

Board of Zoning Appeals

Regular Meeting

Cape Charles Civic Center

April 8th, 2025

1. Call to Order

2. Roll Call

3. Invocation and Pledge of Allegiance

4. Consent Agenda -

- a. Approval of Agenda Format
- b. Approval of Minutes:

5. New Business -

- a. APPEAL2025-01: Application from Greg and Emily Gentry appealing a decision from the Zoning Administrator dated February 4th, 2025, which provided a Zoning Determination concerning 542 Jefferson Avenue that stated:
 - i. The Accessory Building is a legal, non-conforming use as an Accessory Dwelling Unit (ADU) and Short-Term Rentals are not permissible in the ADU and;
 - ii. This lot does not have 2 principal houses but a main house and an Accessory Dwelling Unit.

The applicant is seeking to have 2 primary residences on this property.

Said appeal application is authorized pursuant to Cape Charles Zoning Ordinance Section 2.6.2 (C) and 2.6.4. This property is located in the Residential-1 (R-1) Zoning District.

- b. VAR2025-01: Application from Bay Creek Resort, LLC., for a variance from the Accawmacke Plantation Planned Unit Development (PUD) Section 9.9 for a fence over the allowable 6' height requirement at 111 Palmer Way.
- c. Application(s) from Chris Larmore, Developer of Dreams by the Water Subdivision on Washington Avenue for a variance from the Cape Charles Zoning Ordinance (CCZO) Section 3.1 (E) for a 10' reduction in the front and rear setbacks, for the following lots:

- i. VAR2025-02: Lot 1 (TM #83A1-21-1) – Variance of 10 ft. to front setback and 10 ft. to rear setback
- ii. VAR2025-03: Lot 2 (TM #83A1-21-2) – Variance of 10 ft. to front setback and 10 ft. to rear setback
- iii. VAR2025-04: Lot 3 (TM #83A1-21-3) – Variance of 10 ft. to front setback and 10 ft. to rear setback
- iv. VAR2025-05: Lot 4 (TM #83A1-21-4) – Variance of 10 ft. to front setback and 10 ft. to rear setback
- v. VAR2025-06: Lot 5 (TM #83A1-21-5) – Variance of 10 ft. to front setback and 10 ft. to rear setback
- vi. VAR2025-07: Lot 6 (TM #83A1-21-6) – Variance of 10 ft. to front setback and 10 ft. to rear setback
- vii. VAR2025-08: Lot 7 (TM #83A1-21-7) – Variance of 10 ft. to front setback and 10 ft. to rear setback
- viii. VAR2025-09: Lot 8 (TM #83A1-21-8) – Variance of 10 ft. to front setback and 10 ft. to rear setback
- ix. VAR2025-10: Lot 9 (TM #83A1-21-9) – Variance of 10 ft. to front setback and 10 ft. to rear setback
- x. VAR2025-11: Lot 10 (TM #83A1-21-10) – Variance of 10 ft. to front setback and 10 ft. to rear setback

Said variance applications are authorized pursuant to Cape Charles Zoning Ordinance Sections 2.6.3 and 2.6.4.

6. Other Matters –

- a. None

7. Announcements –

- a. Next Meeting Tuesday May 12th, 2025, @ 10:00a.m.

8. Adjourn

Agenda Item 5 (a):

Appeal 2025-01: Application
from Greg and Emily Gentry
appealing a decision from the
Zoning Administrator

542 Jefferson Avenue –
Appeal Application



Board of Zoning Appeals Application for Appeal of Administrative Zoning Decision

Planning & Zoning Department
2 Plum Street; Cape Charles, VA 23310
757-331-3259 x31

planningtech@capecharles.org

Revised 02/2025

Taxes	✓ paid R.S.
Violations	—
chk # 3137 Fee	\$ 500
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.

FEES ** Payment of advertising costs, actual and adjacent property owner notification mailing costs, actual.

PART 2: PROPERTY INFORMATION

Subject Property Address: 542 JEFFERSON AVE. / 509 NECTARINE ST. - CAPE CHARLES

PART 3: APPLICANT INFORMATION

Applicant's Name: GREG & EMILY GENTRY

Applicant's Mailing Address: 542 JEFFERSON AVE. - CAPE CHARLES, VA 23310

Applicant's Phone #: 757-641-1046

Email: pungoem72@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: FEBRUARY 4, 2025

In accordance with the Code of Virginia, Section 15.2-2309 (1) and Cape Charles Zoning Ordinance Section 2.6.4 (A), I am appealing the decision of the Zoning Administrator. The appeal is based on the following information:

THE SECONDARY DWELLING ON OUR LOT WAS PERMITTED AS AN
ACCESSORY DWELLING UNIT BUT IT DOES NOT MEET THE DEFINITION
OF AN A.D.U. - WE ARE SEEKING APPROVAL TO HAVE THIS HOUSE ZONED
AS A SECONDARY DWELLING SO WE CAN RENT IT INSTEAD OF OUR MAIN HOUSE

This appeal is based on Section(s) 4.2.J of the Cape Charles Zoning Ordinance.

Applicant's signature: Emily Gentry

Date: 2.26.25

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: _____



Municipal Corporation of Cape Charles

February 4, 2025

Greg & Emily Gentry
542 Jefferson Avenue
Cape Charles, VA 23310

RE: Zoning Determination for 542 Jefferson Avenue (Tax Map #83A1-1-141) for Uses Allowed and Permitted

Dear Greg & Emily:

In early November 2024, you applied for a Town Business License for a Short-Term Rental (Vacation) Rental for the Accessory Dwelling Unit on this lot as well as applying for a Rental Inspection for the Accessory Dwelling Unit. Both of these applications were not processed due to denial of zoning clearance since Short Term Rentals are not authorized in Accessory Dwelling Units (ADUs). As a point of note, you listed on these applications an address of 509 Nectarine Street and indicated that you were seeking a Short-Term Rental license and inspection for the Accessory Dwelling Unit. You then provided the Tax Map # of #83A1-1-141. The only address the Town has for that Tax Map # is 542 Jefferson Avenue.

Based upon our conversations regarding this property at that time, which I acknowledge has a very complicated history regarding the house and the accessory structure, I stated that I would do a comprehensive review of the development record for this property and issue a zoning determination letter, stating what is legally allowed to occur on this lot under the Town Zoning Ordinance.

Due to the complexity of this history and the areas of deviation from the zoning ordinance that occurred, I wanted to ensure that my position on this lot was consistent with state law and the Town zoning ordinance. I regret the amount of time (over 3 months) that has lapsed in getting a final zoning determination letter to you but there were many factors that played into that delay, including the work that was underway in my office on the full revision of the Zoning Ordinance and associated public hearings and the Short Term Rental Zoning Ordinance and those associated public hearings, further impacted by holiday and vacation schedules throughout November & December 2024. After the Town's Attorney had a chance to review this matter, I am now able to issue this Zoning Determination letter.

I want to assure you that none of the prior activity and development that occurred on this lot was your responsibility since you only recently acquired the property on May 2, 2024. Nevertheless, you are still bound by the Cape Charles Zoning Ordinance and the

permissible uses and restrictions that are applicable to this lot and the principal residence and accessory dwelling unit that are on this lot, which are set forth below.

This lot is 40 ft. by 140 ft. (5,600 sq. ft) located in the Residential-1 Zoning District. This district requires a minimum lot size of 5,600 square feet and allows for a single-family dwelling as a by-right use. For clarity of the terms used in this letter, as of December 19, 2024, the Zoning Ordinance defines the following two terms:

DWELLING, ACCESSORY (ADU) *is a dwelling unit which is an accessory use to a single-family dwelling or commercial use in the Commercial – Residential Districts. CCZO Section 4.1 (J) provides additional criteria to comply with, in order to be considered a by-right use in the various zoning districts (Attachment A).*

SHORT-TERM RENTAL (STR) *means the provision of a room or space that is suitable or intended for occupancy for dwelling, sleeping, or lodging purposes, for a period of fewer than 30 consecutive days, in exchange for a charge for the occupancy. This does not include a hotel, motel, or bed and breakfast. CCZO Section 4.14 provides additional criteria to comply with, in order to be considered a by-right use in the various zoning districts (Attachment A).*

I am going to provide a chronological listing of activities on the property as well as Town adoption of ordinances that impact this property, specific to the issues of Accessory Dwelling Units and Short-Term Rentals (vacation rentals). In bold, I will provide zoning determination relevant to the property and the uses.

CHRONOLOGICAL LISTING

- 1.) In 2017, Thomas G. Godwin, Sr. received ownership of this lot by Deed of Gift from Jennie Marie Godwin King. The Town acknowledges that there was a principal residence on the property as well as an accessory structure and that both of these were present prior to the Town adopting its first Zoning Ordinance on July 14, 1992. When the Town adopted its zoning ordinance, it included the Residential-1 Zoning District with permitted uses of both single-family dwellings and accessory buildings but there was no allowance for Accessory Dwelling Units (ADUs) as well as Short Term Rentals (Vacation Rentals).

The Zoning Ordinance does include a section called “Non-Conforming Uses” (Section 2.5) which states the following:

A. Any legal use, building, or structure existing at the time of adoption of the Zoning Ordinance or any amendments thereto may be continued even though such use, building, or structure may not conform with the provisions of the zoning ordinance for the district in which is located. Such use, building, or structure shall be deemed a “Non-Conforming Use”. A non-conforming use, building, or structure may be continued provided by the following:

1. **No such non-conforming use, building, or structure shall be enlarged or increased or extended to occupy a greater area of land than was occupied at the effective date of the adoption of this ordinance, unless said enlargement does not result in an increase in nonconformity or result in a change to a use permitted in the district.**
2. **No such non-conforming use, building, or structure shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use, building, or structure at the effective date of adoption of this ordinance or**

amendment of this chapter, unless such move results in decreasing the degree of nonconformity with the requirements of this district.

3. *No additional structures which do not conform to the requirements of this ordinance shall be erected in connection with such non-conforming use of land. No additional uses of a nature which would be prohibited generally in the district involved shall be permitted.*
4. *Any non-conforming use may be extended throughout any parts of the building which were manifestly arranged or designed for such use at the time of adoption or amendment of this ordinance.*
5. *When any non-conforming use is superseded by a permitted use, the use shall thereafter conform to the regulations for the district, and no non-conforming use shall thereafter be resumed with the exception of existing duplexes specifically designed as such.*
6. *If any such non-conforming use or structure ceases for any reason for a period of more than two years, except when government action impedes access to the premises, any subsequent use of such land or structure shall conform to the regulations specified by this chapter for the district in which such land or structure is located with the exception of existing duplexes specifically designed as such.*

B. The rights pertaining to a non-conforming use, building, or structure shall be deemed to pertain to the use or building itself, regardless of the ownership of the land or the building on or in which such non-conformity is conducted or of such non-conforming building or the nature of the tenure of the occupancy thereof.

Building Official Jeb Brady indicated, according to his knowledge and recollection in his position with the Town, that the accessory structure at this property was used as a long-term rental unit prior to Mr. Godwin's ownership of the parcel and continued in that fashion after he received the property.

So, while the Long-Term Rental Unit occurring in the Accessory Building on this property was not a use permitted by right, it was allowed to continue under the Non-Conforming Use Section of the Zoning Ordinance.

Mr. Godwin sold this lot on December 17, 2018 to Bad Dog Investments, LLC (David & Elizabeth Doherty). The Doherty's applied to the Town and received a building permit to renovate the accessory structure.

The Cape Charles Zoning Ordinance, revised August 2017, addressed Accessory Buildings in Section 4.2 – Exceptions to the Regulations, Item E. as follows:

- E. Accessory Buildings. The following restrictions shall apply to accessory buildings located in residential districts.*
1. *The accessory building shall not be located in a front or side yard.*
 2. *The accessory building shall not be closer than five feet (5') to any alley line.*

3. *The accessory building shall not be closer than two feet (2') to any side or rear lot line.*
4. *The accessory building shall not be closer than fifteen feet (15') from the main building.*
5. *A two-story building shall not be located any closer than five feet (5') to any lot line.*
6. *The sum of the footprint square footage (SF) of all buildings on the lot shall be less than 50% of the total lot SF.*
7. *Where total lot frontage on one (1) or more lots owned by the same party is less than eighty feet (80'), the sum of the footprint of all accessory buildings shall be less than the footprint of the primary residence or 550 SF whichever is lesser.*
8. *Where total lot frontage of one (1) or more lots owned by the same party is greater than or equal to eighty feet (80'), the sum of the footprint of all accessory buildings shall be less than the footprint of the primary residence or 660 SF, whichever is lesser.*
9. *Where the main structure possesses no more than one story above grade, no accessory structure shall be higher than the main structure.*
10. *Where the main structure possesses more than one story above grade, no accessory structure shall be higher than two-thirds the height of the main structure or twenty-four feet (24'), whichever is lesser.*
11. *Temporary Family Health Care Structures are only allowed per § 15.2-2292.1 of the Code of Virginia.*

The accessory structure renovations actually turned this structure into a 2-story accessory building with a footprint of 660 square feet and a total living area of 1,320 sq. ft. – which was not in full compliance with the Zoning Ordinance but was accepted by various Town officials; therefore, **I accept and acknowledge the renovated Accessory Building (size and height even though it is not in compliance with the Zoning Ordinance) on this lot. The continued use of the Accessory Building as a Long-Term Rental Dwelling Unit, under the Legal Non-conforming Use Section, was allowed and in compliance with that section.**

- 2.) On November 1, 2018, Town Council amended the Cape Charles Zoning Ordinance to add a new section, Section 4.2 (J) – Accessory Dwelling Units with an effective date of February 1, 2019 (attached). This now provided for ADUs to be possible under the Zoning Ordinance but with certain criteria and only through a Conditional Use Permit. There was no mention of Short-Term Rentals (STR) as part of the ADU ordinance or through any other amendments to the Cape Charles Zoning Ordinance at that time.

At this time, the ADU Ordinance did not contain any language that permitted Short Term Rentals within an ADU. The Town's Zoning Ordinance is structured to only list the things that are allowed, either by-right or by conditional use permit along with the applicable regulations concerning, size, setbacks, height, design requirements, accessory uses. Specific to this lot, no STRs had occurred historically on this lot and were not a covered use within the Legal Non-conforming Section of the Zoning Ordinance and this Zoning Ordinance amendment precludes STRs in the ADU, effective February 1, 2019, since it does not list either as a by-right use or through a

conditional use permit or as an accessory by-right use to an allowed primary by-right use.

- 3.) In February 2021, the Dohertys applied to renovate the main house and indicated that they would live in the accessory structure while the main house renovation was occurring. The Town issued a Certificate of Appropriateness for the main house renovation in March 2021. Two (2) building permits were issued in September and October 2021 dealing with the portion of the property that would have some interior demolition and for the full house renovation.
- 4.) On October 13, 2021, the main house was fully demolished which led to the Town immediately issuing a Notice of Violation for the illegal demolition of the main house and requiring that the main house be rebuilt in the same footprint and in the same architectural style as the former house. The Dohertys acknowledged the violation and applied for the building permit to rebuild the main house in the same footprint and style, as required.
- 5.) On October 20, 2022, Town Council amended the Cape Charles Zoning Ordinance to further add to Section 4.2 (J) and to amend the District Regulations (Article III) so that Accessory Dwelling Units are a permitted use by-right in the listed zoning districts, including Residential-1 and no longer require a Conditional Use Permit as long as they meet the criteria contained in Section 4.2 (J).

This amendment to Section 4.2 (J) clearly states that Accessory Dwelling Units may not be rented on a Transient Occupancy basis, which is 30 days or less. The Transient Occupancy timeframe of 30 days or less is also equivalent to a Short-Term Rental.

With the Town Council amendment of the Zoning Ordinance on 10/20/2022 relative to Accessory Dwelling Units and the clear prohibition of Short-Term Rentals in an Accessory Dwelling Unit, this clarified the formal position of the Town regarding STRs in relation to ADUs. Specific to this lot, no STRs had occurred historically on this lot and were not a covered use within the Legal Non-conforming Section of the Zoning Ordinance and were not legally allowed as of 11/1/2018 when the first Zoning Ordinance was adopted concerning ADUs and were further affirmed that they were not permissible in Accessory Dwelling Units when this Zoning Ordinance amendment was adopted on October 10, 2022.

- 6.) On May 2, 2024, the Dohertys sold the house to you. At that time, construction on the rebuilding of the main house was still in progress and became your responsibility, as the new owners, to complete the rebuild of the main house so that the violation order that remained on the property can be resolved and lifted from this lot.

The Town is not involved when a property is advertised for sale and is not aware when a sale has occurred, until we see the listing printed in the Eastern Shore News or the new owners contact the Town, which was the case in this situation when you contacted us.

- 7.) Building Official Jeb Brady, Planning & Zoning Assistant for Historic Preservation Tracy Outten and I met with you on July 3, 2024 and provided you a full copy of everything we had on this property from the Building Department records and the Historic District Review Board records, including the ongoing violation matter.

Again, you have been fully cooperative and have accepted the work needed to be done on the main house to resolve the violation and have committed to fully complying with this. It is my understanding that you are also utilizing the Accessory Structure Dwelling Unit as your temporary residence while you are completing the renovation/restoration of the main house.

At that meeting, we informed you that the accessory structure could be a long-term rental property once the main house was completed but not a short-term rental since the Town adopted zoning ordinance requirements about Accessory Dwellings in the R-1 Zoning District which prohibits STRs in ADUs. We also informed you that you would be able to rent the main house as a STR in compliance with any ordinance requirements that the Town may adopt concerning STRs, since the Town Council was actively working on that issue in summer 2024 and most likely would have something adopted by the time your main house would be finished with renovation. If you chose to use the main house as an STR, then you, as the property owner, would be allowed to live in the ADU during the weeks when the main house is being rented as an STR.

ZONING DETERMINATION

The Accessory Building on this lot is a Legal Non-Conforming Use as an Accessory Dwelling Unit and has a clear history of being used either as a long-term rental unit or used by the property owner as alternative housing accommodations while the main house was being renovation and/or rebuilt. Short Term Rentals did not occur on this lot within the renovated Accessory Structure and were never part of the type of use that is covered under the Legal Non-Conforming Use designation on this lot.

Additionally, the Town adopted an ordinance (CCZO Section 4.2 (J)) concerning Accessory Dwelling Units on 11/1/2018 that became effective on 2/1/2019 which did not contain any language concerning Short Term Rentals as a permissible use. This particular ordinance was further amended on October 20, 2022 that specifically prohibited Short Term Rentals occurring in Accessory Dwelling Units, pursuant to CCZO Section 4.2 (J), effective October 20, 2022. At no time from February 1, 2019 forward has the Accessory Dwelling Unit on this premises been used for Short Term Rentals.

At their meeting on November 21, 2024, Town Council adopted a comprehensive Short-Term Rental (STR) Ordinance and subsequently amended it on December 19, 2024. You will have the ability to use the main residence as a Short-Term Rental in compliance with this new STR Ordinance, but it cannot include the Accessory Dwelling Unit as part of any STR.

Lastly, I am just confirming that your lot does not have two principal houses since you seemed to assert that position during our last conversation. There is the main house and the accessory dwelling unit. While the main house was demolished in Fall 2021, it was an illegal demolition and the Town immediately issued a violation to that effect and have actively enforced a resolution of restoration of the main house to this property. At no time did that alter the classification of the Accessory Dwelling Unit as an Accessory Dwelling Unit.

While you have indicated that the accessory dwelling unit has a street address of 509 Nectarine Street, this has not been provided by the Town as an official street address and does not reflect as such in the County records either. The only legally assigned address to this lot is 542 Jefferson Avenue. I am not able to provide any confirmation that the address of 509 Nectarine Street was legally created and established on this premises by the Town of Cape Charles and the County of Northampton does not provide street addressing within the corporate limits of Cape Charles; rather that responsibility falls to the Town of Cape Charles.

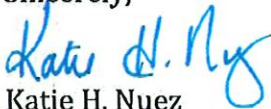
The Accessory Dwelling Unit on this lot cannot be subdivided into its own parcel because there is insufficient land to meet the requirements to be considered a legal lot under the Cape Charles Zoning Ordinance – 40 ft. by 140 ft. equaling 5,600 square feet (CCZO Section 3.1 (E) as well as section (F) (1)) which prohibits the subdivision of residential lots.

RIGHT OF APPEAL

You have the right to appeal a zoning determination within thirty (30) days to the Cape Charles Board of Zoning Appeals, pursuant to Code of Virginia § 15.2-2309 and §15.2-2311.A (attached) and the Cape Charles Zoning Ordinance Section 2.6.4 (attached), by completing the attached application form with the fee of \$500 and will also need to cover the costs for the legal advertisement and the adjacent property owner notification letters.

If an appeal is not filed within 30 days, then the Zoning Administrator's decision shall be final and unappealable.

Sincerely,



Katie H. Nuez

Director of Planning & Zoning Administrator

ATTACHMENTS:

ATTACHMENT A: CCZO Article IV, amended 12/19/2024, which includes Section 4.1 (J) & 4.14

ATTACHMENT B: CCZO new Section 4.2 (J) – Accessory Dwelling Units 2018-11-01

ATTACHMENT C: CCZO Section 4.2 (J) amended – Accessory Dwelling Units 2022-10-20

ATTACHMENT D: Code of Virginia §15.2-2309

ATTACHMENT E: Code of Virginia §15.2-2311.A

ATTACHMENT F: Cape Charles Zoning Ordinance Section 2.6.4

ATTACHMENT G: Application for Appeal to Board of Zoning Appeals of Zoning Administrator's Decision

ATTACHMENT B

ADOPTED BY TOWN COUNCIL on NOVEMBER 1, 2018
with an effective date of February 1, 2029

CAPE CHARLES ZONING ORDINANCE ACCESSORY DWELLING UNITS (ADUs)

Section 2.9 Definitions (insert accessory dwelling definition, modify accessory building and single family dwelling definitions)

DWELLING, ACCESSORY is a dwelling unit which is an accessory use to a single family dwelling, or commercial use in the Commercial – Residential District.

BUILDING, ACCESSORY means a subordinate and separate building located upon the same lot occupied by the main structure or where a main structure was previously located. Accessory buildings shall not be used as dwelling units, unless a conditional use permit is issued for an accessory dwelling.

Section 3.1.C, 3.2.C, 3.3.C, and 3.5.C (insert “Accessory dwellings” in Conditional Use sections)

Section 4.2.J Accessory Dwellings (insert in Article IV)

One accessory dwelling may be maintained on a property in the R-E, R-1, R-2 and CR zoning districts, contingent upon approval as a conditional use in accordance with Section 4.3, and subject to the following:

A. Physical characteristics.

1. Accessory dwellings shall be located in an accessory building.
2. Accessory dwellings shall not have a floor area exceeding 45 percent of the floor area of the main building.
3. Accessory dwellings shall have one kitchen and one bathroom.
4. Accessory buildings containing an accessory dwelling shall maintain the exterior appearance of an accessory building and shall not have the appearance of a single family dwelling.

B. Occupancy characteristics.

1. Length of stay – No accessory dwelling unit shall be occupied by any person or persons, whether paying a fee for such occupancy or not, for a period less than thirty (30) consecutive calendar days. Upon request from any building, zoning, finance, or public safety official acting on behalf of the Town of Cape Charles the owner of the subject lot of record upon

which the accessory dwelling unit sits shall provide occupancy documentation and/or information as requested, either verbally or in writing. Failure to do so may result in the revocation by the Cape Charles Town Council of the conditional use status for the accessory dwelling unit according to Article IV, Section 4.3.F.

2. Water\sewer\trash monthly fee – All accessory dwelling units shall be billed as a water\sewer\trash account separate from the account for the main structure, and shall pay the minimum monthly account fee as set by Town Council.
3. Water meter option – An accessory dwelling unit may have a separate water meter from that of the main structure upon request by the property owner. If so requested the property owner shall pay all water and sewer utility connection fees as set by Town Council. Metered accessory dwelling units will receive a water\sewer bill based on the metered use, but not less than the minimum monthly account fee.
4. Trash can – All accessory dwelling units shall have a separate trash can provided by the contract waste disposal company.
5. Inspections – All accessory dwelling units shall be inspected annually not later than fifteen (15) days from the anniversary date of the conditional use permit being approved by Town Council.

C. Other requirements.

1. Accessory dwellings located in accessory buildings may have a separate water meter from the principal dwelling.
2. The lot on which an accessory dwelling is located shall have the required minimum lot area for the district in which it is located.
3. Parking shall be considered on a case-by-case basis as part of the conditional use permit application process, ensuring adherence to Section 4.5.1 C. 6. (Table of Parking Standards) using both on and off street parking areas.
4. Exterior elevations shall also be approved by the Historic District Review Board when required by Article VIII, Historic District Overlay.

Section 4.5.1 Table of Parking Standards (insert)

C. Residential

- | | |
|-----------------------|--|
| 6. Accessory dwelling | 1.0 space per accessory dwelling unit (minimum); otherwise 1.0 spaces per accessory dwelling unit bedroom. |
|-----------------------|--|

542 Jefferson Avenue -
Staff Report



BOARD OF ZONING APPEALS

Meeting Date: April 8, 2025

Item #5A: APPEAL2025-01 – Appeal of Zoning Administrator’s Decision
Application

Date: March 31, 2025

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

APPELLANT: Greg & Emily Gentry

TYPE OF APPLICATION: APPEAL2025-01

– Appeal of Zoning Administrator Decision

SITE ADDRESS: 542 Jefferson Avenue

SPECIFIC REQUEST: Seeking to have 2
primary residences on the property

TAX MAP: 83A1-1-141

ZONING ORDINANCE: Section 2.6.4

LOT SIZE : 5,600 sq. ft.

CURRENT ZONING: Residential-1 &
Historic District Overlay

DATE RECEIVED : February 26, 2025

DATE DEEMED COMPLETE : March 3, 2025

LEGAL DEADLINE (90 Days from Complete Application – Directory, not Mandatory): June 3, 2025

SUMMARY OF APPEAL

The appellant is appealing the February 4, 2025 Zoning Determination letter was issued to them for 542 Jefferson Avenue that stated the Accessory Structure on this property is a legal, non-conforming use as an Accessory Dwelling Unit (ADU); said ADU is not permitted to have Short-Term Rentals; and this lot does not have 2 principal houses but only a main house and an accessory dwelling unit. This Zoning Determination letter was written in response to the property owner’s desire to rent the ADU on the property as a Short Term Rental (STR) and they were of the opinion that the ADU was really a second residence on the property due to the fact that the post office delivers mail to the ADU showing a 509 Nectarine Street address.

The applicants filed an appeal of said Zoning Determination letter on February 26, 2025. Their appeal application states their position as follows:

“The secondary dwelling on our lot was permitted as an accessory dwelling unit but it does not meet the definition of an A.D.U. (Accessory Dwelling Unit) - we are seeking approval to have this house zoned as a secondary dwelling so we can rent it instead of our main house.” This appeal is based upon CCZO Section 4.2.J.

CODE OF VIRGINIA Requirements to be considered regarding an Appeal of a Zoning Decision:

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.

ZONING ADMINISTRATOR'S RESPONSE TO APPEAL APPLICATION

Under the Cape Charles Zoning Ordinance, a legal conforming lot size in the Residential-1 Zoning District is 5,600 square feet (Section 3.1(E)) per single family home. The ordinance specifically prohibits the subdivision of residential lots (Section 3.1 (F) (1) so this lot, which is sized at 5,600 square feet, can not have 2 principal homes and it can not be subdivided because the ordinance does not allow the creation of a lot in the Residential-1 zoning lot smaller than 5,600 square feet.

There is no provision in the Cape Charles Zoning Ordinance to designate a property to have 2 primary dwellings on one lot. The accessory structure on this lot has been designated as a legal, non-conforming Accessory Dwelling Unit and it can continue to exist as an Accessory Dwelling Unit pursuant to the Legal, Non-Conforming Use section of the Zoning Ordinance (Section (2.5) even if the structure does not fully conform to the requirements in the Zoning Ordinance for Accessory Dwelling Units (Section 4.1 (J)) because this accessory structure was being used as an accessory dwelling unit prior to July 14, 1992 when the Town first adopted zoning. When the Town adopted an Accessory Dwelling Unit (ADU) ordinance on November 1, 2018 and further amended it on October 20, 2022, there was never an allowance for Short Term Rentals to occur in an ADU and were specifically prohibited as part of the 10/20/2022 amendment.

The Zoning Ordinance, when adopted in 1992 thru November 2024, did not contain any provision regarding Short Term Rentals (STRs). The Town amended the Zoning Ordinance to include regulations regarding STRs on November 21, 2024 and further amended the STR provision again on December 19, 2024. STRs are permissible in the several zoning districts, including the Residential-1 zoning district as an accessory use to the primary house (Section 3.1 (C) (4) & Section 4.14. The primary house can be used as a Short Term Rental as long as it complies with the requirements for Short Term Rentals contained in Section 4.14

The Town has never assigned a secondary street address to this property and the only address affiliated in Town records as well as County tax assessment and property records with this tax map

(#83A1-1-141) is 542 Jefferson Avenue. While the US Post Office or other delivery services may have recognized an address of 509 Nectarine Street for delivery of mail or packages and the previous property owners may have marked the accessory dwelling unit with that address, this was not authorized by the Town of Cape Charles and does not constitute any local government approval with responsibility to enforce and administer the laws and ordinances of the Town of Cape Charles.

The appellant's application concurs with the Town's designation of the Accessory Dwelling Unit being a legal, non-conforming use on the property but offers no other evidence nor do they identify any provision in the Zoning Ordinance that would permit them to either re-classify the Accessory Dwelling Unit as another primary house on this parcel or to authorize Short Term Rentals in the Accessory Dwelling Unit. Their entire position is their desire to rent out the Accessory Dwelling Unit as a Short Term Rental rather than the primary home regardless of the Town's Zoning Ordinance requirements.

Discussion Points:

1. Has evidence been provided by the appellant which proves the Zoning Administrator's application of the Zoning Ordinance was incorrect as required by the Code of Virginia Section 15.2-2309?

Proposed Motion For BZA Consideration

The Zoning Administrator respectfully requests that the Board of Zoning Appeals deny the appeal and uphold Zoning Determination letter dated February 4, 2025.

**EXCERPTS FROM THE CAPE CHARLES ZONING ORDINANCE
REFERENCED IN THIS STAFF REPORT**

Cape Charles Zoning Ordinance Section 2.5: Non-Conforming Uses

Section 2.5.1: Continuation of Existing Non-Conforming Uses and Permits

- A. Any legal use, building, or structure existing at the time of adoption of this ordinance, or any amendment thereto may be continued even though such use, building, or structure may not conform with the provisions of this ordinance for the district in which it is located. Such use, building, or structure shall be deemed a “Non-Conforming Use.” A non-conforming use, building, or structure may be continued provided by the following.
1. No such non-conforming use, building, or structure shall be enlarged or increased or extended to occupy a greater area of land than was occupied at the effective date of the adoption of this ordinance, unless said enlargement does not result in an increase in nonconformity or result in a change to a use permitted in the district.
 2. No such non-conforming use, building, or structure shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use, building, or structure at the effective date of adoption of this ordinance or amendment of this chapter, unless such move results in decreasing the degree of nonconformity with the requirements of this district.
 3. No additional structures which do not conform to the requirements of this ordinance shall be erected in connection with such non-conforming use of land. No additional uses of a nature which would be prohibited generally in the district involved shall be permitted.
 4. Any non-conforming use may be extended throughout any parts of the building which were manifestly arranged or designed for such use at the time of adoption or amendment of this ordinance.
 5. When any non-conforming use is superseded by a permitted use, the use shall thereafter conform to the regulations for the district, and no non-conforming use shall thereafter be resumed with the exception of existing duplexes specifically designed as such.
 6. If any such non-conforming use or structure ceases for any reason for a period of more than two years (2 yrs), except when government action impedes access to the premises, any subsequent use of such land or structure shall conform to the regulations specified by this chapter for the district in which such land or structure is located with the exception of existing duplexes specifically designed as such.
- B. The rights pertaining to a non-conforming use, building, or structure shall be deemed to pertain to the use or building itself, regardless of the ownership of the land or the building on or in which such non-conformity is conducted or of such non-conforming building or the nature of the tenure of the occupancy thereof.

Section 3.1: Residential District R-1

- A. Statement of intent. The intent of this basic zoning district is to provide quiet, medium density, single-family residential development plus provide open areas where similar residential development appears likely to occur. The regulations for this district are designed to stabilize and protect the essential characteristics of the district, to promote and encourage a suitable environment for family life where there are children, and to restrict all activities of a commercial nature as described in Section 3.5 (A) of this ordinance, known as Commercial Districts C-1, C-2, and C-3 which are characterized by heavy traffic, noise, and congestion of people and passenger vehicles and by large office buildings and retail establishments, and to promote a convenient, attractive, and harmonious community. This section is created in recognition of the existence of developed areas where single-family and duplex dwellings currently exist on lots of five thousand six hundred square feet (5,600 SF) and where the characteristics of the neighborhood include both permanent as well as seasonal residents.
- B. Permitted Uses. The following uses are permitted by right:
1. Single-family dwellings.
 2. Duplex dwellings provided off-street parking is provided.
 3. Condominium dwellings.
 4. Cooperative dwellings.
 5. Manufactured home dwellings.
 6. Churches and places of worship.
 7. Parks and playgrounds.
 8. Schools, community centers, and public facilities
 9. Group Homes per [§ 15.2-2291](#) of the Code of Virginia.
- C. Accessory Uses.
1. Accessory buildings.
 2. Accessory Dwelling Units by right in compliance with the requirements of Section 4.1 (J).
 3. Home occupations in accordance with Section 4.0.
 4. Short Term Rentals, in accordance with Section 4.14
 5. Up to two (2) single electric vehicle charging stations.
 6. Uses which are customarily accessory and clearly incidental and subordinate to the principal use and structure.
- D. Conditional Uses: The following uses may also be permitted, subject to securing a use permit as provided for in this ordinance:
1. Outdoor recreation facilities
 2. Residential dwelling units in square footage area below the minimum or above the maximum stated in Section 3.1 (E)
 3. Bed and Breakfast Establishments, in accordance with Section 4.1(M)

E. Area and Height Regulations. The following regulations apply to lots and structures in the R-1 zoning district.

	Legal Conforming Lots	Legal, Non-Conforming Lot		
<i>Minimum Lot Size</i>	5,600 (SF)	Up to 5,600 (SF)	5,601 to 8,400 (SF)	8,401 or more (SF)
<i>Minimum Lot Width at Setback Line</i>	40'	-	40'	40'
<i>Front Setback (minimum) *see prevailing standard below</i>	30'	30'	30'	30'
<i>Side Setback (minimum)</i>	5'	5'	5'	5'
<i>Rear Setback (minimum)</i>	25'	25' Unless lot is less than 40' deep, then 5'	25'	25'
<i>Corner Lot Setback *see prevailing standard below</i>	5'	5'	5'	5'
<i>Maximum Height</i>	40' or 2.5 stories	40' or 2.5 stories	40' or 2.5 stories	40' or 2.5 stories
<i>Maximum Lot Coverage</i>	See Section 4.1 (E) for this requirement in conjunction with accessory structures on lots.			
<i>Minimum Dwelling Unit Size</i>	960 (SF)	960 (SF)	960 (SF)	960 (SF)
<i>Maximum Dwelling Unit Size</i>	4,500 (SF)	2,400 (SF)	3,000 (SF)	4,500 (SF)

NOTE: A lot can be a contiguous assemblage of lots under common ownership to meet the lot size requirements. There is no requirement that lot lines must be vacated between two (2) or more lots; however, the lots must remain under common ownership if the lot is developed according to the development standards in the chart above.

PREVAILING STANDARDS: Prevailing standards exist when fifty percent (50%) or more of the buildings exhibit similar attributes in a neighborhood overlay. Where less than fifty percent (50%) of the buildings exhibit similar attributes, any of the range of attributes in the neighborhood would be acceptable.

NEIGHBORHOOD OVERLAY is defined as parts of a six-square block area, including all parcels on the subject block and all parcels facing on three sides, with the property in question located in the center block.

FRONT YARD SETBACKS shall adhere to a prevailing setback standard for new housing.

CORNER LOTS shall adhere to a prevailing setback standard in built up neighborhoods for new housing.

F. Other Regulations

1. Subdivision of residential lots is not permitted.
2. Decks and patios may not be constructed in the front yard area. Decks and patios constructed in the backyard area may be enclosed. Front porches may be enclosed by insect screening, preferably placed on the inside (house side) of architectural elements such as railings and columns. No permanent enclosures of front porches are allowed except for insect screening.
3. Utilities. Upon installation of utility access lines, such lines shall be installed underground. The Town encourages replacement lines to be installed underground.
4. Developmental standards are found in Section 4.12.

Section 4.1: Exceptions to the Regulations

- J. Accessory Dwellings. One accessory dwelling may be maintained on a property in the R-1, R-2, R-3 and CR zoning districts subject to the following:
1. Physical characteristics.
 - a. Accessory dwellings shall be located in an accessory building.
 - b. Accessory dwellings shall not have a floor area exceeding forty-five percent (45%) of the floor area of the main building.
 - c. Accessory dwellings shall have one kitchen, one bathroom, and a sleeping area.
 - d. Accessory buildings shall not have the appearance of a single-family dwelling.
 2. Occupancy characteristics.
 - a. Length of stay – An Accessory Dwelling Unit may not be rented as a short- term rental. An accessory dwelling unit may be occupied by any person or persons for a period no less than thirty (30) consecutive calendar days either paying a fee for such occupancy at his own expense or at the expense of another thirty (30) day rental or greater. Upon request from any building, zoning, finance or public safety official acting on behalf of the Town of Cape Charles the owner of the subject lot of record upon which the Accessory Dwelling Unit Accessory sits shall provide occupancy documentation and/or information as requested in writing.

- b. The property owner where the Accessory Dwelling Unit (ADU) is located may utilize the ADU as an overflow residential space for members of their family and guests.
- 3. Other requirements.
 - a. Accessory dwellings located in accessory buildings may have a separate water meter from the principal dwelling.
 - b. Accessory dwellings will be required to have their own municipality issues trash receptacle, separate from the main residence/structure.
 - c. Accessory dwellings meeting the requirements of all of the physical characteristics of 4.1 (J) (1) and (2) above must obtain a Certificate of Completion for Accessory Dwellings from the Code Official, which is equivalent to a Certificate of Occupancy. In order to issue said Certificate, the Code Official will conduct an inspection to determine compliance with the Building Code.
 - d. The lot on which an accessory dwelling is located shall have the required minimum lot area for the district in which it is located.
 - e. Parking shall be in compliance with Section 4.5 using both on and off-street parking areas.
 - f. Exterior elevations shall also be approved by the Historic District Review Board when required by Article VIII, Historic Overlay.
 - g. Annual Certifications to be submitted to the Town by March 15 of each year to the Building and Planning Departments.
 - i. The property owner will submit an annual affidavit on Town Affidavit Form for Accessory Dwellings attesting to their acknowledgement and adherence to the Zoning Ordinance requirements for Accessory Dwelling Units.
 - ii. The property owner will submit an annual affidavit on Town Affidavit Form for Safety Compliance for Accessory Dwelling Units.
 - iii. If the property owner changes between March 16 and December 31 of the calendar year, the new property owner will be required to submit both a new Town Affidavit Form for Accessory Dwellings and a Town Affidavit Form for Safety Compliance for Accessory Dwelling Units no later than thirty (30) days from the property transfer.

Section 4.14: Short-Term Rental (STR) Regulations

A. Purpose and intent

1. The purpose and intent of this section is to regulate Short-Term Rentals (STRs). STRs are common in America today, including in the town. However, given that they are commercial uses which must co-exist with residential uses, and often in neighborhoods not designed for commercial activity, limits and regulations are needed. This article is intended to provide the requirements to allow these certain limited commercial uses in town zoning districts containing residential uses per Article III.
2. The regulations for short-term rentals are designed to accommodate an STR Owner's and operator's limited commercial use in a way that is safe for the guest, meets town requirements, does not change the character of the town, and fits in with the districts in which STRs operate.
3. This Section is intended to work in tandem with the town's business license requirements as contained in the Town Code, as a measure for the town to monitor the number of STRs and enforce regulations.
4. Owners and operators are allowed a one-year (1 yr) grace period, from the date Zoning Ordinance No. 20241121 is adopted, to come into compliance, and pay the zoning permit fee. However, this grace period is not intended to limit or change existing rules, regulations, or fees, including but not limited to requirements to obtain a business license, pay taxes, and comply with the building code.

B. Permitting Requirements

1. A short-term rental unit shall not be operated until an annual business license is issued in accordance with Town Code Chapter 18, Article II by the Finance Department.
2. A short-term rental unit shall not be operated until a Short-Term Rental (STR) zoning permit is issued by the Planning Department. The application for a zoning permit will require, as a minimum, the following:
 - a. Name of owner and operator of the short-term rental property
 - b. Address of the short-term rental property
 - c. Town business license number
 - d. For operators that are a lessee or sublessee, an attestation that the property owner has granted permission for use of such property as a short-term rental.
 - e. Contact information for all owner(s), operator(s), and property management companies (if applicable), to include: names, telephone numbers, mailing addresses, and e-mail addresses. If ownership is via partnership or corporation, a list of all partners, officers, and shareholders (as appropriate) must be provided with the same contact information.

- f. Contact information for the twenty-four (24) hour/seven (7) days a week contact who is the responsible party to address immediate concerns associated with a short-term rental, and who has the authority to act as the owner's and operator's agent.
 - g. If the property is governed by a homeowners' or condominium association, proof that authorization to operate the short-term rental was provided by the homeowners' or condominium association.
 - h. Certification that Town prepared STR training information has been reviewed annually.
 - i. Certification that adjacent property owners have been notified that an application for a STR zoning permit has been submitted.
 3. Short-term rental zoning permits will be valid for one year (1 yr) and may be renewed each subsequent year, if there were no permit violations, and upon approval of the associated annual business license and re-inspection.
 4. Any change to information on the (STR) zoning permit application will require notification to the Planning Department within ten (10) business days.
 5. Any change in ownership of the property or short-term rental owner or operator will require a new application for the business license, short-term rental zoning permit, and inspection within twenty (20) business days.
 6. An owner (which includes, but is not limited to, corporations or partnerships, and entities or individuals that are stockholders, members or partners in corporations, companies, or partnerships) may only operate up to five (5) short-term rental units within the entire town.
 7. An operator is not prohibited from offering a property as a short-term rental solely on the basis that such operator is a lessee or sublessee, provided that the property owner has granted permission for such property's use as a short-term rental. However, a lessee or sublessee is limited to one (1) short-term rental within the town. An operator will be required to meet any subleasing requirements, if any, from any applicable homeowner's or condominium association.
- C. Additional Requirements
 1. Every short-term rental is required to submit transient occupancy tax (TOT) in accordance with [Town Code Chapter 18, Article V](#).
 2. Short-term rentals are only permitted in those districts as specified in Article III.

