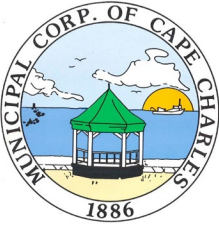


Board of Zoning Appeals
Regular Meeting
Cape Charles Civic Center – 500 Tazewell Avenue
August 13, 2024 @ 10:00 A.M.

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. January 9, 2024
5. Old Business/Matters Deferred from Previous Meetings: NONE.
6. New Business – Public Hearing:
 - A. An application from Paul Chandler appealing the decision from the Zoning Administrator dated May 31, 2024, which cited that 204 Bay Avenue was in violation of Cape Charles Zoning Ordinances as follows:
CCZO Section 2.4.2 (A) (1)
CCZO Section 2.4.3 (1)
CCZO Section 8.16
CCZO Section 8.17

Said appeal application is authorized pursuant to Cape Charles Zoning Ordinance Section 2.6.2 (C) & 2.6.4. The property is located in the Residential-1 (R-1) Zoning District.
7. Other Matters
8. Next Meeting - Tuesday, October 8, 2024 @ 10:00 am
9. Adjourn

Agenda Item 4(A)
Review and Approval of
Minutes



**Board of Zoning Appeals
Public Hearing & Meeting
Cape Charles Civic Center
January 9, 2024
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, Laura Weigand, and Dolores Blackburn. Also, present was Planning & Zoning Administrator Katie Nunez.

Chairman Bill Murphy led the recitation of the Pledge of Allegiance.

ELECTION OF OFFICERS

Member Blackburn nominated Member Holloway as Chairman and Member Weigand nominated Member Blackburn as Chairman. Member Blackburn got 3 votes while member Holloway got 2 votes.

Member Weigand nominated Member Holloway as Vice-Chairman and was seconded by Member Murphy. There were no other nominations for Vice-Chairman.

Ms. Nunez mentioned that Maureen Tamares-Meditz part-time Planning & Zoning Administrative Assistant will act as the Secretary until the Zoning Compliance Officer position is filled again.

CONSENT AGENDA

Motion made by Member Holloway was seconded by Member Weigand to accept the agenda as presented. The motion was approved by unanimous vote.

MINUTES

Motion made by Member Baumann to approve the minutes from the June 13, 2023 meeting, seconded by Member Weigand. The motion was approved by majority vote with Member Blackburn abstaining.

OLD BUSINESS/MATTER DEFERRED FROM PREVIOUS MEETINGS

There was no old business to discuss.

NEW BUSINESS

2023 Annual Report. Ms. Nunez presented the Annual Report. The following corrections were pointed out (i) Change the name of Vice-Chairman to Dolores Blackburn. (ii) Correct the meeting dates on the meeting table on page 4.

Motion made by Member Blackburn was seconded by Member Holloway to accept the 2023 Annual Report with corrections as amended. The motion was approved by unanimous vote.

Review Bylaws: BZA Rules of Procedure and Addition of Remote Meeting Participation Policy.

Motion made by Member Murphy was seconded by Member Holloway to amend BZA Rules of Procedure and Remote Meeting Participation Policy. The motion was approved by unanimous vote.

2024 Training Opportunity – Certified BZA Program. There were discussion about this and members expressed their interest in participating and will let the department know if they will be joining in person or virtually. Ms. Nunez mentioned that she will be happy to share some of the reading materials that she has from the previous class she attended.

NEXT MEETING

March 12, 2024 at 10:00 a.m.

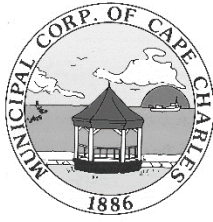
Motion made by Member Holloway, seconded by member Blackburn, to adjourn the Board of Zoning Appeals Public Hearing and Meeting at 10:33 a.m. The motion was approved by unanimous vote.

Chairman Bill Murphy

**Director of Planning/Zoning Administrator
& Subdivision Agent**

Agenda Item 6(A)

Staff Report-Appeal of Zoning
Administrator Determination on
204 Bay Avenue



BOARD OF ZONING APPEALS

Meeting Date: August 13, 2024

Item #5A: – Appeal of Zoning Administrator Determination

Prepared by: Katie H. Nunez, Planning Director & Zoning Administrator

TYPE OF APPLICATION: Appeal of Zoning Administrator Determination/ Notice of Violation issued on 5/31/2024

APPELLANT: Paul Chandler

SITE ADDRESS: 204 Bay Avenue.
Tax Map #83A3-3-1

COUNSEL FOR APPELLANTS:

LOT SIZE: 12,565 sq. ft.

CURRENT ZONING: Residential-1
With an Overlay District of Historic District

ZONING ORDINANCE: Sections 2.4.2(A);
2.4.3; 8.16; & 8.17

DATE RECEIVED : June 28, 2024, 2023

DATE DEEMED COMPLETE : June 28, 2024, 2023

LEGAL DEADLINE (90 Days from Complete Application – Directory, not Mandatory): **August 28, 2024**

SUMMARY OF APPEAL

The Appellant is appealing the May 31, 2024, Zoning Administrator Notice of Violation letter (part of **EXHIBIT A**) which cited the appellant for the unauthorized removal and replacement of the roof and installing flashing to a chimney without obtaining permits prior to any work commencing. Said Notice of Violation letter contained the following Corrective Order and Penalties:

- 1) No work may proceed at 204 Bay Avenue without a Certificate of Appropriateness and any permit as may be required by the Zoning Administrator and Code Official.
- 2) A Certificate of Appropriateness Application for Roof and supporting documents: **This was completed and submitted by the appellant on 5/31/2024 without the required fee for the application which is \$500.**
- 3) Based upon the Zoning Ordinance for violations, the Town, pursuant to Cape Charles Zoning Ordinance Section 2.4.3, will be pursuing all remedies available under the law, including filing with the District Court of Northampton County a Notice of Violation for each of the listed Zoning Ordinance violations which may result in you being found guilty of a Class IV misdemeanor and the imposition of fine of \$250 per each zoning violation.
- 4) Payment for Working without an Approved and Active Certificate of Appropriateness (COA) or After the Fact Permit Fee of \$1,000.
- 5) By June 14, 2024, submit to the Planning & Zoning office a COA – Roof and payment of \$500 along with payment for the penalty fee of \$1,000.

