Municipal Corporation of Cape Charles

Board of Zoning Appeals
Public Hearing and Regular Meeting
Cape Charles Civic Center
April 8th, 2025
10:00 a.m.

At approximately 10:00 a.m., on April 8th, in the Cape Charles Civic Center, Chairwoman Dolores Blackburn, having established a quorum, called to order the Board of Zoning Appeals Public Hearing and Regular Meeting. Board members present were vice-chair Laura Weigand, Members Elise McMath and Bill Stramm. Member Pete Baumann was absent.

Town staff in attendance were Planning/Zoning Administrator Katie Nunez, Zoning Compliance Officer Jack Steinmayer, Building Official Jeb Brady, and Town Clerk Libby Hume.

After reciting the Pledge of Allegiance, Chairwoman Blackburn asked for a motion to approve the agenda as presented.

Motion made by Member Stramm, seconded by Vice-Chair Weigand, to approve the consent agenda as presented. The motion was approved unanimously.

Following the approval of the consent agenda, Chairwoman Blackburn moved to approve the minutes.

Motion made by Vice-Chair Weigand, seconded by Member Stramm, to approve the minutes. The motion was approved unanimously.

New Business

A. ***Appeal 2025- 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;***
   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.
Planning and Zoning Administrator Katie Nunez summarized the staff report for The Board of Zoning Appeals.

After summarizing the staff report, Ms. Nunez asked the Town Building Official, Jeb Brady, to speak on his knowledge of the property, specifically on the accessory

dwelling unit. To his knowledge, the accessory dwelling unit at 542 Jefferson Avenue has never been used as a short-term rental but only as a long-term rental.

Member McMath asked about when the previous owners renovated the property and how many bedrooms it had before and after. Mr. Brady said he couldn't answer the question without checking the files, but he did mention that it changed from a one-story building to a two-story building.

Member McMath then asked if there was an increase in bathrooms at the property. Mr. Brady said he didn't know off the top of his head and didn't want to give an inaccurate answer.

Seeing that there were no more questions for the Building Official, Chairwoman Blackburn then turned to Chris Pocta, a land-use and zoning attorney from Walcott/Rivers/Gates who is representing the Gentrys, to speak to the appeal.

Before starting his presentation, Mr. Pocta handed the Board the following:

- 2025 Return of Business Tangible Property for Business and Professions Form from the Commissioner of Revenue's Office;
- Town of Cape Charles Business License;
- Statement from Spectrum, and
- Pictures of 509 Nectarine Street.

After handing out the above attachments, he then mentioned the standard for the Board of Zoning Appeals, under the Powers and Duties Section, which read, "in exercising its powers, the Board may reverse or affirm wholly or partly or may modify any order, requirement, decision, or determination appealed from, or may decide in favor of the applicant in any matter that is required to affect any variance of the ordinance." Mr. Pocta then stated the Board has many different options before them, as it's not simply an all-or-nothing approach.

Mr. Pocta then explained that the Gentrys purchased the house in 2024 with the understanding and expectation that they would have a short-term rental (STR) in the cottage, and that the main house, which is currently being rebuilt, would serve as their primary residence. He also noted that the previous owners used the cottage as their primary residence and that it is now the only residence being used on the property.

Mr. Pocta then explained how the Board could uphold or partially modify the Zoning Determination, based on the four alternatives presented. The first option he mentioned was a legal, non-conforming use, because of the cottage's history as a rental, which could be seen as legally non-conforming. He went on to describe how the Gentrys applied for an STR permit and obtained a business license from the Finance Department, which approved the Gentrys for an STR in the cottage. Mr. Pocta then informed the Board of Zoning Appeals that they could overturn the Zoning Determination and modify it to recognize the cottage as legally non-conforming, not just as a rental, but also as an STR.

Mr. Pocta then told the Board that their second option was to recognize 509 Nectarine as a separate or secondary single-family dwelling, since the Town had already acknowledged this through the issuance of building permits.

Next, he discussed how there is precedent for what the Gentrys are trying to achieve, as other lots within the Town have two separate single-family dwellings on one parcel. He then cited the examples of 554 Madison Avenue and 409 Nectarine Street as falling into this category.