3. Simultaneous short-term rentals under separate contracts in the same dwelling are prohibited. Commercial gatherings providing direct or indirect compensation, including but not limited to luncheons, banquets, parties, weddings, charitable fund-raising, commercial or advertising activities, or other similar occurrences are prohibited.
4. Occupancy: There shall be no more than two (2) lodgers per bedroom, plus two; with the maximum number of overnight lodgers per dwelling being no greater than ten (10). Occupancy shall not exceed any limit set by the Virginia Uniform Statewide Building Code (VA USBC) or local building official. This shall be identified as the Base Occupancy for STRs (BOSTR). For the purpose of the BOSTR, an occupant shall not include any person two years (2 yrs) of age or under.

Occupancy of greater than above may be approved, provided the property can accommodate sufficient off-street parking consisting of one (1) spot for every two (2) additional lodgers over the base occupancy for STRs (BOSTR), the property meets any other life safety requirements as may be reasonably required for such higher occupancy, and the property will not exceed the VA USBC or local building code official limitations.

The town retains the right to investigate violations and complaints of permit violations, and to periodically contact STR lodgers to determine occupancy. If town investigators determine that a violation has occurred, notice of such violation will be provided to the STR zoning permit holder or agent who will be responsible to cure the violation.

5. The business license and emergency information must be conspicuously posted inside each rental, including the twenty-four/seven (24/7) contact information for the STR responsible party.
6. Signage is to comply with Article V, Section 11.1.
7. Refuse requirements: one (1)- and two (2)-bedroom dwelling units used as short-term rental units will require one (1) trash receptacle; three (3) or more-bedroom units will require two (2) receptacles; five (5) or more bedrooms will require three (3) receptacles. Owners and operators are required to maintain the receptacles so that they do not overflow.
8. Lodgers and their guests will be required to observe noise requirements contained in [Town Code Chapter 20, Article I, Section 20-3](#).
9. Safety Equipment: Operable smoke detectors, fire extinguishers, and carbon monoxide detectors shall be present in compliance with the Virginia Uniform Statewide Building Code.
10. Under no circumstances shall the issuance of a certificate of zoning compliance (permit for short-term rental) by the Administrator (Town) be construed as abrogating, nullifying or invalidating any other provision of Federal, State or local law: any deed covenant or property right; or any homeowners' or condominium association bylaw, or rule.

11. Under no circumstances shall the issuance of a certificate of zoning compliance (permit for short-term rental) by the Administrator (Town) be construed as abrogating, nullifying or invalidating any other provision of Federal, State or local law: any deed covenant or property right; or any homeowners' or condominium association bylaw, or rule.

D. Inspections

1. An initial inspection will be required for all short-term rentals in accordance with [Town Code Chapter 8, Section 8-4](#).
2. An annual re-inspection by the Code Official or designee is required when filing for a short-term rental business license renewal.
3. The Building Code Official or designee maintains the right to inspect a short-term rental, based on complaints or reasonable suspicion, to verify that the rental is being operated in accordance with the Virginia Uniform Statewide Building Code, the permit, and other applicable laws and regulations.

E. Violations

1. A Short-Term Rental (STR) zoning permit may be denied for any of the following violations:
 - a. Failure to obtain/maintain a town business license
 - b. Failure to pay all town real property taxes
 - c. Failure to pay all business taxes from the prior year
 - d. Failure to file and pay (if applicable) payment of transient occupancy taxes due the town for the previous three (3) months or more
 - e. Falsifying town forms or applications
 - f. Other applicable town zoning violations
 - g. Failure to provide responsive actions to issues raised to the twenty-four seven (24/7) contacts, as determined through town investigations.
 - h. Two (2) violations of safety/building code requirements within the same calendar year, that are not cured following reasonable notice.
 - i. Two (2) violations of occupancy limits within the same calendar year, that are not cured following reasonable notice.

Reasonable notice is satisfied when an authorized town official notifies the zoning permit holder or agent of a condition violating requirements of this section, and twenty-four hours (24 hrs.) pass without resolution of the violation.

Note: individual nuisance or noise violations will be issued directly to the offending party in addition to any consequence to the zoning permit holder.

Violations may be investigated by the Town Manager, Treasurer, Zoning Administrator, Building Code Official, Police Chief or their designees as appropriate. Once investigated, violations pursuant to this section will be issued by the Zoning Administrator.

2. An owner or operator, whose Short-Term Rental (STR) zoning permit has been denied pursuant to this Section, shall not be eligible to obtain another STR zoning permit for the subject short-term rental for the entire succeeding calendar year. Thereafter, the owner or operator will be required to apply for a new business license, STR zoning permit, and an inspection.
2. Before the denial of Short-Term Rental (STR) zoning permits is made effective, the town shall give written notice to the short-term rental owner or operator as noted on the STR zoning permit. The notice of permit denial under the provisions of the section shall contain:
 - a. A description of the violations constituting the basis of the denial, suspension or revocation;
 - b. If applicable, a statement of acts necessary to correct the violation(s): and
 - c. A statement that the owner may have a right to appeal the notice of a permit denial within thirty (30) days in accordance with the [Code of Virginia Section 15.2-2311 \(A\)](#) and that the decision of permit denial shall be final and unappealable if not appealed within thirty (30) days.

ATTACHMENTS

Appeals Application for Appeal of Administrative Zoning Decision which includes the following:

- Letter from Zoning Administrator dated February 4, 2025 (7 page); and
 - Attachment A to said letter - CCZO Article IV, amended 12/19/2024, which includes Section 4.1 (J) & 4.14
 - Attachment B to said letter – CCZO new Section 4.2 (J) – Accessory Dwelling Units 2018-11-01
 - Attachment C to said letter – CCZO Section 4.2 (J) amended – Accessory Dwelling Units 2022-10-20
 - Attachment D to said letter – Code of Virginia §15.2-2309
 - Attachment E to said letter – Code of Virginia §15.2-2311.A
 - Attachment F to said letter – Cape Charles Zoning Ordinance Section 2.6.4
 - Attachment G to said letter – Application for Appeal to Board of Zoning Appeals of Zoning Administrator's Decision

Attachment A –
CCZO Article IV

ATTACHMENT A

Article IV - General Regulations Applicable to All Districts

Section 4.0: Home-Based Occupation [revised 12/19/2024]

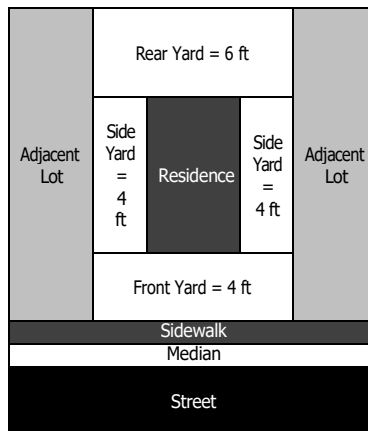
- A. Statement of Intent. The purpose of this section is to allow home-based occupations in all districts that allow residential dwellings provided that the home-based occupation meets the requirements in 4.0 (B) below.
- B. Requirements for a Home-Based Occupation: The conduct of a business in a residence or on its premises is permitted providing the following characteristics are as follows:
 - 1. The home-based occupation is clearly incidental and subordinate to the residential use of the dwelling.
 - 2. The home-based occupation does not require any changes to the exterior of the dwelling.
 - 3. Any outdoor storage of goods, products, equipment, solid waste, or other similar items will not exceed the extent associated with normal neighborhood characteristics.
 - 4. Any accessory building on the property used for the home-based occupation meets all applicable zoning requirements.
 - 5. The home-based occupation will not create noise, dust, vibration, smoke, smell, glare, electrical interference, fire hazard, or other hazard or nuisance to any greater or more frequent extent than associated with normal neighborhood characteristics.
 - 6. Any pedestrian and/or commercial delivery traffic generated by the home-based occupation will not be greater than normal traffic in the neighborhood.
 - 7. Any parking requirements of the home-based occupation will be met by off-street parking.
 - 8. Home occupations must be constructed wholly within the building or structure and shall not exceed fifty percent (50%) of the total floor area.
- C. If the home-based occupation meets the above requirements and the Home-Based Occupation Affidavit is signed, zoning clearance shall be granted. If the home-based occupation does not meet the above requirements, a Conditional Use Permit will be required.
- D. The following are specifically excluded:
 - 1. Family care homes, group homes except as allowed under [§ 15.2-2291](#) of the Code of Virginia, nursing homes, convalescent homes, elderly care facilities.
 - 2. Auto repair shops.
 - 3. Kennels.
 - 4. Any activity that includes the use of weapons, ammunition, explosives, chemicals, fireworks, or other hazardous materials.

5. Butchers.
6. Sexually oriented business including adult media, products, or activity.
7. Illegal drugs and equipment used for these drugs.
8. Funeral parlors

Section 4.1: Exceptions to the Regulations [revised 11/21/2024]

- A. Gasoline Pumps. Gasoline pumps shall be setback a minimum of fifteen feet (15') from the property line.
- B. Trailer Parking
 1. Storage of travel or recreational trailers in an enclosed accessory building is permitted in any district provided that no living quarters are occupied within the trailer.
 2. Travel and recreational trailers shall be parked to the rear of the front line of the main building in a residential district.
 3. Construction trailers are permitted on the construction site for the duration of the construction project.
- C. Structures Permitted Above Height Limitations. Penthouses or roof structures for the housing of elevators, stairways, tanks, ventilating fans, and similar equipment required to operate and maintain the building, fireproof, or parapet walls, towers, steeples, flagpoles, chimneys, smokestacks, wireless masts, water tanks, silos, cupolas, or similar structures may be erected above the height limit specified in the district in which the property is located, but no penthouses or roof shall be allowed for the purpose of providing additional floor space.
- D. Vision Clearance at Intersections. At any corner lot there shall be no planting, structure, fence, retaining wall, shrubbery, or obstruction to vision more than three feet (3') higher than the curb level within the triangle formed by the street right-of-way lines and a line connecting such street lines twenty-five feet (25') from their intersections.
- E. Accessory Buildings. The following restrictions shall apply to accessory buildings located in residential districts.
 1. The accessory building shall not be located in a front or side yard.
 2. The accessory building shall not be closer than five feet (5') to any alley line.
 3. The accessory building shall not be closer than two feet (2') to any side or rear lot line.
 4. The accessory building shall not be closer than fifteen feet (15') from the main building.
 5. A two-story building shall not be located any closer than five feet (5') to any lot line.
 6. The sum of the footprint square footage (SF) of all buildings on the lot shall be less than fifty percent (50%) of the total lot SF.
 7. Where total lot frontage on one (1) or more lots owned by the same party is less than eighty feet (80'), the sum of the footprint of all accessory buildings

- shall be less than the footprint of the primary residence or five hundred and fifty square feet (550 SF) whichever is lesser.
8. Where total lot frontage of one (1) or more lots owned by the same party is greater than or equal to eighty feet (80'), the sum of the footprint of all accessory buildings shall be less than the footprint of the primary residence or six hundred and sixty square feet (660 SF), whichever is lesser.
 9. Where the main structure possesses no more than one story above grade, no accessory structure shall be higher than the main structure.
 10. Where the main structure possesses more than one story above grade, no accessory structure shall be higher than two-thirds the height of the main structure or twenty-four feet (24'), whichever is lesser.
 11. Temporary Family Health Care Structures are only allowed per [§ 15.2-2292.1](#) of the Code of Virginia.
 12. Non-conforming lots smaller than fifty-six hundred (5,600) square feet in the R-1 District the total footprint area of all accessory building lot coverage shall not exceed ten (10) percent.
- F. Projections Allowed in Required Setbacks. No building or structure, or addition thereto, shall extend into a required setback area or yard area, except chimneys, heating and cooling equipment, structures less than sixteen inches (16") in height as measured from finished ground elevations, and steps may extend into such setback or yard area other than front yard setback. The following unenclosed uses may extend no more than four feet, but not nearer than five feet to any property line: balconies, eaves, trims, fascia boards, and similar architectural features, platforms, and terraces. Additional uses may project into setbacks, as interpreted and determined by the Zoning Administrator. In Commercial District C-1, no building or structure, or addition thereto, shall extend into the required front setback area or yard area except for the following: above street floor level balconies, porches, and terraces may extend therein. Support members for these structures may extend to the ground as required by the building and maintenance code. No part of any foundation for these support members shall extend above the ground or grade level. The following unenclosed structures located above the first-floor level may extend to the front lot line: porches, balconies, terraces.
- G. Fences and Walls. The setback and yard requirements of this ordinance shall not be deemed to prohibit any otherwise lawful fence or wall. A fence or wall must be two feet from any sidewalk, alley, or public right of way.
1. In residential areas, fences and walls may be no closer than one inch (1") from adjacent property boundaries (unless adjacent property owners agree to jointly construct the fence on the property line) and may be erected to a height as follows:



Maximum fence heights for interior lots

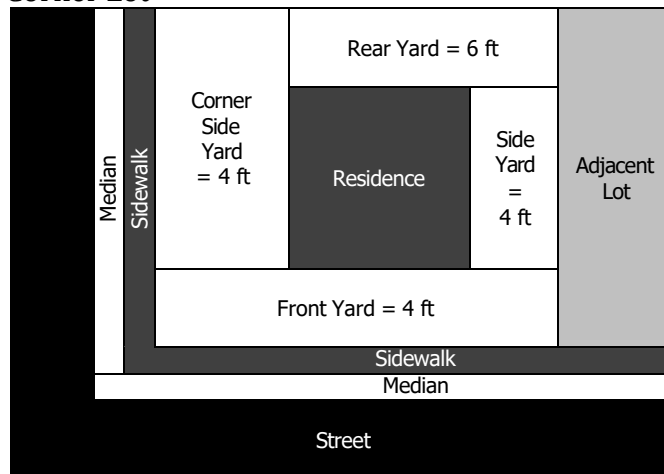
Rear Yard – Not to exceed 6 feet (6')

Side Yard – Not to exceed 4 feet (4')

Front yard – Not to exceed 4 feet (4')

- a. Exception. No fence or wall in a corner side yard shall exceed four feet (4') in height. On corner lots, fences and walls may be erected to a height as follows:

Corner Lot



Maximum fence heights for corner lots

Rear Yard – Not to exceed 6 feet (6')

Side Yard – Not to exceed 4 feet (4')

Corner Side Yard – Not to exceed 4 feet (4')

Front yard – Not to exceed 4 feet (4')

2. Materials. Fences and walls must be constructed of appropriate materials. Materials, both traditional and contemporary (e.g. wood, wrought and cast iron, vinyl, tubular metal), may be used in traditional styles. Certain materials such as razor, barbed, or similar wire are not permitted in residential areas.

Chain link fencing is acceptable in rear yards not facing a public street. Open mesh fencing that existed as of the effective date of this section of the Zoning Ordinance may be maintained; any new fencing must meet the requirements of this ordinance.

All fencing must be constructed with finished side facing the exterior of the property or neighbor (facing out) unless otherwise agreed upon by the adjacent property owner.

3. Commercial and Industrial Fences. Fences in commercial and industrial zones are permitted if they comply with residential fencing requirements in Section 4.1 (G) (1) and (2). In commercial and industrial zones, the Conditional Use Permit process shall be used for any non-conforming fences. Applicants shall demonstrate that the proposed fencing is consistent with the nature of and/or the security requirements of the business.
- H. Wetlands and Water Areas Excluded From Lot Areas. In calculating the area of any lot for the purpose of compliance with the minimum lot area requirements of the district regulations, wetlands, and areas outboard of the shoreline shall be excluded.
- I. Utility Lines Underground. All new utility lines such as electric, telephone, CATV, or other similar lines shall be installed underground. This requirement shall apply to lines serving individual sites as well as to utility lines necessary within a project. All junction and access boxes shall be screened with appropriate landscaping. All utility pad fixtures and meters shall be shown on the site plan. The necessity for utility connections, meter boxes, etc., should be recognized and integrated with the architectural elements of the site plan.
- J. Accessory Dwellings. One accessory dwelling may be maintained on a property in the R-1, R-2, R-3 and CR zoning districts subject to the following:
[revised 12/19/2024]
 1. Physical characteristics.
 - a. Accessory dwellings shall be located in an accessory building.
 - b. Accessory dwellings shall not have a floor area exceeding forty-five Percent (45%) of the floor area of the main building.
 - c. Accessory dwellings shall have one kitchen, one bathroom, and a sleeping area.
 - d. Accessory buildings shall not have the appearance of a single-family dwelling.
 2. Occupancy characteristics.
 - a. Length of stay – An Accessory Dwelling Unit may not be rented as a short- term rental. An accessory dwelling unit may be occupied by any person or persons for a period no less than thirty (30) consecutive calendar days either paying a fee for such occupancy at his own expense or at the expense of another thirty (30) day rental or

greater. Upon request from any building, zoning, finance, or public safety official acting on behalf of the Town of Cape Charles the owner of the subject lot of record upon which the Accessory Dwelling Unit Accessory sits shall provide occupancy documentation and/or information as requested in writing.

- b. The property owner where the Accessory Dwelling Unit (ADU) is located may utilize the ADU as an overflow residential space for members of their family and guests.
3. Other requirements.
- a. Accessory dwellings located in accessory buildings may have a separate water meter from the principal dwelling.
 - b. Accessory dwellings will be required to have their own municipality issues trash receptacle, separate from the main residence/structure.
 - c. Accessory dwellings meeting the requirements of all of the physical characteristics of 4.1 (J) (1) and (2) above must obtain a Certificate of Completion for Accessory Dwellings from the Code Official, which is equivalent to a Certificate of Occupancy. In order to issue said Certificate, the Code Official will conduct an inspection to determine compliance with the Building Code.
 - d. The lot on which an accessory dwelling is located shall have the required minimum lot area for the district in which it is located.
 - e. Parking shall be in compliance with Section 4.5 using both on and off-street parking areas.
 - f. Exterior elevations shall also be approved by the Historic District Review Board when required by Article VIII, Historic Overlay.
 - g. Annual Certifications to be submitted to the Town by March 15 of each year to the Building and Planning Departments.
 - i. The property owner will submit an annual affidavit on Town Affidavit Form for Accessory Dwellings attesting to their acknowledgement and adherence to the Zoning Ordinance requirements for Accessory Dwelling Units.
 - ii. The property owner will submit an annual affidavit on Town Affidavit Form for Safety Compliance for Accessory Dwelling Units.
 - iii. If the property owner changes between March 16 and December 31 of the calendar year, the new property owner will be required to submit both a new Town Affidavit Form for Accessory Dwellings and a Town Affidavit Form for Safety Compliance for Accessory Dwelling Units no later than thirty (30) days from the property transfer.

K. Sidewalks for Infill Development

For Infill Development in any zoning district, construction of a sidewalk is required along the entire street frontage of a lot or parcel that abuts a primary or secondary road at the time when an application is filed for the development of a lot or parcel, whether for residential, commercial, municipal or industrial development. If the lot is a corner lot, then sidewalk developments shall be required for both the frontage of the lot as well as for the side yard adjacent to the road, if there is an existing sidewalk network parallel to the road system.

Said sidewalk must be equal to the same width size of the existing network infrastructure and to be no lesser than five feet in width; said sidewalk construction shall blend any new segment of sidewalk to become part of a continuous, connected and level sidewalk.

At least one walkway must be provided from an adjacent sidewalk to each building entrance designed for use by the general public that is located on the side of the building facing the sidewalk.

L. Accommodations Relative to the Americans with Disabilities Act (ADA) and the Fair Housing Act: *[new subsection added 12/19/2024]*

A property owner may request a reasonable accommodation to rules, policies, practices and procedures for the siting, development and use of housing if you meet all of the following criteria:

1. Have a disability as defined under the Americans with Disabilities Act (ADA) or the housing is for people with disabilities;
2. May need a reasonable accommodation to existing rules and regulations to have an equal opportunity to housing; and
3. The request for accommodation would not be an undue burden on the Town.

Administrative Review and Approval: These types of accommodations may be granted administratively through the Zoning Administrator: the provision of ramps, exterior chair lift and other similar types of facilities or equipment, or accessible parking spaces.

M. Bed and Breakfast Criteria *[revised 12/19/2024]*

Bed and breakfasts, provided the following requirements are met:

1. The owner and family must occupy the residence. The owner and his/her appointed agent are responsible for supervising guests.
2. The single-family dwelling appearance must be maintained.
3. Parking should be considered on a case-by-case basis as part of the conditional use application, ensuring adherence to Table 4.5 (Minimum Parking Space Requirements Table) using both on and off-street parking areas.
4. The number of accommodations shall be subject to recommendation by the Planning Commission and approved by the Town Council.
5. The following ancillary, or accessory, business uses are permissible through a conditional use permit application for a Bed & Breakfast or may be applied for as a modification of the approved conditional use permit for the Bed & Breakfast:

- a. Bicycle rentals
- b. Gift shops, located within either the principal residence or buildings identified as part of the Bed & Breakfast and not to exceed 20% of the total floor space of the Bed & Breakfast
- c. Electric vehicle charging stations

Section 4.2: Conditional Use Permits *[revised 12/19/2024]*

- A. Statement of Intent. The purpose of this section is to recognize certain uses which, by nature, can have a potentially unfavorable impact on or be incompatible with other uses of land within a given zoning district. These uses, as described, may be permitted within given designated districts under controls, limitations, and regulations of a conditional use permit. It shall be the duty of the Town Council under the provisions of this ordinance to evaluate the impact and the compatibility of each use and to stipulate such conditions and restrictions including those specifically contained herein as will assure the use being compatible with the neighborhood in which it is located, both in terms of existing land uses and conditions and in terms of development proposed or permitted by right in the area or, where that cannot be accomplished, to deny the use as not being in accordance with the adopted comprehensive plan or as being incompatible with the surrounding neighborhood.
- B. Conditions for Issuance. Conditional use permits may be issued for any of the conditional uses for which a use permit is required by the provision of this ordinance in the specific districts provided that the Town Council, upon recommendation by the Planning Commission, shall find that after duly advertised public hearing the use will not:
 - 1. Adversely affects the health, safety, or welfare of the persons residing or working in the neighborhood of the proposed use or adversely affect other land uses within the particular surrounding neighborhood.
 - 2. Be detrimental to public welfare or injurious to property or improvements in the neighborhood.
 - 3. Be in conflict with the purpose of the comprehensive plan of the town.

In granting any conditional use permit, the Town Council shall designate such conditions as it determines necessary to carry out the intent of this ordinance.

- C. Procedures. Written application for a conditional use permit may be made by any property owner, tenant, department, board, or bureau of any government agency. The application shall be filed with the Zoning Administrator on forms provided by the town. The application shall be accompanied by a fee established by separate ordinance by the Town Council to defray cost of advertising and processing the application. A site plan in accordance with the site plan ordinance shall be submitted with each application. A list of additional required permits shall be submitted with the application and shall be submitted to the Planning Commission with the application, and the Zoning Administrator may add any additional required permits. Changes to the additional permit list may be made by mutual consent of the applicant and the commission. No changes shall be made to the list after the Planning

Commission recommendations to Town Council. Conditional use permits shall include a disclosure statement, signed by the applicant and notarized, of the equitable ownership of the real estate affected, which shall list the names and addresses of all the adjacent property owners and interested parties, including applicant, owners, contractors, purchasers, and lessees of the land described in the application, all partners, both general and limited, and partnerships, stockholders, officers, and directors. The applicant shall keep this information current at all times during the processing of the application. The procedures for approval of a conditional use permit shall be the same as those prescribed for zoning changes as set forth in this ordinance.

1. Action by the Zoning Administrator. The Zoning Administrator shall study the application and determine whether the proposed conditional use conforms to the general purpose and intent of the comprehensive plan, any applicable regulations that have been adopted, and the requirements of this ordinance. Upon completion of such review, if the administrator shall determine that any proposal in the application does not meet the requirements of this ordinance, he/she shall reject the application and return it to the applicant. If the applicant does meet the requirements of this ordinance, the administrator shall transmit all the findings and recommendations to the Planning Commission. However, nothing herein shall prohibit the administrator from accepting a conditional use permit application if failure to meet applicable requirements is due solely to area or dimension insufficiency of the lot upon which it is proposed. Any appeal of the Zoning Administrator may be made directly to the town manager.
 2. Action by the Planning Commission. After receiving the report of the administrator with all pertinent materials, the Planning Commission shall give notice of and hold a public hearing. Within forty-five (45) days after the hearing, the Commission shall submit its recommendations to the Town Council through the Zoning Administrator. Upon mutual agreement between the Commission and the applicant, such time may be extended.
 3. Action by the Town Council. After receiving the recommendations of the Zoning Administrator and the Planning Commission, the Town Council shall hold a public hearing and act upon the proposed conditional use permit, granting the applicant in whole or in part, with or without modifications, or denying the proposed application. In addition to the general or specific requirements set forth in the ordinance concerning the proposed use, which shall be considered minimum requirements with respect to the permit, additional requirements, conditions, and safeguards may be added by the Town Council as required for the protection of public interest in the specific case.
- D. Approval of a conditional use permit shall be valid for only the specific use it covers in the specific location designated for a period of one year after approval by the Town Council and the completion of the additional permit process as requested in the application. Applicant shall apply or have applied for all additional permits as

provided to the Planning Commission and as required by the Zoning Administrator within one month of the approval by the Town Council. If Applicant fails to apply for any such permit within this time period, the conditional use permit shall be effective as of this date, thirty (30) days after the Town Council approval, unless the Town Council allows for additional time for such application or applications.

1. Staff shall notify Town Council of the date that all additional permits have been approved, which date shall be the commencement date for the one (1) year Conditional Use Permit
 2. Staff shall notify Town Council of the status of the project at a regular meeting prior to the expiration of the one (1) year Conditional Use Permit.
- E. If not acted upon within one six (6) months, the conditional use permit shall become null and void, unless an extension of time is approved by the Town Council for good cause shown before the expiration of the Conditional Use Permit. Town Council may make additional one-year extensions for good cause. To be considered, one or more of the following is required, and may be determined by the Zoning Administrator:
1. The procurement of an active Cape Charles Building Permit
 2. Payment of Water and Wastewater Connection and Facility Fees
 3. Completed Plans stamped by a Virginia Licensed Professional
 4. Commencement of site preparation or construction
- F. No application for a use permit for the same conditional use on a lot, parcel, or tract shall be considered by the Town Council within a one (1) year period from its last consideration. The provisions, however, shall not impair the right of the Town Council to propose a use permit on its own motion if it finds that there is public benefit to be gained.
- G. Revocation of a Conditional Use. If the provisions of this ordinance or the requirements of the conditional use permit are not met, then the Town Council may revoke the conditional use permit provided that ten days' written notice is given to the applicant.

Section 4.3: Landscaping and Screening Regulations [revised 12/19/2024]

- A. Statement of Intent. The intent of this section is to protect water quality by minimizing erosion and sedimentation, enhancing the infiltration of storm water runoff, and maximizing nutrient uptake. The intent of this section is also to preserve and enhance the aesthetics of the Town, to reduce the negative impact such as noise and glare of uses and structures which are in close proximity to each other and generally regarded as incompatible, to promote attractive landscaping in commercial and industrial districts of the Town.

A comprehensive plan for each individual lot or parcel is essential for the visual enhancement of the Town and to protect and promote the appearance, character, and economic values of neighborhoods. The purpose and intent of such landscaping requirements are to reduce the visibility of paved areas from adjacent properties and streets, moderate climatic effects, minimize noise and glare, and enhance public

safety. Landscaping will provide transition and buffers between neighboring properties.

B. General Requirements

1. Landscaping shall be required in all commercial and industrial districts.
 - a. The owner or his agent shall be responsible for the maintenance, repair, and replacement of all landscaping materials as may be required by the provisions of this Article.
 - b. All plant material shall be tended and maintained in a healthy growing condition and free from refuse and debris at all times. All unhealthy, dying, or dead plant materials shall be replaced during the next planting season.
2. Commercial and industrial district uses that abut residential zones shall provide a landscape buffer or screened area between districts.
3. All parking lots shall be screened and landscaped from adjoining properties or every other use and zoning district.
4. Land disturbance shall be limited to the area necessary to provide for the desired use or development.
 - a. Ingress and egress during construction shall be limited to one access point unless otherwise approved by the Zoning Administrator.
5. Indigenous vegetation shall be preserved to the maximum extent possible with the use and the development permitted and in accordance with the Virginia Erosion and Sediment Control Handbook and the Chesapeake Bay Act.
 - a. Clearing shall be allowed only to provide necessary access, positive site drainage, water quality BMPs, and the installation of utilities as approved by the Zoning Administrator.
 - b. Prior to clearing or grading, suitable protective barriers such as safety fencing shall be erected five feet outside of the dripline of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
 - c. Trees may be pruned or removed as necessary to provide sight lines and vistas provided that, where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint pollution from runoff. Preservation of existing trees is encouraged to provide continuity, improved buffering ability, pleasing scale, and image.
 - d. Any path shall be constructed and surfaced so as to effectively control erosion.
6. Any land-disturbing activity exceeding two thousand five hundred square feet (2,500 SF), including construction of single-family homes, shall comply with the requirements of the Erosion and Sediment Control Regulations.
7. The comprehensive plan for each parcel shall include the requirement to retain the one-hundred-foot (100') Resource Protection Area (RPA) and

associated buffer area.

C. Commercial and Industrial Requirements

1. Required open spaces shall be landscaped in accordance with a landscape plan to be submitted with the site plan and approved by the Zoning Administrator.
2. Screening shall be provided along the common side and rear lot lines of every commercial and industrial district that abuts a residential use or zone. Such screening shall include either fencing or shrubs and trees that provide six feet (6') in height barrier to visual observation. Screening shall be shown on the landscape plan submitted.
3. Parking lots. There shall be a landscaped open space within the perimeter of the parking areas in the minimum amount of two square feet (2 SF) per parking space. At least one (1) tree shall be planted for each forty square feet (40 SF) of landscaped area.

D. Multi-Family Developments and Mobile Home Parks

1. Screening is required for multi-family developments and mobile home parks that abut single-family districts or uses.
2. Parking areas may require landscaping and screening in multi-family and mobile home parks. Where required, other provisions of this ordinance shall apply.

Section 4.4: Outdoor Lighting *[new section 12/19/2024]*

4.4.1: Purpose and Intent

The purpose of this section is to establish outdoor lighting standards that reduce the impacts of glare, light trespass and over lighting; promote safety and security; and encourage energy conservation.

4.4.2: Applicability

- A. This section shall apply to the installation of new outdoor lighting fixtures or the replacement of existing outdoor lighting fixtures in all zoning districts. Replacement of a fixture shall mean a change of fixture type or change to the mounting height or location of the fixture. Routine lighting maintenance, such as changing lamps or light bulbs, ballast, starter, photo control, housing and other similar components shall not constitute replacement and shall be permitted provided such changes do not result in a higher lumen output.
- B. Outdoor lighting fixtures, legally installed for commercial use and existing prior to December 19, 2024 that do not conform to the provisions of this section shall be deemed to be a lawful nonconforming use and may remain. A nonconforming lighting fixture that is changed to or replaced by a conforming lighting fixture shall no longer be deemed nonconforming.

4.4.3: Definitions

FOOT CANDLE is the illumination on a one-square foot surface from a consistent light source. One foot candle (1 fc) is enough light to saturate a one (1) foot square with one (1) lumen of light. A foot candle does not measure the intensity of light at its source but instead measures the brightness of the space being lit.

CUT-OFF. A fixture that emits no more than two and a half percent (2.5%) of its light above ninety (90) degrees and no more than ten percent (10%) above eighty (80) degrees from horizontal. (Illuminating Engineering Society of North America definition)

FULL CUT-OFF. A fixture that emits zero percent (0%) of its light above ninety (90) degrees and no more than ten percent (10%) above eighty (80) from horizontal. (IESNA definition)

4.4.4: Standards

- A. A full cut-off lighting fixtures shall be mounted horizontal to the ground and shall be used for all walkways, parking lot, canopy and building/wall mounted lighting and all lighting fixtures located within those portions of open-sided parking structures that are above ground.
- B. Lighting used to illuminate flags, statues, signs or any other objects mounted on a pole, pedestal or platform, spotlighting or floodlighting used for architectural or landscape purposes, shall consist of full cut-off or directionally shielded lighting fixtures that are aimed and controlled so that the directed light shall be substantially confined to the object intended to be illuminated. Directional control shields shall be used where necessary to limit stray light. In addition, such lighting shall be shielded to protect motorists and pedestrians from glare.
- C. All construction site lighting, with the exception of lighting that is used to illuminate the interiors of buildings under construction, shall use full cut-off or directionally shielded fixtures that are aimed and controlled so the directed light shall be substantially confined to the object intended to be illuminated. Directional control shields shall be used where necessary to limit stray light. Frosted light bulbs shall be used to light the ten-foot (10') outermost perimeter area of the interiors of the buildings under construction.
- D. High intensity light beams in the form of outdoor search lights, lasers or strobe lights are prohibited.
- E. Light poles in all parking lots areas shall not exceed a maximum height of twenty feet (25') including the base.
- F. Wherever possible, illumination of outdoor seating areas, building entrances and walkways is accomplished by use of ground mounted fixtures not more than four feet (4') in height.

- G. Wall mounted lights, other than entry lights of one hundred watts (100 w) or less, shall be fully shielded luminaries, such as shoebox or can fixtures, to direct all light downward and to prevent the light source from being visible from any adjacent residential properties and public street rights-of-way. Wall pack lights on buildings may be used at entrances to a building to light unsafe areas. Such lights cannot be used to draw attention to the building or provide general buildings or site lighting. Wall packs on the exterior of the building shall be fully shielded, fully cut-off, to direct light vertically downward at an angle that shall limit output to prevent glare onto adjacent properties and be one hundred watts (100 w) or less. Wall pack lights visible from any location off site are prohibited.

4.4.5: Plan Required

A photometric plan shall be provided that indicates all outdoor lighting fixtures exclusive of streetlights will not have a source of illumination that is visible beyond the site or cause illumination of adjacent properties in excess of half a foot-candle (0.5 fc), as measured at the site boundary. Where lighting is located along a street with existing street lights and/or along a common property line with another commercial parking lot with pre-existing lighting levels exceeding the half a foot-candle (0.5 fc) maximum, the half a foot-candle (0.5 fc) requirement may be waived when it can be demonstrated to the satisfaction of the Zoning Administrator that compliance is not possible due to pre-existing non-conforming overlapping light sources, and the proposed lighting does not intensify the non-conforming condition.

4.4.6: Standards for Certain Uses

In addition to section 4.4 (4), outdoor lighting fixtures associated with service stations, service station/mini-mart and vehicle sale, rental and ancillary service establishments shall be subject to the following:

- A. Service station and service station/mini-mart canopy lighting shall not exceed a maintained level of twenty foot-candles (20 fc) under the canopy as measured horizontally at grade at the inside of the outside edge of the canopy. All underside canopy lighting shall consist of full cut-off lighting fixtures.
- B. Outdoor display area lighting used in conjunction with a vehicle sale, rental and ancillary service establishment shall not exceed a maintained lighting level of twenty foot-candles (20 fc) as measured horizontally at grade. For the purpose of this section, outdoor display areas shall include all display/storage areas for vehicles offered for sale or rent and the associated travel lanes.

4.4.7: Exemptions

The following shall be exempt from the provisions of this section:

- A. Lighting fixtures and standards required by the Federal Communications Commission, Federal Aviation Administration, Federal and State Occupational Safety and Health Administrations or other federal, state or town agencies, to include streetlights within the public right-of-way.

- B. Outdoor lighting fixtures required by law enforcement, fire and rescue, the Virginia Department of Transportation or other emergency response agencies to perform emergency or construction repair work, or to perform nighttime road construction on major thoroughfares.

Section 4.5: Off-Street Parking and Loading Standards *[revised 12/19/2024]*

- A. General requirements.
 - 1. It is the intent of this zoning ordinance that all buildings, structures, and uses of land shall provide off-street vehicular and bicycle parking in an amount sufficient to meet the needs caused by the building or use of land and that such parking and loading spaces be so oriented that they are readily useable for such purposes.
 - 2. Each use of land and each building or structure hereafter constructed or established shall provide off-street parking and loading according to the standards set forth herein. When a change is proposed to a building that is nonconforming as to parking or loading requirements, a conforming amount of parking or loading shall be supplied based upon the size of the addition.
 - 3. No addition, renovation, or change of use to an existing building shall be constructed or established which reduces the number of spaces, areas, or usability of existing parking or loading space unless such building and its addition conform with the regulations for parking and loading contained herein.
 - 4. The parking lot shall not be modified, enlarged, relocated, or expanded in a manner that violates any portion of this zoning ordinance.
 - 5. No non-single-family detached residential parking area may be used for the sale, repair, dismantling, servicing, or long-term storage of any vehicles or equipment, unless such use is permitted by the zoning district in which the area is located. Any repairs deemed an emergency by the Zoning Administrator is exempt from this requirement.
 - 6. Inoperable vehicles may not be parked in required parking spaces or on any side or front yard and shall be completely screened from view of all surrounding public streets.
- B. Minimum number of parking spaces required.
 - 1. The following are the parking space requirements by permitted use:
 - a. For any use not listed, the Zoning Administrator shall determine the proper requirements by classifying the proposed use among the uses specified herein as to assure equal treatment. In making any such determination, the Zoning Administrator shall follow the principles set forth in the statement of purpose for the zoning ordinance in Article I.
 - b. New infill structures or change of use projects on the first floor of structures in Commercial Districts shall be exempt from complying with the requirements of this section. New uses or changes of use units above the first floor shall be required to conform to the parking requirements set forth herein.

2. Maximum number of parking spaces.
 - a. The total number of permitted parking spaces shall not exceed one hundred and ten percent (110%) of the minimum number of off-street parking spaces required by the type of permitted use, except when the excess spaces are contained in a parking structure.
 - b. Any parking not included within a parking structure that is between one hundred (100%) and one hundred and ten percent (110%) of the minimum number of off-street parking spaces required by type of permitted use shall be “grasscrete” or “grasspave” or other pervious paving systems as approved by the Zoning Administrator.
3. The following table states the minimum number of off-street parking spaces required by use. Any uses not listed would be required to provide the minimum number of parking spaces required by the parent category. When a determination of the number of parking spaces required by this table results in a requirement of a fraction of a space, any fraction shall be counted as one parking space.

Table 4.5 Minimum Parking Space Requirements Table

<i>Land Use</i>	<i>Minimum Parking Space Requirements</i>
A. Residential	
1. Single-Family Residences	2 spaces per dwelling in all districts other than R-1, otherwise none
2. Multifamily Residences	1 space per one-bedroom dwelling, otherwise 2 spaces per dwelling
3. Mixed-Use Developments	1.5 spaces per dwelling; 1 space per dwelling for age-restricted; plus 1 additional space per 200 square feet of commercial gross floor area
4. Home Occupations	No additional spaces required
5. Accessory Dwelling Units	1 space per unit
6. Child and Personal Care Uses	1 space per 2 employees
7. Institutional Residence or Care or Confinement Facilities	1 space per 2 beds
8. Bed and Breakfasts	1 space per rentable bedroom plus 2 spaces for owner/landlord lives on premises
9. Temporary Mobile Homes approved in the event of emergency, construction, or repair	2 spaces per temporary mobile home
10. Duplexes	Duplexes in all Residential Districts built after (December 19, 2024), require 1 parking space per each side of the duplex

B. Sales and Rental of Living Space and Goods	
1. Sales and Rental of Goods, Merchandise or Equipment, Non-Motor Vehicle Related	1 space per 300 square feet of gross floor area
Continued - B. Sales and Rental of Living Space and Goods	
2. Wholesale Sales, with or without Outdoor Display or Storage of Goods	1 space per 300 square feet of gross floor area devoted to sales or display, plus one space per 2,000 square feet of gross storage area
3. Hotels, Motels, and Similar Businesses providing overnight accommodations	1 space per unit plus 1 space per 5 units for visitors
4. Extended-Stay Motels/Hotels	1 space per unit plus 1 space per 5 units for visitors
C. Restaurants	
1. Restaurants	1 space per 100 square feet of gross floor area
2. Event Center	1 space per 3 seats
D. Motor Vehicle-Related Sales and Service Operations and Modifications	
1. Motor Vehicle Related Sales and Service Operations and Modifications	Not including outdoor car display areas for dealerships, 1 space per 200 square feet of gross floor area
E. Office, Clerical, Repair, Research and Personal	
1. Service – Office, Clerical, Repair, Research, and Personal, not primarily related to the sale of goods and merchandise	1 space per 300 square feet floor area
F. Recreation, Amusement, and Entertainment	
1. Baseball Batting Cage	20 spaces
2. Bowling Alleys	5 spaces per alley
3. Golf Driving Range and/or Miniature Golf	20 spaces
4. Health Clubs and Other Physical Fitness Establishments	1 space per 300 square feet
5. Park, Playground, Community Center, Swimming Pool and Other Recreational Facilities as a principal use	1 space per 2000 square feet of surface area or parks, playgrounds, and/or swimming pools; plus 2 space per tennis court; plus 1 space per 500 square feet of recreational facility
6. Theaters (indoors)	1 space per 3 seats
7. Performing Arts Center	1 space per 3 seats
8. Subdivision Recreation Area	1 space per 200 square feet of surface area of swimming pools, plus 2 spaces per tennis court, plus 1 space per 500 square feet of clubhouse, offices, meeting rooms, or other similar enclosed buildings

G. Manufacturing, Processing, Creating, Repairing, Renovating, Painting, Cleaning, Assembling of Goods, Merchandise, or Equipment	
1. Manufacturing, Processing, Creating, Repairing, Renovating, Painting, Cleaning, Assembling of Goods, Merchandise, or Equipment	1 space per 2,000 square feet of gross office, plant and/or storage
2. Innovator Space	1 parking space per 500 square feet
H. Storage and Parking	
1. Storage and Parking	1 space per 2,000 square feet of gross storage area
I. Services and Enterprises Related to Animals	
1. Funeral Related Service (human and animal related)	1 space per 3 seats
J. Educational, Cultural, Religious, Philanthropic, Social, Fraternal Uses	
1. Public and Private School Offering General Education Courses (including associated grounds, athletic, and other facilities)	2 spaces per classroom for K – 8 th grade, plus 1 space per teacher or staff member for grades above 8 th
2. Trade or Vocational Schools	10 spaces per classroom
3. College, Universities, Community Colleges (including associated facilities such as dormitories, office buildings, athletic fields, etc)	10 spaces per classroom
4. Assembly Halls, including Union Halls, Conference Halls, Civic Halls and Activities of Similar Nature	1 space per every 3 people allowed to occupy the building, as set by the maximum occupancy limit
5. Libraries, Museums, Art Galleries, Art Centers, and Similar Uses (including associated educational and instructional activities)	1 space per 300 square feet of gross floor area
6. Place of Worship and Places of Assembly	1 space per for every 3 people allowed to occupy the building, as set by the maximum occupancy limit
7. Social, Fraternal Clubs or Lodges, Union Halls or Similar Uses	4 spaces per 1,000 square feet of gross floor area
8. Clubs and Lodges catering exclusively to members and their guests	4 spaces per 1,000 square feet of gross floor area
K. Miscellaneous Public and Semi – Public Facilities	
1. Miscellaneous Public and Semi – Public Facilities	None
L. Agricultural, Forestry, Mining, and Quarrying Operations	
1. Agricultural, Forestry, Mining, and Quarrying Operations	1 space per employee

M. Temporary Structures and Special Events used in connection with the Construction of Permanent Building or for some Non – Recurring Purpose	
1. Temporary Structures and Special Events used in connection with the Construction of Permanent Building or for some Non – Recurring Purpose	Regulated on a case-by-case basis

C. Shared parking.

1. Reduction of parking requirements through a shared parking arrangement may be granted by the Zoning Administrator through written requests from an applicant and provision of one of the options provided in subsection C.2.
2. Options for a reduction of parking through a shared parking arrangement:
 - a. Option one: For properties sharing parking spaces under this provision, cross-easements shall be filed establishing access to the shared parking spaces in perpetuity and documentation of filing provided to the Town.
 - b. Option two: The minimum number of parking spaces where shared parking strategies are proposed shall be determined by a study prepared by the applicant following the procedures of the Urban Land Institute Shared Parking Report, Institute of Transportation Engineers Shared Parking Guidelines, or other approved procedures with approval by the Zoning Administrator.
 - i. The actual number of parking spaces required shall be based on well-recognized sources of parking data such as the Urban Land Institute or Institute of Transportation Engineers reports. If shared parking rates are not available or limited, the applicant may collect data at similar sites to establish local parking demand rates.
 - ii. If the shared parking plan assumes use of an existing parking facility, then field surveys shall be conducted to determine actual parking accumulation. If possible, these surveys should consider the seasonal peak period for the combination of land uses involved.
 - iii. Said study must receive Zoning Administrator review and approval. The study shall document that the arrangement should avoid conflicting parking demands and provide for safe pedestrian circulation and access.
3. Shared parking agreements shall be fully executed and submitted to the Zoning Administrator for review prior to receiving a Certificate of Occupancy.
4. In no case shall the Zoning Administrator approve a reduction of parking through a shared parking arrangement of greater than twenty-five percent (25%) for any use.
5. Any subsequent change in land uses within the participating developments

shall require proof that adequate parking will be available. Prior to any change in use, the owner must apply to the Zoning Administrator for an evaluation and confirmation of the change. If the Zoning Administrator finds that the parking reduction is no longer justified, the Zoning Administrator shall notify the owner to construct the number of parking spaces necessary to meet the difference in the required parking between the proposed and previous uses.

