Planning Commission & Town Council

Joint Work Session Agenda

Cape Charles Civic Center – 500 Tazewell Avenue

August 21, 2023

6:00 p.m.

1. Call to Order – Planning Commission
    a. Roll call and establish a quorum

2. Call to Order – Town Council
    a. Roll call and establish a quorum

3. Consent Agenda
    a. Approval of agenda format

4. Order of Business
    a. Presentation by the Planning Director/Zoning Administrator of the process and intent of the proposed Zoning Ordinance Amendments and review of all the proposed changes.

5. Town Council Adjournment

6. Planning Commission Adjournment

PLANNING COMMISSION
STAFF REPORT

Meeting Date: August 21, 2023
Prepared by: Katie H. Nunez, Planning & Zoning Administrator
Date: August 4, 2023
JOINT WORK SESSION: DRAFT ZONING ORDINANCE REVIEW

In 2021, the Town engaged Summit Engineering Services for two scopes of work: 1) Comprehensive Plan Update; and 2) Review and Update to the Town's Zoning Ordinance. Once we completed the Comprehensive Plan work in December 2022, we turned our attention to working on the Zoning Ordinance review and have been diligently working on this over the last 8 months.

The intent of our review of the zoning ordinance, as identified in the Request for Proposals document and contract with Summit Engineering, stated that the intent is to conduct a third-party review of the entire zoning ordinance, identify inconsistencies, streamline categories of zoning districts, produce a current zoning map, and ensure compliance with state law. Additionally, propose recommendations based upon the consultant's practical experience in this matter as it relates to the Town's dimensional requirements in the zoning districts and any outdated development concepts.

This review was approached from these perspectives:

1) Provided Summit Engineering the Town staff's list of issues/items that needed to be addressed to clarify and/or simplify the ordinance, where possible. As part of this review, look at each section for consistency of presentation, formatting, etc., especially within the zoning districts (Article III).

2) Review the proposed amendments based upon the Planning Commission's review of the Berkeley Group Report called "Overcoming Land Use Ordinance Barriers to Housing Development" which was a report commissioned by Northampton County but included a review of each town's zoning ordinance from the perspective of housing regulations and development.

3) Review of the ordinance for compliance with the requirements of the Code of Virginia relative to Zoning Ordinance, Floodplain Ordinance, Chesapeake Bay Preservation Act Ordinance, Stormwater Ordinance, Erosion & Sediment Control Ordinance, Wetlands and Coastal Dune Ordinance, Subdivision Ordinance and Site Plan Ordinance. The state had released an updated model Floodplain Ordinance in July 2017 so, instead of a marked-up Article VI (Floodplain Ordinance) of the Zoning Ordinance, we have taken the model ordinance and tailored it to our locality with a few items highlighted for your consideration.

PLEASE NOTE: the state is in the midst of revising the Stormwater and Erosion and Sediment Control laws which will most likely result in new model ordinances being issued by the State in late 2023 or early 2024 which we will need to take up at that time.

At this time, the bulk of the ordinance review has been completed and is ready for full Planning Commission and Town Council input to determine if the proposed changes are consistent with our intent when we started this process.

The first work session (August 21, 2023 @ 6:00 p.m.) is devoted to reviewing the documents and all the proposed changes at a high-level view first.

The second work session (September 7, 2023 @ 6:30 pm) will be focused on going through a chapter-by-chapter review of the proposed changes.

As noted above, many of the changes are minor and are to bring the ordinance in line with the State Code. I believe the majority of the discussion at the September 7, 2023 meeting will be focused on Article III (Zoning Districts), Article IV (General Regulations. Applicable to all Zoning Districts), and the new Appendix A – Definitions, which is being pulled out of Article II and will now be a stand alone for all definitions relative to the zoning ordinance, unless there were very specific definitions associated with several of the state mandated ordinances (Floodplain, Wetlands & Coastal Sand Dunes).

The Sign Ordinance section, which is contained in Article IV, Section 4.1, is still being reviewed by the Sign Subcommittee of the Planning Commission relative to a proposed model ordinance which was drafted by the Virginia Local Government Attorneys' Association (VA-LGA) in 2016/2017 after a US Supreme Court Case ruling was issued that struck down localities' sign ordinances if they were structured based upon sign content since this was deemed a violation of free speech. This committee is meeting with great frequency and will forward the draft model ordinance with its recommendations/redlines/edits/comments, etc. as soon as possible to both boards and will be added to a future work session agenda item.

Following the September 7, 2023 work session, we will evaluate how far we have advanced in our review of the proposed amendments to determine the future work session meeting calendar and eventually to determine the public hearing roll-out calendar, both with Informational Meetings in advance of the Joint Public Hearings of the Planning Commission and Town Council as well as the actual public hearings themselves.

Your agenda packet is composed of the following documents:

1) Redlined Zoning Ordinance, showing all proposed deletions, additions, and other comments
2) Proposed Model Floodplain Ordinance with revisions tailored for the Town of Cape Charles
3) Redlined new Appendix A - Definitions
4) List of changes proposed in the Zoning Ordinance
5) Cleaned-up Copy of the Zoning Ordinance DRAFT dated 8/4/2023 with all proposed amendments fully incorporated

Attachment 1

Redlined Zoning Ordinance

TOWN OF CAPE CHARLES

ZONING ORDINANCE09371949

ADOPTED JULY 14, 1992

Last Amended on October 20, 2022

REDLINED DRAFT of PROPOSED AMENDMENTS as of AUGUST 4, 2023

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Commented [ADA2]: All internal references are highlighted in yellow. Wait til the very end of the process before checking, then change highlight to green when confirmed correct.

All external (mostly State Code) references are highlighted in cyan. They can be checked any time. Change to green when confirmed correct.

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Put Zoning Map here when we PDF document.

The Zoning Ordinance posted here was last updated in October 2022.

It is hereby certified that this document is a true, updated copy of the Zoning Ordinance to the best of our knowledge and belief. For legal purposes, all copies of the Zoning Ordinance should be verified against the original held by:

Town Clerk
Town of Cape Charles
2 Plum Street
Cape Charles, VA 23310

The material herein is subject to change and will be updated as necessary.

Neither the Town of Cape Charles nor the publisher is responsible for typographic errors.

Mayor

Attest

October 20, 2022 Date

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ARTICLE I

AN ORDINANCE ESTABLISHING ZONING REGULATIONS FOR THE TOWN OF CAPE CHARLES, VIRGINIA, AND PROVIDING FOR THE ADMINISTRATION, ENFORCEMENT AND AMENDMENT THEREOF, AND FOR THE REPEAL OF ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT THEREWITH.

WHEREAS, by Act of the General Assembly of Virginia as provided in Title 15.2, Chapter 22, Article 7 (§ 15.2-2280 et seq.) of the Code of Virginia, as amended, the governing body of any municipality may, by ordinance, classify the territory under its jurisdiction or any substantial portion thereof into districts of such number, shape, and size as it may deem best suited to carry out the purposes of this article and in each district it may regulate, restrict, permit, prohibit, and determine the following:

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A. The use of land, buildings, structures, and other premises for agricultural, business, industrial, residential, flood plain, and other specific uses;
B. The size, height, area, bulk, location, erection, construction, reconstruction, alteration, repair, maintenance, razing, or removal of structures;
C. The areas and dimensions of land, water, and air space to be occupied by buildings, structures, and uses, and of courts, yards, and other open spaces to be left unoccupied by uses and structures, including variations in the sizes of lots
D. based on whether public or community water supply or sewer system is available and used;
E. The excavation or mining of soil or other natural resources.

WHEREAS, zoning ordinances and districts were drawn and applied with reasonable consideration for the existing uses and character of property, the comprehensive plan, the suitability of property for various uses, the trends of growth or change, the current and future requirements of the community as to land for various purposes as determined by the population and economic studies, the transportation requirements of the community, the requirements of housing, parks, playground, recreational areas and other public services, the conservation of natural resources, the preservation of flood plains, the preservation of agricultural and forestal lands, the conservation of properties and their values and the encroachment of the most appropriate use of land throughout the Town.

NOW, THEREFORE, BE IT RESOLVED, by the Town of Cape Charles, Virginia, Town Council for the general purpose of promoting the health, safety, or general welfare of the public and of further accomplishing the objectives of § 15.2-2200 of the Code of Virginia, that the following be adopted as the Cape Charles Zoning Ordinance together with the accompanying maps.

To these ends, the ordinance shall be designed to give reasonable consideration to each of the following purposes:

A. To provide for adequate light, air, convenience of access, and safety from fire, flood, and other damages;
B. To reduce or prevent congestion in the public streets;
C. To facilitate the creation of a convenient, attractive, and harmonious community;
D. To facilitate the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports, and other public requirements;
E. To protect against destruction of or encroachment upon historic areas;
F. To protect against one or more of the following: overcrowding of land, undue intensity of population in relation to the community facilities existing or available, obstruction of air or light, danger and congestion in travel and transportation, or loss of life, health, or property from fire, flood, panic, or other damages;
G. To encourage economic development activities that provide desirable employment and enlarge the tax base;
H. To provide for the preservation of agricultural and forestal lands and other lands significant for the protection of the natural environment;
I. To promote affordable housing; and
J. To protect state water quality standards, including surface water and groundwater.

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

Mayor:_____ Date: _____

Article II General Provisions

Section 2.1 Title

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

Section 2.2 Legislative Intent

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

Section 2.3 Districts Generally

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

R-1	Residential
R-2	Residential Mixed
CR	Residential Multi-Family
C-1	Commercial/Residential
C-2	Commercial-1
C-3	Commercial-2
GBI H-1	Commercial-3
H	General Business/Light Industrial
M-1	Industrial-1
M-2	Industrial-2
OS	Open Space
PUD	Planned Unit Development

Section 2.3.1 Meaning of District Symbols

The letter "R" represents any residential district designation. The letter "C" represents any commercial district designation. The letter "H" represents any harbor district designation. The letter "M" represents any industrial district designation. The term "GBI" is for commercial and/or light industrial district designation, and OS is for the open space designation. The term "PUD" or "PD" represents Planned Unit Development.

The zoning map shall show by an appropriate symbol on the map the existence of conditions and zones and that attach the following regulations and conditions to the zoning on the map. The Zoning Administrator shall keep in the planning office and make available for public inspection a Conditional Index showing all property which is operating under a Conditional Use Permit. The Index shall provide ready access to the ordinance creating conditions in addition to the regulations provided for in a particular zoning district or zone (Section 15.2-2300)

Section 2.3.2 Zoning Map and Amendments to the Zoning Map

A. The locations and boundaries of the districts established by this chapter shall be as shown on the map entitled "Official Zoning Map, Town of Cape Charles, Virginia, 1997," which is hereby declared to be part of this chapter. A certified copy of this map is on file in the office of the Zoning Administrator, and such map is signed by the Mayor and certified by the Town Clerk. All notations, dimensions, and designations shown thereon shall be as much a part of this chapter as if the same were fully described herein.

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

Section 2.3.3 Determination of District Boundaries

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

A. Where district boundaries are indicated as approximately following or being at right angles to the center lines of streets, highways, alleys, or railroad main tracks, such center line or lines at right angle to such center lines shall be construed to be such boundaries, as the case may be.

B. Where district boundaries are indicated to follow a river, bay, creek, branch, or other body of water, such boundary shall be construed to follow the center line at low water or at the limit of the jurisdiction; and in the event of change in the shoreline, such boundary shall be construed as moving with the actual shoreline.

C. If no distance, angle, or curvature description or other means is given to determine a boundary line accurately and the foregoing provisions do not apply, the same shall be determined by the Zoning Administrator using the scale shown on the map. In case of subsequent dispute, the matter shall be referred to the Board of Zoning Appeals, which shall determine the boundary.

Section 2.3.4 Zoning of Annexed Areas

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

Section 2.3.5 Statutory References

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

Section 2.3.6 Validity

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

other than the section so held to be unconstitutional or invalid.

Section 2.3.7 Conflicts Within Ordinance

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

Section 2.3.8 – 50 Reserved

Section 2.4 Administration and Enforcement

Section 2.4.1 Enforcement of Ordinance, Guarantees

A. In accordance with § 15.2-2286(4) of the Code of Virginia, there is hereby created the office of Zoning Administrator. The Zoning Administrator, who may also hold another office in Town, shall be appointed by the Town Council and shall serve under the direction of the Town Manager, who will coordinate department actions and such assistance as may be required to carry out the responsibilities of this ordinance. In the event that the Town Manager is appointed to serve as Zoning Administrator, same shall serve under the direction of the Mayor.

B. The Zoning Administrator shall be vested with all necessary authority on behalf of the Town Council to administer and enforce the provisions of this ordinance, including:
   1. the ordering in writing of the remedying of any condition found in violation of this ordinance;
   2. the bringing of legal action, after approval by the Town Council, to ensure compliance with the provisions of this ordinance, such action to include injunction, abatement, or other appropriate action or proceedings;
   3. in specific cases, making findings of fact and, with the concurrence of the Town Attorney, conclusions of law regarding determinations of rights accruing under Section 2.5 of this ordinance and § 15.2-2307 of the Code of Virginia.

C. Pursuant to § 15.2-2299 of the Code of Virginia, the Zoning Administrator shall have all necessary authority on behalf of the Town Council to administer and enforce conditions attached to a rezoning or amendment to a zoning map, including:
   1. the ordering in writing of the remedy of any noncompliance with the conditions;
   2. the ordering in writing of the remedy of any noncompliance with the conditions;
   3. the bringing of legal action, after approval by the Town Council, to ensure compliance with the conditions, including injunction, abatement, or other appropriate action or proceeding; and
   4. requiring a guarantee, satisfactory to the Town Council, in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions, or a contract for the construction of the improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee shall be reduced or released by the Town Council, or agent thereof, upon the submission of satisfactory evidence that construction of the improvements has been completed in whole or in part. Failure to meet all conditions shall constitute cause to deny the issuance of any of the required use, occupancy, or building permits as may be appropriate.

D. The Zoning Administrator shall respond within 20 days of a request for a decision or determination on zoning matters within the scope of his or her authority unless the requester has agreed to a longer period.

Section 2.4.2 Permits (revised 2/11/2010 – A.4. added)

A. Building Permits
   1. No building or structure shall be erected, constructed, altered, moved, converted, extended, enclosed, or enlarged without the owner first having applied for and obtained a zoning clearance for a building permit from the Town's Zoning Administrator. Such zoning clearance shall be obtained prior to the application for a building permit from the Cape Charles Building Department. Nothing herein is intended to prevent normal maintenance, which does not require a building permit.
   2. The Zoning Administrator shall certify whether the proposed use, structure, alteration, or enlargement is or is not in conflict with the provisions of this Chapter. If such proposal is in conflict with the provisions of this ordinance, the Zoning Administrator shall refuse to issue such zoning clearance for a building permit.
   3. The fee for a building permit shall be governed by ordinance.
   4. Pursuant to the authority contained in § 15.2-2286.B of the Code of Virginia, prior to the initiation of an application for a Conditional Use Permit, variance, rezoning or other land disturbing permit, including building permits and erosion and sediment control permits, all delinquent real estate taxes owed to the Town against the property shall be paid in full.

B. Certificate of Occupancy
   1. A Certificate of Occupancy shall be required to authorize any of the following:
      a. occupancy of a building after construction;
      b. any enlargement, extension, or alteration of a building to change from one use to another;
      c. any change in the use of a non-conforming building or use.
   2. Application for Certificate of Occupancy shall be made with the Cape Charles Code Official and a copy shall be sent to the Cape Charles Zoning Administrator by the Cape Charles Code Official. The Zoning Administrator shall certify whether the use, structure, alteration, enlargement, or other physical change is in conflict with the provisions of this ordinance. If a conflict is determined, the Zoning Administrator shall refuse approval for issuance of such certificate of occupancy.
   3. Before issuance of a Certificate of Occupancy, for a new structure, the applicant must provide an "as built" elevation drawing confirming that the building, as constructed, is built upon the original elevation above sea level as the lot was before construction. If the site has been built up using fill dirt or other materials, the applicant must provide sufficient evidence to prove that the increased elevation will not negatively impact adjacent properties with stormwater runoff.
   4. The fee for a Certificate of Occupancy shall be governed by ordinance.

Section 2.4.3 Violation and Penalty

A. Violations
   1. It shall constitute a violation of this ordinance for any person, either owner,

agent, or occupant, to commence any actions for which a permit is required by this ordinance without having first obtained an approved permit. Any such permit issued upon a false statement of any fact which is material to the issuance thereof shall be void. Whenever the fact of such false statement shall be established, the Zoning Administrator shall forthwith revoke the same permit by notice in writing to be delivered to the holder of the void permit or, if such holder cannot be found, by posting such notice of revocation in some conspicuous place upon the premises where the violation has occurred. Any such person who shall proceed thereafter with such work or use without having obtained the proper approved permit in accordance with this ordinance shall be deemed guilty of a violation of this ordinance.

2. If the Zoning Administrator finds that any of the provisions of this ordinance are being violated, he/she shall notify in writing the person responsible for the violation, indicating the nature of the violation and ordering action necessary to correct the violation. The Zoning Administrator shall take any other action authorized by law to ensure compliance with or to prevent further violation of this ordinance.
3. Any person, firm, or corporation, whether as principal, agent, employee, or otherwise, violating, causing, or permitting the violation of any of the provisions of this ordinance shall be guilty of a Class IV misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than ten dollars ($10) for each violation and not more than two hundred and fifty dollars ($1,000). Each day such violation shall continue shall constitute a separate violation.
4. Pursuant to § 15.2-2209 of the Code of Virginia, any person, firm, or corporation, whether as principal, agent, employee, or otherwise, violating, causing, or permitting the violation of any of the provisions of this ordinance shall be subject to a civil penalty of not more than $200 for the initial summons and not more than $500 for each additional summons. However, specified violations arising from the same operative set of facts shall not be charged more frequently than once in any 10-day period, and a series of specified violations arising from the same operative set of facts shall not result in civil penalties which exceed a total of $5,000. If such civil penalties total $5,000 or more, the violation may be prosecuted as a criminal misdemeanor.
5. Any official or public employee authorized of this jurisdiction who is vested with the duty of authority to issue permits shall conform to the provisions of this ordinance. Any such permit, if issued in conflict with the provisions of this ordinance, shall be canceled in writing.

Section 2.5 Non-Conforming Uses

Section 2.5.1 Continuation of Existing Non-Conforming Uses and Permits

A. Any legal use, building, or structure existing at the time of adoption of this ordinance or any amendment thereto may be continued even though such use, building, or structure may not conform with the provisions of this ordinance for the district in which it is located. Such use, building, or structure shall be deemed a "Non-Conforming Use." A non-conforming use, building, or structure may be continued provided by the following.
   1. No such non-conforming use, building, or structure shall be enlarged or

increased or extended to occupy a greater area of land than was occupied at the effective date of the adoption of this ordinance, unless said enlargement does not result in an increase in nonconformity or result in a change to a use permitted in the district.

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

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

Section 2.5.2 Restoration of Non-Conforming Use

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

Section 2.5.3 Changes in District Boundaries

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

Section 2.5.6-50 Reserved Section

Section 2.6 Appeals and Variances

Section 2.6.1 Board of Zoning Appeals

A. In accordance with § 15.2-2308 through § 15.2-2314 of the Code of Virginia, any municipality which has enacted or enacts a zoning ordinance shall therefore create a Board of Zoning Appeals. The Town of Cape Charles Board of Zoning Appeals will consist of five members who shall be appointed by the circuit court of Northampton County. Members of the board shall hold no other public office in the municipality except one may be a member of the Planning Commission. The term of office shall be for five years each without pay.

B. Vacancies shall be filled for unexpired terms. The secretary of the board shall notify the court at least thirty days in advance of the expiration of any term of office and shall also notify the court promptly if any vacancy occurs. Appointments to fill vacancies shall only be for the unexpired term. Members may be reappointed to succeed themselves. Members of the board shall hold no other public office in the county or town except one may be a member of the local planning commission.

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

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

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

Section 2.6.2 Powers and Duties of the Board of Zoning Appeals

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

A. To hear and decide appeals from any order, requirement, decision, or determination made by an administrative office in the administration or enforcement of this ordinance;

B. To authorize upon appeal, or original application in specific cases, such variance as defined in § 15.2-2201 of the Code of Virginia from the terms of the ordinance as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship provided that the spirit

of the ordinance shall be observed and substantial justice done, as follows.

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

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

1. That the strict application of the ordinance would produce undue hardship.
2. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
3. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

C. No such variance shall be authorized unless the board finds that the conditions or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

D. In authorizing a variance, the board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee to ensure that the conditions imposed are being and will continue to be complied with.

E. To hear and decide appeals from the decision of the Zoning Administrator. No such appeal shall be heard until after such notice and hearing as provided in § 15.2-2204 of the Code of Virginia.

F. To hear and decide applications for interpretation of the district map where there is an uncertainty as to the location of a district boundary. After notice to the owners of the property affected by such question, and after public hearing with notice as required, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

G. No provision of this section shall be construed as granting any board the power to rezone property.

Section 2.6.3 Applications for Variances

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

Section 2.6.4 Appeals and Procedure of Appeals

A. An appeal to the Board of Zoning Appeals may be taken by any person aggrieved or by an officer, department, board, or bureau of the county or municipality affected by any decision of the Zoning Administrator or Administrative Officer in the administration or enforcement of this ordinance. The decision may be appealed within thirty days thereof by filing a notice of appeal specifying the grounds of the appeal. Said appeal shall be filed with Zoning Administrator and with the Board of Zoning Appeals. The Zoning Administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

B. The board shall fix a reasonable time for the hearing of an application for appeal, give the public notice thereof as well as due notice to the parties in interest, and decide the same within sixty days of the filing of the application for appeal. In exercising its powers, the board may reverse or affirm wholly or in part or may modify an order, requirement, decision, or determination of an administrative officer or decide in favor of the applicant on any matter which it is required to effect any variance from the ordinance. The board shall keep minutes of its proceedings and other official actions which shall be filed in the office of the Zoning Administrator and shall be public record. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses.

C. In accordance with § 15.2-2313 of the Code of Virginia, where a building permit has been issued and the construction of the building for which such permit was issued is subsequently sought to be prevented, restrained, corrected, or abated as a violation of the zoning ordinance, by suit filed within fifteen days after the start of construction by a person who had no actual notice of the issuance of the permit, the court may hear and determine the issues raised in the litigation even though no appeal was taken from the decision of the administrative officer to the Board of Zoning Appeals.

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

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

within thirty days after the filing of the decision in the office of the board.

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

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

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

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

Section 2.6.6 Fee for Appeals and Applications for Variance
Every appeal to the Board of Zoning Appeals from a determination of the Zoning Administrator and every application for a variance shall be accompanied by a fee governed by ordinance set forth by the Town Council of the Town of Cape Charles.

Section 2.6.7 Expiration of Variances
If any variance granted by the Board of Zoning Appeals is not acted on in accordance with the conditions and stipulations required by the Board within a period of 30 months, then the variance shall be null and void and of no force and effect.

Section 2.6.8 Tax Payments Required
Pursuant to § 15.2-2286.B of the Code of Virginia, prior to the initiation of an application for a special use permit, variance, rezoning, zoning clearance, building permit, or other land use permit, the applicant for same must produce satisfactory evidence that any and all delinquent real estate taxes and any fees owed to the Town of Cape Charles which have been properly assessed against the subject property have been paid in full.

Section 2.6.9 Reserved

Section 2.7 Amendments of Chapter and Zoning Map; Conditional Zoning

Section 2.7.1 Amendments Permitted; How Initiated

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

Section 2.7.2 Procedures for Amending Chapter or Zoning Map

A. All proposed amendments or reenactments of this Chapter, and all proposed amendments to the zoning map, shall be referred by the Town Council to the Town's Planning Commission for its recommendations. Failure of the Planning Commission to report within 100 days after the first meeting of the Planning Commission after the proposed amendment or reenactment has been referred to it shall be deemed approval of the proposal by the Planning Commission, unless the proposal has been withdrawn by the applicant prior to the expiration of said time period. In the event of such withdrawal, processing of the proposal shall cease without further action.

B. Prior to issuing its recommendations, the Planning Commission shall hold at least one public hearing after notice of same has been published once a week for two successive weeks in some newspaper having general circulation in the Town. Such public hearing shall be held not less than six nor more than 21 days after the second advertisement appears. Such additional and further notice shall be given as required by § 15.2-2204 of the Code of Virginia. The Planning Commission may make appropriate changes in the proposed amendments as a result of the public hearing. Upon the completion of its work, the Planning Commission shall present the proposed amendments, including revised district maps, to the Town Council together with its recommendations and appropriate explanatory materials.

C. Prior to approving and adopting any amendment to this Chapter or the zoning map, the Town Council shall hold at least one public hearing after giving such public notice as may be required by § 15.2-2204 of the Code of Virginia after which the Council may make appropriate changes or corrections in the proposed amendment. In the case of a proposed amendment to the zoning map, the public notice shall state the general usage and density range of the proposed amendment and the general usage and density range, if any, set forth in the applicable part of the Town's then effective comprehensive plan. No land may be zoned to a more intensive use classification than was contained in the public notice without an additional public hearing after such notice as is required by § 15.2-2204 of the Code of Virginia. Following the required public hearing(s), the Town Council shall act on the proposed amendment in the same manner as adopting any other ordinance.

Section 2.7.3 Appeals

Every action contesting a decision of the Town Council adopting or failing to adopt a proposed amendment to this Chapter or the zoning map shall be filed within thirty days of the Town

Council's decision with the Circuit Court of Northampton County.

Section 2.7.4 Conditional Zoning - Statement of Intent

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

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

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

Section 2.7.6 Conditional Zoning - Enforcement and Guarantees

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

Section 2.7.7 Conditional Zoning - Records

The zoning map shall show by an appropriate symbol on the map the existence of conditions attaching to the zoning on the map. The Zoning Administrator shall keep in his or her office and

shall make available for public inspection a Conditional Zoning Index. The Index shall provide ready access to the ordinance creating the conditions in addition to the regulations provided for in a particular zoning district or zone.

Section 2.7.8 Conditional Zoning - Petition for Review of Decision

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

Section 2.7.9 Conditional Zoning - Amendments and Variations of Conditions

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

Section 2.7.10 Limitation on Reconsideration of Request for Amendment

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

Section 2.8 Condominiums and Cooperatives

Condominiums and cooperative real estate developments must meet all requirements and regulations of the Virginia Condominium Act or Virginia Real Estate Cooperative Act, as appropriate (§ 55.1-1900 et seq.; § 55.1-2100 et seq. Of the Code of Virginia). Condominiums and cooperatives of new construction are permitted only with a special use permit from the Board of Zoning Appeals of the Town of Cape Charles in Districts C-1, CR, R-1, R-2, R-3 and H. Conversion condominiums and cooperatives (governed by the Code of Virginia, § 55.1-1905 and § 55.1-2104, respectively) are permitted by right in all districts in which residential uses are permitted by right or conditional use.

ARTICLE III District Regulations

Section 3.1 Residential District R-1

A. Statement of intent. The intent of this basic zoning district is to provide quiet, medium density, single-family residential development plus provide open areas where similar residential development appears likely to occur. The regulations for this district are designed to stabilize and protect the essential characteristics of the district, to promote and encourage a suitable environment for family life where there are children, and to restrict all activities of a commercial nature as described in Section 3.6-A of this ordinance, known as Commercial District C-1, which states "These commercial activities 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 dwelling currently exist on lots of 5,600 square feet 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: *[revised 10-20-2022]*

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 Article 4.2(J).
3. Home occupations in accordance with Section 4.0.
4. Up to two single electric vehicle charging stations.
5. Uses which are customarily accessory and clearly incidental and subordinate to the principal use and structure.

D. Conditional Uses: The following uses may also be permitted, subject to securing a use permit as provided for in this ordinance:

1. Bed and breakfasts and short-term rentals, provided the following requirements are met:
   a. The owner and family must occupy the residence. The owner and his/her appointed agent are responsible for supervising guests.
   b. The single-family dwelling appearance must be maintained.
   c. Parking should be considered on a case-by-case basis as part of the conditional use application, ensuring adherence to Section 4.5.1 (Table of Parking Standards) using both on and off-street parking areas.
   d. The number of room accommodations shall be subject to

recommendation by the Planning Commission and approved by the Town Council.

2. Outdoor recreation facilities
3. Residential dwelling units in square footage area below the minimum or above the maximum stated in Section 3.1.F.2.

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

Minimum Lot Size	5,600 SF
Minimum Lot Width at Setback Line	40'
Front Setback (minimum)	30'
Side Setback (minimum)	5'
Rear Setback (minimum)	25'
Corner Lot Setback (minimum)	5'
Maximum Height	40' or 2.5 stories
Maximum Lot Coverage	N/A
Minimum Dwelling Unit Size	960 SF
Maximum Dwelling Unit Size	4,500 SF

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 back-yard 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.

Section 3.3 Residential Mixed District R-2

A. Statement of Intent. The intent of this basic zoning district is to provide quiet, medium density residential development with a mixture of single-family and multi- family housing. This district is designed to promote and encourage a suitable environment for family life and to restrict activities of a commercial nature to those which serve the needs of the neighborhood itself.

B. Permitted Uses. The following uses shall be permitted by right: *[revised 10-20- 2022]*
1. Single-family dwellings.
2. Duplex dwellings, provided off-street parking is provided.
3. Condominium dwellings.
4. Cooperative dwellings.
5. Manufactured home dwellings.
6. Churches and places of worship.
7. Parks and playgrounds.
8. Schools, community centers, and public facilities
9. Group Homes per § 15.2-2291 of the Code of Virginia.

C. Accessory Uses. Within the R-2 Land Use Classification, the following accessory uses shall be allowed:

1. Accessory buildings.
2. Accessory Dwelling Units by right in compliance with the requirements of Article 4.2(J).
3. Home occupations in accordance with Section 4.0.
4. Up to two single electric vehicle charging stations.
5. Uses which are customarily accessory and clearly incidental and subordinate to the principal use and structure.

6. Conditional Uses. The following uses are permitted, subject to securing the proper permits:
7. Outdoor recreation facilities
8. Childcare/adult daycare facilities and nursing homes

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

	SF	Patio	Duplex	Zero Lot Line
lot area (sf)	6,000	6,000	10,000	6,000
lot width (ft)	50	50	60	50
lot depth (ft)	85	85	85	85

9. Minimum yard requirements

	SF	Patio	Duplex	Zero Lot Line
front yard (ft)	25	25	25	25
side yard (ft)	15	15 and 5	20	15 and 0
side yard corner	25	25	30	25
rear yard corner	20	20	20	20

10. Maximum building height

	SF	Patio	Duplex	Zero Lot Line
vertical measure	40	40	40	40

11. No more than 50 percent of the lot may be covered by the principal building and accessory buildings.
12. Each single-family dwelling and single-family patio dwelling shall have a minimum habitable area of 1,000 square feet. Each dwelling unit in the duplex shall have a minimum habitable area of 850 square feet.

Section 3.4 Residential Multi-Family District R-3

A. Statement of Intent. The intent of this basic zoning district is to provide for relatively high density, multi-family residential development. This district is designed to promote and encourage a suitable environment for family life and to restrict activities of a commercial nature to those which serve the needs of the surrounding residential neighborhood.

B. Permitted Uses. The following uses shall be permitted by right: *[revised 10-20- 2022]*

1. Single-family dwellings
2. Duplex dwellings
3. Townhouse dwellings
4. Multi-family dwellings
5. Condominium dwellings
6. Cooperative dwellings
7. Group homes
8. Manufactured home dwellings
9. Parks and playgrounds

C. Accessory Uses. Within the R-3 Land Use Classification, the following accessory uses shall be permitted.
1. Accessory buildings
2. Accessory Dwelling Units by right in compliance with the requirements of Article 4.2(J).
3. Home occupations in accordance with Section 4.0.
4. Up to two single electric vehicle charging stations.
5. Uses which are customarily accessory and clearly incidental and subordinate to the principal use and structure, including those listed in Article 3.1(C).

D. Conditional Uses. Within the R-3 Land Use Classification, the following conditional uses may be allowed:
1.
2. Churchesand places of worship
a. Childcare/ adult daycare facilities and nursing homes

E. Lot, Yard, Height, Coverage and Density Requirements. Within the R-3 Residential Land Use Classification, the following standards shall apply:

Minimum Lot Size	1,500 SF
Front Setback (minimum unless otherwise stated)	25'
Side Setback (minimum)	20'
Rear Setback (minimum)	15'
Maximum Height	40'
Maximum Lot Coverage	45%
Minimum Dwelling Unit Size (where applicable)	1,000 SF

1. In addition to the following, townhouse projects must have minimum of three acres.
2. Minimum lot requirements
lot area dwelling units (sf) 1,500
lot width (ft) 20
3. Minimum yard requirements

front yard (no parking in front yard) (ft)	25
front yard (parking in front yard) (ft)	30
side yard between principal structures	20
side yard between end structures and side property line(ft)	20
side yard between units	0
rear yard (no parking in rear yard) (ft)	15

rear yard (parking in rear yard)	30

4. Maximum building height (ft) 40
5. Building coverage. No more than 60 percent of the lot may be covered by the structures.
6. Dwelling size. Each dwelling shall have a minimum habitable area of 1,000 square feet.
7. Maximum development. No more than eight townhouse dwelling units shall be constructed or attached together in a continuous row, and no such row shall exceed 240 feet in length.
8. Off-street parking. Parking shall be provided on the premises. No such parking lot or garage shall be located more than 200 feet from the dwelling unit which it serves.
9. In addition to the following, multi-family projects must have minimum of three acres:

a. Minimum lot requirements

lot area per dwelling unit (sq. ft.)	1,500

b. Minimum yard requirements

front yard (no parking in front yard) (ft)	30
front yard (parking in front yard) (ft)	35
side yard between separate structures	25
side yard between end structure and side property line	35
rear yard (no parking in rear yard) (ft)	20
rear yard (parking in rear yard) (ft)	35

Furthermore, no multi-family unit may be erected on a lot which has a width at the building line of less than 100 feet.

10. Building coverage: No more than 45 percent of the lot may be covered by the structure.

F. Additional Development Requirements. Placement of drives and parking areas. Excluding entrances and exits, no drive or parking area shall be located closer than ten feet from any lot line.

Section 3.5 Commercial Residential CR

A. Statement of Intent. The purpose of this district is to recognize the unique juxtaposition of the existing residential structures within the central business district and the future needs of Cape Charles commercial districts. It is the intent of this zone to promote the continued residential character of these areas while allowing commercial uses to be introduced.
The specific intent of this district is (1) to encourage retention of the existing residential buildings and character of the area and (2) to encourage compatible uses for these buildings.

B. Permitted Uses. The following uses are permitted by right:
1. Single-family dwellings
2. Duplex dwellings

3. Townhouse dwellings
4. Condominium dwellings
5. Cooperative dwellings
6. Manufactured home dwellings
7. Group homes
8. Bed and breakfasts and short-term rentals
9. Churches and places of worship
10. Parks and playgrounds
11. Retail and other stores
12. Offices
13. Galleries and museums
14. Indoor recreational facilities
15. Other food establishments
16. Personal services

17. Any other use which is compatible in nature with the foregoing uses and which the Zoning Administrator determines to be compatible with the intent of the district and is concurred with by the Planning Commission.

C. Accessory Uses:
1. Accessory Buildings
2. Accessory Dwelling Units
3. Home occupations in accordance with Section 4.0.
4. Up to two single electric vehicle charging stations.
5. Uses which are customarily accessory and clearly incidental and subordinate to the principal use and structure including those listed in Article 3.1(C).

D. Conditional Uses:
Childcare/adult daycare facilities and nursing homesConference centersRestaurants and bars

E. Lot, Yard, Height, Coverage and Density Requirements. Within the CR Land Use Classification, the following standards shall apply:

Minimum Lot Size	5,600 SF
Front Setback (minimum unless otherwise stated)	30'
Side Setback (minimum)	5'
Rear Setback (minimum)	25'
Maximum Height	40'

1. Height Regulations: Buildings may be erected up to 40 feet in height from the adjacent ground elevations.

F. Area Regulations
1. The minimum lot size shall be 5,600 square feet. Dwelling units existing on lots at the time of adoption of this ordinance which are generally on lots 40 feet by 140 feet are considered to be conforming lots. However, new construction taking place within this district shall meet all standards and requirements of this district.
2. The minimum dwelling unit size shall be 960 square feet excluding garages, porches, patios, etc.
3. The minimum lot width at the setback line shall be 40 feet.

4. Setback Regulations: The following area regulations shall apply as minimums for new development in this district:
   a. Front setback shall be 30 feet or shall conform to the prevailing setback of the existing built up area.
   - Side yard 5
   - Rear yard 25

G. Development Standards: To help preserve the architectural cohesiveness of the Town, new construction and additions in the CR district shall be compatible, sympathetic, and complementary to existing buildings and follow the same guidelines as the residential district.

Section 3.6 Commercial District C-1

A. Statement of Intent. The intent of this zoning district is to preserve and enhance the traditional mixed use urban nature of Cape Charles commercial districts, to encourage the location of regional and local business and professional activities, to facilitate the development of buildings in keeping with its largely National Historic District character, and to protect against destruction of or undesirable encroachment on these areas.

B. Permitted Uses. The following uses are permitted by right:
1. Hotels and motels
2. Schools, community centers, and public facilities
3. Auditoriums, theatres, and assembly halls
4. Retail and other stores
5. Offices
6. Galleries and museums
7. Restaurants and bars
8. Other food establishments
9. Funeral homes
10. Medical/dental practices (outpatient) and labs
11. Any other commercial or professional use which is compatible in nature with the foregoing uses and which the Zoning Administrator determines to be compatible with the intent of the district and is concurred with by the Planning Commission.

C. Conditional Uses:
1. Multi-family dwellings provided that no such dwelling is located at street level and all dwelling units have direct access to the street level (not access through commercial establishment on the first level).
2. Charging stations for three or more Electric Vehicles

D. Lot, Yard, Height, Coverage and Density Requirements. Within the C-1 Land Use Classification, the following standards shall apply:

Minimum Lot Size	5,600 SF
Front Setback (minimum unless otherwise stated)	Prevailing
Side Setback (minimum)	0', 5' & 10' in Rte 184 area

Rear Setback (minimum)	10'
Maximum Height	40'

1. Height Regulations: Buildings may be erected up to 40 feet in height from the adjacent ground elevations.
2. Area Regulations: The following area regulations shall apply as minimums for new development in this district:
   a. Lot width at setback line: 40'
   b. Area requirements (40 x 140): 5,600 sq ft
   c. Side yard: 0; 5 and 10 feet in Route 184 area
   d. Rear yard: 10 or prevailing rear yard if less
   e. Front setback shall be determined by the average setback of the existing built up commercial area. Front setback along Route 184 (aka Randolph Avenue extended; Old Stone Road) where existing VDOT right of way is 70 feet shall be measured at 80 feet from the center of the right of way.

Section 3.7 Commercial District C-2

A. Statement of Intent. The intent of this zoning district is to recognize the existing commercial areas which are less densely developed than the C-1 District and to encourage compatible commercial uses and density. This area generally has been developed with larger lots and larger individual buildings.

The specific intent of this district is to recognize the existing and possibly new freestanding commercial development.

B. Permitted Uses. The following uses are permitted by right:
1. All uses as allowed in C-1
2. Gas stations/service stations
3. Vehicle rental/sales
4. Vehicle repair/service
5. Any other commercial or professional use which is compatible in nature with the allowed uses and which the Zoning Administrator determines to be compatible with the intent of the district and is concurred with by the Planning Commission.

C. Conditional Uses:
1. Multi-family dwellings provided that no such dwelling is located at street level and all dwelling units have direct access to the street level (not access through commercial establishment on the first level).
2. Charging stations for three or more Electric Vehicles

D. Lot, Yard, Height, Coverage and Density Requirements. Within the C-2 Land Use Classification, the following standards shall apply:
1. Height Regulations: Buildings may be erected up to 35 feet in height from the adjacent ground elevations.
2. Area Regulations: The following area regulations shall apply as minimums for new development in this district:
   a. Lot width at setback line: 60'

b. Area requirements (60 x 150): 9,000 sq ft
c. Side yard: 10'
d. Rear yard: 10' or prevailing rear yard if less
e. Front setback shall be determined by the average setback of the existing built up commercial area.

E. Development/Redevelopment Standards, Other Requirements, and Accessory Uses. The standards for development and/or redevelopment, specific additional requirements, and accessory uses shall be the same as those listed and described for the C-1.

F. Sign design shall relate to the architectural character of the building and, if ground mounted, shall be appropriately landscaped.

Section 3.8 Commercial District C-3

A. Statement of Intent. The intent of this zoning district is to recognize this existing linear commercial zone which flanks Route 184 entering into Cape Charles. This area is divided into smaller lots. The zone shall require a uniform requirement for setbacks as this is recognized as the gateway road into Cape Charles.

The specific intent of this district is (1) to allow development of individual or grouped lots, (2) to encourage uses to service the community, and (3) to encourage quality construction and design recognizing the importance of the district's impact on drivers entering Cape Charles.

B. Permitted Uses. The following uses are permitted by right:
1. All uses as allowed in C-1 and C-2
2. Single-family dwellings
3. Duplex dwellings
4. Schools, community centers, and public facilities
5. Auditoriums, theatres, and assembly halls
6. Any other commercial or professional use which is compatible in nature with the allowed uses and which the Zoning Administrator determines to be compatible with the intent of the district and is concurred with by the Planning Commission.

C. Conditional Uses:
1. Multi-family dwellings
2. Charging stations for three or more Electric Vehicles

D. Lot, Yard, Height, Coverage and Density Requirements. Within the C-3 Land Use Classification, the following standards shall apply:
1. Height Regulations. Buildings may be erected up to a height of 35 feet from the adjacent ground elevation.
2. Area Requirements. The following area regulations shall apply as minimums for new development in this district:
a. Lot width at setback line: 40'
b. Side yard: 5' and 10'
c. Rear yard: 10'
d. Front setback: 80' from center of right of way or 40% of the lot depth,

whichever is less

E. Development standards. All new development shall conform to the commercial design and construction standards required for commercial development within the Town's historic district overlay.

F. Materials and design shall follow site plan ordinance requirements and be considered and approved by a review body named by Town Council.

G. Sign design shall relate to the architectural character of the building and, if ground mounted, shall be appropriately landscaped.

Section 3.9 Harbor District (revised 11-21-19)

A. Statement of Intent. The intent of this zoning district is to encourage a vibrant working waterfront area that is both a strong economic benefit to the Town with compatible new industry and employment uses, and a strong public and recreational value, with public gathering places and access to the water, a place for people to conduct business and to live, meet, relax, encounter nature, and learn of Cape Charles' working maritime and rail heritage and its strong historic traditions. Any new development shall provide and encourage public access to the water's edge as well as emphasize the pedestrian environment throughout the harbor. The south side of Mason Avenue shall provide a visually inviting connection to the harbor via continuous environments for multi-modal means of transportation and connect to the other existing and future links to Cape Charles and environs. This zoning district is also intended to implement the Cape Charles Harbor Area Conceptual Master Plan and Design Guidelines as an overall guide to the future development and redevelopment of the harbor area.

B. Permitted Uses. The following uses are permitted by right:
1. Condominium dwellings
2. Cooperative dwellings
3. Parks and playgrounds
4. Schools, community centers, and public facilities
5. Retail and other stores (less than 2,500 SF gross floor area)
6. Offices
7. Galleries and museums
8. Indoor recreation facilities
9. Conference centers
10. Restaurants and bars
11. Other food establishmentsPersonal services (less than 2,500 SF gross floor area)
12. Medical/dental practices (outpatient) and labs
13. Vehicle rental/sales (less than 2,500 SF gross floor area)
14. Marinas, docks, and wharves (if contiguous to harbor) Utility Facilities

C. Accessory Uses.
1. Accessory buildings
2. Other uses customarily associated and clearly incidental and subordinate to a principal use.

D. Conditional Uses. The following uses may also be permitted, subject to securing a Conditional Use Permit as provided for in this ordinance:

1. Recreational, cultural, and entertainment uses of the following types:
   a. Assembly halls
   b. Auditoriums
   c. Theaters
2. Retail goods establishments of the following types with more than 2,500 square feet of gross floor area:
   a. Antique shops
   b. Bookstores, new and used
   c. Camera shops
   d. Candy stores
   e. Clothing stores
   f. Dry goods stores
   g. Florists, gift shops, card shops, and stationery shops
   h. Grocery stores
   i. Music stores
   j. Newsstands
   k. Tobacco stores
   l. Upholstering shops and fabric stores
   m. Video stores
   n. Watch and jewelry stores
3. Retail service establishments of the following types with more than 2,500 square feet of gross floor area:
   a. Beauty and barbershops
   b. Bicycle moped, and golf cart sales and rentals
   c. Blueprinting shops
   d. Dressmaking, tailoring, millinery, dry cleaning
4. Multi-family dwellings provided the following requirements are met:
   a. All dwelling units shall have direct access to the street level. Means of access may be shared with other dwelling units, but not commercial uses. Access through a commercial establishment on the first level is not permitted.
   b. Dwelling units shall occupy no more than 50 percent of the first floor of any building.
   c. The first floor of all building facades adjacent to a public street shall have a commercial appearance and shall not have a residential appearance.
5. Bed and breakfasts and Short-term rentals, provided the following requirements are met:
   a. The owner and family must occupy the residence. The owner and his/her appointed agent are responsible for supervising guests.
   b. The single-family dwelling appearance must be maintained.
   c. Parking should be considered on a case-by-case basis as part of the conditional use application, ensuring adherence to Section 4.8.E.2 (Table of Parking Standards) using both on and off-street parking areas.
   d. A sign no larger than four square feet shall be permitted.
   e. The number of room accommodations shall be subject to recommendation by the Planning Commission and approved by the Town

Council.

f. The dwelling must meet all of the requirements of Section 3.9.D.6.

6. Childcare/adult daycare facilities and nursing homes
7. Hotels and motels
8. Laundromats
9. Boatels
10. Any other use which is compatible in nature with the foregoing permitted and conditional uses and which the Zoning Administrator determines to be compatible with the intent of the District and is concurred with by the Planning Commission.

E. *Lot and Height Requirements.* Within the Harbor District, the following standards shall apply:

Minimum Lot Size	11,200 SF
Front, Side, Rear, and Corner Setback, (minimum unless otherwise stated)	30' from Cape Charles Harbor, Resource Protection Areas,Marina Rd, Bayshore Rd, or Parcel 83-A3-A-10
Maximum Height	40', up to 55' with stipulations
Maximum Lot Coverage	75%

1. Minimum lot requirements.
   a. lot area.....11,200 square feet
   b. lot frontage.....80 feet
   c. lot depth.....140 feet
2. Height.
   a. *Measurement criteria.* For the purpose of the Harbor District, height means the vertical distance measured from the crown of the nearest street to the top of the highest roof beams on a flat or shed roof, the deck level on a mansard roof, and the average distance between the eaves and the ridge level for gable, hip, and gambrel roofs. When the crown of the nearest street has an elevation greater than three feet above the adjacent ground elevation of the building, the adjacent ground elevation shall be used in place of the crown of the nearest street when measuring height. Note: Mechanical equipment, chimneys, air conditioning units, elevator penthouses, church spires and steeples, water towers, and similar appurtenances are exempted from height restrictions. However, these exclusive items may not exceed the height limit by more than fifteen feet.
   b. *Maximum permitted height.* No building shall have the same continuous elevation for a distance of more than 80 linear feet. Building heights greater than 40 feet and equal to or less than 55 feet may also be permitted in other parts of the Harbor District, subject to securing a Conditional Use Permit as provided for in this ordinance. When reviewing a Conditional Use Permit application for the height of a building in the Harbor District, the following criteria shall be met:
      i. On each block, the average height of all buildings greater than 40 feet and equal to or less than 55 feet in height shall not exceed 45 feet. For the purpose of this section, a block is defined as the

property fronting on one side of a right-of-way or waterway, and lying between two intersecting rights-of-way or otherwise limited by a waterway or other physical barrier of such nature as to interrupt the continuity of development.

ii. The application shall adhere to policies established in the Cape Charles Harbor Area Conceptual Master Plan and Design Guidelines, the Comprehensive Plan, and other officially adopted plans of the Town.

3. Setback Regulations.

a. Waterfront setback requirement. No building or structure shall be located within 30 feet of the Cape Charles Harbor or within 30 feet of a Resource Protection Area not part of an Intensely Developed Area (IDA), or within 30 feet of Marina Road, Bayshore Road, or Parcel 83A3-A-10. This requirement shall not preclude any other applicable regulations, including but not limited to those associated Chesapeake Bay Preservation Areas. The following shall be exempt from the waterfront setback requirement when permitted by all other applicable regulations:1.) Water-dependent facilities as defined by Zoning Ordinance Section 7.3.

i. Walkways, promenades, decks, gazebos, permitted signs, and similar structures intended to accommodate or provide amenities for pedestrians.

F. *Required open space.* Open space shall be provided equivalent to twenty-five (25) percent of lot area. For the purpose of this section, the term open space shall be construed to consist of open space amenities and spacing between buildings. Open space amenities include plazas, esplanades, landscaped areas, walkways, public recreational facilities, and the like designed and maintained for use by pedestrians and open to the public. Such open space amenities shall not be open to vehicular uses except for public safety purposes, and shall be directly accessible from street level. Where feasible, open space shall be designed to serve as part of a coordinated pedestrian circulation system.

G. *Utilities.* All utilities shall be installed underground.

H. *Harbor Development Certificate required.* No zoning clearance shall be issued for location, construction, or enlargement of any building or structure within the Harbor District until a Harbor Development Certificate has been issued. Submission of a Harbor Development Certificate Application and approval by the Town Council shall be required to obtain a Harbor Development Certificate.

1. *Content of Harbor Development Certificate Application.* The Harbor Development Certificate Application shall consist of the General Application and the Detailed Application.

a. *General Application.* The General Application shall include the following items:

i. An application on forms provided by the Zoning Administrator.

ii. A fee established by the Town Council.

iii. A letter of application stating in general terms the proposed use of the property, the effect of the changes on the surrounding area, and the reason for the request.

iv. A plot plan in accordance with the Site Plan Ordinance.

b. *Detailed Application.* The contents of the Detailed Application may be delineated on the plot plan required for the General Application, or provided in separate maps, elevations, or written document as appropriate. The Detailed Application shall indicate the following:
   i. Location, amount, character and continuity of open space.
   ii. A delineation of those general areas that have scenic assets or natural features deserving protection and preservation, including elevations demonstrating protection of views from existing streets, and a statement of how such will be accomplished.
   iii. Convenience of access through and between buildings or in other locations where appropriate for public purposes and where such access will reduce pedestrian congestion on public streets.
   iv. Separation of pedestrian and vehicular traffic.
   v. Landscape plans delineating dimensions and distances and the location, type, size, and description of all existing and proposed plant materials.
   vi. Location and dimensions of on-site signage.
   vii. Conceptual renderings of building exteriors.
   viii. Such other matters as are appropriate to determinations in the specific case. Other information may be requested by the Zoning Administrator, the Harbor Area Review Board, or Town Council.

2. *Review procedure.*
   a. Pre-application meeting. Prior to application submission, the applicant shall meet with the Zoning Administrator and the Harbor Area Review Board in a pre-application meeting. The purpose of the meeting shall be to discuss the general goals of the project and application procedures.
   b. General Application. Following the pre-application meeting, the applicant shall submit a General Application. The contents of the General Application are detailed in Section 3.9.I.1.a.
   c. Post-application meeting. Within thirty (30) days of receipt of the complete General Application, the Zoning Administrator and the Harbor Area Review Board shall meet in a post-application meeting. The purpose of the meeting shall be to discuss the content of the General Application and to formulate recommendations for the applicant.
   d. First review meeting. Within thirty (30) days of the post application meeting, the applicant shall meet with the Zoning Administrator and the Harbor Area Review Board in a first review meeting. The purpose of the meeting shall be to provide the applicant with the Harbor Area Review Board's recommendations and to provide notice to proceed with the Detailed Application.
   e. Town Council summary. Following the first review meeting, the Harbor Area Review Board will present the Town Council with the General Application and a general description of discussion held at the first review meeting. The Town Council summary will be provided at a Town Council regular session or a Town Council work session for informational purposes.
   f. Detailed Application. Following the first review meeting, the applicant

shall submit a Detailed Application. The contents of the Detailed Application are provided in Section 3.9.H.1.b.

g. Zoning Administrator action. Following the Zoning Administrator's receipt of the Detailed Application and his determination that it is complete pursuant to Section 3.9.H.1.b, the Zoning Administrator shall prepare a thorough review and analysis of the Harbor Development Certificate Application and a written staff report. The Zoning Administrator's written report shall be forwarded to the Harbor Area Review Board within 45 days of receipt of the Detailed Application.

h. Second review meeting. After receipt of the Detailed Application, the applicant shall meet with the Zoning Administrator and the Harbor Area Review Board in a second review meeting. The purpose of the meeting shall be to review the Harbor Development Certificate Application, consisting of the General Application and the Detailed Application, and provide the applicant with any necessary recommendations. Follow up meetings may be scheduled to further review the application or to review modifications to the application.

i. Harbor Area Review Board action. After the second review meeting, the Harbor Area Review Board shall forward its recommendation to approve, deny, or approve subject to modification, to the Town Council along with written findings of fact supporting its recommendation.

j. Town Council action. After receipt of the Harbor Area Review Board's recommendations and findings, the Town Council shall decide to approve, deny, or approve subject to modification.

k. Concurrent review permitted. Other development applications, including application for any necessary Certificate of Appropriateness, may be submitted concurrently with an application for a Harbor Development Certificate.

3. *Criteria for review.* In reviewing the Harbor Development Certificate Application, the Zoning Administrator, the Harbor Area Review Board, and the Town Council shall consider the following criteria:

a. Use characteristics of the proposed development.

b. Preservation of historic structures; preservation of significant features of existing buildings when such buildings are to be renovated; relation to nearby historic structures or districts including a need for height limits.

c. Location and adequacy of off-street parking and loading provisions, including the desirability of bicycle parking.

d. Vehicular circulation within the development and its relation to other existing and proposed transportation facilities.

e. Inclusion of alleys to enhance vehicular transportation within the development.

f. Provision of concealed commercial loading and unloading areas adjacent to alleys to prevent loading, unloading, and trash collection along public rights of way.

g. Traffic generation characteristics of the proposed development in relation to street capacity.

h. Provision of open space to meet the requirements of the district; the location, design, landscaping and other significant characteristics of this

public open space, and its relation to existing and planned public and private open space.

i. Multi-modal transportation facilities within the proposed development and their relation to public open space and pedestrian circulation patterns.

j. Architectural relationships, both formal and functional, of the proposed development to surrounding buildings, including building siting, massing, proportion, and scale.

k. Use of architectural details, storefront design, window openings, roof shapes, porches, and columns to balance the proportions of facades into pleasant and cohesive compositions.

l. Microclimate effects of proposed development, including effects on wind velocities, sun reflectance, and sun access to streets and/or existing buildings and/or public open space.

m. Protection of significant views and view corridors, particularly views of the Cape Charles Harbor from existing road intersections.

n. Relationship of on-site lighting and landscaping to other surrounding lighting and landscaping designs both public and private.

o. Relationship of on-site signage to architectural elements of the proposed development and relationships to nearby development.

p. Adherence to policies included in the Cape Charles Harbor Area Conceptual Master Plan and Design Guidelines, the Comprehensive Plan, and other officially adopted plans of the Town.

q. Adherence to the intent and requirements of the Harbor District.

4. Other requirements. Issuance of a Harbor Development Certificate shall not exempt a property owner from obtaining other necessary zoning clearances and building permits as required.

J. Exemption.

Railroad activities in this district are subject to federal preemption to the extent that the activities are an integral part of the railroad's interstate operations. 49 U.S.C. 10501 (b). Therefore, "state and local permitting or pre-clearance requirements [such as building permits, zoning clearances, and site plan requirements] which, by their nature, interfere with interstate commerce by giving the [Town of Cape Charles] the ability to delay or deny the [railroad's] right to construct facilities or conduct operations are preempted." Borough of Riverdale v. New York Susquehanna & Western Railway Corporation, Surface Transportation Board, Docket No. FD 33466 0, September 9, 1999.

However, environmental and other public health and safety issues and "activities and facilities not integrally related to the provision of rail service are not subject to [Surface Transportation Board] jurisdiction or subject to federal preemption." Id. Also, "interstate railroads … are not exempt from certain local fire, health, safety and construction regulations and inspections." Id.

K. Modifications may be allowed that do not change the wall to window area ratio, and do not add to or reduce the number and type of porches\balconies. Modification is solely at the discretion of the zoning administrator, the building official, and the town manager upon approval of a Harbor Development Certificate.

L. Modifications may be allowed to balconies and building architectural projections, and there is no change to street\sidewalk access or percentage of open space upon approval of a Harbor Development Certificate. Modification is solely at the discretion of the zoning administrator, the building official, and the town manager.

M. Modification may be allowed if the required percentage of open space, required landscape, buffering, and Dark Sky compliance are met upon approval of a Harbor development Certificate. Modification is solely at the discretion of the zoning administrator, the building official, and the town manager.

O. Mainstreet Mixed-use Area.

1. The area of the Harbor District along the south side of Mason Avenue, beginning at the western edge of Parcel 83A3-A-5, and projecting eastward to Nectarine Street, and southward a distance of 120 feet from the south side of Mason Avenue, is defined as the "Mainstreet Mixed-Use Area." All buildings in the Mainstreet Mixed-use Area shall meet the following requirements:
    a. Each building shall be a minimum of two stories and shall have only residential uses above the first floor.
        i. Residential portions of the building shall have at least two entrances/exit ways to the ground floor that are separate from the entrances/exit ways used by occupants of nonresidential portions of the building.
        ii. The primary entrance for the residential portion of the building shall be clearly visible from Mason Avenue and shall face Mason Avenue.
    b. Ground floor uses shall be limited to non-motor vehicle related uses, including restaurants, sales and rental of goods, merchandise or equipment establishments, banks and financial institutions, or offices.
    c. Drive-through facilities are prohibited.
    d. The primary façade shall face Mason Avenue. On a corner lot, each side adjacent to a street shall be considered a primary façade.
    e. All blocks shall align with and be equal in frontage length to the blocks on the north side of Mason Avenue so that existing viewsheds to the harbor are maintained.
    f. No building or structure shall exceed 40 feet in height.
    g. The front setback shall be the prevailing setback of adjacent properties along the south side of Mason Avenue.
    h. Development design standards in this area shall be subject to both the Historic District Review Board and the Harbor Area Review Board.
    i. Whenever the provisions of subsection 3.9.B.1 impose standards that are more restrictive than are required in or under any other statute, ordinance or resolution, these standards shall prevail, unless otherwise specified in this Zoning Ordinance.

Section 3.10 General Business/Light Industrial GBI

A. Statement of Intent. The intent of this basic zoning district is to accommodate and develop a district for business, office, light industrial, and specific public purpose and to encourage the formation and continuance of a quiet, compatible, and uncontested

environment for business, professional, and light industrial firms and to discourage any uses capable of adversely affecting the specialized commercial and housing character of the Town.

B. Permitted Uses. The following uses shall be permitted by right; however, any outdoor storage shall be screened from view of all adjacent streets and property lines:
1. All permitted uses within the CR, C-1, C-2, and C-3 districts
2. Vehicle parking
3. Electric vehicle charging facilities (3+ vehicles)
4. Utility facilities
5. Manufacturing and material processing
6. Machine shops, blacksmith shops, and welding shops
7. Wholesale business and warehousing
8. Port facilities/intermodal terminals
9. Agriculture, horticulture, forestry, and aquaculture (excluding livestock)
10.

C. Accessory Uses. Within the GBI District the following accessory uses shall be permitted:
1. Those uses customarily associated and clearly incidental and subordinate to the principal uses and structures and temporary licensed uses such as festivals, displays, outdoor entertainment, outdoor gatherings, performances, and outdoor open-air markets.

D. Conditional Uses. Within the GBI District, there shall be no conditional uses permitted.

E. Lot, Yard, Height, Coverage and Density Requirements. Within the C-1 Land Use Classification, the following standards shall apply:

Front Setback (minimum unless otherwise stated)	75'
Side Setback (minimum)	50'
Rear Setback (minimum)	50'

1. Height Requirements. Buildings may be erected up to forty-five (45) feet in height from the adjacent ground elevation.
2. Area Regulations. The following area regulations shall apply to all parcels located within the GBI District:
   a. Front yard minimum .....75 feet
   b. Side yard minimum.....50 feet
   c. Rear yard minimum .....50 feet

Section 3.11 Industrial District M-1

A. Statement of Intent. The primary purpose of the M-1 District is to permit certain industries, which do not in any way detract from the residential desirability and will not be permitted to locate in any area adjacent to a residential area. The limitation on (or provisions relating to) height of a building, horsepower, heating, flammable liquids or explosives, controlling of emission fumes, odors and noise, landscaping, and the number of people employed are imposed to protect and foster adjacent desirability while permitting industry to locate near a labor supply and near existing available transportation.

B. Permitted Uses. The following uses will be permitted by right:
1. Vehicle parking
2. Electric vehicle charging facilities (3+ vehicles)
3. Utility facilities
4. Manufacturing and material processing
5. Machine shops, blacksmith shops, and welding shops
6. Wholesale business and warehousing
7. Port facilities/intermodal terminals
8. Agriculture, horticulture, forestry, and aquaculture (excluding livestock)
9. Any other use as determined by the Zoning Administrator to be a compatible use with this district

C. Accessory uses. Within the M-1 District the following accessory uses shall be permitted:
1. Schools, community centers, and public facilities
2. Conference centers
3. Utility facilities

D. Conditional Uses. The following uses may also be permitted, subject to securing a Conditional Use Permit as provided for in this ordinance:
1. Heliports

E. Lot, Yard, Height, Coverage and Density Requirements. Within the C-1 Land Use Classification, the following standards shall apply:

[redacted]

1. Height Regulations. Buildings may be erected up to 45 feet in height from the adjacent ground level.
2. Area Requirements. The following requirements shall apply for development in this district:
   a. Lot width at setback .....100 feet
   b. Area requirements .....15,000 square feet
   c. Side yard.....10 feet
   d. Rear yard .....20 feet
   e. Front setback .....35 feet

Section 3.13 Industrial District M-2

A. Statement of Intent. The intent of this zoning district is to provide for mixed industrial and employment land uses in the community. The specific objectives of the M-2 District are to:
1. Encourage the revitalization of the local industrial economy and historic port of Cape Charles and Northampton County
2. Create family-wage employment and training opportunities for local residents.
3. Serve as a model and national prototype of an integrated approach to land development and industrial operations, embodying sustainable approaches to the

local economy, environment, and culture
4. Serve as a model for advancing the traditional settlement patterns of the Eastern Shore's towns and employment centers
5. Encourage cost-effective approaches to resource conservation, wise use of renewable resources, and ecologically-based industrial development

B. Permitted Uses. The following uses are permitted by right:
1. Parks and playgrounds
2. Offices
3. Medical/dental practices (outpatient) and labs
4. Marinas, wharves, and docks (if contiguous to harbor)
5. Manufacturing and material processing
6. Machine shops, blacksmith shops, and welding shops
7. Wholesale business and warehousing
8. Port facilities/intermodal terminals
9. Agriculture, horiculture, forestry, and aquaculture
10.

C. Accessory Uses. Within the M-2 District, the following accessory uses shall be allowed:
1. Schools, community centers, and public facilities
2. Conference centers
3. Utility facilities
4. Only those that are customarily accessory and clearly incidental and subordinate to the principal uses and structures.
5. Temporary licensed uses such as art festivals, displays, educational exhibits, outdoor gatherings or performances, and outdoor food markets.

D. Conditional Uses. Within the M-2 District, the following conditional uses shall be allowed, subject to the issuance of a Conditional Use Permit
1. Recycling drop-off collection centers
2. Recording studio
3. Manufacture, processing, fabrication, and/or assembly of products such as scientific and precision instruments, renewable energy technology components, photographic equipment, communication equipment, aircraft or satellite parts, computation equipment, drugs, medicines, medical equipment, pharmaceutical, household items, glass products, electrical lighting and wiring equipment, service industry machines, lithographic and printing processes, industrial controls, optical goods, and electrical equipment
4. Food production, packaging, packing and canning
5. Wood products manufacturing
6. Educational institution
7. Conference center
8. Outdoor storage provided it shall be surrounded by wax myrtle or red tip photinia installed on 4-foot centers and by evergreen trees with a minimum caliper of 2.5 inches on 15-foot centers, except for entrances and exits.
9. Public utilities substations provided storage or maintenance facilities shall not be permitted and provided further that utilities substations, other than transformers, shall be surrounded by wax myrtle or red tip photinia installed on 4-foot centers

and by evergreen trees with a minimum caliper of 2.5 inches on 15-foot centers, except for entrances and exits, and provided also transformer vaults for underground utilities and the like shall require only wax myrtle or red tip photinia installed on 4-foot centers, solid except for access opening

10. Any telecommunication, television, or radio microwave dishes or antennas
11. Utility generating plant and transmission facility using renewable energy sources
12. Performing arts center
13. Public utility service center
14. Water storage tank
15. Utility installations
16. Recreational facilities
17. Structures, other than buildings, exceeding 50 feet

E. Lot, Yard, Height, and Density Requirements. Within the M-2 District, the following standards shall apply:

Minimum Lot Size	15,000 SF
Minimum Lot Width at Setback Line	100'
Front Setback (minimum unless otherwise stated)	10' minimum, 25' maximum
Side Setback (minimum)	None or 5' between buildings, 10' adjacent to street
Rear Setback (minimum)	20'
Corner Lot Setback (minimum)	
Maximum Height	45' for buildings, 50' for structures other than buildings
Maximum Lot Coverage	60%

1. Minimum lot requirements
   a. lot area ..... 15,000 square feet
   b. lot width ..... 100 feet at setback line
2. Yard requirements
   a. minimum front yard ..... 10 feet
   b. maximum front yard ..... 25 feet
   c. minimum side yard between buildings ..... none or 5 feet
   d. minimum side yard adjacent to street ..... 10 feet
   e. minimum rear yard ..... 20 feet
3. Maximum building height
   a. buildings ..... 45 feet
   b. structures other than buildings ..... 50 feet
4. Building coverage. No more than 60 percent of the land area of the lot may be covered by structures
5. Buffer yards. When a zoning lot within the M-2 District adjoins R-E, R-1, R-2, or R-3 Districts, the following shall be required along all lot lines within the M-2 District adjoining the R-E, R-1, R-2, or R-3 Districts a 50-foot separation of road right-of-way, golf course, lake, drainage easement, natural area, or landscaped buffer yard shall be required.

F. Additional Development Requirements

1. Placement of drives and parking areas. Excluding entrances and exits, no drive or parking area shall be located within any front yard or minimum side and rear yards.
2. Placement of drives and parking areas when adjacent to public right-of-way. Excluding entrances and exits, no drive or parking area shall be located closer than twenty feet from any public right-of-way line for a contiguous public street. Landscaping, hedges, or fast-growing shrubs on four-foot centers on a gradual berm shall be installed within a portion of this buffer area unless to do so will jeopardize existing natural vegetation within the buffer area.
3. No parking or drive aisles shall be located within the required buffer yards.
4. No outside storage of parts, materials, fossil fuels, raw materials, or petroleum shall be permitted within the M-2 District.
5. No outside manufacturing, assembly, or servicing of products used on the property or trucks or automobiles used in conjunction with or for the transport of materials to the district shall be allowed.
6. Any exterior lighting on the property shall be directed down and away from any area zoned R (Residential) or PUD where residential development is a permitted use, to prevent the disbursement or bleeding of light beyond the limits of the developed portions of the property.
7. No outside loudspeakers, intercoms, sirens, paging systems, whistles, horns, bells, or other devices designed to or which transmit a warning message or other communication or signal audible outside any building shall be allowed on the property. No equipment used outdoors, excluding half-ton trucks, shall be equipped with or use any device to emit a warning noise or audible signal while in use on the property.
8. No dust, smoke, or noxious odors shall be released from any structure, building, or equipment used on the property.
9. No delivery or transmission of materials of products shall be permitted to or from the property by truck or rail before 8 a.m. and after 9 p.m. Monday through Saturday and no such deliveries to or from the property by rail or truck, excluding half-ton trucks, shall occur on Sunday.

Section 3.12 Planned Unit Developments (PUD)

A. Statement of Intent. The intent of this district is to promote creative and imaginative development designs for residential and commercial uses by allowing greater flexibility than is possible under the restrictions of conventional zoning regulations. It is further intended to promote more efficient use of land while encouraging variety and convenience for the overall development and the development of recreational areas and open spaces within the project. As in all zoning districts, the intent of the district is to ensure approved development will comply with the Zoning Ordinance, Town Code, and any adopted master plans. Whenever the provisions of this section impose standards that are more restrictive than are required in or under any other statute, ordinance or resolution, these standards shall prevail, unless otherwise specified in this Zoning Ordinance.

B. Permitted Uses. The following uses may be permitted within PUD districts:
   1. Any use permitted in the R-1, R-2, R-3, CR, C-1, C-2, C-3, and Harbor districts.
   2. Commercial recreation uses

3. Outdoor recreational uses
4. Transportation facilities
5. PUD districts shall provide a mix of a minimum of two of the following use categories:
   a. Residential units;
   b. Commercial offices;
   c. Retail;
   d. Hotel; or
   e. Civic uses.

C. Accessory uses
   1. Accessory uses as permitted in the R-1, R-2, and R-3 districts

D. Conditional uses
   1. Any use listed as a conditional use in the R-1, R-2, R-3, CR, C-1, C-2, C-3, and Harbor districts may be a conditional use in PUD districts and shall follow the procedures of this ordinance on issuance of Conditional Use Permits.

E. Lot, Yard, Height, and Density Requirements. Within any PUD district, the following standards shall apply:
   1. Area Regulations. The minimum contiguous area for PUD districts shall be five acres.
   2. Setbacks. Side and rear yard setbacks shall be per the underlying zoning district requirement. Front yard setbacks other than the R-1 underlying zone district shall be located directly adjacent to the supplemental zone, as described in subsection 3.12.B.2.iii. The applicant may propose modifications to the setback regulations in accordance with the procedures of Section 3.12 L. below.
   3. Coverage. The maximum impervious surface coverage in PUD districts shall not exceed 80 percent of the total gross area of development. Impervious surface includes building footprints, impervious private roads, and impervious parking lots. Not included as impervious surface any recreational facility such as tennis courts, bathhouses, swimming pools, required landscape, sidewalk clear, and supplemental zones, and public roads pervious roads, and pervious parking lots. No more than 33 percent of wetlands present in PUD districts may be used when calculating total gross area of development.
   4. Height. The maximum height of any building in PUD districts shall be per the underlying zoning district requirement.
   5. Density of Development. The sub-areas of PUD districts may contain the density requirements of one or more of the R-1, R-2, and R-3 for residential districts, and CR, C-1, C-2, C-3, and Harbor for the commercial districts to accommodate flexibility and imaginative development designs. Density shall be consistent with conditions that are applicable to the property, such as topography, the character of the surrounding property, potential health or safety hazards, traffic safety considerations, and the effects upon existing public facilities that could be alleviated by a reduction in density.

F. Additional Development Requirements
   1. Common Areas. All common areas including open spaces, parking areas, street,

and landscape areas shall be maintained by the owner/developer of the project until transfer to a corporation of property owners, organizing and operating in accordance with the incorporation law of Virginia. All common areas shall provide a permanent easement arrangement to ensure public access to said areas.

2. Utilities. All utilities shall be installed underground. Central instrumentation and substations shall be screened from all rights-of-way with approved fencing and/or landscaping.

G. Design Guidelines.

1. External Relationships: PUD districts shall provide protection for areas within PUD districts and for existing surrounding areas from potentially adverse surrounding influences. In particular, the Overall Development Plan for PUD districts shall demonstrate the following features:
   a. Access. Principal vehicular access points shall be designed to encourage smooth traffic flow with controlled turning movements and minimum hazards to vehicular or pedestrian traffic. Left-hand storage and right-hand turn lanes and/or traffic dividers shall be required where existing or anticipated heavy flows indicate need. In general, streets shall not be connected with streets outside the district in such a way as to encourage the use of such minor streets by substantial amounts of through traffic. Existing public streets on adjacent properties shall be utilized as access into PUD districts.
   b. Screening. Screening at the edges of PUD districts shall be provided when necessary to protect residents from undesirable view, lighting, noise, or other off-site influences, or to protect adjoining residential districts from similar adverse influences within PUD districts. In particular, off-street areas for parking, service areas for loading and unloading non-passenger vehicles, and areas of storage and collection of refuse and garbage shall be screened with approved fencing and/or landscaping.
2. Internal Relationships. PUD districts shall provide safe, efficient, convenient, and harmonious grouping of structures, uses, and facilities. Elements of the proposed development shall be organized in relation to topography, the size and shape of the plot, the character of adjoining property, existing desirable trees, and views within and beyond the site. In particular, the Overall Development Plan for PUD districts shall demonstrate the following features:
   a. Multi-modal circulation and street cross-sections. Private streets may be permitted by Conditional Use Permit in the PUD district. However, unless specifically approved by the Town Council as a Conditional Use Permit, the arrangement, character, extent, width, grade, and location of all streets shall be designed and constructed in accordance with specifications acceptable to the Virginia Department of Transportation for inclusion in the state highway system for maintenance. When private streets are proposed as a Conditional Use Permit, the standards, specifications and a proposed maintenance agreement shall be submitted with the Conditional Use Permit application and shall also be included on the concept plan for the proposed PUD rezoning request. There shall be no gated communities or gated roads allowed in PUD districts. Streets shall travel east-west and north-south to the greatest extent possible, and

there shall be no cul-de-sacs or dead ends.

b. Streetscape design. Properties with required landscape, sidewalk clear, or supplemental zones that are located on private property shall provide a permanent easement arrangement to ensure public access to said zones. The following standards apply to all streets within PUD districts:

i. Landscape zone. All required street trees, streetlights, and pedestrian lights shall be provided in the landscape zone, which shall be five' minimum. Said zone shall be located immediately adjacent to the curb and shall be continuous. All street tree and other plantings in the landscape zone shall follow the VDOT standards for street trees and plantings. Trees shall be located forty' on center with pedestrian lights located between every other street (80' on center). Streetlights shall be located as required by the Zoning Administrator. Landscaping shall be kept to no more than 36" tall for ground cover and limbed up to no lower than six' above ground to provide clear, uninterrupted sight lines.

i. Sidewalk clear zone. The sidewalk clear zone shall be located immediately contiguous to the landscape zone and shall be continuous. Sidewalks meeting VDOT standards shall be installed in the sidewalk clear zone, which shall be a minimum of five'. Sidewalk clear zones located adjacent to Marina Road and Bayshore Road shall be a minimum of 10. Sidewalks shall be unobstructed for a minimum height of 8'. Where newly constructed sidewalks abut narrower existing adjacent sidewalks, the newly constructed sidewalk shall provide an adequate transitional clear zone width for the purposes of providing a safe facilitation of pedestrian flow between the adjacent sidewalks, as approved by the Zoning Administrator. All existing sidewalks shall be replaced in accordance with these provisions within a PUD district. Sidewalks shall be broom-finished concrete with 4' trowel edge along edge joints.

ii. Supplemental zone. All lots within an underlying zoning district sub-area of R-1 shall be exempt from the supplemental zone requirements. Non-residential, multifamily, and mixed-use developments shall be hardscaped. However, a maximum of twenty percent may be occupied by landscaping, planters, or other areas not accessible by pedestrians. The zone shall be used for the following pedestrian amenities: benches, trash receptacles, pet stations, bicycle parking racks, outdoor dining, display of public art, other street furniture, or similar elements. The supplemental zone shall be located on private property.

1. Facades shall be located immediately adjacent to the supplemental zone(s).
2. At a minimum, at least one bench, one trash receptacle shall be provided on each street frontage, unless a bench or receptacle is already provided within 500' on the same street frontage.
3. At least one additional pedestrian amenity shall be

provided on each street frontage.

4. Adjacent ground floor uses must be visible, accessible, and oriented toward the supplemental zone.
5. The supplemental zone shall be no more than 24" higher than the adjacent sidewalk, unless existing topographical conditions render this requirement unreasonable, per approval by the Zoning Administrator.
6. Any authorized walls surrounding landscaped and grassed areas shall not exceed 24", except retaining walls which shall not exceed a maximum of 36", unless existing topographical conditions render this requirement unreasonable, as approved by the Zoning Administrator.
7. Pedestrian amenities shall be connected to the public sidewalk with a public access easement.
8. Storage, utility rooms, private restrooms, or other accessory service uses shall not be located adjacent to the supplemental zone.

H. Modifications to Standards. PUD districts may provide flexibility through modifications to the standards of Section 3.12. All such modifications shall be expressly shown in the Overall Development Plan and approved by the Town Council after lawfully advertised public hearings with the Planning Commission and Town Council, and shall be in keeping with the purpose of PUD districts, the intent of the Zoning Ordinance, the Comprehensive Plan, and any adopted master plans.

I. Procedures for Applications. The creation of PUD districts has the same effect as rezoning of property. The Planning Commission and Town Council shall consider applications for PUD districts in accordance with the Town's and the Code of Virginia's rezoning procedures, which includes advertised public hearings. In approving the application based on the Overall Development Plan, the Council may establish such conditions and require such modifications as deemed necessary to ensure fulfillment of the intent of PUD districts, the purposes of the Zoning Ordinance, the goals of the adopted Comprehensive Plan, and compliance with applicable subdivision and site plan ordinances and the Code of Virginia. For PUD districts proposed for property located in a Chesapeake Bay Preservation Area, the development plan shall have been approved pursuant to the procedures of the Town of Cape Charles Chesapeake Bay Preservation Ordinance prior to submission for approval to the Planning Commission and Town Council.

1. Overall Development Plan (ODP). Development of PUD districts is governed by an Overall Development Plan that designates the standards of zoning and development for PUD districts. The ODP shall be submitted as part of a PUD application, shall be prepared by a licensed professional team, and a list of members of the team with their qualifications shall be submitted with the ODP.
2. At a minimum, the ODP must include:
   a. Analysis of existing site conditions. An analysis of existing site conditions including a boundary survey and topographic map of the site at a minimum 1 inch = 40 feet scale and shall include the total area of the tract presented in square feet or acreage, and information on all existing

manmade and natural features, utilities, all streams and easements, and features to be retained, moved, or altered. The existing shape and dimensions of the existing lot to be built upon including the size, measurement, and location of any existing buildings or structures on the lot shall be included.

b. Master plan. A master plan at a minimum of 1 inch = 40 feet scale outlining all proposed regulations and calculations which shall include, but not be limited to, the following:
   i. Information on proposed improvements, including proposed building footprints, door locations, densities, parking ratios, open space, height, sidewalks, yards, under and over-head utilities, internal circulation and parking, grading, lighting, the general location of all proposed community and public facilities and the generalized proposed plan for water, sanitary waste facilities and drainage improvements, drainage, amenities, and similar details including their respective measurements;
   ii. The type and location of all intended uses, together with their sub-area zoning district designations, and including all proposed modifications to the permitted uses, area regulations, density of development, coverage, common area, utilities, height, yard requirement, and design guidelines listed in this section of the ordinance, together with the rational for such modifications;
   iii. Expected gross land area for all intended uses, including open space;
   iv. A statement of the anticipated residential density, residential unit sizes for all buildings, and the total number of dwelling units;
   v. The total floor area of all commercial uses;
   vi. The names and route numbers of all boundary roads or streets and the width of existing rights-of-way;
   vii. The owners, zoning districts, and uses of each adjoining tract;
c. Landscape plan. A site plan at a minimum of 1 inch = 40 feet scale showing proposed regulations and calculations which shall include, but not be limited to, information on landscaping, tree species, and the number of all plantings and open space including the landscaping that is being preserved, removed, and that which is replacing the landscaping that is removed;
d. Architectural design. Preliminary architectural plans and all elevations with sufficient detail to demonstrate proposed design criteria that shall include, but not be limited to, scaled floor plans and elevation drawings of proposed buildings and structures and information on building materials, features, exterior finish legend, windows, doors, colors, and items affecting exterior appearance, including their respective measurements;
e. Phasing plan. Should a PUD be expected to require five years or longer to complete, a phasing plan shall be proved by the applicant that indicates the timeframe for construction and development of different aspects of the PUD;
f. Parking analysis. A parking analysis must be prepared by a qualified third-party professional engineer;

g. Environment impact plan. A comprehensive plan that describes the natural features and characteristics of a proposed development site, the changes that will occur as a result of the proposed development activities on the site, the anticipated environmental impacts and consequences of the proposed development, and the mitigation measures to be taken to minimize undesirable impacts to the environment.

h. An attorney's certificate showing the owner or owners of the subject property, marketable title to the subject property in such owner or owners, naming the source of applicant's title or interest in the subject property, and the place of record of the latest instrument in the chain of title for each parcel constituting the tract; and

i. Any other information deemed necessary by the Zoning Administrator.

3. Proffers. If the applicant proffers reasonable conditions in connection with the application, a set of signed proffers must be submitted prior to the public hearing with the Town Council in accordance with Section 2.7.5 of this ordinance.

J. Effect of approval of PUD districts.

1. All terms, conditions, safeguards and stipulations included in the Town Council's approval of PUD districts, including without limitation those contained in the Overall Development Plan to the extent approved and adopted by the Town Council, shall be part of the zoning applicable to the property, shall be included in the ordinance approving the rezoning to PUD district, and shall be binding upon the applicant and all successors in interest. Unapproved modifications from the Overall Development Plan or failure to comply with any requirements, conditions, or safeguards shall constitute a violation of the Zoning Ordinance.
2. After approval of PUD districts, the owner may submit subdivision plats and site plans for approval consistent with the Overall Development Plan. No building permits will be issued until site plan approval and final subdivision plats have been approved and recorded in the County land records according to applicable law.

Section 3.14 General Business/Light Industrial H-1 (GBI H-1)

A. Purpose of the District. The GBI H-1 District is a planned mixed industrial and employment park with a comprehensive development plan. The purpose of the district is to:

1. Encourage the revitalization of the local industrial economy and historic port of Cape Charles and Northampton County
2. Create family-wage employment and training opportunities for local residents
3. Serve as a model and national prototype of an integrated approach to land development and industrial operations, embodying sustainable approaches to the local economy, environment, and culture
4. Serve as a model for advancing the traditional settlement patterns of the Eastern Shore's towns and employment centers
5. Incorporate comprehensive, cost-effective approaches to resource conservation, wise use of renewable resources, and ecologically based industrial development in all aspects of design and development of the project.

B. Permitted Uses. Within the GBI H-1 District, the following permitted uses shall be

allowed.

1. Adult and/or child day care center
2. Agriculture (excluding livestock), horticulture, forestry, and/or fishery/aquaculture
3. Art gallery
4. Business service establishment (including mail order or electronic catalog sales)
5. Conference center
6. Communication and telecommunications centers
7. Commuter parking lot
8. Educational institution
9. Flex industrial use
10. Fire, police, rescue stations
11. Food production, packaging, packing, and canning
12. Hotel, serving as an ancillary and interrelated component of the Park
13. Library or other municipal building
14. Manufacture, processing, fabrication, assembly and/or storage of products such as but not limited to scientific and precision instruments, renewable energy technology components, photographic equipment, communications equipment, aircraft or satellite parts, computation equipment, drugs, medicines, medical equipment, pharmaceuticals, household items, glass products, electric lighting and wiring equipment, service industry machines, industrial controls, optical goods, and electrical equipment.
15. Medical care facility, outpatient only
16. Museum, cultural center, arboretum
17. Offices--administrative, business, professional, and telecommunication
18. Outdoor storage provided it shall be surrounded by landscaping sufficient to screen storage area in accordance with Appendix A, applicable category
19. Park, plaza, or natural area
20. Parking structure
21. Performing arts center
22. Post office, drop off and pick up, mail courier and parcel services
23. Printing service
24. Public utility service center, without outdoor storage
25. Rail and/or intermodal terminals, including transfer, storage, handling, inspection, processing and/or transport of containerized bulk and/or other cargo
26. Recording studio
27. Recreational facilities
28. Recycling drop-off collection center serving the Park
29. Research, experimental testing or development activities
30. Restaurant, indoor and outdoor (excluding drive-through)
31. Telecommunications, television, or radio microwave dishes or antennas
32. Training center (excluding rehabilitation and institutional facilities)
33. Utility generating plant and transmission facilities using renewable energy sources
34. Utility installations
35. Utility substations provided storage or maintenance facilities shall not be permitted and provided further that utilities substations, other than transformers, shall be landscaped in accordance with Appendix A, applicable category, sufficient to screen area

36. Warehousing facility (excluding mini-storage facility)
37. Water storage tank
38. Wholesale trade establishment

C. Accessory Uses. Within the GBI H-1 District, the following accessory uses shall be allowed.
1. Only those that are customarily accessory and clearly incidental and subordinate to the principal uses and structures
2. Temporary licensed uses such as festivals, displays, educational exhibits, outdoor gatherings or performances, and outdoor food markets

D. Conditional Uses. Within the GBI H-1 District, the following conditional uses may be allowed, subject to the issuance of a Conditional Use Permit.
1. Structures, other than buildings, exceeding 50 feet
2. Buildings over 40 feet but equal or less than 50 feet or building or structure other than building may be constructed to a maximum height of 75 feet if the building is set back at least 125 additional feet from the required setback for all yards abutting residential properties.

E. Lot, Yard, Height, and Density Requirements. Within the GBI H-1 District, the following standards shall apply.

Minimum Lot Size	15,000 SF
Minimum Lot Width at Setback Line	100'
Front Setback (minimum unless otherwise stated)	10' minimum, 25' maximum
Side Setback (minimum)	None or 5' between buildings, 10' adjacent to street
Rear Setback (minimum)	20'
Corner Lot Setback (minimum)	
Maximum Height	45' for buildings, 50' for structures other than buildings
Maximum Lot Coverage	50%

1. Minimum lot requirements
   a. lot area ..... 15,000 square feet
   b. lot width ..... 100 feet
2. Yard requirements
   a. minimum front yard ..... 10 feet
   b. maximum front yard ..... 25 feet
   c. minimum side yard between buildings ..... none or 5 feet
   d. minimum side yard adjacent to street ..... 10 feet
   e. minimum rear yard ..... 20 feet
3. Maximum building height
   a. buildings ..... 40 feet
   b. structures other than buildings ..... 50 feet
4. Building coverage. No more than 50 percent of the land area of the lot may be covered by structures.

5. Buffer yards. Where the GBI H-1 District adjoins the R (residential) zoning districts within the PUD or CO Land Use Classifications or C districts within the PUD, buffer yards are required as follows:
   a. When a zoning lot within the GBI H-1 District adjoins any R zoning district within the PUD, the following shall be required along all lot lines within the GBI H-1 District adjoining the R zoning district within the PUD.
      i. A 200-foot natural buffer over and above any landscape requests otherwise required by the Town's zoning or site plan ordinances. A preservation easement shall be required prior to site plan approval and no clearing or disturbance of trees or undergrowth shall be allowed within the buffer area.
      ii. No loading facilities, loading docks, or loading bays shall be permitted within 200 feet of any zoning district or zoning classification within the PUD that permits residential as an allowed use and no such facilities shall be located in the side of any portion of a building or structure that is adjacent to the portions of the PUD where residential use is allowed.
      iii. Any buffer yard exclusive of any other yard requirements shall be landscaped with Category III landscape screening as set forth in Appendix A, except that the width of the landscaped area shall be at least 100 feet wide and run continuously for the length of the buffer.
   b. When a zoning lot within the GBI H-1 District adjoins a CO Land Use Classification, the following shall be required along all lot lines within the GBI H-1 District adjoining the CO Land Use Classification:
      i. A 100-foot natural buffer over and above any landscape requests otherwise required by the Town's zoning or site plan ordinances. A preservation easement shall be required prior to site plan approval and no clearing or disturbance of trees or undergrowth shall be allowed within the buffer area.
      ii. No loading facilities, loading docks, or loading bays shall be permitted within 100 feet of any zoning district or zoning classification within the PUD that permits CO Land Use Classification as an allowed use and no such facilities shall be located in the side of any portion of a building or structure that is adjacent to the portions of the PUD where CO Land Use Classification is allowed.
      iii. Any buffer yard exclusive of any other yard requirements shall be landscaped with Category III landscape screening as set forth in Appendix A, except that the width of the landscaped area shall be at least 50 feet wide and run continuously for the length of the buffer.
   c. When a zoning lot within the GBI H-1 District adjoins a C district, the following shall be required along all lot lines within the GBI H-1 District adjoining the C district:
      i. A 50-foot natural buffer over and above any landscape requests otherwise required by the Town's zoning or site plan ordinances. A preservation easement shall be required prior to site plan

approval and no clearing or disturbance of trees or undergrowth shall be allowed within the buffer area.

ii. No loading facilities, loading docks, or loading bays shall be permitted within 75 feet of any zoning district or zoning classification within the PUD that permits commercial as an allowed use and no such facilities shall be located in the side of any portion of a building or structure that is adjacent to the portions of the PUD where commercial use is allowed.

iii. Any buffer yard exclusive of any other yard requirements shall be landscaped with Category III landscape screening as set forth in Appendix A, except that the width of the landscaped area shall be at least 50 feet wide and run continuously for the length of the buffer.

F. Additional Development Requirements.

1. Placement of drives and parking areas. Excluding entrances and exits, no drive or parking area shall be located within any front yard or minimum side or rear yards.
2. Placement of drives and parking areas when adjacent to public right-of-way. Excluding entrances and exits, no drive or parking area shall be located closer than twenty feet from any public right-of-way line for a contiguous public street. Landscaping, hedges, or fast-growing shrubs on a gradual berm shall be installed within a portion of this buffer area unless to do so will jeopardize existing natural vegetation within the buffer area. See Appendix A, Category I for requirements.
3. All parking must comply with Appendix B - Off Street Parking and Loading Requirements
4. Parking is not permitted in the front yard of a lot.
5. No parking or drive aisles shall be located within the required buffer yards.
6. No outside storage of parts, materials, fossil fuels, raw materials, or petroleum shall be permitted within the GBI H-1 District.
7. Any exterior lighting on the property shall be directed down and away from any area zoned R (residential) or PUD where residential development is a permitted use to prevent the disbursement or bleeding of light beyond the limits of the developed portions of the property.
8. No outside loudspeakers, intercoms, paging systems, whistles, horns, bells, or signal*s* audible outside any buildings shall be allowed on the property. Any and all Occupational Safety and Health Administration (OSHA) requirements shall be adhered to; any OSHA-accepted alternative warning devices are encouraged.
9. No dust, smoke, or noxious odors shall be released from any structure, building, or equipment used on the property.
10. No delivery or transmission of materials or products shall be permitted to or from the property by truck or rail between 11 p.m. and 5 a.m. Monday through Sunday.

Section 3.15 Open Space District

A. Statement of Intent. The intent of the Open Space District (OSD) zoning district is to provide opportunities for recreational activities, a network of recreational paths, preserve natural resources and create buffer zones within the town.

B. Permitted Uses

1. Non- commercial recreational uses which are primarily open air.
2. Swimming Pools.
3. Court sports such as but not limited to tennis, volleyball, croquet and basketball.
4. Structures such as picnic shelters, piers and docks, equipment storage buildings associated with permitted recreational uses.
5. Parking areas associated with permitted recreational uses.
6. Retention areas and streets
7. Public Utility Facilities
8. Public Amenities such as restrooms, bath houses, fountains, etc.

C. Accessory Uses. Within the Open Space District, the following accessory uses shall be allowed.
   1. Uses customarily accessory and clearly incidental and subordinate to the permitted uses.

D. Conditional Uses. Within the Open Space District, the following conditional uses may be allowed, subject to the issuance of a Conditional Use Permit.
   1. None

E. Lot, Yard, Height, and Density Requirements. Within the Open Space District, the following standards shall apply.
   1. Minimum setbacks
      a. Buildings
         i. All sides .....20 feet
      b. Courts
         i. From Buildings .....20 feet
         ii. Property Lines .....20 feet
         iii. Streets.....None
   2. In built up neighborhoods, the prevailing setbacks of the neighborhood as defined in Section 3.2 of the Zoning Ordinance.

F. Additional Development Requirements. To help preserve the architectural cohesiveness of the Town, all buildings, structures, public amenities and storage units in the OSD shall be compatible, sympathetic and complimentary with buildings in the neighborhood as defined in Section 3.2 of the Zoning Ordinance.

ARTICLE IV General Regulations Applicable to All Districts

Section 4.0 Home-Based Occupation

A. Statement of Intent. The purpose of this section is to allow home-based occupations in all districts that allow residential dwellings provided that the home-based occupation meets the requirements in 4.0.B below.

B. Requirements for a Home-Based Occupation: The conduct of a business in a residence or on its premises is permitted providing the following characteristics are followed:
   1. The home-based occupation is clearly incidental and subordinate to the residential use of the dwelling
   2. The home-based occupation does not require any changes to the exterior of the dwelling.
   3. Any outdoor storage of goods, products, equipment, solid waste, or other similar items will not exceed the extent associated with normal neighborhood characteristics.
   4. Any accessory building on the property used for the home-based occupation meets all applicable zoning requirements.
   5. The home-based occupation will not create noise, dust, vibration, smoke, small, glare, electrical interference, fire hazard, or other hazard or nuisance to any greater or more frequent extent than associated with normal neighborhood characteristics.
   6. Any pedestrian and/or commercial delivery traffic generated by the home-based occupation will not be greater than normal traffic in the neighborhood.
   7. Any parking requirements of the home-based occupation will be met by off-street parking.

C. If the home-based occupation meets the above requirements and the Home-Based Occupation Affidavit is signed, zoning clearance may be granted. If the home-based occupation does not meet the above requirements, a Conditional Use Permit will be required.

D. Conditional Use PermitNothing herein precludes compliance with any Federal, State, or Local regulatory agency requirements.

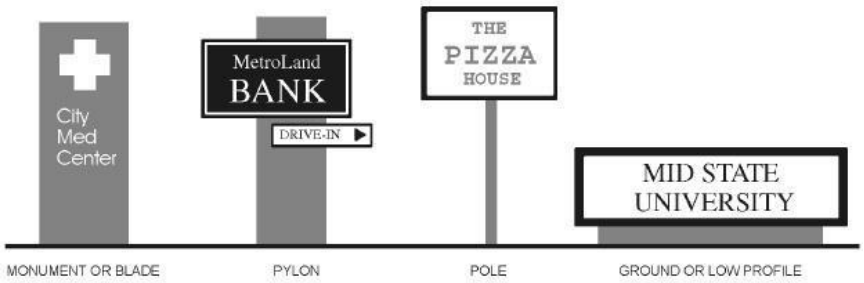
E. The following are specifically excluded:
   1. Family care homes, group homes except as allowed under § 15.2-2291 of the Code of Virginia, nursing homes, convalescent homes, elderly care facilities.
   2. Auto repair shops.
   3. Kennels.
   4. Any activity that includes the use of weapons, ammunition, explosives, chemicals, fireworks, or other hazardous materials.
   5. Butchers.
   6. Sexually oriented business including adult media, products, or activity.
   7. Illegal drugs and equipment used for these drugs.
   8. Funeral parlors

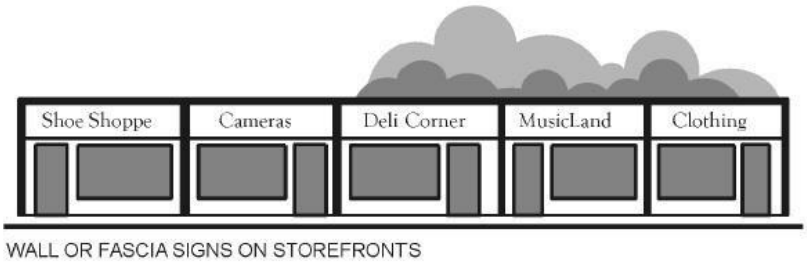
Section 4.1 Sign Regulations

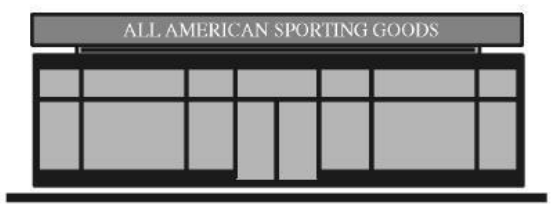
A. Purpose. The purpose of this sign ordinance is to encourage the effective use of signs as a means to communicate in the Town, to maintain and enhance the aesthetic environment and the Town's ability to attract sources of economic development and growth; to improve the pedestrian and traffic safety, to minimize the possible adverse effect of signs on nearby public and private property, and to enable the fair and consistent enforcement of these sign restrictions.

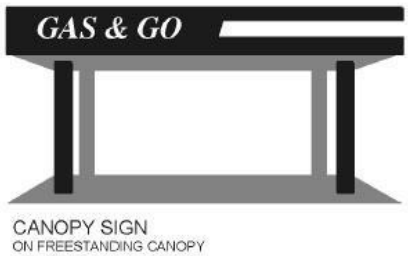
B. General. Sign types and the computation of *sign* area shall be as depicted in Figures C.1(1) through C.1(4).

C. Figures depicted beginning on next page.









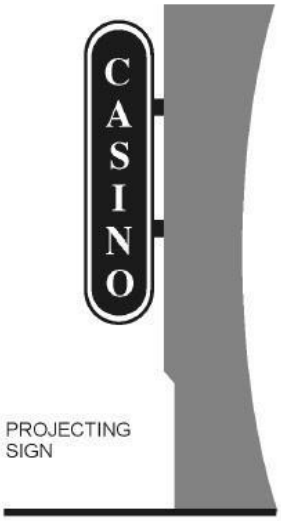


FIGURE C.1(1) GENERAL SIGN TYPES

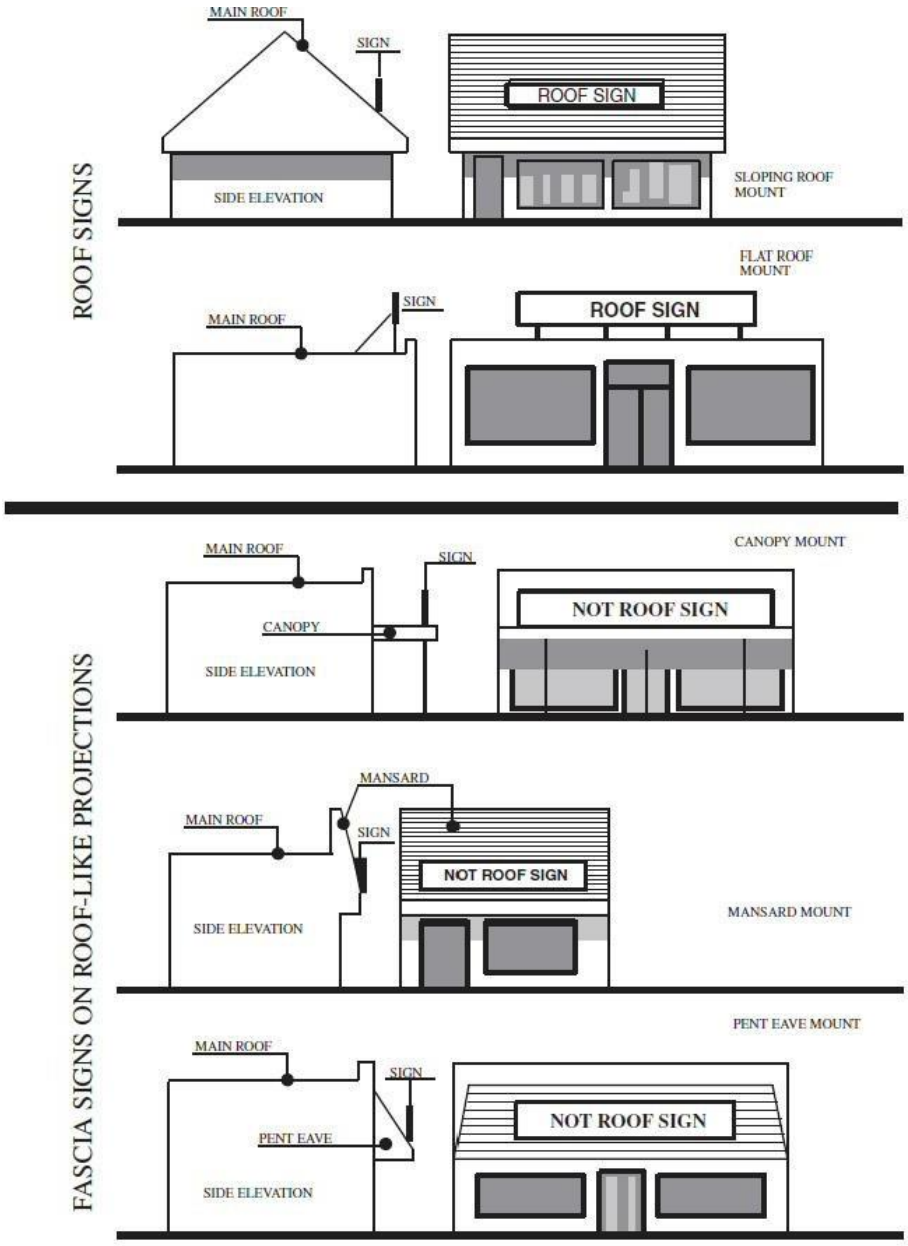


FIGURE C.1(2) COMPARISON—ROOF AND WALL OR FASCIA SIGNS

A. General Provisions

1. Conformance to codes
   Any sign hereafter erected shall conform to the provisions of this ordinance and of any other ordinance or regulation within this jurisdiction.

2. Signs in rights-of-way
   No sign other than an official traffic sign or similar sign shall be erected within any public way, unless specifically authorized by other ordinances or regulations of this jurisdiction or by specific authorization of the Zoning Administrator and the Virginia Department of Transportation (VDOT).

3. Projections over public ways
   Signs projecting over public walkways shall be permitted to do so only with the approval of the Town Manager on a temporary basis. These signs are subject to the projection and clearance limits either defined herein or, if not so defined, at a minimum height of 8 feet (2438 mm) from *grade* level to the bottom of the sign. Signs, architectural projections or *sign* structures projecting over vehicular access areas must conform to the minimum height clearance limitations imposed by the jurisdiction for such structures.

4. Traffic visibility.
   No sign or sign structure shall be erected at the intersection of any street in such a manner as to obstruct free and clear vision, nor at any location where by its position, shape or color it may interfere with or obstruct the view of or be confused with any authorized traffic sign, signal or device.

5. Computation of frontage
   Business signs with an area of two square feet for each foot of facade width to a maximum of fifty square feet in sign area (where more than one business exists in a building, each maximum sign area is to be proportionate to the business square footage). For buildings with more than one wall facing a street, each side of the building will be computed separately.

6. Animation and changeable messages
   Animated signs are not permitted in any areas of the Town.

7. Maintenance, repair and removal
   Every sign permitted by this ordinance shall be kept in good condition and repair. When any sign becomes insecure, in danger of falling or is otherwise deemed unsafe by the zoning administrator, or if any sign shall be unlawfully installed, erected or maintained in violation of any of the provisions of this ordinance, the owner thereof or the person or firm using same shall, upon written notice by the zoning administrator forthwith in the case of immediate danger, and in any case within not more than 10 days, make such sign conform to the provisions of this ordinance, or shall remove it. If within 10 days the order is not complied with, zoning administrator shall be permitted to remove or cause such sign to be removed at the expense of the owner and/or the user of the sign. The Town will store the sign for 30 days to give the owner an opportunity to reclaim the sign. The sign will be destroyed if unclaimed after 30 days. If ownership of the sign cannot be determined, the sign shall be removed and destroyed after 30 days if unclaimed.

8. Obsolete sign copy
Any *sign* copy that no longer advertises or identifies a use conducted on the property on which said *sign* is erected must have the sign copy covered or removed within 10 days after written notification from the zoning administrator; and upon failure to comply with such notice, the zoning administrator is hereby authorized to cause removal of such sign copy, and any expense incident thereto shall be paid by the owner of the building, structure or ground on which the sign is located.
In some instances, the historic significance of the sign will exempt the property from adherence to this ordinance. Such cases will be determined by the zoning administrator.

9. Nonconforming signs
Any sign legally existing at the time of the passage of this ordinance that does not conform in use, location, height or size with the regulations of the zone in which such *sign* is located, shall be considered a legal nonconforming use or structure and shall be permitted to continue in such status until such time as it is either abandoned or removed by its owner, subject to the following limitations:

a. Structural alterations, enlargement or re-erection are permissible only where such alterations will not increase the degree of nonconformity of the signs.
b. Any legal nonconforming *sign* shall be removed or rebuilt without increasing the existing height or area if it is damaged, or removed if allowed to deteriorate to the extent that the cost of repair or restoration exceeds 50 percent of the replacement cost of the sign as determined by the zoning administrator.
c. Signs that comply with either Item 1 or 2 above need not be permitted.

B. Exempt Signs
The following signs shall be exempt from the provisions of this chapter but no sign shall be exempt from Section D.4.

1. Official notices authorized by a *court*, public body or public safety official.
2. Directional, warning or information signs authorized by federal, state or municipal governments.
3. Memorial plaques, building identification signs, historical markers and building cornerstones when cut or carved into a masonry surface or when made of noncombustible material and made an integral part of the building or structure.
4. The flag of a government or noncommercial institution, such as a school.
5. Religious symbols and seasonal decorations within the appropriate public holiday season.
6. Works of fine art or historical signs displayed in conjunction with a commercial enterprise where the enterprise does not receive direct commercial gain.
7. Street address signs and combination nameplate and street address signs which do not exceed 4 square feet in area.

   Freestanding signs or signs attached to fences, no more than one and one half square feet in area, to warn the public against hunting, fishing, trespassing, dangerous animals, swimming, the existence or danger of such, when placed on the periphery of the property or at a location where the warning is necessary.

8. Political signs during the election season. All requirements shown in § H.2.f must be followed.

C. Prohibited Signs
The following devices and locations shall be specifically prohibited:

1. Signs located in such a manner as to obstruct or otherwise interfere with an official traffic sign, signal or device, or obstruct or interfere with a driver's view of approaching, merging or intersecting traffic.

2. All signs encroaching upon or overhanging public right-of-way. No sign shall be attached to any utility pole (with the exception of the utility pole located at the Post Office on Randolph Avenue), light standard, street tree or any other public facility located within the public right-of-way.
3. Signs which blink, flash or are animated by lighting in any fashion that would cause such signs to have the appearance of traffic safety signs and lights, or municipal vehicle warnings from a distance.
4. Signs, any part of which moves by any means, including but not limited to rotating signs, propellers, discs, and such but excluding pennants and signs indicating time and temperature.
5. Portable signs except as allowed for temporary signs.
6. Any *sign* attached to, or placed on, a vehicle or trailer parked on public or private property, except for signs meeting the following conditions:

a. The primary purpose of such a vehicle or trailer is not the display of signs.
b. The signs are magnetic, decals or painted upon an integral part of the vehicle or equipment as originally designed by the manufacturer, and do not break the silhouette of the vehicle.
c. The vehicle or trailer is in operating condition, currently registered and licensed to operate on public streets when applicable, and actively used or available for use in the daily function of the business to which such signs relate.