Finally, he discussed how the Board could resolve this issue based on the Zoning Ordinance itself. Upholding the Zoning Administrator's decision is inconsistent with the intent of the Zoning Ordinance. Since the property is within the Residential-1 Zoning District, the Ordinance aims to regulate and limit commercial uses. By not allowing the Gentrys to rent the smaller ADU, it promotes increased commercial activity within the district.

Mr. Pocta concluded his presentation by stating that rejecting the appeal was practically absurd because it contradicts the neighbors' desires and increases factors the ordinance was created to reduce.

After his presentation ended, Mr. Pocta gave the rest of his time to Mrs. Gentry to speak.

Ms. Gentry discussed how she and her husband moved to Cape Charles seeking a simple life of peace and ease, but they have yet to find it. She felt overwhelmed and distracted by the appeal. She explained that they invested much of their savings into purchasing the property and completing the necessary renovations. She emphasized that operating a short-term rental in the cottage is crucial for recovering some of their funds. Finally, she mentioned that without this income stream, they may be forced to leave Cape Charles.

Public Comments

A. ***Dianne Davis (407 Fig Street)***

Ms. Davis discussed her need for the Gentrys to stay in Cape Charles. She explained that 509 Nectarine Street has been part of her life for most of her years, and when she moved back to Cape Charles in 1978, people were living on the property, with others coming and going over the years. She expressed her hope that the Board would resolve everything. She also mentioned that on her block of Jefferson Avenue, only four houses have full-time residents, while the others are mainly short-term rentals or second homes. Finally, Ms. Davis noted that she would need a full-time resident nearby, like the Gentrys, if anything were to happen to her.

B. ***Claudette Lajoie (127 Peach Street)***

Ms. Lajoie discussed how oddities are common in Cape Charles and explained that Mr. Pocta outlined various ways the Board could address the issue. Finally, she

believes that the Gentrys have embraced Cape Charles and have invested time, effort, and money to keep them in the Town full-time.

C. ***Jeff Gray (615 Monroe Avenue)***
Mr. Gray was speaking in support of the Gentrys, as they have been some of the most wonderful citizens. Like many current residents, the Gentrys are "come heres," and they do good work in the Town. Mr. Gray explained how, every so often, Boards, Tribunals, and Courts sometimes ignore common sense, and he urged the Board of Zoning Appeals to use common sense. Lastly, Mr. Gray mentioned that by using common sense, allowing the ADU to be an STR would actually lessen the impact on the neighborhood.

Written Comments:
Zoning Compliance Officer Jack Steinmayer read the following comments into the record:

A. ***Kristen and John Thornbrugh (508 Nectarine Street)***
B. ***Thomas Austin (506 Nectarine Street)***
C. ***Sheryl Simeck (539 Jefferson Avenue)***
D. ***Lauren Schapker & Mark Keida (602 Jefferson Avenue)***
E. ***Jill Lemery (603 Pine Street)***
F. ***Kathy & Skip Fraas (610 Washington Avenue)***
G. ***Courtney Fraas (34 Bridgeton Drive)***
H. ***Ned & Penny Barham (629 Jefferson Avenue)***
I. ***Jim Granger (524 Jefferson Avenue)***

See attached letters for full comments.

Chairwoman Blackburn then asked the Board if they had any questions for either Town staff or the applicant. Member Stramm replied in the affirmative.

Member Stramm inquired whether the pictures accurately showed the use of an ADU as a short-term rental at 409 Nectarine Street. Mr. Pocta replied that he doesn't believe the Town is considering that as an accessory dwelling unit, partly because it might be on a separate lot.

Member McMath believed that the lot may have been subdivided at one point, and therefore, it sets a precedent. Ms. Nunez explained that this does not set a precedent because it occurred before zoning in the town.

Mr. Pocta then acknowledged that lots cannot be subdivided; however, it happened two blocks down at some point, and the combination of these lots makes up the same size as the Gentry's lot. Mr. Pocta explained that this is exactly what the Gentry's are trying to do: have a short-term rental in the cottage, just like 409 Nectarine.