6. A formal parking study may be waived by the Zoning Administrator for small developments where there is established experience with the land use mix and its impact is expected to be minimal.

D. Bicycle parking.

1. Development of new primary buildings in all R-3, CR, C-1, C-2, C-3, M-2, Harb-Com, Harb-LI, and OS districts, other than single-family residential, shall provide bicycle parking spaces at a ratio of at least one (1) bicycle parking space for every twenty (20) automobile parking spaces.
2. No primary building, other than single-family residential, shall have fewer than three (3) bicycle parking spaces nor be required to exceed a maximum of twenty (20) spaces. If three (3) or more bicycle parking spaces are located within one hundred feet (100') of the primary entrance of the proposed development on the same street frontage, they are exempt from this requirement.
3. Bicycle parking spaces shall be located within twenty feet (20') of the front entrance of the primary structure, or as approved by the Zoning Administrator. Bicycle parking spaces shall not interfere with pedestrian access along sidewalks or walkways.
4. Bicycle parking shall provide an inverted U steel frame or decorative rack approved by the Zoning Administrator. The rack shall be anchored to a concrete pad.

E. Golf cart parking.

1. Golf cart parking spaces are permitted in all off-street surface parking lots and parking structures.
2. Each golf cart parking space shall be six feet (6') wide and at least eleven feet (11') deep.
3. Golf cart parking spaces shall be identified by paving markings and by appropriate signage. Signage shall not count against the maximum aggregate sign area permitted on a lot.
4. Permeable pavers shall be used for golf cart parking spaces as approved by the Zoning Administrator.
5. Wheel bumpers shall be placed at the head of all golf cart parking spaces that do not abut a curb. Wheel bumpers shall be made of concrete, a minimum of four feet (4') long, five inches (5") high, and six inches (6") wide and securely fastened to the pavement by steel re-bars or steel anchors.
6. Golf cart parking spaces may replace up to six (6) automobile parking spaces, with approval by Zoning Administrator as part of the site plan review.

- F. Electric vehicle charging stations.
1. Electric vehicle charging stations are permitted in all off-street surface parking lots and parking structures.
 2. Spaces for electric charging shall be identified by paving markings and by appropriate signage. Signage shall not count against the maximum aggregate sign area permitted on a lot.
 3. Spaces reserved for electric vehicle charging stations may be counted as part of the minimum required parking spaces but shall not be counted toward the maximum.
 4. Any new building with over twenty thousand square feet (20,000 sq) of gross floor area space shall equip at least one required parking space on its property with an electric vehicle charging station prior to receiving a Certificate of Occupancy.
 5. The owner of the property shall be responsible for the installation, maintenance, and operation of electric vehicle charging stations. The owner of the property may determine if a fee is associated with the electric vehicle charging station.
 6. Electric vehicle charging stations shall be installed per U.S. Green Building Council (USGBC) standards.
- G. Parking in non-single-family zoning districts.
1. Off-street surface parking lots shall not be located between the principal building and the street except where otherwise permitted below.
 - a. Lots within CR, C-1, C-2, C-3, Harb-Com, Harb-LI, and M-2 districts with a lot area of less than thirteen thousand square feet (13,000 sq) shall be permitted to have automobile parking located within the front yard only when the following regulations are met:
 - i. Front yard parking shall be limited in area to a maximum of fifty percent (50%) of the area of the front yard.
 - ii. When permitted, automobile parking is only permitted in front yards when located on the permitted access driveway on a paved surface.
 2. *Required dimensions for each parking space.* Each automobile parking space shall be not less than nine feet (9') wide and eighteen feet (18') deep. Adequate interior driveways shall connect each parking space with a public right-of-way, and each space shall have an overhead clearance of at least six and a half feet (6.5').
 3. Parking areas shall have access to a public street.
 4. Parking areas shall be graded and paved, including access drive(s), and be curbed when needed for effective drainage control, and meet the following requirements:
 - a. A minimum depth of six inches (6") of number 21A aggregate base and a minimum of one and a half inches (1.5") of asphalt; or
 - b. Six inches (6") of concrete on appropriate base; or
 - c. Four inches (4") of brick or porous paving block on four inches (4")

of number 21A aggregate base.

- d. Permeable pavers may be used for any parking area, alley, or other low traffic driveway as approved by the Zoning Administrator.
5. Parking areas shall have spaces marked with painted lines, curbstones, or other similar devices, and areas shall be properly maintained in all respects. Landscaping shall be kept healthy and well maintained, surfaces shall be free of potholes, and lines marking spaces shall be distinct and clear.
6. Parking areas shall be drained so as to prevent damage to abutting properties or public streets and where possible it shall be drained towards infiltration swales located in the five-foot (5'), head-to-head landscape strips required between vehicles in Section 4.5 (J) (1) (d).
7. Parking areas shall have adequate lighting if the facilities are to be used at night, provided such lighting shall be arranged and installed so as not to reflect or cause glare on abutting properties. Light poles used in parking lots with one hundred (100) parking spaces or less may not exceed twenty feet (20') in height. Light poles used in parking lots with more than one hundred (100) parking spaces may not exceed thirty-five feet (35') in height. All lighting is to be compliant with Dark Sky lighting standards (see Section 4.4).
8. Parking areas shall be designed to conform to the geometric design standards of the Institute of Traffic Engineers (ITE) when not expressly required in this section.
9. Wheel bumpers shall be placed at the head of all parking spaces that do not abut a curb and any spaces that abut a sidewalk. Wheel bumpers shall be made of concrete, a minimum of six feet (6') long, five (5") inches high, and six inches (6") wide and securely fastened to the pavement by steel re-bars or steel anchors. Individual wheel bumpers shall be placed a minimum of twenty-four inches (24") from the end of each required parking space.
10. Parking areas shall be required to provide handicapped spaces in accordance with the provisions of the Americans with Disabilities Act. All handicapped spaces shall be identified by appropriate restrictive signing and markings.
11. Pedestrian circulation.
 - a. Parking areas shall be designed to facilitate safe and convenient use by pedestrians.
 - b. Parking areas with more than fifty (50) cars shall provide safe pathways from aisles of parking to the nearest building entrance and to adjacent streets. Such pathways shall be at least five feet (5') wide and consist of raised pathways constructed of pavers or other contrasting material.

H. Compact parking spaces.

1. Developments where thirty (30) or more parking spaces are provided shall be required to provide compact parking spaces, as follows:
 - a. A minimum of five (5) spaces, or ten percent (10%) of the total number of parking spaces, whichever is greater, shall be set aside for compact cars.

- b. A maximum of twenty-five percent (25%) of the total required parking spaces may be set aside for compact cars, up to a maximum of fifty (50) spaces, whichever is less.
 - c. Compact parking spaces shall be identified by pavement markings and/or by appropriate signage.
 - d. Parking spaces for compact cars shall not be less than eight feet (8') wide and 16 feet (16') deep.
- I. Stacking spaces for drive-through service windows and drive-through facilities.
 - 1. Stacking spaces shall be provided for any use having a drive-through service window or areas having drop-off and pick-up areas in accordance with the following:
 - a. Inbound stacking spaces shall be provided before the first service window as stipulated below and at least one outbound stacking space shall be provided after each service window of a drive-through facility.
 - b. Each stacking space shall be a minimum of twenty-two feet (22') long.
 - c. Designated stacking spaces shall not interfere with circulation of the lot or free movement or access to parking spaces.
 - 2. Banks with drive-through facilities shall provide a minimum of six (6) spaces before each service position and one (1) outbound space after the service window.
 - 3. Restaurants with drive-through service windows shall provide a minimum of ten (10) stacking spaces for inbound drive-through customers and one (1) additional outbound space after each service window.
 - 4. Other facilities with drive-through service windows shall provide three (3) stacking spaces for each window or drive-through service facility.
 - 5. Drive-through service window lanes shall be separated by striping or curbing from off-street parking areas. Individual lanes shall be striped, marked, or otherwise distinctly delineated.
 - 6. Stacking lanes shall be a minimum of eight and a half feet (8.5') adjacent to the service window.
 - 7. All drive-through service windows shall be provided with a bypass lane with a maximum width of eight and a half feet (8.5').
 - 8. All stacking lanes shall be at least seventy-five feet (75') from an intersection with the nearest street or internal driveway. The distance is measured from the back of the stacking space nearest the entrance to the curb line of the nearest intersection.
 - 9. Pedestrian pathways crossing drive-through lanes shall be clearly signed and identified using alternative materials or raised crosswalks. Painted crosswalks alone are not permitted.
- J. Landscaping in parking lots.
 - 1. Interior landscaping for off-street parking areas shall be required for all surface parking lots designed for twenty (20) or more spaces. The following requirements shall apply.
 - a. Landscape islands shall be located no farther apart than every ten

- (10) parking spaces and at the terminus of all rows of parking. Each landscaped island shall be at least two hundred square feet (200 SF) in area with a minimum width of ten feet (10').
- b. There shall be at least one (1) overstory tree, ten (10) low shrubs and a minimum of sixty percent (60%) living ground cover, sod, and/or annual or perennial color in each landscaped island. Shrubs, sod and/or living ground cover shall not exceed three feet (3') in height.
 - c. Vehicles shall be separated from sidewalks, driveways, and streets in public rights-of-way by wheel bumpers and by a strip of land at least ten feet (10') wide, reserved as open space, and planted in grass containing at least one (1) understory or overstory tree, as appropriate, and ten (10) shrubs per fifty linear feet (50 LF), and a minimum of eighty percent (80%) living ground cover, sod, and/or annual or perennial color in the landscape strip surface area. Wheel bumpers shall be placed a minimum of forty-eight inches (48") from the nearest tree trunk.
 - d. Head-to-head parking shall provide a five-foot (5') grass strip with curb. The grass strip may be counted as part of the landscaped areas and shall have one (1) tree every fifty feet (50') containing at least one (1) overstory tree, and ten (10) shrubs, per fifty linear feet (50LF), and a minimum of seventy percent (70%) living ground cover, sod, and/or annual or perennial color in the landscape strip surface area
 - e. Perimeter landscape strips. The perimeter of a surface parking lot shall provide a five-foot (5') wide landscape strip where such parking lot abuts side or rear property lines. The perimeter landscape strip shall be planted with a single row of overstory trees of a species appropriate for buffers and spaced every forty linear feet (40 LF) of landscape strip, and evergreen shrubs spaced every five linear feet (5 LF) of landscape strip. The perimeter landscape strip shall be continuous except for near perpendicular crossings of driveways and sidewalks.
 - f. Landscaped areas in parking lots shall provide drainage and irrigation that ensures full drainage to the storm drainage system.
 - g. See the Cape Charles Master Tree Plan for trees that shall and shall not be permitted within parking lot landscape areas.
- 2. The minimum number of spaces required may be reduced where the Zoning Administrator has determined that the reductions are necessary to preserve a healthy tree or trees with a three-inch (3") or greater diameter from being damaged or removed and where the site plan provides for the retention for said tree or trees.
 - 3. Screening. Plantings which meet the standards for screening as approved by the Zoning Administrator will be required to screen vehicle accommodation areas other than those serving single-family and duplex dwellings from an adjacent residential district or use. Fencing may be substituted for plantings with the approval of the Zoning Administrator.

K. Access management.

1. Driveways.

- a. Interior driveway. Where 90-degree (90°) parking is utilized, all interior driveways shall be a minimum of twenty-two feet (22') in width. If 45-degree (45°) or 60-degree (60°) angle parking is used, then the interior driveway shall be at least twelve feet (12') in width. Where parallel parking is utilized or there is no parking, interior driveways shall be a minimum of ten feet (10') in width for one-way traffic and twenty feet (20') in width for two-way traffic.
- b. Driveways and drive aisles are not permitted between the sidewalk and a building and shall be perpendicular to any adjacent street.
- c. All developments other than single-family detached dwellings shall have pedestrian walkways of a minimum width of five feet (5') connecting ground level parking to the public sidewalks and to all building entrances.

L. Provisions for off-street loading.

- 1. This subsection shall apply to all activities related to loading and unloading.
 - a. Loading activities within one hundred and fifty feet (150') of residential uses shall only be permitted to undertake said activities Monday through Friday from 7:00am to 10:00pm and on Saturdays from 9:00am to 9:00pm.
 - b. In no case shall loading activities hinder or obstruct free movement of vehicles, and pedestrians over a street, sidewalk, alley, or interrupt parking lot circulation.
 - c. All off-street loading activities and access shall be provided with an asphalt or concrete surface or shall be "grasscrete" or "grasspave" or other pervious paving systems as approved by the Zoning Administrator.
 - d. Loading structures and bays.
 - i. Buildings or structures shall be designed so that the loading areas are not visible from any adjoining residential district or any public right-of-way.
 - ii. When required, one (1) or more off-street loading spaces shall be provided on the same or adjoining premises with the facility it serves, either inside or outside a building or structure.
 - iii. A loading space shall have a minimum dimension of twelve feet (12') wide and thirty-five feet (35') deep.
 - iv. All loading spaces shall maintain overhead clearance of at least fourteen feet (14').
 - v. All off-street loading spaces shall have access from an alley, or if there is no alley, from a street.
 - e. Minimum loading space requirements for non-residential uses:

Gross floor area	Required loading spaces
------------------	-------------------------

0 – 49,000 square feet	1
49,000 – 100,000 square feet	2
100,000 – 160,000 square feet	3
160,000 – 240,000 square feet	4
240,000 – 320,000 square feet	5
320,000 – 400,000 square feet	6
Each 90,000 above 400,000 square feet	1

M. Dumpsters.

1. A fence on three sides shall enclose all dumpsters.
 - a. The height of the fence shall be equal to or higher than the height of the dumpster, in accordance with Section 4.1 (G).
 - b. The visible material of the fence shall be made up of brick, stucco, stone, or wood.
2. The operable side of the dumpster shall be concealed with a gate equal to or higher than the height of the dumpster. The gate shall be opaque and constructed of durable materials.
3. Dumpsters shall be located a minimum of five feet (5') from property lines.
4. In no case shall loading activities hinder or obstruct the free movement of vehicles, and pedestrians over a street, sidewalk, alley, or to interrupt parking lot circulation.
5. Service activities within one hundred and fifty feet (150') of residential uses shall only be permitted Monday through Friday between 7:00am to 10:00pm and on Saturdays from 9:00am to 9:00pm.
6. Temporary construction trash and recycling dumpsters, which are not enclosed, shall be permitted up until such time as a Certificate of Occupancy is issued.

Section 4.6: Stormwater Management

- A. Purpose and Intent. The purpose and intent of the requirements contained in this section are to prevent a new increase in non-point source pollution from new development and achieve a ten percent (10%) reduction in non-point source pollution from redevelopment to the greatest extent possible given the size and current development of lots within the Town.
- B. Except as provided in Section 4.6 (C), for any development or redevelopment within the Town, stormwater runoff shall be controlled by the use of the best management practices that achieve the following:
 1. For development, the post-development nonpoint source pollution runoff load shall not exceed point forty-five pounds (45 lbs) per acre per year.
 2. For redevelopment, the nonpoint source pollution load shall be reduced by at least ten percent (10%). The Zoning Administrator may waive or modify this requirement for redevelopment sites that originally incorporated best

management practices for stormwater runoff quality control provided the following provisions are satisfied:

- a. In no case may the post-development nonpoint source pollution runoff exceed the pre-development load;
 - b. Runoff pollution loads must have been calculated and the best management practices selected for the expressed purpose of controlling nonpoint source pollution; and
 - c. If best management practices are structural, evidence shall be provided that the facilities are currently in good working order and performing at the design levels of service. The Zoning Administrator may require a review of both the original structural design and maintenance plans to verify this provision.
3. For redevelopment, both the pre- and the post-development loadings shall be calculated by the same procedures. However, where the design data is available, the original post-development nonpoint source pollution loadings can be substituted for the existing development loadings.
- C. For any development or redevelopment on any nonconforming lot within the Town, the Zoning Administrator may waive the requirements of this section upon receipt of a written request for such an administrative waiver provided, however, that in no case shall such development or redevelopment result in such nonconforming lot having total impervious coverage in excess of forty percent (40%) for residential uses and seventy-five percent (75%) for commercial uses. The written request for an administrative waiver hereunder shall state the total estimated impervious coverage to result from such development or redevelopment.

Section 4.7: Swimming Pool Regulations *[revised 12/19/2024]*

- A. Definition. For the purpose of this ordinance, a swimming pool is defined as an artificial or man-made container of water capable of being filled to a depth exceeding sixteen inches (16") at the lowest point and is designed to be used for swimming or immersion purposes by individuals. Wading pools are exempt from the provisions of the Zoning Ordinance and are considered temporary pools if made of plastic, light metal, or other light duty materials which do not exceed a full volume depth of sixteen inches (16") at the lowest point, and which are completely emptied of water when not in use. Spas or health pools shall meet the same requirements as swimming pools, except when less than ten feet (10') in width.
- B. Applicability of Zoning and Building Codes. Permanent swimming pools and associated decking and fencing are required to meet all zoning and building code requirements and are considered impervious structures. Building, electrical, and plumbing permits are required for the installation, alteration, repair or remodeling of all pools not exempt from the Zoning Ordinance. In-ground pools require an approved site plan. Above-ground pools may be installed without a survey and engineering grading plan if permitted by the Code Enforcement Official, and where steep slope areas are not present. Abandoned pools must be removed or appropriately filled in and covered. Swimming pools must be discharged according

to all regulations established by the Commonwealth of Virginia.

- C. Setbacks. Swimming pools are permitted to be located no closer than five feet (5') to a side or rear property line and must be located no closer than five feet (5') from any structures, either primary or accessory, located on the lot or premises. Above-ground pools are only allowed in rear yards. The five-foot (5') separation from structures shall not apply to spas or health pools adjoining the principal structure. Spas must be covered with approved spa cover when not in use. Swimming pools and spas are not permitted in the front yard or within approved swale or storm water management systems.
- D. Condition of Water. Water contained in swimming pools must be kept healthy and sanitary at all times and shall not emit an offensive odor that creates a nuisance or unhealthy condition. Approved circulators and filtration systems must be provided for all pools, spas, and health pools. Wading pools are exempt from filtration system requirements.
- E. Fencing. All zoning and building code requirements shall be met. Consistent with the [Code of Virginia §15.2-921](#), all swimming pools must be completely enclosed with a minimum four-foot (4') high fence with locking gate access. Such fence must be constructed of a material that meets the approval of the building code official.

Section 4.8: Communication/Data Equipment [revised 12/19/2024]

- A. Satellite or other ground or building mounted television, radio, or other communications receiving or sending devices.
 - 1. Large satellite dishes (greater than two feet (2') in diameter) are not permitted within the Town of Cape Charles.
 - 2. Mini dishes shall be allowed with building permit and zoning clearance.
 - a. Building-mounted dishes shall not be on the front of any façade or structure. The dish must be mounted in such a way that it cannot be seen from the sidewalk or street.
 - b. Ground-mounted dishes shall not be in the front yard of any structure. Every effort shall be made to mount the dish in an unobtrusive location. Visible dishes shall be screened with plantings.

Section 4.9: Demolition Policy Guidelines *[revised 12/19/2024]*

- A. The owner of a building or structure within the Town shall be entitled to raze or demolish such building or structure provided that he has applied to the Building Official for such right. If the property is located in the Historic District Overlay, then the owner must follow Section 8.21. If property is located in the Historic Harbor Area Overlay District, then the owner must follow Section 9.21.

- B. Demolition-By-Neglect. Any officially designated contributing building, structure or site within the Historic District Overlay must not only comply with this section but also with Section 8.22. If property is located in the Historic Harbor Area Overlay District, then the owner must follow Section 9.23. All other properties, structures or sites within the Town shall not be allowed to deteriorate due to neglect by the owner which would result in violation of the intent of this ordinance. Demolition-by-neglect shall include any one or more of the following courses of action or inaction:
 - 1. Deterioration of the exterior of a building to the extent that it creates or permits a hazardous or unsafe condition.
 - 2. Deterioration of exterior walls or other vertical supports, horizontal members, roofs, chimneys, exterior wall elements such as siding, wooden walls, windows, brick, plaster or mortar to the extent that it adversely affects the character of the district or could lead to irreversible damage to the structure.
 - 3. Defective or deteriorated flooring or floor supports of insufficient size to carry imposed loads with safety.
 - 4. Any fault in the building or structure which renders the same structurally unsafe or not properly watertight.

If the Building Official determines that a structure is being demolished by neglect, he or she shall send notification to the owners stating the reasons therefore and shall give the owner thirty (30) days to respond with a plan of action and ninety (90) days from the date of the notice on which to commence work. If appropriate action is not taken at this time, the Zoning Administrator may initiate appropriate legal action as provided further in this chapter.

- C. Penalties for Noncompliance.
 - 1. Failure to correct a defect after a notice that the Building Official has determined that a property is being demolished by neglect shall constitute a misdemeanor. Such misdemeanor shall be punished as set forth in §§ [18.2-9](#), [18.2-11](#) and [15.2-1429](#) of the Code of Virginia, as amended. Each day that the violation continues is a separate offense.
 - 2. Any property owner in the District who does not obtain approval as required within this ordinance shall be guilty of a misdemeanor and may be punished as set forth in §§ [18.2-9](#), [18.2-11](#) and [15.2-1429](#) of the Code of Virginia, as amended.
 - 3. Nothing in this chapter shall be deemed to restrict or prohibit the Town Council from acquiring in any legal manner any historic area, site, building,

or structure or the land pertaining thereto for the use, observation, education, pleasure, and welfare of the citizens of the Town.

Section 4.10: Cape Charles Planning, Zoning, and Building Fee Schedule

All charges for planning and zoning activities, including but not limited to permit applications, inspections, certificates, reviews, variances, and appeals, shall be established from time to time by the Cape Charles Town Council in its sole discretion.

Section 4.11: Solar Panels: Performance Standards and Design Regulations

[new section 12/19/2024]

Intent: Solar Panels are to be considered accessory structures on residentially zoned properties provided they serve the residence on the property and are subordinate in purpose, area and extent to the dwelling served.

Requirements: Solar energy systems shall be installed in compliance with applicable provisions of the Uniform State Building Code (USBC) and the Virginia State Fire Prevention Code (VSFPC). No ground-mounted solar energy generation facilities shall be permitted.

Solar Panels may be installed on rooftops subject to the following:

- a. Rooftop. All rooftop solar panels shall be screened from view. This shall be accomplished for pitched roofs by placing the panels on the back half of the building or concealing the equipment within the roof structure, or for flat roofs by a parapet wall. Parapets shall match the primary building material of the facade below and shall blend with the design of the building in terms of color and scale. All such screening shall be integrated into the building design. In the Historic Overlay District, all solar panel installations need to be flush with the roofline and blended in appearance so as not to be evident and/or visible from the street.

In general, rooftop solar panels shall be screened from view, which can be accomplished by placing it/them on the back half of the building. When used as a compatible and integral architectural element to a structure, it may be found allowable that they are visible to the public view. Solar panels that are visible to the public view shall be screened in such a way as to minimize glare and reflectance.

Placement of solar panels on roofs shall not exceed the total height allowance for a structure in the Residential Zoning Districts, as stipulated in Article III – Height Regulations for each type of zoning district.

Section 4.12: Development Standards for Residential Zoning Districts

[new section 12/19/2024]

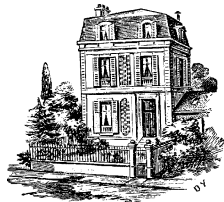
These standards are applicable to the following zoning districts: Residential – 1 (R-1); Commercial-Residential (CR)

Development Standards

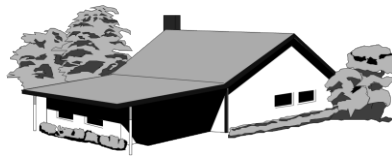
Statement of Intent. The development standards below are intended to help preserve the architectural cohesiveness of the Town of Cape Charles by stipulating that new construction and additions be compatible, sympathetic, and complementary to existing buildings. Development concepts are illustrated below to clarify the intent of the development standards.

1. Proportions. A building may be described by the height, footprint, volume, placement of door openings, window openings, porch columns, spacing, etc. The proportions of new construction should relate, 1:1, to the prevailing standards present in the neighborhood. Comparing new construction to the existing structures in a neighborhood is to see the 1:1 proportion of the building to another.

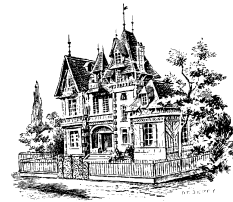
Proportions



YES



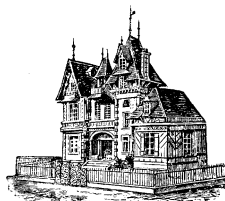
NO



YES

2. Scale and orientation. The elevation of the first (1st) floor on new construction must be the same or within six inches (6") of the average of the prevailing standard of neighborhood buildings but must meet the required floodplain elevation. The principal facade of new construction must be oriented in the same direction as the rest of the buildings in the neighborhood.

Scale and Orientation



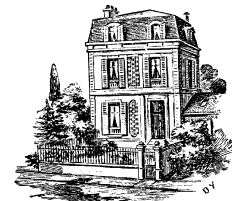
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NO

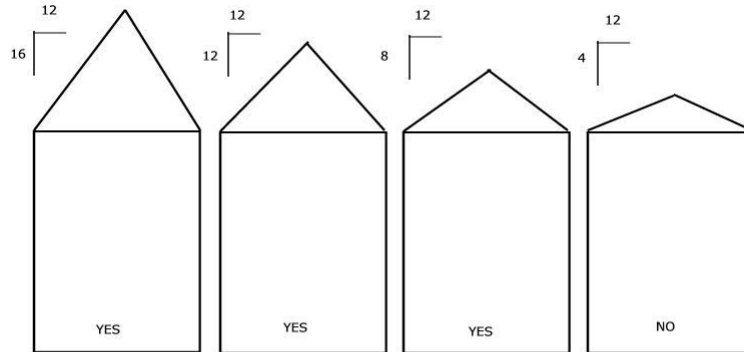


YES



YES

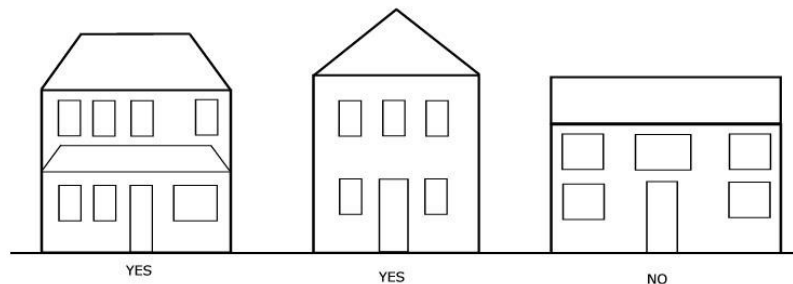
3. Roofs. Primary roof ridges of new construction must be parallel to the primary roof ridges of existing neighborhood buildings. New construction should reflect the prevailing roof pitch of neighborhood buildings within twenty percent (20%). Where there is no prevailing standard, roof pitch should be no less than 8:12.



Roof Pitch Examples
(Drawing Not To Scale)

4. Windows and doors. The facade of new construction must draw upon the proportion of neighborhood structures. Windows must be double hung windows or of a size and style similar to existing windows in the neighborhood. The following window treatments are allowed: Jalousie windows, picture windows and horizontal windows, only in traditional American ranch style architecture. Exterior doors should be paneled or have glass panels. Flush doors are not allowed.

Proportion of Openings



5. Porches. Porches must be constructed on the front of the house and must cover at least eighty percent (80%) of the building facade's width. Where there is no prevailing standard, porches may be reduced to be in keeping with the house style. Front porches must have a minimum depth of six feet (6'). Porches on the side and rear of the house are also permitted. All porches must meet setback regulations.
6. Materials. New construction should use materials in a manner sympathetic to the character of the existing neighborhood houses. It is encouraged that materials should be of similar or complementary size, texture, scale, craftsmanship, and applicability to function performed. It should be noted that the sympathetic use of materials does not imply that materials used in new construction will replicate the old in detail nor will new construction attempt to imitate existing structures. Rather, it is a matter of determining

the compatibility of new construction. Certain materials are potentially visually intrusive that their use for new construction in the R-1 District will not be permitted. These materials include:

- a. asphalt siding, vertical plywood siding, aluminum siding
 - b. exposed concrete block above foundation level
 - c. corrugated metal, except for roof applications
 - d. flush doors (hollow or solid core)
7. Utilities. Upon installation of utility access lines, such lines shall be installed underground. The Town encourages replacement lines to be installed underground.

Section 4.13: Development/Redevelopment Standards for Commercial Districts

[new section 12/19/2024]

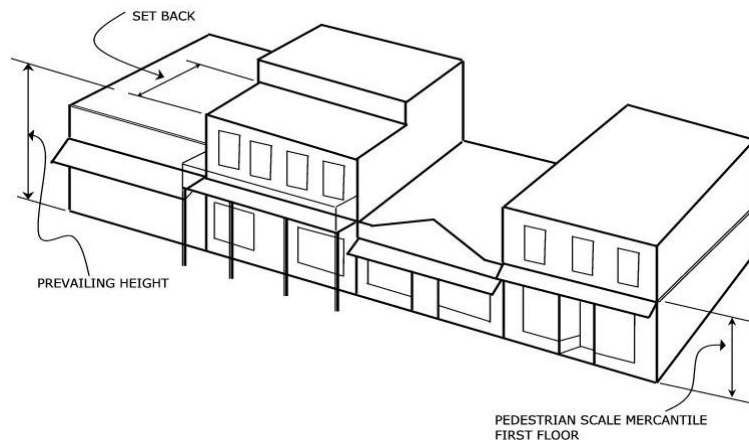
These standards are applicable to the following zoning districts:

Commercial -1 (C-1); Commercial-2 (C-2); and Commercial – 3 (C-3)

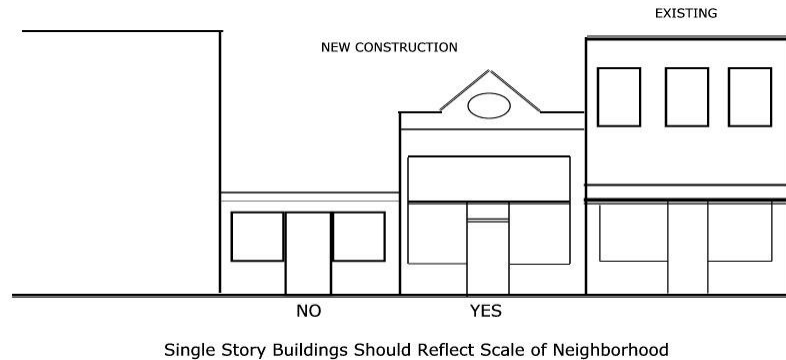
Development Standards

Statement of Intent. The development standards below are intended to help preserve the architectural character of the Town of Cape Charles' commercial districts by requiring that all façade reconstruction / rehabilitation must conform to the building style as described in the United States Department of Interior National Register without the addition to or removal of contributing elements. New construction, additions, and alterations must be compatible, sympathetic, and complementary to the original or existing buildings in built-up areas. Development concepts are illustrated below to clarify the intent of the development standards.

1. Scale. When the scale of neighborhood buildings is relatively consistent, new construction should be discouraged from drastically altering these relationships. In the Town of Cape Charles, the two (2)- and three (3)-story structure is the norm, and structures which digress from this standard to any great degree seriously impact the character of the Town of Cape Charles. If construction is to be allowed, particular attention should be given to the location, siting, setbacks, and façade treatments of the proposed building. No matter what size of the new building, the base of the building should be scaled to pedestrians.

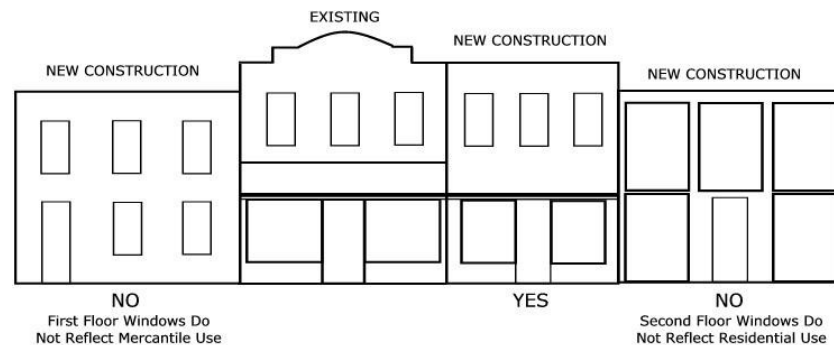


2. Floor-to-Floor Heights. This important element of scale is often ignored in new construction, which tends toward lower ceiling heights. Floor-to-floor heights of new construction should be within ten percent (10%) of neighborhood construction, where a relatively consistent floor-to-floor height is expressed in the facades of a given street.

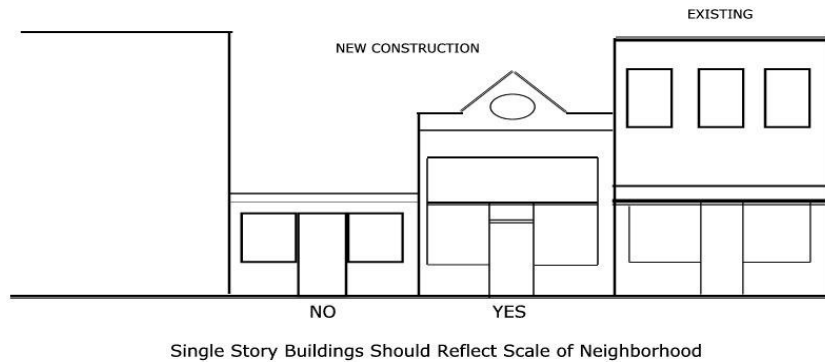


3. Windows and Cornice Lines. All first-floor facades shall have large glass areas which denote mercantile use. First (1st) floor walls should be more than 50 percent (50%) glass. The first (1st) floor shall be distinguished from the upper floors by a cornice line if appropriate or other delineations such as transom windows, fabric awnings, or porches.

Windows above the first floor are to be more residential in scale and should be double hung, single or multiple, and vertical in proportion. Walls above the first (1st) floor should be more than fifty percent (50%) solid.



New construction of one-story buildings, such as some convenience stores and fast-food restaurants in commercial districts, intrude upon the character of the Town of Cape Charles and will only be permitted in infill situations and must meet all other development standards. There are many examples of convenience stores and fast-food chain restaurants being successfully integrated into a historic context.



4. Massing. The facades of new construction should reflect the sense of lightness or weight of neighboring buildings by using similar proportions of solids (siding or walls) to void (window and door openings) and projecting bays and overhangs.

5. Materials. New construction should use materials in a manner sympathetic to the historic buildings in the Town of Cape Charles. Materials should be of similar or complementary color, size, texture, scale, craftsmanship, and applicability to function performed.

It should be noted that the sympathetic use of materials does not imply that materials used in new construction will replicate the old in detail nor that new construction will attempt to imitate historic structures. Rather, it is a matter of determining the compatibility of the new with the old. Certain materials are potentially so visually intrusive that their use for new construction in the Town will not be permitted. These materials include:

- aluminum
- asphalt siding
- carpeted porch floors and steps
- corrugated metal, except for roof applications
- exposed concrete block above foundation level
- exposed concrete masonry
- faux brick and stone (brick face)
- flush exterior doors
- inappropriate window treatments
- jalousie windows
- picture windows
- windows with horizontal glazing
- metal or wood awnings
- open mesh-type fencing
- ornamental pierced concrete masonry screens and walls
- painted concrete masonry
- unpainted wood
- vertical plywood siding
- vertical wood siding on primary structures
- wrought iron and aluminum porch columns

6. Siting. The siting of new construction in the commercial district shall conform to the building line of adjacent buildings. New commercial buildings should occupy the full width of their lot at the street line except in the Route 184 corridor. Freestanding “object” buildings that do not conform to the street and lot lines will not be permitted in the Mason Avenue from Harbor to Peach historic context. Where a commercial building is built adjacent to a vacant lot, it should be built with a party wall in anticipation of subsequent new construction being built adjacent and up to the property line. Probably the single most damaging siting of a commercial building is toward the rear of the lot with parking between the building and the street.
7. Utilities. Upon installation or replacement of utility access lines, such lines shall be installed underground.

Section 4.14: Short-Term Rental (STR) Regulations *[new section 11/21/2024]*

A. Purpose and intent *[revised 12/19/2024]*

1. The purpose and intent of this section is to regulate Short-term rentals (STRs). STRs are common in America today, including in the town. However, given that they are commercial uses which must co-exist with residential uses, and often in neighborhoods not designed for commercial activity, limits and regulations are needed. This article is intended to provide the requirements to allow these certain limited commercial uses in town zoning districts containing residential uses per Article III.
2. The regulations for short-term rentals are designed to accommodate an STR Owner’s and operator’s limited commercial use in a way that is safe for the guest, meets town requirements, does not change the character of the town, and fits in with the districts in which STRs operate.
3. This Section is intended to work in tandem with the town’s business license requirements as contained in the Town Code, as a measure for the town to monitor the number of STRs and enforce regulations.
4. Owners and operators are allowed a one-year (1 yr) grace period, from the date Zoning Ordinance No. 20241121 is adopted, to come into compliance, and pay the zoning permit fee. However, this grace period is not intended to limit or change existing rules, regulations, or fees, including but not limited to requirements to obtain a business license, pay taxes, and comply with the building code.

B. Permitting Requirements

1. A short-term rental unit shall not be operated until an annual business license is issued in accordance with Town Code Chapter 18, Article II by the Finance Department.
2. A short-term rental unit shall not be operated until a Short-Term Rental (STR) zoning permit is issued by the Planning Department. The application for a zoning permit will require, as a minimum, the following:
 - a. Name of owner and operator of the short-term rental property

- b. Address of the short-term rental property
 - c. Town business license number
 - d. For operators that are a lessee or sublessee, an attestation that the property owner has granted permission for use of such property as a short-term rental.
 - e. Contact information for all owner(s), operator(s), and property management companies (if applicable), to include: names, telephone numbers, mailing addresses, and e-mail addresses. If ownership is via partnership or corporation, a list of all partners, officers, and shareholders (as appropriate) must be provided with the same contact information.
 - f. Contact information for the twenty-four (24) hour/seven (7) days a week contact who is the responsible party to address immediate concerns associated with a short-term rental, and who has the authority to act as the owner's and operator's agent.
 - g. If the property is governed by a homeowners' or condominium association, proof that authorization to operate the short-term rental was provided by the homeowners' or condominium association.
 - h. Certification that Town prepared STR training information has been reviewed annually.
 - i. Certification that adjacent property owners have been notified that an application for a STR zoning permit has been submitted.
 - 3. Short-term rental zoning permits will be valid for one year (1 yr) and may be renewed each subsequent year, if there were no permit violations, and upon approval of the associated annual business license and re-inspection.
 - 4. Any change to information on the short-term rental zoning permit application will require notification to the Planning Department within ten (10) business days.
 - 5. Any change in ownership of the property or short-term rental owner or operator will require a new application for the business license, short-term rental zoning permit, and inspection within twenty (20) business days.
 - 6. An owner (which includes, but is not limited to, corporations or partnerships, and entities or individuals that are stockholders, members or partners in corporations, companies, or partnerships) may only operate up to five (5) short-term rental units within the entire town.
 - 7. An operator is not prohibited from offering a property as a short-term rental solely on the basis that such operator is a lessee or sublessee, provided that the property owner has granted permission for such property's use as a short-term rental. However, a lessee or sublessee is limited to one (1) short-term rental within the town. An operator will be required to meet any subleasing requirements, if any, from any applicable homeowner's or condominium association.
- C. Additional Requirements [12/19/2024]
- 1. Every short-term rental is required to submit transient occupancy tax (TOT) in accordance with [Town Code Chapter 18, Article V](#).

2. Short-term rentals are only permitted in those districts as specified in Article III.
3. Simultaneous short-term rentals under separate contracts in the same dwelling are prohibited.
4. Commercial gatherings providing direct or indirect compensation, including but not limited to luncheons, banquets, parties, weddings, charitable fund-raising, commercial or advertising activities, or other similar occurrences are prohibited.
5. Occupancy: There shall be no more than two (2) lodgers per bedroom, plus two; with the maximum number of overnight lodgers per dwelling being no greater than ten (10). Occupancy shall not exceed any limit set by the Virginia Uniform Statewide Building Code (VA USBC) or local building official. This shall be identified as the Base Occupancy for STRs (BOSTR). For the purpose of the BOSTR, an occupant shall not include any person two years (2 yrs) of age or under.

Occupancy of greater than above may be approved, provided the property can accommodate sufficient off-street parking consisting of one (1) spot for every two (2) additional lodgers over the base occupancy for STRs (BOSTR), the property meets any other life safety requirements as may be reasonably required for such higher occupancy, and the property will not exceed the VA USBC or local building code official limitations.

The town retains the right to investigate violations and complaints of permit violations, and to periodically contact STR lodgers to determine occupancy. If town investigators determine that a violation has occurred, notice of such violation will be provided to the STR zoning permit holder or agent who will be responsible to cure the violation.

