Board of Zoning Appeals

Regular Meeting

Cape Charles Civic Center – 500 Tazewell Avenue

January 10, 2023 @ 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:
    A. August 9, 2022
    B. September 13, 2022

5. Old Business/Matters Deferred from Previous Meetings: None

6. New Business – Public Hearing:
    A. An application from Dave Padavana for a variance of 4 ft 4 inches from the rear year setback at 112 Churchill Downs (Tax Map #90-6-7) pursuant to the Cape Charles Zoning Ordinance (CCZO), Appendix: Accawmacke Plantation Planned Unit Development Ordinance (PUD), Article 4.2 (E) (2) for a single-family dwelling; purpose is for the addition of an open porch addition; property is zoned PUD R-2 District.

7. Other Matters

8. Next Meeting – Tuesday, February 14, 2023 @ 10:00 am

9. Adjourn

DRAFT
Board of Zoning Appeals
Public Hearing & Meeting
Cape Charles Civic Center
August 9, 2022
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, Dolores Blackburn, Jim Holloway, and Laura Weigand. Chairman Bill Murphy participated via telephone. Also, present were, Town Planner/Zoning Administrator Katie Nunez and Planning Technician Tracy Outten. The applicant and their representative. There were seventeen members of the public in attendance.

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

CONSENT AGENDA

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

Motion made by Laura Weigand, seconded by Jim Holloway, to approve the minutes from the March 8, 2022 Board of Zoning Appeals Public Hearing and Meeting and the July 12, 2022 Board of Zoning Appeals Public Hearing and Meeting as presented. The motion was approved by unanimous vote.

OLD BUSINESS/MATTERS DEFERRED FROM PREVIOUS MEETINGS

There was no old business to discuss.

NEW BUSINESS - PUBLIC HEARING

A. *An application from Dave & Pam Hainsworth for the property at the corner of Bay Avenue and Washington Avenue adjacent to the Chesapeake Bay and further described as the majority portion of Tax Map #83A1-3-A and 50% of Tax Map #83A1-3-C totaling approximately .85 acres or 37,037 sq. ft. and further identified on the proposed Site Plan as Lot A located in the Residential-1 (R-1) Zoning District and in the Chesapeake Bay Preservation Act (CBPA) Overlay Zoning District; said application is seeking an exception to the CBPA of the Cape Charles Zoning Ordinance (CCZO) Section 7.7 (A3) to allow for a residential dwelling unit pursuant to CCZO Section 7.5 which provides by-right single family dwelling in the R-1 Zoning District.*

B. *An application from Dave & Pam Hainsworth for the property at the corner of Bay Avenue and Washington Avenue adjacent to the Chesapeake Bay and further described as the remaining portion of Tax Map #83A1-3-A not identified in the application above, 50% of Tax Map #83A1-3-C and all of Tax Map #83A1-3-B1 totaling approximately .84 acres or 36,933 sq. ft. and further identified on the proposed Site Plan as Lot B located in the Residential-1 (R-1) Zoning District and in the Chesapeake Bay Preservation Act (CBPA) Overlay Zoning District; said application is seeking an exception to the CBPA of the Cape Charles Zoning Ordinance (CCZO) Section 7.7 (A3) to allow for a residential dwelling unit pursuant to CCZO Section 7.5 which provides by-right single family dwelling in the R-1 Zoning District.*

   Pete Baumann read the public notice and informed all in attendance that the applicants would be amending their applications but, the board would still hold the public hearing to receive comments.

   Katie Nunez stated that Mr. and Mrs. David Hainsworth, the applicants, would be amending their applications as advised by their attorney, Carl Eason. She added that any votes and discussion would be tabled until the Board of Zoning Appeals September meeting. Ms. Nunez than presented her PowerPoint and staff report explaining the applications and why exceptions were needed.

Katie Nunez did point out that the exceptions were supposed to be granted for only the minimum necessary for a house not a garage or outside attributes such as pavers or patios.

PUBLIC COMMENTS

Susan Mastyl, Harborton, Virginia

Ms. Mastyl opposed any development of the parcels under discussion. (Please see attached.)

Nancy Proto, 607 Pine Street

Ms. Proto thanked Katie Nunez for the thorough explanation and research for theses applications. She requested that the board follow all processes and ordinances as written. Ms. Proto added that the Hainsworth would be welcomed to the neighborhood if the outcome was favorable.

William Knight, 509 Arnie's Loop

Mr. Knight spoke on behalf of the Concerned Citizens of Cape Charles to stress that the community needed more activities for the vulnerable citizens. He had concerns about the potential buildings and asked if anyone thought about the tenants at Seabreeze Apartments. Mr. Knight ended his comments by stated that the town is only as strong as its weakest link.

There were no additional public comments to be heard from the member of the public in attendance. Planning Technician Tracy Outten read comments submitted in writing from Peter and Elizabeth Alpern, Bruce Gittinger, and Chuck Little. (Please see attached.)

Carl Eason, attorney for Mr. and Mrs. Hainsworth, said these lots preceded the Chesapeake Bay Preservation Act so homes could be built at this location but, he was not in support of this application as it was submitted. Mr. Eason thanked Katie Nunez for having this meeting.

Motion made by Dolores Blackburn, seconded by Jim Holloway, to table the Application from Dave and Pam Hainsworth for the property at the corner of Bay Avenue and Washington Avenue adjacent to the Chesapeake Bay and further described as the majority portion of Tax Map #83A1-3-A and 50% of Tax Map #83A1-3-C totaling approximately .85 acres or 37,037 sq. ft. and further identified on the proposed Site Plan as Lot A located in the Residential-1 (R-1) Zoning District and in the Chesapeake Bay Preservation Act (CBPA) Overlay Zoning District; said application is seeking an exception to the CBPA of the Cape Charles Zoning Ordinance (CCZO) Section 7.7 (A3) to allow for a residential dwelling unit pursuant to CCZO Section 7.5 which provides by-right single family dwelling in the R-1 Zoning District. The motion was approved by unanimous vote.

Motion made by Dolores Blackburn, seconded by Jim Holloway, to table the Application from Dave and Pam Hainsworth for the property at the corner of Bay Avenue and Washington Avenue adjacent to the Chesapeake Bay and further described as the remaining portion of Tax Map #83A1-3-A not identified in the application above, 50% of Tax Map #83A1-3-C and all of Tax Map #83A1-3-B1 totaling approximately .84 acres or 36,933 sq. ft. and further identified on the proposed Site Plan as Lot B located in the Residential-1 (R-1) Zoning District and in the Chesapeake Bay Preservation Act (CBPA) Overlay Zoning District; said application is seeking an exception to the CBPA of the Cape Charles Zoning Ordinance (CCZO) Section 7.7 (A3) to allow for a residential dwelling unit pursuant to CCZO Section 7.5 which provides by-right single family dwelling in the R-1 Zoning District. The motion was approved by unanimous vote.