7. Vehicles and trailers are not used primarily as static displays, advertising a product or service, nor utilized as storage, shelter or distribution points for commercial products or services for the general public.
8. Balloons, streamers or pinwheels except those temporarily displayed as part of a special sale, promotion or community event. For the purposes of this subsection, "temporarily" means no more than 20 days in any calendar year.
9. Any signs that use the word "stop" or "danger" or otherwise present or imply the need or requirement to stop or take caution of the existence of danger or which is a copy of, imitation of, or which for any reason is likely to be confused with any sign displayed or authorized by a public authority.
10. Any non-shielded illumination of a sign within 200 feet of a residential district.
11. Billboard signs
12. Illuminated tubing or strings of lights solely for the purpose of illumination, except when displayed as decorations during the holiday seasons. This includes any lighting arrangement which outlines any portion of a building or structure by exposed tubing or strings of lights.
13. Signs advertising activities which are illegal under federal, state, or local laws and regulations.

D. Permits Required

1. Unless specifically exempted, a permit must be obtained from the zoning administrator for the erection and maintenance of all signs erected or maintained within this jurisdiction and in accordance with other ordinances of this jurisdiction. Exemptions from the necessity of securing a permit, however, shall not be construed to relieve the owner of the sign involved from responsibility for its erection and maintenance in a safe manner and in a manner in accordance with all the other provisions of this ordinance.
2. Construction documents

   Before any permit is granted for the erection of a sign or sign structure requiring such permit, construction documents shall be filed with the zoning administrator showing the dimensions, materials and required details of construction, including loads, stresses, anchorage and any other pertinent data. The permit application shall be accompanied by the written consent of the owner or lessee of the premises upon which the sign is to be erected and by engineering calculations signed and sealed by a registered design professional where required by the

International Building Code.

3. Changes to signs
No sign shall be structurally altered, enlarged or relocated except in conformity to the provisions herein, nor until a proper permit, if required, has been secured. The changing or maintenance of movable parts or components of an approved sign that is designed for such changes, or the changing of copy, business names, lettering, sign faces, colors, display and/or graphic matter, or the content of any sign shall not be deemed a structural alteration.

4. Permit fees
Permit fees to erect, alter or relocate a sign shall be in accordance with the fee schedule adopted within this jurisdiction.

5. Permit number. Permit must be made available upon request.

6. Permit expiration. If a sign is not erected within twelve months following the issuance of a sign permit, such permit shall be null and void.

7. Church, school, or other public or semi-public institutions may have one name sign or bulletin board not exceeding twenty square feet in area.

8. Landscaping shall be integrated with each individual freestanding sign. Landscaping plans will be approved by the Zoning Administrator.

9. Signs and advertising structures shall not obstruct any window, door, fire escape, stairway, ladder, or opening intended to provide light, air, or ingress and egress for any building structure.

E. Specific Sign Requirements

1. Identification signs.

Identification signs shall be in accordance with Sections H.1.a through H.1.b.

a. Wall signs
Every single-family residence, multiple-family residential complex, commercial or *industrial* building, and every separate nonresidential building in a residential zone may display wall signs per street frontage subject to the limiting standards set forth in Table H.1.a. For shopping centers, planned *industrial* parks or other multiple occupancy nonresidential buildings, the building face or wall shall be calculated separately for each separate occupancy.

TABLE H.1.a IDENTIFICATION SIGN STANDARDS—WALL SIGNS

LAND USE	**AGGREGATE AREA (square feet)**
ingle-family residential	2 SQFT
ultiple-family residential	T per residential dwelling

For SI: 1 square foot = 0.0929 m^2.

a. Free-standing signs
In addition to any allowable wall signs, every single-family residential subdivision, multiple-family residential complex, commercial or *industrial* building, and every separate nonresidential building in a residential zone shall be permitted to display free-standing or combination signs per street frontage subject to the limiting standards set forth in Table H.1.b.

TABLE H.1.b IDENTIFICATION SIGN STANDARDS—
FREE-STANDING SIGNS[a,b,c]

LAND USE	MBER OF SIGNS	MAXIMUM HEIGHT (feet)	AREA (square feet)	SPACING
Residential Subdivision	1	6′	12 Sq Ft	er subdivision entrance[a]
ultiple-family residential	1	6′	12 Sq Ft	1 per driveway[a]
nmercial and industrial	1	6′	64 Sq Ft	150[b]
lason Avenue Commercial	1 per store front	6′	12 Sq Ft	1 per store front

For SI: 1 foot = 304.8 mm, 1 square foot = 0.0929 m^2, 1 acre = 4047 m^2.

a. For shopping centers or planned *industrial* parks, two monument-style free-standing signs not exceeding 50 percent each of the permitted height and area, and spaced not closer than 100 feet to any other free-standing identification sign, shall be permitted to be allowed in lieu of any free-standing sign otherwise permitted in Table H.1.b.

b. For any commercial or *industrial* development complex exceeding 1,000,000 square feet of gross leasable area, or 40 acres in size, such as regional shopping centers, auto malls or planned *industrial* parks, one free-standing sign per street front shall be permitted to be increased in sign area by up to 50 percent.

Temporary signs
Temporary signs shall be in accordance with Sections H.2.a through H.2.f.

b. Real estate signs
Real estate signs shall be permitted in all zoning districts, subject to the following limitations:

(1) Real estate signs, including Open House Signs, located on a single residential lot shall be limited to one sign, not greater than 4 square feet in area.

(2) Real estate signs advertising the sale of lots located within a subdivision shall be limited to one sign per entrance to the subdivision, and each *sign* shall be no greater than 32 square feet in area nor 6 feet in height. All signs permitted under this section shall be removed within 7 days after sale of the last original lot.

(3) Real estate signs advertising the sale or lease of space within commercial or *industrial* buildings shall be no greater than 12 square feet in area nor 8 feet in height, and shall be limited to one sign per street front.

(4) Real estate signs advertising the sale or lease of vacant commercial or *industrial* land shall be limited to one sign per street front, and each sign shall be no greater than 8 feet in height, and 20 square feet for property of 10 acres or less, or 32 square feet for property exceeding 10 acres.

(5) Real estate signs shall be removed not later than 7 days after execution of a lease agreement in the event of a lease, or the closing of the sale in the event of a purchase.

(6) Real estate auction signs advertising the sale of residential, commercial or *industrial* property shall be no greater than 32 square feet, and may be displayed for up to 30 days.

c. Development and construction signs
Signs temporarily erected during construction to inform the public of the developer, contractors, architects, engineers, the nature of the project or anticipated completion dates, shall be permitted in all zoning districts, subject to the following limitations:

(1) Such signs on a single residential lot shall be limited to one sign, not greater than 6 feet in height and 4 square feet in area.

(2) Such signs for a residential subdivision or multiple residential lots shall be limited to one sign, at each entrance to the subdivision or on one of the lots to be built upon, and shall be no greater than 6 feet in height and 32 square feet in area.

(3) Such signs for commercial or *industrial* projects shall be limited to one sign per street front, not to exceed 6 feet in height and 12 square feet for projects on parcels 5 acres or less in size, and not to exceed 6 feet in height and 32 square feet for projects on parcels larger than 5 acres.

(4) Development and construction signs may not be displayed until after the issuance of construction permits by the building official, and must be removed not later than 7 days following issuance of an occupancy permit for any or all portions of the project.

d. Special promotion, event and grand opening signs
Signs temporarily displayed to advertise special promotions, events and grand openings shall be permitted for nonresidential uses in a residential district, and for all commercial and *industrial* districts subject to the following limitations:

(1) Such signs shall be limited to one sign per street front.

(2) Such signs may be displayed for not more than 30 consecutive days in any 3-month period, and not more than 60 days in any calendar year. The signs shall be erected no more than 7 days prior to the event or grand opening and shall be removed not more than 1 day after the event or grand opening.

(3) The total number of all such signs shall not exceed 5 in any single- family residential district,

limited to 4 square feet in any multiple- family residential district and in any commercial or *industrial* district.

e. Political signs

Political signs shall be permitted in all zoning districts, subject to the following limitations:

(1) Such signs shall not exceed an area of 4 square feet per sign.

(2) Such signs for election candidates or ballot propositions shall be displayed only for a period of 45 days preceding the election and shall be removed within 7 days after the election.

(3) Such signs shall not be placed in any public right-of-way or obstruct traffic visibility.

f. Other Temporary Signs

This category includes temporary signs that do not conform to any of the other categories listed above.

(1) Such signs on a single residential lot shall be limited to one sign per lot which shall not exceed an area of 4 square feet.

2. Requirements for specific sign types

Signs of specific type shall be in accordance with Sections H.3.a through H.3.g.

a. Canopy and marquee signs

(1) The permanently affixed copy area of *canopy* or marquee signs shall not exceed an area equal to 25 percent of the face area of the *canopy*, marquee or architectural projection upon which such sign is affixed or applied.

(2) Graphic striping, patterns or color bands on the face of a building, *canopy*, marquee or architectural projection shall not be included in the computation of sign copy area.

b. Awning signs

(1) The copy area of awning signs shall not exceed an area equal to 25 percent of the background area of the awning or awning surface to which such a sign is affixed or applied, or the permitted area for wall or fascia signs, whichever is less.

(2) Neither the background color of an awning, nor any graphic treatment or embellishment thereto such as striping, patterns or valances, shall be included in the computation of sign copy area.

c. Projecting signs

(1) Projecting signs shall be permitted in lieu of free-standing signage on any street frontage limited to one sign per occupancy along any street frontage with public entrance to such an occupancy, and shall be limited in area to 2 square feet per each lineal foot of building frontage, except that no such sign shall exceed an area of 50 square feet.

(2) No such *sign* shall extend vertically above the highest point of the building facade upon which it is mounted.

(3) Such signs shall not extend over a public sidewalk without approval of the Zoning Administrator.

(4) Such signs shall maintain a clear vertical distance above any public sidewalk a minimum of 8 feet.

d. Under *canopy* signs

(1) Under *canopy* signs shall be limited to no more than one such sign per public entrance to any occupancy.

(2) Such signs shall maintain a clear vertical distance above any sidewalk or pedestrian way a minimum of 8 feet.

e. Roof signs

(1) Roof signs shall not be permitted in any districts.

f. Window signs (Inside).

Window signs shall be permitted for any nonresidential use in a residential district, and for all commercial and *industrial* districts, subject to the following limitations:

(1) Any signs attached to windows or glass walls advertising weekly specials or special services offered for a limited time by a business establishment.

(2) The aggregate area of all such signs shall not exceed 25 percent of the window area on which such signs are displayed. Window panels separated by muntins or mullions shall be considered as one continuous window area.

(3) Window signs shall not be assessed against the sign area permitted for other sign types.

g. Menu boards

Menu board signs shall not be permitted to exceed 10 square feet and are limited to one sign per business.

h. Sandwich boards

Sandwich boards on public right-of-way shall be removed at daily close of business. The signs shall not exceed 10 square feet and are limited to one sign per business.

F. Signs for Development Complexes

1. Master sign plan required

All landlord or single-owner controlled multiple-occupancy development complexes on parcels exceeding 8 acres (32 376 m^2) in size, such as shopping centers or planned *industrial* parks, shall submit to the zoning administrator a master sign plan prior to issuance of new sign permits. The master sign plan shall establish standards and criteria for all signs in the complex that require permits, and shall address, at a minimum, the following:

a. Proposed sign locations.
b. Materials.
c. Type of illumination.
d. Design of free-standing sign structures.
e. Size.
f. Quantity.
g. Uniform standards for nonbusiness signage, including directional and informational signs.

2. Development complex sign

In addition to the free-standing business identification signs otherwise allowed by this ordinance, every multiple-occupancy development complex shall be entitled to one free-standing sign per street front, at the maximum size permitted for business identification free-standing signs, to identify the development complex. No business identification shall be permitted on a development complex sign. Any free-standing sign otherwise permitted under this ordinance may identify the name of the development complex.

3. Compliance with master sign plan

All applications for sign permits for signage within a multiple-occupancy development complex shall comply with the master sign plan.

4. Amendments

Any amendments to a master sign plan must be signed and approved by the owner(s) within the development complex before such amendment will become effective.

G. Other Permitted Signs

1. Commercial Districts

a. Barber poles.
b. Theater marquees, including chaser lights, neon, and backlit changeable letterings appropriate to its use.

H. Sign Illumination

1. External Illumination. External lighting shall be limited to light fixtures utilizing white, not colored, lighting and shall not be blinking, fluctuating, or moving. External lighting shall be provided by concealed and/or screened spots or floods and shall be arranged and installed so that direct or reflected illumination does not exceed (0.5) foot candles above background measured at the lot line of any adjoining residential or agricultural parcel or public right-of-way.
2. Internal Illumination. Internal lighting shall be limited to internal light contained within translucent letters and internal illuminated sign boxes provided the background or field on which the copy and/or logos are placed is opaque. The area illuminated is restricted to the sign face only. The direct or reflected illumination shall not exceed (0.5) foot candles above the background measured at the lot line of any adjoining residential or agricultural parcel or public right-of-way.

I. Violations of Signs

The Zoning Administrator shall have the authority to determine violations of this preceding section and notify the owner of such violation in writing. In addition to penalties described in Section 2.4.3, if it is determined that a sign is unlawfully installed, erected or maintained in violation of any of the provisions of this ordinance, the owner thereof or the person or firm using same shall, upon written notice by the zoning administrator forthwith in the case of immediate danger, and in any case within not more than 10 days, make such sign conform to the provisions of this ordinance, or shall remove it. If within 10 days the order is not complied with, zoning administrator shall be permitted to remove or cause such sign to be removed at the expense of the owner and/or the user of the sign. The Town will store the sign for 30 days to give the owner an opportunity to reclaim the sign. The sign will be destroyed if unclaimed after 30 days. If ownership of the sign cannot be determined, the sign shall be removed and destroyed after 30 days if unclaimed. For repeat offenses, the Zoning Administrator is authorized to immediately remove any unlawfully placed sign.

Section 4.2 Exceptions to the Regulations

A. Gasoline Pumps. Gasoline pumps shall be setback a minimum of 15 feet from the property line.

B. Trailer Parking
   1. Storage of travel or recreational trailers in an enclosed accessory building is permitted in any district provided that no living quarters are maintained within the trailer.
   2. Travel and recreational trailers shall be parked to the rear of the front line of the main building in a residential district.
   3. Construction trailers are permitted on the construction site for the duration of the construction project.

C. Structures Permitted Above Height Limitations. Penthouses or roof structures for the housing of elevators, stairways, tanks, ventilating fans, and similar equipment required to operate and maintain the building, fireproof, or parapet walls, towers, steeples, flagpoles, chimneys, smokestacks, wireless masts, water tanks, silos, cupolas, or similar structures may be erected above the height limit specified in the district in which the property is located, but no penthouses or roof shall be allowed for the purpose of providing additional floor space.

D. Vision Clearance at Intersections. At any corner lot there shall be no planting, structure,

fence, retaining wall, shrubbery, or obstruction to vision more than three feet higher than the curb level within the triangle formed by the street right-of-way lines and a line connecting such street lines 25 feet from their intersections.

E. Accessory Buildings. The following restrictions shall apply to accessory buildings located in residential districts.

1. The accessory building shall not be located in a front or side yard.
2. The accessory building shall not be closer than five feet (5') to any alley line.
3. The accessory building shall not be closer than two feet (2') to any side or rear lot line.
4. The accessory building shall not be closer than fifteen feet (15') from the main building.
5. A two-story building shall not be located any closer than five feet (5') to any lot line.
6. The sum of the footprint square footage (SF) of all buildings on the lot shall be less than 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.
12. Non-conforming lots smaller than fifty-six hundred (5,600) square feet in the R-1 District the total footprint area of all accessory building lot coverage shall not exceed ten (10) percent.

F. Projections Allowed in Required Setbacks. No building or structure, or addition thereto, shall extend into a required setback area or yard area, except chimneys, heating and cooling equipment, structures less than sixteen (16) inches in height as measured from finished ground elevations, and steps may extend into such setback or yard area other than front yard setback. The following unenclosed uses may extend no more than four feet, but not nearer than five feet to any property line: balconies, eaves, trims, fascia boards, and similar architectural features, platforms, and terraces. Additional uses may project into setbacks, as interpreted and determined by the Zoning Administrator.In Commercial District C-1, no building or structure, or addition thereto, shall extend into the required front setback area or yard area except for the following: above street floor level balconies, porches, and terraces may extend therein. Support members for these structures may extend to the ground as required by the building and maintenance code. No part of any foundation for these support members shall extend above the ground or grade level. The following unenclosed structures located above the first floor level may

extend to the front lot line: porches, balconies, terraces.

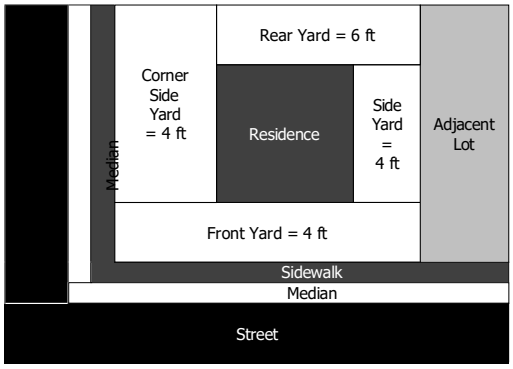
G. Fences and Walls. The setback and yard requirements of this ordinance shall not deem to prohibit any otherwise lawful fence or wall. A fence or wall must be two feet from any sidewalk, alley, or public right of way.

1. In residential areas, fences and walls may be no closer than one inch from adjacent property boundaries (unless adjacent property owners agree to jointly construct the fence on the property line) and may be erected to a height as follows:

Maximum fence heights for interior lots
Rear Yard – Not to exceed 6 feet
Side Yard – Not to exceed 4 feet
Front yard – Not to exceed 4 feet

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

Corner Lot



Maximum fence heights for corner lots
Rear Yard – Not to exceed 6 feet
Side Yard – Not to exceed 4 feet
Corner Side Yard – Not to exceed 4 feet
Front yard – Not to exceed 4 feet

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

Chain link fencing is acceptable in rear yards not facing a public street. Open mesh fencing that existed as of the effective date of this section of the Zoning

Ordinance may be maintained; any new fencing must meet the requirements of this ordinance.

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

3. Commercial and Industrial Fences. Fences in commercial and industrial zones are permitted if they comply with residential fencing requirements in Section 4.2 G 1 and 2. In commercial and industrial zones, the Conditional Use Permit process shall be used for any non-conforming fences. Applicants shall demonstrate that the proposed fencing is consistent with the nature of and the security requirements of the business.

H. Wetlands and Water Areas Excluded From Lot Areas. In calculating the area of any lot for the purpose of compliance with the minimum lot area requirements of the district regulations, wetlands, and areas outboard of the shoreline shall be excluded.

I. Utility Lines Underground. All new utility lines such as electric, telephone, CATV, or other similar lines shall be installed underground. This requirement shall apply to lines serving individual sites as well as to utility lines necessary within a project. All junction and access boxes shall be screened with appropriate landscaping. All utility pad fixtures and meters shall be shown on the site plan. The necessity for utility connections, meter boxes, etc., should be recognized and integrated with the architectural elements of the site plan.

J. Accessory Dwellings. One accessory dwelling may be maintained on a property in the R-1, R-2 and CR zoning districts subject to the following: *[revised 10-20-2022]*

1. Physical characteristics.
   a. Accessory dwellings shall be located in an accessory building.
   b. Accessory dwellings shall not have a floor area exceeding forty-five (45) percent of the floor area of the main building.
   c. Accessory dwellings shall have one kitchen, one bathroom, and a sleeping area.
   d. Accessory buildings shall not have the appearance of a single-family dwelling.
2. Occupancy characteristics.
   a. Transient Occupancy (also referred to as Short Term Rentals [STRs]) means any person(s) who, for any period of not more than thirty (30) consecutive days, either at his own expense or at the expense of another, lodges or obtains lodging at any hotel, motel Short-term rental, or other facility. Accessory Dwelling Units may not be rented on a Transient Occupancy basis.
   b. Length of stay – An Accessory Dwelling Unit may be occupied by any person or persons for a period no less than thirty (30) consecutive calendar days either paying a fee for such occupancy at his own expense or at the expense of another (30-day rental or greater). Upon request from any building, zoning, finance, or public safety official acting on behalf of the Town of Cape Charles the owner of the subject lot of record upon which the Accessory Dwelling UnitAccessory Dwelling Unit sits shall provide occupancy documentation and/or information as requested in

writing.

c. The property owner where the Accessory Dwelling Unit (ADU) is located may utilize the ADU as overflow residential space for members of their family and guests.

3. Other requirements.
   a. Accessory dwellings located in accessory buildings may have a separate water meter from the principal dwelling.
   b. Accessory dwellings will be required to have its own municipality issues trash receptacle, separate from the main residence/structure.
   c. Accessory dwellings meeting the requirements of all of the physical characteristics of 4.2 (J) (1) and (2) above must obtain a Certificate of Completion for Accessory Dwellings from the Code Official, which is equivalent to a Certificate of Occupancy. In order to issue said Certificate, the Code Official will conduct an inspection to determine compliance with the Building Code.
   d. The lot on which an accessory dwelling is located shall have the required minimum lot area for the district in which it is located.
   e. Parking shall be in compliance with Section 4.5 using both on and off-street parking areas.
   f. Exterior elevations shall also be approved by the Historic District Review Board when required by Article VIII, Historic Overlay.
   g. Annual Certifications to be submitted to the Town by March 15 of each year to the Building and Planning Departments.
      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 30 days from the property transfer.

Section 4.3 Conditional Use Permits

A. Statement of Intent. The purpose of this section is to recognize certain uses which, by nature, can have a potentially unfavorable impact on or be incompatible with other uses of land within a given zoning district. These uses, as described, may be permitted within given designated districts under controls, limitations, and regulations of a conditional use permit. It shall be the duty of the Town Council under the provisions of this ordinance to evaluate the impact and the compatibility of each use and to stipulate such conditions and restrictions including those specifically contained herein as will assure the use being compatible with the neighborhood in which it is located, both in terms of existing land uses and conditions and in terms of development proposed or permitted by right in the area or, where that cannot be accomplished, to deny the use as not being in accordance with the adopted comprehensive plan or as being incompatible with the surrounding

neighborhood.

B. Conditions for Issuance. Conditional use permits may be issued for any of the conditional uses for which a use permit is required by the provision of this ordinance in the specific districts provided that the Town Council, upon recommendation by the Planning Commission, shall find that after duly advertised public hearing the use will not:

1. Adversely affect the health, safety, or welfare of the persons residing or working in the neighborhood of the proposed use or adversely affect other land uses within the particular surrounding neighborhood.
2. Be detrimental to the public welfare or injurious to property or improvements in the neighborhood.
3. Be in conflict with the purpose of the comprehensive plan of the town.

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

C. Procedures. Written application for a conditional use permit may be made by any property owner, tenant, department, board, or bureau of any government agency. The application shall be filed with the Zoning Administrator on forms provided by the town. The application shall be accompanied by a fee established by separate ordinance by the Town Council to defray cost of advertising and processing the application. A site plan in accordance with the site plan ordinance shall be submitted with each application. A list of additional required permits shall be submitted with the application and shall be submitted to the Planning Commission with the application, and the Zoning Administrator may add any additional required permits. Changes to the additional permit list may be made by mutual consent of the applicant and the commission. No changes shall be made to the list after the Planning Commission recommendations to Town Council. Conditional use permits shall include a disclosure statement, signed by the applicant and notarized, of the equitable ownership of the real estate affected, which shall list the names and addresses of all the adjacent property owners and interested parties, including applicant, owners, contractors, purchasers, and lessees of the land described in the application, all partners, both general and limited, and partnerships, stockholders, officers, and directors. The applicant shall keep this information current at all times during the processing of the application. The procedures for approval of a conditional use permit shall be the same as those prescribed for zoning changes as set forth in this ordinance.

1. Action by the Zoning Administrator. The Zoning Administrator shall study the application and determine whether the proposed conditional use conforms to the general purpose and intent of the comprehensive plan, any applicable regulations that have been adopted, and the requirements of this ordinance. Upon completion of such review, if the administrator shall determine that any proposal in the application does not meet the requirements of this ordinance, he/she shall reject the application and return it to the applicant. If the applicant does meet the requirements of this ordinance, the administrator shall transmit all the findings and recommendations to the Planning Commission. However, nothing herein shall prohibit the administrator from accepting a conditional use permit application if failure to meet applicable requirements is due solely to area or dimension insufficiency of the lot upon which it is proposed. Any appeal of the Zoning Administrator may be made directly to the town manager.
2. Action by the Planning Commission. After receiving the report of the administrator

with all pertinent materials, the Planning Commission shall give notice of and hold a public hearing. Within 45 days after the hearing, the Commission shall submit its recommendations to the Town Council through the Zoning Administrator. Upon mutual agreement between the Commission and the applicant, such time may be extended.

3. Action by the Town Council. After receiving the recommendations of the Zoning Administrator and the Planning Commission, the Town Council shall hold a public hearing and act upon the proposed conditional use permit, granting the applicant in whole or in part, with or without modifications, or denying the proposed application. In addition to the general or specific requirements set forth in the ordinance concerning the proposed use, which shall be considered minimum requirements with respect to the permit, additional requirements, conditions, and safeguards may be added by the Town Council as required for the protection of the public interest in the specific case.

D. Approval of a conditional use permit shall be valid for only the specific use it covers in the specific location designated for a period of one year after approval by the Town Council and the completion of the additional permit process as requested in the application. Applicant shall apply or have applied for all additional permits as provided to the Planning Commission and as required by the Zoning Administrator within one (1) month of the approval by the Town Council. If Applicant fails to apply for any such permit within this time period, the conditional use permit shall be effective as of this date, thirty (30) days after the Town Council approval, unless the Town Council allows for additional time for such application or applications.

1. Staff shall notify Town Council of the date that all additional permits have been approved which date shall be the commencement date for the one (1) year Conditional Use Permit
2. Staff shall notify Town Council of the status of the project at a regular meeting prior to the expiration of the one (1) year Conditional Use Permit.

E. If not acted upon within one six (6) months, the conditional use permit shall become null and void, unless an extension of time is approved by the Town Council for good cause shown before the expiration of the Conditional Use Permit. Town Council may make additional one-year extensions for good cause. To be considered acted upon one (1) or more of the following is required, and may be determined by the Zoning Administrator:

1. The procurement of an active Cape Charles Building Permit
2. Payment of Water and Wastewater Connection and Facility Fees
3. Completed Plans stamped by a Virginia Licensed Professional
4. Commencement of site preparation or construction
5. No application for a use permit for the same conditional use on a lot, parcel, or tract shall be considered by the Town Council within a one-year period from its last consideration. The provisions, however, shall not impair the right of the Town Council to propose a use permit on its own motion if it finds that there is public benefit to be gained.

F. Revocation of a Conditional Use. If the provisions of this ordinance or the requirements of the conditional use permit are not met, then the Town Council may revoke the

conditional use permit provided that ten days' written notice is given to the applicant.

Section 4.4 Landscaping and Screening Regulations

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

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

B. General Requirements

1. Landscaping shall be required in all commercial and industrial districts.
    a. The owner or his agent shall be responsible for the maintenance, repair, and replacement of all landscaping materials as may be required by the provisions of this Article.
    b. All plant material shall be tended and maintained in a healthy growing condition and free from refuse and debris at all times. All unhealthy, dying, or dead plant materials shall be replaced during the next planting season.
2. Commercial and industrial district uses that abut residential zones shall provide a landscape buffer or screened area between districts.
3. All parking lots shall be screened and landscaped from adjoining properties or every other use and zoning district.
4. Land disturbance shall be limited to the area necessary to provide for the desired use or development.
    a. Ingress and egress during construction shall be limited to one access point unless otherwise approved by the Zoning Administrator.
5. Indigenous vegetation shall be preserved to the maximum extent possible with the use and the development permitted and in accordance with the Virginia Erosion and Sediment Control Handbook and the Chesapeake Bay Act.
    a. Clearing shall be allowed only to provide necessary access, positive site drainage, water quality BMPs, and the installation of utilities as approved by the Zoning Administrator.
    b. Prior to clearing or grading, suitable protective barriers such as safety fencing shall be erected five feet outside of the dripline of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
    c. Trees may be pruned or removed as necessary to provide sight lines and

vistas provided that, where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint pollution from runoff. Preservation of existing trees is encouraged to provide continuity, improved buffering ability, pleasing scale, and image.

d. Any path shall be constructed and surfaced so as to effectively control erosion.

6. Any land-disturbing activity exceeding 2,500 square feet, including construction of single-family homes, shall comply with the requirements of the Erosion and Sediment Control Regulations.
7. The comprehensive plan for each parcel shall include the requirement to retain the 100 foot Resource Protection Area (RPA) and associated buffer area.

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

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

E. Exterior Lighting
1. All exterior lighting shall be arranged and installed so that the direct or reflected illumination does not exceed (0.5) foot candles above the background measured at the lot line of any adjoining parcel.
2. Lighting standards shall be of a directional type capable of shielding the light source from direct view from any adjoining parcel.
3. All lighting shall comply with Dark Sky standards.

Section 4.5 Off-Street Parking and Loading Standards. [updated 2/6/2020]

A. General requirements.
1. It is the intent of this zoning ordinance that all buildings, structures, and uses of land shall provide off-street vehicular and bicycle parking in an amount sufficient to meet the needs caused by the building or use of land and that such parking and loading spaces be so oriented that they are readily useable for such purposes.

2. Each use of land and each building or structure hereafter constructed or established shall provide off-street parking and loading according to the standards set forth herein. When a change is proposed to a building that is nonconforming as to parking or loading requirements, a conforming amount of parking or loading shall be supplied based upon the size of the addition.
3. No addition, renovation, or change of use to an existing building shall be constructed or established which reduces the number of spaces, area, or usability of existing parking or loading space unless such building and its addition conform with the regulations for parking and loading contained herein.
4. The parking lot shall not be modified, enlarged, relocated, or expanded in a manner that violates any portion of this zoning ordinance.
5. No non-single-family detached residential parking area may be used for the sale, repair, dismantling, servicing, or long-term storage of any vehicles or equipment, unless such use is permitted by the zoning district in which the area is located. Any repairs deemed an emergency by the Zoning Administrator is exempt from this requirement.
6. Inoperable vehicles may not be parked in required parking spaces or in any side or front yard and shall be completely screened from view of all surrounding public streets.

B. Minimum number of parking spaces required.
1. The following are the parking space requirements by permitted use:
2. For any use not listed, the Zoning Administrator shall determine the proper requirements by classifying the proposed use among the uses specified herein as to assure equal treatment. In making any such determination, the Zoning Administrator shall follow the principles set forth in the statement of purpose for the zoning ordinance in Article I.
3. New infill structures or change of use projects on the first floor of structures in Commercial Districts shall be exempt from complying with the requirements of this Section. New uses or changes of use units above the first floor shall be required to conform to the parking requirements set forth herein.
4. Maximum number of parking spaces.
5. The total number of permitted parking spaces shall not exceed 110 percent of the minimum number of off-street parking spaces required by type of permitted use, except when the excess spaces are contained in a parking structure.
6. Any parking not included within a parking structure that is between 100 and 110 percent of the minimum number of off-street parking spaces required by type of permitted use shall be "grasscrete" or "grasspave" or other pervious paving systems as approved by the Zoning Administrator.
7. The following table states the minimum number of off-street parking spaces required by use. Any uses not listed would be required to provide the minimum number of parking spaces required by the parent category. When a determination of the number of parking spaces required by this table results in a requirement of a fraction of a space, any fraction shall be counted as one parking space.

Minimum Parking Space Requirements Table

Land Use	Minimum Parking Space Requirements
a. Residential	
1. Single-family residences	2 spaces per dwelling unit in all districts other than R-1, otherwise none
2. Multifamily residences	1 space per one-bedroom dwelling unit, otherwise two spaces per dwelling unit
3. Mixed-use developments	1.5 spaces per dwelling unit; 1 space per dwelling unit for age-restricted; plus 1 additional space per 200 square feet of commercial gross floor area
4. Home occupations	No additional spaces required
5. Accessory Dwelling Units	1 space per unit
6. Child and personal care uses	1 space per 2 employees
7. Institutional residence or care or confinement facilities	1 space per 2 beds
8. Rooming houses, boarding houses	1 space per bedroom
Short-term rentals, bed and breakfasts, other temporary residences renting by the day or week	1 space per rentable bedroom plus 2 spaces if owner/landlord lives on premises
Temporary mobile homes approved in the event of an emergency, construction, or repair	2 spaces per temporary mobile home
b. Sales and Rental of Living Space and Goods	
1. Sales and rental of goods, merchandise or equipment, non-motor vehicle related	1 space per 300 square feet of gross floor area
Wholesale sales, with or without outdoor display or storage of goods	1 space per 300 square feet of gross floor area devoted to sales or display, plus one space per 2,000 square feet of gross storage area
Hotels, motels and similar businesses or institutions providing overnight accommodations	1 space per unit plus 1 space per 5 units for visitors
Extended-stay motels/hotels	1 space per unit plus 1 space per 5 units for visitors
c. Restaurants	
1. Restaurants	1 space per 100 square feet of gross floor area
2. Event center	1 space per 3 seats

d. Motor vehicle-related sales and service operations and modifications	
Motor vehicle-related sales and service operations and modifications	Not including outdoor car display areas for dealerships, 1 space per 200 square feet of gross floor area
e. Office, Clerical, Repair, Research and Personal	
Services – Office, clerical, repair, research, and personal, not primarily related to the sale of goods and merchandise	1 space per 300 square feet of gross floor area
f. Offices	
Services – office, clerical, repair, research, and personal, not primarily related to the sale of goods and merchandise	1 space per 300 square feet of gross floor area
g. Recreation, amusement, and entertainment	
1. Baseball batting range	20 spaces
2. Bowling alleys	5 spaces per alley
3. Golf driving range and/or miniature golf	20 spaces
4. Health clubs and other physical fitness establishments	1 space per 300 square feet
5 . Park, playground, community center, swimming pool and other recreational facilities as a principal use	1 space per 2000 square feet of surface area of parks, playgrounds, and/or swimming pools; plus 2 spaces per tennis court; plus 1 space per 500 square feet of recreational facility
6. Theaters (indoors)	1 space per 3 seats
7. Performing arts center	1 space per 3 seats
8. Subdivision recreation area	1 space per 200 square feet of surface area of swimming pools, plus 2 spaces per tennis court, plus 1 space per 500 square feet of clubhouse, offices, meeting rooms, or other similar enclosed buildings
h. Manufacturing, processing, creating, repairing, renovating, painting, cleaning, assembling of goods, merchandise, or equipment	
1. Manufacturing, processing, creating, repairing, renovating, painting, cleaning, assembling of goods, merchandise, or equipment	1 space per 2,000 square feet of gross office, plant, and/or storage
2. Innovator space	1 parking space per 500 square feet
i. Storage and parking	
1. Storage and parking	1 space per 2,000 square feet of gross storage area
j. Services and enterprises related to animals	
Services and enterprises related to animals	1 space per 250 square feet of gross floor area

k. Funeral related services (human and animal related)	
1. Funeral related services (human and animal related)	1 space per 3 seats
l. Educational, cultural, religious, philanthropic, social, or fraternal uses	
Public and private schools offering general education courses (including associated grounds and athletic and other facilities)	2 spaces per classroom for K - 8th grade, plus 1 space per teacher or staff member for grades above 8th
2. Trade or vocational schools	10 spaces per classroom
College, universities, community colleges (including associated facilities such as dormitories, office buildings, athletic fields, etc.)	10 spaces per classroom
Assembly halls, including union halls, conference halls, civic halls and activities of similar nature	1 space for every 3 people allowed to occupy the building, as set by the maximum occupancy limit
Libraries, museums, art galleries, art centers, and similar uses (including associated educational and instructional activities)	1 space per 300 square feet of gross floor area
6. Place of worship and places of assembly	1 space for every 3 people allowed to occupy the building, as set by the maximum occupancy limit
7. Social, fraternal clubs or lodges, union halls, and similar uses	4 spaces per 1,000 square feet of gross floor area
8. Clubs and lodges catering exclusively to members and their guests	4 spaces per 1,000 square feet of gross floor area
m. Miscellaneous public and semi-public facilities	
1. Miscellaneous public and semi-public facilities	None
n. Agricultural, forestry, mining, and quarrying operations	
1. Agricultural, forestry, mining, and quarrying operations	1 space per employee
o. Temporary structures and special events used in connection with the construction of a permanent building or for some non-recurring purpose	
1. Temporary structures and special events used in connection with the construction of a permanent building or for some non-recurring purpose	Regulated on a case-by-case basis

C. Shared parking.

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

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

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

F. Electric vehicle charging stations.
   1. Electric vehicle charging stations are permitted in all off-street surface parking lots and parking structures.
   2. Spaces for electric charging shall be identified by paving markings and by appropriate signage. Signage shall not count against the maximum aggregate sign area permitted on a lot.
   3. Spaces reserved for electric vehicle charging stations may be counted as part of the minimum required parking spaces but shall not be counted toward the maximum.
   4. Any new building with over 20,000 square feet of gross floor area space shall equip at least one required parking space on its property with an electric vehicle charging station prior to receiving a Certificate of Occupancy.
   5. The owner of the property shall be responsible for the installation, maintenance, and operation of electric vehicle charging stations. The owner of the property may determine if a fee is associated with the electric vehicle charging station.

6. Electric vehicle charging stations shall be installed per U.S. Green Building Council (USGBC) standards.

G. Parking in non-single-family zoning districts.

1. Off-street surface parking lots shall not be located between the principal building and the street except where otherwise permitted below.
    a. Lots within CR, C-1, C-2, C-3, H, GBI, M-1, and M-2 districts with a lot area of less than 13,000 square feet shall be permitted to have automobile parking located within the front yard only when the following regulations are met:
        i. Front yard parking shall be limited in area to a maximum of 50 percent of the area of the front yard.
2. When permitted, automobile parking is only permitted in front yards when located on the permitted access driveway on a paved surface.
3. Required dimensions for each parking space. Each automobile parking space shall be not less than nine feet wide and 18 feet deep. Adequate interior driveways shall connect each parking space with a public right-of- way, and each space shall have an overhead clearance of at least 6.5 feet.
4. Parking areas shall have access to a public street.
5. Parking areas shall be graded and paved, including access drive(s), and be curbed when needed for effective drainage control, and meet the following requirements:
    a. A minimum depth of six inches of number 21A aggregate base and a minimum of 1.5 inches of asphalt; or
    b. Six inches of concrete on appropriate base; or
    c. Four inches of brick or porous paving block on four inches of number 21A aggregate base.
    d. Permeable pavers may be used for any parking area, alley, or other low traffic driveway as approved by the Zoning Administrator.
6. Parking areas shall have spaces marked with painted lines, curbstones, or other similar devices, and areas shall be properly maintained in all respects. Landscaping shall be kept healthy and well maintained, surfaces shall be free of potholes, and lines marking spaces shall be distinct and clear.
7. Parking areas shall be drained so as to prevent damage to abutting properties or public streets and where possible shall be drained towards infiltration swales located in the five-foot, head-to-head landscape strips required between vehicles in Section 4.5.J.1.d.
8. Parking areas shall have adequate lighting if the facilities are to be used at night, provided such lighting shall be arranged and installed so as not to reflect or cause glare on abutting properties. Light poles used in parking lots with 100 parking spaces or less may not exceed 20 feet in height. Light poles used in parking lots with more than 100 parking spaces may not exceed 35 feet in height. All lighting is to be compliant with Dark Sky lighting standards.
9. Parking areas shall be designed to conform to the geometric design standards of the Institute of Traffic Engineers (ITE) when not expressly required in this section.
10. Wheel bumpers shall be placed at the head of all parking spaces that do not abut a curb and any spaces that abut a sidewalk. Wheel bumpers shall be made of

concrete, a minimum of six feet long, five inches high, and six inches wide and securely fastened to the pavement by steel re- bars or steel anchors. Individual wheel bumpers shall be placed a minimum of 24 inches from the end of each required parking space.

11. Parking areas shall be required to provide handicapped spaces in accordance with the provisions of the Americans with Disabilities Act. All handicapped spaces shall be identified by appropriate restrictive signing and markings.
12. Pedestrian circulation.
    a. Parking areas shall be designed to facilitate safe and convenient use by pedestrians.
    b. Parking areas with more than 50 cars shall provide safe pathways from aisles of parking to the nearest building entrance and to adjacent streets. Such pathways shall be at least five feet wide and consist of raised pathways constructed of pavers or other contrasting material.

H. Compact parking spaces.
1. Developments where 30 or more parking spaces are provided shall be required to provide compact parking spaces, as follows:
    a. A minimum of five spaces, or ten percent of the total number of parking spaces, whichever is greater, shall be set aside for compact cars.
    b. A maximum of 25 percent of the total required parking spaces may be set aside for compact cars, up to a maximum of 50 spaces, whichever is less.
    c. Compact parking spaces shall be identified by pavement markings and/or by appropriate signage.
    d. Parking spaces for compact cars shall not be less than eight feet wide and 16 feet deep.

I. Stacking spaces for drive-through service windows and drive-through facilities.
1. Stacking spaces shall be provided for any use having a drive-through service window or areas having drop-off and pick-up areas in accordance with the following:
    a. Inbound stacking spaces shall be provided before the first service window as stipulated below and at least one outbound stacking space shall be provided after each service window of a drive-through facility.
    b. Each stacking space shall be a minimum of 22 feet long.
    c. Designated stacking spaces shall not interfere with circulation of the lot or free movement or access to parking spaces.
2. Banks with drive-through facilities shall provide a minimum of six spaces before each service position and one outbound space after the service window.
3. Restaurants with drive-through service windows shall provide a minimum of ten stacking spaces for inbound drive-through customers and one additional outbound space after each service window.
4. Other facilities with drive-through service windows shall provide three stacking spaces for each window or drive-through service facility.
5. Drive-through service window lanes shall be separated by striping or curbing from off-street parking areas. Individual lanes shall be striped, marked, or otherwise distinctly delineated.
6. Stacking lanes shall be a minimum of 8.5 feet adjacent to the service window.

7. All drive-through service windows shall be provided with a bypass lane with a maximum width of 8.5 feet.
8. All stacking lanes shall be at least 75 feet from an intersection with the nearest street or internal driveway. The distance is measured from the back of the stacking space nearest the entrance to the curb line of the nearest intersection.
9. Pedestrian pathways crossing drive-through lanes shall be clearly signed and identified using alternative materials or raised crosswalks. Painted crosswalks alone are not permitted.

J. Landscaping in parking lots.
1. Interior landscaping for off-street parking areas shall be required for all surface parking lots designed for 20 or more spaces. The following requirements shall apply.
   a. Landscape islands shall be located no farther apart than every ten parking spaces and at the terminus of all rows of parking. Each landscaped island shall be at least 200 square feet in area with a minimum width of ten feet.
   b. There shall be at least one overstory tree, ten low shrubs and a minimum of 60 percent living ground cover, sod, and/or annual or perennial color in each landscaped island. Shrubs, sod and/or living ground cover shall not to exceed three feet in height.
   c. Vehicles shall be separated from sidewalks, driveways, and streets in public rights-of-way by wheel bumpers and by a strip of land at least ten feet wide, reserved as open space, and planted in grass containing at least one understory or overstory tree, as appropriate, and ten shrubs per 50 linear feet, and a minimum of 80 percent living ground cover, sod, and/or annual or perennial color in the landscape strip surface area. Wheel bumpers shall be placed a minimum of 48 inches from the nearest tree trunk.
   d. Head-to-head parking shall provide a five-foot grass strip with curb. The grass strip may be counted as part of the landscaped areas and shall have one tree every 50 feet containing at least one overstory tree, and ten shrubs, per 50 linear feet, and a minimum of 70 percent living ground cover, sod, and/or annual or perennial color in the landscape strip surface area.
   e. Perimeter landscape strips. The perimeter of a surface parking lot shall provide a five-foot wide landscape strip where such parking lot abuts side or rear property lines. The perimeter landscape strip shall be planted with a single row of overstory trees of a species appropriate for buffers and spaced every 40 linear feet of landscape strip, and evergreen shrubs spaced every 5 linear feet of landscape strip. The perimeter landscape strip shall be continuous except for near perpendicular crossings of driveways and sidewalks.
   f. Landscaped areas in parking lots shall provide drainage and irrigation that ensures full drainage to the storm drainage system.
   g. See the Cape Charles Master Tree Plan for trees that shall and shall not be permitted within parking lot landscape areas.
2. The minimum number of spaces required may be reduced where the Zoning

Administrator has determined that the reductions are necessary to preserve a healthy tree or trees with a three-inch or greater diameter from being damaged or removed and where the site plan provides for the retention for said tree or trees.

3. Screening. Plantings which meet the standards for screening as approved by the Zoning Administrator will be required to screen vehicle accommodation areas other than those serving single-family and duplex dwellings from an adjacent residential district or use. Fencing may be substituted for plantings with the approval of the Zoning Administrator.

K. Access management.

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

L. Provisions for off-street loading.

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

e. Minimum loading space requirements for non-residential uses:

Gross floor area	**Required loading spaces**
0 – 49,000 square feet	1
49,000 – 100,000 square feet	2
100,000 – 160,000 square feet	3
160,000 – 240,000 square feet	4
240,000 – 320,000 square feet	5
320,000 – 400,000 square feet	6
Each 90,000 above 400,000 square feet	1

M. Dumpsters.

1. A fence on three sides shall enclose all dumpsters.
   a. The height of the fence shall be equal to or higher than the height of the dumpster, in accordance with Section 4.2.G.
   b. The visible material of the fence shall be made up of brick, stucco, stone, or wood.
2. The operable side of the dumpster shall be concealed with a gate equal to or higher than the height of the dumpster. The gate shall be opaque and constructed of durable materials.
3. Dumpsters shall be located a minimum of five feet from property lines.
4. In no case shall loading activities hinder or obstruct the free movement of vehicles, and pedestrians over a street, sidewalk, alley, or to interrupt parking lot circulation.
5. Service activities within 150 feet of residential uses shall only be permitted Monday through Friday between 7:00am to 10:00pm and on Saturdays from 9:00am to 9:00pm.
6. Temporary construction trash and recycling dumpsters, which are not enclosed, shall be permitted up until such time as a Certificate of Occupancy is issued.

Section 4.6 Stormwater Management

A. Purpose and Intent. The purpose and intent of the requirements contained in this section are to prevent a new increase in nonpoint source pollution from new development and achieve a 10 percent reduction in nonpoint source pollution from redevelopment to the greatest extent possible given the size and current development of lots within the Town.

B. Except as provided in Section 4.7.C, for any development or redevelopment within the Town, stormwater runoff shall be controlled by the use of best management practices that achieve the following:

1. For development, the post-development nonpoint source pollution runoff load shall not exceed .45 pounds per acre per year.
2. For redevelopment, the nonpoint source pollution load shall be reduced by at least 10 percent. The Zoning Administrator may waive or modify this requirement

for redevelopment sites that originally incorporated best management practices for stormwater runoff quality control provided the following provisions are satisfied:

a. In no case may the post-development nonpoint source pollution runoff exceed the pre-development load;

b. Runoff pollution loads must have been calculated and the best management practices selected for the expressed purpose of controlling nonpoint source pollution; and

c. If best management practices are structural, evidence shall be provided that the facilities are currently in good working order and performing at the design levels of service. The Zoning Administrator may require a review of both the original structural design and maintenance plans to verify this provision.

3. For redevelopment, both the pre- and the post-development loadings shall be calculated by the same procedures. However, where the design data is available, the original post-development nonpoint source pollution loadings can be substituted for the existing development loadings.

C. For any development or redevelopment on any nonconforming lot within the Town, the Zoning Administrator may waive the requirements of this section upon receipt of a written request for such an administrative waiver provided, however, that in no case shall such development or redevelopment result in such nonconforming lot having total impervious coverage in excess of 40 percent for residential uses and 75 percent for commercial uses. The written request for an administrative waiver hereunder shall state the total estimated impervious coverage to result from such development or redevelopment.

Section 4.7 Swimming Pool Regulations

A. Definition. For the purpose of this ordinance, a swimming pool is defined as an artificial or man-made container of water capable of being filled to a depth exceeding 16 inches at the lowest point and is designed to be used for swimming or immersion purposes by individuals. Wading pools are exempt from the provisions of the Zoning Ordinance and are considered temporary pools if made of plastic, light metal, or other light duty materials which do not exceed a full volume depth of 16 inches at the lowest point, and which are completely emptied of water when not in use. Spas or health pools shall meet the same requirements as swimming pools, except when less that 10 feet in width.

B. Applicability of Zoning and Building Codes. Permanent swimming pools and associated decking and fencing are required to meet all zoning and building code requirements and are considered impervious structures. Building, electrical, and plumbing permits are required for the installation, alteration, repair or remodeling of all pools not exempt from the Zoning Ordinance. In-ground pools require an approved site plan. Above- ground pools may be installed without a survey and engineering grading plan if permitted by the Code Enforcement Official, and where steep slope areas are not present. Abandoned pools must be removed or appropriately filled in and covered. Swimming pools must be discharged according to all regulations established by the Commonwealth of Virginia.

C. Setbacks. Swimming pools are permitted to be located no closer than 5 feet to a side or

rear property line and must be located no closer than 5 feet from any structures, either primary or accessory, located on the lot or premises. Above-ground pools are only allowed in rear yards. The 5-foot separation from structures shall not apply to spas or health pools adjoining the principal structure. Spas must be covered with approved spa cover when not in use. Swimming pools and spas are not permitted in the front yard or within approved swale or storm water management systems.

D. Condition of Water. Water contained in swimming pools must be kept healthy and sanitary at all times and shall not emit an offensive odor that creates a nuisance or unhealthy condition. Approved circulators and filtration systems must be provided for all pools, spas, and health pools Wading pools are exempt from filtration system requirement.

E. Fencing. All zoning and building code requirements shall be met. Consistent with the Code of Virginia §15.2-921, all swimming pools must be completely enclosed with a minimum 4-foot high fence with locking gate access. Such fence must be constructed of a material that meets the approval of the building code official.

Section 4.8 Satellite Dish

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

Section 4.9 Demolition Policy Guidelines

A. The owner of a building or structure within the Town shall be entitled to raze or demolish such building or structure provided that he has applied to the Building Official for such right.
   1. The owner must first try to sell the property at the appraised price (the appraisal to be at the owner's expense).
   2. The owner must have the property for sale, actively marketing and advertising it for sale for that appraised price for a period of one year.
   3. If unsold, the Town may elect to purchase the property at the appraised price or permit the demolition.

B. Demolition-By-Neglect. No officially designated contributing building, structure, or site within the Town shall be allowed to deteriorate due to neglect by the owner which would result in violation of the intent of this ordinance. Demolition-by-neglect shall include any one or more of the following courses of action or inaction:
   1. Deterioration of the exterior of a building to the extent that it creates or permits a hazardous or unsafe condition.
   2. Deterioration of exterior walls or other vertical supports, horizontal members,

roofs, chimneys, exterior wall elements such as siding, wooden walls, windows, brick, plaster or mortar to the extent that it adversely affects the character of the district or could lead to irreversible damage to the structure.

3. Defective or deteriorated flooring or floor supports, or flooring or floor supports of insufficient size to carry imposed loads with safety.
4. Any fault in the building or structure which renders the same structurally unsafe or not properly watertight.

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

C. Penalties for Noncompliance.

1. Failure to correct a defect after a notice that the Building Official has determined that a property is being demolished by neglect shall constitute a misdemeanor. Such misdemeanor shall be punished as set forth in §§ 18.2-9, 18.2-11 and 15.2-1429 of the Code of Virginia, as amended. Each day that the violation continues is a separate offense.
2. Any property owner in the District who does not obtain approval as required within this ordinance shall be guilty of a misdemeanor and may be punished as set forth in §§ 18.2-9, 18.2-11 and 15.2-1429 of the Code of Virginia, as amended.
3. Nothing in this chapter shall be deemed to restrict or prohibit the Town Council to acquire in any legal manner any historic area, site, building, or structure or the land pertaining thereto for the use, observation, education, pleasure, and welfare of the citizens of the Town.

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

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

Section 4.11 Wind Turbines

A. Statement of Intent. The intent of this ordinance is to regulate the placement, construction and modification of wind energy systems while promoting the safe, effective and efficient use of the wind energy resource and wind energy systems while not interfering with the development of independent renewable energy sources. Wind Energy Systems meeting the requirements will be allowed by Conditional Use Permit. The Zoning Administrator shall maintain an inventory of wind energy systems to include their installation, operation and removal dates to be updates annually.

B. Applicability. The requirements set forth in this section shall govern all zones and wind energy systems used to generate electricity or perform work which may be connected to

the utility grid pursuant to Virginia's net metering laws (§ 56-594 Of the Code of Virginia), serve as an independent source of energy or serve in a hybrid system.

C. Wind Energy Systems Setbacks. The minimum setbacks for wind energy systems are detailed in the matrix below:

	Minimum Lot Size	Minimum Setback Requirements[1]					Maximum Height from Grade
		Occupied Buildings (Subject Property)[2]	Occupied Buildings (Adjacent Prop.)[2,3]	Property Lines	Public/ Private Right of Way	Highways 184 & 642	
Anemometers	20,000 Sq. Ft.	1.0	1.5	1.0	1.5	2.5	Nacelle Height
Micro System	5,600 Sq. Ft.	0.0	1.0	1.0	1.5	1.0	Note 4
Small System	20,000 Sq. Ft.	0.0	1.5	1.0	1.5	2.5	120 Ft.
Large System	5 Acres	1.0	2.0	1.0	1.5	2.5	250 Ft.
Utility System	25 Acres	1.5	2.5	1.5	1.5	2.5	500 Ft.

[1] Measured from the center of the wind turbine base to the property line, ROW, or nearest point on the fountain of an occupied building.
[2] Calculated by multiplying the required setback number by the wind turbine height.
[3] This setback proposes to reduce noise and shadow flicker impacts to any previously existing occupied buildings on adjacent property or work site.
[4] One system per lot with a maximum of 18 feet above the roof.

1. As part of the Conditional Use Permit Process the setback requirements may be waived if the following conditions are met:
   a. Property owners may waive the occupied building setback requirements on both the subject property and/or the adjacent properties, and the property line setback requirements for wind turbines, by executing a signed waiver that sets forth the applicable setback provisions and proposed changes.
   b. The written waiver shall notify the applicable property owners of the setback required by this ordinance, describe how the proposed wind turbine and/or wind energy facility is not in compliance and state that the consent is granted for the wind turbine and/or wind energy facility to not be setback as required by this ordinance.
   c. Any such waiver shall be signed by all affected property owners and be recorded in the Northampton County Clerk's office. The waiver shall describe the properties benefited and/or burdened and advise all subsequent purchasers of any burdened property that waiver of setback shall run with the land and may forever burden the subject property.

D. Conditional Use Permit Requirements
   2. For issuance of a Conditional Use Permit, the application shall demonstrate that

the proposed wind energy facility will comply with this ordinance and shall contain at a minimum the following:

a. A narrative describing the proposed wind energy facility;
b. The approximate generating capacity of the wind energy facility;
c. The specific number, representative types and heights or range of heights of the wind turbines to be constructed, including their generating capacity, dimensions and respective manufacturers and description of ancillary facilities;
d. Identification and location of the properties on which the proposed wind energy facility will be located;
e. A plot plan showing the planned location of each wind turbine, property lines, setback lines, access road and turnout locations, substation(s), electrical cabling from the wind energy facility to the substation(s), ancillary equipment, buildings and structures, including permanent meteorological towers, associated transmission lines, and location of all structures and properties with the geographical boundaries of any applicable setback;
f. Evidence of compliance with Federal Aviation Administration regulations;
g. Signed and approved copies of any negotiated power purchase agreement and the utility company's approved schematics.
h. An Environmental Assessment is required for small, large and utility scale wind energy facilities, which shall include review and comments from the applicable state and federal agencies, including but not limited to, Virginia Department of Mines, Minerals and Energy, DNR, USACE, US Fish and Wildlife and a completed Virginia Renewables Siting Scoring System (VRS3). The Planning Commission may require an additional Environmental Impact Statement (EIS) for the installation of three (3) or more turbines or if significant impacts could result from the installation.
i. Decommissioning plans that describe the anticipated life of the wind power project, the estimated decommissioning costs in current dollars, the method for ensuring that funds will be available for the decommissioning and restoration and the anticipated manner in which the wind power project will be decommissioned and the site restored. This obligation shall be recorded and goes with the land.
j. Signature of the property owner(s) and the facility owner/operator of the energy facility;
k. Other relevant studies or reports that may be reasonably requested by the Town of Cape Charles to ensure compliance with this ordinance.

3. Throughout the permit process the applicant shall promptly notify the Town of any changes to the information contained in the permit application.
4. Changes to the pending application that do not materially alter the initial site plan may be adopted administratively.
5. Historic District Review Board or Harbor Area Review Board approval is required for systems within the Historic District Overlay District or Harbor District.

E. Installation and Design

6. The installation and design of the wind energy facility shall conform to applicable

industry standards, including those of ANSI (American National Standards Institute).

7. All electrical and mechanical components of the wind energy facility shall conform to relevant and applicable town, state and national codes and ordinances. A Cape Charles Building Permit is required.
8. Small and Micro wind energy facilities shall not exceed 60 decibels as measured at the property line. The level, however, may be exceeded during short term events such as utility outages and/or severe windstorms.
9. Any on-site transmission or power lines shall, to the maximum extent possible, be placed underground.
10. The visual appearance of wind energy facilities shall at a minimum:
    a. Maintain a galvanized finish and be a non-obtrusive color such as white, off-white or gray;
    b. Not be artificially lighted, except to the extent required by the FAA or other applicable authority that regulates air safety;
    c. Not display advertising, including flags, streamers or decorative items, except for the identification of the turbine manufacturer, facility owner and operator.

F. Decommissioning or Abandonment

1. The wind energy facility owner, and/or operator and/or property owner shall have 3 months to complete decommissioning of the facility if no electricity is generated for a continuous period of 12 months. Repair, maintenance or redesign plans shall be submitted to the zoning administrator if turbines will be off-line for 12 months or more.
2. Decommissioning shall include removal of the wind turbines, buildings, cabling, electrical components, roads and any other associated facilities. Foundations shall be removed to a depth of 48" below finished grade.
3. Disturbed earth shall be graded and re-seeded, unless the landowner requests in writing that the access roads or other land surface areas not be restored. The required Erosion and Sediment measures shall be put in place per the Virginia Erosion and Sediment Control Handbook

Section 4.12 Cape Charles Planning, Zoning, and Building Fee Schedule

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

Section 4.13 Development Standards

(Add development standards) (remove pictures and review, generally before adding)

ARTICLE V - CORRIDOR OVERLAY DISTRICT WEST and EAST

Article V, Corridor Overlay District West and East is hereby deleted from the Town of Cape Charles Zoning Ordinance on May 24, 2000.

ARTICLE VI - Flood Plain District FH-1

Statement of Intent

This district is established under the authority of §15.2-984 of the Code of Virginia of 1950, as amended, for the purpose of providing safety from floods, prevention of property damage and loss, and all other related dangers and of promoting the health, safety, and general welfare by regulating and restricting areas in the tidal flood plains of the Chesapeake Bay, the Atlantic Ocean, and all creeks and streams which are subject to overflowing of their banks. The provisions of this Article shall apply in zoning districts within the Town, a portion of which is located within a flood plain area, the boundaries of which are indicated on the official zoning map, which is an integral part of this ordinance, and are shown as overlapping other zoning districts. The regulations set forth in this district shall be construed to qualify or supplement, as the case may be, the district regulations appearing elsewhere in this ordinance. Through the regulation of existing or future uses, activities, and development, it is the intent of this Article to: (1) prevent unacceptable increases in flood heights, velocities, and frequencies; (2) restrict or prohibit placement of uses, activities, and development within areas subject to flooding; (3) require all uses, activities, and development within flood-prone areas to be protected and/or flood proofed against flooding and flood damage; (4) protect individuals from buying lands and structures which are unsuited for specific purposes because of flood hazards.

Section 6.1 Interpretation and Application of Article

A. Applicability. This Article shall apply to all lands within the jurisdiction of the Town of Cape Charles which are shown on the zoning map of the Town of Cape Charles to be located in the Flood Plain District (FH-1) as interpreted under Section 6.3.

B. Compliance. No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered except in full compliance with the terms and provisions of this ordinance and any other applicable ordinances and regulations which apply to uses within the jurisdiction of the ordinance.

C. Abrogation and Greater Restrictions. This ordinance supersedes any ordinance currently in effect in flood-prone areas. However, any underlying ordinance shall remain in full force and effect to the extent that those provisions are more restrictive than this ordinance.

D. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this ordinance. The remaining portions shall remain in full force and effect, and for this purpose the provisions of this ordinance are hereby declared to be severable.

E. Interaction of Related Documents. The application of zoning laws within the Town, the zoning map as heretofore constituted, and the map sheets referred to in Section 6.3 which depict flood plain districts shall be read and construed together.

Section 6.3 Identification of the Flood Plain District

A. Identification. For the purpose of establishing the Flood Plain Districts and for delineation of such districts, the Flood Insurance Study for Northampton County and the accompanying Flood Insurance Rate Maps prepared by FEMA dated August 28, 2008, establishing such zones shall apply. The areas indicated on such maps as Zones AE and VE shall constitute the Flood Plain Districts for the purpose of this Article. The Coastal High Hazard Area is that area of the 100-year flood plain subject to high velocity water, including but not limit to, hurricane wave wash or tsunamis. Such area is delineated by the above-reference Flood Insurance Study and is show on the accompanying Flood Insurance Rate Map as VE. The Coastal Flood Plain Area is that area of the 100-year flood plain not included in the Coastal High Hazard Area. The basis for the outermost boundary of the Coastal Flood Plain Area shall be the 100-year flood elevations contained in the above-reference Flood Insurance Study. Such area is delineated on the accompanying Flood Insurance Rate Map as Zones AE.

B. District Boundary Changes. The delineation of any of the Flood Plain Districts may be revised by the Town Council of the Town of Cape Charles where natural or man-made changes have occurred and/or more detailed studies conducted or undertaken by the U.S. Army Corps of Engineers or other qualified agencies or individuals substantiate the necessity for such change. However, prior to any such change, approval must be obtained from the Federal Insurance Administration.

C. Interpretation of District Boundaries. Initial interpretations of the boundaries of the Flood Plain Districts shall be made by the zoning officer. Should a dispute arise concerning the boundaries of any of the districts, the zoning hearing board shall make the necessary determination. The person questioning or contesting the location of the district boundary shall be given a reasonable opportunity to present his case to the board and to submit his own technical evidence if he so desires.

Section 6.4 District Provisions

The Flood Plain District described above shall be overlay to the existing underlying area as shown on the official zoning ordinance map, and as such, the provisions for the Flood Plain District shall serve as a supplement to the underlying district provisions. Any conflict between the provisions or requirements of the Flood Plain District and any underlying district, the more restrictive provisions and/or those pertaining to the Flood Plain District shall apply. In the event any provision concerning a Flood Plain District is declared inapplicable as a result of any legislative or administrative action or judicial decision, the basic underlying provisions shall remain applicable.

Section 6.4.1 Permit Requirement

All uses, activities, and development occurring within any Flood Plain District shall be undertaken only upon the issuance of a zoning permit. Such development shall be undertaken only in strict compliance with the provisions of the ordinance and with all other applicable codes and ordinances, such as the Virginia Uniform Statewide Building Code and the Town of Cape Charles' Subdivision Regulations. Prior to the issuance of any such permit, the zoning office shall require all applications to include compliance with all applicable state and federal laws. All permits shall be accompanied by an elevation certificate for residential structures and a flood-proofing certificate shall be required for non-residential structures. The use of these certificates do not provide a waiver of the flood insurance purchase requirement. The form is used only to

provide elevation information necessary to ensure compliance with applicable community flood plain management ordinances, to determine the proper insurance premium rate, and/or to support a request for a letter of map amendment or revision. (See Exhibit "A," elevation certificate, and Exhibit "B," flood proofing certification). The flood carrying capacity within an altered or relocated portion of any watercourse shall be maintained.

Section 6.4.2 Site Plans and Permit Applications

A. All applications for development in the Flood Plain District and all building permits issued for the flood plain shall incorporate the following information:
   1. for structures to be elevate, the elevation of the lowest floor (including basement)
   2. for structures to be flood proofed (non-residential only), the elevation to which the structure will be flood proofed
   3. the elevation of the 100-year flood
   4. topographic information showing existing and proposed ground elevations

Section 6.5 General Regulations for the Flood Plain District

Within the Flood Plain District, which is composed of the Coastal High Hazard Area and the Coastal Flood Plain, the following regulations shall apply in addition to the special regulations found in Section 6.6.

Section 6.5.1 Sanitary Sewer Facilities

All new or replacement sanitary sewer facilities and private package sewage treatment plants (including all pumping stations and collector systems) shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into the flood waters. In addition, they should be located and constructed to minimize or eliminate flood damage and impairment.

Section 6.5.2 Water Facilities

All new or replacement water facilities shall be designed to minimize or eliminate infiltration of flood waters into the system and be located and constructed to minimize or eliminate flood damages.

Section 6.5.3 Drainage Facilities

All storm drainage facilities shall be designed to convey the flow of surface waters without damage to persons or property. The systems shall ensure drainage away from buildings and onsite waste disposal sites. The Town of Cape Charles may require a primarily underground system to accommodate frequent floods and a secondary surface system to accommodate larger, less frequent floods. Drainage plans shall be consistent with local and regional drainage plans. The facilities shall be designed to prevent the discharge of excess runoff onto adjacent properties.

Section 6.5.4 Utilities

All utilities, such as gas lines, electrical and telephone systems, being placed in flood prone areas should be located, elevated (where possible), and constructed to minimize the chance of impairment during a flooding occurrence.

Section 6.5.5 Streets and Sidewalks

Streets and sidewalks should be designed to minimize their potential for increasing and aggravating the levels of flood flow. Drainage openings shall be required to sufficiently discharge flood flows without unduly increasing flood heights.

Section 6.5.6 New Construction/Substantial Improvements

All new construction and substantial improvements shall (1) have the lowest floor (in AE zones) or lowest horizontal structural member (in VE zones) installed at least one foot above the base flood elevation, (2) be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effect of buoyancy, (3) be constructed with materials resistant to flood damage, (4) be constructed by methods and practices that minimize flood damages, and (5) be constructed with electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities that are designed and/or located so as to prevent water entering or accumulating within the components during conditions of flooding.

Section 6.6 Special Flood Plain District Management Regulations

The Flood Plain District is divided into two sub-zones: See Section 6.3. The following requirements shall apply to all structures as indicated for the respective sub-zones.

Section 6.6.1 Coastal High Hazard Area (V Zones)

A. As set forth in this section, all manufactured homes to be placed or substantially improved on sites within the VE-Zones shall comply with the requirements of this section.

B. Man-made alterations of sand dunes or wetlands which would increase potential flood damage are prohibited.

C. The use of fill for structural support of buildings is prohibited.

D. All new construction must be located landward of the reach of mean high tide.

E. Those uses which may be classified as a "functionally dependent use" are exempt from this requirement.

F. All new construction and substantial improvements within Zone VE on the Town's FIRM shall have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For purposes of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local or state codes) may be permitted only if a licensed professional engineer or architect certified that the designs proposed meet the following conditions:

1. breakaway wall collapse shall result from a water load less than that which would

occur during the base flood and the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and non-structural). Maximum wind and water loading values to be used in this determination shall each have 1 percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval). Such enclosed space shall be usable solely for parking of vehicles, building access, or storage.

2. Nonconforming structures cannot be expanded.

G. Within VE-Zones on the Flood Insurance Rate Map, obtain the elevation (in relation to mean sea level) of the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings and columns) of all new substantially improved structures, whether or not such structures contain a basement.

H. All new construction and substantial improvements shall be elevated on pilings or columns and must have the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) elevated at least one foot above the base flood level/elevation and the pile or column foundation and structure attached thereto must be anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state or local building standards. A licensed professional engineer or architect shall develop or review the structural design and methods of construction and shall certify that design and methods of construction to be used are in accordance with accepted standards.

I. All recreational vehicles placed in VE-Zones either should be on site for fewer than 180 consecutive days, be fully licensed and ready for highway use, or comply with the requirements of this section. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by a quick disconnect type utilities and security devices, and has no permanently attached additions.

Section 6.6.2 Coastal Flood Plain Areas (A Zones)

A. All new construction and substantial improvements of residential structures within Zone AE on the Town of Cape Charles FIRM shall have the lowest floor (including basement) elevated at least one foot above the base flood level/elevation.

B. Manufactured homes that are placed or substantially improved on sites shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated at least one foot above the base flood level/elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

C. Recreational vehicles placed on sites either:

1. be on site for fewer than 180 consecutive days, be fully licensed and ready for

highway use, or

2. meet the permit requirements for placement and the elevation and anchoring requirements for manufactured homes in Section 6.6.2.B. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

D. All new construction and substantial improvements of nonresidential structures within AE on the Cape Charles FIRM shall: (1) be designed, together with utility and sanitary facilities, so that the structure is watertight one foot above the base flood level with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effect of buoyancy, or (2) have the lowest floor (including basement) elevated at least one foot above the base flood level/elevation. A licensed professional engineer or architect shall certify that the floodproofing methods are adequate to withstand the flood depths, pressure, velocities, impact, and uplift forces and other factors associated with the base flood. The building official shall maintain a record of such certificates indicating the specific elevation (as related to the base flood elevation as referenced to the National Geodetic Vertical Datum of 1929) to which such structures are flood proofed.

E. The use of fill for aesthetic purposes for structures is permitted provided piles or piers are first installed as the basic foundation to obtain the proper elevation to raise the lowest floor above the base flood elevation.

Section 6.7 Supplemental Regulations

All subdivisions proposed to be located within the established Flood Plain District shall have indicated on the subdivision plat base flood elevation data to the following extent.

Section 6.7.1

The established 100-year flood line and elevation shall be indicated on the subdivision plat.

Section 6.7.2

The lowest and highest elevation in relation to the base flood elevation within the proposed subdivision shall be on the subdivision plat as a spot elevation.

Section 6.8 Variances in the Flood Plain District

No variance shall be authorized within any established Flood Plain District unless the Council finds that the requested variance complies with the following:

Section 6.8.1

Variances may be issued by the Cape Charles Board of Zoning Appeals in conformance with the procedures of Section 6.8.2 and 6.8.3 of this ordinance for new construction and substantial improvements to be erected on a lot which is of a size less than the minimum required for the residential, commercial, or industrial zoning district within which it is located and which is contiguous to and surrounded by lots with existing structures constructed below the base flood level.

Section 6.8.2

Variances shall only be issued by the Board of Zoning Appeals upon: (1) a showing of good and

sufficient cause; (2) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

Section 6.8.3
Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief. In passing upon applications for variances, the Board of Zoning Appeals shall satisfy all relevant factors and procedures specified in other sections of the zoning ordinance and consider the following additional factors:

A. The danger to life and property due to increased flood heights or velocities caused by encroachments.

B. The danger that materials may be swept onto other lands or downstream to the injury of others.

C. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.

D. The susceptibility of the proposed facility and its contents to flood damage, the effect of such damage on the individual owners.

E. The importance of the services provided by the proposed facility to the community.

F. The requirements of the facility for a waterfront location.

G. The availability of alternative locations not subject to flooding for the proposed use.

H. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.

I. The relationship of the proposed use to the comprehensive plan and flood plain management program for the area.

J. The safety of access by ordinary and emergency vehicles to the property in time of flood.

K. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.

L. The repair or rehabilitation of historic structure upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

M. Such other factors which are relevant to the purposes of this ordinance.

Section 6.8.4
The Board of Zoning Appeals shall notify the applicant in writing over the signature of the

Zoning Administrator that: (1) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as $25 per $100 of insurance coverage and (2) such construction below the base flood level increases risk to life and property. Such notification shall be maintained with a record of all variance actions as required in the next section.

Section 6.8.5
The Board of Zoning Appeals shall: (1) maintain a record of all variance actions, including justification for their issuance and (2) report such variances issued in its annual report submitted to the Federal Insurance Administrator.

Section 6.9 Existing Structures in Flood Plain Districts
A structure or use of a structure or premises which lawfully existed before the enactment of these provisions, but which is not in conformity with these provisions, may be continued subject to the following conditions:

A. Any modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use located in any flood plain area to an extent or amount of less than 50 percent of its market value shall be elevated and/or flood proofed to the greatest extent possible.

B. The modification, alternation, repair, reconstruction, or improvement of any kind to a structure and/or use, regardless of its location in a flood plain district, to an extent or amount of 50 percent or more of its market value shall be undertaken only in full compliance with this ordinance and the provisions of the Virginia Uniform Statewide Building Code.

Section 6.10 Administration
The Zoning Administrator shall furnish a written report of his findings to the Planning Commission at such time as the subdivision plat or group housing project site plan comes before the Planning Commission for preliminary approval or for a recommendation for action, as the case may be. The Zoning Administrator shall review plats and site plans prior to the final approval by designated authorities, and he shall communicate his findings to the appropriate authorities in writing. Disapproval of flood control measures by the Building Official, Zoning Administrator, or Floodplain Manager at any stage of review shall be grounds for deferral or disapproval of the development. Such person shall then have the right of appeal of decisions by the Building Official, Zoning Administrator, or Floodplain Manager in accordance with the applicable sections of the Town Code or Zoning Ordinance. The appeal shall be to the Cape Charles Building Code Board of Appeals or to the Board of Zoning Appeals as necessary or applicable.

Section 6.10.1
The building official shall determine the adequacy of flood-proofing measures, subject to the guidelines stated elsewhere in this ordinance and the Virginia Uniform Statewide Building Code prior to the issuance of building permit.

Section 6.10.2
All building permits, site plans, and subdivisions shall be reviewed by the appropriate authorized

authority for compliance with the requirements of the Flood Plain District.

Section 6.10.3
All building permits shall indicate the required elevation needed to provide for flood proofing.

Section 6.11 Warning and Disclaimer of Liability
The degree of flood protection sought by the provisions of this ordinance is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that areas outside the Flood Plain Districts or that land uses permitted within such districts will be free from flooding or flood damage.

This ordinance shall not create liability on the part of the Town of Cape Charles or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made there under.

ARTICLE VII - Chesapeake Bay Preservation Area Overlay District

Section 7.1 Title

This ordinance shall be known and referenced as the Chesapeake Bay Preservation Area Overlay District of the Town of Cape Charles.

Section 7.1.1 Findings of Fact

The Chesapeake Bay and its tributaries is one of the most important and productive estuarine systems in the world, providing economic and social benefits to the citizens of Cape Charles and the Commonwealth of Virginia. The health of the Bay is vital to maintaining the Town of Cape Charles' economy and the welfare of its citizens.

The Chesapeake Bay has been degraded significantly by many sources of pollution, including non-point source pollution from land uses and development. Existing high quality waters are worthy of protection from degradation to guard against further pollution. Certain lands that are proximate to shorelines have intrinsic water quality value due to the ecological and biological processes they perform. Other lands have severe development constraints from flooding, erosion, and soil limitations. With proper management, they offer significant ecological benefits by providing water quality maintenance and pollution control, as well as flood and shoreline erosion control. These lands together, designated by the Town Council of Cape Charles as Chesapeake Bay Preservation Areas (hereinafter CBPA), need to be protected from destruction and damage in order to protect the quality of life in Cape Charles and the Commonwealth of Virginia.

Section 7.2 Purpose and Intent

A. This ordinance is enacted to implement the requirements of § 62.1-44.15:67 et seq. of the Code of Virginia, 1988 as amended, (The Chesapeake Bay Preservation Act) and amends the Zoning Ordinance of Cape Charles. The intent of the Town Council and the purpose of the Overlay District is to: (1) protect existing high quality state waters; (2) restore all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them; (3) safeguard the clean waters of the Commonwealth from pollution; (4) prevent any increase in pollution; (5) reduce existing pollution; and (6) promote water resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of the Town of Cape Charles.

B. This district shall be in addition to and shall overlay all other zoning districts where they are applied so that any parcel of land lying in the Chesapeake Bay Preservation Area Overlay District shall also lie in one or more of the other zoning districts provided for by the Zoning Ordinance. Unless otherwise stated in the Overlay District, the review and approval procedures provided for in other applicable ordinances shall be followed in reviewing and approving development, redevelopment, and uses governed by this Article.

C. This Article is enacted under the authority of § 62.1-44.15:67 et seq., The Chesapeake Bay Preservation Act, and § 15.2-2283 of the Code of Virginia, which states that zoning

ordinances may "also include reasonable provisions, not inconsistent with applicable state water quality standards, to protect surface water and groundwater as defined in Section 62.1-255."

Section 7.3 Areas of Applicability

A. The Chesapeake Bay Preservation Act Overlay District shall apply to all lands identified as CBPAs as designated by the Town Council and as shown on the Zoning District Map. Such map, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Article.
   1. The Resource Protection Area includes:
   2. tidal wetlands
   3. non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow
   4. tidal shores
   5. a 100-foot vegetated buffer area located adjacent to and landward of the components listed in subsections a through c above and along both sides of any water body with perennial flow

B. The Resource Management Area is composed of the following land categories: flood plains; highly erodible soils, including steep slopes; highly permeable soils; non-tidal wetlands not included in the RPA; other lands necessary to protect the quality of state waters or a minimum of 100 feet in width landward of the Resource Protection Area , whichever is greatest.

C. The Zoning District Map shows the general location of CBPAs and should be consulted by persons contemplating activities within Cape Charles prior to engaging in a regulated activity.

D. Portions of RPAs and RMAs designated by the Town Council as Intensely Developed Areas shall serve as redevelopment areas. Areas so designated shall comply with all erosion and sediment control requirements and the performance standards for redevelopment in Section 7.10, Performance Standards.

Section 7.5 Use Regulations

Permitted uses, special permit uses, accessory uses, and special requirements shall be as established by the underlying zoning district unless specifically modified by the requirements set forth herein.

Section 7.6 Lot Size

Lot size shall be subject to the requirements of the underlying zoning district(s) provided that any lot shall have sufficient area outside the RPA to accommodate an intended development in accordance with the performance standards in Section 7.10 when such development is not otherwise allowed in the RPA.

Section 7.7 Development Criteria for Resource Protection Areas

A. Development in RPAs may be allowed only if it: (1) is water dependent, (2) constitutes redevelopment or development within IDAs, or (3) constitutes redevelopment
   1. A new or expanded water dependent facility may be allowed provided that the

following criteria are met:

a. It does not conflict with the comprehensive plan;
b. It complies with the performance criteria set forth in Section 7.10 of this Article;
c. Any non water dependent component is located outside of the RPA; and
d. Access to the water dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided.

2. Redevelopment on isolated redevelopment sites outside of the designated IDAs shall be permitted only if there is not an increase in the amount of impervious cover and no further encroachment within the RPA and it shall conform to the stormwater management requirements outlined under Section 7.10.B.8 and erosion and sediment control requirements outlined under Section 7.10.B.4 of this Article.

B. A water quality impact assessment shall be required for any proposed land disturbance, development or redevelopment within RPAs and for any development within RMAs when required by the Zoning Administrator because of the unique characteristics of the site or intensity of development in accordance with the provisions of Section 7.11 of this Article.

Section 7.8 Conflict With Other Regulations

In any case where the requirements of this Article conflict with any other provision of the Cape Charles Zoning Ordinance and other regulations or existing state or federal regulations, whichever imposes the more stringent restrictions shall apply.

Section 7.9 Interpretation of Resource Protection Area Boundaries

A. Delineation by the Applicant. The site-specific boundaries of the Resource Protection Area shall be determined by the applicant through the performance of an environmental site assessment, subject to approval by the Zoning Administrator and in accordance with Section 7.12, Plan of Development Process or Section 7.11 Water Quality Impact Assessment, of this Article. The Zoning District Map may be used as a guide to the general location of Resource Protection Areas.

B. Where Conflict Arises Over Delineation. When the applicant provides a site- specific delineation of the RPA, the Zoning Administrator will verify the accuracy of the boundary delineation. In determining the site-specific RPA boundary, the Zoning Administrator may render adjustments to the applicant's boundary delineation in accordance with Section 7.12, Plan of Development Process, of this Article. In the event the adjusted boundary delineation is contested by the applicant, the applicant may seek relief in accordance with the provisions of Section 7.12.H of this ordinance.

Section 7.10 Performance Standards

A. Purpose and Intent. The performance standards establish the means to minimize erosion and sedimentation potential, reduce land application of nutrients and toxins, and maximize rainwater infiltration. Natural ground cover, especially woody vegetation, is most effective in holding soil in place and preventing site erosion. Indigenous

vegetation, within its adaptability to local conditions without the use of harmful fertilizers or pesticides, filters stormwater runoff. Minimizing impervious cover enhances rainwater infiltration and effectively reduces stormwater runoff potential.

The purpose and intent of these requirements are also to implement the following objectives: prevent a net increase in nonpoint source pollution from new development; achieve a 10 percent reduction in nonpoint source pollution from redevelopment; and achieve a 40 percent reduction in nonpoint source pollution from agricultural uses.

B. General Performance Standards for Development and Redevelopment

1. Land disturbance shall be limited to the area necessary to provide for the proposed use or development.
    a. Ingress and egress during construction shall be limited to one access point unless otherwise approved by the Zoning Administrator.
2. Indigenous vegetation shall be preserved to the maximum extent practicable consistent with the use or development proposed and in accordance with the Virginia Erosion and Sediment Control Handbook.
    a. Site clearing for construction activities shall be allowed as approved by the Zoning Administrator through the plan of development review process.
    b. Prior to clearing or grading, suitable protective barriers, such as safety fencing, shall be erected five feet outside of the drip line of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
3. Land development shall minimize impervious cover to promote infiltration of storm water into the ground consistent with the proposed use or development.
    a. Grid and modular pavements may be used for any required parking area, alley, or other low traffic driveway unless otherwise approved by the Zoning Administrator.
4. Notwithstanding any other provision of this Article or exceptions or exemptions thereto, any land-disturbing activity exceeding 2,500 square feet, including construction of all single-family houses, shall comply with the requirements of Cape Charles' Erosion and Sediment Control Ordinance.
5. All development and redevelopment exceeding 2,500 square feet of land disturbance shall be subject to a plan of development process including the approval of a site plan in accordance with the provisions of the Site Plan Ordinance.
6. All on-site sewage disposal systems not requiring a VPDES permit shall be pumped out at least once every five years in accordance with the provisions of the State Health Code.
7. A reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site shall be provided in accordance with the State Health Code. This requirement shall not apply to any lot or parcel recorded prior to October 1, 1989, if such lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site as determined by the local health department. Building or construction of any impervious surface shall be

prohibited on the area of all sewage disposal sites or on an on-site sewage treatment system which operates under a permit issued by the State Water Control Board until the structure is served by public sewer.

8. For any development or redevelopment, stormwater runoff shall be controlled by the use of best management practices that achieve the following:
   a. For development, the post-development nonpoint source pollution runoff load shall not exceed the pre-development load based on the calculated average land cover condition of the Town of Cape Charles.
   b. For sites within IDAs or other isolated redevelopment sites, the non-point source pollution load shall be reduced by at least 10 percent. The Zoning Administrator may waive or modify this requirement for redevelopment sites that originally incorporated best management practices for storm water runoff quality control provided the following provisions are satisfied:
      i. In no case may the post-development non-point source pollution runoff load exceed the pre-development load.
      ii. Runoff pollution loads must have been calculated and the BMPs selected for the expressed purpose of controlling non-point source pollution.
      iii. If best management practices are structural, evidence shall be provided that the facilities are currently in good working order and performing at the design levels of service. The Zoning Administrator may require a review of both the original structural design and maintenance plans to verify this provision. A new maintenance agreement may be required to ensure compliance with this Article.
   c. For redevelopment, both the pre- and the post-development loadings shall be calculated by the same procedures. However, where the design data is available, the original post-development non-point source pollution loadings can be substituted for the existing development loadings.
9. Prior to initiating grading or other on-site activities on any portion of a lot or parcel, all wetlands permits required by federal, state, and local laws and regulations shall be obtained and evidence of such submitted to the Zoning Administrator in accordance with Section 7.12 of this Article.
10. Land upon which agricultural activities are being conducted shall have a soil and water quality conservation assessment. Such assessments shall evaluate the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management and management of pesticides, and where necessary, results in a plan that outlines additional practices needed to ensure that water quality protection is accomplished consistent with the Article.

C. Buffer Area Requirements. To minimize the adverse effects of human activities on the other components of Resource Protection Areas, state waters, and aquatic life, a 100-foot buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist. The buffer area shall be located adjacent to and landward of other RPA components and along both sides of any water body with perennial flow. The full buffer area shall be designated as the landward component of

the RPA in accordance with Section 7.4, Areas of Applicability, and Section 7.12, Plan of Development Process, of this Article.

The 100-foot buffer area shall be deemed to achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients.

The buffer area shall be maintained to meet the following additional performance standards:

1. In order to maintain the functional value of the buffer area, indigenous vegetation may be removed, subject to approval by the Zoning Administrator, only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices including those that prevent upland erosion and concentrated flows of stormwater, as follows:
    a. Trees may be pruned or removed as necessary to provide for sight lines and vistas provided that, where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff.
    b. Any path shall be constructed and surfaced so as to effectively control erosion.
    c. Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu and multiflora rose) may be removed and thinning of trees allowed, pursuant to standards adopted by the Town of Cape Charles.
    d. For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best of available technical advice and applicable permit conditions or requirements.
2. When the application of the buffer areas would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, the Zoning Administrator may allow encroachments into the buffer area in accordance with Section 7.12, Plan of Development Process, and the following criteria:
    a. Encroachments into the buffer areas shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;
    b. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel; and
    c. The encroachment may not extend into the seaward 50 feet of the buffer area.
3. Redevelopment within IDAs may be exempt from establishing vegetation within the buffer area in accordance with Section 7.12, Plan of Development Process, of this Article.
4. On agricultural lands the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and appropriate measures may be taken to prevent noxious weeds from invading the buffer area. Agricultural activities may encroach into the buffer area as follows:

a. Agricultural activities may encroach into the landward 50 feet of the 100-foot wide buffer area when at least one agricultural best management practice, which, in the opinion of the [local soil and water conservation district board], addresses the more predominant water quality issue on the adjacent land – erosion control or nutrient management – is being implemented on the adjacent land, provided that the combination of the undisturbed buffer area and the best management practice achieves water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot wide buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil test, must be developed consistent with the "Virginia Nutrient Management Training and Certification Regulations (4 VAC 5- 15 et seq.)" administered by the Virginia Department of Conservation and Recreation.

b. Agricultural activities may encroach within the landward 75 feet of the 100-foot wide buffer area when agricultural best management practices which address erosion control, nutrient management, and pest chemical control, are being implemented on the adjacent land. The erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as "T", as defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U. S. Department of Agriculture Natural Resource Conservation Service. A nutrient management plan, including soil test, must be developed consistent with the "Virginia Nutrient Management Training and Certification Regulations (4 VAC 5- 15 et seq. administered by the Virginia Department of Conservation and Recreation. In conjunction with the remaining buffer area, this collection of best management practices shall be presumed to achieve water quality protection at least the equivalent of that provided by the 100-foot wide buffer area.

c. The buffer area is not required to be designated adjacent to agricultural drainage ditches if the adjacent agricultural land has in place at least one best management practices as considered by the local Soil and Water Conservation District to address the more predominant water quality issue on the adjacent land – either erosion control or nutrient management

5. When agricultural or silvicultural uses within the buffer area cease, and the lands are proposed to be converted to other uses, the full 100-foot wide buffer area shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions are maintained or established.

Section 7.11 Water Quality Impact Assessment

A. Purpose and Intent. The purpose of the water quality impact assessment is to: (1) identify the impact of proposed development on water quality and lands within RPAs and other environmentally sensitive lands; (2) ensure that, where development does take place within RPAs and other sensitive lands, it will be located on those portions of a site

and in a manner that will be least disruptive to the natural functions of RPAs and other sensitive lands; (3) to protect individuals from investing funds for improvements proposed for location on lands unsuited for such development because of high ground water, erosion, or vulnerability to flood and storm damage; and (4) specify mitigation which will address water quality protection.

B. Water Quality Impact Assessment Required. A water quality impact assessment is required for (1) any proposed land disturbance, redevelopment or development within a RPA, including any buffer area modification or encroachment as provided in Section 7.10 of this Article; (2) any development in a RMA as deemed necessary by the Zoning Administrator due to the unique characteristics of the site or intensity of the proposed development. There shall be two levels of water quality impact assessments--a minor assessment and a major assessment.

C. Minor Water Quality Impact Assessment. A minor water quality impact assessment pertains only to a development within CBPAs which causes no more than 5,000 square feet of land disturbance and requires any modification or encroachment into the landward 50 feet of the 100- foot buffer area. A minor assessment must demonstrate that the undisturbed buffer area, enhanced vegetative plantings, and any required best management practices will result in removal of no less than 75 percent of sediments and 40 percent of nutrients from post-development stormwater runoff and that the remaining buffer area will retard runoff, prevent erosion and filter nonpoint source pollution the equivalent of the full undisturbed 100-foot buffer area. A minor assessment shall include a site drawing to scale which shows the following:

1. Location of the components of the RPA, including the 100-foot buffer area;
2. Location and nature of the proposed encroachment into the buffer area if needed including: type of paving material; areas of clearing or grading; location of any structures, drives, or other impervious cover;
3. Type and location of proposed best management practices to mitigate the proposed encroachment.
4. Location of existing vegetation onsite, including the number and type of trees and other vegetation to be removed in the buffer to accommodate the encroachment or modification;
5. Revegetation plan that supplements the existing buffer vegetation in a manner that provides for pollutant removal, erosion and runoff control.

D. Major Water Quality Impact Assessment. A major water quality impact assessment shall be required for any development which (1) exceeds 5,000 square feet of land disturbance within CBPA and requires any modifications or encroachment into the landward 50 feet of the 100-foot buffer area; (2) proposes to disturb any portion of any other component of an RPA or proposes to disturbs any portion of the buffer area within 50 feet of any other component of any RPA; or (3) is located in an RMA and is deemed necessary by the Zoning Administrator. The information required in this section shall be considered a minimum unless the Zoning Administrator determines that some of the elements are unnecessary due to the scope and nature of the proposed use and development of land.

1. The following elements shall be included in the preparation and submission of a major water quality assessment:

a. All of the information required in a minor water quality impact assessment as specified in Section 7.11.C;
b. A hydro-ecological element that:
    i. describes the existing topography, soils, hydrology, and geology of the site and adjacent lands
    ii. indicates the following:
        1. disturbance or destruction of wetlands and justification for such action
        2. disruptions or reductions in the supply of water to wetlands, streams, or other water bodies
        3. disruptions to existing hydrology including wetlands and stream circulation patterns
        4. source location and description of proposed fill material
        5. location of dredge material and location of dumping area for such material
        6. location of and impacts on shellfish beds or submerged aquatic vegetation
        7. estimation of pre- and post-development pollutant loads in runoff
        8. estimation of percent increase in impervious surface on site and type(s) of surfacing materials used
        9. percent of site to be cleared for project
        10. anticipated duration and phasing schedule of construction project
        11. listing of all requisite permits from all applicable agencies necessary to develop project
    iii. describes the proposed mitigation measures for the potential hydroecological impacts. Potential mitigation measures include:
        1. proposed erosion and sediment control concepts; concepts should include minimizing the extent of the cleared area, perimeter controls, reduction of runoff velocities, measures to stabilize disturbed areas, schedule and personnel for site inspection
        2. proposed water quality and quantity stormwater management system
        3. creation of wetlands to replace those lost
        4. minimizing cut and fill
c. A landscape element that:
    i. identifies and delineates the location of plant material on site, including all trees two inches or greater diameter at breast height. Where there are groups of trees, stands may be outlined.
    ii. describes the impacts the development or use will have on the existing vegetation. Information should include:
        1. limits of clearing based on all anticipated improvements including buildings, drives, and utilities
        2. clear delineation of all trees and other woody vegetation proposed to be removed
        3. description of plant species to be disturbed or removed

iii. describes the potential measures for mitigation. Possible mitigation measures should include:
   1. replanting schedule for trees and other significant vegetation removed for construction including a list of possible plants and trees to be used
   2. demonstration that the design of the plan will preserve to the greatest extent possible any significant trees and vegetation on the site and will provide maximum erosion control and overland flow benefits from such vegetation
   3. demonstration that native plants are to be used to the greatest extent possible

E. Submission and Review Requirements
1. Eight copies of all site drawings and other applicable information as required by Subsections C and D above shall be submitted to the Zoning Administrator for review.
2. All information required in this section shall be certified as complete and accurate by a professional engineer or certified land surveyor.
3. A minor water quality impact assessment shall be prepared and submitted to and reviewed by the Zoning Administrator in conjunction with Section 7.12, Plan of Development Process, of this Article.
4. A major water quality impact assessment shall be prepared and submitted to and reviewed by the Zoning Administrator in conjunction with a request for rezoning, special use permit, or in conjunction with Section 7.12 of this Article as deemed necessary by the Zoning Administrator.
5. As part of any major quality impact assessment submittal, the Zoning Administrator may require review by the Chesapeake Bay Local Assistance Department (CBLAD). Upon receipt of a major water quality impact assessment, the Zoning Administrator will determine if such review is warranted and may request CBLAD to review the assessment and respond with written comments. Any comments by such CBLAD will be incorporated into the final review by the Zoning Administrator provided that such comments are provided by CBLAD within 90 days of the request.

F. Evaluation Procedure
1. Upon the completed review of a minor water quality impact assessment, the Zoning Administrator will determine if any proposed encroachment into the buffer area is consistent with the provisions of this Article and make a finding based upon the following criteria:
   a. the necessity of the proposed encroachment and the ability to place improvements elsewhere on the site to avoid disturbance of the buffer area;
   b. impervious surface is minimized;
   c. proposed best management practices, where required, achieve the requisite reductions in pollutant loadings;
   d. the development, as proposed, meets the purpose and intent of this Article;
   e. the cumulative impact of the proposed development, when considered in

relation to other development in the vicinity both existing and proposed, will not result in a significant degradation of water quality.

2. Upon the completed review of a major water quality impact assessment, the Zoning Administrator will determine if the proposed development is consistent with the purpose and intent of this Article and make a finding based upon the following criteria in conjunction with Section 7.12.
   a. Within an RPA, the proposed development is water dependent.
   b. The disturbance of any wetlands will be minimized.
   c. The development will not result in significant disruption of the hydrology of the site.
   d. The development will not result in significant degradation to aquatic vegetation or life.
   e. The development will not result in unnecessary destruction of plant materials on site.
   f. Proposed erosion and sediment control concepts are adequate to achieve the reductions in runoff and prevent off-site sedimentations.
   g. Proposed storm water management concepts are adequate to control the storm water runoff to achieve the required performance standard for pollutant control.
   h. Proposed re-vegetation of disturbed areas will provide optimum erosion and sediment control benefits.
   i. The development as proposed is consistent with the purpose and intent of the Overlay District.
3. The Zoning Administrator shall require additional mitigation where potential impacts have not been adequately addressed. Evaluation of mitigation measures will be made by the Zoning Administrator based on the criteria listed above in Subsections 1 and 2.
4. The Zoning Administrator shall find the proposal to be inconsistent with the purpose and intent of this Article when the impacts created by the proposal cannot be mitigated. Evaluation of the impacts will be made by the Zoning Administrator based on the criteria listed in Subsections 1 and 2.

Section 7.12 Plan of Development Process

Any development or redevelopment exceeding 2,500 square feet of land disturbance shall be accomplished through a plan of development process prior to any clearing or grading of the site or the issuance of any building permit to assure compliance with all applicable requirements of this Article.

A. Required Information. In addition to the requirements of this Ordinance or the requirements of the Cape Charles Subdivision Ordinance, the plan of development process shall consist of the plans and studies identified below. These required plans and studies may be coordinated or combined as deemed appropriate by the Zoning Administrator. The Zoning Administrator may determine that some of the following information is unnecessary due to the scope and nature of the proposed development.
   1. The following plans or studies shall be submitted unless otherwise provided for:
      a. A site plan in accordance with the provisions of this ordinance; or a subdivision plat in accordance with the provisions of the Subdivision Ordinance of Cape Charles;

b. An environmental site assessment;
c. A landscaping plan;
d. A storm water management plan;
e. An erosion and sediment control plan in accordance with the provisions of the Cape Charles Erosion and Sediment Control Ordinance.

B. Environmental Site Assessment. An environmental site assessment shall be submitted in conjunction with preliminary site plan or preliminary subdivision plan approval.

1. The environmental site assessment shall be drawn to scale and clearly delineate the following environmental features:
   a. tidal wetlands
   b. tidal shores
   c. non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow
   d. a 100-foot buffer area located adjacent to and landward of the components listed in Subsections a through c above, and along both sides of any water body with perennial flow
   e. other sensitive environmental features as determined by the Zoning Administrator
2. Wetlands delineations shall be performed consistent with the methods and procedures used and accepted from time to time by the U.S. Army Corps of Engineers.
3. The environmental site assessment shall delineate the site-specific geographic extent of the RPA.
4. The environmental site assessment shall be drawn at the same scale as the preliminary site plan or subdivision plat and shall be certified as complete and accurate by a professional engineer or a certified land surveyor. This requirement may be waived by the Zoning Administrator when the proposed use or development would result in less than 5,000 square feet of disturbed area.

C. Landscaping Plan. A landscape plan shall be submitted in conjunction with site plan approval or as part of subdivision plat approval. No clearing or grading of any lot or parcel shall be permitted without an approved landscaping plan.

1. Landscaping plans when required shall be prepared and/or certified by design professionals practicing within their areas of competence as prescribed by the Code of Virginia and must meet the following requirements:
   a. The landscaping plan shall be drawn to scale and clearly delineate the location, size, and description of existing and proposed plant material. All existing trees on the site two inches or greater DBH shall be shown on the landscaping plan. Where there are groups of trees, stands may be outlined instead. The specific number of trees two inches or greater DBH to be preserved outside of this construction footprint shall be indicated on the plan. Trees to be removed to create a desired construction footprint shall be clearly delineated on the landscaping plan.
   b. Any required buffer area shall be clearly delineated and any plant material to be added to establish or supplement the buffer area, as required by this Article, shall be shown on the landscaping plan.
   c. Within the buffer area, trees to be removed for sight lines, vistas, access

paths, and best management practices, as provided for in this Article, shall be shown on the plan. Vegetation required by this Article to replace any existing trees within the buffer area shall also be shown on the landscaping plan.

d. Trees to be removed for shoreline stabilization projects and any replacement vegetation required by this Article shall be shown on the landscaping plan.

e. The plan shall depict grade changes or other work adjacent to trees which would affect them adversely. Specifications shall be provided as to how grade, drainage, and aeration would be maintained around trees to be preserved.

f. The landscaping plan will include specifications for the protection of existing trees during clearing, grading, and all phases of construction.

2. Plant specifications

a. All plant materials necessary to supplement the buffer area or vegetated areas outside the construction footprint shall be installed according to standard planting practices and procedures.

b. All supplementary or replacement plant materials shall be living and in a healthy condition. Plant materials shall conform to the standards of the most recent edition of the American Standard for Nursery Stock, published by the American Association of Nurserymen.

3. Maintenance

a. The applicant shall be responsible for the maintenance and replacement of all vegetation as may be required by the provision of the Article.

b. In buffer areas and areas outside the construction footprint, plant material shall be tended and maintained in a healthy growing condition and free from refuse and debris. Unhealthy, dying, or dead plant materials shall be replaced during the next planting season as required by the provisions of this Article.

D. Stormwater Management Plan. A stormwater management plan shall be submitted as part of the plan of development process required by this Article and in conjunction with site plan or subdivision plan approval.

1. Contents of the plan. The storm water management plan shall contain maps, charts, graphs, tables, photographs, narrative descriptions, explanations, and citations to supporting references as appropriate to communicate the information required by this Article. At a minimum, the storm water management plan must contain the following:

a. location and design of all planned storm water control devices;

b. procedures for implementing non-structural storm water control practices and techniques;

c. pre- and post-development non-point source pollutant loadings with supporting documentation of all utilized coefficients and calculations;

d. for facilities, verification of structural soundness, including a professional engineer or Class IIIB surveyor certification.

2. Site specific facilities shall be designed for the ultimate development of the contributing watershed based on zoning, comprehensive plans, local public facility master plans, or other similar planning documents.

3. All engineering calculations must be performed in accordance with procedures outlined in the current edition of the Virginia Storm water Management Handbook.
4. The plan shall establish a long-term schedule for inspection and maintenance of storm water management facilities that includes all maintenance requirements and persons responsible for performing maintenance. If the designated maintenance responsibility is with a party other that the Town of Cape Charles, then a maintenance agreement shall be executed between the responsible party and the Town of Cape Charles.

E. Erosion and Sediment Control Plan. An erosion and sediment control plan shall be submitted that satisfies the requirements of this Article and in accordance with the Cape Charles Erosion and Sediment Control Ordinance in conjunction with site plan or subdivision plan approval.

F. Final Plan. Final plan for property within CBPAs shall be final plats for land to be subdivided or site plans for land not to be subdivided as required in the Cape Charles Subdivision Ordinance and this Ordinance.
1. Final plans for all lands within CBPAs shall include the following additional information:
   a. the delineation of the Resource Protection Area boundary
   b. the delineation of required buffer areas
   c. all wetlands permits required by law
   d. a maintenance agreement as deemed necessary and appropriate by the Zoning Administrator to ensure proper maintenance of best management practices in order to continue their functions
2. Installation and bonding requirements
   a. Where buffer areas, landscaping, storm water management facilities, or other specifications of an approved plan are required, no certificate of occupancy shall be issued until the installation of required plant materials or facilities is completed in accordance with the approved site plan.
   b. When the occupancy of a structure is desired prior to the completion of the required landscaping, storm water management facilities, or other specifications of an approved plan, a certificate of occupancy may be issued only if the applicant provides Cape Charles a form of surety satisfactory to the Zoning Administrator in an amount equal to the remaining plant materials, related materials, and installation costs of the required landscaping or facilities and/or maintenance costs for any required storm water management facilities during the construction period.
   c. All required landscaping shall be installed and approved by the first planting season following issuance of a certificate of occupancy or the surety may be forfeited to the Town of Cape Charles.
   d. All required storm water management facilities or other specifications shall be installed and approved within 18 months of project commencement. Should the applicant fail, after proper notice, to initiate, complete, or maintain appropriate actions required by the approved plan, the surety may be forfeited to the Town of Cape Charles. Cape Charles

may collect from the applicant the amount by which the reasonable cost of required actions exceed the amount of the surety held.

e. After all required actions of the approved site plan have been completed, the applicant must submit a written request for a final inspection. If the requirements of the approved plan have been completed to the satisfaction of the Zoning Administrator, such unexpended or un-obligated portion of the surety held shall be refunded to the applicant or terminated within 60 days following the receipt of the applicant's request for final inspection. The Zoning Administrator may require a certificate of substantial completion from a professional engineer or Class IIIB surveyor before making a final inspection.

G. Administrative Responsibility. Administration of the plan of development process shall be in accordance with this ordinance or the Cape Charles Subdivision Ordinance.

H. Denial of Plan, Appeal of Conditions or Modifications. In the event the final plan or any component of the plan of development process is disapproved and recommended conditions or modifications are unacceptable to the applicant, the applicant may appeal such administrative decision to the Planning Commission. In granting an appeal the Planning Commission must find such plan to be in accordance with all applicable ordinances and include necessary elements to mitigate any detrimental impact on water quality and upon adjacent property and the surrounding area or such plan meets the purposes and intent of the performance standards in this Article. If the Planning Commission finds that the applicant's plan does not meet the above-stated criteria, they shall deny approval of the plan. In the event of a denial of appeal to the Planning Commission, the applicant may appeal such decision to the Cape Charles Town Council. Said appeal shall be made within 15 days of the negative decision. Further appeals by the applicant shall be as established by law.

Section 7.13 Non-Conforming Use and Development Waivers

A. The lawful use of a building or structure which existed on September 11, 1990, or which exists at the time of any amendment to this Article and which is not in conformity with the provisions of the Overly District may be continued in accordance Section 2.5 of this Ordinance. No change or expansion of use shall be allowed with the exception that:

1. The Zoning Administrator may grant a non-conforming use and development waiver for structures on legal non-conforming lots or parcels to provide for remodeling and alterations to such non-conforming structures provided that:
   a. there will be no increase in non-point source pollution load;
   b. any development or land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of this Article;
   c. the intent of Section 2.5, Non-Conforming Uses, is upheld.

2. An application for a non-conforming use and development waiver shall be made to and upon forms furnished by the Zoning Administrator and shall include, for the purpose of proper enforcement of this Article, the following information:
   a. name and address of applicant and property owner;
   b. legal description of the property and type of proposed use and

development;

c. a sketch of the dimensions of the lot or parcel, location of buildings and proposed additions relative to the lot lines, and boundary of the Resource Protection Area;

d. location and description of any existing private water supply or sewerage system.

3. A non-conforming use and development waiver shall become null and void twelve months from the date issued if no substantial work has commenced.

4. An application for the expansion of a nonconforming structure may be approved by the Zoning Administrator through an administrative review process provided that the following findings are made:

a. The request for the waiver is the minimum necessary to afford relief;

b. Granting the waiver will not confer upon the applicant any specific privileges that are denied by this Article to other property owners in similar situations;

c. The waiver is in harmony with the purpose and intent of this Article and does not result in water quality degradation;

d. The waiver is not based on conditions or circumstances that are self-created or self-imposed;

e. Reasonable and appropriate conditions are imposed, as warranted, that will prevent the waiver from causing a degradation of water quality;

f. Other findings, as appropriate and required by the Town of Cape Charles are met; and

g. In no case shall this provision apply to accessory structures.

5. In accordance with Code of Virginia §15.2-2283, additions to nonconforming structures for the purpose of providing reasonable modifications in accordance with the American with Disabilities Act of 1990 shall not be considered an expansion of a nonconforming structure.

6. In accordance with the Code of Virginia § 15.2-2307.H, nothing in this ordinance shall be construed to prevent the owner of a valid nonconforming mobile or manufactured home from replacing that home with a newer manufactured home, either single- or multisection, that meets the current HUD manufactured housing code. Any such replacement home shall retain the valid nonconforming status of the prior home.

Section 7.14 Exemptions

A. Exemptions for Utilities, Railroads, and Public Roads.

1. Construction, installation, operation, and maintenance of electric, natural gas, fiber-optic, and telephone transmission lines, railroads, and public roads and their appurtenant structures in accordance with (i) regulations promulgated pursuant to the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq. of the Code of Virginia) and the Stormwater Management Act (§ 62.1-44.15:24 et seq. of the Code of Virginia), (ii) an erosion and sediment control plan and a stormwater management plan approved by the Virginia Department of Conservation and Recreation, or (iii) local water quality protection criteria at least as stringent as the above state requirements are deemed to comply with this Article. The exemption of public roads is further conditioned on the following:

a. The road alignment and design has been optimized, consistent with all

applicable requirements, to prevent or otherwise minimize the encroachment in the Resource Protection Area and to minimize the adverse effects on water quality.

