

Board of Zoning Appeals
Regular Meeting
Cape Charles Civic Center – 500 Tazewell Avenue
July 12, 2022 10:00 A.M.

1. Call to Order
 - a. Roll call and establish a quorum
2. Invocation and Pledge of Allegiance
3. Adoption of Agenda
4. Review and Approval of Minutes
5. Old Business/Matters Deferred from Previous Meetings: None
6. New Business – Public Hearing
 - A. An application from Spencer & Lauren Custis at Lot 100 Washington Avenue (Tax Map #83A1-1-100) in the Residential-1 Zoning District for a variance from CC Zoning Ordinance Section 3.2 (B) to allow an accessory structure (existing shed) to remain on premise without a principal use of a main dwelling unit.
7. Other Matters
8. Next Meeting – Tuesday, August 9, 2022 @ 10:00 a.m.
9. Adjourn

TOWN OF CAPE CHARLES
Notice of Public Hearing – Variance Request

The Cape Charles Board of Zoning Appeals will hold a public hearing on Tuesday, July 12, 2022 at 10:00 am in the Cape Charles Civic Center, 500 Tazewell Avenue, to receive public comment on the following:

- A. An application from Spencer & Lauren Custis at Lot 100 Washington Ave (Tax Map #83A1-1-100) in the Residential-1 Zoning District for a variance from CC Zoning Ordinance Section 3.2 (B) to allow an accessory structure (existing shed) to remain on premise without a principal use of a main dwelling unit.

The application is available for public review on our website at www.capecharles.org. Please contact Interim Town Planner/Zoning Administrator Katie Nunez at 757-331-2036, or by email at planner@capecharles.org, if you have any questions or require additional information. Anyone interested in attending and needing special assistance contact the Town at least 48 hours before the hearing.

AD PLACED: Eastern Shore Post – Tuesday, June 21, 2022

AD TO RUN: Friday, June 24 and July 1, 2022



BOARD OF ZONING APPEALS STAFF REPORT

Meeting Date: July 12, 2022

Item #: 4A – Public Hearing

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

APPLICANT: Spencer & Lauren Custis

SITE ADDRESS: Lot 100 Washington Avenue

TAX MAP: 83A1-1-100

LOT SIZE: 5,600 sq. ft.

TYPE OF APPLICATION: Variance

SPECIFIC REQUEST: 8 ft. variance from rear yard setback of 20 ft. for a screened-in porch

ZONING: CCZO Section 3.2 (B) (1) & (4)

CURRENT ZONING: Residential-1 (R-1)

DATE RECEIVED: May 23, 2022

DATE DEEMED COMPLETE: May 23, 2021

LEGAL DEADLINE (90 Days from Complete Application – Directory, not Mandatory): August 23, 2022

NARRATIVE OF PROPOSAL

Last fall, it came to the staff's attention that there was a shed on this lot which did not have Town approval. However, due to the backlog of work in the department and staffing shortages, I was not able to address any violations occurring in Town at that time. In spring 2022, Ken Butta was hired as our part-time Zoning Compliance Officer and we have been working through the backlog of possible violations. In June 2022, I reached out to Mr. Custis and indicated that we were getting ready to issue a violation notice to him on this matter and indicated that he could attempt to obtain a variance after the fact from the Board of Zoning Appeals for having an accessory structure on this property without a principal use or principal structure. Filing a variance application prior to any Town enforcement action being imposed would allow for the specific consideration whether a variance would be allowed for an accessory structure without a principal structure vs. Mr. Custis having to appeal the enforcement action and then possibly pursue a variance application if he was successfully in any appeal of the enforcement action which would also be heard by the Board of Zoning Appeals.

Therefore, the property owners did file the variance application to retain the 6 ft x 10 ft (60 ft) shed on the property without a house (principal structure). In their letter of intent, they stated that they plan on building a home on the lot at a later date but did not provide any timeframe relative to that. They are currently using the shed to store their golf cart and want to obtain an address for the property so that their electrical service to the shed can be turned on in order to charge the golf cart. It is relevant to note that the applicant does own a house at 204 Washington Avenue (Lot 108 or 4 lots to the west of the parcel for this application

The Town does not issue street addresses until a principal structure is erected on a lot. Additionally, the Cape Charles Zoning Ordinance Section 3.2 (Single Family Residential District R-1) has permitted uses by right of both single-family dwellings and accessory buildings; however, in CCZO Section 2.9 DEFINITIONS, Accessory Use is defined as follows:

ACCESSORY USE, except as otherwise provided in the zoning district regulations, an accessory use is:

1. a use which is conducted on the same zoning lot as the principal use to which it is related, whether located within the same building or as an accessory structure, or as an accessory use of land, or which is conducted on a contiguous lot in the same ownership, and
2. clearly incidental to, and customarily found in connection with, such principal use, and
3. operated and maintained substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the zoning lot with the principal use.