OTHER BUSINESS

There was no other business to discuss.

NEXT MEETING

Tuesday, September 13, 2022 at 10:00 a.m. – Bill Murphy informed the board he would not be back from out of town and needed to participate by phone.

DRAFT

Hearing no objection, Vice-Chairman Pete Baumann adjourned the Board of Zoning Appeals Public Hearing and Meeting at 10:54 a.m. The motion was approved by unanimous vote.

_____
Vice-Chairman Pete Baumann

_____
Planning Technician

DRAFT

August 9, 2022 Board of Zoning Appeals Public Hearing Comments

Susan Mastyl, 14329 Mears Circle, Harborton, Virginia

Cape Charles Board of Zoning Appeals

August 9, 2022

Mr. Chairman, members of the Board, I'm speaking today to oppose any development of the parcels under discussion. The Chesapeake Bay Preservation Act is an important protective measure, to prevent any further degradation of the Bay and its tributaries, and to promote the preservation of tidal and nontidal wetlands and tidal shores. These wetlands and tidal shores act as important nurseries for the fish, shellfish, and wildlife of the Bay, and serve as a critical protective buffer for storm surges and high-tide flooding.

Although my husband and I live in Accomack County, we visit Cape Charles frequently. We happened to be here a couple of days after Superstorm Sandy in 2012. Just adjacent to the property under discussion, to the northeast, are three apartment buildings – after Sandy, the end of the building closest to the water had been completely undermined by wave action, and was hanging out over the water. That's only the most graphic example of the power of the storms that come through this area – and with sea-level rise, the flooding will be worse and the storms will be more frequent and more intense.

Building on this property is just wrong. Every square inch of nonpermeable surface will increase runoff into the Bay, and will decrease the buffer effect for properties to landward. As the town's ordinance says, tidal shorelines and those prone to flooding, erosion, and soil limitations "need to be protected from destruction and damage in order to protect the quality of life in Cape Charles and the Commonwealth of Virginia."

It doesn't do any good to have regulations on the books if we can't enforce them when it matters most. The Act gives the Town the authority to prohibit development in these most critical areas, to protect the Bay and to protect the Town. I'm asking you to use that authority and deny this application.

Thank you.

Sue Mastyl
14329 Mears Circle
Harborton, VA 23389
(757) 442-6644
smastyl@msn.com

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Peter and Elizabeth Alpern, 3 Bay Vistas Way, Cape Charles

July 30, 2022

Dear Ms. Nunez:

My wife Elizabeth and I have owned the property at 3 Bay Vistas Way in Cape Charles since August 2020. While it is currently our second home, it is our intention to pass this house on to our children and so we are heavily interested in the beautification and enhancement of our property and the area surrounding it. I would also like to mention that my mother Linda Connor Kohl and my sister Elaine Alpern Cafferillo also own homes in Cape Charles, both on Randolph Avenue. While Elizabeth and I only speak only for ourselves, I identify my family members so that you understand how imbedded my family has become in the local community. We love this town and have demonstrated that we believe in investing in Cape Charles.

Elizabeth and I would like to let you know that we are in favor of the variance applications made by Dave and Pam Hainsworth to develop the Old Ferry Dock Lots A and B in the NW corner of Cape Charles. We have

reviewed both applications extensively and believe that Cape Charles will benefit from the Hainsworth's investment in Lots A and B because:

- The plans include significant investment in erosion prevention methods including a silt fence and a breakwater. The NW corner of Cape Charles is particularly exposed and vulnerable due to its lack of development and the prevailing NW winds (or so they seem to me, having spent a good bit of time on this very spot). The Hainsworth's investment will significantly reduce the threat of erosion to surrounding property owners, benefitting all residents of Cape Charles.
- The Hainsworth's plans also illustrate significant landscaping upgrades to the lots. These landscaping upgrades will not only further contribute to erosion prevention, they will significantly beautify the entire NW corner of Cape Charles. This particular area of town has in recent decades become notably unsightly due to the lack of investment in these vacant lots and the neglect of the Seabreeze Apartments by Greenbrier Management. Again, the Hainsworth's investment in landscaping will benefit all residents of Cape Charles by beautifying an entire quadrant of town.
- By allowing the Hainsworth's residential development of Lots A and B, it is our opinion that the Zoning Board is protecting all residents of Historic Cape Charles by intelligently planning this ½ mile by ½ mile town. It seems to us that commercial development in Cape Charles is kept to the South and East parts of town. The Hainsworth's investment will preserve the residential nature of the North and West ends of town benefiting all residential property owners in Historic Cape Charles.
- Owning a waterfront home ourselves, we can tell you that the building requirements of such structures are and should be different because of our exposure to the Chesapeake Bay and "all She has to offer". Modern construction methods allow for the significant structural upgrades required without altering the external character of the structures. The Hainsworth's investment in Lots A and B include plans for two homes that will not only be built to the standards required for waterfront living, their appearances will be in the character of Historic Cape Charles. All residents of Cape Charles will benefit from the Hainsworth's investment because it will be more desirable to live near the Hainsworth's homes than it is to live next to the overgrown vacant lots, as they currently exist.

Respectfully, in writing this letter, we feel as if we are telling you your business and we clearly yield to your expertise. However, **we believe that the answers at the hearing on August 9th should be obvious to all; that the Hainsworth's development of the Ferry Dock Lots A and B in the northwest corner of Cape Charles will benefit every taxpayer and stake holder in this town for years to come and should be approved.**

Sincerely yours,

Peter Alpern Elizabeth Alpern
pwalpern@yahoo.com elizabeth.alpern@yahoo.com
+1 (908) 868-8350 +1 (908) 868-8349

Primary address:
32 Heather Court
Berkeley Heights, NJ 07922

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DRAFT

Chuck Little, 8 Randolph Avenue, Cape Charles
From: chucklittle@earthlink.net <chucklittle@earthlink.net>
Sent: Sunday, July 31, 2022 3:41 PM
To: 'Katie Nunez' <planner@capecharles.org>
Subject: Rezoning At The North End of Bay Avenue

Hi,
I am writing in support of the application to allow two houses to be built on the waterfront property just north of the intersection of Bay Avenue and Washington. It would be a significant improvement to the beachfront aesthetic to have the beach at that location cleaned up along with the pilings. As it stands now the property is of little use to the town or residents and it is a great opportunity to have someone willing to lay it on the line to enhance that location, especially since the town can be in control of the architecture so it will be in keeping with the rest of the waterfront homes.

