

**Board of Zoning Appeals
Public Hearing and Regular Meeting
Cape Charles Civic Center
May 13th, 2025**

At 10:00 a.m., having established a quorum, Chairwoman Dolores Blackburn called to order the Board of Zoning Appeals Public Hearing and Regular Meeting for May 13th, 2025. Also present were Members Baumann, McMath, Stramm, and Weigand.

Also present were Director of Planning/Zoning Administrator Katie Nunez, Zoning Compliance Officer Jack Steinmayer, Town Clerk Libby Hume, and Town Manager Rick Keuroglian.

There were 3 members of the public in attendance and 9 watching online.

A moment of silence was observed, followed by the recitation of the Pledge of Allegiance.

Consent Agenda

The consent agenda was approved by unanimous consent.

Old Business

- A. *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.*

Chairwoman Blackburn made a motion to take this application off the table. The motion was seconded by Vice-Chair Weigand. Motion was carried unanimously.

The applicant's representative, Chris Pocta, appeared before the Board of Zoning Appeals and provided a recap of arguments previously presented. He clarified that the Gentry's are not seeking to overturn the Zoning Administrator's determination in its entirety, but rather obtain a partial modification allowing them to operate a Short-Term Rental in the ADU – while committing not to rent the main house. He then went on to explain the four primary justifications previously brought up in support of the appeal: (1) a documented history of rental activity in the ADU before

adoption of the Short-Term Rental Ordinance, (2) the unique nature of the property and the circumstances under which the Gentry's acquired it, including the pre-existing violations they did not cause and were actively working to remedy, (3) a nearby precedent at the intersection of Madison and Jefferson involving two structures on a single-lot with an active short-term rental operations, and (4) substantial support from adjacent property owners and the Cape Charles Historic District Civic League.

Chairwoman Blackburn clarified for the record that the smaller structure should not be referred to as a cottage, but an Accessory Dwelling Unit under the Zoning Ordinance, and that per the Ordinance, an ADU should not be designed or built to resemble a standalone house.

The Board of Zoning Appeals then began to deliberate amongst themselves and discussed the following:

Vice-Chair Weigand reported that her independent research found that the property carries two separate property addresses, though both share the same Tax Map ID number, confirming that it is a single undivided lot. She also noted that the county's recordkeeping recognizes the two structures as Building 1 and Building 2. She then acknowledged the complexity of the situation but stated that the property is clearly one lot.

Member Baumann stated that his preliminary inclination had been to deny the appeal request based on his review of the record; he further referenced the applicable legal standard – preponderance of the evidence – as the evidentiary threshold applicable to the Board's review of this application.

Member McMath expressed her view that the structure does not clearly meet the Zoning Ordinance definition of an ADU, noting that the additional second story altered the building's character in a way that did not fit any defined zoning category and that the ambiguity of the application should be resolved by the Town Council rather than the Board of Zoning Appeals. She then acknowledged that resolving the underlying issue is beyond the Board's scope, and that the question that they need to answer is whether the Zoning Administrator applied the ordinance correctly.

Member Stramm noted three key findings that support upholding the Zoning Determination: (1) the property cannot be legally subdivided as doing so would create two non-conforming lots, (2) the applicant's stated goal of having two

principal residences on the property would not be permitted under the Zoning Ordinance, and (3) the structure is an ADU in which short-term rentals are not permitted. He further noted that the applicants retain the ability to rent the ADU as a long-term rental of 30 days or more.

Chairwoman Blackburn stated that while she was uncertain whether she would fully characterize the structure as an ADU, the question before the Board was whether the Zoning Administrator had ruled correctly – and on that question, she agreed that the ruling was correct. She then mentioned to the applicant that the owner may wish to bring the matter to the Town Council, given the property’s unique circumstances.

Zoning Administrator Katie Nunez then added some clarification regarding questions raised by the Board of Zoning Appeals. In response to Member McMath regarding the legal non-conforming use status, Ms. Nunez clarified that the secondary structure had predated the Town’s Zoning Ordinance, making it a legal non-conforming use. She then further noted that the previous owners had occupied the ADU as their primary residence while renovating the main house from 2018 through 2024. She then advised the Board that the legal non-conforming use had run out due to the prior owners occupying it for 6 years. She also confirmed that there was an active building permit on the property since the violation order was enforced.

Chairwoman Blackburn made a motion to uphold the Zoning Administrator’s Determination and deny the appeal application, seconded by Member Baumann. Following the discussion, the Board voted 4-1 in favor of denying the appeal, with Member McMath dissenting.

Motion to adjourn the Board of Zoning Appeals May 13th, 2025 Regular Meeting was made by Vice-Chair Weigand, seconded by Member Stramm. The motion passed unanimously. The Board of Zoning Appeals dismissed at 10:33 a.m.

Chairman Stramm

Zoning Compliance Officer