The appellant does not believe he is in violation of Section 2.4.2 (A) since the Building Official ruled that a building permit was not required for the scope of work undertaken at 204 Bay Avenue.

The appellant does not believe that he is violation of Section 2.4.3 since the work undertaken on the roof was maintenance and is exempt from this code section.

The appellant does not believe that he is in violation of Section 8.16 because the work does not qualify as substantial alteration required HDRB review.

Therefore, he does not believe that any permit or approval was needed from the Town for the scope of work for 204 Bay Avenue which was for reroofing (original roof material was slate and copper & proposed roofing material was slate, copper and .032 baked-on enamel aluminum) and adding of new gutters and downspouts.

CODE OF VIRGINIA Requirements to be considered:

A. Section 15.2-2309. Powers and duties of boards of zoning appeals.

Boards of zoning appeals shall have the following powers and duties

1. To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto. The decision on such appeal 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 specific.

B. Section 15.2-2311. Appeals to board (in part).

A. An appeal to the board may be taken by any person aggrieved or by any officer, department, board or bureau of the locality affected by any decision of the zoning administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this article, any ordinance adopted pursuant to this article, or any modification of zoning requirements pursuant to § 15.2-2286.

CAPE CHARLES ZONING ORDINANCE REQUIREMENTS TO BE CONSIDERED

A. Section 4.2.2 (A) - PERMITS

A. Building Permits

1. No building or structure shall be erected, constructed, altered, moved, converted, extended, enclosed, or enlarged without the owner first having applied for and obtained a

zoning clearance for a building permit from the Town's Zoning Administrator. Such zoning clearance shall be obtained prior to the application for a building permit from the Cape Charles Building Department. Nothing herein is intended to prevent normal maintenance, which does not require a building permit.

2. The Zoning Administrator shall certify whether the proposed use, structure, alteration, or enlargement is or is not in conflict with the provisions of this Chapter. If such proposal conflicts with the provisions of this ordinance, the Zoning Administrator shall refuse to issue such zoning clearance for a building permit.

3. The fee for a building permit shall be governed by ordinance.

4. Pursuant to the authority contained in §15.2-2286, 15.B. of the Code of Virginia of 1950, as amended, prior to the initiation of an application for a special exception, conditional use permit, variance, rezoning or other land disturbing permit, including building permits and erosion and sediment control permits, all delinquent real estate taxes owed to the Town against the property shall be paid in full.

B. Section 2.4.3 Violation and Penalty

A. Violations

1. It shall constitute a violation of this ordinance for any person, either owner, agent, or occupant, to commence any actions for which a permit is required by this ordinance without having first obtained an approved permit. Any such permit issued upon a false statement of any fact which is material to the issuance thereof shall be void. Whenever the fact of such false statement shall be established, the Zoning Administrator shall forthwith revoke the same permit by notice in writing to be delivered to the holder of the void permit or, if such holder cannot be found, by posting such notice of revocation in some conspicuous place upon the premises where the violation has occurred. Any such person who shall proceed thereafter with such work or use without having obtained the proper approved permit in accordance with this ordinance shall be deemed guilty of a violation of this ordinance.

2. If the Zoning Administrator finds that any of the provisions of this ordinance are being violated, he/she shall notify in writing the person responsible for the violation, indicating the nature of the violation and ordering action necessary to correct the violation. The Zoning Administrator shall take any other action authorized by law to ensure compliance with or to prevent further violation of this ordinance.

3. Any person, firm, or corporation, whether as principal, agent, employee, or otherwise, violating, causing, or permitting the violation of any of the provisions of this ordinance shall be guilty of a Class IV misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than ten dollars (\$10) for each violation and not more than two hundred and fifty dollars (\$250). Each day such violation shall continue shall constitute a separate violation.

4. Any official or public employee authorized of this jurisdiction who is vested with the duty of authority to issue permits shall conform to the provisions of this ordinance. Any such permit, if issued in conflict with the provisions of this ordinance, shall be canceled in writing.

C. Section 8.16 Approval of Historic District Review Board Required

A. Except as herein otherwise provided in this article, no building or structure, including signs, shall be erected, reconstructed, restored, or substantially altered in exterior appearance and no contributing buildings or structures shall be razed or demolished within a historic district and no permit authorizing same shall be granted unless and until the same is approved by the Historic District Review Board and a Certificate of Appropriateness has been issued by that body, with right of direct appeal to the Town Council as hereinafter provided, as being architecturally compatible with the historical, cultural, and/or architectural aspects of the structure and its surroundings.

B. Contributing accessory structures will be treated as contributing structures only under the following conditions:

- 1. It is on a permanent foundation; and*
- 2. It is of sufficient square footage that a new structure of that type would require a building permit; and*
- 3. It is not being used as, or being considered for, accessory dwelling units.*

C. "Substantial alterations" shall be defined as any and all work done on buildings, structures, or sites in a historic district other than those specifically exempted herein:

1. General examples of "non-substantial" alterations:

- a. Work done to prevent deterioration or to replace parts of a structure with similar materials in order to correct any deterioration, decay of, or damage to any structure or on any part thereof, or*
- b. To restore same as nearly as practical to its condition prior to such deterioration, decay, or damage.*

2. Examples of work not constituting "substantial alteration" include those minor actions exempted from review by §8.16 of this article.

3. General examples of work constituting "substantial alterations" include:

- a. Construction of a new building at any location or a new permanent accessory building requiring a building permit on a landmark or contributing property or on a site within the Historic District.*
- b. Any addition to or alteration of a building which increases the square footage of the building or otherwise alters substantially its size, height, contour, or outline.*
- c. Any alteration of the exterior architectural style of a structure or its significant elements; some examples being removal or rebuilding of porches, openings, dormers, window sashes, chimneys, columns, stairways, terraces, decks, fences, or any other structural elements.*
- d. Addition to or removal of one or more stories or alteration of a roof line.*
- e. Any other major actions not specifically covered by the terms of this section, but which would have an effect on the character of the historic district.*

D. In any case in which there might be some question as to whether a project may be exempted from review, may constitute a minor action, or may constitute "substantial alteration," the Zoning Administrator shall be contacted for an interpretation prior to commencement of work.