Chuck Little
8 Randolph Avenue
Cape Charles, VA 23310
757-636-0819

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Bruce Gittinger, 4 Tazewell Avenue, Cape Charles

RECEIVED 8-1-2022

To whom it may concern:

I am Bruce Gittinger of 4 Tazewell Ave and I am writing this note to express my support of David and Pam Hainesworth's proposal to purchase the lot(s) at the corner of Washington and Bay Avenues in order to build a home. We are Dave's neighbors at his current home at 2 Tazewell Ave and attest to his meticulous care of that property. We know it would be the same for his new property/home. As we understand it, the lots are already zoned R-1. His proposed home would greatly improve the current status of the property. No doubt his new home would be an asset to the town of Cape Charles

Sincerely,

Bruce L Gittinger

Bruce L. Gittinger
8/1/2022

DRAFT
Board of Zoning Appeals
Public Hearing & Meeting
Cape Charles Civic Center
September 13, 2022
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, Dolores Blackburn, Jim Holloway, and Laura Weigand. Chairman Bill Murphy participated via telephone. Also, present were, Town Planner/Zoning Administrator Katie Nunez, Planning Technician Tracy Outten, the applicants, their representatives, and the current owners. There were three members of the public in attendance.

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

CONSENT AGENDA

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

OLD BUSINESS/MATTERS DEFERRED FROM PREVIOUS MEETINGS

A. *An application from Dave & Pam Hainsworth for the property at the corner of Bay Avenue and Washington Avenue adjacent to the Chesapeake Bay and further described as the majority portion of Tax Map #83A1-3-A and 50% of Tax Map #83A1-3-C totaling approximately .85 acres or 37,037 sq. ft. and further identified on the proposed Site Plan as Lot A located in the Residential-1 (R-1) Zoning District and in the Chesapeake Bay Preservation Act (CBPA) Overlay Zoning District; said application is seeking an exception to the CBPA of the Cape Charles Zoning Ordinance (CCZO) Section 7.7 (A3) to allow for a residential dwelling unit pursuant to CCZO Section 7.5 which provides by-right single family dwelling in the R-1 Zoning District.*

B. *An application from Dave & Pam Hainsworth for the property at the corner of Bay Avenue and Washington Avenue adjacent to the Chesapeake Bay and further described as the remaining portion of Tax Map #83A1-3-A not identified in the application above, 50% of Tax Map #83A1-3-C and all of Tax Map #83A1-3-B1 totaling approximately .84 acres or 36,933 sq. ft. and further identified on the proposed Site Plan as Lot B located in the Residential-1 (R-1) Zoning District and in the Chesapeake Bay Preservation Act (CBPA) Overlay Zoning District; said application is seeking an exception to the CBPA of the Cape Charles Zoning Ordinance (CCZO) Section 7.7 (A3) to allow for a residential dwelling unit pursuant to CCZO Section 7.5 which provides by-right single family dwelling in the R-1 Zoning District.*

Pete Baumann read the public notice.

Katie Nunez explained the applications and read the staff report.

Motion made by Dolores Blackburn, and seconded by Laura Weigand, to remove from the table the Application from Dave and Pam Hainsworth for the property at the corner of Bay Avenue and Washington Avenue adjacent to the Chesapeake Bay and further described as the majority portion of Tax Map #83A1-3-A and 50% of Tax Map #83A1-3-C totaling approximately .85 acres or 37,037 sq. ft. and further identified on the proposed Site Plan as Lot A located in the Residential-1 (R-1) Zoning District and in the Chesapeake Bay Preservation Act (CBPA) Overlay Zoning District; said application is seeking an exception to the CBPA of the Cape Charles Zoning Ordinance (CCZO) Section 7.7 (A3) to allow for a residential dwelling unit pursuant to CCZO Section 7.5 which provides by-right single family dwelling in the R-1 Zoning District. The motion was approved by unanimous vote.

Motion made by Dolores Blackburn, and seconded by Laura Weigand, to remove from the table the Application from Dave and Pam Hainsworth for the property at the corner of Bay Avenue and Washington Avenue adjacent to the Chesapeake Bay and further described as the remaining portion of Tax Map #83A1-3-A not identified in the application above, 50% of Tax Map #83A1-3-C and all of Tax Map #83A1-3-B1 totaling approximately .84 acres or 36,933 sq. ft. and further identified on the proposed Site Plan as Lot B located in the Residential-1 (R-1) Zoning District and in the Chesapeake Bay Preservation Act (CBPA) Overlay Zoning District; said application is seeking an exception to the CBPA of the Cape Charles Zoning Ordinance (CCZO) Section 7.7 (A3) to allow for a residential dwelling unit pursuant to CCZO Section 7.5 which provides by-right single family dwelling in the R-1 Zoning District. The motion was approved by unanimous vote.

PUBLIC COMMENTS

Nancy Proto, 607 Pine Street

Ms. Proto thanked the Board and Town Staff for all the time spent on these applications and added that the new proposal was okay.

William Knight, 509 Arnie's Loop

Mr. Knight was not against the proposal but, wanted to ensure the Town was considerate of the whole footprint of Cape Charles. He spoke on behalf of the Seabreeze Apartment Residents, so they were no left behind in the midst of all this wealth. Mr. Knight mentioned that senior citizens should not be forgotten.

There were no additional public comments to be heard from the members of the public in attendance. Planning Technician Tracy Outten read comments submitted in writing from Steve Handy and Claudine Pierce. (Please see attached.)

Carl Eason, attorney for Mr. and Mrs. Hainsworth, explained the changes and legalities of the applications. He thought the Cape Charles Zoning Ordinance would contradict law if it was used to deny the applications, and the circuit court case would not stand. Mr. Eason continued saying that grandfathered was not the proper term and the correct term was exception which would mean today's standards would not have to be used. He asked the board not to look at the numbers but instead the footprint of the proposals.

Greg Milstead, engineer, thanked all in attendance for their time and explained some changes as follows: (i) impervious area was reduced by seven percent (7%); (ii) second proposed paver/patio impervious area reduced by five percent (5%); (iii) the impact mitigation soil would be done for the site plan; (iv) proposed private drive would capture and treat stormwater; (v) gravel down spouts were proposed for roof run-off; (vi) bio retention beds were mentioned; and (vii) proposed buffer restoration.