Vice-Chair Weigand then asked Ms. Nunez if Town staff knew when the lots on Nectarine and Madison were subdivided, since they have two separate owners. Ms. Nunez explained she had not done any title work on this case, and if Mr. Pocta was going to introduce this into the record, he would need to do the title work

himself to show when the property was subdivided. However, it was done before zoning.

Vice-Chair Weigand then inquired about the service bills for the property. Ms. Gentry explained that they receive separate utility bills for both properties, since there is a water meter on 509 Nectarine and 542 Jefferson, along with two power meter boxes.

Member McMath then asked whether the zoning ordinance allows for separate water meters for an accessory dwelling unit. Ms. Nunez explained that when the Town Council first adopted the accessory dwelling unit ordinance, they anticipated that some long-term rentals would want to bill separately.

Member Stramm then asked Ms. Nunez if any ADUs in the Historic District are STRs. Ms. Nunez stated that no, there are no STRs in the Historic District that are in ADUs.

Vice-Chair Weigand asked if both structures on the property were historically contributing structures. Ms. Nunez confirmed that yes, both houses were contributing.

Motion made by Member McMath to close the public hearing, seconded by Vice-Chair Weigand. The motion was approved unanimously.

The Board then began deliberations about the application.

Vice-Chair Weigand was remorseful, and as a BZA member, she would have to follow and interpret the application by the Zoning Ordinance.

Member McMath emphasized the importance of recognizing the challenging position the Zoning Administrator was in during this case. Since the renovations, which Town Staff approved, inadvertently conflicted with Section 4.2 (E) of the Zoning Ordinance, the Zoning Administrator had limited options that no longer accurately represent the status of the accessory structures. Additionally, the Zoning Administrator made a fair decision within the constraints of the current ordinance, although this case reveals a gap in the zoning framework.

Member McMath discussed how the footprints of the two structures on the property existed long before Cape Charles adopted zoning in 1992, a historical fact that predates the current zoning framework. She also mentioned that other properties in the Residential-1 (R-1) Zoning District are smaller than the required 5,600 sq. ft. lot size before the enactment of the Zoning Ordinance. Finally, she noted that the secondary structure on the property underwent extensive repairs and no longer qualifies as an Accessory Dwelling Unit, as outlined in 4.1 (J) (1) (C) & (D), and because of this, it now resembles a detached single-family dwelling.

Member McMath explained that, given the unique circumstances of the property that the Board should consider a different motion.

Both Member McMath and Vice-Chair Weigand agreed to separating the lots because giving 509 Nectarine a separate address should support the Gentry's appeal for two separate residences, as it would mean two distinct lots. Ms. Nunez stated that the Gentry's have not provided any proof that they are two separate lots.

Member McMath responded to Ms. Nunez's comment by saying that, regardless of when it was done, it still counts, and the two lots are smaller than the required 5,600 sq. ft. per lot in the R-1 District.

Ms. Nunez then explained that the Planning/Zoning office, Building office, and County office do not recognize 509 Nectarine Street as an official address within the Town of Cape Charles. While it may be receiving mail at that address, the Town cannot prevent the post office from delivering mail there.

Motion made by Vice-Chair Weigand to table the application to conduct title work on the property. Motion died.

Ms. Nunez explained to the Board that their job was either to uphold the Zoning Determination or deny it and provide the reasons for denial. The Board cannot grant a variance of the ordinance since that's not what the Gentrys are seeking.

Member McMath explained that she did not believe the Zoning Administrator made the wrong decision; however, this property presents an ambiguous situation as it is neither an ADU nor a detached single-family unit. Therefore, she is motioning to vary, which is allowed in Article VII, Section 8. Ms. Nunez explained that they have not met the legal burden in reviewing the decision issued and determining whether the administrator was at fault or not.

Member McMath then stated she was up quite late, is a new member, and wants to resolve the issue at hand, which was the answer she found. Ms. Nunez then wanted to clarify for the Board that the motion Member McMath was proposing was that, by approving this motion if it passes, it would tacitly allow the Gentrys to subdivide their land and create a smaller parcel than what is currently permitted under the Zoning Ordinance. The ordinance prohibits creating lots smaller than 5,600 sq. ft.