D. Section 8.17 Certain Minor Actions Exempted from Review by the Historic District Review Board

Within the Historic District certain minor actions which are deemed not to have permanent effects upon the character of the historic district are exempted from review for architectural compatibility by the Historic District Review Board. Such actions shall include the following and any similar actions which in the opinion of the Zoning Administrator will have no more effect on the character of the district than those listed:

- A. Repainting the structure. (Original painting of masonry surfaces is not exempted from review.)*
- B. Replacement of missing or broken windowpanes, roofing slates, tiles, porch floor, posts, rails, shingles, window frames, or shutters where no substantial change in design or material is proposed.*
- C. Addition or deletion of storm doors or storm windows, window gardens, or similar appurtenances and portable air conditioners located in existing windows, doors, or other existing wall openings (if no building permit is required for such addition or deletion).*
- D. Addition or deletion of television and radio antennas or skylights and solar collectors in locations not visible from a public street or a waterway.*
- E. Landscaping involving minor grading, walks, low retaining walls, temporary fencing, fencing immediately surrounding trash receptacles or outdoor ventilation units, small fountains, outdoor showers, and ponds which will not substantially affect the character of the property and its surroundings.*
- F. Construction of off-street loading areas and off-street parking areas.*
- G. Creation of outside storage in a commercial or industrial district which does not require structural changes or major grading and is not visible from a public street or waterway.*
- H. Additions or deletions to an existing building which are not visible from a public street or sidewalk. Alleys in this context are not to be considered public places.*
- I. Covered by other zoning ordinance requirements as administrated by the Zoning Administrator unless altered by the overlay ordinance.*
- J. Receiving historic preservation tax credits through state or federal offices.*
- K. Demolition of non-contributing buildings or structures.*
- L. Alterations or repairs made to a building or structure for the purpose of temporary emergency stabilization.*

ZONING ADMINISTRATOR's response to the appellants' arguments and POSITION:

The Zoning Administrator is responsible for administering the entire Zoning Ordinance, including the Historic District Overlay. Zoning Clearance is required for any new uses, structures, work or compliance with all provisions of the Zoning Ordinance; said zoning clearance is required to accompany any building permit issuance as well as the Historic District review and approval. The house at 204 Bay Avenue is a contributing structure in the Historic District.

The appellant reroofed a component of the roofing structure for 204 Bay Avenue and used some different material for that; in addition, the appellant added new elements to the house of gutters and downspouts - these required application to the department and a review by the Zoning Administrator

to determine the type of work and what level of review was required pursuant to Chapter 8 – Historic District Overlay and their accompany guidelines prior to any work commencing.

Based upon the pictures provided by the appellant when he was first contacted by the office, I agreed that replacement of the roof was necessary to prevent further damage to the structure and would fall under Section 8.17 as minor work. Once the appellant provided information about the square footage of roof replacement involved then the Building Official, then the Building Official ruled that no building permit is required.

The addition of gutters and downspouts was a new element that was being added to the house and required a permit under Chapter 8 – Historic District Overlay which could be issued administratively but still required a Certificate of Appropriateness and Zoning Clearance before any work commenced.

The appellant informed the Town after the fact that the work was completed, and no approvals had been obtained from the Town, as noted in the Notice of Violation.

While the appellant immediately completed and submitted the Certificate of Appropriateness application to the Town when he was informed of the Notice of Violation, he did not provide the accompanying application fee of \$500 as well as the Working without a Permit Fee or what is also called After the Fact Fee of \$1,000.

An application is not deemed complete without payment of the fee and any violation fees that may be pending on a property.

Therefore, the Notice of Violation that was issued on 5/31/2024 remains in effect and no permit has been issued for the work that occurred on this property.

Discussion Points:

1) **Has evidence been provided by the appellant which proves the Zoning Administrator's application of the Zoning Ordinance was incorrect?**

PROPOSED MOTION FOR CONSIDERATION:

The Zoning Administrator respectfully requests that the BZA deny the appeal and uphold the May 31, 2024, Notice of Violation based upon the Zoning Administrator's decision was correct in the application and enforcement of all of the provisions of the Zoning Ordinance relative to the Scope of Work conducted at 204 Bay Avenue as stated in the May 31, 2024, Certificate of Appropriateness application.

Attachments:

Appeal Packet filed by Paul Chandler of the Zoning Administrator decision of May 31, 2024

204 Bay Avenue Appeals Packet



Board of Zoning Appeals Application for Appeal of Administrative Zoning Decision

Planning & Zoning Department
2 Plum Street; Cape Charles, VA 23310
757-331-3259 x24

planningtech@capecharles.org

Revised 03/2023

Taxes	<i>paid</i>
Violations	<i>1000.00</i>
Fee	<i>500.00</i>
Decision	

Budget Code: MISPL 100-3100-1070

PART 1: APPLICATION NOTES

This form is used to appeal an administrative zoning decision. Appeal fee \$500. Fee must be paid at the time of application for appeal.

PART 2: PROPERTY INFORMATION

Subject Property Address: **204 Bay Avenue, Cape Charles, VA 23310**

PART 3: APPLICANT INFORMATION

Applicant's Name: **Paul Chandler**

Applicant's Mailing Address: **11548 Swanson Mill Way, Glen Allen, VA 23059**

Applicant's Phone #: **804 245 0572**

Email: **pauljc2000@gmail.com**

PART 4: PROJECT INFORMATION

Briefly describe the decision that you are appealing. Provide a copy of the letter sent to you by the Zoning Administrator. If necessary, you may attach additional information to this form. Date of Decision: May 31, 2024

In accordance with the Code of Virginia, Section 15.2-2309 (1) and Cape Charles Zoning Ordinance Section 2.6.2 (1), I am appealing the decision of the Zoning Administrator. The appeal is based on the following information:

See attached documentation

This appeal is based on Section(s) 2.4.2A, 2.4.3, 8.16, 8.17 of the Cape Charles Zoning Ordinance.

Applicant's signature: _____

Date: 6/26/20

Zoning Administrator's signature: _____

Date: _____

Chairman: _____

Date: _____

Notice sent to applicant by certified mail of the decision by the BZA with 30 day right to appeal to Circuit Court.

