



TOWN COUNCIL
Special Meeting
Cape Charles Civic Center &
Electronic Communications
June 4, 2020
6:30 PM

This Special Meeting of the Cape Charles Town Council was held with a quorum physically present at the Cape Charles Civic Center and with several participants via video conference in accordance with Code of Virginia § 2.2-3708.2, subsection A.3, resulting from Governor Northam's March 12, 2020 declaration of a state of emergency for the Commonwealth of Virginia arising from the Novel Coronavirus (COVID-19) pandemic. It was deemed impractical and unsafe to assemble all participants physically in one location due to the highly contagious nature of COVID-19.

The purpose of this meeting was to review i) approval of the minutes from the February and March Council meetings; ii) approval of the January, February and March financial reports; iii) hear an appeal of the Historic District Review Board decision for 301 Madison Avenue; iv) recognition of employees celebrating significant anniversaries; and v) updates from the town manager regarding the beach reopening plan and July 4 activities. The meeting was live-streamed on Facebook, as well as video-taped for viewing from the Town's website after processing. Public comments were accepted in writing prior to the meeting. Viewers could also submit their comments via Facebook Live and emails to the clerk.

At approximately 6:30 p.m. Mayor William "Smitty" Dize, having established a quorum, called to order the Special Meeting of the Town Council. Physically present at the Civic Center were Mayor Dize, Councilmen Bannon, Buchholz, Follmer and Grossman, Town Manager John Hozey, Town Clerk Libby Hume, Code Official Jeb Brady, Community Relations Manager Jennifer Lewis, and Police Chief Jim Pruitt. In attendance via Zoom was Vice Mayor Bennett. Councilwoman Holloway arrived at the Civic Center at 6:36 p.m. Also, in attendance via Zoom were Historic District Review Board Chairman Kerry Shackelford and appellant Frank Giardina. There were no members of the public physically in attendance, but there were 31 viewers on Facebook Live.

PUBLIC COMMENTS (on agenda items only):

Town Clerk Libby Hume read a comment submitted in writing from Ms. Jane McKinley. (Please see attached.)

CONSENT AGENDA:

- A. Approval of Agenda Format
- B. Approval of Minutes:
 - i. February 6, 2020 Special Meeting & Executive Session
 - ii. February 20, 2020 Public Hearing, Regular Meeting & Executive Session
 - iii. February 29, 2020 Public Input Session
 - iv. March 5, 2020 Special Meeting & Executive Session
 - v. March 30, 2020 Special Meeting
- C. Approval of Financial Reports:
 - i. January 31, 2020
 - ii. February 29, 2020
 - iii. March 31, 2020

Motion made by Councilman Bannon, seconded by Councilman Grossman, to approve the Consent Agenda as presented. The motion was approved by unanimous vote. Roll call vote: Bannon, yes; Bennett, yes; Buchholz, yes; Follmer, yes; Grossman, yes; Holloway, yes.

SPECIAL MEETING ORDER OF BUSINESS:

A. *Appeal of Historic District Review Board Decision – 301 Madison Avenue:*

Councilman Grossman provided a summary in chronological order as follows: i) The property was situated on a corner lot with a front exposure on Madison Avenue and side/rear on Strawberry Street; ii) The property was listed as a contributing structure in the 1990 National Register of Historic Places as a 1930s brick and concrete block church. However, the applicants had provided evidence that this was not an accurate classification. In the 1930s, a small 540 SF wooden structure was built on the property and used for the original church. In 1947, the building was relocated to the lot next door (lot 149). The current structure was built in 1949 and operated as a church until 1984 when it was disbanded. The building sat unused until 1998 when it was purchased and repurposed into a home. In 1998, an adjoining building was added at the rear of the church for living space; iii) A pre-application meeting was held on March 4, 2020 and the applicants were advised at that time that removal of the chimney would most likely be rejected and an alternative design was discussed. Relative to the rear deck, initially the applicants were looking to expand the existing deck and add a roof, but during subsequent discussions, based on zoning restrictions, the deck height was lowered, and no roof was included. A sketch of the deck was eventually provided and included in the applicants' package; iv) The HDRB meeting was held on April 30, 2020 via electronic communications. The applicants' submittal requested removal of the chimney stating that it was sticking out of the roof of the 1999 addition, was no longer used and was just a hollow structure extending down through the addition into the middle of one of the bathrooms making the bathroom renovation difficult. There were signs of various leakages over the years. The chimney was not visible from Madison Avenue. The chimney was an exterior part of the original church building as shown in historical photographs. The living area addition constructed in later years enveloped the base of the chimney. The HDRB unanimously approved the certificate of appropriateness with conditions that 1) the chimney be retained; and 2) shop drawings be provided for HDRB approval if handrails were added to the deck; v) The letter of appeal was received on May 5, 2020 related to the two conditions imposed by the HDRB; and vi) Zoning Ordinance Article VIII, Section 8.18 was reviewed outlining the authority of the HDRB as well as an excerpt from page 36 of the Historic District Guidelines regarding roofs.

Frank Giardina, the appellant, was given an opportunity to speak and stated the following reasons for his appeal: i) His reasons for appealing the decision regarding chimney removal was 1) 80-85% of the chimney was covered up by the newer addition on the church, including most of the historic part of the chimney. Only about 15% of the original chimney appeared from the roof of the addition; and 2) Because the addition enveloped around the chimney, it was in the middle of a bathroom making it difficult to maneuver in the bathroom. Working around it was a difficult task for the contractors repairing the bathroom; and ii) The deck was on the back of the house attached to the newer addition which was built in 1999. It was visible from Strawberry Street but not from Madison Avenue. He and his wife preferred to build a deck with a more contemporary, nautical-style railing, potentially using a horizontal cable instead of vertical spindles. The HDRB instructed them to use a historic style railing, possible like those on front porches of houses, but that wasn't a style that they wanted.

HDRB Chairman Kerry Shackelford began by stating that the basis for the HDRB's decisions was the fact that the guidelines were extremely clear, with no ambiguity, on these two issues. He went on to explain in detail the board's rationale for the decisions. (Please see attached.)

Mr. Giardina added that the historic value of the building was already jeopardized because the vinyl addition in 1999. The chimney was 85% covered up. He and his wife were trying to live in the house, and it was difficult with the chimney being inside the addition. The HDRB did make it clear that the deck railing had to meet historic guidelines but had approved the COA without a railing and conditioned that if a railing was added, the shop drawings had to be submitted for review and approval. The style of railing was the opposite of what they wanted to install.

Kerry Shackelford responded that he was sympathetic to what the Giardinas wanted to do but the guidelines were there to protect the historic district and it was more reason to make the extra efforts to retain the historic nature of what was there. The HDRB didn't care what happened to the portion of the chimney inside the house.

Council opted to decide on each appeal item separately.

Chimney:

Councilman Follmer stated that he had lived in multiple historic districts and appreciated the needs of the appellant, but chimneys were a pretty standard feature of any historic district. Removal of a chimney changed the profile of the structure. If removal of the chimney was a matter of preference versus a compelling need, he didn't think it met the standard for removal.

Councilman Bannon stated that he looked at the property yesterday and added that the chimney was impressive.

Motion made by Councilman Grossman, seconded by Councilman Bannon, to uphold the Historic District Review Board's decision regarding the chimney. The motion was approved by unanimous vote. Roll call vote: Bannon, yes; Bennett, yes; Buchholz, yes; Follmer, yes; Grossman, yes; Holloway, yes.

Deck Railing:

Regarding the deck, Councilman Buchholz recalled a discussion with representatives from the Virginia Department of Historic Resources who stated that there was some latitude with new additions not having to convey a historic look. As long as the historic portion was unchanged, additions could be made to the structure. Councilwoman Holloway agreed. Councilman Grossman reminded all that the issue at hand wasn't to approve or reject the type of deck railing, but the issue regarding the HDRB having the opportunity to review the style of deck railing.