Discussions and questions were as follows: (i) Katie Nunez asked the elevation of the house. Greg Milstead answered ten feet (10'). (ii) Laura Weigand wanted to know more about permeable pavement. Mr. Milstead explained permeable pavement was a porous surface with an underlying reservoir that catches surface precipitation and runoff, storing it for future infiltration in the soil or discharge in a drainage system. Ms. Weigand than asked if fertilizer run-off would affect the stormwater; no, it would be naturally cleaned. (iii) Pete Baumann inquired about the disposal of the existing cement on the beach that the Town dumped there. It would be disposed of properly. and (iv) Laura Weigand asked if the lot lines would be combined; no, the lot lines would not be changed. She than asked if the lots could be subdivided to be sold in the future; no.

John Salm, Civil Engineer, said the Resource Protection Area table showed approvals in other localities. He said the separate structures were taken off and the encroachment into the buffers was minimized. Mr. Salm did make it clear that Mr. and Mrs. Hainsworth could ask for three (3) houses to be constructed since there are three (3) distinct lots but were being generous and only asking for two (2). Attorney Carl Eason offered from his clients a worded proffer that no further development beyond two (2) homes would be constructed.

DRAFT

After extension discussion by the board members a motion was made by Dolores Blackburn, seconded by Jim Holloway, to approve the amended Applications A and B from Dave and Pam Hainsworth to allow an exception to the CBPA of the Cape Charles Zoning Ordinance (CCZO) Section 7.7 (A3) to allow for two residential dwelling units as presented in the amended application with the condition that there be no further development of a family dwelling or residience on Tax Map #B3A1-3-A1, which was a condition also offered by the applicants by their attorney Carl Eason, and to include as part of the vegetation plan for Lot B the enhanced vegetation plan nearest the Bay pursuant to CCZO Section 7.5.; this exception vote by the Board of Zoning Appeals will be recorded with the Clerk of Courts as a condition to these three tax parcel numbers. The motion was approved by unanimous vote.

NEW BUSINESS - PUBLIC HEARING
There was no new business to discuss.

OTHER BUSINESS
There was no other business to discuss.

NEXT MEETING
There were no applications filed for the October 11, 2022 meeting.

Motion made by Jim Holloway, seconded by Dolores Blackburn, to adjourn the Board of Zoning Appeals Public Hearing and Meeting at 11:59 a.m. The motion was approved by unanimous vote.

_____
Vice-Chairman Pete Baumann

_____
Planning Technician

DRAFT

September 13, 2022 Board of Zoning Appeals Public Hearing Comments

Steve Handy and Claudine Pierce, 10 Tazewell Avenue, Cape Charles

FROM: Stephen M Handy and Claudine H Pierce
10 Tazewell Ave
Cape Charles, Va 23310

TO: Town of Cape Charles
Planning and Zoning
Attn: Katie Nunez - Zoning Administrator
Cape Charles, Va 23310

Dear Ms. Nunez,

We are full time residents of the Cape Charles Historic District and are writing to you in support of the proposed development by Dave and Pam Hainsworth at the Old Ferry Dock, Lot A & B at Bay Ave and Washington Ave on the waterfront.

It appears the proposed development plan is consistent with the development already in place at the nearby Bay Vistas development but with the proposed building set back not crossing the Seaward line. The siting of the proposed houses is well back from the shore allowing for extensive waterside landscaping and erosion prevention measures. This site is currently unprotected from erosion and will continue to deteriorate without the installation of measures proposed by the Hainsworth's. This will protect and improve water quality, a provision of the Chesapeake Bay Act, vs. the current erosion scenario, as well as beautify an otherwise overgrown vacant lot.

The staggered siting of the proposed structures will have a minimum impact on the Washington Ave. frontage with the second structure set well back from the street. We don't see this second structure as having a negative visual impact or adding significantly to development complications as long as storm water run off is properly addressed.

We feel the well planned development proposed by the Hainsworth's will address a neglected historic corner of Cape Charles. The site of the old ferry dock should not be allowed to continue to wash into the bay and this development will help preserve the property for the future. We're sure the Hainsworth's will work with the Cape Charles Historic Board to create homes in keeping with the historic town and be an example of how to reimagine an otherwise forgotten area of Cape Charles. Surely an asset to the town and all of us who live here.

Sincerely,

Steve Handy and Claudine Pierce

TOWN OF CAPE CHARLES
Notice of Public Hearing – Variance Request

The Cape Charles Board of Zoning Appeals will hold a public hearing on Tuesday, January 10, 2023, at 10:00 am, in the Cape Charles Civic Center, 500 Tazewell Avenue, to receive public comment on the following:

A. An application from Dave Padavana for a variance of 4 ft 4 inches of the rear yard setback at 112 Churchill Downs (Tax Map #90-6-7) pursuant to the Cape Charles Zoning Ordinance (CCZO), Appendix: Accacwmacke Plantation Planned Unit Development Ordinance (PUD), Article 4.2 (E) (2) for a single-family dwelling; purpose is for the addition of an open porch addition; property zoned the PUD R-2 District.

The application is available for public review on our website at www.capecharles.org. Please contact Town Planner/Zoning Administrator Katie Nunez at 1-757-331-2036, 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.

BOARD OF ZONING APPEALS
STAFF REPORT

Meeting Date: January 10, 2023
Item #: 2b – Variance
Prepared by: Katie H. Nunez, Planning/Zoning Administrator

APPLICANT: Dave Padavana
SITE ADDRESS: 112 Churchill Downs

TAX MAP: 90-6-7

LOT SIZE: 6,869 sq. ft.

TYPE OF APPLICATION: Variance
SPECIFIC REQUEST: 4 ft 4 in.. variance from rear yard setback of 20 ft. for an open porch
ZONING: Accawmacke Plantation Planned Unit Development (PUD) Article 4.2 (E) (2)
CURRENT ZONING: PUD R-2

DATE RECEIVED: December 14, 2023
DATE DEEMED COMPLETE: December 14, 2022
LEGAL DEADLINE (90 Days from Complete Application – Directory, not Mandatory): March 16, 2023