2. Construction, installation, and maintenance of water, sewer, and natural gas and underground telecommunication and cable television lines, owned, permitted or both by the Town of Cape Charles, shall be exempt from the Overlay District provided that:
   a. to the degree possible, the location of such utilities and facilities shall be outside RPAs;
   b. no more land shall be disturbed than is necessary to provide for the proposed utility installation;
   c. all construction, installation, and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal requirements and permits and designed and conducted in a manner that protects water quality; and
   d. any land disturbance exceeding an area of 2,500 square feet complies with all Cape Charles erosion and sediment control requirements.

B. Exemptions for Silvicultural Activities. Silvicultural activities are exempt from the requirements of this Article provided that silvicultural operations adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in the 1997 edition of "Best Management Practices Handbook for Forestry Operations [Technical Guide].

C. Exemptions in Resource Protection Areas. The following land disturbances in Resource Protection Areas may be exempted from the Overlay District: (1) water wells; (2) passive recreation facilities such as boardwalks, trails, and pathways; and (3) historic preservation and archaeological activities provided that it is demonstrated to the satisfaction of the Zoning Administrator that:
   1. Any required permits, except those to which this exemption specifically applies, shall have been issued;
   2. Sufficient and reasonable proof is submitted that the intended use will not deteriorate water quality;
   3. The intended use does not conflict with nearby planned or approved uses; and
   4. Any land disturbance exceeding an area 2,500 square feet shall comply with all Cape Charles erosion and sediment control requirements.

Section 7.15 Exceptions

A. A request for an exception to the requirements of Sections 7.7 and 7.10.C of this Overlay District shall be made in writing to the Board of Zoning Appeals. It shall identify the impacts of the proposed exception on water quality and on lands within the RPA through the performance of a water quality impact assessment which complies with the provisions of Section 7.11.

B. The Town of Cape Charles shall notify the affected public of any such exception requests and shall consider these requests in a public hearing in accordance with § 15.2-2204 of the Code of Virginia, except that only one hearing shall be required.

C. The Board of Zoning Appeals shall review the request for an exception and the water quality impact assessment and may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this Article if the Board of Zoning Appeals finds:

1. Granting the exception will not confer upon the applicant any special privileges that are denied by this Article to other property owners in the Overlay District;
2. The exception request is not based upon conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels;
3. The exception request is the minimum necessary to afford relief;
4. The exception request will be consistent with the purpose and intent of the Overlay District and not injurious to the neighborhood or otherwise detrimental to the public welfare, and is not of substantial detriment to water quality; and
5. Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a degradation of water quality.

D. If the Board of Zoning Appeals cannot make the required findings or refuses to grant the exception, the Board of Zoning Appeals shall return the request for an exception together with the water quality impact assessment and the written findings and rationale for the decision to the applicant.

E. A request for an exception to the requirements of provisions of this Article other than those in Sections 7.7 and 7.10.C shall be made in writing to the Zoning Administrator. The Zoning Administrator may grant these exceptions provided that:

1. Exceptions to the requirements are minimum necessary to afford relief; and Reasonable and appropriate conditions are placed upon any exception that is granted, as necessary, so that the purpose and intent of this Article is preserved.
2. Exceptions to § 7.10.B may be made provided that the findings noted in §7.15.C are made.

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Section 7.16 Enforcement

A. Any person who: (i) violates any provision of this ordinance or (ii) violates or fails, neglects, or refuses to obey any Town of Cape Charles or its official Designee's final notice, order, rule, regulation, or variance or permit condition authorized under this ordinance shall, upon such finding by an appropriate circuit court be assessed a civil penalty not to exceed $5,000 for each day of violation. Such civil penalties may, at the discretion of the court assessing them, be directed to be paid into the treasury of the Town of Cape Charles for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, in such a manner as the court may direct by order, except that where the violator is the Town of Cape Charles itself or its agent, the court shall direct the penalty to be paid into the state treasury.

B. With the consent of any person who: (i) violates any provision of any Town of Cape Charles ordinance related to the protection of water quality in Chesapeake Bay Preservation Areas or (ii) violates or fails, neglects, or refuses to obey any Town of Cape Charles or its official Designee's order, rule, regulation, or variance or permit condition authorized under such ordinance, the Town of Cape Charles may provide for the

issuance of an order against such person for the one-time payment of civil charges for each violation in specific sums, not to exceed $10,000 for each violation. Such civil charges shall be paid into the treasury of the Town of Cape Charles for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, except that where the violator is the Town of Cape Charles itself or its agent, the civil charges shall be paid into the state treasury. Civil charges shall be in lieu of any appropriate civil penalty that could be imposed under subdivision 1 of this subsection. Civil charges may be in addition to the cost of any restoration required or ordered by the Town of Cape Charles body or official.

Section 7.17 Severability

The provisions of this ordinance shall be deemed to be severable, and if any of the provisions hereof are adjudged to be invalid or unenforceable, the remaining portions of this ordinance shall remain in full force and effect and their validity shall remain unimpaired.

Section 7.18 Effective Date

This ordinance was duly considered following a required public hearing held on November 12, 2003 and was adopted by the Town Council of Cape Charles, Virginia, at its regular meeting held November 12, 2003. (Ord. No. 11122003; 11-12-03)

Article VIII - Historic District Overlay

"The Cape Charles Historic District encompasses nearly all of the town of Cape Charles as it was originally laid out in 1883-1884 as well as the Sea Cottage addition, an area west of the original limits of the town, that was developed after 1909…The town was originally laid out in an unusual twenty-seven block grid pattern dominated by a central park with four landscaped streets that radiate from the park and serve as a main cross axis for the town's circulation pattern. No other such plan is known to exist in Virginia."
- 1989 National Register of Historic Places Registration Form Section 7, page 1.

"An interesting stock of architectural styles in both the residential area and the downtown commercial area contribute an historic style and authenticity. The street patterns, lot configurations and boundaries, which were laid out in an historic grid pattern, have remained largely unaltered, adding to the Town's historical integrity. Cape Charles' late nineteenth and early twentieth century character is a key element in the Town's interest and attractiveness to tourists. The traditional downtown commercial area on Mason Avenue still serves as the commercial center for the Town. It is important that the Town's historic character be protected, not only for its intrinsic value, but also to contribute to attract and expand tourism in Cape Charles." – Town of Cape Charles 1999 Comprehensive Plan, page 40.

The Town of Cape Charles participates in the Certified Local Government program and in so doing demonstrates a commitment to keep what is significant from the past for the benefit of future generations. The architectural integrity of existing structures shall be recognized, and future development shall be compatible.

Section 8.1 Purpose of the District

The purpose of this district is to guard against destruction or encroachment upon historic areas, buildings, monuments, or other features, or buildings and structures of registered architectural significance which contribute or will contribute to the cultural, social, economic, political, artistic, or architectural heritage of the Town of Cape Charles and the Commonwealth of Virginia. It is also the purpose of the district to preserve the character of the designated historic areas and historic landmarks and other historic or architectural features and to ensure that buildings, structures, streets, walkways, or signs shall be erected, reconstructed, altered, or restored so as to be kept architecturally compatible with the character of the historic district.

Section 8.2 Criteria for Establishing Historic Districts--General Character

The boundaries of the Historic District shall in general be drawn to include areas containing buildings or places in which historic events occurred or having special public value because of notable architectural or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation. The district may include either individual buildings or places of such character, and a reasonable distance beyond, or it may include areas or groupings of structures which have significance relative to their patterns of development or social and economic or architectural interrelationships even though some structures in the area might not possess significant merit when considered alone.

Section 8.3 Inventory of Landmarks and Contributing Properties Established

The Town of Cape Charles has established as part of this ordinance a map covering the area included in the Historic District, based on the criteria set forth in this ordinance. This map shall be as much a part of this ordinance as if fully described herein. Pending further amendment of this ordinance, the period of significance for the Town will be from 1883 to 1964 as delineated in the Cape Charles Historic District National Register of Historic Places (amended 2019). As identified in the National Register, structures or sites designated as properties which contribute to the historic character of the Town shall be known as contributing properties for the purpose of this Ordinance. Structures or sites not designated as landmark or contributing properties shall be known as noncontributing properties. Should a building or structure within the boundaries of the historic district not be listed in the national register, the building or structure will be classified as noncontributing. The map may be amended from time to time in the same manner as the zoning district map.

Section 8.4. Application of the District; Relation to Other Zoning Districts

To enable the district to operate in harmony with the plan for land use and population density embodied in these regulations, the Historic District is created as a special district to be superimposed on other districts contained in these regulations and is to be so designated by a special symbol for its boundaries on the Zoning District Map. The uses, housing types, minimum lot requirements, minimum yard requirements, maximum height, and accessory uses and accessory signs shall be determined by the regulations applicable to the other districts over which the Historic District is superimposed except as these other district regulations may be modified by application of the regulations in the Historic District.

Section 8.5 Permitted Uses

A building or land shall be used only for any use or accessory use permitted in the zoning district in which the premises are situated and upon which the Historic District is superimposed.

Section 8.6 Historic District Review Board; Creation

For the general purposes of this Article as herein stated and specifically to preserve and protect historic places and areas in the Town through the control of demolition of such places and through the regulation of architectural design and uses of structures in such areas, there is created a board known as the Historic District Review Board.

Section 8.7 Historic District Review Board; Membership

The members of the Historic District Review Board shall be appointed by the Town Council. The Membership shall consist of five citizens, at least three of whom shall be residents of the local historic district.

Section 8.8 Historic District Review Board; Terms

Upon approval by the Town Council, members shall be appointed for a term of five years. Appointments to fill vacancies shall be only for the unexpired term. Members may be reappointed to succeed themselves. A member whose term expires shall continue to serve until a successor is appointed and qualifies.

Section 8.9 Historic District Review Board; Qualifications

Members of the Historic District Review Board shall have demonstrated interest and knowledge in the historical and architectural development of the Town and when possible, include a Planning Commission member, as well as professionals in the disciplines of architecture, history, historic preservation, archaeology, or related profession; and professionals in the disciplines of planning, building construction, or real estate.

Section 8.10 Historic District Review Board; Organization

The Historic District Review Board shall elect from its own membership a chairman and vice chairman who shall serve annual terms and may succeed themselves. The chairman shall preside over all meetings in addition to having the duties and responsibilities of other members of the Board. The vice chairman shall preside over meetings of the Board in the absence of the chairman.

Section 8.11 Historic District Review Board; Rules

The Board shall meet in regular session on the third Tuesday of every month when an application has been filed requiring consideration. Special meetings of the Board may be called by the chairman or a majority of the members after public notice as required.

Section 8.12 Historic District Review Board; Meetings; Hearings

Written notice of a special meeting is not required if the time of special meeting has been fixed at a regular meeting or if all members are present at a special meeting or file a written waiver of notice. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all voting members of the Board. The Board may make, alter, or rescind rules and forms for its procedures, consistent with the ordinances of the Town and the general laws of the Commonwealth of Virginia.

Section 8.13 Historic District Review Board; Procedures

The Board shall, with the concurrence of the town manager, establish procedures for all matters coming before it for review and all meetings shall be open to the public. The Board will have the right to appeal decisions of the town manager to the Town Council.

Section 8.14 Historic District Review Board; Powers and Duties

The Historic District Review Board shall have the power and authority for issuing or denying Certificates of Appropriateness for construction, reconstruction, substantial exterior alteration, razing, or relocation within the historic district. In addition, the Board shall have the following duties:

A. To assist and advise the Town Council, the Planning Commission, and other Town departments, agencies, and property owners in matters involving historically significant sites and buildings or other properties in the historic districts such as, but not limited to, appropriate land usage, parking facilities, and signs.

B. To continuously evaluate conditions and advise owners of historic landmarks or contributing structures or other properties in historic districts on problems of preservation.

C. To oversee studies deemed necessary by the Town Council or Planning Commission

concerning location of historic districts and means of preservation, utilization, improvement, and maintenance of historic assets in the Town.

D. To propose additional historic districts or additions or deletions to districts.

E. To recommend standards and guidelines for adoption by the Town Council to supplement the standards set forth in this Ordinance; the currently adopted guidelines are called "Cape Charles Historic District Guidelines revised October 2017."

F. To formulate recommendations to the Town Council concerning the establishment of an appropriate system of markers for selected historic sites and buildings, including proposals for the installation and care of such historic markers.

G. To cooperate with and enlist assistance from the Virginia Department of Historic Resources, the National Trust for Historic Preservation, and other interested parties both public and private in its efforts to preserve the character of historic landmarks, buildings, sites, or areas within the Town.

Section 8.15 Summary of Administration Review Procedures

In general, it is the purpose of this ordinance to establish review procedures for actions affecting properties in the Historic District.

A. Actions related to "Standards" will be exclusively the purview of the Zoning Administrator.

B. Actions addressed by "Guidelines" will be the purview of the Historic District Review Board, except that guidelines that are relatively straight forward may be delegated to the Zoning Administrator at the discretion of the Historic District Review Board.

C. In all cases the decisions of the Zoning Administrator shall be appealed to the Board of Zoning Appeals as stated in §2-2.6.2.C, the decisions of the Historic District Review Board may be appealed to the Town Council, and the final decisions of the Town Council may be appealed to the Circuit Court of Northampton County.

Section 8.16 Approval of Historic District Review Board Required

A. Except as herein otherwise provided in this article, no building or structure, including signs, shall be erected, reconstructed, restored, or substantially altered in exterior appearance and no contributing buildings or structures shall be razed or demolished within a historic district and no permit authorizing same shall be granted unless and until the same is approved by the Historic District Review Board and a Certificate of Appropriateness has been issued by that body, with right of direct appeal to the Town Council as hereinafter provided, as being architecturally compatible with the historical, cultural, and/or architectural aspects of the structure and its surroundings.

B. Contributing accessory structures will be treated as contributing structures only under the following conditions:
   1. It is on a permanent foundation; and
   2. It is of sufficient square footage that a new structure of that type would require a building permit; and
   3. It is not being used as, or being considered for, Accessory Dwelling Units.

C. "Substantial alterations" shall be defined as any and all work done on buildings, structures, or sites in a historic district other than those specifically exempted herein:
   1. General examples of "non-substantial" alterations:
      a. Work done to prevent deterioration or to replace parts of a structure with

similar materials in order to correct any deterioration, decay of, or damage to any structure or on any part thereof, or

b. To restore same as nearly as practical to its condition prior to such deterioration, decay, or damage.

2. Examples of work not constituting "substantial alteration" include those minor actions exempted from review by §8.16 of this article.

3. General examples of work constituting "substantial alterations" include:

a. Construction of a new building at any location or a new permanent accessory building requiring a building permit on a landmark or contributing property or on a site within the Historic District.

b. Any addition to or alteration of a building which increases the square footage of the building or otherwise alters substantially its size, height, contour, or outline.

c. Any alteration of the exterior architectural style of a structure or its significant elements; some examples being removal or rebuilding of porches, openings, dormers, window sashes, chimneys, columns, stairways, terraces, decks, fences, or any other structural elements.

d. Addition to or removal of one or more stories or alteration of a roof line.

e. Any other major actions not specifically covered by the terms of this section, but which would have an effect on the character of the historic district.

D. In any case in which there might be some question as to whether a project may be exempted from review, may constitute a minor action, or may constitute "substantial alteration," the Zoning Administrator shall be contacted for an interpretation prior to commencement of work.

Section 8.17 Certain Minor Actions Exempted from Review by the Historic District Review Board

Within the Historic District certain minor actions which are deemed not to have permanent effects upon the character of the historic district are exempted from review for architectural compatibility by the Historic District Review Board. Such actions shall include the following and any similar actions which in the opinion of the Zoning Administrator will have no more effect on the character of the district than those listed:

A. Repainting the structure. (Original painting of masonry surfaces is not exempted from review.)

B. Replacement of missing or broken windowpanes, roofing slates, tiles, porch floor, posts, rails, shingles, window frames, or shutters where no substantial change in design or material is proposed.

C. Addition or deletion of storm doors or storm windows, window gardens, or similar appurtenances and portable air conditioners located in existing windows, doors, or other existing wall openings (if no building permit is required for such addition or deletion).

D. Addition or deletion of television and radio antennas or skylights and solar collectors in locations not visible from a public street or a waterway.

E. Landscaping involving minor grading, walks, low retaining walls, temporary fencing, fencing immediately surrounding trash receptacles or outdoor ventilation units, small fountains, outdoor showers, and ponds which will not substantially affect the character

of the property and its surroundings.

F. Construction of off-street loading areas and off-street parking areas.

G. Creation of outside storage in a commercial or industrial district which does not require structural changes or major grading and is not visible from a public street or waterway.

H. Additions or deletions to an existing building which are not visible from a public street or sidewalk. Alleys in this context are not to be considered public places.

I. Covered by other zoning ordinance requirements as administrated by the Zoning Administrator unless altered by the overlay ordinance.

J. Receiving historic preservation tax credits through state or federal offices.

K. Demolition of non-contributing buildings or structures.

L. Alterations or repairs made to a building or structure for the purpose of temporary emergency stabilization.

Section 8.18 Delegation of Authority

A. The Zoning Administrator or Code Official shall have authority to order that work be stopped and that an appropriate application be filed for review by the Historic District Review Board in any case where the action has an adverse effect on the Historic District.

B. The Historic District Review Board shall periodically review the design guidelines contained in this section.

Section 8.19 Certificate of Appropriateness

Evidence of the approval required under the terms of the Historic District shall be a certificate of appropriateness issued on behalf of the Historic District Review Board, stating that the demolition, moving, or changes in the exterior architectural appearance of the proposed construction, reconstruction, alteration, or restoration for which application has been made are approved by the Historic District Review Board or the Zoning Administrator. The Historic District Review Board may permit modifications of original proposals if such modifications are formally acknowledged, clearly described, and recorded in the records of the case. A certificate of appropriateness shall be in addition to any other permits required. Any action by applicants following issuance of a permit-requiring certificate of appropriateness shall be in accord with the application and material approved and any conditions appended thereto.

Section 8.20 Design Guidelines; Recommendations for Review

A. The Historic District Review Board shall be guided in its decisions by the design guidelines but must also use independent judgement and discretion to consider the unique characteristics of each request. The board is expected to work with each applicant to assist them in achieving their goal while preserving the character of the district. The board shall utilize the pre-application review process as defined in Section 8.25.A.

B. It shall be the duty of the Historic District Review Board to prepare recommended amendments to the design guidelines.

C. The Town Council shall adopt and amend the design guidelines after conducting at least one public hearing pursuant to §15.2-2204 of the Code of Virginia.

D. Separate guidelines shall be developed for all new infill buildings in Cape Charles' historic district. New infill construction will not diminish, detract, or distract from the

character of surrounding historic buildings or the overall historic district.

E. Alterations and additions to non-contributing structures that affect the exterior appearance of the structure or additions should be compatible with the district following the guidelines for new (infill) construction. Criteria for non-contributing structures may be less restrictive than that applied to contributing structures.

Section 8.21 Demolition: Alternate Procedure: Offer to Sell

A. Prior to approval of any application for demolition, modification, moving, or removal of a contributing structure within the Cape Charles Historic District; the zoning administrator, the Historic District Review Board, or the Town Council, as applicable, shall review the application for its compatibility with each of the following guidelines.
   1. Whether or not the contributing structure is of such architectural or historic interest that its removal would be to the detriment of the character and integrity of the Historic District.
   2. Whether or not the contributing structure is of such interest or significance that it would qualify as a National, State, or local historic landmark.
   3. Whether or not retention of the contributing structure would help to preserve and protect a historic place or area of historic interest in the Town.
   4. Whether or not plans for future use of the site after demolition are appropriate, compatible, sympathetic, and complimentary to the character and integrity of the Historic District.

   No subsequent application under Section 8.21A regarding the contributing structure may be made until more than one year after a final denial by the Town Council.

B. In addition to the right of appeal herein elsewhere set forth, the owner of a contributing structure in the Cape Charles Historic District shall as a matter of right be entitled to move, remove, modify, raze or demolish all or part of such contributing structure provided that:
   1. The owner has applied to the Town Council for such right.
   2. The owner has for the applicable period of time set forth in the time schedule in Section 8.21.B.4., and at a price reasonably related to the fair market value of the contributing structure and the land, other improvements and appurtenances pertaining thereto (assuming the buyer will be required to preserve and restore the contributing structure in place on the property) as determined by the average of two (2) real estate appraisals from two (2) different appraisers, made a bona fide, public offer (pursuant to the requirements of this Section 8.21 B.) to sell such contributing structure, and the land, other improvements and appurtenances pertaining thereto (collectively, the "Property"), to the Town and any other person, firm, corporation, government or political subdivision or agency thereof, which gives reasonable assurance that it is willing to preserve and restore the contributing structure in place. If the two (2) required real estate appraisals submitted by the Owner differ by more than ten percent (10%), the owner must have the Property appraised a third time at his own expense by a third real estate appraiser selected by the Town. The bona fide offer to sell must be at a price not more than the average of the two such appraisals that are closest to one another.

3. No bona fide contract, binding upon all parties thereto, shall have been executed for the sale of any such Property thereto, prior to the expiration of the applicable time period set forth in the time schedule in Section 8.21.B.4. Any appeal which may be taken to the court from the decision of the Town Council, whether instituted by the owner or by any other proper party, notwithstanding the provisions heretofore stated relating to a stay of the decision appealed from, shall not affect the right of the owner to make the bona fide offer to sell referred to above.
4. The time schedule for offers to sell shall be as follows:
    a. Three (3) consecutive months when the offering price is less than twenty-five thousand dollars.
    b. Four (4) consecutive months when the offering price is twenty-five thousand or more but less than forty thousand dollars.
    c. Five (5) consecutive months when the offering price is forty thousand or more but less than fifty-five thousand dollars.
    d. Six (6) consecutive months when the offering price is fifty-five thousand dollars or more but less than seventy-five thousand dollars.
    e. Seven (7) consecutive months when the offering price is seventy-five thousand dollars or more but less than ninety thousand dollars.
    f. Twelve (12) consecutive months when the offering price is ninety thousand dollars or more.
5. Before making a bona fide offer to sell, the owner shall first file a statement with the Zoning Administrator along with the appraisals required by Section 8.21.B.2. The statement shall identify the Property, state the offering price, the date the offer of sale is to begin, the names and addresses of adjacent property owners, and the names and addresses of listing real estate agents, if any. The owner shall be required to maintain the Property in at least its current condition during the term of the public offer. No time period set forth in the time schedule contained in Section 8.21.B.4. shall begin to run until the statement has been filed. Within five (5) business days after receipt of a statement, copies of the statement shall be delivered by the Zoning Administrator to the Town Manager, the Town Council, and the Historic District Review Board. Within thirty (30) days after the receipt of a statement, the Zoning Administrator: (a) shall place notice of the statement once a week for two successive weeks in a newspaper having general circulation in the Town, (b) post a notice of the statement prominently on the Property, and (c) send notice of the offer, accompanied by the statement, to the adjacent property owners by certified or registered mail.
6. During the time period for the offer to sell, the Town may take steps as it deems necessary to preserve the contributing structure in accordance with the purposes of this article. Such steps may include, but are not limited to, consultation with civic groups, public agencies, and interested citizens, recommendations for acquisition of the Property by public or private bodies or agencies, and exploration of the possibility of moving structures or other features on the Property.
7. The fact that an offer to sell a Property is made at a price reasonably related to fair market value as described previously may be questioned by any party who files with the Zoning Administrator, on or before sixty (60) days after the offer for sale has begun, a petition in writing signed by at least twenty-five (25)

persons owning real estate within Cape Charles, questioning such valuation. Upon receipt of such a petition, one (1) disinterested real estate appraiser shall be appointed by the petitioners, and the cost of the appraisal shall be borne by the petitioners. Said appraiser shall forthwith make an appraisal of the Property on the same basis as described in B.2. above, and the Town shall use the average of the lower two appraisals to establish fair market value under Section 8.21.B. In the event such valuation indicates that the price at which the applicant offered to sell the Property was at a price that is higher than the Property's fair market value, the offer to sell shall be void and of no force and effect for purposes of satisfying the requirements set forth in this Section 8.21.B.

Section 8.22 Maintenance and Repair Required

A. The purpose of this section is solely to stop demolition by neglect, whereby owners of property in the Historic District allow the structure, or historic attributes of the structure, to become a hazardous building or structure. Any building or structure which is determined to be in such an unsafe condition that it would endanger life or property is governed by Town Code Chapter 18, Article III, Unsafe Buildings or Structures and under the sole jurisdiction of the Town's Code Official.

B. All buildings and structures in the Historic District shall be preserved against decay and deterioration and maintained free from structural defects to the extent that such decay, deterioration, or defects may, in the opinion of the Historic District Review Board and Town Council, result in the irreparable deterioration of any exterior appurtenance or architectural feature or produce a detrimental effect upon the character of the district as a whole or upon the life and character of the structure itself, including but not limited to:
   1. The deterioration of exterior walls or other vertical supports, including broken doors and windowpanes;
   2. The deterioration of roofs or horizontal members;
   3. The deterioration of exterior chimneys;
   4. The deterioration or crumbling of exterior plaster, wood, or mortar;
   5. The deterioration of any feature so as to create or permit the creation of any hazardous or unsafe condition or conditions.

C. After notice by the Zoning Administrator or Code Official by certified mail of specific instances of failure to maintain or repair and of an opportunity to appear before the Historic District Review Board, the owner or person in charge of said structure shall have ninety (90) days to remedy such violation. Thereafter, each day during which there exists any violation of this section shall constitute a separate offense and shall be punishable as provided in this ordinance. In the alternative, if the owner fails to act, the Historic District Review Board may recommend to the Town Council that the Zoning Administrator, after due notice to the owner, enter the property and make or cause to be made such repairs as are necessary to preserve the integrity and safety of the structure and the reasonable costs thereof shall be placed as a lien against the property.

Section 8.23 File of Actions to be Maintained

In order to provide guidance for the consistent application of standards and guidelines, and for assistance to future applicants and the promotion of consistent policies in guiding applicants

toward better standards of design, the Zoning Administrator shall maintain a file containing a record of all applications, including drawings and photographs pertaining thereto and the decision of the Zoning Administrator or the Historic District Review Board in each case. The file documents shall be compiled by the Zoning Administrator, maintained by the Town Clerk, and remain the property of the Town but shall be held available for public review.

Section 8.24 Administration; Zoning Administrator

Except as authorized herein the Zoning Administrator or Code Official shall not authorize a permit for any erection, reconstruction, integral exterior facade change, demolition, or razing of a building or structure in the Historic District until the same has been approved by the Historic District Review Board as set forth in the following procedures.

Section 8.25 Receipt of Application

Upon receipt of an application by the Zoning Administrator for each permit in the historic district, the Zoning Administrator shall oversee the following:

A. Pre-application review: Persons considering action that requires a certificate of appropriateness, as set forth in this ordinance, are to request an informal informational meeting with the Zoning Administrator and at least one member of the Historic District Review Board prior to submitting a formal application for a certificate of appropriateness. Requests for such informational meetings can be made to the zoning administrator, who will contact a member of the board. The informational meeting will occur within thirty (30) days of receipt of such a request. The purpose of an informational meeting is to review the design guidelines and standards and the procedures for obtaining a certificate of appropriateness. Neither the applicant nor the zoning administrator/board member(s) shall be bound by any informational meeting or conceptual review. Zoning administrator can use discretion on the need for a pre-application meeting or the inclusion of a board representative depending on the nature of project proposed;

B. Once accepted by the zoning administrator as a fully completed application, the zoning administrator will forward to the Historic District Review Board a copy of the application, together with a copy of the site plan and the building plans and specifications filed by the applicant if such application requires the Historic District Review Board to meet and render a decision;

C. Compile a record of all such applications and of the final disposition of the same, to be maintained by the Town Clerk;

D. Require applicants to submit one (1) hard copy and one electronic version of material required to permit compliance with the foregoing.

Section 8.26 Material to be Submitted for Review

By general rule, or by specific request in a particular case, the Historic District Review Board may require submission of any or all of the following in connection with the application: architectural plans, site plans, landscaping plans, construction methods, proposed exterior lighting arrangements, elevations of all portions of structures with important relationships to public view and such other exhibits and reports as are necessary for its determinations. Requests for approval of activities proposed in historic districts shall be accepted only from the

record owner of the land involved in such proposal, or their agent.

Section 8.27 Other Approvals Required

The Zoning Administrator will review submitted applications for Certificates of Appropriateness against appropriate zoning requirements before forwarding application to the Historic District Review Board for pre-application review and approval. In any case in which an applicant's proposal also requires the approval of the Board of Zoning Appeals, final action by the Board of Zoning Appeals shall precede final action by the Historic District Review Board. The Board of Zoning Appeals may, however, table a proposal in order to request the comments of the Historic District Review Board. In this case, final action by the Historic District Review Board shall be taken prior to consideration of proposals requiring site plan approval.

Section 8.28 Action by the Historic District Review Board; Issuance of Certificates of Appropriateness

The Historic District Review Board shall render a decision upon any request or application for a Certificate of Appropriateness within ninety (90) days after the filing of an application accepted as complete. Failure of the Historic District Review Board to render such a decision within said ninety (90) day period, unless such period be extended with the concurrence of the applicant, shall entitle the applicant to proceed as if the Historic District Review Board had granted the Certificate of Appropriateness applied for prior to denying the Certificate of Appropriateness. The Historic District Review Board, on the basis of the review of information received, shall, upon request, indicate to the applicant the changes in plans and specifications, if any, which in the opinion of the Historic District Review Board, would protect and/or preserve the historical aspects of the landmark, building, structure, or district. If the applicant determines that they will make the suggested changes, the Historic District Review Board may issue the Certificate of Appropriateness. Agreed to changes will be so stipulated on the Certificate of Appropriateness.

All conditions required for the approval of a certificate of appropriateness will also be included on the building plan and will be reviewed by the Code Official during routine inspections.

The Zoning Administrator will be responsible for issuance of the Certificate of Appropriateness to the applicant and the Town's Code Official office within five (5) business days. Denials of applications are to be stated in writing to the applicant along with the reasons for such denials by the zoning administrator and issued within five (5) business days. Once a Certificate of Appropriateness is granted, the applicant may obtain permits to start work with the understanding that work may be stopped should an appeal be filed to the board's decision within a 30-day period following approval of the Certificate of Appropriateness, and that the applicant takes full responsibility to bear whatever consequences result from the appeal's final decision.

Section 8.29 Expiration of Certificates of Appropriateness

Any certificate issued pursuant to this article shall expire of its own limitation six (6) months from the date of issuance if the work authorized thereby is not commenced by the end of such six (6) month period; and further, any such certificate shall also expire and become null and void if such authorized work is suspended or abandoned for a period of six (6) months after being commenced. Any period or periods of time during which the right to use any such certificate is stayed pursuant to this article shall be excluded from the computation of the six (6) months.

Section 8.30 Inspection by Administrator After Approval

When a Certificate of Appropriateness has been issued, the Zoning Administrator or Town Building Official shall from time to time inspect the alteration or construction approved by such certificate and shall give prompt notice to the applicant of any work not in accordance with such certificate or violating any ordinances of the Town. The Zoning Administrator or Town Building Official may revoke the certificate or the building permit if violations are not corrected by the applicant in a timely manner.

Section 8.31 Delay of Approval

In the case of a proposal other than for demolition or moving but involving a designated landmark where the Historic District Review Board or, on appeal, the Town Council cannot reach a satisfactory agreement with the owner and where the Historic District Review Board or, on appeal, the Town Council decides such action to be in the public interest and not in conflict with any provision of law, it may delay the effective date of an approval for a period of three (3) months from the date of application or appeal to enable negotiations to be undertaken and completed for acquisition of the property for preservation or public use. Failure of negotiations within this period shall be the equivalent of a denial of the application by the Historic District Review Board or, on appeal, by the Town Council.

Section 8.32 Conditions Imposed by the Historic District Review Board

In approval of any proposal under this section, the Historic District Review Board or, on appeal, the Town Council may limit such approval by such reasonable conditions as the case may require, including but not limited to, the specifications enumerated for conditional uses and for the Town Council.

Section 8.33 Appeals; Decisions of the Historic District Review Board

An appeal from a decision of the Historic District Review Board may be taken to the Town Council by the owner of the property in question or by any party aggrieved and must show that he has an immediate, pecuniary and substantial interest in the litigation, and not a remote or indirect interest, which shall be taken within thirty (30) days after the decision appealed from by filing with the Zoning Administrator the following: a notice of appeal specifying the grounds thereof; a signed statement listing any personal or business relationship with any general or subcontractors associated with the project under appeal; a signed statement that all real and personal property taxes are current as of the date of the filed appeal notice; a signed statement listing any personal or business relationship or partnership with the property owner(s) associated with the project under appeal; a fee equal in value to the fee paid by the property owner(s) associated with the project under appeal. The person submitting the appeal shall not be allowed to present any evidence that was not presented to the Historic District Review Board, Council members having any relevant interaction with the applicant shall disclose such interaction prior to considering the appeal. The Zoning Administrator will prepare a document of all the papers constituting the record upon which the action appealed from was taken. The Town Council shall fix a reasonable time for the hearing, give public notice thereof and decide the same within sixty (60) days from the date the person submitted a request for appeal. At the hearing, the appealing party may appear in person or by agent. In exercising its powers, the Town Council may, in conformity with the provisions of this Ordinance, reverse or affirm, wholly or partly, or may modify any order, requirement, decision, or determination appealed from and make such order, requirement, decision or determination as ought to be made and to that end

shall have all the powers of the Historic District Review Board.

Section 8.34 Appeals; Decisions of the Zoning Administrator

An appeal from a decision of the Zoning Administrator may be taken to the Board of Zoning Appeals by the owner of the property in question or by any party aggrieved and must show that he has an immediate, pecuniary and substantial interest in the litigation, and not a remote or indirect interest, which shall be taken within thirty (30) days after the decision appealed from by filing with the Zoning Administrator the following: a notice of appeal specifying the grounds thereof; a signed statement listing any personal or business relationship with any general or subcontractors associated with the project under appeal; a signed statement that all real and personal property taxes are current as of the date of the filed appeal notice; a signed statement listing any personal or business relationship or partnership with property owner(s) associated with the project under appeal. The Zoning Administrator shall transmit to the Board of Zoning Appeals within five (5) days all the papers constituting the record upon which the action appealed from was taken. The Board of Zoning Appeals shall fix a reasonable time for the meeting, give public notice thereof as required pursuant to § 15.2-2204 of the Code of Virginia; and decide the same within sixty (60) days. At the meeting the party may appear in person or by agent. In exercising its powers, the Board of Zoning Appeals may reverse or affirm, wholly or partly, or may modify, any order, requirement, decision, or determination appealed from and make such order, requirement, decision or determination as ought to be made.

Section 8.35 Appeal to the Circuit Court from a Decision of the Town Council

An appeal from a final decision of the Town Council may be filed with the Circuit Court within thirty (30) days after said decision in the manner prescribed by law by the owner of the property in question, by any party aggrieved and must show that he has an immediate, pecuniary and substantial interest in the litigation, and not a remote or indirect interest, or by the Historic District Review Board. The filing of an appeal shall stay the decision of the Town Council pending the outcome of the appeal to the court, except that the filing of such petition shall not stay the decision of the Town Council if such decision denies the right to raze or demolish a designated landmark, building, or structure. The court may reverse or modify the decision of the Town Council, in whole or part, if it finds upon review that the decision of the governing body is contrary to law or that its decision is arbitrary and constitutes an abuse of discretion, or it may affirm the decision of the Town Council.

Section 8.36 Violations and Penalties

Any violation of this Article and the penalties for all such violations shall be as set forth in §2.4.3 of the Zoning Ordinance.

Section 8.37 Definitions

For the purpose of this article, terms and words pertaining to the Historic District are defined in Article II of this Ordinance.

Article IX - Historic Harbor Area Overlay District

Section 9.1 Statement of Intent

The Cape Charles Harbor is a vital part Cape Charles' history, and will continue to play an important role in the Town's future. Water transportation provides one of the Town's primary means of access, along with roadway transportation. The intent of the Historic Harbor Area Overlay District is to encourage development and redevelopment that is architecturally compatible with existing and previously existing development in the Cape Charles Harbor area, as well as in the neighboring area within the adjacent Historic District Overlay. Much of the Cape Charles Harbor Area's historic significance is derived from the harbor's role in the Town's formation. In addition to ensuring architectural styles are compatible with the area's heritage, the Historic Harbor Area Overlay District is intended to preserve the harbor area's historic sense of place. This overlay district is also intended to implement the general concepts found in the Cape Charles Harbor Area Conceptual Master Plan and Design Guidelines, which support development and redevelopment that is visually compatible with the heritage of the Cape Charles Harbor Area.

Section 9.2 Specific Purpose of the District

The purpose of this district is to provide for protection against destruction or encroachment upon historic areas, buildings, monuments, or other features, or buildings and structures of recognized architectural significance which contribute or will contribute to the cultural, social, economic, political, artistic, or architectural heritage of the Town of Cape Charles and the Commonwealth of Virginia. It is the purpose of the district to preserve the designated historic areas and historic landmarks and other historic or architectural features, and their surroundings within a reasonable distance, from destruction, damage, defacement, and obvious incongruous development or uses of land and to ensure that buildings, structures, streets, walkways, or signs shall be erected, reconstructed, altered, or restored so as to be kept architecturally compatible with the character of the general area in which they are located and with the historic buildings or structures within the district.

Section 9.3 Criteria for Establishing Historic Districts--General Character

The boundaries of the Historic Harbor Area Overlay District shall in general be drawn to include areas near the Cape Charles Harbor containing buildings or places in which historic events occurred or having special public value because of notable architectural or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation. The district may include either individual buildings or places of such character, and a reasonable distance beyond, or it may include areas or groupings of structures which have significance relative to their patterns of development or social and economic or architectural interrelationships even though some structures in the area might not possess significant merit when considered alone.

Section 9.4 Application of the District; Relation to Other Zoning Districts

To enable the district to operate in harmony with the plan for land use and population density embodied in these regulations, the Historic Harbor Area Overlay District is created as a special district to be superimposed on other districts contained in these regulations and is to be so designated by a special symbol for its boundaries on the Zoning District Map. The uses, housing

types, minimum lot requirements, minimum yard requirements, maximum height, and accessory uses and accessory signs shall be determined by the regulations applicable to the other districts over which the Historic Harbor Area Overlay District is superimposed except as these other district regulations may be modified by application of the regulations in the Historic Harbor Area Overlay District.

Section 9.5 Permitted Uses

A building or land shall be used only for the following purposes:

A. Any use or accessory use permitted in the zoning district in which the premises are located.

B. Any use for which a Conditional Use Permit has been issued, subject in all cases to review and report by the Harbor Area Review Board.

C. Any variance authorized by the Board of Zoning Appeals, subject in all cases to review and report by the Harbor Area Review Board.

Section 9.6 Harbor Area Review Board; Creation

For the general purposes of this Article as herein stated and specifically to preserve and protect historic places and areas in the Town through the control of demolition of such places and through the regulation of architectural design and uses of structures in such areas, there is created a board known as the Harbor Area Review Board.

Section 9.7 Harbor Area Review Board; Membership

The members of said Harbor Area Review Board will be appointed by the Town Council. The Membership shall consist of seven citizens. One member shall also be a member of the Town Council, two members shall also be members of the Planning Commission, and one member shall also be a member of the Historic District Review Board.

All former members of the Harbor Area Review Board are eligible to be alternates to present Harbor Area Review Board Members. An alternate, upon written request of a Harbor Area Review Board member, may serve as a member of the Harbor Area Review Board for the meeting(s) for which the alternate has been requested to serve. Alternates shall have all rights, responsibilities, and duties as a present Harbor Area Review Board member during the meeting(s) during which the alternate(s) shall serve.

Section 9.8 Harbor Area Review Board; Terms

Except for members who also serve on the Town Council, Planning Commission, or Historic District Review Board, members shall be appointed for a term of five years except that original appointments shall be made for such terms that the term of at least one member shall expire each year. Appointees who also serve on the Town Council, Planning Commission, or Historic District Review Board shall be appointed to a term coinciding with their term on the Town Council, Planning Commission, or Historic District Review Board, as appropriate. Appointments to fill vacancies shall be only for the unexpired term. Members may be reappointed to succeed themselves. A member whose term expires shall continue to serve until a successor is appointed and qualifies.

Section 9.9 Harbor Area Review Board; Qualifications
Members of the Harbor Area Review Board shall have demonstrated interest and knowledge in the historical and architectural development of the Town and when possible be a licensed architect or engineer, planning commission member, or licensed building contractor.

Section 9.10 Harbor Area Review Board; Organization
The Harbor Area Review Board shall elect from its own membership a chairman and vice chairman who shall serve annual terms and may succeed themselves. The chairman shall preside over all meetings in addition to having the duties and responsibilities of other members of the Board. The vice chairman shall preside over meetings of the Board in the absence of the chairman. The Harbor Area Review Board may appoint a secretary and keep written minutes of its meetings.

Section 9.11 Harbor Area Review Board; Rules
The Board shall meet in regular session at least once a month whenever an application has been filed requiring their consideration. Special meetings of the Board may be called by the chairman or a majority of the members after twenty-four hours' written notice to each member served personally or left at his usual place of business or residence. Such notice shall be publicly posted and will state the time and place of a meeting and the purpose thereof.

Section 9.12 Harbor Area Review Board; Meetings; Hearings
Written notice of a special meeting is not required if the time of special meeting has been fixed at a regular meeting or if all members are present at a special meeting or file a written waiver of notice. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all voting members of the Board. The Board may make, alter, or rescind rules and forms for its procedures, consistent with the ordinances of the Town and the general laws of the Commonwealth of Virginia.

Section 9.13 Harbor Area Review Board; Procedures
The Board shall establish procedures for all matters coming before it for review and all meetings shall be open to the public.

Section 9.14 Harbor Area Review Board; Powers and Duties
The Harbor Area Review Board shall have the power and authority for issuing or denying Certificates of Appropriateness for construction, reconstruction, substantial exterior alteration, razing, or relocation within the Historic Harbor Area Overlay District. In addition, the Board shall have the following duties:

A. To assist and advise the Town Council, the Planning Commission, and other Town departments, agencies, and property owners in matters involving historically significant sites at buildings or other properties in historic districts such as, but not limited to, appropriate land usage, parking facilities, fencing, and signs.

B. To continuously evaluate conditions and advise owners of historic landmarks or contributing structures or other properties in historic districts on problems of preservation.

C. To conduct studies deemed necessary by the Town Council or Planning Commission

concerning location of historic districts and means of preservation, utilization, improvement, and maintenance of historic assets in the Town.

D. To propose additional historic districts or additions or deletions to districts.

E. To adopt standards for review to supplement the standards set forth in this Ordinance.

F. To formulate recommendations to the Town Council concerning the establishment of an appropriate system of markers for selected historic sites and buildings, including proposals for the installation and care of such historic markers.

G. To cooperate with and enlist assistance from the Virginia Department of Historic Resources, the National Trust for Historic Preservation, and other interested parties both public and private in its efforts to preserve, restore, and conserve historic landmarks, buildings, sites, or areas within the Town.

Section 9.15 Summary of Administration Review Procedures

In general, it is the purpose of this ordinance to establish review procedures for actions affecting properties in the Historic Harbor Area Overlay District which will be relatively simple with minimum delay for those actions which will have little if any permanent effect on the character of the district or on a significant structure. A more thorough review for actions which may have a substantial effect on the character of the district or on a significant structure is required. To this end, some actions are exempted from special historic and architectural review altogether, except as normal review may be necessary for issuance of a building permit. Other actions, depending on the possible consequences thereof, may be reviewed by the Zoning Administrator or by the Harbor Area Review Board acting with original jurisdiction, or, in the most serious cases, action by the Town Council following action by the Harbor Area Review Board. In all cases the decisions of the Zoning Administrator may be appealed to the Harbor Area Review Board, the decisions of the Harbor Area Review Board may be appealed to the Town Council, and the final decisions of the Town Council may be appealed to the Circuit Court of Northampton County.

Section 9.16 Certain Minor Actions Exempted from Review by the Harbor Area Review Board

Within the Historic Harbor Area Overlay District certain minor actions which are deemed not to have permanent effects upon the character of the district are exempted from review for architectural compatibility by the Harbor Area Review Board. Such actions shall include the following and any similar actions which in the opinion of the Zoning Administrator will have no more effect on the character of the district than those listed:

A. Repainting the structure in the same color or a very similar color or painting the structure with those colors specified in the design guidelines. (Original painting of masonry surfaces is not exempted from review.)

B. Replacement of missing or broken window panes, roofing slates, tiles, porch floor, posts, rails, shingles, window frames, or shutters where no substantial change in design or material is proposed.

C. Addition or deletion of storm doors or storm windows, window gardens, or similar appurtenances and portable air conditioners located in existing windows, doors, or other existing wall openings (if no building permit is required for such addition or deletion).

D. Addition or deletion of television and radio antennas or skylights and solar collectors in locations not visible from a public street or a waterway.

E. Landscaping involving minor grading, walks, low retaining walls, temporary fencing, small fountains, ponds and the like, which will not substantially affect the character of the property and its surroundings.

F. If consistent with the design guidelines, erection of any sign permitted in a residential district and any permitted non-illuminated flat or wall sign not exceeding three inches from a wall and not exceeding four square feet in area in a commercial or industrial district.

G. Construction of off-street loading areas and off-street parking areas containing five spaces or less in a commercial or industrial district.

H. Creation of outside storage having a structure footprint of less than forty- one (41) square feet in a commercial or industrial district which does not require structural changes or major grading and is not visible from a public street or waterway.

Section 9.17 Certain Actions Recommended in Design Guidelines Exempted from Review by the Harbor Area Review Board; Delegation of Authority

A. The Harbor Area Review Board and the Zoning Administrator shall have authority to order that work be stopped and that an appropriate application be filed for review by the Harbor Area Review Board in any case where the action may have an adverse effect on the Historic Harbor Area Overlay District or may produce arresting and spectacular effects, violent contrasts of materials or colors, and intense and lurid colors or patterns, or details clearly inconsistent with the character of the present structures or with the prevailing character of the surroundings and the district.

B. The authority to perform any action under this section not granted to the Zoning Administrator shall remain with the Harbor Area Review Board.

Section 9.18 Approval of Harbor Area Review Board Required

A. Except as herein otherwise provided in this article, no building or structure, including signs, shall be erected, reconstructed, restored, or substantially altered in exterior appearance and no buildings or structures shall be razed or demolished within a historic district and no permit authorizing same shall be granted unless and until the same is approved by the Harbor Area Review Board and a Certificate of Appropriateness has been issued by that body, with right of direct appeal to the Town Council as hereinafter provided, as being architecturally compatible with the historical, cultural, and/or architectural aspects of the structure and its surroundings.

1. Exemptions

a. Railroad activities in this district are subject to federal preemption to the extent that the activities are an integral part of the railroad's interstate operations. 49 U.S.C. 10501 (b). Therefore, "state and local permitting or pre-clearance requirements [such as building permits, zoning clearances, and site plan requirements] which, by their nature, interfere with interstate commerce by giving the [Town of Cape Charles] the ability to delay or deny the [railroad's] right to construct facilities or conduct operations are preempted." Borough of Riverdale v. New York Susquehanna & Western Railway Corporation, Surface Transportation Board, Docket No. FD - 33466 - 0, September 9, 1999.

However, environmental and other public health and safety issues and "activities and facilities not integrally related to the provision of rail service are not subject to [Surface Transportation Board] jurisdiction or subject to federal preemption." Id. Also, "interstate railroads … are not exempt from certain local fire, health, safety and construction regulations and inspections." Id.

b. Activities requiring a Harbor Development Certificate, as described in Section 3.9, are exempt from requiring a Certificate of Appropriateness.

B. "Substantial alterations" shall be defined as any and all work done on buildings, structures, or sites other than those specifically exempted herein:

1. General examples of "non-substantial" alterations:
   a. Work done to prevent deterioration or to replace parts of a structure with similar materials in order to correct any deterioration, decay of, or damage to any structure or on any part thereof, or
   b. To restore same as nearly as practical to its condition prior to such deterioration, decay, or damage.
2. Examples of work not constituting "substantial alteration" include those minor actions exempted from review by §9.16 of this article.
3. General examples of work constituting "substantial alterations" include:
   a. Construction of a new building at any location or a new accessory building on a landmark or contributing property or on a site within the Historic Harbor Area Overlay District
   b. Any addition to or alteration of a building which increases the square footage of the building or otherwise alters substantially its size, height, contour, or outline.
   c. Any change or alteration of the exterior architectural style of a structure, including removal or rebuilding of porches, openings, dormers, window sashes, chimneys, columns, structural elements, stairways, terraces, and the like.
   d. Any change or alteration of the exterior color scheme of the structure or any of its significant elements, including porches, openings, dormers, window sashes, awnings, canopies, chimneys, columns, stairways, terraces, or any other structural elements. This also applies to all structures on the site.
   e. Addition to or removal of one or more stories or alteration of a roof line.
   f. Landscaping which involves major changes of grade or walls and fences

more than three-and-one-half feet in height.

g. Any other major actions not specifically covered by the terms of this section but which would have a substantial effect on the character of the historic district.

C. In any case in which there might be some question as to whether a project may be exempted from review may constitute a minor action or may constitute "substantial alteration," the Zoning Administrator shall be contacted for an interpretation prior to commencement of work.

Section 9.19 Harbor Development Certificate

Evidence of the approval required under the terms of the Historic Harbor Area Overlay District shall be a certificate of appropriateness issued by the Harbor Area Review Board, or the Zoning Administrator as the case may require, stating that the demolition, moving, or changes in the exterior architectural appearance of the proposed construction, reconstruction, alteration, or restoration for which application has been made are approved by the Harbor Area Review Board or the Administrator as the case may require. The Harbor Area Review Board, or the Administrator in a case within his authority, may permit modifications of original proposals if such modifications are formally acknowledged, clearly described, and recorded in the records of the case. A certificate of appropriateness shall be in addition to any other permits required. Any action by applicants following issuance of a permit-requiring certificate of appropriateness shall be in accord with the application and material approved and any conditions appended thereto.

Section 9.20 Design Guidelines; Standards for Review

A. In order to achieve the purposes of the Historic Harbor Area Overlay District, the Harbor Area Review Board shall be guided in its decisions by the design guidelines as authorized in subsection B of this section

B. It shall be the duty of the Harbor Area Review Board to prepare and recommend to Planning Commission, specific design guidelines for adoption by Town Council, illustrated as necessary, for buildings, structures, and sites in the historic district

C. The Town Council shall adopt an initial set of design guidelines after receiving a recommendation from the Planning Commission and after conducting at least one public hearing pursuant to § 15.2-2204 of the Code of Virginia. Prior to issuing a recommendation, the Planning Commission shall conduct at least one public hearing pursuant to § 15.2-2204 of the Code of Virginia.

D. The Town Council may amend adopted design guidelines after receiving a recommendation from the Planning Commission and after conducting at least one public hearing pursuant to § 15.2-2204 of the Code of Virginia. Prior to issuing a recommendation, the Planning Commission shall conduct at least one public hearing pursuant to § 15.2-2204 of the Code of Virginia.

Section 9.21 Demolition; Alternate Procedure: Offer to Sell

A. Prior to approval of any application for demolition, modification, moving, or removal of a contributing structure within the Cape Charles Historic Harbor Area Overlay District; the Zoning Administrator, the Harbor Area Review Board, or the Town Council, as

applicable, shall review the application for its compatibility with each of the following guidelines.

1. Whether or not the contributing structure is of such architectural or historic interest that its removal would be to the detriment of the character and integrity of the Historic Harbor Area Overlay District.
2. Whether or not the contributing structure is of such interest or significance that it would qualify as a National, State, or local historic landmark.
3. Whether or not retention of the contributing structure would help to preserve and protect a historic place or area of historic interest in the Town.
4. Whether or not plans for future use of the site after demolition are appropriate, compatible, sympathetic, and complimentary to the character and integrity of the Historic Harbor Area Overlay District.

No subsequent application under Section 9.21 A. regarding the contributing structure may be made until more than one year after a final denial by the Town Council.

B. In addition to the right of appeal herein elsewhere set forth, the owner of a contributing structure in the Cape Charles Historic Harbor Area Overlay District shall as a matter of right be entitled to move, remove, modify, raze or demolish all or part of such contributing structure provided that:

1. The owner has applied to the Town Council for such right.
2. The owner has for the applicable period of time set forth in the time schedule in Section 9.21 B. 4., and at a price reasonably related to the fair market value of the contributing structure and the land, other improvements and appurtenances pertaining thereto (assuming the buyer will be required to preserve and restore the contributing structure in place on the property) as determined by the average of two (2) real estate appraisals from two (2) different appraisers, made a bona fide, public offer (pursuant to the requirements of this Section 9.21 B.) to sell such contributing structure, and the land, other improvements and appurtenances pertaining thereto (collectively, the "Property"), to the Town and any other person, firm, corporation, government or political subdivision or agency thereof, which gives reasonable assurance that it is willing to preserve and restore the contributing structure in place. If the two (2) required real estate appraisals submitted by the Owner differ by more than ten percent (10%), the owner must have the Property appraised a third time at his own expense by a third real estate appraiser selected by the Town. The bona fide offer to sell must be at a price not more than the average of the two such appraisals that are closest to one another.
3. No bona fide contract, binding upon all parties thereto, shall have been executed for the sale of any such Property thereto, prior to the expiration of the applicable time period set forth in the time schedule in Section 9.21 B. 4. Any appeal which may be taken to the court from the decision of the Town Council, whether instituted by the owner or by any other proper party, notwithstanding the provisions heretofore stated relating to a stay of the decision appealed from, shall not affect the right of the owner to make the bona fide offer to sell referred to above.
4. The time schedule for offers to sell shall be as follows:
   a. Three (3) consecutive months when the offering price is less than twenty-

five thousand dollars.

b. Four (4) consecutive months when the offering price is twenty- five thousand or more but less than forty thousand dollars.
c. Five (5) consecutive months when the offering price is forty thousand or more but less than fifty-five thousand dollars.
d. Six (6) consecutive months when the offering price is fifty-five thousand dollars or more but less than seventy-five thousand dollars.
e. Seven (7) consecutive months when the offering price is seventy- five thousand dollars or more but less than ninety thousand dollars.
f. Twelve (12) consecutive months when the offering price is ninety thousand dollars or more.

5. Before making a bona fide offer to sell, the owner shall first file a statement with the Zoning Administrator along with the appraisals required by Section 9.21 B. 2. The statement shall identify the Property, state the offering price, the date the offer of sale is to begin, the names and addresses of adjacent property owners, and the names and addresses of listing real estate agents, if any. The owner shall be required to maintain the Property in at least its current condition during the term of the public offer. No time period set forth in the time schedule contained in Section 9.21 B. 4. shall begin to run until the statement has been filed. Within five (5) days after receipt of a statement, copies of the statement shall be delivered by the Zoning Administrator to the Town Manager, the Town Council, and the Harbor Area Review Board. Within thirty (30) days after the receipt of a statement, the Zoning Administrator: (a) shall place notice of the statement once a week for two successive weeks in a newspaper having general circulation in the Town, (b) post a notice of the statement prominently on the Property, and (c) send notice of the offer, accompanied by the statement, to the adjacent property owners by certified or registered mail.
6. During the time period for the offer to sell, the Town may take steps as it deems necessary to preserve the contributing structure in accordance with the purposes of this article. Such steps may include, but are not limited to, consultation with civic groups, public agencies, and interested citizens, recommendations for acquisition of the Property by public or private bodies or agencies, and exploration of the possibility of moving structures or other features on the Property.

C. The fact that an offer to sell a Property is made at a price reasonably related to fair market value as described previously may be questioned by any party who files with the Zoning Administrator, on or before sixty (60) days after the offer for sale has begun, a petition in writing signed by at least twenty-five (25) persons owning real estate within Cape Charles, questioning such valuation. Upon receipt of such a petition, one (1) disinterested real estate appraiser shall be appointed by the petitioners, and the cost of the appraisal shall be borne by the petitioners. Said appraiser shall forthwith make an appraisal of the Property on the same basis as described in B.2. above, and the Town shall use the average of the lower two appraisals to establish fair market value under Section 9.21.B. In the event such valuation indicates that the price at which the applicant offered to sell the Property was at a price that is higher than the Property's fair market value, the offer to sell shall be void and of no force and effect for purposes of satisfying the requirements set forth in this Section 9.21.B.

Section 9.22 Hazardous Buildings or Structures

Nothing in this Article shall prevent the razing or demolition of any building or structure without consideration of the Harbor Area Review Board which is in such an unsafe condition that it would endanger life or property, and protection from such condition is provided for in the Building Code and/or other applicable Town ordinances. However, such razing or demolition shall not be commenced without written approval of the Town Administrator verifying the conditions necessitating such action.

Section 9.23 Maintenance and Repair Required

A. The purpose of this section is solely to stop demolition by neglect, whereby owners of property in the Historic Harbor Area Overlay District jeopardize the future prosperity and well-being of the town by allowing historic assets to decay so as to allow the structure, or historic attributes of the structure, to become a hazardous building or structure.

B. All buildings and structures in the Historic Harbor Area Overlay District shall be preserved against decay and deterioration and maintained free from structural defects to the extent that such decay, deterioration, or defects may, in the opinion of the Harbor Area Review Board and Town Council, result in the irreparable deterioration of any exterior appurtenance or architectural feature or produce a detrimental effect upon the character of the district as a whole or upon the life and character of the structure itself, including but not limited to:
   1. The deterioration of exterior walls or other vertical supports, including broken doors and window panes;
   2. The deterioration of roofs or horizontal members;
   3. The deterioration of exterior chimneys;
   4. The deterioration or crumbling of exterior plaster, wood, or mortar;
   5. The deterioration of any feature so as to create or permit the creation of any hazardous or unsafe condition or conditions.

C. After notice by the Harbor Area Review Board by certified mail of specific instances of failure to maintain or repair and of an opportunity to appear before the Harbor Area Review Board, the owner or person in charge of said structure shall have 90 days to remedy such violation. Thereafter, each day during which there exists any violation of this section shall constitute a separate offense and shall be punishable as provided in this ordinance. In the alternative, if the owner fails to act, the Harbor Area Review Board may recommend to the Town Council that the Town Administrator, after due notice to the owner, enter the property and make or cause to be made such repairs as are necessary to preserve the integrity and safety of the structure and the reasonable costs thereof shall be placed as a lien against the property or, in a proper hardship case as determined by the Town Council, paid by the Town from a fund established for such purposes.

Section 9.24 File of Actions to be Maintained

In order to provide guidance for application of standards and guidelines, for the improvement of standards and guidelines, and for assistance to future applicants and the promotion of consistent policies in guiding applicants toward better standards of design, the Administrator and the Harbor Area Review Board shall maintain a file containing a record of all applications brought before them, including drawings and photographs pertaining thereto and the decision

of the Administrator or the Harbor Area Review Board in each case. The file documents shall remain the property of the Town but shall be held available for public review.

Section 9.25 Administration; Zoning Administrator

Except as authorized herein the Zoning Administrator shall not authorize a permit for any erection, reconstruction, integral exterior facade change, demolition, or razing of a building or structure in the Historic Harbor Area Overlay District until the same has been approved by the Harbor Area Review Board as set forth in the following procedures.

Section 9.26 Receipt of Application

Upon receipt of an application by the Zoning Administrator for each permit in the district, the Zoning Administrator shall:

A. Forthwith forward to the Harbor Area Review Board a copy of the application, together with a copy of the site plan and the building plans and specifications filed by the applicant if such application requires the Harbor Area Review Board to meet and render a decision;

B. Maintain in his office a record of all such applications and of his handling and final disposition of the same;

C. Require applicants to submit three (3) copies of material required to permit compliance with the foregoing.

Section 9.27 Material to be Submitted for Review

By general rule, or by specific request in a particular case, the Harbor Area Review Board may require submission of any or all of the following in connection with the application: architectural plans, site plans, landscaping plans, construction methods, proposed signs with appropriate detail as to character, proposed exterior lighting arrangements, elevations of all portions of structures with important relationships to public view (with indications as to visual construction materials, design of doors and windows, colors, and relationships to adjoining structures), and such other exhibits and reports as are necessary for its determinations. Requests for approval of activities proposed in the Historic Harbor Area Overlay District shall be accepted only from the record owner of the land involved in such proposal, or his agent.

Section 9.28 Other Approvals Required

In any case in which an applicant's proposal also requires the approval of the Board of Zoning Appeals, final action by the Board of Zoning Appeals shall precede final action by the Harbor Area Review Board. The Board of Zoning Appeals may, however, table a proposal in order to request the comments of the Harbor Area Review Board. Other development applications may be submitted concurrently with an application for a Certificate of Appropriateness. Final action by the Harbor Area Review Board shall be taken prior to consideration of proposals requiring site plan approval.

Section 9.29 Action by the Harbor Area Review Board; Issuance of Certificates of Appropriateness

The Harbor Area Review Board shall render a decision upon any request or application for a Certificate of Appropriateness within 60 days after the filing of an application accepted as

complete. Failure of the Harbor Area Review Board to render such a decision within said 60-day period, unless such period be extended with the concurrence of the applicant, shall entitle the applicant to proceed as if the Harbor Area Review Board had granted the Certificate of Appropriateness applied for prior to denying the Certificate of Appropriateness. The Harbor Area Review Board, on the basis of the review of information received, shall, upon request, indicate to the applicant the changes in plans and specifications, if any, which in the opinion of the Harbor Area Review Board, would protect and/or preserve the historical aspects of the landmark, building, structure, or district. If the applicant determines that he will make the suggested changes and does so in writing, the Harbor Area Review Board may issue the Certificate of Appropriateness.

Section 9.30 Expiration of Certificates of Appropriateness and Permits to Raze

Any certificate issued pursuant to this article and any permit to raze a building issued pursuant to this article shall expire of its own limitation twelve months from the date of issuance if the work authorized thereby is not commenced by the end of such twelve- month period; and further, any such certificate and permit shall also expire and become null and void if such authorized work is suspended or abandoned for a period of twelve months after being commenced. Any period or periods of time during which the right to use any such certificate or permit is stayed pursuant to this article shall be excluded from the computation of the twelve months.

Section 9.31 Inspection by Administrator After Approval

When a Certificate of Appropriateness has been issued, the Administrator or Town Building Official shall from time to time inspect the alteration or construction approved by such certificate and shall give prompt notice to the applicant of any work not in accordance with such certificate or violating any ordinances of the Town. The Administrator or Town Building Official may revoke the certificate or the building permit if violations are not corrected by the applicant in a timely manner.

Section 9.32 Delay of Approval

In the case of a proposal other than for demolition or moving but involving a designated landmark where the Harbor Area Review Board or, on appeal, the Town Council cannot reach a satisfactory agreement with the owner and where the Harbor Area Review Board or, on appeal, the Town Council decides such action to be in the public interest and not in conflict with any provision of law, it may delay the effective date of an approval for a period of three months from the date of application or appeal to enable negotiations to be undertaken and completed for acquisition of the property for preservation or public use. Failure of negotiations within this period shall be the equivalent of a denial of the application by the Harbor Area Review Board or, on appeal, by the Town Council.

Section 9.33 Conditions Imposed by the Harbor Area Review Board

In approval of any proposal under this section, the Harbor Area Review Board or, on appeal, the Town Council may limit such approval by such reasonable conditions as the case may require, including but not limited to, the specifications enumerated for conditional uses and for the Town Council.

Section 9.34 Appeals; Decisions of the Harbor Area Review Board

An appeal from a decision of the Harbor Area Review Board may be taken to the Town Council by the owner of the property in question or by any party aggrieved by said decision, which shall be taken within thirty (30) days after the decision appealed from by filing with the Administrator a notice of appeal specifying the grounds thereof. The Administrator shall forthwith transmit to the Town Council all the papers constituting the record upon which the action appealed from was taken. The Town Council shall fix a reasonable time for the hearing, give public notice thereof and decide the same within 60 days. At the hearing the appealing party may appear in person or by agent. In exercising its powers, the Town Council may, in conformity with the provisions of this Ordinance, reverse or affirm, wholly or partly, or may modify any order, requirement, decision, or determination appealed from and make such order, requirement, decision or determination as ought to be made and to that end shall have all the powers of the Harbor Area Review Board.

Section 9.35 Appeals; Decisions of the Zoning Administrator

An appeal from a decision of the Zoning Administrator may be taken to the Harbor Area Review Board by the owner of the property in question or by any party aggrieved by said decision, which shall be taken within thirty (30) days after the decision appealed from by filing with the Administrator a notice of appeal specifying the grounds thereof. The Administrator shall forthwith transmit to the Harbor Area Review Board all the papers constituting the record upon which the action appealed from was taken. The Harbor Area Review Board shall fix a reasonable time for the meeting, give public notice thereof as required pursuant to § 15.2-2204 of the Code of Virginia, and decide the same within 60 days. At the meeting the party may appear in person or by agent. In exercising its powers, the Harbor Area Review Board may reverse or affirm, wholly or partly, or may modify, any order, requirement, decision, or determination appealed from and make such order, requirement, decision or determination as ought to be made.

Section 9.36 Appeal to the Circuit Court from a Decision of the Town Council

An appeal from a final decision of the Town Council may be filed with the Circuit Court within 30 days after said decision in the manner prescribed by law by the owner of the property in question or by the Harbor Area Review Board or by any party aggrieved by said decision or by any party who recorded an appearance at the hearing before the Town Council. The filing of an appeal shall stay the decision of the Town Council pending the outcome of the appeal to the court, except that the filing of such petition shall not stay the decision of the Town Council if such decision denies the right to raze or demolish a designated landmark, building, or structure. The court may reverse or modify the decision of the Town Council, in whole or part, if it finds upon review that the decision of the governing body is contrary to law or that its decision is arbitrary and constitutes an abuse of discretion, or it may affirm the decision of the Town Council.

Section 9.37 Violations and Penalties

Any violation of this Article and the penalties for all such violations shall be as set forth in §2.4.3 of the Zoning Ordinance.

Section 9.38 Definitions

For the purpose of this article, certain terms and words pertaining to the Historic Harbor Area Overlay District are hereby defined. The general rules of construction contained in Article II of this Ordinance are applicable to these definitions.

APPENDIX A - Subdivision Ordinance

An ordinance to regulate the subdivision of property into lots, streets, alleys, and other public areas, to provide for the making and recording of plats of such subdivision and the certification of same and provide for the approval of plats.

Whereas, (pursuant to) § 15.2-2241 of the Code of Virginia, the governing body of the Town of Cape Charles, Virginia, is authorized to adopt regulations to provide:

A. For plat details which shall meet the standard for plats as adopted under § 42.1-82 of the Virginia Public Records Act (§ 42.1-76 et seq.) and are compliant with Virginia State Code Section 17.1-236

B. For the coordination of streets within and contiguous to the subdivision with other existing or planned streets within the general area as to location, widths, grades and drainage, including, for ordinances and amendments thereto adopted on or after January 1, 1990, for the coordination of such streets with existing or planned streets in existing or future adjacent or contiguous to adjacent subdivisions;

C. For adequate provisions for drainage and flood control, for adequate provisions related to the failure of impounding structures and impacts within dam break inundation zones, and other public purposes, and for light and air, and for identifying soil characteristics;

D. For the extent to which and the manner in which streets shall be graded, graveled or otherwise improved and water and storm and sanitary sewer and other public utilities or other community facilities are to be installed;

E. For the acceptance of dedication for public use of any right-of-way located within any subdivision or section thereof, which has constructed or proposed to be constructed within the subdivision or section thereof, any street, curb, gutter, sidewalk, bicycle trail, drainage or sewerage system, waterline as part of a public system or other improvement dedicated for public use, and maintained by the locality, the Commonwealth, or other public agency, and for the provision of other site-related improvements required by local ordinances for vehicular ingress and egress, including traffic signalization and control, for public access streets, for structures necessary to ensure stability of critical slopes, and for storm water management facilities, financed or to be financed in whole or in part by private funds only if the owner or developer (i) certifies to the governing body that the construction costs have been paid to the person constructing such facilities or, at the option of the local governing body, presents evidence satisfactory to the governing body that the time for recordation of any mechanics lien has expired or evidence that any debt for said construction that may be due and owing is contested and further provides indemnity with adequate surety in an amount deemed sufficient by the governing body or its designated administrative agency; (ii) furnishes to the governing body a certified check or cash escrow in the amount of the estimated costs of construction or a personal, corporate or property bond, with surety satisfactory to the governing body or its designated administrative agency, in an amount sufficient for and conditioned upon the construction of such facilities, or a contract for the construction of such facilities and the contractor's bond, with like surety, in like amount and so

conditioned; or (iii) furnishes to the governing body a bank or savings institution's letter of credit on certain designated funds satisfactory to the governing body or its designated administrative agency as to the bank or savings institution, the amount and the form. The amount of such certified check, cash escrow, bond, or letter of credit shall not exceed the total of the estimated cost of construction based on unit prices for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs, inflation, and potential damage to existing roads or utilities, which shall not exceed 10 percent of the estimated construction costs. If the owner or developer defaults on construction of such facilities, and such facilities are constructed by the surety or with funding from the aforesaid check, cash escrow, bond or letter of credit, the locality shall be entitled to retain or collect the allowance for administrative costs to the extent the costs of such construction do not exceed the total of the originally estimated costs of construction and the allowance for administrative costs. "Such facilities," as used in this section, means those facilities specifically provided for in this section.

F. If a developer records a final plat which may be a section of a subdivision as shown on an approved preliminary subdivision plat and furnishes to the governing body a certified check, cash escrow, bond, or letter of credit in the amount of the estimated cost of construction of the facilities to be dedicated within said section for public use and maintained by the locality, the Commonwealth, or other public agency, the developer shall have the right to record the remaining sections shown on the preliminary subdivision plat for a period of five years from the recordation date of any section, or for such longer period as the local commission or other agent may, at the approval, determine to be reasonable, taking into consideration the size and phasing of the proposed development, subject to the terms and conditions of this subsection and subject to engineering and construction standards and zoning requirements in effect at the time that each remaining section is recorded. In the event a governing body of a county, wherein the highway system is maintained by the Department of Transportation, has accepted the dedication of a road for public use and such road due to factors other than its quality of construction is not acceptable into the secondary system of state highways, then such governing body may, if so provided by its subdivision ordinance, require the subdivider or developer to furnish the county with a maintenance and indemnifying bond, with surety satisfactory to the governing body or its designated administrative agency, in an amount sufficient for and conditioned upon the maintenance of such road until such time as it is accepted into the secondary system of state highways. In lieu of such bond, the governing body or its designated administrative agency may accept a bank or savings institution's letter of credit on certain designated funds satisfactory to the governing body or its designated administrative agency as to the bank or savings institution, the amount and the form, or accept payment of a negotiated sum of money sufficient for and conditioned upon the maintenance of such road until such time as it is accepted into the secondary system of state highways and assume the subdivider's or developer's liability for maintenance of such road. "Maintenance of such road" as used in this section, means maintenance of the streets, curb, gutter, drainage facilities, utilities or other street improvements, including the correction of defects or damages and the removal of snow, water or debris, so as to keep such road reasonably open for public usage.

G. As used in this section, "designated administrative agency" means the planning commission of the locality or an agent designated by the governing body of the locality for such purpose as set forth in §§ 15.2-2258 through 15.2-2261;

H. For conveyance of common or shared easements to franchised cable television operators furnishing cable television and public service corporations furnishing cable television, gas, telephone and electric service to the proposed subdivision. Once a developer conveys an easement that will permit electric, cable or telephone service to be furnished to a subdivision, the developer shall, within 30 days after written request by a cable television operator or telephone service provider, grant an easement to that cable television operator or telephone service provider for the purpose of providing cable television and communications services to that subdivision, which easement shall be geographically coextensive with the electric service easement, or if only a telephone or cable service easement has been granted, then geographically coextensive with that telephone or cable service easement; however, the developer and franchised cable television operator or telephone service provider may mutually agree on an alternate location for an easement. If the final subdivision plat is recorded and does not include conveyance of a common or shared easement as provided herein, the local planning commission or agent designated by the governing body to review and act on submitted subdivision plats shall not be responsible to enforce the requirements of this subdivision;

I. For monuments of specific types to be installed establishing street and property lines;

J. That unless a plat is filed for recordation within six months after final approval thereof or such longer period as may be approved by the governing body, such approval shall be withdrawn and the plat marked void and returned to the approving official; however, in any case where construction of facilities to be dedicated for public use has commenced pursuant to an approved plan or permit with surety approved by the governing body or its designated administrative agency, or where the developer has furnished surety to the governing body or its designated administrative agency by certified check, cash escrow, bond, or letter of credit in the amount of the estimated cost of construction of such facilities, the time for plat recordation shall be extended to one year after final approval or to the time limit specified in the surety agreement approved by the governing body or its designated administrative agency, whichever is greater;

K. For the administration and enforcement of such ordinance, not inconsistent with provisions contained in this chapter, and specifically for the imposition of reasonable fees and charges for the review of plats and plans, and for the inspection of facilities required by any such ordinance to be installed; such fees and charges shall in no instance exceed an amount commensurate with the services rendered taking into consideration the time, skill and administrator's expense involved. All such charges heretofore made are hereby validated;

L. For reasonable provisions permitting a single division of a lot or parcel for the purpose of sale or gift to a member of the immediate family of the property owner in accordance with the provisions of § 15.2-2244; and

M. For the periodic partial and final complete release of any bond, escrow, letter of credit, or other performance guarantee required by the governing body under this section in accordance with the provisions of § 15.2-2245.

Therefore, be it ordained by the Town Council of Cape Charles, Virginia, that the following regulations are hereby adopted for the subdivision of land within the jurisdiction of the Town of Cape Charles from and after the effective date of this ordinance. Every owner or proprietor of any tract of land to which these regulations apply who subdivides such tract as provided in these regulations shall cause a plat of such subdivision developed and prepared in accordance with these regulations, with reference to known or permanent monuments, to be made and recorded in the office of the clerk of the court wherein deeds conveying such land are required by law to be recorded.

Section 1 Purpose, Title, and Interpretation

A. Purpose. The purpose of this ordinance is to establish subdivision standards and procedures for the Town of Cape Charles, Virginia, as provided for by the 1950 Code of Virginia, as amended. These are part of a long-range plan to guide and facilitate the orderly beneficial growth of the community and to promote the public health, safety, convenience, comfort, prosperity, and general welfare. More specifically, the purposes of these standards and procedures are to provide a guide for the change that occurs when lands and acreage become urban in character as a result of development for residential, business, or industrial purposes; to provide assurance that the purchasers of lots are buying a commodity that is suitable for development and use; and to make possible the provision of public services in a safe, adequate, and efficient manner. Subdivided land sooner or later becomes a public responsibility in that roads and streets must be maintained and numerous public services customary to urban areas must be provided. This ordinance assists the community in meeting these responsibilities.

B. Title. This ordinance is known and may be cited as the "Subdivision Ordinance of the Town of Cape Charles, Virginia."

C. Interpretation

1. The standards and procedures contained herein are declared to be the minimum requirements for the promotion of the public safety, health, convenience, comfort, prosperity, and general welfare.
2. This ordinance is not intended to interfere with, abrogate, or annul any easement, covenant, restriction, or any other agreement between parties provided, however, that where this ordinance imposes a greater restriction upon the use of buildings or land or imposes additional standards or requires additional improvements or larger open spaces than are imposed or required by other restrictions, ordinances, rules, regulation, or by easements, covenants or agreements, the provisions of this ordinance shall govern.
3. Nothing in this ordinance to the contrary withstanding, where there is or appears to be conflict between the provisions of this ordinance and the zoning ordinance of the Town of Cape Charles, then the provisions of the zoning ordinance shall govern.

Section 3 Administration

Section 3.1 Administrator
The agent appointed by the governing body is hereby delegated to administer this ordinance. In so doing, the agent shall be considered the agent of the governing body, and approval or disapproval by the agent shall constitute approval or disapproval as though it were given by the governing body. The agent may also consult with the Planning Commission on matters contained herein.

Section 3.2 Duties
The agent shall perform his duties regarding subdivisions and subdividing in accordance with this ordinance and the Land Subdivision and Development Act.

Section 3.3 To Consult
In the performance of his duties the agent may call for opinions or decisions, either verbal or written, from other departments in considering details of any submitted plat. This authority of the agent shall have particular reference to the resident highway engineer and the health officer.

Section 3.4 Additional Authority
In addition to the regulations herein contained for the platting of subdivisions, the agent may, from time to time, establish any additional reasonable administrative procedures deemed necessary for the proper administration of this ordinance, including the administrative approval of recombination of four or fewer plats of land.

Section 4 Procedure for Making and Recording Plats

Section 4.1 Platting Required
Any owner or developer of any tract of land situated within the Town of Cape Charles who subdivides the same shall cause a plat of such subdivision, with reference to known or permanent monuments, to be made and recorded in the office of the clerk of the appropriate court. No such plat of subdivision shall be recorded unless and until it shall have been submitted, approved, and certified by the agent in accordance with the regulations set forth in this ordinance. No lot shall be sold in any such subdivision before the plat shall have been recorded.

In the event a plan for subdivision is disapproved by the agent, the sub-divider may appeal to the governing body which may then override the recommendation of the agent and approve said plat.

Section 4.2 Draw and Certify
Every such plat shall be prepared by a surveyor or engineer duly licensed by the State of Virginia, who shall endorse upon each plat a certificate signed by him setting forth the source of the title of the land subdivided and the place of record of the last instrument in the chain of title. When the plat is of land acquired from more than one source of title, the outlines of the several tracts shall be indicated upon such plat within an inset block or by means of a dotted boundary line upon the plat.

Section 4.3 Owner's Statement
Every such plat, or the deed of dedication to which such plat is attached, shall contain in addition to the surveyor's or engineer's certificate a statement to the effect that "the above and foregoing subdivision of (here insert correct description of the land subdivided) as appears in the plat is with the free consent and in accordance with the desire of the undersigned owners, proprietors, and trustees, if any," which shall be signed by the owners, proprietors, and trustees, and shall be duly acknowledged before some officer authorized to take acknowledgment of deeds and, when thus executed and approved as herein specified, shall be filed and recorded in the office of the clerk of the appropriate court and indexed under the names of the land owners signing such statements and under the name of the subdivision.

Section 4.4 No One Exempt
No person shall subdivide any tract of land that is located within the Town except in conformity with the provision of this ordinance.

Section 4.5 Necessary Changes
No changes, erasures, or revision shall be made on any preliminary or final plat nor on accompanying data sheets after approval of the agent has been endorsed in writing on the plat or sheets unless authorization for such changes has been granted in writing by the agent.

Section 4.6 Fees
All fees shall be governed as set forth by the Town Council of the Town of Cape Charles.

Section 4.7 Vacating Plat
Any plat of record may be vacated in accordance with the provisions of § 15.2-2278 of the Code of Virginia.

Section 5 General Regulations

Section 5.1 Mutual Responsibility
There is a mutual responsibility between the sub-divider and the Town of Cape Charles to divide the land so as to improve the general use pattern of the land being subdivided.

Redevelopment of any office, commercial, industrial, duplex or multi-family site, or single-family site consisting of more than three lots not currently served by water quality or best management practices shall achieve at least a 10 percent reduction in non-point source pollution and run-off compared to the pre-existing run-off load from the site.

Section 5.2 Land Must Be Suitable
The agent shall not approve the subdivision of land if, from adequate investigations conducted by all public agencies concerned, it has been determined that in the best interest of the public the site is not suitable for platting and development purposes of the kind proposed. In this connection the agent may require the sub-divider to furnish topographical maps, elevations, flood profiles, or other relevant data.

Section 5.3 Flooding

Land subject to flooding and land deemed to be topographically unsuitable may be platted for residential occupancy, subject to the approval of the administrator and Town Council. Such land within the subdivision subject to severe flooding shall be set aside on the plat for such uses as shall not be endangered by periodic or occasional inundation or shall not produce conditions contrary to public welfare.

Section 5.4 Improvements

All required improvements shall be installed by the sub-divider at his cost. In cases where specifications have been established either by the Virginia Department of Highways and Transportation for streets, curbs, etc., or by the Virginia Department of Health, or by local ordinances and codes, such specifications shall be followed. The sub- divider's bond shall not be released until construction has been inspected and approved by the appropriate engineer. All improvements shall be in accordance with the following requirements.

Section 5.4.1 Streets

All streets in the proposed subdivision shall be designed and constructed in accordance with the following minimum requirements by the sub-divider at no cost to the locality.

Section 5.4.1 **Alignment and Layout**

The arrangement of streets in new subdivisions shall make provision for the continuation of existing streets in adjoining areas. The street arrangement must be such as to cause no unnecessary hardship to owners of adjoining property when they plat their own land and seek to provide for convenient access to it. Where, in the opinion of the agent, it is desirable to provide for street access to adjoining property, proposed streets shall be extended by dedication to the boundary line of such property. Half streets along the boundary of land proposed for subdivision may not be permitted. Wherever possible, streets should intersect at right angles. Offset and jogs shall be avoided.

Section 5.4.1.2 Access and Circulation

Streets, drives, parking, and service areas shall provide immediate, safe and convenient access and circulation for dwelling units and project facilities and for service and emergency vehicles including fire fighting equipment and snow removal. Streets shall not be laid out so as to encourage outside traffic to traverse the development on minor streets, or to create unnecessary fragmentation of the development into small blocks.

Vehicular access to other streets or portions of streets from off-street parking and service areas shall be so combined, limited, located, designed, and controlled as to channel traffic from and to such areas conveniently, safely, and in a manner which minimizes marginal traffic friction and promotes free traffic flow on streets without excessive interruption.

Section 5.4.1.3 Service Drives

Whenever a proposed subdivision contains or is adjacent to a state primary highway, provision shall be made for a service drive or marginal street approximately parallel to such right-of-way at a distance suitable for an appropriate use of the land between such highway and the proposed subdivision. Such distances shall be determined with due consideration of the minimum distance required for ingress and egress to the main thoroughfare. The right-of-way

of any major highway or street projected across any railroad, limited access highway, or expressway shall be of adequate width to provide for the cuts or fills required for any future separation of grades.

Section 5.4.1.4 Approach Angle
Major streets shall approach major or minor streets at an angle of not less than 80 degrees unless the agent, upon recommendation of the highway engineer, shall approve a lesser angle of approach for reasons of contour, terrain, or matching of existing development patterns.

Section 5.4.1.5 Minimum Widths
The minimum width of proposed streets, measured from lot line to lot line, shall be specified by the Virginia Department of Highways and Transportation for acceptance in the State Secondary Road System but not less than 50 feet.

Section 5.4.1.6 Street Width
When lots in a subdivision abut on one side of any street which has been included in the State Secondary Road System, the sub-divider shall be required to dedicate enough land so that one-half the width of such street, as measured from the center line to the subdivision property line, shall be 25 feet or one-half the standard width of such highway, whichever is greater, but he shall not be responsible for grading or surfacing said existing street or highway.

Section 5.4.1.7 Street Construction
Streets shall be constructed in compliance with the requirements of the Virginia Department of Highways and Transportation.

Where required by the highway engineer, a drainage system shall be provided for by means of culverts, ditches, catch basins, and any other facilities that are necessary to provide adequate drainage and disposal of surface and storm waters from or across all streets and adjoining properties. Curb and gutter and sidewalks shall be required for all new subdivisions in accordance with standard specifications for the Town of Cape Charles.

Street signs shall be installed at all street intersections in any subdivision by the sub- divider. The grades of streets submitted on subdivision plats shall be approved by the agent upon recommendation of the highway engineer prior to final action by the agent.

Section 5.4.1.8 Cul-de-sac
Generally, minor terminal streets (cul-de-sacs), designed to have one end permanently closed, shall be no longer than 400 feet to the beginning of the turn-around. Each cul- de-sac must be terminated by a turn-around of not less than 100 feet in diameter.

Section 5.4.1.9 Private Streets and Reserve Strips
There shall be no private streets platted in any subdivision. Every subdivision property shall be serviced from a publicly dedicated street. There shall be no reserve strip controlling access to streets.

Section 5.4.1.10 Names
Proposed streets which are obviously in alignment with other already existing and named streets shall bear the names of the existing streets. In no case shall the names of proposed

streets duplicate existing street names irrespective of the use of the suffix street, avenue, boulevard, drive, way, place, lane, or court. Street names shall be indicated on the preliminary and final plats and shall be approved by the agent. Names of existing streets shall not be changed except by approval of the governing body.

Section 5.4.1.11 Identification Signs
Street identification signs of a design approved by the agent shall be installed at all intersections readable from either side.

Section 5.4.2 Monuments
As required by this ordinance, all monuments must be installed by the sub-divider and shall meet the minimum specifications. Upon completion of subdivision streets, sewers, and other improvements, the sub-divider shall make certain that all monuments required by the agent are clearly visible for inspection and use. Such monuments shall be inspected and approved by the agent before any improvements are accepted by the governing body.

Section 5.4.2.1 Location - Concrete
Concrete monuments four inches in diameter or square, three feet long, with a flat top, shall be set at all street corners, at all points where the street line intersects the exterior boundaries of the subdivision, and at right angle points, and points of curve in each street. The top of the monument shall have an appropriate mark to identify properly the location and shall be set six inches above finished grade.

Section 5.4.2.2 Location - Iron Pipe
All other lot corners shall be marked with iron pipe not less than 3/4 inch in diameter and 24 inches long and driven so as to be flush with the finished grade.

Section 5.4.3 Water Facilities
Public water connections shall be extended from the designated main to all lots within a subdivision and all fire hydrants by the sub-divider in accordance with the design standards and specifications for water construction and improvement in Cape Charles, Virginia, and meeting the approval of the agent. Individual wells will not be permitted.

Section 5.4.4 Sewerage Facilities
Public sewer connections shall be extended from the designated main to all lots within a subdivision. Septic tanks will not be permitted. Every subdivision shall be provided by the sub-divider with a satisfactory and sanitary means of sewage collection and disposal in accordance with the design standards and specifications for sewerage construction and improvements in the Town of Cape Charles, Virginia, and meeting the approval of the agent.

Section 5.4.5 Storm Drainage Facilities
The sub-divider shall provide all necessary information needed to determine what improvements are necessary to properly develop the subject property including contour intervals, drainage plans, and flood control devices. The sub-divider shall also provide plans for all such improvements together with a properly qualified certified engineer's or surveyor's statement that such improvements when properly installed will be adequate for proper development. The highway engineer shall then approve or disapprove the plans. The sub-divider shall also provide any other information required by the highway engineer.

Section 5.4.6 Street Lights
Installation of street lights shall be required in accordance with design and specification standards approved by the administrator as deemed appropriate.

Section 5.4.7 Fire Protection
Adequate fire hydrants in a subdivision at locations approved by the agent shall be required. The location of the fire hydrants shall meet the National Board of Fire Underwriters specifications.

Section 5.4.8 Easements
The agent shall require that easements for drainage through adjoining property be provided by the sub-divider. Easements of not less than 12 feet in width shall be provided for water, sewer, power lines, and other utilities in the subdivision when required by the agent. A larger easement width may be required if determined by the agent.

Section 5.4.9 Bond
The sub-divider shall furnish a cash bond or equivalent, a surety bond of a surety company, or a certified check payable to the Treasurer of the Town of Cape Charles in an amount equal to the total cost as determined by the agent of such improvements so as to guarantee they will be installed within a designated reasonable length of time in a manner acceptable to the agent. Said bond or check shall accompany the final plat when it is submitted to the agent. In the absence of a performance bond or check, no final plat shall be approved or recorded until the required improvements have been installed and approved by the agent.

Section 5.4.10 Plans and Specifications
Five blue or black line prints of the plans and specifications for all required physical improvements to be installed shall be prepared by an engineer and shall be submitted to the agent for approval or disapproval within 45 days. If approved, one copy bearing certification of such approval shall be returned to the sub-divider. If disapproved, all papers shall be returned to the sub-divider with the reason for disapproval in writing. In the event no action is taken in 45 days, such subdivision shall be deemed approved.

Section 5.5 Lots
Lots shall be arranged in order that the following considerations are satisfied.

Section 5.5.1 Shape
The lot arrangement, design, and shape shall be such that lots will provide satisfactory and desirable sites for buildings, be properly related to topography, and conform to requirements of this ordinance. Lots shall not contain peculiarly shaped elongations solely to provide necessary square footage of area which would be unusable for normal purposes.

Section 5.5.2 Location
Each lot shall abut on a street dedicated by the subdivision plat or on an existing publicly dedicated street or on a street which has become public by right of use. If the existing streets are not 50 feet in width, the sub-divider shall make provisions in the deeds to the lots for all buildings to be so constructed as to permit the widening by dedication of such roads or streets to a width of 50 feet.

Section 5.5.3 Corner Lots
Corner lots shall have extra width sufficient for maintenance of any required lines on both streets as determined by the agent.

Section 5.5.4 Side Lines
Side lines of lots shall be approximately at right angles or radial to the street line.

Section 5.5.5 Remnants
All remnants of lots below minimum size left over after subdividing of a tract must be added to adjacent lots or otherwise disposed of rather than allowed to remain as unusable parcels.

Section 5.5.6 Separate Ownership
Where the land covered by a subdivision includes two or more parcels in separate ownership and lot arrangement is such that a property ownership line divides one or more lots, the land in each lot so divided shall be transferred by deed to single ownership, simultaneously with the recording of the final plat. Said deed is to be deposited with the clerk of the court and held with the final plat until the sub-divider is ready to record same, and they both shall then be recorded together.

Section 5.5.7 Business or Industrial
Lots intended for business or industrial use shall be designed specifically for such purposes with adequate space set aside for off-street parking and delivery facilities.

Section 5.6 Blocks
Where created by the subdivision of land, all new blocks shall respect viewsheds and shall comply with the following requirements.

Section 5.6.1 Length
Generally, the maximum length shall be six hundred (600) feet, and the minimum length of blocks upon which lots have frontage shall be five hundred (500) feet. Block lengths along the south side of Mason Avenue shall align with the blocks on the north side of Mason Avenue.

Section 5.6.2 Width
Blocks shall be wide enough to allow two tiers of lots of minimum depth, except where fronting on major streets, unless prevented by topographical conditions or size of the property, in which case the agent may approve a single tier of lots of minimum depth.

Section 5.6.3 Orientation
Where a proposed subdivision will adjoin a major road, the agent may require that the greater dimension of the block shall front or back upon such major thoroughfare to avoid unnecessary ingress or egress.

Section 5.7 Dedication of Land
Where the size of the subdivision warrants, the sub-divider shall dedicate to the Town of Cape Charles such reasonable amount of land for parking lots, parks, and playgrounds as determined necessary to protect the safety (fire and traffic hazards considered) and the general public

welfare of the area. The size, location, and character of the land dedicated, if any, shall be determined by the agent after (a) consideration of the purpose of this ordinance, (b) consideration of any related objective approved by the Town Council, and (c) consideration of the Town's officially adopted Comprehensive Plan.

Section 6 Approval of Plats

Section 6.1 Approval Required Before Sale
Whenever any subdivision of land is proposed and before any permit for the erection of a structure shall be granted, the sub-divider or his agent shall apply in writing to the agent for the approval of the subdivision plat. No lot shall be sold until a final plat for the subdivision shall have been approved and recorded in the following manner.

Section 6.2 Preliminary Sketch
The sub-divider may, if he so chooses, submit to the agent a preliminary sketch of the proposed subdivision prior to his preparing engineered preliminary and final plats. The purpose of such preliminary sketch is to permit the agent to advise the sub-divider whether his plans in general are in accordance with the requirements of this ordinance. The agent, upon submission of any preliminary sketch, shall study it and advise the sub- divider wherein it appears that changes would be necessary. The agent may mark the preliminary sketch indicating necessary changes, and any such marked sketch shall be returned to the commission with the preliminary plat. The preliminary sketch shall be as follows.

Section 6.2.1 Specifications, Contents
It shall be drawn on white paper or on a print of a topographic map of the property. It shall be drawn to a scale of 100 feet to the inch. It shall show the name, location of all proposed streets, lots, parks, playgrounds, and other proposed uses of the land to be subdivided and shall include the approximate dimensions.

Section 6.2.2 Part of Tract
Whenever part of a tract is proposed for platting and it is intended to subdivide additional parts in the future, a sketch plan for the entire tract shall be submitted with the preliminary plat. This sketch is merely for informational purposes and is not binding on the sub-divider or the governing body.

Section 6.3 Preliminary Plat
The sub-divider shall present to the agent five prints of a preliminary layout at a scale of 100 feet to the inch as a preliminary plat. The preliminary plat shall include the following information:

Section 6.3.1
Name of subdivision (the name shall not duplicate nor too closely approximate that of any existing subdivision in this or neighboring counties), owner, sub-divider, surveyor, or engineer, date of drawing, number of streets, north point, and scale. If true north is used, method of determination must be shown.

Section 6.3.2
Location of proposed subdivision by an insert map at a scale of not less than two inches equal

one mile showing adjoining roads, their names and number, towns, subdivisions, and other landmarks if any within 2,000 feet.

Section 6.3.3
The boundary survey or existing survey on record provided such survey shows a closure with an accuracy of not less than one in 2,500; total acreage, acreage of subdivided area, number and approximate area and frontage of all building sites, existing buildings within the boundaries of the tract, names of owners and their property lines within the boundaries of the tract and adjoining such boundaries.

Section 6.3.4
All existing, platted, and proposed streets, their names, numbers, and widths; existing utility or other easements, public areas, and parking spaces; culverts, drains, and water courses, their names and other pertinent data.

Section 6.3.5
The complete drainage layout, including all pipe sizes, types, drainage easements, and means of transporting the drainage to a well-defined open stream which is considered natural drainage.

Section 6.3.6
A cross section showing the proposed street construction, depth, and type of base, type of surface, etc.

Section 6.3.7
A profile or contour map showing the proposed grades for the streets and drainage facilities including elevations of existing and proposed ground surface at all street intersections and at points of major grade change along the center line of streets together with proposed grade lines connecting therewith.

Section 6.3.8
Location of each proposed lot line showing dimensions.

Section 6.3.9
The proposed building setback lines shown as dotted lines, to scale with dimensions to front property or street center lines.

Section 6.3.10
Proposed block and lot numbers and the area of each lot.

Section 6.3.11
Proposed deed covenants, by reference to outlines of same which shall accompany the preliminary plat.

Section 6.3.12
A location map tying the subdivision into our present road system either by aerial photographs or topographic maps of the U.S. Department of Interior.

Section 6.3.13

Proposed connections with existing sanitary sewers and existing water supply or alternate means of sewage disposal and water supply.

Section 6.3.14

All parcels of land to be dedicated for public use and the condition of such dedication.

Section 6.4 Items to Accompany Preliminary Plat

Section 6.4.1

Items as described in the following paragraphs of this section shall accompany the preliminary plat at the time the latter is submitted to the agent or, in any event, no later than 12 days thereafter.

Section 6.4.2

Statement by the Health Official that the sub-divider has consulted with him with respect to the certificate which will be required before the final plat can be approved. State Health Department's Subdivision Evaluation Procedures must be followed in order to receive Health Department approval.

Section 6.4.3

Statement by the sub-divider acknowledging that any percolation tests, topographic studies, or other requirements of the health official will be carried out at the expense of the sub-divider.

Section 6.4.4

If streets or parking areas are included in the subdivision, a statement by the highway engineer that the sub-divider has consulted with him as to the plans, specifications, and any special treatment which will be required in their construction, together with the drainage system which will be required.

Section 6.4.5

If it is proposed to dedicate or reserve land (other than for streets) for public use or for the common use of future property owners in the subdivision, a statement by the sub- divider to that effect, giving an outline of the terms proposed and the acreage involved.

Section 6.4.6

If town water or sewerage is to be provided, a certificate from the town officer. Said certificate may require that certain specifications be met as a condition to furnishing or operating town water or sewerage. (The agent shall transfer this certificate to the final plat when this is filed.)

Section 6.4.7

Statement by the sub-divider as to whether any part of the proposed subdivision lies within the area of applicability of any other effective subdivision ordinance.

Section 6.4.8

Outline of deed covenants, if any, pertaining to the subdivision.

Section 6.4.9

Check payable to the Town Treasurer to cover fees required.

Section 6.5 Procedure

The agent or his appointed representative shall discuss the preliminary plat with the sub-divider in order to determine whether or not his preliminary plat generally conforms to the requirements of the subdivision ordinance and of the zoning ordinance. The sub- divider shall then be advised in writing within 60 days, which may be by formal letter or by legible markings on his copy of the preliminary plat, concerning any additional data that may be required, the character and extent of public improvements that will have to be made, an estimate of the cost of construction of improvements, and the amount of the performance bond which will be required as a prerequisite to approval of the final subdivision plat.

In determining the cost of required improvements and the amount of the performance bond, the agent may consult with a duly licensed engineer who shall prepare this data for the agent or preferably may require a bona fide estimate of the cost of improvements to be furnished by the sub-divider.

Section 6.6 No Guarantee

Approval by the agent of the preliminary plat does not constitute a guarantee of approval of the final plat.

Section 6.7 Six Months' Limit

The sub-divider shall have not more than six months after receiving official notification concerning the preliminary plat to file with the agent a final subdivision plat in accordance with this ordinance. Failure to do so shall make preliminary approval null and void. The agent may, on written request by the sub-divider, grant an extension of the time limit.

Section 6.8 Final Plat

The subdivision plat submitted for final approval by the governing body and subsequent recording shall be clearly and legibly drawn in ink upon tracing cloth at a scale of 100 feet to the inch on sheets having a size of 15 inches by 20 inches or size of plat book. In addition to the requirements of the preliminary plat, the final plat shall include the following:

Section 6.8.1

A blank oblong space three inches by five inches shall be reserved for the use of the approving authority.

Section 6.8.2

Certificates signed by surveyor or engineer setting forth the source of title of the owners of the land subdivided and the place of record of the last instrument in the chain of title.

Section 6.8.3

A statement to the effect that the subdivision as it appears on this plat is with the free consent and in accordance with the desires of the owners, proprietors, and trustees, if any, which shall be signed by the owners, proprietors, and trustees, if any, and shall be duly acknowledged before some officer authorized to take acknowledgments of deeds.

Section 6.8.4

When the subdivision consists of land acquired from more than one source of title, the outlines of the various tracts shall be indicated by dash-lines, and identification of the respective tracts shall be placed on the plat.

Section 6.8.5
The accurate location and dimensions by bearings and distances with all curve data on all lots and street lines and center lines of streets; boundaries of all proposed or existing easements, parks, school sites; all existing public and private streets, their names, numbers and widths; existing utilities and those to be provided such as sanitary sewers, storm drains, water mains, manholes and underground conduits including their size and type; water courses and their names; names of owners and their property lines both within the boundary of the subdivision and adjoining said boundaries.

Section 6.8.6
Distances and bearings must balance and close with an accuracy of not less than one in 10,000.

Section 6.8.7
The data of all curves along the street frontage shall be shown in detail on the curve data table containing the following: delta, radius, arc, tangent, chord, and chord bearings.

Section 6.9 Conditions
The plat shall not be approved until the sub-divider has complied with the general requirements and minimum standards of design in accordance with this ordinance, and has made satisfactory arrangements for performance bond, cash, or cash bond to cover the cost of necessary improvements, in lieu of construction, to the satisfaction of the agent. Approval of final plat shall be written on the face of the plat by the agent. The sub-divider shall record plat within six months after final approval; otherwise, agent shall mark plat "void" and return same to sub-divider.

Section 6.9.1
Within sixty days after recordation of the approved final plat, the sub-divider shall file a copy thereof in the office of the Northampton County Commissioner of Revenue pursuant to the Virginia Land Subdivision Act.

Section 6.9.2
Recordation of the final plat of a subdivision shall not be deemed to be the acceptance by the Town of any street or road or other public place shown on the plat for maintenance, repair, or operation thereof.

Section 7 Effectual Clauses

Section 7.1 Exception
Where the sub-divider can show that a provision of these standards in cases of unusual situations or when strict adherence to the general regulations would result in substantial injustice or unnecessary hardship, and where, because of topographical or other conditions peculiar to the site, in the opinion of the administrator, a departure may be made without destroying the intent of such provision, the administrator may authorize an exception. Any exception shall be authorized in writing and shall state the reasons why the exception was

granted. If an applicant is aggrieved by the administrator's decision, he may appeal that decision to the Town Council. Appeals of the administrator's decision for purposes of the Subdivision Ordinance shall be to the Town Council and not the Board of Zoning Appeals (BZA). If an applicant is aggrieved by the decision of the Town Council, he may appeal that decision to the Northampton County Circuit Court as provided by law.
(Ord. of 7-14-92, 7-1)

Section 7.2 Penalties

Any owner or proprietor of any tract of land who subdivides that tract of land and who violates any of the provisions of this ordinance shall be guilty of a misdemeanor, punishable by a fine of not more than $500 for each lot or parcel of land so subdivided or transferred or sold; every day thereafter shall constitute a separate offense; and the description of such lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties or from the remedies herein provided.

The clerk of the Circuit Court of Northampton County shall not file or record a plat of a subdivision, under the penalties provided by Code of Virginia, 17-59, until such plat has been approved as required herein.

Section 7.3 Validity

Should any article, section, subsection or provision of this subdivision (ordinance) be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of this subdivision ordinance as a whole or any part thereof other than the part so declared to be invalid or unconstitutional.

Section 7.4 Repeal

Subject to Section 7.6 of this ordinance, all ordinances or portions of ordinances in conflict with this ordinance are hereby repealed to the extent of their conflict. (Ord. of 7-14-92, 7-4)

Section 7.5 Amendments

This ordinance may be amended in whole or in part by the Town Council of Cape Charles provided that any such amendment shall either originate with or be submitted to the Cape Charles Planning Commission for recommendation; and further provided that no such amendment shall be adopted without a public hearing having been held by the governing body. Notice of the time and place of the hearing shall have been given in accordance with § 15.2-2204 of the Code of Virginia.

Section 7.6 Interaction with Other Ordinances

The provisions of this Subdivision Ordinance may be modified by the terms of a PUD rezoning application filed pursuant to the provisions of the Cape Charles PUD Ordinance. (Ord. of 7-14-92, 7-6)

Section 8 Effective Date

This ordinance was duly considered following a required public hearing held on January 3, 1977, and was adopted by the Town Council of Cape Charles, Virginia, at its regular meeting held on January 11, 1977, the members voting:

Mary B. Bowen: Aye
Frank C. Fitzhugh: Aye
Thomas G. Godwin: Aye
J. Crawley Lewis: Aye
Clement Pruitt: Aye
Earl Scott, Jr.: Aye

This ordinance shall be effective on and after 12:01 a.m., January 11, 1977.

Amended by Town Council on July 11, 1995, and ratified and confirmed by Town Council on June 16, 1997.

Modifications to Section 2-Definitions approved by Town Council on February 9, 2012.

APPENDIX B - Site Plan Ordinance

Section 1 Purpose of Article

The purpose of these requirements is to provide for the orderly development of certain activities in the Town and to ensure that such activities are developed in a manner harmonious with surrounding properties and in the interest of the general public welfare. To achieve these ends and to assure compliance with all applicable requirements of this chapter, site plans for certain uses of land shall be submitted to and reviewed by the Zoning Administrator.

Section 2 Developments and Uses Requiring a Site Plan

All development which exceeds 2,500 square feet of land disturbance, including single- family residential development, shall submit either a plot plan or site plan prior to the initiation of the development process. Land-disturbing activities shall not include minor activities such as home gardening, individual home landscaping, and home maintenance, nor shall it include access or staging areas provided they do not result in land disturbance.

Any changes to an existing multi-family, commercial, and industrial use that increase the improved square footage by more than 100 square feet or as deemed necessary by the Zoning Administrator or increase the number of units within the previously approved site plan.

Churches, church schools, public and private schools, hospitals, nursing homes, and government offices.

Section 3 Procedures for Preparation

Site plans or any portion thereof involving engineering, architecture, landscape architecture, or land surveying shall be certified by an engineer, architect, or land surveyor authorized by the Commonwealth to practice as such.

Site plans shall be prepared to a scale of not more than one inch equals 100 feet (1" = 100') or other scale acceptable to the administrator.

A site plan may be prepared in one or more sheets to show clearly the information required by the Article and to facilitate the review and approval of the site plan. If prepared in more than one sheet, match lines shall clearly indicate where the several sheets join.

All horizontal dimensions shown on the site plan shall be in feet and decimal fractions to a foot to the closest one-hundredths of a foot (.00), and all bearings in degrees, minutes, and seconds to the nearest ten seconds.

Every site plan shall show the name and address of the owner or developer, the north point, the date, the scale of drawing, and the number of sheets. In addition, it shall reserve a blank space at least three inches wide and five inches for the approving authority.

Six copies of the site plan shall be submitted to the Zoning Administrator for administrative review.

Section 4 Required Information

A. Plot Plans. One copy of a plot plan, drawn to scale, for individual single-family dwellings or accessory structures for single-family residences or for commercial development which results in a land disturbance less than 5,000 square feet and which will result in an area of impervious surface of less than 16 percent of any lot or parcel shall be submitted to the Zoning Administrator for review and approval. Any encroachment into an RPA shall require an applicant to prepare a site plan as outlined in Subsection B below including the submission of a water quality impact assessment in accordance with Subsection 7.11 of the Chesapeake Bay Preservation Ordinance.

1. At a minimum, the plot plan shall be drawn to scale and contain the following information:
   a. a boundary survey of the site drawn to scale or site drawing showing the north arrow and property line boundaries and distances;
   b. area of the lot/parcel;
   c. location, dimension, and use of proposed and existing structures including marine and temporary structures. In the case of temporary structures, the date when the structures will be removed must be indicated;
   d. location of all building restriction lines, setbacks, easements, covenant restrictions, and rights-of-way;
   e. dimensions and location of all existing driveways, parking areas, or other impervious surfaces;
   f. limits of clearing and grading;
   g. specifications for the protection of existing trees and vegetation during clearing, grading, and all phases of construction;
   h. location of Resource Protection Area (RPA) boundary, as specified in Subsection 7.4.A of the Chesapeake Bay Preservation Ordinance, including any additional required buffer areas and RPA maintenance and use restrictions; [revision adopted by Town Council 12/2010]
   i. location of all erosion and sediment control devices;
   j. amount of impervious surface proposed for the site.

Adopted December 2010

B. A site plan shall be required for any single-family, residential, or commercial development which results in 5,000 square feet or more of land disturbance or for any multi-family or industrial development or for development specified in Subsections 2.B and 2.C or for any other development deemed necessary by the Zoning Administrator. All site plans shall contain the following information:

1. Location of the tract by an insert map at a scale of not less than one inch equals two thousand feet (1" = 2,000'), unless otherwise acceptable to the administrator, indicating the scale, the north arrow, and such information as the names and numbers of the adjoining roads, streams and bodies of water, railroads, subdivisions, or other landmarks sufficient to clearly identify the location of the property.
2. A boundary survey of the tract by bearings and distances certified by a licensed land surveyor.
3. Certificate signed by the surveyor or engineer setting forth the source of title of the owner of the tract and the place of record of the last instrument in the chain of title.

