Board of Zoning Appeals

Regular Meeting
Cape Charles Civic Center
May 13, 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:
     - **i.** March 11th, 2025 Minutes
     - **ii.** April 8th, 2025 Minutes
     - **iii.** May 6th, 2025 Minutes

5. **New Business –** None

6. **Old 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.

7. **Other Matters –**
   - **a.** None

8. **Announcements –**
   - **a.** Next Meeting Tuesday, June 10, 2025, @ 10:00 a.m.

9. **Adjourn**

March 11th, 2025 Minutes

Municipal Corporation of Cape Charles

Board of Zoning Appeals
Public Hearing and Regular Meeting
Cape Charles Civic Center
March 11th, 2025
10:00 a.m.

At approximately 10:00 a.m., on March 11th, 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 Laura Weigand, Elise McMath, Bill Stramm, and Pete Baumann.

Town Staff in attendance were Planning & Zoning Administrator Katie Nunez, Zoning Compliance Officer Jack Steinmayer, and Town Clerk Libby Hume.

After the recitation of the Pledge of Allegiance, Chairwoman Blackburn began the process to re-elect a chair and vice-chair. Dolores Blackburn was nominated and elected chair by a unanimous vote. Member Baumann was nominated for Vice-Chair but turned it down. Member Weigand was nominated for Vice-Chair and elected Vice-Chair by a unanimous vote.

Next, Chairwoman Blackburn asked for a motion to approve the consent agenda as presented.

Motion made by Vice-Chair Weigand, seconded by Member Stramm, to approve the consent agenda as presented.

Afterwards, Chairwoman Blackburn asked for a motion to approve the minutes as presented.

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

New Business

A. ***Informal discussion with Chris Larmore, Developer of Dreams by the Water Subdivision on Washington Avenue, regarding the Residential-1 (R-1) Zoning requirements concerning setbacks and the size and type of house being considered for development on the 10 lots in the subdivision.***
Zoning Compliance Officer Jack Steinmayer summarized the staff report.

After the summarization of the staff report, Chris Larmore, Developer of Dreams by the Water Subdivision, spoke on how he got involved in the development.

He stated that, like many people within Cape Charles, he fell in love with the small-town feel. After watching the development take shape, he was interested in purchasing one of the lots that he would use as a second home until he retired down in Cape Charles.

After getting involved in the project, Mr. Larmore very quickly picked up that the building envelope that was allowed after the application of the current setback regulations would not be a home that he would choose to build. He clarified that this does not mean the homes are bad or the people who occupy the homes are bad, it's just something that he wouldn't want to live in full-time.

After finding out about the limitations of the current lots, Mr. Larmore met with the purchasers and was curious to hear how the development came about in the first place. After meeting with the purchasers, Mr. Larmore watched as the original four partners dwindled, however, those four original purchasers still very much maintain an interest in the development.

Mr. Larmore then explained that two of the ten lots had been transferred, sold, and settled, and those owners were in attendance.

Mr. Larmore then told the Board that what they had before them was not a developer but future neighbors, friends, and families.

The main challenge that Mr. Larmore faced was the road, as he explained. Mr. Larmore then stated that the previous developers did not have the experience to understand the impact of a VDOT road would have on the development. As an acceptable VDOT road is 50 ft. wide, and that has restricted a majority of the building envelope.

Mr. Larmore then explained that if the owners were to build homes on the lots with the restrictions that were currently in place, the homes would be 40 ft. from the curb line, which would unreasonably restrict the type of home that could be built. By asking for a relief of 10 ft. in the front yard and 10 ft. in the back yard, it would move the homes 30 ft. from the street, which would be identical to the current setbacks would read.

Mr. Larmore then spoke on how he had developed a rendering of the completed development to show the Board what the development would look like once all 10 homes were in place.

He then mentioned that if you take the spirit of open space and the spirit of setbacks, and take the existing building envelope, it would allow up to 27,000 sq. ft. of the 66,000 sq. ft. in the development to be built upon. By granting the relief that Mr. Larmore presented to the Board, it would reduce the total buildable space to 18,000 sq. ft.

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By approving the variance and granting more depth, the owners can build something more square-shaped instead of long and rectangular, and more aesthetically pleasing.

Next, Mr. Larmore stated that a benefit that the Town would receive by approving the variance would increase the tax base. As a rancher would be capped at $600,000 per house and lot, the homes that are being proposed are about $900,000 per house and lot, which is a $3 million difference in accessible tax base.

Mr. Larmore then spoke on how the neighbors would be affected. He explained that they only have 3 direct neighbors as one side is adjacent to a storm water pond.

Finally, Mr. Larmore was hoping that the Board would agree that Dreams by the Water would be an incredible addition to the Town.

After finishing his presentation, Mr. Larmore asked the Board of Zoning Appeals Members if they had any questions.

Chairwoman Blackburn asked Mr. Larmore if the Board was to include the road easement when calculating the proposed front yard setback. Mr. Larmore said yes, as right now the property line starts 10 ft. back from the road, and what they are asking for is a 10 ft. reduction from the 30 ft. front yard setback.

Chairwoman Blackburn then asked if they were also looking for relief from the backyard setbacks. Mr. Larmore stated in the affirmative that they were looking for a 15 ft. reduction in the rear yard setback.

Vice-Chair Weigand asked if this would not include sidewalks. Ms. Nunez explained that on the subdivision plat that was approved, sidewalks were to be installed.

Vice-Chair Weigand then explained that to consider a variance, there needs to be a hardship, and she did not see a hardship, other than design and monetary value of the properties. Mr. Larmore responded that Vice-Chair Weigand was correct, as there is a very specific definition of a hardship. However, along that accepted trend, there is the allowance to say ten property owners are all currently affected and cannot build with the current setbacks.

Member Baumann wanted to know what the footprint of the Coast Guard station was on the property. Ms. Nunez and Mr. Larmore responded that they did not know.

Ms. Nunez then explained that if any application came before the Board, Mr. Larmore would have to address the six criteria for a variance. She then read through the six criteria. She then explained that many challenges with the subdivision layout would have been addressed in the original development, however, that did not happen. She went on to explain that within the Zoning Ordinance, there is an exception process, called “deviations or exceptions,” which allows the Subdivision

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Agent alone to make modifications to the requirements in the Zoning Ordinance. She believes that this project may fit that exception.
Chairwoman Blackburn stated that almost all the lots in Cape Charles are long and thin, and the 30 ft. front yard setback makes sense for these lots, but not as much for smaller lots. Mr. Larmore then stated after speaking to many of the original engineers, it was clear they did not know what the end product was going to be.

Member Stramm asked Ms. Nunez if there were lots within the Historic District that were within the 30 ft. setbacks in both the front and rear. Ms. Nunez explained that not every lot in the Historic District conforms to the ordinance requirements, and there are lots in the Historic District that are legal, non-conforming lots. She then mentioned that there is one exception within the Historic District called the prevailing setback for the front property line.

Member Stramm wondered if this development fell under that criterion. Ms. Nunez explained that there are some factors in support of the relief that Mr. Larmore is seeking, as it's not a direct subdivision within the Historic District, as they are creating a new subdivision and are, to some extent, making a new standard to themselves.

Mr. Larmore then spoke on how they are being held to conforming standards for non-conforming lots and are now faced with a home that is only 26 ft. deep.

Ms. Nunez then wanted to make one correction, in the Zoning Ordinance within the R-1 District, 5,600 sq. ft. is the requirement for lot size, and there is no requirement for depth, only the 40 ft. width requirements.

Chairwoman Blackburn could not see how one could create conforming lots within the area where the development is.

Member Weigand stated that at the same time, they are still conforming lots, as all the lots are 5,600 sq. ft. Ms. Nunez explained that Mr. Larmore could build a house that would fit all the ordinance requirements.

Ms. Nunez then asked the Board if they would be receptive to hearing the application for all 10 lots. All members responded in the affirmative.

Annual Report
No questions or changes. Ms. Nunez quickly explained the annual report for the Board.

Member Weigand then wondered if Member Stramm would have to recuse himself if anyone appealed a decision made by the Planning Commission. Ms. Nunez explained that the Planning Commission can only make recommendations and not actual decisions.

Vice-Chair Weigand made a motion to approve the annual report, seconded by Member Baumann. The motion was approved unanimously.

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Motion made by Member Stramm to adjourn the Board of Zoning Appeals at 10:52 a.m., seconded by Vice-Chair Weigand. The motion was approved unanimously.