6. The business license and emergency information must be conspicuously posted inside each rental, including the twenty-four/seven (24/7) contact information for the STR responsible party.
7. Signage is to comply with Article V, Section 11.1.
8. Refuse requirements: one (1)- and two (2)-bedroom dwelling units used as short-term rental units will require one (1) trash receptacle; three (3) or more-bedroom units will require two (2) receptacles; five (5) or more bedrooms will require three (3) receptacles. Owners and operators are required to maintain the receptacles so that they do not overflow.
9. Lodgers and their guests will be required to observe noise requirements contained in [Town Code Chapter 20, Article I, Section 20-3](#).
10. Safety Equipment: Operable smoke detectors, fire extinguishers, and carbon monoxide detectors shall be present in compliance with the Virginia Uniform Statewide Building Code.
11. Under no circumstances shall the issuance of a certificate of zoning compliance (permit for short-term rental) by the Administrator (Town) be construed as abrogating, nullifying or invalidating any other provision of Federal, State or local law: any deed covenant or property right; or any

homeowners' or condominium association bylaw, or rule.

D. Inspections

1. An initial inspection will be required for all short-term rentals in accordance with [Town Code Chapter 8, Section 8-4](#).
2. An annual re-inspection by the Code Official or designee is required when filing for a short-term rental business license renewal.
3. The Building Code Official or designee maintains the right to inspect a short-term rental, based on complaints or reasonable suspicion, to verify that the rental is being operated in accordance with the Virginia Uniform Statewide Building Code, the permit, and other applicable laws and regulations.

E. Violations

1. A Short-Term Rental (STR) zoning permit may be denied for any of the following violations:
 - a. Failure to obtain/maintain a town business license
 - b. Failure to pay all town real property taxes
 - c. Failure to pay all business taxes from the prior year
 - d. Failure to file and pay (if applicable) payment of transient occupancy taxes due the town for the previous three (3) months or more
 - e. Falsifying town forms or applications
 - f. Other applicable town zoning violations
 - g. Failure to provide responsive actions to issues raised to the twenty-four seven (24/7) contacts, as determined through town investigations.
 - h. Two (2) violations of safety/building code requirements within the same calendar year, that are not cured following reasonable notice.
 - i. Two (2) violations of occupancy limits within the same calendar year, that are not cured following reasonable notice.

Reasonable notice is satisfied when an authorized town official notifies the zoning permit holder or agent of a condition violating requirements of this section, and twenty-four hours (24 hrs.) pass without resolution of the violation.

Note: individual nuisance or noise violations will be issued directly to the offending party in addition to any consequence to the zoning permit holder.

Violations may be investigated by the Town Manager, Treasurer, Zoning Administrator, Building Code Official, Police Chief or their designees as appropriate. Once investigated, violations pursuant to this section will be issued by the Zoning Administrator.

2. An owner or operator, whose Short-Term Rental (STR) zoning permit has been denied pursuant to this Section, shall not be eligible to obtain another STR zoning permit for the subject short-term rental for the entire succeeding

calendar year. Thereafter, the owner or operator will be required to apply for a new business license, STR zoning permit, and an inspection.

3. Before the denial of Short-Term Rental (STR) zoning permits is made effective, the town shall give written notice to the short-term rental owner or operator as noted on the STR zoning permit. The notice of permit denial under the provisions of the section shall contain:
 - a. A description of the violations constituting the basis of the denial, suspension or revocation;
 - b. If applicable, a statement of acts necessary to correct the violation(s):
and
 - c. A statement that the owner may have a right to appeal the notice of a permit denial within thirty (30) days in accordance with the [Code of Virginia Section 15.2-2311 \(A\)](#) and that the decision of permit denial shall be final and unappealable if not appealed within thirty (30) days.

Attachment B –
CCZO New Section 4.2 (J)
Accessory Dwelling Units

ATTACHMENT B

**ADOPTED BY TOWN COUNCIL on NOVEMBER 1, 2018
with an effective date of February 1, 2019**

CAPE CHARLES ZONING ORDINANCE ACCESSORY DWELLING UNITS (ADUs)

Section 2.9 Definitions (insert accessory dwelling definition, modify accessory building and single family dwelling definitions)

DWELLING, ACCESSORY is a dwelling unit which is an accessory use to a single family dwelling, or commercial use in the Commercial – Residential District.

BUILDING, ACCESSORY means a subordinate and separate building located upon the same lot occupied by the main structure or where a main structure was previously located. Accessory buildings shall not be used as dwelling units, unless a conditional use permit is issued for an accessory dwelling.

Section 3.1.C, 3.2.C, 3.3.C, and 3.5.C (insert “Accessory dwellings” in Conditional Use sections)

Section 4.2.J Accessory Dwellings (insert in Article IV)

One accessory dwelling may be maintained on a property in the R-E, R-1, R-2 and CR zoning districts, contingent upon approval as a conditional use in accordance with Section 4.3, and subject to the following:

A. Physical characteristics.

1. Accessory dwellings shall be located in an accessory building.
2. Accessory dwellings shall not have a floor area exceeding 45 percent of the floor area of the main building.
3. Accessory dwellings shall have one kitchen and one bathroom.
4. Accessory buildings containing an accessory dwelling shall maintain the exterior appearance of an accessory building and shall not have the appearance of a single family dwelling.

B. Occupancy characteristics.

1. Length of stay – No accessory dwelling unit shall be occupied by any person or persons, whether paying a fee for such occupancy or not, for a period less than thirty (30) consecutive calendar days. Upon request from any building, zoning, finance, or public safety official acting on behalf of the Town of Cape Charles the owner of the subject lot of record upon

which the accessory dwelling unit sits shall provide occupancy documentation and/or information as requested, either verbally or in writing. Failure to do so may result in the revocation by the Cape Charles Town Council of the conditional use status for the accessory dwelling unit according to Article IV, Section 4.3.F.

2. Water\sewer\trash monthly fee – All accessory dwelling units shall be billed as a water\sewer\trash account separate from the account for the main structure, and shall pay the minimum monthly account fee as set by Town Council.
3. Water meter option – An accessory dwelling unit may have a separate water meter from that of the main structure upon request by the property owner. If so requested the property owner shall pay all water and sewer utility connection fees as set by Town Council. Metered accessory dwelling units will receive a water\sewer bill based on the metered use, but not less than the minimum monthly account fee.
4. Trash can – All accessory dwelling units shall have a separate trash can provided by the contract waste disposal company.
5. Inspections – All accessory dwelling units shall be inspected annually not later than fifteen (15) days from the anniversary date of the conditional use permit being approved by Town Council.

C. Other requirements.

1. Accessory dwellings located in accessory buildings may have a separate water meter from the principal dwelling.
2. The lot on which an accessory dwelling is located shall have the required minimum lot area for the district in which it is located.
3. Parking shall be considered on a case-by-case basis as part of the conditional use permit application process, ensuring adherence to Section 4.5.1 C. 6. (Table of Parking Standards) using both on and off street parking areas.
4. Exterior elevations shall also be approved by the Historic District Review Board when required by Article VIII, Historic District Overlay.

Section 4.5.1 Table of Parking Standards (insert)

C. Residential

- | | |
|-----------------------|--|
| 6. Accessory dwelling | 1.0 space per accessory dwelling unit (minimum); otherwise 1.0 spaces per accessory dwelling unit bedroom. |
|-----------------------|--|

Attachment C –
CCZO Section 4.2 (J)
Amended Accessory
Dwelling Units

ATTACHMENT C

TOWN OF CAPE CHARLES ZONING ORDINANCE ARTICLE IV, SECTION 4.2.J – ACCESSORY DWELLING UNITS (ADUs) Amended October 20, 2022

Accessory Dwellings. One accessory dwelling may be maintained on a property in the R-E, R-1, R-2 and CR zoning districts subject to the following:

1. Physical characteristics.
 - a. Accessory dwellings shall be located in an accessory building.
 - b. Accessory dwellings shall not have a floor area exceeding forty-five (45) percent of the floor area of the main building.
 - c. Accessory dwellings shall have one kitchen, one bathroom, and a sleeping area.
 - d. Accessory buildings shall not have the appearance of a single-family dwelling.
2. Occupancy characteristics.
 - a. Transient Occupancy (also referred to as Short Term Rentals [STRs]) means any person(s) who, for any period of not more than thirty (30) consecutive days, either at his own expense or at the expense of another, lodges or obtains lodging at any hotel, motel tourist home, or other facility. Accessory Dwelling Units may not be rented on a Transient Occupancy basis.
 - b. Length of stay – An accessory dwelling unit may be occupied by any person or persons for a period no less than thirty (30) consecutive calendar days either paying a fee for such occupancy at his own expense or at the expense of another (30-day rental or greater). Upon request from any building, zoning, finance, or public safety official acting on behalf of the Town of Cape Charles the owner of the subject lot of record upon which the accessory dwelling unit sits shall provide occupancy documentation and/or information as requested in writing.
 - c. The property owner where the Accessory Dwelling Unit (ADU) is located may utilize the ADU as overflow residential space for members of their family and guests.
3. Other requirements.
 - a. Accessory dwellings located in accessory buildings may have a separate water meter from the principal dwelling.
 - b. Accessory dwellings will be required to have its own municipality issued trash receptacle, separate from the main residence/structure.
 - c. Accessory dwellings meeting the requirements of all of the physical characteristics of 4.2 (J) (1) and (2) above must obtain a Certificate of Completion for Accessory Dwellings from the Code Official, which is equivalent to a Certificate of Occupancy. In order to issue said Certificate, the

Code Official will conduct an inspection to determine compliance with the Building Code.

d. The lot on which an accessory dwelling is located shall have the required minimum lot area for the district in which it is located.

e. Parking shall be in compliance with Section 4.5 using both on and off-street parking areas.

f. Exterior elevations shall also be approved by the Historic District Review Board when required by Article VIII, Historic Overlay.

g. Annual Certifications to be submitted to the Town by March 15 of each year to the Building and Planning Departments.

1. The property owner will submit an annual affidavit on Town Affidavit Form for Accessory Dwellings attesting to their acknowledgement and adherence to the Zoning Ordinance requirements for Accessory Dwelling Units.

2. The property owner will submit an annual affidavit on Town Affidavit Form for Safety Compliance for Accessory Dwelling Units.

3. If the property owner changes between March 16 and December 31 of the calendar year, the new property owner will be required to submit both a new Town Affidavit Form for Accessory Dwellings and a Town Affidavit Form for Safety Compliance for Accessory Dwelling Units no later than 30 days from the property transfer

Attachment D –
Code of Virginia §15.2-2309

Code of Virginia
Title 15.2. Counties, Cities and Towns
Subtitle II. Powers of Local Government
Chapter 22. Planning, Subdivision of Land and Zoning
Article 7. Zoning

§ 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 special.

2. Notwithstanding any other provision of law, general or special, to grant upon appeal or original application in specific cases a variance as defined in § 15.2-2201, provided that the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in this section.

Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability, and (i) the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition or situation of the property concerned is 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; (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A 4 of § 15.2-2286 at the time of the filing of the variance application. Any variance granted to provide a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability may expire when the person benefited by it is no longer in need of the modification to such property or improvements provided by the variance, subject to the provisions of state and federal fair

housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable. If a request for a reasonable modification is made to a locality and is appropriate under the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable, such request shall be granted by the locality unless a variance from the board of zoning appeals under this section is required in order for such request to be granted.

No variance shall be considered except after notice and hearing as required by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

In granting a variance, the board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, general or special, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

3. To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

4. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by § 15.2-2204, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

5. No provision of this section shall be construed as granting any board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.

6. To hear and decide applications for special exceptions as may be authorized in the ordinance. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

No special exception may be granted except after notice and hearing as provided by § 15.2-2204.

However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

7. To revoke a special exception previously granted by the board of zoning appeals if the board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. If a governing body reserves unto itself the right to issue special exceptions pursuant to § 15.2-2286, and, if the governing body determines that there has not been compliance with the terms and conditions of the permit, then it may also revoke special exceptions in the manner provided by this subdivision.

8. The board by resolution may fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with § 15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.

Code 1950, §§ 15-831, 15-850, 15-968.9; 1950, p. 176; 1962, c. 407, § 15.1-495; 1964, c. 535; 1972, c. 695; 1975, cc. 521, 641; 1987, c. 8; 1991, c. 513; 1996, c. 555; 1997, c. 587; 2000, c. 1050; 2002, c. 546; 2003, c. 403; 2006, c. 264; 2008, c. 318; 2009, c. 206; 2015, c. 597; 2018, c. 757.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Attachment E –
Code of Virginia §15.2-
2311.A

Code of Virginia
Title 15.2. Counties, Cities and Towns
Subtitle II. Powers of Local Government
Chapter 22. Planning, Subdivision of Land and Zoning
Article 7. Zoning

§ 15.2-2311. Appeals to board

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. Notwithstanding any charter provision to the contrary, any written notice of a zoning violation or a written order of the zoning administrator dated on or after July 1, 1993, shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within 30 days in accordance with this section, and that the decision shall be final and unappealable if not appealed within 30 days. The zoning violation or written order shall include the applicable appeal fee and a reference to where additional information may be obtained regarding the filing of an appeal. The appeal period shall not commence until the statement is given and the zoning administrator's written order is sent by registered or certified mail to, or posted at, the last known address or usual place of abode of the property owner or its registered agent, if any. There shall be a rebuttable presumption that the property owner's last known address is that shown on the current real estate tax assessment records, or the address of a registered agent that is shown in the records of the Clerk of the State Corporation Commission. The appeal shall be taken within 30 days after the decision appealed from by filing with the zoning administrator, and with the board, a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. The fee for filing an appeal shall not exceed the costs of advertising the appeal for public hearing and reasonable costs. A decision by the board on an appeal taken pursuant to this section shall be binding upon the owner of the property which is the subject of such appeal only if the owner of such property has been provided notice of the zoning violation or written order of the zoning administrator in accordance with this section. The owner's actual notice of such notice of zoning violation or written order or active participation in the appeal hearing shall waive the owner's right to challenge the validity of the board's decision due to failure of the owner to receive the notice of zoning violation or written order. For jurisdictions that impose civil penalties for violations of the zoning ordinance, any such civil penalty shall not be assessed by a court having jurisdiction during the pendency of the 30-day appeal period.

B. An appeal shall stay all proceedings in furtherance of the action appealed from unless the zoning administrator certifies to the board that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the board or by a court of record, on application and on notice to the zoning administrator and for good cause shown.

C. In no event shall a written order, requirement, decision or determination made by the zoning administrator or other administrative officer be subject to change, modification or reversal by any zoning administrator or other administrative officer after 60 days have elapsed from the date

of the written order, requirement, decision or determination where the person aggrieved has materially changed his position in good faith reliance on the action of the zoning administrator or other administrative officer unless it is proven that such written order, requirement, decision or determination was obtained through malfeasance of the zoning administrator or other administrative officer or through fraud. The 60-day limitation period shall not apply in any case where, with the concurrence of the attorney for the governing body, modification is required to correct clerical errors.

D. In any appeal taken pursuant to this section, if the board's attempt to reach a decision results in a tie vote, the matter may be carried over until the next scheduled meeting at the request of the person filing the appeal.

1975, c. 521, § 15.1-496.1; 1983, c. 12; 1993, c. 780; 1995, c. 424; 1997, c. 587; 2005, cc. 625, 677; 2008, c. 378; 2010, c. 241; 2011, c. 457; 2012, cc. 400, 550, 606; 2017, c. 665; 2019, c. 387.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Attachment F –
CCZO Section 2.6.4

ATTACHMENT F

Article II - General Provisions

Section 2.1: Title

This ordinance and its contents along with the accompanying map shall be known, designated, and cited as the “**Town of Cape Charles Zoning Ordinance.**”

Section 2.2: Legislative Intent

This ordinance is enacted to promote the health, safety, and general welfare of the citizens of Cape Charles, Virginia. It is the intention of the Town Council that the provisions of this ordinance will implement the purpose and intent of the Comprehensive Plan of the Town by encouraging the most desirable use of land for residential, recreational, commercial, industrial, and agricultural purposes.

Section 2.3: Districts Generally *[revised 12/19/2024]*

The Town of Cape Charles is hereby divided into the basic following zoning districts:

R-1	Residential
R-2	Residential Mixed
R-3	Residential Multi-Family
CR	Commercial/Residential
C-1	Commercial-1
C-2	Commercial-2
C-3	Commercial-3
Harb-C	Harbor-Commercial
Harb-LI	Harbor – Light Industrial
M-2	Heavy Industrial-2
OS	Open Space
PUD	Planned Unit Development
Bay Crossing PUD	Bay Crossing Planned Unit Development
ACC PUD	Accawmacke Plantation Planned Unit Development

Section 2.3.1: Meaning of District Symbols

The letter “R” represents any residential district designation. The letter “C” represents any commercial district designation. The term “Harb” represents any harbor district designation. The letter “M” represents a heavy industrial district designation. The term “LI” is for light industrial district designation, and OS is for the open space designation. The term “PUD” represents Planned Unit Development.

The zoning map shall show by an appropriate symbol on the map the existence of conditions and zones and that attach the following regulations and conditions to the zoning on the map. The Zoning Administrator shall keep in the planning office and make available for public inspection a Conditional Index showing all property which is operating under a Conditional Use Permit. The Index shall provide ready access to the ordinance creating conditions in addition to the regulations provided for in a particular zoning district or zone (Code of

Virginia Section 15.2-2300).

2.3.2: Zoning Map and Amendments to the Zoning Map [revised 12-19-2024]

The locations and boundaries of the districts established by this chapter shall be as shown on the map entitled “Official Zoning Map, Town of Cape Charles, Virginia,” which is hereby declared to be part of this chapter and found on page 2 of Zoning Ordinance and is dated through the most recent zoning map amendments adopted by Town Council. A certified copy of this map is on file in the office of the Zoning Administrator, and such map is signed by the Mayor and certified by the Town Clerk. All notations, dimensions, and designations shown thereon shall be as much a part of this chapter as if the same were fully described herein.

This map also includes all of the area encompassed by the Accawmacke Plantation Planned Unit Development (PUD), also referred to as Bay Creek North and Bay Creek South; however, these sections of the Zoning Map have not been amended since February 9, 1993. This map does reflect the approved and named subdivisions or provide the street names contained therein but the zoning districts in the Bay Creek areas are set by the February 9, 1993, Accawmacke Plantation PUD Ordinance.

The Zoning Administrator shall maintain a copy of the Zoning Map of the Town, making such amendments to such map as they are approved by the Town Council in accordance with the provisions of Section 2.7 of this Chapter.

Section 2.3.3: Determination of District Boundaries

Unless the zoning district boundary lines are fixed by dimensions or otherwise clearly shown or described and where uncertainty exists with respect to the boundaries of any zoning districts as shown on the zoning map, the following rules shall apply:

- A. Where district boundaries are indicated as approximately following or being at right angles to the center lines of streets, highways, alleys, or railroad main tracks, such center line or lines at right angle to such center lines shall be construed to be such boundaries, as the case may be.
- B. Where district boundaries are indicated to follow a river, bay, creek, branch, or other body of water, such boundary shall be construed to follow the center line at low water or at the limit of the jurisdiction; and in the event of change in the shoreline, such boundary shall be construed as moving with the actual shoreline.
- C. If no distance, angle, or curvature description or other means is given to determine a boundary line accurately and the foregoing provisions do not apply, the same shall be determined by the Zoning Administrator using the scale shown on the map. In case of subsequent dispute, the matter shall be referred to the Board of Zoning Appeals, which shall determine the boundary.

Section 2.3.4: Zoning of Annexed Areas

Any area annexed by the Town of Cape Charles shall, unless otherwise stated, immediately upon the effective date of such annexation be automatically classified as an R-1 district until a zoning plan for such area has been adopted by the Town Council. The Planning

Commission shall prepare and present to the Town Council a zoning plan of the annexed area within six months of the annexation.

Section 2.3.5: Statutory References

References and citations within this ordinance to provisions of the Code of Virginia shall mean the cited Code section as in effect on the date of adoption of this ordinance and as amended from time to time, as well as all replacements, successors, provisions, or recodifications of same made from time to time by the Virginia General Assembly.

Section 2.3.6: Validity

Should any section of this ordinance be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole or any other part thereof other than the section so held to be unconstitutional or invalid.

Section 2.3.7: Conflicts Within Ordinance

Where there is conflict between provisions or requirements of this ordinance, the more restrictive provisions or requirements shall apply.

Section 2.3.8 – 50: Reserved

Section 2.4: Administration and Enforcement

Section 2.4.1: Enforcement of Ordinance, Guarantees

- A. In accordance with [§ 15.2-2286\(4\)](#) of the Code of Virginia, there is hereby created the office of Zoning Administrator. The Zoning Administrator, who may also hold another office in Town, shall be appointed by the Town Council and shall serve under the direction of the Town Manager, who will coordinate department actions, and such assistance as may be required to carry out the responsibilities of this ordinance. In the event that the Town Manager is appointed to serve as Zoning Administrator, same shall serve under the direction of the Mayor.
- B. The Zoning Administrator shall be vested with all necessary authority on behalf of the Town Council to administer and enforce the provisions of this ordinance, including:
 1. the ordering in writing of the remedying of any condition found in violation of this ordinance;
 2. the bringing of legal action, after approval by the Town Council, to ensure compliance with the provisions of this ordinance, such action to include injunction, abatement, or other appropriate action or proceedings and;
 3. in specific cases, making findings of fact and, with the concurrence of the Town Attorney, conclusions of law regarding determinations of rights accruing under Section 2.5 of this ordinance and [§ 15.2-2307](#) of the Code of Virginia.
- C. Pursuant to [§ 15.2-2299](#) of the Code of Virginia, the Zoning Administrator shall have all necessary authority on behalf of the Town Council to administer and enforce conditions attached to a rezoning or amendment to a zoning map, including:
 1. the ordering in writing of the remedy of any noncompliance with the

- conditions;
 - 2. the bringing of legal action, after approval by the Town Council, to ensure compliance with the conditions, including injunction, abatement, or other appropriate action or proceeding; and
 - 3. requiring a guarantee, satisfactory to the Town Council, in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions, or a contract for the construction of the improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee shall be reduced or released by the Town Council, or agent thereof, upon the submission of satisfactory evidence that construction of the improvements has been completed in whole or in part. Failure to meet all conditions shall constitute cause to deny the issuance of any of the required use, occupancy, or building permits as may be appropriate.
- D. The Zoning Administrator shall respond within 20 days of a request for a decision or determination on zoning matters within the scope of his or her authority unless the requester has agreed to a longer period.

Section 2.4.2: Permits *[revised 2/11/2010 – A.4. added]*

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.B](#), of the Code of Virginia, prior to the initiation of an application for a 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. Certificate of Occupancy

- 1. A Certificate of Occupancy shall be required to authorize any of the following:
 - a. occupancy of a building after construction;
 - b. any enlargement, extension, or alteration of a building to change from one use to another;
 - c. any change in the use of a non-conforming building or use.
- 2. Application for Certificate of Occupancy shall be made with the Cape Charles

Code Official and a copy shall be sent to the Cape Charles Zoning Administrator by the Cape Charles Code Official. The Zoning Administrator shall certify whether the use, structure, alteration, enlargement, or other physical change is in conflict with the provisions of this ordinance. If a conflict is determined, the Zoning Administrator shall refuse approval for issuance of such certificate of occupancy.

3. Before issuance of a Certificate of Occupancy, for a new structure, the applicant must provide an “as built” elevation drawing confirming that the building, as constructed, is built upon the original elevation above sea level as the lot was before construction. If the site has been built up using fill dirt or other materials, the applicant must provide sufficient evidence to prove that the increased elevation will not negatively impact adjacent properties with stormwater runoff.
4. The fee for a Certificate of Occupancy shall be governed by ordinance.

Section 2.4.3: Violation and Penalty *[revised 12/19/2024]*

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 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. Pursuant to [§15.2-2286 \(A\) \(5\)](#), 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 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 one thousand dollars (\$1,000). Failure to remove or abate a zoning violation within the specified time period shall constitute a separate misdemeanor offense punishable by a fine of not less than \$10 or more than \$1,000, and such failure during any succeeding 30-day period shall constitute a separate misdemeanor offense for each 30-day period punishable by a fine of not less than \$10 nor more than \$1,000.

4. Pursuant to [§ 15.2-2209](#) of the Code of Virginia, 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 subject to a civil penalty of not more than \$200 for the initial summons and not more than \$500 for each additional summons. However, specified violations arising from the same operative set of facts shall not be charged more frequently than once in any 10-day period, and a series of specified violations arising from the same operative set of facts shall not result in civil penalties which exceed a total of \$5,000. If such civil penalties total \$5,000 or more, the violation may be prosecuted as a criminal misdemeanor. The schedule of offenses does not include any zoning violation resulting in injury to any persons.
5. The Zoning Administrator or his/her deputy may issue a civil summons for a violation on the schedule of offenses. Any person summoned or issued a ticket for a scheduled violation may make an appearance in person or by mail to the Town Treasurer prior to the date fixed for trial in court. Any person appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. Such persons shall be informed of their right to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of court.
6. If a person charged with a scheduled violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided for by law. In any trial for a scheduled violation authorized by this section, it shall be the burden of the county to establish the liability of the violator by a preponderance of the evidence. An admission of liability or finding of liability shall not be a criminal conviction for any purposes.
7. No provision herein shall be construed to allow the imposition of civil penalties:
 - a. For activities related to land development; or
 - b. For violation of any provision of this chapter relating to the posting of signs on public property or public right-of-way.
8. 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.

Section 2.5: Non-Conforming Uses [revised 12/19/2024]

Section 2.5.1: Continuation of Existing Non-Conforming Uses and Permits

- A. Any legal use, building, or structure existing at the time of adoption of this ordinance, or any amendment thereto may be continued even though such use, building, or structure may not conform with the provisions of this ordinance for the district in which it is located. Such use, building, or structure shall be deemed a “Non- Conforming Use.” A non-conforming use, building, or structure may be continued provided by the following.

1. No such non-conforming use, building, or structure shall be enlarged or increased or extended to occupy a greater area of land than was occupied at the effective date of the adoption of this ordinance, unless said enlargement does not result in an increase in nonconformity or result in a change to a use permitted in the district.
 2. No such non-conforming use, building, or structure shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use, building, or structure at the effective date of adoption of this ordinance or amendment of this chapter, unless such move results in decreasing the degree of nonconformity with the requirements of this district.
 3. No additional structures which do not conform to the requirements of this ordinance shall be erected in connection with such non-conforming use of land. No additional uses of a nature which would be prohibited generally in the district involved shall be permitted.
 4. Any non-conforming use may be extended throughout any parts of the building which were manifestly arranged or designed for such use at the time of adoption or amendment of this ordinance.
 5. When any non-conforming use is superseded by a permitted use, the use shall thereafter conform to the regulations for the district, and no non-conforming use shall thereafter be resumed with the exception of existing duplexes specifically designed as such.
 6. If any such non-conforming use or structure ceases for any reason for a period of more than two years, except when government action impedes access to the premises, any subsequent use of such land or structure shall conform to the regulations specified by this chapter for the district in which such land or structure is located with the exception of existing duplexes specifically designed as such.
- B. The rights pertaining to a non-conforming use, building, or structure shall be deemed to pertain to the use or building itself, regardless of the ownership of the land or the building on or in which such non-conformity is conducted or of such non-conforming building or the nature of the tenure of the occupancy thereof.

Section 2.5.2: Restoration of Non-Conforming Use

No building or structure which has been damaged by any cause including neglect to the extent of more than fifty percent of the fair market value of the building immediately prior to damage shall be restored except in conforming with the regulations of this ordinance, and all rights as a non-conforming use are terminated. If a building or structure is damaged by less than fifty percent of the fair market value, it may be repaired or reconstructed and used as before the time of damage provided that such repairs or reconstruction be substantially completed within 12 months of the date of such damage. If delay of reconstruction is caused by reasons beyond the owner's control, extension may be given to substantially complete reconstruction.

Section 2.5.3: Changes in District Boundaries

Whenever the boundaries of a district are changed, any uses of structures or buildings which become non-conforming as a result of change shall be subject to the provisions of this ordinance.

Section 2.6: Appeals and Variances

Section 2.6.1: Board of Zoning Appeals

- A. In accordance with [§ 15.2-2308](#) through [§ 15.2-2314](#) of the Code of Virginia, any municipality which has enacted or enacts a zoning ordinance shall therefore create a Board of Zoning Appeals. The Town of Cape Charles Board of Zoning Appeals will consist of five members who shall be appointed by the circuit court of Northampton County. Members of the board shall hold no other public office in the municipality except one may be a member of the Planning Commission. The term of office shall be for five years each without pay.
- B. Vacancies shall be filled for unexpired terms. The secretary of the board shall notify the court at least thirty days in advance of the expiration of any term of office and shall also notify the court promptly if any vacancy occurs. Appointments to fill vacancies shall only be for the unexpired term. Members may be reappointed to succeed themselves. Members of the board shall hold no other public office in the county or town except one may be a member of the local planning commission.

A member whose term expires shall continue to serve until his/her successor is appointed or qualified. The board may make, alter, and rescind rules and forms for its procedures, consistent with ordinances of the town and general laws of the state. Board members may be removed for cause upon written charges and after a public hearing held at least fifteen days after notice. Removal shall be based on malfeasance, misfeasance, or non-feasance in office or other just cause by the court which appointed them. The board shall keep a full public record of its proceedings and shall submit a report of its activities to the governing body at least once a year.

- C. Within the limits of funds appropriated by the governing body, the board may employ or contract for secretaries, clerks, legal counsel, and other technical clerical services.

The board shall be governed by these provisions and any provisions set forth in [§ 15.2-2308](#) through [§ 15.2-2314](#) of the Code of Virginia. The board shall annually choose its own chairman and vice-chairman, who shall serve in the absence of the chairman.

Section 2.6.2: Powers and Duties of the Board of Zoning Appeals [revised 12/19/2024]

The Board of Zoning Appeals shall have the following powers and duties in accordance with [§ 15.2-2309](#) of the Code of Virginia:

When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size, or shape of specific piece of property at the time of the adoption of this ordinance, or where by reason of exceptional topographical conditions or other extraordinary situation or condition of such piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of this ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrated hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant. All variances shall be in harmony with the intended spirit and purpose of the ordinance.

No such variance shall be authorized by the board unless it finds all of the following conditions exist that:

1. 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, or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability, and
2. the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance; and
3. the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; and
4. the condition or situation of the property concerned is 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; and
5. the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and
6. the relief or remedy sought by the variance application is not available through a conditional use process that is authorized in the ordinance pursuant to [§ 15.2-2309.6](#) of the Code of Virginia or the process for modification of a zoning ordinance pursuant to [§ 15.2-2286.A.4](#) of the Code of Virginia at the time of the filing of the variance application.

Section 2.6.3: Applications for Variances

Applications for variances may be made by any property owner, tenant, with owner's approval, government official, department, board, or bureau. Such application shall be made to the Zoning Administrator in accordance with the rules adopted by the board. The application along with accompanying maps, plans or other information shall be transmitted promptly to the secretary of the board to be placed on the agenda and acted upon by the board. No such variance shall be authorized except after notice and hearing as required. The Zoning Administrator shall also transmit a copy of the application to the local planning commission which may send a recommendation to the board or appear as a party at the hearing. The Board of Zoning Appeals will not consider the same application which has previously been denied within a period of one year.

Section 2.6.4: Appeals and Procedure of Appeals

- A. 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.
- B. 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.
- C. In accordance with [§ 15.2-2313](#) of the Code of Virginia, 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.

Section 2.6.5: Certiorari to Review Decision of the Board of Zoning Appeals

Any person or persons jointly or severally aggrieved by any decision of the Board of Zoning Appeals or any taxpayer or any officer, department, board, or bureau of the municipality may present to the circuit court of the county a petition specifying the grounds on which aggrieved within thirty days after the filing of the decision in the office of the board.

Upon presentation of such petition the court shall allow a writ of certiorari to review the decision of the Board of Zoning Appeals and shall prescribe therein the time within which a return thereto must be made and served upon the realtor's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may on application, on notice to the board, and on due cause shown, grant a restraining order.

The board shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and the material to show the grounds of the decision appealed from and verification.

If, upon hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take such evidence as it may direct and report the same to the court with findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or in part, or may modify the decision brought up for review.

Costs shall not be allowed against the board, unless it shall appear to the court that it acted in bad faith or with malice in making the decision appealed from. In the event that a decision of the board is affirmed, and the court finds that the appeal was frivolous, the court may order the person or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making a return of the record pursuant to the writ.

Section 2.6.6: Fee for Appeals and Applications for Variance

Every appeal to the Board of Zoning Appeals from a determination of the Zoning Administrator and every application for a variance shall be accompanied by a fee governed by ordinance set forth by the Town Council of the Town of Cape Charles.

Section 2.6.7: Expiration of Variances

If any variance granted by the Board of Zoning Appeals is not acted on in accordance with the conditions and stipulations required by the Board within a period of 30 months, then the variance shall be null and void and of no force and effect.

Section 2.6.8: Tax Payments Required

Pursuant to [§ 15.2-2286.B](#) of the Code of Virginia, prior to the initiation of an application for a special use permit, variance, rezoning, zoning clearance, building permit, or other land use permit, the applicant for same must produce satisfactory evidence that any and all delinquent real estate taxes and any fees owed to the Town of Cape Charles which have been properly assessed against the subject property have been paid in full.

Section 2.6.9: Reserved

Section 2.7: Amendment s of Chapter and Zoning Map; Conditional Zoning

Section 2.7.1: Amendments Permitted; How Initiated

In accordance with [§ 15.2-2286.A.7](#) of the Code of Virginia, whenever public necessity, convenience, general welfare or good zoning practice require, the Town Council may amend, supplement, or change the regulations, district boundaries or classifications of property contained in this Chapter. Any such amendment may be initiated by (a) resolution of the Town Council, (b) motion of the Town's Planning Commission, or (c) the petition of the owner, contract purchaser with the owner's written consent, or the owner's agent therefore, of the property which is the subject of the proposed zoning map amendment, addressed to the Town Council or the Town's Planning Commission, which shall forward such petition to the Town Council.

Section 2.7.2: Procedures for Amending Chapter or Zoning Map

- A. All proposed amendments or reenactments of this Chapter, and all proposed amendments to the zoning map, shall be referred by the Town Council to the Town's Planning Commission for its recommendations. Failure of the Planning Commission to report within 100 days after the first meeting of the Planning Commission after the proposed amendment or reenactment has been referred to it shall be deemed approval of the proposal by the Planning Commission, unless the proposal has been withdrawn by the applicant prior to the expiration of said time period. In the event of such withdrawal, processing of the proposal shall cease without further action.
- B. Prior to issuing its recommendations, the Planning Commission shall hold at least one public hearing after notice of same has been published once a week for two successive weeks in some newspaper having general circulation in the Town, with the first notice appearing no more than 28 days before and the second notice appearing no less than seven days before the day for the meeting reference in the notice. Such public hearing shall be held not less than seven days after the second advertisement appears. Such additional and further notice shall be given as required by [§ 15.2-2204](#) of the Code of Virginia. The Planning Commission may make appropriate changes in the proposed amendments as a result of the public hearing. Upon the completion of its work, the Planning Commission shall present the proposed amendments, including revised district maps, to the Town Council together with its recommendations and appropriate explanatory materials.
- C. Prior to approving and adopting any amendment to this Chapter or the zoning map, the Town Council shall hold at least one public hearing after giving such public notice as may be required by [§ 15.2-2204](#) of the Code of Virginia after which the Council may make appropriate changes or corrections in the proposed amendment. In the case of a proposed amendment to the zoning map, the public notice shall state the general usage and density range of the proposed amendment and the general usage and density range, if any, set forth in the applicable part of the Town's then effective comprehensive plan. No land may be zoned to a more intensive use classification than was contained in the public notice without an additional public hearing after such notice as is required by [§ 15.2-2204](#) of the Code of Virginia. Following the required public hearing(s), the Town Council shall act on the proposed amendment in the same

manner as adopting any other ordinance.

Section 2.7.3: Appeals

Every action contesting a decision of the Town Council adopting or failing to adopt a proposed amendment to this Chapter or the zoning map shall be filed within thirty days of the Town Council's decision with the Circuit Court of Northampton County.

Section 2.7.4: Conditional Zoning - Statement of Intent

In accordance with [§ 15.2-2296](#) et seq. of the Code of Virginia, it is the general policy of the Town of Cape Charles to provide for the orderly development of land, for all purposes, through zoning and other land development legislation. Frequently, where competing and incompatible uses conflict, traditional zoning methods and procedures are inadequate. In these cases, more flexible and adaptable zoning methods are needed to permit differing land uses and at the same time recognize effects of change. It is the purpose of Sections 2.7.4 through 2.7.10 to provide a more flexible and adaptable zoning method to cope with situations found in such zones through conditional zoning. Conditional zoning allows a zoning reclassification subject to certain conditions proffered by the zoning applicant for the protection of the community that are not generally applicable to land similarly zoned. The provisions of Sections 2.7.4 through 2.7.10 shall not be used for the purpose of discrimination in housing.

Section 2.7.5: Conditional Zoning - Conditions as Part of a Rezoning or Amendment to the Zoning Map

As part of a rezoning or amendment to the zoning map, the owner of the parcel for which the rezoning or amendment is sought may voluntarily proffer, in writing made prior to the Town Council's public hearing on same, reasonable conditions in connection with the proposed rezoning or amendment. Applications for conditional zoning shall be handled in the same manner and following the same procedures as provided in Section 2.7.2 with respect to amendments generally. Once proffered and accepted as part of an amendment to this Chapter or the zoning map, such conditions shall continue in effect until a subsequent amendment changes the zoning of the property covered by such conditions. However, such conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

Section 2.7.6: Conditional Zoning - Enforcement and Guarantees

The Zoning Administrator is hereby vested with all necessary authority on behalf of the Town Council to administer and enforce conditions attached to a rezoning or amendment to the zoning map, including (a) the ordering in writing of the remedy of any noncompliance with the proffered and accepted conditions; (b) the bringing of legal action to ensure compliance with the conditions, including injunction, abatement, or other appropriate action or proceeding; and (c) requiring a guarantee satisfactory to the Town Council, in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions, or a contract for the construction of the improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee shall be reduced or released by the Town upon the submission of satisfactory evidence that construction of the improvements has been completed in whole or in part. Failure to meet all conditions shall constitute cause to deny the issuance of any of the required use, occupancy, or building

permits, as may be appropriate.

Section 2.7.7: Conditional Zoning - Records

The zoning map shall show by an appropriate symbol on the map the existence of conditions attaching to the zoning on the map. The Zoning Administrator shall keep in his or her office and shall make available for public inspection a Conditional Zoning Index. The Index shall provide ready access to the ordinance, creating the conditions in addition to the regulations provided for in a particular zoning district or zone.

Section 2.7.8: Conditional Zoning - Petition for Review of Decision

Any zoning applicant or other person who is aggrieved by a decision of the Zoning Administrator made pursuant to the provisions of Section 2.7.6 may petition the Town Council for review of the decision of the Zoning Administrator. All petitions for such review shall be filed with the Zoning Administrator and the Town Clerk within thirty days from the date of the decision for which review is sought and shall specify the ground upon which the petitioner is aggrieved.

Section 2.7.9: Conditional Zoning - Amendments and Variations of Conditions

There shall be no amendment or variation of conditions created pursuant to the provisions of Section 2.7.5 until after the Town Council holds a public hearing which hearing is advertised as required by [§ 15.2-2204](#) of the Code of Virginia.

Section 2.7.10: Limitation on Reconsideration of Request for Amendment

No application for an amendment to this Chapter or the zoning map, including an application for conditional zoning, shall be considered by the Town Council within one year from the Council's last consideration of same. This limitation shall not apply to amendments proposed by either the Planning Commission or the Town Council on its own motion where that body finds it to be in the public interest to reconsider same.

Section 2.8: Condominiums and Cooperatives *(revised 12/19/2024)*

Condominiums and cooperative real estate developments must meet all requirements and regulations of the Virginia Condominium Act or Virginia Real Estate Cooperative Act, as appropriate ([§ 55.1-1900](#) et seq.; [§ 55.1-2100](#) et seq. Of the Code of Virginia).

Agenda Item 5 (b):

Variance 2025-01: Application
from Bay Creek Resort, LLC.,
for a variance from the PUD
Section 9.9

111 Palmer Drive –
Variance Application



Zoning Variance Application

Planning & Zoning Department
2 Plum Street; Cape Charles, VA 23310
757-331-3259 x30

planningtech@capecharles.org

Revised 12/2024

Taxes	✓ paid R.S
Violations	—
pa. l Fee	\$500
BZA Date	
Decision	

BUDGET CODE: MISPL 100-3100-1070

PART 1: APPLICATION NOTES

- VARIANCE** means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. **It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.**
- The burden of proof shall be on the applicant for a variance to prove by the greater amount of evidence that the application meets the standard as defined, and the criteria set in number 3.
- The Board of Zoning Appeals shall grant a variance if the evidence shows the strict application of the terms of the zoning ordinance would reasonably restrict the utilization of the property, or the granting of the variance would alleviate hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability, and:
 - The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant.
 - The authorization of a variance will not be a substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance.
 - Such hardship is not shared by other properties in the same zoning district and same vicinity.
 - The granting of the variance does not result in a use that is not permitted on such property or a change in the zoning classification of the property.
 - The remedy sought is not available through a special exception process that is authorized in the ordinance.
- If a variance is approved for a property only the minimum required to alleviate hardship will be granted.
- *FEES: \$500 & Payment of advertising costs, actual and adjacent property owner notification mailing, costs.**

All items from this checklist must be submitted prior to the application being evaluated.