Chairwoman Blackburn then stated that the Board was not authorized to do that.

Motion made by Member McMath to vary Section 3.1 (E) of the Cape Charles Zoning Ordinance, specifically the minimum lot size requirement, and Section (F) (1) regarding the prohibition of subdivision of residential lots, as it applies to the property in this case. Furthermore, Member McMath recommends that the property owner work to distinguish the secondary from the main structure and that Town staff prepare a

recommendation to Town Council to address the gaps in the Zoning Ordinance and provide clarity in future cases. Motion failed by a 1-3 vote, with Member McMath voting yea and Chairwoman Blackburn, Vice-Chair Weigand, and Member Stramm voting nay.

Chairwoman Blackburn then asked the Board whether they had any other suggestions or motions to address the appeal.

Member Stramm wanted to know if the Board, whether affirming, denying, or modifying part of the appeal, would be legal.

Member McMath then pulled out the Town of Cape Charles Board of Zoning Appeals Rules and Procedures. She then read Article VII, Section 8, which states, "the final disposition of any appeal shall be in the form of a motion sustaining, reversing, varying, or modifying the order requirement or determination appealed from." Member McMath explained that the Gentrys did not apply for a variance, but the Board could grant the applicant a variance.

Vice-Chair Weigand wanted to revisit her original motion and table the matter to conduct further research on the property.

Member McMath stated that the request was semantical and that the two structures are on one parcel, and that you cannot rent a short-term rental unless it is the primary dwelling on the lot. Member McMath then said that the best option would be to divide the lots and allow the cottage to become the primary dwelling of the second lot. Vice-Chair Weigand said she also agreed with the division of the lots.

Member McMath stated that she had inquired about the address when she received the packet from a zoning perspective. She believes that it wouldn't alter the circumstances the Board faces. Member McMath then explained that they shouldn't table the appeal, as she did not want them to pay an additional $500.

Vice-Chair Weigand agreed; however, she mentioned that on appeals, the Board is simply trying to determine whether the Zoning Administrator was correct or incorrect in her decision.

Member McMath stated she disagreed with the analysis that 509 Nectarine Street is considered an accessory dwelling. She mentioned that the solution would be to allow the Gentrys to divide their lot, as others have done in the past, and have lots that are smaller than 5,600 sq. ft.

Ms. Nunez then hoped the Board would proceed by tabling the appeal to speak with the Town Manager.

Member McMath then asked for Mr. Pocta's opinion. He stated that there are other options the Board can consider.

Ms. Gentry asked what the Board planned to bring back to the Town Attorney and Manager. Chairwoman Blackburn said they would be seeking legal guidance and considering all possible options.

Motion made by Vice-Chair Weigand to table the application to conduct title work on the property, seconded by Member Stramm. Motion carried with a 3-1 vote, with Member McMath dissenting.

B. ***Variance 2025-01: 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.***
Planning and Zoning Administrator Katie Nunez summarized the staff report.

Mark Brambell from Bay Creek Development spoke on the application.

After Mr. Brambell spoke on the application, Vice-Chair Weigand asked whether any other zones in Bay Creek were currently zoned as Conservation Open Spaces (CO). Mr. Brambell explained that the golf course, pool complex, and the POAs are zoned as CO. He further mentioned that this was specifically one aspect that Bay Creek aimed to address when the Town moved on to amending the PUD.

Written Comments

A. ***I. Reese Smith, Jr. of Beacon Magnolia Park, LLC.***
See the attached letter for the full comment.

Member Stramm made a motion to close the public hearing, seconded by Member McMath. The motion was approved unanimously.

Motion made by Member Stramm 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' according to Accawmacke Plantation Planned Unit Development Section 9.9, seconded by Member McMath. The motion was approved unanimously.

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 lots 1-10.***
Planning and Zoning Administrator Katie Nunez summarized the staff report.

Chris Larmore, developer of Dreams by the Water, was adamant that he could produce an exponentially better product for the prospective homeowners and the Town if he were granted the variance. He went on to explain that the property's uniqueness and issue is the depth of the lots; even if they reduced the number of lots, it would not address the pervasive depth issue. Mr. Larmore then mentioned that the depth of the lots is a byproduct of the requirement to include a Virginia VDOT-approved road.

