Used to put a limit on the time permitted for debate of a motion. It requires a second. is not debatable and traditionally requires a two-thirds vote. Since the Town Charter allows forbusiness to be conducted based on a majority vote. if a motion to limit debate does not pass by a two- thirds vote. then after further debate for a reasonable time the motion shall require only a majority vote.

- Motion of the Previous Question (often referred to as “a motion to call the question" or “motion to bring the matter to a vote"): Used to end debate and bring the pending motion to a vote. It requires a second. is not debatable. and traditionally requires a two-thirds vote. Since the Town Charter allows for business to be conducted based on a majority vote. if a motion of the previous question does not pass by a two-thirds vote. then after further debate for a reasonable time the motion shall require only a majority vote.

- Motion to Lay on the Table (often confused with a motion to postpone indefinitely): Used to temporary interrupt pending business so that another matter can be considered first. It requires a second and is notdebatable. This is often done by unanimous consent to move business forward.

- Motion to Recess: This is a motion to take a short break in the proceeding. It requires a second and is notdebatable.

- Motion to Adjourn: This motion closes the meeting. It requires a second and is not debatable.

3. <u>Agenda</u>

The presiding officer should make a reasonable effort to conduct business in accordance with a consent agenda. The agenda should be organized to promote the orderly conduct of business. If the members cannot agree on the agenda, it should be presented by motion and subject to a vote. Keep in mind that even after an agenda is approved it can be amended. Often that is done by unanimous consent at the suggestion of the presiding officer to expedite the meeting. The procedure is for the presiding officer to state. '"Is there any objection to amending the agenda [explain]. Hearing no objection, the agenda is so amended by unanimous consent."

4. Other Issues

- Mayor's Veto: The Town Charter provides the Mayor with "the power of veto over the ordinances and resolutions of the council, but such ordinances and resolutions may be passed over such veto by a two-thirds vote of the members of the town council present and meeting." With a six-member council the override requires a vote of four members if all are present and voting.

- Quorum: The Town Charter provides that "four members of the town council shall constitute a quorum for the transaction of business at any meeting." The bylaws of other bodies establish the number of members required for a quorum. The Code of Virginia provides that if a member is disqualified due to a conflict of interest "the remaining member or members shall constitute a quorum for the conduct of business and have authority to act for the agency by majority vote, unless a unanimous vote of all members is required by law, in which case authority to act shall require a unanimous vote of remaining members.'' 2.2-3112.C.

Acknowledgement

I _____ (printed name), a sitting member of _____ (body), hereby certify that I have been given a copy, read, understand, and will abide by the above Town of Cape Charles Code of Ethics & Meeting Rules of Order, adopted on July 22, 2021.

_____ (signature)

_____ (date)