Motion made by Councilman Grossman, seconded by Councilman Bannon, to uphold the Historic District Review Board's condition requiring the submittal of plans for any deck railing to the HDRB for review. The motion was approved by unanimous vote. Roll call vote: Bannon, yes; Bennett, yes; Buchholz, yes; Follmer, yes; Grossman, yes; Holloway, yes.

B. Recognition of Employees Celebrating Significant Anniversaries:

Mayor Dize stated that both employees were valuable employees in public utilities and continued as follows:

Dan Dabinett – 10 years on May 5, 2020. Mayor Dize stated that he was working for the Town when Dan Dabinett was hired. Dan Dabinett brought something extra to the Town with his mechanical skills. It was hard to believe that it's been 10 years.

Bill Powell – 30 years on June 12, 2020. Mayor Dize stated that Bill Powell had seen a lot of ups and downs during his 30 years. Bill Powell and Gerald Elliott, who celebrated 35 years last year, had a lot of knowledge between them and were very valuable to the Town.

Mayor Dize thanked both Dan Dabinett and Bill Powell for their service to the Town.

C. Town Manager Updates:

i. Beach Reopening Plan:

John Hozey stated that last week, Council gave him until June 5 to reopen the beach which was now ready to open tomorrow as requested. He submitted a plan that was forwarded as an attachment to the Council packet. It was designed to cover the requirements in the Governor's Executive Order 65. John Hozey continued to review the Cape Charles Beach Re-Opening Plan. (Please see attached.)

There was some discussion as follows: i) Cancellation language would be included in the cleaning contract since the Town would most likely not have much warning of future changes to the Governor's mandates; ii) The beach would remain open after 6:00 p.m., but without attendants. The Town could not control the beach around the clock; iii) Jen Lewis was in charge of the attendance program and was keeping a log of pertinent information; iv) There were two porta-potties behind the library – one ADA accessible and one regular unit. The beach bathrooms were also open. Staff hoped to have the mobile unit on Peach Street soon. The planned location was just off the asphalt and would require a small adjustment to the lease with the railroad. The unit would be connected to the Town's water and sewer. It was impractical cost-wise to bring in potable water and pump out the units. The cost to install would be about \$5K, which was an unbudgeted expense. He was working to make things happen, but it would be a couple more weeks. It was noted that there were restrooms available at Central Park and the Harbor as well; v) The Governor's executive order specifically stated that playgrounds and gazebos would remain closed. The Town could reopen the beach, fishing pier, park, and tennis courts, but the gazebo and playground were not permitted to reopen per the Governor. Staff anticipated their reopening in time so included these areas in the scope of work for the cleaning contract. The pavilion at the beach was the only shaded area, so it was assumed that people would use it, but the benches had been removed. Councilwoman Holloway stated that her interpretation of the language regarding pavilions and gazebos were large ones where people congregated, not small ones like those in Cape Charles; vi) The Town offices and library would remain closed for at least a couple more weeks. With the portable bathroom units behind the library, staff didn't see a need for the library bathrooms to be used. There was much discussion regarding porta-potties and the need to have the library bathrooms open to the public with the influx of people in town. John Hozey stated that under normal situations, staff would maintain the library bathroom, but these weren't normal times and he had to consider the safety of the staff, so the library bathrooms were not opening to the public right now; and vii) The libraries on the Eastern Shore were networked and guidance was being received from the Eastern Shore Public Library (ESPL). Since the Cape Charles Memorial Library belonged to the Town, we could override the decisions of the ESPL such as keeping our computer lab open, when the other libraries closed completely to the public.

ii. 2020 July 4 Activities:

John Hozey stated the following: i) It was difficult for us to deal with July 4. It was especially harder for him since he had not been through a Cape Charles July 4 before. He understood it was the premier event for the Town and expressed his concerns; ii) Currently, the July 4 celebration and activities could not be held due to gatherings being limited to 50 people, but July 4 was still four weeks away and things could change; and iii) Chincoteague's Pony Penning was canceled. All other July 4 activities in the area had been canceled. If we were to move forward with July 4 as planned, the Town would be flooded with people which would be difficult to control. He asked Council for guidance and their expectations, adding that Jen Lewis was here this evening to answer any questions.