_____
Chairwoman Blackburn

_____
Katie Nunez
Director of Planning & Zoning Administrator, Subdivision Agent

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April 8th, 2025 Minutes

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 asked for a motion 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 wanted to know when the previous owners renovated the property, it went from how many bedrooms to how many bedrooms. Mr. Brady said he could not answer the proposed question without looking back into the files, but he did mention that it went from a one-story building to a two-story building.

Member McMath then wanted to know if there was an increase in bathrooms at the property. Mr. Brady said he did not know off the top of his head and did not 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 spoke on how the Gentrys purchased the house in 2024 with the expectation and understanding that they would have a STR in the cottage, and the main house that is being rebuilt would be the primary residence. He then spoke on how the previous owners used the cottage as their primary residence, and how it is currently the only residence being used on the property.

Mr. Pocta then spoke on how the Board could uphold or modify in part the Zoning Determination, and it should be based on the four alternatives presented. The first one he mentioned was a legal, non-conforming use, because of the history of the cottage as a rental, it could be seen as legally non-conforming. He went on to say how the Gentrys applied for a STR application and obtained a business license from the Finance Department, which approved the Gentrys for an STR in the cottage. Mr. Pocta then told the Board of Zoning Appeals that they could overturn the aspect of the Zoning Determination and modify it to say the cottage was legally non-conforming, not just as a rental, but an STR.

Mr. Pocta then told the Board that the second option they had was to recognize 509 Nectarine as a separate or secondary single-family dwelling, as 509 Nectarine had been recognized by the Town through the acquisition of building permits.

Next, he spoke on how there was precedent for what the Gentrys were trying to accomplish, as other lots within the Town have two separate single-family dwellings on one lot. He then gave the example of 554 Madison Avenue and 409 Nectarine Street falling into this category.

Finally, he spoke on how the Board could resolve this issue based on the Zoning Ordinance itself. As a result of upholding the Zoning Administrator, it is inconsistent with the intent of the Zoning Ordinance. As within the Residential-1 Zoning District, the Ordinance attempts to control and contain commercial uses, and by not allowing the Gentrys to rent the smaller ADU, it increases commercial activity within the district.

Mr. Pocta wrapped up his presentation by stating it was practically absurd to reject the appeal as it is inconsistent with the desire of the neighbors, and it increases factors the ordinance was created to reduce.

After finishing his presentation, Mr. Pocta yielded the remainder of his time for Ms. Gentry to speak.

Ms. Gentry spoke on how she and her husband have moved to Cape Charles for a simple life of peace and ease, but have yet to find any. She had been overwhelmed and distracted by the appeal. She spoke on how they have invested much of their savings in purchasing the property and completing the renovations required. She spoke on how operating a short-term rental in the cottage was a crucial component in recouping some of the funds. Finally, she mentioned that without this income stream, she and her husband may be forced to move out of Cape Charles.

Public Comments

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

Ms. Davis spoke about how she needs the Gentrys to stay in Cape Charles. She spoke about how, for most of her life, 509 Nectarine Street has been there, and when she moved back to Cape Charles in 1978, people were living on the property, and others have continued to come and go over the years. She went on to express her hope that the Board would resolve everything. Finally, she mentioned that on her block of Jefferson Avenue, there are only four houses with full-time residents, while every other house is a short-term rental or second home. Finally, Ms. Davis spoke on how she would need a full-time resident, such as the Gentry's nearby, if anything were to happen to her.

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

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Ms. Lajoie spoke on how in Cape Charles, it is not unusual to have oddities and how Mr. Pocta laid out that there are many different ways the Board can go about addressing the issue. Finally, she believes that the Gentrys have embraced Cape Charles and have put forth time, effort, and money to keep them within the Town full-time.

C. ***Jeff Gray (615 Monroe Avenue)***
Mr. Gray was speaking in support of the Gentrys, as they have been the most wonderful citizens. Like many of the current residents, the Gentrys are "come heres," and they do good work in the Town. Mr. Gray spoke on how, every so often, Boards, Tribunals, and Courts sometimes forgo common sense, and he wanted the Board of Zoning Appeals to exercise common sense. Finally, Mr. Gray spoke on how by using common sense allowing the ADU to be an STR would actually reduce 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 wanted to know if the pictures provided accurately reflected the use of an ADU as a short-term rental at 409 Nectarine Street. Mr. Pocta responded by saying that he doesn't believe that the Town is classifying that as an accessory dwelling unit, and that may be in part due to it being a separate lot.

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

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

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Vice-Chair Weigand then asked Ms. Nunez if Town staff knew when the lots on Nectarine and Madison were subdivided, as 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 have to do the title work himself, to show when the property was subdivided, however, it was done before zoning.

Vice-Chair Weigand then wanted to know about the service bills that go to the property. Ms. Gentry explained they get separate utility bills for both properties, as there is a water meter on 509 Nectarine and 542 Jefferson, and two power meter boxes.

Member McMath then asked if it was included in the zoning ordinance that you can have separate water for an accessory dwelling unit. Ms. Nunez explained that when the Town Council adopted the accessory dwelling unit ordinance for the first time, they envisioned that some of the 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 no, there are no STRs in the Historic District that are in ADUs.

Vice-Chair Weigand wanted to know if both of the structures on the property were historically contributing structures. Ms. Nunez stated 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 stated that it is important to acknowledge the difficult position that the Zoning Administrator was placed in during this case. As the renovations, which were accepted by Town Staff, inadvertently contradicted Section 4.2 (E) of the Zoning Ordinance, leaving the Zoning Administrator with limited options that no longer accurately reflect the state of the accessory structures. Furthermore, the Zoning Administrator made a reasonable determination within the constraints of the existing ordinance, though this case highlights a gap in the zoning framework.

Member McMath then spoke on how the footprint of the two structures on the property has existed long before Cape Charles adopted zoning in 1992, a historical fact that predates the current zoning framework. She then spoke on how 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 mentioned how the secondary structure on the property underwent extensive

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repairs, and it no longer meets the definition of an Accessory Dwelling Unit, as outlined in 4.1 (J) (1) (C) & (D), and because of this, it looks more like 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 Members McMath and Vice-Chair Weigand were amicable to separating the lots, because giving 509 Nectarine a separate address should validate the Gentry's appeal of allowing two separate residences, because it should be two separate lots. Ms. Nunez stated that the Gentry's have not presented any evidence that they are two separate lots.

Member McMath followed up on Ms. Nunez's comment by stating that, regardless of when it was done, it was still done, and the two lots are smaller than the requirement of 5,600 sq. ft. per lot in the R-1 District.

Ms. Nunez then went on to explain 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 might be receiving mail at the address, the Town cannot stop the post office from delivering mail to the address.

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 list the reasons why they are denying the decision. The Board cannot grant a variance of the ordinance as it's not what the Gentry's are seeking.

Member McMath explained that she did not believe the Zoning Administrator made the wrong decision, however, this property is 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 burden of law in reviewing the decision issued and finding whether the administrator was at fault or not.

Member McMath then stated she was up quite late, and she is a new member, and she wants to resolve the issue at hand, and this was the answer that she found. Ms. Nunez then wanted to clarify for the Board that the motion Member McMath was proposing was that providing tacit approval, approval by this motion if it is approved, to allow the Gentry's to subdivide their land and create a smaller parcel than what is allowed under the Zoning Ordinance today, and where it is prohibited in the Zoning Ordinance to not allow the creation of a lot under 5,600 sq. ft.

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

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

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

Member Stramm wanted to know that if the Board either affirmed or denied part of the appeal, and modified it, would that be legal?

Member McMath then pulled up the Town of Cape Charles Board of Zoning Appeals Rules and Procedures. She then read Article VII, Section 8, which read "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 stated that the Gentrys did not apply for a variance, but the Board could give the applicant a variance.

Vice-Chair Weigand wanted to go back to her original motion and table the matter to conduct more 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 stated 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 believed that 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 standpoint. She believes that it wouldn't change the circumstances that the Board finds itself in. Member McMath then went on to explain 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 just trying to determine if the Zoning Administrator was either right or wrong on 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 Gentry's to divide their lot, as others have done in the past, and have lots that are smaller than 5,600 sq. ft.

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Ms. Nunez then hoped the Board would move forward with tabling the appeal to speak with the Town Manager.

Member McMath then wanted to get the opinion of Mr. Pocta. He stated that there are other alternatives the Board can take.