Date: _____ Sent by: _____



Appeal of Administrative Zoning Decision

204 Bay Avenue

Additional Notes:

Violations cited by the town:

This is to inform you that you are in violation of the Cape Charles Zoning Ordinance (CCZO), as follows:

1. CCZO Section 2.4.2 (A) (1)
2. CCZO Section 2.4.3
3. CCZO Section 8.16
4. CCZO Section 8.17

for the unauthorized removal and replacement of the roof and installing flashing to a chimney at 204 Bay Avenue.

1 . CCZO Section 2.4.2

A. Building Permits

1. *No building or structure shall be erected, constructed, altered, moved, converted, extended, enclosed, or enlarged without the owner first having applied for and obtained a zoning clearance for a building permit from the Town's Zoning Administrator. Such zoning clearance shall be obtained prior to the application for a building permit from the Cape Charles Building Department. Nothing herein is intended to prevent normal maintenance, which does not require a building permit.*

The CCZO Section 2.4.2 (A) (1) appeal is based on the following:

The code section clearly states that "Nothing herein is intended to prevent normal maintenance, which does not require a building permit."

1. The work performed was to undertake normal maintenance to repair a section of the metal roof, and adjoining chimney flashing which had been causing water damage inside the home and needed to be urgently addressed (see pictures below).
2. Ms. Nunez states in her violation notification that Jeb Brady has determined that the size of the roof area on the rear building addition does not require a building permit.

The maintenance work is a clear exemption from the code section, and the code official has stated that a building permit was not required, therefore, there is no code violation.



2. CCZO Section 2.4.3

A. Violations

1. *It shall constitute a violation of this ordinance for any person, either owner, agent, or occupant, to commence any actions for which a permit is required by this ordinance without having first obtained an approved permit. Any such permit issued upon a false statement of any fact which is material to the issuance thereof shall be void. Whenever the fact of such false statement shall be established, the Zoning Administrator shall forthwith revoke the same permit by notice in writing to be delivered to the holder of the void permit or, if such holder cannot be found, by posting such notice of revocation in some conspicuous place upon the premises where the violation has occurred. Any such person who shall proceed thereafter with such work or use without having obtained the proper approved permit in accordance with this ordinance shall be deemed guilty of a violation of this ordinance.*

The CCZO Section 2.4.3 appeal is based on the following:

The code section clearly states that “Nothing herein is intended to prevent normal maintenance, which does not require a building permit.”

1. The work performed was to undertake normal maintenance to repair a section of the metal roof, and adjoining chimney flashing which had been causing water damage inside the home and needed to be urgently addressed (see pictures below).
2. Ms. Nunez states in her violation notification that Jeb Brady has determined that the size of the roof area on the rear building addition does not require a building permit.

The maintenance work is a clear exemption from the code section, and the code official has stated that a building permit was not required, therefore, there is no code violation.

3. CCZO Section 8.16 Approval of Historic District Review Board Required

A. *Except as herein otherwise provided in this article, no building or structure, including signs, shall be erected, reconstructed, restored, or substantially altered in exterior appearance and no contributing buildings or structures shall be razed or demolished within a historic district and no permit authorizing same shall be granted unless and until the same is approved by the Historic District Review Board and a Certificate of Appropriateness has been issued by that body, with right of direct appeal to the Town Council as hereinafter provided, as being architecturally compatible with the historical, cultural, and/or architectural aspects of the structure and its surroundings.*

B. *Contributing accessory structures will be treated as contributing structures only under the following conditions:*

- 1. It is on a permanent foundation; and*
- 2. It is of sufficient square footage that a new structure of that type would require a building permit; and*
- 3. It is not being used as, or being considered for, accessory dwelling units.*

C. *"Substantial alterations" shall be defined as any and all work done on buildings, structures, or sites in a historic district other than those specifically exempted herein.*

1. General examples of "non-substantial" alterations:

- a. Work done to prevent deterioration or to replace parts of a structure with similar materials in order to correct any deterioration, decay of, or damage to any structure or on any part thereof, or*
- b. To restore same as nearly as practical to its condition prior to such deterioration, decay, or damage.*

2. Examples of work not constituting "substantial alteration" include those minor actions exempted from review by §8.16 of this article.

3. General examples of work constituting "substantial alterations" include:

- a. Construction of a new building at any location or a new permanent accessory building requiring a building permit on a landmark or contributing property or on a site within the Historic District.*
- b. Any addition to or alteration of a building which increases the square footage of the building or otherwise alters substantially its size, height, contour, or outline.*
- c. Any alteration of the exterior architectural style of a structure or its significant elements; some examples being removal or rebuilding of porches, openings, dormers, window sashes, chimneys, columns, stairways, terraces, decks, fences, or any other structural elements.*
- d. Addition to or removal of one or more stories or alteration of a roof line.*
- e. Any other major actions not specifically covered by the terms of this section, but which would have an effect on the character of the historic district*

D. *In any case in which there might be some question as to whether a project may be exempted from review, may constitute a minor action, or may constitute "substantial alteration," the Zoning Administrator shall be contacted for an interpretation prior to commencement of work*

The CCZO Section 8.16 appeal is based on the following:

1. The work performed is not a substantial alteration.

Section 8.16 C is the exact definition of the "non-substantial" work performed.

1. *General examples of "non-substantial" alterations:*

- a. *Work done to prevent deterioration or to replace parts of a structure with similar materials in order to correct any deterioration, decay of, or damage to any structure or on any part thereof, or*
- b. *To restore same as nearly as practical to its condition prior to such deterioration, decay, or damage.*

2. None of the examples in 8.16.3 apply.
3. None of the work performed on the rear addition is visible from the ground, or any location in the town. The only way to view this non-substantial alteration is to stand on the roof itself, approximately 30 feet above the ground! (see picture below). No reasonable person would classify this "alteration" as substantial, when that "alteration" will never be seen.
4. By contrast, the work performed by our neighbor at 204 Bay Avenue where a blue roof was installed, would classify as a substantial alteration, but, ironically, no action was taken against this abomination.