There was discussion as follows: i) All other localities had canceled their July 4 activities. The Town consulted our fireworks contractor and because of the unusual nature, they were willing to work with the Town and credit the 50% deposit already paid toward next year's event so the Town wouldn't lose any money; ii) Mayor Dize stated that the Town had canceled everything else. People fought for our freedoms and he felt that all the July 4 celebration should move forward as planned – parade, fireworks, and street fair; iii) If the Town canceled the fireworks, people would still come into town to watch Cherrystone's fireworks, which were private; iv) Councilwoman Holloway agreed that people would come into the town regardless of whether we held our fireworks or not, but added that it would be reckless to move forward with all activities and allow everyone from the Eastern Shore and elsewhere to come in without taking any precautions; v) There was discussion regarding the entire country opening back up. It would be prudent to wait two more weeks

to see what happened before making any decisions; vi) Chief Pruitt expressed his concerns. With the beach open, his officers were working extra hours to enforce the requirements there. With everything else going on around the country and in the surrounding areas, his officers are overworked. He received an update earlier today regarding credible threats on the homes of law enforcement officers. He had to be in Town all night protecting the residents, leaving his wife and kids at home; vii) There was some discussion regarding social distancing and the July 4 vendors along Bay Avenue. Jen Lewis suggested spreading the vendors out along the length of Bay Avenue and possibly not allowing alcohol sales. We could also possibly spread out the people lined up along the parade route, but there would be no way to control the crowds for the fireworks; viii) Councilman Follmer stated that he liked to see fireworks, but didn't see where it was logistically possible. The Town typically had 5K people during the day on July 4 and that number increased at night for the fireworks. People would come to Town to watch the Cherrystone fireworks, but they weren't as much of a draw as the Cape Charles fireworks. Fewer people would come into Town if we didn't have fireworks. The more attractions, the more people would be drawn into town; ix) Councilwoman Holloway suggested reaching out to the County and State police for assistance. Otherwise, we needed to block stone road, check addresses and only allow residents into town. Jen Lewis commented that we asked for assistance from the county in the past and we would have to hire off-duty officers. The state police would help direct traffic out of town. Chief Pruitt added that the state police were extremely short-handed with only eight to ten officers on the Shore; x) Councilman Bannon stated that he was 83 years old and in good health. There were many residents in their 80s and 90s who weren't healthy, and he didn't want to further jeopardize their health. He suggested moving the traditional July activities possibly to Labor Day since the Town could not control crowds; xi) Councilman Grossman asked Jen Lewis about the number of calls received regarding the parade. Jen Lewis explained that the calls were from vendors since she didn't require parade participants to register in advance since most participants just showed up for line-up; and xii) Councilwoman Holloway stated that people would still show up for the parade. She saw where they were talking about it on social media.

Mayor Dize stated that he felt the fireworks could probably continue and as it got closer to July 4, other decisions could be made. He asked Council for their preference regarding July 4.

Vice Mayor Bennett stated that he preferred to delay any decision since in two weeks' time, the Governor could lift all restrictions. He would hate to cancel the event before we had to.

Councilwoman Holloway stated that Council needed to establish how things would be handled. She felt that the state would shift into phase 3 by July 4 and the Town needed to be prepared and Council needed to own their decision. A lot of tough decisions were made over the last three months. Council needed to think strategically.

Councilman Bannon stated that if Council wanted to move forward with something on July 4, then maybe the Town could do the fireworks only.

Councilman Grossman expressed his agreement with Councilman Bannon, canceling the parade and the street fair and only holding the fireworks.

Jen Lewis suggested a shortened day with the parade beginning at 2:00 p.m., with a shortened street fair eliminating some of the vendors, followed by fireworks. There was much discussion regarding the parade, requiring advance registrations, not permitting parade participants to throw candy, spreading out the route to allow more room for the crowd, and possibly using the beach attendants to help with the crowd along the parade route.