AERIAL MAP – Lot Outlined in Blue



ORDINANCE REQUIREMENTS TO BE CONSIDERED:

- (a) **Does the evidence show that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance?**

The lot is legally sized per the CCZO. It appears that the applicant is not ready to move forward at this time to fully develop the lot with a house. The need and use of an accessory structure is based upon the needs of the applicant and their lifestyle and not taking into consideration the requirements of the Zoning Ordinance which would require a principal use or structure before the allowance of an accessory structure which is supposed to be supportive to the principal structure.

- (b) **Was the property interest for which the variance is being requested acquired in good faith and any hardship was not created by the applicant for the variance?**

The applicant has created this situation by placing a shed on the property without seeking any zoning clearance. PLEASE NOTE: the size of the shed is under the 256 square feet requirement for a building permit.

- (c) **Will the granting of the variance not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area?**

The variance is necessary only because there is no house on the premises in conjunction with the accessory structure and traditionally, a house and an accessory structure are by-right uses in this zoning district. There are many sheds on the lots on Washington Avenue but none without a house as well.

- (d) **Is the condition or situation of the property concerned not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance?**

This appears to be a fairly rare case and does not support the consideration of the formulation of a general regulation to the ordinance.

- (e) **Does the granting of the variance result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property?**

As noted, an accessory structure is a by-right use in the R-1 Zoning District when it is applied as defined in the ordinance.

- (f) **Is the relief or remedy sought by the variance application not available through a special exception process that is authorized in the ordinance or the process for modification of a zoning ordinance at the time of the filing of the variance application?**

No. The variance would not be needed if a principal use or structure, such as a single-family home was constructed.

DISCUSSION POINTS:

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

BZA REVIEW:

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

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

STAFF RECOMMENDATION:

Staff recommends that the BZA consider the items that have been raised in this report and consider the request at hand. The staff is not recommended that the application be approved based upon the points raised in this staff report, specifically in the section called “ORDINANCE REQUIREMENTS TO BE CONSIDERED”. If there was a specific timeline regarding the construction of a single-family dwelling on this lot within the next 12 months, then staff would be more supportive of this application. However, in the absence of that, I am not supportive of allowing a 60 square foot shed on a lot without any other requirement of the zoning ordinance regarding accessory structures being adhered to and possibly being utilized by a nearby property that the applicant owns.

If the shed is really being used to support the principal house at 204 Washington Avenue, then the applicant should pursue placing it on that property and seeking any variances that may be needed if the shed cannot reasonably fit on that property.

PROPOSED MOTION FOR CONSIDERATION:

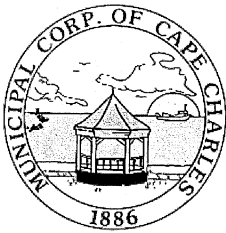
Staff offers the following motion for the Board’s consideration and is prepared to assist to amend or alter the motion based upon the public hearing and discussion of the Board:

After careful consideration of the application and the staff report, the Board of Zoning Appeals votes to deny the Variance Application from Spencer and Lauren Custis at Lot 100 Washington Avenue (Tax Map #83A1-1-100) for a use variance to allow an accessory structure without a principal structure (or single-family dwelling) pursuant to CCZO Section 3.2 (B) as an accessory structure is defined in Section 2.9 of the Cape Charles Zoning Ordinance.

Attachments:

Attachment 1 – Application and Documents

Attachment 2 – Section 3.2 (B)