4. CCZO Section 8.17 Certain Minor Actions Exempted from Review by the HDRB

Within the Historic District certain minor actions which are deemed not to have permanent effects upon the character of the historic district are exempted from review for architectural compatibility by the Historic District Review Board.

The CCZO Section 8.16 appeal is based on the following:

Exemption 8.16.H states:

H. Additions or deletions to an existing building which are not visible from a public street or sidewalk.



Summary

CORRECTIVE ORDER AND PENALTIES

- 1. No work may proceed at 204 Bay Avenue without a Certificate of Appropriateness and any permit as may be required by the Zoning Administrator and Code Official.*
- 2. A Certificate of Appropriateness Application - Roof and supporting documents have been completed and submitted to the Town of Cape Charles Planning and Zoning Department for review and the office is awaiting payment for document completion.*

The work performed did not require a permit, per Jeb, and a Certificate of Appropriateness was not required as the work is covered by the "non-substantial" maintenance exemption of the HRB rules, as well as the HRB exemption covering alterations not visible from the street.

During my conversations with Ms. Nunez, her arguments have been inconsistent and factually incorrect. She repeatedly stated that the material used for the work was different from the original material, but again, the exemptions that apply mean that the material used is irrelevant.

For reference, the picture below shows the finished job, completed by the best copper and slate roofing company on the east coast who installed the copper roof on our wrap-around porch.

The picture shows the copper integrated gutter repairs and patinaed roofing and flashing to complement the original aged copper visible on the original gutters.





Municipal Corporation of Cape Charles

NOTICE OF VIOLATION & CORRECTIVE ORDER

Email & Certified Mail – Paul and Kimberly Chandler

May 31, 2024

Paul J. and Kimberly A. Chandler

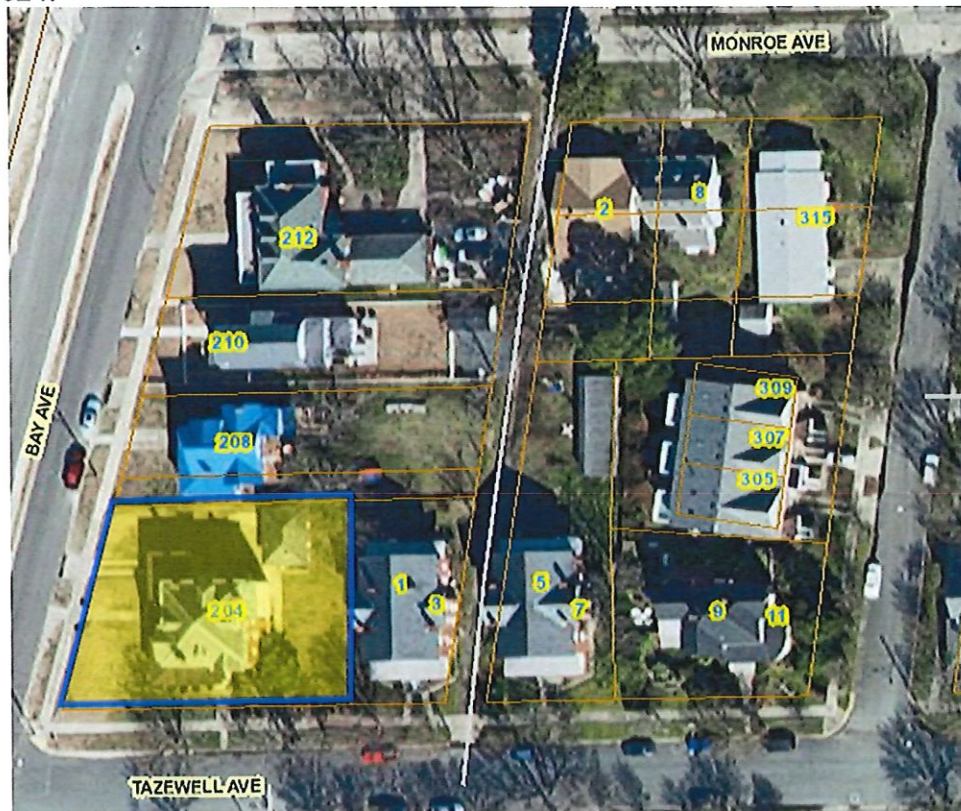
**RE: Notice of Zoning Ordinance Violation at 204 Bay Avenue –
Tax Map # 83A3-3-1 regarding the removal and replacement of the roof and adding
flashing to a chimney**

To: Paul and Kimberly Chandler,

This is to inform you that you are in violation of the Cape Charles Zoning Ordinance (CCZO), as follows:

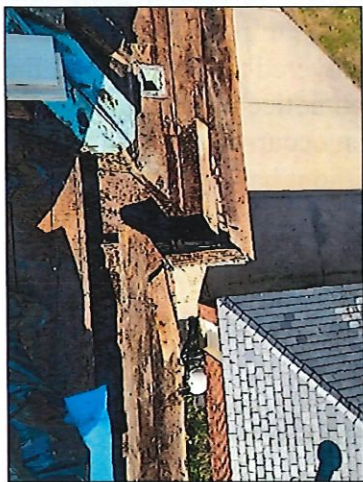
1. CCZO Section 2.4.2 (A) (1)
2. CCZO Section 2.4.3
3. CCZO Section 8.16
4. CCZO Section 8.17

for the unauthorized removal and replacement of the roof and installing flashing to a chimney at 204 Bay Avenue. You were informed of the need for permits for any work to be completed by the Zoning Administrator Katherine H. (Katie) Nunez during a conversation on approximately April 26, 2024.