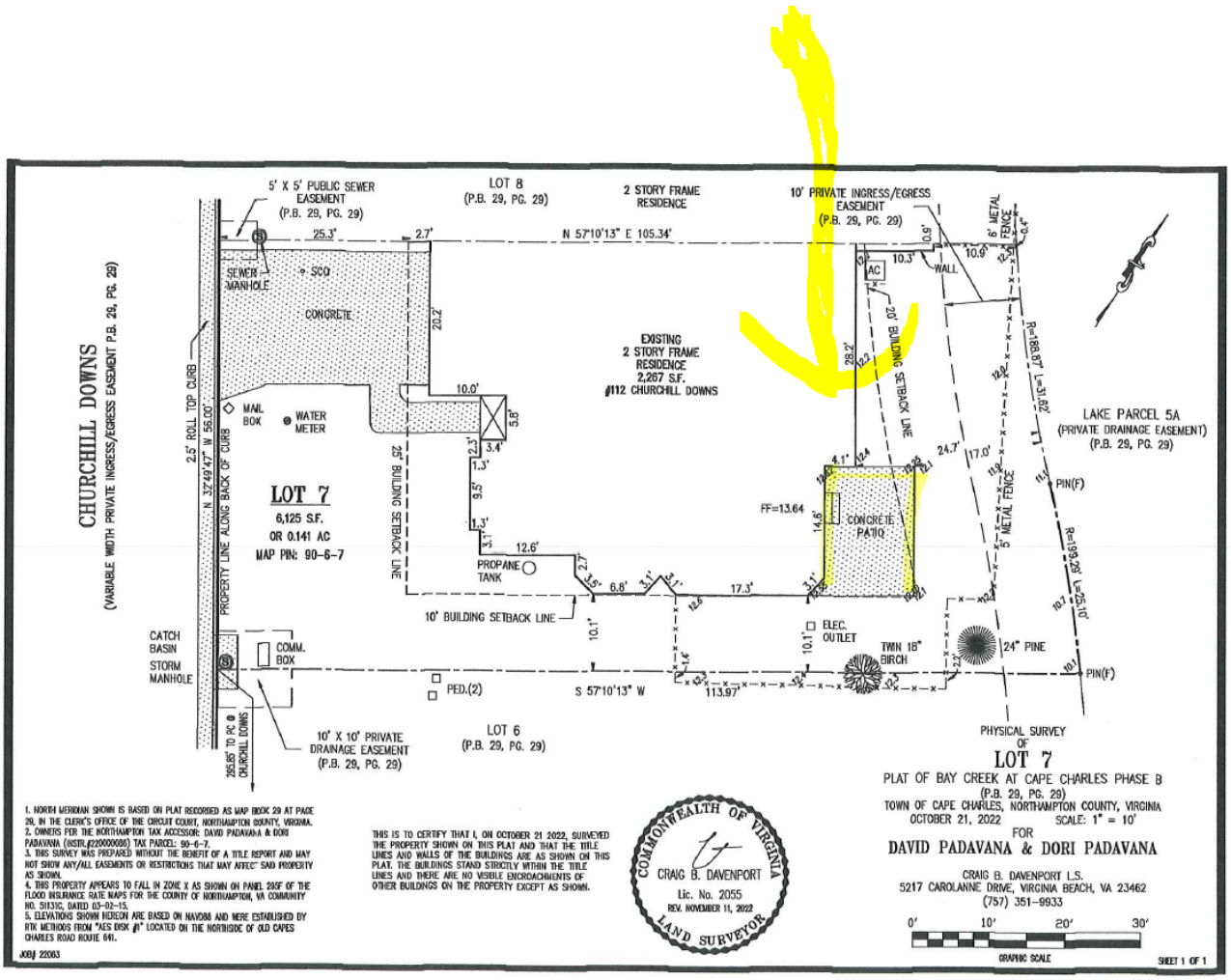
NARRATIVE OF PROPOSAL

The applicant is seeking to add an open 14.6 ft x 12 ft porch addition over existing concrete terrace at the south end at the rear of the house which would encroach into the rear setback by 4 ft 4 inches. This lot is located in the New Quarter subdivision within Bay Creek and falls under the Accawmacke Plantation Planned Unit Development (PUD) which is an appendix to the Cape Charles Zoning Ordinance.

This rear porch would require relief of 4 ft 4 inches from the rear yard setback of 20 ft to allow for a 15-ft. 8 inch setback to the rear property line, pursuant to PUD Article 4.2 (E) (2).

AERIAL MAP

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



ORDINANCE REQUIREMENTS TO BE CONSIDERED:

(a) Does the evidence show that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance?
The lot is legally sized per the PUD and there is a house which was constructed in 2002. The applicant is seeking to add a 175 sq. ft open-air porch/patio to the rear of the house of which approximately less than 40 sq. ft would be in the rear setback. The lot has not been restricted from being developed with a single-family dwelling. The addition of exterior, seasonal living space is being sought approximately 20 years after the house was constructed which was not part of the original house plan. The addition of a additional

patio/porch area is not an unreasonable request for an older home; the only limitation is the space on the lot available for the placement of this seasonal porch.

(b) Was the property interest for which the variance is being requested acquired in good faith and any hardship was not created by the applicant for the variance? The property was purchased by the applicant in January 2022 and are seeking some minor improvements to the property and did not create the hardship.

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

(d) Is the condition or situation of the property concerned not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance?
This appears to be a fairly rare case and does not support the consideration of the formulation of a general regulation to the ordinance.

(e) Does the granting of the variance result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property?
The addition of an open-air porch is appropriate and legal per the ordinance.

(f) Is the relief or remedy sought by the variance application not available through a special exception process that is authorized in the ordinance or the process for modification of a zoning ordinance at the time of the filing of the variance application?
No. The variance is necessary.

DISCUSSION POINTS:

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

BZA REVIEW:

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

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

STAFF RECOMMENDATION:

Staff recommends that the BZA consider the items that have been raised in this report and consider the request at hand. The staff would recommend that the application be approved based upon the points

raised in this staff report, specifically in the section called "ORDINANCE REQUIREMENTS TO BE CONSIDERED".

Please note that the property with this request needs to achieve zoning clearance before the application can be submitted and reviewed by the Architectural Review Committee (ARC). The ARC has been informed that this application has been submitted to the BZA seeking a variance of 4 ft 4 inches from the rear setback requirement.

PROPOSED MOTION FOR CONSIDERATION:

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

> ***After careful consideration of the application and the staff report, the Board of Zoning Appeals votes to approve the Variance Application from David Padavana of 112 Churchill Downs (Tax Map #90-6-7) for a 4 ft 4 inch variance to the rear yard setback requirement of 20 ft. pursuant to Accawmacke Plantation PUD Article 4.2 (E) (2) for a screened-in porch based upon the reasons outlined in the Staff Report "Ordinance Requirements to be Considered".***

Attachments:

Attachment 1 – Application and Documents

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

$500.00 - App. Deadline 12/14 for the 1/10/2023 BZA Mtg. @ 10:00am.