Ms. Gentry wanted to know what the Board was going to be taking back to the Town Attorney and Manager. Chairwoman Blackburn stated they were just going to be getting some legal direction and looking at all the 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.

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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 uniqueness and issue with the property 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 looking for approval of 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 on all the prospective homeowners in the Dreams by the Water subdivision who were looking to have their families be outside and live in the neighborhood, and 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 wanted to know if Dreams by the Water went through the replating process, would they have to regain ownership of the two lots that have already been sold? Ms. Nunez explained she did see that being a viable option at this point.

Member McMath wanted to know if Mr. Larmore had contacted the neighbors of the development, 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 did say he would contact the neighbors, he did not because the neighbors were the two affected

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neighbors are much closer and under the guidelines of the PUD have much more flexibility and rights than what 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 was no development on any of the lots that are 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 they would have to swale that, and 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 wanted to know if the development would be required to have sidewalks. Ms. Nunez stated Yes, the development would need to have sidewalks.

Member Stramm wanted to know that in one of the letters, they talked about 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 in some way, 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 the subdivision standards; they had to be road-acceptable to VDOT.

Mr. Larmore wanted to know if they could come to a compromise. He wanted to know if they could come closer to a compromise if they gave something to the property owners at Bay Vista Way. He then gave the example, if they did not

request the rear yard setback to the affected properties, it would show that the Board does listen to those who show concern. Mr. Larmore then spoke on how Lots 1-3 were owned by him, and if he was willing to concede to not request the rear yard setback, would it possibly get the board closer to a positive vote?

Mr. Larmore then spoke on how Lot 4 would need to have the rear yard setback, as it is a pie-shaped lot. He then went on to explain that the 4 lots around the cul-de-sac were the 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 wanted to know if 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 amongst themselves on how to best solve this issue, Mr. Larmore requested a five-minute recess to explain to the other property owners what was trying to be accomplished.

After coming back from the 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 wanted to know how the remaining Board members would change the relief, since they are not talking about meeting with the adjacent property owners.

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

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.

DRAFT

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 are still in possession of the developer. Mr. Larmore explained that lots 10 and 8 have been conveyed, and that the two individuals were not aware that the restrictions that were in place would impact the homes they were looking at building. He then explained that the original developer wanted to retain at least two of the lots. Member McMath wanted to know if the realtor conveyed the building envelope to the purchaser. Mr. Larmore stated that he did not know.

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

Ms. Nunez answered by explaining 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 wanted to know if 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 if the Board would agree to give 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.

_____

Chairwoman Blackburn

DRAFT

_____

Katie Nunez
Director of Planning & Zoning, Subdivision Agent

DRAFT

2025 Return of Business Tangible Property for Business and Professions Form from the Commissioner of Revenue's Office

(as referred to in minutes)

County of Northampton, Virginia
Office of the Commissioner of Revenue
PO Box 65, Eastville, VA 23347-0065
Phone : (757) 678-0446
Fax : (757) 678-0483
Email : COR@co.northampton.va.us

2025 Return of Business Tangible Property for Businesses and Professions

IMPORTANT: COMPLETE, SIGN AND RETURN
ON OR BEFORE **MAY 1, 2025**
PENALTY FOR LATE FILING IS 10%

Return to:

Commissioner of Revenue
PO Box 65
Eastville, VA 23347

GENTRY, GREGORY W & EMILY D
TWENTY OCTOBER
542 JEFFERSON AVE
CAPE CHARLES, VA 23310-2804

Cust Acct No [redacted] Prop ID [redacted] District **TCC**

Business License No **TCC** Transient Occupancy No [redacted]

Return of Business Tangible Property for Transient Occupancy Properties: Every person or business opened by January 1st offering use or possession of a room or space occupied for lodging of a property located within Northampton County for a period of less than thirty (30) days must submit a return of business tangible property.

Vacation Rental Property Business

Property Location: **509 NECTARINE ST**

Rental Name:

Please list the number of bedrooms open to guests, and check if the following rooms are open to guests.

Bedroom(s)	Bathroom	Living Room	Kitchen	OFFICE USE - Assessment
	☐	☐	☐	

If the Business is Closed: If you are no longer in business, your lease has expired, your property has been disposed of, etc., please visit our office or visit the Commissioner of Revenue's webpage and complete the "Business Closure Form." Please keep in mind, business tangible property is not prorated, even if it is sold or moved out of Northampton County after January 1, 2025.

To Avoid 10% Late Filing Penalty ($10 minimum): This form must be postmarked or returned by May 1, 2025 to the Commissioner of Revenue.

UNSIGNED FORMS WILL BE RETURNED

VIRGINIA: I declare that the foregoing statement and figures are true, full, and correct to the best of my knowledge and belief.

Signature _____ Date _____

It is a Class 1 misdemeanor to make a false statement with intent to defraud if the amount of the tax lawfully assessed in connection with this return is more than $1,000. It is a Class 3 misdemeanor to make a false statement with intent to defraud if the amount of the tax lawfully assessed in connection with this return is $1,000 or less.

Please complete the following information so we may contact you if there are questions about your return.

Name _____

Phone _____

Email _____

File with the Commissioner of Revenue's Office at PO Box 65, Eastville, VA 23347-0065
on or before May 1st to avoid late filing penalty

Town of Cape Charles Business License

(as referred to in minutes)

BUSINESS LICENSE

2024

TOWN OF CAPE CHARLES
STATE OF VIRGINIA

Acct # [redacted]
Reg #: [redacted]

Business: TWENTY OCTOBER
Service Address: 509 NECTARINE STREET

This is to certify that the person, firm, or corporation named herein, having paid the fee required by municipal ordinance is hereby registered to engage in the business named above.

TWENTY OCTOBER
542 JEFFERSON AVE

Cape Charles VA 23310-____

Contact/Owner of Business:
OWNER EMILY GENTRY

Date Issued: 11/14/2024
Authorized By: Jerry Murphy

VAC RENTAL HISTORIC/BUSINESS SVCS

Period of Registration: From 1/1/2024 To 12/31/2024

Signed:

Ownership Not Transferable

DBA: THE NECTARINE

BUSINESS LICENSE

2024
-Duplicate-

TOWN OF CAPE CHARLES
STATE OF VIRGINIA

Acct # [redacted]
Reg #: [redacted]

Business: TWENTY OCTOBER
Service Address: 509 NECTARINE STREET

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Contact/Owner of Business:
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Authorized By: Jerry Murphy

VAC RENTAL HISTORIC/BUSINESS SVCS

Period of Registration: From 1/1/2024 To 12/31/2024

Signed:

Ownership Not Transferable

DBA: THE NECTARINE

Statement from Spectrum

(as referred to in minutes)

Congratulations, Emily!

This month you saved: $23.01

Amount Due	Due by
$94.99	Auto Pay

How It Adds Up

Service from Mar 6 - Apr 5

Previous Balance		$94.99
Credit Card Payment	02/23	-$94.99
Remaining Balance		**$0.00**

Current Activity

Spectrum Internet®

Spectrum Internet	$88.00
Internet $69.99 12m	-$18.01
Your promotional price will expire on 01/05/26	
WiFi Service	$10.00
Spectrum Internet Ultra	$20.00
$5 Auto Pay Discount	-$5.00
Spectrum Internet® Total	**$94.99**

Auto Pay Amount $94.99

Includes Auto Pay Discount

YOUR AUTO PAY WILL BE PROCESSED 03/23/25

Need Help with Your Bill or Service? Scan to Chat!

Get quick answers, manage your account or resolve issues instantly by chatting with us now.

Thank you for choosing Spectrum.
We appreciate your prompt payment and value you as a customer.

Auto Pay.
Thank you for signing up for auto pay. Please note your payment may be drafted and posted to your Spectrum account the day after your transaction is scheduled to be processed by your bank.

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Detach the included payment stub and enclose it with a check made payable to Spectrum. If you have questions about your account, call us at **(855) 757-7328**.

Spectrum

DO NOT SEND PAYMENTS TO THIS ADDRESS
4145 S FALKENBURG RD RIVERVIEW FL 33578-8652

[redacted]

EMILY GENTRY
509 NECTARINE ST
CAPE CHARLES VA 23310-2823

Amount Due	$94.99
Due by	Auto Pay
Account Number	[redacted]

Please send payment to:

SPECTRUM
PO BOX 94188
PALATINE IL 60094-4188

[redacted]

[redacted]

REMINDER – YOUR FINAL PAPER BILL
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1-877-470-6728

[redacted]

[redacted]

Support, Bill FAQs and Descriptions

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Call: **(855) 75-SPECTRUM (1-855-757-7328)**

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What happens if I have insufficient funds or a past due balance?
Spectrum may charge a processing fee for any returned checks and card chargebacks. If your payment method is refused or returned for any reason, we may debit your account for the payment, plus an insufficient funds processing fee as described in your terms of service or video services rate card up to the amount allowable by law and any applicable tax. Your bank account may be debited as early as the same day your payment is refused or returned. If your bank account isn't debited, the return check amount (plus fee) must be paid by cash, cashier's check or money order.