The applicant provided the following before and after pictures:

BEFORE



AFTER



CORRECTIVE ORDER AND PENALTIES

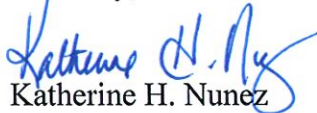
1. No work may proceed at 204 Bay Avenue without a Certificate of Appropriateness and any permit as may be required by the Zoning Administrator and Code Official.
2. A Certificate of Appropriateness Application – Roof and supporting documents have been completed and submitted to the Town of Cape Charles Planning and Zoning Department for review and the office is awaiting payment for document completion.
3. Based upon the Zoning Ordinance violations, the Town, pursuant to Cape Charles Zoning Ordinance Section 2.4.3, will be pursuing all remedies available under the law, including filing with the District Court of Northampton County a Notice of Violation for each of the listed Zoning Ordinance violations which may result in you being found guilty of a Class IV misdemeanor and the imposition of fine of \$250 per each zoning ordinance.
4. **Payment for Working without an approved and active Certificate of Appropriateness (COA) or After the Fact Permit Fee of \$1,000.00.**
5. **By June 14, 2024, submit to the Planning and Zoning office a COA – Roof and payment of fee \$500 along with payment for the penalty fee of \$1,000; a check made payable to the Town of Cape Charles can be mailed to 2 Plum Street; Cape Charles, VA 23310.**

You have the right to appeal this Notice of Violation and Corrective Action order to the following:

- For Appeals of Zoning Code Violations, you will need to file an application with the Cape Charles Board of Zoning Appeals within 30 days of the date of this letter pursuant to Cape Charles Zoning Ordinance Section 2.6.4 and the Code of Virginia Section 15.2-2311 (A); the decision shall be final and unappealable if not appealed within 30 days. The forms are attached to this letter, and you must include the filing fee of \$500 for any application of appeal.

ALL PAYMENTS are to be made out to the Town of Cape Charles.

Sincerely,



Katherine H. Nunez

Director of Planning, Zoning Administrator, & Subdivision Agent

Cc: Katherine H. Nunez, Director of Planning, Zoning Administrator, & Subdivision Agent
John Hozey, Town Manager
Historic District Review Board
Jeb Brady, Code Official

ATTACHMENT 1: Requirement for Zoning Clearance
ATTACHMENT 2: Approval of HDRB/Zoning Administrator Required
ATTACHMENT 3: Violations and Penalties
ATTACHMENT 4: Procedure for Appeals



Municipal Corporation of Cape Charles

Applicable Zoning Ordinances – Requirement for Zoning Clearance

CCZO Section 2.4.2 Permits

A. Building Permits

1. No building or structure shall be erected, constructed, altered, moved, converted, extended, enclosed, or enlarged without the owner first having applied for and obtained a zoning clearance for a building permit from the Town's Zoning Administrator. Such zoning clearance shall be obtained prior to the application for a building permit from the Cape Charles Building Department. Nothing herein is intended to prevent normal maintenance, which does not require a building permit.
2. The Zoning Administrator shall certify whether the proposed use, structure, alteration, or enlargement is or is not in conflict with the provisions of this Chapter. If such proposal is in conflict with the provisions of this ordinance, the Zoning Administrator shall refuse to issue such zoning clearance for a building permit.
3. The fee for a building permit shall be governed by ordinance.
4. Pursuant to the authority contained in §15.2-2286, 15.B. of the Code of Virginia of 1950, as amended, prior to the initiation of an application for a special exception, conditional use permit, variance, rezoning or other land disturbing permit, including building permits and erosion and sediment control permits, all delinquent real estate taxes owed to the Town against the property shall be paid in full.



Municipal Corporation of Cape Charles

Ordinance Citations – Approval of HDRB Required

CCZO Section 8.16 Approval of Historic District Review Board Required

- A. Except as herein otherwise provided in this article, no building or structure, including signs, shall be erected, reconstructed, restored, or substantially altered in exterior appearance and no contributing buildings or structures shall be razed or demolished within a historic district and no permit authorizing same shall be granted unless and until the same is approved by the Historic District Review Board and a Certificate of Appropriateness has been issued by that body, with right of direct appeal to the Town Council as hereinafter provided, as being architecturally compatible with the historical, cultural, and/or architectural aspects of the structure and its surroundings.
- B. Contributing accessory structures will be treated as contributing structures only under the following conditions:
1. It is on a permanent foundation; and
 2. It is of sufficient square footage that a new structure of that type would require a building permit; and
 3. It is not being used as, or being considered for, accessory dwelling units.
- C. "Substantial alterations" shall be defined as any and all work done on buildings, structures, or sites in a historic district other than those specifically exempted herein.
1. General examples of "non-substantial" alterations:
 - a. Work done to prevent deterioration or to replace parts of a structure with similar materials in order to correct any deterioration, decay of, or damage to any structure or on any part thereof, or
 - b. To restore same as nearly as practical to its condition prior to such deterioration, decay, or damage.
 2. Examples of work not constituting "substantial alteration" include those minor actions exempted from review by §8.16 of this article.
 3. General examples of work constituting "substantial alterations" include:
 - a. Construction of a new building at any location or a new permanent accessory building requiring a building permit on a landmark or contributing property or on a site within the Historic District.
 - b. Any addition to or alteration of a building which increases the square footage of the building or otherwise alters substantially its size, height, contour, or outline.
 - c. Any alteration of the exterior architectural style of a structure or its significant elements; some examples being removal or rebuilding of porches, openings, dormers, window sashes, chimneys, columns, stairways, terraces, decks, fences, or any other structural elements.
 - d. Addition to or removal of one or more stories or alteration of a roof line.
 - e. Any other major actions not specifically covered by the terms of this section, but which would have an effect on the character of the historic district
- D. In any case in which there might be some question as to whether a project may be exempted from review, may constitute a minor action, or may constitute "substantial alteration," the Zoning Administrator shall be contacted for an interpretation prior to commencement of work



Municipal Corporation of Cape Charles

Applicable Zoning Ordinances – Appeals and Procedure of Appeals

CCZO Section 2.6.4 – Appeals and Procedures of Appeals

An appeal to the Board of Zoning Appeals may be taken by any person aggrieved or by an officer, department, board, or bureau of the county or municipality affected by any decision of the Zoning Administrator or Administrative Officer in the administration or enforcement of this ordinance. The decision may be appealed within thirty days thereof by filing a notice of appeal specifying the grounds of the appeal. Said appeal shall be filed with Zoning Administrator and with the Board of Zoning Appeals. The Zoning Administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

The board shall fix a reasonable time for the hearing of an application for appeal, give the public notice thereof as well as due notice to the parties in interest, and decide the same within sixty days of the filing of the application for appeal. In exercising its powers, the board may reverse or affirm wholly or in part or may modify an order, requirement, decision, or determination of an administrative officer or decide in favor of the applicant on any matter which it is required to effect any variance from the ordinance. The board shall keep minutes of its proceedings and other official actions which shall be filed in the office of the Zoning Administrator and shall be public record. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses.