John Hozey added that we wouldn't be able to achieve the social distancing requirements. We could spread out the vendors, condense the schedule, and prohibit candy being thrown but we would still be overrun by people no matter what we did.

Vice Mayor Bennett stated that regardless of whether we hold or cancel the July 4 events, we would still have a crowd of people here shoulder to shoulder all day.

Councilman Bannon stated that this topic could be discussed all night with no resolution.

John Hozey stated that he would like the Council meetings to get on schedule twice each month. We could wait until the next meeting in two weeks to see what happened. His understanding was that the Governor needed two weeks of trend data to make his next decision. In two weeks, we might know something regarding Phase 3. He asked Council to think about the plans and talk to their constituents. The final decision would be made at the June 18 meeting.

Motion made by Councilman Grossman, seconded by Councilman Bannon, to adjourn the Town Council Special Meeting. The motion was approved by unanimous vote. Roll call vote: Bannon, yes; Bennett, yes; Buchholz, yes; Follmer, yes; Grossman, yes; Holloway, yes.

The meeting adjourned at 7:48 p.m.

Mayor Dize

Town Clerk

**Comments & Information Provided in Writing
June 4, 2020 Town Council Special Meeting**

Jane McKinley

Subject: Tonight's Council Meeting

I see that a discussion of July 4th activities is on the agenda for tonight's meeting and am in hopes that the town will give creative thought to how some of the traditional activities can be held. We know that, regardless of whether or not activities will be available, in all likelihood, the town will be inundated by visitors. And it will be incumbent on all of us to see that proper social distancing and other safe practices are observed. This brings me to the thought of the golf cart parade, especially as I recall images of spectators packed along Bay and Mason. I would like to suggest continuing to hold the parade but to change the route so that it is much longer, winding throughout the streets of the historic district. By lengthening the route, it will allow people to spread out. Perhaps the lead cart will have a sign reminding the crowd to maintain their distance. And maybe there shouldn't be an MC this year introducing the carts which would create a central point of congregation. Thank you for considering my suggestion.

Kerry Shackelford, Historic District Review Board Chairman

Appeal of HDRB decision for 301 Mason Ave

The board's decision to offer a conditional approval for proposed work at 301 Mason Ave, was based on the fact that the chimney and rear deck or porch are both highly visible. We have not been concerned about the appearance of porches or decks on the rear of buildings where they are not visible from the public right of way. This building, being on a corner allows for visibility of the rear porch or deck, as such the design and construction should follow the same guidelines as a front porch.

The parameters for design in construction and repair in the Historic District are covered in the statement below:

Pg. 18 "The guidelines in this publication are based on The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (see the bibliography for citation). They express a basic rehabilitation credo of "retain, repair, and replace." In other words, do not remove a historic element unless there is no other option, do not replace an element if it can be repaired, and so on."

In planning a design for porches or decks that are visible the guidelines state the following:

Pg. 21, No. 3 "Choose a design that relates to the design character of the historic buildings in the area."

Pg. 23, "It is essential that new construction in the Historic District reflect the integrity of design details and materials which help form the District's character."

Pg. 23, "Materials used in new construction should be in units similar in scale to those used historically."

The concept here is to utilize traditional and compatible materials and styles for visible elements, this is simply about the handrail, in this case, as it is so visible from the street. The use of "Richmond" style handrail, or other readily available materials along with compatible pickets is all we are asking. The standard modern approach to deck railings is incompatible with historic examples in the district. In fact a handrail is not necessary in this situation so an easy solution would be to just not put one up.

Further the guidelines are specific about removing historic elements such as chimneys:

Pg. 19, No. 2 "The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided."

Chimneys are an integral aspect often referred to in the guidelines along with other exterior design elements that define the historic character of the district. Removal of them allows for a slow degradation of the overall character of the district and while it is an inconvenience in the interior configuration of the structure it does not restrict the use of the building or pose any risk to health and safety.