- | | | |
|---|---|--|
| ☒ Completed application & Justification Letter | ☒ Existing site plan/survey | ☒ Photos of existing conditions. |
| ☒ Photos/elevation drawings of proposed project | ☒ Proposed site plan/survey | ☒ Payment of Fees * |

PART 2: PROPERTY INFORMATION

Property Address: 111 Palmer Drive, Cape Charles VA	Tax Map #: 90-30-G1
Existing Use: Golf Maintenance Facility	Zoning District: PUD Open Space/CO
Has a previous application been filed for a variance in connection with this property? ☒ No ☐ Yes, attach an explanation	
Has a Conditional Use Permit been issued for the existing use? ☒ No ☐ Yes, provide a copy	
Are there any proffers associated with this property? ☒ No ☐ Yes, provide a copy	
Is the property located within an Overlay District? ☒ No ☐ Yes, which one _____	
Is this property located within a Subdivision? ☐ No ☒ Yes, which one Bay Creek	
Is this property located within a Resource Protection Area? ☒ No ☐ Yes	

PART 3: PROPERTY OWNER INFORMATION	
Name and/or Company: Bay Creek Resort, LLC.	
Mailing Address: 1 Clubhouse Way, Cape Charles VA	
Phone Number: 910-279-4489	Email: Mbrambell@preservecommunities.com
PART 4: APPLICANT 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:
PART 5: ZONING ORDINANCE OR ACCAWMACKE PLANTATION PUD VARIANCE SECTION	
Please provide the Zoning Ordinance Section that you are seeking relief from: _____	
Please provide the Accawmacke Plantation PUD Section you are seeking relief from: <u>Section 9.9</u>	
PART 6: VARIANCE JUSTIFICATION	
<i>Applicant must explain (Please use additional pages where necessary)</i>	
A) PROPERTY DESCRIPTION	
How do the zoning ordinance's strict regulations for the lot or parcel of land's shape, size, or area unreasonably restrict the utilization of the property?	
The closest zoning to PUD Open Space under PUD Article 4.4 is CO LAND USE CLASSIFICATION (CONSERVATION - OPEN SPACE), which permits a golf maintenance facility. Section 9.9 which covers fencing fails to include the CO. It permits 6' fences in R and 8' ones in SC, C, and GBI districts. As it reads now no fences are allowed in a CO.	
What type of reasonable deviation is being sought?	
A variance to permit a 8' fence in a CO until we can amend Section 9.9 to read as "8' in the SC, C, CO, and GBI districts".	
Lot or Parcel Size:	Proposed Size:
Shape:	Proposed Shape:
How does the zoning ordinance's strict limitations on the size, height, area, or location of the building or structure unreasonably restrict the utilization of the property?	
What type of reasonable deviation is being sought?	
Main Structure Size:	Proposed Structure Size:
Existing Height:	Proposed Height:
Existing / Required Setback Front:	Proposed Setback Front:
Existing / Required Setback West Side:	Proposed Setback West Side:
Existing / Required Setback East Side:	Proposed Setback East Side:
Existing / Required Setback Rear:	Proposed Setback Rear:

B) CRITERIA	
1.	Does strict application of the zoning ordinance to the subject property result in a hardship to the owner? <i>(Answer A or B)</i>
	A. Explain how the variance would alleviate a hardship caused by the physical characteristics of the property?
	B. Explain how the zoning ordinance unreasonably restricts the use of the property? Section 9.9 Fails to allow fencing in a CO District. There are numerous existing 6' fence already in this district. I believe the intent of section 9.9 was to allow an 8' fence in anything other than the residential district. If a variance is granted, when the PUD documents are updated I would propose the following amendment. Amended Section 9.9, which covers fences, permits 6' fences in the residential district and 8' in the SC, C, CO, and GBI districts.
2.	Is the hardship unique to the property?
	A. Explain if the hardship is shared by other properties in the neighborhood. Yes, There are other existing fences in the district.
	B. Explain how this situation or condition of the property applies generally to the other properties in the same zone. Currently fences are not permitted by right in a CO District.
3.	Was the hardship created or caused by the applicant? No. The hardship was caused by zoning inconsistency in the PUD Docs.
	A. Did the condition exist when the property was purchased? Yes. There was existing fencing on the property.
	B. Did the applicant purchase the property without knowing of this hardship? Yes. Nobody until now spotted the inconstancy in the PUD documents.
	C. How and when did the condition which created the hardship first occur? December 20, 2024 When the Town sent a letter
	D. Did the applicant create the hardship and, if so, how was it created? No. Inconstancy in the PUD documents.
	E. What could have been done to avoid hardship? Better or revised PUD Documents.
4.	Will the variance if granted be harmful to others?
	A. Explain if the proposed variance will be detrimental to the adjacent properties or the neighborhood? No. If anything it will provide better screening.
	B. Explain how the proposed variance will affect the values of the adjacent and nearby properties. It will increase it. Nobody wants to see or hear a golf maintenance facility.
	C. Have you shown the proposed plans to the adjacent neighbors and other affected property owners? Have any of them objected, or have any of them written a letter of support for the proposed variance? If so, please attach the letter or submit it before the hearing. The Beacon Homes are developing the adjacent property. They are in favor o
	D. Explain how the proposed variance will change the character of the neighborhood?
5.	Is there any other administrative or procedural remedy to relieve the hardship?

Part 7: ALTERNATIVE SOLUTIONS

Have alternative plans or solutions been considered so a variance would not be needed? Please explain solutions that have been considered, and why it is unsatisfactory.

Part 8: STATEMENT OF INTENT

Describe the planned use and explain why a variance from the district ordinance is needed. State the sections of the Town Zoning Ordinance or the Accawmacke Plantation PUD for which you are requesting a variance. Include the standards listed in the Zoning Ordinance/PUD and the amount of a variance you are requesting.

The 8' fence is on the golf course maintenance facility, tax parcel 90-30-G1. Looking at the zoning map, I think it's zoned PUD Open Space and not Residential. I agree that the zoning map leaves room for interpretation, especially regarding the line placement between PUD Open Space and Residential. That said, the parcel should be zoned in only one. The closest zoning to PUD Open Space under PUD Article 4.4 is CO LAND USE CLASSIFICATION (CONSERVATION - OPEN SPACE), which permits a golf maintenance facility but fails to address fences completely.

Section 9.9, which covers fences, permits 6' fences in the residential district and 8' in the SC, C, and GBI districts.

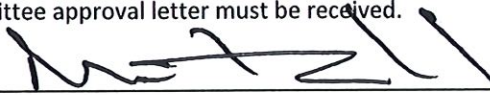
As such, I would like to request a variance to permit an 8' fence on parcel 90-30-G1. I believe the intent of section 9.9 was to allow an 8' fence in anything other than the residential district. If a variance is granted, when the PUD documents are updated I would propose the following amendment.

Amended Section 9.9, which covers fences, permits 6' fences in the residential district and 8' in the SC, C, CO, and GBI districts.

Thanks for your consideration on this matter.

CERTIFICATION

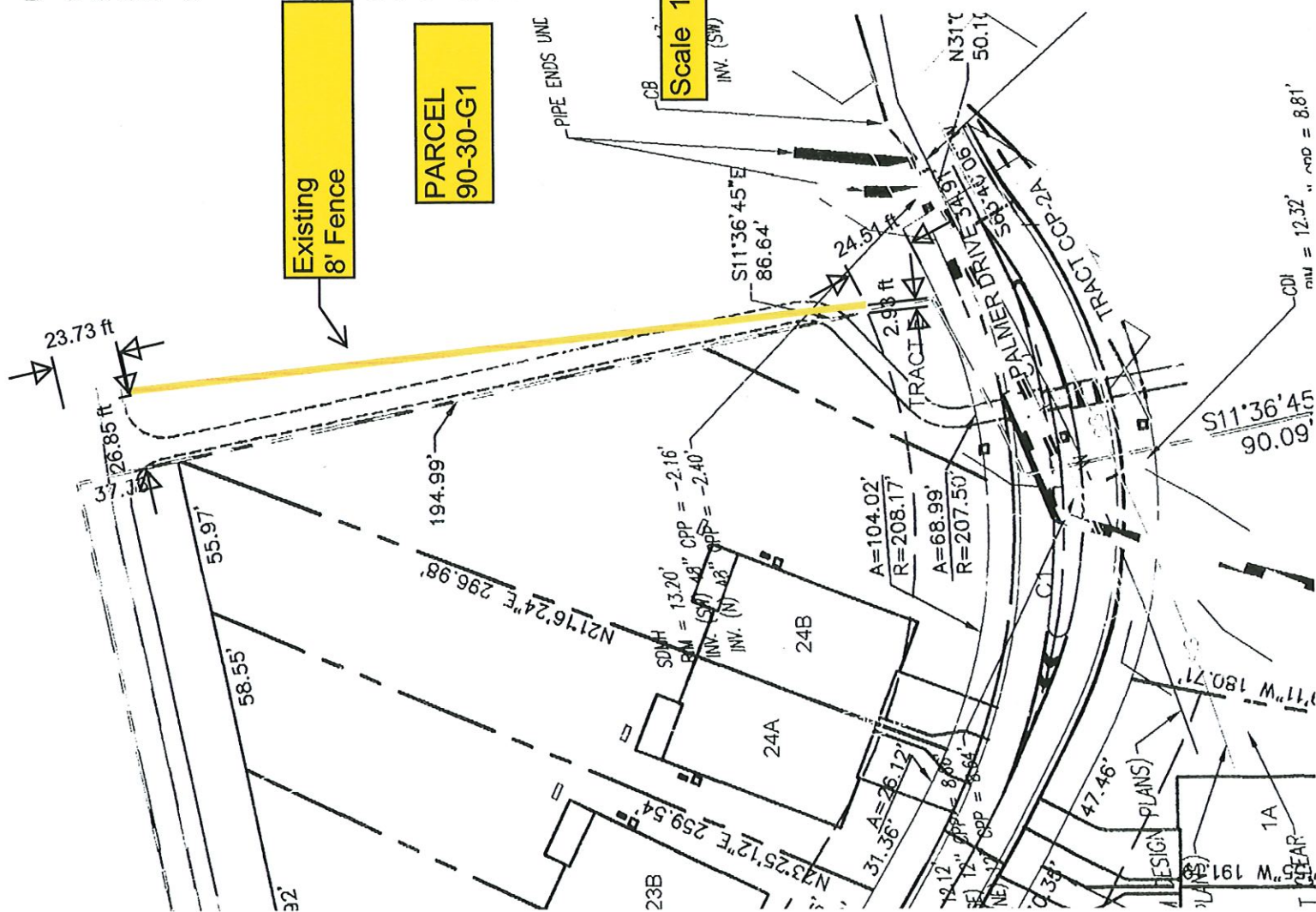
I hereby certify that I have the authority to make the foregoing application, that the information given is true and correct, and that the construction or improvements will conform to the regulations in the Virginia Statewide Building Code, all pertinent Town Ordinances, including fire, sewer and water ordinances, and private building restrictions, if any, which may be imposed on the property by deed. Before any work begins, a zoning clearance request must be approved. I understand that for any changes made in the historic district, a Certificate of Appropriateness must be received; and any changes made in the Accawmacke Plantation PUD, an Architectural Review Committee approval letter must be received.

Applicant's signature: 

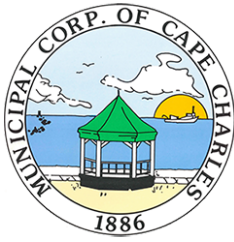
Date: 2/27/25

Zoning Administrator's signature: _____

Date: _____



111 Palmer Drive –
Staff Report



Board of Zoning Appeals

Meeting Date: April 8th, 2025

Item #: 5B: VAR2025-01 – Variance Application

Date: March 25th, 2025

Prepared by: Jack Steinmayer,, Zoning Compliance Officer

APPLICANT: Bay Creek Resort, LLC.

SITE ADDRESS: 111 Palmer Drive

TAX MAP: 90-30-G1

LOT SIZE: 6.53 Acres (284,446.8 sf)

TYPE OF APPLICATION: VAR2025-01-Variance Application from Fence Height Requirements

SPECIFIC REQUEST: Variance to permit an 8' fence in the Open Space District

ZONING: Accawmacke Plantation – Planned Unit Development (PUD) Section 9.9 (A)

CURRENT ZONING: Residential – 2 (R-2)

DATE RECEIVED: February 27th, 2025

DATE DEEMED COMPLETE: February 27th, 2025

LEGAL DEADLINE (90 days from complete application – Directory, no Mandatory): May 28th, 2025

Narrative of Proposal:

The applicant, Bay Creek Resort, LLC., is seeking to receive a variance from Section 9.9 (A) of the Accawmacke Plantation – Planned Unit Development (PUD) for a fence greater than the allowable 6' height limit. This property is located in the Residential – 2 (R-2) Zoning District within Bay Creek and falls under the Accawmacke Plantation – Planned Unit Development (PUD) which is an appendix of the Cape Charles Zoning Ordinance.

Aerial Map:





Image of Property:



Ordinance Requirements to be Considered:

- (a) Does 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 currently being used as a golf maintenance facility. The applicant is seeking to receive a variance to allow the constructed fence to be greater than the allowable 6' height limit.

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

The property has been owned by Bay Creek since 1995. The hardship was created by the applicant. However, some responsibility does fall upon the Town as staff know that amendments need to be made to the PUD to reflect changes that have occurred, but due to other responsibilities it has not occurred. Once the Zoning Ordinance changes have been finalized, staff will begin to look at the PUD.

(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?

By granting this variance, it would improve the area by blocking the golf maintenance facility from the public view of the future residents of Village J.

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

This will be a one-time variance request. As the fence was constructed with the intent to block the golf maintenance facility from the public view once Village J in Bay Creek comes online.

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

No granting the variance would not change the zoning classification.

(f) Is the relief or remedy sought by the variance application not available through a special exemption process that is authorized in the ordinance or the process for a 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 variance request is reasonable?

BZA Review:

Some items that the Board of Zoning Appeals may wish to consider in its review:

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

Staff Recommendation:

Staff recommends that the Board of Zoning Appeals 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 the section called, "Ordinance Requirements To Be Considered".

Proposed Motion For Consideration

Staff offers the following motion for the Board's consideration: ***"After careful consideration of the application and the staff report, the Board of Zoning Appeals votes to approve the Variance Application submitted by Bay Creek Development (Tax Map #90-30-G1) for a variance to allow for a fence greater than 6' pursuant to Accawmacke Planation PUD Section 9.9.***

Agenda Item 5 (c)

Application(s) from Chris
Larmore, Developer of
Dreams by the Water
Subdivision for a variance
from the CCZO Section 3.1 (E)

Lot 1 – Variance Application



Zoning Variance Application

Planning & Zoning Department
2 Plum Street; Cape Charles, VA 23310
757-331-3259 x30

planningtech@capecharles.org

Revised 12/2024	
Taxes	☒ Paid M.S.
Violations	_____
Paid C.C. Fee	\$500
BZA Date	4-8-25
Decision	

BUDGET CODE: MISPL 100-3100-1070

PART 1: APPLICATION NOTES

- VARIANCE** means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. **It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.**
- The burden of proof shall be on the applicant for a variance to prove by the greater amount of evidence that the application meets the standard as defined, and the criteria set in number 3.
- The Board of Zoning Appeals shall grant a variance if the evidence shows the strict application of the terms of the zoning ordinance would reasonably restrict the utilization of the property, or the granting of the variance would alleviate hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability, and:
 - The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant.
 - The authorization of a variance will not be a substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance.
 - Such hardship is not shared by other properties in the same zoning district and same vicinity.
 - The granting of the variance does not result in a use that is not permitted on such property or a change in the zoning classification of the property.
 - The remedy sought is not available through a special exception process that is authorized in the ordinance.
- If a variance is approved for a property only the minimum required to alleviate hardship will be granted.
- *FEES: \$500 & Payment of advertising costs, actual and adjacent property owner notification mailing, costs.**

All items from this checklist must be submitted prior to the application being evaluated.

- | | | |
|--|--|---|
| ☐ Completed application & Justification Letter | ☐ Existing site plan/survey | ☐ Photos of existing conditions. |
| ☐ Photos/elevation drawings of proposed project | ☐ Proposed site plan/survey | ☐ Payment of Fees * |

PART 2: PROPERTY INFORMATION

Property Address: Washington Ave/Dreams St. Lot- Parcel #16737, a/k/a Dreams by the Water, lot #1

Tax Map #: 083A1

Existing Use: Vacant

Zoning District: R-1

Has a previous application been filed for a variance in connection with this property? ☐ No ☐ Yes, attach an explanation

Has a Conditional Use Permit been issued for the existing use? ☒ No ☐ Yes, provide a copy

Are there any proffers associated with this property? ☒ No ☐ Yes, provide a copy

Is the property located within an Overlay District? ☒ No ☐ Yes, which one _____

Is this property located within a Subdivision? ☒ No ☐ Yes, which one _____

Is this property located within a Resource Protection Area? ☒ No ☐ Yes

PART 3: PROPERTY OWNER INFORMATION	
Name and/or Company: Dreams By The Water LLC	
Mailing Address: c/o Ralph E. Main, Jr. 415 Fourth Street NE, P.O. Box 2666 Charlottesville, VA 22902	
Phone Number: 434-531-0121	Email: Cgheatingandair@gmail.com
PART 4: APPLICANT 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: Chris Larmore/C&L Homes CC Inc.	
Mailing Address: 10603 Shifting Sands Drive Ocean City MD 21842	
Phone Number: 443-880-8950	Email: Occigarette@aol.com
PART 5: ZONING ORDINANCE OR ACCAWMACKE PLANTATION PUD VARIANCE SECTION	
Please provide the Zoning Ordinance Section that you are seeking relief from: _____	
Please provide the Accawmacke Plantation PUD Section you are seeking relief from: _____	
PART 6: VARIANCE JUSTIFICATION	
<i>Applicant must explain (Please use additional pages where necessary)</i>	
A) PROPERTY DESCRIPTION	
How do the zoning ordinance's strict regulations for the lot or parcel of land's shape, size, or area unreasonably restrict the utilization of the property? Building setbacks required of a normal lot with more depth, front to rear, restrict construction of a home and any other reasonable use of the property in the given zoning district.	
What type of reasonable deviation is being sought? Reduction of the front and rear setbacks by 10' each	
Lot or Parcel Size: See previously submitted plats/plans	Proposed Size:
Shape:	Proposed Shape:
How does the zoning ordinance's strict limitations on the size, height, area, or location of the building or structure unreasonably restrict the utilization of the property? The ability to construct a single-family home as shown or any other structure that is consistent with the use and character of the neighborhood.	
What type of reasonable deviation is being sought? Reduction of the front and rear setback	
Main Structure Size: See previously submitted plans	Proposed Structure Size:
Existing Height:	Proposed Height:
Existing / Required Setback Front:	Proposed Setback Front:
Existing / Required Setback West Side:	Proposed Setback West Side:
Existing / Required Setback East Side:	Proposed Setback East Side:
Existing / Required Setback Rear:	Proposed Setback Rear:

B) CRITERIA

1. Does strict application of the zoning ordinance to the subject property result in a hardship to the owner? *(Answer A or B)*

A. Explain how the variance would alleviate a hardship caused by the physical characteristics of the property?
It would allow construction of homes as shown and presented during informal meeting with the Town Officials and Zoning Board; would permit a use that is consistent with the character of the neighborhood

B. Explain how the zoning ordinance unreasonably restricts the use of the property?
Building envelope and setbacks unreasonably restrict construction that is consistent with the zoning and character of the neighborhood.

2. Is the hardship unique to the property? **No**

A. Explain if the hardship is shared by other properties in the neighborhood.
All ten lots in Dreams by the Water are affected.

B. Explain how this situation or condition of the property applies generally to the other properties in the same zone.
Application of conforming setbacks to non-conforming (depth) lots

3. Was the hardship created or caused by the applicant? **No**

A. Did the condition exist when the property was purchased?
Yes

B. Did the applicant purchase the property without knowing of this hardship?
No - Purchase is contingent on resolution before this board.

C. How and when did the condition which created the hardship first occur?
By approval of and recordation by the predecessor in title

D. Did the applicant create the hardship and, if so, how was it created?
No

E. What could have been done to avoid hardship?
Request a relief or different designation (such as granted to a PUD) at the time of original application

4. Will the variance if granted be harmful to others? **No**

A. Explain if the proposed variance will be detrimental to the adjacent properties or the neighborhood?
It will not be detrimental

B. Explain how the proposed variance will affect the values of the adjacent and nearby properties.
It will increase their property value by constructing residence's consistent with their character

C. Have you shown the proposed plans to the adjacent neighbors and other affected property owners? Have any of them objected, or have any of them written a letter of support for the proposed variance? If so, please attach the letter or submit it before the hearing. **no**

D. Explain how the proposed variance will change the character of the neighborhood?
It will allow construction of homes more in line with the neighborhood and the Towns character

5. Is there any other administrative or procedural remedy to relieve the hardship?
Katie Nunez indicated there may be another means if the variance is not approved

Part 7: ALTERNATIVE SOLUTIONS

Have alternative plans or solutions been considered so a variance would not be needed? Please explain solutions that have been considered, and why it is unsatisfactory.

Research and design of alternative homes was studied and considered, without a successful outcome

Part 8: STATEMENT OF INTENT

Describe the planned use and explain why a variance from the district ordinance is needed. State the sections of the Town Zoning Ordinance or the Accawmacke Plantation PUD for which you are requesting a variance. Include the standards listed in the Zoning Ordinance/PUD and the amount of a variance you are requesting.

Residential: For all the reasons stated earlier - subdivision play unknowingly created a hardship on the building envelopes by application of the setbacks by the Town.

(See attached narrative)

CERTIFICATION

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. Before any work begins, a zoning clearance request must be approved. I understand that for any changes made in the historic district, a Certificate of Appropriateness must be received; and any changes made in the Accawmacke Plantation PUD, an Architectural Review Committee approval letter must be received.

Applicant's signature: _____

Date: March 14th 2025

Zoning Administrator's signature: _____

Date: _____

Variance for Dreams by the Water

Request: Reduction of the front yard setback from 30' to 20', and the rear yard setback from 25' to 15' for lots 1-10.

Rational: This will enable the construction of homes more in character with the neighborhood, as well as the Town of Cape Charles.

- Enable designs with porches, decks, outside areas for neighbor and family interactions.
- Architectural features such as higher pitched roofs, dormers, and home designs that are proportionately more equal in depth, as width.
- Room and allowance for garages to aid in off street parking, storage of items out of public view, etc.

Impact:

- No negative impact on direct, or indirect neighbors.
- Open Space:
 - Vastly exceeds the preference set at 50% ratio of home footprint of the lots.
- Increase in total assessable tax base
 - Build out with proposed homes \$8,000,000 - \$10,000,000 assessed value

Summary: It is the unwavering desire of the Developers, each lot owner (all ten lot owners are unanimously represented) to deliver a community to the neighborhood, the visitors and residents of the Town of Cape Charles in the spirit of the overall code, strategic plan, and betterment of the Town.



Owner Affidavit for Permission to Represent

Planning & Zoning Department
2 Plum Street; Cape Charles, VA 23310
757-331-3259 x31

planningtech@capecharles.org

Revised 03/2023

Taxes

Violations

Fees

Decision

PART 1. APPLICATION NOTES

Use this form to give permission for a contractor, architect, or other individual to represent the owner of a property in matters within the Town of Cape Charles.

PART 2: PROPERTY INFORMATION

Property Address: 0 Washington Avenue (Lot 0000001, Parcel Rec #16737)

Tax Map #: 083A1

PART 3: PROPERTY OWNER INFORMATION

Name and/or Company: Dreams By The Water LLC

Mailing Address: c/o Ralph E. Main, Jr. 415 Fourth Street NE, PO Box 2666, Charlottesville, VA 22902

Phone Number: 1-434-531-0121

Email: Cgheatingandair@gmail.com

I hereby give authority to the following representative to act on my behalf on the following matter:

Any and all zoning related matters

PART 4: REPRESENTATIVE INFORMATION

Name and/or Company: Chris Larmore, C& L Homes

Mailing Address: 10603 Shifting Sand Drive, Ocean City, MD 21842

Phone Number: 1-443-880-8950

Email: occigarette@aol.com

☒ to file documents on my behalf

☒ To represent me in meetings with Town officials

Name and/or Company:

Mailing Address:

Phone Number:

Email:

☐ to file documents on my behalf

☐ To represent me in meetings with Town officials

Signature of owner: _____

Date: _____

State of Virginia, County of Albemarle The foregoing instrument was acknowledged before me this
12 day of March, 2025 by Chadwick Graham (name of person acknowledged)

Signature of Notarial Officer: _____

Notary Registration number: _____

My commission expires: _____

Dawn Leigh Shields
Notary Public
Commonwealth of Virginia
7960330
My Commission Expires May 31, 2025

Lot 1 – Staff Report



BOARD OF ZONING APPEALS

Meeting Date: April 8, 2025

Item #5C (i): –VAR2025-02 – Variance Application

Date: March 31, 2025

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

APPLICANT: Dreams by the Water, LLC
Represented by Chris Larmore of C&L Homes CC
Inc

SITE ADDRESS: Lot 1 Dream Street, off
Washington Avenue

TAX MAP: 83A1-21-1

LOT SIZE : 5,604 sq. ft.

TYPE OF APPLICATION: VAR2025-02 –
Variance Application from Front and Rear
Setbacks

SPECIFIC REQUEST: Variance of 10 ft from
both front and rear setback

ZONING ORDINANCE: Article 3, Section
3.1 (E)

CURRENT ZONING: Residential-1

DATE RECEIVED : March 14, 2025

DATE DEEMED COMPLETE : March 14, 2025

LEGAL DEADLINE (90 Days from Complete Application – Directory, not Mandatory): June 14, 2025

Narrative of Proposal:

In 2020, the old Coast Guard housing property on Washington Avenue was sold after the original housing buildings were demolished and removed from the property. The purchaser, Dreams by the Water, LLC and its agent Tom Kavounas, submitted a conceptual sketch for a subdivision for this property into 10 residential lots using the already established layout location of the “old” parking lot which had to be upgraded to comply the required road standards to be accepted into the VDOT Road system. After a considerable amount of discussion on the subdivision requirements, a preliminary plat was submitted in June 2021. The initial review of the preliminary plat was completed that required corrections and resubmission to the Town. The Town was finally able to approve the preliminary plat on July 5, 2022 and signed off on the Utility and Right of Way Construction Drawings for this subdivision in full compliance with the Subdivision Ordinance and the underlying zoning district (R-1) development requirements contained in Article 3.

The front property setback is 30 feet and the rear property setback is 25 ft. in the Residential-1 zoning district. The applicant is seeking a 10 ft variance from both of these setbacks.

Aerial Map:



Ordinance Requirements to be Considered for Variances:

- (a) Does 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 Cape Charles Zoning Ordinance Residential-1 Zoning Ordinance establishes a legal lot at 5,600 square feet with a presumption that the lot composition is 40 feet wide by 140 ft deep which is the traditional lot size and layout when the Town of Cape Charles was first laid out in 1884.

When this subdivision was created, each of the 10 lots meets or exceeds the 5,600 square foot lot size, thus complying with the Cape Charles Zoning Ordinance. The front lot width met the requirement of 40 feet with this lot at 45.17 ft. The lot depth, where there is no established minimum requirement, is at 56.77 ft. on the left side due to the impact of the entrance to the subdivision and 81.75 ft on the right.

While a house can be constructed on this lot without the variance being approved, the style and design of a home may not fully integrate with the overall character of the Residential-1 Zoning District (Historic District). This property does not have to comply with the Historic District Guidelines and has flexibility in meeting the Development Standards for the Residential Zoning Districts contained in CCZO Section 4.12. since the Dreams by the Water Subdivision is its own neighborhood and block. The developer and the prospective lot

owners have indicated to mimic the style in the Historic District in certain aspects: building proportions, scale and orientation and roof pitch, and front porches.

The challenges of the lot size and configuration to the size and style of a home should have been part of the due diligence of the developer when the conceptual subdivision plan was submitted to the Town and the developer should have petitioned the Town for an exception to the subdivision requirements when the preliminary plat creating the subdivision was submitted to the Town, pursuant to CCZO Appendix B (Subdivision Ordinance) Section 7.1. However, due to changing staff at the time when this subdivision plat was submitted to the Town, this provision of the ordinance may not have been fully known or understood and the developer, at that time, did not have a clear vision as to the size of home intended for this neighborhood which would not be accommodated due to the dimensional requirements of the Residential-1 zoning district.

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

Dreams by the Water, LLC is the entity that acquired this property and advanced the subdivision plat and is the entity submitting this variance application. However, additional partner(s) have recently been brought into this project, specifically Chris Larmore of C&L Homes CC Inc., that has allowed for a greater review of the plat on a lot by lot basis through certain computer software to provide 3D renderings and the style, type and size of house can be accommodated on each lot.

(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 Dreams by the Water Subdivision is a 10-lot subdivision that is located perpendicular to Washington Avenue and the “front street” of this subdivision is a new road called Dream Street and is a new neighborhood block being created. Five of the lots are adjacent to the Bay Vista subdivision to the west, a subdivision that is within the Accawmacke Plantation Planned Unit Development (PUD) (aka Bay Creek) and is governed by different dimensional requirements as well as design standards. To the east, the other five lots are adjacent to one of the stormwater retention ponds owned by the Bay Creek at Cape Charles Community Association Inc c/o Property Management Associates that services the Bay Creek development. This parcel will never be developed beyond the stormwater pond.

Across Washington Street to the south is the Town’s Historic District which does have a design requirement and development requirement. However, there is a provision in the Residential-1 zoning district that has a built in capacity for waivers of the front setback associated with prevailing development standards. Providing the relief from the front and rear setback requirements would not be of substantial detriment to any of the adjacent or nearby properties and all of the 10 lots in Dreams by the Water are seeking this similar relief so that the neighborhood is being treated consistently.

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

While all 10 lots in the Dreams by the Water subdivision are seeking the same variance, this situation is rare and is not considered a recurring circumstance that would require a zoning ordinance text amendment. This property is a redevelopment of a former Coast Guard housing development for its staff station at the Cape Charles Coast Guard office.

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

The developer is seeking to only develop single family residences on these lots and the variance would only improve that ability and would be consistent with the uses allowed in the Residential-1 zoning district.

The house size would still be in keeping with the minimum and maximum house size allowed in the Residential-1 zoning district which is 960 sq. ft up to 4,500 sq. ft.

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

While the Subdivision Ordinance does include an exception process (Appendix B, Section 7.1), this is a process that is generally exercised during the development of a preliminary subdivision plat. A zoning text amendment of reducing the setback requirements in the Residential-1 zoning ordinance is not a viable solution since it would be applicable to all lots within this zoning district and not just to the 10 lots in the Dreams by the Water subdivision.

Discussion Points:

1. Does the Board feel that allowing the variance request is reasonable?

BZA Review:

Some items that the Board of Zoning Appeals may wish to consider in its review:

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

Staff Recommendation:

Staff recommends that the Board of Zoning Appeals 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 the section called, "Ordinance Requirements To Be Considered".

Proposed Motion For Consideration

Staff offers the following motion for the Board's consideration: ***"After careful consideration of the application and the staff report, the Board of Zoning Appeals votes to approve VAR2025-02 for Tax Map #83A1-21-1 (Lot 1 Dream Street) in consideration of the ordinance criteria for variances being met."***

Attachments:

Dreams by the Water – Lot 1 – Variance Application

Dreams by the Water – Narrative of Variance

Cape Charles Zoning Ordinance Article III, Section 3.1 (E)

Cape Charles Zoning Ordinance Appendix B – Subdivision Ordinance Section 7.1

Lot 2 – Variance Application



Zoning Variance Application

Planning & Zoning Department
2 Plum Street; Cape Charles, VA 23310
757-331-3259 x30

planningtech@capecharles.org

Revised 12/2024	
Taxes	☒ Paid M.S
Violations	_____
Fee	\$500
BZA Date	4-8-25
Decision	

BUDGET CODE: MISPL 100-3100-1070

PART 1: APPLICATION NOTES

- VARIANCE** means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. **It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.**
- The burden of proof shall be on the applicant for a variance to prove by the greater amount of evidence that the application meets the standard as defined, and the criteria set in number 3.
- The Board of Zoning Appeals shall grant a variance if the evidence shows the strict application of the terms of the zoning ordinance would reasonably restrict the utilization of the property, or the granting of the variance would alleviate hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability, and:
 - The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant.
 - The authorization of a variance will not be a substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance.
 - Such hardship is not shared by other properties in the same zoning district and same vicinity.
 - The granting of the variance does not result in a use that is not permitted on such property or a change in the zoning classification of the property.
 - The remedy sought is not available through a special exception process that is authorized in the ordinance.
- If a variance is approved for a property only the minimum required to alleviate hardship will be granted.
- *FEES: \$500 & Payment of advertising costs, actual and adjacent property owner notification mailing, costs.**

All items from this checklist must be submitted prior to the application being evaluated.

- | | | |
|---|---|--|
| ☒ Completed application & Justification Letter | ☒ Existing site plan/survey | ☒ Photos of existing conditions. |
| ☒ Photos/elevation drawings of proposed project | ☒ Proposed site plan/survey | ☒ Payment of Fees * |

PART 2: PROPERTY INFORMATION

Property Address: Washington Ave/Dreams St. Lot- Parcel #16738, a/k/a Dreams by the Water, lot #2	Tax Map #: 083A1
Existing Use: Vacant	Zoning District: R-1

- Has a previous application been filed for a variance in connection with this property? ☐ No ☐ Yes, attach an explanation
- Has a Conditional Use Permit been issued for the existing use? ☒ No ☐ Yes, provide a copy
- Are there any proffers associated with this property? ☒ No ☐ Yes, provide a copy
- Is the property located within an Overlay District? ☒ No ☐ Yes, which one _____
- Is this property located within a Subdivision? ☒ No ☐ Yes, which one _____
- Is this property located within a Resource Protection Area? ☒ No ☐ Yes

PART 3: PROPERTY OWNER INFORMATION	
Name and/or Company: Dreams By The Water LLC	
Mailing Address: c/o Ralph E. Main, Jr. 415 Fourth Street NE, P.O. Box 2666 Charlottesville, VA 22902	
Phone Number: 434-531-0121	Email: Cgheatingandair@gmail.com
PART 4: APPLICANT 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: Chris Larmore/C&L Homes CC Inc.	
Mailing Address: 10603 Shifting Sands Drive Ocean City MD 21842	
Phone Number: 443-880-8950	Email: Occigarette@aol.com
PART 5: ZONING ORDINANCE OR ACCAWMACKE PLANTATION PUD VARIANCE SECTION	
Please provide the Zoning Ordinance Section that you are seeking relief from: _____	
Please provide the Accawmacke Plantation PUD Section you are seeking relief from: _____	
PART 6: VARIANCE JUSTIFICATION	
<i>Applicant must explain (Please use additional pages where necessary)</i>	
A) PROPERTY DESCRIPTION	
How do the zoning ordinance's strict regulations for the lot or parcel of land's shape, size, or area unreasonably restrict the utilization of the property? Building setbacks required of a normal lot with more depth, front to rear, restrict construction of a home and any other reasonable use of the property in the given zoning district.	
What type of reasonable deviation is being sought? Reduction of the front and rear setbacks by 10' each	
Lot or Parcel Size: See previously submitted plats/plans	Proposed Size:
Shape:	Proposed Shape:
How does the zoning ordinance's strict limitations on the size, height, area, or location of the building or structure unreasonably restrict the utilization of the property? The ability to construct a single-family home as shown or any other structure that is consistent with the use and character of the neighborhood.	
What type of reasonable deviation is being sought? Reduction of the front and rear setback	
Main Structure Size: See previously submitted plans	Proposed Structure Size:
Existing Height:	Proposed Height:
Existing / Required Setback Front:	Proposed Setback Front:
Existing / Required Setback West Side:	Proposed Setback West Side:
Existing / Required Setback East Side:	Proposed Setback East Side:
Existing / Required Setback Rear:	Proposed Setback Rear:

B) CRITERIA

1. Does strict application of the zoning ordinance to the subject property result in a hardship to the owner? *(Answer A or B)*

A. Explain how the variance would alleviate a hardship caused by the physical characteristics of the property?
It would allow construction of homes as shown and presented during informal meeting with the Town Officials and Zoning Board; would permit a use that is consistent with the character of the neighborhood

B. Explain how the zoning ordinance unreasonably restricts the use of the property?
Building envelope and setbacks unreasonably restrict construction that is consistent with the zoning and character of the neighborhood.

2. Is the hardship unique to the property? **No**

A. Explain if the hardship is shared by other properties in the neighborhood.
All ten lots in Dreams by the Water are affected.

B. Explain how this situation or condition of the property applies generally to the other properties in the same zone.
Application of conforming setbacks to non-conforming (depth) lots

3. Was the hardship created or caused by the applicant? **No**

A. Did the condition exist when the property was purchased?
Yes

B. Did the applicant purchase the property without knowing of this hardship?
No - Purchase is contingent on resolution before this board.

C. How and when did the condition which created the hardship first occur?
By approval of and recordation by the predecessor in title

D. Did the applicant create the hardship and, if so, how was it created?
No

E. What could have been done to avoid hardship?
Request a relief or different designation (such as granted to a PUD) at the time of original application

4. Will the variance if granted be harmful to others? **No**

A. Explain if the proposed variance will be detrimental to the adjacent properties or the neighborhood?
It will not be detrimental

B. Explain how the proposed variance will affect the values of the adjacent and nearby properties.
It will increase their property value by constructing residence's consistent with their character

C. Have you shown the proposed plans to the adjacent neighbors and other affected property owners? Have any of them objected, or have any of them written a letter of support for the proposed variance? If so, please attach the letter or submit it before the hearing. **no**

D. Explain how the proposed variance will change the character of the neighborhood?
It will allow construction of homes more in line with the neighborhood and the Towns character

5. Is there any other administrative or procedural remedy to relieve the hardship?
Katie Nunez indicated there may be another means if the variance is not approved

Part 7: ALTERNATIVE SOLUTIONS

Have alternative plans or solutions been considered so a variance would not be needed? Please explain solutions that have been considered, and why it is unsatisfactory.

Research and design of alternative homes was studied and considered, without a successful outcome

Part 8: STATEMENT OF INTENT

Describe the planned use and explain why a variance from the district ordinance is needed. State the sections of the Town Zoning Ordinance or the Accawmacke Plantation PUD for which you are requesting a variance. Include the standards listed in the Zoning Ordinance/PUD and the amount of a variance you are requesting.

Residential: For all the reasons stated earlier - subdivision play unknowingly created a hardship on the building envelopes by application of the setbacks by the Town.

(See attached narrative)

CERTIFICATION

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. Before any work begins, a zoning clearance request must be approved. I understand that for any changes made in the historic district, a Certificate of Appropriateness must be received; and any changes made in the Accawmacke Plantation PUD, an Architectural Review Committee approval letter must be received.

Applicant's signature: _____

Date: March 14th 2025

Zoning Administrator's signature: _____

Date: _____

Variance for Dreams by the Water

Request: Reduction of the front yard setback from 30' to 20', and the rear yard setback from 25' to 15' for lots 1-10.

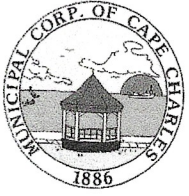
Rational: This will enable the construction of homes more in character with the neighborhood, as well as the Town of Cape Charles.

- Enable designs with porches, decks, outside areas for neighbor and family interactions.
- Architectural features such as higher pitched roofs, dormers, and home designs that are proportionately more equal in depth, as width.
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- No negative impact on direct, or indirect neighbors.
- Open Space:
 - Vastly exceeds the preference set at 50% ratio of home footprint of the lots.
- Increase in total assessable tax base
 - Build out with proposed homes \$8,000,000 - \$10,000,000 assessed value

Summary: It is the unwavering desire of the Developers, each lot owner (all ten lot owners are unanimously represented) to deliver a community to the neighborhood, the visitors and residents of the Town of Cape Charles in the spirit of the overall code, strategic plan, and betterment of the Town.



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Revised 03/2023

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Fees

Decision

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Tax Map #: 083A1

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☒ to file documents on my behalf

☒ To represent me in meetings with Town officials

Name and/or Company:

Mailing Address:

Phone Number:

Email:

☐ to file documents on my behalf

☐ To represent me in meetings with Town officials

Signature of owner:

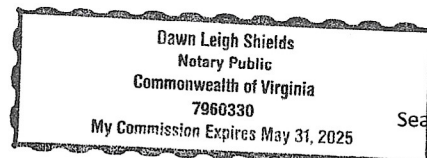
Date:

State of Virginia, County of Albemarle
12 day of March, 2025 by Chadwick Graham (name of person acknowledged)
The foregoing instrument was acknowledged before me this

Signature of Notarial Officer:

Notary Registration number:

My commission expires:



Lot 2 – Staff Report



BOARD OF ZONING APPEALS

Meeting Date: April 8, 2025

Item #5C (ii): –VAR2025-03 – Variance Application

Date: March 31, 2025

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

APPLICANT: Dreams by the Water, LLC
Represented by Chris Larmore of C&L Homes CC
Inc

SITE ADDRESS: Lot 2 Dream Street, off
Washington Avenue

TAX MAP: 83A1-21-2

LOT SIZE : 5,600 sq. ft.

TYPE OF APPLICATION: VAR2025-03 –
Variance Application from Front and Rear
Setbacks

SPECIFIC REQUEST: Variance of 10 ft from
both front and rear setback

ZONING ORDINANCE: Article 3, Section
3.1 (E)

CURRENT ZONING: Residential-1

DATE RECEIVED : March 14, 2025

DATE DEEMED COMPLETE : March 14, 2025

LEGAL DEADLINE (90 Days from Complete Application – Directory, not Mandatory): June 14, 2025

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The front property setback is 30 feet, and the rear property setback is 25 ft. in the Residential-1 zoning district. The applicant is seeking a 10 ft variance from both of these setbacks.

Aerial Map:



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- (a) ***Does 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 Cape Charles Zoning Ordinance Residential-1 Zoning Ordinance establishes a legal lot at 5,600 square feet with a presumption that the lot composition is 40 feet wide by 140 ft deep which is the traditional lot size and layout when the Town of Cape Charles was first laid out in 1884.

When this subdivision was created, each of the 10 lots meets or exceeds the 5,600 square foot lot size, thus complying with the Cape Charles Zoning Ordinance. The front lot width met the requirement of 40 feet with this lot at 68.51 ft. The lot depth, where there is no established minimum requirement, is at 81.75 ft. on the left side and 81.73 ft on the right.

While a house can be constructed on this lot without the variance being approved, the style and design of a home may not fully integrate with the overall character of the Residential-1 Zoning District (Historic District). This property does not have to comply with the Historic District Guidelines and has flexibility in meeting the Development Standards for the Residential Zoning Districts contained in CCZO Section 4.12. since the Dreams by the Water Subdivision is its own neighborhood and block. The developer and the prospective lot

owners have indicated to mimic the style in the Historic District in certain aspects: building proportions, scale and orientation and roof pitch, and front porches.

The challenges of the lot size and configuration to the size and style of a home should have been part of the due diligence of the developer when the conceptual subdivision plan was submitted to the Town and the developer should have petitioned the Town for an exception to the subdivision requirements when the preliminary plat creating the subdivision was submitted to the Town, pursuant to CCZO Appendix B (Subdivision Ordinance) Section 7.1. However, due to changing staff at the time when this subdivision plat was submitted to the Town, this provision of the ordinance may not have been fully known or understood and the developer, at that time, did not have a clear vision as to the size of home intended for this neighborhood which would not be accommodated due to the dimensional requirements of the Residential-1 zoning district.

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Dreams by the Water, LLC is the entity that acquired this property and advanced the subdivision plat and is the entity submitting this variance application. However, additional partner(s) have recently been brought into this project, specifically Chris Larmore of C&L Homes CC Inc., that has allowed for a greater review of the plat on a lot-by-lot basis through certain computer software to provide 3D renderings and the style, type and size of house can be accommodated on each lot.

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The Dreams by the Water Subdivision is a 10-lot subdivision that is located perpendicular to Washington Avenue and the “front street” of this subdivision is a new road called Dream Street and is a new neighborhood block being created. Five of the lots are adjacent to the Bay Vista subdivision to the west, a subdivision that is within the Accawmacke Plantation Planned Unit Development (PUD) (aka Bay Creek) and is governed by different dimensional requirements as well as design standards. To the east, the other five lots are adjacent to one of the stormwater retention ponds owned by the Bay Creek at Cape Charles Community Association Inc c/o Property Management Associates that services the Bay Creek development. This parcel will never be developed beyond the stormwater pond.

Across Washington Street to the south is the Town’s Historic District which does have a design requirement and development requirement. However, there is a provision in the Residential-1 zoning district that has a built-in capacity for waivers of the front setback associated with prevailing development standards. Providing the relief from the front and rear setback requirements would not be of substantial detriment to any of the adjacent or nearby properties and all of the 10 lots in Dreams by the Water are seeking this similar relief so that the neighborhood is being treated consistently.