4. All existing property lines; existing streets and easements, their names, numbers, and width; the location and sizes of existing sanitary and storm sewers, gas lines, water mains, culverts, and other utilities and their easements; existing buildings; existing watercourses, waterways, or lakes and their names; and other existing physical features in or adjoining the project.
5. Existing zoning and zoning district boundaries on the property in question and on immediately surrounding properties, including all Resource Protection Area and Resource Management Area boundaries, and present use of adjoining tracts.
6. Existing topography with a maximum of two-foot contour levels. Where existing ground is on a slope of less than two percent, either one-foot contours or spot elevations where necessary but not more than fifty feet apart in both directions.
7. The location, dimensions, and materials proposed for the construction of proposed streets, alleys, driveways, and the location, type, and size of vehicular entrance(s) to the site.
8. The location and amount (in square feet) of all existing and proposed impervious surface including but not limited to all off-street parking, loading spaces, and walkways. The type of surfacing, size, angle of stalls, width of aisles and a specific schedule showing the number of parking spaces provided should also be indicated.
9. All proposed water and sanitary sewer facilities indicating all pipe sizes, types, and grades and where connection is to be made to town or to other utility system; all proposed gas lines and other utilities and their easements.
10. The proposed location, general use, number of floors, height and floor area for each building, accessory and main, and where applicable, the number, size, and type of dwelling units.
11. Proposed finished grading by contours supplemented where necessary by spot elevations.
12. The location, sizes, types, and grades of ditches, catch basins, and pipes and connections to existing drainage system.
13. Provisions for the adequate control of erosion and sedimentation indicating the proposed temporary and permanent control practices and measures that will be implemented during all phases of clearing, grading, and construction.
14. Delineation of any floodplain limits.
15. Location, type, size, and height of fencing, retaining walls, and screen planting where required under the provisions of the chapter.
16. A landscape plan, drawn to scale, delineating dimensions and distances and the location, type, size, and description of all existing and proposed plant materials. Any required buffer area and all existing trees on site six inches or greater DBH shall be clearly shown on the landscape plan. Where there are groups of trees, stands may be outlined instead. Trees to be removed to create a desired construction footprint shall be clearly delineated on the plan. The landscape plan will include specifications for the protection of existing trees and buffer areas during clearing, grading, and all phases of construction.
17. The location and dimensions of proposed recreation, open space, and required amenities and improvements including details of disposition.
18. A storm water management plan to include maps, graphs, tables, narrative descriptions, and citations to support references as appropriate to communicate the information required by the Town Code. At a minimum, the storm water

management plan shall contain: (a) location and design of all planned storm water control devices; (b) procedures for implementing non-structural storm water control practices and techniques as applicable; (c) pre- and post-development non-point source pollutant loadings with supporting documentation of all utilized coefficients and calculations; and (d) for facilities, verification of structural soundness including a Professional Engineer or Class IIIB Surveyor Certification. All engineering calculations must be performed in accordance with procedures outlined in the current edition of the Local Assistance Manual, the Virginia Erosion and Sediment Control Handbook, or the Virginia Department of Transportation Drainage Manual.

C. All features and elements of the site plan required by this Article shall in all respects conform to all applicable provisions and standards of the Code of Virginia and this Code, including, but not limited to: The Cape Charles Comprehensive Zoning Ordinance, Subdivision Ordinance, Erosion and Sediment Control Ordinance, or any PUD zoning ordinance approved by Town Council.

Section 5 Procedure for Processing

A. All applicants for site plan review shall submit to the Zoning Administrator a site plan for the proposed development. The site plan review fee, as established by the Council, shall be paid at this time.

B. The Zoning Administrator shall review all site plans which are submitted to him pursuant hereto. The administrator shall check the site plan for general completeness and compliance with all applicable requirements. The administrator shall circulate the site plan to the relevant town departments, agencies, and officials for written comments as to the proposed development's conformance to all applicable standards and requirements and whether approval of the site plan is recommended.

C. Except under abnormal circumstances, within 45 days from the receipt of the site plan in his office, the Zoning Administrator shall approve, approve subject to conditions, or disapprove the site plan and notify the applicant in writing of the action taken. If the site plan is denied approval, the administrator, in notifying the applicant of the decision, shall set forth in detail the reasons for the denial, which shall be limited to any defect in form or required information, any violation of any provision or standard of this chapter or any other ordinance, or the inadequacy of any utility and shall state any changes which would make the site plan acceptable.

Section 6 Time for Obtaining Building Permit After Approval; Extension of Time

Approval of a site plan submitted under the provisions of this Article shall expire five years after the date of such approval unless building permits have been obtained for construction in accordance therewith. A single one-year extension may be given upon written request by the applicant to the Zoning Administrator and Town Manager made within ninety days before the expiration of the approved site plan. The Zoning Administrator and Town Manager shall acknowledge the request and shall make a decision regarding the requested extension within thirty days after receipt of the request.

Section 7 Revision of Site Plan; Waiver of Requirements of Article

The Zoning Administrator may approve minor revisions to an approved site plan, providing that Town requirements and specifications are not affected. Major revisions shall require that a new site plan be drawn, and the review and approval process begun anew. Any revision to an approved site plan that does not change the proposed use and which exceeds the ordinance requirements of the previously approved plan shall be approved by the Zoning Administrator.

Section 8 Appeals

Any applicant aggrieved of any decision of the Zoning Administrator on a site plan review may, within ten days of such decision, appeal to the Town Council. The Town Council shall act upon such an appeal by the owner at its next regularly scheduled meeting. The applicant may appeal Town Council's decision to the Northampton County Circuit Court as provided by law.

Section 9 Building Permits to Comply with Site Plans

No permit shall be issued for any structure in an area covered by the site plan that is required under the provisions of this Article in conformity to such a plan which has been duly approved or revised as provided in Section 7.

Section 10 Agreement and Bond for Construction of Certain Improvements; Establishment of Fees for Examination and Issuance of Building Permits

A. Prior to the issuance of any building permits for which an approved site plan is required, there shall be executed by the owner, developer, or their contractor, an agreement to construct the agreed-upon physical improvements that are located within the public right- of-way or public easements in a form approved by the Town. Such agreements shall be in accordance with this ordinance and be accompanied by a letter of credit, escrow, or a bond with surety acceptable to the Town (hereinafter "security") in the amount of the estimated cost of the required physical improvements as determined by the town departments, divisions, or agencies responsible for such improvements.

B. Such security shall remain in force until the completion of the secured improvements within the public right-of-way or public easements shown on the approved site plan. Such security shall be partially and proportionally released within thirty days of receipt by the Town of written notice from the contractor certifying completion of a distinguishable part of the secured improvements. If the Town notifies the contractor in writing of any defects or deficiencies in the secured improvements within this 30-day period, then corrective measures must be taken by the contractor prior to any partial or complete release of the security.

C. Such security shall be with a firm or bank acceptable to the Town Manager which approval shall not be unreasonably withheld.

D. "Best Management Practices" imposed by these regulations that require regular or periodic maintenance in order to continue their function shall be regulated by a maintenance agreement submitted to the Town by the owner, developer, homeowner association, or other entity responsible for said BMPs and, where approved by the Town, shall run with the land and be binding upon the entity that assumes responsibility for said BMPs.

Section 11 Compliance with Approved Site Plan

A. Unless otherwise specifically provided in this chapter, the construction standards for all offsite improvements and site improvements required by this Article shall comply with approved site plan.

B. Inspections during the installation of the offsite improvements and required onsite improvements shall be made by the department responsible for such improvements as are required to certify compliance with the approved site plan.

C. The owner shall notify the Town Manager in writing three days prior to the beginning of all street or storm sewer work shown to be constructed on the site plan.

D. The owner or owner's contractor shall provide adequate supervision on the site during the installation of all required improvements within the public right-of-way or public easements and have a responsible superintendent or foreman, together with one set of approved plans, profiles, and specifications, available at the site at all times when work is being performed.

E. Upon satisfactory completion of the installation of the required improvements, the owner shall receive a certificate of approval from the Zoning Administrator. The Town Manager will authorize the release of any bond which may have been furnished for the guarantee of satisfactory installation of such improvements or parts thereof upon notice by the Zoning Administrator that the improvements have been satisfactorily completed.

F. The installation of improvements as required in this Article shall in no case serve to bind the Town except such improvements for the maintenance, repair, or operation thereof, but such acceptance shall be subject to the existing regulations concerning the acceptance of each type of improvement. Upon acceptance, the Town shall assume all ownership, maintenance, and repair obligations of the dedicated improvements.

Section 12 Occupancy Certificates

A final occupancy permit may be issued for any appropriately completed building or part of building located in a part of the total area of an approved site plan, such part of the total area to be known as a section provided that:

A. The other onsite construction and improvements included in the approved site plan for the section have been completed and have been inspected and accepted by the Zoning Administrator, the Town Manager, and the county health officer or their agents.

B. The offsite improvements related to and necessary to service the section has been completed, inspected, and accepted by the Town Manager or his agents, or the developer has provided surety acceptable to the Town.

This ordinance was adopted by the Town Council of Cape Charles, Virginia, on July 14, 1992, amended July 11, 1995, and ratified and confirmed on June 16, 1997.

Section 4.A, Item 1.h. was amended and adopted by the Town Council of Cape Charles, Virginia on December 9, 2010.

APPENDIX C - Cape Charles/Coastal Primary Sand Dune Zoning Ordinance

Section 1 Authorization

The governing body of the Town of Cape Charles, acting pursuant to § 28.2-1403 of the Code of Virginia, adopts this ordinance regulating the use and development of coastal primary sand dunes. Whenever coastal primary sand dunes are referred to in this ordinance, such references shall also include beaches.

Section 2 Definitions

Section 3 Uses and Activities

The following uses of and activities in dunes are authorized if otherwise permitted by law:

A. the construction and maintenance of noncommercial walkways which do not alter the contour of the coastal primary sand dune;

B. the construction and maintenance of observation platforms which are not an integral part of any dwelling and which do not alter the contour of the coastal primary sand dune;

C. the planting of beach grasses or other vegetation for the purpose of stabilizing coastal primary sand dunes;

D. the placement of sand fences or other material on or adjacent to coastal primary sand dunes for the purpose of stabilizing such features, except that this provision shall not be interpreted to authorize the placement of any material which represents a public health or safety hazard;

E. sand replenishment activities of any private or public concern, provided no sand shall be removed from any coastal primary sand dune unless authorized by lawful permit;

F. the normal maintenance of any groin, jetty, riprap, bulkhead, or other structure designed to control beach erosion which may abut a coastal primary sand dune;

G. the normal maintenance or repair of existing roads, highways, railroad beds, and facilities of the United States, this Commonwealth or any of its counties, cities, or towns, or of any person provided no coastal primary sand dunes are altered;

H. outdoor recreational activities provided the activities do not alter the natural contour of the coastal primary sand dune or destroy the vegetation growing thereon;

I. the conservation and research activities of the Commission, Virginia Institute of Marine Science, Department of Game and Inland Fisheries, and other conservation-related agencies;

J. the construction and maintenance of aids to navigation which are authorized by governmental authority;

K. activities pursuant to any emergency declaration by the governing body of any local government or the Governor of the Commonwealth or any public health officer for the purposes of protecting the public health and safety; and

L. governmental activity in coastal primary sand dunes owned or leased by the Commonwealth or a political subdivision thereof.

Section 4 Use Regulations

A. Any person who desires to use or alter any coastal primary sand dune within this Town, other than for the purpose of conducting the activities specified in Section 3 of this ordinance, shall first file an application directly with the Wetlands Board or with the Commission.

B. The permit application shall include the following: the name and address of the applicant; a detailed description of the proposed activities and a map, drawn to an appropriate and uniform scale, showing the area of dunes directly affected, the location of the proposed work thereon, the area of any proposed fill and excavation, the location, width, depth, and length of any disposal area, and the location of all existing and proposed structures, sewage collection and treatment facilities, utility installations, roadways, and other related appurtenances or facilities, including those on adjacent uplands; a description of the type of equipment to be used and the means of equipment access to the activity site; the names and addresses of owners of record of adjacent land; an estimate of cost; the primary purpose of the project; any secondary purposes of the project, including further projects; the public benefit to be derived from the proposed project; a complete description of measures to be taken during and after the alteration to reduce detrimental offsite effects; the completion date of the proposed work, project, or structure; and such additional materials and documentation as the Wetlands Board may require.

C. A non-refundable processing fee shall accompany each permit application. The fee shall be set by the applicable governing body with due regard for the services to be rendered, including the time, skill, and administrator's expense. No person shall be required to file two separate applications for permits if the proposed project will require permits under this ordinance and Chapter 14 of Title 28.2 (§ 28.2-1400 et seq.) of the Code of Virginia. Under those circumstances, the fee shall be established pursuant to this ordinance.

Section 5 Public Inspection

All applications, maps, and documents submitted shall be open for public inspection at the office of the recording secretary of the Town of Cape Charles.

Section 6 Public Hearing Requirements

Not later than 60 days after receipt of a complete application, the Wetlands Board shall hold a public hearing on the application. The applicant, local governing body, Commissioner, owner of record of any land adjacent to the coastal primary sand dunes in question, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, the State Water Control Board, the Department of Transportation, and any governmental agency expressing an interest in the application shall be notified of the hearing. The board shall mail these notices not less than 20 days prior to the date set for the hearing. The Wetlands Board shall also cause notice

of the hearing to be published at least once a week for two weeks prior to such hearing in a newspaper of general circulation in the Town of Cape Charles. The costs of publication shall be paid by the applicant.

Section 7 Permit Procedure

A. Approval of a permit application shall require the affirmative vote of three members of a five-member board or four members of a seven-member board.

B. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. Any person may appear and be heard at the public hearing. Each witness at the hearing may submit a concise written statement of his testimony. The board shall make a record of the proceedings, which shall include the application, any written statements of witnesses, a summary of statements of all witnesses, the findings and decision of the board, and the rationale for the decision.

C. The board shall make its determination within 30 days of the hearing. If the board fails to act within that time, the application shall be deemed approved. Within 48 hours of its determination, the board shall notify the applicant and the Commissioner of its determination. If the board fails to make a determination with the 30-day period, it shall promptly notify the applicant and the Commission that the application is deemed approved.

D. If the board's decision is reviewed or appealed, the board shall transmit the record of its hearing to the Commissioner. Upon a final determination by the Commission, the record shall be returned to the board. The record shall be open for public inspection at the office of the recording officer of the Town of Cape Charles.

Section 8 Bond

The board may require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it, securing to the Commonwealth compliance with the conditions and limitations set forth in the permit. The board may, after a hearing held pursuant to this ordinance, suspend or revoke a permit if the applicant has failed to comply with any of the conditions or limitations set forth in the permit or has exceeded the scope of the work described in the application. The board may, after a hearing, suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application.

Section 9 Preservation

In fulfilling its responsibilities under this ordinance, the board shall preserve and protect coastal primary sand dunes and beaches and prevent their despoliation and destruction. However, whenever practical, the board shall accommodate necessary economic development in a manner consistent with the protection of these features.

Section 10 Criteria

A. In deciding whether to grant, grant in modified form, or deny a permit, the board shall consider the following:
   1. the testimony of any person in support of or in opposition to the permit application;
   2. the impact of the proposed development on the public health, safety, and

welfare; and

3. the proposed development's conformance with standards prescribed in § 28.2-1408 of the Code of Virginia and guidelines promulgated pursuant to § 28.2-1401 of the Code of Virginia.

B. The board shall grant the permit if all of the following criteria are met:

1. The anticipated public and private benefit of the proposed activity exceeds its anticipated public and private detriment.
2. The proposed development conforms with the standards prescribed in § 28.2-1408 of the Code of Virginia and guidelines promulgated pursuant to § 28.2-1401 of the Code of Virginia.
3. The proposed activity does not violate the purposes and intent of this ordinance or Chapter 14 of Title 28.2 (§ 28.2-1400 et seq.) of the Code of Virginia.

C. If the board finds that any of the criteria listed in Subsection B of this section are not met, the board shall deny the permit application but allow the applicant to resubmit the application in modified form.

Section 11 Commissioner's Copy

The permit shall be in writing, signed by the chairman of the board, and notarized. A copy of the permit shall be transmitted to the Commissioner.

Section 12 Expiration Date

No permit shall be granted without an expiration date established by the board. Upon proper application, the board may extend the permit expiration date.

Section 13 Compensation Rights

No permit granted by a wetlands board shall in any way affect the right of any person to seek compensation for any injury in fact incurred by him because of the permitted activity.

This ordinance was duly considered following a required public hearing held on June 14, 1994, and was adopted by the Town Council of Cape Charles, Virginia, at its regular meeting held on July 12, 1994, the members voting unanimously.

This ordinance shall be effective on or after 12:01 a.m., July 12, 1994.

Amended by Town Council on July 11, 1995, and ratified and confirmed by Town Council on June 16, 1997.

APPENDIX D - Erosion and Sediment Control Ordinance

Section 22.1 Chapter Title
This ordinance shall be known as the "Erosion and Sediment Control Ordinance of the Town of Cape Charles, Virginia."

Section 22.2 Purpose of Chapter
The purpose of this ordinance is to prevent degradation of properties, stream channels, water, and other natural resources of the Town of Cape Charles and to promote the public health and welfare of the people in Cape Charles by establishing requirements for the control of erosion and sedimentation from non-agricultural land disturbance and by establishing procedures whereby these requirements shall be administered and enforced. (Ord. No. 17, 6-11-91)

This chapter is authorized by the Code of Virginia, Title 62.1, Chapter 3.1, Article 2.4 (§ 62.1-44.15:51 et seq.) known as the "Erosion and Sediment Control Law." This law provides for a comprehensive statewide program with standards and guidelines to control soil erosion and sedimentation on the local level (Ord. No. 17, 3, 6-11-91).

Section 22.3 Definitions

Section 22.4 Severability
If any portion of this article is held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the remainder of the provision.

Section 22.5 Local Erosion and Sediment Control Program

A. The minimum standards of local program effectiveness established by the Board, pursuant to Subsection D of § 62.1-44.15:52 of the Code of Virginia, shall be maintained by the Town program and who hereby adopts the regulations, references, guidelines, standards and specifications promulgated by the Board for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources. Said regulations, references, guidelines, standards and specifications for erosion and sediment control are included in but not limited to the "Virginia Erosion and Sediment Control Regulations" and the Virginia Erosion and Sediment Control Handbook, as amended.

B. A local program shall contain a certified program administrator, a certified plan reviewer, and a certified project inspector, who may be the same person. Any person who holds a certificate of competence from the Board in the areas of plan review, project inspection, or program administration which was attained prior to the adoption of the mandatory certification of Subsection A of this section shall be deemed to satisfy the requirements of that area certification.

C. The Town of Cape Charles hereby appoints the E&S Administrator and Plan Reviewer as the plan approving authority.

D. The program and regulations provided for in this ordinance shall be made available for public inspection at the office of the program administrator. The regulations may be revised from time to time as necessary. Before adopting or revising regulations, the

Town shall give due notice and shall conduct a public hearing on the proposed or revised regulations except that a public hearing shall not be required when the district is amending its program to conform to revisions in the state program. However, a public hearing shall be held if the Town is proposing regulations that are more stringent than the state program.

(Ord. No. 9372, I, 7-14-93)

Cross Reference - Similar provisions, § 62.1-44.15:53 of the Code of Virginia. State Law Reference - See Editor's note to 22-4.

Section 22.6 Regulated Land-Disturbing Activities; Submission and Approval of Control Plan

A. The owner or lessee of the land being developed has the responsibility for plan preparation and submission. The owner or lessee may designate someone (e.g. an engineer, architect, contractor, etc.) to prepare the plan, but the owner or lessee retains the ultimate responsibility.

B. Except as provided in § 62.1-44.15:56 of the Code of Virginia, no person may engage in any land-disturbing activity until he has submitted to the Town Program Administrator an erosion and sediment control plan for the land-disturbing activity and the plan has been reviewed and approved by said Administrator. Where land-disturbing activities involve lands under the jurisdiction of more than one local control program, an erosion and sediment control plan, at the option of the applicant, may be submitted to the Soil and Water Conservation Board for review and approval rather than to each jurisdiction concerned.

C. Where the land-disturbing activity results from the construction of a single-family residence, an "agreement in lieu of a plan" may be substituted for an erosion and sediment control plan, if approved by the program administrator. The Program Administrator may waive the certificate of competence requirement in (D) below for an agreement in lieu of a plan for construction of a single family residence. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of an individual holding a certificate of competence, as provided by § 10.1-561 of the Virginia Erosion and Sediment Control Law. Failure to provide the name of an individual holding a certificate of competence may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be in violation of this ordinance.

D. The Certified Plan Reviewer shall review E&S plans submitted to it and grant written approval within 45 days of the receipt if it is determined that the plan meets the requirements of the Board's regulations and if the person responsible for carrying out the plan certifies that he will properly perform the conservation measures included in the plan and will conform to the provisions of this article. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence, to the program authority, as provided by § 10.1-561, of the Virginia Erosion and Sediment Control Law, who will be in charge of and responsible for

carrying out the land-disturbing activity. Failure to provide the name of an individual holding a certificate of competence prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this ordinance.

E. The standards contained within the "Virginia Erosion and Sediment Control Regulations", the Virginia Erosion and Sediment Control Handbook and Chapters 22 & 74 of "The Cape Charles Town Code" are to be used by the applicant when making a submittal under the provisions of this ordinance and in the preparation of an erosion and sediment control plan. The plan approving authority, in considering the adequacy of a submitted plan, shall be guided by the same standards, regulations and guidelines. When the standards vary between the publications, the State regulations shall take precedence.

F. When a plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall specify the modifications, terms, and conditions that will permit approval of the plan. If no action is taken by the plan approving authority within 45 days, the plan will be deemed approved and the person authorized to proceed with the proposed activity.

G. An approved plan may be changed by the Town in the following cases:
1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations; or
2. Where the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this article, are agreed to by the Program Administrator and the person responsible for carrying out the plan.

H. In order to prevent further erosion, the Program Administrator may require approval of a plan for any land identified in the local program as an erosion impact area.

I. When land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission and approval of an erosion and sediment control plan shall be the responsibility of the owner.

J. The Department of Conservation and Recreation will be responsible for plan approval of state agencies and these agencies are exempt from this ordinance except as provided for in § 62.1-44.15:56 of the Code of Virginia.

K. Electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, and railroad companies shall file general erosion and sediment control specifications annually with the Board for review and written comments. The specifications shall apply to:
1. Construction, installation, or maintenance of electric and telephone utility lines; and
2. Construction of the tracks, rights of way, bridges, communication facilities and other related structures and facilities of the railroad company.

L. The Program Administrator may waive or modify any of the regulations that are deemed inappropriate or too restrictive for site conditions, by granting a variance. A variance may be granted under these conditions:

1. At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the plan-approving authority shall be documented in the plan.
2. During construction, the person responsible for implementing the approved plan may request a variance in writing from the plan-approving authority. The plan-approving authority shall respond in writing either approving or disapproving such a request. If the plan-approving authority does not approve a variance within 10 days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.

(Ord. No. 9372, I, 7-14-93)

State Law Reference - Similar provisions, § 62.1-44.15:55 of the Code of Virginia.
Note - See the Editor's note to 22-4.

Section 22.7 Permit Required for Land-Disturbing Activities

A. No person may engage in any land-disturbing activity until he has acquired a land-disturbing permit, unless the proposed land-disturbing activity is specifically exempt from the provisions of this ordinance, and has paid the fees and posted the required bond.

B. No land-disturbing permit shall be issued by the Program Administrator or any employee of the Town until the applicant submits an approved Erosion and Sediment Control Plan (unless exempted by the provisions of this ordinance) and certification that the plan will be followed.

C. No land-disturbing permit shall be issued for a portion of a site for which a wetlands permit is required until evidence of necessary permits from the local wetlands boards, the Marine Resources Commission, or the United States Army Corps of Engineers, as applicable, is submitted to the program administrator.

Section 22.8 Erosion and Sediment Control Program Fees

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

Section 22.9 Application for Approval

Application for approval of an Erosion and Sediment Control Plan submitted to the Program Administrator shall include the following items:

A. Standard Town of Cape Charles application form;

B. The Erosion and Sediment Control Plan including:
   1. A contoured site plan showing elevations and all E&S measures to be installed,
   2. A detailed narrative to support the site plan describing all E&S measures to be installed, and
   3. Any calculations needed to support the narrative.

C. A certification by the person responsible for carrying out the plan that he will properly perform the control measures included in the plan, and proof of the responsible person's certification by DCR.

D. Payment of the plan review and inspection fees listed in Section 22.8.

E. Documents under Subsections 1, 2, and 3 above shall be submitted in triplicate.

Reference: Code of Virginia E&S Law & Regs. § 62.1-44.15:54, § 62.1-44.15:55.

Section 22.10 Bond or Other Security for Land-Disturbing Activities

A. Prior to the issuance of any permit for grading, land disturbing, building, or other activity involving land-disturbing activities, the applicant shall provide a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement as is acceptable to the Town to ensure that emergency measures could be taken by the Town at the applicant's expense should he fail, within the time specified, to initiate appropriate conservation action which may be required of him as a result of his land-disturbing activity. If the Town takes such conservation action upon such failure by the permittee, the Town may collect from the permittee for the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within 60 days of the achievement of adequate stabilization of the land-disturbing activity, such bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated, as the case may be.

B. The requirements of this section are in addition to all other provisions of law which relate to the issuance of such permits and shall not be construed to otherwise affect the requirements for such permits.

Reference: Code of Virginia, E&S Law & Regs. § 62.1-44.15:57.

Section 22.11 Monitoring, Reports, and Inspections

A. The Program Administrator of the Town shall provide for inspections of the land disturbing activity based on a two week regular inspection schedule for each site and may require monitoring and reports from the person responsible for carrying out the plan, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation. Inspections shall also be performed within 48 hours of a significant weather event, immediately following initial installation of erosion and sediment controls, and at the completion of a project prior to the release of any performance bonds. A certified

inspector of the Town shall be responsible for performing inspections on all land disturbing activity and shall report findings to the program administrator. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspections. Subsequent to inspections a list of items to be corrected, installed or repaired will be hand delivered or mailed first class to the permittee or the person responsible for carrying out the plan. An alternative inspection program which ensures compliance with the approved erosion and sediment control plan may be established by the Program Administrator. Any alternative inspection program shall be:

1. Approved by the Board prior to implementation.
2. Established in writing.
3. Based upon a system of priorities that at a minimum, address the amount of disturbed project area, site conditions and stage of construction; and
4. Documented by inspection records.

B. If the program administrator determines that there is a failure to comply with the inspections list by the time specified on the inspections report, a "notice to comply" shall be served upon the permittee or person responsible for carrying out the plan. The notice to comply shall be delivered by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the land disturbing activities to the agent or employee supervising such activities. The notice to comply shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the specified time, the permit shall be deemed revoked and the owner, permittee or person responsible for carrying out the plan shall be deemed in violation of this article and shall be subject to the penalties provided by § 62.1-44.15:63 of the Code of Virginia, as amended.

C. Upon determination of a violation of this ordinance, the Program Administrator may in conjunction with, or subsequent to, a notice to comply as specified in subsection "B" above, issue an order requiring that all or part of the land- disturbing activities permitted on the site be stopped until specified corrective measures have been taken. Such an order may be issued only after the alleged violator has failed to comply with a notice to comply. The order shall be served in the same manner as a notice to comply, and shall remain in effect for seven days from the date of service pending application by the enforcing authority or alleged violator for the appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have occurred. Any person violating or failing, neglecting or refusing to obey an order issued by the chief administrative officer or his designee may be compelled in a proceeding instituted in the circuit court of jurisdiction wherein the violation was alleged to have occurred to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted. Nothing in this section shall prevent the chief administrative officer or his designee from taking any other action specified in Code of Virginia, E&S Law & Regs. § 62.1-44.15:63.

D. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an

approved plan or any required permits, such an order may be issued whether or not the alleged violator has been issued a notice to comply as specified in subsection "B" above.

Reference: Code of Virginia, E&S Law & Regs. § 62.1-44.15:58.

Section 22.12 Penalties, Injunctions, and Other Legal Actions

A. Violators of § 62.1-44.15:55, § 62.1-44.15:56, or § 62.1-44.15:58 of the Code of Virginia shall be guilty of a Class I misdemeanor.

B. In lieu of criminal sanctions, any person who violates any provision of this ordinance, and condition of a permit, and any provision of this program shall, upon a finding of the appropriate general district court, be assessed the following civil penalties:

1. With the exception of a violation arising from commencement of land disturbing activities without a Town-approved plan and land-disturbing permit, a civil penalty in the amount of $100.00 per violation shall be assessed when any person violates any regulation or order of this ordinance, any condition of a permit, or any provision of this program, or for failure to provide, implement, maintain, or properly install any of the following erosion and sediment control measures required by an approved plan:
   a. vegetative controls including, but not limited to, permanent or temporary ground cover,
   b. structural controls including, but not limited to, construction entrances, storm drain and drop inlet protection, outlet protection, and sediment traps and basins,
   c. transporting sediment or debris onto paved public roads by vehicular traffic runoff, and
   d. perimeter controls including, but not limited to, straw bales or silt fences,
2. A civil penalty in the amount of $1,000.00 shall be assessed for commencement of land disturbing activities without a Town-approved plan and land-disturbing permit.
3. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of $3,000.00 except that a series of violations arising from the commencement of land disturbing activities without a Town approved plan and land disturbing permit for any person shall not result in civil penalties which exceed a total of $10,000.00.
4. The Program Administrator for the Town may issue a summons for collection of the civil penalty and the action may be prosecuted by the Town's legal resources.
5. In any trial for a scheduled violation, it shall be the burden of the locality to show the liability of the violator by a preponderance of the evidence. An admission or finding of liability shall not be a criminal conviction for any purpose. Any civil penalties assessed by a court shall be paid into the treasury of the Town, except that where the violator is the Town itself, or its agent, the court shall direct the penalty to be paid into the State treasury.

C. The Program Administrator or the owner of property which has sustained damage may apply to the circuit court in Northampton County to enjoin a violation or a threatened violation of this ordinance without the necessity of showing that an adequate remedy at law does not exist. An aggrieved owner of property sustaining pecuniary damages resulting from a violation of an approved plan or required permit or from the conduct of land-disturbing activities commenced without an approved plan or required permit may also give written notice of the alleged violation to the Director (§ 62.1-44.15:64 of the Code of Virginia).

However, an owner of property shall not apply for injunctive relief unless:

1. He has notified in writing the person who has violated the local program, and the program authority, that a violation of the local program has caused, or creates a probability of causing, damage to his property, and
2. Neither the person who has violated the local program nor the program authority has taken corrective action within 15 days to eliminate the conditions which have cause, or create the probability of causing, damage to his property.

D. In addition to any criminal or civil penalties provided under this chapter, any person who violates any provision of this chapter may be liable to the Town in a civil action for damages.

E. Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed $2,000 for each violation. A civil action for such violation or failure may be brought by the Town. Any civil penalties assessed by a court shall be paid into the treasury of the Town, except that where the violator is the Town itself, or its agent, the court shall direct the penalty to be paid into the State treasury.

F. With the consent of any person who has violated or failed, neglected, or refused to obey any regulation or order of the Town or any condition of a permit or any provision of this article, the Program Administrator may provide for the payment of civil charges for violations in specific sums, not to exceed the limit specified in Subsection E of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under Subsection B or E.

G. The Commonwealth's Attorney shall, upon request of the Town, take legal action to enforce the provisions of this ordinance.

H. Compliance with the provisions of this article shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion or sedimentation that all requirements of law have been met and the complaining party must show negligence in order to recover damages.

I. Such civil penalties as are imposed pursuant to this chapter shall be deposited into the Town's treasury.

(Ord. No. 9372, I, 7-14-93)

State Law Reference - Similar provisions, § 62.1-44.15:63 of the Code of Virginia.
Note: See the Editor's note to 22-4.

Section 22.13 Appeals and Judicial Review

A. Any applicant under the provision of this ordinance who is aggrieved by any action of the Town or its agent in disapproving plans submitted or noncompliance issues cited in inspection reports pursuant to this ordinance shall have the right to apply for and receive a review of such action by the Town Manager provided an appeal is filed within 30 days from the date of the action. Any applicant who seeks an appeal hearing before the manager shall be heard provided that the manager and other involved parties have at least 30 days prior notice. In reviewing the agent's actions, the manager shall consider evidence and opinions presented by the aggrieved applicant and agent. After considering the evidence and opinions, the manager may affirm, reverse or modify the action. The manager's decision shall be final, subject only to review by the Circuit Court of Northampton County.

B. Final decisions of the Town under this ordinance shall be subject to review by the Northampton County Circuit Court, provided an appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities.

Reference: Code of Virginia, E&S Law & Regs. § 62.1-44.15:62.

APPENDIX E - Wetlands Ordinance

ARTICLE I - In General

Section 74.1 - 74.19 Reserved

ARTICLE II - Wetlands Zoning Ordinance

Division I - Generally

Section 74.20 Definitions

(Ord. No. 9341, 2, 4-13-93)

Section 74.21 Permitted Uses of and Activities on Wetlands

The following uses of and activities on wetlands are permitted if otherwise permitted by law:

A. the construction and maintenance of noncommercial catwalks, piers, boathouses, boat shelters, fences, duck blinds, wildlife management shelters, footbridges, observation decks and shelters, and other similar structures provided that such structures are so constructed on pilings as to permit the reasonably unobstructed flow of the tide and preserve the natural contour of the wetlands;

B. the cultivation and harvesting of shellfish and worms for bait;

C. noncommercial outdoor recreational activities, including hiking, boating, trapping, hunting, fishing, shell fishing, horseback riding, swimming, skeet and trapshooting, and shooting preserves provided that structure shall be constructed except as permitted in Subsection 1 of this section;

D. the cultivation and harvesting of agricultural, forestry, or horticultural products; grazing and haying;

E. conservation, repletion, and research activities of the Virginia Marine Resources Commission, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, and other related conservation agencies;

F. the construction or maintenance of aides to navigation which are authorized by governmental authority;

G. emergency measures decreed by any duly appointed health officer of a governmental subdivision acting to protect the public health;

H. the normal maintenance, repair, or addition to presently existing roads, highways, railroad beds, or the facilities of any person, firm, corporation, utility, federal, state, county, city, or town abutting on or crossing wetlands provided that no waterway is altered and no additional wetlands are covered;

I. governmental activity on wetlands owned or leased by the Commonwealth of Virginia or a political sub-division thereof.

J. the normal maintenance of man-made drainage ditches provided that no additional wetlands are covered and provided further that this paragraph shall not be deemed to authorize construction of any drainage ditch;

K. outdoor recreational activities provided that such activities do not impair the natural functions of the wetlands or alter the natural contour of the wetlands.

(Ord. No. 9341, 3, 4-13-93)

Section 74.22 - 74.30 Reserved

Division 2 - Permit to Use or Develop Wetlands

Section 74.31 Application Generally

A. Any person who desires to use or develop any wetland within this Town, other than for those activities specified in Section 74.21 above, shall first file an application for a permit with the wetlands board directly or through the Commission.

B. An application shall include the following: the name and address of the applicant; a detailed description of the proposed work thereon, indicating the area of existing and proposed fill and excavation, especially the location, width, depth, and length of any proposed channel and the disposal area, all existing and proposed structures; sewage collection and treatment facilities, utility installations, roadways, and other related appurtenances of facilities, including those on adjacent uplands, and the type of equipment to be used and the means of equipment access to the activity site; the names and addresses of owners of record of adjacent land and known claimants of water rights in or adjacent to the wetlands of whom the applicant has notice; an estimate of cost; the primary purpose of the project; any secondary purposes of the project including further projects; the public benefit to be derived from the proposed project; a complete description of measures to be taken during and after the alteration to reduce detrimental offsite effects; the completion date of the proposed work, project, or structure and such additional materials and documentation as the wetlands board may deem necessary.

C. All fees shall be governed as set forth by the Town Council of the Town of Cape Charles.

(Ord. No. 9341, 4, 4-13-93)

Section 74.32 Application and Related Data Open for Public Inspection

All applications and maps and documents relating thereto shall be open for public inspection at the office of the Town Clerk of this Town. (Ord. No. 9341, 5, 4-13-93)

Section 74.33 Hearing on Application; Grant or Denial

A. Not later than 60 days after receipt of such application, the wetlands board shall hold a public hearing on such application. The applicant, the local governing body, the

commissioner, the owner of record of any land adjacent to the wetlands in question, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, Water Control Board, the Department of Transportation, and governmental agencies expressing an interest therein shall be notified by the board of the hearing by mail not less than 20 days prior to the date set for the hearing. The wetlands board shall also cause notice of such hearing to be published at least once a week for two weeks prior to such hearing in the newspaper having a general circulation in this Town. Every such advertisement shall contain a reference to the place or places within the county or municipality where copies of the proposed application may be examined. The costs of such publication shall be paid by the applicant.

B. In acting on any application for a permit, the board shall grant the application upon the concurring favorable vote of three members of a five-member board or four members of a seven-member board. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. Any person may appear and be heard at the public hearing. Each witness at the hearing may submit a concise written statement of his testimony. The board shall make a record of the proceeding, which shall include the application, any written statements of witnesses, a summary of statements of all witnesses, the findings and decision of the board, and the rationale for the decision. The board shall make its determination within 30 days from the hearing. If the board fails to act within such time, the application shall be deemed approved. Within 48 hours of its determination, the board shall notify the applicant and the commissioner of such determination; and if the board has not made a determination, it shall notify the applicant and the commission that 30 days has passed and that the application is deemed approved. The term "act" referred above shall be the action of taking a vote on the application. If the application receives less than four concurring favorable votes for a seven- member board and three concurring favorable votes for a five-member board, this will be a determination to deny the permit.

C. The board shall transmit a copy of the permit to the commissioner. If the application is reviewed or appealed, then the board shall transmit the record of its hearing to the commissioner. Upon a final determination by the commission, the record shall be returned to the board. The record shall be open for public inspection at the office of the Town Clerk of this Town.

D. In making its decision whether to grant, to grant in modified form, or to deny an application for a permit, the board shall base its decision on these factors:
1. such matters raised through the testimony of any person in support of or in opposition to the permit application;
2. impact of the development on the public health, safety, and welfare;
3. the proposed development's conformance with standards prescribed in § 28.2-1308 of the Code of Virginia, and guidelines promulgated pursuant to § 28.2-1301 of the Code of Virginia.

E. If the board, in applying the standards above, finds that the anticipated public and private benefit of the proposed activity exceeds the anticipated public and private detriment and that the proposed activity conforms with the standards prescribed in § 28.2-1308 of the Code of Virginia, and guidelines promulgated pursuant to § 28.2-1301

of the Code of Virginia, and the proposed activity does not violate the purpose and intent of this ordinance or Chapter 13 of Title 28.2 (§ 28.2-1300 et seq.) of the Code of Virginia.

F. If the board finds that any criteria listed in Subsection B of this section are not met, the board shall deny the permit application but allow the applicant to resubmit the application in modified form.

(Ord. No. 9341, 6, 7, 10, 4-13-93)

Section 74.34 Bond or Letter of Credit to Assure Compliance with Conditions and Limitations

The board may require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it securing to the commonwealth compliance with the conditions and limitations set forth in the permit. The board may, after a hearing as provided herein, suspend or revoke a permit if the board finds that the applicant has failed to comply with any of the conditions or limitations set forth in the permit or has exceeded the scope of the work as set forth in the application. The board, after hearing, may suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application. (Ord. No. 9341, 8, 4-13-93)

Section 74.35 Preservation and Development

In fulfilling its responsibilities under this article, the board shall preserve and prevent the despoliation and destruction of wetlands within its jurisdiction, while accommodating necessary economic development in a manner consistent with wetlands preservation. (Ord. No. 9341, 9, 4-13-93)

Section 74.36 Copy to be Transmitted to Commissioner

The permit shall be in writing, signed by the chairman of the board, and notarized. A copy of the permit shall be transmitted to the commissioner. (Ord. No. 9341, 11, 4-13- 93)

Section 74.37 Expiration

No permit shall be granted without an expiration date established by the board. The board, however, may upon proper application, therefore, grant extensions. (Ord. No. 9341, 12, 4-13-93)

Section 74.38 Not to Affect Zoning and Land Use Ordinances

No permit granted by a wetlands board shall affect in any way the applicable zoning and land use ordinance of this Town or the right of any person to seek compensation for any injury in fact incurred by him because of the proposed activity. (Ord. No. 9341, 13, 4- 13-93)

This ordinance was adopted by the Town Council of Cape Charles, Virginia, on April 13, 1993, amended July 11, 1995, and ratified and confirmed on June 16, 1977.

APPENDIX F - Tree Conservation and Preservation Ordinance

ARTICLE I - GENERAL

Section 1.1 Narrative

Trees are proven producers of oxygen, a necessary element for the survival of man. Trees appreciably reduce the ever-increasing and environmentally dangerous carbon dioxide contents in the air, and they play a vital role in purifying the air that man breathes.

Trees, through their root systems, stabilize the water table and play an important and effective part in soil conservation and erosion control.

Trees are an invaluable physical and psychological counterpart to the town setting, make town life more comfortable by providing shade and cooling of the air and land, reducing noise levels and glare.

The Town Council of Cape Charles has determined that the planting and preservation of trees within the Town of Cape Charles is not only desirable but essential to the present and future health, safety and welfare of all its citizens.

Section 1.2 Intent and Purpose

The intent of the Cape Charles Tree Master Plan is to develop vibrant green infrastructure in all town districts by promoting the planting of appropriate new trees, and protecting appropriate existing trees. The Plan's purpose is to ensure the beauty and ecological health of Cape Charles for its citizens and guests. The general intent and purpose of this Tree Conservation and Preservation Ordinance is to implement the Cape Charles Tree Master Plan.

The specific purposes of this ordinance are: to perpetuate tree growth; to encourage tree preservation; to provide adequate tree canopy and density; and to protect water quality by minimizing erosion and sedimentation, enhancing the infiltration of storm water runoff, and maximizing nutrient intake. The intent of these regulations is also to preserve and enhance the aesthetics of the Town, and to reduce the negative impact such as noise and glare of uses and structures which are in close proximity to each other and which are generally regarded as incompatible, and to promote attractive landscaping in residential, commercial and industrial districts of the Town. A comprehensive plan for each individual lot or parcel is essential for the visual enhancement of the Town and for the protection and promotion of appearance, character, and economic values. The purpose and intent of such landscaping requirements are to reduce the visibility of paved areas from adjacent properties and streets, moderate climatic effects, minimize noise and glare, and enhance public safety. Landscaping will provide transition and buffers between neighboring properties.

The terms and provisions of this article shall apply to real property in the town as follows:

A. All undeveloped property and property undergoing redevelopment.

B. Streetscape area of all developed property including existing developed areas and the historic district.

C. Public rights-of-way, parks and public grounds.

Section 1.3 Definitions. All terms in this chapter will be interpreted as defined in Appendix X of this Ordinance.

Section 1.4 Standards

Section 1.4.1 General Standards

A. A subdivision plat, site, or plot plan for any subdivision or site development activity shall include the planting and/or replacement of trees on the site to the extent that, at 20 years of growth, minimum tree canopy shall be provided in accord with the following standards:

B. Ten percent (10%) tree canopy for a site zoned business, commercial, or industrial. Existing trees which are to be preserved may be included to be all or in part of the canopy requirements and may include wooded preserves, if the approved site plan identifies such trees, and the trees meet the standards of appropriateness of the Cape Charles Tree Master Plan.

C. Twenty (20%) tree canopy for a residential site zoned 10 units or less per acre is provided as a maximum goal in § 15.2-961 of the Code of Virginia. On the typical 40′ x 140′ residential lot one (1) tree per twenty (20′) feet of lot frontage is required. The location of the trees on the lot shall be at the owner's discretion. Existing trees which are to be preserved may be included to be all or in part of the canopy requirements if the approved site plan identified such trees, and the trees meet the standards of appropriateness (see the Cape Charles Tree Master Plan).

D. Trees shall be selected from the specifications and standards and shall conform with the following minimum size or height (at date of planting) standards:

1.	Deciduous shade trees	6′ height
2.	Streetscape trees	6′ height
3.	Ornamental and understory trees	6′ height
4.	Coniferous trees	6′ height
5.	Evergreen shrubs	18″ spread or height
6.	Deciduous shrubs	24″ spread or height

E. Tree canopy requirements may be reduced on a case-by-case basis by waiver of the Zoning Administrator during the site plan approval process where it can be clearly demonstrated by the applicant that either (a) the reduced canopy achieves the intended landscape design objective through a combination of alternative landscape architectural and landscaping techniques or (b) where the characteristics of the property are such that the canopy coverage would not be effective and other methods of landscaping provide equal and adequate design responses. The above stipulated sizes may be modified based on specific property conditions and site design requirements.

Section 1.4.2 General Requirements

A. Landscaping shall be required in all residential, commercial and industrial districts. The owner or his agent shall be responsible for the maintenance, repair, and replacement of all landscaping materials as may be required under Town ordinances.

B. All plant material, including trees, shall be tended and maintained in a healthy growing condition and free from refuse and debris and invasive species as identified by the Virginia Division of Forestry or the Virginia Department of Agriculture, at all times. All unhealthy, dying, or dead plant materials shall be replaced during the next planting season.

C. Commercial and industrial district uses that abut residential zones shall provide a landscape buffer or screened areas between districts.

D. All parking lots shall be screened and landscaped from adjoining properties or every other use and zoning district.

E. Land disturbance shall be limited to the area necessary to provide for the desired use or development.

F. The Cape Charles Historic District Guidelines referencing Street Trees and Plantings are incorporated by reference (Streetscape, pgs. 65-66).

Section 1.4.3 Streetscape tree planting

A. All streetscape trees shall be a minimum of 6′ in height at the time of planting. Trees shall be guaranteed to be in good physical condition as determined by the Zoning Administrator or his designee, for a period of one year by the developer or owner. The one-year period shall commence from the time of final inspection.

B. Tree selection: Trees shall be selected from the specifications and standards identified in the Cape Charles Master Tree Plan 2006.

ARTICLE II - TREE REMOVAL, REPLACEMENT, AND CONSERVATION

The goal of the Cape Charles Master Tree Plan is to retain a "no net loss" in terms of trees in the streetscapes throughout the Town. However, the private property rights of landowners shall be respected in order to permit the uses of the property in accordance with the Town's Zoning Ordinance. Therefore, removal of trees is allowed within the building envelope. Removal of diseased or unsafe trees is also allowed. Clearing shall be allowed only to provide a building site, necessary access, positive site drainage, water quality BMPs, and the installation of utilities as approved by Town officials. Replacement should be provided as described herein.

The Virginia Department of Transportation ("VDOT") governs the public rights of way in Cape Charles and no work may be initiated in these rights of way without VDOT approval.

Section 2.1 Tree protection during construction.

A. Existing trees that are to be used to meet the requirements of Section 1.4 shall be protected in accordance with the following:
   1. Before construction activity begins, protective barriers must be securely in place.
   2. Minimum undisturbed areas shall be determined. This area is approximately the ground area covered by the outermost branches (drip line), as defined in the Virginia Erosion and Sediment Control Handbook.
   3. All construction activities shall also be prohibited within the minimum

undisturbed areas provided for any tree(s) for which credit is given toward satisfying the residential canopy requirements.

4. All temporary construction activities shall also be prohibited within the minimum undisturbed areas, including all excavating, filling, trenching, construction storage and dumping, and parking of construction equipment/vehicles or employee vehicles.

B. Inspection: Each lot shall be inspected and approved prior to the issuance of the certificate of occupancy or final inspection approval. All new trees must be identified with species identification tags and must remain tagged until after the inspection is complete. The inspection shall be performed by either the Zoning Administrator or a representative of the Department of Planning. Where additional residential lot trees are required, no certificate of occupancy or final inspection approval shall be issued until the required trees have been planted in accordance with Town of Cape Charles typical planting standards. When the occupancy of a structure is desired prior to the completion of the residential lot tree planting requirement, a temporary certificate of occupancy may be issued if the owner or developer provides to the Department of Code Enforcement a disclosure statement accepting responsibility for the installation of the required trees.

Section 2.2 Removal or treatment of trees on private property

A. Permit--Required.

1. A tree removal permit shall be required before any tree (or shrub which is in tree form) on property described in Article I, Section 1.2 may be destroyed or removed.
2. When a site plan, plot plan, or other development plan is required, application for a tree removal permit shall consist of a plan acceptable to the Zoning Administrator in form and content, submitted as part of the site plan or other development plan. The Zoning Administrator shall determine the plan's compliance with the requirements of the town. No plan shall be approved which does not comply with these requirements.
3. When no site plan, plot plan, or other development plan is required, application for a tree removal permit shall be submitted to the Zoning Administrator in a form which provides the information deemed necessary by the Zoning Administrator. Where no emergency exists, the Zoning Administrator shall act upon a tree removal permit application within eight (8) days from receipt of application.
4. Factors to consider: In addition to reviewing for conformance to standards and guidelines promulgated in the Cape Charles Master Tree Plan, the following factors shall also be taken into consideration:
   a. The extent to which tree clearing is shown to avoid excessive clearing and still permit the applicant to achieve the proposed development or land use.
   b. The extent to which the actual or intended use of the property is in accordance with the regulations of the zoning district in which the property lies requires clearing of trees.
   c. The hardship to the applicant which will result from a modification or rejection of the required permit.

d. The desirability of preserving any tree by reason of its size, age or some other outstanding quality, such as uniqueness, rarity or status as a landmark or species specimen.
e. The extent to which the area would be subject to environmental degradation due to removal of the trees.
f. The heightened desirability of preserving tree cover in densely developed or densely populated areas.
g. Whether the tree is diseased, injured beyond restoration, in danger of falling, interferes with utility services or creates unsafe visual clearance.

B. Replacement of trees. When warranted in the judgment of the Zoning Administrator, the applicant may be required to replace, in accordance with a tree replacement plan, any tree being removed with a suitable replacement tree elsewhere on the site. In determining whether the replacement of trees is reasonable and shall be required, the Zoning Administrator shall consider the intended use of the property together with an evaluation of the following:
1. Existing tree coverage, size and type;
2. Number of trees to be removed;
3. Area to be covered with structures, parking and driveways;
4. Grading plan and drainage requirements; and
5. Character of the site and its environs.

C. Approval. If the permit application conforms to standards and guidelines and there are no objections resulting from consideration of the factors listed above in this section, the permit application shall be approved.

D. Rejection. If the permit application does not conform to standards and guidelines or there is an objection resulting from consideration of the factors listed above in this section, the permit application shall be rejected. The Zoning Administrator may require that the application be modified to bring it into conformance with the standards and guidelines or to eliminate any objections to the application.

E. The area of land to be cleared of trees and other vegetation in conjunction with proposed development or land use shall not include any trees which are unique by reason of size, age or some other outstanding quality, such as rarity or status as a landmark or species specimen (see definition of "historic tree"). Subject to the Zoning Administrator's approval, the area to be cleared shall generally be limited to that area needed for:
1. Street construction and necessary slope construction.
2. Public service or utility easements and rights-of-way. This shall include area for utility line installation with any construction easements necessary for such installation and easements for maintenance access. These easements shall not be cleared prior to actual line installation.
3. Building roof coverage area and ancillary structures such as patios and porches plus fifteen (15) feet on all sides for construction activity. (building envelope)
4. Driveways, alleyways, walkways, parking lots and other land area necessary to the installation of the proposed development or use.
5. Sediment basins. Only those trees within the area necessary for construction of

the dam, the area in which sediment will collect, and the area necessary for construction and maintenance of the basin shall be cleared of trees.

Section 2.3 Activities of public utilities.

The authority of the zoning administrator shall extend to the control of the activities of utility companies in the matter of treating, trimming, planting or removing trees or shrubs on the public grounds and streets of the town.

It shall be unlawful for any such company to in any manner treat, trim, plant or remove trees or shrubs on any property, grounds or streets of the city without the written permission of the Zoning Administrator, who is hereby expressly given the right to withdraw any permission where inspection by the Zoning Administrator indicates that the work has not been or is not being done in compliance with good horticultural standards.

Section 2.4 Plantings along streets and public use easements (rights of way)

A. The planting, pruning or other treatment of trees upon the streets and public use easements shall be under the direction of the Town Manager or his designee. No tree upon any street or public use easement in the town shall be destroyed, cut down or otherwise removed without the consent of the Town Manager or his designee. No trees or plants of any kind shall be planted upon any street, public use easement or public property except with the consent of the Town Manager or his designee.

B. No trees shall be planted at public expense upon private property unless a public use easement has been granted; except, that, with the consent of the owner, trees may be planted upon the line between any street and the abutting private property, and trees may be planted in connection with public works projects which have disturbed private property and where the town has easements, on condition that the planting, pruning, removal or other treatment of the trees so planted shall be under the control of the Town Manager or his designee.

C. It shall be unlawful to girdle, break, bend, wound, tack signs or notices upon or in any manner injure any tree planted upon any public use easement or street or on the line thereof within the corporate limits, except with the approval of the Town Manager or his designee.

Section 2.5 Failure to comply with plan.

If the Zoning Administrator determines that the permit holder has failed to comply with the plan, the Zoning Administrator shall immediately serve upon the permit holder a notice to comply which shall be sent by registered or certified mail to the address specified by the permit holder in his permit application. Such notice shall set forth specifically the measures needed to come into compliance with such plan and shall specify the time within which such measures shall be completed. If the permit holder fails to comply within the time specified, he may be subject to revocation of the permit and the town, at the direction of the Zoning Administrator, may correct the noted deficiencies at the permit holder's expense; furthermore, the permit holder may be deemed to be in violation of this article and upon conviction could be subject to the penalties provided by this article.

Section 2.6 Exceptions; waiver of chapter

A. In the event that any tree shall be determined to be in a hazardous or dangerous condition so as to endanger the public health, welfare or safety, and require immediate removal without delay, verbal authorization may be given by the Zoning Administrator and the tree removed without obtaining a permit as herein required.

B. During the period of an emergency, such as a tornado, ice storm, flood or any other act of nature, the requirements of this article may be waived by the town manager or his designee.

Section 2.7 Replacement of trees destroyed in violation of chapter

When trees are destroyed in violation of this article, replacement trees shall be required unless exemption is granted by the Zoning Administrator. The size, species and quantity of these replacements shall be determined by the Zoning Administrator based on the value of the trees removed as calculated by the latest formula published by the International Society of Arboriculture.

Section 2.8 Appeals

An appeal to the Board of Zoning Appeals may be taken by any person aggrieved by any decision of the Town Manager, his designee or Zoning Administrator relative to the administration of this chapter. An appeal shall be taken within thirty (30) working days from the date of the issuance of the Zoning Administrator's written order, by filing with the Zoning Administrator and the Town Manager a notice of appeal specifying the grounds thereof. The Zoning Administrator shall then transmit to the Board of Zoning Appeals the record upon which the appeal is based. All decisions by the Town Manager, his designee or the Zoning Administrator shall be appealed first to the Board of Zoning Appeals, then to the Northampton County Circuit Court. An appeal stays all compliance with the action being appealed, unless the Zoning Administrator certifies to the Town Manager that by reason of stated facts a stay would, in his opinion, cause imminent endangerment to life or property. In such cases, compliance shall not be stayed other than by a restraining order which may be granted by a court of record, on application and on notice to the Zoning Administrator and on due cause shown.

Section 2.9 Violations and penalties; remedies

Any person, whether as an owner, lessee, principal, agent, employee or otherwise, who violates any of the provisions of this chapter or permits any such violation or fails to comply with any of the requirements, or who erects any building or who uses any building or any land in violation of any detailed statement of plan submitted by him and approved under the provision of this chapter shall be subject to a civil penalty not to exceed two thousand five hundred dollars ($2,500.00) for each violation. Each day upon which such violation continues shall constitute a separate violation. Furthermore the town manager, through the town attorney, may apply to the circuit court of the county for injunctive relief to enjoin a violation or a threatened violation of this chapter, it being determined that vegetation in general and trees in particular are unique and thus a proper subject of equitable relief.

Attachment 2

Proposed Model Floodplain Ordinance

XV. Example Floodplain Management Ordinance

This is an example of an ordinance that could be used by municipalities to comply with the requirements of the Federal Emergency Management Agency's (FEMA) National Flood Insurance Program (NFIP) regulations. Your municipal attorney and engineer should be consulted to make this fit the needs of your community.

In using these provisions, certain things must be understood and kept in mind:

- These provisions should be modified to reflect the kinds of flooding hazards in your community as well as the community's circumstances, objectives, or policies.

- These provisions have been prepared only with the intention of meeting the **minimum** requirements of the FEMA NFIP regulations and the Virginia Uniform State Building Code (USBC).

- The Department of Conservation and Recreation (DCR) suggests that in some cases the minimum standards provide insufficient protection, create a risk of higher than necessary insurance rates, or create a more complex program. In these cases we have recommended specific higher standards or excluded additional complex options. We do this with *italics* and try to explain why the change is recommended or a provision might require additional attention in a footnote. Local requirements (higher standards) are encouraged, such as those under the Community Rating System (CRS) for example, and are supported by the Federal Emergency Management Agency and DCR. The more restrictive local regulations are recognized as taking precedence over the federal minimum guidelines.

- The needs, circumstances, and objectives of communities are diverse and the development of a single model ordinance or set of provisions for use by all is unrealistic to produce and what is provided may be subject to community revisions to meet individualized needs.

- This document is a template highlighting minimum requirements a community must have in their ordinance pursuant to federal requirements. You must make certain changes in order for this template to act as a document that meets 44 CFR requirements for your community. Changes required are as follows:

    - Add the date of the community's effective Flood Insurance Rate Map (FIRM) and Flood Insurance Study (FIS) to the first paragraph of Article III, Section 3.1.A as indicated.
    - Adopt, sign and date the ordinance as described in Article VII.

If there are any questions concerning these suggested provisions or concerning the National Flood Insurance Program, please contact DCR's Division of Dam Safety and Floodplain Management at (804) 371-6095 or the FEMA Region 3 Office at (215) 931-5500.

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ORDINANCE NO.____

AN ORDINANCE AMENDING ORDINANCE NO.____, THE ZONING ORDINANCE OF CAPE CHARLES, VIRGINIA, BY ESTABLISHING FLOODPLAIN DISTRICTS, BY REQUIRING THE ISSUANCE OF PERMITS FOR DEVELOPMENT, AND BY PROVIDING FACTORS AND CONDITIONS FOR VARIANCES TO THE TERMS OF THE ORDINANCES.

BE IT ENACTED AND ORDAINED BY THE CAPE CHARLES, Virginia, as follows:

ARTICLE I - GENERAL PROVISIONS

Section 1.1 – Statutory Authorization and Purpose [44 CFR 59.22(a)(2)]

Va. Code § 15.2-2283 specifies that zoning ordinances shall be for the general purpose of promoting the health, safety, or general welfare of the public and of further accomplishing the objectives of § 15.2-2200 which encourages localities to improve the public health, safety, convenience, and welfare of their citizens. To these ends, flood ordinances shall be designed to provide for safety from flood, to facilitate the provision of flood protection, and to protect against loss of life, health, or property from flood.

In accordance with these directed provisions, this ordinance is specifically adopted pursuant to the authority granted to localities by Va. Code § 15.2 - 2280.

The purpose of these provisions is to prevent: the loss of life, health, or property, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief, and the impairment of the tax base by:

A. Regulating uses, activities, and development which, alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities, and frequencies;

B. Restricting or prohibiting certain uses, activities, and development from locating within districts subject to flooding;

C. Requiring all those uses, activities, and developments that do occur in flood-prone districts to be protected and/or floodproofed against flooding and flood damage; and,

D. Protecting individuals from [buying] land and structures which are unsuited for intended purposes because of flood hazards.

Section 1.2 – Applicability

These provisions shall apply to all privately and publicly owned lands within the jurisdiction of Cape Charles and identified as areas of special flood hazard *identified by the community*[1] *or* shown on the flood insurance rate map (FIRM) or included in the flood insurance study (FIS) that are provided to the Cape Charles by FEMA.

Section 1.3 - Compliance and Liability

A. No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered except in full compliance with the terms and provisions of this ordinance and any other applicable ordinances and regulations which apply to uses within the jurisdiction of this ordinance.

B. The degree of flood protection sought by the provisions of this ordinance is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study, but does not imply total flood protection. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that districts outside the floodplain district or land uses permitted within such district will be free from flooding or flood damages.

C. This ordinance shall not create liability on the part of Cape Charles or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

Section 1.4 – Records [44 CFR 59.22(a)(9)(iii)]

Records of actions associated with administering this ordinance shall be kept on file and maintained by or under the direction of the Floodplain Administrator in perpetuity[2].

Section 1.5 - Abrogation and Greater Restrictions [44 CFR 60.1(b)]

To the extent that the provisions are more restrictive, this ordinance supersedes any ordinance currently in effect in flood-prone districts. To the extent that any other existing law or regulation is more restrictive or does not conflict it shall remain in full force and effect.

These regulations are not intended to repeal or abrogate any existing ordinances including subdivision regulations, zoning ordinances, or building codes. In the event of a conflict between these regulations and any other ordinance, the more restrictive shall govern.

Section 1.6 - Severability

[1] Communities have the authority and are encouraged to regulate areas known to flood that do not appear in the FIRM or FIS. Even if you have not identified areas of flood risk that are not included in FEMA's products you might want to adopt this higher standard to reserve the option to identify and regulate locally known risk areas.

[2] This is a requirement to participate in the NFIP and is more restrictive then the Library of Virginia policy. If these records are not available, there is no way to show that a structure was built in compliance with the regulations at the time. Maintaining these records is the only way the community can show that it has been fairly administering the program.

If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this ordinance. The remaining portions shall remain in full force and effect; and for this purpose, the provisions of this ordinance are hereby declared to be severable.

Section 1.7 - Penalty for Violations [44 CFR 60.2(e)]

Any person who fails to comply with any of the requirements or provisions of this article or directions of the director of planning or any authorized employee of the Cape Charles shall be guilty of the appropriate violation and subject to the penalties thereof.

The VA USBC addresses building code violations and the associated penalties in Section 104 and Section 115. Violations and associated penalties of the Zoning Ordinance of Cape Charles are addressed in Section2.4.3 of the Zoning Ordinance.

In addition to the above penalties, all other actions are hereby reserved, including an action in equity for the proper enforcement of this article. The imposition of a fine or penalty for any violation of, or noncompliance with, this article shall not excuse the violation or noncompliance or permit it to continue; and all such persons shall be required to correct or remedy such violations within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in noncompliance with this article may be declared by the Cape Charles to be a public nuisance and abatable as such. Flood insurance may be withheld from structures constructed in violation of this article.[3]

[3] If this is not a part of the zoning ordinance specific fines and penalties will need to be adopted instead.

ARTICLE II - ADMINISTRATION

Section 2.1 - Designation of the Floodplain Administrator [44 CFR 59.22(b)]

The Cape Charles Building Official is hereby appointed to administer and implement these regulations and is referred to herein as the Floodplain Administrator. The Floodplain Administrator may:

A. Do the work themselves. In the absence of a designated Floodplain Administrator, the duties are conducted by the Cape Charles chief executive officer.

B. Delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees.

C. Enter into a written agreement or written contract with another community or private sector entity to administer specific provisions of these regulations. Administration of any part of these regulations by another entity shall not relieve the community of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations at 44 C.F.R. Section 59.22.

Section 2.2 - Duties and Responsibilities of the Floodplain Administrator [44 CFR 60.3]

The duties and responsibilities of the Floodplain Administrator shall include but are not limited to:

A. Review applications for permits to determine whether proposed activities will be located in the Special Flood Hazard Area (SFHA).

B. Interpret floodplain boundaries and provide available base flood elevation and flood hazard information.

C. Review applications to determine whether proposed activities will be reasonably safe from flooding and require new construction and substantial improvements to meet the requirements of these regulations.

D. Review applications to determine whether all necessary permits have been obtained from the Federal, State, or local agencies from which prior or concurrent approval is required; in particular, permits from state agencies for any construction, reconstruction, repair, or alteration of a dam, reservoir, or waterway obstruction (including bridges, culverts, structures), any alteration of a watercourse, or any change of the course, current, or cross section of a stream or body of water, including any change to the 100-year frequency floodplain of free-flowing non-tidal waters of the State.

E. Verify that applicants proposing an alteration of a watercourse have notified adjacent communities, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management), and other appropriate agencies (VADEQ, USACE), and have submitted copies of such notifications to FEMA.

F. Advise applicants for new construction or substantial improvement of structures that are located within an area of the Coastal Barrier Resources System established by the Coastal Barrier Resources Act that Federal flood insurance is not available on such structures; areas

subject to this limitation are shown on Flood Insurance Rate Maps as Coastal Barrier Resource System Areas (CBRS) or Otherwise Protected Areas (OPA).

G. Approve applications and issue permits to develop in flood hazard areas if the provisions of these regulations have been met, or disapprove applications if the provisions of these regulations have not been met.

H. Inspect or cause to be inspected, buildings, structures, and other development for which permits have been issued to determine compliance with these regulations or to determine if non-compliance has occurred or violations have been committed.

I. Review Elevation Certificates and require incomplete or deficient certificates to be corrected.

J. Submit to FEMA, or require applicants to submit to FEMA, data and information necessary to maintain FIRMs, including hydrologic and hydraulic engineering analyses prepared by or for the Cape Charles, within six months after such data and information becomes available if the analyses indicate changes in base flood elevations.

K. Maintain and permanently keep records that are necessary for the administration of these regulations, including:

1. Flood Insurance Studies, Flood Insurance Rate Maps (including historic studies and maps and current effective studies and maps), and Letters of Map Change; and

2. Documentation supporting issuance and denial of permits, Elevation Certificates, documentation of the elevation (in relation to the datum on the FIRM) to which structures have been floodproofed, inspection records, other required design certifications, variances, and records of enforcement actions taken to correct violations of these regulations.

L. Enforce the provisions of these regulations, investigate violations, issue notices of violations or stop work orders, and require permit holders to take corrective action.

M. Advise the Board of Zoning Appeals regarding the intent of these regulations and, for each application for a variance, prepare a staff report and recommendation.

N. Administer the requirements related to proposed work on existing buildings:

1. Make determinations as to whether buildings and structures that are located in flood hazard areas and that are damaged by any cause have been substantially damaged.

2. Make reasonable efforts to notify owners of substantially damaged structures of the need to obtain a permit to repair, rehabilitate, or reconstruct. Prohibit the non-compliant repair of substantially damaged buildings except for temporary emergency protective measures necessary to secure a property or stabilize a building or structure to prevent additional damage.

O. Undertake, as determined appropriate by the Floodplain Administrator due to the circumstances, other actions which may include but are not limited to: issuing press

releases, public service announcements, and other public information materials related to permit requests and repair of damaged structures; coordinating with other Federal, State, and local agencies to assist with substantial damage determinations; providing owners of damaged structures information related to the proper repair of damaged structures in special flood hazard areas; and assisting property owners with documentation necessary to file claims for Increased Cost of Compliance coverage under NFIP flood insurance policies.

P. Notify the Federal Emergency Management Agency when the corporate boundaries of the Cape Charles have been modified and:

1. Provide a map that clearly delineates the new corporate boundaries or the new area for which the authority to regulate pursuant to these regulations has either been assumed or relinquished through annexation; and

2. If the FIRM for any annexed area includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in these regulations, prepare amendments to these regulations to adopt the FIRM and appropriate requirements, and submit the amendments to the governing body for adoption; such adoption shall take place at the same time as or prior to the date of annexation and a copy of the amended regulations shall be provided to Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and FEMA.

Q. Upon the request of FEMA, complete and submit a report concerning participation in the NFIP which may request information regarding the number of buildings in the SFHA, number of permits issued for development in the SFHA, and number of variances issued for development in the SFHA.

R. It is the duty of the Community Floodplain Administrator to take into account flood, mudslide and flood-related erosion hazards, to the extent that they are known, in all official actions relating to land management and use throughout the entire jurisdictional area of the Community, whether or not those hazards have been specifically delineated geographically (e.g. via mapping or surveying).

Section 2.3 - Use and Interpretation of FIRMs [44 CFR 60.3]

The Floodplain Administrator shall make interpretations, where needed, as to the exact location of special flood hazard areas, floodplain boundaries, and floodway boundaries. The following shall apply to the use and interpretation of FIRMs and data:

A. Where field surveyed topography indicates that adjacent ground elevations:

1. Are below the base flood elevation in riverine SFHAs, or below the 1% storm surge elevation in coastal SFHAs, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as special flood hazard area and subject to the requirements of these regulations;

2. Are above the base flood elevation and the area is labelled as a SFHA on the FIRM, the area shall be regulated as special flood hazard area unless the applicant obtains a Letter of Map Change that removes the area from the SFHA.

B. In FEMA-identified special flood hazard areas where base flood elevation and floodway data have not been identified and in areas where FEMA has not identified SFHAs, any other flood hazard data available from a Federal, State, or other source shall be reviewed and reasonably used.

C. Base flood elevations and designated floodway boundaries on FIRMs and in FISs shall take precedence over base flood elevations and floodway boundaries by any other sources if such sources show reduced floodway widths and/or lower base flood elevations.

D. Other sources of data shall be reasonably used if such sources show increased base flood elevations and/or larger floodway areas than are shown on FIRMs and in FISs.

E. If a Preliminary Flood Insurance Rate Map and/or a Preliminary Flood Insurance Study has been provided by FEMA:

1. Upon the issuance of a Letter of Final Determination by FEMA, the preliminary flood hazard data shall be used and shall replace the flood hazard data previously provided from FEMA for the purposes of administering these regulations.

2. Prior to the issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data shall be deemed the best available data pursuant to Article III, Section 3.1.A.3 and used where no base flood elevations and/or floodway areas are provided on the effective FIRM.

3. Prior to issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data is permitted where the preliminary base flood elevations or floodway areas exceed the base flood elevations and/or designated floodway widths in existing flood hazard data provided by FEMA. Such preliminary data may be subject to change and/or appeal to FEMA.

Section 2.4 - Jurisdictional Boundary Changes [44 CFR 59.22, 65.3]

The County floodplain ordinance in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas until the municipality adopts and enforces an ordinance which meets the requirements for participation in the National Flood Insurance Program. Municipalities with existing floodplain ordinances shall pass a resolution acknowledging and accepting responsibility for enforcing floodplain ordinance standards prior to annexation of any area containing identified flood hazards. If the FIRM for any annexed area includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in these regulations, the governing body shall prepare amendments to these regulations to adopt the FIRM and appropriate requirements, and submit the amendments to the governing body for adoption; such adoption shall take place at the same time as or prior to the date of annexation and a copy of the amended regulations shall be provided to Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and FEMA.

In accordance with the Code of Federal Regulations, Title 44 Subpart (B) Section 59.22(a)(9)(v) all NFIP participating communities must notify the Federal Insurance Administration and optionally the State Coordinating Office in writing whenever the boundaries of the community

have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce floodplain management regulations for a particular area.

In order that all Flood Insurance Rate Maps accurately represent the community's boundaries, a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished floodplain management regulatory authority must be included with the notification.

Section 2.5 - District Boundary Changes

The delineation of any of the Floodplain Districts may be revised by the Cape Charles where natural or man-made changes have occurred and/or where more detailed studies have been conducted or undertaken by the U. S. Army Corps of Engineers or other qualified agency, or an individual documents the need for such change. However, prior to any such change, approval must be obtained from the Federal Emergency Management Agency. A completed LOMR is a record of this approval.

Section 2.6 - Interpretation of District Boundaries

Initial interpretations of the boundaries of the Floodplain Districts shall be made by the Zoning Officer. Should a dispute arise concerning the boundaries of any of the Districts, the Board of Zoning Appeals shall make the necessary determination. The person questioning or contesting the location of the District boundary shall be given a reasonable opportunity to present his case to the Board and to submit his own technical evidence if he so desires.

Section 2.7 – Submitting Model Backed Technical Data [44 CFR 65.3]

A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, a community shall notify the Federal Emergency Management Agency of the changes by submitting technical or scientific data. The community may submit data via a LOMR. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.

Section 2.8 – Letters of Map Revision

When development in the floodplain will cause or causes a change in the base flood elevation, the applicant, including state agencies, must notify FEMA by applying for a Conditional Letter of Map Revision and then a Letter of Map Revision.

Example cases:

- Any development that causes a rise in the base flood elevations within the floodway**.**
- Any development occurring in Zones A1-30 and AE without a designated floodway, which will cause a rise of more than one foot in the base flood elevation.

- Alteration or relocation of a stream (including but not limited to installing culverts and bridges) *44 Code of Federal Regulations §65.3 and §65.6(a)(12).*

ARTICLE III - ESTABLISHMENT OF ZONING DISTRICTS

Section 3.1 - Description of Special Flood Hazard Districts [44 CFR 59.1, 60.3]

A. Basis of Districts

The various special flood hazard districts shall include the SFHAs. The basis for the delineation of these districts shall be the FIS and the FIRM for Cape Charles prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated March 2nd, 2015 and any subsequent revisions or amendments thereto.

The Cape Charles may identify and regulate local flood hazard or ponding areas that are not delineated on the FIRM. These areas may be delineated on a "Local Flood Hazard Map" using best available topographic data and locally derived information such as flood of record, historic high water marks, or approximate study methodologies.

The boundaries of the SFHA Districts are established as shown on the FIRM which is declared to be a part of this ordinance and which shall be kept on file at the Cape Charles offices.

1. The **Floodway District** is in an **AE Zone** and is delineated, for purposes of this ordinance, using the criterion that certain areas within the floodplain must be capable of carrying the waters of the one percent annual chance flood without increasing the water surface elevation of that flood more than one (1) foot at any point. The areas included in this District are specifically defined in Table ____ of the above-referenced FIS and shown on the accompanying FIRM.

   The following provisions shall apply within the Floodway District of an AE zone [44 CFR 60.3(d)]:

   a. Within any floodway area, no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment will not result in any increase in flood levels within the community during the occurrence of the base flood discharge. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently-accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the Floodplain Administrator.

      Development activities which increase the water surface elevation of the base flood may be allowed, provided that the applicant first applies – with the Cape Charles' endorsement – for a Conditional Letter of Map Revision (CLOMR), and receives the approval of the Federal Emergency Management Agency.

      If Article III, Section 3.1.A.1.a is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article 4.

Commented [AA1]: Town still determining this, as of 8.2.23

b. The placement of manufactured homes (mobile homes) is prohibited, except in an existing manufactured home (mobile home) park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring, elevation, and encroachment standards are met.

2. The **AE, or AH Zones** on the FIRM accompanying the FIS shall be those areas for which one-percent annual chance flood elevations have been provided and the floodway has **not** been delineated. The following provisions shall apply within an AE or AH zone [44 CFR 60.3(c)] where FEMA has provided base flood elevations[4]:

   Until a regulatory floodway is designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within the areas of special flood hazard, designated as Zones A1-30, AE, or AH on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the Cape Charles.

Development activities in Zones Al-30, AE, or AH on the Cape Charles' FIRM which increase the water surface elevation of the base flood by more than one foot may be allowed, provided that the applicant first applies – with the Cape Charles' endorsement – for a Conditional Letter of Map Revision, and receives the approval of the Federal Emergency Management Agency.

3. The **A Zone** on the FIRM accompanying the FIS shall be those areas for which no detailed flood profiles or elevations are provided, but the one percent annual chance floodplain boundary has been approximated. For these areas, the following provisions shall apply [44 CFR 60.3(b)]:

   The Approximated Floodplain District shall be that floodplain area for which no detailed flood profiles or elevations are provided, but where a one percent annual chance floodplain boundary has been approximated. Such areas are shown as Zone A on the maps accompanying the FIS. For these areas, the base flood elevations and floodway information from Federal, State, and other acceptable sources shall be used, when available. Where the specific one percent annual chance flood elevation cannot be determined for this area using other sources of data, such as the U. S. Army Corps of Engineers Floodplain Information Reports, U. S. Geological Survey Flood-Prone Quadrangles, etc., then the applicant for the proposed use, development and/or activity shall determine this base flood elevation. For development proposed in the approximate floodplain the applicant must use technical methods that correctly reflect currently accepted practices, such as point on boundary, high water marks, or detailed methodologies hydrologic and hydraulic analyses. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the Floodplain Administrator.

4 The requirement in 60.3(c)(10) only applies along rivers, streams, and other watercourses where FEMA has provided base flood elevations. The requirement does not apply along lakes, bays and estuaries, and the ocean coast.

The Floodplain Administrator reserves the right to require a hydrologic and hydraulic analysis for any development. When such base flood elevation data is utilized, the lowest floor shall be elevated to or above the base flood *level plus eighteen (18) inches*[5].

During the permitting process, the Floodplain Administrator shall obtain:

a. The elevation of the lowest floor (in relation to mean sea level), including the basement, of all new and substantially improved structures; and,

b. If the structure has been floodproofed in accordance with the requirements of this article, the elevation (in relation to mean sea level) to which the structure has been floodproofed.

Base flood elevation data shall be obtained from other sources or developed using detailed methodologies comparable to those contained in a FIS for subdivision proposals and other proposed development proposals (including manufactured home parks and subdivisions) that exceed fifty lots or five acres, whichever is the lesser[6].

4. The **AO Zone** on the FIRM accompanying the FIS shall be those areas of shallow flooding identified as AO on the FIRM. For these areas, the following provisions shall apply [44 CFR 60.3(c)]:

   a. All new construction and substantial improvements of residential structures shall have the lowest floor, including basement, elevated to or above the flood depth specified on the FIRM, above the highest adjacent grade at least as high as the depth number specified in feet on the FIRM. If no flood depth number is specified, the lowest floor, including basement, shall be elevated no less than two feet above the highest adjacent grade.

   b. All new construction and substantial improvements of non-residential structures shall

      (1) Have the lowest floor, including basement, elevated to or above the flood depth specified on the FIRM, above the highest adjacent grade at least as high as the depth number specified in feet on the FIRM. If no flood depth number is specified, the lowest floor, including basement, shall be elevated at least two feet above the highest adjacent grade; or,

      (2) Together with attendant utility and sanitary facilities be completely floodproofed to the specified flood level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

[5] The flood maps anticipate one foot of rise in BFE due to fill in the floodplain, so while building to BFE is all that is required; it will result in flooding if all assumptions made in mapping are correct. Flood insurance rounds up for freeboard so an 18 inch requirement offers the best "bang for the buck" in reducing flood insurance rates and allows for an additional margin of safety in case the models have an error or are based on incomplete data.

[6] The recommended standard here is 5 lots instead of 50. Fifty lots is the breakpoint suggested in the federal regulations but the 5/5 rule is less confusing and captures more commercial development.

c. Adequate drainage paths around structures on slopes shall be provided to guide floodwaters around and away from proposed structures.

5. The **Coastal A Zone**[7] is labelled as AE on the FIRM; it is those areas that are seaward of the limit of moderate wave action (LiMWA) line. As defined by the VA USBC, these areas are subject to wave heights between 1.5 feet and 3 feet. For these areas, the following provisions shall apply:

   Buildings and structures within this zone shall have the lowest floor elevated to or above the base flood elevation plus one foot[8] of freeboard, and must comply with the provisions in Article III, Section 3.1.A.2 and Article IV, Sections 4.2 and 4.3.

6. The **VE or V Zones** on FIRMs accompanying the FIS shall be those areas that are known as Coastal High Hazard areas, extending from offshore to the inland limit of a primary frontal dune along an open coast or other areas subject to high velocity waves. For these areas, the following provisions shall apply [44 CFR 60.3(e)]:

   a. All new construction and substantial improvements in Zones V and VE, including manufactured homes, shall be elevated on pilings or columns so that:

      (1) The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level *plus eighteen (18) inches.*[9] if the lowest horizontal structural member is parallel to the direction of wave approach or elevated at least two feet above the base flood level if the lowest horizontal structural member is perpendicular to the direction of wave approach; and,

      (2) The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall each have a one percent chance of being equaled or exceeded in any given year (one-percent annual chance).

   b. A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of Article III, Section A.6.a.

   c. The Floodplain Administrator shall obtain the elevation (in relation to mean sea level) of the bottom of the lowest horizontal structural member of the lowest floor

[7] Instead of having a coastal A zone a community can include this area in the V zone, adopting these standards for Coastal A areas provides a higher degree of protection, reflects the level of surge risk seen in actual events, and helps ensure that buildings built now receive favorable insurance rates if FEMA does change their program requirements to include coastal A limitations. Right now the only provisions effecting this zone are found in the Virginia Building Code and are reflected in the language here.

[8] If your community has adopted a higher freeboard (as is recommended) this one foot requirement might need to be changed for consistency with the freeboard required in A or V zones. Consider changing the one foot to 18" of freeboard.

[9] . Flood insurance rounds up for freeboard so an 18 inch requirement offers the best "bang for the buck" in reducing flood insurance rates and allows for an additional margin of safety in case the models have an error or are based on incomplete data.

(excluding pilings and columns) of all new and substantially improved structures in Zones V and VE. The Floodplain Management Administrator shall maintain a record of all such information.

d. All new construction shall be located landward of the reach of mean high tide.

e. All new construction and substantial improvements shall have the space below the lowest floor either free of obstruction[10] or constructed with non-supporting breakaway walls, open wood-lattice work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purpose of this Section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

(1) Breakaway wall collapse shall result from water load less than that which would occur during the base flood; and

(2) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Maximum wind and water loading values to be used in this determination shall each have a one percent chance of being equaled or exceeded in any given year.

f. The enclosed space below the lowest floor shall be used solely for parking of vehicles, building access, or storage. Such space shall not be partitioned into multiple rooms, temperature-controlled, or used for human habitation. The enclosed space shall be less than 300 square feet.[11]

g. The use of fill for structural support of buildings is prohibited. When non-structural fill is proposed in a coastal high hazard area, appropriate engineering analyses shall be conducted to evaluate the impacts of the fill prior to issuance of a permit.

h. The man-made alteration of sand dunes, which would increase potential flood damage, is prohibited.

7. The mapped floodplain includes all of the above regions and also the regions designated as having a 0.2 percent annual chance of flooding on any flood map or flood insurance study. In this area no emergency service, medical service, or governmental records

[10] An optional higher standard is to simply require that all areas below the lowest floor be free from obstructions that cannot be seen though. This makes it much easier to be sure that these areas are not converted to living spaces and means that breakaway walls do not need technical inspections.

[11] Spaces that are 300 square feet or more trigger very high insurance rates, so limiting the size of these spaces to less than 300 square feet is a higher standard that can make the structure more affordable to insure.

storage shall be allowed except by special exception using the variance process.[12]

Section 3.2 - Overlay Concept

The Floodplain Districts described above shall be overlays to the existing underlying districts as shown on the Official Zoning Ordinance Map, and as such, the provisions for the floodplain districts shall serve as a supplement to the underlying district provisions.

If there is any conflict between the provisions or requirements of the Floodplain Districts and those of any underlying district, the more restrictive provisions and/or those pertaining to the floodplain districts shall apply.

In the event any provision concerning a Floodplain District is declared inapplicable as a result of any legislative or administrative actions or judicial decision, the basic underlying provisions shall remain applicable.

[12] This limitation on the use of the 0.2 percent floodplain is not required by NFIP regulations but is an accepted standard for critical facilities in emergency management. Critical facilities that are built in mapped floodplain might not be eligible for rebuilding assistance after a disaster, therefore DCR recommends this provision to ensure that any decision made to build in these circumstances is carefully considered.

ARTICLE IV - DISTRICT PROVISIONS [44 CFR 59.22, 60.2, 60.3]

Section 4.1 – Permit and Application Requirements

A. Permit Requirement

All uses, activities, and development occurring within any floodplain district, including placement of manufactured homes, shall be undertaken only upon the issuance of a permit. Such development shall be undertaken only in strict compliance with the provisions of this Ordinance and with all other applicable codes and ordinances, as amended, such as the Virginia Uniform Statewide Building Code (VA USBC) and the Cape Charles Subdivision Ordinance. Prior to the issuance of any such permit, the Floodplain Administrator shall require all applications to include compliance with all applicable State and Federal laws and shall review all sites to assure they are reasonably safe from flooding. Under no circumstances shall any use, activity, and/or development adversely affect the capacity of the channels or floodways of any watercourse, drainage ditch, or any other drainage facility or system.

B. Site Plans and Permit Applications

All applications for development within any floodplain district and all permits issued for the floodplain shall incorporate the following information:

1. The elevation of the Base Flood at the site.

2. For structures to be elevated, the elevation of the lowest floor (including basement) or, in V zones, the lowest horizontal structural member.

3. For structures to be floodproofed (non-residential only), the elevation to which the structure will be floodproofed.

4. Topographic information showing existing and proposed ground elevations.

Section 4.2 - General Standards

The following provisions shall apply to all permits:

A. New construction and substantial improvements shall be built according to this ordinance and the VA USBC, and anchored to prevent flotation, collapse, or lateral movement of the structure.

B. Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state anchoring requirements for resisting wind forces.

C. New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

D. New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.

E. Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities, including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

F. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

G. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

H. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

In addition to provisions A – H above, in all special flood hazard areas, the additional provisions shall apply:

I. Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within this jurisdiction a permit shall be obtained from the U. S. Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission (a joint permit application is available from any of these organizations). Furthermore, in riverine areas, notification of the proposal shall be given by the applicant to all affected adjacent jurisdictions, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management), other required agencies, and the Federal Emergency Management Agency.

J. The flood carrying capacity within an altered or relocated portion of any watercourse shall be maintained.

Section 4.3 - Elevation and Construction Standards [44 CFR 60.3]

In all identified flood hazard areas where base flood elevations have been provided in the FIS or generated by a certified professional in accordance with Article III, Section 3.1.A.3 the following provisions shall apply:

A. For all properties required to comply with the freeboard elevation, the height allowance or restriction identified in Article 3 may be exceeded equal to the freeboard requirement.

B. Residential Construction

New construction or substantial improvement of any residential structure (including manufactured homes) in Zones A1-30, AE, AH, and A with detailed base flood elevations shall have the lowest floor, including basement, elevated to or above the base flood level plus eighteen(18) inches[13]. See Article III, Section 3.1.A.5 and Article III, Section 3.1.A.6 for requirements in the Coastal A, VE, and V zones.

[13] The flood maps anticipate one foot of rise in BFE due to fill in the floodplain, so while building to BFE is all that is required; it will result in flooding if all assumptions made in mapping are correct. Flood insurance rounds up for freeboard so an 18 inch requirement offers the best "bang for the buck" in reducing flood insurance rates and allows for an additional margin of safety in case the models have an error or are based on incomplete data

C. Non-Residential Construction

1. New construction or substantial improvement of any commercial, industrial, or non-residential building (or manufactured home) shall have the lowest floor, including basement, elevated to or above the base flood level plus eighteen (18) inches[14]. See Article III, Section 3.1.A.5 and Article III, Section 3.1.A.6 for requirements in the Coastal A, VE, and V zones.

2. Non-residential buildings located in all A1-30, AE, and AH zones may be floodproofed in lieu of being elevated provided that all areas of the building components below the elevation corresponding to the BFE plus two feet[15] are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification, including the specific elevation (in relation to mean sea level) to which such structures are floodproofed, shall be maintained by (title of community administrator).

D. Space Below the Lowest Floor

In zones A, AE, AH, AO, and A1-A30, fully enclosed areas, of new construction or substantially improved structures, which are below the regulatory flood protection elevation shall:

1. Not be designed or used for human habitation, but shall be used solely for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator).

2. Be constructed entirely of flood resistant materials below the regulatory flood protection elevation;

3. Include measures to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet the following minimum design criteria:

   a. Provide a minimum of two openings on different sides of each enclosed area subject to flooding.

[14] The flood maps anticipate one foot of rise in BFE due to fill in the floodplain, so while building to BFE is all that is required; it will result in flooding if all assumptions made in mapping are correct. Flood insurance rounds up for freeboard so an 18 inch requirement offers the best "bang for the buck" in reducing flood insurance rates and allows for an additional margin of safety in case the models have an error or are based on incomplete data

[15] If your community has adopted the recommended freeboard you might need to change this provision to be consistent or higher than the freeboard otherwise required. Please note that the minimum requirements are BFE plus one foot – two feet of freeboard is the recommended minimum.

b. The total net area of all openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding.

c. If a building has more than one enclosed area, each area must have openings to allow floodwaters to automatically enter and exit.

d. The bottom of all required openings shall be no higher than one (1) foot above the adjacent grade.

e. Openings may be equipped with screens, louvers, or other opening coverings or devices, provided they permit the automatic flow of floodwaters in both directions.

f. Foundation enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires openings as outlined above.

D. Accessory Structures

1. Accessory structures in the SFHA shall comply with the elevation requirements and other requirements of Article IV, Section 4.3.B or, if not elevated or dry floodproofed, shall:

   a. Not be used for human habitation;

   b. Be limited to no more than *600 square feet*[16] in total floor area;

   c. Be useable only for parking of vehicles or limited storage;

   d. Be constructed with flood damage-resistant materials below the base flood elevation;

   e. Be constructed and placed to offer the minimum resistance to the flow of floodwaters;

   f. Be anchored to prevent flotation;

   g. Have electrical service and mechanical equipment elevated to or above the base flood elevation;

   h. Shall be provided with flood openings which shall meet the following criteria:

      (1) There shall be a minimum of two flood openings on different sides of each enclosed area; if a building has more than one enclosure below the lowest floor,

[16] This is the minimum size restriction set by FEMA Region III, but a community could choose a higher standard and limit accessory structures to a size less than 600 square feet. However, a variance could be issued for larger accessory structures, not to exceed 600 square feet. If a smaller size limit is chosen, additional language would be required in Article VI: Variances - see Footnote 23. The chosen size restriction should also be reflected in Article IV, Section 4.3.D.2.b, Article VI, Section M, and Article VIII-Glossary in the definition of "Appurtenant or accessory structure".

each such enclosure shall have flood openings on exterior walls.

(2) The total net area of all flood openings shall be at least 1 square inch for each square foot of enclosed area (non-engineered flood openings), or the flood openings shall be engineered flood openings that are designed and certified by a licensed professional engineer to automatically allow entry and exit of floodwaters; the certification requirement may be satisfied by an individual certification or an Evaluation Report issued by the ICC Evaluation Service, Inc.

(3) The bottom of each flood opening shall be 1 foot or less above the higher of the interior floor or grade, or the exterior grade, immediately below the opening.

(4) Any louvers, screens or other covers for the flood openings shall allow the automatic flow of floodwaters into and out of the enclosed area.

E. Standards for Manufactured Homes and Recreational Vehicles

1. In zones A, AE, AH, and AO, all manufactured homes placed, or substantially improved, on individual lots or parcels, must meet all the requirements for new construction, including the elevation and anchoring requirements in Article III, Section 3.1.A.6 and Article IV, Sections 4.2 and 4.3.

2. All recreational vehicles placed on sites must either:

a. Be on the site for fewer than 180 consecutive days, be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions); or

b. Meet all the requirements for manufactured homes in Article IV, Section 4.3.E.1.

Section 4.4 - Standards for Subdivision Proposals

A. All subdivision proposals shall be consistent with the need to minimize flood damage;

B. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;

C. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards, and

D. Base flood elevation data shall be obtained from other sources or developed using detailed methodologies, hydraulic and hydrologic analysis, comparable to those contained in a Flood Insurance Study for subdivision proposals and other proposed development

proposals (including manufactured home parks and subdivisions) that exceed fifty[17] lots or five acres, whichever is the lesser.

[17] The recommended standard here is 5 lots instead of 50. Fifty lots is the breakpoint suggested in the federal regulations, but the 5/5 rule is less confusing and captures more commercial development.

ARTICLE V – EXISTING STRUCTURES IN FLOODPLAIN AREAS

Any structure or use of a structure or premises must be brought into conformity with these provisions when it is changed, repaired, or improved[18] unless one of the following exceptions is established before the change is made:

A. The floodplain manager has determined that:

   1. Change is not a substantial repair or substantial improvement AND

   2. No new square footage is being built in the floodplain that is not complaint AND

   3. No new square footage is being built in the floodway AND

   4. The change complies with this ordinance and the VA USBC AND

   5. The change, when added to all the changes made during a rolling 5-year period does not constitute 50% of the structure's value.[19]

B. The changes are required to comply with a citation for a health or safety violation.

C. The structure is a historic structure and the change required would impair the historic nature of the structure.

[18] The assumption that all buildings will be brought in to compliance unless an exception is found is not required by the federal regulations, it is a recommended change for the sake of administrative efficiency and improved compliance.
[19] This cumulative change requirement is a recommended higher standard. DCR has found that not having a time period for cumulative change can lead to people trying to split work up to avoid hitting the 50% limit which puts the community in a difficult place with enforcement and increases administrative burdens.

ARTICLE VI - VARIANCES: FACTORS TO BE CONSIDERED [44 CFR 60.6]

Variances shall be issued only upon (i) a showing of good and sufficient cause, (ii) after the Board of Zoning Appeals has determined that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) after the Board of Zoning Appeals has determined that the granting of such variance will not result in (a) unacceptable or prohibited increases in flood heights, (b) additional threats to public safety, (c) extraordinary public expense; and will not (d) create nuisances, (e) cause fraud or victimization of the public, or (f) conflict with local laws or ordinances.

While the granting of variances generally is limited to a lot size less than one-half acre, deviations from that limitation may occur. However, as the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases. Variances may be issued by the Board of Zoning Appeals for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the provisions of this Section.

Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the criteria of this Section are met, and the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

In passing upon applications for variances, the Board of Zoning Appeals shall satisfy all relevant factors and procedures specified in other sections of the zoning ordinance and consider the following additional factors:

A. The danger to life and property due to increased flood heights or velocities caused by encroachments. No variance shall be granted for any proposed use, development, or activity within any Floodway District that will cause any increase in the one percent (1%) chance flood elevation.

B. The danger that materials may be swept on to other lands or downstream to the injury of others.

C. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.

D. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.

E. The importance of the services provided by the proposed facility to the community.

F. The requirements of the facility for a waterfront location.

G. The availability of alternative locations not subject to flooding for the proposed use.

H. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.

I. The relationship of the proposed use to the comprehensive plan and floodplain

management program for the area.

J. The safety of access by ordinary and emergency vehicles to the property in time of flood.

K. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.

L. The historic nature of a structure. Variances for repair or rehabilitation of historic structures may be granted upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

M. No variance shall be granted for an accessory structure exceeding 600 square feet. *(Note: See Article IV, Section 4.3.D.2).* [20]

N. Such other factors which are relevant to the purposes of this Ordinance.

The Board of Zoning Appeals may refer any application and accompanying documentation pertaining to any request for a variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for flood protection and other related matters.

Variances shall be issued only after the Board of Zoning Appeals has determined that the granting of such will not result in (a) unacceptable or prohibited increases in flood heights, (b) additional threats to public safety, (c) extraordinary public expense; and will not (d) create nuisances, (e) cause fraud or victimization of the public, or (f) conflict with local laws or ordinances.

Variances shall be issued only after the Board of Zoning Appeals has determined that the variance will be the minimum required to provide relief.

The Board of Zoning Appeals shall notify the applicant for a variance, in writing that the issuance of a variance to construct a structure below the one percent (1%) chance flood elevation (a) increases the risks to life and property and (b) will result in increased premium rates for flood insurance.
A record shall be maintained of the above notification as well as all variance actions, including justification for the issuance of the variances. Any variances that are issued shall be noted in the annual or biennial report submitted to the Federal Insurance Administrator.

[20] If a size restriction for accessory structures that is less than 600 square feet is chosen, variances could be issued for structures larger than that size restriction, not to exceed 600 square feet. In this case, additional language is required under Article VI, Section M. Suggested language:

> "Accessory structures within the SFHA that are greater than {insert size restriction} square feet, do not exceed 600 square feet, and do not meet all requirements for elevating or dry floodproofing, as set out in Article IV, Section 4.3.B, must secure a variance in accordance with the floodplain ordinance before a permit is issued. The structure must comply with accessory structure criteria in Article IV, Section 4.3.D.2. No variance shall be granted for an accessory structure exceeding 600 square feet. *(Note: See Article IV, Section 4.3.D.2).*"

ARTICLE VII - GLOSSARY [44 CFR 59.1]

A. Appurtenant or accessory structure - A non-residential structure which is on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Accessory structures are not to exceed *600 square feet*[21].

B. Base flood - The flood having a one percent chance of being equalled or exceeded in any given year.

C. Base flood elevation - The water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year. The water surface elevation of the base flood in relation to the datum specified on the community's Flood Insurance Rate Map. For the purposes of this ordinance, the base flood is the 1% annual chance flood.

D. Basement - Any area of the building having its floor sub-grade (below ground level) on all sides.

E. Board of Zoning Appeals - The board appointed to review appeals made by individuals with regard to decisions of the Zoning Administrator in the interpretation of this ordinance.

F. Coastal A Zone - Flood hazard areas that have been delineated as subject to wave heights between 1.5 feet and 3 feet.

G. Development - Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, temporary structures, mining, dredging, filling, grading, paving, excavation, drilling or other land-disturbing activities or permanent or temporary storage of equipment or materials.

H. Elevated building - A non-basement building built to have the lowest floor elevated above the ground level by means of solid foundation perimeter walls, pilings, or columns (posts and piers).

I. Encroachment - The advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

J. Existing construction - For the purposes of the insurance program, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975 for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures" and "pre-FIRM."

K. Flood or flooding -
1. A general or temporary condition of partial or complete inundation of normally dry

[21] This is the size restriction set by FEMA Region III, but a community could choose a higher standard and limit accessory structures to a size less than 600 square feet. However, a variance could be issued for larger accessory structures, not to exceed 600 square feet. If a smaller size limit is chosen, additional language would be required in Article VI: Variances - see Footnote 23. The chosen size restriction should also be reflected in Article IV, Section 4.3.D.2.b, Article VI, Section M, and Article VIII-Glossary in the definition of "Appurtenant or accessory structure".

land areas from:

a. The overflow of inland or tidal waters; or,
b. The unusual and rapid accumulation or runoff of surface waters from any source.
c. Mudflows which are proximately caused by flooding as defined in paragraph (1)(b) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

2. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph 1 (a) of this definition.

L. Flood Insurance Rate Map (FIRM) - an official map of a community, on which the Federal Emergency Management Agency has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

M. Flood Insurance Study (FIS) - a report by FEMA that examines, evaluates and determines flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudflow and/or flood-related erosion hazards.

N. Floodplain or flood-prone area - Any land area susceptible to being inundated by water from any source.

O. Floodproofing - any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

P. Floodway - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot at any point within the community.

Q. Freeboard - A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. “Freeboard” tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization in the watershed.

R. Functionally dependent use - A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. This term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and shipbuilding and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

S. Highest adjacent grade - the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

T. Historic structure - Any structure that is:
1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
   a. By an approved state program as determined by the Secretary of the Interior; or,
   b. Directly by the Secretary of the Interior in states without approved programs.

U. Hydrologic and Hydraulic Engineering Analysis - Analyses performed by a licensed professional engineer, in accordance with standard engineering practices that are accepted by the Virginia Department of Conservation and Recreation and FEMA, used to determine the base flood, other frequency floods, flood elevations, floodway information and boundaries, and flood profiles.

V. Letters of Map Change (LOMC) - A Letter of Map Change is an official FEMA determination, by letter, that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

Letter of Map Amendment (LOMA) - An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a land as defined by meets and bounds or structure is not located in a special flood hazard area.

Letter of Map Revision (LOMR) - A revision based on technical data that may show changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features. A Letter of Map Revision Based on Fill (LOMR-F), is a determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer exposed to flooding associated with the base flood. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.

Conditional Letter of Map Revision (CLOMR) - A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study.

W. Lowest adjacent grade - the lowest natural elevation of the ground surface next to the walls of a structure.

X. Lowest floor - The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest

floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Federal Code 44CFR §60.3.

Y. Manufactured home - A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

Z. Manufactured home park or subdivision - a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

AA. Mean Sea Level – for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or the North American Vertical Datum (NAVD) of 1988 to which base flood elevations shown on a community's FIRM are referenced.

BB. New construction - For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after_____ {insert the effective date of the community's initial Flood Insurance Rate Map} [*or "*after December 31, 1974", *choose whichever is later*], and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

CC. Post-FIRM structures - A structure for which construction or substantial improvement occurred on or after _____ {insert the effective date of the community's initial Flood Insurance Rate Map} [*or* "after December 31, 1974", *choose whichever is later*].

DD. Pre-FIRM structures - A structure for which construction or substantial improvement occurred before _____ {insert the effective date of the community's initial Flood Insurance Rate Map} [*or* "on or before December 31, 1974", *choose whichever is later*].

EE. Primary frontal dune - a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms.

FF. Recreational vehicle - A vehicle which is:

1. Built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light duty truck; and,
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use.

GG. Repetitive Loss Structure - A building covered by a contract for flood insurance that has incurred flood-related damages on two occasions in a 10-year period, in which the cost of

the repair, on the average, equalled or exceeded 25 percent of the market value of the structure at the time of each such flood event; and at the time of the second incidence of flood-related damage, the contract for flood insurance contains increased cost of compliance coverage.

HH. Severe repetitive loss structure - a structure that: (a) Is covered under a contract for flood insurance made available under the NFIP; and (b) Has incurred flood related damage - (i) For which 4 or more separate claims payments have been made under flood insurance coverage with the amount of each such claim exceeding $5,000, and with the cumulative amount of such claims payments exceeding $20,000; or (ii) For which at least 2 separate claims payments have been made under such coverage, with the cumulative amount of such claims exceeding the market value of the insured structure.

II. Shallow flooding area - A special flood hazard area with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

JJ. Special flood hazard area - The land in the floodplain subject to a one (1%) percent or greater chance of being flooded in any given year as determined in Article 3, Section 3.1 of this ordinance.

KK. Start of construction - For other than new construction and substantial improvement, under the Coastal Barriers Resource Act (P.L. – 97-348), means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of the construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

LL. Structure - for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

MM. Substantial damage - Damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. *It also means flood-related damages sustained by a structure on two occasions in a 10-year period, in which the cost of the repair, on the average, equals or exceeds 25 percent of the market value of the structure at the time of each such flood event.*

NN. Substantial improvement - Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. The term does

not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or
2. Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.
3. Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined above, must comply with all ordinance requirements that do not preclude the structure's continued designation as a historic structure. Documentation that a specific ordinance requirement will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from ordinance requirements will be the minimum necessary to preserve the historic character and design of the structure.

OO. Violation - the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

PP. Watercourse - A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

ARTICLE VIII – ENACTMENT[22]

Enacted and ordained this ____ day of _____, 20____. This ordinance, number _____ of Cape Charles, Virginia, shall become effective upon passage.

_____
Signature

_____
Title

_____
Attested

[22] This section can be customized based upon a community's preferences. The model ordinance contains this section as FEMA requires an ordinance to have signatures from the community, either elected officials or administrators, showing that the ordinance has been officially adopted. FEMA also requires a date of adoption and an ordinance number.

Attachment 3

Redlined Appendix A

Definitions

Definitions (put in around page 378, pick up at page 234)

ABANDONMENT means the relinquishment of property, or a cessation of the use of the property, by the owner or lessee without any intention of transferring rights to the property to another owner or of resuming the use of the property.

ABATTOIR means slaughterhouse, a place where livestock is killed and prepared for distribution to butcher shops and food markets.

ACCESS means a way or means of approach to provide vehicular or pedestrian physical entrance to a property.

ACCESSORY USE, except as otherwise provided in the zoning district regulations, an accessory use is:

1. A use which is conducted on the same zoning lot as the principal use to which it is related, whether located within the same building or as an accessory structure, or as an accessory use of land, or which is conducted on a contiguous lot in the same ownership, and
2. Clearly incidental to, and customarily found in connection with, such principal use, and
3. Operated and maintained substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the zoning lot with the principal use.

ACRE is a measure of land area containing 43,560 square feet.

ACREAGE means a parcel of land, regardless of area, described by metes and bounds which respectively are ascribed to them by this section.

ADAPTIVE REUSE means the development of a new use for an older building or for a building originally designed for a special or specific purpose.

ADDITION means a structure added to the original structure at some time after the completion of the original structure or an extension or increase in floor area or height of a building or structure.

ADJACENT includes the term contiguous.

ADJACENT GROUND ELEVATION means the elevation of the surface of the ground between a point touching the exterior wall of a building and a point three feet in distance from such wall measured perpendicularly therefrom.

ADMINISTRATOR, THE ZONING ADMINISTRATOR, is that person appointed by the Town Council as the individual who issues the permit for the construction, alteration, reconstruction, repair, restoration, demolition, or razing of all or part of any building.

ADULT BOOK STORE means any establishment having as a substantial portion of its stock in trade, books, pictures, magazines, and other periodicals which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specific sexual activities or specified anatomical areas, or an establishment trading in such books, pictures,

magazines, and other periodicals which limits its customers to persons over eighteen years of age.

ADULT CARE means the provision of health care including retirement homes, congregate living, and acute care facilities, or a mixture thereof.

ADULT MOVIE THEATER means any establishment used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas for observation by patrons therein, or an establishment used for presenting such material which limits its customers to persons over eighteen years of age.

"

Affordable housing" means, as a guideline, housing that is affordable to households with incomes at or below the area median income, provided that the occupant pays no more than thirty percent of his gross income for gross housing costs, including utilities. For the purpose of administering affordable dwelling unit ordinances authorized by this chapter, local governments may establish individual definitions of affordable housing and affordable dwelling units including determination of the appropriate percent of area median income and percent of gross income.

AGRICULTURE means the tilling of soil, the raising of crops, forestry, the keeping and raising of livestock and fowl, and including the process of any products produced on the premises, such as milk, eggs, and the like.

AGRICULTURAL LANDS means those lands used for the planting and harvesting of crops or plant growth of any kind in the open; pasture; horticulture; dairying; floriculture; or raising of poultry and/or livestock.

AFFORDABLE HOUSING means housing that is affordable to **households** with incomes typically at or below **120% of** the **area median income**, provided that the occupant pays no more than thirty percent of his gross income for gross housing costs, including utilities.

ALLEY means the minor way used primarily for vehicular access to the rear or side of properties otherwise abutting a street. For an alley way to be recognized as such by the Town, it must have previously been officially adopted by the Town.

ALTERATION means any change or rearrangement in the supporting members of an existing building, such as bearing walls, columns, beams, girders, or interior partitions, as well as any exterior change such as in doors, windows, roof, siding, porches, means of ingress or egress, or any enlargement to or diminution of a building or structure, whether horizontally or vertically, or the moving of a building or structure from one location to another.

AMERICANS WITH DISABILITIES ACT (ADA) is a 1990 federal law designed to bring disabled Americans into the economic mainstream by providing them equal access to jobs, transportation, public facilities, and services.

ANEMOMETER. Measures the wind speed and may transmit wind speed data to the controller.

APARTMENT HOUSE means a building used or intended to be used as the residence of three or more families living independently of each other.

APARTMENT BUILDING means a building used or intended to be used as the residence of three or more households/families living independently of each other.

APARTMENT UNIT is considered one or more rooms with private bath and kitchen facilities comprising an independent, self-contained dwelling unit in a building containing three or more dwelling units.

AREA MEDIAN INCOME means the midpoint of Northampton County's income distribution for a family of four and is calculated on an annual basis by the Department of Housing and Urban Development as median family income (MFI).