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Unless prevented by situations beyond our control, services will be restored within 24 hours of you being notified.

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Terms & Conditions - Spectrum's detailed standard terms and conditions for service are located at **spectrum.com/policies**.

Spectrum Terms and Conditions of Service - In accordance with the Spectrum Terms and Conditions of Service, Spectrum services are billed on a monthly basis. Spectrum does not provide credits for monthly subscription services that are cancelled prior to the end of the current billing month.

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Insufficient Funds Payment Policy - Charter may charge an insufficient funds processing fee for all returned checks and bankcard charge-backs. If your check, bankcard (debit or credit) charge, or other instrument or electronic transfer transaction used to pay us is dishonored, refused or returned for any reason, we may electronically debit your account for the payment, plus an insufficient funds processing fee as set forth in your terms of service or on your Video Services rate card (up to the amount allowable by law and any applicable sales tax). Your bank account may be debited as early as the same day payment is dishonored, refused or returned. If your bank account is not debited, the returned check amount (plus fee) must be replaced by cash, cashier's check or money order.

Complaint Procedures - If you disagree with your charges, you need to register a complaint no later than 60 days after the due date on your bill statement.

Franchise Administrator - Town of Cape Charles 2 Plum St Cape Charles VA 23310 Phone: (757) 331-3259

[redacted]

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RAP-2502-RA2
SA1PF00Z

Pictures of 509 Nectarine Street

(as referred to in minutes)

509

Google Maps

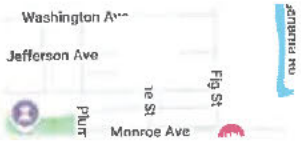
509 County Rd 641

Cape Charles, Virginia

Google Street View

Mar 2023 See latest date

Image capture: Mar 2023 © 2025 Google



Google Maps

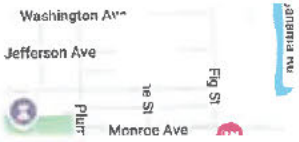
509 Nectarine St

Cape Charles, Virginia

Google Street View

Aug 2014 See latest date

Image capture: Aug 2014 © 2025 Google



Google Maps

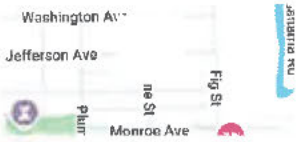
598 Nectarine St

Cape Charles, Virginia

Google Street View

Aug 2023 See more dates

Image capture: Aug 2023 © 2025 Google



Google Maps

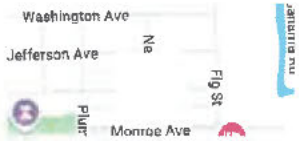
409 Nectarine St

Cape Charles, Virginia

Google Street View

Aug 2023 See more dates

Image capture: Aug 2023 © 2025 Google



BOARD OF ZONING APPEALS MEETING
APRIL 8, 2025

CITIZEN WRITTEN COMMENTS RECEIVED

A. APPEAL2025-01: GENTRY APPEAL AT 542 JEFFERSON AVENUE

1. Kristen and Jon Thornbrugh, 508 Nectarine Street
2. Thomas Austin, 506 Nectarine Street
3. Sheryl Simeck, 539 Jefferson Avenue
4. Lauren Schapker & Mark Keida, 602 Jefferson Avenue
5. Jill Lemery, 603 Pine Street
6. Kathy & Skip Fraas, 610 Washington Avenue
7. Courtney Fraas, 34 Bridgeton Drive
8. Ned & Penny Barham, 629 Jefferson Avenue
9. Jim Granger, 524 Jefferson Avenue

B. VAR2025-01: Bay Creek Resort, LLC Variance

1. I. Reese Smith, Jr. of Beacon at Magnolia Park, LLC – adjacent property owner

C. VAR2025-02 thru 11: Dreams by the Water Variances

1. Devon and Linda Johson, 2 Bay Vistas Way
2. Drs. Fabien and Shashi Baksh, 4 Bay Vistas Way
3. Peter Alpern, 3 Bay Vistas Way
4. John and Antoinette Payne, Lot 0 Baby Vistas Way
5. Nancy & George Proto, 607 Pine Street

A. APPEAL2025-01: GENTRY APPEAL AT 542 JEFFERSON AVENUE

1. Kristen and Jon Thornbrugh, 508 Nectarine Street
2. Thomas Austin, 506 Nectarine Street
3. Sheryl Simeck, 539 Jefferson Avenue
4. Lauren Schapker & Mark Keida, 602 Jefferson Avenue
5. Jill Lemery, 603 Pine Street
6. Kathy & Skip Fraas, 610 Washington Avenue
7. Courtney Fraas, 34 Bridgeton Drive
8. Ned & Penny Barham, 629 Jefferson Avenue
9. Jim Granger, 524 Jefferson Avenue

April 2, 2025

Dear Board of Zoning Appeals:

We reside at 508 Nectarine, directly across the street from Emily and Greg Gentry. We purchased our home in 2015, so we have personally observed many changes in both the residences across the street from us. When we first moved in, the now torn down smaller unit facing Nectarine St had several different renters living there throughout the years until it became uninhabitable, with swarms of termites coming out of it, causing the floors to cave in. Since then, the beautiful home the Gentrys currently reside in was built, and now they are building their primary home facing Jefferson St. in the spirit of the former home that stood there for years falling into neglect and disrepair. We have enjoyed watching the love and care they are providing to both homes, and the value they add to our corner neighborhood in Cape Charles.

We understand and support their desire to have a short term rental on their Nectarine facing property. We would much rather see their smaller cottage rented out as our parking will be less impacted by renting the much smaller unit on their property. This property location has always been a rental since we have lived here, and we enjoy welcoming new folks to our community and have no objection at all to the Nectarine cottage being a short term rental. The improvements the Gentrys have made to our community in such a short timeframe are immense, and we do not understand why the town would only allow a much larger home to become a short term rental, yet preclude the smaller home from being rented out? The smaller cottage location on the property has always been a month to month rental until the Dohertys purchased it.

The Dohertys' plan was always to rent out on a short term basis the smaller cottage once the larger Jefferson St. facing home was renovated and they moved into that as their permanent residence. We have always supported this plan, and planned to rent out the smaller cottage for our friends and family when they came to visit us. This is still our plan with the Gentrys, once they move into the larger home on the property.

We have also been witness to the hyprocrisy of the duplex next door to us on Nectarine being allowed to be split into two separate "condo" properties with both sides being allowed rented out on a short term basis. To not allow the Gentrys to rent out a completely separate structure on their property, but to allow one structure/duplex, literally 100 yards away, to be split into two separate short term rental units seems like a complete injustice. Further, it smells of back room dealing between the developer of the duplex and the town. Why does an investment

developer get this opportunity, but someone who is actually living on the property and making our neighborhood better does not?

We urge you to apply logic to this unique situation and permit the Gentrys to have their Nectarine cottage as a short term rental. They are prime examples of the kind of citizens that Cape Charles needs, as they have brought value to our street by renovating not one, but two properties, and will be on site property managers for their short term rental.

Kind regards,

Kristen and Jon Thornbrugh

Kristen and Jon Thornbrugh

508 Nectarine Street

Thomas Austin
506 Nectarine St
Cape Charles, VA 23310
taustin777@yahoo.com
(410)652-4746
3/31/2025

Dear Members of the Board of Zoning Appeals,

I am writing to express my strong support for my neighbors, Greg and Emily Gentry, who are seeking approval to allow short-term rentals in the accessory dwelling unit on their property located at 542 Jefferson Ave. (Main Home) / 509 Nectarine St. (ADU).

Since Greg and Emily moved into the neighborhood, they have made significant improvements to their property, which was previously in a state of disrepair. Their investment and hard work have not only enhanced the aesthetic appeal of their home but have also positively impacted the overall appearance and value of our neighborhood.