In accordance with Section 15.2-2313 where a building permit has been issued and the construction of the building for which such permit was issued is subsequently sought to be prevented, restrained, corrected, or abated as a violation of the zoning ordinance, by suit filed within fifteen days after the start of construction by a person who had no actual notice of the issuance of the permit, the court may hear and determine the issues raised in the litigation even though no appeal was taken from the decision of the administrative officer to the Board of Zoning Appeals.



Board of Zoning Appeals Application for Appeal of Administrative Zoning Decision

Planning & Zoning Department
2 Plum Street; Cape Charles, VA 23310
757-331-3259 x24

planningtech@capecharles.org

Revised 03/2023

Taxes

Violations

Fee

Decision

Budget Code: MISPL 100-3100-1070

PART 1: APPLICATION NOTES

This form is used to appeal an administrative zoning decision. Appeal fee \$500. Fee must be paid at the time of application for appeal.

PART 2: PROPERTY INFORMATION

Subject Property Address:

PART 3: APPLICANT INFORMATION

Applicant's Name:

Applicant's Mailing Address:

Applicant's Phone #:

Email:

PART 4: PROJECT INFORMATION

Briefly describe the decision that you are appealing. Provide a copy of the letter sent to you by the Zoning Administrator. If necessary, you may attach additional information to this form. Date of Decision: _____

In accordance with the Code of Virginia, Section 15.2-2309 (1) and Cape Charles Zoning Ordinance Section 2.6.2 (1), I am appealing the decision of the Zoning Administrator. The appeal is based on the following information:

This appeal is based on Section(s) _____ of the Cape Charles Zoning Ordinance.

Applicant's signature: _____

Date: _____

Zoning Administrator's signature: _____

Date: _____

Chairman: _____

Date: _____

Notice sent to applicant by certified mail of the decision by the BZA with 30 day right to appeal to Circuit Court.

Date: _____ Sent by: _____



Application for Zoning Clearance

Planning & Zoning Department
2 Plum Street; Cape Charles, VA 23310
757-331-3259 x24

planningtech@capecharles.org

Revised 02/2024

Taxes	☒
Violations	yes
Fee	HDRB
Decision	

Fee \$150 unless a residential building permit

Budget Code: MISPL 100-3100-1070

Budget Code for VIOLATIONS: PERMZ 100-3100-1370

PART 1. APPLICATION NOTES

Use this form to request zoning clearance for all new construction, alteration of existing structures, additions, or demolitions within the Town of Cape Charles * *The applicant is responsible for confirming and obtaining all necessary building permits after approvals.*

In addition to the information required in this application, all items from this checklist must be submitted before it can be evaluated.

☒ Photos of existing area ☐ Site Plan ☐ Owner Affidavit

Owner/Applicant signature: 

Date: 5/13/24

PART 2: PROPERTY INFORMATION

Property Address: 204 Bay Avenue

Tax Map #: 83A3-3-1

Zoning District if not located in Bay Creek:

☒ R-1 ☐ R-2 ☐ R-3 ☐ CR ☐ C-1 ☐ C-2 ☐ C-3
☐ M-1 ☐ M-2 ☐ GBI ☐ GBI-H1 ☐ Harbor

Zoning District if located in Bay Creek:

☐ Located on Bay Creek property, but not in a current subdivision

Subdivision Name	Zoning Designation	Subdivision Name	Zoning Designation
☐ Bayside Village	PUD Village	☐ Muirfield Village	PUD Village
☐ Bay Vista	PUD R-3	☐ New Quarter	PUD R-2
☐ Fairways	PUD R-3	☐ Plantation Pointe	PUD R-1
☐ Heron Pointe	PUD R-2	☐ The Colony	PUD R-3
☐ Kings Bay	PUD R-2	☐ The Hollies	PUD R-2
☐ Marina Resort	PUD R-2	☐ The Signature	PUD R-2
☐ Marina Village East	PUD R-2		



Certificate of Appropriateness Application

Roof Work Only

Planning & Zoning Department
2 Plum Street; Cape Charles, VA 23310
757-331-3259 x24
planningtech@capecharles.org

Revised 07/2023

Taxes	PD
Violations	\$1,000
Fee	\$50 / \$500
Decision	

Budget Code: HISTF 100-3100-1100

PART 1: APPLICATION NOTES

A Certificate of Appropriateness is required for all applications for zoning clearances and permits involving any exterior alteration, modification, restoration, reconstruction, demolition, new construction or moving a property within the Cape Charles Historic District Overlay. ** The applicant is responsible for confirming and obtaining all necessary building permits after approvals.*

The following documents must be submitted to the Town before this application can be reviewed. In addition to these documents, the COA application and requested supporting information must be deemed complete by the department staff prior to being evaluated.

☒ (A) Zoning Clearance Application ☒ (B) Photos of existing roof ☐ (C) Owner Affidavit ☐ (D) Payment of Fee

Owner signature: 

Date: 5/13/24

PART 2: PROPERTY INFORMATION

Property Address: 204 Bay Ave

Tax Map #: 83A3-3-1

Is there an active Certificate of Appropriateness on this property? ☒ No ☐ Yes _____ Date

Zoning District: R-1

PART 3: PROPERTY OWNER INFORMATION

Name and/or Company: Paul Chandler

Mailing Address: 11548 Swanson Mill Way, Glen Allen VA 23059

Phone Number: 804 245 0572

Email: pauljc2000@gmail.com

PART 4: PROPERTY INFORMATION

☒ Check here if applicant is owner. (If applicant is not the property owner, an Owner's Permission Affidavit must be attached.)

Name and/or Company:

Mailing Address:

Phone Number:

Email:



Certificate of Appropriateness Application

Roof Work Only

Planning & Zoning Department
2 Plum Street; Cape Charles, VA 23310
757-331-3259 x24
planningtech@capecharles.org

Revised 07/2023

Taxes	✓ pd MW
Violations	\$1,000
Fee	\$50 / \$500
Decision	

Budget Code: HISTF 100-3100-1100

PART 1: APPLICATION NOTES

A Certificate of Appropriateness is required for all applications for zoning clearances and permits involving any exterior alteration, modification, restoration, reconstruction, demolition, new construction or moving a property within the Cape Charles Historic District Overlay. * *The applicant is responsible for confirming and obtaining all necessary building permits after approvals.*

The following documents must be submitted to the Town before this application can be reviewed. In addition to these documents, the COA application and requested supporting information must be deemed complete by the department staff prior to being evaluated.