AREA OF SPECIAL FLOOD PLAIN means the land in the flood plain within a community subject to a 1 percent or greater chance of flooding in any given year. This area is designated on the Flood Insurance Rate Map (hereinafter as FIRM) as AE and VE.

APPLICANT is the person submitting an application.

ARCHITECTURAL PROJECTION. Any projection that is not intended for occupancy and that extends beyond the face of an exterior wall of a building, but that does not include signs as defined herein. See also "Awning;" "Backlit awning;" and "*Canopy*, Attached and Free-standing."

ATTIC is space between ceiling framing of the top story and the underside of the roof.

AUTOMOBILE GRAVEYARD means any lot or place which is exposed to weather upon which three or more motor vehicles of any kind, incapable of being operated, are placed.

AVERAGE SETBACK shall be the mean setback from a street right-of-way of buildings on both sides of a lot.

AWNING. An architectural projection or shelter projecting from and supported by the exterior wall of a building and composed of a covering of rigid or nonrigid materials and/or fabric on a supporting framework that may be either permanent or retractable, including such structures that are internally illuminated by fluorescent or other light sources.

AWNING, BACKLIT. An awning with a translucent covering material and a source of illumination contained within its framework.

BASE FLOOD ELEVATION means the highest height, expressed in feet above sea level, of the level of flood waters occurring in the regulatory base flood.

BANNER. A flexible substrate on which copy, or graphics may be displayed.

BASEMENT means that portion of a building that is partly or completely below grade. A basement is a level within a building that has its floor surface below the adjoining ground level. A basement shall be counted as a story if over 50 percent of its height is above finished grade.

BASE FLOOD/100-YEAR FLOOD means a flood that on the average is likely to occur once every 100 years (i.e., that has a 1 percent chance of occurring each year, although the flood may occur in any year).

BATHROOM means a room or area that includes a sink and toilet. It may also include a bathtub, shower, or bidet.

BED AND BREAKFAST means a single-family dwelling containing sleeping and/or breakfast accommodations as an accessory use to the principal use. Such lodging shall have room accommodations for transient persons and wherein a charge is normally paid for such accommodations. Owner or manager is a permanent dweller residing on site.

BEDROOM is a room or space within a structure intended for sleeping. Requirements include:

- A minimum size of 70 sq. ft; if more than one person occupies the room, there must be 50 sq. ft. per occupant.
- Access to a bathroom without crossing another bedroom.
- Every bedroom must have access to natural ventilation and have a permanent heat source.
- Two means of egress: one that leads to the rest of the home without going through another bedroom and one that leads directly to the outside. If the outside egress is a window, it must be at least 5.7 sq. ft and can be no more than 44 inches from the room floor, unless there is a permanent step installed. It shall be illegal to have locking bars or grates covering an egress window.
- Ceiling height must be no less than 7 feet.

BEST MANAGEMENT PRACTICES or **BMP** means a practice, or a combination of practices, that is determined by a state or designated area-wide planning agency to be the most effective, practical means of preventing or reducing the amount of pollution generated by non-point sources to a level compatible with water quality goals.

BIKEWAY means a pathway often paved and separated from streets and sidewalks designed to be used by bicycles.

BILLBOARD. Any large sign/panel including supporting structure used as an outdoor display for the purpose of displaying advertisements; the product, business, or service so advertised or displayed being remote from the site of the sign. This sign is typically seen alongside roadways or on the sides of buildings. (Sometimes referred to as “Off-premise sign” or “Outdoor advertising sign.”)

BLIGHTED AREA is an area characterized by deteriorating and/or abandoned buildings, inadequate or missing public or community services, and vacant land with debris, litter, lack of sanitation facilities, trash and junk accumulation and impacted by adverse environmental nuisances, such as noise, heavy traffic, and odors.

BOARDING HOUSE or **ROOMING HOUSE** means a dwelling unit or part thereof in which, for compensation, lodging and meals are provided; personal and financial services may be offered as well.

BOARD OF ZONING APPEALS means the board appointed to review appeals made by individuals with regard to decisions of the Zoning Administrator or Floodplain Manager in the interpretation of this ordinance.

BUFFER AREA means an area of natural or established vegetation managed to protect other components of a Resource Protection Area and state waters from significant degradation due to land disturbances.

BUFFER YARD means an area or areas located within districts or land use classifications which extend along adjacent property lines abutting other districts.

BUILDING means any structure having a roof supported by walls which is solidly enclosed, including any area which is solidly enclosed with glass or any other rigid material which will not allow for the passage of air.

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 unless a zoning permit is issued in compliance with Section 4.2(J).

BUILDING ELEVATION. The entire side of a building, from ground level to the roofline, as viewed perpendicular to the walls on that side of the building.

BUILDING FOOTPRINT is the land area on which a proposed building is located.

BUILDING, HEIGHT OF means the vertical distance measured from the finished grade to the top of the highest roof beams on a flat or shed roof, to the top of a parapet, the deck level on a mansard roof, and the average distance between eaves and the ridge level for gable, hip, and gambrel roofs. Note: Mechanical equipment, chimneys, air conditioning units, elevator penthouses, church spires and steeples, water towers, and similar appurtenances are exempted from height restrictions. However, these exclusive items may not exceed the height limit by more than fifteen feet.

BUILDING INSPECTOR/OFFICIAL is the individual designated by the appointing authority to enforce the provisions of the building code.

BUILDING, MAIN means the principal structure or the principal building on a lot or the building or the principal building housing the principal use on a lot.

BUILDING, PARCEL means a fraction of a tract of land containing one or more building lots.

BUILDING PERMIT is an approval statement signed by the Building Permit Office authorizing the construction, alteration, reconstruction, repair, restoration, demolition, or razing of all or a part of any building.

CANOPY, ATTACHED. A multisided overhead structure or architectural projection supported by attachments to a building on one or more sides and either cantilevered from such building or also supported by columns at additional points. The surface(s) and/or soffit of an attached canopy may be illuminated by means of internal or external sources of light. See also "Marquee."

CANOPY, FREE-STANDING. A multisided overhead structure supported by columns, but not enclosed by walls. The surface(s) and or soffit of a free-standing canopy may be illuminated by means of internal or external sources of light.

CAREGIVER is an adult who provides care for a mentally or physically impaired person within the Commonwealth. A caregiver shall be either related by blood, marriage or adoption to or the legally appointed guardian of the mentally or physically impaired person for whom he is caring.

CARRY-OUT RESTAURANT means an establishment that by design of the physical facilities, service, or packaging sells prepared ready-to-eat foods intended primarily to be consumed off the premises.

CEMETERY means property used for interring of the dead.

CERTIFICATE OF APPROPRIATENESS is a certificate or other statement indicating approval by the Administrator, the Harbor Area Review Board or the Historic District Review Board as the case may require, of plans for construction, alteration, reconstruction, repair, restoration, demolition, or razing of a building or structure or part thereof.

CHESAPEAKE BAY PRESERVATION AREA or **CBPA** means any land designated by the Town Council pursuant to Part III of the Chesapeake Bay Preservation Area Designation and Management Regulations, 9VAC25-830-10 et seq., § 62.1-44.15:68 of the Code of Virginia. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area.

CHILD CARE CENTER means any facility, other than a family home, established for providing childcare, supervision, and protection of children.

CHILD AND PERSONAL CARE USES shall mean any care, activity, and supervision (with or without academic instruction) for five or more children.

CHURCH means a building or structure, or groups of buildings or structures, that by design and construction are primarily intended for conducting organized religious services and associated accessory uses.

CLUB means a group of people organized for a common purpose to pursue common goals,

interests, or activities and usually characterized by certain membership qualifications, payment of fees and dues, regular meetings, and a constitution and by-laws.

COASTAL HIGH HAZARD AREA means an area subject to high velocity waters including but not limited to hurricane wave wash. The area is designated on the FIRM as VE.

COMMERCIAL USE is an activity involving the sale of goods or services carried out for profit.

COMMERCIAL VEHICLE shall mean limousine, flatbed truck, dump truck, tow truck, bus, school bus, transport wrecker, cab-on-chassis truck, tractor trailer, wheeled attachment, earth-moving machinery, semi-trailer, and any vehicle over 20 feet in length, eight feet in height, or seven feet in width.

COMMISSION shall mean the Cape Charles Planning Commission.

COMPREHENSIVE PLAN is a master plan, long-range plan, intended to guide the growth and development of a community or region that typically includes inventory and analytic sections leading to recommendations for the community's future economic development, housing, recreation and open space, transportation, community facilities, and land use, all related to the community's goals and objectives for these elements.

CONDITIONAL USE means a use permitted in a particular zoning district upon showing that such use in a specified location will comply with all the conditions and standards for the location or operation of the use as specified in the zoning ordinance and authorized by the approving agency.

CONDITIONAL USE PERMIT is a permit recommended by the Planning Commission and issued by the Town Council stating that the conditional use meets all conditions set forth in local ordinances.

CONSTRUCTION FOOTPRINT means the area of all impervious surface including but not limited to buildings, roads and drives, parking areas, and sidewalks and the area necessary for construction of such improvements.

CONTINUING CARE RETIREMENT COMMUNITY, sometimes known as a life plan community, is a type of retirement community where a continuum of aging care needs from independent living, assisted living, and skilled nursing care can all be met within the community.

CONTRIBUTING PROPERTIES are those properties constructed fifty (50) years or more ago.

COOPERATIVE means real estate owned by an association, each of the members of which is entitles, by virtue of his ownership interest in the association, to exclusive possession of a unit. (See § 55.1-2100 et seq. Of the Code of Virginia)

CONSTRUCTION shall mean any site or building preparation, assembly, erection, repair, alteration or similar action, or demolition of buildings or structures.

CONTRIBUTING STRUCTURE OR PROPERTY means a structure, building, or place constructed

on or before 1964 OR which has special significance because of notable architectural or historic features relating to the cultural or artistic heritage of the community and whose authentic look and character should be retained. The National Register of Historic Places (amended 2019) provides the listing of contributing structures and properties. Should a building or structure within the boundaries of the historic district not be listed in the national register, the building or structure will be classified as noncontributing.

COPY. Those letters, numerals, figures, symbols, logos and graphic elements comprising the content or message of a sign, excluding numerals identifying a street address only.

COUNTRY CLUB is land area and buildings containing golf courses, recreational facilities, a clubhouse, and customary accessory uses open to members and their guests.

CRAWL SPACE is an under floor space that is not a basement which usually contains pipes, ducts, wiring and lighting fixtures, and permits access but is too low for standing.

CROP is a harvestable product planted, grown, and cultivated in the soil.

DECK is an uncovered platform, constructed of wood or wood substitute.

DEMOLITION is the dismantling or tearing down of all or part of any building and all operations incidental thereto.

DEMOLITION PERMIT means the official authorization in writing to remove part or all of a building or structure.

DENSITY means the total number of families, individuals, dwelling units, households, or housing structures per unit of land.

DESIGN GUIDELINES are those set of recommendations adopted pursuant to §8.20 and §9.20 of this Code.

DEVELOPER means the owner or any person with written authorization for the owner who intends to improve or to construct improvements upon any given property.

"Development" means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units. The term "development" shall not be construed to include any tract of land which will be principally devoted to agricultural production.

DIAMETER AT BREAST HEIGHT or **DBH** means the diameter of a tree measured outside the bark at a point 4.5 feet above ground.

DISTRICT is a part, zone, or geographical area within the municipality within which certain

zoning or development regulations apply.

DOG PEN means any structure used to enclose and confine domestic canines outside of the principal building or structure on a lot. Pens shall be located only in the rear yard and in accordance with the Town's zoning regulations. Pens shall be designed to provide the canines with shelter from the elements of nature and constructed in such a manner as not to cause injury to the animal or interfere with movement, vision or respiration. Pens shall be in a clean, dry, and sanitary condition at all times. Animal waste shall not be allowed to accumulate.

DRIPLINE means a vertical projection to the ground surface from the furthest lateral extent of a tree's leaf canopy.

DRIVE-THROUGH ESTABLISHMENT/RESTAURANT shall mean a business establishment so developed that its retail or service character includes providing a driveway approach and service window for motor vehicles so as to serve patrons as they are seated in the motor vehicle and passing by the service window rather than serving them from within a building.

DRIVEWAY shall mean a vehicular connection between the right-of-way of a street and to a vehicle parking, loading, or maneuvering facility, lots, building sites, uses, or other divisions of land and not intended to be public ingress and egress. A driveway is not considered a street.

DWELLING means a structure or portion thereof that is used exclusively for human habitation.

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

DWELLING, CONDOMINUM shall mean a single, separately owned dwelling unit in a multi-unit development or structure, with jointly owned and shared areas and facilities.

DWELLING, DUPLEX shall mean a building designed as a single structure, containing two separate dwelling units joined side-by-side, has direct access to the outside, and each of which is designed or arranged to be occupied by two families living independently of each other.

DWELLING, MANUFACTURED HOME or MOBILE HOME means a special form of 'one-family dwellings' with the following characteristics: A structure, transportable in one or more sections, which in the traveling mode is 8 body feet or more in width, or 40 body feet or more in length, or which when erected onsite is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure, and designed and constructed to National Manufactured Housing Construction and Safety Standards Act of 1974. The term does not include any self-propelled recreational vehicle. Calculations used to determine the number of square feet in a structure will include the total of square feet for each transportable section comprising the completed structure and will be based on the structure's exterior dimensions measured at the largest horizontal projections when erected onsite. These dimensions will include all expandable rooms, cabinets, and other projections containing interior space, but do not include bay windows.

DWELLING, MULTI-FAMILY shall mean a building designed for and containing three or more dwelling units.

DWELLING, SEASONAL is a dwelling unit not used as a principal residence that may be occupied weekends and for brief periods during the year.

DWELLING, SINGLE FAMILY DETACHED shall mean a single-family dwelling that is located on an individual lot of record.

DWELLING, SINGLE-FAMILY ATTACHED (TOWNHOUSE) shall mean a dwelling unit which is located on an individual lot of record and which is attached to another dwelling unit or any adjoining lot by a common wall.

DWELLING UNIT means one or more rooms, designed, occupied, or intended for occupancy as a separate living quarter with cooking, sleeping, and sanitary facilities provided within the dwelling unit for the exclusive use of a single family maintaining a household.

EASEMENT is a grant of one or more of the property rights by the property owner to and/or for use by the public, a corporation, or another person or entity.

ENGINEER means a professional engineer licensed by the Commonwealth of Virginia.

ENLARGEMENT means an increase in the size of an existing structure or use, including the physical size of the property, building, parking, and other improvements.

EVENT CENTER shall mean a multi-purpose facility generally used for meetings, parties, banquets, weddings, and other social gatherings, conventions, and the display of merchandise by a variety of industrial groups, professional groups, social groups and trade organizations.

EXISTING CONSTRUCTION means, for the purpose of determining rates, structures for which the start of construction commenced before the effective date of the FIRM. EXISTING CONSTRUCTION may also be referred to as **EXISTING STRUCTURES.**

EXISTING USE is the use of a lot or structure at the time of the enactment of the zoning ordinance.

FARM or **FARMLAND** is a parcel of land used for agricultural activities.

FENCE means an artificially constructed barrier of any material or combination of materials erected to enclose, screen, or separate areas.

FLOOD or FLOODING means:

1. A general and temporary condition of partial or complete inundation of normally dry land areas

from:

A. The overflow of inland or tidal waters.
B. The unusual and rapid accumulation or runoff of surface waters from any source.
C. Mudslides (i.e., mudflows) which are approximately caused or precipitated by accumulations of water on or under the ground.

2. The collapse of subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in 1.a of this section.

FLOOD INSURANCE RATE MAP (FIRM) means the official map of the community, on which the administrator has delineated both special hazard areas and the risk premium zones applicable to the community. FLOOD PLAIN means (1) a relatively flat land area adjoining a river, stream, or watercourse which is subject to partial or complete inundation; (2) an area subject to the unusual and rapid accumulation of runoff of surface water from any source.

FLOOD PLAIN means the channel and the relatively flat area adjoining the channel of a natural stream, river, or body of water that has been or may be covered by floodwater.

FLOOD PLAIN MANAGEMENT means the operation of an overall program of corrective and preventive measures for reducing flood damage including but not limited to emergency preparedness plans, flood control works, and flood plain management regulations.

FLOOD PROOFING means any combination of structural and nonstructural additions, changes, or adjustments to structure which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOOR AREA shall mean the gross horizontal areas of a building, including mezzanines and lofts, exclusive of garages, parking structures, basements, open balconies and porches, and equipment and service areas, measured from the exterior face of the exterior walls of a building.

FOOT CANDLE means a standard measurement of light intensity, defined as the illuminance on a one-square foot surface from a uniform source of light.

FORESTRY means an establishment primarily engaged in the operation of timber tracts, tree farms, forest nurseries, the gathering of forest products, or in performing forest services.

FRONTAGE is the width in linear feet of each lot where it abuts the right-of-way of any public or private street.

FRONTAGE, BUILDING. The length of an exterior building wall or structure of a single premise orientated to the public way or other properties that it faces.

FRONTAGE, PROPERTY. The length of the property line(s) of any single premise along either a public way or other properties on which it borders.

FUNCTIONALLY DEPENDENT USE means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

FUNERAL HOME is a building used for the preparation of the deceased for burial and the display of the deceased and rituals connected therewith before burial or cremation.

GARAGE means a deck, building, or parking structure, or part thereof, used or intended to be used for the parking and storage of vehicles.

GARAGE, PRIVATE RESIDENTIAL is a structure that is an accessory to a residential building and that is used for the parking and storage of vehicles owned and operated by the residents thereof and that is not a separate commercial enterprise available to the general public.

GOLF COURSE means a tract of land laid out for at least nine holes for playing the game of golf and improved with tees, greens, fairways, and hazards, and that may include a clubhouse and shelter.

GOVERNING BODY shall mean the Cape Charles Town Council.

GRADE (ADJACENT GROUND LEVEL), generally flat horizontal surfaces, is the lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the building or structure and the property line. When ground level slopes, the reference plane shall be established by the average of elevations at the four corners of the lot and two additional highest points on the lot (i.e., the average of six points).

GRADING is the act of excavation or filling or combination thereof or any leveling to a smooth horizontal or sloping surface on a property, but not including normal cultivation associated with an agricultural operation.

GROSS FLOOR AREA (GFA) shall mean the total covered floor area inside the building envelope, including exterior walls, and excluding the roof.

GROUND COVER means grasses or other plants and landscaping grown to keep soil from being blown or washed away.

GROUP HOME is a residential facility, licensed by the Department of Behavioral Health and Developmental Services, in which no more than eight individuals with mental illness, mental retardation, or developmental disabilities reside, with one or more residential counselors or other staff persons. For the purposes of this ordinance, mental illness and developmental disability shall not include current

illegal use of or addiction to a controlled substance as defined in § 54.1-3401 of the Code of Virginia.

HARBOR DISTRICT is a zoning district emphasizing the maritime experience of Cape Charles.

HARDSHIP means a restriction on property so unreasonable that it results in an arbitrary and capricious interference with basic property rights, and that which relates to the physical characteristics of the property, not the personal, financial, or self-imposed circumstances of the owner or user.

HEALTH CARE FACILITY means a facility or institution, whether public or private, principally engaged in providing services for health maintenance and the treatment of mental or physical conditions.

HISTORIC DISTRICT means an area containing buildings or places in which historic events occurred or having special public value because of notable architectural or other features relating to the cultural or artistic heritage of the community of such significance as to warrant conservation and preservation.

HISTORIC LANDMARK is defined as any building or place listed on the National Register of Historic Places or on the Register of the Virginia Historic Landmarks Commission.

HISTORIC STRUCTURES means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the national register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in the states with historic preservation programs which have been approved by the Secretary of the Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: a. by an approved state program as determined by the Secretary of the Interior, or b. directly by the Secretary of Interior in the states without approved programs.

HOME OCCUPATION means any activity carried out for gain by a resident and conducted as a customary, incidental, and accessory use in the resident's dwelling. Home occupations must be constructed wholly within the building or structure and shall not exceed 50 percent of the total floor area and the residential appearances of the building or structure must be maintained.

HOSPITAL means an institution providing primary health services and medical or surgical care to persons, primarily inpatients, suffering from illness, disease, injury, deformity, and other abnormal physical or mental conditions and including, as an integral part of the institution, related facilities, such as laboratories, outpatient facilities, training facilities, medical offices, and staff residents.

HOTEL is a building in which lodging or boarding and lodging facilities are provided for transient guests, and offered to the public for compensation and in which ingress and egress to and from all rooms are through an inside lobby or office supervised by a person in charge at all hours.

HOUSEHOLD (family) all the people who occupy a housing unit. A household includes the related family members and all the unrelated people, if any, such as lodgers, foster children, wards, or employees who share the housing unit. A person living alone in a housing unit, or a group of unrelated people sharing a housing unit such as partners or roomers, is also counted as a household.

HYBRID SYSTEM. An energy system that uses more than one technology to produce energy to work (for example a wind/solar system).

IMPERVIOUS is any paved, hardened or structural surfaces which prevent or impede the infiltration of stormwater into the soil.

IMPERVIOUS COVER means a surface composed of any material that significantly impedes or prevents natural infiltration or water into the soil. Impervious surfaces include but are not limited to roofs, buildings, streets, parking areas, and any concrete, asphalt, compacted gravel, or shell surface.

IMPROVEMENT means any permanent structure that becomes part of, placed upon, or is affixed to real estate.

INDUSTRIAL, LIGHT means industrial uses that meet the performance standards, bulk controls, and other requirements established in an ordinance.

INDUSTRIAL PARK means any tract of land that is planned, developed, and operated as an integrated facility for a number of individual industrial uses, with consideration of transportation facilities, circulations, parking, utility needs, aesthetics, and compatibility.

INDUSTRY means those fields of economic activity including forestry, fishing, hunting, and trapping; mining; construction; manufacturing; transportation; communications; electric, gas, and sanitary services; and wholesale trade.

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INNOVATOR SPACE shall mean a space in an existing or new building that is designed to support innovative design, fabrication and wholesale or retail sales of small articles that are unique in design and employ methods of low volume, high value-added production that employ innovative technology and/or artistic skill that are not hazardous or noxious.

INSTITUTIONAL USES shall mean a nonprofit or quasi-public use, such as a religious institution, library, public or private school, hospital, or government owned or government operated structure or land used for public purpose.

INTENSELY DEVELOPED AREA or **IDA** means a portion of Resource Protection Area or a Resource Management Area designated by the Town Council where development is concentrated and little of the natural environment remains.

JUNKYARD means any area, lot, parcel, building, or structure or part thereof used for the storage, collection, processing, purchase, sale, salvage, or disposal of junk.

KENNEL means a commercial establishment in which dogs or domesticated animals are housed, groomed, bred, boarded, trained, or sold, all for a fee. This includes any building or premises used, designed, or arranged for the boarding or breeding or care of four or more dogs, cats, or other domesticated pets of at least six months of age.

KITCHEN means a space within a structure designated for the cooking and preparation of food that includes a sink and a refrigerator.

KILOWATT (kW). A measure of electric power equivalent to 1,000 watts.

LAND USE means a description of how land is occupied or utilized.

LANDSCAPE means an expanse of natural scenery; lawns, trees, plants, and other natural materials, such as rock and wood chips and decorative features, including sculptures, patterned walks, fountains, and pools.

LANDSCAPE PLAN is a plan indicating the location, size, quantity and species of replacement trees and shrubbery.

LANDSCAPE ZONE is an area reserved for the growing and maintenance of landscape materials, including approved street trees and ground cover.

LOT means a parcel of land occupied by a main structure or to be occupied by a main structure or group of main structures and accessory structures, together with such yards, open space, and lot areas as are required by this ordinance, and having frontage upon a street, either shown on a plat of record or considered as a unit of property and described by metes and bounds.

LOT AREA means the total area within the lot lines of a lot, excluding any street right-of-ways.

LOT, CORNER means a lot or parcel of land abutting upon two or more streets at their intersection or upon two parts of the same street forming an interior angle of less than 135 degrees.

LOT COVERAGE is that portion of the lot that is covered by buildings.

LOT DEPTH means the average distance measured from the front of the lot line to the rear of the lot

line.

LOT, FLAG means a lot not meeting minimum frontage requirements and where access to the public road is by narrow private right-of-way or driveway.

LOT FRONTAGE means the length of the front lot line measured at the street right-of-way line.

LOT LINE means a line of record bounding a lot that divides one lot from another lot or from a public or private street or any other public space.

LOT LINE, FRONT is the lot line separating a lot from the street right-of-way.

LOT LINE, REAR is the lot line opposite and most distant from the front lot line. In the case of a triangular or otherwise irregularly shaped lot, a line ten feet in length entirely within the lot, parallel to and at a maximum distance from the front lot line.

LOT OF RECORD means a lot that exists as shown or described on a plat or deed in the records of the local registry of deeds.

LOT WIDTH is the horizontal distance between the side lot lines measured at right angles to its depth along a straight line parallel to the front lot line at the minimum required building setback line.

MANSARD. An inclined decorative roof-like projection that is attached to an exterior building facade.

MANUFACTURED HOME means a structure subject to Federal regulations, which is transportable in one or more sections, is eight body feet or more in width and forty body feet in length in the traveling mode, or is 320 or more square feet when erected on site; is built on a permanent chassis; is designed to be used as a single-family dwelling, with or without a permanent foundation when connected to the required facilities; and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure.

MANUFACTURED HOME PARK/SUBDIVISION means a parcel (or contiguous parcels) of land divided into two or more lots for rent or sale. MAP means the Flood Insurance Rate Map (FIRM) for the community issued by the Federal Insurance Administration.

MANUFACTURED HOUSING means factory built, single-family structures that meet national standards.

MANUFACTURING is an establishment engaged in the mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the creation of products, and the blending of materials, such as lubricating oils, plastics, resins, or lacquers.

MARINA is a facility for the storing, servicing, fueling, berthing, and securing of boats and that may include eating, sleeping, and retail facilities for owners, crews, and guests.

MARQUEE. See "Canopy (attached).”

MEAN SEA LEVEL means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum to which base flood elevations shown on the Flood Insurance Rate Map are referenced.

MEGAWATT (MW). A measure of electric power equivalent to 1 million watts.

MENTALLY or PHYSICALLY IMPAIRED PERSON is a person who is a resident of Virginia and who requires assistance with two or more activities of daily living, as defined in § 63.2-2200 of the Code of Virginia, as certified in writing by a physician licensed in the Commonwealth of Virginia.

"Mixed use development" means property that incorporates two or more different uses, and may include a variety of housing types, within a single development.

MOBILE HOME PARK is a site containing space with the required improvements and utilities that are leased for the long-term placement of manufactured houses and that may include services and facilities for the residents.

MODULAR BUILDING, OR HOME OR INDUSTRIALIZED BUILDING means, but is not limited to, single and multifamily houses, apartment units, commercial buildings, and permanent additions thereof, a combination of one or more sections or modules, subject to state regulations and including the necessary electrical, plumbing, heating, ventilating, and other service systems, manufactured off-site and transported to the point of use for installation or erection, with or without other specified components, to comprise a finished building. Unlike Manufactured Homes, the design, installation, and construction of modular or Industrialized homes are regulated by the Uniform Statewide Building Code.

MOTEL is one or more buildings in which lodging or board and lodging are provided for transient guests for compensation and supervised by a person in charge at all hours. Ingress and egress to and from all rooms are made primarily directly from an exterior walkaway rather than from an inside lobby.

MUNICIPAL COMMUNITY CENTER. See ‘Neighborhood Community Center.”

NACELLE. The cover housing surrounding a wind turbine, usually at the center of the blades.

NEIGHBORHOOD is an area of the community with characteristics that distinguish it from other areas and that may include distinct ethnic or economic characteristics, housing types, schools, or boundaries defined by physical barriers, such as roads, railroads, or other natural features.

NEIGHBORHOOD COMMUNITY CENTER is a facility within Residential Districts intended for the use of Town citizens for recreational and educational use.

NEW CONSTRUCTION means, for the purpose of determining insurance rates, structures for which the

start of construction commenced on or after the effective date of the initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For flood management purposes, NEW CONSTRUCTION means structures for which the start of construction commenced on or after the effective date of a flood plain management regulation adopted by a community and includes any subsequent improvement to such structures.

NON-CONFORMING LOT is a lot, the area, dimensions, or location of which was lawful prior to the adoption, revision, or amendment of the zoning ordinance but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.

NON-CONFORMING STRUCTURE or **BUILDING** is a structure or building, the size, dimensions, or location of which was lawful prior to adoption, revision, or amendment of the zoning ordinance but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.

NON-CONFORMING USE is a use or activity that was lawful prior to the adoption, revision, or amendment of the zoning ordinance but fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.

NONCONTRIBUTING STRUCTURE are those that were built after 1964 or have been altered to such a degree that they are no longer representative of the period which they were built or are in such poor physical condition that their retention is difficult. The National Register of Historic Places (amended 2019) provides the listing of non-contributing structures and properties. Should a building or structure within the boundaries of the historic district not to be listed in the national register, the building or structure will be classified as non-contributing.

NONPOINT SOURCE POLLUTION means pollution consisting of constituents such as sediment, nutrients, and organic and toxic substances from diffuse sources, such as runoff from agriculture and urban land development and use.

NONTIDAL WETLANDS means those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions such as defined by the U.S. Environmental Protection Agency pursuant to Section 404 of the Federal Clean Water Act in 33 C.F.R. 328.3b.

NOXIOUS WEEDS means weeds that are difficult to control effectively, such as Johnson Grass, Kudzu, and multiflora rose.

OCCUPANCY PERMIT is a required permit allowing the use of a building or structure after it has been determined that all the requirements of applicable ordinances have been met.

OFFICE means a room or group of rooms for conducting affairs of a business, profession, service, industry, or government and generally furnished with desks, tables, files, and communication

equipment.

OFF-SITE PARKING means parking provided for a specific use but located on a site other than the one on which the specific use is located.

OPEN SPACE is a lot or portion of a lot set aside, designated or reserved for the outdoor enjoyment of the public or for all persons occupying a building on the lot, and is preserved as natural areas or is designed as a park or recreational area.

OUTDOOR STORAGE means the keeping in an enclosed area of any goods, junk, material, merchandise, or vehicles in the same place for more than twenty-four hours.

OVERLAY ZONE is an area where additional requirements are superimposed upon a base zoning district or underlying district.

OWNER shall mean the legal or beneficial titleholder of a site, including but not limited to, a mortgagee or vendee in possession, receiver, executor, trustee, lessee or other person, firm or corporation in control of the site.

PARAPET. The extension of a building facade above the line of the structural roof.

PARCEL: See **LOT**.

PARK means a tract of land designated and used by the public for active and passive recreation.

PARKING LOT OR PARKING GARAGE shall mean an area or building designated and designed for the temporary storage of vehicles.

PARKING SPACE shall mean a marked or striped usable hard-surfaced area enclosed within a main or accessory building, or unenclosed, permanently reserved for the temporary storage of one vehicle.

PATIO is an uncovered courtyard composed of a paved surface such as concrete, tile, or brick which lies directly on the ground.

PAVERS shall mean preformed paving blocks that are installed on the ground to form patterns while at the same time facilitate pedestrian and vehicular travel.

PEDESTRIAN WALKWAY shall mean a walking surface similar to a sidewalk, which facilitates the safe, unobstructed and convenient flow of pedestrians internally on a private property.

PEN means a small enclosure used for the concentrated confinement and housing of animals, a place for feeding and fattening animals, or a coop. Enclosed pastures or range with an area in excess of one hundred square feet for each animal shall not be regarded as a pen.

PERIOD OF SIGNIFICANCE: The National Register of Historic Places recognizes buildings, sites, and districts for their historic significance, and has documented that the significance be associated with a discrete chronological period for the Cape Charles Historic District from 1883 to 1964.

PERMEABILITY is the ease with which air, water, or other fluids can move through soil or rock.

PERMIT is any written governmental permission issued by an authorized official, empowering the holder thereof to do some act not forbidden by law but not allowed without such authorization.

PERMITTED USE means any allowable use in a zoning district and subject to the restrictions applicable to the zoning district.

PERSON means any individual or group of individuals, corporation, partnership, association, or any other entity, including state and local governments and agencies.

PERVIOUS is any surface or element through which water can infiltrate directly into the ground.

PERVIOUS PAVING is any paving surface that presents an opportunity for precipitation to infiltrate or percolate directly into the ground.

PHASE or **PHASED** is subparts or segments of construction projects where the subpart or segment is constructed and stabilized prior to completing construction activities on the entire construction site.

PICNIC AREA means a place equipped with tables, benches, grills, and trash receptacles for people to assemble, cook, eat, and relax.

PLACE OF WORKSHIP shall mean a building where persons regularly assemble for religious purposes and related social events and which is maintained and controlled by a religious body organized to sustain religious ceremonies and purposes.

"Planned unit development" means a form of development characterized by unified site design for a variety of housing types and densities, clustering of buildings, common open space, and a mix of building types and land uses in which project planning and density calculation are performed for the entire development rather than on an individual lot basis.

PLAN OF DEVELOPMENT means the process for site plan or subdivision plat review to ensure compliance with § 62.1-44.15:67 et seq. of the Code of Virginia and this Article prior to any clearing or grading of a site or the issuance of a building permit.

"Plat" or "plat of subdivision" means the schematic representation of land divided or to be divided and information in accordance with the provisions of §§ 15.2-2241, 15.2-2242, 15.2-2258, 15.2-2262, and 15.2-2264, and other applicable statutes.

PLAYGROUND means an active recreational area with a variety of facilities, including equipment for younger children as well as court and field games.

PLOT means a single-family parcel of land or a parcel of land that can be identified and referenced to a recorded plat or map.

PORCH means a roofed area, which may be screened, usually attached to or part of and with direct access to or from a building. A porch becomes a room when the enclosed space is heated or air conditioned, or has water and sewer service, and when the percentage of window area to wall area is less than fifty percent.

PREMISES shall mean any building, lot, parcel of land, or portion of land whether improved, or unimproved including adjacent sidewalks and parking strips.

PRESERVATION is the process of applying measures necessary to sustain the existing form, integrity, and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction. The limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a preservation project. However, new exterior additions are not within the scope of this treatment.

PRINCIPAL BUILDING shall mean a building in which is conducted the principal permitted use(s) of the lot on which said building is situated.

PRINCIPALLY ABOVE GROUND means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

PRIVATE shall mean property owned by individuals, corporations, and other organizations and not by city, county, state or federal governments.

PROFFER is an offer of restrictions on use of property presented by an applicant for conditional rezoning or a special exception.

PROJECT shall mean the entire proposed development.

PROPERTY means a lot, parcel, or tract of land together with the building and structures located thereon.

PUBLIC, when used as a modifier shall mean "government-owned" or "government-operated."

PUBLIC AREA means any park, playground, trail, path, or other recreational area and open space; scenic and historical sites; schools and other public buildings and structures; and other places where the public is directly or indirectly invited to congregate.

PUBLIC ART is a fountain, sculpture, painting, mural, or similar object that is sited within a planned development as a focal point and is intended for the enjoyment of the general public.

PUBLIC ROAD means a publicly owned road designed and constructed in accordance with water quality protection criteria at least as stringent as requirements applicable to the Virginia Department of Transportation, including regulations promulgated pursuant to (i) the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq. of the Code of Virginia). This definition includes those roads where the Virginia Department of Transportation exercises direct supervision over the design or construction activities, or both, and cases where secondary roads are constructed and maintained, or both, by the Town of Cape Charles in accordance with the standards of the Town of Cape Charles.

PUBLIC UTILITY means a closely regulated enterprise with a franchise for providing to the public a utility service deemed necessary for the public health, safety, and welfare.

PUBLIC UTILITY FACILITY means any building, structure, and facility including generating and switching stations, poles, lines, pumping stations, repeaters, antennas, transmitters, and receivers, valves, and all buildings and structures relating to the furnishing of utility services, such as electric, gas, telephone, water, sewer, and public transit, to the public.

RECONSTRUCTION is any or all work needed to remake or rebuild all or part of any building to a sound condition, but not necessarily of original materials. It is the process of depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location. Reconstruction is different from the other historic treatments in that it is undertaken when there are often no visible historic materials extant or only a foundation remains.

RECREATION, ACTIVE means leisure-time activities, usually of a formal nature and often performed with others, requiring equipment and taking place at prescribed places, sites, or fields.

RECREATION, PASSIVE means activities that involve relatively inactive or less energetic activities, such as walking, sitting, picnicking, card games, checkers, and similar games.

RECREATIONAL VEHICLE means a vehicle which is:

1. built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection;
3. designated to be self-propelled or permanently towable by a light-duty truck; and
4. designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational camping, travel, or seasonal use.

REDEVELOPMENT means the process of developing land that is or has been previously developed.

REHABILITATION is the process of making possible a compatible use for a property through repair, alterations, and additions while retaining to the maximum extent practicable those portions or features which convey its historical, cultural, or architectural values.

REGULATION shall mean any rule, development standard, or other requirement adopted by the governing body pursuant to the requirements of this Zoning Ordinance.

REPAIRS are any or all work involving the replacement of existing work with equivalent material for the purpose of maintenance, but not including any addition, change, or modification in construction.

RESIDENCE means a home or abode or place where an individual is actually living at a specific point in time.

RESIDENTIAL PROPERTY shall mean all property used for single-family detached, single-family attached, or multifamily residences, or mixed-use development that contains one or more dwelling units.

RESOURCE MANAGEMENT AREA or **RMA** means that component of the Chesapeake Bay Preservation Area that is not classified as the Resource Protection Area. RMAs include land types that, if improperly used or developed, have the potential for causing significant water quality degradation or for diminishing the functional value of the Resource Protection Area.

RESOURCE PROTECTION AREA or **RPA** means that component of the Chesapeake Bay Preservation Area comprised of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of state waters.

RESTAURANT means an establishment where food and drink are prepared and served and consumed primarily within the principal building.

RESTORATION is any or all work connected with the returning to or restoring of a building or a part of any building to its original condition through the use of original or nearly original materials. It is the process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a restoration project.

RETAIL is the selling of goods, wares, or merchandise directly to the ultimate consumer or persons without a resale license.

RETAIL SALES mean an establishment engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods.

RETAINING WALL is a structure constructed and erected between lands of different elevations to protect structures and/or to prevent erosion.

RIGHT-OF-WAY means (1) a strip of land acquired by reservation, dedication, forced dedication, prescription or condemnation and intended to be occupied by a road, crosswalk, railroad, electric transmission lines, oil or gas pipelines, water line, sanitary storm sewer, and other similar uses; (2) generally the right of one to pass over the property of another.

ROOF LINE. The top edge of a peaked roof or, in the case of an extended facade or parapet, the uppermost point of said facade or parapet.

SAND DUNES means naturally occurring accumulations of sand in ridges or mounds landward of the beach.

SATELLITE EARTH STATION ANTENNA means a parabolic or dish-shaped antenna over 24 inches in diameter or any other apparatus or device that is designed for the purpose of receiving radio waves.

SETBACK is the minimum distance allowable between a building or structure and any lot line.

SIGN means any letters, words, numbers, figures, devices, designs, emblems, trademarks, or any parts or combinations thereof, by which anything is made known. The structure, supports, or uprights on which any sign is supported shall be considered a part of the sign.

SIGN. Any device visible from a public place that displays either commercial or noncommercial messages by means of graphic presentation of alphabetic or pictorial symbols or representations. Noncommercial flags or any flags displayed from flagpoles or staffs will not be considered to be signs.

SIGN, ANIMATED means A sign employing actual motion or the illusion of motion. Animated signs, which are differentiated from changeable signs as defined and regulated by this code, include the following types:

Electrically activated. Animated signs producing the illusion of movement by means of electronic, electrical or electro-mechanical input and/or illumination capable of simulating movement through employment of the characteristics of one or both of the classifications noted below:

1. Flashing. Animated signs or animated portions of signs whose illumination is characterized by a repetitive cycle.
2. Patterned illusionary movement. Animated signs or animated portions of signs whose illumination is characterized by simulated movement through alternate or sequential activation of various illuminated elements for the purpose of producing repetitive light patterns designed to appear in some form of constant motion.

Environmentally activated. Animated signs or devices motivated by wind, thermal changes or other natural environmental input. Includes spinners, pinwheels, pennant strings, and/or other

devices or displays that respond to naturally occurring external motivation.

Mechanically activated. Animated signs characterized by repetitive motion and/or rotation activated by a mechanical system powered by electric motors or other mechanically induced means.

SIGN AREA means the entire face of a sign, including the advertising surface and any framing, trim, or molding but not including the support structures.

SIGN AREA. The simple geometric measure of the sign material substrate.

SIGN, AWNING. A sign displayed on or attached flat against the surface or surfaces of an awning. See also "Wall or fascia sign."

SIGN, BANNER. A sign utilizing a banner as its display surface.

SIGN, BUSINESS is a sign that directs attention to a business or profession conducted, or to a commodity or service sold, offered, or manufactured, or to an entertainment offered on the premises where the sign is located.

SIGN, CANOPY. A sign affixed to the visible surface(s) of an attached or free-standing canopy. For reference, see Section C.

SIGN, CHANGEABLE. A sign with the capability of content change by means of manual or remote input, including signs which are:

Electrically activated. Changeable sign whose message copy or content can be changed by means of remote electrically energized on-off switching combinations of alphabetic or pictographic components arranged on a display surface. Illumination may be integral to the components, such as characterized by lamps or other light-emitting devices; or it may be from an external light source designed to reflect off the changeable component display. See also "Electronic message sign or center."

Manually activated. Changeable sign whose message copy or content can be changed manually.

SIGN, COMBINATION. A sign that is supported partly by a pole and partly by a building structure.

SIGN COPY. Those letters, numerals, figures, symbols, logos and graphic elements comprising the content or message of a sign, exclusive of numerals identifying a street address only.

SIGN, DEVELOPMENT COMPLEX. A free-standing sign identifying a multiple-occupancy development, such as a shopping center or planned industrial park, which is controlled by a single owner or landlord, approved in accordance with Section I.2 of this chapter.

SIGN, DIRECTIONAL means signs limited to directional messages, principally for pedestrian or vehicular traffic, such as "one way," "entrance," and "exit."

SIGN, DIRECTIONAL. Any sign that is designed and erected for the purpose of providing direction and/or orientation for pedestrian or vehicular traffic.

SIGN, DOUBLE-FACED. A sign with two faces, back to back.

SIGN, ELECTRIC. Any sign activated or illuminated by means of electrical energy.

SIGN, ELECTRONIC MESSAGE. An electrically activated changeable sign whose variable message capability can be electronically programmed.

SIGN, EXTERIOR. Any sign placed outside a building.

SIGN FACE. The surface upon, against or through which the sign copy is displayed or illustrated, not including structural supports, architectural features of a building or sign structure, nonstructural or decorative trim, or any areas that are separated from the background surface upon which the sign copy is displayed by a distinct delineation, such as a reveal or border. see Section C.

1. In the case of panel or cabinet type signs, the sign face shall include the entire area of the sign panel, cabinet or face substrate upon which the *sign* copy is displayed or illustrated, but not open space between separate panels or cabinets.
2. In the case of *sign* structures with routed areas of sign copy, the *sign* face shall include the entire area of the surface that is routed, except where interrupted by a reveal, border, or a contrasting surface or color.
3. In the case of signs painted on a building, or individual letters or graphic elements affixed to a building or structure, the *sign* face shall comprise the sum of the geometric figures or combination of regular geometric figures drawn closest to the edge of the letters or separate graphic elements comprising the *sign* copy, but not the open space between separate groupings of sign copy on the same building or structure.
4. In the case of *sign* copy enclosed within a painted or illuminated border or displayed on a background contrasting in color with the color of the building or structure, the *sign* face shall comprise the area within the contrasting background, or within the painted or illuminated border.

SIGN, FASCIA. See "Wall or fascia sign."

SIGN, FLASHING. See "Animated sign, electrically activated."

SIGN, FREESTANDING means any non-movable sign not affixed to a building or solid structure.

SIGN, FREE-STANDING. A sign principally supported by a structure affixed to the ground, and not supported by a building, including signs supported by one or more columns, poles or braces placed in or upon the ground. Maximum size of 10 square feet. For visual reference, see Section C.

SIGN, GROUND. See "Free-standing sign."

SIGN, HOME OCCUPATION means a sign containing only the name of the occupation of a permitted home occupation.

SIGN, ILLUMINATED. A sign characterized by the use of artificial light, either projecting through its surface(s) (internally illuminated); or reflecting off its surface(s) (externally illuminated). Lighting fixtures must be dark sky compliant.

SIGN, INTERIOR. Any sign placed within a building, but not including "window signs" as defined by this ordinance. Interior signs, with the exception of window signs as defined, are not regulated by this chapter.

SIGN, MARQUEE. See "Canopy sign."

SIGN, MENU BOARD. A free-standing sign orientated to the drive-through lane for a restaurant that advertises the menu items available from the drive-through window, and which has no more than 20 percent of the total area for such a sign utilized for business identification. Maximum size of 10 square feet.

SIGN, MULTIPLE-FACED. A sign containing three or more faces.

SIGN, OFF-PREMISE. See "Billboard."

SIGN, ON-PREMISE. A sign erected, maintained or used in the outdoor environment for the purpose of the display of messages appurtenant to the use of, products sold on, or the sale or lease of, the property on which it is displayed.

SIGN, OUTDOOR ADVERTISING. See "Billboard."

SIGN, POLE. See "Free-standing sign."

SIGN, POLITICAL means a temporary sign announcing or supporting political candidates or issues in connection with any national, state, or local election.

SIGN, POLITICAL. A temporary sign intended to advance a political statement, cause or candidate for office during an election. A legally permitted outdoor advertising sign shall not be considered to be a political sign.

SIGN, PORTABLE. Any sign not permanently attached to the ground or to a building or building surface. See "Temporary Sign."

SIGN, PROJECTING. A sign other than a wall sign that is attached to or projects more than 18 inches (457 mm) from a building face or wall or from a structure whose primary purpose is other than the support of a sign. For visual reference, see Section C.

SIGN, REAL ESTATE means a sign pertaining to the sale or lease of the premises or a portion of the premises on which the sign is located.

SIGN, REAL ESTATE. A temporary sign advertising the sale, lease or rental of the property or premises upon which it is located.

SIGN, REVOLVING. A sign that revolves 360 degrees (6.28 rad) about an axis. See also "Animated sign, mechanically activated."

SIGN, ROOF. A sign mounted on, and supported by, the main roof portion of a building, or above the uppermost edge of a parapet wall of a building and which is wholly or partially supported by such a building. Signs mounted on mansard facades, pent eaves and architectural projections such as canopies or marquees shall not be considered to be roof signs. For a visual reference, and a comparison of differences between roof and fascia signs, see Section C.

SIGN, SANDWICH BOARD. A freestanding temporary sign, constructed of two large boards hinged at the top, held together by a chain or rope, with no other moving parts or lights; displayed outside a business, during business hours, to advertise the business, hours of operation, an event, a promotion, etc. Maximum size of 10 square feet.

SIGN STRUCTURE. Any structure supporting a sign.

SIGN, TEMPORARY means a sign or advertising display constructed of cloth, canvas, fabric, plywood, or other light material and designed or intended to be displayed for a short period of time.

SIGN, TEMPORARY. A sign intended to display either commercial or noncommercial messages of a transitory or temporary nature. Portable signs or any sign not permanently embedded in the ground, or not permanently affixed to a building or sign structure that is permanently embedded in the ground, are considered temporary signs.

SIGN, UNDER-CANOPY OR UNDER-MARQUEE. A sign attached to the underside of a canopy or marquee.

SIGN, V. Signs containing two faces of approximately equal size, erected upon common or separate structures, positioned in a "V" shape with an interior angle between faces of not more than 90 (1.57 rad) degrees with the distance between the sign faces not exceeding 5 feet (1524 mm) at their closest point.

SIGN, WALL OR FASCIA. A sign that is in any manner affixed to any exterior wall of a building or structure and that projects not more than 18 inches (457 mm) from the building or structure wall, including signs affixed to architectural projections from a building provided the copy area of such signs remains on a parallel plane to the face of the building facade or to the face or faces of the architectural projection to which it is affixed. For a visual reference and a comparison of differences between wall or fascia signs and roof signs, see Section C.

SIGN, WINDOW. A sign affixed to the surface of a window with its message intended to be visible to and readable from the public way or from adjacent property.

SILVICULTURAL ACTIVITIES means forest management activities, including but not limited to the harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of property for reforestation that are conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to § 10.1-1105 of the Code or Virginia and are located on property defined as real estate devoted to forest use under § 58.1-3230 of the Code of Virginia.

"Site plan" means the proposal for a development or a subdivision including all covenants, grants or easements and other conditions relating to use, location and bulk of buildings, density of development, common open space, public facilities and such other information as required by the subdivision ordinance to which the proposed development or subdivision is subject.

SLEEPING AREA is an area in a room or house where a person can sleep and may utilize a bed, bunk beds, daybed, or other furniture identified for sleeping purposes, including and without limitation, a pull-out couch or futon.

SPOT ZONING means the rezoning of a lot or parcel of land to benefit an owner for a use incompatible with the surrounding land uses and that does not further the comprehensive plan.

STANDARDS are Zoning Ordinance requirements that are evaluated by the Zoning Administrator or Code Official and not under the discretion of the Historic District Review Board or the Harbor Area Review Board.

START OF CONSTRUCTION means the date the building permit was issued, provided the actual START OF CONSTRUCTION, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the state of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation of property or accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual START OF CONSTRUCTION means the first alteration on any wall, ceiling, floor, or other structural part of a building, whether or not the alteration affects the external dimensions of the building.

STOOP is a small porch (covered or uncovered) and the step(s) to it.

STORY means that portion of a building included between the surface of any floor and the floor next above it or, if there is no floor above it, the space between the floor and the ceiling next above it. A basement shall be counted as a story if over 50 percent of its height is above finished grade.

STORY, HALF, HABITABLE ATTIC, means a finished or unfinished area, not considered a full story, complying with all of the following requirements:

- The occupiable floor area is at least 70 square feet.
- The occupiable floor area has a ceiling height of not less than 7 feet. For rooms with sloped ceilings, ceiling height shall not be less than 5 feet and not less than 50 percent of the required floor area shall have a ceiling height of not less than 7 feet. A shower or tub equipped with a shower head shall have a ceiling height in accordance with the Virginia Residential Building Code.
- The occupiable space is enclosed by the roof assembly above, knee walls (if applicable) on the sides and the floor-ceiling assembly below.
- Total occupiable space shall not exceed 50 percent of the greatest story floor area.

"Street" means highway, street, avenue, boulevard, road, lane, alley, or any public way.

STREET, ARTERIAL means a street which moves or is designed to move large volumes of traffic from one part of town to another, connecting residential areas with employment centers and centers of commercial activity. Traffic volumes are usually 500 vehicles per day or greater.

STREET, COLLECTOR means a street that collects traffic from local streets and connects with minor and major arterial.

STREET, LOCAL means a street designed to provide vehicular access to abutting property and to discourage through traffic.

STREET SCAPE means a design term referring to all the elements that constitute the physical makeup of a street and that, as a group, define its character, including building frontage, landscaping, street paving, street furniture, trees and other plantings, awnings, and marquee signs and lighting.

STRUCTURAL ALTERATION means any change in either the supporting members of a building, such as bearing walls, columns, beams and girders, or in the dimension or configuration of the roof or exterior walls.

STRUCTURE means a combination of materials to form a construction for use, occupancy, or ornamentation whether installed on, above, or below the surface of land or water.

STRUCTURE, APPURTENANT means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

"Subdivision," unless otherwise defined in an ordinance adopted pursuant to § 15.2-2240, means the division of a parcel of land into three or more lots or parcels of less than five acres each for the

purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided and solely for the purpose of recordation of any single division of land into two lots or parcels, a plat of such division shall be submitted for approval in accordance with § 15.2-2258. Nothing in this definition, section, nor any ordinance adopted pursuant to § 15.2-2240 shall preclude different owners of adjacent parcels from entering into a valid and enforceable boundary line agreement with one another so long as such agreement is only used to resolve a bona fide property line dispute, the boundary adjustment does not move by more than 250 feet from the center of the current platted line or alter either parcel's resultant acreage by more than five percent of the smaller parcel size, and such agreement does not create an additional lot, alter the existing boundary lines of localities, result in greater street frontage, or interfere with a recorded easement, and such agreement shall not result in any nonconformity with local ordinances and health department regulations. Notice shall be provided to the zoning administrator of the locality in which the parcels are located for review. For any property affected by this definition, any division of land subject to a partition suit by virtue of order or decree by a court of competent jurisdiction shall take precedence over the requirements of Article 6 (§ 15.2-2240 et seq.) and the minimum lot area, width, or frontage requirements in the zoning ordinance so long as the lot or parcel resulting from such order or decree does not vary from minimum lot area, width, or frontage requirements by more than 20 percent. A copy of the final decree shall be provided to the zoning administrator of the locality in which the property is located.

SUBSTANTIAL ALTERATION means expansion or modification of a building or development that would result in a disturbance of land exceeding an area of 2,500 square feet in the Resource Management Area only.

SUBSTANTIAL DAMAGE means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENTS means any construction, rehabilitation, addition, or other improvements of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage regardless of the actual repair work performed. The term does not include either: (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (2) any alteration of a historic structure, provided that the alteration will not preclude the structure as continued designation as a historic structure.

TAKING means to take, expropriate, acquire, or seize property without compensation.

TEMPORARY STRUCTURE shall mean a structure without any foundation or footing and removed when the designated time period, activity, or use of which the temporary structure was erected has ceased.

TIDAL SHORE or **SHORE** means land contiguous to a tidal body of water between the mean low water level and the mean high-water level.

TIDAL WETLANDS means the vegetated and non-vegetated wetlands as defined in Section 28.2-1300 of the Code of Virginia.

TOWER (WIND ENERGY). The structure on which the wind system is mounted.

TOWER HEIGHT (WIND ENERGY). The height above grade of the fixed portion of the tower, including the nacelle and excluding the rotor blades.

TRACT is an area, parcel, site, piece of land, or property that is the subject of development applications.

TRAILER means a structure standing on wheels, towed or hauled by another vehicle, and used for short-term human occupancy, carrying materials, goods, or objects or as a temporary office.

TRANSPORTATION FACILITY is any structure or facility that is primarily used, as part of a transit system, for the purpose of loading, unloading, or transferring passengers or accommodating the movement of passengers from one mode of transportation to another.

USE means the purpose or activity for which land or buildings are designed, arranged, or intended or for which land or buildings are occupied or maintained.

UTILITY INSTALLATION. See Public Utility Facility.

VACANCY means any unoccupied land, structure, or part thereof that is available and suitable for occupancy.

"Variance" means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

VIEWSHEDS are the areas of land extending south from Washington Avenue to Bayshore Lane, that align in width and angle with the existing streets to the north (including Harbor Street and Peach Street), that shall be restricted to only ground- level development and their amenities, including but not limited to streets, pedestrian or multi-modal trails, or linear parks, so as to maintain the view from the north to the south and vice-versa.

WATER-DEPENDENT FACILITY means a development of land that cannot exist outside the Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include but are not limited to: (1) ports; (2) the intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers; (3) marinas and other boat docking structures; (4) beaches and other public water-oriented recreation areas; and (5) fisheries or other marine resources facilities.

WETLANDS means tidal and non-tidal wetlands.

WIND ENERGY FACILITY. An electric generating facility, whose main purpose is to supply electricity, consisting of one or more Wind Turbines and other accessory structures and buildings, including substations, meteorological towers, electrical infrastructure, transmission lines and other appurtenant structures and facilities.

WIND ENERGY FACILITY, LARGE SYSTEM. A system which has a rated capacity of not more than 999kW.

WIND ENERGY FACILITY, MICRO SYSTEM. A building mounted wind system that has a manufacturer's rating of 10kW or less and projects no more than 18 feet above the highest point of the roof and shall not be considered a small wind energy system in terms of the area or setback requirements. Only one facility is allowed per dwelling unit.

WIND ENERGY FACILITY, SMALL SYSTEM. A system which has a rated capacity of not more than 25kW and primarily used for onsite consumption.

WIND ENERGY FACILITY, UTILITY SCALE. A wind energy conversion system consisting of one or more wind turbine(s), tower(s), and associated control or conversion electronics, which has a rated capacity of 1mW or greater.

WIND FARM. See "Wind Energy Facility – Utility Scale."

WIND POWER. Electrical Power generated by wind driven turbine blades turning an electrical generator.

WIND PUMP. A type of windmill used for pumping water from a well or pond.

WIND TURBINE. A wind energy conversion system that converts wind energy into electricity through the use of a wind turbine generator, and may include a nacelle, rotor, tower, and pad transformer.

WIND TURBINE HEIGHT. The distance measured from the grade to the highest point of the turbine rotor or tip of the turbine blade when it reaches its highest elevation.

WINDMILL. A machine designed to convert the energy of the wind into more useful forms using rotating blades to turn mechanical machinery to do physical work, such as crushing grain or pumping water.

WORKFORCE HOUSING means housing commonly targeted at “essential workers” in a community (e.g., police officers, firefighters, teachers, nurses, medical personnel, service workers). Workforce housing is targeted more generally at income levels from 80% to 120% of Area Median Income (AMI), regardless of type of employment.

YARD is an open space that lies between the principal building or buildings and the nearest lot.

YARD, FRONT means a space extending the full width of the lot between any building and the front lot line and measured perpendicularly to the building at the closest point to the front lot line.

YARD, REAR means a space extending across the full width of the lot between the principal building and the rear of the lot and measured perpendicularly to the building to the closest point of the rear lot line.

YARD, SIDE means a space extending from the front yard to the rear yard between the principal building and the side lot line and measured perpendicularly from the side lot line to the closest point of the principal building.

ZONING or **TO ZONE** means the process of classifying land within a locality into areas and districts, being generally referred to as “zones,” and the prescribing and application in each of these areas and district regulations concerning buildings and structural designs, building and structure placement, and uses to which the land, buildings, and structures within such designated areas may be put.

Attachment 4

Spreadsheet listing Changes

TRACKING OF ZONING ORDINANCE CHANGES - KATIE NUNE / ANNE DARBY, SUMMIT

	A	B	C	D
1	Source	Item	Section	*Comments*
2	General/Conversation	Move all definitions to one section		*Done. Need to review duplicate definitions.*
3	General/Conversation	Formatting - make consistent throughout		*Mostly done, but wait til last step to complete*
4		At end of process, make sure all numbering is correct (e.g. after removing RE District)		*Wait*
5	General/Conversation	Check and update all necessary State Code references		*Done*
6	General/Conversation	Check and update all necessary internal references/references to sections in ZO		*Need to wait until all changes have been made*
7	General/Conversation	Review entire ordinance for discrepancies between State Code and existing Ordinance		*Has not been done yet (completely). When we do this, look at all BGSF recommendations. (They make recommendations for changes and the comments just say consultant (us) is already doing this, so we need to make sure to catch all those references.)*
8	General/Conversation	Review and make changes to all Zoning Districts to match Future Land Use categories in Comprehensive Plan.		
9	Work Session Powerpoint	Removed RE Residential Estate		*Done*
10		Changed ADU parking requirements to one per unit, not one per BR		*Done*
11		Added language re Violations and Pentalties to conform with SC		*added language in Sec 2.4.3. Kept language as is, without referencing new language in 2.4.3, in tree ordinance, to keep limit on penalty of tree ordinance*
12		Removed occupancy of vacant non-conforming buildings		*Done*
13		Removed all references to Special Exceptions		*Done*
14		Removed references to dog pens as permitted principal use, they can be an accessory use.		*Done*
15		Recombination plat - need to add statement giving Zoning Administrator the right to do this.		*Added draft language to SO, need to run by Katie. Per 6.15.23 conversation, we will wait for her to review SO to make more changes.*
16		Swimming pools no CUP		*Moved to by-right accessory use for all R properties*
17		Home occupations - rewrite so they're not a question		*Done*
18		Removed all references to FAR		*Done*
19		Section 4.2 add sentence stating that ZA has flexibility to interpret		*Done*
20		Move design standards to new section		*Done*
21		Changed lower case CUP and ADU references to consistent upper caps (some were capitalized, some were not)		*Done*
22		Add floodplain to zoning map		*This will be done when online map is created*
23		Ditto Ches Bay Pres Overlay		*Ditto*
24		Variances in the Flood Plain District, clarify that they go to BZA		*They do, and this should be clarified when make changes to FPO*
25				
26				
27				
28				
29	KHN_2December	In the last line, add "with" between such boundary shall be construed as moving "with" the actual shoreline.	2.3.3.b	*Done*

	A	B	C	D
30	KHN_2December	Include the requirement that a demolition permit requires zoning clearance and zoning clearance is required for any proposed use, structure, alteration or enlargement whether a building permit is required.	2.4.2	*Made no changes, as I believe it's already correct.*
31	KHN_2December	Needs to revised to add the maximum civil penalties allowed by Code of Virginia	2.4.3	*Added updated language and state code reference*
32	KHN_2December	Will need to look at this section if duplexes are re-inserted in the Residential zoning districts by-right	2.5.4	*Per other comments, this section is now deleted.*
33	KHN_2December	Don't believe this is in compliance with Code of Virginia Section 15.2-2309 (7)	2.6.7	*Nothing in Sec 15.2 about expiration of variances, and other Zos have expiration dates. Added 30 months as a time limit, since there was no time limit.*
34	KHN_2December	The second sentence "Specific dwelling unit square footage relative to the square footage of any lot or continguous assemblage of lots under common ownership", etc. : this is not a common provisions in a zoning ordinance and there have been problems when a structure has been built over lot lines that would normally be vacated to create a single building lot. Should discuss and consider removing this.	3.2.F.2	*Removed*
35	KHN_2December	Should add Electric Charging Stations as a Use, possibly either by-right or through conditional use permit - establish criteria for an EV Charging Station In Article IV, Section 4.5 (F), there are requirements to compel inclusion of Evs thru the parking requirements? Is that appropriate?	3.5 - 3.8	*Added up to 2 EV charging stations as permitted accessory use in R-1 (also allowed in R-2 and R-3). Added in CR (and other C districts).*
36	KHN_2December	Strangely composed as questions. This should be rewritten as requirements/standards. Include any limitations or standards relative to signage on the house, lot, etc.	4.0	*Home occupation questions rephrased as statements.*
37	KHN_2December	Confusing to have some definitions here but also state that these definitions are to be used for these terms that are used elsewhere in the ordinance and there is a whole section in Article II called "Definitions".	4.1	*All definitions moved to one section at end*
38	KHN_2December	This whole section is challenging to administer and difficult for the public to understand. Need to understand what are we trying to achieve about signs for the community. Need to simplify.	4.1	
39	KHN_2December	At a minimum, need to know actual max sq. footage of a size; need definition of temporary sign; need to understand how to classify and length of time to allow for vacation rental signs vs. real estate for sale or long-term lease.	4.1	
40	KHN_2December	Make it clear that zoning clearance is required and maybe Historic District Review is needed.	4.1	
41	KHN_2December	What is a Real Estate Sign (see page 14)?	4.1	
42	KHN_2December	This section says the requirements are contained in Section H.2.f but there is no such section - need to create the requirements for politicial signs	4.1.E.9	*Replace entire Sign Ord with new model Ord. Per 6/29 meeitng, Katie is going to review and update to fit Cape Charles, then we will insert.*
43	KHN_2December	Missing the various Mixed Use Commercial Zoning Districts in sign regs	4.1.H.2.c.3	
44	KHN_2December	Should read "single residential lots" and not "slot"	4.4.H.2.3.1	*Done.*
45	KHN_2December	What would be the type of structures that are 16 in height or less that would qualify under this? Are we good with that?	4.2.F	*Hardscaping, walls. Seems ok to me.* *Figured this out at work session - NJHF*

Notes for Zoning Ordinance Changes 2 - Katie June

	A	B	C	D
46	KHN_2December	CUPs: Criteria for what is considered "action" for the permit to be active and in legal should be reviewed and should also be consistent language with Article 8 (Certificates of Appropriateness) Time frame to act upon is one - year - should consider changing this to 6 months.	4.3.D	*Per this comment, comments from KN and PC Work Session, changed this to six months, added "commencement of site preparation or construction" to the list of criteria, and added the phrase "and may be determined by the Zoning Administrator."*
47	KHN_2December	In the uses under the general zoning districts, why are pools a CUP?	4.3.D	*Pools are no longer conditional uses*
48	KHN_2December	Screening must be required, not "may be required"	4.4.D.1	*Done*
49	KHN_2December	Need to expand to create standards, definitions, etc re: "Foot candle", "Dark Sky standards", etc.	4.4.E	*Added "foot candle" definition in Definitions section, referenced International Dark Sky Association standards in text.*
50	KHN_2December	Whole Thing needs to be looked at and possibly revised - need input from consultant - Parking & Loading	4.5	
51	KHN_2December	Need to also factor into "Golf Cart Parking" and possible substitution into the required standards that would lessen the spaces for a traditional vehicle - Town Code has language about golf cart parking - should that be in only Town Code or should it be placed in zoning ordinance?	4.5.A - 4.5.B	*Make no changes, per 6/29 meeting with KN*
52	KHN_2December	Section (E) below in Seciton 4.5 provides basics on size, etc. - this should be merged with the parking section in (A) and (B) of Section 4.5	4.5	
53	KHN_2December	Shared Parking - This needs to be revised and beefed up - there is no discussion about distance or location of the shared parking to the business or orignial property location; length of time for the shared parking agreement; sample agreement document for a Shared Parking Agreement would be useful. 4.5.C	4.5.C	*Shared use agreement samples on Sharepoint site*
54	KHN_2December	Dumpsters – (not town trash receptacles) – need to simplify to make more realistic (need to talk to Katie about her thoughts) need to acknowledge that they have to be a site plan development, but trash collection, and they could simplify to make life easier, and they could maybe have a dumpster instead of several trash cans	4.5.M	*Made several changes to simplify the requirements.*
55	KHN_2December	There has been a recent change in the Building Code that now requires either fencing around the pool or an electric pool cover and the zoning ordinance as currently written does not require fences but indicates complliance with Building Code requirements. I will be recommending in tandem with our Building Official that we amend Section 4.7 to require fencing around pools as a zoning stipulation. Relative to the Historic District Guidelines, I do not believe that pools need to be added to Chapter 8 of the Guidelines as long as fencing becomes a zoning requirement around pools then pools would only be allowed in the side and rear yards and with fencing would be wholly screened from public view and thus not applicable to HDRB Review. However, if this zoning amendment does not occur, then the Town will need to revise the Guidelines.	4.7	*Per PC work session, they requested adding a requirement for fencing with a locking gate, butthis is already in there, section 4.7(E). Added text that this is consisten with Sec 15.2-921 of the Code of VA*
56	KHN_2December	Need to inform PC and TC about the new state laws re: Marijiuana and figure out what Town wants to do re: zoning	General	*In work session, we determined if/when this use comes up, this can just be considered a retail use.*
57	KHN_2December	Need to add power of recombination plat for Zoning Administrator		*Draft language in SO*
58	KHN_2December	Add language requiring "as built" elevation drawings before CO is issued	2.4.2	*Done*
59				
60	**Housing Subcommittee**			
61	BGSF 1	8. Cape Charles' zoning ordinances do not address 'temporary family health care structures'. Recommendation: This item should be inserted into Article IV and made applicable to all residential districts.	4.2.11	*Made change in Zoning Ordinance with State Code reference.*
62				
63				

	A	B	C	D
64				
65				
66				
67				
68				
69		Change every reference to Tourist Home to Short-term rental		*Done*
70	BGSF 2	1.In R-1 district, primarily historic, do not lower below 960 SF and allow for duplexes with stipulations (especially parking)		*No change necessary for 960 SF, added "duplexes, provided off-street parking is provided"*
71		2. In R-3 district, change to % of lot size in lieu of SF minimum and allow for duplexes.	3.1	*added Duplexes as permitted principal use. The % of lot size does not make sense to me. If infill that is consistent with historical lotting pattern is the goal, then setbacks are most important for new development. What about lots that are larger or smaller? I would not recommend making this change.*
72		3. In CR district, convert to % of lot size on non-conforming lots (< 5600 SF) and allow for duplexes. Keep conforming lots at 960 sq.ft. minimum as currently written. (different source: In CR, convert to % of lot size on nonconforming lots and allow for duplexes. Keep conforming lots at 960 SF)	3.4	
73		Recommendation: Adopt table format for permitted (by-right) and conditional uses.	3.5	
74			3.1 - 3.15	
75		1. Review options for incentivizing diverse range of housing options. Examples, density, height.		*There is a range of housing permitted.*
76				
77		1. Change uses as shown in attached table.		*Done. Double check that everything is in the document as desired.* *There might be a mix-up between manufactured home vs. modular home. Make sure everything is consistent.*
78		Action Taken: Need to address manufactured housing. The PC/TC work session on the update to the comp plan included a strategy: In accordance with the Code of Virginia Sec 15.2-2223.5, ensure that manufactured homes remain a source of affordable housing. Comp Plan approved Dec 2022.	3.1 - 3.15	*Review State Code re Manufactured Housing, then review CC ZO.*
79	BGSF 3			
80		**Cape Charles currently defines Manufactured Homes as a special one-family dwelling with certain conditions. Therefore, a manufactured Home meeting all the zoning requirements contained within districts for single-family houses, they are permitted.** "**DWELLING,** MOBILE HOME or **MANUFACTURED HOME** means a special form of 'one-family dwellings' with the following characteristics....."		*These have been added to the Definitions section*
81		Remove all references to "low income housing" and replace with "affordable housing."		*It looks like any references were only in the definitions section, which was updated.*
82		Add definition of "affordable housing" to Definitions section, as written in BGSF 3 document.		*Done*
83		**Add all housing-related definitions as found in BGSF 3 to Definitions section**		*Done*
84		Recommendation: For multifamily buildings, change coverage limit to no more that 60 percent of the lot.		*Done. Only applicable to R3 district, and it's in there already.*
85	BGSF 4	Recommendation: Change to one parking space per ADU.		*Done.*
86		**BG makes recommendations to remove minimum building sizes, but there is no PC recommendation. Ignore this?**		*Ignore*

	A	B	C	D
87		Recommendation: Sidewalk requirements during new home construction in R-1 District needs to be a specific requirement and brought into zoning ordinance.		*You cannot require, recommend (discussed 6/29) consulting Town Attorney as to whether you should remove from ZO.*
88	BFSF 5	Recommendation: Need to 1. review the adequacy of timelines associated with state-agency review, and		
89	BGSF 6	2.review the recording of plats and plans to determine state code compliance.		
90				
91		Work in progress: Consultant is currently contracted to review ordinances for state code compliance.		
92		Recommendation: Amend ordinances to ensure plat and plan review processes and ordinances comply with the Code of Virginia.		*(make sure to review Appendix with SC references in review)*
93				
94				
95	BGSF 7	Manufactured homes are not specifically addressed within the localities' non-conformity provisions. The Code of Virginia § 15.2-2307.H permits the replacement of non-conforming manufactured homes with another comparable manufactured home that meets the current HUD manufactured housing code. This provision should be specifically addressed within the localities' zoning ordinances.		***Added language to Section 7.13(6) reflecting State Code.***
96				
97		The Code of Virginia § 15.2-2283 provides for reasonable modifications in accordance with the Americans with Disabilities Act of 1990 and the Virginia Uniform Statewide Building Code (13VAC5-63-432.5. Chapter 4) requires accessibility to existing structures be provided and/or maintained. All of the localities' ordinances should ensure that additions for accessibility such as ramps or lifts are excluded from standards which would prohibit them as additions		***Added language to Section 7.13(5) stating that additions for reasonable modifications... shall not be considered expansions of nonconforming uses.***
98		**Recommendation: Amend ordinances to ensure compliance with state codes regulating non-conforming uses.**		
99		BG recommends adopting Inclusionary Zoning		*Research SC Sec 15.2 2305.1 to see what is permitted, but check with Katie to see will of PC/TC. Both additional density and affordable housing are a priority? Note, SC likely Permits, but does not Require, so need to get a read on will of Town.*
100	BGSF 8			
101		We do recommend that a Manufactured Home is placed on a permanent foundation.		*Definition for Manufactured home added, permanent chassis a requirement*
102		Update definitions (Factor 3)		*Done. Added definitions for affordable housing, workforce housing, duplex, multi-family, continuing care retirement facility, deleted Family (coupled with HH), delted extended stay hote/motel, manufactured dwelling, modular building, removed mobile home, added manufactured housing, manufactured home*
103		Change coverage limit for multifamily buildings to no more than 60% of lot		*This was already in Ord.*
104		Change off-street parking requirement for ADUs to one space		*Done*
105				
106		Review timelines associated with state agency review		
107		Review recording of plats and plans to determine compliance with state code		
108				

	A	B	C	D
109		Remove R-E district (several parcels will need to be rezoned)		*Done*
110	PCWS_27March	Remove 4-year vacancy stipulation for duplexes (2.5.5)		*Removed entire section.*
111	PCWS_27March	Sort out setbacks between avenue and setbacks (R-1)		
112	PCWS_27March	Move development standards for R-1 to Historic District Guidelines and clean up		*Development standards are currently in a separate word doc, will put back in as separate section, in Article IV.*
113	PCWS_27March	Remove dimension requirements for lot size, just use overall area. Noah will do GIS analysis for the commercial districts.		*Initial GIS analysis is done. Need to talk with KHN/PC*
114	PCWS_27March	Remove FAR component of Harbor District (3.9)		*Done*
115	PCWS_27March	Remove language about ZA waiving environmental assessment for RMA (7.9)		*Done*
116	PCWS_27March	Remove all references to Special Exception		*Done*
117	PCWS_27March	Beef up Shared Parking stuff, look for sample agreement		*Shared parking agreements in Sharepoint site*
118	PCWS_27March			
119		Add Flood Plain District Map		
120	SummitReview	Add Chesapeake Bay Preservation Act Overlay Map		
121	SummitReview	Add RMA overlay		
122		Add lot, yard, height table to all zoning districts, as example		
123		CR district - (and others as necessary) streamline lists of permitted, accessory and Conditional uses		
124	SummitReview	Streamline parking minimums		
125	SummitReview	Add use table (Katie has one?)		*Noah has completed, can be added as appendix, or split up.*
126	SummitReview	Katie/PC need to review definitions for duplicates		*In combined Definitions section, there are still duplicates. Go through and suggest culling.*
127	SummitReview	There are some conflicts between uses permitted in R-1 and R-2. Some permitted uses in R-1 are listed as conditional for R-2, but all uses permitted in R-1 are supposedly permitted in R-2		
128	SummitReview	Viewsheds - there is a definition but there is nothing to enforce it. Needs new guidelines for the Harbor District and the Harbor area (this is a larger topic area and can't be solved today!)		*This probably not legally enforceable but there is no reason not to keep it.*
129	SummitReview	Condense permitted uses and add definitions as needed.		
130				
131	Other	Change to zoning map - CC having a public hearing about it???		*They must. They can notice and hold public hearing for both Zoning Ord adoption and Zoning Map adoption.*
132	From 6.7.23 call with Katie:	Combine retail and stores, etc, as permitted		
133		Parking - build a case for reducing parking minimums		
134	From 6.14.23 call with Katie:	GIS analysis: come up with min/max SF for each property zoned in each district, then make suggestions for changing min/max so most properties are in conformity with zoning district		
135		Can you tell Katie how many acres are zoned in each district, especially Industrial?		
136		SIGNS: Katie will get model sign ord from Town atty, and we will use that		
137				
138		**KHN has not reviewed the following yet and is seeking Consultant review of these sections re: compliance with state law and any other comments they wish to propose to potentially improve our adminstration of these matters:**		

	A	B	C	D
139		Article VI Flood Plain Ordinance		*waiting to hear last time it was approved by DEQ by Katie - seems like it would match state code but unsure about federal flood stuff too (cbh)*
140		Article VII Chesapeake Bay Preservation Ordinance		*waiting to hear last time it was approved by DEQ by Katie (cbh)*
141		Appendix A Subdivision Ordinance		*The first part is copied from state code then it goes into the platting stuff that I was unclear on(cbh)*
142		Appendix B Site Plan Ordinance		*can't seem to find anything giving them permission for this section, but that is likely just b/c I am searching the wrong things? (cbh)*
143		Appendix C Coastal Primary Sand Dune Ordinance		*matches state code word for word (cbh)*
144		Appendix D Erosion and Sediment Control Ordinance		*State code says "Include such survey of lands and waters...." and "Contain conservation standards for various types of soils and land use" - this portion doesn't seem to include those two things, but otherwise seems to match state code requirements (cbh)*
145		Appendix E Wetlands Ordinance		*The first part is copied from state code but after section 74.34 it deviates. I don't think that they are doing anything outside of state code, but state code is more specific about what permits will be granted and this code doesn't specify that I could tell (cbh)*
146		Appendix F Tree Conservation and Preservation Ordinance		*This seems to be aligned with state code (cbh)*

Attachment 5

Clean Copy of DRAFT

Zoning Ordinance

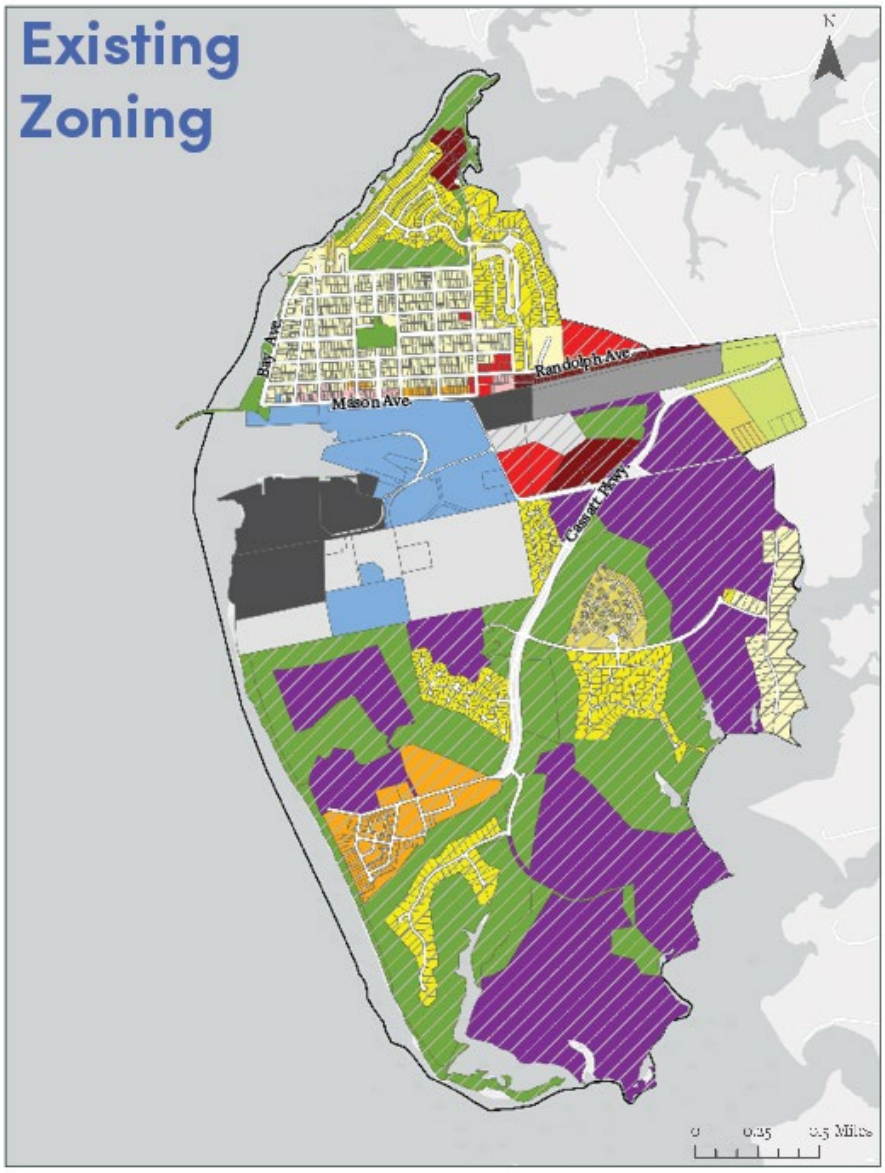
TOWN OF CAPE CHARLES

ZONING ORDINANCE

ADOPTED JULY 14, 992

Last Amended on October 20, 2022
AMENDED DRAFT AUGUST 4, 2023

Existing Zoning



Zoning Classifications

- Open Space
- Residential Estate (R-E)
- Single-Family Residential (R-1)
- Medium Density Residential (R-2)
- Multi-Family Residential (R-3)
- Commercial Residential (CR)
- Commercial District (C-1)
- Commercial District (C-2)
- Commercial District (C-3)
- General Business/Light Industrial (GBI H-1)
- Industrial (M-1)
- Industrial (M-2)
- Harbor District

- Planned Unit Development (PUD)
- PUD Open Space
- Low Density Residential (PUD-R1)
- Medium Density Residential (PUD-R2)
- Multi-Family Residential (PUD-R3)
- Residential/Commercial (PUD Village)
- Commercial (PUD-C)
- Specialty Commercial (PUD-SC)
- PUD General Business/Industrial (PUD-GBI)

- Cape Charles Boundary

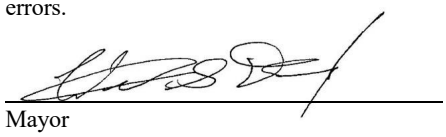
The Zoning Ordinance posted here was last updated in October 2022.

It is hereby certified that this document is a true, updated copy of the Zoning Ordinance to the best of our knowledge and belief. For legal purposes, all copies of the Zoning Ordinance should be verified against the original held by:

Town Clerk
Town of Cape Charles
2 Plum Street
Cape Charles, VA 23310

The material herein is subject to change and will be updated as necessary.

Neither the Town of Cape Charles nor the publisher is responsible for typographic errors.



Mayor

Attest

October 20, 2022 Date

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ARTICLE I

AN ORDINANCE ESTABLISHING ZONING REGULATIONS FOR THE TOWN OF CAPE CHARLES, VIRGINIA, AND PROVIDING FOR THE ADMINISTRATION, ENFORCEMENT AND AMENDMENT THEREOF, AND FOR THE REPEAL OF ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT THEREWITH.

WHEREAS, by Act of the General Assembly of Virginia as provided in Title 15.2, Chapter 22, Article 7 (§ 15.2-2280 et seq.) of the Code of Virginia, as amended, the governing body of any municipality may, by ordinance, classify the territory under its jurisdiction or any substantial portion thereof into districts of such number, shape, and size as it may deem best suited to carry out the purposes of this article and in each district it may regulate, restrict, permit, prohibit, and determine the following:

A. The use of land, buildings, structures, and other premises for agricultural, business, industrial, residential, flood plain, and other specific uses;
B. The size, height, area, bulk, location, erection, construction, reconstruction, alteration, repair, maintenance, razing, or removal of structures;
C. The areas and dimensions of land, water, and air space to be occupied by buildings, structures, and uses, and of courts, yards, and other open spaces to be left unoccupied by uses and structures, including variations in the sizes of lots
D. based on whether public or community water supply or sewer system is available and used;
E. The excavation or mining of soil or other natural resources.

WHEREAS, zoning ordinances and districts were drawn and applied with reasonable consideration for the existing uses and character of property, the comprehensive plan, the suitability of property for various uses, the trends of growth or change, the current and future requirements of the community as to land for various purposes as determined by the population and economic studies, the transportation requirements of the community, the requirements of housing, parks, playground, recreational areas and other public services, the conservation of natural resources, the preservation of flood plains, the preservation of agricultural and forestal lands, the conservation of properties and their values and the encroachment of the most appropriate use of land throughout the Town.

NOW, THEREFORE, BE IT RESOLVED, by the Town of Cape Charles, Virginia, Town Council for the general purpose of promoting the health, safety, or general welfare of the public and of further accomplishing the objectives of § 15.2-2200of the Code of Virginia, that the following be adopted as the Cape Charles Zoning Ordinance together with the accompanying maps.

To these ends, the ordinance shall be designed to give reasonable consideration to each of the following purposes:

A. To provide for adequate light, air, convenience of access, and safety from fire, flood, and other damages;
B. To reduce or prevent congestion in the public streets;
C. To facilitate the creation of a convenient, attractive, and harmonious community;
D. To facilitate the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports, and other public requirements;
E. To protect against destruction of or encroachment upon historic areas;
F. To protect against one or more of the following: overcrowding of land, undue intensity of population in relation to the community facilities existing or available, obstruction of air or light, danger and congestion in travel and transportation, or loss of life, health, or property from fire, flood, panic, or other damages;
G. To encourage economic development activities that provide desirable employment and enlarge the tax base;
H. To provide for the preservation of agricultural and forestal lands and other lands significant for the protection of the natural environment;
I. To promote affordable housing; and
J. To protect state water quality standards, including surface water and groundwater.

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

Mayor:_____ Date:

Article II General Provisions

Section 2.1 Title
This ordinance and its contents along with the accompanying map shall be known, designated, and cited as the "Town of Cape Charles Zoning Ordinance."

Section 2.2 Legislative Intent
This ordinance is enacted to promote the health, safety, and general welfare of the citizens of Cape Charles, Virginia. It is the intention of the Town Council that the provisions of this ordinance will implement the purpose and intent of the Comprehensive Plan of the Town by encouraging the most desirable use of land for residential, recreational, commercial, industrial, and agricultural purposes.

Section 2.3 Districts Generally
The Town of Cape Charles is hereby divided into the basic following zoning districts:
R-1
R-2
CR
C-1
C-2
C-3
GBI H-1
H
M-1
M-2
OS
PUD
Residential
Residential Mixed
Residential Multi-Family
Commercial/Residential
Commercial-1
Commercial-2
Commercial-3
General Business/Light Industrial
Industrial-1
Industrial-2
Open Space
Planned Unit Development

Section 2.3.1 Meaning of District Symbols
The letter "R" represents any residential district designation. The letter "C" represents any commercial district designation. The letter "H" represents any harbor district designation. The letter "M" represents any industrial district designation. The term "GBI" is for commercial and/or light industrial district designation, and OS is for the open space designation. The term "PUD" or "PD" represents Planned Unit Development.

The zoning map shall show by an appropriate symbol on the map the existence of conditions

and zones and that attach the following regulations and conditions to the zoning on the map. The Zoning Administrator shall keep in the planning office and make available for public inspection a Conditional Index showing all property which is operating under a Conditional Use Permit. The Index shall provide ready access to the ordinance creating conditions in addition to the regulations provided for in a particular zoning district or zone (Section 15.2-2300)

Section 2.3.2 Zoning Map and Amendments to the Zoning Map

A. The locations and boundaries of the districts established by this chapter shall be as shown on the map entitled "Official Zoning Map, Town of Cape Charles, Virginia, 2022," which is hereby declared to be part of this chapter. A certified copy of this map is on file in the office of the Zoning Administrator, and such map is signed by the Mayor and certified by the Town Clerk. All notations, dimensions, and designations shown thereon shall be as much a part of this chapter as if the same were fully described herein.

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

Section 2.3.3 Determination of District Boundaries

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

A. Where district boundaries are indicated as approximately following or being at right angles to the center lines of streets, highways, alleys, or railroad main tracks, such center line or lines at right angle to such center lines shall be construed to be such boundaries, as the case may be.

B. Where district boundaries are indicated to follow a river, bay, creek, branch, or other body of water, such boundary shall be construed to follow the center line at low water or at the limit of the jurisdiction; and in the event of change in the shoreline, such boundary shall be construed as moving with the actual shoreline.

C. If no distance, angle, or curvature description or other means is given to determine a boundary line accurately and the foregoing provisions do not apply, the same shall be determined by the Zoning Administrator using the scale shown on the map. In case of subsequent dispute, the matter shall be referred to the Board of Zoning Appeals, which shall determine the boundary.

Section 2.3.4 Zoning of Annexed Areas

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

Section 2.3.5 Statutory References

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

Section 2.3.6 Validity

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

other than the section so held to be unconstitutional or invalid.

Section 2.3.7 Conflicts Within Ordinance

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

Section 2.3.8 – 50 Reserved

Section 2.4 Administration and Enforcement

Section 2.4.1 Enforcement of Ordinance, Guarantees

A. In accordance with § 15.2-2286(4) of the Code of Virginia, there is hereby created the office of Zoning Administrator. The Zoning Administrator, who may also hold another office in Town, shall be appointed by the Town Council and shall serve under the direction of the Town Manager, who will coordinate department actions and such assistance as may be required to carry out the responsibilities of this ordinance. In the event that the Town Manager is appointed to serve as Zoning Administrator, same shall serve under the direction of the Mayor.

B. The Zoning Administrator shall be vested with all necessary authority on behalf of the Town Council to administer and enforce the provisions of this ordinance, including:
   1. the ordering in writing of the remedying of any condition found in violation of this ordinance;
   2. the bringing of legal action, after approval by the Town Council, to ensure compliance with the provisions of this ordinance, such action to include injunction, abatement, or other appropriate action or proceedings;
   3. in specific cases, making findings of fact and, with the concurrence of the Town Attorney, conclusions of law regarding determinations of rights accruing under Section 2.5 of this ordinance and § 15.2-2307 of the Code of Virginia.

C. Pursuant to § 15.2-2299 of the Code of Virginia, the Zoning Administrator shall have all necessary authority on behalf of the Town Council to administer and enforce conditions attached to a rezoning or amendment to a zoning map, including:
   1. the ordering in writing of the remedy of any noncompliance with the conditions;
   2. the ordering in writing of the remedy of any noncompliance with the conditions;
   3. the bringing of legal action, after approval by the Town Council, to ensure compliance with the conditions, including injunction, abatement, or other appropriate action or proceeding; and
   4. requiring a guarantee, satisfactory to the Town Council, in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions, or a contract for the construction of the improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee shall be reduced or released by the Town Council, or agent thereof, upon the submission of satisfactory evidence that construction of the improvements has been completed in whole or in part. Failure to meet all conditions shall constitute cause to deny the issuance of any of the required use, occupancy, or building permits as may be appropriate.

D. The Zoning Administrator shall respond within 20 days of a request for a decision or determination on zoning matters within the scope of his or her authority unless the requester has agreed to a longer period.

Section 2.4.2 Permits **(revised 2/11/2010 – A.4. added)**

A. Building Permits
   1. No building or structure shall be erected, constructed, altered, moved, converted, extended, enclosed, or enlarged without the owner first having applied for and obtained a zoning clearance for a building permit from the Town's Zoning Administrator. Such zoning clearance shall be obtained prior to the application for a building permit from the Cape Charles Building Department. Nothing herein is intended to prevent normal maintenance, which does not require a building permit.
   2. The Zoning Administrator shall certify whether the proposed use, structure, alteration, or enlargement is or is not in conflict with the provisions of this Chapter. If such proposal is in conflict with the provisions of this ordinance, the Zoning Administrator shall refuse to issue such zoning clearance for a building permit.
   3. The fee for a building permit shall be governed by ordinance.
   4. Pursuant to the authority contained in § 15.2-2286.B of the Code of Virginia, prior to the initiation of an application for a Conditional Use Permit, variance, rezoning or other land disturbing permit, including building permits and erosion and sediment control permits, all delinquent real estate taxes owed to the Town against the property shall be paid in full.

B. Certificate of Occupancy
   1. A Certificate of Occupancy shall be required to authorize any of the following:
      a. occupancy of a building after construction;
      b. any enlargement, extension, or alteration of a building to change from one use to another;
      c. any change in the use of a non-conforming building or use.
   2. Application for Certificate of Occupancy shall be made with the Cape Charles Code Official and a copy shall be sent to the Cape Charles Zoning Administrator by the Cape Charles Code Official. The Zoning Administrator shall certify whether the use, structure, alteration, enlargement, or other physical change is in conflict with the provisions of this ordinance. If a conflict is determined, the Zoning Administrator shall refuse approval for issuance of such certificate of occupancy.
   3. Before issuance of a Certificate of Occupancy, for a new structure, the applicant must provide an "as built" elevation drawing confirming that the building, as constructed, is built upon the original elevation above sea level as the lot was before construction. If the site has been built up using fill dirt or other materials, the applicant must provide sufficient evidence to prove that the increased elevation will not negatively impact adjacent properties with stormwater runoff.
   4. The fee for a Certificate of Occupancy shall be governed by ordinance.

Section 2.4.3 Violation and Penalty

A. Violations
   1. It shall constitute a violation of this ordinance for any person, either owner, agent, or occupant, to commence any actions for which a permit is required by this ordinance without having first obtained an approved permit. Any such permit

issued upon a false statement of any fact which is material to the issuance thereof shall be void. Whenever the fact of such false statement shall be established, the Zoning Administrator shall forthwith revoke the same permit by notice in writing to be delivered to the holder of the void permit or, if such holder cannot be found, by posting such notice of revocation in some conspicuous place upon the premises where the violation has occurred. Any such person who shall proceed thereafter with such work or use without having obtained the proper approved permit in accordance with this ordinance shall be deemed guilty of a violation of this ordinance.

2. If the Zoning Administrator finds that any of the provisions of this ordinance are being violated, he/she shall notify in writing the person responsible for the violation, indicating the nature of the violation and ordering action necessary to correct the violation. The Zoning Administrator shall take any other action authorized by law to ensure compliance with or to prevent further violation of this ordinance.
3. Any person, firm, or corporation, whether as principal, agent, employee, or otherwise, violating, causing, or permitting the violation of any of the provisions of this ordinance shall be guilty of a Class IV misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than ten dollars ($10) for each violation and not more than two hundred and fifty dollars ($1,000). Each day such violation shall continue shall constitute a separate violation.
4. Pursuant to § 15.2-2209 of the Code of Virginia, any person, firm, or corporation, whether as principal, agent, employee, or otherwise, violating, causing, or permitting the violation of any of the provisions of this ordinance shall be subject to a civil penalty of not more than $200 for the initial summons and not more than $500 for each additional summons. However, specified violations arising from the same operative set of facts shall not be charged more frequently than once in any 10-day period, and a series of specified violations arising from the same operative set of facts shall not result in civil penalties which exceed a total of $5,000. If such civil penalties total $5,000 or more, the violation may be prosecuted as a criminal misdemeanor.
1. Any official or public employee authorized of this jurisdiction who is vested with the duty of authority to issue permits shall conform to the provisions of this ordinance. Any such permit, if issued in conflict with the provisions of this ordinance, shall be canceled in writing.

Section 2.5 Non-Conforming Uses

Section 2.5.1 Continuation of Existing Non-Conforming Uses and Permits

A. Any legal use, building, or structure existing at the time of adoption of this ordinance or any amendment thereto may be continued even though such use, building, or structure may not conform with the provisions of this ordinance for the district in which it is located. Such use, building, or structure shall be deemed a "Non-Conforming Use." A non-conforming use, building, or structure may be continued provided by the following.
   1. No such non-conforming use, building, or structure shall be enlarged or increased or extended to occupy a greater area of land than was occupied at the effective date of the adoption of this ordinance, unless said enlargement does not result in

an increase in nonconformity or result in a change to a use permitted in the district.

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

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

Section 2.5.2 Restoration of Non-Conforming Use

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

Section 2.5.3 Changes in District Boundaries

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

Section 2.5.6-50 Reserved Section

Section 2.6 Appeals and Variances

Section 2.6.1 Board of Zoning Appeals

A. In accordance with § 15.2-2308 through § 15.2-2314 of the Code of Virginia, any municipality which has enacted or enacts a zoning ordinance shall therefore create a Board of Zoning Appeals. The Town of Cape Charles Board of Zoning Appeals will consist of five members who shall be appointed by the circuit court of Northampton County. Members of the board shall hold no other public office in the municipality except one may be a member of the Planning Commission. The term of office shall be for five years each without pay.

B. Vacancies shall be filled for unexpired terms. The secretary of the board shall notify the court at least thirty days in advance of the expiration of any term of office and shall also notify the court promptly if any vacancy occurs. Appointments to fill vacancies shall only be for the unexpired term. Members may be reappointed to succeed themselves. Members of the board shall hold no other public office in the county or town except one may be a member of the local planning commission.

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

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

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

Section 2.6.2 Powers and Duties of the Board of Zoning Appeals

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

A. To hear and decide appeals from any order, requirement, decision, or determination made by an administrative office in the administration or enforcement of this ordinance;

B. To authorize upon appeal, or original application in specific cases, such variance as defined in § 15.2-2201 of the Code of Virginia from the terms of the ordinance as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship provided that the spirit of the ordinance shall be observed and substantial justice done, as follows.

When a property owner can show that his property was acquired in good faith and where

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

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

1. That the strict application of the ordinance would produce undue hardship.
2. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
3. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

C. No such variance shall be authorized unless the board finds that the conditions or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

D. In authorizing a variance, the board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee to ensure that the conditions imposed are being and will continue to be complied with.

E. To hear and decide appeals from the decision of the Zoning Administrator. No such appeal shall be heard until after such notice and hearing as provided in § 15.2-2204 of the Code of Virginia.

F. To hear and decide applications for interpretation of the district map where there is an uncertainty as to the location of a district boundary. After notice to the owners of the property affected by such question, and after public hearing with notice as required, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

G. No provision of this section shall be construed as granting any board the power to rezone property.

A.

Section 2.6.3 Applications for Variances

Applications for variances may be made by any property owner, tenant, with owner's approval, government official, department, board, or bureau. Such application shall be made to the Zoning

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

Section 2.6.4 Appeals and Procedure of Appeals

A. An appeal to the Board of Zoning Appeals may be taken by any person aggrieved or by an officer, department, board, or bureau of the county or municipality affected by any decision of the Zoning Administrator or Administrative Officer in the administration or enforcement of this ordinance. The decision may be appealed within thirty days thereof by filing a notice of appeal specifying the grounds of the appeal. Said appeal shall be filed with Zoning Administrator and with the Board of Zoning Appeals. The Zoning Administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

B. The board shall fix a reasonable time for the hearing of an application for appeal, give the public notice thereof as well as due notice to the parties in interest, and decide the same within sixty days of the filing of the application for appeal. In exercising its powers, the board may reverse or affirm wholly or in part or may modify an order, requirement, decision, or determination of an administrative officer or decide in favor of the applicant on any matter which it is required to effect any variance from the ordinance. The board shall keep minutes of its proceedings and other official actions which shall be filed in the office of the Zoning Administrator and shall be public record. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses.

C. In accordance with § 15.2-2313 of the Code of Virginia, where a building permit has been issued and the construction of the building for which such permit was issued is subsequently sought to be prevented, restrained, corrected, or abated as a violation of the zoning ordinance, by suit filed within fifteen days after the start of construction by a person who had no actual notice of the issuance of the permit, the court may hear and determine the issues raised in the litigation even though no appeal was taken from the decision of the administrative officer to the Board of Zoning Appeals.

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

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

Upon presentation of such petition the court shall allow a writ of certiorari to review the decision of the Board of Zoning Appeals and shall prescribe therein the time within which a return thereto must be made and served upon the realtor's attorney, which shall not be less

than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may on application, on notice to the board, and on due cause shown, grant a restraining order.

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

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

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

Section 2.6.6 Fee for Appeals and Applications for Variance
Every appeal to the Board of Zoning Appeals from a determination of the Zoning Administrator and every application for a variance shall be accompanied by a fee governed by ordinance set forth by the Town Council of the Town of Cape Charles.

Section 2.6.7 Expiration of Variances
If any variance granted by the Board of Zoning Appeals is not acted on in accordance with the conditions and stipulations required by the Board within a period of 30 months, then the variance shall be null and void and of no force and effect.

Section 2.6.8 Tax Payments Required
Pursuant to § 15.2-2286.B of the Code of Virginia, prior to the initiation of an application for a special use permit, variance, rezoning, zoning clearance, building permit, or other land use permit, the applicant for same must produce satisfactory evidence that any and all delinquent real estate taxes and any fees owed to the Town of Cape Charles which have been properly assessed against the subject property have been paid in full.

Section 2.6.9 Reserved

Section 2.7 Amendments of Chapter and Zoning Map; Conditional Zoning

Section 2.7.1 Amendments Permitted; How Initiated
In accordance with § 15.2-2286.A.7 of the Code of Virginia, whenever public necessity, convenience, general welfare or good zoning practice require, the Town Council may amend, supplement, or change the regulations, district boundaries or classifications of property contained in this Chapter. Any such amendment may be initiated by (a) resolution of the Town

Council, (b) motion of the Town's Planning Commission, or (c) the petition of the owner, contract purchaser with the owner's written consent, or the owner's agent therefore, of the property which is the subject of the proposed zoning map amendment, addressed to the Town Council or the Town's Planning Commission, which shall forward such petition to the Town Council.

Section 2.7.2 Procedures for Amending Chapter or Zoning Map

A. All proposed amendments or reenactments of this Chapter, and all proposed amendments to the zoning map, shall be referred by the Town Council to the Town's Planning Commission for its recommendations. Failure of the Planning Commission to report within 100 days after the first meeting of the Planning Commission after the proposed amendment or reenactment has been referred to it shall be deemed approval of the proposal by the Planning Commission, unless the proposal has been withdrawn by the applicant prior to the expiration of said time period. In the event of such withdrawal, processing of the proposal shall cease without further action.

B. Prior to issuing its recommendations, the Planning Commission shall hold at least one public hearing after notice of same has been published once a week for two successive weeks in some newspaper having general circulation in the Town. Such public hearing shall be held not less than six nor more than 21 days after the second advertisement appears. Such additional and further notice shall be given as required by § 15.2-2204 of the Code of Virginia. The Planning Commission may make appropriate changes in the proposed amendments as a result of the public hearing. Upon the completion of its work, the Planning Commission shall present the proposed amendments, including revised district maps, to the Town Council together with its recommendations and appropriate explanatory materials.

C. Prior to approving and adopting any amendment to this Chapter or the zoning map, the Town Council shall hold at least one public hearing after giving such public notice as may be required by § 15.2-2204 of the Code of Virginia after which the Council may make appropriate changes or corrections in the proposed amendment. In the case of a proposed amendment to the zoning map, the public notice shall state the general usage and density range of the proposed amendment and the general usage and density range, if any, set forth in the applicable part of the Town's then effective comprehensive plan. No land may be zoned to a more intensive use classification than was contained in the public notice without an additional public hearing after such notice as is required by § 15.2-2204 of the Code of Virginia. Following the required public hearing(s), the Town Council shall act on the proposed amendment in the same manner as adopting any other ordinance.

Section 2.7.3 Appeals

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

Section 2.7.4 Conditional Zoning - Statement of Intent

In accordance with § 15.2-2296 et seq. of the Code of Virginia, it is the general policy of the Town of Cape Charles to provide for the orderly development of land, for all purposes, through

zoning and other land development legislation. Frequently, where competing and incompatible uses conflict, traditional zoning methods and procedures are inadequate. In these cases, more flexible and adaptable zoning methods are needed to permit differing land uses and at the same time recognize effects of change. It is the purpose of Sections 2.7.4 through 2.7.10 to provide a more flexible and adaptable zoning method to cope with situations found in such zones through conditional zoning. Conditional zoning allows a zoning reclassification subject to certain conditions proffered by the zoning applicant for the protection of the community that are not generally applicable to land similarly zoned. The provisions of Sections 2.7.4 through 2.7.10 shall not be used for the purpose of discrimination in housing.

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

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

Section 2.7.6 Conditional Zoning - Enforcement and Guarantees

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

Section 2.7.7 Conditional Zoning - Records

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

Section 2.7.8 Conditional Zoning - Petition for Review of Decision

Any zoning applicant or other person who is aggrieved by a decision of the Zoning Administrator

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

Section 2.7.9 Conditional Zoning - Amendments and Variations of Conditions

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

Section 2.7.10 Limitation on Reconsideration of Request for Amendment

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

Section 2.8 Condominiums and Cooperatives

Condominiums and cooperative real estate developments must meet all requirements and regulations of the Virginia Condominium Act or Virginia Real Estate Cooperative Act, as appropriate (§ 55.1-1900 et seq.; § 55.1-2100 et seq. Of the Code of Virginia). Condominiums and cooperatives of new construction are permitted only with a special use permit from the Board of Zoning Appeals of the Town of Cape Charles in Districts C-1, CR, R-1, R-2, R-3 and H. Conversion condominiums and cooperatives (governed by the Code of Virginia, § 55.1-1905 and § 55.1-2104, respectively) are permitted by right in all districts in which residential uses are permitted by right or conditional use.

ARTICLE III District Regulations

Section 3.1 Residential District R-1

A. Statement of intent. The intent of this basic zoning district is to provide quiet, medium density, single-family residential development plus provide open areas where similar residential development appears likely to occur. The regulations for this district are designed to stabilize and protect the essential characteristics of the district, to promote and encourage a suitable environment for family life where there are children, and to restrict all activities of a commercial nature as described in Section 3.6-A of this ordinance, known as Commercial District C-1, which states "These commercial activities 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 dwelling currently exist on lots of 5,600 square feet 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: *[revised 10-20-2022]*
   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 Article 4.2(J).
   3. Home occupations in accordance with Section 4.0.
   4. Up to two single electric vehicle charging stations.
   5. Uses which are customarily accessory and clearly incidental and subordinate to the principal use and structure.

D. Conditional Uses: The following uses may also be permitted, subject to securing a use permit as provided for in this ordinance:
   1. Bed and breakfasts and short-term rentals, provided the following requirements are met:
      a. The owner and family must occupy the residence. The owner and his/her appointed agent are responsible for supervising guests.
      b. The single-family dwelling appearance must be maintained.
      c. Parking should be considered on a case-by-case basis as part of the conditional use application, ensuring adherence to Section 4.5 (Table of Parking Standards) using both on and off-street parking areas.
      d. The number of room accommodations shall be subject to recommendation

by the Planning Commission and approved by the Town Council.

2. Outdoor recreation facilities
3. Residential dwelling units in square footage area below the minimum or above the maximum stated in Section 3.1.E

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

Minimum Lot Size	5,600 SF
Minimum Lot Width at Setback Line	40'
Front Setback (minimum)	30'
Side Setback (minimum)	5'
Rear Setback (minimum)	25'
Corner Lot Setback (minimum)	5'
Maximum Height	40' or 2.5 stories
Maximum Lot Coverage	N/A
Minimum Dwelling Unit Size	960 SF
Maximum Dwelling Unit Size	4,500 SF

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.

Section 3.3 Residential Mixed District R-2

A. Statement of Intent. The intent of this basic zoning district is to provide quiet, medium density residential development with a mixture of single-family and multi- family housing. This district is designed to promote and encourage a suitable environment for family life and to restrict activities of a commercial nature to those which serve the needs of the neighborhood itself.

B. Permitted Uses. The following uses shall be permitted by right: *[revised 10-20- 2022]*
1. Single-family dwellings.
2. Duplex dwellings, provided off-street parking is provided.
3. Condominium dwellings.
4. Cooperative dwellings.
5. Manufactured home dwellings.
6. Churches and places of worship.
7. Parks and playgrounds.
8. Schools, community centers, and public facilities
9. Group Homes per § 15.2-2291 of the Code of Virginia.