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

While all 10 lots in the Dreams by the Water subdivision are seeking the same variance, this situation is rare and is not considered a recurring circumstance that would require a zoning ordinance text amendment. This property is a redevelopment of a former Coast Guard housing development for its staff station at the Cape Charles Coast Guard office.

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

The developer is seeking to only develop single family residences on these lots and the variance would only improve that ability and would be consistent with the uses allowed in the Residential-1 zoning district.

The house size would still be in keeping with the minimum and maximum house size allowed in the Residential-1 zoning district which is 960 sq. ft up to 4,500 sq. ft.

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

While the Subdivision Ordinance does include an exception process (Appendix B, Section 7.1), this is a process that is generally exercised during the development of a preliminary subdivision plat. A zoning text amendment of reducing the setback requirements in the Residential-1 zoning ordinance is not a viable solution since it would be applicable to all lots within this zoning district and not just to the 10 lots in the Dreams by the Water subdivision.

Discussion Points:

1. Does the Board feel that allowing the variance request is reasonable?

BZA Review:

Some items that the Board of Zoning Appeals may wish to consider in its review:

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

Staff Recommendation:

Staff recommends that the Board of Zoning Appeals 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 the section called, "Ordinance Requirements To Be Considered".

Proposed Motion For Consideration

Staff offers the following motion for the Board's consideration: ***"After careful consideration of the application and the staff report, the Board of Zoning Appeals votes to approve VAR2025-02 for Tax Map #83A1-21-2 (Lot 2 Dream Street) in consideration of the ordinance criteria for variances being met."***

Attachments:

Dreams by the Water – Lot 2 – Variance Application

Dreams by the Water – Narrative of Variance

Cape Charles Zoning Ordinance Article III, Section 3.1 (E)

Cape Charles Zoning Ordinance Appendix B – Subdivision Ordinance Section 7.1

Lot 3 – Variance Application



Zoning Variance Application

Planning & Zoning Department
2 Plum Street; Cape Charles, VA 23310
757-331-3259 x30

planningtech@capecharles.org

Revised 12/2024	
Taxes	☒ paid M.S
Violations	_____
paid c.c Fee	\$500
BZA Date	4-8-25
Decision	

BUDGET CODE: MISPL 100-3100-1070

PART 1: APPLICATION NOTES

- VARIANCE** means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. **It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.**
- The burden of proof shall be on the applicant for a variance to prove by the greater amount of evidence that the application meets the standard as defined, and the criteria set in number 3.
- The Board of Zoning Appeals shall grant a variance if the evidence shows the strict application of the terms of the zoning ordinance would reasonably restrict the utilization of the property, or the granting of the variance would alleviate hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability, and:
 - The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant.
 - The authorization of a variance will not be a substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance.
 - Such hardship is not shared by other properties in the same zoning district and same vicinity.
 - The granting of the variance does not result in a use that is not permitted on such property or a change in the zoning classification of the property.
 - The remedy sought is not available through a special exception process that is authorized in the ordinance.
- If a variance is approved for a property only the minimum required to alleviate hardship will be granted.
- *FEES: \$500 & Payment of advertising costs, actual and adjacent property owner notification mailing, costs.**

All items from this checklist must be submitted prior to the application being evaluated.

- | | | |
|---|---|--|
| ☒ Completed application & Justification Letter | ☒ Existing site plan/survey | ☒ Photos of existing conditions. |
| ☒ Photos/elevation drawings of proposed project | ☒ Proposed site plan/survey | ☒ Payment of Fees * |

PART 2: PROPERTY INFORMATION

Property Address: Washington Ave/Dreams St. Lot- Parcel #16739, a/k/a Dreams by the Water, lot #3	Tax Map #: 083A1
Existing Use: Vacant	Zoning District: R-1
Has a previous application been filed for a variance in connection with this property? ☐ No ☐ Yes, attach an explanation	
Has a Conditional Use Permit been issued for the existing use? ☒ No ☐ Yes, provide a copy	
Are there any proffers associated with this property? ☒ No ☐ Yes, provide a copy	
Is the property located within an Overlay District? ☒ No ☐ Yes, which one _____	
Is this property located within a Subdivision? ☒ No ☐ Yes, which one _____	
Is this property located within a Resource Protection Area? ☒ No ☐ Yes	

PART 3: PROPERTY OWNER INFORMATION	
Name and/or Company: Dreams By The Water LLC	
Mailing Address: c/o Ralph E. Main, Jr. 415 Fourth Street NE, P.O. Box 2666 Charlottesville, VA 22902	
Phone Number: 434-531-0121	Email: Cgheatingandair@gmail.com
PART 4: APPLICANT 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: Chris Larmore/C&L Homes CC Inc.	
Mailing Address: 10603 Shifting Sands Drive Ocean City MD 21842	
Phone Number: 443-880-8950	Email: Occigarette@aol.com
PART 5: ZONING ORDINANCE OR ACCAWMACKE PLANTATION PUD VARIANCE SECTION	
Please provide the Zoning Ordinance Section that you are seeking relief from: _____	
Please provide the Accawmacke Plantation PUD Section you are seeking relief from: _____	
PART 6: VARIANCE JUSTIFICATION	
<i>Applicant must explain (Please use additional pages where necessary)</i>	
A) PROPERTY DESCRIPTION	
How do the zoning ordinance's strict regulations for the lot or parcel of land's shape, size, or area unreasonably restrict the utilization of the property? Building setbacks required of a normal lot with more depth, front to rear, restrict construction of a home and any other reasonable use of the property in the given zoning district.	
What type of reasonable deviation is being sought? Reduction of the front and rear setbacks by 10' each	
Lot or Parcel Size: See previously submitted plats/plans	Proposed Size:
Shape:	Proposed Shape:
How does the zoning ordinance's strict limitations on the size, height, area, or location of the building or structure unreasonably restrict the utilization of the property? The ability to construct a single-family home as shown or any other structure that is consistent with the use and character of the neighborhood.	
What type of reasonable deviation is being sought? Reduction of the front and rear setback	
Main Structure Size: See previously submitted plans	Proposed Structure Size:
Existing Height:	Proposed Height:
Existing / Required Setback Front:	Proposed Setback Front:
Existing / Required Setback West Side:	Proposed Setback West Side:
Existing / Required Setback East Side:	Proposed Setback East Side:
Existing / Required Setback Rear:	Proposed Setback Rear:

B) CRITERIA	
1. Does strict application of the zoning ordinance to the subject property result in a hardship to the owner? (Answer A or B)	A. Explain how the variance would alleviate a hardship caused by the physical characteristics of the property? It would allow construction of homes as shown and presented during informal meeting with the Town Officials and Zoning Board; would permit a use that is consistent with the character of the neighborhood B. Explain how the zoning ordinance unreasonably restricts the use of the property? Building envelope and setbacks unreasonably restrict construction that is consistent with the zoning and character of the neighborhood.
2. Is the hardship unique to the property? No	A. Explain if the hardship is shared by other properties in the neighborhood. All ten lots in Dreams by the Water are affected. B. Explain how this situation or condition of the property applies generally to the other properties in the same zone. Application of conforming setbacks to non-conforming (depth) lots
3. Was the hardship created or caused by the applicant? No	A. Did the condition exist when the property was purchased? Yes B. Did the applicant purchase the property without knowing of this hardship? No - Purchase is contingent on resolution before this board. C. How and when did the condition which created the hardship first occur? By approval of and recordation by the predecessor in title D. Did the applicant create the hardship and, if so, how was it created? No E. What could have been done to avoid hardship? Request a relief or different designation (such as granted to a PUD) at the time of original application
4. Will the variance if granted be harmful to others? No	A. Explain if the proposed variance will be detrimental to the adjacent properties or the neighborhood? It will not be detrimental B. Explain how the proposed variance will affect the values of the adjacent and nearby properties. It will increase their property value by constructing residence's consistent with their character C. Have you shown the proposed plans to the adjacent neighbors and other affected property owners? Have any of them objected, or have any of them written a letter of support for the proposed variance? If so, please attach the letter or submit it before the hearing. no D. Explain how the proposed variance will change the character of the neighborhood? It will allow construction of homes more in line with the neighborhood and the Towns character
5. Is there any other administrative or procedural remedy to relieve the hardship?	Katie Nunez indicated there may be another means if the variance is not approved

Part 7: ALTERNATIVE SOLUTIONS

Have alternative plans or solutions been considered so a variance would not be needed? Please explain solutions that have been considered, and why it is unsatisfactory.

Research and design of alternative homes was studied and considered, without a successful outcome

Part 8: STATEMENT OF INTENT

Describe the planned use and explain why a variance from the district ordinance is needed. State the sections of the Town Zoning Ordinance or the Accawmacke Plantation PUD for which you are requesting a variance. Include the standards listed in the Zoning Ordinance/PUD and the amount of a variance you are requesting.

Residential: For all the reasons stated earlier - subdivision play unknowingly created a hardship on the building envelopes by application of the setbacks by the Town.

(See attached narrative)

CERTIFICATION

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. Before any work begins, a zoning clearance request must be approved. I understand that for any changes made in the historic district, a Certificate of Appropriateness must be received; and any changes made in the Accawmacke Plantation PUD, an Architectural Review Committee approval letter must be received.

Applicant's signature: _____

Date: March 14th 2025

Zoning Administrator's signature: _____

Date: _____

Variance for Dreams by the Water

Request: Reduction of the front yard setback from 30' to 20', and the rear yard setback from 25' to 15' for lots 1-10.

Rational: This will enable the construction of homes more in character with the neighborhood, as well as the Town of Cape Charles.

- Enable designs with porches, decks, outside areas for neighbor and family interactions.
- Architectural features such as higher pitched roofs, dormers, and home designs that are proportionately more equal in depth, as width.
- Room and allowance for garages to aid in off street parking, storage of items out of public view, etc.

Impact:

- No negative impact on direct, or indirect neighbors.
- Open Space:
 - Vastly exceeds the preference set at 50% ratio of home footprint of the lots.
- Increase in total assessable tax base
 - Build out with proposed homes \$8,000,000 - \$10,000,000 assessed value

Summary: It is the unwavering desire of the Developers, each lot owner (all ten lot owners are unanimously represented) to deliver a community to the neighborhood, the visitors and residents of the Town of Cape Charles in the spirit of the overall code, strategic plan, and betterment of the Town.



Owner Affidavit for Permission to Represent

Planning & Zoning Department
2 Plum Street; Cape Charles, VA 23310
757-331-3259 x31

planningtech@capecharles.org

Revised 03/2023

Taxes

Violations

Fees

Decision

PART 1: APPLICATION NOTES

Use this form to give permission for a contractor, architect, or other individual to represent the owner of a property in matters within the Town of Cape Charles.

PART 2: PROPERTY INFORMATION

Property Address: 0 Washington Avenue (Lot 00000003, Parcel Rec #16739)

Tax Map #: 083A1

PART 3: PROPERTY OWNER INFORMATION

Name and/or Company: Dreams By The Water LLC

Mailing Address: c/o Ralph E. Main, Jr. 415 Fourth Street NE, PO Box 2666, Charlottesville, VA 22902

Phone Number: 1-434-531-0121

Email: Cgheatingandair@gmail.com

I hereby give authority to the following representative to act on my behalf on the following matter:

Any and all zoning related matters

PART 4: REPRESENTATIVE INFORMATION

Name and/or Company: Chris Larmore, C&L Homes

Mailing Address: 10603 Shifting Sand Drive, Ocean City, MD 21842

Phone Number: 1-443-880-8950

Email: occigarette@aol.com

☒ to file documents on my behalf

☒ To represent me in meetings with Town officials

Name and/or Company:

Mailing Address:

Phone Number:

Email:

☐ to file documents on my behalf

☐ To represent me in meetings with Town officials

Signature of owner: _____

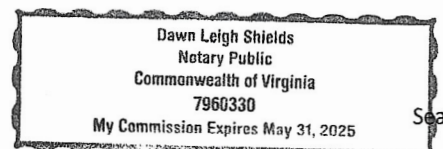
Date: _____

State of Virginia, County of Albemarle The foregoing instrument was acknowledged before me this 12 day of March, 2025, by Chadwick Graham (name of person acknowledged)

Signature of Notarial Officer: Dawn Shields

Notary Registration number: 7960330

My commission expires: 05/31/2025



Lot 3 – Staff Report



BOARD OF ZONING APPEALS

Meeting Date: April 8, 2025

Item #5C (iii): –VAR2025-04 – Variance Application

Date: March 31, 2025

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

APPLICANT: Dreams by the Water, LLC
Represented by Chris Larmore of C&L Homes CC
Inc

SITE ADDRESS: Lot 3 Dream Street, off
Washington Avenue

TAX MAP: 83A1-21-3

LOT SIZE : 5,600 sq. ft.

TYPE OF APPLICATION: VAR2025-04 –
Variance Application from Front and Rear
Setbacks

SPECIFIC REQUEST: Variance of 10 ft from
both front and rear setback

ZONING ORDINANCE: Article 3, Section
3.1 (E)

CURRENT ZONING: Residential-1

DATE RECEIVED : March 14, 2025

DATE DEEMED COMPLETE : March 14, 2025

LEGAL DEADLINE (90 Days from Complete Application – Directory, not Mandatory): June 14, 2025

Narrative of Proposal:

In 2020, the old Coast Guard housing property on Washington Avenue was sold after the original housing buildings were demolished and removed from the property. The purchaser, Dreams by the Water, LLC and its agent Tom Kavounas, submitted a conceptual sketch for a subdivision for this property into 10 residential lots using the already established layout location of the “old” parking lot which had to be upgraded to comply the required road standards to be accepted into the VDOT Road system. After a considerable amount of discussion on the subdivision requirements, a preliminary plat was submitted in June 2021. The initial review of the preliminary plat was completed and required corrections and resubmission to the Town. The Town was finally able to approve the preliminary plat on July 5, 2022 and signed off on the Utility and Right of Way Construction Drawings for this subdivision in full compliance with the Subdivision Ordinance and the underlying zoning district (R-1) development requirements contained in Article 3.

The front property setback is 30 feet, and the rear property setback is 25 ft. in the Residential-1 zoning district. The applicant is seeking a 10 ft variance from both of these setbacks.

Aerial Map:



Ordinance Requirements to be Considered for Variances:

- (a) Does 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 Cape Charles Zoning Ordinance Residential-1 Zoning Ordinance establishes a legal lot at 5,600 square feet with a presumption that the lot composition is 40 feet wide by 140 ft deep which is the traditional lot size and layout when the Town of Cape Charles was first laid out in 1884.

When this subdivision was created, each of the 10 lots meets or exceeds the 5,600 square foot lot size, thus complying with the Cape Charles Zoning Ordinance. The front lot width met the requirement of 40 feet with this lot at 68.53 ft. The lot depth, where there is no established minimum requirement, is at 81.73 ft. on the left side and 81.71 ft on the right.

While a house can be constructed on this lot without the variance being approved, the style and design of a home may not fully integrate with the overall character of the Residential-1 Zoning District (Historic District). This property does not have to comply with the Historic District Guidelines and has flexibility in meeting the Development Standards for the Residential Zoning Districts contained in CCZO Section 4.12. since the Dreams by the Water Subdivision is its own neighborhood and block. The developer and the prospective lot

owners have indicated to mimic the style in the Historic District in certain aspects: building proportions, scale and orientation and roof pitch, and front porches.

The challenges of the lot size and configuration to the size and style of a home should have been part of the due diligence of the developer when the conceptual subdivision plan was submitted to the Town and the developer should have petitioned the Town for an exception to the subdivision requirements when the preliminary plat creating the subdivision was submitted to the Town, pursuant to CCZO Appendix B (Subdivision Ordinance) Section 7.1. However, due to changing staff at the time when this subdivision plat was submitted to the Town, this provision of the ordinance may not have been fully known or understood and the developer, at that time, did not have a clear vision as to the size of home intended for this neighborhood which would not be accommodated due to the dimensional requirements of the Residential-1 zoning district.

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

Dreams by the Water, LLC is the entity that acquired this property and advanced the subdivision plat and is the entity submitting this variance application. However, additional partner(s) have recently been brought into this project, specifically Chris Larmore of C&L Homes CC Inc., that has allowed for a greater review of the plat on a lot-by-lot basis through certain computer software to provide 3D renderings and the style, type and size of house can be accommodated on each lot.

(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 Dreams by the Water Subdivision is a 10-lot subdivision that is located perpendicular to Washington Avenue and the “front street” of this subdivision is a new road called Dream Street and is a new neighborhood block being created. Five of the lots are adjacent to the Bay Vista subdivision to the west, a subdivision that is within the Accawmacke Plantation Planned Unit Development (PUD) (aka Bay Creek) and is governed by different dimensional requirements as well as design standards. To the east, the other five lots are adjacent to one of the stormwater retention ponds owned by the Bay Creek at Cape Charles Community Association Inc c/o Property Management Associates that services the Bay Creek development. This parcel will never be developed beyond the stormwater pond.

Across Washington Street to the south is the Town’s Historic District which does have a design requirement and development requirement. However, there is a provision in the Residential-1 zoning district that has a built-in capacity for waivers of the front setback associated with prevailing development standards. Providing the relief from the front and rear setback requirements would not be of substantial detriment to any of the adjacent or nearby properties and all of the 10 lots in Dreams by the Water are seeking this similar relief so that the neighborhood is being treated consistently.

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

While all 10 lots in the Dreams by the Water subdivision are seeking the same variance, this situation is rare and is not considered a recurring circumstance that would require a zoning ordinance text amendment. This property is a redevelopment of a former Coast Guard housing development for its staff station at the Cape Charles Coast Guard office.

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

The developer is seeking to only develop single family residences on these lots and the variance would only improve that ability and would be consistent with the uses allowed in the Residential-1 zoning district.

The house size would still be in keeping with the minimum and maximum house size allowed in the Residential-1 zoning district which is 960 sq. ft up to 4,500 sq. ft.

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

While the Subdivision Ordinance does include an exception process (Appendix B, Section 7.1), this is a process that is generally exercised during the development of a preliminary subdivision plat. A zoning text amendment of reducing the setback requirements in the Residential-1 zoning ordinance is not a viable solution since it would be applicable to all lots within this zoning district and not just to the 10 lots in the Dreams by the Water subdivision.

Discussion Points:

1. Does the Board feel that allowing the variance request is reasonable?

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Some items that the Board of Zoning Appeals may wish to consider in its review:

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

Staff Recommendation:

Staff recommends that the Board of Zoning Appeals 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 the section called, "Ordinance Requirements To Be Considered".

Proposed Motion For Consideration

Staff offers the following motion for the Board's consideration: ***"After careful consideration of the application and the staff report, the Board of Zoning Appeals votes to approve VAR2025-04 for Tax Map #83A1-21-3 (Lot 3 Dream Street) in consideration of the ordinance criteria for variances being met."***

Attachments:

Dreams by the Water – Lot 3 – Variance Application

Dreams by the Water – Narrative of Variance

Cape Charles Zoning Ordinance Article III, Section 3.1 (E)

Cape Charles Zoning Ordinance Appendix B – Subdivision Ordinance Section 7.1

Lot 4 – Variance Application



Zoning Variance Application

Planning & Zoning Department
2 Plum Street; Cape Charles, VA 23310
757-331-3259 x30

planningtech@capecharles.org

Revised 12/2024	
Taxes	☒ Paid M.S.
Violations	—
Paid C.C. Fee	\$500
BZA Date	4-8-25
Decision	

BUDGET CODE: MISPL 100-3100-1070

PART 1: APPLICATION NOTES

- VARIANCE** means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. **It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.**
- The burden of proof shall be on the applicant for a variance to prove by the greater amount of evidence that the application meets the standard as defined, and the criteria set in number 3.
- The Board of Zoning Appeals shall grant a variance if the evidence shows the strict application of the terms of the zoning ordinance would reasonably restrict the utilization of the property, or the granting of the variance would alleviate hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability, and:
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 - The authorization of a variance will not be a substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance.
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 - The remedy sought is not available through a special exception process that is authorized in the ordinance.
- If a variance is approved for a property only the minimum required to alleviate hardship will be granted.
- *FEES: \$500 & Payment of advertising costs, actual and adjacent property owner notification mailing, costs.**

All items from this checklist must be submitted prior to the application being evaluated.

- | | | |
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| ☒ Completed application & Justification Letter | ☒ Existing site plan/survey | ☒ Photos of existing conditions. |
| ☒ Photos/elevation drawings of proposed project | ☒ Proposed site plan/survey | ☒ Payment of Fees * |

PART 2: PROPERTY INFORMATION

Property Address: Washington Ave/Dreams St. Lot- Parcel #16740, a/k/a Dreams by the Water, lot #4	Tax Map #: 083A1
Existing Use: Vacant	Zoning District: R-1

- Has a previous application been filed for a variance in connection with this property? ☐ No ☐ Yes, attach an explanation
- Has a Conditional Use Permit been issued for the existing use? ☒ No ☐ Yes, provide a copy
- Are there any proffers associated with this property? ☒ No ☐ Yes, provide a copy
- Is the property located within an Overlay District? ☒ No ☐ Yes, which one _____
- Is this property located within a Subdivision? ☒ No ☐ Yes, which one _____
- Is this property located within a Resource Protection Area? ☒ No ☐ Yes

PART 3: PROPERTY OWNER INFORMATION	
Name and/or Company: Dreams By The Water LLC	
Mailing Address: c/o Ralph E. Main, Jr. 415 Fourth Street NE, P.O. Box 2666 Charlottesville, VA 22902	
Phone Number: 434-531-0121	Email: Cgheatingandair@gmail.com
PART 4: APPLICANT INFORMATION	
☐ Check here if applicant is owner. (If applicant is not the property owner, an Owner's Permission Affidavit must be attached.)	
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Please provide the Zoning Ordinance Section that you are seeking relief from: _____	
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<i>Applicant must explain (Please use additional pages where necessary)</i>	
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Lot or Parcel Size: See previously submitted plats/plans	Proposed Size:
Shape:	Proposed Shape:
How does the zoning ordinance's strict limitations on the size, height, area, or location of the building or structure unreasonably restrict the utilization of the property? The ability to construct a single-family home as shown or any other structure that is consistent with the use and character of the neighborhood.	
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Main Structure Size: See previously submitted plans	Proposed Structure Size:
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Existing / Required Setback Front:	Proposed Setback Front:
Existing / Required Setback West Side:	Proposed Setback West Side:
Existing / Required Setback East Side:	Proposed Setback East Side:
Existing / Required Setback Rear:	Proposed Setback Rear:

B) CRITERIA

1. Does strict application of the zoning ordinance to the subject property result in a hardship to the owner? *(Answer A or B)*

A. Explain how the variance would alleviate a hardship caused by the physical characteristics of the property?
It would allow construction of homes as shown and presented during informal meeting with the Town Officials and Zoning Board; would permit a use that is consistent with the character of the neighborhood

B. Explain how the zoning ordinance unreasonably restricts the use of the property?
Building envelope and setbacks unreasonably restrict construction that is consistent with the zoning and character of the neighborhood.

2. Is the hardship unique to the property? **No**

A. Explain if the hardship is shared by other properties in the neighborhood.
All ten lots in Dreams by the Water are affected.

B. Explain how this situation or condition of the property applies generally to the other properties in the same zone.
Application of conforming setbacks to non-conforming (depth) lots

3. Was the hardship created or caused by the applicant? **No**

A. Did the condition exist when the property was purchased?
Yes

B. Did the applicant purchase the property without knowing of this hardship?
No - Purchase is contingent on resolution before this board.

C. How and when did the condition which created the hardship first occur?
By approval of and recordation by the predecessor in title

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No

E. What could have been done to avoid hardship?
Request a relief or different designation (such as granted to a PUD) at the time of original application

4. Will the variance if granted be harmful to others? **No**

A. Explain if the proposed variance will be detrimental to the adjacent properties or the neighborhood?
It will not be detrimental

B. Explain how the proposed variance will affect the values of the adjacent and nearby properties.
It will increase their property value by constructing residence's consistent with their character

C. Have you shown the proposed plans to the adjacent neighbors and other affected property owners? Have any of them objected, or have any of them written a letter of support for the proposed variance? If so, please attach the letter or submit it before the hearing. **no**

D. Explain how the proposed variance will change the character of the neighborhood?
It will allow construction of homes more in line with the neighborhood and the Towns character

5. Is there any other administrative or procedural remedy to relieve the hardship?
Katie Nunez indicated there may be another means if the variance is not approved

Part 7: ALTERNATIVE SOLUTIONS

Have alternative plans or solutions been considered so a variance would not be needed? Please explain solutions that have been considered, and why it is unsatisfactory.

Research and design of alternative homes was studied and considered, without a successful outcome

Part 8: STATEMENT OF INTENT

Describe the planned use and explain why a variance from the district ordinance is needed. State the sections of the Town Zoning Ordinance or the Accawmacke Plantation PUD for which you are requesting a variance. Include the standards listed in the Zoning Ordinance/PUD and the amount of a variance you are requesting.

Residential: For all the reasons stated earlier - subdivision play unknowingly created a hardship on the building envelopes by application of the setbacks by the Town.

(See attached narrative)

CERTIFICATION

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. Before any work begins, a zoning clearance request must be approved. I understand that for any changes made in the historic district, a Certificate of Appropriateness must be received; and any changes made in the Accawmacke Plantation PUD, an Architectural Review Committee approval letter must be received.

Applicant's signature: _____

Date: March 14th 2025

Zoning Administrator's signature: _____

Date: _____

Variance for Dreams by the Water

Request: Reduction of the front yard setback from 30' to 20', and the rear yard setback from 25' to 15' for lots 1-10.

Rational: This will enable the construction of homes more in character with the neighborhood, as well as the Town of Cape Charles.

- Enable designs with porches, decks, outside areas for neighbor and family interactions.
- Architectural features such as higher pitched roofs, dormers, and home designs that are proportionately more equal in depth, as width.
- Room and allowance for garages to aid in off street parking, storage of items out of public view, etc.

Impact:

- No negative impact on direct, or indirect neighbors.
- Open Space:
 - Vastly exceeds the preference set at 50% ratio of home footprint of the lots.
- Increase in total assessable tax base
 - Build out with proposed homes \$8,000,000 - \$10,000,000 assessed value

Summary: It is the unwavering desire of the Developers, each lot owner (all ten lot owners are unanimously represented) to deliver a community to the neighborhood, the visitors and residents of the Town of Cape Charles in the spirit of the overall code, strategic plan, and betterment of the Town.



Owner Affidavit for Permission to Represent

Planning & Zoning Department
2 Plum Street; Cape Charles, VA 23310
757-331-3259 x31

planningtech@capecharles.org

Revised 03/2023

Taxes

Violations

Fees

Decision

PART 1: APPLICATION NOTES

Use this form to give permission for a contractor, architect, or other individual to represent the owner of a property in matters within the Town of Cape Charles.

PART 2: PROPERTY INFORMATION

Property Address: 0 Washington Avenue (Lot 0000004, Parcel Rec #16740)

Tax Map #: 083A1

PART 3: PROPERTY OWNER INFORMATION

Name and/or Company: Dreams By The Water LLC

Mailing Address: c/o Ralph E. Main, Jr. 415 Fourth Street NE, PO Box 2666, Charlottesville, VA 22902

Phone Number: 1-434-531-0121

Email: Cgheatingandair@gmail.com

I hereby give authority to the following representative to act on my behalf on the following matter:

Any and all zoning related matters

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Name and/or Company: Chris Larmore, C&L Homes

Mailing Address: 10603 Shifting Sand Drive, Ocean City, MD 21842

Phone Number: 1-443-880-8950

Email: occigarette@aol.com

☒ to file documents on my behalf

☒ To represent me in meetings with Town officials

Name and/or Company:

Mailing Address:

Phone Number:

Email:

☐ to file documents on my behalf

☐ To represent me in meetings with Town officials

Signature of owner:

Date:

3/12/25

State of Virginia, County of Albemarle
12 day of March, 20 25 by Chadwick Graham (name of person acknowledged)

Signature of Notarial Officer:

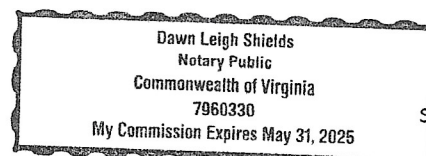
Dawn Shields

Notary Registration number:

7960330

My commission expires:

05/31/2025



Lot 4 – Staff Report



BOARD OF ZONING APPEALS

Meeting Date: April 8, 2025

Item #5C (iv): –VAR2025-05 – Variance Application

Date: March 31, 2025

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

APPLICANT: Dreams by the Water, LLC
Represented by Chris Larmore of C&L Homes CC
Inc

SITE ADDRESS: Lot 4 Dream Street, off
Washington Avenue

TAX MAP: 83A1-21-4

LOT SIZE : 5,765 sq. ft.

TYPE OF APPLICATION: VAR2025-05 –
Variance Application from Front and Rear
Setbacks

SPECIFIC REQUEST: Variance of 10 ft from
both front and rear setback

ZONING ORDINANCE: Article 3, Section
3.1 (E)

CURRENT ZONING: Residential-1

DATE RECEIVED : March 14, 2025

DATE DEEMED COMPLETE : March 14, 2025

LEGAL DEADLINE (90 Days from Complete Application – Directory, not Mandatory): **June 14, 2025**

Narrative of Proposal:

In 2020, the old Coast Guard housing property on Washington Avenue was sold after the original housing buildings were demolished and removed from the property. The purchaser, Dreams by the Water, LLC and its agent Tom Kavounas, submitted a conceptual sketch for a subdivision for this property into 10 residential lots using the already established layout location of the “old” parking lot which had to be upgraded to comply the required road standards to be accepted into the VDOT Road system. After a considerable amount of discussion on the subdivision requirements, a preliminary plat was submitted in June 2021. The initial review of the preliminary plat was completed and required corrections and resubmission to the Town. The Town was finally able to approve the preliminary plat on July 5, 2022 and signed off on the Utility and Right of Way Construction Drawings for this subdivision in full compliance with the Subdivision Ordinance and the underlying zoning district (R-1) development requirements contained in Article 3.

The front property setback is 30 feet, and the rear property setback is 25 ft. in the Residential-1 zoning district. The applicant is seeking a 10 ft variance from both of these setbacks.

Aerial Map:



Ordinance Requirements to be Considered for Variances:

- (a) ***Does 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 Cape Charles Zoning Ordinance Residential-1 Zoning Ordinance establishes a legal lot at 5,600 square feet with a presumption that the lot composition is 40 feet wide by 140 ft deep which is the traditional lot size and layout when the Town of Cape Charles was first laid out in 1884.

When this subdivision was created, each of the 10 lots meets or exceeds the 5,600 square foot lot size, thus complying with the Cape Charles Zoning Ordinance. The front lot width met the requirement of 40 feet with this lot at 87.39 ft. The lot depth, where there is no established minimum requirement, is at 81.71 ft. on the left side and 56.69 ft on the right.

While a house can be constructed on this lot without the variance being approved, the style and design of a home may not fully integrate with the overall character of the Residential-1 Zoning District (Historic District). This property does not have to comply with the Historic

District Guidelines and has flexibility in meeting the Development Standards for the Residential Zoning Districts contained in CCZO Section 4.12. since the Dreams by the Water Subdivision is its own neighborhood and block. The developer and the prospective lot owners have indicated to mimic the style in the Historic District in certain aspects: building proportions, scale and orientation and roof pitch, and front porches.

The challenges of the lot size and configuration to the size and style of a home should have been part of the due diligence of the developer when the conceptual subdivision plan was submitted to the Town and the developer should have petitioned the Town for an exception to the subdivision requirements when the preliminary plat creating the subdivision was submitted to the Town, pursuant to CCZO Appendix B (Subdivision Ordinance) Section 7.1. However, due to changing staff at the time when this subdivision plat was submitted to the Town, this provision of the ordinance may not have been fully known or understood and the developer, at that time, did not have a clear vision as to the size of home intended for this neighborhood which would not be accommodated due to the dimensional requirements of the Residential-1 zoning district.

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

Dreams by the Water, LLC is the entity that acquired this property and advanced the subdivision plat and is the entity submitting this variance application. However, additional partner(s) have recently been brought into this project, specifically Chris Larmore of C&L Homes CC Inc., that has allowed for a greater review of the plat on a lot-by-lot basis through certain computer software to provide 3D renderings and the style, type and size of house can be accommodated on each lot.

(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 Dreams by the Water Subdivision is a 10-lot subdivision that is located perpendicular to Washington Avenue and the “front street” of this subdivision is a new road called Dream Street and is a new neighborhood block being created. Five of the lots are adjacent to the Bay Vista subdivision to the west, a subdivision that is within the Accawmacke Plantation Planned Unit Development (PUD) (aka Bay Creek) and is governed by different dimensional requirements as well as design standards. To the east, the other five lots are adjacent to one of the stormwater retention ponds owned by the Bay Creek at Cape Charles Community Association Inc c/o Property Management Associates that services the Bay Creek development. This parcel will never be developed beyond the stormwater pond.

Across Washington Street to the south is the Town’s Historic District which does have a design requirement and development requirement. However, there is a provision in the Residential-1 zoning district that has a built-in capacity for waivers of the front setback associated with prevailing development standards. Providing the relief from the front and rear setback requirements would not be of substantial detriment to any of the adjacent or nearby properties and all of the 10 lots in Dreams by the Water are seeking this similar relief so that the neighborhood is being treated consistently.

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

While all 10 lots in the Dreams by the Water subdivision are seeking the same variance, this situation is rare and is not considered a recurring circumstance that would require a zoning ordinance text amendment. This property is a redevelopment of a former Coast Guard housing development for its staff station at the Cape Charles Coast Guard office.

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

The developer is seeking to only develop single family residences on these lots and the variance would only improve that ability and would be consistent with the uses allowed in the Residential-1 zoning district.

The house size would still be in keeping with the minimum and maximum house size allowed in the Residential-1 zoning district which is 960 sq. ft up to 4,500 sq. ft.

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

While the Subdivision Ordinance does include an exception process (Appendix B, Section 7.1), this is a process that is generally exercised during the development of a preliminary subdivision plat. A zoning text amendment of reducing the setback requirements in the Residential-1 zoning ordinance is not a viable solution since it would be applicable to all lots within this zoning district and not just to the 10 lots in the Dreams by the Water subdivision.

Discussion Points:

1. Does the Board feel that allowing the variance request is reasonable?

BZA Review:

Some items that the Board of Zoning Appeals may wish to consider in its review:

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

Staff Recommendation:

Staff recommends that the Board of Zoning Appeals 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 the section called, "Ordinance Requirements To Be Considered".

Proposed Motion For Consideration

Staff offers the following motion for the Board's consideration: ***"After careful consideration of the application and the staff report, the Board of Zoning Appeals votes to approve VAR2025-05 for Tax Map #83A1-21-4 (Lot 4 Dream Street) in consideration of the ordinance criteria for variances being met."***

Attachments:

Dreams by the Water – Lot 4 – Variance Application

Dreams by the Water – Narrative of Variance

Cape Charles Zoning Ordinance Article III, Section 3.1 (E)

Cape Charles Zoning Ordinance Appendix B – Subdivision Ordinance Section 7.1

Lot 5 – Variance Application



Zoning Variance Application

Planning & Zoning Department
2 Plum Street; Cape Charles, VA 23310
757-331-3259 x30

planningtech@capecharles.org

Revised 12/2024	
Taxes	☒ paid M.S
Violations	_____
Paid Fee	\$500
BZA Date	4-8-25
Decision	

BUDGET CODE: MISPL 100-3100-1070

PART 1: APPLICATION NOTES

- VARIANCE** means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. **It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.**
- The burden of proof shall be on the applicant for a variance to prove by the greater amount of evidence that the application meets the standard as defined, and the criteria set in number 3.
- The Board of Zoning Appeals shall grant a variance if the evidence shows the strict application of the terms of the zoning ordinance would reasonably restrict the utilization of the property, or the granting of the variance would alleviate hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability, and:
 - The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant.
 - The authorization of a variance will not be a substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance.
 - Such hardship is not shared by other properties in the same zoning district and same vicinity.
 - The granting of the variance does not result in a use that is not permitted on such property or a change in the zoning classification of the property.
 - The remedy sought is not available through a special exception process that is authorized in the ordinance.
- If a variance is approved for a property only the minimum required to alleviate hardship will be granted.
- *FEES: \$500 & Payment of advertising costs, actual and adjacent property owner notification mailing, costs.**

All items from this checklist must be submitted prior to the application being evaluated.

- | | | |
|---|---|--|
| ☒ Completed application & Justification Letter | ☐ Existing site plan/survey | ☒ Photos of existing conditions. |
| ☒ Photos/elevation drawings of proposed project | ☒ Proposed site plan/survey | ☒ Payment of Fees * |

PART 2: PROPERTY INFORMATION

Property Address: Washington Ave/Dreams St. Lot- Parcel #16741, a/k/a Dreams by the Water, lot #5	Tax Map #: 083A1
Existing Use: Vacant	Zoning District: R-1

- Has a previous application been filed for a variance in connection with this property? ☐ No ☐ Yes, attach an explanation
- Has a Conditional Use Permit been issued for the existing use? ☒ No ☐ Yes, provide a copy
- Are there any proffers associated with this property? ☒ No ☐ Yes, provide a copy
- Is the property located within an Overlay District? ☒ No ☐ Yes, which one _____
- Is this property located within a Subdivision? ☒ No ☐ Yes, which one _____
- Is this property located within a Resource Protection Area? ☒ No ☐ Yes

PART 3: PROPERTY OWNER INFORMATION	
Name and/or Company: Dreams By The Water LLC	
Mailing Address: c/o Ralph E. Main, Jr. 415 Fourth Street NE, P.O. Box 2666 Charlottesville, VA 22902	
Phone Number: 434-531-0121	Email: Cgheatingandair@gmail.com
PART 4: APPLICANT 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: Chris Larmore/C&L Homes CC Inc.	
Mailing Address: 10603 Shifting Sands Drive Ocean City MD 21842	
Phone Number: 443-880-8950	Email: Occigarette@aol.com
PART 5: ZONING ORDINANCE OR ACCAWMACKE PLANTATION PUD VARIANCE SECTION	
Please provide the Zoning Ordinance Section that you are seeking relief from: _____	
Please provide the Accawmacke Plantation PUD Section you are seeking relief from: _____	
PART 6: VARIANCE JUSTIFICATION	
<i>Applicant must explain (Please use additional pages where necessary)</i>	
A) PROPERTY DESCRIPTION	
How do the zoning ordinance's strict regulations for the lot or parcel of land's shape, size, or area unreasonably restrict the utilization of the property? Building setbacks required of a normal lot with more depth, front to rear, restrict construction of a home and any other reasonable use of the property in the given zoning district.	
What type of reasonable deviation is being sought? Reduction of the front and rear setbacks by 10' each	
Lot or Parcel Size: See previously submitted plats/plans	Proposed Size:
Shape:	Proposed Shape:
How does the zoning ordinance's strict limitations on the size, height, area, or location of the building or structure unreasonably restrict the utilization of the property? The ability to construct a single-family home as shown or any other structure that is consistent with the use and character of the neighborhood.	
What type of reasonable deviation is being sought? Reduction of the front and rear setback	
Main Structure Size: See previously submitted plans	Proposed Structure Size:
Existing Height:	Proposed Height:
Existing / Required Setback Front:	Proposed Setback Front:
Existing / Required Setback West Side:	Proposed Setback West Side:
Existing / Required Setback East Side:	Proposed Setback East Side:
Existing / Required Setback Rear:	Proposed Setback Rear:

B) CRITERIA

1. Does strict application of the zoning ordinance to the subject property result in a hardship to the owner? *(Answer A or B)*

A. Explain how the variance would alleviate a hardship caused by the physical characteristics of the property?
It would allow construction of homes as shown and presented during informal meeting with the Town Officials and Zoning Board; would permit a use that is consistent with the character of the neighborhood

B. Explain how the zoning ordinance unreasonably restricts the use of the property?
Building envelope and setbacks unreasonably restrict construction that is consistent with the zoning and character of the neighborhood.

2. Is the hardship unique to the property? **No**

A. Explain if the hardship is shared by other properties in the neighborhood.
All ten lots in Dreams by the Water are affected.

B. Explain how this situation or condition of the property applies generally to the other properties in the same zone.
Application of conforming setbacks to non-conforming (depth) lots

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A. Did the condition exist when the property was purchased?
Yes

B. Did the applicant purchase the property without knowing of this hardship?
No - Purchase is contingent on resolution before this board.

C. How and when did the condition which created the hardship first occur?
By approval of and recordation by the predecessor in title

D. Did the applicant create the hardship and, if so, how was it created?
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E. What could have been done to avoid hardship?
Request a relief or different designation (such as granted to a PUD) at the time of original application

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A. Explain if the proposed variance will be detrimental to the adjacent properties or the neighborhood?
It will not be detrimental

B. Explain how the proposed variance will affect the values of the adjacent and nearby properties.
It will increase their property value by constructing residence's consistent with their character

C. Have you shown the proposed plans to the adjacent neighbors and other affected property owners? Have any of them objected, or have any of them written a letter of support for the proposed variance? If so, please attach the letter or submit it before the hearing. **no**

D. Explain how the proposed variance will change the character of the neighborhood?
It will allow construction of homes more in line with the neighborhood and the Towns character

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(See attached narrative)

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Date: March 14th 2025

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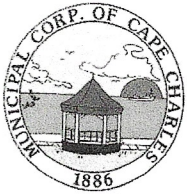
Rational: This will enable the construction of homes more in character with the neighborhood, as well as the Town of Cape Charles.

- Enable designs with porches, decks, outside areas for neighbor and family interactions.
- Architectural features such as higher pitched roofs, dormers, and home designs that are proportionately more equal in depth, as width.
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Impact:

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 - Vastly exceeds the preference set at 50% ratio of home footprint of the lots.
- Increase in total assessable tax base
 - Build out with proposed homes \$8,000,000 - \$10,000,000 assessed value

Summary: It is the unwavering desire of the Developers, each lot owner (all ten lot owners are unanimously represented) to deliver a community to the neighborhood, the visitors and residents of the Town of Cape Charles in the spirit of the overall code, strategic plan, and betterment of the Town.



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planningtech@capecharles.org

Revised 03/2023

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Violations

Fees

Decision

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Tax Map #: 083A1

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Email: occigarette@aol.com

☒ to file documents on my behalf

☒ To represent me in meetings with Town officials

Name and/or Company:

Mailing Address:

Phone Number:

Email:

☐ to file documents on my behalf

☐ To represent me in meetings with Town officials

Signature of owner:

Date: 3/12/25

State of Virginia, County of Albemarle
12 day of March, 2025, by Chadwick Graham (name of person acknowledged)
The foregoing instrument was acknowledged before me this

Signature of Notarial Officer:

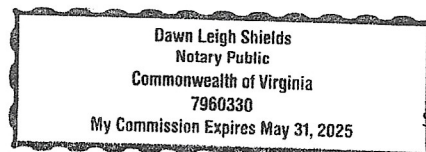
Notary Registration number:

My commission expires:

Dawn Shields

7960330

05/31/2025



Lot 5 – Staff Report



BOARD OF ZONING APPEALS

Meeting Date: April 8, 2025

Item #5C (v): –VAR2025-06 – Variance Application

Date: March 31, 2025

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

APPLICANT: Dreams by the Water, LLC
Represented by Chris Larmore of C&L Homes CC
Inc

SITE ADDRESS: Lot 5 Dream Street, off
Washington Avenue

TAX MAP: 83A1-21-5

LOT SIZE : 10,456 sq. ft.