☒ (A) Zoning Clearance Application ☒ (B) Photos of existing roof ☐ (C) Owner Affidavit ☐ (D) Payment of Fee

Owner signature:

Date: 5/13/24

PART 2: PROPERTY INFORMATION

Property Address: 204 Bay Ave

Tax Map #: 83A3-3-1

Is there an active Certificate of Appropriateness on this property? ☒ No ☐ Yes _____ Date

Zoning District: R-1

PART 3: PROPERTY OWNER INFORMATION

Name and/or Company: Paul Chandler

Mailing Address: 11548 Swanson Mill Way, Glen Allen VA 23059

Phone Number: 804 245 0572

Email: pauljc2000@gmail.com

PART 4: PROPERTY INFORMATION

☒ Check here if applicant is owner. (If applicant is not the property owner, an Owner's Permission Affidavit must be attached.)

Name and/or Company:

Mailing Address:

Phone Number:

Email:

204 Bay Avenue Roof Pictures After Work Completed



204 Bay Avenue Additional Existing Roof Pictures



204 Bay Avenue Existing Roof Pictures



Tracy Outten

From: Paul Chandler <pauljc2000@gmail.com>
Sent: Monday, May 13, 2024 3:40 PM
To: Tracy Outten; Katie Nunez
Subject: RE: 204 Bay Ave - Certificate of Appropriateness Application

Tracy

All of that information is contained in the multiple forms I was asked to complete.

See my responses (again) below!

Tracy Outten wrote:

Good afternoon, Mr. Chandler.

After reviewing the Application for Certificate of Appropriateness – Roof for 204 Bay Avenue I need some clarity on the following items:

- Was the whole roof replaced?

No.

What was replaced:

Percentage of roof replaced. 0% of the main roof. 100% on non-historic addition, approx 48 sq ft.

The valleys on the main roof.

Integrated copper gutters on the rear of the main roof.

Flat metal roof on the rear addition, which is not original to the house.

Copper was used on the valleys and integrated gutters.

Standing seam galvanized aluminum with an aged copper finish was used on the flat roof

○ If not, please explain:

Katie and Tracy

Attached is the application and before and after pictures.

Katie, you mentioned that I also needed to complete a building permit, in addition to the roofing permit, however, on reviewing the building permit it appears to be completely irrelevant to this project. Please advise.

Let me know if you need anything else at this stage.

Paul.



APPLICATION FOR RESID
Town of
Municipal
2 P
Cape Charles
(757) 331-2176
codeofficial



Stevens Roofing
818 W. 39th St.
Norfolk, VA

Sec. 18-39

I, Paul Chandler

204 Bay Avenue

of rotting wood visible from the attic area (for roof
visual defects. If defective materials are found, the
Fire retardant treated plywood shall not be utilized
construction within four (4) feet on either side of the
all applicable codes and ordinances.

Paul Chandler.
204 Bay Avenue
2016
\$600 plus
cost of
permit
(value of contract)

Answer YES or NO beside the following statements as they pertain to this job:

- Yes ☐ No ☐ 1. Roof to be a nail over with only one layer or roofing existing.
Yes ☒ No ☐ 2. Existing roofing to be removed and replaced with a new roof.

TOWNHOUSES/CONDOMINIUMS/APARTMENTS

- Yes ☐ No ☐ 3. Fire retardant treated plywood addressed.

Owner/Contractor Signature

ASBESTOS CERTIFICATION

I, Paul Chandler, certify that the property at
204 Bay Ave has been inspected for asbestos and
complies with the Code of Virginia, Section 54.1-503, the Uniform statewide Building Code, Section
108.10, the "Clean Air Act" (NESHAP) and OSHA "Standards for Construction Workers",
Environmental Protection Agency (EPA), Asbestos Hazard Emergency Response Act, or is exempt as
noted in the exemptions below:

- Exception
1. Single Family dwellings
 2. Residential housing with four or less unit

Owner/Contractor Signature



Stevens Roofing Corp
818 West 39th Street,
Norfolk, VA 23508
Phone: (757) 489-8791
Fax: (757) 489-8649

05/17/2024

Paul Chandler
204 Bay Avenue
Cape Charles, VA 23310
(804) 245-0572

Job: 282: Paul Chandler

Upper Rear Copper Roof Replacement

Remove upper rear copper roof and built-in gutter system and make repairs to sheathing if necessary (See Note).

Furnish and apply a high temperature ice and water barrier underlayment and install in built-in gutter a 16oz. built-in gutter system. New gutter to be installed using a cleated system to allow gutter to properly expand and contract. New gutter to tie into built-in gutter on the back of the house. Old and new gutter to be tied together using cloth tape and coating.

Furnish and install a double locked standing seam metal roof system using .032 baked-on enamel aluminum. Tie new roof into slate roof and properly flash chimney using materials and methods supplied by manufacturer.

Slate Roof Repair Section

Take-up necessary slate to remove metal valleys over front gable and make repairs to sheathing if necessary (See Note)

Furnish and apply an ice and water barrier underlayment and install new metal valleys using 16oz. copper and reinstall slate.

Replace missing and badly broken slate in roof. Resecure loose and sliding slate and reseal flashings where needed using a urethane caulking.

Remove exhaust vent from detached garage and install necessary sheathing. Slate over opening to complete.

Katie Nunez

From: Paul Chandler <pauljc2000@gmail.com>
Sent: Monday, May 13, 2024 3:40 PM
To: Tracy Outten; Katie Nunez
Subject: RE: 204 Bay Ave - Certificate of Appropriateness Application

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Copper was used on the valleys and integrated gutters.

Standing seam galvanized aluminum with an aged copper finish was used on the flat roof

- If not, please explain:

Katie and Tracy

Attached is the application and before and after pictures.

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Let me know if you need anything else at this stage.

Paul.