One of the key concerns often associated with short-term rentals is parking. However, I can confidently say that there is ample parking available on our street, and the addition of short-term rental guests will not create any parking issues. Greg and Emily have always been considerate and respectful neighbors, and I have no doubt that they will ensure their guests adhere to the same standards.

Allowing short-term rentals in the ADU will provide the Gentry's with an opportunity to generate additional income, which will help them maintain and further improve their property. This, in turn, benefits the entire community by continuing to elevate the quality and desirability of our neighborhood.

I believe that Greg and Emily have demonstrated their commitment to being responsible and engaged members of our community. Their proposal for short-term rentals is a reasonable and beneficial use of their property, and I wholeheartedly support their request for approval.

Thank you for considering my perspective on this matter. I trust that you will give Greg and Emily's application the favorable consideration it deserves.

Sincerely,

Thomas Austin

To: Whom It May Concern

From: Sheryl Simeck

Date: March 28, 2025

Subject: Support for Short-Term Rental at 509 Nectarine

I am writing to express my support for Emily and Greg Gentry's request to rent their two-bedroom cottage at 509 Nectarine in Cape Charles, VA, on a short-term basis. Currently, they are permitted to rent their house at 542 Jefferson on a short-term basis, but not the cottage.

My husband Frank and I, who own the property across the street at 539 Jefferson Ave., fully support their request. We believe it is in the best interest of the town for them to rent the cottage, which sleeps four, instead of the house, which could sleep eight. This would mean fewer people and fewer cars coming in and out of town during the vacation season. Additionally, it gives the owners an incentive to continue residing in Cape Charles, which we believe is desired by the town.

Since we've known the Gentrys, we have found them to be wonderful neighbors. They purchased a property with a half-built home and have worked hard to complete the structure according to regulations, securing all necessary permits, inspections and approvals.

The previous owners of the property may have had some issues with permits and misunderstandings with the town. We hope the Gentrys are treated fairly based on their actions rather than perceptions of prior actions they had nothing to do with.

April 4, 2025

To Whom It May Concern:

We are the owners of 602 Jefferson Ave. and are writing in support of our neighbors Emily and Greg Gentry's application to have two primary residences at 542 Jefferson Ave., one which they will plan to rent out to short-term renters.

We have no opposition to short-term renters in the neighborhood, and having the Gentrys living in the primary residence also affords them the ability to be involved and engaged with the short-term renters in their cottage, which generally leads to better outcomes for all parties.

We recognize that you are evaluating many variables in this case. As new homeowners in the neighborhood, we wanted to share that the Gentrys are the types of people that make a place like Cape Charles a wonderful place to be part of. The Gentrys were first to welcome us to the neighborhood, offered us help mowing and moving items in their pickup, let us borrow their tools to fix our shed and plumbing, have watched our home when we were away, and they are generally some of the nicest people around.

We see the Gentrys as people that you want to build a community around. For us, they represent what makes Cape Charles so special. Thank you for considering our support of their appeal.

Best Regards,

Lauren Schapker & Mark Keida

602 Jefferson Ave.

Cape Charles, VA 22310

Katie Nunez

From: Christopher A. Pocta <cpocta@wolriv.com>
Sent: Saturday, April 5, 2025 1:26 PM
To: Katie Nunez
Cc: Katie Nunez
Subject: FW: Gentry Zoning Appeal

Katie,

Please find below a message in support of the upcoming zoning appeal.

Respectfully,

Chris

Christopher A. Pocta, Esq.
W O L C O T T| R I V E R S | G A T E S
Attorneys at Law
200 Bendix Road, Suite 300
Virginia Beach, VA 23452
D: (757) 687-3662 O: (757) 497-6633 | F: (757) 554-0248 www.wolcottriversgates.com cpocta@wolriv.com

-----Original Message-----
From: jill Lemery <jill_lem24@yahoo.com>
Sent: Friday, April 4, 2025 7:12 PM
To: Christopher A. Pocta <cpocta@wolriv.com>
Cc: yourhomegirl90@gmail.com
Subject: Gentry Zoning Appeal

To whom it may concern -
I am writing this in support of Greg and Emily Gentry's appeal to use 504 Nectarine as a short term rental. This home has its own property address and therefore should not be considered an accessory dwelling unit.
I met Greg and Emily last year. They are a kind and giving couple. The Gentry's have become a staple in the community where they can be seen volunteering and/or attending most town events. Emily has also opened a business in town.
It would be a great loss to our town if we lose these active members in our community due to the zoning issues that will most definitely have a financial impact on their family.
I hope that the appeals board will overturn the previous decision.
Kindly,
Jill Lemery
603 Pine St
Cape Charles

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April 4, 2025

Board of Zoning Appeals,

We are writing on behalf of Greg and Emily Gentry as they attempt to navigate a constant and uncertain battle with a zoning issue with the town of Cape Charles. We have been in Cape Charles 22 years now and in my capacity as a town employee for a decade working in the finance department, I am certain the town is unfairly declaring the structure in question an ADU and thus not to be a short-term rental.

This structure has three very unique differences from other ADU's:

1. When it was originally constructed it was given its own meter and hence the property has been receiving a completely separate water bill from the main house. The owners have been paying two water bills for years. To my knowledge, NO ADU in town has its own connection.
2. Since it has its own connection, it has its own address as well. No ADU in town has its own address.
3. When the original structure was built over the years it had fallen into disrepair, so the previous owner did make repairs and redesigned on the original footprint. Therefore, we believe this structure should be grandfathered as its unique differences should not classify it as an ADU but rather a complete separate dwelling on the property.

Furthermore, when I worked in the finance department my husband and I were considering buying the property with the intent of doing just what the Gentry's are doing. I did research and asked both the Treasurer and the planning/zoning department and was told due to the above unique differences we would indeed be able to short term rent the smaller structure.

I do hope you all award the Gentry's a variance as we believe they are in the right in this dispute and as our personal history with the property revealed they are. Thank you for your consideration.

Sincerely,

Kathleen and Skip Fraas

610 Washington Avenue

Cape Charles, VA 23310

Courtney Fraas
34 Bridgeton Drive
Cape Charles, VA 23310
courtneyhelenfraas@gmail.com
(443)745-0145

April 5, 2025

Cape Charles Board of Zoning Appeals
Town of Cape Charles
2 Plum Street
Cape Charles, VA 23310

Dear Members of the Board,

I am writing to express my strong support for Emily and Greg Gentry in their appeal to rent out the independent dwelling located behind their primary residence here in Cape Charles.

While I understand that current zoning regulations typically require homeowners to rent out the main house for short-term rental, Emily and Greg's situation is unique and deserves special consideration. Their independent dwelling has its own physical address and is billed separately for water usage, distinguishing it from traditional accessory units and making it functionally more like a standalone home.

Beyond the unique characteristics of the property itself, Emily and Greg are full-time residents and active local business owners who are deeply committed to the Cape Charles community. They consistently contribute to the town's vibrancy and economy, and they care for their property with the utmost attention and respect.

Approving their request to rent out the independent dwelling would not only help support their family but also provide a high-quality housing option in Cape Charles—without detracting from the character or integrity of our neighborhood.

Given their exceptional circumstances and ongoing contributions to the community, I respectfully urge the Board to approve their appeal and grant them the allowance to rent this independent dwelling.

Sincerely,
Courtney Fraas

Cape Charles, Virginia
April 5, 2025

The Board of Zoning Appeals
Cape Charles, Va.

Dear Board Members;

My name is Ned Barham. My wife Penny and I live at 629 Jefferson Avenue in Cape Charles. This letter is in support of short-term rentals in Cape Charles. Our neighbors Emily and Greg Gentry are in the process of building a beautiful home with a smaller cottage on Jefferson Avenue. They are friendly and responsible neighbors that we have been fortunate to get to know.

It has come to our attention that the Gentry's would like to be able to rent the smaller cottage located on their property as a short-term rental. We are in support of allowing this to proceed. We see nothing but a positive situation with the landlord located on the same property as the renters. We have full confidence in the Gentry's contributing to and following through with making Jefferson Avenue a friendly, positive place to live.

Sincerely,

Ned and Penny Barham

Katie Nunez

From: Christopher A. Pocta <cpocta@wolriv.com>
Sent: Sunday, April 6, 2025 8:12 PM
To: Katie Nunez
Cc: Katie Nunez
Subject: FW: Support for Gentry Board of Zoning Appeals APPEAL2025-01

Katie,

Please find attached the letter in support form Mr. Granger re: the Gentry's appeal on Tuesday.