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
- ☑ Letter of intent clearly explaining project
- ☐ Existing site plan or survey
- ☐ Proposed site plan or survey (if applicable)
- ☑ Photos/elevations of existing structure
- ☑ Photos/elevations of proposed project
- ☑ Payment of fees (single-family detached ~~$450~~ $500, all others $750, each additional variance request on same application $50)

PROJECT INFORMATION

Name of Project: PADAVANA RESIDENCE PORCH ADDITION

Property Address: 112 CHURCHILL DOWNS

Brief Description of Project: OPEN PORCH ADDITION OVER CONCRETE TERRACE

Zoning District: NEW QUARTER Current Use: _____ Proposed Use: _____

OWNER INFORMATION

Name and Company: _____

Mailing Address: _____

Phone Number: _____ Email: _____

APPLICANT INFORMATION

☒ check here if applicant is owner

Name: David Padavana

Mailing Address: 112 Churchill Downs

Phone Number: 757-589-5755 Email: dapad@outlook.com

****

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: 12/9/22

Paid $500.00 Check #302.

VARIANCE APPLICATION

December 9, 2022

PADAVANA RESIDENCE
112 CHURCHILL DOWNS
CAPE CHARLES VA

OPEN PORCH ADDITION

Description of Work:

The proposed open porch addition will be at the south end of the back of the house and will be over existing concrete terrace. It's location, size, and gable roof will match other sunrooms and screened porches in the New Quarter neighborhood of Bay Creek. The perimeter of the floor will align above the terrace edges and the two east side posts and step will extend on foot beyond the terrace edge to allow for post foundations. The horizontal cornice and gutter on the south side of the roof will align with those elements on that side of the house, and the roof pitches will match the existing house roof. The schematic design drawings provide additional information.

A copy of this Variance will be part of the Final Formal Application to Bay Creek's ARC for their consideration.

Thank you,

Dave Padavana
Homeowner
757.589.5755

BAY CREEK

Architectural Review Committee Application

2. CONCEPTUAL (optional)

Village: New Quarter Lot: 6 Date: 8-22-22
Street Address: 112 Churchill Downs

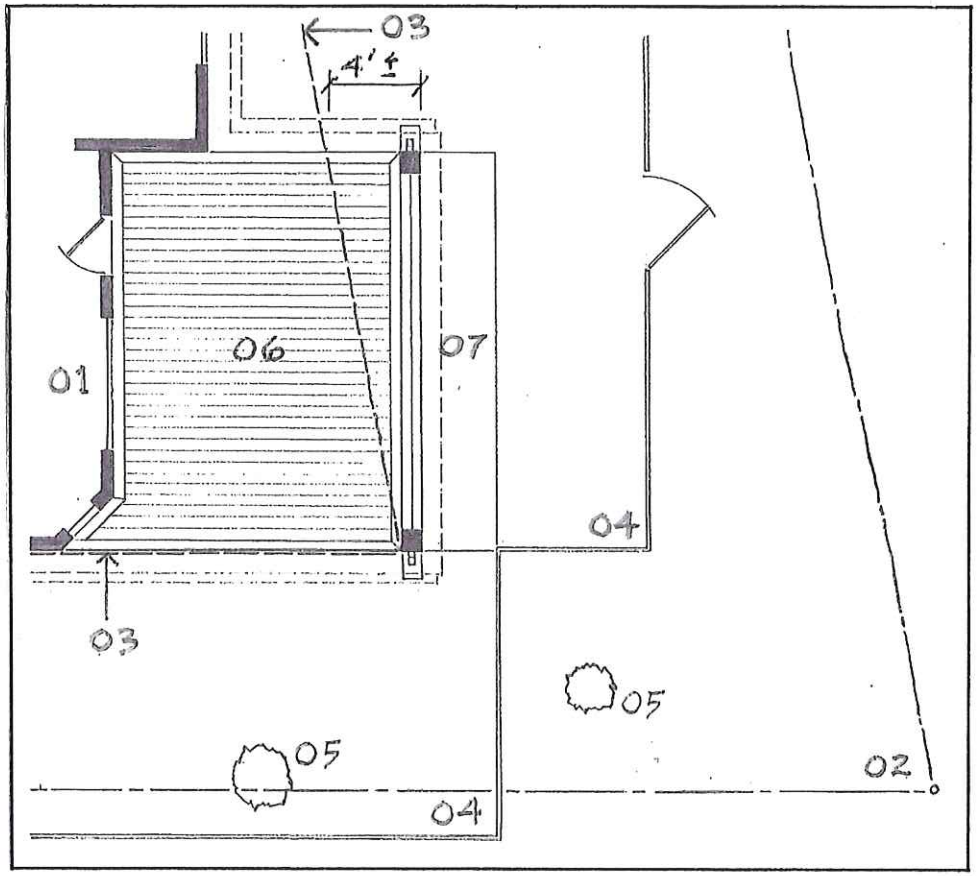
Applicant: David & Dori Padavana	Phone: 757-589-5755	Email: Dapad@outlook.com
Builder: Homeowners	Phone: 757-589-5755	Email: dapad@outlook.com
Designer: The Lindsay Studio	Phone: 757-695-3823	Email: E.eichman@lindsaystudio.net
Sales Agent: Shanna Colls	Phone: 757-331-8742	Email: scolls@baycreeklife.com

Mark the right hand column of each requirement to indicate its inclusion in your submittal.

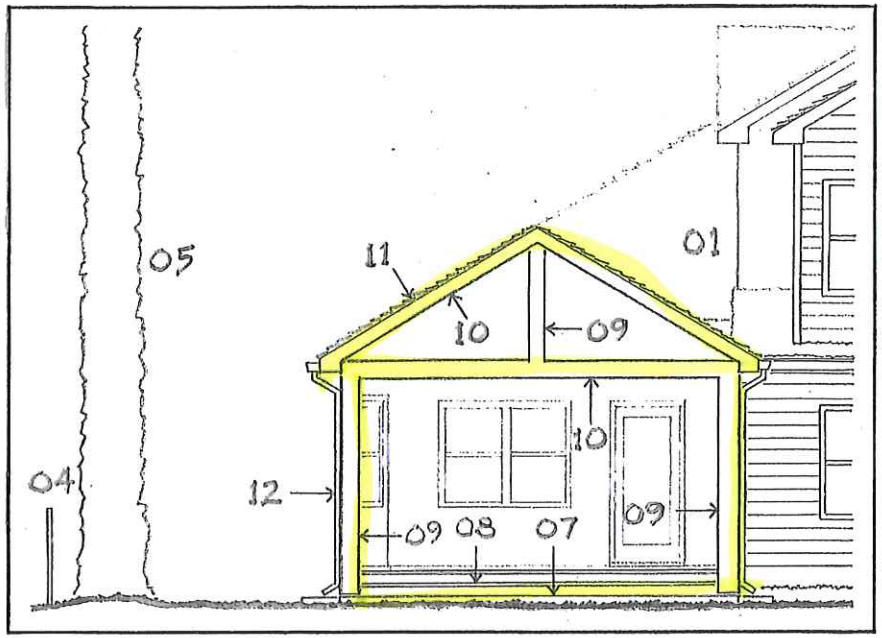
Choose One: 1. Application for **NEW HOME CONSTRUCTION** 2. Application for **MODIFICATION** to existing structure or landscaping	✔
a. Visual rendering / sketch / photo of concept	✔
b. Plat or Site plan with overlayed scaled project footprint	✔
c. Project dimensions	✔