TYPE OF APPLICATION: VAR2025-06 –
Variance Application from Front and Rear
Setbacks

SPECIFIC REQUEST: Variance of 10 ft from
both front and rear setback

ZONING ORDINANCE: Article 3, Section
3.1 (E)

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DATE RECEIVED : March 14, 2025

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The Cape Charles Zoning Ordinance Residential-1 Zoning Ordinance establishes a legal lot at 5,600 square feet with a presumption that the lot composition is 40 feet wide by 140 ft deep which is the traditional lot size and layout when the Town of Cape Charles was first laid out in 1884.

When this subdivision was created, each of the 10 lots meets or exceeds the 5,600 square foot lot size, thus complying with the Cape Charles Zoning Ordinance. The front lot width met the requirement of 40 feet with this lot at 78.54 ft. The lot depth, where there is no established minimum requirement, is at 116.44 ft. on the left side and 66.40 ft on the right.

While a house can be constructed on this lot without the variance being approved, the style and design of a home may not fully integrate with the overall character of the Residential-1

Zoning District (Historic District). This property does not have to comply with the Historic District Guidelines and has flexibility in meeting the Development Standards for the Residential Zoning Districts contained in CCZO Section 4.12. since the Dreams by the Water Subdivision is its own neighborhood and block. The developer and the prospective lot owners have indicated to mimic the style in the Historic District in certain aspects: building proportions, scale and orientation and roof pitch, and front porches.

The challenges of the lot size and configuration to the size and style of a home should have been part of the due diligence of the developer when the conceptual subdivision plan was submitted to the Town and the developer should have petitioned the Town for an exception to the subdivision requirements when the preliminary plat creating the subdivision was submitted to the Town, pursuant to CCZO Appendix B (Subdivision Ordinance) Section 7.1. However, due to changing staff at the time when this subdivision plat was submitted to the Town, this provision of the ordinance may not have been fully known or understood and the developer, at that time, did not have a clear vision as to the size of home intended for this neighborhood which would not be accommodated due to the dimensional requirements of the Residential-1 zoning district.

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

Dreams by the Water, LLC is the entity that acquired this property and advanced the subdivision plat and is the entity submitting this variance application. However, additional partner(s) have recently been brought into this project, specifically Chris Larmore of C&L Homes CC Inc., that has allowed for a greater review of the plat on a lot-by-lot basis through certain computer software to provide 3D renderings and the style, type and size of house can be accommodated on each lot.

(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 Dreams by the Water Subdivision is a 10-lot subdivision that is located perpendicular to Washington Avenue and the “front street” of this subdivision is a new road called Dream Street and is a new neighborhood block being created. Five of the lots are adjacent to the Bay Vista subdivision to the west, a subdivision that is within the Accawmacke Plantation Planned Unit Development (PUD) (aka Bay Creek) and is governed by different dimensional requirements as well as design standards. To the east, the other five lots are adjacent to one of the stormwater retention ponds owned by the Bay Creek at Cape Charles Community Association Inc c/o Property Management Associates that services the Bay Creek development. This parcel will never be developed beyond the stormwater pond.

Across Washington Street to the south is the Town’s Historic District which does have a design requirement and development requirement. However, there is a provision in the Residential-1 zoning district that has a built-in capacity for waivers of the front setback associated with prevailing development standards. Providing the relief from the front and rear setback requirements would not be of substantial detriment to any of the adjacent or

nearby properties and all of the 10 lots in Dreams by the Water are seeking this similar relief so that the neighborhood is being treated consistently.

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

While all 10 lots in the Dreams by the Water subdivision are seeking the same variance, this situation is rare and is not considered a recurring circumstance that would require a zoning ordinance text amendment. This property is a redevelopment of a former Coast Guard housing development for its staff station at the Cape Charles Coast Guard office.

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

The developer is seeking to only develop single family residences on these lots and the variance would only improve that ability and would be consistent with the uses allowed in the Residential-1 zoning district.

The house size would still be in keeping with the minimum and maximum house size allowed in the Residential-1 zoning district which is 960 sq. ft up to 4,500 sq. ft.

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

While the Subdivision Ordinance does include an exception process (Appendix B, Section 7.1), this is a process that is generally exercised during the development of a preliminary subdivision plat. A zoning text amendment of reducing the setback requirements in the Residential-1 zoning ordinance is not a viable solution since it would be applicable to all lots within this zoning district and not just to the 10 lots in the Dreams by the Water subdivision.

Discussion Points:

1. Does the Board feel that allowing the variance request is reasonable?

BZA Review:

Some items that the Board of Zoning Appeals may wish to consider in its review:

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

Staff Recommendation:

Staff recommends that the Board of Zoning Appeals 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 the section called, "Ordinance Requirements To Be Considered".

Proposed Motion For Consideration

Staff offers the following motion for the Board's consideration: ***"After careful consideration of the application and the staff report, the Board of Zoning Appeals votes to approve VAR2025-06 for Tax Map #83A1-21-5 (Lot 5 Dream Street) in consideration of the ordinance criteria for variances being met."***

Attachments:

Dreams by the Water – Lot 5 – Variance Application

Dreams by the Water – Narrative of Variance

Cape Charles Zoning Ordinance Article III, Section 3.1 (E)

Cape Charles Zoning Ordinance Appendix B – Subdivision Ordinance Section 7.1

Lot 6 – Variance Application



Zoning Variance Application

Planning & Zoning Department
2 Plum Street, Cape Charles, VA 23310
757-331-3259 x30

planningtech@capecharles.org

Revised 12/2024	
Taxes	☒ Paid M.S.
Violations	—
Paid C.C. Fee	\$ 500
BZA Date	4-8-25
Decision	

BUDGET CODE: MISPL 100-3100-1070

PART 1: APPLICATION NOTES

- VARIANCE** means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. **It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.**
- The burden of proof shall be on the applicant for a variance to prove by the greater amount of evidence that the application meets the standard as defined, and the criteria set in number 3.
- The Board of Zoning Appeals shall grant a variance if the evidence shows the strict application of the terms of the zoning ordinance would reasonably restrict the utilization of the property, or the granting of the variance would alleviate hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability, and:
 - The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant.
 - The authorization of a variance will not be a substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance.
 - Such hardship is not shared by other properties in the same zoning district and same vicinity.
 - The granting of the variance does not result in a use that is not permitted on such property or a change in the zoning classification of the property.
 - The remedy sought is not available through a special exception process that is authorized in the ordinance.
- If a variance is approved for a property only the minimum required to alleviate hardship will be granted.
- *FEES: \$500 & Payment of advertising costs, actual and adjacent property owner notification mailing, costs.**

All items from this checklist must be submitted prior to the application being evaluated.

- | | | |
|---|---|--|
| ☒ Completed application & Justification Letter | ☒ Existing site plan/survey | ☒ Photos of existing conditions. |
| ☒ Photos/elevation drawings of proposed project | ☒ Proposed site plan/survey | ☒ Payment of Fees * |

PART 2: PROPERTY INFORMATION

Property Address: Washington Ave/Dreams St. Lot- Parcel #16742, a/k/a Dreams by the Water, lot #6	Tax Map #: 083A1
Existing Use: Vacant	Zoning District: R-1
Has a previous application been filed for a variance in connection with this property? ☐ No ☐ Yes, attach an explanation Has a Conditional Use Permit been issued for the existing use? ☒ No ☐ Yes, provide a copy Are there any proffers associated with this property? ☒ No ☐ Yes, provide a copy Is the property located within an Overlay District? ☒ No ☐ Yes, which one _____ Is this property located within a Subdivision? ☒ No ☐ Yes, which one _____ Is this property located within a Resource Protection Area? ☒ No ☐ Yes	

PART 3: PROPERTY OWNER INFORMATION	
Name and/or Company: Dreams By The Water LLC	
Mailing Address: c/o Ralph E. Main, Jr. 415 Fourth Street NE, P.O. Box 2666 Charlottesville, VA 22902	
Phone Number: 434-531-0121	Email: Cgheatingandair@gmail.com
PART 4: APPLICANT 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: Chris Larmore/C&L Homes CC Inc.	
Mailing Address: 10603 Shifting Sands Drive Ocean City MD 21842	
Phone Number: 443-880-8950	Email: Occigarette@aol.com
PART 5: ZONING ORDINANCE OR ACCAWMACKE PLANTATION PUD VARIANCE SECTION	
Please provide the Zoning Ordinance Section that you are seeking relief from: _____	
Please provide the Accawmacke Plantation PUD Section you are seeking relief from: _____	
PART 6: VARIANCE JUSTIFICATION	
<i>Applicant must explain (Please use additional pages where necessary)</i>	
A) PROPERTY DESCRIPTION	
How do the zoning ordinance's strict regulations for the lot or parcel of land's shape, size, or area unreasonably restrict the utilization of the property? Building setbacks required of a normal lot with more depth, front to rear, restrict construction of a home and any other reasonable use of the property in the given zoning district.	
What type of reasonable deviation is being sought? Reduction of the front and rear setbacks by 10' each	
Lot or Parcel Size: See previously submitted plats/plans	Proposed Size:
Shape:	Proposed Shape:
How does the zoning ordinance's strict limitations on the size, height, area, or location of the building or structure unreasonably restrict the utilization of the property? The ability to construct a single-family home as shown or any other structure that is consistent with the use and character of the neighborhood.	
What type of reasonable deviation is being sought? Reduction of the front and rear setback	
Main Structure Size: See previously submitted plans	Proposed Structure Size:
Existing Height:	Proposed Height:
Existing / Required Setback Front:	Proposed Setback Front:
Existing / Required Setback West Side:	Proposed Setback West Side:
Existing / Required Setback East Side:	Proposed Setback East Side:
Existing / Required Setback Rear:	Proposed Setback Rear:

B) CRITERIA

1. Does strict application of the zoning ordinance to the subject property result in a hardship to the owner? *(Answer A or B)*

A. Explain how the variance would alleviate a hardship caused by the physical characteristics of the property?
It would allow construction of homes as shown and presented during informal meeting with the Town Officials and Zoning Board; would permit a use that is consistent with the character of the neighborhood

B. Explain how the zoning ordinance unreasonably restricts the use of the property?
Building envelope and setbacks unreasonably restrict construction that is consistent with the zoning and character of the neighborhood.

2. Is the hardship unique to the property? **No**

A. Explain if the hardship is shared by other properties in the neighborhood.
All ten lots in Dreams by the Water are affected.

B. Explain how this situation or condition of the property applies generally to the other properties in the same zone.
Application of conforming setbacks to non-conforming (depth) lots

3. Was the hardship created or caused by the applicant? **No**

A. Did the condition exist when the property was purchased?
Yes

B. Did the applicant purchase the property without knowing of this hardship?
No - Purchase is contingent on resolution before this board.

C. How and when did the condition which created the hardship first occur?
By approval of and recordation by the predecessor in title

D. Did the applicant create the hardship and, if so, how was it created?
No

E. What could have been done to avoid hardship?
Request a relief or different designation (such as granted to a PUD) at the time of original application

4. Will the variance if granted be harmful to others? **No**

A. Explain if the proposed variance will be detrimental to the adjacent properties or the neighborhood?
It will not be detrimental

B. Explain how the proposed variance will affect the values of the adjacent and nearby properties.
It will increase their property value by constructing residence's consistent with their character

C. Have you shown the proposed plans to the adjacent neighbors and other affected property owners? Have any of them objected, or have any of them written a letter of support for the proposed variance? If so, please attach the letter or submit it before the hearing. **no**

D. Explain how the proposed variance will change the character of the neighborhood?
It will allow construction of homes more in line with the neighborhood and the Towns character

5. Is there any other administrative or procedural remedy to relieve the hardship?
Katie Nunez indicated there may be another means if the variance is not approved

Part 7: ALTERNATIVE SOLUTIONS

Have alternative plans or solutions been considered so a variance would not be needed? Please explain solutions that have been considered, and why it is unsatisfactory.

Research and design of alternative homes was studied and considered, without a successful outcome

Part 8: STATEMENT OF INTENT

Describe the planned use and explain why a variance from the district ordinance is needed. State the sections of the Town Zoning Ordinance or the Accawmacke Plantation PUD for which you are requesting a variance. Include the standards listed in the Zoning Ordinance/PUD and the amount of a variance you are requesting.

Residential: For all the reasons stated earlier - subdivision play unknowingly created a hardship on the building envelopes by application of the setbacks by the Town.

(See attached narrative)

CERTIFICATION

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. Before any work begins, a zoning clearance request must be approved. I understand that for any changes made in the historic district, a Certificate of Appropriateness must be received; and any changes made in the Accawmacke Plantation PUD, an Architectural Review Committee approval letter must be received.

Applicant's signature: _____

Date: March 14th 2025

Zoning Administrator's signature: _____

Date: _____

Variance for Dreams by the Water

Request: Reduction of the front yard setback from 30' to 20', and the rear yard setback from 25' to 15' for lots 1-10.

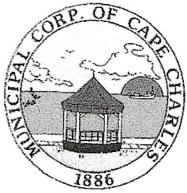
Rational: This will enable the construction of homes more in character with the neighborhood, as well as the Town of Cape Charles.

- Enable designs with porches, decks, outside areas for neighbor and family interactions.
- Architectural features such as higher pitched roofs, dormers, and home designs that are proportionately more equal in depth, as width.
- Room and allowance for garages to aid in off street parking, storage of items out of public view, etc.

Impact:

- No negative impact on direct, or indirect neighbors.
- Open Space:
 - Vastly exceeds the preference set at 50% ratio of home footprint of the lots.
- Increase in total assessable tax base
 - Build out with proposed homes \$8,000,000 - \$10,000,000 assessed value

Summary: It is the unwavering desire of the Developers, each lot owner (all ten lot owners are unanimously represented) to deliver a community to the neighborhood, the visitors and residents of the Town of Cape Charles in the spirit of the overall code, strategic plan, and betterment of the Town.



Owner Affidavit for Permission to Represent

Planning & Zoning Department
2 Plum Street; Cape Charles, VA 23310
757-331-3259 x31

planningtech@capecharles.org

Revised 03/2023

Taxes

Violations

Fees

Decision

PART 1: APPLICATION NOTES

Use this form to give permission for a contractor, architect, or other individual to represent the owner of a property in matters within the Town of Cape Charles.

PART 2: PROPERTY INFORMATION

Property Address: 0 Washington Avenue (Lot 0000006, Parcel Rec #16742)

Tax Map #: 083A1

PART 3: PROPERTY OWNER INFORMATION

Name and/or Company: Dreams By The Water LLC

Mailing Address: c/o Ralph E. Main, Jr. 415 Fourth Street NE, PO Box 2666, Charlottesville, VA 22902

Phone Number: 1-434-531-0121

Email: Cgheatingandair@gmail.com

I hereby give authority to the following representative to act on my behalf on the following matter:

Any and all zoning related matters

PART 4: REPRESENTATIVE INFORMATION

Name and/or Company: Chris Larmore, C&L Homes

Mailing Address: 10603 Shifting Sand Drive, Ocean City, MD 21842

Phone Number: 1-443-880-8950

Email: occigarette@aol.com

☒ to file documents on my behalf

☒ To represent me in meetings with Town officials

Name and/or Company:

Mailing Address:

Phone Number:

Email:

☐ to file documents on my behalf

☐ To represent me in meetings with Town officials

Signature of owner: [Signature]

Date: 3/12/25

State of Virginia

County of Albemarle

12 day of March, 20 25

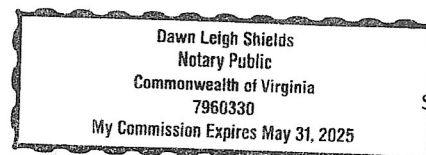
by Charlwick Graham

The foregoing instrument was acknowledged before me this
(name of person acknowledged)

Signature of Notarial Officer: [Signature]

Notary Registration number: 7960330

My commission expires: 05/31/2025



Lot 6 – Staff Report



BOARD OF ZONING APPEALS

Meeting Date: April 8, 2025

Item #5C (vi): –VAR2025-07 – Variance Application

Date: March 31, 2025

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

APPLICANT: Dreams by the Water, LLC
Represented by Chris Larmore of C&L Homes CC
Inc

SITE ADDRESS: Lot 6 Dream Street, off
Washington Avenue

TAX MAP: 83A1-21-6

LOT SIZE : 10,451 sq. ft.

TYPE OF APPLICATION: VAR2025-07 –
Variance Application from Front and Rear
Setbacks

SPECIFIC REQUEST: Variance of 10 ft from
both front and rear setback

ZONING ORDINANCE: Article 3, Section
3.1 (E)

CURRENT ZONING: Residential-1

DATE RECEIVED : March 14, 2025

DATE DEEMED COMPLETE : March 14, 2025

LEGAL DEADLINE (90 Days from Complete Application – Directory, not Mandatory): June 14, 2025

Narrative of Proposal:

In 2020, the old Coast Guard housing property on Washington Avenue was sold after the original housing buildings were demolished and removed from the property. The purchaser, Dreams by the Water, LLC and its agent Tom Kavounas, submitted a conceptual sketch for a subdivision for this property into 10 residential lots using the already established layout location of the “old” parking lot which had to be upgraded to comply the required road standards to be accepted into the VDOT Road system. After a considerable amount of discussion on the subdivision requirements, a preliminary plat was submitted in June 2021. The initial review of the preliminary plat was completed that required corrections and resubmission to the Town. The Town was finally able to approve the preliminary plat on July 5, 2022 and signed off on the Utility and Right of Way Construction Drawings for this subdivision in full compliance with the Subdivision Ordinance and the underlying zoning district (R-1) development requirements contained in Article 3.

The front property setback is 30 feet, and the rear property setback is 25 ft. in the Residential-1 zoning district. The applicant is seeking a 10 ft variance from both of these setbacks.

Aerial Map:



Ordinance Requirements to be Considered for Variances:

- (a) Does 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 Cape Charles Zoning Ordinance Residential-1 Zoning Ordinance establishes a legal lot at 5,600 square feet with a presumption that the lot composition is 40 feet wide by 140 ft deep which is the traditional lot size and layout when the Town of Cape Charles was first laid out in 1884.

When this subdivision was created, each of the 10 lots meets or exceeds the 5,600 square foot lot size, thus complying with the Cape Charles Zoning Ordinance. The front lot width met the requirement of 40 feet with this lot at 78.54 ft. The lot depth, where there is no established minimum requirement, is at 66.40 ft. on the left side and 56.69 ft on the right.

While a house can be constructed on this lot without the variance being approved, the style and design of a home may not fully integrate with the overall character of the Residential-1

Zoning District (Historic District). This property does not have to comply with the Historic District Guidelines and has flexibility in meeting the Development Standards for the Residential Zoning Districts contained in CCZO Section 4.12. since the Dreams by the Water Subdivision is its own neighborhood and block. The developer and the prospective lot owners have indicated to mimic the style in the Historic District in certain aspects: building proportions, scale and orientation and roof pitch, and front porches.

The challenges of the lot size and configuration to the size and style of a home should have been part of the due diligence of the developer when the conceptual subdivision plan was submitted to the Town and the developer should have petitioned the Town for an exception to the subdivision requirements when the preliminary plat creating the subdivision was submitted to the Town, pursuant to CCZO Appendix B (Subdivision Ordinance) Section 7.1. However, due to changing staff at the time when this subdivision plat was submitted to the Town, this provision of the ordinance may not have been fully known or understood and the developer, at that time, did not have a clear vision as to the size of home intended for this neighborhood which would not be accommodated due to the dimensional requirements of the Residential-1 zoning district.

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

Dreams by the Water, LLC is the entity that acquired this property and advanced the subdivision plat and is the entity submitting this variance application. However, additional partner(s) have recently been brought into this project, specifically Chris Larmore of C&L Homes CC Inc., that has allowed for a greater review of the plat on a lot-by-lot basis through certain computer software to provide 3D renderings and the style, type and size of house can be accommodated on each lot.

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The Dreams by the Water Subdivision is a 10-lot subdivision that is located perpendicular to Washington Avenue and the “front street” of this subdivision is a new road called Dream Street and is a new neighborhood block being created. Five of the lots are adjacent to the Bay Vista subdivision to the west, a subdivision that is within the Accawmacke Plantation Planned Unit Development (PUD) (aka Bay Creek) and is governed by different dimensional requirements as well as design standards. To the east, the other five lots are adjacent to one of the stormwater retention ponds owned by the Bay Creek at Cape Charles Community Association Inc c/o Property Management Associates that services the Bay Creek development. This parcel will never be developed beyond the stormwater pond.

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nearby properties and all of the 10 lots in Dreams by the Water are seeking this similar relief so that the neighborhood is being treated consistently.

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

While all 10 lots in the Dreams by the Water subdivision are seeking the same variance, this situation is rare and is not considered a recurring circumstance that would require a zoning ordinance text amendment. This property is a redevelopment of a former Coast Guard housing development for its staff station at the Cape Charles Coast Guard office.

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

The developer is seeking to only develop single family residences on these lots and the variance would only improve that ability and would be consistent with the uses allowed in the Residential-1 zoning district.

The house size would still be in keeping with the minimum and maximum house size allowed in the Residential-1 zoning district which is 960 sq. ft up to 4,500 sq. ft.

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

While the Subdivision Ordinance does include an exception process (Appendix B, Section 7.1), this is a process that is generally exercised during the development of a preliminary subdivision plat. A zoning text amendment of reducing the setback requirements in the Residential-1 zoning ordinance is not a viable solution since it would be applicable to all lots within this zoning district and not just to the 10 lots in the Dreams by the Water subdivision.

Discussion Points:

1. Does the Board feel that allowing the variance request is reasonable?

BZA Review:

Some items that the Board of Zoning Appeals may wish to consider in its review:

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

Staff Recommendation:

Staff recommends that the Board of Zoning Appeals 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 the section called, "Ordinance Requirements To Be Considered".

Proposed Motion For Consideration

Staff offers the following motion for the Board's consideration: ***"After careful consideration of the application and the staff report, the Board of Zoning Appeals votes to approve VAR2025-07 for Tax Map #83A1-21-6 (Lot 6 Dream Street) in consideration of the ordinance criteria for variances being met."***

Attachments:

Dreams by the Water – Lot 6 – Variance Application

Dreams by the Water – Narrative of Variance

Cape Charles Zoning Ordinance Article III, Section 3.1 (E)

Cape Charles Zoning Ordinance Appendix B – Subdivision Ordinance Section 7.1

Lot 7 – Variance Application



Zoning Variance Application

Planning & Zoning Department
2 Plum Street, Cape Charles, VA 23310
757-331-3259 x30

planningtech@capecharles.org

Revised 12/2024	
Taxes	☒ paid M.S
Violations	_____
paid c.c Fee	\$ 500
BZA Date	4-8-25
Decision	

BUDGET CODE: MISPL 100-3100-1070

PART 1: APPLICATION NOTES

- VARIANCE** means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. **It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.**
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- The Board of Zoning Appeals shall grant a variance if the evidence shows the strict application of the terms of the zoning ordinance would reasonably restrict the utilization of the property, or the granting of the variance would alleviate hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability, and:
 - The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant.
 - The authorization of a variance will not be a substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance.
 - Such hardship is not shared by other properties in the same zoning district and same vicinity.
 - The granting of the variance does not result in a use that is not permitted on such property or a change in the zoning classification of the property.
 - The remedy sought is not available through a special exception process that is authorized in the ordinance.
- If a variance is approved for a property only the minimum required to alleviate hardship will be granted.
- *FEES: \$500 & Payment of advertising costs, actual and adjacent property owner notification mailing, costs.**

All items from this checklist must be submitted prior to the application being evaluated.

- | | | |
|---|---|--|
| ☒ Completed application & Justification Letter | ☒ Existing site plan/survey | ☒ Photos of existing conditions. |
| ☒ Photos/elevation drawings of proposed project | ☒ Proposed site plan/survey | ☒ Payment of Fees* |

PART 2: PROPERTY INFORMATION

Property Address: Washington Ave/Dreams St. Lot- Parcel #16743, a/k/a Dreams by the Water, lot #7	Tax Map #: 083A1
Existing Use: Vacant	Zoning District: R-1
Has a previous application been filed for a variance in connection with this property? ☐ No ☐ Yes, attach an explanation Has a Conditional Use Permit been issued for the existing use? ☒ No ☐ Yes, provide a copy Are there any proffers associated with this property? ☒ No ☐ Yes, provide a copy Is the property located within an Overlay District? ☒ No ☐ Yes, which one _____ Is this property located within a Subdivision? ☒ No ☐ Yes, which one _____ Is this property located within a Resource Protection Area? ☒ No ☐ Yes	

PART 3: PROPERTY OWNER INFORMATION	
Name and/or Company: Dreams By The Water LLC	
Mailing Address: c/o Ralph E. Main, Jr. 415 Fourth Street NE, P.O. Box 2666 Charlottesville, VA 22902	
Phone Number: 434-531-0121	Email: Cgheatingandair@gmail.com
PART 4: APPLICANT 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: Chris Larmore/C&L Homes CC Inc.	
Mailing Address: 10603 Shifting Sands Drive Ocean City MD 21842	
Phone Number: 443-880-8950	Email: Occigarette@aol.com
PART 5: ZONING ORDINANCE OR ACCAWMACKE PLANTATION PUD VARIANCE SECTION	
Please provide the Zoning Ordinance Section that you are seeking relief from: _____	
Please provide the Accawmacke Plantation PUD Section you are seeking relief from: _____	
PART 6: VARIANCE JUSTIFICATION	
<i>Applicant must explain (Please use additional pages where necessary)</i>	
A) PROPERTY DESCRIPTION	
How do the zoning ordinance's strict regulations for the lot or parcel of land's shape, size, or area unreasonably restrict the utilization of the property? Building setbacks required of a normal lot with more depth, front to rear, restrict construction of a home and any other reasonable use of the property in the given zoning district.	
What type of reasonable deviation is being sought? Reduction of the front and rear setbacks by 10' each	
Lot or Parcel Size: See previously submitted plats/plans	Proposed Size:
Shape:	Proposed Shape:
How does the zoning ordinance's strict limitations on the size, height, area, or location of the building or structure unreasonably restrict the utilization of the property? The ability to construct a single-family home as shown or any other structure that is consistent with the use and character of the neighborhood.	
What type of reasonable deviation is being sought? Reduction of the front and rear setback	
Main Structure Size: See previously submitted plans	Proposed Structure Size:
Existing Height:	Proposed Height:
Existing / Required Setback Front:	Proposed Setback Front:
Existing / Required Setback West Side:	Proposed Setback West Side:
Existing / Required Setback East Side:	Proposed Setback East Side:
Existing / Required Setback Rear:	Proposed Setback Rear:

B) CRITERIA

1. Does strict application of the zoning ordinance to the subject property result in a hardship to the owner? *(Answer A or B)*

A. Explain how the variance would alleviate a hardship caused by the physical characteristics of the property?
It would allow construction of homes as shown and presented during informal meeting with the Town Officials and Zoning Board; would permit a use that is consistent with the character of the neighborhood

B. Explain how the zoning ordinance unreasonably restricts the use of the property?
Building envelope and setbacks unreasonably restrict construction that is consistent with the zoning and character of the neighborhood.

2. Is the hardship unique to the property? **No**

A. Explain if the hardship is shared by other properties in the neighborhood.
All ten lots in Dreams by the Water are affected.

B. Explain how this situation or condition of the property applies generally to the other properties in the same zone.
Application of conforming setbacks to non-conforming (depth) lots

3. Was the hardship created or caused by the applicant? **No**

A. Did the condition exist when the property was purchased?
Yes

B. Did the applicant purchase the property without knowing of this hardship?
No - Purchase is contingent on resolution before this board.

C. How and when did the condition which created the hardship first occur?
By approval of and recordation by the predecessor in title

D. Did the applicant create the hardship and, if so, how was it created?
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E. What could have been done to avoid hardship?
Request a relief or different designation (such as granted to a PUD) at the time of original application

4. Will the variance if granted be harmful to others? **No**

A. Explain if the proposed variance will be detrimental to the adjacent properties or the neighborhood?
It will not be detrimental

B. Explain how the proposed variance will affect the values of the adjacent and nearby properties.
It will increase their property value by constructing residence's consistent with their character

C. Have you shown the proposed plans to the adjacent neighbors and other affected property owners? Have any of them objected, or have any of them written a letter of support for the proposed variance? If so, please attach the letter or submit it before the hearing. **no**

D. Explain how the proposed variance will change the character of the neighborhood?
It will allow construction of homes more in line with the neighborhood and the Towns character

5. Is there any other administrative or procedural remedy to relieve the hardship?
Katie Nunez indicated there may be another means if the variance is not approved

Part 7: ALTERNATIVE SOLUTIONS

Have alternative plans or solutions been considered so a variance would not be needed? Please explain solutions that have been considered, and why it is unsatisfactory.

Research and design of alternative homes was studied and considered, without a successful outcome

Part 8: STATEMENT OF INTENT

Describe the planned use and explain why a variance from the district ordinance is needed. State the sections of the Town Zoning Ordinance or the Accawmacke Plantation PUD for which you are requesting a variance. Include the standards listed in the Zoning Ordinance/PUD and the amount of a variance you are requesting.

Residential: For all the reasons stated earlier - subdivision play unknowingly created a hardship on the building envelopes by application of the setbacks by the Town.

(See attached narrative)

CERTIFICATION

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. Before any work begins, a zoning clearance request must be approved. I understand that for any changes made in the historic district, a Certificate of Appropriateness must be received; and any changes made in the Accawmacke Plantation PUD, an Architectural Review Committee approval letter must be received.

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Date: March 14th 2025

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Date: _____

Variance for Dreams by the Water

Request: Reduction of the front yard setback from 30' to 20', and the rear yard setback from 25' to 15' for lots 1-10.

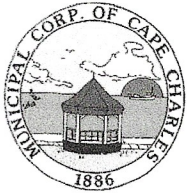
Rational: This will enable the construction of homes more in character with the neighborhood, as well as the Town of Cape Charles.

- Enable designs with porches, decks, outside areas for neighbor and family interactions.
- Architectural features such as higher pitched roofs, dormers, and home designs that are proportionately more equal in depth, as width.
- Room and allowance for garages to aid in off street parking, storage of items out of public view, etc.

Impact:

- No negative impact on direct, or indirect neighbors.
- Open Space:
 - Vastly exceeds the preference set at 50% ratio of home footprint of the lots.
- Increase in total assessable tax base
 - Build out with proposed homes \$8,000,000 - \$10,000,000 assessed value

Summary: It is the unwavering desire of the Developers, each lot owner (all ten lot owners are unanimously represented) to deliver a community to the neighborhood, the visitors and residents of the Town of Cape Charles in the spirit of the overall code, strategic plan, and betterment of the Town.



Owner Affidavit for Permission to Represent

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Revised 03/2023

Taxes

Violations

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Decision

PART 1: APPLICATION NOTES

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Property Address: 0 Washington Avenue (Lot 0000007, Parcel Rec #16743)

Tax Map #: 083A1

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Email: occigarette@aol.com

☒ to file documents on my behalf

☒ To represent me in meetings with Town officials

Name and/or Company:

Mailing Address:

Phone Number:

Email:

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☐ To represent me in meetings with Town officials

Signature of owner: [Signature]

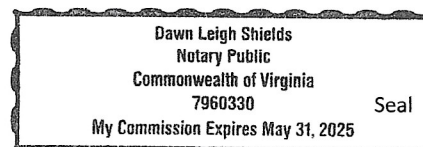
Date: 3/12/25

State of Virginia County of Albemarle
12 day of MARCH, 20 25 by chadwick graham (name of person acknowledged)

Signature of Notarial Officer: [Signature]

Notary Registration number: 7960330

My commission expires: 05/31/2025



Lot 7 – Staff Report



BOARD OF ZONING APPEALS

Meeting Date: April 8, 2025

Item #5C (vii): –VAR2025-08 – Variance Application

Date: March 31, 2025

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

APPLICANT: Dreams by the Water, LLC.,
Represented by Chris Larmore of C&L Homes CC
Inc

TYPE OF APPLICATION: VAR2025-08 –
Variance Application from Front and Rear
Setbacks

SITE ADDRESS: Lot 8 Dream Street, off
Washington Avenue

TAX MAP: 83A1-21-8

LOT SIZE : 5,765 sq. ft.

SPECIFIC REQUEST: Variance of 10 ft from
both front and rear setback

ZONING ORDINANCE: Article 3, Section
3.1 (E)

CURRENT ZONING: Residential-1

DATE RECEIVED : March 14, 2025

DATE DEEMED COMPLETE : March 14, 2025

LEGAL DEADLINE (90 Days from Complete Application – Directory, not Mandatory): **June 14, 2025**

Narrative of Proposal:

In 2020, the old Coast Guard housing property on Washington Avenue was sold after the original housing buildings were demolished and removed from the property. The purchaser, Dreams by the Water, LLC and its agent Tom Kavounas, submitted a conceptual sketch for a subdivision for this property into 10 residential lots using the already established layout location of the “old” parking lot which had to be upgraded to comply the required road standards to be accepted into the VDOT Road system. After a considerable amount of discussion on the subdivision requirements, a preliminary plat was submitted in June 2021. The initial review of the preliminary plat was completed that required corrections and resubmission to the Town. The Town was finally able to approve the preliminary plat on July 5, 2022 and signed off on the Utility and Right of Way Construction Drawings for this subdivision in full compliance with the Subdivision Ordinance and the underlying zoning district (R-1) development requirements contained in Article 3.

The front property setback is 30 feet, and the rear property setback is 25 ft. in the Residential-1 zoning district. The applicant is seeking a 10 ft variance from both of these setbacks.

Aerial Map:



Ordinance Requirements to be Considered for Variances:

- (a) Does 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 Cape Charles Zoning Ordinance Residential-1 Zoning Ordinance establishes a legal lot at 5,600 square feet with a presumption that the lot composition is 40 feet wide by 140 ft deep which is the traditional lot size and layout when the Town of Cape Charles was first laid out in 1884.

When this subdivision was created, each of the 10 lots meets or exceeds the 5,600 square foot lot size, thus complying with the Cape Charles Zoning Ordinance. The front lot width met the requirement of 40 feet with this lot at 87.39 ft. The lot depth, where there is no established minimum requirement, is at 56.69 ft. on the left side due and 81.71 ft on the right.

While a house can be constructed on this lot without the variance being approved, the style and design of a home may not fully integrate with the overall character of the Residential-1 Zoning District (Historic District). This property does not have to comply with the Historic District Guidelines and has flexibility in meeting the Development Standards for the Residential Zoning Districts contained in CCZO Section 4.12. since the Dreams by the Water Subdivision is its own neighborhood and block. The developer and the prospective lot owners have indicated to mimic the style in the Historic District in certain aspects: building proportions, scale and orientation and roof pitch, and front porches.

The challenges of the lot size and configuration to the size and style of a home should have been part of the due diligence of the developer when the conceptual subdivision plan was submitted to the Town and the developer should have petitioned the Town for an exception to the subdivision requirements when the preliminary plat creating the subdivision was submitted to the Town, pursuant to CCZO Appendix B (Subdivision Ordinance) Section 7.1. However, due to changing staff at the time when this subdivision plat was submitted to the Town, this provision of the ordinance may not have been fully known or understood and the developer, at that time, did not have a clear vision as to the size of home intended for this neighborhood which would not be accommodated due to the dimensional requirements of the Residential-1 zoning district.

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

Dreams by the Water, LLC is the entity that acquired this property and advanced the subdivision plat and is the entity submitting this variance application. However, additional partner(s) have recently been brought into this project, specifically Chris Larmore of C&L Homes CC Inc., that has allowed for a greater review of the plat on a lot-by-lot basis through certain computer software to provide 3D renderings and the style, type and size of house can be accommodated on each lot.

(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 Dreams by the Water Subdivision is a 10-lot subdivision that is located perpendicular to Washington Avenue and the “front street” of this subdivision is a new road called Dream Street and is a new neighborhood block being created. Five of the lots are adjacent to the Bay Vista subdivision to the west, a subdivision that is within the Accawmacke Plantation Planned Unit Development (PUD) (aka Bay Creek) and is governed by different dimensional requirements as well as design standards. To the east, the other five lots are adjacent to one of the stormwater retention ponds owned by the Bay Creek at Cape Charles Community Association Inc c/o Property Management Associates that services the Bay Creek development. This parcel will never be developed beyond the stormwater pond.

Across Washington Street to the south is the Town’s Historic District which does have a design requirement and development requirement. However, there is a provision in the Residential-1 zoning district that has a built-in capacity for waivers of the front setback associated with prevailing development standards. Providing the relief from the front and

rear setback requirements would not be of substantial detriment to any of the adjacent or nearby properties and all of the 10 lots in Dreams by the Water are seeking this similar relief so that the neighborhood is being treated consistently.

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

While all 10 lots in the Dreams by the Water subdivision are seeking the same variance, this situation is rare and is not considered a recurring circumstance that would require a zoning ordinance text amendment. This property is a redevelopment of a former Coast Guard housing development for its staff station at the Cape Charles Coast Guard office.

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

The developer is seeking to only develop single family residences on these lots and the variance would only improve that ability and would be consistent with the uses allowed in the Residential-1 zoning district.

The house size would still be in keeping with the minimum and maximum house size allowed in the Residential-1 zoning district which is 960 sq. ft up to 4,500 sq. ft.

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

While the Subdivision Ordinance does include an exception process (Appendix B, Section 7.1), this is a process that is generally exercised during the development of a preliminary subdivision plat. A zoning text amendment of reducing the setback requirements in the Residential-1 zoning ordinance is not a viable solution since it would be applicable to all lots within this zoning district and not just to the 10 lots in the Dreams by the Water subdivision.

Discussion Points:

1. Does the Board feel that allowing the variance request is reasonable?

BZA Review:

Some items that the Board of Zoning Appeals may wish to consider in its review:

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

Staff Recommendation:

Staff recommends that the Board of Zoning Appeals 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 the section called, "Ordinance Requirements To Be Considered".

Proposed Motion For Consideration

Staff offers the following motion for the Board's consideration: ***"After careful consideration of the application and the staff report, the Board of Zoning Appeals votes to approve VAR2025-08 for Tax Map #83A1-21-7 (Lot 7 Dream Street) in consideration of the ordinance criteria for variances being met."***

Attachments:

Dreams by the Water – Lot 7 – Variance Application

Dreams by the Water – Narrative of Variance

Cape Charles Zoning Ordinance Article III, Section 3.1 (E)

Cape Charles Zoning Ordinance Appendix B – Subdivision Ordinance Section 7.1

Lot 8 – Variance Application



Zoning Variance Application

Planning & Zoning Department
2 Plum Street; Cape Charles, VA 23310
757-331-3259 x30

planningtech@capecharles.org

Revised 12/2024	
Taxes	☒ paid M.S
Violations	—
Paid C.C. Fee	\$ 500
BZA Date	4-8-25
Decision	

BUDGET CODE: MISPL 100-3100-1070

PART 1: APPLICATION NOTES

- VARIANCE** means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. **It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.**
- The burden of proof shall be on the applicant for a variance to prove by the greater amount of evidence that the application meets the standard as defined, and the criteria set in number 3.
- The Board of Zoning Appeals shall grant a variance if the evidence shows the strict application of the terms of the zoning ordinance would reasonably restrict the utilization of the property, or the granting of the variance would alleviate hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability, and:
 - The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant.
 - The authorization of a variance will not be a substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance.
 - Such hardship is not shared by other properties in the same zoning district and same vicinity.
 - The granting of the variance does not result in a use that is not permitted on such property or a change in the zoning classification of the property.
 - The remedy sought is not available through a special exception process that is authorized in the ordinance.
- If a variance is approved for a property only the minimum required to alleviate hardship will be granted.
- *FEES: \$500 & Payment of advertising costs, actual and adjacent property owner notification mailing, costs.**

All items from this checklist must be submitted prior to the application being evaluated.

- | | | |
|---|---|--|
| ☒ Completed application & Justification Letter | ☒ Existing site plan/survey | ☒ Photos of existing conditions. |
| ☒ Photos/elevation drawings of proposed project | ☒ Proposed site plan/survey | ☒ Payment of Fees * |

PART 2: PROPERTY INFORMATION

Property Address: Washington Ave/Dreams St. Lot- Parcel #16744, a/k/a Dreams by the Water, lot #8	Tax Map #: 083A1
Existing Use: Vacant	Zoning District: R-1

- Has a previous application been filed for a variance in connection with this property? ☐ No ☐ Yes, attach an explanation
- Has a Conditional Use Permit been issued for the existing use? ☒ No ☐ Yes, provide a copy
- Are there any proffers associated with this property? ☒ No ☐ Yes, provide a copy
- Is the property located within an Overlay District? ☒ No ☐ Yes, which one _____
- Is this property located within a Subdivision? ☒ No ☐ Yes, which one _____
- Is this property located within a Resource Protection Area? ☒ No ☐ Yes

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Name and/or Company: Kevin L. & Melanie Evans & Chad F. & Tabatha Reuschling	
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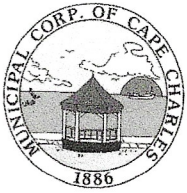
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Revised 03/2023

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☒ To represent me in meetings with Town officials

Name and/or Company:

Mailing Address:

Phone Number:

Email:

☐ to file documents on my behalf

☐ To represent me in meetings with Town officials

Signature of owner: Kevin Evans, Melanie Evans, Chad Reuschling, Tabatha Reuschling

Date: 3-12-2025

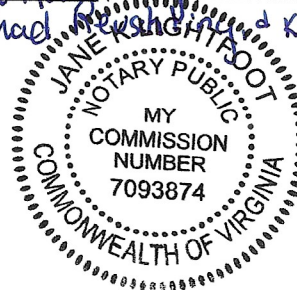
State of Virginia, County of Albemarle
12th day of March, 2025, by Melanie Evans, Tabatha Reuschling

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ (name of person acknowledged)

Signature of Notarial Officer: [Signature]

Notary Registration number: 7093874

My commission expires: 9-30-27



Seal

Lot 8 – Staff Report



BOARD OF ZONING APPEALS

Meeting Date: April 8, 2025

Item #5C (viii): –VAR2025-09 – Variance Application

Date: March 31, 2025

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

APPLICANT: Kevin and Melanie Reuschling;
represented by Chris Larmore Developer of Dreams
by the Water

TYPE OF APPLICATION: VAR2025-09 –
Variance Application from Front and Rear
Setbacks

SITE ADDRESS: Lot 8 Dream Street, off
Washington Avenue

TAX MAP: 83A1-21-8

LOT SIZE : 5,600 sq. ft.