Respectfully,

Chris

Christopher A. Pocta, Esq.
WOLCOTT|RIVERS|GATES
Attorneys at Law
200 Bendix Road, Suite 300
Virginia Beach, VA 23452
D: (757) 687-3662 O: (757) 497-6633 | F: (757) 554-0248
www.wolcottriversgates.com
cpocta@wolriv.com

From: Jim Granger <shputz8@gmail.com>
Sent: Sunday, April 6, 2025 6:31 PM
To: Libby Hume <clerk@capecharles.org>
Cc: Emily Gentry <yourhomegirl90@gmail.com>; Christopher A. Pocta <cpocta@wolriv.com>
Subject: Support for Gentry Board of Zoning Appeals APPEAL2025-01

Ms Hume - please pass to members of Board of Zoning Appeals, Town Council, Town Staff, and others as appropriate

All,

Bottom line: I support Greg and Emily Gentry's request for a variance to allow short term rentals in their smaller house.

As the second-closest full time resident to the Gentry's property at 542 Jefferson Avenue, a property that I pass at least seven times every day while walking our dogs, I'm probably the person most impacted by their request to use their smaller house on the property as an STR, and I support their request. As you see in the packet, that property has a complex history. I'm going to set that aside and just speak to the issue and why I feel a variance should be issued.

The Gentrys are full-time residents of the Cape Charles Historic District. Considering how few full time residents are left in the Historic District, I feel we should accommodate them as much as possible. If the

plot of their property had a line in the middle of it, there wouldn't be an issue. As currently ruled, it's permissible to rent the main house, a potentially large STR that would continue the STR issues that exist throughout the Historic District, which I normally vigorously oppose. They are asking to rent their smaller house. I understand that it's classified as an ADU, but realistically, it's not. It's not a garage with a furnished attic, it's a small two bedroom house. It's a limited, perfect reasonably priced STR for a single family of 4-6 people, the type I love to see in Cape Charles. With the Gentrys living in the larger house, the landlords are on-site - not absentees in Northern VA, Colorado, or wherever. That will prevent the typical STR issues that are the bane of life in the Historic District. They don't want to rent the small house as a long term rental because they have a lot of family that's reasonably close that comes to stay with them. I'm sure you've heard that story before - I've met many of those family members. They couldn't kick out long term renters to accommodate their family, so a STR is a logical choice.

The Gentrys are committed to Cape Charles as full-time residents. The Board of Zoning Appeals exists so that reasonable people can take an overall look at the entire situation and make exceptions to the rules as necessary. I feel that the Gentry's situation is unique within the Historic District and is deserving of a variance. I strongly support their appeal.

Respectfully,
Jim Granger

524 Jefferson Ave
Cape Charles, VA

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B. VAR2025-01: Bay Creek Resort, LLC Variance

1. I. Reese Smith, Jr. of Beacon at Magnolia Park, LLC – adjacent property owner

BEACON
CUSTOM HOMES

March 4, 2025

Re: Variance request for fence height at 111 Palmer Way

Dear Members of the Cape Charles Board of Zoning Appeals,

As the owner of the adjacent parcel located to the West of the above referenced property, please allow this letter to serve as our notice that we fully support the zoning variance application to be considered on April 8th, 2025.

This owner has no objection what so ever to the applicant's request for a variance for a fence over 6' tall.

Thank you.

I. Reese Smith, Jr.
Managing Member / President
Beacon at Magnolia Park, LLC.

P O Box 6897, Virginia Beach, Virginia 23456 *Office: 757-390-4241*

C. VAR2025-02 thru 11: Dreams by the Water Variances

1. Devon and Linda Johson, 2 Bay Vistas Way
2. Drs. Fabien and Shashi Baksh, 4 Bay Vistas Way
3. Peter Alpern, 3 Bay Vistas Way
4. John and Antoinette Payne, Lot 0 Baby Vistas Way
5. Nancy & George Proto, 607 Pine Street

Katie Nunez

From: Linda Johnson <teamdevonlinda@gmail.com>
Sent: Tuesday, April 1, 2025 8:42 AM
To: Katie Nunez
Cc: Devon Johnson
Subject: Variance Application from Chris Larmore, Developer of Dreams by the Water

Dear Ms. Nunez: My wife and I are formally objecting to the 10 ft variance that the developer is requesting. Our property is located behind this development and are acutely aware of the harm this variance will cause.

Ms Nunez's memorandum to the Board of Zoning Appeals states that after a considerable amount of discussion on the subdivision requirements for this property a preliminary plat was submitted in June 2021. The town approved the preliminary plat onJuly 5, 2022. The preliminary subdivision plat was designed to comply with the existing zoning regulations.

The developer has indicated that the setbacks and the lot configuration have hampered the style and size of a house on each lot and most importantly The Rate of Return is no longer feasible!

We appreciate the developers honesty that it's about the money and the variance will allow them to make more money.

The developer would and should have known about his building envelope and any encumbrance before they became a part of this project. The developer then admits in their filing that they are seeking relief for a condition that existed when they purchased the property.

The developer states that by granting this relief it will not be harmful to others. You are looking at doubling the size of the houses. See attached the attachment. The houses will be twice as large, the storm water runs off will double the distance between the homes will be closer than they already are. Stacking houses does nothing for the character of neighborhood other than to increase the developer's rate of return.
There will be harm!

The Town previously was deliberate when they considered and approved this project in 2022. The desire of the applicant Rate of return should not carry the day. We do not believe anything should change from the original approved subdivision plat that the town approved in 2022 and again express our objection to the consideration of this variance application.

Regards, Devon and Linda Johnson

2 Bay Vistas Way

Cape Charles, VA 23310

<image001.jpg>

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Katie Nunez

From: Fabien and Shashi Baksh <bakshfsnsdd@gmail.com>
Sent: Sunday, April 6, 2025 6:08 PM
To: Katie Nunez
Subject: Dreams by the Water Application for Variance

A. RE: 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:
   b. Lot 1 (TM #83A1-21-1) –Variance of 10 ft. to front setback and 10 ft. to rear setback.
   c. Lot 2 (TM #83A1-21-2) – Variance of 10 ft. to front setback and 10 ft. to rear setback.
   d. Lot 3 (TM #83A1-21-3) – Variance of 10 ft. to front setback and 10 ft. to rear setback.
   e. Lot 4 (TM #83A1-21-4) – Variance of 10 ft. to front setback and 10 ft. to rear setback.
   f. Lot 5 (TM #83A1-21-5) – Variance of 10 ft. to front setback and 10 ft. to rear setback.

Dear Zoning Board / Ms Nunez,

We are the owners of 4 Bay Vistas Way, adjacent to the above lots 1-5 of Dreams by the Water.

Our neighbor, the Johnsons, and we will be directly impacted by this application for variance, despite repeated mentions in the agenda documents that either we will not be impacted or will be positively affected. We were never contacted about this, nor was our opinion sought.

We purchased our home in 2018 as a vacation home, and we plan to eventually retire there. The reasons for our choice of this property in Cape Charles include -
1. The unique location features a bayfront property with water views stretching as far as the eye can see, including a deeded beach.
2. The quiet and historic town of Cape Charles, with well-developed zoning plans and controlled growth, to preserve the town's character, is a perfect fit for us. We are not fans of busy beach towns, as our daily lives as practicing physicians leave us yearning for a quiet getaway location, which Cape Charles provides.
3. The absence of "too-close" neighbors leaving us with our sense of space and privacy.

We have read the application for variance by Dreams by the Water, and while we are sympathetic to their need to see a return of investment, this should not be at our expense, especially as the property was purchased with the current zoning ordinance in place. A change in the rear setback for Lots 1 through 5, from 25 to 15 feet, will place five large houses that are closely situated directly adjacent to our two properties (the Johnsons and ourselves). This will undoubtedly have a negative impact on the enjoyment of our properties. Contrary to Dreams by the Water's suggestion that this will not reduce but increase our property value, we believe it will make our homes less saleable and, in fact, decrease their value. There are many beachfront communities that are busy and densely packed; people come to visit and buy in Cape Charles specifically for

the opposite experience. The last thing we need are densely packed houses right up against our property, regardless of how large and expensive they may be.

We specifically object in no uncertain terms to the decrease in the rear setback from 25 ft to 15 ft for lots 1, 2, 3, 4 and 5. This variance will negatively impact our property value and the enjoyment of our homes.