3. Explain in detail your concept:

The proposed Open Porch Addition will be at the South end of the back of the House, and it will be over the existing concrete Terrace. Its Location, Size, and Gable Roof will match other Sunrooms and Screened Porches in New Quarter. The perimeter of the Floor will align above the Terrace Edges, and the two East Side Posts and Step will extend one foot beyond the Terrace edge to allow for Post Foundations. The horizontal Cornice and Gutter on the South Side of the Roof will align with those elements on that side of the House, and the Roof pitches will match the existing House Roof. The *Schematic Design Drawings provide additional information.*



PORCH and YARD PLAN
one inch = eight feet



EAST PORCH ELEVATION
one inch = eight feet

LEGEND

01 Existing Residence
02 Existing Lot Lines
03 Existing Setback Lines
04 Existing Fence
05 Existing Tree
06 Proposed Porch
07 Proposed Sidewalk
08 Porch Step
09 Porch Post
10 Porch Beam
11 Porch Roof
12 Gutter/Downspout

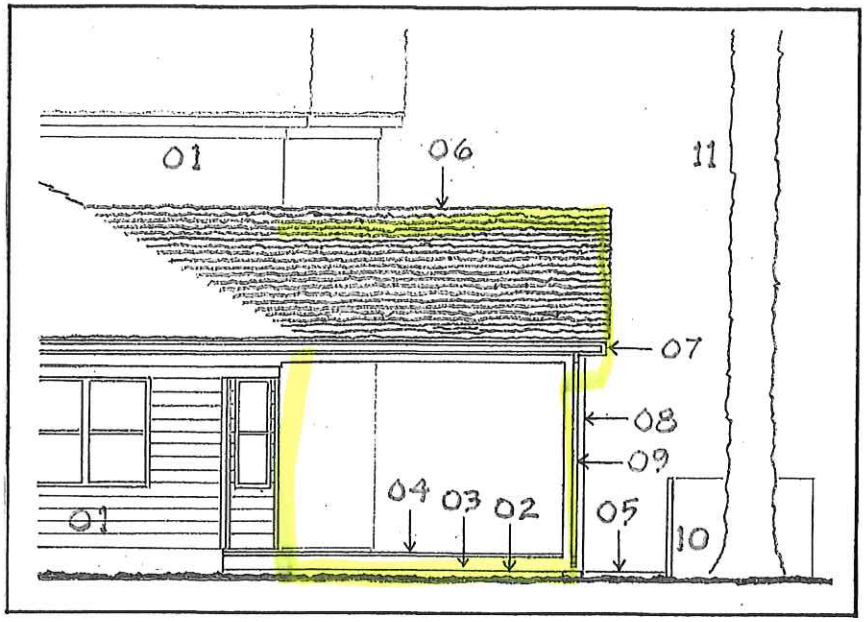
Numbers on Drawings
match Legend Numbers

PADAWANA RESIDENCE
PORCH ADDITION
112 Churchill Downs
Cape Charles, Virginia 23310

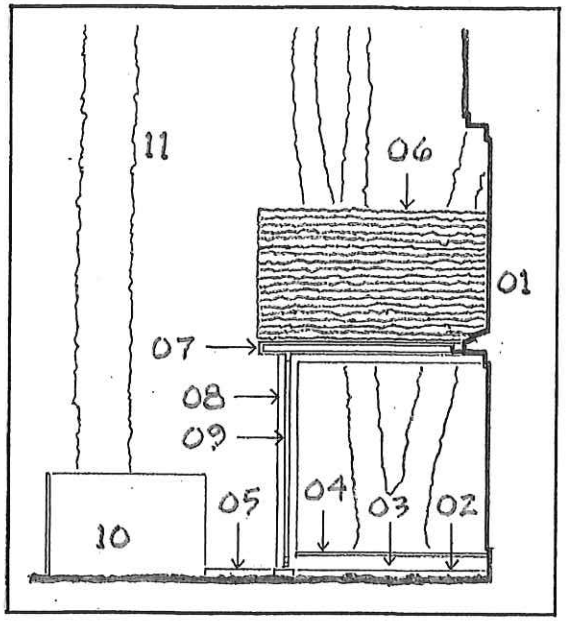
The Lindsay Studio L.L.C.
110 Churchill Downs
Cape Charles, Virginia 23310

3 December 2022

ONE



SOUTH PORCH ELEVATION
one inch = eight feet



NORTH PORCH ELEVATION
one inch = eight feet

LEGEND

01 Existing Residence
02 Existing Patio
03 Porch Fascia
04 Porch Floor
05 Sidewalk
06 Porch Roof
07 Porch Cornice
08 Porch Post
09 Gutter/Downspout
10 Existing Fence
11 Existing Tree