SPECIFIC REQUEST: Variance of 10 ft from
both front and rear setback

ZONING ORDINANCE: Article 3, Section
3.1 (E)

CURRENT ZONING: Residential-1

DATE RECEIVED : March 14, 2025

DATE DEEMED COMPLETE : March 14, 2025

LEGAL DEADLINE (90 Days from Complete Application – Directory, not Mandatory): **June 14, 2025**

Narrative of Proposal:

In 2020, the old Coast Guard housing property on Washington Avenue was sold after the original housing buildings were demolished and removed from the property. The purchaser, Dreams by the Water, LLC and its agent Tom Kavounas, submitted a conceptual sketch for a subdivision for this property into 10 residential lots using the already established layout location of the “old” parking lot which had to be upgraded to comply the required road standards to be accepted into the VDOT Road system. After a considerable amount of discussion on the subdivision requirements, a preliminary plat was submitted in June 2021. The initial review of the preliminary plat was completed that required corrections and resubmission to the Town. The Town was finally able to approve the preliminary plat on July 5, 2022 and signed off on the Utility and Right of Way Construction Drawings for this subdivision in full compliance with the Subdivision Ordinance and the underlying zoning district (R-1) development requirements contained in Article 3.

The front property setback is 30 feet, and the rear property setback is 25 ft. in the Residential-1 zoning district. The applicant is seeking a 10 ft variance from both of these setbacks.

Aerial Map:



Ordinance Requirements to be Considered for Variances:

- (a) Does 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 Cape Charles Zoning Ordinance Residential-1 Zoning Ordinance establishes a legal lot at 5,600 square feet with a presumption that the lot composition is 40 feet wide by 140 ft deep which is the traditional lot size and layout when the Town of Cape Charles was first laid out in 1884.

When this subdivision was created, each of the 10 lots meets or exceeds the 5,600 square foot lot size, thus complying with the Cape Charles Zoning Ordinance. The front lot width met the requirement of 40 feet with this lot at 68.53 ft. The lot depth, where there is no established minimum requirement, is at 81.71 ft. on the left side and 81.73 ft on the right.

While a house can be constructed on this lot without the variance being approved, the style and design of a home may not fully integrate with the overall character of the Residential-1 Zoning District (Historic District). This property does not have to comply with the Historic District Guidelines and has flexibility in meeting the Development Standards for the

Residential Zoning Districts contained in CCZO Section 4.12. since the Dreams by the Water Subdivision is its own neighborhood and block. The developer and the prospective lot owners have indicated to mimic the style in the Historic District in certain aspects: building proportions, scale and orientation and roof pitch, and front porches.

The challenges of the lot size and configuration to the size and style of a home should have been part of the due diligence of the developer when the conceptual subdivision plan was submitted to the Town and the developer should have petitioned the Town for an exception to the subdivision requirements when the preliminary plat creating the subdivision was submitted to the Town, pursuant to CCZO Appendix B (Subdivision Ordinance) Section 7.1. However, due to changing staff at the time when this subdivision plat was submitted to the Town, this provision of the ordinance may not have been fully known or understood and the developer, at that time, did not have a clear vision as to the size of home intended for this neighborhood which would not be accommodated due to the dimensional requirements of the Residential-1 zoning district.

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

Dreams by the Water, LLC is the entity that acquired this property and advanced the subdivision plat and is the entity submitting this variance application. However, additional partner(s) have recently been brought into this project, specifically Chris Larmore of C&L Homes CC Inc., that has allowed for a greater review of the plat on a lot-by-lot basis through certain computer software to provide 3D renderings and the style, type and size of house can be accommodated on each lot.

(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 Dreams by the Water Subdivision is a 10-lot subdivision that is located perpendicular to Washington Avenue and the “front street” of this subdivision is a new road called Dream Street and is a new neighborhood block being created. Five of the lots are adjacent to the Bay Vista subdivision to the west, a subdivision that is within the Accawmacke Plantation Planned Unit Development (PUD) (aka Bay Creek) and is governed by different dimensional requirements as well as design standards. To the east, the other five lots are adjacent to one of the stormwater retention ponds owned by the Bay Creek at Cape Charles Community Association Inc c/o Property Management Associates that services the Bay Creek development. This parcel will never be developed beyond the stormwater pond.

Across Washington Street to the south is the Town’s Historic District which does have a design requirement and development requirement. However, there is a provision in the Residential-1 zoning district that has a built-in capacity for waivers of the front setback associated with prevailing development standards. Providing the relief from the front and rear setback requirements would not be of substantial detriment to any of the adjacent or nearby properties and all of the 10 lots in Dreams by the Water are seeking this similar relief so that the neighborhood is being treated consistently.

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

While all 10 lots in the Dreams by the Water subdivision are seeking the same variance, this situation is rare and is not considered a recurring circumstance that would require a zoning ordinance text amendment. This property is a redevelopment of a former Coast Guard housing development for its staff station at the Cape Charles Coast Guard office.

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

The developer is seeking to only develop single family residences on these lots and the variance would only improve that ability and would be consistent with the uses allowed in the Residential-1 zoning district.

The house size would still be in keeping with the minimum and maximum house size allowed in the Residential-1 zoning district which is 960 sq. ft up to 4,500 sq. ft.

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

While the Subdivision Ordinance does include an exception process (Appendix B, Section 7.1), this is a process that is generally exercised during the development of a preliminary subdivision plat. A zoning text amendment of reducing the setback requirements in the Residential-1 zoning ordinance is not a viable solution since it would be applicable to all lots within this zoning district and not just to the 10 lots in the Dreams by the Water subdivision.

Discussion Points:

1. Does the Board feel that allowing the variance request is reasonable?

BZA Review:

Some items that the Board of Zoning Appeals may wish to consider in its review:

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

Staff Recommendation:

Staff recommends that the Board of Zoning Appeals 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 the section called, "Ordinance Requirements To Be Considered".

Proposed Motion For Consideration

Staff offers the following motion for the Board's consideration: ***"After careful consideration of the application and the staff report, the Board of Zoning Appeals votes to approve VAR2025-09 for Tax Map #83A1-21-8 (Lot 8 Dream Street) in consideration of the ordinance criteria for variances being met."***

Attachments:

Dreams by the Water – Lot 8 – Variance Application

Dreams by the Water – Narrative of Variance

Cape Charles Zoning Ordinance Article III, Section 3.1 (E)

Cape Charles Zoning Ordinance Appendix B – Subdivision Ordinance Section 7.1

Lot 9 – Variance Application



Zoning Variance Application

Planning & Zoning Department
2 Plum Street; Cape Charles, VA 23310
757-331-3259 x30

planningtech@capecharles.org

Revised 12/2024	
Taxes	☒ paid M.S
Violations	_____
paid C.C. Fee	\$500
BZA Date	4-8-25
Decision	

BUDGET CODE: MISPL 100-3100-1070

PART 1: APPLICATION NOTES

- VARIANCE** means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. **It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.**
- The burden of proof shall be on the applicant for a variance to prove by the greater amount of evidence that the application meets the standard as defined, and the criteria set in number 3.
- The Board of Zoning Appeals shall grant a variance if the evidence shows the strict application of the terms of the zoning ordinance would reasonably restrict the utilization of the property, or the granting of the variance would alleviate hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability, and:
 - The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant.
 - The authorization of a variance will not be a substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance.
 - Such hardship is not shared by other properties in the same zoning district and same vicinity.
 - The granting of the variance does not result in a use that is not permitted on such property or a change in the zoning classification of the property.
 - The remedy sought is not available through a special exception process that is authorized in the ordinance.
- If a variance is approved for a property only the minimum required to alleviate hardship will be granted.
- *FEES: \$500 & Payment of advertising costs, actual and adjacent property owner notification mailing, costs.**

All items from this checklist must be submitted prior to the application being evaluated.

- | | | |
|---|---|--|
| ☒ Completed application & Justification Letter | ☒ Existing site plan/survey | ☒ Photos of existing conditions. |
| ☒ Photos/elevation drawings of proposed project | ☒ Proposed site plan/survey | ☒ Payment of Fees * |

PART 2: PROPERTY INFORMATION

Property Address: Washington Ave/Dreams St. Lot- Parcel #16745, a/k/a Dreams by the Water, lot #9	Tax Map #: 083A1
Existing Use: Vacant	Zoning District: R-1

- Has a previous application been filed for a variance in connection with this property? ☐ No ☐ Yes, attach an explanation
- Has a Conditional Use Permit been issued for the existing use? ☒ No ☐ Yes, provide a copy
- Are there any proffers associated with this property? ☒ No ☐ Yes, provide a copy
- Is the property located within an Overlay District? ☒ No ☐ Yes, which one _____
- Is this property located within a Subdivision? ☒ No ☐ Yes, which one _____
- Is this property located within a Resource Protection Area? ☒ No ☐ Yes

PART 3: PROPERTY OWNER INFORMATION	
Name and/or Company: Dreams By The Water LLC	
Mailing Address: c/o Ralph E. Main, Jr. 415 Fourth Street NE, P.O. Box 2666 Charlottesville, VA 22902	
Phone Number: 434-531-0121	Email: Cgheatingandair@gmail.com
PART 4: APPLICANT 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: Chris Larmore/C&L Homes CC Inc.	
Mailing Address: 10603 Shifting Sands Drive Ocean City MD 21842	
Phone Number: 443-880-8950	Email: Occigarette@aol.com
PART 5: ZONING ORDINANCE OR ACCAWMACKE PLANTATION PUD VARIANCE SECTION	
Please provide the Zoning Ordinance Section that you are seeking relief from: _____	
Please provide the Accawmacke Plantation PUD Section you are seeking relief from: _____	
PART 6: VARIANCE JUSTIFICATION	
<i>Applicant must explain (Please use additional pages where necessary)</i>	
A) PROPERTY DESCRIPTION	
How do the zoning ordinance's strict regulations for the lot or parcel of land's shape, size, or area unreasonably restrict the utilization of the property? Building setbacks required of a normal lot with more depth, front to rear, restrict construction of a home and any other reasonable use of the property in the given zoning district.	
What type of reasonable deviation is being sought? Reduction of the front and rear setbacks by 10' each	
Lot or Parcel Size: See previously submitted plats/plans	Proposed Size:
Shape:	Proposed Shape:
How does the zoning ordinance's strict limitations on the size, height, area, or location of the building or structure unreasonably restrict the utilization of the property? The ability to construct a single-family home as shown or any other structure that is consistent with the use and character of the neighborhood.	
What type of reasonable deviation is being sought? Reduction of the front and rear setback	
Main Structure Size: See previously submitted plans	Proposed Structure Size:
Existing Height:	Proposed Height:
Existing / Required Setback Front:	Proposed Setback Front:
Existing / Required Setback West Side:	Proposed Setback West Side:
Existing / Required Setback East Side:	Proposed Setback East Side:
Existing / Required Setback Rear:	Proposed Setback Rear:

B) CRITERIA

1. Does strict application of the zoning ordinance to the subject property result in a hardship to the owner? (Answer A or B)

A. Explain how the variance would alleviate a hardship caused by the physical characteristics of the property?
It would allow construction of homes as shown and presented during informal meeting with the Town Officials and Zoning Board; would permit a use that is consistent with the character of the neighborhood

B. Explain how the zoning ordinance unreasonably restricts the use of the property?
Building envelope and setbacks unreasonably restrict construction that is consistent with the zoning and character of the neighborhood.

2. Is the hardship unique to the property? No

A. Explain if the hardship is shared by other properties in the neighborhood.
All ten lots in Dreams by the Water are affected.

B. Explain how this situation or condition of the property applies generally to the other properties in the same zone.
Application of conforming setbacks to non-conforming (depth) lots

3. Was the hardship created or caused by the applicant? No

A. Did the condition exist when the property was purchased?
Yes

B. Did the applicant purchase the property without knowing of this hardship?
No - Purchase is contingent on resolution before this board.

C. How and when did the condition which created the hardship first occur?
By approval of and recordation by the predecessor in title

D. Did the applicant create the hardship and, if so, how was it created?
No

E. What could have been done to avoid hardship?
Request a relief or different designation (such as granted to a PUD) at the time of original application

4. Will the variance if granted be harmful to others? No

A. Explain if the proposed variance will be detrimental to the adjacent properties or the neighborhood?
It will not be detrimental

B. Explain how the proposed variance will affect the values of the adjacent and nearby properties.
It will increase their property value by constructing residence's consistent with their character

C. Have you shown the proposed plans to the adjacent neighbors and other affected property owners? Have any of them objected, or have any of them written a letter of support for the proposed variance? If so, please attach the letter or submit it before the hearing. no

D. Explain how the proposed variance will change the character of the neighborhood?
It will allow construction of homes more in line with the neighborhood and the Towns character

5. Is there any other administrative or procedural remedy to relieve the hardship?
Katie Nunez indicated there may be another means if the variance is not approved

Part 7: ALTERNATIVE SOLUTIONS

Have alternative plans or solutions been considered so a variance would not be needed? Please explain solutions that have been considered, and why it is unsatisfactory.

Research and design of alternative homes was studied and considered, without a successful outcome

Part 8: STATEMENT OF INTENT

Describe the planned use and explain why a variance from the district ordinance is needed. State the sections of the Town Zoning Ordinance or the Accawmacke Plantation PUD for which you are requesting a variance. Include the standards listed in the Zoning Ordinance/PUD and the amount of a variance you are requesting.

Residential: For all the reasons stated earlier - subdivision play unknowingly created a hardship on the building envelopes by application of the setbacks by the Town.

(See attached narrative)

CERTIFICATION

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. Before any work begins, a zoning clearance request must be approved. I understand that for any changes made in the historic district, a Certificate of Appropriateness must be received; and any changes made in the Accawmacke Plantation PUD, an Architectural Review Committee approval letter must be received.

Applicant's signature: _____

Date: March 14th 2025

Zoning Administrator's signature: _____

Date: _____

Variance for Dreams by the Water

Request: Reduction of the front yard setback from 30' to 20', and the rear yard setback from 25' to 15' for lots 1-10.

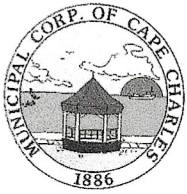
Rational: This will enable the construction of homes more in character with the neighborhood, as well as the Town of Cape Charles.

- Enable designs with porches, decks, outside areas for neighbor and family interactions.
- Architectural features such as higher pitched roofs, dormers, and home designs that are proportionately more equal in depth, as width.
- Room and allowance for garages to aid in off street parking, storage of items out of public view, etc.

Impact:

- No negative impact on direct, or indirect neighbors.
- Open Space:
 - Vastly exceeds the preference set at 50% ratio of home footprint of the lots.
- Increase in total assessable tax base
 - Build out with proposed homes \$8,000,000 - \$10,000,000 assessed value

Summary: It is the unwavering desire of the Developers, each lot owner (all ten lot owners are unanimously represented) to deliver a community to the neighborhood, the visitors and residents of the Town of Cape Charles in the spirit of the overall code, strategic plan, and betterment of the Town.



Owner Affidavit for Permission to Represent

Planning & Zoning Department
2 Plum Street; Cape Charles, VA 23310
757-331-3259 x31

planningtech@capecharles.org

Revised 03/2023

Taxes

Violations

Fees

Decision

PART 1. APPLICATION NOTES

Use this form to give permission for a contractor, architect, or other individual to represent the owner of a property in matters within the Town of Cape Charles.

PART 2: PROPERTY INFORMATION

Property Address: 0 Washington Avenue (Lot 0000009, Parcel Rec #16745)

Tax Map #: 083A1

PART 3: PROPERTY OWNER INFORMATION

Name and/or Company: Dreams By The Water LLC

Mailing Address: c/o Ralph E. Main, Jr. 415 Fourth Street NE, PO Box 2666, Charlottesville, VA 22902

Phone Number: 1-434-531-0121

Email: Cgheatingandair@gmail.com

I hereby give authority to the following representative to act on my behalf on the following matter:

Any and all zoning related matters

PART 4: REPRESENTATIVE INFORMATION

Name and/or Company: Chris Larmore, C&L Homes

Mailing Address: 10603 Shifting Sand Drive, Ocean City, MD 21842

Phone Number: 1-443-880-8950

Email: occigarette@aol.com

☒ to file documents on my behalf

☒ To represent me in meetings with Town officials

Name and/or Company:

Mailing Address:

Phone Number:

Email:

☐ to file documents on my behalf

☐ To represent me in meetings with Town officials

Signature of owner: _____

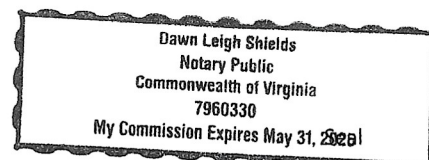
Date: 3/12/25

State of Virginia, County of Albemarle
12 day of MARCH, 20 25, by Chadwick Graham (name of person acknowledged)
The foregoing instrument was acknowledged before me this

Signature of Notarial Officer: Dawn Shields

Notary Registration number: 7960330

My commission expires: 05/31/2025



Lot 9 – Staff Report



BOARD OF ZONING APPEALS

Meeting Date: April 8, 2025

Item #5C (ix): –VAR2025-10 – Variance Application

Date: March 31, 2025

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

APPLICANT: Dreams by the Water, LLC
Represented by Chris Larmore of C&L Homes CC
Inc

SITE ADDRESS: Lot 9 Dream Street, off
Washington Avenue

TAX MAP: 83A1-21-9

LOT SIZE : 5,600 sq. ft.

TYPE OF APPLICATION: VAR2025-10 –
Variance Application from Front and Rear
Setbacks

SPECIFIC REQUEST: Variance of 10 ft from
both front and rear setback

ZONING ORDINANCE: Article 3, Section
3.1 (E)

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Staff Recommendation:

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Proposed Motion For Consideration

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Attachments:

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Dreams by the Water – Narrative of Variance

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Lot 10 – Variance
Application



Zoning Variance Application

Planning & Zoning Department
2 Plum Street; Cape Charles, VA 23310
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planningtech@capecharles.org

Revised 12/2024	
Taxes	☒ Paid M.S
Violations	—
Paid C.C Fee	\$500
BZA Date	4-8-25
Decision	

BUDGET CODE: MISPL 100-3100-1070

PART 1: APPLICATION NOTES

- VARIANCE** means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. **It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.**
- The burden of proof shall be on the applicant for a variance to prove by the greater amount of evidence that the application meets the standard as defined, and the criteria set in number 3.
- The Board of Zoning Appeals shall grant a variance if the evidence shows the strict application of the terms of the zoning ordinance would reasonably restrict the utilization of the property, or the granting of the variance would alleviate hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability, and:
 - The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant.
 - The authorization of a variance will not be a substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance.
 - Such hardship is not shared by other properties in the same zoning district and same vicinity.
 - The granting of the variance does not result in a use that is not permitted on such property or a change in the zoning classification of the property.
 - The remedy sought is not available through a special exception process that is authorized in the ordinance.
- If a variance is approved for a property only the minimum required to alleviate hardship will be granted.
- *FEES: \$500 & Payment of advertising costs, actual and adjacent property owner notification mailing, costs.**

All items from this checklist must be submitted prior to the application being evaluated.

- | | | |
|---|---|--|
| ☒ Completed application & Justification Letter | ☒ Existing site plan/survey | ☒ Photos of existing conditions. |
| ☒ Photos/elevation drawings of proposed project | ☒ Proposed site plan/survey | ☒ Payment of Fees * |

PART 2: PROPERTY INFORMATION

Property Address: Washington Ave/Dreams St. Lot- Parcel #16746, a/k/a Dreams by the Water, lot #10

Tax Map #: 083A1

Existing Use: **Vacant**

Zoning District: **R-1**

Has a previous application been filed for a variance in connection with this property? ☐ No ☐ Yes, attach an explanation

Has a Conditional Use Permit been issued for the existing use? ☒ No ☐ Yes, provide a copy

Are there any proffers associated with this property? ☒ No ☐ Yes, provide a copy

Is the property located within an Overlay District? ☒ No ☐ Yes, which one _____

Is this property located within a Subdivision? ☒ No ☐ Yes, which one _____

Is this property located within a Resource Protection Area? ☒ No ☐ Yes

PART 3: PROPERTY OWNER INFORMATIONName and/or Company: **Rolene Wagner**Mailing Address: **9505 Crystal Falls Drive, Hagerstown MD 21740**Phone Number: **301-356-3552**Email: **Lexi9505@gmail.com****PART 4: APPLICANT 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: **Chris Larmore/C&L Homes CC Inc.**Mailing Address: **10603 Shifting Sands Drive Ocean City MD 21842**Phone Number: **443-880-8950**Email: **Occigarette@aol.com****PART 5: ZONING ORDINANCE OR ACCAWMACKE PLANTATION PUD VARIANCE SECTION**

Please provide the Zoning Ordinance Section that you are seeking relief from: _____

Please provide the Accawmacke Plantation PUD Section you are seeking relief from: _____

PART 6: VARIANCE JUSTIFICATION*Applicant must explain (Please use additional pages where necessary)***A) PROPERTY DESCRIPTION**

How do the zoning ordinance's strict regulations for the lot or parcel of land's shape, size, or area unreasonably restrict the utilization of the property?

Building setbacks required of a normal lot with more depth, front to rear, restrict construction of a home and any other reasonable use of the property in the given zoning district.

What type of reasonable deviation is being sought?

Reduction of the front and rear setbacks by 10' eachLot or Parcel Size: **See previously submitted plats/plans**

Proposed Size:

Shape:

Proposed Shape:

How does the zoning ordinance's strict limitations on the size, height, area, or location of the building or structure unreasonably restrict the utilization of the property?

The ability to construct a single-family home as shown or any other structure that is consistent with the use and character of the neighborhood.

What type of reasonable deviation is being sought?

Reduction of the front and rear setbackMain Structure Size: **See previously submitted plans**

Proposed Structure Size:

Existing Height:

Proposed Height:

Existing / Required Setback Front:

Proposed Setback Front:

Existing / Required Setback West Side:

Proposed Setback West Side:

Existing / Required Setback East Side:

Proposed Setback East Side:

Existing / Required Setback Rear:

Proposed Setback Rear:

B) CRITERIA	
1.	Does strict application of the zoning ordinance to the subject property result in a hardship to the owner? <i>(Answer A or B)</i>
	A. Explain how the variance would alleviate a hardship caused by the physical characteristics of the property? It would allow construction of homes as shown and presented during informal meeting with the Town Officials and Zoning Board; would permit a use that is consistent with the character of the neighborhood
	B. Explain how the zoning ordinance unreasonably restricts the use of the property? Building envelope and setbacks unreasonably restrict construction that is consistent with the zoning and character of the neighborhood.
2.	Is the hardship unique to the property? No
	A. Explain if the hardship is shared by other properties in the neighborhood. All ten lots in Dreams by the Water are affected.
	B. Explain how this situation or condition of the property applies generally to the other properties in the same zone. Application of conforming setbacks to non-conforming (depth) lots
3.	Was the hardship created or caused by the applicant? No
	A. Did the condition exist when the property was purchased? Yes
	B. Did the applicant purchase the property without knowing of this hardship? No - Purchase is contingent on resolution before this board.
	C. How and when did the condition which created the hardship first occur? By approval of and recordation by the predecessor in title
	D. Did the applicant create the hardship and, if so, how was it created? No
	E. What could have been done to avoid hardship? Request a relief or different designation (such as granted to a PUD) at the time of original application
4.	Will the variance if granted be harmful to others? No
	A. Explain if the proposed variance will be detrimental to the adjacent properties or the neighborhood? It will not be detrimental
	B. Explain how the proposed variance will affect the values of the adjacent and nearby properties. It will increase their property value by constructing residence's consistent with their character
	C. Have you shown the proposed plans to the adjacent neighbors and other affected property owners? Have any of them objected, or have any of them written a letter of support for the proposed variance? If so, please attach the letter or submit it before the hearing. no
	D. Explain how the proposed variance will change the character of the neighborhood? It will allow construction of homes more in line with the neighborhood and the Towns character
5.	Is there any other administrative or procedural remedy to relieve the hardship? Katie Nunez indicated there may be another means if the variance is not approved

Part 7: ALTERNATIVE SOLUTIONS

Have alternative plans or solutions been considered so a variance would not be needed? Please explain solutions that have been considered, and why it is unsatisfactory.

Research and design of alternative homes was studied and considered, without a successful outcome

Part 8: STATEMENT OF INTENT

Describe the planned use and explain why a variance from the district ordinance is needed. State the sections of the Town Zoning Ordinance or the Accawmacke Plantation PUD for which you are requesting a variance. Include the standards listed in the Zoning Ordinance/PUD and the amount of a variance you are requesting.

Residential: For all the reasons stated earlier - subdivision play unknowingly created a hardship on the building envelopes by application of the setbacks by the Town.

(See attached narrative)

CERTIFICATION

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. Before any work begins, a zoning clearance request must be approved. I understand that for any changes made in the historic district, a Certificate of Appropriateness must be received; and any changes made in the Accawmacke Plantation PUD, an Architectural Review Committee approval letter must be received.

Applicant's signature: _____

Date: March 14th 2025

Zoning Administrator's signature: _____

Date: _____

Variance for Dreams by the Water

Request: Reduction of the front yard setback from 30' to 20', and the rear yard setback from 25' to 15' for lots 1-10.

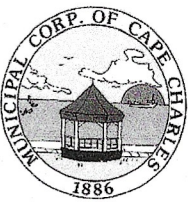
Rational: This will enable the construction of homes more in character with the neighborhood, as well as the Town of Cape Charles.

- Enable designs with porches, decks, outside areas for neighbor and family interactions.
- Architectural features such as higher pitched roofs, dormers, and home designs that are proportionately more equal in depth, as width.
- Room and allowance for garages to aid in off street parking, storage of items out of public view, etc.

Impact:

- No negative impact on direct, or indirect neighbors.
- Open Space:
 - Vastly exceeds the preference set at 50% ratio of home footprint of the lots.
- Increase in total assessable tax base
 - Build out with proposed homes \$8,000,000 - \$10,000,000 assessed value

Summary: It is the unwavering desire of the Developers, each lot owner (all ten lot owners are unanimously represented) to deliver a community to the neighborhood, the visitors and residents of the Town of Cape Charles in the spirit of the overall code, strategic plan, and betterment of the Town.



Owner Affidavit for Permission to Represent

Planning & Zoning Department
2 Plum Street; Cape Charles, VA 23310
757-331-3259 x31

planningtech@capecharles.org

Revised 03/2023

Taxes

Violations

Fees

Decision

PART 1. APPLICATION NOTES

Use this form to give permission for a contractor, architect, or other individual to represent the owner of a property in matters within the Town of Cape Charles.

PART 2: PROPERTY INFORMATION

Property Address: 0 WASHINGTON AVE (LOT 10, PARCEL REC # 16746)

Tax Map #: 083A1-21-00-000010

PART 3: PROPERTY OWNER INFORMATION

Name and/or Company: DREAMS BY THE WATER LLC

Mailing Address: Rolene Wagner 9505 CRYSTAL FALLS DR HAGERSTOWN, MD 21740

Phone Number: 301-356-3552 Email: lexi9505@gmail.com

I hereby give authority to the following representative to act on my behalf on the following matter:

ANY and ALL zoning related matters

PART 4: REPRESENTATIVE INFORMATION

Name and/or Company: CHRIS LARMORE, C&L HOMES

Mailing Address: 10603 Shifting Sand DRIVE, OCEAN CITY, MD 21842

Phone Number: 443-880-8950 Email: occigarette@aol.com

☐ to file documents on my behalf

☒ To represent me in meetings with Town officials

Name and/or Company: CHRIS LARMORE, C&L HOMES

Mailing Address: 10603 Shifting Sand Drive, Ocean City, MD 21842

Phone Number: 443 880 8950 Email: occigarette@aol.com

☒ to file documents on my behalf

☐ To represent me in meetings with Town officials

Signature of owner: [Signature]

Date: 3/12/25

State of MD County of Washington
12th day of March, 2025, by Rolene Wagner

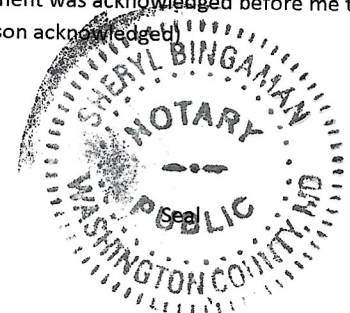
The foregoing instrument was acknowledged before me this
(name of person acknowledged)

Signature of Notarial Officer: Sheryl Bingaman

Notary Registration number: n/a

My commission expires: 03/28/2027

Sheryl Bingaman
Notary Public
Washington County, MD
My Commission Expires March 28, 2027



Lot 10 – Staff Report



BOARD OF ZONING APPEALS

Meeting Date: April 8, 2025

Item #5C (x): –VAR2025-11 – Variance Application

Date: March 31, 2025

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

APPLICANT: Rolene Wagner, Represented by
Chris Larmore, Developer of Dreams by the Water

SITE ADDRESS: Lot 1 Dream Street, off
Washington Avenue

TAX MAP: 83A1-21-10

LOT SIZE : 5,601 sq. ft.

TYPE OF APPLICATION: VAR2025-11 –
Variance Application from Front and Rear
Setbacks

SPECIFIC REQUEST: Variance of 10 ft from
both front and rear setback

ZONING ORDINANCE: Article 3, Section
3.1 (E)

CURRENT ZONING: Residential-1

DATE RECEIVED : March 14, 2025

DATE DEEMED COMPLETE : March 14, 2025

LEGAL DEADLINE (90 Days from Complete Application – Directory, not Mandatory): **June 14, 2025**

Narrative of Proposal:

In 2020, the old Coast Guard housing property on Washington Avenue was sold after the original housing buildings were demolished and removed from the property. The purchaser, Dreams by the Water, LLC and its agent Tom Kavounas, submitted a conceptual sketch for a subdivision for this property into 10 residential lots using the already established layout location of the “old” parking lot which had to be upgraded to comply the required road standards to be accepted into the VDOT Road system. After a considerable amount of discussion on the subdivision requirements, a preliminary plat was submitted in June 2021. The initial review of the preliminary plat was completed that required corrections and resubmission to the Town. The Town was finally able to approve the preliminary plat on July 5, 2022 and signed off on the Utility and Right of Way Construction Drawings for this subdivision in full compliance with the Subdivision Ordinance and the underlying zoning district (R-1) development requirements contained in Article 3.

The front property setback is 30 feet and the rear property setback is 25 ft. in the Residential-1 zoning district. The applicant is seeking a 10 ft variance from both of these setbacks.

Aerial Map:



Ordinance Requirements to be Considered for Variances:

- (a) Does 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 Cape Charles Zoning Ordinance Residential-1 Zoning Ordinance establishes a legal lot at 5,600 square feet with a presumption that the lot composition is 40 feet wide by 140 ft deep which is the traditional lot size and layout when the Town of Cape Charles was first laid out in 1884.

When this subdivision was created, each of the 10 lots meets or exceeds the 5,600 square foot lot size, thus complying with the Cape Charles Zoning Ordinance. The front lot width

met the requirement of 40 feet with this lot at 45.15 ft. The lot depth, where there is no established minimum requirement, is at 81.75 ft. on the left side and 56.76 on the right side due to the impact of the entrance to the subdivision.

While a house can be constructed on this lot without the variance being approved, the style and design of a home may not fully integrate with the overall character of the Residential-1 Zoning District (Historic District). This property does not have to comply with the Historic District Guidelines and has flexibility in meeting the Development Standards for the Residential Zoning Districts contained in CCZO Section 4.12. since the Dreams by the Water Subdivision is its own neighborhood and block. The developer and the prospective lot owners have indicated to mimic the style in the Historic District in certain aspects: building proportions, scale and orientation and roof pitch, and front porches.

The challenges of the lot size and configuration to the size and style of a home should have been part of the due diligence of the developer when the conceptual subdivision plan was submitted to the Town and the developer should have petitioned the Town for an exception to the subdivision requirements when the preliminary plat creating the subdivision was submitted to the Town, pursuant to CCZO Appendix B (Subdivision Ordinance) Section 7.1. However, due to changing staff at the time when this subdivision plat was submitted to the Town, this provision of the ordinance may not have been fully known or understood and the developer, at that time, did not have a clear vision as to the size of home intended for this neighborhood which would not be accommodated due to the dimensional requirements of the Residential-1 zoning district.

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

Dreams by the Water, LLC is the entity that acquired this property and advanced the subdivision plat and is the entity submitting this variance application. However, additional partner(s) have recently been brought into this project, specifically Chris Larmore of C&L Homes CC Inc., that has allowed for a greater review of the plat on a lot-by-lot basis through certain computer software to provide 3D renderings and the style, type and size of house can be accommodated on each lot.

(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 Dreams by the Water Subdivision is a 10-lot subdivision that is located perpendicular to Washington Avenue and the “front street” of this subdivision is a new road called Dream Street and is a new neighborhood block being created. Five of the lots are adjacent to the Bay Vista subdivision to the west, a subdivision that is within the Accawmacke Plantation Planned Unit Development (PUD) (aka Bay Creek) and is governed by different dimensional requirements as well as design standards. To the east, the other five lots are adjacent to one of the stormwater retention ponds owned by the Bay Creek at Cape Charles Community Association Inc c/o Property Management Associates that services the Bay Creek development. This parcel will never be developed beyond the stormwater pond.

Across Washington Street to the south is the Town's Historic District which does have a design requirement and development requirement. However, there is a provision in the Residential-1 zoning district that has a built-in capacity for waivers of the front setback associated with prevailing development standards. Providing the relief from the front and rear setback requirements would not be of substantial detriment to any of the adjacent or nearby properties and all of the 10 lots in Dreams by the Water are seeking this similar relief so that the neighborhood is being treated consistently.

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

While all 10 lots in the Dreams by the Water subdivision are seeking the same variance, this situation is rare and is not considered a recurring circumstance that would require a zoning ordinance text amendment. This property is a redevelopment of a former Coast Guard housing development for its staff station at the Cape Charles Coast Guard office.

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

The developer is seeking to only develop single family residences on these lots and the variance would only improve that ability and would be consistent with the uses allowed in the Residential-1 zoning district.

The house size would still be in keeping with the minimum and maximum house size allowed in the Residential-1 zoning district which is 960 sq. ft up to 4,500 sq. ft.

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

While the Subdivision Ordinance does include an exception process (Appendix B, Section 7.1), this is a process that is generally exercised during the development of a preliminary subdivision plat. A zoning text amendment of reducing the setback requirements in the Residential-1 zoning ordinance is not a viable solution since it would be applicable to all lots within this zoning district and not just to the 10 lots in the Dreams by the Water subdivision.

Discussion Points:

1. Does the Board feel that allowing the variance request is reasonable?

BZA Review:

Some items that the Board of Zoning Appeals may wish to consider in its review:

1. *Is the application complete and does it contain sufficient information and detail for the Board of Zoning Appeals to make a defensible ruling?*

2. *Is on its face, is the proposal, a sound and well thought out one that has taken into account potential downsides as well as upsides?*
3. *Are there compelling reasons to approve or deny the request, beyond the fact that no one has spoken in opposition to it or that some are opposed to it?*

Staff Recommendation:

Staff recommends that the Board of Zoning Appeals 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 the section called, "Ordinance Requirements To Be Considered".

Proposed Motion For Consideration

Staff offers the following motion for the Board's consideration: ***"After careful consideration of the application and the staff report, the Board of Zoning Appeals votes to approve VAR2025-11 for Tax Map #83A1-21-10 (Lot 10 Dream Street) in consideration of the ordinance criteria for variances being met."***

Attachments:

Dreams by the Water – Lot 10 – Variance Application

Dreams by the Water – Narrative of Variance

Cape Charles Zoning Ordinance Article III, Section 3.1 (E)

Cape Charles Zoning Ordinance Appendix B – Subdivision Ordinance Section 7.1

Attachment A –
CCZO Article III,
Section 3.1 (E)

Article III - District Regulations

Section 3.1: Residential District R-1

- A. Statement of intent. The intent of this basic zoning district is to provide quiet, medium density, single-family residential development plus provide open areas where similar residential development appears likely to occur. The regulations for this district are designed to stabilize and protect the essential characteristics of the district, to promote and encourage a suitable environment for family life where there are children, and to restrict all activities of a commercial nature as described in Section 3.5 (A) of this ordinance, known as Commercial Districts C-1, C-2, and C-3 which are characterized by heavy traffic, noise, and congestion of people and passenger vehicles and by large office buildings and retail establishments, and to promote a convenient, attractive, and harmonious community. This section is created in recognition of the existence of developed areas where single-family and duplex dwellings currently exist on lots of five thousand six hundred square feet (5,600 SF) and where the characteristics of the neighborhood include both permanent as well as seasonal residents.
- B. Permitted Uses. The following uses are permitted by right:
1. Single-family dwellings.
 2. Duplex dwellings provided off-street parking is provided.
 3. Condominium dwellings.
 4. Cooperative dwellings.
 5. Manufactured home dwellings.
 6. Churches and places of worship.
 7. Parks and playgrounds.
 8. Schools, community centers, and public facilities
 9. Group Homes per [§ 15.2-2291](#) of the Code of Virginia.
- C. Accessory Uses.
1. Accessory buildings.
 2. Accessory Dwelling Units by right in compliance with the requirements of Section 4.1 (J).
 3. Home occupations in accordance with Section 4.0.
 4. Short Term Rentals, in accordance with Section 4.14
 5. Up to two (2) single electric vehicle charging stations.
 6. Uses which are customarily accessory and clearly incidental and subordinate to the principal use and structure.
- D. Conditional Uses: The following uses may also be permitted, subject to securing a use permit as provided for in this ordinance:
1. Outdoor recreation facilities
 2. Residential dwelling units in square footage area below the minimum or above the maximum stated in Section 3.1 (E)
 3. Bed and Breakfast Establishments, in accordance with Section 4.1(M)

E. Area and Height Regulations. The following regulations apply to lots and structures in the R-1 zoning district.

	<i>Legal Conforming Lots</i>	<i>Legal, Non-Conforming Lot</i>		
<i>Minimum Lot Size</i>	5,600 (SF)	Up to 5,600 (SF)	5,601 to 8,400 (SF)	8,401 or more (SF)
<i>Minimum Lot Width at Setback Line</i>	40'	-	40'	40'
<i>Front Setback (minimum) *see prevailing standard below</i>	30'	30'	30'	30'
<i>Side Setback (minimum)</i>	5'	5'	5'	5'
<i>Rear Setback (minimum)</i>	25'	25' Unless lot is less than 40' deep, then 5'	25'	25'
<i>Corner Lot Setback *see prevailing standard below</i>	5'	5'	5'	5'
<i>Maximum Height</i>	40' or 2.5 stories	40' or 2.5 stories	40' or 2.5 stories	40' or 2.5 stories
<i>Maximum Lot Coverage</i>	See Section 4.1 (E) for this requirement in conjunction with accessory structures on lots.			
<i>Minimum Dwelling Unit Size</i>	960 (SF)	960 (SF)	960 (SF)	960 (SF)
<i>Maximum Dwelling Unit Size</i>	4,500 (SF)	2,400 (SF)	3,000 (SF)	4,500 (SF)

NOTE: A lot can be a contiguous assemblage of lots under common ownership to meet the lot size requirements. There is no requirement that lot lines must be vacated between two (2) or more lots; however, the lots must remain under common ownership if the lot is developed according to the development standards in the chart above.

PREVAILING STANDARDS: Prevailing standards exist when fifty percent (50%) or more of the buildings exhibit similar attributes in a neighborhood overlay. Where less than fifty percent (50%) of the buildings exhibit similar attributes, any of the range of attributes in the neighborhood would be acceptable.

NEIGHBORHOOD OVERLAY is defined as parts of a six-square block area, including all parcels on the subject block and all parcels facing on three sides, with the property in question located in the center block.

FRONT YARD SETBACKS shall adhere to a prevailing setback standard for new housing.

CORNER LOTS shall adhere to a prevailing setback standard in built up neighborhoods for new housing.

F. Other Regulations

1. Subdivision of residential lots is not permitted.
2. Decks and patios may not be constructed in the front yard area. Decks and patios constructed in the backyard area may be enclosed. Front porches may be enclosed by insect screening, preferably placed on the inside (house side) of architectural elements such as railings and columns. No permanent enclosures of front porches are allowed except for insect screening.
3. Utilities. Upon installation of utility access lines, such lines shall be installed underground. The Town encourages replacement lines to be installed underground.
4. Developmental standards are found in Section 4.12.

Section 3.2: Residential Mixed District R-2

- A. Statement of Intent. The intent of this basic zoning district is to provide quiet, medium density residential development with a mixture of single-family and multi-family housing. This district is designed to promote and encourage a suitable environment for family life and to restrict activities of a commercial nature to those which serve the needs of the neighborhood itself.
- B. Permitted Uses. The following uses shall be permitted by right:
1. Single-family dwellings.
 2. Duplex dwellings provided off-street parking is provided.
 3. Condominium dwellings.
 4. Cooperative dwellings.
 5. Manufactured home dwellings.
 6. Churches and places of worship.
 7. Parks and playgrounds.
 8. Schools, community centers, and public facilities
 9. Group Homes per [§ 15.2-2291](#) of the Code of Virginia.
- C. Accessory Uses. Within the R-2 Land Use Classification, the following accessory uses shall be allowed:
1. Accessory buildings.
 2. Accessory Dwelling Units by right in compliance with the requirements of Section 4.1 (J).
 3. Home occupations in accordance with Section 4.0.
 4. Up to two single electric vehicle charging stations.
 5. Uses which are customarily accessory and clearly incidental and subordinate to the principal use and structure.
 6. Short Term Rentals in accordance with Section 4.14
- D. Conditional Uses. The following uses are permitted, subject to securing the proper permits:
1. Outdoor recreation facilities
 2. Childcare/adult daycare facilities and nursing homes

Attachment B –
CCZO Appendix B,
Subdivision Ordinance
Section 7.1

cover the cost of necessary improvements, in lieu of construction, to the satisfaction of the agent. Approval of final plat shall be written on the face of the plat by the agent. The sub-divider shall record plat within six months (6 mos) after final approval; otherwise, agent shall mark plat “void” and return same to sub-divider.

Section 6.9.1

Within sixty (60) days after recordation of the approved final plat, the sub-divider shall file a copy thereof in the office of the Northampton County Commissioner of Revenue pursuant to the Virginia Land Subdivision Act.

Section 6.9.2

Recordation of the final plat of a subdivision shall not be deemed to be the acceptance by the Town of any street or road or other public place shown on the plat for maintenance, repair, or operation thereof.

Section 7: Effectual Clauses

Section 7.1: Exception

Where the sub-divider can show that a provision of these standards in cases of unusual situations or when strict adherence to the general regulations would result in substantial injustice or unnecessary hardship, and where, because of topographical or other conditions peculiar to the site, in the opinion of the administrator, a departure may be made without destroying the intent of such provision, the administrator may authorize an exception. Any exception shall be authorized in writing and shall state the reasons why the exception was granted. If an applicant is aggrieved by the administrator's decision, he may appeal that decision to the Town Council. Appeals of the administrator's decision for purposes of the Subdivision Ordinance shall be to the Town Council and not the Board of Zoning Appeals (BZA). If an applicant is aggrieved by the decision of the Town Council, he may appeal that decision to the Northampton County Circuit Court as provided by law.

(Ord. of 7-14-92, 7-1)

Section 7.2: Penalties

Any owner or proprietor of any tract of land who subdivides that tract of land and who violates any of the provisions of this ordinance shall be guilty of a misdemeanor, punishable by a fine of not more than \$500 (five hundred dollars) for each lot or parcel of land so subdivided or transferred or sold; every day thereafter shall constitute a separate offense; and the description of such lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties or from the remedies herein provided.

The clerk of the Circuit Court of Northampton County shall not file or record a plat of a subdivision, under the penalties provided by Code of Virginia [§ 17-59](#), until such plat has been approved as required herein.