Sincere Regards,
Drs. Fabien and Shashi Baksh
4 Bay Vistas Way,
Cape Charles,
717-368-4740

Peter Alpern
3 Bay Vista
Cape Charles, VA 23310

April 7, 2025

Cape Charles Zoning
2 Plum Street
Cape Charles, VA 23310

To whom it may concern:

This letter is intended to be read at the April 8, 2025 meeting of the Board of Zoning Appeals and is regarding the "Dreams by the Water Subdivision"

To wit:

- My wife Elizabeth and I own the house at 3 Bay Vista in the Bay Vista Planned Unit Development in Cape Charles, VA.
- The Bay Vista PUD is currently being encroached upon by the Cape Charles Planning Department from the East by a variance requested by "Dreams by the Water" to reduce the back yard set back by 10 feet, and from the West by a ridiculous and inappropriate plan to rezone the Seabreeze Apartments so that they can be "fix and flipped" by another developer.
- On page 2 of the "Informal Discussion" memo dated March 4, 2025 regarding the Dreams by the Water subdivision, Katie Nunez notes:

  "The developer has indicated that the setbacks and the lot configuration have hampered the style and size of a house on each lot and the rate of return is no longer feasible."
- <u>It can not possibly</u> be the business of the Government of Cape Charles to enhance the investment returns of a land investor. Further, returns on land investments MUST NOT be enhanced by the Cape Charles Planning Department at the expense of neighboring tax paying property owners.
- The 25' rear yard setback required by homes in "Dreams by the Water" is no different than the setback required of all similarly zoned properties in Cape Charles.
- Because 25 foot setbacks are required of all similarly zoned homes in Cape Charles, enforcing the setback will ensure that the Dreams by the Water homes are in line with all neighboring homes in Cape Charles.

- If the developer is unable to yield a desired rate of return by building and selling houses that comply with the town's codes and regulations, then perhaps the investor paid too much for the land. This mistake by the investor can not become the burden of neighboring homeowners by giving up free space required by current setbacks.

Please enforce the 25 foot rear yard setback on all parcels in the Dreams by the Water subdivision, and protect my investment in Cape Charles, and that of my Bay Vista neighbors.

Sincere regards,
Peter Alpern
908-868-8350

Katie Nunez

From: John Payne <johnpayneuptown@gmail.com>
Sent: Monday, April 7, 2025 3:12 PM
To: Katie Nunez
Cc: Commissioner Bill Stramm; Antoinette (Toni) Payne
Subject: Board of zoning Appeals Discussion Agenda item 6 a

Unfortunately we are unable to attend this meeting and hope this email wil be read on our behalf:

I would like to introduce myself John, and my wife Antoinette, as the land owners of lot 0 Bay Vista Way. We have owned this lot for six years with plans to build our house on the lot. We recently had a site plan prepared by MAS of Virginia Beach, and we recognize the difficulty of building within the constraints of an approved Site Plan. Quite frankly when I saw the original sign for 10 lots on the adjacent property, I had difficulty understanding how this parcel could yield 10 lots. Now seeing the package for your agenda discussion I realize most lots are the minimum lot size of 5,600 sq ft. maximizing the yield for this subdivision, and that appears to now impact the builder's return. That is a market force and not a typical consideration in adjustment of requirements. My lot in the adjoining subdivision is over 9,566 sq ft feet and quite frankly, with the setbacks it certainly constrains the design. We therefore request that the discussion to change the setback requirements be rejected as currently proposed. The change of the rear setback from 25ft to 15ft in this situation is in my opinion inappropriate. The constraints of the culdesac should be reconsidered, and a reduction of units, and or a possible reduction of front setbacks, would allow a more appropriate lot size and building envelopes. Thank you for your consideration, of our thoughts in advance of your deliberations.

Sincerely,

John and Antoinette Payne

11219 Lake Jackson Drive
Manassas Virginia 20111
johnpayneuptown@gmail.com
phone 571-332-8106

Sent from my iPhone.
John Payne

April 7, 2025

Comment to BZA Opposing Dreams by the Water Exceptions Requested

Ms. Nunez,

This note is in reference to developer's and owner's appeal to the Zoning Board of Appeals setback exceptions to the lots on Dreams by the Water development as discussed at the March 11, 2025, BZA meeting.

While the setback exemptions being requested would not directly impact us or our property we are writing to object strongly to them.

We are frustrated by the Town's degree of inconsistency in applying the town building codes/ordinances/approving variances. We experienced this ourselves on a number of occasions. Exceptions can be given for hardships. There is no hardship that we can determine if this is not granted.

We had to get a variance not to have our porch cover the width of our house - it was approved because our lot is very wide. No houses were on our block at the time of the request. Subsequently two new homes were built on Pine Street which were not required to have porches at all other than very small landings - certainly no way near the 2/3 or 3/4 or full porch like the town HRB requires.

We would have liked to have had our house wider (extend closer to Washington), but were told that it needed to align with the house across the street and other homes down Washington because of setback requirements. Consequently, we have a narrow living room which was necessary to accommodate the other rooms we needed. We were told the "hardship" argument was not going to fly because the lot was big enough to build a home. **A hardship cannot be a "personal" one.** We were told to build a smaller house. We did.

The justification for approving the exceptions given were:

1)It's the town's fault for approving the lots (they were inexperienced or didn't know what they were doing or something like that). *Since the approval has no created a hardship this argument is specious.*

2) It's the developer's fault for not catching it . *This cannot be attributed to the Town. The Town is not responsible for any part of the development.*

3) It's the owner's fault because they were not aware when they bought the property. When we bought our lot *we requested the exception before we purchased the lot. It wasn't that difficult to obtain a plot plan with the buildable footprint for a house with setbacks noted.* It was the responsibility of the owner to understand any restrictions on development

We do not know how there can be surprises when making such a costly purchase? But to ask for exceptions because they either didn't' know or want a bigger house does not seem justifiable. The setbacks are the setbacks and they exist for a reason. I am hoping that the BZA will not approve just for the asking.

Granting an exception for any of these reasons sets a precedent that will weaken the Town's ability to control development in the future. All a developer would need to say hereafter is "I forgot," or " I didn't know". Where do you draw the line? This blurs if not completely eliminating the line. What if others come before the board for a "hardship" exception because they want a bigger house? or no sidewalk? or any other personal reason they might have. How do you say "yes" to some and "no" to others?

People make decisions and on is probably the largest investment of our lives based upon town codes and ordinances. To change these ordinances, codes and laws to accommodate what people would like to do rather than following the law is a serious disservice to those of us who have made these investment decisions.

We urge the BZA to deny this exception. Exemptions cannot be granted based upon a "personal" hardship." Who wouldn't able to come up with a "personal" hardship if they wanted an exception. It's a very risky, unfair precedent.

Sadly, they must have known - or should have known - the limitations of the lot when they purchased their property.

Nancy Proto
George Proto
607 Pine Street

May 6th, 2025 Minutes

Municipal Corporation of Cape Charles

Board of Zoning Appeals
Public Hearing and Regular Meeting
Cape Charles Civic Center
May 6th, 2025
10:00 a.m.

At approximately 10:00 a.m., on May 6th, in the Cape Charles Civic Center, Chairwoman Dolores Blackburn, having established a quorum, called to order the Board of Zoning Appeals Regular Meeting. Board members present were vice-chair Laura Weigand, Members Elise McMath, Bill Stramm, and Pete Baumann.

Town Staff in attendance were Planning/Zoning Administrator Katie Nunez, Town Manager John Hozey, incoming Town Manager Rick Keuroglian, 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.

New Business

A. ***Discussion with Town Manager John Hozey regarding Greg and Emily Gentry's application 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 (STRs) 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 (ADU).***

Before Town Manager Hozey began his presentation, he told the Board of Zoning Appeals how much he appreciated their work and the time they devoted to the Town.

Mr. Hozey then discussed the roles and process of the Board of Zoning Appeals (see attached).

Mr. Hozey then went on to explain to the Board that all of this meant that they have begun straying from their lane, and how it is not their role to champion a specific applicant, but to follow the rules and laws of the Town, and to try and usurp that role from Town Council is highly inappropriate.

Afterwards, Mr. Hozey then turned to the facts of the Gentry appeal. He explained that the Gentrys are allowed to have an ADU that does not meet

the definition of an ADU because it was classified as a legal, non-conforming use under the Zoning Ordinance, and if it is not an ADU, then what other definition, authorized within the ordinance, are the applicants suggesting?

He then mentioned that the applicant and Board continued to use the term "cottage" and how there is no definition of cottage in the Zoning Ordinance.