He then explained that he was seeking approval for a less buildable envelope than what is currently approved, and instead of getting it back in width, they were requesting extra depth.

Written Comments

Zoning Compliance Officer Jack Steinmayer read the following comments into the record:

A. ***Devon and Linda Johnson (2 Bay Vistas Way)***
B. ***Drs. Fabien and Shashi Baksh (4 Bay Vistas Way)***
C. ***Peter Alpern (3 Bay Vistas Way)***
D. ***John and Antoinette Payne (Lot 0 Bay Vistas Way)***
E. ***Nancy and George Proto (607 Pine Street)***

See attached letters for full comments.

After the written comments were read into the record, Chris Larmore was given time to address the comments.

Mr. Larmore went on to explain that most developers were looking to get a return on their investment; however, this was not the case for him, as he had already done that and is now looking to produce a product that everyone in Town can be proud of.

Mr. Larmore then spoke to all the prospective homeowners in the Dreams by the Water subdivision who wanted to be outside and live in the neighborhood, not just go home to a simple structure where they reside.

After Mr. Larmore finished his presentation, Chairwoman Blackburn asked the Members of the board if they had any questions.

Member McMath asked the zoning administrator about the process for replating the development and if all the lots had to be owned by the same entity. Ms. Nunez explained that two of the lots had been sold to individuals. Member McMath then asked whether, if Dreams by the Water went through the replating process, they would have to regain ownership of the two lots that have already been sold. Ms. Nunez explained that she did see that being a viable option at this point.

Member McMath asked whether Mr. Larmore had contacted the development's neighbors, as mentioned at the previous meeting. Mr. Larmore did not recall saying anything to that effect. He then went on to explain that if he had said he would contact the neighbors, he did not, because the neighbors are the two affected neighbors, who are much closer and, under the PUD guidelines, have much more flexibility and rights than Dreams by the Water has. He did not think they would object to the proposal.

Ms. Nunez said that the Town did provide letters to the adjacent property owners, as it is required by law.

Member McMath said she was curious about the stormwater runoff, particularly about the white house behind the two lots near the top. Ms. Nunez explained that there has been no development on any of the lots before the town, so she cannot say how the Town would address the stormwater issue without receiving a development plan per lot, based on the size of the house, driveways, any hardscaping, both impervious and pervious.

Mr. Larmore wanted to clarify that it is extremely difficult because of the 10 feet between the two homes, and that they would have to swale that. By making the side yard setbacks larger, it would be easier to swale. He then explained that the architects he had looked at the development had already addressed this against the current guidelines.

Member McMath then asked whether the development would be required to include sidewalks. Ms. Nunez stated Yes, the development would need to have sidewalks.

Member Stramm wanted to know whether one of the letters discussed the Bay Vista PUD. Was there a Bay Vista PUD? Ms. Nunez explained that Bay Vista fell under the Accawmacke Plantation PUD.

Vice-Chair Weigand made a motion to deny the variance because it did not meet all the criteria of a variance, seconded by Member McMath. Motion failed as Vice-Chair Weigand and McMath voted for, and Member Stramm and Chairwoman Blackburn voted against.

Member McMath wanted to call attention to the two lots that have been sold, which are on the opposite side of the neighbors who are in opposition to the variance request. She further believed that some middle ground could be found, given the proximity of the two developments.

Chairwoman Blackburn mentioned that the lots are still conforming lots, as they are 5,600 sq. ft., and that, in some ways, the hardship was not created by the developer, as the Coast Guard station was there before. Ms. Nunez explained that it was a parking lot, and when they purchased the property, they had to upgrade to meet subdivision standards and be road-acceptable to VDOT.

Mr. Larmore wanted to know whether they could reach a compromise. He wanted to know if they could come closer to a compromise if they gave something to the property owners on Bay Vista Way. He then gave the example that if they did not request the rear-yard setback for the affected properties, it would show that the Board does listen to those who show concern. Mr. Larmore then spoke about how Lots 1-3 were owned by him and asked whether, if he were willing to concede not requesting the rear yard setback, it would bring the board closer to a positive vote.