C. Accessory Uses. Within the R-2 District, the following accessory uses shall be allowed:
1. Accessory buildings.
2. Accessory Dwelling Units by right in compliance with the requirements of Article 4.2(J).
3. Home occupations in accordance with Section 4.0.
4. Up to two single electric vehicle charging stations.
5. Uses which are customarily accessory and clearly incidental and subordinate to the principal use and structure.
6. Conditional Uses. The following uses are permitted, subject to securing the proper permits:
7. Outdoor recreation facilities
8. Childcare/adult daycare facilities and nursing homes

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

Section 3.4 Residential Multi-Family District R-3

A. Statement of Intent. The intent of this basic zoning district is to provide for relatively high density, multi-family residential development. This district is designed to promote and encourage a suitable environment for family life and to restrict activities of a commercial nature to those which serve the needs of the surrounding residential neighborhood.

A. Permitted Uses. The following uses shall be permitted by right: *[revised 10-20- 2022]*
1. Single-family dwellings
2. Duplex dwellings
3. Townhouse dwellings
4. Multi-family dwellings
5. Condominium dwellings
6. Cooperative dwellings
7. Group homes
8. Manufactured home dwellings
9. Parks and playgrounds

B. Accessory Uses. Within the R-3 District, the following accessory uses shall be permitted.
1. Accessory buildings
2. Accessory Dwelling Units by right in compliance with the requirements of Article 4.2(J).
3. Home occupations in accordance with Section 4.0.
4. Up to two single electric vehicle charging stations.
5. Uses which are customarily accessory and clearly incidental and subordinate to the principal use and structure, including those listed in Article 3.1(C).

C. Conditional Uses. Within the R-3 District, the following conditional uses may be allowed:
1. Churches and places of worship
2. Childcare/ adult daycare facilities and nursing homes

D. Lot, Yard, Height, Coverage and Density Requirements. Within the R-3 District, the following standards shall apply:

Minimum Lot Size	1,500 SF
Front Setback (minimum unless otherwise stated)	25'
Side Setback (minimum)	20'
Rear Setback (minimum)	15'
Maximum Height	40'
Maximum Lot Coverage	45%
Minimum Dwelling Unit Size (where applicable)	1,000 SF

1. In addition to the following, townhouse projects must have minimum of three acres.
2. Minimum lot requirements
   a. lot area dwelling units (sf): 1,500
   b. lot width: (ft) 20
3. Minimum yard requirements

Minimum yard requirements	
front yard (no parking in front yard)	25 ft
front yard (parking in front yard)	30 ft
side yard between principal structures	20 ft
side yard between end structures and side property line	20 ft
side yard between units	0 ft
rear yard (no parking in rear yard)	15 ft
rear yard (parking in rear yard)	30 ft

4. Maximum building height: 40 ft
5. Building coverage. No more than 60 percent of the lot may be covered by the structures.
6. Dwelling size. Each dwelling shall have a minimum habitable area of 1,000 square feet.
7. Maximum development. No more than eight townhouse dwelling units shall be constructed or attached together in a continuous row, and no such row shall exceed 240 feet in length.
8. Off-street parking. Parking shall be provided on the premises. No such parking lot or garage shall be located more than 200 feet from the dwelling unit which it serves.
9. In addition to the following, multi-family projects must have minimum of three acres:

Minimum lot requirements	
lot area per dwelling unit	1,500 SF
Minimum yard requirements	
front yard (no parking in front yard)	30 ft
front yard (parking in front yard)	35 ft
side yard between separate structures	25 ft
side yard between end structures and side property line	35 ft

rear yard (no parking in rear yard)	20 ft
rear yard (parking in rear yard)	35 ft

10. Furthermore, no multi-family unit may be erected on a lot which has a width at the building line of less than 100 feet.
11. Building coverage: No more than 45 percent of the lot may be covered by the structure.

E. Additional Development Requirements. Placement of drives and parking areas. Excluding entrances and exits, no drive or parking area shall be located closer than ten feet from any lot line.

Section 3.5 Commercial Residential CR

A. Statement of Intent. The purpose of this district is to recognize the unique juxtaposition of the existing residential structures within the central business district and the future needs of Cape Charles commercial districts. It is the intent of this zone to promote the continued residential character of these areas while allowing commercial uses to be introduced.
The specific intent of this district is (1) to encourage retention of the existing residential buildings and character of the area and (2) to encourage compatible uses for these buildings.

B. Permitted Uses. The following uses are permitted by right:
1. Single-family dwellings
2. Duplex dwellings
3. Townhouse dwellings
4. Condominium dwellings
5. Cooperative dwellings
6. Manufactured home dwellings
7. Group homes
8. Bed and breakfasts and short-term rentals
9. Churches and places of worship
10. Parks and playgrounds
11. Retail and other stores
12. Offices
13. Galleries and museums
14. Indoor recreational facilities
15. Other food establishments
16. Personal services

C. Any other use which is compatible in nature with the foregoing uses and which the Zoning Administrator determines to be compatible with the intent of the district and is concurred with by the Planning Commission.

D. Accessory Uses:
1. Accessory Buildings
2. Accessory Dwelling Units

3. Home occupations in accordance with Section 4.0.
4. Up to two single electric vehicle charging stations.
5. Uses which are customarily accessory and clearly incidental and subordinate to the principal use and structure including those listed in Article 3.1(C).

E. Conditional Uses:
1. Childcare/adult daycare facilities and nursing homes
2. Conference centers
3. Restaurants and bars

F. Lot, Yard, Height, Coverage and Density Requirements. Within the CR District, the following standards shall apply:

Minimum Lot Size	5,600 SF
Front Setback (minimum unless otherwise stated)	30 ft
Side Setback (minimum)	5 ft
Rear Setback (minimum)	25 ft
Maximum Height	40 ft

1. Height Regulations: Buildings may be erected up to 40 feet in height from the adjacent ground elevations.

G. Area Regulations
1. The minimum lot size shall be 5,600 square feet. Dwelling units existing on lots at the time of adoption of this ordinance which are generally on lots 40 feet by 140 feet are considered to be conforming lots. However, new construction taking place within this district shall meet all standards and requirements of this district.
2. The minimum dwelling unit size shall be 960 square feet excluding garages, porches, patios, etc.
3. The minimum lot width at the setback line shall be 40 feet.
4. Setback Regulations: The following area regulations shall apply as minimums for new development in this district:
    a. Front setback shall be 30 feet or shall conform to the prevailing setback of the existing built up area.
        i. Side yard: 5 ft
        ii. Rear yard: 25 ft

H. Development Standards: To help preserve the architectural cohesiveness of the Town, new construction and additions in the CR district shall be compatible, sympathetic, and complementary to existing buildings and follow the same guidelines as the residential district.

Section 3.6 Commercial District C-1

A. Statement of Intent. The intent of this zoning district is to preserve and enhance the traditional mixed use urban nature of Cape Charles commercial districts, to encourage the location of regional and local business and professional activities, to facilitate the

development of buildings in keeping with its largely National Historic District character, and to protect against destruction of or undesirable encroachment on these areas.

B. Permitted Uses. The following uses are permitted by right:
1. Hotels and motels
2. Schools, community centers, and public facilities
3. Auditoriums, theatres, and assembly halls
4. Retail and other stores
5. Offices
6. Galleries and museums
7. Restaurants and bars
8. Other food establishments
9. Funeral homes
10. Medical/dental practices (outpatient) and labs
11. Any other commercial or professional use which is compatible in nature with the foregoing uses and which the Zoning Administrator determines to be compatible with the intent of the district and is concurred with by the Planning Commission.

C. Conditional Uses:
1. Multi-family dwellings provided that no such dwelling is located at street level and all dwelling units have direct access to the street level (not access through commercial establishment on the first level).
2. Charging stations for three or more Electric Vehicles

D. Lot, Yard, Height, Coverage and Density Requirements. Within the C-1 District, the following standards shall apply:

Minimum Lot Size	5,600 SF
Front Setback (minimum unless otherwise stated)	Prevailing*
Side Setback (minimum)	0', 5' & 10' in Rte 184 area
Rear Setback (minimum)	10'*
Maximum Height	40'
Lot Width at Setback Line	40’

1. Area Regulations: The following area regulations shall apply in addition to the above:
   a. *Front setback shall be determined by the average setback of the existing built up commercial area. Front setback along Route 184 (aka Randolph Avenue extended; Old Stone Road) where existing VDOT right of way is 70 feet shall be measured at 80 feet from the center of the right of way.
   b. *If prevailing rear yard is less than 10’, required setback will be the prevailing setback.

Section 3.7 Commercial District C-2

A. Statement of Intent. The intent of this zoning district is to recognize the existing commercial areas which are less densely developed than the C-1 District and to encourage compatible commercial uses and density. This area generally has been developed with larger lots and larger individual buildings.

The specific intent of this district is to recognize the existing and possibly new freestanding commercial development.

B. Permitted Uses. The following uses are permitted by right:
1. All uses as allowed in C-1
2. Gas stations/service stations
3. Vehicle rental/sales
4. Vehicle repair/service
5. Any other commercial or professional use which is compatible in nature with the allowed uses and which the Zoning Administrator determines to be compatible with the intent of the district and is concurred with by the Planning Commission.

C. Conditional Uses:
a. Multi-family dwellings provided that no such dwelling is located at street level and all dwelling units have direct access to the street level (not access through commercial establishment on the first level).
b. Charging stations for three or more Electric Vehicles

D. Lot, Yard, Height, Coverage and Density Requirements. Within the C-2 District, the following standards shall apply:
a. Area Regulations: The following area regulations shall apply as minimums for new development in this district:
i. Front setback shall be determined by the average setback of the existing built up commercial area.

E. Lot, Yard, Height, Coverage and Density Requirements. Within the C-2 District, the following standards shall apply:

Minimum Lot Size	9,000 SF
Front Setback	Prevailing average of existing commercial area
Side Setback (minimum)	10′
Rear Setback (minimum)	10' or prevailing rear yard if less
Maximum Height	35'
Lot Width at Setback Line	60′

F. Development/Redevelopment Standards, Other Requirements, and Accessory Uses. The standards for development and/or redevelopment, specific additional requirements, and accessory uses shall be the same as those listed and described for the C-1 District.

G. Sign design shall relate to the architectural character of the building and, if ground mounted, shall be appropriately landscaped.

Section 3.8 Commercial District C-3

A. Statement of Intent. The intent of this zoning district is to recognize this existing linear

commercial zone which flanks Route 184 entering into Cape Charles. This area is divided into smaller lots. The zone shall require a uniform requirement for setbacks as this is recognized as the gateway road into Cape Charles.

The specific intent of this district is (1) to allow development of individual or grouped lots, (2) to encourage uses to service the community, and (3) to encourage quality construction and design recognizing the importance of the district's impact on drivers entering Cape Charles.

B. Permitted Uses. The following uses are permitted by right:
1. All uses as allowed in C-1 and C-2
2. Single-family dwellings
3. Duplex dwellings
4. Schools, community centers, and public facilities
5. Auditoriums, theatres, and assembly halls
6. Any other commercial or professional use which is compatible in nature with the allowed uses and which the Zoning Administrator determines to be compatible with the intent of the district and is concurred with by the Planning Commission.

C. Conditional Uses:
1. Multi-family dwellings
2. Charging stations for three or more Electric Vehicles

1. Lot, Yard, Height, Coverage and Density Requirements. Within the C-3 District, the following standards shall apply:

Lot Width at Setback Line	40′
Side Yard	5′ and 10'
Rear Yard	10′
Front Setback	80′ from center of ROW or 40% of the lot depth, whichever is less
Maximum Height	35′

D. Development standards. All new development shall conform to the commercial design and construction standards required for commercial development within the Town's historic district overlay.

E. Materials and design shall follow site plan ordinance requirements and be considered and approved by a review body named by Town Council.

F. Sign design shall relate to the architectural character of the building and, if ground mounted, shall be appropriately landscaped.

Section 3.9 Harbor District (revised 11-21-19)

A. Statement of Intent. The intent of this zoning district is to encourage a vibrant working waterfront area that is both a strong economic benefit to the Town with compatible new industry and employment uses, and a strong public and recreational value, with public gathering places and access to the water, a place for people to conduct business and to

live, meet, relax, encounter nature, and learn of Cape Charles' working maritime and rail heritage and its strong historic traditions. Any new development shall provide and encourage public access to the water's edge as well as emphasize the pedestrian environment throughout the harbor. The south side of Mason Avenue shall provide a visually inviting connection to the harbor via continuous environments for multi-modal means of transportation and connect to the other existing and future links to Cape Charles and environs. This zoning district is also intended to implement the Cape Charles Harbor Area Conceptual Master Plan and Design Guidelines as an overall guide to the future development and redevelopment of the harbor area.

B. Permitted Uses. The following uses are permitted by right:
1. Condominium dwellings
2. Cooperative dwellings
3. Parks and playgrounds
4. Schools, community centers, and public facilities
5. Retail and other stores (less than 2,500 SF gross floor area)
6. Offices
7. Galleries and museums
8. Indoor recreation facilities
9. Conference centers
10. Restaurants and bars
11. Other food establishments
12. Personal services (less than 2,500 SF gross floor area)
13. Medical/dental practices (outpatient) and labs
14. Vehicle rental/sales (less than 2,500 SF gross floor area)
15. Marinas, docks, and wharves (if contiguous to harbor)
16. Utility Facilities

C. Accessory Uses.
1. Accessory buildings
2. Other uses customarily associated and clearly incidental and subordinate to a principal use.

D. Conditional Uses. The following uses may also be permitted, subject to securing a Conditional Use Permit as provided for in this ordinance:
1. Multi-family dwellings
2. Bed & breakfasts and short-term rentals
3. Hotels and motels
4. Auditoriums, theaters, and assembly halls
5. Childcare/adult daycare facilities and nursing homes
6. Retail and other stores (2,500 SF gross floor area or greater)
7. Personal services (2,500 SF gross floor area or greater)
8. Laundromats
9. Boatels
10. Any other use which is compatible in nature with the foregoing permitted and conditional uses and which the Zoning Administrator determines to be compatible with the intent of the District and is concurred with by the Planning Commission.

E. Lot and Height Requirements. Within the Harbor District, the following standards shall apply:

Minimum Lot Size	11,200 SF
Front, Side, Rear, and Corner Setback, (minimum unless otherwise stated below)	30' from Cape Charles Harbor, Resource Protection Areas, Marina Rd, Bayshore Rd, or Parcel 83-A3-A-10
Maximum Height	40', up to 55' with stipulations*
Maximum Lot Coverage	75%
Lot Frontage	80′
Lot Depth	140′
Required Open Space	25′

1. *Height.
   a. Measurement criteria. For the purpose of the Harbor District, height means the vertical distance measured from the crown of the nearest street to the top of the highest roof beams on a flat or shed roof, the deck level on a mansard roof, and the average distance between the eaves and the ridge level for gable, hip, and gambrel roofs. When the crown of the nearest street has an elevation greater than three feet above the adjacent ground elevation of the building, the adjacent ground elevation shall be used in place of the crown of the nearest street when measuring height. Note: Mechanical equipment, chimneys, air conditioning units, elevator penthouses, church spires and steeples, water towers, and similar appurtenances are exempted from height restrictions. However, these exclusive items may not exceed the height limit by more than fifteen feet.
   b. Maximum permitted height. No building shall have the same continuous elevation for a distance of more than 80 linear feet. Building heights greater than 40 feet and equal to or less than 55 feet may also be permitted in other parts of the Harbor District, subject to securing a Conditional Use Permit as provided for in this ordinance. When reviewing a Conditional Use Permit application for the height of a building in the Harbor District, the following criteria shall be met:
      i. On each block, the average height of all buildings greater than 40 feet and equal to or less than 55 feet in height shall not exceed 45 feet. For the purpose of this section, a block is defined as the property fronting on one side of a right-of-way or waterway, and lying between two intersecting rights-of-way or otherwise limited by a waterway or other physical barrier of such nature as to interrupt the continuity of development.
      ii. The application shall adhere to policies established in the Cape Charles Harbor Area Conceptual Master Plan and Design Guidelines, the Comprehensive Plan, and other officially adopted plans of the Town.
3. Setback Regulations.
   a. Waterfront setback requirement. No building or structure shall be located within 30 feet of the Cape Charles Harbor or within 30 feet of a Resource Protection Area not part of an Intensely Developed Area (IDA), or within

30 feet of Marina Road, Bayshore Road, or Parcel 83A3-A-10. This requirement shall not preclude any other applicable regulations, including but not limited to those associated Chesapeake Bay Preservation Areas. The following shall be exempt from the waterfront setback requirement when permitted by all other applicable regulations: 1.) Water-dependent facilities as defined by Zoning Ordinance Section 7.3.

i. Walkways, promenades, decks, gazebos, permitted signs, and similar structures intended to accommodate or provide amenities for pedestrians.

F. Required open space. Open space shall be provided equivalent to twenty-five (25) percent of lot area. For the purpose of this section, the term open space shall be construed to consist of open space amenities and spacing between buildings. Open space amenities include plazas, esplanades, landscaped areas, walkways, public recreational facilities, and the like designed and maintained for use by pedestrians and open to the public. Such open space amenities shall not be open to vehicular uses except for public safety purposes, and shall be directly accessible from street level. Where feasible, open space shall be designed to serve as part of a coordinated pedestrian circulation system.

G. Utilities. All utilities shall be installed underground.

H. Harbor Development Certificate required. No zoning clearance shall be issued for location, construction, or enlargement of any building or structure within the Harbor District until a Harbor Development Certificate has been issued. Submission of a Harbor Development Certificate Application and approval by the Town Council shall be required to obtain a Harbor Development Certificate.

1. Content of Harbor Development Certificate Application. The Harbor Development Certificate Application shall consist of the General Application and the Detailed Application.
    a. General Application. The General Application shall include the following items:
        i. An application on forms provided by the Zoning Administrator.
        ii. A fee established by the Town Council.
        iii. A letter of application stating in general terms the proposed use of the property, the effect of the changes on the surrounding area, and the reason for the request.
        iv. A plot plan in accordance with the Site Plan Ordinance.
    b. Detailed Application. The contents of the Detailed Application may be delineated on the plot plan required for the General Application, or provided in separate maps, elevations, or written document as appropriate. The Detailed Application shall indicate the following:
        i. Location, amount, character and continuity of open space.
        ii. A delineation of those general areas that have scenic assets or natural features deserving protection and preservation, including elevations demonstrating protection of views from existing streets, and a statement of how such will be accomplished.
        iii. Convenience of access through and between buildings or in other locations where appropriate for public purposes and where such access will reduce pedestrian congestion on public streets.

iv. Separation of pedestrian and vehicular traffic.
v. Landscape plans delineating dimensions and distances and the location, type, size, and description of all existing and proposed plant materials.
vi. Location and dimensions of on-site signage.
vii. Conceptual renderings of building exteriors.
viii. Such other matters as are appropriate to determinations in the specific case. Other information may be requested by the Zoning Administrator, the Harbor Area Review Board, or Town Council.

2. Review procedure.
   a. Pre-application meeting. Prior to application submission, the applicant shall meet with the Zoning Administrator and the Harbor Area Review Board in a pre-application meeting. The purpose of the meeting shall be to discuss the general goals of the project and application procedures.
   b. General Application. Following the pre-application meeting, the applicant shall submit a General Application. The contents of the General Application are detailed in Section 3.9.I.1.a.
   c. Post-application meeting. Within thirty (30) days of receipt of the complete General Application, the Zoning Administrator and the Harbor Area Review Board shall meet in a post-application meeting. The purpose of the meeting shall be to discuss the content of the General Application and to formulate recommendations for the applicant.
   d. First review meeting. Within thirty (30) days of the post application meeting, the applicant shall meet with the Zoning Administrator and the Harbor Area Review Board in a first review meeting. The purpose of the meeting shall be to provide the applicant with the Harbor Area Review Board's recommendations and to provide notice to proceed with the Detailed Application.
   e. Town Council summary. Following the first review meeting, the Harbor Area Review Board will present the Town Council with the General Application and a general description of discussion held at the first review meeting. The Town Council summary will be provided at a Town Council regular session or a Town Council work session for informational purposes.
   f. Detailed Application. Following the first review meeting, the applicant shall submit a Detailed Application. The contents of the Detailed Application are provided in Section 3.9.H.1.b.
   g. Zoning Administrator action. Following the Zoning Administrator's receipt of the Detailed Application and his determination that it is complete pursuant to Section 3.9.H.1.b, the Zoning Administrator shall prepare a thorough review and analysis of the Harbor Development Certificate Application and a written staff report. The Zoning Administrator's written report shall be forwarded to the Harbor Area Review Board within 45 days of receipt of the Detailed Application.
   h. Second review meeting. After receipt of the Detailed Application, the applicant shall meet with the Zoning Administrator and the Harbor Area Review Board in a second review meeting. The purpose of the meeting shall be to review the Harbor Development Certificate Application, consisting of the General Application and the Detailed Application, and

provide the applicant with any necessary recommendations. Follow up meetings may be scheduled to further review the application or to review modifications to the application.

i. Harbor Area Review Board action. After the second review meeting, the Harbor Area Review Board shall forward its recommendation to approve, deny, or approve subject to modification, to the Town Council along with written findings of fact supporting its recommendation.

j. Town Council action. After receipt of the Harbor Area Review Board's recommendations and findings, the Town Council shall decide to approve, deny, or approve subject to modification.

k. Concurrent review permitted. Other development applications, including application for any necessary Certificate of Appropriateness, may be submitted concurrently with an application for a Harbor Development Certificate.

3. Criteria for review. In reviewing the Harbor Development Certificate Application, the Zoning Administrator, the Harbor Area Review Board, and the Town Council shall consider the following criteria:

a. Use characteristics of the proposed development.

b. Preservation of historic structures; preservation of significant features of existing buildings when such buildings are to be renovated; relation to nearby historic structures or districts including a need for height limits.

c. Location and adequacy of off-street parking and loading provisions, including the desirability of bicycle parking.

d. Vehicular circulation within the development and its relation to other existing and proposed transportation facilities.

e. Inclusion of alleys to enhance vehicular transportation within the development.

f. Provision of concealed commercial loading and unloading areas adjacent to alleys to prevent loading, unloading, and trash collection along public rights of way.

g. Traffic generation characteristics of the proposed development in relation to street capacity.

h. Provision of open space to meet the requirements of the district; the location, design, landscaping and other significant characteristics of this public open space, and its relation to existing and planned public and private open space.

i. Multi-modal transportation facilities within the proposed development and their relation to public open space and pedestrian circulation patterns.

j. Architectural relationships, both formal and functional, of the proposed development to surrounding buildings, including building siting, massing, proportion, and scale.

k. Use of architectural details, storefront design, window openings, roof shapes, porches, and columns to balance the proportions of facades into pleasant and cohesive compositions.

l. Microclimate effects of proposed development, including effects on wind velocities, sun reflectance, and sun access to streets and/or existing buildings and/or public open space.

m. Protection of significant views and view corridors, particularly views of the

Cape Charles Harbor from existing road intersections.

n. Relationship of on-site lighting and landscaping to other surrounding lighting and landscaping designs both public and private.

o. Relationship of on-site signage to architectural elements of the proposed development and relationships to nearby development.

p. Adherence to policies included in the Cape Charles Harbor Area Conceptual Master Plan and Design Guidelines, the Comprehensive Plan, and other officially adopted plans of the Town.

q. Adherence to the intent and requirements of the Harbor District.

4. Other requirements. Issuance of a Harbor Development Certificate shall not exempt a property owner from obtaining other necessary zoning clearances and building permits as required.

J. Exemption.

Railroad activities in this district are subject to federal preemption to the extent that the activities are an integral part of the railroad's interstate operations. 49 U.S.C. 10501 (b). Therefore, "state and local permitting or pre-clearance requirements [such as building permits, zoning clearances, and site plan requirements] which, by their nature, interfere with interstate commerce by giving the [Town of Cape Charles] the ability to delay or deny the [railroad's] right to construct facilities or conduct operations are preempted." Borough of Riverdale v. New York Susquehanna & Western Railway Corporation, Surface Transportation Board, Docket No. FD 33466 0, September 9, 1999.

However, environmental and other public health and safety issues and "activities and facilities not integrally related to the provision of rail service are not subject to [Surface Transportation Board] jurisdiction or subject to federal preemption." Id. Also, "interstate railroads … are not exempt from certain local fire, health, safety and construction regulations and inspections." Id.

K. Modifications may be allowed that do not change the wall to window area ratio, and do not add to or reduce the number and type of porches\balconies. Modification is solely at the discretion of the zoning administrator, the building official, and the town manager upon approval of a Harbor Development Certificate.

L. Modifications may be allowed to balconies and building architectural projections, and there is no change to street\sidewalk access or percentage of open space upon approval of a Harbor Development Certificate. Modification is solely at the discretion of the zoning administrator, the building official, and the town manager.

M. Modification may be allowed if the required percentage of open space, required landscape, buffering, and Dark Sky compliance are met upon approval of a Harbor development Certificate. Modification is solely at the discretion of the zoning administrator, the building official, and the town manager.

O. Mainstreet Mixed-use Area.

1. The area of the Harbor District along the south side of Mason Avenue, beginning at the western edge of Parcel 83A3-A-5, and projecting eastward to Nectarine Street, and southward a distance of 120 feet from the south side of Mason Avenue,

is defined as the "Mainstreet Mixed-Use Area." All buildings in the Mainstreet Mixed-use Area shall meet the following requirements:

a. Each building shall be a minimum of two stories and shall have only residential uses above the first floor.
    i. Residential portions of the building shall have at least two entrances/exit ways to the ground floor that are separate from the entrances/exit ways used by occupants of nonresidential portions of the building.
    ii. The primary entrance for the residential portion of the building shall be clearly visible from Mason Avenue and shall face Mason Avenue.
b. Ground floor uses shall be limited to non-motor vehicle related uses, including restaurants, sales and rental of goods, merchandise or equipment establishments, banks and financial institutions, or offices.
c. Drive-through facilities are prohibited.
d. The primary façade shall face Mason Avenue. On a corner lot, each side adjacent to a street shall be considered a primary façade.
e. All blocks shall align with and be equal in frontage length to the blocks on the north side of Mason Avenue so that existing viewsheds to the harbor are maintained.
f. No building or structure shall exceed 40 feet in height.
g. The front setback shall be the prevailing setback of adjacent properties along the south side of Mason Avenue.
h. Development design standards in this area shall be subject to both the Historic District Review Board and the Harbor Area Review Board.
i. Whenever the provisions of subsection 3.9.B.1 impose standards that are more restrictive than are required in or under any other statute, ordinance or resolution, these standards shall prevail, unless otherwise specified in this Zoning Ordinance.

Section 3.10 General Business/Light Industrial GBI

A. Statement of Intent. The intent of this basic zoning district is to accommodate and develop a district for business, office, light industrial, and specific public purpose and to encourage the formation and continuance of a quiet, compatible, and uncontested environment for business, professional, and light industrial firms and to discourage any uses capable of adversely affecting the specialized commercial and housing character of the Town.

B. Permitted Uses. The following uses shall be permitted by right; however, any outdoor storage shall be screened from view of all adjacent streets and property lines:
    1. All permitted uses within the CR, C-1, C-2, and C-3 districts
    2. Vehicle parking
    3. Electric vehicle charging facilities (3+ vehicles)
    4. Utility facilities
    5. Manufacturing and material processing
    6. Machine shops, blacksmith shops, and welding shops
    7. Wholesale business and warehousing
    8. Port facilities/intermodal terminals

9. Agriculture, horticulture, forestry, and aquaculture (excluding livestock)

C. Accessory Uses. Within the GBI District the following accessory uses shall be permitted:
1. Those uses customarily associated and clearly incidental and subordinate to the principal uses and structures and temporary licensed uses such as festivals, displays, outdoor entertainment, outdoor gatherings, performances, and outdoor open-air markets.

D. Conditional Uses. Within the GBI District, there shall be no conditional uses permitted.

E. Lot, Yard, Height, Coverage and Density Requirements. Within the GBI District, the following standards shall apply:

Front Setback (minimum unless otherwise stated)	75 ft
Side Setback (minimum)	50 ft
Rear Setback (minimum)	50 ft
Maximum Height	45 ft

Section 3.11 Industrial District M-1

A. Statement of Intent. The primary purpose of the M-1 District is to permit certain industries, which do not in any way detract from the residential desirability and will not be permitted to locate in any area adjacent to a residential area. The limitation on (or provisions relating to) height of a building, horsepower, heating, flammable liquids or explosives, controlling of emission fumes, odors and noise, landscaping, and the number of people employed are imposed to protect and foster adjacent desirability while permitting industry to locate near a labor supply and near existing available transportation.

B. Permitted Uses. The following uses will be permitted by right:
1. Vehicle parking
2. Electric vehicle charging facilities (3+ vehicles)
3. Utility facilities
4. Manufacturing and material processing
5. Machine shops, blacksmith shops, and welding shops
6. Wholesale business and warehousing
7. Port facilities/intermodal terminals
8. Agriculture, horticulture, forestry, and aquaculture (excluding livestock)
9. Any other use as determined by the Zoning Administrator to be a compatible use with this district

C. Accessory uses. Within the M-1 District the following accessory uses shall be permitted:
1. Schools, community centers, and public facilities
2. Conference centers
3. Utility facilities

D. Conditional Uses. The following uses may also be permitted, subject to securing a Conditional Use Permit as provided for in this ordinance:

1. Heliports

E. Lot, Yard, Height, Coverage and Density Requirements. Within the C-1 District, the following standards shall apply:

Minimum Lot Size	15,000 SF
Minimum Lot Width at Setback Line	100'
Front Setback (minimum unless otherwise stated)	35'
Side Setback (minimum)	10'
Rear Setback (minimum)	20'
Maximum Height	45′

Section 3.13 Industrial District M-2

A. Statement of Intent. The intent of this zoning district is to provide for mixed industrial and employment land uses in the community. The specific objectives of the M-2 District are to:
1. Encourage the revitalization of the local industrial economy and historic port of Cape Charles and Northampton County
2. Create family-wage employment and training opportunities for local residents.
3. Serve as a model and national prototype of an integrated approach to land development and industrial operations, embodying sustainable approaches to the local economy, environment, and culture
4. Serve as a model for advancing the traditional settlement patterns of the Eastern Shore's towns and employment centers
5. Encourage cost-effective approaches to resource conservation, wise use of renewable resources, and ecologically-based industrial development

B. Permitted Uses. The following uses are permitted by right:
1. Parks and playgrounds
2. Offices
3. Medical/dental practices (outpatient) and labs
4. Marinas, wharves, and docks (if contiguous to harbor)
5. Manufacturing and material processing
6. Machine shops, blacksmith shops, and welding shops
7. Wholesale business and warehousing
8. Port facilities/intermodal terminals
9. Agriculture, horticulture, forestry, and aquaculture

C. Accessory Uses. Within the M-2 District, the following accessory uses shall be allowed:
1. Schools, community centers, and public facilities
2. Conference centers
3. Utility facilities
4. Only those that are customarily accessory and clearly incidental and subordinate to the principal uses and structures.
5. Temporary licensed uses such as art festivals, displays, educational exhibits, outdoor gatherings or performances, and outdoor food markets.

D. Conditional Uses. Within the M-2 District, the following conditional uses shall be allowed, subject to the issuance of a Conditional Use Permit

1. Recycling drop-off collection centers
2. Recording studio
3. Manufacture, processing, fabrication, and/or assembly of products such as scientific and precision instruments, renewable energy technology components, photographic equipment, communication equipment, aircraft or satellite parts, computation equipment, drugs, medicines, medical equipment, pharmaceutical, household items, glass products, electrical lighting and wiring equipment, service industry machines, lithographic and printing processes, industrial controls, optical goods, and electrical equipment
4. Food production, packaging, packing and canning
5. Wood products manufacturing
6. Educational institution
7. Conference center
8. Outdoor storage provided it shall be surrounded by wax myrtle or red tip photinia installed on 4-foot centers and by evergreen trees with a minimum caliper of 2.5 inches on 15-foot centers, except for entrances and exits.
9. Public utilities substations provided storage or maintenance facilities shall not be permitted and provided further that utilities substations, other than transformers, shall be surrounded by wax myrtle or red tip photinia installed on 4-foot centers and by evergreen trees with a minimum caliper of 2.5 inches on 15-foot centers, except for entrances and exits, and provided also transformer vaults for underground utilities and the like shall require only wax myrtle or red tip photinia installed on 4-foot centers, solid except for access opening
10. Any telecommunication, television, or radio microwave dishes or antennas
11. Utility generating plant and transmission facility using renewable energy sources
12. Performing arts center
13. Public utility service center
14. Water storage tank
15. Utility installations
16. Recreational facilities
17. Structures, other than buildings, exceeding 50 feet

E. Lot, Yard, Height, and Density Requirements. Within the M-2 District, the following standards shall apply:

Minimum Lot Size	15,000 SF
Minimum Lot Width at Setback Line	100'
Front Setback (minimum unless otherwise stated)	10' minimum, 25' maximum
Side Setback (minimum)	None or 5' between buildings, 10' adjacent to street
Rear Setback (minimum)	20'
Maximum Height	45' for buildings, 50' for structures other than buildings

Maximum Lot Coverage	60%
Buffer Yards	See below

1. Buffer yards. When a zoning lot within the M-2 District adjoins R-E, R-1, R-2, or R-3 Districts, the following shall be required along all lot lines within the M-2 District adjoining the R-E, R-1, R-2, or R-3 Districts a 50-foot separation of road right-of-way, golf course, lake, drainage easement, natural area, or landscaped buffer yard shall be required.

F. Additional Development Requirements
1. Placement of drives and parking areas. Excluding entrances and exits, no drive or parking area shall be located within any front yard or minimum side and rear yards.
2. Placement of drives and parking areas when adjacent to public right-of-way. Excluding entrances and exits, no drive or parking area shall be located closer than twenty feet from any public right-of-way line for a contiguous public street. Landscaping, hedges, or fast-growing shrubs on four-foot centers on a gradual berm shall be installed within a portion of this buffer area unless to do so will jeopardize existing natural vegetation within the buffer area.
3. No parking or drive aisles shall be located within the required buffer yards.
4. No outside storage of parts, materials, fossil fuels, raw materials, or petroleum shall be permitted within the M-2 District.
5. No outside manufacturing, assembly, or servicing of products used on the property or trucks or automobiles used in conjunction with or for the transport of materials to the district shall be allowed.
6. Any exterior lighting on the property shall be directed down and away from any area zoned R (Residential) or PUD where residential development is a permitted use, to prevent the disbursement or bleeding of light beyond the limits of the developed portions of the property.
7. No outside loudspeakers, intercoms, sirens, paging systems, whistles, horns, bells, or other devices designed to or which transmit a warning message or other communication or signal audible outside any building shall be allowed on the property. No equipment used outdoors, excluding half-ton trucks, shall be equipped with or use any device to emit a warning noise or audible signal while in use on the property.
8. No dust, smoke, or noxious odors shall be released from any structure, building, or equipment used on the property.
9. No delivery or transmission of materials of products shall be permitted to or from the property by truck or rail before 8 a.m. and after 9 p.m. Monday through Saturday and no such deliveries to or from the property by rail or truck, excluding half-ton trucks, shall occur on Sunday.

Section 3.12 Planned Unit Developments (PUD)

A. *Statement of Intent.* The intent of this district is to promote creative and imaginative development designs for residential and commercial uses by allowing greater flexibility than is possible under the restrictions of conventional zoning regulations. It is further intended to promote more efficient use of land while encouraging variety and convenience

for the overall development and the development of recreational areas and open spaces within the project. As in all zoning districts, the intent of the district is to ensure approved development will comply with the Zoning Ordinance, Town Code, and any adopted master plans. Whenever the provisions of this section impose standards that are more restrictive than are required in or under any other statute, ordinance or resolution, these standards shall prevail, unless otherwise specified in this Zoning Ordinance.

B. *Permitted Uses.* The following uses may be permitted within PUD districts:

1. Residential
    a. Any use permitted in the R-1, R-2, and R-3 districts.
2. Commercial
    a. Any use permitted in the CR, C-1, C-2, C-3, and Harbor districts.
    b. Commercial recreation uses
    c. Outdoor recreational uses
    d. Transportation facilities
3. Accessory uses
    a. Accessory uses as permitted in the R-1, R-2, and R-3 districts
4. Conditional uses
    a. Any use listed as a conditional use in the R-1, R-2, R-3, CR, C-1, C-2, C-3, and Harbor districts may be a conditional use in PUD districts and shall follow the procedures of this ordinance on issuance of Conditional Use Permits.
5. PUD districts shall provide a mix of a minimum of two of the following use categories:
    a. Residential units;
    b. Commercial offices;
    c. Retail;
    d. Hotel; or
    e. Civic uses.

C. *Area Regulations.* The minimum contiguous area for PUD districts shall be five acres.

D. *Density of Development.* The sub-areas of PUD districts may contain the density requirements of one or more of the R-1, R-2, and R-3 for residential districts, and CR, C-1, C-2, C-3, and Harbor for the commercial districts to accommodate flexibility and imaginative development designs. Density shall be consistent with conditions that are applicable to the property, such as topography, the character of the surrounding property, potential health or safety hazards, traffic safety considerations, and the effects upon existing public facilities that could be alleviated by a reduction in density.

E. *Coverage.* The maximum impervious surface coverage in PUD districts shall not exceed 80 percent of the total gross area of development. Impervious surface includes building footprints, impervious private roads, and impervious parking lots. Not included as impervious surface any recreational facility such as tennis courts, bathhouses, swimming pools, required landscape, sidewalk clear, and supplemental zones, and public roads pervious roads, and pervious parking lots. No more than 33 percent of wetlands present in PUD districts may be used when calculating total gross area of development.

F. *Common Areas.* All common areas including open spaces, parking areas, street, and landscape areas shall be maintained by the owner/developer of the project until transfer to a corporation of property owners, organizing and operating in accordance with the incorporation law of Virginia. All common areas shall provide a permanent easement arrangement to ensure public access to said areas.

G. *Utilities.* All utilities shall be installed underground. Central instrumentation and substations shall be screened from all rights-of-way with approved fencing and/or landscaping.

H. *Height.* The maximum height of any building in PUD districts shall be per the underlying zoning district requirement.

I. Setbacks. Side and rear yard setbacks shall be per the underlying zoning district requirement. Front yard setbacks other than the R-1 underlying zone district shall be located directly adjacent to the supplemental zone, as described in subsection 3.12.B.2.iii. The applicant may propose modifications to the setback regulations in accordance with the procedures of Section 3.12 L. below.

J. Design Guidelines.

1. *External Relationships:* PUD districts shall provide protection for areas within PUD districts and for existing surrounding areas from potentially adverse surrounding influences. In particular, the Overall Development Plan for PUD districts shall demonstrate the following features:

    a. *Access.* Principal vehicular access points shall be designed to encourage smooth traffic flow with controlled turning movements and minimum hazards to vehicular or pedestrian traffic. Left-hand storage and right- hand turn lanes and/or traffic dividers shall be required where existing or anticipated heavy flows indicate need. In general, streets shall not be connected with streets outside the district in such a way as to encourage the use of such minor streets by substantial amounts of through traffic. Existing public streets on adjacent properties shall be utilized as access into PUD districts.

    b. *Screening.* Screening at the edges of PUD districts shall be provided when necessary to protect residents from undesirable view, lighting, noise, or other off-site influences, or to protect adjoining residential districts from similar adverse influences within PUD districts. In particular, off-street areas for parking, service areas for loading and unloading non-passenger vehicles, and areas of storage and collection of refuse and garbage shall be screened with approved fencing and/or landscaping.

2. *Internal Relationships.* PUD districts shall provide safe, efficient, convenient, and harmonious grouping of structures, uses, and facilities. Elements of the proposed development shall be organized in relation to topography, the size and shape of

the plot, the character of adjoining property, existing desirable trees, and views within and beyond the site. In particular, the Overall Development Plan for PUD districts shall demonstrate the following features

a. *Multi-modal circulation and street cross-sections.* Private streets may be permitted by conditional use permit in the PUD district. However, unless specifically approved by the Town Council as a conditional use permit, the arrangement, character, extent, width, grade, and location of all streets shall be designed and constructed in accordance with specifications acceptable to the Virginia Department of Transportation for inclusion in the state highway system for maintenance. When private streets are proposed as a conditional use permit, the standards, specifications and a proposed maintenance agreement shall be submitted with the conditional use permit application and shall also be included on the concept plan for the proposed PUD rezoning request. There shall be no gated communities or gated roads allowed in PUD districts. Streets shall travel east-west and north-south to the greatest extent possible, and there shall be no cul-de-sacs or dead ends.

b. *Streetscape design.* Properties with required landscape, sidewalk clear, or supplemental zones that are located on private property shall provide a permanent easement arrangement to ensure public access to said zones. The following standards apply to all streets within PUD districts:
   i. *Landscape zone.* All required street trees, streetlights, and pedestrian lights shall be provided in the landscape zone, which shall be five' minimum. Said zone shall be located immediately adjacent to the curb and shall be continuous. All street tree and other plantings in the landscape zone shall follow the VDOT standards for street trees and plantings. Trees shall be located forty' on center with pedestrian lights located between every other street (80' on center). Streetlights shall be located as required by the Zoning Administrator. Landscaping shall be kept to no more than 36" tall for ground cover and limbed up to no lower than six' above ground to provide clear, uninterrupted sight lines.
   ii. *Sidewalk clear zone.* The sidewalk clear zone shall be located immediately contiguous to the landscape zone and shall be continuous. Sidewalks meeting VDOT standards shall be installed in the sidewalk clear zone, which shall be a minimum of five'. Sidewalk clear zones located adjacent to Marina Road and Bayshore Road shall be a minimum of 10. Sidewalks shall be unobstructed for a minimum height of 8'. Where newly constructed sidewalks abut narrower existing adjacent sidewalks, the newly constructed sidewalk shall provide an adequate transitional clear zone width for the purposes of providing a safe facilitation of pedestrian flow between the adjacent sidewalks, as approved by the Zoning Administrator. All existing sidewalks shall be replaced in accordance with these provisions within a PUD district. Sidewalks shall be broom- finished concrete with 4' trowel edge along edge joints.

iii. *Supplemental zone.* All lots within an underlying zoning district sub-area of R-1 shall be exempt from the supplemental zone requirements. Non-residential, multifamily, and mixed-use developments shall be hardscaped. However, a maximum of twenty percent may be occupied by landscaping, planters, or other areas not accessible by pedestrians. The zone shall be used for the following pedestrian amenities: benches, trash receptacles, pet stations, bicycle parking racks, outdoor dining, display of public art, other street furniture, or similar elements. The supplemental zone shall be located on private property.

1. Facades shall be located immediately adjacent to the supplemental zone(s).
2. At a minimum, at least one bench, one trash receptacle shall be provided on each street frontage, unless a bench or receptacle is already provided within 500' on the same street frontage.
3. At least one additional pedestrian amenity shall be provided on each street frontage.
4. Adjacent ground floor uses must be visible, accessible, and oriented toward the supplemental zone.
5. The supplemental zone shall be no more than 24" higher than the adjacent sidewalk, unless existing topographical conditions render this requirement unreasonable, per approval by the Zoning Administrator.
6. Any authorized walls surrounding landscaped and grassed areas shall not exceed 24", except retaining walls which shall not exceed a maximum of 36", unless existing topographical conditions render this requirement unreasonable, as approved by the Zoning Administrator.
7. Pedestrian amenities shall be connected to the public sidewalk with a public access easement.
8. Storage, utility rooms, private restrooms, or other accessory service uses shall not be located adjacent to the supplemental zone.

K. *Modifications to Standards.* PUD districts may provide flexibility through modifications to the standards of Section 3.12. All such modifications shall be expressly shown in the Overall Development Plan and approved by the Town Council after lawfully advertised public hearings with the Planning Commission and Town Council, and shall be in keeping with the purpose of PUD districts, the intent of the Zoning Ordinance, the Comprehensive Plan, and any adopted master plans.

L. Procedures for Applications. The creation of PUD districts has the same effect as rezoning of property. The Planning Commission and Town Council shall consider applications for PUD districts in accordance with the Town's and the Code of Virginia's rezoning procedures, which includes advertised public hearings. In approving the application based on the Overall Development Plan, the Council may establish such conditions and require such modifications as deemed necessary to ensure fulfillment of the intent of PUD districts, the purposes of the Zoning Ordinance, the goals of the adopted Comprehensive Plan, and compliance with applicable subdivision and site plan ordinances and the Code of Virginia. For PUD districts proposed for property located in a Chesapeake Bay Preservation Area, the development plan shall have been approved pursuant to the procedures of the Town of Cape Charles Chesapeake Bay Preservation Ordinance prior to submission for approval to the Planning Commission and Town Council.

1. *Overall Development Plan (ODP).* Development of PUD districts is governed by an Overall Development Plan that designates the standards of zoning and development for PUD districts. The ODP shall be submitted as part of a PUD application, shall be prepared by a licensed professional team, and a list of members of the team with their qualifications shall be submitted with the ODP.
2. At a minimum, the ODP must include:
    a. *Analysis of existing site conditions.* An analysis of existing site conditions including a boundary survey and topographic map of the site at a minimum 1 inch = 40 feet scale and shall include the total area of the tract presented in square feet or acreage, and information on all existing manmade and natural features, utilities, all streams and easements, and features to be retained, moved, or altered. The existing shape and dimensions of the existing lot to be built upon including the size, measurement, and location of any existing buildings or structures on the lot shall be included.
    b. *Master plan.* A master plan at a minimum of 1 inch = 40 feet scale outlining all proposed regulations and calculations which shall include, but not be limited to, the following:
        i. Information on proposed improvements, including proposed building footprints, door locations, densities, parking ratios, open space, height, sidewalks, yards, under and over-head utilities, internal circulation and parking, grading, lighting, the general location of all proposed community and public facilities and the generalized proposed plan for water, sanitary waste facilities and drainage improvements, drainage, amenities, and similar details including their respective measurements;
        ii. The type and location of all intended uses, together with their sub-area zoning district designations, and including all proposed modifications to the permitted uses, area regulations, density of development, coverage, common area, utilities, height, yard requirement, and design guidelines listed in this section of the ordinance, together with the rational for such modifications;
        iii. Expected gross land area for all intended uses, including open space;
        iv. A statement of the anticipated residential density, residential unit sizes for all buildings, and the total number of dwelling units;
        v. The total floor area of all commercial uses;
        vi. The names and route numbers of all boundary roads or streets and the width of existing rights-of-way;
        vii. The owners, zoning districts, and uses of each adjoining tract;
    c. *Landscape plan.* A site plan at a minimum of 1 inch = 40 feet scale showing proposed regulations and calculations which shall include, but not be limited to, information on landscaping, tree species, and the number of all plantings and open space including the landscaping that is being preserved, removed, and that which is replacing the landscaping that is removed;

d. *Architectural design.* Preliminary architectural plans and all elevations with sufficient detail to demonstrate proposed design criteria that shall include, but not be limited to, scaled floor plans and elevation drawings of proposed buildings and structures and information on building materials, features, exterior finish legend, windows, doors, colors, and items affecting exterior appearance, including their respective measurements;

e. *Phasing plan.* Should a PUD be expected to require five years or longer to complete, a phasing plan shall be proved by the applicant that indicates the timeframe for construction and development of different aspects of the PUD;

f. *Parking analysis.* A parking analysis must be prepared by a qualified third-party professional engineer;

g. *Environment impact plan.* A comprehensive plan that describes the natural features and characteristics of a proposed development site, the changes that will occur as a result of the proposed development activities on the site, the anticipated environmental impacts and consequences of the proposed development, and the mitigation measures to be taken to minimize undesirable impacts to the environment.

h. An attorney's certificate showing the owner or owners of the subject property, marketable title to the subject property in such owner or owners, naming the source of applicant's title or interest in the subject property, and the place of record of the latest instrument in the chain of title for each parcel constituting the tract; and

i. Any other information deemed necessary by the Zoning Administrator.

3. Proffers. If the applicant proffers reasonable conditions in connection with the application, a set of signed proffers must be submitted prior to the public hearing with the Town Council in accordance with Section 2.7.5 of this ordinance.

M. Effect of approval of PUD districts.

1. All terms, conditions, safeguards and stipulations included in the Town Council's approval of PUD districts, including without limitation those contained in the Overall Development Plan to the extent approved and adopted by the Town Council, shall be part of the zoning applicable to the property, shall be included in the ordinance approving the rezoning to PUD district, and shall be binding upon the applicant and all successors in interest. Unapproved modifications from the Overall Development Plan or failure to comply with any requirements, conditions, or safeguards shall constitute a violation of the Zoning Ordinance.
2. After approval of PUD districts, the owner may submit subdivision plats and site plans for approval consistent with the Overall Development Plan. No building permits will be issued until site plan approval and final subdivision plats have been approved and recorded in the County land records according to applicable law.

Section 3.14 General Business/Light Industrial H-1 (GBI H-1)

A. Purpose of the District. The GBI H-1 District is a planned mixed industrial and employment park with a comprehensive development plan. The purpose of the district is to:
   1. Encourage the revitalization of the local industrial economy and historic port of Cape Charles and Northampton County
   2. Create family-wage employment and training opportunities for local residents
   3. Serve as a model and national prototype of an integrated approach to land development and industrial operations, embodying sustainable approaches to the local economy, environment, and culture
   4. Serve as a model for advancing the traditional settlement patterns of the Eastern Shore's towns and employment centers
   5. Incorporate comprehensive, cost-effective approaches to resource conservation, wise use of renewable resources, and ecologically based industrial development in all aspects of design and development of the project.

B. Permitted Uses. Within the GBI H-1 District, the following permitted uses shall be allowed. Permitted (if serving as interrelated component of the business/industrial park)
   1. Childcare/adult daycare facilities and nursing homes
   2. Offices
   3. Indoor recreation facilities
   4. Vehicle parking
   5. Electric vehicle charging facilities (3+ vehicles)
   6. Utility facilities
   7. Manufacturing and material processing
   8. Machine shops, blacksmith shops, and welding shops
   9. Wholesale business and warehousing
   10. Port facilities/intermodal terminals
   11. Agriculture, horticulture, forestry, and aquaculture (excluding livestock)

C. Accessory Uses. Within the GBI H-1 District, the following accessory uses shall be allowed.
   1. Only those that are customarily accessory and clearly incidental and subordinate to the principal uses and structures.
   2. Temporary licensed uses such as festivals, displays, educational exhibits, outdoor gatherings or performances, and outdoor food markets.

D. Conditional Uses. Within the GBI H-1 District, the following conditional uses may be allowed, subject to the issuance of a Conditional Use Permit.
   1. Structures, other than buildings, exceeding 50 feet
   2. Buildings over 40 feet but equal or less than 50 feet or building or structure other than building may be constructed to a maximum height of 75 feet if the building is set back at least 125 additional feet from the required setback for all yards abutting residential properties.

E. Lot, Yard, Height, and Density Requirements. Within the GBI H-1 District, the following standards shall apply.

Minimum Lot Size	15,000 SF
Minimum Lot Width at Setback Line	100'

Front Setback (minimum unless otherwise stated)	10' minimum, 25' maximum
Side Setback (minimum)	None or 5' between buildings, 10' adjacent to street
Rear Setback (minimum)	20'
Maximum Height	45' for buildings, 50' for structures other than buildings
Maximum Lot Coverage	50% of lot area
Buffer Yards	See below.

1. Buffer yards. Where the GBI H-1 District adjoins the R (residential) zoning districts within the PUD or CO Districts or C districts within the PUD, buffer yards are required as follows:
   a. When a zoning lot within the GBI H-1 District adjoins any R zoning district within the PUD, the following shall be required along all lot lines within the GBI H-1 District adjoining the R zoning district within the PUD.
      i. A 200-foot natural buffer over and above any landscape requests otherwise required by the Town's zoning or site plan ordinances. A preservation easement shall be required prior to site plan approval and no clearing or disturbance of trees or undergrowth shall be allowed within the buffer area.
      ii. No loading facilities, loading docks, or loading bays shall be permitted within 200 feet of any zoning district or zoning classification within the PUD that permits residential as an allowed use and no such facilities shall be located in the side of any portion of a building or structure that is adjacent to the portions of the PUD where residential use is allowed.
      iii. Any buffer yard exclusive of any other yard requirements shall be landscaped with Category III landscape screening as set forth in Appendix A, except that the width of the landscaped area shall be at least 100 feet wide and run continuously for the length of the buffer.
   b. When a zoning lot within the GBI H-1 District adjoins a CO District, the following shall be required along all lot lines within the GBI H-1 District adjoining the CO District:
      i. A 100-foot natural buffer over and above any landscape requests otherwise required by the Town's zoning or site plan ordinances. A preservation easement shall be required prior to site plan approval and no clearing or disturbance of trees or undergrowth shall be allowed within the buffer area.
      ii. No loading facilities, loading docks, or loading bays shall be permitted within 100 feet of any zoning district or zoning classification within the PUD that permits CO District as an allowed use and no such facilities shall be located in the side of any portion of a building or structure that is adjacent to the portions of the PUD where CO District is allowed.

iii. Any buffer yard exclusive of any other yard requirements shall be landscaped with Category III landscape screening as set forth in Appendix A, except that the width of the landscaped area shall be at least 50 feet wide and run continuously for the length of the buffer.

c. When a zoning lot within the GBI H-1 District adjoins a C district, the following shall be required along all lot lines within the GBI H-1 District adjoining the C district:

i. A 50-foot natural buffer over and above any landscape requests otherwise required by the Town's zoning or site plan ordinances. A preservation easement shall be required prior to site plan approval and no clearing or disturbance of trees or undergrowth shall be allowed within the buffer area.

ii. No loading facilities, loading docks, or loading bays shall be permitted within 75 feet of any zoning district or zoning classification within the PUD that permits commercial as an allowed use and no such facilities shall be located in the side of any portion of a building or structure that is adjacent to the portions of the PUD where commercial use is allowed.

iii. Any buffer yard exclusive of any other yard requirements shall be landscaped with Category III landscape screening as set forth in Appendix A, except that the width of the landscaped area shall be at least 50 feet wide and run continuously for the length of the buffer.

F. Additional Development Requirements.

1. Placement of drives and parking areas. Excluding entrances and exits, no drive or parking area shall be located within any front yard or minimum side or rear yards.
2. Placement of drives and parking areas when adjacent to public right-of-way. Excluding entrances and exits, no drive or parking area shall be located closer than twenty feet from any public right-of-way line for a contiguous public street. Landscaping, hedges, or fast-growing shrubs on a gradual berm shall be installed within a portion of this buffer area unless to do so will jeopardize existing natural vegetation within the buffer area. See Appendix A, Category I for requirements.
3. All parking must comply with Section 4.5 - Off Street Parking and Loading Requirements
4. Parking is not permitted in the front yard of a lot.
5. No parking or drive aisles shall be located within the required buffer yards.
6. No outside storage of parts, materials, fossil fuels, raw materials, or petroleum shall be permitted within the GBI H-1 District.
7. Any exterior lighting on the property shall be directed down and away from any area zoned R (residential) or PUD where residential development is a permitted use to prevent the disbursement or bleeding of light beyond the limits of the developed portions of the property.
8. No outside loudspeakers, intercoms, paging systems, whistles, horns, bells, or signal*s* audible outside any buildings shall be allowed on the property. Any and all Occupational Safety and Health Administration (OSHA) requirements shall be adhered to; any OSHA-accepted alternative warning devices are encouraged.

9. No dust, smoke, or noxious odors shall be released from any structure, building, or equipment used on the property.
10. No delivery or transmission of materials or products shall be permitted to or from the property by truck or rail between 11 p.m. and 5 a.m. Monday through Sunday.

Section 3.15 Open Space District

A. Statement of Intent. The intent of the Open Space District (OSD) zoning district is to provide opportunities for recreational activities, a network of recreational paths, preserve natural resources and create buffer zones within the town.

B. Permitted Uses
1. Parks and playgrounds
2. Outdoor recreation facilities
3. Utility facilities

C. Accessory Uses. Within the Open Space District, the following accessory uses shall be allowed.
1. Accessory buildings
2. Uses customarily accessory and clearly incidental and subordinate to the permitted uses.

D. Conditional Uses. Within the Open Space District, the following conditional uses may be allowed, subject to the issuance of a Conditional Use Permit.
1. None

E. Lot, Yard, Height, and Density Requirements. Within the Open Space District, the following standards shall apply.

Minimum Building Setbacks:	
All Sides:	20′
In built up neighborhoods, the prevailing setbacks of the neighborhood as defined in Section 4.13 of the Zoning Ordinance	
Minimum Court Setbacks:	
From Buildings:	20′
From Property Lines:	20′
From Streets:	None

F. Additional Development Requirements. To help preserve the architectural cohesiveness of the Town, all buildings, structures, public amenities and storage units in the OSD shall be compatible, sympathetic and complimentary with buildings in the neighborhood as defined in Section 4.13 of the Zoning Ordinance.

Section 3.16 Bay Crossing Planned Unit Development (PUD) District

[new section 1/19/2023]

A. **Statement of Intent.** The intent of this PUD district is to provide for low-to moderate density residential development designed to serve the workforce and other housing needs of the Town of Cape Charles and Northampton County. The targeted workforce housing segment income range is up to 150% of the Area Median Income (AMI). Additionally, this district provides for residential and limited complimentary commercial development with substantial

Town control by both the Town Council and Planning Commission thru the existing Conditional Use Permit process to ensure any proposed use and application is appropriate for the development and harmonious with the associated multi-family residential development.

B. **Permitted Uses**. The following uses shall be permitted by right, subject to the yard, height, coverage and density requirements contained herein: all uses permitted by-right and as accessory uses in the R-3 District and Electric Vehicle Charging Station(s). Notwithstanding the foregoing, the following items from the Zoning Ordinance shall be not applicable (i) Item #35 from the C-1 District (any use allowed in the S-C District) and (ii) Item C from the C-1 District.

C. **Conditional Uses.** Subject to the Conditional Use Permit application process, the following conditional uses may be allowed: all uses in the C-1, C-2 and C-3 Districts, conditional uses within the R-3 District, short term rentals including subletting of units (said unit's square footage will be less than 1,000 square feet and the short term rental is defined as 30 days or less for rent), and any other commercial or professional use which is compatible in nature with the allowed uses and which the Zoning Administrator determines to be compatible with the intent of the district and is concurred with by the Planning Commission.

D. **Lot, Yard, Height, Coverage and Density Requirements for Residential Development Within the Bay Crossing PUD District.** The following standards shall apply: Minimum of 5 acres for the PUD District.

1. In addition to the following, townhouse projects must have minimum of one acre:
    a. Minimum lot requirements
        i. lot area dwelling units (sf): N/A
        ii. lot width (ft): 15
    b. Minimum yard requirements
        i. front yard (ft):10
        ii. side yard between principal structures (ft): 20
        iii. side yard between end structures and side property line(ft): 10
        iv. side yard between units: N/A
        v. rear yard (ft): 10
        vi. rear yard (parking in rear yard): 10

    c. Maximum building height (ft): 40
    d. Building coverage: No more than 60 percent of the lot may be covered by the structures.
    e. Maximum development: No more than twenty-five townhouse dwelling units shall be constructed or attached together in a continuous row, and no such row shall exceed 240 feet in length.
    f. Off-street parking: Parking shall be provided on the premises. No such parking lot or garage shall be located more than 200 feet from the dwelling unit which it serves (excluding non-residential parking such as guest, golf cart or flex parking). Two (2) spaces per dwelling unit shall be required.
    g. The definition of a townhouse is a multi-floor home that shares one or more walls with adjacent properties.

2. In addition to the following, multi-family projects must have minimum of one acre:

a. Minimum lot requirements lot area per building (FAR): 0.35
b. Minimum yard requirements
    i. front yard (no parking in front yard) (ft): 30
    ii. front yard (parking in front yard) (ft): 30
    iii. side yard between separate structures (ft): 20
    iv. side yard between end structure and side property line (ft): 20
    v. rear yard (no parking in rear yard) (ft): 20
    vi. rear yard (parking in rear yard) (ft): 35
c. Furthermore, no multi-family unit may be erected on a lot which has a width at the building line of less than 60 feet.
d. Maximum building height (ft): 40
e. Building coverage: No more than 60 percent of the lot may be covered by the structure.
f. Parking: Multi-family projects must have one space per one bedroom dwelling unit or studio, otherwise two spaces per dwelling unit.
g. Required open space. Open space shall be provided equivalent to ten percent (10%) percent of lot area. For the purpose of this section, the term open space shall be construed to consist of open space amenities and spacing between buildings. Open space amenities include plazas, esplanades, landscaped areas, walkways, public recreational facilities, and the like designed and maintained for use by residents, pedestrians and open to the public. Where feasible, open space shall be designed to serve as part of a coordinated pedestrian circulation system.
h. Development in this district may contain the density requirements of oneor more of the R-1, R-2, and R-3 for residential districts, and CR, C-1, C-2 and C-3, for the commercial districts to accommodate flexibility and imaginative development designs. Density shall be consistent with conditions that are applicable to the property, such as topography, the character of the surrounding property, potential health or safety hazards, traffic safety considerations, and the effects upon existing public facilities that could be alleviated by a reduction in density.
i. Additional Development Terms. Placement of drives and parking areas. Entrances and exits, drives or parking area may be located adjacent to any lot line.

E. **Lot, Yard, Height Requirements for Commercial Development Within the Bay Crossing PUD District.**

1. In addition to the following, commercial projects must have minimum of ¼ acre:
a. Lot width at setback line (ft): 40
b. Side yard (ft): 5
c. Rear yard (ft): 10
d. Front setback (ft): 25 feet from center of right of way (defined as centerline of main street roadway) or 15 percent ± of the lot depth, whichever is less.
e. Height Regulations. Buildings may be erected up to a height of 35 feet from the adjacent ground elevation.
f. Notwithstanding the foregoing, any electric vehicle charging stations shall be implemented with no setback or minimum land area restrictions provided they meet with adequate landscaping and screening requirements.
g. Buffer yards. The following Buffer Yards shall apply, in lieu of any other setbacks, as follows. If the Bay Crossing PUD adjoins:

i. Open Space/Conservation Easement zoning from the Accawmacke Plantation PUD, there shall be no buffer yard requirement.
ii. Old Cape Charles Road, there shall be a 100' buffer yard requirement.
iii. Cassatt Parkway, there shall be a 30' setback.
iv. RE or R3 Zoned property, there shall be a 20' setback.

F. Other applicable provisions and limitations as follows:

1. Primary Access: All development on the parcel shall maintain primary access (and signage, if applicable) to Cassatt Parkway via the Main Street access road.
2. **All other provisions of the Cape Charles Zoning Ordinance shall apply to this Bay Crossing PUD District unless stated herein. In the event there is a conflict between this Bay Crossing PUD District and the applicable Zoning Ordinance, the Bay Crossing PUD District terms shall apply, to the extent they are not inconsistent with the provisions of this chapter.**

ARTICLE IV General Regulations Applicable to All Districts

Section 4.0 Home-Based Occupation

A. Statement of Intent. The purpose of this section is to allow home-based occupations in all districts that allow residential dwellings provided that the home-based occupation meets the requirements in 4.0.B below.

B. Requirements for a Home-Based Occupation: The conduct of a business in a residence or on its premises is permitted providing the following characteristics are followed:
   1. The home-based occupation is clearly incidental and subordinate to the residential use of the dwelling.
   2. The home-based occupation does not require any changes to the exterior of the dwelling.
   3. Any outdoor storage of goods, products, equipment, solid waste, or other similar items will not exceed the extent associated with normal neighborhood characteristics.
   4. Any accessory building on the property used for the home-based occupation meets all applicable zoning requirements.
   5. The home-based occupation will not create noise, dust, vibration, smoke, small, glare, electrical interference, fire hazard, or other hazard or nuisance to any greater or more frequent extent than associated with normal neighborhood characteristics.
   6. Any pedestrian and/or commercial delivery traffic generated by the home-based occupation will not be greater than normal traffic in the neighborhood.
   7. Any parking requirements of the home-based occupation will be met by off-street parking.

C. If the home-based occupation meets the above requirements and the Home-Based Occupation Affidavit is signed, zoning clearance may be granted. If the home-based occupation does not meet the above requirements, a Conditional Use Permit will be required.

D. Conditional Use Permit: Nothing herein precludes compliance with any Federal, State, or Local regulatory agency requirements.

E. The following are specifically excluded:
   1. Family care homes, group homes except as allowed under § 15.2-2291 of the Code of Virginia, nursing homes, convalescent homes, elderly care facilities.
   2. Auto repair shops.
   3. Kennels.
   4. Any activity that includes the use of weapons, ammunition, explosives, chemicals, fireworks, or other hazardous materials.
   5. Butchers.
   6. Sexually oriented business including adult media, products, or activity.
   7. Illegal drugs and equipment used for these drugs.
   8. Funeral parlors

Section 4.1 Sign Regulations

A. Purpose. The purpose of this sign ordinance is to encourage the effective use of signs as a means to communicate in the Town, to maintain and enhance the aesthetic environment and the Town's ability to attract sources of economic development and growth; to improve the pedestrian and traffic safety, to minimize the possible adverse effect of signs on nearby public and private property, and to enable the fair and consistent enforcement of these sign restrictions.

B. General. Sign types and the computation of *sign* area shall be as depicted in Figures C.1(1) through C.1(4).

C. Figures depicted beginning on next page.

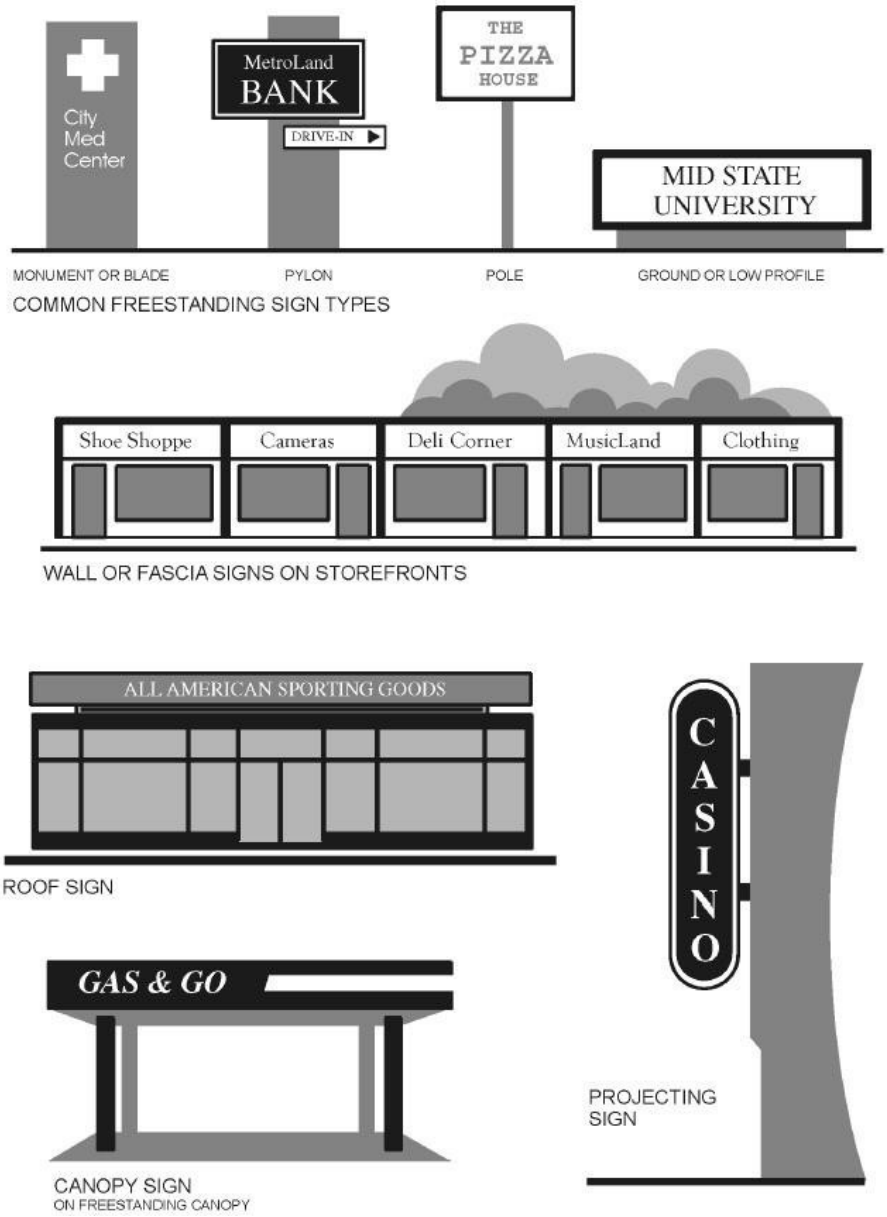


FIGURE C.1(1) GENERAL SIGN TYPES

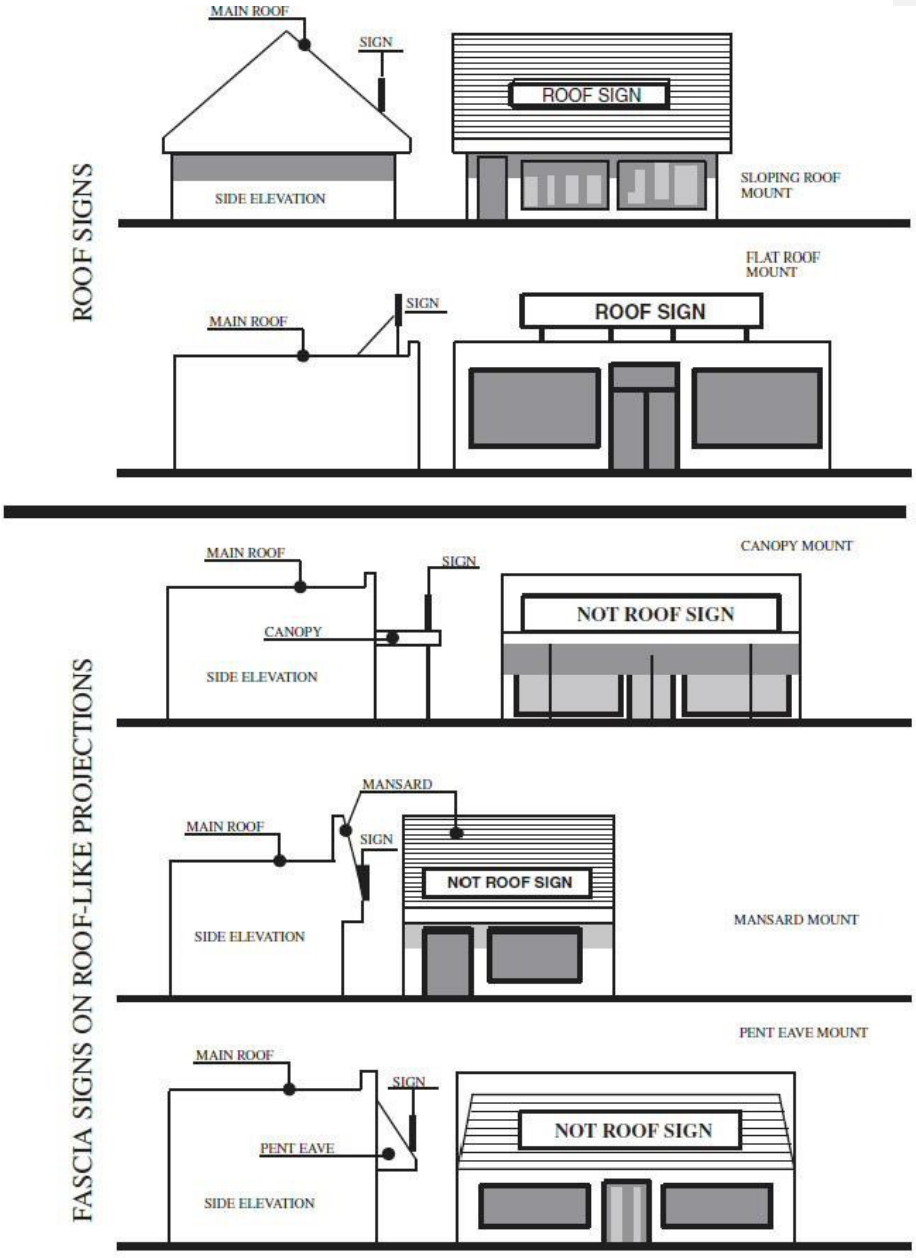


FIGURE C.1(2) COMPARISON—ROOF AND WALL OR FASCIA SIGNS

A. General Provisions

1. Conformance to codes

Any sign hereafter erected shall conform to the provisions of this ordinance and of any other ordinance or regulation within this jurisdiction.

2. Signs in rights-of-way

No sign other than an official traffic sign or similar sign shall be erected within any public way, unless specifically authorized by other ordinances or regulations of this jurisdiction or by specific authorization of the Zoning Administrator and the Virginia Department of Transportation (VDOT).

3. Projections over public ways

Signs projecting over public walkways shall be permitted to do so only with the approval of the Town Manager on a temporary basis. These signs are subject to the projection and clearance limits either defined herein or, if not so defined, at a minimum height of 8 feet (2438 mm) from *grade* level to the bottom of the sign. Signs, architectural projections or *sign* structures projecting over vehicular access areas must conform to the minimum height clearance limitations imposed by the jurisdiction for such structures.

4. Traffic visibility.

No sign or sign structure shall be erected at the intersection of any street in such a manner as to obstruct free and clear vision, nor at any location where by its position, shape or color it may interfere with or obstruct the view of or be confused with any authorized traffic sign, signal or device.

5. Computation of frontage

Business signs with an area of two square feet for each foot of facade width to a maximum of fifty square feet in sign area (where more than one business exists in a building, each maximum sign area is to be proportionate to the business square footage). For buildings with more than one wall facing a street, each side of the building will be computed separately.

6. Animation and changeable messages

Animated signs are not permitted in any areas of the Town.

7. Maintenance, repair and removal

Every sign permitted by this ordinance shall be kept in good condition and repair. When any sign becomes insecure, in danger of falling or is otherwise deemed unsafe by the zoning administrator, or if any sign shall be unlawfully installed, erected or maintained in violation of any of the provisions of this ordinance, the owner thereof or the person or firm using same shall, upon written notice by the zoning administrator forthwith in the case of immediate danger, and in any case within not more than 10 days, make such sign conform to the provisions of this ordinance, or shall remove it. If within 10 days the order is not complied with, zoning administrator shall be permitted to remove or cause such sign to be removed at the expense of the owner and/or the user of the sign. The Town will store the sign for 30 days to give the owner an opportunity to reclaim the sign. The sign will be destroyed if unclaimed after 30 days. If ownership of the sign cannot be determined, the sign shall be removed and destroyed after 30 days if unclaimed.

8. Obsolete sign copy

Any *sign* copy that no longer advertises or identifies a use conducted on the property on which said *sign* is erected must have the sign copy covered or removed within 10 days after written notification from the zoning administrator; and upon failure to comply with such notice, the zoning administrator is hereby authorized to cause removal of such sign copy, and any expense incident thereto shall be paid by the owner of the building, structure or ground on which the sign is located.

In some instances, the historic significance of the sign will exempt the property from adherence to this ordinance. Such cases will be determined by the zoning administrator.

9. Nonconforming signs

Any sign legally existing at the time of the passage of this ordinance that does not conform in use, location, height or size with the regulations of the zone in which such *sign* is located, shall be considered a legal nonconforming use or structure and shall be permitted to continue in such status until such time as it is either abandoned or removed by its owner, subject to the following limitations:

a. Structural alterations, enlargement or re-erection are permissible only where such alterations will not increase the degree of nonconformity of the signs.

b. Any legal nonconforming *sign* shall be removed or rebuilt without increasing the existing height or area if it is damaged, or removed if allowed to deteriorate to the extent that the cost of repair or restoration exceeds 50 percent of the replacement cost of the sign as determined by the zoning administrator.

c. Signs that comply with either Item 1 or 2 above need not be permitted.

B. Exempt Signs

The following signs shall be exempt from the provisions of this chapter but no sign shall be exempt from Section D.4.

1. Official notices authorized by a *court*, public body or public safety official.

2. Directional, warning or information signs authorized by federal, state or municipal governments.

3. Memorial plaques, building identification signs, historical markers and building cornerstones when cut or carved into a masonry surface or when made of noncombustible material and made an integral part of the building or structure.

4. The flag of a government or noncommercial institution, such as a school.

5. Religious symbols and seasonal decorations within the appropriate public holiday season.

6. Works of fine art or historical signs displayed in conjunction with a commercial enterprise where the enterprise does not receive direct commercial gain.

7. Street address signs and combination nameplate and street address signs which do not exceed 4 square feet in area.

Freestanding signs or signs attached to fences, no more than one and one half square feet in area, to warn the public against hunting, fishing, trespassing, dangerous animals, swimming, the existence or danger of such, when placed on the periphery of the property or at a location where the warning is necessary.

8. Political signs during the election season. All requirements shown in § H.2.f must be followed.

C. Prohibited Signs

The following devices and locations shall be specifically prohibited:

1. Signs located in such a manner as to obstruct or otherwise interfere with an official traffic sign, signal or device, or obstruct or interfere with a driver's view of approaching, merging or intersecting traffic.

2. All signs encroaching upon or overhanging public right-of-way. No sign shall be attached to any utility pole (with the exception of the utility pole located at the Post Office on Randolph Avenue), light standard, street tree or any other public facility located within the public right-of-way.

3. Signs which blink, flash or are animated by lighting in any fashion that would cause such signs to have the appearance of traffic safety signs and lights, or municipal vehicle warnings from a distance.

4. Signs, any part of which moves by any means, including but not limited to rotating signs, propellers, discs, and such but excluding pennants and signs indicating time and temperature.

5. Portable signs except as allowed for temporary signs.
6. Any *sign* attached to, or placed on, a vehicle or trailer parked on public or private property, except for signs meeting the following conditions:
a. The primary purpose of such a vehicle or trailer is not the display of signs.
b. The signs are magnetic, decals or painted upon an integral part of the vehicle or equipment as originally designed by the manufacturer, and do not break the silhouette of the vehicle.
c. The vehicle or trailer is in operating condition, currently registered and licensed to operate on public streets when applicable, and actively used or available for use in the daily function of the business to which such signs relate.
7. Vehicles and trailers are not used primarily as static displays, advertising a product or service, nor utilized as storage, shelter or distribution points for commercial products or services for the general public.
8. Balloons, streamers or pinwheels except those temporarily displayed as part of a special sale, promotion or community event. For the purposes of this subsection, "temporarily" means no more than 20 days in any calendar year.
9. Any signs that use the word "stop" or "danger" or otherwise present or imply the need or requirement to stop or take caution of the existence of danger or which is a copy of, imitation of, or which for any reason is likely to be confused with any sign displayed or authorized by a public authority.
10. Any non-shielded illumination of a sign within 200 feet of a residential district.
11. Billboard signs
12. Illuminated tubing or strings of lights solely for the purpose of illumination, except when displayed as decorations during the holiday seasons. This includes any lighting arrangement which outlines any portion of a building or structure by exposed tubing or strings of lights.
13. Signs advertising activities which are illegal under federal, state, or local laws and regulations.

D. Permits Required

1. Unless specifically exempted, a permit must be obtained from the zoning administrator for the erection and maintenance of all signs erected or maintained within this jurisdiction and in accordance with other ordinances of this jurisdiction. Exemptions from the necessity of securing a permit, however, shall not be construed to relieve the owner of the sign involved from responsibility for its erection and maintenance in a safe manner and in a manner in accordance with all the other provisions of this ordinance.
2. Construction documents

Before any permit is granted for the erection of a sign or sign structure requiring such permit, construction documents shall be filed with the zoning administrator showing the dimensions, materials and required details of construction, including loads, stresses, anchorage and any other pertinent data. The permit application shall be accompanied by the written consent of the owner or lessee of the premises upon which the sign is to be erected and by engineering calculations signed and sealed by a registered design professional where required by the *International Building Code*.

3. Changes to signs

No sign shall be structurally altered, enlarged or relocated except in conformity to the provisions herein, nor until a proper permit, if required, has been secured. The changing or maintenance of movable parts or components of an approved sign that is designed for such changes, or the changing of copy, business names, lettering, sign faces, colors, display and/or graphic matter, or the content of any sign shall not be deemed a structural alteration.

4. Permit fees

Permit fees to erect, alter or relocate a sign shall be in accordance with the fee schedule adopted within this jurisdiction.

5. Permit number. Permit must be made available upon request.

6. Permit expiration. If a sign is not erected within twelve months following the issuance of a sign permit, such permit shall be null and void.

7. Church, school, or other public or semi-public institutions may have one name sign or bulletin board not exceeding twenty square feet in area.

8. Landscaping shall be integrated with each individual freestanding sign. Landscaping plans will be approved by the Zoning Administrator.

9. Signs and advertising structures shall not obstruct any window, door, fire escape, stairway, ladder, or opening intended to provide light, air, or ingress and egress for any building structure.

E. Specific Sign Requirements

1. Identification signs.

Identification signs shall be in accordance with Sections H.1.a through H.1.b.

a. Wall signs

Every single-family residence, multiple-family residential complex, commercial or *industrial* building, and every separate nonresidential building in a residential zone may display wall signs per street frontage subject to the limiting standards set forth in Table H.1.a. For shopping centers, planned *industrial* parks or other multiple occupancy nonresidential buildings, the building face or wall shall be calculated separately for each separate occupancy.

TABLE H.1.a IDENTIFICATION SIGN STANDARDS—WALL SIGNS

LAND USE	**AGGREGATE AREA (square feet)**
ingle-family residential	2 SQFT
ultiple-family residential	T per residential dwelling

For SI: 1 square foot = 0.0929 m2.

a. Free-standing signs

In addition to any allowable wall signs, every single-family residential subdivision, multiple-family residential complex, commercial or *industrial* building, and every separate nonresidential building in a residential zone shall be permitted to display free-standing or combination signs per street frontage subject to the limiting standards set forth in Table H.1.b.

TABLE H.1.b IDENTIFICATION SIGN STANDARDS—
FREE-STANDING SIGNSa,b,c

LAND USE	**MBER OF SIGNS**	**MAXIMUM HEIGHT (feet)**	**AREA (square feet)**	**SPACING**
Residential Subdivision	1	6′	12 Sq Ft	er subdivision entrancea
ultiple-family residential	1	6′	12 Sq Ft	1 per drivewaya

mmercial and industrial	1	6’	64 Sq Ft	150b
lason Avenue Commercial	1 per store front	6’	12 Sq Ft	1 per store front

For SI: 1 foot = 304.8 mm, 1 square foot = 0.0929 m2, 1 acre = 4047 m2.

a. For shopping centers or planned *industrial* parks, two monument-style free-standing signs not exceeding 50 percent each of the permitted height and area, and spaced not closer than 100 feet to any other free-standing identification sign, shall be permitted to be allowed in lieu of any free-standing sign otherwise permitted in Table H.1.b.

b. For any commercial or *industrial* development complex exceeding 1,000,000 square feet of gross leasable area, or 40 acres in size, such as regional shopping centers, auto malls or planned *industrial* parks, one free-standing sign per street front shall be permitted to be
increased in sign area by up to 50 percent.

- Temporary signs

Temporary signs shall be in accordance with Sections H.2.a through H.2.f.

b. Real estate signs

Real estate signs shall be permitted in all zoning districts, subject to the following limitations:

1. Real estate signs, including Open House Signs, located on a single residential lot shall be limited to one sign, not greater than 4 square feet in area.
2. Real estate signs advertising the sale of lots located within a subdivision shall be limited to one sign per entrance to the subdivision, and each *sign* shall be no greater than 32 square feet in area nor 6 feet in height. All signs permitted under this section shall be removed within 7 days after sale of the last original lot.
3. Real estate signs advertising the sale or lease of space within commercial or *industrial* buildings shall be no greater than 12 square feet in area nor 8 feet in height, and shall be limited to one sign per street front.
4. Real estate signs advertising the sale or lease of vacant commercial or *industrial* land shall be limited to one sign per street front, and each sign shall be no greater than 8 feet in height, and 20 square feet for property of 10 acres or less, or 32 square feet for property exceeding 10 acres.
5. Real estate signs shall be removed not later than 7 days after execution of a lease agreement in the event of a lease, or the closing of the sale in the event of a purchase.
6. Real estate auction signs advertising the sale of residential, commercial or *industrial* property shall be no greater than 32 square feet, and may be displayed for up to 30 days.

c. Development and construction signs

Signs temporarily erected during construction to inform the public of the developer, contractors, architects, engineers, the nature of the project or anticipated completion dates, shall be permitted in all zoning districts, subject to the following limitations:

1. Such signs on a single residential lot shall be limited to one sign, not greater than 6 feet in height and 4 square feet in area.
2. Such signs for a residential subdivision or multiple residential lots shall be limited to one sign, at each entrance to the subdivision or on one of the lots to be built upon, and shall be no greater than 6 feet in height and 32 square feet in area.
3. Such signs for commercial or *industrial* projects shall be limited to one sign per street front, not to exceed 6 feet in height and 12 square feet for projects on parcels 5 acres or less in

size, and not to exceed 6 feet in height and 32 square feet for projects on parcels larger than 5 acres.

4. Development and construction signs may not be displayed until after the issuance of construction permits by the building official, and must be removed not later than 7 days following issuance of an occupancy permit for any or all portions of the project.

d. Special promotion, event and grand opening signs

Signs temporarily displayed to advertise special promotions, events and grand openings shall be permitted for nonresidential uses in a residential district, and for all commercial and *industrial* districts subject to the following limitations:

1. Such signs shall be limited to one sign per street front.

2. Such signs may be displayed for not more than 30 consecutive days in any 3-month period, and not more than 60 days in any calendar year. The signs shall be erected no more than 7 days prior to the event or grand opening and shall be removed not more than 1 day after the event or grand opening.

3. The total number of all such signs shall not exceed 5 in any single- family residential district, limited to 4 square feet in any multiple- family residential district and in any commercial or *industrial* district.

e. Political signs

Political signs shall be permitted in all zoning districts, subject to the following limitations:

1. Such signs shall not exceed an area of 4 square feet per sign.

2. Such signs for election candidates or ballot propositions shall be displayed only for a period of 45 days preceding the election and shall be removed within 7 days after the election.

3. Such signs shall not be placed in any public right-of-way or obstruct traffic visibility.

f. Other Temporary Signs

This category includes temporary signs that do not conform to any of the other categories listed above.

(1) Such signs on a single residential lot shall be limited to one sign per lot which shall not exceed an area of 4 square feet.

2. Requirements for specific sign types

Signs of specific type shall be in accordance with Sections H.3.a through H.3.g.

a. Canopy and marquee signs

1. The permanently affixed copy area of *canopy* or marquee signs shall not exceed an area equal to 25 percent of the face area of the *canopy*, marquee or architectural projection upon which such sign is affixed or applied.

2. Graphic striping, patterns or color bands on the face of a building, *canopy*, marquee or architectural projection shall not be included in the computation of sign copy area.

b. Awning signs

1. The copy area of awning signs shall not exceed an area equal to 25 percent of the background area of the awning or awning surface to which such a sign is affixed or applied, or the permitted area for wall or fascia signs, whichever is less.

2. Neither the background color of an awning, nor any graphic treatment or embellishment thereto such as striping, patterns or valances, shall be included in the computation of sign copy area.

c. Projecting signs

1. Projecting signs shall be permitted in lieu of free-standing signage on any street frontage limited to one sign per occupancy along any street frontage with public entrance to such an occupancy, and shall be limited in area to 2 square feet per each lineal foot of building frontage, except that no such sign shall exceed an area of 50 square feet.

2. No such *sign* shall extend vertically above the highest point of the building facade upon which it is mounted.
3. Such signs shall not extend over a public sidewalk without approval of the Zoning Administrator.
4. Such signs shall maintain a clear vertical distance above any public sidewalk a minimum of 8 feet.

d. Under *canopy* signs

1. Under *canopy* signs shall be limited to no more than one such sign per public entrance to any occupancy.
2. Such signs shall maintain a clear vertical distance above any sidewalk or pedestrian way a minimum of 8 feet.

e. Roof signs

(1) Roof signs shall not be permitted in any districts.

f. Window signs (Inside).

Window signs shall be permitted for any nonresidential use in a residential district, and for all commercial and *industrial* districts, subject to the following limitations:

1. Any signs attached to windows or glass walls advertising weekly specials or special services offered for a limited time by a business establishment.
2. The aggregate area of all such signs shall not exceed 25 percent of the window area on which such signs are displayed. Window panels separated by muntins or mullions shall be considered as one continuous window area.
3. Window signs shall not be assessed against the sign area permitted for other sign types.

g. Menu boards

Menu board signs shall not be permitted to exceed 10 square feet and are limited to one sign per business.

h. Sandwich boards

Sandwich boards on public right-of-way shall be removed at daily close of business. The signs shall not exceed 10 square feet and are limited to one sign per business.

F. Signs for Development Complexes

1. Master sign plan required

All landlord or single-owner controlled multiple-occupancy development complexes on parcels exceeding 8 acres (32 376 m2) in size, such as shopping centers or planned *industrial* parks, shall submit to the zoning administrator a master sign plan prior to issuance of new sign permits. The master sign plan shall establish standards and criteria for all signs in the complex that require permits, and shall address, at a minimum, the following:

a. Proposed sign locations.
b. Materials.
c. Type of illumination.
d. Design of free-standing sign structures.
e. Size.
f. Quantity.
g. Uniform standards for nonbusiness signage, including directional and informational signs.

2. Development complex sign

In addition to the free-standing business identification signs otherwise allowed by this ordinance, every multiple-occupancy development complex shall be entitled to one free-standing sign per street front, at the maximum size permitted for business identification free-standing signs, to identify the development complex. No business identification shall be permitted on a development

complex sign. Any free-standing sign otherwise permitted under this ordinance may identify the name of the development complex.

3. Compliance with master sign plan

All applications for sign permits for signage within a multiple-occupancy development complex shall comply with the master sign plan.

4. Amendments

Any amendments to a master sign plan must be signed and approved by the owner(s) within the development complex before such amendment will become effective.

G. Other Permitted Signs

1. Commercial Districts

a. Barber poles.

b. Theater marquees, including chaser lights, neon, and backlit changeable letterings appropriate to its use.

H. Sign Illumination

1. External Illumination. External lighting shall be limited to light fixtures utilizing white, not colored, lighting and shall not be blinking, fluctuating, or moving. External lighting shall be provided by concealed and/or screened spots or floods and shall be arranged and installed so that direct or reflected illumination does not exceed (0.5) foot candles above background measured at the lot line of any adjoining residential or agricultural parcel or public right-of-way.

2. Internal Illumination. Internal lighting shall be limited to internal light contained within translucent letters and internal illuminated sign boxes provided the background or field on which the copy and/or logos are placed is opaque. The area illuminated is restricted to the sign face only. The direct or reflected illumination shall not exceed (0.5) foot candles above the background measured at the lot line of any adjoining residential or agricultural parcel or public right-of-way.

3. Violations of Signs

The Zoning Administrator shall have the authority to determine violations of this preceding section and notify the owner of such violation in writing. In addition to penalties described in Section 2.4.3, if it is determined that a sign is unlawfully installed, erected or maintained in violation of any of the provisions of this ordinance, the owner thereof or the person or firm using same shall, upon written notice by the zoning administrator forthwith in the case of immediate danger, and in any case within not more than 10 days, make such sign conform to the provisions of this ordinance, or shall remove it. If within 10 days the order is not complied with, zoning administrator shall be permitted to remove or cause such sign to be removed at the expense of the owner and/or the user of the sign. The Town will store the sign for 30 days to give the owner an opportunity to reclaim the sign. The sign will be destroyed if unclaimed after 30 days. If ownership of the sign cannot be determined, the sign shall be removed and destroyed after 30 days if unclaimed. For repeat offenses, the Zoning Administrator is authorized to immediately remove any unlawfully placed sign.

Section 4.2 Exceptions to the Regulations

A. Gasoline Pumps. Gasoline pumps shall be setback a minimum of 15 feet from the property line.

B. Trailer Parking

1. Storage of travel or recreational trailers in an enclosed accessory building is

permitted in any district provided that no living quarters are maintained within the trailer.

2. Travel and recreational trailers shall be parked to the rear of the front line of the main building in a residential district.
3. Construction trailers are permitted on the construction site for the duration of the construction project.

C. Structures Permitted Above Height Limitations. Penthouses or roof structures for the housing of elevators, stairways, tanks, ventilating fans, and similar equipment required to operate and maintain the building, fireproof, or parapet walls, towers, steeples, flagpoles, chimneys, smokestacks, wireless masts, water tanks, silos, cupolas, or similar structures may be erected above the height limit specified in the district in which the property is located, but no penthouses or roof shall be allowed for the purpose of providing additional floor space.

D. Vision Clearance at Intersections. At any corner lot there shall be no planting, structure, fence, retaining wall, shrubbery, or obstruction to vision more than three feet higher than the curb level within the triangle formed by the street right-of-way lines and a line connecting such street lines 25 feet from their intersections.

E. Accessory Buildings. The following restrictions shall apply to accessory buildings located in residential districts.

1. The accessory building shall not be located in a front or side yard.
2. The accessory building shall not be closer than five feet (5′) to any alley line.
3. The accessory building shall not be closer than two feet (2′) to any side or rear lot line.
4. The accessory building shall not be closer than fifteen feet (15′) from the main building.
5. A two-story building shall not be located any closer than five feet (5′) to any lot line.
6. The sum of the footprint square footage (SF) of all buildings on the lot shall be less than 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.
12. Non-conforming lots smaller than fifty-six hundred (5,600) square feet in the R-1 District the total footprint area of all accessory building lot coverage shall not

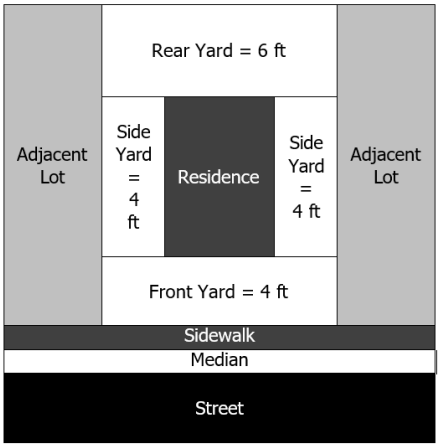
exceed ten (10) percent.

F. Projections Allowed in Required Setbacks. No building or structure, or addition thereto, shall extend into a required setback area or yard area, except chimneys, heating and cooling equipment, structures less than sixteen (16) inches in height as measured from finished ground elevations, and steps may extend into such setback or yard area other than front yard setback. The following unenclosed uses may extend no more than four feet, but not nearer than five feet to any property line: balconies, eaves, trims, fascia boards, and similar architectural features, platforms, and terraces.

G. Additional uses may project into setbacks, as interpreted and determined by the Zoning Administrator. In Commercial District C-1, no building or structure, or addition thereto, shall extend into the required front setback area or yard area except for the following: above street floor level balconies, porches, and terraces may extend therein. Support members for these structures may extend to the ground as required by the building and maintenance code. No part of any foundation for these support members shall extend above the ground or grade level. The following unenclosed structures located above the first floor level may extend to the front lot line: porches, balconies, terraces.

H. Fences and Walls. The setback and yard requirements of this ordinance shall not deem to prohibit any otherwise lawful fence or wall. A fence or wall must be two feet from any sidewalk, alley, or public right of way.

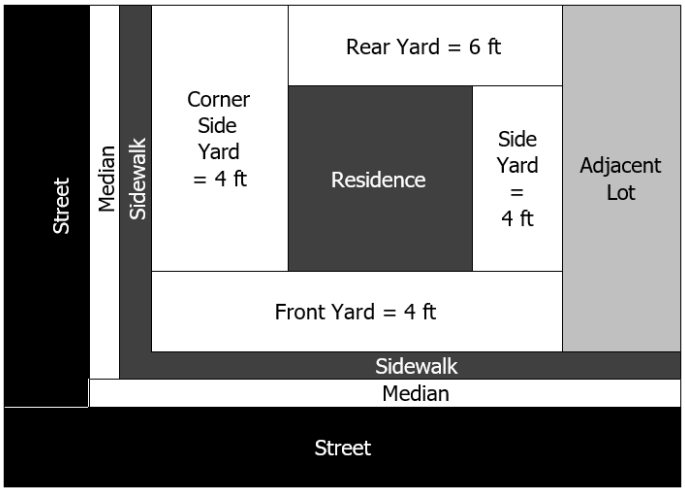
1. In residential areas, fences and walls may be no closer than one inch from adjacent property boundaries (unless adjacent property owners agree to jointly construct the fence on the property line) and may be erected to a height as follows:



Maximum fence heights for interior lots	
Rear Yard	Not to exceed 6 feet
Side Yard	Not to exceed 4 feet
Front Yard	Not to exceed 4 feet

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

Corner Lot



Maximum fence heights for corner lots	
Rear Yard	Not to exceed 6 feet
Side Yard	Not to exceed 4 feet
Corner Side Yard	Not to exceed 4 feet
Front Yard	Not to exceed 4 feet

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

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

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

3. Commercial and Industrial Fences. Fences in commercial and industrial zones are permitted if they comply with residential fencing requirements in Section 4.2 G 1 and 2. In commercial and industrial zones, the Conditional Use Permit process shall be used for any non-conforming fences. Applicants shall demonstrate that the proposed fencing is consistent with the nature of and the security requirements of the business.

I. Wetlands and Water Areas Excluded From Lot Areas. In calculating the area of any lot for the purpose of compliance with the minimum lot area requirements of the district regulations, wetlands, and areas outboard of the shoreline shall be excluded.

J. Utility Lines Underground. All new utility lines such as electric, telephone, CATV, or other similar lines shall be installed underground. This requirement shall apply to lines serving individual sites as well as to utility lines necessary within a project. All junction and access boxes shall be screened with appropriate landscaping. All utility pad fixtures and meters shall be shown on the site plan. The necessity for utility connections, meter boxes, etc., should be recognized and integrated with the architectural elements of the site plan.

K. Accessory Dwellings. One accessory dwelling may be maintained on a property in the R-1, R-2 and CR zoning districts subject to the following: *[revised 10-20-2022]*

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

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

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

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

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

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

   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 30 days from the property transfer.

Section 4.3 Conditional Use Permits

A. Statement of Intent. The purpose of this section is to recognize certain uses which, by nature, can have a potentially unfavorable impact on or be incompatible with other uses of land within a given zoning district. These uses, as described, may be permitted within given designated districts under controls, limitations, and regulations of a conditional use permit. It shall be the duty of the Town Council under the provisions of this ordinance to evaluate the impact and the compatibility of each use and to stipulate such conditions and restrictions including those specifically contained herein as will assure the use being compatible with the neighborhood in which it is located, both in terms of existing land uses and conditions and in terms of development proposed or permitted by right in the area or, where that cannot be accomplished, to deny the use as not being in accordance with the adopted comprehensive plan or as being incompatible with the surrounding neighborhood.

B. Conditions for Issuance. Conditional use permits may be issued for any of the conditional uses for which a use permit is required by the provision of this ordinance in the specific districts provided that the Town Council, upon recommendation by the Planning Commission, shall find that after duly advertised public hearing the use will not:

1. Adversely affect the health, safety, or welfare of the persons residing or working in the neighborhood of the proposed use or adversely affect other land uses within the particular surrounding neighborhood.
2. Be detrimental to the public welfare or injurious to property or improvements in the neighborhood.
3. Be in conflict with the purpose of the comprehensive plan of the town.

In granting any conditional use permit, the Town Council shall designate such conditions

as it determines necessary to carry out the intent of this ordinance.

C. Procedures. Written application for a conditional use permit may be made by any property owner, tenant, department, board, or bureau of any government agency. The application shall be filed with the Zoning Administrator on forms provided by the town. The application shall be accompanied by a fee established by separate ordinance by the Town Council to defray cost of advertising and processing the application. A site plan in accordance with the site plan ordinance shall be submitted with each application. A list of additional required permits shall be submitted with the application and shall be submitted to the Planning Commission with the application, and the Zoning Administrator may add any additional required permits. Changes to the additional permit list may be made by mutual consent of the applicant and the commission. No changes shall be made to the list after the Planning Commission recommendations to Town Council. Conditional use permits shall include a disclosure statement, signed by the applicant and notarized, of the equitable ownership of the real estate affected, which shall list the names and addresses of all the adjacent property owners and interested parties, including applicant, owners, contractors, purchasers, and lessees of the land described in the application, all partners, both general and limited, and partnerships, stockholders, officers, and directors. The applicant shall keep this information current at all times during the processing of the application. The procedures for approval of a conditional use permit shall be the same as those prescribed for zoning changes as set forth in this ordinance.

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

the public interest in the specific case.

D. Approval of a conditional use permit shall be valid for only the specific use it covers in the specific location designated for a period of one year after approval by the Town Council and the completion of the additional permit process as requested in the application. Applicant shall apply or have applied for all additional permits as provided to the Planning Commission and as required by the Zoning Administrator within one (1) month of the approval by the Town Council. If Applicant fails to apply for any such permit within this time period, the conditional use permit shall be effective as of this date, thirty (30) days after the Town Council approval, unless the Town Council allows for additional time for such application or applications.

1. Staff shall notify Town Council of the date that all additional permits have been approved which date shall be the commencement date for the one (1) year Conditional Use Permit
2. Staff shall notify Town Council of the status of the project at a regular meeting prior to the expiration of the one (1) year Conditional Use Permit.

E. If not acted upon within one six (6) months, the conditional use permit shall become null and void, unless an extension of time is approved by the Town Council for good cause shown before the expiration of the Conditional Use Permit. Town Council may make additional one-year extensions for good cause. To be considered acted upon one (1) or more of the following is required, and may be determined by the Zoning Administrator:

1. The procurement of an active Cape Charles Building Permit
2. Payment of Water and Wastewater Connection and Facility Fees
3. Completed Plans stamped by a Virginia Licensed Professional
4. Commencement of site preparation or construction
5. No application for a use permit for the same conditional use on a lot, parcel, or tract shall be considered by the Town Council within a one-year period from its last consideration. The provisions, however, shall not impair the right of the Town Council to propose a use permit on its own motion if it finds that there is public benefit to be gained.

F. Revocation of a Conditional Use. If the provisions of this ordinance or the requirements of the conditional use permit are not met, then the Town Council may revoke the conditional use permit provided that ten days' written notice is given to the applicant.

Section 4.4 Landscaping and Screening Regulations

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

A comprehensive plan for each individual lot or parcel is essential for the visual enhancement of the Town and to protect and promote the appearance, character, and economic values of neighborhoods. The purpose and intent of such landscaping

requirements are to reduce the visibility of paved areas from adjacent properties and streets, moderate climatic effects, minimize noise and glare, and enhance public safety. Landscaping will provide transition and buffers between neighboring properties.

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

C. Commercial and Industrial Requirements
   1. Required open spaces shall be landscaped in accordance with a landscape plan to

be submitted with the site plan and approved by the Zoning Administrator.

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

D. Multi-Family Developments and Mobile Home Parks

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

E. Exterior Lighting

1. All exterior lighting shall be arranged and installed so that the direct or reflected illumination does not exceed (0.5) foot candles above the background measured at the lot line of any adjoining parcel.
2. Lighting standards shall be of a directional type capable of shielding the light source from direct view from any adjoining parcel.
3. All lighting shall comply with Dark Sky standards.

Section 4.5 Off-Street Parking and Loading Standards. [updated 2/6/2020]

A. General requirements.

1. It is the intent of this zoning ordinance that all buildings, structures, and uses of land shall provide off-street vehicular and bicycle parking in an amount sufficient to meet the needs caused by the building or use of land and that such parking and loading spaces be so oriented that they are readily useable for such purposes.
2. Each use of land and each building or structure hereafter constructed or established shall provide off-street parking and loading according to the standards set forth herein. When a change is proposed to a building that is nonconforming as to parking or loading requirements, a conforming amount of parking or loading shall be supplied based upon the size of the addition.
3. No addition, renovation, or change of use to an existing building shall be constructed or established which reduces the number of spaces, area, or usability of existing parking or loading space unless such building and its addition conform with the regulations for parking and loading contained herein.
4. The parking lot shall not be modified, enlarged, relocated, or expanded in a manner that violates any portion of this zoning ordinance.
5. No non-single-family detached residential parking area may be used for the sale, repair, dismantling, servicing, or long-term storage of any vehicles or equipment, unless such use is permitted by the zoning district in which the area is located. Any repairs deemed an emergency by the Zoning Administrator is exempt from this requirement.
6. Inoperable vehicles may not be parked in required parking spaces or in any side

or front yard and shall be completely screened from view of all surrounding public streets.

B. Minimum number of parking spaces required.

1. The following are the parking space requirements by permitted use:
2. For any use not listed, the Zoning Administrator shall determine the proper requirements by classifying the proposed use among the uses specified herein as to assure equal treatment. In making any such determination, the Zoning Administrator shall follow the principles set forth in the statement of purpose for the zoning ordinance in Article I.
3. New infill structures or change of use projects on the first floor of structures in Commercial Districts shall be exempt from complying with the requirements of this Section. New uses or changes of use units above the first floor shall be required to conform to the parking requirements set forth herein.
4. Maximum number of parking spaces.
5. The total number of permitted parking spaces shall not exceed 110 percent of the minimum number of off-street parking spaces required by type of permitted use, except when the excess spaces are contained in a parking structure.
6. Any parking not included within a parking structure that is between 100 and 110 percent of the minimum number of off-street parking spaces required by type of permitted use shall be "grasscrete" or "grasspave" or other pervious paving systems as approved by the Zoning Administrator.
7. The following table states the minimum number of off-street parking spaces required by use. Any uses not listed would be required to provide the minimum number of parking spaces required by the parent category. When a determination of the number of parking spaces required by this table results in a requirement of a fraction of a space, any fraction shall be counted as one parking space.