Next, Mr. Hozey went on to explain that within the Gentry application, they want to have 509 Nectarine zoned as a secondary dwelling on their lot, and how it is already classified as a secondary dwelling, as that is the definition of an ADU.

Finally, Mr. Hozey explained to the Board that the entire purpose of the appeal was to use the secondary structure as an STR, in direct violation of the ordinance. The Board of Zoning Appeals cannot approve something that is specifically prohibited by law.

After finishing his presentation, Mr. Hozey explained that the Zoning Administrator and he spent a lot of time trying to come up with a solution for the applicant, however, they couldn't as every idea violated the intent of the Zoning Ordinance and sometimes the answer is just no.

Member Weigand then told Mr. Hozey that the thing that makes this case different from others is the acknowledgement of two separate addresses on the lot. Mr. Hozey then explained that there is nothing within the Zoning Ordinance itself that grants special privileges to having a second address. He then mentioned that when the Board began talking about granting the applicant a variance, it is not the role of the Board, and they do not understand Zoning like the Zoning Administrator, which is why they are required to defer to the Zoning Administrator. When the Board suggests illegal variances, they make it worse.

He then spoke on how the law clearly states that primary residences must have 5,600 sq. ft., and they cannot subdivide the lot, as the ordinance also states that lots cannot be subdivided.

Member Weigand then mentioned that this lot is very similar to a lot on Madison and Nectarine. Mr. Hozey explained that the split happened before zoning, and is a legal, non-conforming use. The Town does not cite a legal, non-conforming use as a reason to use it in other places. It does not set a precedent.
Mr. Hozey then mentioned that when the Board next meets, the Board will take the application off the table, and if they can find legal evidence that the Zoning Administrator got it wrong, then place it into the record. If the board cannot find legal evidence that supports the applicant, then they must deny the appeal.

DRAFT

Vice-Chair Weigand made a motion to adjourn the Board of Zoning Appeals Regular Meeting at 10:19 a.m., seconded by Member Stramm. The motion was approved unanimously.

_____
Chairwoman Blackburn

_____
Katie Nunez
Director of Planning/Zoning Administrator, Subdivision Agent

DRAFT

Board of Zoning Appeals Discussion
(05/06/25)

Roles of the Board of Zoning Appeals (BZA) - (15.2-2309)

1. To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of local zoning ordinances or applicable state codes

2. To grant a variance as defined in local zoning ordinances or applicable state codes

3. To hear and decide applications for interpretation of the zoning district map, where there is any uncertainty as to the location of a district boundary

4. To hear and decide applications for special exceptions as may be authorized in the ordinance; or to revoke a special exception previously granted by the board if the board determines that there has not been compliance with the terms or conditions of the permit

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Nowhere in the proscribed responsibilities does it say that the BZA has the authority to suggest alternatives beyond the details of the matter before them in an effort to solve the appellant's problem. The BZA's responsibility is to focus on the materials and evidence presented, and an appropriate interpretation of the applicable laws.

In the matter of a zoning determination appeal, the BZA must limit their deliberations and decisions to only the orders, requirements, decisions, or determinations of the zoning administrator that have been appealed (15.2-2309.1).

In doing so, the BZA must presume the zoning administrator to be correct. The entire burden of proving the zoning administrator wrong is the exclusive responsibility of the appellant (15.2-2309.1). It is therefore inappropriate for the BZA to try and find fault with the zoning administrator's interpretation, outside of evaluating the evidence provided by the appellant, and the appropriate provisions of law. To do otherwise could be tantamount to the BZA presuming the zoning administrator is incorrect, in direct violation of state code.

If the appellant cannot provide a convincing legal argument to counter the zoning administrator's ruling, the appeal should be denied. If the appellant can provide a compelling legal argument to support an error on the part of the zoning administrator, the BZA should approve the appeal; but must cite the applicable provisions that the zoning administrator got wrong, why it was wrong, and include that into the record of their decision.

The BZA must always act as a dispassionate decision-making body, despite any personal opinions regarding the laws or procedures being evaluated; or despite any sympathies they might hold for the appellant.

The TOCC BZA Rules of Procedure (section 6-2) and TOCC ZO (section 2.6.4.B) states that, "in exercising its powers, the Board may reverse or affirm, wholly or partly, or may modify any order, requirement, decision, or determination appealed"; However, this authority is limited to only the ruling of the zoning administrator, and does not apply to the zoning ordinance itself.

It is human nature to want to help people, but it is not within the BZA's authority to ignore or modify any provision of existing law. It is the role of the Town Council, not the BZA, to address any perceived issues with any existing laws. The BZA must therefore interpret the law as written.

Variances are defined as only "reasonable deviations" from the zoning ordinance (15.2-2201); meaning the BZA's authority to deviate from the ordinance is limited.

Variances may only be provided, "notwithstanding any other provision of law" (15.2-2309.2); meaning the BZA cannot override, change, or ignore other provisions of the zoning ordinance when approving a specific request.

The bar to approve a variance is very high and must meet ALL the listed requirements in TOCC ZO Section 2.6.2. Additionally, hardships being alleviated by a variance must be determined to be of a very significant nature, and not provide a special privilege or convenience not available to others in a similar situation.

It is illegal for members of the BZA to have ex-parte communications with the appellant or the appellant's representative that would include discussions of the facts or law relative to a particular case before them (15.2-2308.1.A). This prohibition is very important to avoid collusion or the perception of impropriety.

Staff Report (05/13/2025)

BOARD OF ZONING APPEALS

Meeting Date: May 13, 2025
Item #5A: APPEAL2025-01 – Appeal of Zoning Administrator's Decision Application
Date: May 7, 2025
Prepared by: Katie H. Nunez, Planning Director & Zoning Administrator

APPELLANT: Greg & Emily Gentry

SITE ADDRESS: 542 Jefferson Avenue

TAX MAP: 83A1-1-141

LOT SIZE : 5,600 sq. ft.

TYPE OF APPLICATION: APPEAL2025-01 – Appeal of Zoning Administrator Decision

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

ZONING ORDINANCE: Section 2.6.4

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 Previous Meeting

On April 8th, 2025, the Board of Zoning Appeals heard an application from Greg and Emily Gentry appealing a decision from the Zoning Administrator, which provided a Zoning Determination concerning 542 Jefferson Avenue that stated:

a. The Accessory Building is a legal, non-conforming use as an Accessory Dwelling Unit (ADU), and Short-Term Rentals (STRs) are not permissible in the ADU;
b. This lot does not have 2 principal houses but a main house and an ADU.

After hearing the staff report, testimony from the applicant and their attorney, Christopher Pocta, along with comments from the public, the Board of Zoning Appeals deliberated on the case for roughly an hour and forty-five minutes.

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

It was clear that after some time, the board would not be able to come to a consensus agreement on the appeal application before them. As there was a full docket of items to get through, Planning/Zoning Administrator Katie Nunez suggested tabling the application until the board could meet with the Town Manager.

The board agreed, and Chairwoman Blackburn asked for a motion to table the appeal application.

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.

Staff Report:

After tabling the appeal from the April 8th, 2025 Board of Zoning Appeals Meeting, a motion needs to be made to take it off the table to continue deliberations on the appeal application.

Discussion Point(s):

A. Has evidence been provided by the appellant that 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(s) for BZA Consideration

If the appellant *did* provide enough evidence that the Zoning Administrator was incorrect, the following motion should be read:

A. Motion to approve the Gentry's appeal predicated upon the fact that the appellant provided sufficient evidence (list ordinance sections) that proved the Zoning Administrator's application of the Zoning Ordinance was incorrect. [BZA MEMBERS WILL NEED TO SPECIFICAL STATE WHAT SECTIONS OF THE ZONING ORDINANCE WERE WRONG AND IN WHAT MANNER THEY WERE WRONGLY APPLIED BY THE ZONING ADMINISTRATOR]

If the appellant *did not* provide enough evidence that the Zoning Administrator was incorrect, the following motion should be read:

A. Motion to uphold the Zoning Determination.

Staff Report (4/8/2025)

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

SITE ADDRESS: 542 Jefferson Avenue

TAX MAP: 83A1-1-141

LOT SIZE : 5,600 sq. ft.

TYPE OF APPLICATION: APPEAL2025-01 – Appeal of Zoning Administrator Decision

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

ZONING ORDINANCE: Section 2.6.4

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

Gentry 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	—
Fee	chk #3437 $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: _____

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
ATTACMHMENT 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.