Mr. Larmore then spoke about the need to have the rear yard setback on Lot 4, as it is a pie-shaped lot. He then explained that the 4 lots around the cul-de-sac were most affected by the street.

Member McMath stated that she was a bit confused about Mr. Larmore's role in the development. Mr. Larmore explained that he was the contract-purchaser for four of the lots and possibly a fifth. Member McMath then asked whether Mr. Larmore had a vested interest in lot four. Mr. Larmore explained that he did not, as lot 4 was owned by one of the original developers.

As the board discussed among themselves how best to solve this issue, Mr. Larmore requested a five-minute recess to explain to the other property owners what was being attempted.

After returning from recess, Mr. Larmore explained that he was representing all ten lot owners and that a compromise would always be on the table, and in this case, the compromise was three of his lots.

Motion made by Member McMath to table Variance 2025-02 through 2025-06, to consult with the adjacent property owners and inform them of the proposed compromise for three of the five lots of the removal of the rear yard setback, and obtain their position on said compromise, seconded by Member Stramm. The motion passed with a 2-1 vote. Members McMath and Stramm voted yea; Vice-Chair Weigand voted nay. Chairwoman Blackburn abstained.

Motion made by Member Stramm to approve VAR2025-07 through VAR2025-11 in consideration of the ordinance criteria of variances being met, seconded by Chairwoman Blackburn. The motion failed with a 2-2 vote. Chairwoman Blackburn and Member voted yea; Members McMath and Vice-Chair Weigand voted nay.

After the proposed motion failed, Chairwoman Blackburn asked how the remaining Board members would change the relief, since they are not meeting with the adjacent property owners.

Member McMath wanted to address the variance criteria as a Board before voting to understand better whether the developer has met them.

Chairwoman Blackburn stated that she thought the staff report laid out the criteria, and they met the hardship as it wasn't created by them, the impact is not negative, and it will be unique and fit in with the Town of Cape Charles.

Member McMath stated that the part that was still confusing to her was that the lots have not been sold, and the lots that have been platted by the original developer remain in the developer's possession. Mr. Larmore explained that lots 10 and 8 have been conveyed, and that the two individuals were not aware that the restrictions in place would affect the homes they were planning to build. He then explained that the original developer wanted to retain at least two of the lots. Member McMath asked whether the realtor conveyed the building envelope to the purchaser. Mr. Larmore stated that he did not know.

Vice-Chair Weigand suggested it might be two different variances the developer would request, as the VDOT road affects only the back four lots. She then went on to explain that the people buying the lots knew about the setbacks or had done the due diligence to find out beforehand. As the buyer is beholden to understanding what they are purchasing. Finally, she wanted to know whether the Board could split the variance request into two, one for the front and one for the rear.

Ms. Nunez answered by explaining that the Board could vote on all, some, or none of the variance request.

Motion made by Vice-Chair Weigand to approve the front setbacks of 10' for VAR2025-07 through VAR2025-11 and deny the rear setbacks of 10'. Motion died.

Member McMath asked whether everyone understood her question about ownership. Member Weigand mentioned it shouldn't matter, and whoever owns the lots had done their due diligence to make sure they knew what the buildable space was.

Mr. Larmore wanted to know whether the Board would agree to grant the front-yard concession to all lots, but not the rear yards. Mr. Larmore then asked Ms. Nunez if that would include the lots that were tabled.

Vice-Chair Weigand made a motion to take it off the table, seconded by Member Stramm. The motion was approved unanimously.

Vice-Chair Weigand made a motion to grant on all lots from VAR2025-02 through VAR2025-11 the 10' front yard setback and deny the 10' rear yard setback, seconded by Member McMath. The motion was approved unanimously.

Motion by Member Stramm to adjourn the April 8th, 2025 Board of Zoning Appeals Regular Meeting and Public Hearing at 1:03 p.m., seconded by Vice-Chair Weigand. The motion was approved unanimously.

Bill Stramm

Chairman Stramm

Zoning Compliance Officer