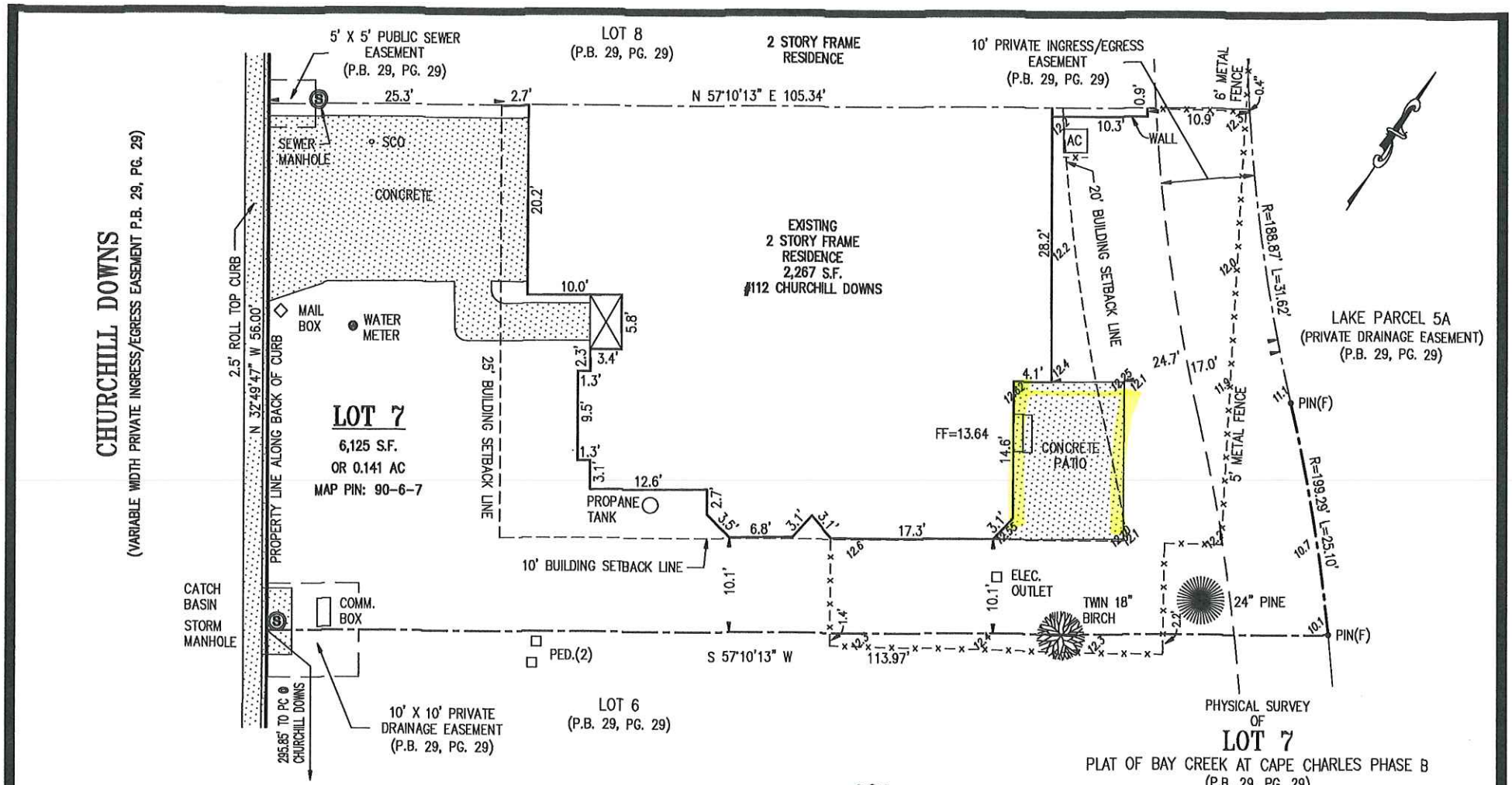
Numbers on Drawings match Legend Numbers

PADAVANA RESIDENCE
PORCH ADDITION
112 Churchill Downs
Cape Charles, Virginia 23310

The Lindsay Studio L.L.C.
110 Churchill Downs
Cape Charles, Virginia 23310

3 December 2022

TWO



1. NORTH MERIDIAN SHOWN IS BASED ON PLAT RECORDED AS MAP BOOK 29 AT PAGE 29, IN THE CLERK'S OFFICE OF THE CIRCUIT COURT, NORTHAMPTON COUNTY, VIRGINIA.
2. OWNERS PER THE NORTHAMPTON TAX ACCESSOR: DAVID PADAVANA & DORI PADAVANA (INSTR.#220000086) TAX PARCEL: 90-6-7.
3. THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND MAY NOT SHOW ANY/ALL EASEMENTS OR RESTRICTIONS THAT MAY AFFECT SAID PROPERTY AS SHOWN.
4. THIS PROPERTY APPEARS TO FALL IN ZONE X AS SHOWN ON PANEL 295F OF THE FLOOD INSURANCE RATE MAPS FOR THE COUNTY OF NORTHAMPTON, VA COMMUNITY NO. 51131C, DATED 03-02-15.
5. ELEVATIONS SHOWN HEREON ARE BASED ON NAVD88 AND WERE ESTABLISHED BY RTK METHODS FROM "AES DISK #1" LOCATED ON THE NORTHSIDE OF OLD CAPES CHARLES ROAD ROUTE 641.

JOB# 22063

THIS IS TO CERTIFY THAT I, ON OCTOBER 21 2022, SURVEYED THE PROPERTY SHOWN ON THIS PLAT AND THAT THE TITLE LINES AND WALLS OF THE BUILDINGS ARE AS SHOWN ON THIS PLAT. THE BUILDINGS STAND STRICTLY WITHIN THE TITLE LINES AND THERE ARE NO VISIBLE ENCROACHMENTS OF OTHER BUILDINGS ON THE PROPERTY EXCEPT AS SHOWN.

COMMONWEALTH OF VIRGINIA
CRAIG B. DAVENPORT
Lic. No. 2055
REV. NOVEMBER 11, 2022
LAND SURVEYOR

PHYSICAL SURVEY OF

LOT 7

PLAT OF BAY CREEK AT CAPE CHARLES PHASE B
(P.B. 29, PG. 29)
TOWN OF CAPE CHARLES, NORTHAMPTON COUNTY, VIRGINIA
OCTOBER 21, 2022 SCALE: 1" = 10'

FOR

DAVID PADAVANA & DORI PADAVANA

CRAIG B. DAVENPORT L.S.
5217 CAROLANNE DRIVE, VIRGINIA BEACH, VA 23462
(757) 351-9933

0' 10' 20' 30'
GRAPHIC SCALE

SHEET 1 OF 1

ACCAWMACKE PLANTATION PUD

Adopted February 9. 2003 & subsequently amended

ARTICLE 4.2

R-2 LAND USE CLASSIFICATION (MEDIUM DENSITY RESIDENTIAL)

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

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

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

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

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

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

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

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

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

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

1. Minimum Lot Requirements.

	Single Family Dwelling	Patio Dwelling	Duplex Dwelling	Zero Lot Line Dwelling
Lot area (sq. ft.)	6,000	6,000	10,000	6,000
Lot width (feet)	50	50	60	50
Lot depth (feet)	85	85	85	85
2. Minimum Yard Requirements.				
Front yard (feet)	25	25	25	25
Side yard (feet)	5 & 10	5*	10	0 & 10
Side yard-corner (feet)	20	10*	20	0 & 20
Rear yard (feet)	20	20	20	20
3. Maximum Building Height.				
Vertical measure (feet)	40	40	40	40

**modified January 14, 2003*

4. Bufferyards. Where R-2 Land Use Classifications adjoin R-1 Land Use Classifications within the PUD, bufferyards are required as follows:

a. When a zoning lot within an R-2 Land Use Classification adjoins an R-1 Land Use Classification, the following shall be required along all lot lines within the R-2 Land Use Classification adjoining the R-1 Land Use Classification:

i) A 50 foot separation of road right-of-way, golf, lake, drainage easement, or natural feature; or

ii) A 50 foot bufferyard exclusive of any other yard requirements, landscaped by a Category I landscape screening in accordance with Appendix A.

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

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