Minimum Parking Space Requirements Table

Land Use	Minimum Parking Space Requirements
a. Residential	
1. Single-family residences	2 spaces per dwelling unit in all districts other than R-1, otherwise none
2. Multifamily residences	1 space per one-bedroom dwelling unit, otherwise two spaces per dwelling unit
3. Mixed-use developments	1.5 spaces per dwelling unit; 1 space per dwelling unit for age-restricted; plus 1 additional space per 200 square feet of commercial gross floor area
4. Home occupations	No additional spaces required
5. Accessory Dwelling Units	1 space per unit
6. Child and personal care uses	1 space per 2 employees
7. Institutional residence or care or confinement facilities	1 space per 2 beds
8. Rooming houses, boarding houses	1 space per bedroom
Short-term rentals, bed and breakfasts, other temporary residences renting by the day or week	1 space per rentable bedroom plus 2 spaces if owner/landlord lives on premises
Temporary mobile homes approved in the event of an emergency, construction, or repair	2 spaces per temporary mobile home
b. Sales and Rental of Living Space and Goods	
1. Sales and rental of goods, merchandise or equipment, non-motor vehicle related	1 space per 300 square feet of gross floor area
Wholesale sales, with or without outdoor display or storage of goods	1 space per 300 square feet of gross floor area devoted to sales or display, plus one space per 2,000 square feet of gross storage area
Hotels, motels and similar businesses or institutions providing overnight accommodations	1 space per unit plus 1 space per 5 units for visitors
Extended-stay motels/hotels	1 space per unit plus 1 space per 5 units for visitors
c. Restaurants	
1. Restaurants	1 space per 100 square feet of gross floor area
2. Event center	1 space per 3 seats

d. Motor vehicle-related sales and service operations and modifications	
Motor vehicle-related sales and service operations and modifications	Not including outdoor car display areas for dealerships, 1 space per 200 square feet of gross floor area
e. Office, Clerical, Repair, Research and Personal	
Services – Office, clerical, repair, research, and personal, not primarily related to the sale of goods and merchandise	1 space per 300 square feet of gross floor area
f. Offices	
Services – office, clerical, repair, research, and personal, not primarily related to the sale of goods and merchandise	1 space per 300 square feet of gross floor area
g. Recreation, amusement, and entertainment	
1. Baseball batting range	20 spaces
2. Bowling alleys	5 spaces per alley
3. Golf driving range and/or miniature golf	20 spaces
4. Health clubs and other physical fitness establishments	1 space per 300 square feet
5 . Park, playground, community center, swimming pool and other recreational facilities as a principal use	1 space per 2000 square feet of surface area of parks, playgrounds, and/or swimming pools; plus 2 spaces per tennis court; plus 1 space per 500 square feet of recreational facility
6. Theaters (indoors)	1 space per 3 seats
7. Performing arts center	1 space per 3 seats
8. Subdivision recreation area	1 space per 200 square feet of surface area of swimming pools, plus 2 spaces per tennis court, plus 1 space per 500 square feet of clubhouse, offices, meeting rooms, or other similar enclosed buildings
h. Manufacturing, processing, creating, repairing, renovating, painting, cleaning, assembling of goods, merchandise, or equipment	
1. Manufacturing, processing, creating, repairing, renovating, painting, cleaning, assembling of goods, merchandise, or equipment	1 space per 2,000 square feet of gross office, plant, and/or storage
2. Innovator space	1 parking space per 500 square feet
i. Storage and parking	
1. Storage and parking	1 space per 2,000 square feet of gross storage area
j. Services and enterprises related to animals	
Services and enterprises related to animals	1 space per 250 square feet of gross floor area

k. Funeral related services (human and animal related)	
1. Funeral related services (human and animal related)	1 space per 3 seats
l. Educational, cultural, religious, philanthropic, social, or fraternal uses	
Public and private schools offering general education courses (including associated grounds and athletic and other facilities)	2 spaces per classroom for K - 8th grade, plus 1 space per teacher or staff member for grades above 8th
2. Trade or vocational schools	10 spaces per classroom
College, universities, community colleges (including associated facilities such as dormitories, office buildings, athletic fields, etc.)	10 spaces per classroom
Assembly halls, including union halls, conference halls, civic halls and activities of similar nature	1 space for every 3 people allowed to occupy the building, as set by the maximum occupancy limit
Libraries, museums, art galleries, art centers, and similar uses (including associated educational and instructional activities)	1 space per 300 square feet of gross floor area
6. Place of worship and places of assembly	1 space for every 3 people allowed to occupy the building, as set by the maximum occupancy limit
7. Social, fraternal clubs or lodges, union halls, and similar uses	4 spaces per 1,000 square feet of gross floor area
8. Clubs and lodges catering exclusively to members and their guests	4 spaces per 1,000 square feet of gross floor area
m. Miscellaneous public and semi-public facilities	
1. Miscellaneous public and semi-public facilities	None
n. Agricultural, forestry, mining, and quarrying operations	
1. Agricultural, forestry, mining, and quarrying operations	1 space per employee
o. Temporary structures and special events used in connection with the construction of a permanent building or for some non-recurring purpose	
1. Temporary structures and special events used in connection with the construction of a permanent building or for some non-recurring purpose	Regulated on a case-by-case basis

C. Shared parking.

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

D. Bicycle parking.

1. Development of new primary buildings in all R-3, CR, C-1, C-2, C-3, H, GBI, M-1,

M-2, and OSD districts, other than single-family residential, shall provide bicycle parking spaces at a ratio of at least one bicycle parking space for every 20 automobile parking spaces.

2. No primary building, other than single-family residential, shall have fewer than three bicycle parking spaces nor be required to exceed a maximum of 20 spaces. If three or more bicycle parking spaces are located within 100' of the primary entrance of the proposed development on the same street frontage, they are exempt from this requirement.
3. Bicycle parking spaces shall be located within 20 feet of the front entrance of the primary structure, or as approved by the Zoning Administrator. Bicycle parking spaces shall not interfere with pedestrian access along sidewalks or walkways.
4. Bicycle parking shall provide an inverted U steel frame or decorative rack approved by the Zoning Administrator. The rack shall be anchored to a concrete pad.

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

F. Electric vehicle charging stations.
   1. Electric vehicle charging stations are permitted in all off-street surface parking lots and parking structures.
   2. Spaces for electric charging shall be identified by paving markings and by appropriate signage. Signage shall not count against the maximum aggregate sign area permitted on a lot.
   3. Spaces reserved for electric vehicle charging stations may be counted as part of the minimum required parking spaces but shall not be counted toward the maximum.
   4. Any new building with over 20,000 square feet of gross floor area space shall equip at least one required parking space on its property with an electric vehicle charging station prior to receiving a Certificate of Occupancy.
   5. The owner of the property shall be responsible for the installation, maintenance, and operation of electric vehicle charging stations. The owner of the property may determine if a fee is associated with the electric vehicle charging station.
   6. Electric vehicle charging stations shall be installed per U.S. Green Building Council (USGBC) standards.

G. Parking in non-single-family zoning districts.

1. Off-street surface parking lots shall not be located between the principal building and the street except where otherwise permitted below.
    a. Lots within CR, C-1, C-2, C-3, H, GBI, M-1, and M-2 districts with a lot area of less than 13,000 square feet shall be permitted to have automobile parking located within the front yard only when the following regulations are met:
        i. Front yard parking shall be limited in area to a maximum of 50 percent of the area of the front yard.
2. When permitted, automobile parking is only permitted in front yards when located on the permitted access driveway on a paved surface.
3. Required dimensions for each parking space. Each automobile parking space shall be not less than nine feet wide and 18 feet deep. Adequate interior driveways shall connect each parking space with a public right-of- way, and each space shall have an overhead clearance of at least 6.5 feet.
4. Parking areas shall have access to a public street.
5. Parking areas shall be graded and paved, including access drive(s), and be curbed when needed for effective drainage control, and meet the following requirements:
    a. A minimum depth of six inches of number 21A aggregate base and a minimum of 1.5 inches of asphalt; or
    b. Six inches of concrete on appropriate base; or
    c. Four inches of brick or porous paving block on four inches of number 21A aggregate base.
    d. Permeable pavers may be used for any parking area, alley, or other low traffic driveway as approved by the Zoning Administrator.
6. Parking areas shall have spaces marked with painted lines, curbstones, or other similar devices, and areas shall be properly maintained in all respects. Landscaping shall be kept healthy and well maintained, surfaces shall be free of potholes, and lines marking spaces shall be distinct and clear.
7. Parking areas shall be drained so as to prevent damage to abutting properties or public streets and where possible shall be drained towards infiltration swales located in the five-foot, head-to-head landscape strips required between vehicles in Section 4.5.J.1.d.
8. Parking areas shall have adequate lighting if the facilities are to be used at night, provided such lighting shall be arranged and installed so as not to reflect or cause glare on abutting properties. Light poles used in parking lots with 100 parking spaces or less may not exceed 20 feet in height. Light poles used in parking lots with more than 100 parking spaces may not exceed 35 feet in height. All lighting is to be compliant with Dark Sky lighting standards.
9. Parking areas shall be designed to conform to the geometric design standards of the Institute of Traffic Engineers (ITE) when not expressly required in this section.
10. Wheel bumpers shall be placed at the head of all parking spaces that do not abut a curb and any spaces that abut a sidewalk. Wheel bumpers shall be made of concrete, a minimum of six feet long, five inches high, and six inches wide and securely fastened to the pavement by steel re- bars or steel anchors. Individual wheel bumpers shall be placed a minimum of 24 inches from the end of each required parking space.
11. Parking areas shall be required to provide handicapped spaces in accordance with the provisions of the Americans with Disabilities Act. All handicapped spaces shall

be identified by appropriate restrictive signing and markings.

12. Pedestrian circulation.
    a. Parking areas shall be designed to facilitate safe and convenient use by pedestrians.
    b. Parking areas with more than 50 cars shall provide safe pathways from aisles of parking to the nearest building entrance and to adjacent streets. Such pathways shall be at least five feet wide and consist of raised pathways constructed of pavers or other contrasting material.

H. Compact parking spaces.
1. Developments where 30 or more parking spaces are provided shall be required to provide compact parking spaces, as follows:
    a. A minimum of five spaces, or ten percent of the total number of parking spaces, whichever is greater, shall be set aside for compact cars.
    b. A maximum of 25 percent of the total required parking spaces may be set aside for compact cars, up to a maximum of 50 spaces, whichever is less.
    c. Compact parking spaces shall be identified by pavement markings and/or by appropriate signage.
    d. Parking spaces for compact cars shall not be less than eight feet wide and 16 feet deep.

I. Stacking spaces for drive-through service windows and drive-through facilities.
1. Stacking spaces shall be provided for any use having a drive-through service window or areas having drop-off and pick-up areas in accordance with the following:
    a. Inbound stacking spaces shall be provided before the first service window as stipulated below and at least one outbound stacking space shall be provided after each service window of a drive-through facility.
    b. Each stacking space shall be a minimum of 22 feet long.
    c. Designated stacking spaces shall not interfere with circulation of the lot or free movement or access to parking spaces.
2. Banks with drive-through facilities shall provide a minimum of six spaces before each service position and one outbound space after the service window.
3. Restaurants with drive-through service windows shall provide a minimum of ten stacking spaces for inbound drive-through customers and one additional outbound space after each service window.
4. Other facilities with drive-through service windows shall provide three stacking spaces for each window or drive-through service facility.
5. Drive-through service window lanes shall be separated by striping or curbing from off-street parking areas. Individual lanes shall be striped, marked, or otherwise distinctly delineated.
6. Stacking lanes shall be a minimum of 8.5 feet adjacent to the service window.
7. All drive-through service windows shall be provided with a bypass lane with a maximum width of 8.5 feet.
8. All stacking lanes shall be at least 75 feet from an intersection with the nearest street or internal driveway. The distance is measured from the back of the stacking space nearest the entrance to the curb line of the nearest intersection.
9. Pedestrian pathways crossing drive-through lanes shall be clearly signed and

identified using alternative materials or raised crosswalks. Painted crosswalks alone are not permitted.

J. Landscaping in parking lots.

1. Interior landscaping for off-street parking areas shall be required for all surface parking lots designed for 20 or more spaces. The following requirements shall apply.
   a. Landscape islands shall be located no farther apart than every ten parking spaces and at the terminus of all rows of parking. Each landscaped island shall be at least 200 square feet in area with a minimum width of ten feet.
   b. There shall be at least one overstory tree, ten low shrubs and a minimum of 60 percent living ground cover, sod, and/or annual or perennial color in each landscaped island. Shrubs, sod and/or living ground cover shall not to exceed three feet in height.
   c. Vehicles shall be separated from sidewalks, driveways, and streets in public rights-of-way by wheel bumpers and by a strip of land at least ten feet wide, reserved as open space, and planted in grass containing at least one understory or overstory tree, as appropriate, and ten shrubs per 50 linear feet, and a minimum of 80 percent living ground cover, sod, and/or annual or perennial color in the landscape strip surface area. Wheel bumpers shall be placed a minimum of 48 inches from the nearest tree trunk.
   d. Head-to-head parking shall provide a five-foot grass strip with curb. The grass strip may be counted as part of the landscaped areas and shall have one tree every 50 feet containing at least one overstory tree, and ten shrubs, per 50 linear feet, and a minimum of 70 percent living ground cover, sod, and/or annual or perennial color in the landscape strip surface area.
   e. Perimeter landscape strips. The perimeter of a surface parking lot shall provide a five-foot wide landscape strip where such parking lot abuts side or rear property lines. The perimeter landscape strip shall be planted with a single row of overstory trees of a species appropriate for buffers and spaced every 40 linear feet of landscape strip, and evergreen shrubs spaced every 5 linear feet of landscape strip. The perimeter landscape strip shall be continuous except for near perpendicular crossings of driveways and sidewalks.
   f. Landscaped areas in parking lots shall provide drainage and irrigation that ensures full drainage to the storm drainage system.
   g. See the Cape Charles Master Tree Plan for trees that shall and shall not be permitted within parking lot landscape areas.
2. The minimum number of spaces required may be reduced where the Zoning Administrator has determined that the reductions are necessary to preserve a healthy tree or trees with a three-inch or greater diameter from being damaged or removed and where the site plan provides for the retention for said tree or trees.
3. Screening. Plantings which meet the standards for screening as approved by the Zoning Administrator will be required to screen vehicle accommodation areas other than those serving single-family and duplex dwellings from an adjacent residential district or use. Fencing may be substituted for plantings with the approval of the

Zoning Administrator.

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

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

Gross floor area	**Required loading spaces**
0 – 49,000 square feet	1
49,000 – 100,000 square feet	2
100,000 – 160,000 square feet	3

160,000 – 240,000 square feet	4
240,000 – 320,000 square feet	5
320,000 – 400,000 square feet	6
Each 90,000 above 400,000 square feet	1

M. Dumpsters.
1. A fence on three sides shall enclose all dumpsters.
   a. The height of the fence shall be equal to or higher than the height of the dumpster, in accordance with Section 4.2.G.
   b. The visible material of the fence shall be made up of brick, stucco, stone, or wood.
2. The operable side of the dumpster shall be concealed with a gate equal to or higher than the height of the dumpster. The gate shall be opaque and constructed of durable materials.
3. Dumpsters shall be located a minimum of five feet from property lines.
4. In no case shall loading activities hinder or obstruct the free movement of vehicles, and pedestrians over a street, sidewalk, alley, or to interrupt parking lot circulation.
5. Service activities within 150 feet of residential uses shall only be permitted Monday through Friday between 7:00am to 10:00pm and on Saturdays from 9:00am to 9:00pm.
6. Temporary construction trash and recycling dumpsters, which are not enclosed, shall be permitted up until such time as a Certificate of Occupancy is issued.

Section 4.6 Stormwater Management

A. Purpose and Intent. The purpose and intent of the requirements contained in this section are to prevent a new increase in nonpoint source pollution from new development and achieve a 10 percent reduction in nonpoint source pollution from redevelopment to the greatest extent possible given the size and current development of lots within the Town.

B. Except as provided in Section 4.7.C, for any development or redevelopment within the Town, stormwater runoff shall be controlled by the use of best management practices that achieve the following:
1. For development, the post-development nonpoint source pollution runoff load shall not exceed .45 pounds per acre per year.
2. For redevelopment, the nonpoint source pollution load shall be reduced by at least 10 percent. The Zoning Administrator may waive or modify this requirement for redevelopment sites that originally incorporated best management practices for stormwater runoff quality control provided the following provisions are satisfied:
   a. In no case may the post-development nonpoint source pollution runoff exceed the pre-development load;
   b. Runoff pollution loads must have been calculated and the best management practices selected for the expressed purpose of controlling nonpoint source pollution; and
   c. If best management practices are structural, evidence shall be provided that the facilities are currently in good working order and performing at the

design levels of service. The Zoning Administrator may require a review of both the original structural design and maintenance plans to verify this provision.

3. For redevelopment, both the pre- and the post-development loadings shall be calculated by the same procedures. However, where the design data is available, the original post-development nonpoint source pollution loadings can be substituted for the existing development loadings.

C. For any development or redevelopment on any nonconforming lot within the Town, the Zoning Administrator may waive the requirements of this section upon receipt of a written request for such an administrative waiver provided, however, that in no case shall such development or redevelopment result in such nonconforming lot having total impervious coverage in excess of 40 percent for residential uses and 75 percent for commercial uses. The written request for an administrative waiver hereunder shall state the total estimated impervious coverage to result from such development or redevelopment.

Section 4.7 Swimming Pool Regulations

A. Definition. For the purpose of this ordinance, a swimming pool is defined as an artificial or man-made container of water capable of being filled to a depth exceeding 16 inches at the lowest point and is designed to be used for swimming or immersion purposes by individuals. Wading pools are exempt from the provisions of the Zoning Ordinance and are considered temporary pools if made of plastic, light metal, or other light duty materials which do not exceed a full volume depth of 16 inches at the lowest point, and which are completely emptied of water when not in use. Spas or health pools shall meet the same requirements as swimming pools, except when less that 10 feet in width.

B. Applicability of Zoning and Building Codes. Permanent swimming pools and associated decking and fencing are required to meet all zoning and building code requirements and are considered impervious structures. Building, electrical, and plumbing permits are required for the installation, alteration, repair or remodeling of all pools not exempt from the Zoning Ordinance. In-ground pools require an approved site plan. Above- ground pools may be installed without a survey and engineering grading plan if permitted by the Code Enforcement Official, and where steep slope areas are not present. Abandoned pools must be removed or appropriately filled in and covered. Swimming pools must be discharged according to all regulations established by the Commonwealth of Virginia.

C. Setbacks. Swimming pools are permitted to be located no closer than 5 feet to a side or rear property line and must be located no closer than 5 feet from any structures, either primary or accessory, located on the lot or premises. Above-ground pools are only allowed in rear yards. The 5-foot separation from structures shall not apply to spas or health pools adjoining the principal structure. Spas must be covered with approved spa cover when not in use. Swimming pools and spas are not permitted in the front yard or within approved swale or storm water management systems.

D. Condition of Water. Water contained in swimming pools must be kept healthy and sanitary at all times and shall not emit an offensive odor that creates a nuisance or unhealthy condition. Approved circulators and filtration systems must be provided for all pools, spas,

and health pools Wading pools are exempt from filtration system requirement.

E. Fencing. All zoning and building code requirements shall be met. Consistent with the Code of Virginia §15.2-921, all swimming pools must be completely enclosed with a minimum 4-foot high fence with locking gate access. Such fence must be constructed of a material that meets the approval of the building code official.

Section 4.8 Satellite Dish

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

Section 4.9 Demolition Policy Guidelines

A. The owner of a building or structure within the Town shall be entitled to raze or demolish such building or structure provided that he has applied to the Building Official for such right.
   1. The owner must first try to sell the property at the appraised price (the appraisal to be at the owner's expense).
   2. The owner must have the property for sale, actively marketing and advertising it for sale for that appraised price for a period of one year.
   3. If unsold, the Town may elect to purchase the property at the appraised price or permit the demolition.

B. Demolition-By-Neglect. No officially designated contributing building, structure, or site within the Town shall be allowed to deteriorate due to neglect by the owner which would result in violation of the intent of this ordinance. Demolition-by-neglect shall include any one or more of the following courses of action or inaction:
   1. Deterioration of the exterior of a building to the extent that it creates or permits a hazardous or unsafe condition.
   2. Deterioration of exterior walls or other vertical supports, horizontal members, roofs, chimneys, exterior wall elements such as siding, wooden walls, windows, brick, plaster or mortar to the extent that it adversely affects the character of the district or could lead to irreversible damage to the structure.
   3. Defective or deteriorated flooring or floor supports, or flooring or floor supports of insufficient size to carry imposed loads with safety.
   4. Any fault in the building or structure which renders the same structurally unsafe or not properly watertight.

      If the Building Official determines that a structure is being demolished by

neglect, he or she shall send notification to the owners stating the reasons therefore and shall give the owner thirty days to respond with a plan of action and ninety days from the date of the notice in which to commence work. If appropriate action is not taken at this time, the Zoning Administrator may initiate appropriate legal action as provided further in this chapter.

C. Penalties for Noncompliance.

1. Failure to correct a defect after a notice that the Building Official has determined that a property is being demolished by neglect shall constitute a misdemeanor. Such misdemeanor shall be punished as set forth in §§ 18.2-9, 18.2-11 and 15.2-1429 of the Code of Virginia, as amended. Each day that the violation continues is a separate offense.
2. Any property owner in the District who does not obtain approval as required within this ordinance shall be guilty of a misdemeanor and may be punished as set forth in §§ 18.2-9, 18.2-11 and 15.2-1429 of the Code of Virginia, as amended.
3. Nothing in this chapter shall be deemed to restrict or prohibit the Town Council to acquire in any legal manner any historic area, site, building, or structure or the land pertaining thereto for the use, observation, education, pleasure, and welfare of the citizens of the Town.

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

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

Section 4.11 Wind Turbines

A. Statement of Intent. The intent of this ordinance is to regulate the placement, construction and modification of wind energy systems while promoting the safe, effective and efficient use of the wind energy resource and wind energy systems while not interfering with the development of independent renewable energy sources. Wind Energy Systems meeting the requirements will be allowed by Conditional Use Permit. The Zoning Administrator shall maintain an inventory of wind energy systems to include their installation, operation and removal dates to be updates annually.

B. Applicability. The requirements set forth in this section shall govern all zones and wind energy systems used to generate electricity or perform work which may be connected to the utility grid pursuant to Virginia's net metering laws (§ 56-594 Of the Code of Virginia), serve as an independent source of energy or serve in a hybrid system.

C. Wind Energy Systems Setbacks. The minimum setbacks for wind energy systems are detailed in the matrix below:

		Minimum Setback Requirements[1]	

	Minimum Lot Size	Occupied Buildings (Subject Property)[2]	Occupied Buildings (Adjacent Prop.)[2,3]	Property Lines	Public/ Private Right of Way	Highways 184 & 642	Maximum Height from Grade
Anemometers	20,000 Sq. Ft.	1.0	1.5	1.0	1.5	2.5	Nacelle Height
Micro System	5,600 Sq. Ft.	0.0	1.0	1.0	1.5	1.0	Note 4
Small System	20,000 Sq. Ft.	0.0	1.5	1.0	1.5	2.5	120 Ft.
Large System	5 Acres	1.0	2.0	1.0	1.5	2.5	250 Ft.
Utility System	25 Acres	1.5	2.5	1.5	1.5	2.5	500 Ft.

[1] Measured from the center of the wind turbine base to the property line, ROW, or nearest point on the fountain of an occupied building.
[2] Calculated by multiplying the required setback number by the wind turbine height.
[3] This setback proposes to reduce noise and shadow flicker impacts to any previously existing occupied buildings on adjacent property or work site.
[4] One system per lot with a maximum of 18 feet above the roof.

1. As part of the Conditional Use Permit Process the setback requirements may be waived if the following conditions are met:
   a. Property owners may waive the occupied building setback requirements on both the subject property and/or the adjacent properties, and the property line setback requirements for wind turbines, by executing a signed waiver that sets forth the applicable setback provisions and proposed changes.
   b. The written waiver shall notify the applicable property owners of the setback required by this ordinance, describe how the proposed wind turbine and/or wind energy facility is not in compliance and state that the consent is granted for the wind turbine and/or wind energy facility to not be setback as required by this ordinance.
   c. Any such waiver shall be signed by all affected property owners and be recorded in the Northampton County Clerk's office. The waiver shall describe the properties benefited and/or burdened and advise all subsequent purchasers of any burdened property that waiver of setback shall run with the land and may forever burden the subject property.

D. Conditional Use Permit Requirements
2. For issuance of a Conditional Use Permit, the application shall demonstrate that the proposed wind energy facility will comply with this ordinance and shall contain at a minimum the following:
   a. A narrative describing the proposed wind energy facility;
   b. The approximate generating capacity of the wind energy facility;
   c. The specific number, representative types and heights or range of heights of the wind turbines to be constructed, including their generating capacity, dimensions and respective manufacturers and description of ancillary

facilities;

d. Identification and location of the properties on which the proposed wind energy facility will be located;
e. A plot plan showing the planned location of each wind turbine, property lines, setback lines, access road and turnout locations, substation(s), electrical cabling from the wind energy facility to the substation(s), ancillary equipment, buildings and structures, including permanent meteorological towers, associated transmission lines, and location of all structures and properties with the geographical boundaries of any applicable setback;
f. Evidence of compliance with Federal Aviation Administration regulations;
g. Signed and approved copies of any negotiated power purchase agreement and the utility company's approved schematics.
h. An Environmental Assessment is required for small, large and utility scale wind energy facilities, which shall include review and comments from the applicable state and federal agencies, including but not limited to, Virginia Department of Mines, Minerals and Energy, DNR, USACE, US Fish and Wildlife and a completed Virginia Renewables Siting Scoring System (VRS3). The Planning Commission may require an additional Environmental Impact Statement (EIS) for the installation of three (3) or more turbines or if significant impacts could result from the installation.
i. Decommissioning plans that describe the anticipated life of the wind power project, the estimated decommissioning costs in current dollars, the method for ensuring that funds will be available for the decommissioning and restoration and the anticipated manner in which the wind power project will be decommissioned and the site restored. This obligation shall be recorded and goes with the land.
j. Signature of the property owner(s) and the facility owner/operator of the energy facility;
k. Other relevant studies or reports that may be reasonably requested by the Town of Cape Charles to ensure compliance with this ordinance.

3. Throughout the permit process the applicant shall promptly notify the Town of any changes to the information contained in the permit application.
4. Changes to the pending application that do not materially alter the initial site plan may be adopted administratively.
5. Historic District Review Board or Harbor Area Review Board approval is required for systems within the Historic District Overlay District or Harbor District.

E. Installation and Design

1. The installation and design of the wind energy facility shall conform to applicable industry standards, including those of ANSI (American National Standards Institute).
2. All electrical and mechanical components of the wind energy facility shall conform to relevant and applicable town, state and national codes and ordinances. A Cape Charles Building Permit is required.
3. Small and Micro wind energy facilities shall not exceed 60 decibels as measured at the property line. The level, however, may be exceeded during short term events such as utility outages and/or severe windstorms.
4. Any on-site transmission or power lines shall, to the maximum extent possible, be

placed underground.

5. The visual appearance of wind energy facilities shall at a minimum:
   a. Maintain a galvanized finish and be a non-obtrusive color such as white, off-white or gray;
   b. Not be artificially lighted, except to the extent required by the FAA or other applicable authority that regulates air safety;
   c. Not display advertising, including flags, streamers or decorative items, except for the identification of the turbine manufacturer, facility owner and operator.

F. Decommissioning or Abandonment
   1. The wind energy facility owner, and/or operator and/or property owner shall have 3 months to complete decommissioning of the facility if no electricity is generated for a continuous period of 12 months. Repair, maintenance or redesign plans shall be submitted to the zoning administrator if turbines will be off-line for 12 months or more.
   2. Decommissioning shall include removal of the wind turbines, buildings, cabling, electrical components, roads and any other associated facilities. Foundations shall be removed to a depth of 48" below finished grade.
   3. Disturbed earth shall be graded and re-seeded, unless the landowner requests in writing that the access roads or other land surface areas not be restored. The required Erosion and Sediment measures shall be put in place per the Virginia Erosion and Sediment Control Handbook

Section 4.12 Cape Charles Planning, Zoning, and Building Fee Schedule

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

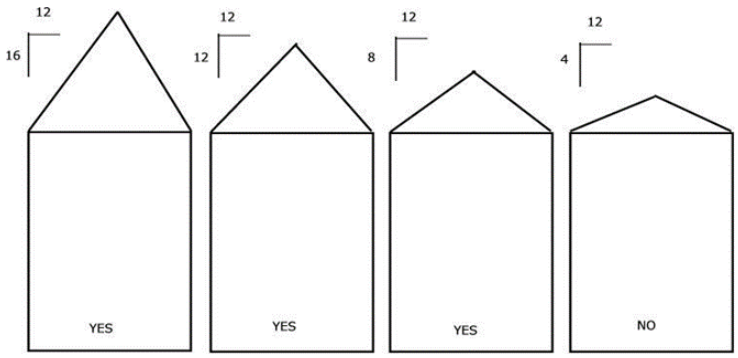
Section 4.13 Development Standards

A. Development Standards applicable to all Residential Zoning Districts

1. Statement of Intent. The development standards below are intended to help preserve the architectural cohesiveness of the Town of Cape Charles by stipulating that new construction and additions be compatible, sympathetic, and complementary to existing buildings. Development concepts are illustrated below to clarify the intent of the development standards.
   a. Proportions. A building may be described by the height, footprint, volume, placement of door openings, window openings, porch columns, spacing, etc. The

proportions of new construction should relate, 1:1, to the prevailing standards present in the neighborhood. Comparing new construction to the existing structures in a neighborhood is to see the 1:1 proportion of the building to another.

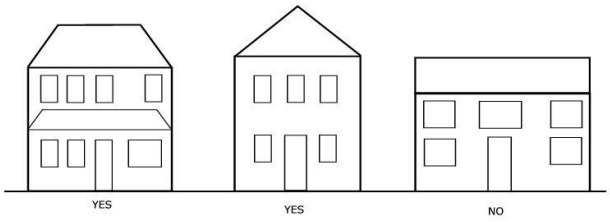
b. Scale and orientation. The elevation of the first floor on new construction must be the same or within six inches of the average of the prevailing standard of neighborhood buildings but must meet the required floodplain elevation. The principal facade of new construction must be oriented in the same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



Roof Pitch Examples
(Drawing Not To Scale)

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

Proportion of Openings



d. Windows and doors. The facade of new construction must draw upon the proportion of neighborhood structures. Windows must be double hung windows or of a size and style similar to existing windows in the neighborhood. The following window treatments are allowed: Jalousie windows, picture windows and horizontal

windows, only in traditional American ranch style architecture. Exterior doors should be paneled or have glass panels. Flush doors are not allowed.

e. Porches. Porches must be constructed on the front of the house and must cover at least 80 percent of the building facade's width. Where there is no prevailing standard, porches may be reduced to be in keeping with the house style. Front porches must have a minimum depth of six feet. Porches on the side and rear of the house are also permitted. All porches must meet setback regulations.

f. Materials. New construction should use materials in a manner sympathetic to the character of the existing neighborhood houses. It is encouraged that materials should be of similar or complementary size, texture, scale, craftsmanship, and applicability to function performed. It should be noted that the sympathetic use of materials does not imply that materials used in new construction will replicate the old in detail nor that new construction will attempt to imitate existing structures. Rather, it is a matter of determining the compatibility of new construction. Certain materials are potentially so visually intrusive that their use for new construction in the R- 1 District will not be permitted. These materials include:

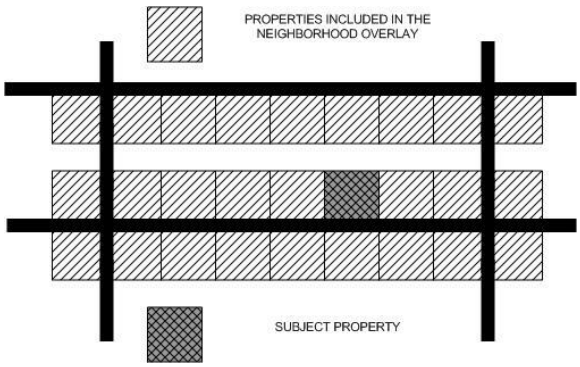
- asphalt siding, vertical plywood siding, aluminum siding
- exposed concrete block above foundation level
- corrugated metal, except for roof applications
- flush doors (hollow or solid core)

Vinyl siding will be permitted as long as each individual clapboard is no wider than five inches.

g. Utilities. Upon installation of utility access lines, such lines shall be installed underground. The Town encourages replacement lines to be installed underground.

Certain terms shall have the meanings ascribed to them as follows:

NEIGHBORHOOD For the purpose of this ordinance, a 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.



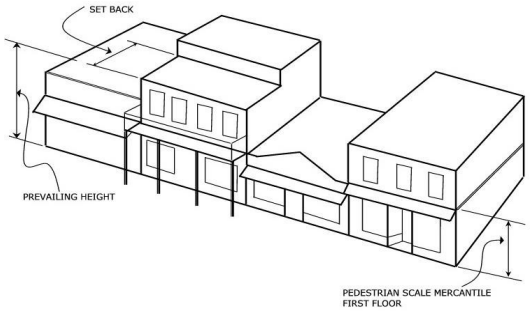
PREVAILING STANDARDS Prevailing standards exist when 50 percent or more of the buildings exhibit similar attributes in a neighborhood overlay. Where less than 50 percent of the buildings exhibit similar attributes, any of the range of attributes in the neighborhood would be acceptable.

Development Standards Applicable to all Commercial Zoning Districts

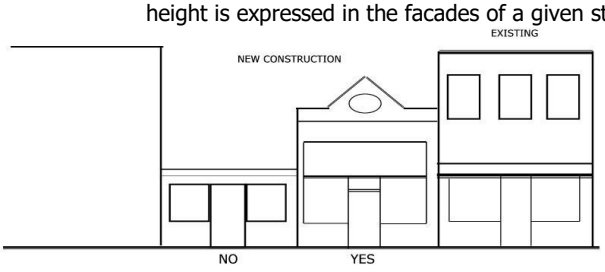
A. Development/Redevelopment Standards:

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

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



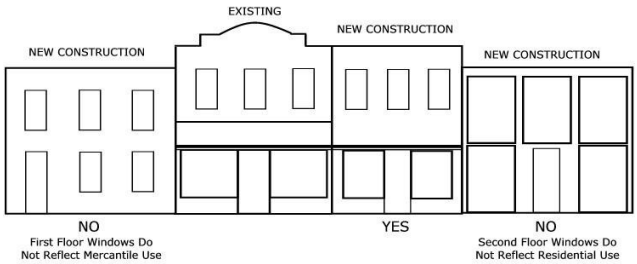
b. Floor-to-Floor Heights. This important element of scale is often ignored in new construction, which tends toward lower ceiling heights. Floor-to-floor heights of new construction should be within 10 percent of neighborhood construction, where a relatively consistent floor-to-floor height is expressed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



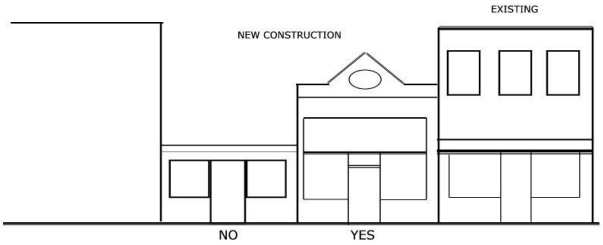
Single Story Buildings Should Reflect Scale of Neighborhood

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

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



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



Single Story Buildings Should Reflect Scale of Neighborhood

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

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

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

- aluminum or vinyl siding
- asphalt siding
- carpeted porch floors and steps
- corrugated metal, except for roof applications
- exposed concrete block above foundation level
- exposed concrete masonry
- faux brick and stone (brick face)
- flush exterior doors
- inappropriate window treatments
- jalousie windows
- picture windows
- windows with horizontal glazing
- metal or wood awnings

- open mesh-type fencing
- ornamental pierced concrete masonry screens and walls
- painted concrete masonry
- unpainted wood
- vertical plywood siding
- vertical wood siding on primary structures
- wrought iron and aluminum porch columns

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

h. Utilities. Upon installation or replacement of utility access lines, such lines shall be installed underground.

2. Demolition. The owner of a building or structure within the Town shall be entitled to raze or demolish such building or structure provided that he has applied to the Building Official for such right. An owner is entitled to raze or demolish his property pursuant to the procedure outlined in Article IV of the Town Zoning Ordinance.

3. Demolition-By-Neglect. No officially designated contributing building, structure, or site within the Town shall be allowed to deteriorate due to neglect by the owner which would result in violation of the intent of this ordinance. Demolition-by-neglect shall include any one or more of the following courses of action or inaction:

a. Deterioration of the exterior of a building to the extent that it creates or permits a hazardous or unsafe condition.

b. Deterioration of exterior walls or other vertical supports, horizontal members, roofs, chimneys, exterior wall elements such as siding, wooden walls, windows, brick, plaster or mortar to the extent that it adversely affects the character of the district or could lead to irreversible damage to the structure.

c. Defective or deteriorated flooring or floor supports or flooring or floor supports of insufficient size to carry imposed loads with safety.

d. Any fault in the building or structure which renders the same structurally unsafe or not properly watertight.

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

chapter.

4. Penalties for Noncompliance.

   a. Failure to correct a defect after a notice that the Building Official has determined that a property is being demolished by neglect according to Section 4.9 of this ordinance shall constitute a misdemeanor. Such misdemeanor shall be punished as set forth in §§ 18.2-9, 18.2-11 and 15.2-1429 of the Code of Virginia, as amended. Each day that the violation continues is a separate offense.
   b. Any property owner in the District who does not obtain approval as required within this ordinance shall be guilty of a misdemeanor and may be punished as set forth in §§ 18.2-9, 18.2-11 and 15.2-1429 of the Code of Virginia, as amended.
   c. Nothing in this chapter shall be deemed to restrict or prohibit the Town Council to acquire in any legal manner any historic area, site, building, or structure or the land pertaining thereto for the use, observation, education, pleasure, and welfare of the citizens of the Town.

B. Additional Requirements

1. Architectural Treatment. No building exterior (whether front, side, or rear) will consist of architectural materials inferior in quality, appearance, or detail to any other exterior of the same building. Nothing in this section shall preclude the use of different materials on different building exteriors (which would be acceptable if representative of good architectural design) but rather shall preclude the use of inferior materials on sides which face adjoining property and thus might adversely impact existing or future development causing a substantial depreciation of property values. No portion of a building constructed of unadorned concrete or concrete block or corrugated and/or sheet metal shall be visible from any adjoining agricultural or residential district or public right-of-way. Mechanical equipment whether ground level or roof top shall be shielded and screened from public view and designed to be perceived as an integral part of the building.
2. Driveways and Parking Areas. Driveways and parking areas shall be paved with concrete, bituminous concrete, or other similar material. Surface penetration treated parking areas and drives shall be prohibited. Concrete curbs and gutters shall be installed around the perimeter of all driveways and parking areas. Other curbing material of similar quality like brick or cobblestone shall be permitted at the discretion of the director of planning. Drainage shall be designed to meet the requirements of the Virginia Department of Transportation.
3. New in-fill structures or change of use projects on the first floor of structures in C-1 shall be exempt from complying with the exact requirements of Section 4.5.(A), Section 4.6, and Table 4.8. Owners are encouraged to provide off street parking for themselves, employees, and loading facilities where possible (i.e., alleys to backyard areas). Owners shall evaluate existing parking and access and submit proposed plan to Town for review. Projects will be evaluated on a case-by-case basis. New or change of use second- or

third-floor projects shall be required to conform to the parking requirements as set forth herein.

4. Outside Storage Areas. All outdoor storage areas shall be visually screened from public streets, internal roadways, and adjacent property. Screening shall consist of either a ventilated solid board fence, masonry wall, dense evergreen plant materials, or such other materials as may be approved. All such screening shall be of sufficient height to screen storage areas from view. Outdoor storage shall include the parking of all company owned and operated vehicles with the exception of passenger vehicles.

ARTICLE VI - Flood Plain District FH-1

Statement of Intent

This district is established under the authority of §15.2-984 of the Code of Virginia of 1950, as amended, for the purpose of providing safety from floods, prevention of property damage and loss, and all other related dangers and of promoting the health, safety, and general welfare by regulating and restricting areas in the tidal flood plains of the Chesapeake Bay, the Atlantic Ocean, and all creeks and streams which are subject to overflowing of their banks. The provisions of this Article shall apply in zoning districts within the Town, a portion of which is located within a flood plain area, the boundaries of which are indicated on the official zoning map, which is an integral part of this ordinance, and are shown as overlapping other zoning districts. The regulations set forth in this district shall be construed to qualify or supplement, as the case may be, the district regulations appearing elsewhere in this ordinance. Through the regulation of existing or future uses, activities, and development, it is the intent of this Article to: (1) prevent unacceptable increases in flood heights, velocities, and frequencies; (2) restrict or prohibit placement of uses, activities, and development within areas subject to flooding; (3) require all uses, activities, and development within flood-prone areas to be protected and/or flood proofed against flooding and flood damage; (4) protect individuals from buying lands and structures which are unsuited for specific purposes because of flood hazards.

ORDINANCE NO.____

AN ORDINANCE AMENDING ORDINANCE NO.____, THE ZONING ORDINANCE OF CAPE CHARLES, VIRGINIA, BY ESTABLISHING FLOODPLAIN DISTRICTS, BY REQUIRING THE ISSUANCE OF PERMITS FOR DEVELOPMENT, AND BY PROVIDING FACTORS AND CONDITIONS FOR VARIANCES TO THE TERMS OF THE ORDINANCES.

BE IT ENACTED AND ORDAINED BY THE CAPE CHARLES, Virginia, as follows:

Section 1.1 – Statutory Authorization and Purpose

Va. Code § 15.2-2283 specifies that zoning ordinances shall be for the general purpose of promoting the health, safety, or general welfare of the public and of further accomplishing the objectives of § 15.2-2200 which encourages localities to improve the public health, safety, convenience, and welfare of their citizens. To these ends, flood ordinances shall be designed to provide for safety from flood, to facilitate the provision of flood protection, and to protect against loss of life, health, or property from flood.

In accordance with these directed provisions, this ordinance is specifically adopted pursuant to the authority granted to localities by Va. Code § 15.2 - 2280.

The purpose of these provisions is to prevent: the loss of life, health, or property, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief, and the impairment of the tax base by:

A. Regulating uses, activities, and development which, alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities, and frequencies;

B. Restricting or prohibiting certain uses, activities, and development from locating within districts subject to flooding;

C. Requiring all those uses, activities, and developments that do occur in flood-prone districts to be protected and/or floodproofed against flooding and flood damage; and,

D. Protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.

Section 1.2 – Applicability

These provisions shall apply to all privately and publicly owned lands within the jurisdiction of Cape Charles and identified as areas of special flood hazard *identified by the community or* shown on the flood insurance rate map (FIRM) or included in the flood insurance study (FIS) that are provided to the Cape Charles by FEMA.

Section 1.3 - Compliance and Liability

A. No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered except in full compliance with the terms and provisions of this ordinance and any other applicable ordinances and regulations which apply to uses within the jurisdiction of this ordinance.

B. The degree of flood protection sought by the provisions of this ordinance is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study, but does not imply total flood protection. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that districts outside the floodplain district or land uses permitted within such district will be free from flooding or flood damages.

C. This ordinance shall not create liability on the part of Cape Charles or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

Section 1.4 – Records

Records of actions associated with administering this ordinance shall be kept on file and maintained by or under the direction of the Floodplain Administrator in perpetuity.

Section 1.5 - Abrogation and Greater Restrictions

To the extent that the provisions are more restrictive, this ordinance supersedes any ordinance currently in effect in flood-prone districts. To the extent that any other existing law or regulation is more restrictive or does not conflict it shall remain in full force and effect.

These regulations are not intended to repeal or abrogate any existing ordinances including subdivision regulations, zoning ordinances, or building codes. In the event of a conflict between these regulations and any other ordinance, the more restrictive shall govern.

Section 1.6 - Severability

If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this ordinance. The remaining portions shall remain in full force and effect; and for this purpose,

the provisions of this ordinance are hereby declared to be severable.

Section 1.7 - Penalty for Violations

Any person who fails to comply with any of the requirements or provisions of this article or directions of the director of planning or any authorized employee of the Cape Charles shall be guilty of the appropriate violation and subject to the penalties thereof.

The VA USBC addresses building code violations and the associated penalties in Section 104 and Section 115. Violations and associated penalties of the Zoning Ordinance of Cape Charles are addressed in Section 2.4.3 of the Zoning Ordinance.

In addition to the above penalties, all other actions are hereby reserved, including an action in equity for the proper enforcement of this article. The imposition of a fine or penalty for any violation of, or noncompliance with, this article shall not excuse the violation or noncompliance or permit it to continue; and all such persons shall be required to correct or remedy such violations within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in noncompliance with this article may be declared by the Cape Charles to be a public nuisance and abatable as such. Flood insurance may be withheld from structures constructed in violation of this article.

Section 2.1 - Designation of the Floodplain Administrator

The Cape Charles Building Official is hereby appointed to administer and implement these regulations and is referred to herein as the Floodplain Administrator. The Floodplain Administrator may:

A. Do the work themselves. In the absence of a designated Floodplain Administrator, the duties are conducted by the Cape Charles chief executive officer.

B. Delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees.

C. Enter into a written agreement or written contract with another community or private sector entity to administer specific provisions of these regulations. Administration of any part of these regulations by another entity shall not relieve the community of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations at 44 C.F.R. Section 59.22.

Section 2.2 - Duties and Responsibilities of the Floodplain Administrator

The duties and responsibilities of the Floodplain Administrator shall include but are not limited to:

A. Review applications for permits to determine whether proposed activities will be located in the Special Flood Hazard Area (SFHA).

B. Interpret floodplain boundaries and provide available base flood elevation and flood hazard information.

C. Review applications to determine whether proposed activities will be reasonably safe from flooding and require new construction and substantial improvements to meet the requirements of these regulations.

D. Review applications to determine whether all necessary permits have been obtained from the Federal, State, or local agencies from which prior or concurrent approval is required; in particular, permits from state agencies for any construction, reconstruction, repair, or alteration of a dam, reservoir, or waterway obstruction (including bridges, culverts, structures), any alteration of a watercourse, or any change of the course, current, or cross section of a stream or body of water, including any change to the 100-year frequency floodplain of free-flowing non-tidal waters of the State.

E. Verify that applicants proposing an alteration of a watercourse have notified adjacent communities, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management), and other appropriate agencies (VADEQ, USACE), and have submitted copies of such notifications to FEMA.

F. Advise applicants for new construction or substantial improvement of structures that are located within an area of the Coastal Barrier Resources System established by the Coastal

Barrier Resources Act that Federal flood insurance is not available on such structures; areas subject to this limitation are shown on Flood Insurance Rate Maps as Coastal Barrier Resource System Areas (CBRS) or Otherwise Protected Areas (OPA).

G. Approve applications and issue permits to develop in flood hazard areas if the provisions of these regulations have been met, or disapprove applications if the provisions of these regulations have not been met.

H. Inspect or cause to be inspected, buildings, structures, and other development for which permits have been issued to determine compliance with these regulations or to determine if non-compliance has occurred or violations have been committed.

I. Review Elevation Certificates and require incomplete or deficient certificates to be corrected.

J. Submit to FEMA, or require applicants to submit to FEMA, data and information necessary to maintain FIRMs, including hydrologic and hydraulic engineering analyses prepared by or for the Cape Charles, within six months after such data and information becomes available if the analyses indicate changes in base flood elevations.

K. Maintain and permanently keep records that are necessary for the administration of these regulations, including:

1. Flood Insurance Studies, Flood Insurance Rate Maps (including historic studies and maps and current effective studies and maps), and Letters of Map Change; and

2. Documentation supporting issuance and denial of permits, Elevation Certificates, documentation of the elevation (in relation to the datum on the FIRM) to which structures have been floodproofed, inspection records, other required design certifications, variances, and records of enforcement actions taken to correct violations of these regulations.

L. Enforce the provisions of these regulations, investigate violations, issue notices of violations or stop work orders, and require permit holders to take corrective action.

M. Advise the Board of Zoning Appeals regarding the intent of these regulations and, for each application for a variance, prepare a staff report and recommendation.

N. Administer the requirements related to proposed work on existing buildings:

1. Make determinations as to whether buildings and structures that are located in flood hazard areas and that are damaged by any cause have been substantially damaged.

2. Make reasonable efforts to notify owners of substantially damaged structures of the need to obtain a permit to repair, rehabilitate, or reconstruct. Prohibit the non-compliant repair of substantially damaged buildings except for temporary emergency protective measures necessary to secure a property or stabilize a building or structure to prevent additional damage.

O. Undertake, as determined appropriate by the Floodplain Administrator due to the circumstances, other actions which may include but are not limited to: issuing press releases, public service announcements, and other public information materials related to permit requests and repair of damaged structures; coordinating with other Federal, State, and local agencies to assist with substantial damage determinations; providing owners of damaged structures information related to the proper repair of damaged structures in special flood hazard areas; and assisting property owners with documentation necessary to file claims for Increased Cost of Compliance coverage under NFIP flood insurance policies.

P. Notify the Federal Emergency Management Agency when the corporate boundaries of the Cape Charles have been modified and:

1. Provide a map that clearly delineates the new corporate boundaries or the new area for which the authority to regulate pursuant to these regulations has either been assumed or relinquished through annexation; and

2. If the FIRM for any annexed area includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in these regulations, prepare amendments to these regulations to adopt the FIRM and appropriate requirements, and submit the amendments to the governing body for adoption; such adoption shall take place at the same time as or prior to the date of annexation and a copy of the amended regulations shall be provided to Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and FEMA.

Q. Upon the request of FEMA, complete and submit a report concerning participation in the NFIP which may request information regarding the number of buildings in the SFHA, number of permits issued for development in the SFHA, and number of variances issued for development in the SFHA.

R. It is the duty of the Community Floodplain Administrator to take into account flood, mudslide and flood-related erosion hazards, to the extent that they are known, in all official actions relating to land management and use throughout the entire jurisdictional area of the Community, whether or not those hazards have been specifically delineated geographically (e.g. via mapping or surveying).

Section 2.3 - Use and Interpretation of FIRMs

The Floodplain Administrator shall make interpretations, where needed, as to the exact location of special flood hazard areas, floodplain boundaries, and floodway boundaries. The following shall apply to the use and interpretation of FIRMs and data:

A. Where field surveyed topography indicates that adjacent ground elevations:

1. Are below the base flood elevation in riverine SFHAs, or below the 1% storm surge elevation in coastal SFHAs, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as special flood hazard area and subject to

the requirements of these regulations;

2. Are above the base flood elevation and the area is labelled as a SFHA on the FIRM, the area shall be regulated as special flood hazard area unless the applicant obtains a Letter of Map Change that removes the area from the SFHA.

B. In FEMA-identified special flood hazard areas where base flood elevation and floodway data have not been identified and in areas where FEMA has not identified SFHAs, any other flood hazard data available from a Federal, State, or other source shall be reviewed and reasonably used.

C. Base flood elevations and designated floodway boundaries on FIRMs and in FISs shall take precedence over base flood elevations and floodway boundaries by any other sources if such sources show reduced floodway widths and/or lower base flood elevations.

D. Other sources of data shall be reasonably used if such sources show increased base flood elevations and/or larger floodway areas than are shown on FIRMs and in FISs.

E. If a Preliminary Flood Insurance Rate Map and/or a Preliminary Flood Insurance Study has been provided by FEMA:

1. Upon the issuance of a Letter of Final Determination by FEMA, the preliminary flood hazard data shall be used and shall replace the flood hazard data previously provided from FEMA for the purposes of administering these regulations.

2. Prior to the issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data shall be deemed the best available data pursuant to Article III, Section 3.1.A.3 and used where no base flood elevations and/or floodway areas are provided on the effective FIRM.

3. Prior to issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data is permitted where the preliminary base flood elevations or floodway areas exceed the base flood elevations and/or designated floodway widths in existing flood hazard data provided by FEMA. Such preliminary data may be subject to change and/or appeal to FEMA.

Section 2.4 - Jurisdictional Boundary Changes

The County floodplain ordinance in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas until the municipality adopts and enforces an ordinance which meets the requirements for participation in the National Flood Insurance Program. Municipalities with existing floodplain ordinances shall pass a resolution acknowledging and accepting responsibility for enforcing floodplain ordinance standards prior to annexation of any area containing identified flood hazards. If the FIRM for any annexed area includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in these regulations, the governing body shall prepare amendments to these regulations to adopt the FIRM and appropriate requirements, and submit the amendments to the governing body for adoption; such adoption shall take place at the same time as or prior to the date

of annexation and a copy of the amended regulations shall be provided to Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and FEMA.

In accordance with the Code of Federal Regulations, Title 44 Subpart (B) Section 59.22(a)(9)(v) all NFIP participating communities must notify the Federal Insurance Administration and optionally the State Coordinating Office in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce floodplain management regulations for a particular area.

In order that all Flood Insurance Rate Maps accurately represent the community's boundaries, a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished floodplain management regulatory authority must be included with the notification.

Section 2.5 - District Boundary Changes

The delineation of any of the Floodplain Districts may be revised by the Cape Charles where natural or man-made changes have occurred and/or where more detailed studies have been conducted or undertaken by the U. S. Army Corps of Engineers or other qualified agency, or an individual documents the need for such change. However, prior to any such change, approval must be obtained from the Federal Emergency Management Agency. A completed LOMR is a record of this approval.

Section 2.6 - Interpretation of District Boundaries

Initial interpretations of the boundaries of the Floodplain Districts shall be made by the Zoning Officer. Should a dispute arise concerning the boundaries of any of the Districts, the Board of Zoning Appeals shall make the necessary determination. The person questioning or contesting the location of the District boundary shall be given a reasonable opportunity to present his case to the Board and to submit his own technical evidence if he so desires.

Section 2.7 – Submitting Model Backed Technical Data

A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, a community shall notify the Federal Emergency Management Agency of the changes by submitting technical or scientific data. The community may submit data via a LOMR. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.

Section 2.8 – Letters of Map Revision

When development in the floodplain will cause or causes a change in the base flood elevation, the applicant, including state agencies, must notify FEMA by applying for a Conditional Letter of Map Revision and then a Letter of Map Revision.

Example cases:

- Any development that causes a rise in the base flood elevations within the floodway**.**
- Any development occurring in Zones A1-30 and AE without a designated floodway, which will cause a rise of more than one foot in the base flood elevation.
- Alteration or relocation of a stream (including but not limited to installing culverts and bridges) *44 Code of Federal Regulations §65.3 and §65.6(a)(12)*.

Section 3.1 - Description of Special Flood Hazard Districts

A. Basis of Districts

The various special flood hazard districts shall include the SFHAs. The basis for the delineation of these districts shall be the FIS and the FIRM for Cape Charles prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated March 2nd, 2015 and any subsequent revisions or amendments thereto.

The Cape Charles may identify and regulate local flood hazard or ponding areas that are not delineated on the FIRM. These areas may be delineated on a "Local Flood Hazard Map" using best available topographic data and locally derived information such as flood of record, historic high water marks, or approximate study methodologies.

The boundaries of the SFHA Districts are established as shown on the FIRM which is declared to be a part of this ordinance and which shall be kept on file at the Cape Charles offices.

1. The **Floodway District** is in an **AE Zone** and is delineated, for purposes of this ordinance, using the criterion that certain areas within the floodplain must be capable of carrying the waters of the one percent annual chance flood without increasing the water surface elevation of that flood more than one (1) foot at any point. The areas included in this District are specifically defined in Table ____ of the above-referenced FIS and shown on the accompanying FIRM.

   Commented [AA1]: Town still determining this, as of 8.2.23

   The following provisions shall apply within the Floodway District of an AE zone [44 CFR 60.3(d)]:

   a. Within any floodway area, no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment will not result in any increase in flood levels within the community during the occurrence of the base flood discharge. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently-accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the Floodplain Administrator.

      Development activities which increase the water surface elevation of the base flood may be allowed, provided that the applicant first applies – with the Cape Charles' endorsement – for a Conditional Letter of Map Revision (CLOMR), and receives the approval of the Federal Emergency Management Agency.

      If Article III, Section 3.1.A.1.a is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article 4.

   b. The placement of manufactured homes (mobile homes) is prohibited, except in an existing

manufactured home (mobile home) park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring, elevation, and encroachment standards are met.

2. The **AE, or AH Zones** on the FIRM accompanying the FIS shall be those areas for which one-percent annual chance flood elevations have been provided and the floodway has **not** been delineated. The following provisions shall apply within an AE or AH zone [44 CFR 60.3(c)] where FEMA has provided base flood elevations:

   Until a regulatory floodway is designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within the areas of special flood hazard, designated as Zones A1-30, AE, or AH on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the Cape Charles.

Development activities in Zones Al-30, AE, or AH on the Cape Charles' FIRM which increase the water surface elevation of the base flood by more than one foot may be allowed, provided that the applicant first applies – with the Cape Charles' endorsement – for a Conditional Letter of Map Revision, and receives the approval of the Federal Emergency Management Agency.

3. The **A Zone** on the FIRM accompanying the FIS shall be those areas for which no detailed flood profiles or elevations are provided, but the one percent annual chance floodplain boundary has been approximated. For these areas, the following provisions shall apply [44 CFR 60.3(b)]:

   The Approximated Floodplain District shall be that floodplain area for which no detailed flood profiles or elevations are provided, but where a one percent annual chance floodplain boundary has been approximated. Such areas are shown as Zone A on the maps accompanying the FIS. For these areas, the base flood elevations and floodway information from Federal, State, and other acceptable sources shall be used, when available. Where the specific one percent annual chance flood elevation cannot be determined for this area using other sources of data, such as the U. S. Army Corps of Engineers Floodplain Information Reports, U. S. Geological Survey Flood-Prone Quadrangles, etc., then the applicant for the proposed use, development and/or activity shall determine this base flood elevation. For development proposed in the approximate floodplain the applicant must use technical methods that correctly reflect currently accepted practices, such as point on boundary, high water marks, or detailed methodologies hydrologic and hydraulic analyses. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the Floodplain Administrator.

   The Floodplain Administrator reserves the right to require a hydrologic and hydraulic analysis for any development. When such base flood elevation data is utilized, the lowest floor shall be elevated to or above the base flood level plus eighteen (18) inches.

During the permitting process, the Floodplain Administrator shall obtain:

a. The elevation of the lowest floor (in relation to mean sea level), including the basement, of all new and substantially improved structures; and,

b. If the structure has been floodproofed in accordance with the requirements of this article, the elevation (in relation to mean sea level) to which the structure has been floodproofed.

Base flood elevation data shall be obtained from other sources or developed using detailed methodologies comparable to those contained in a FIS for subdivision proposals and other proposed development proposals (including manufactured home parks and subdivisions) that exceed fifty lots or five acres, whichever is the lesser.

4. The **AO Zone** on the FIRM accompanying the FIS shall be those areas of shallow flooding identified as AO on the FIRM. For these areas, the following provisions shall apply [44 CFR 60.3(c)]:

   a. All new construction and substantial improvements of residential structures shall have the lowest floor, including basement, elevated to or above the flood depth specified on the FIRM, above the highest adjacent grade at least as high as the depth number specified in feet on the FIRM. If no flood depth number is specified, the lowest floor, including basement, shall be elevated no less than two feet above the highest adjacent grade.

   b. All new construction and substantial improvements of non-residential structures shall

      (1) Have the lowest floor, including basement, elevated to or above the flood depth specified on the FIRM, above the highest adjacent grade at least as high as the depth number specified in feet on the FIRM. If no flood depth number is specified, the lowest floor, including basement, shall be elevated at least two feet above the highest adjacent grade; or,

      (2) Together with attendant utility and sanitary facilities be completely floodproofed to the specified flood level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

   c. Adequate drainage paths around structures on slopes shall be provided to guide floodwaters around and away from proposed structures.

5. The **Coastal A Zone** is labelled as AE on the FIRM; it is those areas that are seaward of the limit of moderate wave action (LiMWA) line. As defined by the VA USBC, these areas are subject to wave heights between 1.5 feet and 3 feet. For these areas, the following provisions shall apply:

   Buildings and structures within this zone shall have the lowest floor elevated to or above the base flood elevation plus one foot of freeboard, and must comply with the provisions in Article

III, Section 3.1.A.2 and Article IV, Sections 4.2 and 4.3.

6. The **VE or V Zones** on FIRMs accompanying the FIS shall be those areas that are known as Coastal High Hazard areas, extending from offshore to the inland limit of a primary frontal dune along an open coast or other areas subject to high velocity waves. For these areas, the following provisions shall apply [44 CFR 60.3(e)]:

   a. All new construction and substantial improvements in Zones V and VE, including manufactured homes, shall be elevated on pilings or columns so that:

      (1) The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level plus eighteen (18) inches. if the lowest horizontal structural member is parallel to the direction of wave approach or elevated at least two feet above the base flood level if the lowest horizontal structural member is perpendicular to the direction of wave approach; and,

      (2) The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall each have a one percent chance of being equaled or exceeded in any given year (one-percent annual chance).

   b. A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of Article III, Section A.6.a.

   c. The Floodplain Administrator shall obtain the elevation (in relation to mean sea level) of the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures in Zones V and VE. The Floodplain Management Administrator shall maintain a record of all such information.

   d. All new construction shall be located landward of the reach of mean high tide.

   e. All new construction and substantial improvements shall have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood-lattice work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purpose of this Section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

      (1) Breakaway wall collapse shall result from water load less than that which would occur

during the base flood; and

(2) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Maximum wind and water loading values to be used in this determination shall each have a one percent chance of being equaled or exceeded in any given year.

f. The enclosed space below the lowest floor shall be used solely for parking of vehicles, building access, or storage. Such space shall not be partitioned into multiple rooms, temperature-controlled, or used for human habitation. The enclosed space shall be less than 300 square feet.

g. The use of fill for structural support of buildings is prohibited. When non-structural fill is proposed in a coastal high hazard area, appropriate engineering analyses shall be conducted to evaluate the impacts of the fill prior to issuance of a permit.

h. The man-made alteration of sand dunes, which would increase potential flood damage, is prohibited.

7. The mapped floodplain includes all of the above regions and also the regions designated as having a 0.2 percent annual chance of flooding on any flood map or flood insurance study. In this area no emergency service, medical service, or governmental records storage shall be allowed except by special exception using the variance process.

Section 3.2 - Overlay Concept

The Floodplain Districts described above shall be overlays to the existing underlying districts as shown on the Official Zoning Ordinance Map, and as such, the provisions for the floodplain districts shall serve as a supplement to the underlying district provisions.

If there is any conflict between the provisions or requirements of the Floodplain Districts and those of any underlying district, the more restrictive provisions and/or those pertaining to the floodplain districts shall apply.

In the event any provision concerning a Floodplain District is declared inapplicable as a result of any legislative or administrative actions or judicial decision, the basic underlying provisions shall remain applicable.

Section 4.1 – Permit and Application Requirements

A. Permit Requirement

All uses, activities, and development occurring within any floodplain district, including placement of manufactured homes, shall be undertaken only upon the issuance of a permit. Such development shall be undertaken only in strict compliance with the provisions of this Ordinance and with all other applicable codes and ordinances, as amended, such as the Virginia Uniform Statewide Building Code (VA USBC) and the Cape Charles Subdivision Ordinance. Prior to the issuance of any such permit, the Floodplain Administrator shall require all applications to include compliance with all applicable State and Federal laws and shall review all sites to assure they are reasonably safe from flooding. Under no circumstances shall any use, activity, and/or development adversely affect the capacity of the channels or floodways of any watercourse, drainage ditch, or any other drainage facility or system.

B. Site Plans and Permit Applications

All applications for development within any floodplain district and all permits issued for the floodplain shall incorporate the following information:

1. The elevation of the Base Flood at the site.

2. For structures to be elevated, the elevation of the lowest floor (including basement) or, in V zones, the lowest horizontal structural member.

3. For structures to be floodproofed (non-residential only), the elevation to which the structure will be floodproofed.

4. Topographic information showing existing and proposed ground elevations.

Section 4.2 - General Standards

The following provisions shall apply to all permits:

A. New construction and substantial improvements shall be built according to this ordinance and the VA USBC, and anchored to prevent flotation, collapse, or lateral movement of the structure.

B. Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state anchoring requirements for resisting wind forces.

C. New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

D. New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.

E. Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities,

including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

F. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

G. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

H. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

In addition to provisions A – H above, in all special flood hazard areas, the additional provisions shall apply:

I. Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within this jurisdiction a permit shall be obtained from the U. S. Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission (a joint permit application is available from any of these organizations). Furthermore, in riverine areas, notification of the proposal shall be given by the applicant to all affected adjacent jurisdictions, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management), other required agencies, and the Federal Emergency Management Agency.

J. The flood carrying capacity within an altered or relocated portion of any watercourse shall be maintained.

Section 4.3 - Elevation and Construction Standards

In all identified flood hazard areas where base flood elevations have been provided in the FIS or generated by a certified professional in accordance with Article III, Section 3.1.A.3 the following provisions shall apply:

A. For all properties required to comply with the freeboard elevation, the height allowance or restriction identified in Article III may be exceeded equal to the freeboard requirement.

B. Residential Construction

New construction or substantial improvement of any residential structure (including manufactured homes) in Zones A1-30, AE, AH, and A with detailed base flood elevations shall have the lowest floor, including basement, elevated to or above the base flood level plus eighteen (18) inches. See Article III, Section 3.1.A.5 and Article III, Section 3.1.A.6 for requirements in the Coastal A, VE, and V zones.

C. Non-Residential Construction

1. New construction or substantial improvement of any commercial, industrial, or non-residential building (or manufactured home) shall have the lowest floor, including basement, elevated to or above the base flood level plus eighteen (18) inches. See Article III, Section 3.1.A.5 and Article III, Section 3.1.A.6 for requirements in the Coastal A, VE, and V zones.

2. Non-residential buildings located in all A1-30, AE, and AH zones may be floodproofed in lieu of being elevated provided that all areas of the building components below the elevation corresponding to the BFE plus two feet are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification, including the specific elevation (in relation to mean sea level) to which such structures are floodproofed, shall be maintained by the Cape Charles Floodplain Administrator.

D. Space Below the Lowest Floor

In zones A, AE, AH, AO, and A1-A30, fully enclosed areas, of new construction or substantially improved structures, which are below the regulatory flood protection elevation shall:

1. Not be designed or used for human habitation, but shall be used solely for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator).

2. Be constructed entirely of flood resistant materials below the regulatory flood protection elevation;

3. Include measures to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet the following minimum design criteria:

   a. Provide a minimum of two openings on different sides of each enclosed area subject to flooding.

   b. The total net area of all openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding.

   c. If a building has more than one enclosed area, each area must have openings to allow floodwaters to automatically enter and exit.

   d. The bottom of all required openings shall be no higher than one (1) foot above the adjacent grade.

   e. Openings may be equipped with screens, louvers, or other opening coverings or devices, provided they permit the automatic flow of floodwaters in both directions.

   f. Foundation enclosures made of flexible skirting are not considered enclosures for

regulatory purposes, and, therefore, do not require openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires openings as outlined above.

D. Accessory Structures

1. Accessory structures in the SFHA shall comply with the elevation requirements and other requirements of Article IV, Section 4.3.B or, if not elevated or dry floodproofed, shall:
   a. Not be used for human habitation
   b. Be limited to no more than 600 square feet in total floor area
   c. Be only usable for

Not be used for human habitation;

Be limited to no more than *600 square feet* in total floor area;

Be useable only for parking of vehicles or limited storage;

Be constructed with flood damage-resistant materials below the base flood elevation;
Be constructed and placed to offer the minimum resistance to the flow of floodwaters;

Be anchored to prevent flotation;

Have electrical service and mechanical equipment elevated to or above the base flood elevation;

Shall be provided with flood openings which shall meet the following criteria:

(1) There shall be a minimum of two flood openings on different sides of each enclosed area; if a building has more than one enclosure below the lowest floor, each such enclosure shall have flood openings on exterior walls.

(2) The total net area of all flood openings shall be at least 1 square inch for each square foot of enclosed area (non-engineered flood openings), or the flood openings shall be engineered flood openings that are designed and certified by a licensed professional engineer to automatically allow entry and exit of floodwaters; the certification requirement may be satisfied by an individual certification or an Evaluation Report issued by the ICC Evaluation Service, Inc.

(3) The bottom of each flood opening shall be 1 foot or less above the higher of the interior floor or grade, or the exterior grade, immediately below the opening.

(4) Any louvers, screens or other covers for the flood openings shall allow the automatic flow of floodwaters into and out of the enclosed area.

E. Standards for Manufactured Homes and Recreational Vehicles

1. In zones A, AE, AH, and AO, all manufactured homes placed, or substantially improved, on individual lots or parcels, must meet all the requirements for new construction, including the elevation and anchoring requirements in Article III, Section 3.1.A.6 and Article IV, Sections 4.2 and 4.3.

2. All recreational vehicles placed on sites must either:

   a. Be on the site for fewer than 180 consecutive days, be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions); or

   b. Meet all the requirements for manufactured homes in Article IV, Section 4.3.E.1.

Section 4.4 - Standards for Subdivision Proposals

A. All subdivision proposals shall be consistent with the need to minimize flood damage;

B. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;

C. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards, and

D. Base flood elevation data shall be obtained from other sources or developed using detailed methodologies, hydraulic and hydrologic analysis, comparable to those contained in a Flood Insurance Study for subdivision proposals and other proposed development proposals (including manufactured home parks and subdivisions) that exceed fifty lots or five acres, whichever is the lesser.

Section 5 – Existing Structures in Floodplain Areas

Any structure or use of a structure or premises must be brought into conformity with these provisions when it is changed, repaired, or improved unless one of the following exceptions is established before the change is made:

A. The floodplain manager has determined that:

1. Change is not a substantial repair or substantial improvement AND
2. No new square footage is being built in the floodplain that is not complaint AND
3. No new square footage is being built in the floodway AND
4. The change complies with this ordinance and the VA USBC AND
5. The change, when added to all the changes made during a rolling 5-year period does not constitute 50% of the structure's value.

B. The changes are required to comply with a citation for a health or safety violation.

C. The structure is a historic structure and the change required would impair the historic nature of the structure.

Section 6 – Variances: Factors to be Considered [44 CFR 60.6]

Variances shall be issued only upon (i) a showing of good and sufficient cause, (ii) after the Board of Zoning Appeals has determined that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) after the Board of Zoning Appeals has determined that the granting of such variance will not result in (a) unacceptable or prohibited increases in flood heights, (b) additional threats to public safety, (c) extraordinary public expense; and will not (d) create nuisances, (e) cause fraud or victimization of the public, or (f) conflict with local laws or ordinances.

While the granting of variances generally is limited to a lot size less than one-half acre, deviations from that limitation may occur. However, as the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases. Variances may be issued by the Board of Zoning Appeals for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the provisions of this Section.

Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the criteria of this Section are met, and the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

In passing upon applications for variances, the Board of Zoning Appeals shall satisfy all relevant factors and procedures specified in other sections of the zoning ordinance and consider the following additional factors:

A. The danger to life and property due to increased flood heights or velocities caused by encroachments. No variance shall be granted for any proposed use, development, or activity within any Floodway District that will cause any increase in the one percent (1%) chance flood elevation.

B. The danger that materials may be swept on to other lands or downstream to the injury of others.

C. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.

D. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.

E. The importance of the services provided by the proposed facility to the community.

F. The requirements of the facility for a waterfront location.

G. The availability of alternative locations not subject to flooding for the proposed use.

H. The compatibility of the proposed use with existing development and development

anticipated in the foreseeable future.

I. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.

J. The safety of access by ordinary and emergency vehicles to the property in time of flood.

K. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.

L. The historic nature of a structure. Variances for repair or rehabilitation of historic structures may be granted upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

M. No variance shall be granted for an accessory structure exceeding 600 square feet. *(Note: See Article IV, Section 4.3.D.2)*.

N. Such other factors which are relevant to the purposes of this Ordinance.

The Board of Zoning Appeals may refer any application and accompanying documentation pertaining to any request for a variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for flood protection and other related matters.

Variances shall be issued only after the Board of Zoning Appeals has determined that the granting of such will not result in (a) unacceptable or prohibited increases in flood heights, (b) additional threats to public safety, (c) extraordinary public expense; and will not (d) create nuisances, (e) cause fraud or victimization of the public, or (f) conflict with local laws or ordinances.

Variances shall be issued only after the Board of Zoning Appeals has determined that the variance will be the minimum required to provide relief.

The Board of Zoning Appeals shall notify the applicant for a variance, in writing that the issuance of a variance to construct a structure below the one percent (1%) chance flood elevation (a) increases the risks to life and property and (b) will result in increased premium rates for flood insurance.
A record shall be maintained of the above notification as well as all variance actions, including justification for the issuance of the variances. Any variances that are issued shall be noted in the annual or biennial report submitted to the Federal Insurance Administrator.

Section 7 - Glossary

A. Appurtenant or accessory structure - A non-residential structure which is on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Accessory structures are not to exceed *600 square feet*.

B. Base flood - The flood having a one percent chance of being equalled or exceeded in any given year.

C. Base flood elevation - The water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year. The water surface elevation of the base flood in relation to the datum specified on Cape Charles' Flood Insurance Rate Map. For the purposes of this ordinance, the base flood is the 1% annual chance flood.

D. Basement - Any area of the building having its floor sub-grade (below ground level) on all sides.

E. Board of Zoning Appeals - The board appointed to review appeals made by individuals with regard to decisions of the Zoning Administrator in the interpretation of this ordinance.

F. Coastal A Zone **-** Flood hazard areas that have been delineated as subject to wave heights between 1.5 feet and 3 feet.

G. Development - Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, temporary structures, mining, dredging, filling, grading, paving, excavation, drilling or other land-disturbing activities or permanent or temporary storage of equipment or materials.

H. Elevated building - A non-basement building built to have the lowest floor elevated above the ground level by means of solid foundation perimeter walls, pilings, or columns (posts and piers).

I. Encroachment - The advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

J. Existing construction - For the purposes of the insurance program, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975 for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures" and "pre-FIRM."

K. Flood or flooding -
1. A general or temporary condition of partial or complete inundation of normally dry land areas from:
   a. The overflow of inland or tidal waters; or,
   b. The unusual and rapid accumulation or runoff of surface waters from any source.

c. Mudflows which are proximately caused by flooding as defined in paragraph (1)(b) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

2. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph 1 (a) of this definition.

L. Flood Insurance Rate Map (FIRM) - an official map of a community, on which the Federal Emergency Management Agency has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

M. Flood Insurance Study (FIS) - a report by FEMA that examines, evaluates and determines flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudflow and/or flood-related erosion hazards.

N. Floodplain or flood-prone area - Any land area susceptible to being inundated by water from any source.

O. Floodproofing - any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

P. Floodway - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot at any point within the community.

Q. Freeboard - A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization in the watershed.

R. Functionally dependent use - A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. This term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and shipbuilding and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

S. Highest adjacent grade - the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

T. Historic structure - Any structure that is:
1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
   a. By an approved state program as determined by the Secretary of the Interior; or,
   b. Directly by the Secretary of the Interior in states without approved programs.

U. Hydrologic and Hydraulic Engineering Analysis - Analyses performed by a licensed professional engineer, in accordance with standard engineering practices that are accepted by the Virginia Department of Conservation and Recreation and FEMA, used to determine the base flood, other frequency floods, flood elevations, floodway information and boundaries, and flood profiles.

V. Letters of Map Change (LOMC) - A Letter of Map Change is an official FEMA determination, by letter, that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

Letter of Map Amendment (LOMA) - An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a land as defined by meets and bounds or structure is not located in a special flood hazard area.

Letter of Map Revision (LOMR) - A revision based on technical data that may show changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features. A Letter of Map Revision Based on Fill (LOMR-F), is a determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer exposed to flooding associated with the base flood. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.

Conditional Letter of Map Revision (CLOMR) - A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study.

W. Lowest adjacent grade - the lowest natural elevation of the ground surface next to the walls of a structure.

X. Lowest floor - The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building

access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Federal Code 44CFR §60.3.

Y. Manufactured home - A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

Z. Manufactured home park or subdivision - a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

AA. Mean Sea Level – for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or the North American Vertical Datum (NAVD) of 1988 to which base flood elevations shown on a community's FIRM are referenced.

BB. New construction - For the purposes of determining insurance rates, structures for which the "start of construction" commenced after December 31, 1974 includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

CC. Post-FIRM structures - A structure for which construction or substantial improvement occurred after December 31, 1974.

DD. Pre-FIRM structures - A structure for which construction or substantial improvement occurred on or before December 31, 1974.

EE. Primary frontal dune - a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms.

FF. Recreational vehicle - A vehicle which is:
1. Built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light duty truck; and,
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use.

GG. Repetitive Loss Structure - A building covered by a contract for flood insurance that has incurred flood-related damages on two occasions in a 10-year period, in which the cost of the repair, on the average, equalled or exceeded 25 percent of the market value of the structure at the time of each such flood event; and at the time of the second incidence of flood-related damage, the contract for flood insurance contains increased

cost of compliance coverage.

HH. Severe repetitive loss structure - a structure that: (a) Is covered under a contract for flood insurance made available under the NFIP; and (b) Has incurred flood related damage - (i) For which 4 or more separate claims payments have been made under flood insurance coverage with the amount of each such claim exceeding $5,000, and with the cumulative amount of such claims payments exceeding $20,000; or (ii) For which at least 2 separate claims payments have been made under such coverage, with the cumulative amount of such claims exceeding the market value of the insured structure.

II. Shallow flooding area - A special flood hazard area with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

JJ. Special flood hazard area - The land in the floodplain subject to a one (1%) percent or greater chance of being flooded in any given year as determined in Article 3, Section 3.1 of this ordinance.

KK. Start of construction - For other than new construction and substantial improvement, under the Coastal Barriers Resource Act (P.L. – 97-348), means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of the construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

LL. Structure - for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

MM. Substantial damage - Damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. It also means flood-related damages sustained by a structure on two occasions in a 10-year period, in which the cost of the repair, on the average, equals or exceeds 25 percent of the market value of the structure at the time of each such flood event.

NN. Substantial improvement - Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or
2. Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.
3. Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined above, must comply with all ordinance requirements that do not preclude the structure's continued designation as a historic structure. Documentation that a specific ordinance requirement will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from ordinance requirements will be the minimum necessary to preserve the historic character and design of the structure.

OO. Violation - the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

PP. Watercourse - A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

Section 8 - Enactment

Enacted and ordained this ____ day of _____, 20____. This ordinance, number _____ of Cape Charles, Virginia, shall become effective upon passage.

_____
Signature

_____
Title

_____
Attested

ARTICLE VII - Chesapeake Bay Preservation Area Overlay District

Section 7.1 Title

This ordinance shall be known and referenced as the Chesapeake Bay Preservation Area Overlay District of the Town of Cape Charles.

Section 7.1.1 Findings of Fact

The Chesapeake Bay and its tributaries is one of the most important and productive estuarine systems in the world, providing economic and social benefits to the citizens of Cape Charles and the Commonwealth of Virginia. The health of the Bay is vital to maintaining the Town of Cape Charles' economy and the welfare of its citizens.

The Chesapeake Bay has been degraded significantly by many sources of pollution, including non-point source pollution from land uses and development. Existing high quality waters are worthy of protection from degradation to guard against further pollution. Certain lands that are proximate to shorelines have intrinsic water quality value due to the ecological and biological processes they perform. Other lands have severe development constraints from flooding, erosion, and soil limitations. With proper management, they offer significant ecological benefits by providing water quality maintenance and pollution control, as well as flood and shoreline erosion control. These lands together, designated by the Town Council of Cape Charles as Chesapeake Bay Preservation Areas (hereinafter CBPA), need to be protected from destruction and damage in order to protect the quality of life in Cape Charles and the Commonwealth of Virginia.

Section 7.2 Purpose and Intent

A. This ordinance is enacted to implement the requirements of § 62.1-44.15:67 et seq. of the Code of Virginia, 1988 as amended, (The Chesapeake Bay Preservation Act) and amends the Zoning Ordinance of Cape Charles. The intent of the Town Council and the purpose of the Overlay District is to: (1) protect existing high quality state waters; (2) restore all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them; (3) safeguard the clean waters of the Commonwealth from pollution; (4) prevent any increase in pollution; (5) reduce existing pollution; and (6) promote water resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of the Town of Cape Charles.

B. This district shall be in addition to and shall overlay all other zoning districts where they are applied so that any parcel of land lying in the Chesapeake Bay Preservation Area Overlay District shall also lie in one or more of the other zoning districts provided for by the Zoning Ordinance. Unless otherwise stated in the Overlay District, the review and approval procedures provided for in other applicable ordinances shall be followed in reviewing and approving development, redevelopment, and uses governed by this Article.

C. This Article is enacted under the authority of § 62.1-44.15:67 et seq., The Chesapeake Bay Preservation Act, and § 15.2-2283 of the Code of Virginia, which states that zoning ordinances may "also include reasonable provisions, not inconsistent with applicable state water quality standards, to protect surface water and groundwater as defined in Section

62.1-255."

Section 7.3 Areas of Applicability

A. The Chesapeake Bay Preservation Act Overlay District shall apply to all lands identified as CBPAs as designated by the Town Council and as shown on the Zoning District Map. Such map, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Article.
   1. The Resource Protection Area includes:
   2. tidal wetlands
   3. non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow
   4. tidal shores
   5. a 100-foot vegetated buffer area located adjacent to and landward of the components listed in subsections a through c above and along both sides of any water body with perennial flow

B. The Resource Management Area is composed of the following land categories: flood plains; highly erodible soils, including steep slopes; highly permeable soils; non-tidal wetlands not included in the RPA; other lands necessary to protect the quality of state waters or a minimum of 100 feet in width landward of the Resource Protection Area , whichever is greatest.

C. The Zoning District Map shows the general location of CBPAs and should be consulted by persons contemplating activities within Cape Charles prior to engaging in a regulated activity.

D. Portions of RPAs and RMAs designated by the Town Council as Intensely Developed Areas shall serve as redevelopment areas. Areas so designated shall comply with all erosion and sediment control requirements and the performance standards for redevelopment in Section 7.10, Performance Standards.

Section 7.5 Use Regulations

Permitted uses, special permit uses, accessory uses, and special requirements shall be as established by the underlying zoning district unless specifically modified by the requirements set forth herein.

Section 7.6 Lot Size

Lot size shall be subject to the requirements of the underlying zoning district(s) provided that any lot shall have sufficient area outside the RPA to accommodate an intended development in accordance with the performance standards in Section 7.10 when such development is not otherwise allowed in the RPA.

Section 7.7 Development Criteria for Resource Protection Areas

A. Development in RPAs may be allowed only if it: (1) is water dependent, (2) constitutes redevelopment or development within IDAs, or (3) constitutes redevelopment
   1. A new or expanded water dependent facility may be allowed provided that the following criteria are met:
      a. It does not conflict with the comprehensive plan;

b. It complies with the performance criteria set forth in Section 7.10 of this Article;
c. Any non water dependent component is located outside of the RPA; and
d. Access to the water dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided.

2. Redevelopment on isolated redevelopment sites outside of the designated IDAs shall be permitted only if there is not an increase in the amount of impervious cover and no further encroachment within the RPA and it shall conform to the stormwater management requirements outlined under Section 7.10.B.8 and erosion and sediment control requirements outlined under Section 7.10.B.4 of this Article.

B. A water quality impact assessment shall be required for any proposed land disturbance, development or redevelopment within RPAs and for any development within RMAs when required by the Zoning Administrator because of the unique characteristics of the site or intensity of development in accordance with the provisions of Section 7.11 of this Article.

Section 7.8 Conflict With Other Regulations

In any case where the requirements of this Article conflict with any other provision of the Cape Charles Zoning Ordinance and other regulations or existing state or federal regulations, whichever imposes the more stringent restrictions shall apply.

Section 7.9 Interpretation of Resource Protection Area Boundaries

A. Delineation by the Applicant. The site-specific boundaries of the Resource Protection Area shall be determined by the applicant through the performance of an environmental site assessment, subject to approval by the Zoning Administrator and in accordance with Section 7.12, Plan of Development Process or Section 7.11 Water Quality Impact Assessment, of this Article. The Zoning District Map may be used as a guide to the general location of Resource Protection Areas.

B. Where Conflict Arises Over Delineation. When the applicant provides a site- specific delineation of the RPA, the Zoning Administrator will verify the accuracy of the boundary delineation. In determining the site-specific RPA boundary, the Zoning Administrator may render adjustments to the applicant's boundary delineation in accordance with Section 7.12, Plan of Development Process, of this Article. In the event the adjusted boundary delineation is contested by the applicant, the applicant may seek relief in accordance with the provisions of Section 7.12.H of this ordinance.

Section 7.10 Performance Standards

A. Purpose and Intent. The performance standards establish the means to minimize erosion and sedimentation potential, reduce land application of nutrients and toxins, and maximize rainwater infiltration. Natural ground cover, especially woody vegetation, is most effective in holding soil in place and preventing site erosion. Indigenous vegetation, within its adaptability to local conditions without the use of harmful fertilizers or pesticides, filters stormwater runoff. Minimizing impervious cover enhances rainwater infiltration and effectively reduces stormwater runoff potential.

The purpose and intent of these requirements are also to implement the following objectives: prevent a net increase in nonpoint source pollution from new development; achieve a 10 percent reduction in nonpoint source pollution from redevelopment; and achieve a 40 percent reduction in nonpoint source pollution from agricultural uses.

B. General Performance Standards for Development and Redevelopment

1. Land disturbance shall be limited to the area necessary to provide for the proposed use or development.
    a. Ingress and egress during construction shall be limited to one access point unless otherwise approved by the Zoning Administrator.
2. Indigenous vegetation shall be preserved to the maximum extent practicable consistent with the use or development proposed and in accordance with the Virginia Erosion and Sediment Control Handbook.
    a. Site clearing for construction activities shall be allowed as approved by the Zoning Administrator through the plan of development review process.
    b. Prior to clearing or grading, suitable protective barriers, such as safety fencing, shall be erected five feet outside of the drip line of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
3. Land development shall minimize impervious cover to promote infiltration of storm water into the ground consistent with the proposed use or development.
    a. Grid and modular pavements may be used for any required parking area, alley, or other low traffic driveway unless otherwise approved by the Zoning Administrator.
4. Notwithstanding any other provision of this Article or exceptions or exemptions thereto, any land-disturbing activity exceeding 2,500 square feet, including construction of all single-family houses, shall comply with the requirements of Cape Charles' Erosion and Sediment Control Ordinance.
5. All development and redevelopment exceeding 2,500 square feet of land disturbance shall be subject to a plan of development process including the approval of a site plan in accordance with the provisions of the Site Plan Ordinance.
6. All on-site sewage disposal systems not requiring a VPDES permit shall be pumped out at least once every five years in accordance with the provisions of the State Health Code.
7. A reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site shall be provided in accordance with the State Health Code. This requirement shall not apply to any lot or parcel recorded prior to October 1, 1989, if such lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site as determined by the local health department. Building or construction of any impervious surface shall be prohibited on the area of all sewage disposal sites or on an on-site sewage treatment system which operates under a permit issued by the State Water Control Board until the structure is served by public sewer.
8. For any development or redevelopment, stormwater runoff shall be controlled by the use of best management practices that achieve the following:

a. For development, the post-development nonpoint source pollution runoff load shall not exceed the pre-development load based on the calculated average land cover condition of the Town of Cape Charles.
b. For sites within IDAs or other isolated redevelopment sites, the non-point source pollution load shall be reduced by at least 10 percent. The Zoning Administrator may waive or modify this requirement for redevelopment sites that originally incorporated best management practices for storm water runoff quality control provided the following provisions are satisfied:
   i. In no case may the post-development non-point source pollution runoff load exceed the pre-development load.
   ii. Runoff pollution loads must have been calculated and the BMPs selected for the expressed purpose of controlling non-point source pollution.
   iii. If best management practices are structural, evidence shall be provided that the facilities are currently in good working order and performing at the design levels of service. The Zoning Administrator may require a review of both the original structural design and maintenance plans to verify this provision. A new maintenance agreement may be required to ensure compliance with this Article.
c. For redevelopment, both the pre- and the post-development loadings shall be calculated by the same procedures. However, where the design data is available, the original post-development non-point source pollution loadings can be substituted for the existing development loadings.

9. Prior to initiating grading or other on-site activities on any portion of a lot or parcel, all wetlands permits required by federal, state, and local laws and regulations shall be obtained and evidence of such submitted to the Zoning Administrator in accordance with Section 7.12 of this Article.
10. Land upon which agricultural activities are being conducted shall have a soil and water quality conservation assessment. Such assessments shall evaluate the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management and management of pesticides, and where necessary, results in a plan that outlines additional practices needed to ensure that water quality protection is accomplished consistent with the Article.

C. Buffer Area Requirements. To minimize the adverse effects of human activities on the other components of Resource Protection Areas, state waters, and aquatic life, a 100-foot buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist. The buffer area shall be located adjacent to and landward of other RPA components and along both sides of any water body with perennial flow. The full buffer area shall be designated as the landward component of the RPA in accordance with Section 7.4, Areas of Applicability, and Section 7.12, Plan of Development Process, of this Article.

The 100-foot buffer area shall be deemed to achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients.

The buffer area shall be maintained to meet the following additional performance

standards:

1. In order to maintain the functional value of the buffer area, indigenous vegetation may be removed, subject to approval by the Zoning Administrator, only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices including those that prevent upland erosion and concentrated flows of stormwater, as follows:
    a. Trees may be pruned or removed as necessary to provide for sight lines and vistas provided that, where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff.
    b. Any path shall be constructed and surfaced so as to effectively control erosion.
    c. Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu and multiflora rose) may be removed and thinning of trees allowed, pursuant to standards adopted by the Town of Cape Charles.
    d. For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best of available technical advice and applicable permit conditions or requirements.
2. When the application of the buffer areas would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, the Zoning Administrator may allow encroachments into the buffer area in accordance with Section 7.12, Plan of Development Process, and the following criteria:
    a. Encroachments into the buffer areas shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;
    b. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel; and
    c. The encroachment may not extend into the seaward 50 feet of the buffer area.
3. Redevelopment within IDAs may be exempt from establishing vegetation within the buffer area in accordance with Section 7.12, Plan of Development Process, of this Article.
4. On agricultural lands the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and appropriate measures may be taken to prevent noxious weeds from invading the buffer area. Agricultural activities may encroach into the buffer area as follows:
    a. Agricultural activities may encroach into the landward 50 feet of the 100-foot wide buffer area when at least one agricultural best management practice, which, in the opinion of the [local soil and water conservation district board], addresses the more predominant water quality issue on the adjacent land – erosion control or nutrient management – is being implemented on the adjacent land, provided that the combination of the undisturbed buffer area and the best management practice achieves water

quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot wide buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil test, must be developed consistent with the "Virginia Nutrient Management Training and Certification Regulations (4 VAC 5- 15 et seq.)" administered by the Virginia Department of Conservation and Recreation.

b. Agricultural activities may encroach within the landward 75 feet of the 100-foot wide buffer area when agricultural best management practices which address erosion control, nutrient management, and pest chemical control, are being implemented on the adjacent land. The erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as "T", as defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U. S. Department of Agriculture Natural Resource Conservation Service. A nutrient management plan, including soil test, must be developed consistent with the "Virginia Nutrient Management Training and Certification Regulations (4 VAC 5- 15 et seq. administered by the Virginia Department of Conservation and Recreation. In conjunction with the remaining buffer area, this collection of best management practices shall be presumed to achieve water quality protection at least the equivalent of that provided by the 100-foot wide buffer area.

c. The buffer area is not required to be designated adjacent to agricultural drainage ditches if the adjacent agricultural land has in place at least one best management practices as considered by the local Soil and Water Conservation District to address the more predominant water quality issue on the adjacent land – either erosion control or nutrient management

5. When agricultural or silvicultural uses within the buffer area cease, and the lands are proposed to be converted to other uses, the full 100-foot wide buffer area shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions are maintained or established.

Section 7.11 Water Quality Impact Assessment

A. Purpose and Intent. The purpose of the water quality impact assessment is to: (1) identify the impact of proposed development on water quality and lands within RPAs and other environmentally sensitive lands; (2) ensure that, where development does take place within RPAs and other sensitive lands, it will be located on those portions of a site and in a manner that will be least disruptive to the natural functions of RPAs and other sensitive lands; (3) to protect individuals from investing funds for improvements proposed for location on lands unsuited for such development because of high ground water, erosion, or vulnerability to flood and storm damage; and (4) specify mitigation which will address water quality protection.

B. Water Quality Impact Assessment Required. A water quality impact assessment is required for (1) any proposed land disturbance, redevelopment or development within a RPA, including any buffer area modification or encroachment as provided in Section 7.10 of this

Article; (2) any development in a RMA as deemed necessary by the Zoning Administrator due to the unique characteristics of the site or intensity of the proposed development. There shall be two levels of water quality impact assessments--a minor assessment and a major assessment.

C. Minor Water Quality Impact Assessment. A minor water quality impact assessment pertains only to a development within CBPAs which causes no more than 5,000 square feet of land disturbance and requires any modification or encroachment into the landward 50 feet of the 100- foot buffer area. A minor assessment must demonstrate that the undisturbed buffer area, enhanced vegetative plantings, and any required best management practices will result in removal of no less than 75 percent of sediments and 40 percent of nutrients from post-development stormwater runoff and that the remaining buffer area will retard runoff, prevent erosion and filter nonpoint source pollution the equivalent of the full undisturbed 100-foot buffer area. A minor assessment shall include a site drawing to scale which shows the following:

1. Location of the components of the RPA, including the 100-foot buffer area;
2. Location and nature of the proposed encroachment into the buffer area if needed including: type of paving material; areas of clearing or grading; location of any structures, drives, or other impervious cover;
3. Type and location of proposed best management practices to mitigate the proposed encroachment.
4. Location of existing vegetation onsite, including the number and type of trees and other vegetation to be removed in the buffer to accommodate the encroachment or modification;
5. Revegetation plan that supplements the existing buffer vegetation in a manner that provides for pollutant removal, erosion and runoff control.

D. Major Water Quality Impact Assessment. A major water quality impact assessment shall be required for any development which (1) exceeds 5,000 square feet of land disturbance within CBPA and requires any modifications or encroachment into the landward 50 feet of the 100-foot buffer area; (2) proposes to disturb any portion of any other component of an RPA or proposes to disturbs any portion of the buffer area within 50 feet of any other component of any RPA; or (3) is located in an RMA and is deemed necessary by the Zoning Administrator. The information required in this section shall be considered a minimum unless the Zoning Administrator determines that some of the elements are unnecessary due to the scope and nature of the proposed use and development of land.

1. The following elements shall be included in the preparation and submission of a major water quality assessment:
    a. All of the information required in a minor water quality impact assessment as specified in Section 7.11.C;
    b. A hydro-ecological element that:
        i. describes the existing topography, soils, hydrology, and geology of the site and adjacent lands
        ii. indicates the following:
            1. disturbance or destruction of wetlands and justification for such action
            2. disruptions or reductions in the supply of water to wetlands, streams, or other water bodies

3. disruptions to existing hydrology including wetlands and stream circulation patterns
4. source location and description of proposed fill material
5. location of dredge material and location of dumping area for such material
6. location of and impacts on shellfish beds or submerged aquatic vegetation
7. estimation of pre- and post-development pollutant loads in runoff
8. estimation of percent increase in impervious surface on site and type(s) of surfacing materials used
9. percent of site to be cleared for project
10. anticipated duration and phasing schedule of construction project
11. listing of all requisite permits from all applicable agencies necessary to develop project

iii. describes the proposed mitigation measures for the potential hydroecological impacts. Potential mitigation measures include:

1. proposed erosion and sediment control concepts; concepts should include minimizing the extent of the cleared area, perimeter controls, reduction of runoff velocities, measures to stabilize disturbed areas, schedule and personnel for site inspection
2. proposed water quality and quantity stormwater management system
3. creation of wetlands to replace those lost
4. minimizing cut and fill

c. A landscape element that:

i. identifies and delineates the location of plant material on site, including all trees two inches or greater diameter at breast height. Where there are groups of trees, stands may be outlined.

ii. describes the impacts the development or use will have on the existing vegetation. Information should include:

1. limits of clearing based on all anticipated improvements including buildings, drives, and utilities
2. clear delineation of all trees and other woody vegetation proposed to be removed
3. description of plant species to be disturbed or removed

iii. describes the potential measures for mitigation. Possible mitigation measures should include:

1. replanting schedule for trees and other significant vegetation removed for construction including a list of possible plants and trees to be used
2. demonstration that the design of the plan will preserve to the greatest extent possible any significant trees and vegetation on the site and will provide maximum erosion control and overland flow benefits from such vegetation
3. demonstration that native plants are to be used to the

greatest extent possible

E. Submission and Review Requirements
1. Eight copies of all site drawings and other applicable information as required by Subsections C and D above shall be submitted to the Zoning Administrator for review.
2. All information required in this section shall be certified as complete and accurate by a professional engineer or certified land surveyor.
3. A minor water quality impact assessment shall be prepared and submitted to and reviewed by the Zoning Administrator in conjunction with Section 7.12, Plan of Development Process, of this Article.
4. A major water quality impact assessment shall be prepared and submitted to and reviewed by the Zoning Administrator in conjunction with a request for rezoning, special use permit, or in conjunction with Section 7.12 of this Article as deemed necessary by the Zoning Administrator.
5. As part of any major quality impact assessment submittal, the Zoning Administrator may require review by the Chesapeake Bay Local Assistance Department (CBLAD). Upon receipt of a major water quality impact assessment, the Zoning Administrator will determine if such review is warranted and may request CBLAD to review the assessment and respond with written comments. Any comments by such CBLAD will be incorporated into the final review by the Zoning Administrator provided that such comments are provided by CBLAD within 90 days of the request.

F. Evaluation Procedure
1. Upon the completed review of a minor water quality impact assessment, the Zoning Administrator will determine if any proposed encroachment into the buffer area is consistent with the provisions of this Article and make a finding based upon the following criteria:
   a. the necessity of the proposed encroachment and the ability to place improvements elsewhere on the site to avoid disturbance of the buffer area;
   b. impervious surface is minimized;
   c. proposed best management practices, where required, achieve the requisite reductions in pollutant loadings;
   d. the development, as proposed, meets the purpose and intent of this Article;
   e. the cumulative impact of the proposed development, when considered in relation to other development in the vicinity both existing and proposed, will not result in a significant degradation of water quality.
2. Upon the completed review of a major water quality impact assessment, the Zoning Administrator will determine if the proposed development is consistent with the purpose and intent of this Article and make a finding based upon the following criteria in conjunction with Section 7.12.
   a. Within an RPA, the proposed development is water dependent.
   b. The disturbance of any wetlands will be minimized.
   c. The development will not result in significant disruption of the hydrology of the site.
   d. The development will not result in significant degradation to aquatic

vegetation or life.

e. The development will not result in unnecessary destruction of plant materials on site.
f. Proposed erosion and sediment control concepts are adequate to achieve the reductions in runoff and prevent off-site sedimentations.
g. Proposed storm water management concepts are adequate to control the storm water runoff to achieve the required performance standard for pollutant control.
h. Proposed re-vegetation of disturbed areas will provide optimum erosion and sediment control benefits.
i. The development as proposed is consistent with the purpose and intent of the Overlay District.

3. The Zoning Administrator shall require additional mitigation where potential impacts have not been adequately addressed. Evaluation of mitigation measures will be made by the Zoning Administrator based on the criteria listed above in Subsections 1 and 2.
4. The Zoning Administrator shall find the proposal to be inconsistent with the purpose and intent of this Article when the impacts created by the proposal cannot be mitigated. Evaluation of the impacts will be made by the Zoning Administrator based on the criteria listed in Subsections 1 and 2.

Section 7.12 Plan of Development Process

Any development or redevelopment exceeding 2,500 square feet of land disturbance shall be accomplished through a plan of development process prior to any clearing or grading of the site or the issuance of any building permit to assure compliance with all applicable requirements of this Article.

A. Required Information. In addition to the requirements of this Ordinance or the requirements of the Cape Charles Subdivision Ordinance, the plan of development process shall consist of the plans and studies identified below. These required plans and studies may be coordinated or combined as deemed appropriate by the Zoning Administrator. The Zoning Administrator may determine that some of the following information is unnecessary due to the scope and nature of the proposed development.
   1. The following plans or studies shall be submitted unless otherwise provided for:
      a. A site plan in accordance with the provisions of this ordinance; or a subdivision plat in accordance with the provisions of the Subdivision Ordinance of Cape Charles;
      b. An environmental site assessment;
      c. A landscaping plan;
      d. A storm water management plan;
      e. An erosion and sediment control plan in accordance with the provisions of the Cape Charles Erosion and Sediment Control Ordinance.

B. Environmental Site Assessment. An environmental site assessment shall be submitted in conjunction with preliminary site plan or preliminary subdivision plan approval.
   1. The environmental site assessment shall be drawn to scale and clearly delineate the following environmental features:

a. tidal wetlands
b. tidal shores
c. non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow
d. a 100-foot buffer area located adjacent to and landward of the components listed in Subsections a through c above, and along both sides of any water body with perennial flow
e. other sensitive environmental features as determined by the Zoning Administrator

2. Wetlands delineations shall be performed consistent with the methods and procedures used and accepted from time to time by the U.S. Army Corps of Engineers.
3. The environmental site assessment shall delineate the site-specific geographic extent of the RPA.
4. The environmental site assessment shall be drawn at the same scale as the preliminary site plan or subdivision plat and shall be certified as complete and accurate by a professional engineer or a certified land surveyor. This requirement may be waived by the Zoning Administrator when the proposed use or development would result in less than 5,000 square feet of disturbed area.

C. Landscaping Plan. A landscape plan shall be submitted in conjunction with site plan approval or as part of subdivision plat approval. No clearing or grading of any lot or parcel shall be permitted without an approved landscaping plan.
1. Landscaping plans when required shall be prepared and/or certified by design professionals practicing within their areas of competence as prescribed by the Code of Virginia and must meet the following requirements:
a. The landscaping plan shall be drawn to scale and clearly delineate the location, size, and description of existing and proposed plant material. All existing trees on the site two inches or greater DBH shall be shown on the landscaping plan. Where there are groups of trees, stands may be outlined instead. The specific number of trees two inches or greater DBH to be preserved outside of this construction footprint shall be indicated on the plan. Trees to be removed to create a desired construction footprint shall be clearly delineated on the landscaping plan.
b. Any required buffer area shall be clearly delineated and any plant material to be added to establish or supplement the buffer area, as required by this Article, shall be shown on the landscaping plan.
c. Within the buffer area, trees to be removed for sight lines, vistas, access paths, and best management practices, as provided for in this Article, shall be shown on the plan. Vegetation required by this Article to replace any existing trees within the buffer area shall also be shown on the landscaping plan.
d. Trees to be removed for shoreline stabilization projects and any replacement vegetation required by this Article shall be shown on the landscaping plan.
e. The plan shall depict grade changes or other work adjacent to trees which would affect them adversely. Specifications shall be provided as to how grade, drainage, and aeration would be maintained around trees to be

preserved.

f. The landscaping plan will include specifications for the protection of existing trees during clearing, grading, and all phases of construction.

2. Plant specifications
   a. All plant materials necessary to supplement the buffer area or vegetated areas outside the construction footprint shall be installed according to standard planting practices and procedures.
   b. All supplementary or replacement plant materials shall be living and in a healthy condition. Plant materials shall conform to the standards of the most recent edition of the American Standard for Nursery Stock, published by the American Association of Nurserymen.
3. Maintenance
   a. The applicant shall be responsible for the maintenance and replacement of all vegetation as may be required by the provision of the Article.
   b. In buffer areas and areas outside the construction footprint, plant material shall be tended and maintained in a healthy growing condition and free from refuse and debris. Unhealthy, dying, or dead plant materials shall be replaced during the next planting season as required by the provisions of this Article.

D. Stormwater Management Plan. A stormwater management plan shall be submitted as part of the plan of development process required by this Article and in conjunction with site plan or subdivision plan approval.
   1. Contents of the plan. The storm water management plan shall contain maps, charts, graphs, tables, photographs, narrative descriptions, explanations, and citations to supporting references as appropriate to communicate the information required by this Article. At a minimum, the storm water management plan must contain the following:
      a. location and design of all planned storm water control devices;
      b. procedures for implementing non-structural storm water control practices and techniques;
      c. pre- and post-development non-point source pollutant loadings with supporting documentation of all utilized coefficients and calculations;
      d. for facilities, verification of structural soundness, including a professional engineer or Class IIIB surveyor certification.
   2. Site specific facilities shall be designed for the ultimate development of the contributing watershed based on zoning, comprehensive plans, local public facility master plans, or other similar planning documents.
   3. All engineering calculations must be performed in accordance with procedures outlined in the current edition of the Virginia Storm water Management Handbook.
   4. The plan shall establish a long-term schedule for inspection and maintenance of storm water management facilities that includes all maintenance requirements and persons responsible for performing maintenance. If the designated maintenance responsibility is with a party other that the Town of Cape Charles, then a maintenance agreement shall be executed between the responsible party and the Town of Cape Charles.

E. Erosion and Sediment Control Plan. An erosion and sediment control plan shall be

submitted that satisfies the requirements of this Article and in accordance with the Cape Charles Erosion and Sediment Control Ordinance in conjunction with site plan or subdivision plan approval.

F. Final Plan. Final plan for property within CBPAs shall be final plats for land to be subdivided or site plans for land not to be subdivided as required in the Cape Charles Subdivision Ordinance and this Ordinance.

1. Final plans for all lands within CBPAs shall include the following additional information:
    a. the delineation of the Resource Protection Area boundary
    b. the delineation of required buffer areas
    c. all wetlands permits required by law
    d. a maintenance agreement as deemed necessary and appropriate by the Zoning Administrator to ensure proper maintenance of best management practices in order to continue their functions
2. Installation and bonding requirements
    a. Where buffer areas, landscaping, storm water management facilities, or other specifications of an approved plan are required, no certificate of occupancy shall be issued until the installation of required plant materials or facilities is completed in accordance with the approved site plan.
    b. When the occupancy of a structure is desired prior to the completion of the required landscaping, storm water management facilities, or other specifications of an approved plan, a certificate of occupancy may be issued only if the applicant provides Cape Charles a form of surety satisfactory to the Zoning Administrator in an amount equal to the remaining plant materials, related materials, and installation costs of the required landscaping or facilities and/or maintenance costs for any required storm water management facilities during the construction period.
    c. All required landscaping shall be installed and approved by the first planting season following issuance of a certificate of occupancy or the surety may be forfeited to the Town of Cape Charles.
    d. All required storm water management facilities or other specifications shall be installed and approved within 18 months of project commencement. Should the applicant fail, after proper notice, to initiate, complete, or maintain appropriate actions required by the approved plan, the surety may be forfeited to the Town of Cape Charles. Cape Charles may collect from the applicant the amount by which the reasonable cost of required actions exceed the amount of the surety held.
    e. After all required actions of the approved site plan have been completed, the applicant must submit a written request for a final inspection. If the requirements of the approved plan have been completed to the satisfaction of the Zoning Administrator, such unexpended or un-obligated portion of the surety held shall be refunded to the applicant or terminated within 60 days following the receipt of the applicant's request for final inspection. The Zoning Administrator may require a certificate of substantial completion from a professional engineer or Class IIIB surveyor before making a final inspection.

G. Administrative Responsibility. Administration of the plan of development process shall be in accordance with this ordinance or the Cape Charles Subdivision Ordinance.

H. Denial of Plan, Appeal of Conditions or Modifications. In the event the final plan or any component of the plan of development process is disapproved and recommended conditions or modifications are unacceptable to the applicant, the applicant may appeal such administrative decision to the Planning Commission. In granting an appeal the Planning Commission must find such plan to be in accordance with all applicable ordinances and include necessary elements to mitigate any detrimental impact on water quality and upon adjacent property and the surrounding area or such plan meets the purposes and intent of the performance standards in this Article. If the Planning Commission finds that the applicant's plan does not meet the above-stated criteria, they shall deny approval of the plan. In the event of a denial of appeal to the Planning Commission, the applicant may appeal such decision to the Cape Charles Town Council. Said appeal shall be made within 15 days of the negative decision. Further appeals by the applicant shall be as established by law.

Section 7.13 Non-Conforming Use and Development Waivers

A. The lawful use of a building or structure which existed on September 11, 1990, or which exists at the time of any amendment to this Article and which is not in conformity with the provisions of the Overly District may be continued in accordance Section 2.5 of this Ordinance. No change or expansion of use shall be allowed with the exception that:

1. The Zoning Administrator may grant a non-conforming use and development waiver for structures on legal non-conforming lots or parcels to provide for remodeling and alterations to such non-conforming structures provided that:
   a. there will be no increase in non-point source pollution load;
   b. any development or land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of this Article;
   c. the intent of Section 2.5, Non-Conforming Uses, is upheld.