VARIANCE APPLICATION

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

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

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

PROJECT INFORMATION

Name of Project: Spencer Custis shed

Property Address: Lot 100 Washington Avenue

Brief Description of Project: Installed shed on rear of property

Zoning District: _____ Current Use: _____ Proposed Use: _____

OWNER INFORMATION

Name and Company: Spencer Custis

Mailing Address: 4005 Kensington Avenue, Richmond, VA 23221

Phone Number: 7577100728 Email: spenmc9@hotmail.com

APPLICANT INFORMATION

☒ check here if applicant is owner

Name: _____

Mailing Address: _____

Phone Number: _____ Email: _____

CERTIFICATION OF APPLICANT

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

Signature of Applicant:  Date: 5/23/22

Spencer Custis
4005 Kensington Ave
Richmond, VA 23221

Town of Cape Charles
Board of Zoning Appeals
C/O Katie Nunez

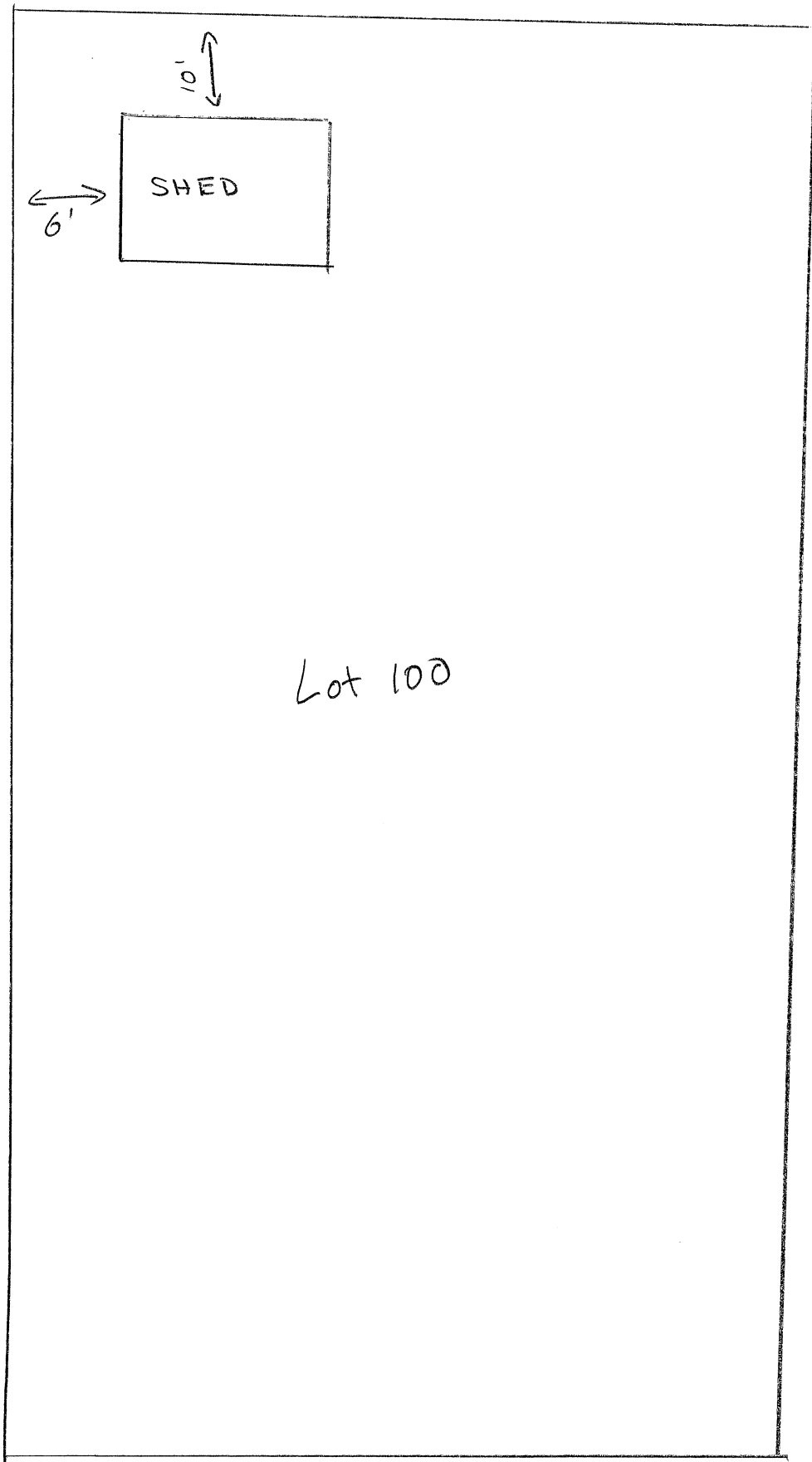
Katie,

I am respectfully requesting to allow my installed shed to have a variance granted so that planning staff can release the electrical permit to allow a meter to be installed. I installed the shed not knowing that it was not allowed without a main dwelling unit and installed it in a location to the rear of the property in preparation of building our home. We have already installed all the electrical for the shed and we do plan on building a home on the lot at a later date. We are using the shed to house our golf cart to keep it out of the weather and need approval so that we can get a power meter for the shed to keep the golf cart battery charged. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Spencer Custis", with a stylized flourish extending to the right.

Spencer Custis



Washington Ave



Section 3.2 Single Family Residential District R-1

A. Statement of intent. The intent of this basic zoning district is to provide quiet, medium density, single-family residential development plus provide open areas where similar residential development appears likely to occur.

The regulations for this district are designed to stabilize and protect the essential characteristics of the district, to promote and encourage a suitable environment for family life where there are children, and to restrict all activities of a commercial nature as described in Section 3.6-A of this ordinance, known as Commercial District C-1, which states “These commercial activities are characterized by heavy traffic, noise, and congestion of people and passenger vehicles and by large office buildings and retail establishments,” and to promote a convenient, attractive, and harmonious community. This section is created in recognition of the existence of developed areas where single-family and duplex dwelling currently exist on lots of 5,600 square feet and where the characteristics of the neighborhood include both permanent as well as seasonal residents.

B. Permitted Uses. The following uses are permitted by right:

1. Single-family dwellings
2. Churches and places of worship
3. Parks and playgrounds
4. Accessory buildings
5. Schools and Municipal Community Center
6. Group Homes per § 15.2-2291 of the Code of Virginia
7. Home occupations in accordance with Section 4.0.
8. Dog pens.