These are published and well-known aspects of the guidelines and the board takes its responsibility seriously to utilize them as they are written. The applicant was informed of the position on these areas during the pre-application meeting, and the Board meeting.

**Cape Charles Beach
Re-Opening Plan
(June 5, 2020)**

The Cape Charles Beach is approximately one-half mile long and varies in width with the tide but averages approximately 200 feet. There are seven entrances (no railings) and no dedicated parking areas. Facilities include one public restroom, a "LOVE" sculpture, a gazebo, and one wooden platform overlook.

This plan is designed to fulfill the requirements of Governor Northam's Executive Order 65

Distancing

Beachgoers will be limited to groups of no more than 50 individuals. All groups must be separated by a minimum of six feet. No entertainment or group sporting events will be permitted on the beach.

Three seasonal employees have been hired to be beach attendants. There will be two attendants on duty during the weekends and one during the week between the hours of 9 am and 6 pm daily. *(The hours were set by the Governor.)* Attendant duties:

- Monitor beach for safe distance practice, and other beach codes (i.e. dogs)
- If a problem ensues, contact police officer to handle situation
- Walking or motorized patrols every hour
- Monitor life jacket station and clean after each use

Attendant equipment:

- Shade tent
- High visibility shirts with town logo and reading "Attendant"
- Cooler to provide them with ice and water
- Possible UTV from public works
- Radios to call on duty officer and other attendants

Signage

Signage will be posted at each of the beach entrances, welcoming beachgoers but listing the distancing requirements and prohibitions. Normal signage will return on Route 13. *(50 was now the maximum for group size per the Governor's mandate on June 3. The Beach closed sign had been removed. Although all the repairs had not yet been completed, the fishing pier would be opened. Public Works would complete the repairs in the fall. The materials would be removed tomorrow morning and the new signage would be installed.)*

Cleaning

The primary high-touch areas are the restroom, LOVE sculpture, dolphin sculpture, and gazebo*. A contractor will be hired to clean and sanitize these areas every two hours between the hours of 9 am to 6 pm, seven days per week. A short-term procurement contract has been secured for three weeks while we bid out the remaining portion of this work for the summer. *(An alternate option in the bid packet was for the cleaning of Central Park bathrooms every four hours. Staff would wait until bids were received and costs determined before making any decisions.)*

*Note: The gazebo must remain closed under phase 2 restrictions, but it is hoped this could be allowed under phase 3, so the gazebo was included in the scope of work for the cleaning contractor.

Enforcement

An additional police officer will be scheduled on Saturdays and Sundays, from 10:00 am to 4:00 pm. All other times, the officer on duty will respond. Police officer duties:

- Assist beach attendants when needed
- Patrol beach on ATV every hour on weekends (staggered ½ hour from attendants)
- Assist on duty officer with any other calls for service when needed

Should the beach become overcrowded, every other access point will be closed. The remaining entrances will be manned (with attendants or town staff) to better monitor the flow on and off the beach until overcrowding is mitigated. *(An overcrowding plan was another executive order requirement.)*

Cost to implement

With implementation on June 5 and continuing until September 7, just over 13 weeks (14 weekends):

- Cleaning Contractors
- Beach attendants
- Police officer
- Signage and promotional materials
- Supplies, fuel, misc.
- **Total estimated cost: \$56,000**

(The cost to implement the plan would not be cheap. We wouldn't know the costs until the bids were received. He was working with a budget of about \$55-60K just to maintain the beach, not including the other areas. The Town's share of the available COVID-19 funding through the County was about \$86K. The Town had already incurred thousands of dollars in expenses. He hoped to have enough to include some cleaning in Central Park. The Town received some assistance from Cape Charles Main Street (CCMS) in obtaining 24 hand sanitizer dispensers. Public Works installed them on lamp posts along Mason Avenue, Central Park and at the Harbor. They weren't pretty but were functional and refillable. CCMS Program Director Karen Zamorski had labels that would be put on the dispensers so people would know what they were. Everything would be ready for tomorrow.)