2. An application for a non-conforming use and development waiver shall be made to and upon forms furnished by the Zoning Administrator and shall include, for the purpose of proper enforcement of this Article, the following information:
   a. name and address of applicant and property owner;
   b. legal description of the property and type of proposed use and development;
   c. a sketch of the dimensions of the lot or parcel, location of buildings and proposed additions relative to the lot lines, and boundary of the Resource Protection Area;
   d. location and description of any existing private water supply or sewerage system.
3. A non-conforming use and development waiver shall become null and void twelve months from the date issued if no substantial work has commenced.
4. An application for the expansion of a nonconforming structure may be approved by the Zoning Administrator through an administrative review process provided that the following findings are made:

a. The request for the waiver is the minimum necessary to afford relief;
b. Granting the waiver will not confer upon the applicant any specific privileges that are denied by this Article to other property owners in similar situations;
c. The waiver is in harmony with the purpose and intent of this Article and does not result in water quality degradation;
d. The waiver is not based on conditions or circumstances that are self-created or self-imposed;
e. Reasonable and appropriate conditions are imposed, as warranted, that will prevent the waiver from causing a degradation of water quality;
f. Other findings, as appropriate and required by the Town of Cape Charles are met; and
g. In no case shall this provision apply to accessory structures.

5. In accordance with Code of Virginia §15.2-2283, additions to nonconforming structures for the purpose of providing reasonable modifications in accordance with the American with Disabilities Act of 1990 shall not be considered an expansion of a nonconforming structure.
6. In accordance with the Code of Virginia § 15.2-2307.H, nothing in this ordinance shall be construed to prevent the owner of a valid nonconforming mobile or manufactured home from replacing that home with a newer manufactured home, either single- or multisection, that meets the current HUD manufactured housing code. Any such replacement home shall retain the valid nonconforming status of the prior home.

Section 7.14 Exemptions

A. Exemptions for Utilities, Railroads, and Public Roads.
1. Construction, installation, operation, and maintenance of electric, natural gas, fiber-optic, and telephone transmission lines, railroads, and public roads and their appurtenant structures in accordance with (i) regulations promulgated pursuant to the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq. of the Code of Virginia) and the Stormwater Management Act (§ 62.1-44.15:24 et seq. of the Code of Virginia), (ii) an erosion and sediment control plan and a stormwater management plan approved by the Virginia Department of Conservation and Recreation, or (iii) local water quality protection criteria at least as stringent as the above state requirements are deemed to comply with this Article. The exemption of public roads is further conditioned on the following:
a. The road alignment and design has been optimized, consistent with all applicable requirements, to prevent or otherwise minimize the encroachment in the Resource Protection Area and to minimize the adverse effects on water quality.
2. Construction, installation, and maintenance of water, sewer, and natural gas and underground telecommunication and cable television lines, owned, permitted or both by the Town of Cape Charles, shall be exempt from the Overlay District provided that:
a. to the degree possible, the location of such utilities and facilities shall be outside RPAs;
b. no more land shall be disturbed than is necessary to provide for the proposed utility installation;

c. all construction, installation, and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal requirements and permits and designed and conducted in a manner that protects water quality; and

d. any land disturbance exceeding an area of 2,500 square feet complies with all Cape Charles erosion and sediment control requirements.

B. Exemptions for Silvicultural Activities. Silvicultural activities are exempt from the requirements of this Article provided that silvicultural operations adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in the 1997 edition of "Best Management Practices Handbook for Forestry Operations [Technical Guide].

C. Exemptions in Resource Protection Areas. The following land disturbances in Resource Protection Areas may be exempted from the Overlay District: (1) water wells; (2) passive recreation facilities such as boardwalks, trails, and pathways; and (3) historic preservation and archaeological activities provided that it is demonstrated to the satisfaction of the Zoning Administrator that:

1. Any required permits, except those to which this exemption specifically applies, shall have been issued;
2. Sufficient and reasonable proof is submitted that the intended use will not deteriorate water quality;
3. The intended use does not conflict with nearby planned or approved uses; and
4. Any land disturbance exceeding an area 2,500 square feet shall comply with all Cape Charles erosion and sediment control requirements.

Section 7.15 Exceptions

A. A request for an exception to the requirements of Sections 7.7 and 7.10.C of this Overlay District shall be made in writing to the Board of Zoning Appeals. It shall identify the impacts of the proposed exception on water quality and on lands within the RPA through the performance of a water quality impact assessment which complies with the provisions of Section 7.11.

B. The Town of Cape Charles shall notify the affected public of any such exception requests and shall consider these requests in a public hearing in accordance with § 15.2-2204 of the Code of Virginia, except that only one hearing shall be required.

C. The Board of Zoning Appeals shall review the request for an exception and the water quality impact assessment and may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this Article if the Board of Zoning Appeals finds:

1. Granting the exception will not confer upon the applicant any special privileges that are denied by this Article to other property owners in the Overlay District;
2. The exception request is not based upon conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels;

3. The exception request is the minimum necessary to afford relief;
4. The exception request will be consistent with the purpose and intent of the Overlay District and not injurious to the neighborhood or otherwise detrimental to the public welfare, and is not of substantial detriment to water quality; and
5. Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a degradation of water quality.

D. If the Board of Zoning Appeals cannot make the required findings or refuses to grant the exception, the Board of Zoning Appeals shall return the request for an exception together with the water quality impact assessment and the written findings and rationale for the decision to the applicant.

E. A request for an exception to the requirements of provisions of this Article other than those in Sections 7.7 and 7.10.C shall be made in writing to the Zoning Administrator. The Zoning Administrator may grant these exceptions provided that:
1. Exceptions to the requirements are minimum necessary to afford relief; and Reasonable and appropriate conditions are placed upon any exception that is granted, as necessary, so that the purpose and intent of this Article is preserved.
2. Exceptions to Sections 7.10.B may be made provided that the findings noted in §7.15.C are made.

Section 7.16 Enforcement

A. Any person who: (i) violates any provision of this ordinance or (ii) violates or fails, neglects, or refuses to obey any Town of Cape Charles or its official Designee's final notice, order, rule, regulation, or variance or permit condition authorized under this ordinance shall, upon such finding by an appropriate circuit court be assessed a civil penalty not to exceed $5,000 for each day of violation. Such civil penalties may, at the discretion of the court assessing them, be directed to be paid into the treasury of the Town of Cape Charles for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, in such a manner as the court may direct by order, except that where the violator is the Town of Cape Charles itself or its agent, the court shall direct the penalty to be paid into the state treasury.

B. With the consent of any person who: (i) violates any provision of any Town of Cape Charles ordinance related to the protection of water quality in Chesapeake Bay Preservation Areas or (ii) violates or fails, neglects, or refuses to obey any Town of Cape Charles or its official Designee's order, rule, regulation, or variance or permit condition authorized under such ordinance, the Town of Cape Charles may provide for the issuance of an order against such person for the one-time payment of civil charges for each violation in specific sums, not to exceed $10,000 for each violation. Such civil charges shall be paid into the treasury of the Town of Cape Charles for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, except that where the violator is the Town of Cape Charles itself or its agent, the civil charges shall be paid into the state treasury. Civil charges shall be in lieu of any appropriate civil penalty that could be imposed under subdivision 1 of this subsection. Civil charges may be in addition to the cost of any restoration required or ordered by the Town of Cape Charles body or official.

Section 7.17 Severability

The provisions of this ordinance shall be deemed to be severable, and if any of the provisions hereof are adjudged to be invalid or unenforceable, the remaining portions of this ordinance shall remain in full force and effect and their validity shall remain unimpaired.

Section 7.18 Effective Date

This ordinance was duly considered following a required public hearing held on November 12, 2003 and was adopted by the Town Council of Cape Charles, Virginia, at its regular meeting held November 12, 2003. (Ord. No. 11122003; 11-12-03)

Section 7.19 Definitions

AGRICULTURAL LANDS means those lands used for the planting and harvesting of crops or plant growth of any kind in the open; pasture; horticulture; dairying; floriculture; or raising of poultry and/or livestock.

BEST MANAGEMENT PRACTICES or **BMP** means a practice, or a combination of practices, that is determined by a state or designated area-wide planning agency to be the most effective, practical means of preventing or reducing the amount of pollution generated by non-point sources to a level compatible with water quality goals.

BUFFER AREA means an area of natural or established vegetation managed to protect other components of a Resource Protection Area and state waters from significant degradation due to land disturbances.

CHESAPEAKE BAY PRESERVATION AREA or **CBPA** means any land designated by the Town Council pursuant to Part III of the Chesapeake Bay Preservation Area Designation and Management Regulations, 9 VAC 10-20 et seq**.,** Section 10.1-2107 of the Code of Virginia. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area.

CONSTRUCTION FOOTPRINT means the area of all impervious surface including but not limited to buildings, roads and drives, parking areas, and sidewalks and the area necessary for construction of such improvements.

DEVELOPMENT means the construction or substantial alteration of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures.

DIAMETER AT BREAST HEIGHT or **DBH** means the diameter of a tree measured outside the bark at a point 4.5 feet above ground.

DRIPLINE means a vertical projection to the ground surface from the furthest lateral extent of a tree's leaf canopy.

IMPERVIOUS COVER means a surface composed of any material that significantly impedes or prevents natural infiltration or water into the soil. Impervious surfaces include but are not limited

to roofs, buildings, streets, parking areas, and any concrete, asphalt, compacted gravel, or shell surface.

INTENSELY DEVELOPED AREA or **IDA** means a portion of Resource Protection Area or a Resource Management Area designated by the Town Council where development is concentrated and little of the natural environment remains.

NONPOINT SOURCE POLLUTION means pollution consisting of constituents such as sediment, nutrients, and organic and toxic substances from diffuse sources, such as runoff from agriculture and urban land development and use.

NONTIDAL WETLANDS means those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions such as defined by the U.S. Environmental Protection Agency pursuant to Section 404 of the Federal Clean Water Act in 33 C.F.R. 328.3~~b, dated November 13, 1986~~.

NOXIOUS WEEDS means weeds that are difficult to control effectively, such as Johnson Grass, Kudzu, and multiflora rose.

PLAN OF DEVELOPMENT means the process for site plan or subdivision plat review to ensure compliance with Section 10.1-2109 of the Code of Virginia and this Article prior to any clearing or grading of a site or the issuance of a building permit.

PUBLIC ROAD means a publicly owned road designed and constructed in accordance with water quality protection criteria at least as stringent as requirements applicable to the Virginia Department of Transportation, including regulations promulgated pursuant to (i) the Erosion and Sediment Control Law (§ 10.1-603.1 et seq. of the Code of Virginia). This definition includes those roads where the Virginia Department of Transportation exercises direct supervision over the design or construction activities, or both, and cases where secondary roads are constructed and maintained, or both, by the Town of Cape Charles in accordance with the standards of the Town of Cape Charles.

REDEVELOPMENT means the process of developing land that is or has been previously developed.

RESOURCE MANAGEMENT AREA or **RMA** means that component of the Chesapeake Bay Preservation Area that is not classified as the Resource Protection Area. RMAs include land types that, if improperly used or developed, have the potential for causing significant water quality degradation or for diminishing the functional value of the Resource Protection Area.

RESOURCE PROTECTION AREA or **RPA** means that component of the Chesapeake Bay Preservation Area comprised of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of state waters.

SILVICULTURAL ACTIVITIES means forest management activities, including but not limited to the harvesting of timber, the construction of roads and trails for forest management purposes,

and the preparation of property for reforestation that are conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to
§ 10.1-1105 of the Code or Virginia and are located on property defined as real estate devoted to forest use under § 58.1-3230 of the Code of Virginia.

SUBSTANTIAL ALTERATION means expansion or modification of a building or development that would result in a disturbance of land exceeding an area of 2,500 square feet in the Resource Management Area only.

TIDAL SHORE or **SHORE** means land contiguous to a tidal body of water between the mean low water level and the mean high-water level.

TIDAL WETLANDS means the vegetated and non-vegetated wetlands as defined in Section 28.2-1300 of the Code of Virginia.

WATER-DEPENDENT FACILITY means a development of land that cannot exist outside the Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include but are not limited to: (1) ports; (2) the intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers; (3) marinas and other boat docking structures; (4) beaches and other public water-oriented recreation areas; and (5) fisheries or other marine resources facilities.

WETLANDS means tidal and non-tidal wetlands.

Article VIII - Historic District Overlay

"The Cape Charles Historic District encompasses nearly all of the town of Cape Charles as it was originally laid out in 1883-1884 as well as the Sea Cottage addition, an area west of the original limits of the town, that was developed after 1909…The town was originally laid out in an unusual twenty-seven block grid pattern dominated by a central park with four landscaped streets that radiate from the park and serve as a main cross axis for the town's circulation pattern. No other such plan is known to exist in Virginia."
- 1989 National Register of Historic Places Registration Form Section 7, page 1.

"An interesting stock of architectural styles in both the residential area and the downtown commercial area contribute an historic style and authenticity. The street patterns, lot configurations and boundaries, which were laid out in an historic grid pattern, have remained largely unaltered, adding to the Town's historical integrity. Cape Charles' late nineteenth and early twentieth century character is a key element in the Town's interest and attractiveness to tourists. The traditional downtown commercial area on Mason Avenue still serves as the commercial center for the Town. It is important that the Town's historic character be protected, not only for its intrinsic value, but also to contribute to attract and expand tourism in Cape Charles." – Town of Cape Charles 1999 Comprehensive Plan, page 40.

The Town of Cape Charles participates in the Certified Local Government program and in so doing demonstrates a commitment to keep what is significant from the past for the benefit of future generations. The architectural integrity of existing structures shall be recognized, and future development shall be compatible.

Section 8.1 Purpose of the District

The purpose of this district is to guard against destruction or encroachment upon historic areas, buildings, monuments, or other features, or buildings and structures of registered architectural significance which contribute or will contribute to the cultural, social, economic, political, artistic, or architectural heritage of the Town of Cape Charles and the Commonwealth of Virginia. It is also the purpose of the district to preserve the character of the designated historic areas and historic landmarks and other historic or architectural features and to ensure that buildings, structures, streets, walkways, or signs shall be erected, reconstructed, altered, or restored so as to be kept architecturally compatible with the character of the historic district.

Section 8.2 Criteria for Establishing Historic Districts--General Character

The boundaries of the Historic District shall in general be drawn to include areas containing buildings or places in which historic events occurred or having special public value because of notable architectural or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation. The district may include either individual buildings or places of such character, and a reasonable distance beyond, or it may include areas or groupings of structures which have significance relative to their patterns of development or social and economic or architectural interrelationships even though some structures in the area might not possess significant merit when considered alone.

Section 8.3 Inventory of Landmarks and Contributing Properties Established

The Town of Cape Charles has established as part of this ordinance a map covering the area included in the Historic District, based on the criteria set forth in this ordinance. This map shall be as much a part of this ordinance as if fully described herein. Pending further amendment of

this ordinance, the period of significance for the Town will be from 1883 to 1964 as delineated in the Cape Charles Historic District National Register of Historic Places (amended 2019). As identified in the National Register, structures or sites designated as properties which contribute to the historic character of the Town shall be known as contributing properties for the purpose of this Ordinance. Structures or sites not designated as landmark or contributing properties shall be known as noncontributing properties. Should a building or structure within the boundaries of the historic district not be listed in the national register, the building or structure will be classified as noncontributing. The map may be amended from time to time in the same manner as the zoning district map.

Section 8.4. Application of the District; Relation to Other Zoning Districts
To enable the district to operate in harmony with the plan for land use and population density embodied in these regulations, the Historic District is created as a special district to be superimposed on other districts contained in these regulations and is to be so designated by a special symbol for its boundaries on the Zoning District Map. The uses, housing types, minimum lot requirements, minimum yard requirements, maximum height, and accessory uses and accessory signs shall be determined by the regulations applicable to the other districts over which the Historic District is superimposed except as these other district regulations may be modified by application of the regulations in the Historic District.

Section 8.5 Permitted Uses
A building or land shall be used only for any use or accessory use permitted in the zoning district in which the premises are situated and upon which the Historic District is superimposed.

Section 8.6 Historic District Review Board; Creation
For the general purposes of this Article as herein stated and specifically to preserve and protect historic places and areas in the Town through the control of demolition of such places and through the regulation of architectural design and uses of structures in such areas, there is created a board known as the Historic District Review Board.

Section 8.7 Historic District Review Board; Membership
The members of the Historic District Review Board shall be appointed by the Town Council. The Membership shall consist of five citizens, at least three of whom shall be residents of the local historic district.

Section 8.8 Historic District Review Board; Terms
Upon approval by the Town Council, members shall be appointed for a term of five years. Appointments to fill vacancies shall be only for the unexpired term. Members may be reappointed to succeed themselves. A member whose term expires shall continue to serve until a successor is appointed and qualifies.

Section 8.9 Historic District Review Board; Qualifications

Members of the Historic District Review Board shall have demonstrated interest and knowledge in the historical and architectural development of the Town and when possible, include a Planning Commission member, as well as professionals in the disciplines of architecture, history, historic preservation, archaeology, or related profession; and professionals in the disciplines of planning, building construction, or real estate.

Section 8.10 Historic District Review Board; Organization
The Historic District Review Board shall elect from its own membership a chairman and vice chairman who shall serve annual terms and may succeed themselves. The chairman shall preside over all meetings in addition to having the duties and responsibilities of other members of the Board. The vice chairman shall preside over meetings of the Board in the absence of the chairman.

Section 8.11 Historic District Review Board; Rules
The Board shall meet in regular session on the third Tuesday of every month when an application has been filed requiring consideration. Special meetings of the Board may be called by the chairman or a majority of the members after public notice as required.

Section 8.12 Historic District Review Board; Meetings; Hearings
Written notice of a special meeting is not required if the time of special meeting has been fixed at a regular meeting or if all members are present at a special meeting or file a written waiver of notice. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all voting members of the Board. The Board may make, alter, or rescind rules and forms for its procedures, consistent with the ordinances of the Town and the general laws of the Commonwealth of Virginia.

Section 8.13 Historic District Review Board; Procedures
The Board shall, with the concurrence of the town manager, establish procedures for all matters coming before it for review and all meetings shall be open to the public. The Board will have the right to appeal decisions of the town manager to the Town Council.

Section 8.14 Historic District Review Board; Powers and Duties
The Historic District Review Board shall have the power and authority for issuing or denying Certificates of Appropriateness for construction, reconstruction, substantial exterior alteration, razing, or relocation within the historic district. In addition, the Board shall have the following duties:

A. To assist and advise the Town Council, the Planning Commission, and other Town departments, agencies, and property owners in matters involving historically significant sites and buildings or other properties in the historic districts such as, but not limited to, appropriate land usage, parking facilities, and signs.

B. To continuously evaluate conditions and advise owners of historic landmarks or contributing structures or other properties in historic districts on problems of preservation.

C. To oversee studies deemed necessary by the Town Council or Planning Commission concerning location of historic districts and means of preservation, utilization, improvement, and maintenance of historic assets in the Town.

D. To propose additional historic districts or additions or deletions to districts.

E. To recommend standards and guidelines for adoption by the Town Council to supplement the standards set forth in this Ordinance; the currently adopted guidelines are called "Cape Charles Historic District Guidelines revised October 2017."

F. To formulate recommendations to the Town Council concerning the establishment of an

appropriate system of markers for selected historic sites and buildings, including proposals for the installation and care of such historic markers.

G. To cooperate with and enlist assistance from the Virginia Department of Historic Resources, the National Trust for Historic Preservation, and other interested parties both public and private in its efforts to preserve the character of historic landmarks, buildings, sites, or areas within the Town.

Section 8.15 Summary of Administration Review Procedures

In general, it is the purpose of this ordinance to establish review procedures for actions affecting properties in the Historic District.

A. Actions related to "Standards" will be exclusively the purview of the Zoning Administrator.

B. Actions addressed by "Guidelines" will be the purview of the Historic District Review Board, except that guidelines that are relatively straight forward may be delegated to the Zoning Administrator at the discretion of the Historic District Review Board.

C. In all cases the decisions of the Zoning Administrator shall be appealed to the Board of Zoning Appeals as stated in §2-2.6.2.C, the decisions of the Historic District Review Board may be appealed to the Town Council, and the final decisions of the Town Council may be appealed to the Circuit Court of Northampton County.

Section 8.16 Approval of Historic District Review Board Required

A. Except as herein otherwise provided in this article, no building or structure, including signs, shall be erected, reconstructed, restored, or substantially altered in exterior appearance and no contributing buildings or structures shall be razed or demolished within a historic district and no permit authorizing same shall be granted unless and until the same is approved by the Historic District Review Board and a Certificate of Appropriateness has been issued by that body, with right of direct appeal to the Town Council as hereinafter provided, as being architecturally compatible with the historical, cultural, and/or architectural aspects of the structure and its surroundings.

B. Contributing accessory structures will be treated as contributing structures only under the following conditions:
   1. It is on a permanent foundation; and
   2. It is of sufficient square footage that a new structure of that type would require a building permit; and
   3. It is not being used as, or being considered for, Accessory Dwelling Units.

C. "Substantial alterations" shall be defined as any and all work done on buildings, structures, or sites in a historic district other than those specifically exempted herein:
   1. General examples of "non-substantial" alterations:
      a. Work done to prevent deterioration or to replace parts of a structure with similar materials in order to correct any deterioration, decay of, or damage to any structure or on any part thereof, or
      b. To restore same as nearly as practical to its condition prior to such deterioration, decay, or damage.
   2. Examples of work not constituting "substantial alteration" include those minor actions exempted from review by Section 8.16 of this article.
   3. General examples of work constituting "substantial alterations" include:
      a. Construction of a new building at any location or a new permanent

accessory building requiring a building permit on a landmark or contributing property or on a site within the Historic District.

b. Any addition to or alteration of a building which increases the square footage of the building or otherwise alters substantially its size, height, contour, or outline.
c. Any alteration of the exterior architectural style of a structure or its significant elements; some examples being removal or rebuilding of porches, openings, dormers, window sashes, chimneys, columns, stairways, terraces, decks, fences, or any other structural elements.
d. Addition to or removal of one or more stories or alteration of a roof line.
e. Any other major actions not specifically covered by the terms of this section, but which would have an effect on the character of the historic district.

D. In any case in which there might be some question as to whether a project may be exempted from review, may constitute a minor action, or may constitute "substantial alteration," the Zoning Administrator shall be contacted for an interpretation prior to commencement of work.

Section 8.17 Certain Minor Actions Exempted from Review by the Historic District Review Board

Within the Historic District certain minor actions which are deemed not to have permanent effects upon the character of the historic district are exempted from review for architectural compatibility by the Historic District Review Board. Such actions shall include the following and any similar actions which in the opinion of the Zoning Administrator will have no more effect on the character of the district than those listed:

A. Repainting the structure. (Original painting of masonry surfaces is not exempted from review.)
B. Replacement of missing or broken windowpanes, roofing slates, tiles, porch floor, posts, rails, shingles, window frames, or shutters where no substantial change in design or material is proposed.
C. Addition or deletion of storm doors or storm windows, window gardens, or similar appurtenances and portable air conditioners located in existing windows, doors, or other existing wall openings (if no building permit is required for such addition or deletion).
D. Addition or deletion of television and radio antennas or skylights and solar collectors in locations not visible from a public street or a waterway.
E. Landscaping involving minor grading, walks, low retaining walls, temporary fencing, fencing immediately surrounding trash receptacles or outdoor ventilation units, small fountains, outdoor showers, and ponds which will not substantially affect the character of the property and its surroundings.
F. Construction of off-street loading areas and off-street parking areas.
G. Creation of outside storage in a commercial or industrial district which does not require structural changes or major grading and is not visible from a public street or waterway.
H. Additions or deletions to an existing building which are not visible from a public street or sidewalk. Alleys in this context are not to be considered public places.
I. Covered by other zoning ordinance requirements as administrated by the Zoning Administrator unless altered by the overlay ordinance.

J. Receiving historic preservation tax credits through state or federal offices.
K. Demolition of non-contributing buildings or structures.
L. Alterations or repairs made to a building or structure for the purpose of temporary emergency stabilization.

Section 8.18 Delegation of Authority

A. The Zoning Administrator or Code Official shall have authority to order that work be stopped and that an appropriate application be filed for review by the Historic District Review Board in any case where the action has an adverse effect on the Historic District.
B. The Historic District Review Board shall periodically review the design guidelines contained in this section.

Section 8.19 Certificate of Appropriateness

Evidence of the approval required under the terms of the Historic District shall be a certificate of appropriateness issued on behalf of the Historic District Review Board, stating that the demolition, moving, or changes in the exterior architectural appearance of the proposed construction, reconstruction, alteration, or restoration for which application has been made are approved by the Historic District Review Board or the Zoning Administrator. The Historic District Review Board may permit modifications of original proposals if such modifications are formally acknowledged, clearly described, and recorded in the records of the case. A certificate of appropriateness shall be in addition to any other permits required. Any action by applicants following issuance of a permit-requiring certificate of appropriateness shall be in accord with the application and material approved and any conditions appended thereto.

Section 8.20 Design Guidelines; Recommendations for Review

A. The Historic District Review Board shall be guided in its decisions by the design guidelines but must also use independent judgement and discretion to consider the unique characteristics of each request. The board is expected to work with each applicant to assist them in achieving their goal while preserving the character of the district. The board shall utilize the pre-application review process as defined in Section 8.25.A.

B. It shall be the duty of the Historic District Review Board to prepare recommended amendments to the design guidelines.

C. The Town Council shall adopt and amend the design guidelines after conducting at least one public hearing pursuant to §15.2-2204 of the Code of Virginia.

D. Separate guidelines shall be developed for all new infill buildings in Cape Charles' historic district. New infill construction will not diminish, detract, or distract from the character of surrounding historic buildings or the overall historic district.

E. Alterations and additions to non-contributing structures that affect the exterior appearance of the structure or additions should be compatible with the district following the guidelines for new (infill) construction. Criteria for non-contributing structures may be less restrictive than that applied to contributing structures.

Section 8.21 Demolition: Alternate Procedure: Offer to Sell

A. Prior to approval of any application for demolition, modification, moving, or removal of a

contributing structure within the Cape Charles Historic District; the zoning administrator, the Historic District Review Board, or the Town Council, as applicable, shall review the application for its compatibility with each of the following guidelines.

1. Whether or not the contributing structure is of such architectural or historic interest that its removal would be to the detriment of the character and integrity of the Historic District.
2. Whether or not the contributing structure is of such interest or significance that it would qualify as a National, State, or local historic landmark.
3. Whether or not retention of the contributing structure would help to preserve and protect a historic place or area of historic interest in the Town.
4. Whether or not plans for future use of the site after demolition are appropriate, compatible, sympathetic, and complimentary to the character and integrity of the Historic District.

No subsequent application under Section 8.21A regarding the contributing structure may be made until more than one year after a final denial by the Town Council.

B. In addition to the right of appeal herein elsewhere set forth, the owner of a contributing structure in the Cape Charles Historic District shall as a matter of right be entitled to move, remove, modify, raze or demolish all or part of such contributing structure provided that:

1. The owner has applied to the Town Council for such right.
2. The owner has for the applicable period of time set forth in the time schedule in Section 8.21.B.4., and at a price reasonably related to the fair market value of the contributing structure and the land, other improvements and appurtenances pertaining thereto (assuming the buyer will be required to preserve and restore the contributing structure in place on the property) as determined by the average of two (2) real estate appraisals from two (2) different appraisers, made a bona fide, public offer (pursuant to the requirements of this Section 8.21 B.) to sell such contributing structure, and the land, other improvements and appurtenances pertaining thereto (collectively, the "Property"), to the Town and any other person, firm, corporation, government or political subdivision or agency thereof, which gives reasonable assurance that it is willing to preserve and restore the contributing structure in place. If the two (2) required real estate appraisals submitted by the Owner differ by more than ten percent (10%), the owner must have the Property appraised a third time at his own expense by a third real estate appraiser selected by the Town. The bona fide offer to sell must be at a price not more than the average of the two such appraisals that are closest to one another.
3. No bona fide contract, binding upon all parties thereto, shall have been executed for the sale of any such Property thereto, prior to the expiration of the applicable time period set forth in the time schedule in Section 8.21.B.4. Any appeal which may be taken to the court from the decision of the Town Council, whether instituted by the owner or by any other proper party, notwithstanding the provisions heretofore stated relating to a stay of the decision appealed from, shall not affect the right of the owner to make the bona fide offer to sell referred to above.
4. The time schedule for offers to sell shall be as follows:
    a. Three (3) consecutive months when the offering price is less than twenty-five thousand dollars.

b. Four (4) consecutive months when the offering price is twenty-five thousand or more but less than forty thousand dollars.
c. Five (5) consecutive months when the offering price is forty thousand or more but less than fifty-five thousand dollars.
d. Six (6) consecutive months when the offering price is fifty-five thousand dollars or more but less than seventy-five thousand dollars.
e. Seven (7) consecutive months when the offering price is seventy-five thousand dollars or more but less than ninety thousand dollars.
f. Twelve (12) consecutive months when the offering price is ninety thousand dollars or more.

5. Before making a bona fide offer to sell, the owner shall first file a statement with the Zoning Administrator along with the appraisals required by Section 8.21.B.2. The statement shall identify the Property, state the offering price, the date the offer of sale is to begin, the names and addresses of adjacent property owners, and the names and addresses of listing real estate agents, if any. The owner shall be required to maintain the Property in at least its current condition during the term of the public offer. No time period set forth in the time schedule contained in Section 8.21.B.4. shall begin to run until the statement has been filed. Within five (5) business days after receipt of a statement, copies of the statement shall be delivered by the Zoning Administrator to the Town Manager, the Town Council, and the Historic District Review Board. Within thirty (30) days after the receipt of a statement, the Zoning Administrator: (a) shall place notice of the statement once a week for two successive weeks in a newspaper having general circulation in the Town, (b) post a notice of the statement prominently on the Property, and (c) send notice of the offer, accompanied by the statement, to the adjacent property owners by certified or registered mail.
6. During the time period for the offer to sell, the Town may take steps as it deems necessary to preserve the contributing structure in accordance with the purposes of this article. Such steps may include, but are not limited to, consultation with civic groups, public agencies, and interested citizens, recommendations for acquisition of the Property by public or private bodies or agencies, and exploration of the possibility of moving structures or other features on the Property.
7. The fact that an offer to sell a Property is made at a price reasonably related to fair market value as described previously may be questioned by any party who files with the Zoning Administrator, on or before sixty (60) days after the offer for sale has begun, a petition in writing signed by at least twenty-five (25) persons owning real estate within Cape Charles, questioning such valuation. Upon receipt of such a petition, one (1) disinterested real estate appraiser shall be appointed by the petitioners, and the cost of the appraisal shall be borne by the petitioners. Said appraiser shall forthwith make an appraisal of the Property on the same basis as described in B.2. above, and the Town shall use the average of the lower two appraisals to establish fair market value under Section 8.21.B. In the event such valuation indicates that the price at which the applicant offered to sell the Property was at a price that is higher than the Property's fair market value, the offer to sell shall be void and of no force and effect for purposes of satisfying the requirements set forth in this Section 8.21.B.

Section 8.22 Maintenance and Repair Required

A. The purpose of this section is solely to stop demolition by neglect, whereby owners of property in the Historic District allow the structure, or historic attributes of the structure, to become a hazardous building or structure. Any building or structure which is determined to be in such an unsafe condition that it would endanger life or property is governed by Town Code Chapter 18, Article III, Unsafe Buildings or Structures and under the sole jurisdiction of the Town's Code Official.

B. All buildings and structures in the Historic District shall be preserved against decay and deterioration and maintained free from structural defects to the extent that such decay, deterioration, or defects may, in the opinion of the Historic District Review Board and Town Council, result in the irreparable deterioration of any exterior appurtenance or architectural feature or produce a detrimental effect upon the character of the district as a whole or upon the life and character of the structure itself, including but not limited to:
   1. The deterioration of exterior walls or other vertical supports, including broken doors and windowpanes;
   2. The deterioration of roofs or horizontal members;
   3. The deterioration of exterior chimneys;
   4. The deterioration or crumbling of exterior plaster, wood, or mortar;
   5. The deterioration of any feature so as to create or permit the creation of any hazardous or unsafe condition or conditions.

C. After notice by the Zoning Administrator or Code Official by certified mail of specific instances of failure to maintain or repair and of an opportunity to appear before the Historic District Review Board, the owner or person in charge of said structure shall have ninety (90) days to remedy such violation. Thereafter, each day during which there exists any violation of this section shall constitute a separate offense and shall be punishable as provided in this ordinance. In the alternative, if the owner fails to act, the Historic District Review Board may recommend to the Town Council that the Zoning Administrator, after due notice to the owner, enter the property and make or cause to be made such repairs as are necessary to preserve the integrity and safety of the structure and the reasonable costs thereof shall be placed as a lien against the property.

Section 8.23 File of Actions to be Maintained

In order to provide guidance for the consistent application of standards and guidelines, and for assistance to future applicants and the promotion of consistent policies in guiding applicants toward better standards of design, the Zoning Administrator shall maintain a file containing a record of all applications, including drawings and photographs pertaining thereto and the decision of the Zoning Administrator or the Historic District Review Board in each case. The file documents shall be compiled by the Zoning Administrator, maintained by the Town Clerk, and remain the property of the Town but shall be held available for public review.

Section 8.24 Administration; Zoning Administrator

Except as authorized herein the Zoning Administrator or Code Official shall not authorize a permit for any erection, reconstruction, integral exterior facade change, demolition, or razing of a building or structure in the Historic District until the same has been approved by the Historic District Review Board as set forth in the following procedures.

Section 8.25 Receipt of Application

Upon receipt of an application by the Zoning Administrator for each permit in the historic district, the Zoning Administrator shall oversee the following:

A. Pre-application review: Persons considering action that requires a certificate of appropriateness, as set forth in this ordinance, are to request an informal informational meeting with the Zoning Administrator and at least one member of the Historic District Review Board prior to submitting a formal application for a certificate of appropriateness. Requests for such informational meetings can be made to the zoning administrator, who will contact a member of the board. The informational meeting will occur within thirty (30) days of receipt of such a request. The purpose of an informational meeting is to review the design guidelines and standards and the procedures for obtaining a certificate of appropriateness. Neither the applicant nor the zoning administrator/board member(s) shall be bound by any informational meeting or conceptual review. Zoning administrator can use discretion on the need for a pre-application meeting or the inclusion of a board representative depending on the nature of project proposed;

B. Once accepted by the zoning administrator as a fully completed application, the zoning administrator will forward to the Historic District Review Board a copy of the application, together with a copy of the site plan and the building plans and specifications filed by the applicant if such application requires the Historic District Review Board to meet and render a decision;

C. Compile a record of all such applications and of the final disposition of the same, to be maintained by the Town Clerk;

D. Require applicants to submit one (1) hard copy and one electronic version of material required to permit compliance with the foregoing.

Section 8.26 Material to be Submitted for Review

By general rule, or by specific request in a particular case, the Historic District Review Board may require submission of any or all of the following in connection with the application: architectural plans, site plans, landscaping plans, construction methods, proposed exterior lighting arrangements, elevations of all portions of structures with important relationships to public view and such other exhibits and reports as are necessary for its determinations. Requests for approval of activities proposed in historic districts shall be accepted only from the record owner of the land involved in such proposal, or their agent.

Section 8.27 Other Approvals Required

The Zoning Administrator will review submitted applications for Certificates of Appropriateness against appropriate zoning requirements before forwarding application to the Historic District Review Board for pre-application review and approval. In any case in which an applicant's proposal also requires the approval of the Board of Zoning Appeals, final action by the Board of Zoning Appeals shall precede final action by the Historic District Review Board. The Board of Zoning Appeals may, however, table a proposal in order to request the comments of the Historic District Review Board. In this case, final action by the Historic District Review Board shall be taken prior to consideration of proposals requiring site plan approval.

Section 8.28 Action by the Historic District Review Board; Issuance of Certificates of Appropriateness

The Historic District Review Board shall render a decision upon any request or application for a Certificate of Appropriateness within ninety (90) days after the filing of an application accepted as complete. Failure of the Historic District Review Board to render such a decision within said ninety (90) day period, unless such period be extended with the concurrence of the applicant, shall entitle the applicant to proceed as if the Historic District Review Board had granted the Certificate of Appropriateness applied for prior to denying the Certificate of Appropriateness. The Historic District Review Board, on the basis of the review of information received, shall, upon request, indicate to the applicant the changes in plans and specifications, if any, which in the opinion of the Historic District Review Board, would protect and/or preserve the historical aspects of the landmark, building, structure, or district. If the applicant determines that they will make the suggested changes, the Historic District Review Board may issue the Certificate of Appropriateness. Agreed to changes will be so stipulated on the Certificate of Appropriateness.

All conditions required for the approval of a certificate of appropriateness will also be included on the building plan and will be reviewed by the Code Official during routine inspections.

The Zoning Administrator will be responsible for issuance of the Certificate of Appropriateness to the applicant and the Town's Code Official office within five (5) business days. Denials of applications are to be stated in writing to the applicant along with the reasons for such denials by the zoning administrator and issued within five (5) business days. Once a Certificate of Appropriateness is granted, the applicant may obtain permits to start work with the understanding that work may be stopped should an appeal be filed to the board's decision within a 30-day period following approval of the Certificate of Appropriateness, and that the applicant takes full responsibility to bear whatever consequences result from the appeal's final decision.

Section 8.29 Expiration of Certificates of Appropriateness

Any certificate issued pursuant to this article shall expire of its own limitation six (6) months from the date of issuance if the work authorized thereby is not commenced by the end of such six (6) month period; and further, any such certificate shall also expire and become null and void if such authorized work is suspended or abandoned for a period of six (6) months after being commenced. Any period or periods of time during which the right to use any such certificate is stayed pursuant to this article shall be excluded from the computation of the six (6) months.

Section 8.30 Inspection by Administrator After Approval

When a Certificate of Appropriateness has been issued, the Zoning Administrator or Town Building Official shall from time to time inspect the alteration or construction approved by such certificate and shall give prompt notice to the applicant of any work not in accordance with such certificate or violating any ordinances of the Town. The Zoning Administrator or Town Building Official may revoke the certificate or the building permit if violations are not corrected by the applicant in a timely manner.

Section 8.31 Delay of Approval

In the case of a proposal other than for demolition or moving but involving a designated landmark where the Historic District Review Board or, on appeal, the Town Council cannot reach a satisfactory agreement with the owner and where the Historic District Review Board or, on appeal, the Town Council decides such action to be in the public interest and not in conflict

with any provision of law, it may delay the effective date of an approval for a period of three (3) months from the date of application or appeal to enable negotiations to be undertaken and completed for acquisition of the property for preservation or public use. Failure of negotiations within this period shall be the equivalent of a denial of the application by the Historic District Review Board or, on appeal, by the Town Council.

Section 8.32 Conditions Imposed by the Historic District Review Board
In approval of any proposal under this section, the Historic District Review Board or, on appeal, the Town Council may limit such approval by such reasonable conditions as the case may require, including but not limited to, the specifications enumerated for conditional uses and for the Town Council.

Section 8.33 Appeals; Decisions of the Historic District Review Board
An appeal from a decision of the Historic District Review Board may be taken to the Town Council by the owner of the property in question or by any party aggrieved and must show that he has an immediate, pecuniary and substantial interest in the litigation, and not a remote or indirect interest, which shall be taken within thirty (30) days after the decision appealed from by filing with the Zoning Administrator the following: a notice of appeal specifying the grounds thereof; a signed statement listing any personal or business relationship with any general or subcontractors associated with the project under appeal; a signed statement that all real and personal property taxes are current as of the date of the filed appeal notice; a signed statement listing any personal or business relationship or partnership with the property owner(s) associated with the project under appeal; a fee equal in value to the fee paid by the property owner(s) associated with the project under appeal. The person submitting the appeal shall not be allowed to present any evidence that was not presented to the Historic District Review Board, Council members having any relevant interaction with the applicant shall disclose such interaction prior to considering the appeal. The Zoning Administrator will prepare a document of all the papers constituting the record upon which the action appealed from was taken. The Town Council shall fix a reasonable time for the hearing, give public notice thereof and decide the same within sixty (60) days from the date the person submitted a request for appeal. At the hearing, the appealing party may appear in person or by agent. In exercising its powers, the Town Council may, in conformity with the provisions of this Ordinance, reverse or affirm, wholly or partly, or may modify any order, requirement, decision, or determination appealed from and make such order, requirement, decision or determination as ought to be made and to that end shall have all the powers of the Historic District Review Board.

Section 8.34 Appeals; Decisions of the Zoning Administrator
An appeal from a decision of the Zoning Administrator may be taken to the Board of Zoning Appeals by the owner of the property in question or by any party aggrieved and must show that he has an immediate, pecuniary and substantial interest in the litigation, and not a remote or indirect interest, which shall be taken within thirty (30) days after the decision appealed from by filing with the Zoning Administrator the following: a notice of appeal specifying the grounds thereof; a signed statement listing any personal or business relationship with any general or subcontractors associated with the project under appeal; a signed statement that all real and personal property taxes are current as of the date of the filed appeal notice; a signed statement listing any personal or business relationship or partnership with property owner(s) associated with the project under appeal. The Zoning Administrator shall transmit to the Board of Zoning Appeals within five (5) days all the papers constituting the record upon which the action

appealed from was taken. The Board of Zoning Appeals shall fix a reasonable time for the meeting, give public notice thereof as required pursuant to § 15.2-2204 of the Code of Virginia; and decide the same within sixty (60) days. At the meeting the party may appear in person or by agent. In exercising its powers, the Board of Zoning Appeals may reverse or affirm, wholly or partly, or may modify, any order, requirement, decision, or determination appealed from and make such order, requirement, decision or determination as ought to be made.

Section 8.35 Appeal to the Circuit Court from a Decision of the Town Council

An appeal from a final decision of the Town Council may be filed with the Circuit Court within thirty (30) days after said decision in the manner prescribed by law by the owner of the property in question, by any party aggrieved and must show that he has an immediate, pecuniary and substantial interest in the litigation, and not a remote or indirect interest, or by the Historic District Review Board. The filing of an appeal shall stay the decision of the Town Council pending the outcome of the appeal to the court, except that the filing of such petition shall not stay the decision of the Town Council if such decision denies the right to raze or demolish a designated landmark, building, or structure. The court may reverse or modify the decision of the Town Council, in whole or part, if it finds upon review that the decision of the governing body is contrary to law or that its decision is arbitrary and constitutes an abuse of discretion, or it may affirm the decision of the Town Council.

Section 8.36 Violations and Penalties

Any violation of this Article and the penalties for all such violations shall be as set forth in Section 2.4.3 of the Zoning Ordinance.

Article IX - Historic Harbor Area Overlay District

Section 9.1 Statement of Intent

The Cape Charles Harbor is a vital part Cape Charles' history, and will continue to play an important role in the Town's future. Water transportation provides one of the Town's primary means of access, along with roadway transportation. The intent of the Historic Harbor Area Overlay District is to encourage development and redevelopment that is architecturally compatible with existing and previously existing development in the Cape Charles Harbor area, as well as in the neighboring area within the adjacent Historic District Overlay. Much of the Cape Charles Harbor Area's historic significance is derived from the harbor's role in the Town's formation. In addition to ensuring architectural styles are compatible with the area's heritage, the Historic Harbor Area Overlay District is intended to preserve the harbor area's historic sense of place. This overlay district is also intended to implement the general concepts found in the Cape Charles Harbor Area Conceptual Master Plan and Design Guidelines, which support development and redevelopment that is visually compatible with the heritage of the Cape Charles Harbor Area.

Section 9.2 Specific Purpose of the District

The purpose of this district is to provide for protection against destruction or encroachment upon historic areas, buildings, monuments, or other features, or buildings and structures of recognized architectural significance which contribute or will contribute to the cultural, social, economic, political, artistic, or architectural heritage of the Town of Cape Charles and the Commonwealth of Virginia. It is the purpose of the district to preserve the designated historic areas and historic landmarks and other historic or architectural features, and their surroundings within a reasonable distance, from destruction, damage, defacement, and obvious incongruous development or uses of land and to ensure that buildings, structures, streets, walkways, or signs shall be erected, reconstructed, altered, or restored so as to be kept architecturally compatible with the character of the general area in which they are located and with the historic buildings or structures within the district.

Section 9.3 Criteria for Establishing Historic Districts--General Character

The boundaries of the Historic Harbor Area Overlay District shall in general be drawn to include areas near the Cape Charles Harbor containing buildings or places in which historic events occurred or having special public value because of notable architectural or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation. The district may include either individual buildings or places of such character, and a reasonable distance beyond, or it may include areas or groupings of structures which have significance relative to their patterns of development or social and economic or architectural interrelationships even though some structures in the area might not possess significant merit when considered alone.

Section 9.4 Application of the District; Relation to Other Zoning Districts

To enable the district to operate in harmony with the plan for land use and population density embodied in these regulations, the Historic Harbor Area Overlay District is created as a special district to be superimposed on other districts contained in these regulations and is to be so designated by a special symbol for its boundaries on the Zoning District Map. The uses, housing types, minimum lot requirements, minimum yard requirements, maximum height, and accessory

uses and accessory signs shall be determined by the regulations applicable to the other districts over which the Historic Harbor Area Overlay District is superimposed except as these other district regulations may be modified by application of the regulations in the Historic Harbor Area Overlay District.

Section 9.5 Permitted Uses

A building or land shall be used only for the following purposes:

A. Any use or accessory use permitted in the zoning district in which the premises are located.

B. Any use for which a Conditional Use Permit has been issued, subject in all cases to review and report by the Harbor Area Review Board.

C. Any variance authorized by the Board of Zoning Appeals, subject in all cases to review and report by the Harbor Area Review Board.

Section 9.6 Harbor Area Review Board; Creation

For the general purposes of this Article as herein stated and specifically to preserve and protect historic places and areas in the Town through the control of demolition of such places and through the regulation of architectural design and uses of structures in such areas, there is created a board known as the Harbor Area Review Board.

Section 9.7 Harbor Area Review Board; Membership

The members of said Harbor Area Review Board will be appointed by the Town Council. The Membership shall consist of seven citizens. One member shall also be a member of the Town Council, two members shall also be members of the Planning Commission, and one member shall also be a member of the Historic District Review Board.

All former members of the Harbor Area Review Board are eligible to be alternates to present Harbor Area Review Board Members. An alternate, upon written request of a Harbor Area Review Board member, may serve as a member of the Harbor Area Review Board for the meeting(s) for which the alternate has been requested to serve. Alternates shall have all rights, responsibilities, and duties as a present Harbor Area Review Board member during the meeting(s) during which the alternate(s) shall serve.

Section 9.8 Harbor Area Review Board; Terms

Except for members who also serve on the Town Council, Planning Commission, or Historic District Review Board, members shall be appointed for a term of five years except that original appointments shall be made for such terms that the term of at least one member shall expire each year. Appointees who also serve on the Town Council, Planning Commission, or Historic District Review Board shall be appointed to a term coinciding with their term on the Town Council, Planning Commission, or Historic District Review Board, as appropriate. Appointments to fill vacancies shall be only for the unexpired term. Members may be reappointed to succeed themselves. A member whose term expires shall continue to serve until a successor is appointed and qualifies.

Section 9.9 Harbor Area Review Board; Qualifications

Members of the Harbor Area Review Board shall have demonstrated interest and knowledge in

the historical and architectural development of the Town and when possible be a licensed architect or engineer, planning commission member, or licensed building contractor.

Section 9.10 Harbor Area Review Board; Organization

The Harbor Area Review Board shall elect from its own membership a chairman and vice chairman who shall serve annual terms and may succeed themselves. The chairman shall preside over all meetings in addition to having the duties and responsibilities of other members of the Board. The vice chairman shall preside over meetings of the Board in the absence of the chairman. The Harbor Area Review Board may appoint a secretary and keep written minutes of its meetings.

Section 9.11 Harbor Area Review Board; Rules

The Board shall meet in regular session at least once a month whenever an application has been filed requiring their consideration. Special meetings of the Board may be called by the chairman or a majority of the members after twenty-four hours' written notice to each member served personally or left at his usual place of business or residence. Such notice shall be publicly posted and will state the time and place of a meeting and the purpose thereof.

Section 9.12 Harbor Area Review Board; Meetings; Hearings

Written notice of a special meeting is not required if the time of special meeting has been fixed at a regular meeting or if all members are present at a special meeting or file a written waiver of notice. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all voting members of the Board. The Board may make, alter, or rescind rules and forms for its procedures, consistent with the ordinances of the Town and the general laws of the Commonwealth of Virginia.

Section 9.13 Harbor Area Review Board; Procedures

The Board shall establish procedures for all matters coming before it for review and all meetings shall be open to the public.

Section 9.14 Harbor Area Review Board; Powers and Duties

The Harbor Area Review Board shall have the power and authority for issuing or denying Certificates of Appropriateness for construction, reconstruction, substantial exterior alteration, razing, or relocation within the Historic Harbor Area Overlay District. In addition, the Board shall have the following duties:

A. To assist and advise the Town Council, the Planning Commission, and other Town departments, agencies, and property owners in matters involving historically significant sites at buildings or other properties in historic districts such as, but not limited to, appropriate land usage, parking facilities, fencing, and signs.

B. To continuously evaluate conditions and advise owners of historic landmarks or contributing structures or other properties in historic districts on problems of preservation.

C. To conduct studies deemed necessary by the Town Council or Planning Commission concerning location of historic districts and means of preservation, utilization, improvement, and maintenance of historic assets in the Town.

D. To propose additional historic districts or additions or deletions to districts.

E. To adopt standards for review to supplement the standards set forth in this Ordinance.

F. To formulate recommendations to the Town Council concerning the establishment of an appropriate system of markers for selected historic sites and buildings, including proposals for the installation and care of such historic markers.

G. To cooperate with and enlist assistance from the Virginia Department of Historic Resources, the National Trust for Historic Preservation, and other interested parties both public and private in its efforts to preserve, restore, and conserve historic landmarks, buildings, sites, or areas within the Town.

Section 9.15 Summary of Administration Review Procedures

In general, it is the purpose of this ordinance to establish review procedures for actions affecting properties in the Historic Harbor Area Overlay District which will be relatively simple with minimum delay for those actions which will have little if any permanent effect on the character of the district or on a significant structure. A more thorough review for actions which may have a substantial effect on the character of the district or on a significant structure is required. To this end, some actions are exempted from special historic and architectural review altogether, except as normal review may be necessary for issuance of a building permit. Other actions, depending on the possible consequences thereof, may be reviewed by the Zoning Administrator or by the Harbor Area Review Board acting with original jurisdiction, or, in the most serious cases, action by the Town Council following action by the Harbor Area Review Board. In all cases the decisions of the Zoning Administrator may be appealed to the Harbor Area Review Board, the decisions of the Harbor Area Review Board may be appealed to the Town Council, and the final decisions of the Town Council may be appealed to the Circuit Court of Northampton County.

Section 9.16 Certain Minor Actions Exempted from Review by the Harbor Area Review Board

Within the Historic Harbor Area Overlay District certain minor actions which are deemed not to have permanent effects upon the character of the district are exempted from review for architectural compatibility by the Harbor Area Review Board. Such actions shall include the following and any similar actions which in the opinion of the Zoning Administrator will have no more effect on the character of the district than those listed:

A. Repainting the structure in the same color or a very similar color or painting the structure with those colors specified in the design guidelines. (Original painting of masonry surfaces is not exempted from review.)

B. Replacement of missing or broken window panes, roofing slates, tiles, porch floor, posts, rails, shingles, window frames, or shutters where no substantial change in design or material is proposed.

C. Addition or deletion of storm doors or storm windows, window gardens, or similar appurtenances and portable air conditioners located in existing windows, doors, or other existing wall openings (if no building permit is required for such addition or deletion).

D. Addition or deletion of television and radio antennas or skylights and solar collectors in locations not visible from a public street or a waterway.

E. Landscaping involving minor grading, walks, low retaining walls, temporary fencing, small fountains, ponds and the like, which will not substantially affect the character of the property and its surroundings.

F. If consistent with the design guidelines, erection of any sign permitted in a residential district and any permitted non-illuminated flat or wall sign not exceeding three inches from a wall and not exceeding four square feet in area in a commercial or industrial district.

G. Construction of off-street loading areas and off-street parking areas containing five spaces or less in a commercial or industrial district.

H. Creation of outside storage having a structure footprint of less than forty- one (41) square feet in a commercial or industrial district which does not require structural changes or major grading and is not visible from a public street or waterway.

Section 9.17 Certain Actions Recommended in Design Guidelines Exempted from Review by the Harbor Area Review Board; Delegation of Authority

A. The Harbor Area Review Board and the Zoning Administrator shall have authority to order that work be stopped and that an appropriate application be filed for review by the Harbor Area Review Board in any case where the action may have an adverse effect on the Historic Harbor Area Overlay District or may produce arresting and spectacular effects, violent contrasts of materials or colors, and intense and lurid colors or patterns, or details clearly inconsistent with the character of the present structures or with the prevailing character of the surroundings and the district.

B. The authority to perform any action under this section not granted to the Zoning Administrator shall remain with the Harbor Area Review Board.

Section 9.18 Approval of Harbor Area Review Board Required

A. Except as herein otherwise provided in this article, no building or structure, including signs, shall be erected, reconstructed, restored, or substantially altered in exterior appearance and no buildings or structures shall be razed or demolished within a historic district and no permit authorizing same shall be granted unless and until the same is approved by the Harbor Area Review Board and a Certificate of Appropriateness has been issued by that body, with right of direct appeal to the Town Council as hereinafter provided, as being architecturally compatible with the historical, cultural, and/or architectural aspects of the structure and its surroundings.

1. Exemptions

a. Railroad activities in this district are subject to federal preemption to the extent that the activities are an integral part of the railroad's interstate operations. 49 U.S.C. 10501 (b). Therefore, "state and local permitting or pre-clearance requirements [such as building permits, zoning clearances,

and site plan requirements] which, by their nature, interfere with interstate commerce by giving the [Town of Cape Charles] the ability to delay or deny the [railroad's] right to construct facilities or conduct operations are preempted." Borough of Riverdale v. New York Susquehanna & Western Railway Corporation, Surface Transportation Board, Docket No. FD - 33466 - 0, September 9, 1999.

However, environmental and other public health and safety issues and "activities and facilities not integrally related to the provision of rail service are not subject to [Surface Transportation Board] jurisdiction or subject to federal preemption." Id. Also, "interstate railroads … are not exempt from certain local fire, health, safety and construction regulations and inspections." Id.

b. Activities requiring a Harbor Development Certificate, as described in Section 3.9, are exempt from requiring a Certificate of Appropriateness.

B. "Substantial alterations" shall be defined as any and all work done on buildings, structures, or sites other than those specifically exempted herein:

1. General examples of "non-substantial" alterations:
   a. Work done to prevent deterioration or to replace parts of a structure with similar materials in order to correct any deterioration, decay of, or damage to any structure or on any part thereof, or
   b. To restore same as nearly as practical to its condition prior to such deterioration, decay, or damage.
2. Examples of work not constituting "substantial alteration" include those minor actions exempted from review by Section 9.16 of this article.
3. General examples of work constituting "substantial alterations" include:
   a. Construction of a new building at any location or a new accessory building on a landmark or contributing property or on a site within the Historic Harbor Area Overlay District
   b. Any addition to or alteration of a building which increases the square footage of the building or otherwise alters substantially its size, height, contour, or outline.
   c. Any change or alteration of the exterior architectural style of a structure, including removal or rebuilding of porches, openings, dormers, window sashes, chimneys, columns, structural elements, stairways, terraces, and the like.
   d. Any change or alteration of the exterior color scheme of the structure or any of its significant elements, including porches, openings, dormers, window sashes, awnings, canopies, chimneys, columns, stairways, terraces, or any other structural elements. This also applies to all structures on the site.
   e. Addition to or removal of one or more stories or alteration of a roof line.
   f. Landscaping which involves major changes of grade or walls and fences more than three-and-one-half feet in height.
   g. Any other major actions not specifically covered by the terms of this section but which would have a substantial effect on the character of the historic district.

C. In any case in which there might be some question as to whether a project may be exempted from review may constitute a minor action or may constitute "substantial alteration," the Zoning Administrator shall be contacted for an interpretation prior to commencement of work.

Section 9.19 Harbor Development Certificate

Evidence of the approval required under the terms of the Historic Harbor Area Overlay District shall be a certificate of appropriateness issued by the Harbor Area Review Board, or the Zoning Administrator as the case may require, stating that the demolition, moving, or changes in the exterior architectural appearance of the proposed construction, reconstruction, alteration, or restoration for which application has been made are approved by the Harbor Area Review Board or the Administrator as the case may require. The Harbor Area Review Board, or the Administrator in a case within his authority, may permit modifications of original proposals if such modifications are formally acknowledged, clearly described, and recorded in the records of the case. A certificate of appropriateness shall be in addition to any other permits required. Any action by applicants following issuance of a permit-requiring certificate of appropriateness shall be in accord with the application and material approved and any conditions appended thereto.

Section 9.20 Design Guidelines; Standards for Review

A. In order to achieve the purposes of the Historic Harbor Area Overlay District, the Harbor Area Review Board shall be guided in its decisions by the design guidelines as authorized in subsection B of this section

B. It shall be the duty of the Harbor Area Review Board to prepare and recommend to Planning Commission, specific design guidelines for adoption by Town Council, illustrated as necessary, for buildings, structures, and sites in the historic district

C. The Town Council shall adopt an initial set of design guidelines after receiving a recommendation from the Planning Commission and after conducting at least one public hearing pursuant to § 15.2-2204 of the Code of Virginia. Prior to issuing a recommendation, the Planning Commission shall conduct at least one public hearing pursuant to § 15.2-2204 of the Code of Virginia.

D. The Town Council may amend adopted design guidelines after receiving a recommendation from the Planning Commission and after conducting at least one public hearing pursuant to § 15.2-2204 of the Code of Virginia. Prior to issuing a recommendation, the Planning Commission shall conduct at least one public hearing pursuant to § 15.2-2204 of the Code of Virginia.

Section 9.21 Demolition; Alternate Procedure: Offer to Sell

A. Prior to approval of any application for demolition, modification, moving, or removal of a contributing structure within the Cape Charles Historic Harbor Area Overlay District; the Zoning Administrator, the Harbor Area Review Board, or the Town Council, as applicable, shall review the application for its compatibility with each of the following guidelines.
   1. Whether or not the contributing structure is of such architectural or historic interest that its removal would be to the detriment of the character and integrity of the Historic Harbor Area Overlay District.

2. Whether or not the contributing structure is of such interest or significance that it would qualify as a National, State, or local historic landmark.
3. Whether or not retention of the contributing structure would help to preserve and protect a historic place or area of historic interest in the Town.
4. Whether or not plans for future use of the site after demolition are appropriate, compatible, sympathetic, and complimentary to the character and integrity of the Historic Harbor Area Overlay District.

No subsequent application under Section 9.21 A. regarding the contributing structure may be made until more than one year after a final denial by the Town Council.

B. In addition to the right of appeal herein elsewhere set forth, the owner of a contributing structure in the Cape Charles Historic Harbor Area Overlay District shall as a matter of right be entitled to move, remove, modify, raze or demolish all or part of such contributing structure provided that:
   1. The owner has applied to the Town Council for such right.
   2. The owner has for the applicable period of time set forth in the time schedule in Section 9.21 B. 4., and at a price reasonably related to the fair market value of the contributing structure and the land, other improvements and appurtenances pertaining thereto (assuming the buyer will be required to preserve and restore the contributing structure in place on the property) as determined by the average of two (2) real estate appraisals from two (2) different appraisers, made a bona fide, public offer (pursuant to the requirements of this Section 9.21 B.) to sell such contributing structure, and the land, other improvements and appurtenances pertaining thereto (collectively, the "Property"), to the Town and any other person, firm, corporation, government or political subdivision or agency thereof, which gives reasonable assurance that it is willing to preserve and restore the contributing structure in place. If the two (2) required real estate appraisals submitted by the Owner differ by more than ten percent (10%), the owner must have the Property appraised a third time at his own expense by a third real estate appraiser selected by the Town. The bona fide offer to sell must be at a price not more than the average of the two such appraisals that are closest to one another.
   3. No bona fide contract, binding upon all parties thereto, shall have been executed for the sale of any such Property thereto, prior to the expiration of the applicable time period set forth in the time schedule in Section 9.21 B. 4. Any appeal which may be taken to the court from the decision of the Town Council, whether instituted by the owner or by any other proper party, notwithstanding the provisions heretofore stated relating to a stay of the decision appealed from, shall not affect the right of the owner to make the bona fide offer to sell referred to above.
   4. The time schedule for offers to sell shall be as follows:
      a. Three (3) consecutive months when the offering price is less than twenty-five thousand dollars.
      b. Four (4) consecutive months when the offering price is twenty- five thousand or more but less than forty thousand dollars.
      c. Five (5) consecutive months when the offering price is forty thousand or more but less than fifty-five thousand dollars.
      d. Six (6) consecutive months when the offering price is fifty-five thousand

dollars or more but less than seventy-five thousand dollars.

e. Seven (7) consecutive months when the offering price is seventy- five thousand dollars or more but less than ninety thousand dollars.

f. Twelve (12) consecutive months when the offering price is ninety thousand dollars or more.

5. Before making a bona fide offer to sell, the owner shall first file a statement with the Zoning Administrator along with the appraisals required by Section 9.21 B. 2. The statement shall identify the Property, state the offering price, the date the offer of sale is to begin, the names and addresses of adjacent property owners, and the names and addresses of listing real estate agents, if any. The owner shall be required to maintain the Property in at least its current condition during the term of the public offer. No time period set forth in the time schedule contained in Section 9.21 B. 4. shall begin to run until the statement has been filed. Within five (5) days after receipt of a statement, copies of the statement shall be delivered by the Zoning Administrator to the Town Manager, the Town Council, and the Harbor Area Review Board. Within thirty (30) days after the receipt of a statement, the Zoning Administrator: (a) shall place notice of the statement once a week for two successive weeks in a newspaper having general circulation in the Town, (b) post a notice of the statement prominently on the Property, and (c) send notice of the offer, accompanied by the statement, to the adjacent property owners by certified or registered mail.

6. During the time period for the offer to sell, the Town may take steps as it deems necessary to preserve the contributing structure in accordance with the purposes of this article. Such steps may include, but are not limited to, consultation with civic groups, public agencies, and interested citizens, recommendations for acquisition of the Property by public or private bodies or agencies, and exploration of the possibility of moving structures or other features on the Property.

C. The fact that an offer to sell a Property is made at a price reasonably related to fair market value as described previously may be questioned by any party who files with the Zoning Administrator, on or before sixty (60) days after the offer for sale has begun, a petition in writing signed by at least twenty-five (25) persons owning real estate within Cape Charles, questioning such valuation. Upon receipt of such a petition, one (1) disinterested real estate appraiser shall be appointed by the petitioners, and the cost of the appraisal shall be borne by the petitioners. Said appraiser shall forthwith make an appraisal of the Property on the same basis as described in B.2. above, and the Town shall use the average of the lower two appraisals to establish fair market value under Section 9.21.B. In the event such valuation indicates that the price at which the applicant offered to sell the Property was at a price that is higher than the Property's fair market value, the offer to sell shall be void and of no force and effect for purposes of satisfying the requirements set forth in this Section 9.21.B.

Section 9.22 Hazardous Buildings or Structures

Nothing in this Article shall prevent the razing or demolition of any building or structure without consideration of the Harbor Area Review Board which is in such an unsafe condition that it would endanger life or property, and protection from such condition is provided for in the Building Code and/or other applicable Town ordinances. However, such razing or demolition shall not be commenced without written approval of the Town Administrator verifying the conditions necessitating such action.

Section 9.23 Maintenance and Repair Required

A. The purpose of this section is solely to stop demolition by neglect, whereby owners of property in the Historic Harbor Area Overlay District jeopardize the future prosperity and well-being of the town by allowing historic assets to decay so as to allow the structure, or historic attributes of the structure, to become a hazardous building or structure.

B. All buildings and structures in the Historic Harbor Area Overlay District shall be preserved against decay and deterioration and maintained free from structural defects to the extent that such decay, deterioration, or defects may, in the opinion of the Harbor Area Review Board and Town Council, result in the irreparable deterioration of any exterior appurtenance or architectural feature or produce a detrimental effect upon the character of the district as a whole or upon the life and character of the structure itself, including but not limited to:
   1. The deterioration of exterior walls or other vertical supports, including broken doors and window panes;
   2. The deterioration of roofs or horizontal members;
   3. The deterioration of exterior chimneys;
   4. The deterioration or crumbling of exterior plaster, wood, or mortar;
   5. The deterioration of any feature so as to create or permit the creation of any hazardous or unsafe condition or conditions.

C. After notice by the Harbor Area Review Board by certified mail of specific instances of failure to maintain or repair and of an opportunity to appear before the Harbor Area Review Board, the owner or person in charge of said structure shall have 90 days to remedy such violation. Thereafter, each day during which there exists any violation of this section shall constitute a separate offense and shall be punishable as provided in this ordinance. In the alternative, if the owner fails to act, the Harbor Area Review Board may recommend to the Town Council that the Town Administrator, after due notice to the owner, enter the property and make or cause to be made such repairs as are necessary to preserve the integrity and safety of the structure and the reasonable costs thereof shall be placed as a lien against the property or, in a proper hardship case as determined by the Town Council, paid by the Town from a fund established for such purposes.

Section 9.24 File of Actions to be Maintained

In order to provide guidance for application of standards and guidelines, for the improvement of standards and guidelines, and for assistance to future applicants and the promotion of consistent policies in guiding applicants toward better standards of design, the Administrator and the Harbor Area Review Board shall maintain a file containing a record of all applications brought before them, including drawings and photographs pertaining thereto and the decision of the Administrator or the Harbor Area Review Board in each case. The file documents shall remain the property of the Town but shall be held available for public review.

Section 9.25 Administration; Zoning Administrator

Except as authorized herein the Zoning Administrator shall not authorize a permit for any erection, reconstruction, integral exterior facade change, demolition, or razing of a building or structure in the Historic Harbor Area Overlay District until the same has been approved by the Harbor Area Review Board as set forth in the following procedures.

Section 9.26 Receipt of Application

Upon receipt of an application by the Zoning Administrator for each permit in the district, the Zoning Administrator shall:

A. Forthwith forward to the Harbor Area Review Board a copy of the application, together with a copy of the site plan and the building plans and specifications filed by the applicant if such application requires the Harbor Area Review Board to meet and render a decision;

B. Maintain in his office a record of all such applications and of his handling and final disposition of the same;

C. Require applicants to submit three (3) copies of material required to permit compliance with the foregoing.

Section 9.27 Material to be Submitted for Review

By general rule, or by specific request in a particular case, the Harbor Area Review Board may require submission of any or all of the following in connection with the application: architectural plans, site plans, landscaping plans, construction methods, proposed signs with appropriate detail as to character, proposed exterior lighting arrangements, elevations of all portions of structures with important relationships to public view (with indications as to visual construction materials, design of doors and windows, colors, and relationships to adjoining structures), and such other exhibits and reports as are necessary for its determinations. Requests for approval of activities proposed in the Historic Harbor Area Overlay District shall be accepted only from the record owner of the land involved in such proposal, or his agent.

Section 9.28 Other Approvals Required

In any case in which an applicant's proposal also requires the approval of the Board of Zoning Appeals, final action by the Board of Zoning Appeals shall precede final action by the Harbor Area Review Board. The Board of Zoning Appeals may, however, table a proposal in order to request the comments of the Harbor Area Review Board. Other development applications may be submitted concurrently with an application for a Certificate of Appropriateness. Final action by the Harbor Area Review Board shall be taken prior to consideration of proposals requiring site plan approval.

Section 9.29 Action by the Harbor Area Review Board; Issuance of Certificates of Appropriateness

The Harbor Area Review Board shall render a decision upon any request or application for a Certificate of Appropriateness within 60 days after the filing of an application accepted as complete. Failure of the Harbor Area Review Board to render such a decision within said 60-day period, unless such period be extended with the concurrence of the applicant, shall entitle the applicant to proceed as if the Harbor Area Review Board had granted the Certificate of Appropriateness applied for prior to denying the Certificate of Appropriateness. The Harbor Area Review Board, on the basis of the review of information received, shall, upon request, indicate to the applicant the changes in plans and specifications, if any, which in the opinion of the Harbor Area Review Board, would protect and/or preserve the historical aspects of the landmark, building, structure, or district. If the applicant determines that he will make the suggested changes and does so in writing, the Harbor Area Review Board may issue the

Certificate of Appropriateness.

Section 9.30 Expiration of Certificates of Appropriateness and Permits to Raze
Any certificate issued pursuant to this article and any permit to raze a building issued pursuant to this article shall expire of its own limitation twelve months from the date of issuance if the work authorized thereby is not commenced by the end of such twelve- month period; and further, any such certificate and permit shall also expire and become null and void if such authorized work is suspended or abandoned for a period of twelve months after being commenced. Any period or periods of time during which the right to use any such certificate or permit is stayed pursuant to this article shall be excluded from the computation of the twelve months.

Section 9.31 Inspection by Administrator After Approval
When a Certificate of Appropriateness has been issued, the Administrator or Town Building Official shall from time to time inspect the alteration or construction approved by such certificate and shall give prompt notice to the applicant of any work not in accordance with such certificate or violating any ordinances of the Town. The Administrator or Town Building Official may revoke the certificate or the building permit if violations are not corrected by the applicant in a timely manner.

Section 9.32 Delay of Approval
In the case of a proposal other than for demolition or moving but involving a designated landmark where the Harbor Area Review Board or, on appeal, the Town Council cannot reach a satisfactory agreement with the owner and where the Harbor Area Review Board or, on appeal, the Town Council decides such action to be in the public interest and not in conflict with any provision of law, it may delay the effective date of an approval for a period of three months from the date of application or appeal to enable negotiations to be undertaken and completed for acquisition of the property for preservation or public use. Failure of negotiations within this period shall be the equivalent of a denial of the application by the Harbor Area Review Board or, on appeal, by the Town Council.

Section 9.33 Conditions Imposed by the Harbor Area Review Board
In approval of any proposal under this section, the Harbor Area Review Board or, on appeal, the Town Council may limit such approval by such reasonable conditions as the case may require, including but not limited to, the specifications enumerated for conditional uses and for the Town Council.

Section 9.34 Appeals; Decisions of the Harbor Area Review Board
An appeal from a decision of the Harbor Area Review Board may be taken to the Town Council by the owner of the property in question or by any party aggrieved by said decision, which shall be taken within thirty (30) days after the decision appealed from by filing with the Administrator a notice of appeal specifying the grounds thereof. The Administrator shall forthwith transmit to the Town Council all the papers constituting the record upon which the action appealed from was taken. The Town Council shall fix a reasonable time for the hearing, give public notice thereof and decide the same within 60 days. At the hearing the appealing party may appear in person or by agent. In exercising its powers, the Town Council may, in conformity with the provisions of this Ordinance, reverse or affirm, wholly or partly, or may modify any order,

requirement, decision, or determination appealed from and make such order, requirement, decision or determination as ought to be made and to that end shall have all the powers of the Harbor Area Review Board.

Section 9.35 Appeals; Decisions of the Zoning Administrator

An appeal from a decision of the Zoning Administrator may be taken to the Harbor Area Review Board by the owner of the property in question or by any party aggrieved by said decision, which shall be taken within thirty (30) days after the decision appealed from by filing with the Administrator a notice of appeal specifying the grounds thereof. The Administrator shall forthwith transmit to the Harbor Area Review Board all the papers constituting the record upon which the action appealed from was taken. The Harbor Area Review Board shall fix a reasonable time for the meeting, give public notice thereof as required pursuant to § 15.2-2204 of the Code of Virginia, and decide the same within 60 days. At the meeting the party may appear in person or by agent. In exercising its powers, the Harbor Area Review Board may reverse or affirm, wholly or partly, or may modify, any order, requirement, decision, or determination appealed from and make such order, requirement, decision or determination as ought to be made.

Section 9.36 Appeal to the Circuit Court from a Decision of the Town Council

An appeal from a final decision of the Town Council may be filed with the Circuit Court within 30 days after said decision in the manner prescribed by law by the owner of the property in question or by the Harbor Area Review Board or by any party aggrieved by said decision or by any party who recorded an appearance at the hearing before the Town Council. The filing of an appeal shall stay the decision of the Town Council pending the outcome of the appeal to the court, except that the filing of such petition shall not stay the decision of the Town Council if such decision denies the right to raze or demolish a designated landmark, building, or structure. The court may reverse or modify the decision of the Town Council, in whole or part, if it finds upon review that the decision of the governing body is contrary to law or that its decision is arbitrary and constitutes an abuse of discretion, or it may affirm the decision of the Town Council.

Section 9.37 Violations and Penalties

Any violation of this Article and the penalties for all such violations shall be as set forth in Section 2.4.3 of the Zoning Ordinance.

APPENDIX A – Definitions

ABANDONMENT means the relinquishment of property, or a cessation of the use of the property, by the owner or lessee without any intention of transferring rights to the property to another owner or of resuming the use of the property.

ABATTOIR means slaughterhouse, a place where livestock is killed and prepared for distribution to butcher shops and food markets.

ACCESS means a way or means of approach to provide vehicular or pedestrian physical entrance to a property.

ACCESSORY USE, except as otherwise provided in the zoning district regulations, an accessory use is:

1. A use which is conducted on the same zoning lot as the principal use to which it is related, whether located within the same building or as an accessory structure, or as an accessory use of land, or which is conducted on a contiguous lot in the same ownership, and
2. Clearly incidental to, and customarily found in connection with, such principal use, and
3. Operated and maintained substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the zoning lot with the principal use.

ACRE is a measure of land area containing 43,560 square feet.

ACREAGE means a parcel of land, regardless of area, described by metes and bounds which respectively are ascribed to them by this section.

ADAPTIVE REUSE means the development of a new use for an older building or for a building originally designed for a special or specific purpose.

ADDITION means a structure added to the original structure at some time after the completion of the original structure or an extension or increase in floor area or height of a building or structure.

ADJACENT includes the term contiguous.

ADJACENT GROUND ELEVATION means the elevation of the surface of the ground between a point touching the exterior wall of a building and a point three feet in distance from such wall measured perpendicularly therefrom.

ADMINISTRATOR, THE ZONING ADMINISTRATOR, means the official charged with the enforcement of the zoning ordinance. The Administrator may be any appointed or elected official who is designated to the position by the Town Council. The Administrator may serve with or without compensation as determined by the Council.

ADULT BOOK STORE means any establishment having as a substantial portion of its stock in trade, books, pictures, magazines, and other periodicals which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specific sexual activities or specified anatomical areas, or an establishment trading in such books, pictures, magazines, and other periodicals which limits its customers to persons over eighteen years of age.

ADULT CARE means the provision of health care including retirement homes, congregate living, and acute care facilities, or a mixture thereof.

ADULT MOVIE THEATER means any establishment used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas for observation by patrons therein, or an establishment used for presenting such material which limits its customers to persons over eighteen years of age.

AFFORDABLE HOUSING means, as a guideline, housing that is affordable to households with incomes at or below the area median income, provided that the occupant pays no more than thirty percent of his gross income for gross housing costs, including utilities. For the purpose of administering affordable dwelling unit ordinances authorized by this chapter, local governments may establish individual definitions of affordable housing and affordable dwelling units including determination of the appropriate percent of area median income and percent of gross income.

AGRICULTURE means the tilling of soil, the raising of crops, forestry, the keeping and raising of livestock and fowl, and including the process of any products produced on the premises, such as milk, eggs, and the like.

AGRICULTURAL LANDS means those lands used for the planting and harvesting of crops or plant growth of any kind in the open; pasture; horticulture; dairying; floriculture; or raising of poultry and/or livestock.

ALLEY means the minor way used primarily for vehicular access to the rear or side of properties otherwise abutting a street. For an alley way to be recognized as such by the Town, it must have previously been officially adopted by the Town.

ALTERATION is any change, modification, or addition to a part or all of the exterior of any building or structure, or the moving of a building and structure from one location to another.

AMERICANS WITH DISABILITIES ACT (ADA) is a 1990 federal law designed to bring disabled Americans into the economic mainstream by providing them equal access to jobs, transportation, public facilities, and services.

ANEMOMETER. Measures the wind speed and may transmit wind speed data to the controller.

APARTMENT BUILDING means a building used or intended to be used as the residence of three or more households/families living independently of each other.

APARTMENT UNIT is considered one or more rooms with private bath and kitchen facilities comprising an independent, self-contained dwelling unit in a building containing three or more dwelling units.

AREA MEDIAN INCOME means the midpoint of Northampton County's income distribution for a family of four and is calculated on an annual basis by the Department of Housing and Urban Development as median family income (MFI).

AREA OF SPECIAL FLOOD PLAIN means the land in the flood plain within a community subject to a 1 percent or greater chance of flooding in any given year. This area is designated on the Flood Insurance Rate Map (hereinafter as FIRM) as AE and VE.

APPLICANT is the person submitting an application.

ARCHITECTURAL PROJECTION. Any projection that is not intended for occupancy and that extends beyond the face of an exterior wall of a building, but that does not include signs as defined herein. See also "Awning;" "Backlit awning;" and "*Canopy*, Attached and Free-standing."

ATTIC is space between ceiling framing of the top story and the underside of the roof.

AUTOMOBILE GRAVEYARD means any lot or place which is exposed to weather upon which three or more motor vehicles of any kind, incapable of being operated, are placed.

AVERAGE SETBACK shall be the mean setback from a street right-of-way of buildings on both sides of a lot.

AWNING. An architectural projection or shelter projecting from and supported by the exterior wall of a building and composed of a covering of rigid or nonrigid materials and/or fabric on a supporting framework that may be either permanent or retractable, including such structures that are internally illuminated by fluorescent or other light sources.

AWNING, BACKLIT. An awning with a translucent covering material and a source of illumination contained within its framework.

BASE FLOOD ELEVATION means the highest height, expressed in feet above sea level, of the level of flood waters occurring in the regulatory base flood.

BANNER. A flexible substrate on which copy, or graphics may be displayed.

BASEMENT means that portion of a building that is partly or completely below grade. A basement is a level within a building that has its floor surface below the adjoining

ground level. A basement shall be counted as a story if over 50 percent of its height is above finished grade.

BASE FLOOD/100-YEAR FLOOD means a flood that on the average is likely to occur once every 100 years (i.e., that has a 1 percent chance of occurring each year, although the flood may occur in any year).

BATHROOM means a room or area that includes a sink and toilet. It may also include a bathtub, shower, or bidet.

BED AND BREAKFAST means a single-family dwelling containing sleeping and/or breakfast accommodations as an accessory use to the principal use. Such lodging shall have room accommodations for transient persons and wherein a charge is normally paid for such accommodations. Owner or manager is a permanent dweller residing on site.

BEDROOM is a room or space within a structure intended for sleeping. Requirements include:

- A minimum size of 70 sq. ft; if more than one person occupies the room, there must be 50 sq. ft. per occupant.
- Access to a bathroom without crossing another bedroom.
- Every bedroom must have access to natural ventilation and have a permanent heat source.
- Two means of egress: one that leads to the rest of the home without going through another bedroom and one that leads directly to the outside. If the outside egress is a window, it must be at least 5.7 sq. ft and can be no more than 44 inches from the room floor, unless there is a permanent step installed. It shall be illegal to have locking bars or grates covering an egress window.
- Ceiling height must be no less than 7 feet.

BEST MANAGEMENT PRACTICES or **BMP** means a practice, or a combination of practices, that is determined by a state or designated area-wide planning agency to be the most effective, practical means of preventing or reducing the amount of pollution generated by non-point sources to a level compatible with water quality goals.

BIKEWAY means a pathway often paved and separated from streets and sidewalks designed to be used by bicycles.

BILLBOARD. Any large sign/panel including supporting structure used as an outdoor display for the purpose of displaying advertisements; the product, business, or service so advertised or displayed being remote from the site of the sign. This sign is typically seen alongside roadways or on the sides of buildings. (Sometimes referred to as "Off-premise sign" or "Outdoor advertising sign.")

BLIGHTED AREA is an area characterized by deteriorating and/or abandoned buildings, inadequate or missing public or community services, and vacant land with debris, litter, lack of sanitation facilities, trash and junk accumulation and impacted by adverse environmental nuisances, such as noise, heavy traffic, and odors.

BOARDING HOUSE or **ROOMING HOUSE** means a dwelling unit or part thereof in which, for compensation, lodging and meals are provided; personal and financial services may be offered as well.

BOARD OF ZONING APPEALS means the board appointed to review appeals made by individuals with regard to decisions of the Zoning Administrator or Floodplain Manager in the interpretation of this ordinance.

BUFFER AREA means an area of natural or established vegetation managed to protect other components of a Resource Protection Area and state waters from significant degradation due to land disturbances.

BUFFER YARD means an area or areas located within districts or land use classifications which extend along adjacent property lines abutting other districts.

BUILDING means any structure having a roof supported by walls which is solidly enclosed, including any area which is solidly enclosed with glass or any other rigid material which will not allow for the passage of air.

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 unless a zoning permit is issued in compliance with Section 4.2(J).

BUILDING ELEVATION. The entire side of a building, from ground level to the roofline, as viewed perpendicular to the walls on that side of the building.

BUILDING FOOTPRINT is the land area on which a proposed building is located.

BUILDING, HEIGHT OF means the vertical distance measured from the finished grade to the top of the highest roof beams on a flat or shed roof, to the top of a parapet, the deck level on a mansard roof, and the average distance between eaves and the ridge level for gable, hip, and gambrel roofs. Note: Mechanical equipment, chimneys, air conditioning units, elevator penthouses, church spires and steeples, water towers, and similar appurtenances are exempted from height restrictions. However, these exclusive items may not exceed the height limit by more than fifteen feet.

BUILDING INSPECTOR/OFFICIAL is the individual designated by the appointing authority to enforce the provisions of the building code.

BUILDING, MAIN means the principal structure or the principal building on a lot or the building or the principal building housing the principal use on a lot.

BUILDING PERMIT is an approval statement signed by the Building Permit Office authorizing the construction, alteration, reconstruction, repair, restoration, demolition, or razing of all or a part of any building.

CANOPY, ATTACHED. A multisided overhead structure or architectural projection supported by attachments to a building on one or more sides and either cantilevered from such building or also supported by columns at additional points. The surface(s) and/or soffit of an attached canopy may be illuminated by means of internal or external sources of light. See also "Marquee."

CANOPY, FREE-STANDING. A multisided overhead structure supported by columns, but not enclosed by walls. The surface(s) and or soffit of a free-standing canopy may be illuminated by means of internal or external sources of light.

CAREGIVER is an adult who provides care for a mentally or physically impaired person within the Commonwealth. A caregiver shall be either related by blood, marriage or adoption to or the legally appointed guardian of the mentally or physically impaired person for whom he is caring.

CARRY-OUT RESTAURANT means an establishment that by design of the physical facilities, service, or packaging sells prepared ready-to-eat foods intended primarily to be consumed off the premises.

CEMETERY means any land or structure used or intended to be used for the interment of human remains. The sprinkling of ashes or their burial in a biodegradable container on church grounds or their placement in a columbarium on church property shall not constitute the creation of a cemetery.

CERTIFICATE OF APPROPRIATENESS is a certificate or other statement indicating approval by the Administrator, the Harbor Area Review Board or the Historic District Review Board as the case may require, of plans for construction, alteration, reconstruction, repair, restoration, demolition, or razing of a building or structure or part thereof.

CHESAPEAKE BAY PRESERVATION AREA or **CBPA** means any land designated by the Town Council pursuant to Part III of the Chesapeake Bay Preservation Area Designation and Management Regulations, 9VAC25-830-10 et seq., § 62.1-44.15:68 of the Code of Virginia. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area.

CHILD CARE CENTER means any facility, other than a family home, established for providing childcare, supervision, and protection of children.

CHILD AND PERSONAL CARE USES shall mean any care, activity, and supervision (with or without academic instruction) for five or more children.

CHURCH means a building or structure, or groups of buildings or structures, that by design and construction are primarily intended for conducting organized religious services and associated accessory uses.

CLUB means a group of people organized for a common purpose to pursue common goals, interests, or activities and usually characterized by certain membership qualifications, payment of fees and dues, regular meetings, and a constitution and by-laws.

COASTAL HIGH HAZARD AREA means an area subject to high velocity waters including but not limited to hurricane wave wash. The area is designated on the FIRM as VE.

COMMERCIAL USE is an activity involving the sale of goods or services carried out for profit.

COMMERCIAL VEHICLE shall mean limousine, flatbed truck, dump truck, tow truck, bus, school bus, transport wrecker, cab-on-chassis truck, tractor trailer, wheeled attachment, earth-moving machinery, semi-trailer, and any vehicle over 20 feet in length, eight feet in height, or seven feet in width.

COMMISSION shall mean the Cape Charles Planning Commission.

COMPREHENSIVE PLAN is a master plan, long-range plan, intended to guide the growth and development of a community or region that typically includes inventory and analytic sections leading to recommendations for the community's future economic development, housing, recreation and open space, transportation, community facilities, and land use, all related to the community's goals and objectives for these elements.

CONDITIONAL USE means a use permitted in a particular zoning district upon showing that such use in a specified location will comply with all the conditions and standards for the location or operation of the use as specified in the zoning ordinance and authorized by the approving agency.

CONDITIONAL USE PERMIT is a permit recommended by the Planning Commission and issued by the Town Council stating that the conditional use meets all conditions set forth in local ordinances.

CONDITIONAL ZONING means, as part of classifying land within a locality into areas and districts by legislative action, the allowing of reasonable conditions governing the use of such property, such conditions being in addition to, or modification of the regulations provided for a particular zoning district or zone by the overall zoning ordinance.

CONSTRUCTION FOOTPRINT means the area of all impervious surface including but not limited to buildings, roads and drives, parking areas, and sidewalks and the area necessary for construction of such improvements.

CONTINUING CARE RETIREMENT COMMUNITY, sometimes known as a life plan community, is a type of retirement community where a continuum of aging care needs

from independent living, assisted living, and skilled nursing care can all be met within the community.

CONTRIBUTING PROPERTIES are those properties constructed fifty (50) years or more ago.

COOPERATIVE means real estate owned by an association, each of the members of which is entitles, by virtue of his ownership interest in the association, to exclusive possession of a unit. (See § 55.1-2100 et seq. Of the Code of Virginia)

CONSTRUCTION shall mean any site or building preparation, assembly, erection, repair, alteration or similar action, or demolition of buildings or structures.

CONTRIBUTING STRUCTURE OR PROPERTY means a structure, building, or place constructed on or before 1964 OR which has special significance because of notable architectural or historic features relating to the cultural or artistic heritage of the community and whose authentic look and character should be retained. The National Register of Historic Places (amended 2019) provides the listing of contributing structures and properties. Should a building or structure within the boundaries of the historic district not be listed in the national register, the building or structure will be classified as noncontributing.

COPY. Those letters, numerals, figures, symbols, logos and graphic elements comprising the content or message of a sign, excluding numerals identifying a street address only.

COUNTRY CLUB is land area and buildings containing golf courses, recreational facilities, a clubhouse, and customary accessory uses open to members and their guests.

CRAWL SPACE is an under floor space that is not a basement which usually contains pipes, ducts, wiring and lighting fixtures, and permits access but is too low for standing.

CROP is a harvestable product planted, grown, and cultivated in the soil.

DECK is an uncovered platform, constructed of wood or wood substitute.

DEMOLITION is the dismantling or tearing down of all or part of any building and all operations incidental thereto.

DEMOLITION PERMIT means the official authorization in writing to remove part or all of a building or structure.

DENSITY means the total number of families, individuals, dwelling units, households, or housing structures per unit of land.

DESIGN GUIDELINES are those set of recommendations adopted pursuant to §8.20 and §9.20 of this Code.

DEVELOPER means the owner or any person with written authorization for the owner who intends to improve or to construct improvements upon any given property.

DEVELOPMENT means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units. The term "development" shall not be construed to include any tract of land which will be principally devoted to agricultural production.

DIAMETER AT BREAST HEIGHT or **DBH** means the diameter of a tree measured outside the bark at a point 4.5 feet above ground.

DISTRICT is a part, zone, or geographical area within the municipality within which certain zoning or development regulations apply.

DOG PEN means any structure used to enclose and confine domestic canines outside of the principal building or structure on a lot. Pens shall be located only in the rear yard and in accordance with the Town's zoning regulations. Pens shall be designed to provide the canines with shelter from the elements of nature and constructed in such a manner as not to cause injury to the animal or interfere with movement, vision or respiration. Pens shall be in a clean, dry, and sanitary condition at all times. Animal waste shall not be allowed to accumulate.

DRIPLINE means a vertical projection to the ground surface from the furthest lateral extent of a tree's leaf canopy.

DRIVE-THROUGH ESTABLISHMENT/RESTAURANT shall mean a business establishment so developed that its retail or service character includes providing a driveway approach and service window for motor vehicles so as to serve patrons as they are seated in the motor vehicle and passing by the service window rather than serving them from within a building.

DRIVEWAY shall mean a vehicular connection between the right-of-way of a street and to a vehicle parking, loading, or maneuvering facility, lots, building sites, uses, or other divisions of land and not intended to be public ingress and egress. A driveway is not considered a street.

DWELLING means a structure or portion thereof that is used exclusively for human habitation.

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

DWELLING, CONDOMINUM shall mean a single, separately owned dwelling unit in a multi-unit development or structure, with jointly owned and shared areas and facilities.

DWELLING, DUPLEX shall mean a building designed as a single structure, containing two separate dwelling units joined side-by-side, has direct access to the outside, and each of which is designed or arranged to be occupied by two families living independently of each other.

DWELLING, MANUFACTURED HOME or MOBILE HOME means a special form of 'one-family dwellings' with the following characteristics: A structure, transportable in one or more sections, which in the traveling mode is 8 body feet or more in width, or 40 body feet or more in length, or which when erected onsite is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure, and designed and constructed to National Manufactured Housing Construction and Safety Standards Act of 1974. The term does not include any self-propelled recreational vehicle. Calculations used to determine the number of square feet in a structure will include the total of square feet for each transportable section comprising the completed structure and will be based on the structure's exterior dimensions measured at the largest horizontal projections when erected onsite. These dimensions will include all expandable rooms, cabinets, and other projections containing interior space, but do not include bay windows.

DWELLING, MULTI-FAMILY shall mean a building designed for and containing three or more dwelling units.

DWELLING, SEASONAL is a dwelling unit not used as a principal residence that may be occupied weekends and for brief periods during the year.

DWELLING, SINGLE FAMILY DETACHED shall mean a single-family dwelling that is located on an individual lot of record.

DWELLING, SINGLE-FAMILY ATTACHED (TOWNHOUSE) shall mean a dwelling unit which is located on an individual lot of record and which is attached to another dwelling unit or any adjoining lot by a common wall.

DWELLING UNIT means one or more rooms, designed, occupied, or intended for occupancy as a separate living quarter with cooking, sleeping, and sanitary facilities provided within the dwelling unit for the exclusive use of a single family maintaining a household.

EASEMENT is a grant of one or more of the property rights by the property owner to and/or for use by the public, a corporation, or another person or entity.

ENGINEER means a professional engineer licensed by the Commonwealth of Virginia.

ENLARGEMENT means an increase in the size of an existing structure or use, including the physical size of the property, building, parking, and other improvements.

EVENT CENTER shall mean a multi-purpose facility generally used for meetings, parties, banquets, weddings, and other social gatherings, conventions, and the display of merchandise by a variety of industrial groups, professional groups, social groups and trade organizations.

EXISTING CONSTRUCTION means, for the purpose of determining rates, structures for which the start of construction commenced before the effective date of the FIRM. EXISTING CONSTRUCTION may also be referred to as **EXISTING STRUCTURES.**

EXISTING USE is the use of a lot or structure at the time of the enactment of the zoning ordinance.

FAMILY DAY HOME means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. The provider of a licensed or registered family day home shall disclose to the parents or guardians of children in their care the percentage of time per week that persons other than the provider will care for the children. Family day homes serving five through 12 children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. However, a family day home where the children in care are all related to the provider by blood or marriage shall not be required to be licensed.

FARM or **FARMLAND** is a parcel of land used for agricultural activities.

FENCE means an artificially constructed barrier of any material or combination of materials erected to enclose, screen, or separate areas.

FLOOD or FLOODING means:

1. A general and temporary condition of partial or complete inundation of normally dry land areas from:
   A. The overflow of inland or tidal waters.
   B. The unusual and rapid accumulation or runoff of surface waters from any source.
   C. Mudslides (i.e., mudflows) which are approximately caused or precipitated by accumulations of water on or under the ground.
2. The collapse of subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in 1.a of this section.

FLOOD INSURANCE RATE MAP (FIRM) means the official map of the community, on which the administrator has delineated both special hazard areas and the risk premium zones applicable to the community. FLOOD PLAIN means (1) a relatively flat land area adjoining a

river, stream, or watercourse which is subject to partial or complete inundation; (2) an area subject to the unusual and rapid accumulation of runoff of surface water from any source.

FLOOD PLAIN means the channel and the relatively flat area adjoining the channel of a natural stream, river, or body of water that has been or may be covered by floodwater.

FLOOD PLAIN MANAGEMENT means the operation of an overall program of corrective and preventive measures for reducing flood damage including but not limited to emergency preparedness plans, flood control works, and flood plain management regulations.

FLOOD PROOFING means any combination of structural and nonstructural additions, changes, or adjustments to structure which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOOR AREA shall mean the gross horizontal areas of a building, including mezzanines and lofts, exclusive of garages, parking structures, basements, open balconies and porches, and equipment and service areas, measured from the exterior face of the exterior walls of a building.

FOOT CANDLE means a standard measurement of light intensity, defined as the illuminance on a one-square foot surface from a uniform source of light.

FORESTRY means an establishment primarily engaged in the operation of timber tracts, tree farms, forest nurseries, the gathering of forest products, or in performing forest services.

FRONTAGE is the width in linear feet of each lot where it abuts the right-of-way of any public or private street.

FRONTAGE, BUILDING. The length of an exterior building wall or structure of a single premise orientated to the public way or other properties that it faces.

FRONTAGE, PROPERTY. The length of the property line(s) of any single premise along either a public way or other properties on which it borders.

FUNCTIONALLY DEPENDENT USE means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

FUNERAL HOME is a building used for the preparation of the deceased for burial and the display of the deceased and rituals connected therewith before burial or cremation.

GARAGE means a deck, building, or parking structure, or part thereof, used or intended to be used for the parking and storage of vehicles.

GARAGE, PRIVATE RESIDENTIAL is a structure that is an accessory to a residential building and that is used for the parking and storage of vehicles owned and operated by the residents thereof and that is not a separate commercial enterprise available to the general public.

GOLF COURSE means a tract of land laid out for at least nine holes for playing the game of golf and improved with tees, greens, fairways, and hazards, and that may include a clubhouse and shelter.

GOVERNING BODY shall mean the Cape Charles Town Council.

GRADE (ADJACENT GROUND LEVEL), generally flat horizontal surfaces, is the lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the building or structure and the property line. When ground level slopes, the reference plane shall be established by the average of elevations at the four corners of the lot and two additional highest points on the lot (i.e., the average of six points).

GRADING is the act of excavation or filling or combination thereof or any leveling to a smooth horizontal or sloping surface on a property, but not including normal cultivation associated with an agricultural operation.

GROSS FLOOR AREA (GFA) shall mean the total covered floor area inside the building envelope, including exterior walls, and excluding the roof.

GROUND COVER means grasses or other plants and landscaping grown to keep soil from being blown or washed away.

GROUP HOME is a residential facility, licensed by the Department of Behavioral Health and Developmental Services, in which no more than eight individuals with mental illness, mental retardation, or developmental disabilities reside, with one or more residential counselors or other staff persons. For the purposes of this ordinance, mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined in § 54.1-3401 of the Code of Virginia.

HARBOR DISTRICT is a zoning district emphasizing the maritime experience of Cape Charles.

HARDSHIP means a restriction on property so unreasonable that it results in an arbitrary and capricious interference with basic property rights, and that which relates to the physical characteristics of the property, not the personal, financial, or self-imposed circumstances of the owner or user.

HEALTH CARE FACILITY means a facility or institution, whether public or private, principally engaged in providing services for health maintenance and the treatment of mental or physical conditions.

HISTORIC DISTRICT means an area containing buildings or places in which historic events occurred or having special public value because of notable architectural or other features

relating to the cultural or artistic heritage of the community of such significance as to warrant conservation and preservation.

HISTORIC LANDMARK is defined as any building or place listed on the National Register of Historic Places or on the Register of the Virginia Historic Landmarks Commission.

HISTORIC STRUCTURES means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the national register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in the states with historic preservation programs which have been approved by the Secretary of the Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: a. by an approved state program as determined by the Secretary of the Interior, or b. directly by the Secretary of Interior in the states without approved programs.

HOME OCCUPATION means any activity carried out for gain by a resident and conducted as a customary, incidental, and accessory use in the resident's dwelling. Home occupations must be constructed wholly within the building or structure and shall not exceed 50 percent of the total floor area and the residential appearances of the building or structure must be maintained.

HOSPITAL means an institution providing primary health services and medical or surgical care to persons, primarily inpatients, suffering from illness, disease, injury, deformity, and other abnormal physical or mental conditions and including, as an integral part of the institution, related facilities, such as laboratories, outpatient facilities, training facilities, medical offices, and staff residents.

HOTEL is a building in which lodging or boarding and lodging facilities are provided for transient guests, and offered to the public for compensation and in which ingress and egress to and from all rooms are through an inside lobby or office supervised by a person in charge at all hours.

HOUSEHOLD (family) all the people who occupy a housing unit. A household includes the related family members and all the unrelated people, if any, such as lodgers, foster children, wards, or employees who share the housing unit. A person living alone in a housing unit, or a group of unrelated people sharing a housing unit such as partners or roomers, is also counted as a household.

HYBRID SYSTEM. An energy system that uses more than one technology to produce energy to work (for example a wind/solar system).

IMPERVIOUS is any paved, hardened or structural surfaces which prevent or impede the infiltration of stormwater into the soil.

IMPERVIOUS COVER means a surface composed of any material that significantly impedes or prevents natural infiltration or water into the soil. Impervious surfaces include but are not limited to roofs, buildings, streets, parking areas, and any concrete, asphalt, compacted gravel, or shell surface.

IMPROVEMENT means any permanent structure that becomes part of, placed upon, or is affixed to real estate.

INDUSTRIAL, LIGHT means industrial uses that meet the performance standards, bulk controls, and other requirements established in an ordinance.

INDUSTRIAL PARK means any tract of land that is planned, developed, and operated as an integrated facility for a number of individual industrial uses, with consideration of transportation facilities, circulations, parking, utility needs, aesthetics, and compatibility.

INDUSTRY means those fields of economic activity including forestry, fishing, hunting, and trapping; mining; construction; manufacturing; transportation; communications; electric, gas, and sanitary services; and wholesale trade.

INNOVATOR SPACE shall mean a space in an existing or new building that is designed to support innovative design, fabrication and wholesale or retail sales of small articles that are unique in design and employ methods of low volume, high value-added production that employ innovative technology and/or artistic skill that are not hazardous or noxious.

INSTITUTIONAL USES shall mean a nonprofit or quasi-public use, such as a religious institution, library, public or private school, hospital, or government owned or government operated structure or land used for public purpose.

INTENSELY DEVELOPED AREA or **IDA** means a portion of Resource Protection Area or a Resource Management Area designated by the Town Council where development is concentrated and little of the natural environment remains.

JUNKYARD means any area, lot, parcel, building, or structure or part thereof used for the storage, collection, processing, purchase, sale, salvage, or disposal of junk.

KENNEL means a commercial establishment in which dogs or domesticated animals are housed, groomed, bred, boarded, trained, or sold, all for a fee. This includes any building or premises used, designed, or arranged for the boarding or breeding or care of four or more dogs, cats, or other domesticated pets of at least six months of age.

KITCHEN means a space within a structure designated for the cooking and preparation of food that includes a sink and a refrigerator.

KILOWATT (kW). A measure of electric power equivalent to 1,000 watts.

LAND USE means a description of how land is occupied or utilized.

LANDSCAPE means an expanse of natural scenery; lawns, trees, plants, and other natural materials, such as rock and wood chips and decorative features, including sculptures, patterned walks, fountains, and pools.

LANDSCAPE PLAN is a plan indicating the location, size, quantity and species of replacement trees and shrubbery.

LANDSCAPE ZONE is an area reserved for the growing and maintenance of landscape materials, including approved street trees and ground cover.

LOT means a parcel of land occupied by a main structure or to be occupied by a main structure or group of main structures and accessory structures, together with such yards, open space, and lot areas as are required by this ordinance, and having frontage upon a street, either shown on a plat of record or considered as a unit of property and described by metes and bounds.

LOT AREA means the total area within the lot lines of a lot, excluding any street right-of-ways.

LOT, CORNER means a lot or parcel of land abutting upon two or more streets at their intersection or upon two parts of the same street forming an interior angle of less than 135 degrees.

LOT COVERAGE is that portion of the lot that is covered by buildings.

LOT DEPTH means the average distance measured from the front of the lot line to the rear of the lot line.

LOT, FLAG means a lot not meeting minimum frontage requirements and where access to the public road is by narrow private right-of-way or driveway.

LOT FRONTAGE means the length of the front lot line measured at the street right-of-way line.

LOT LINE means a line of record bounding a lot that divides one lot from another lot or from a public or private street or any other public space.

LOT LINE, FRONT is the lot line separating a lot from the street right-of-way.

LOT LINE, REAR is the lot line opposite and most distant from the front lot line. In the case of a triangular or otherwise irregularly shaped lot, a line ten feet in length entirely within the lot, parallel to and at a maximum distance from the front lot line.

LOT OF RECORD means a lot that exists as shown or described on a plat or deed in the records of the local registry of deeds.

LOT WIDTH is the horizontal distance between the side lot lines measured at right angles to its depth along a straight line parallel to the front lot line at the minimum required building setback line.

MANSARD. An inclined decorative roof-like projection that is attached to an exterior building facade.

MANUFACTURED HOME PARK/SUBDIVISION means a parcel (or contiguous parcels) of land divided into two or more lots for rent or sale. MAP means the Flood Insurance Rate Map (FIRM) for the community issued by the Federal Insurance Administration.

MANUFACTURING is an establishment engaged in the mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the creation of products, and the blending of materials, such as lubricating oils, plastics, resins, or lacquers.

MARINA is a facility for the storing, servicing, fueling, berthing, and securing of boats and that may include eating, sleeping, and retail facilities for owners, crews, and guests.

MARQUEE. See "Canopy (attached)."

MEAN SEA LEVEL means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum to which base flood elevations shown on the Flood Insurance Rate Map are referenced.

MEGAWATT (MW). A measure of electric power equivalent to 1 million watts.

MENTALLY or PHYSICALLY IMPAIRED PERSON is a person who is a resident of Virginia and who requires assistance with two or more activities of daily living, as defined in § 63.2-2200 of the Code of Virginia, as certified in writing by a physician licensed in the Commonwealth of Virginia.

MIXED USE DEVELOPMENT means property that incorporates two or more different uses, and may include a variety of housing types, within a single development.

MODULAR BUILDING, OR HOME OR INDUSTRIALIZED BUILDING means, but is not limited to, single and multifamily houses, apartment units, commercial buildings, and permanent additions thereof, a combination of one or more sections or modules, subject to state regulations and including the necessary electrical, plumbing, heating, ventilating, and other service systems, manufactured off-site and transported to the point of use for installation or erection, with or without other specified components, to comprise a finished building. Unlike Manufactured Homes, the design, installation, and construction of modular or Industrialized homes are regulated by the Uniform Statewide Building Code.

MOTEL is one or more buildings in which lodging or board and lodging are provided for transient guests for compensation and supervised by a person in charge at all hours. Ingress and egress to and from all rooms are made primarily directly from an exterior walkaway rather than from an inside lobby.

MUNICIPAL COMMUNITY CENTER. See 'Neighborhood Community Center."

NACELLE. The cover housing surrounding a wind turbine, usually at the center of the blades.

NEIGHBORHOOD is an area of the community with characteristics that distinguish it from other areas and that may include distinct ethnic or economic characteristics, housing types, schools, or boundaries defined by physical barriers, such as roads, railroads, or other natural features.

NEIGHBORHOOD COMMUNITY CENTER is a facility within Residential Districts intended for the use of Town citizens for recreational and educational use.

NEW CONSTRUCTION means, for the purpose of determining insurance rates, structures for which the start of construction commenced on or after the effective date of the initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For flood management purposes, NEW CONSTRUCTION means structures for which the start of construction commenced on or after the effective date of a flood plain management regulation adopted by a community and includes any subsequent improvement to such structures.

NON-CONFORMING LOT is a lot, the area, dimensions, or location of which was lawful prior to the adoption, revision, or amendment of the zoning ordinance but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.

NON-CONFORMING STRUCTURE or **BUILDING** is a structure or building, the size, dimensions, or location of which was lawful prior to adoption, revision, or amendment of the zoning ordinance but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.

NON-CONFORMING USE is a use or activity that was lawful prior to the adoption, revision, or amendment of the zoning ordinance but fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.

NONCONTRIBUTING STRUCTURE are those that were built after 1964 or have been altered to such a degree that they are no longer representative of the period which they were built or are in such poor physical condition that their retention is difficult. The National Register of Historic Places (amended 2019) provides the listing of non-contributing structures and properties. Should a building or structure within the boundaries of the historic district not to be listed in the national register, the building or structure will be classified as non-contributing.

NONPOINT SOURCE POLLUTION means pollution consisting of constituents such as sediment, nutrients, and organic and toxic substances from diffuse sources, such as runoff from agriculture and urban land development and use.

NONTIDAL WETLANDS means those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions such as defined by the U.S. Environmental Protection Agency pursuant to Section 404 of the Federal Clean Water Act in 33 C.F.R. 328.3b.

NOXIOUS WEEDS means weeds that are difficult to control effectively, such as Johnson Grass, Kudzu, and multiflora rose.

OCCUPANCY PERMIT is a required permit allowing the use of a building or structure after it has been determined that all the requirements of applicable ordinances have been met.

OFFICE means a room or group of rooms for conducting affairs of a business, profession, service, industry, or government and generally furnished with desks, tables, files, and communication equipment.

OFF-SITE PARKING means parking provided for a specific use but located on a site other than the one on which the specific use is located.

OPEN SPACE is a lot or portion of a lot set aside, designated or reserved for the outdoor enjoyment of the public or for all persons occupying a building on the lot, and is preserved as natural areas or is designed as a park or recreational area.

OUTDOOR STORAGE means the keeping in an enclosed area of any goods, junk, material, merchandise, or vehicles in the same place for more than twenty-four hours.

OVERLAY ZONE is an area where additional requirements are superimposed upon a base zoning district or underlying district.

OWNER shall mean the legal or beneficial titleholder of a site, including but not limited to, a mortgagee or vendee in possession, receiver, executor, trustee, lessee or other person, firm or corporation in control of the site.

PARAPET. The extension of a building facade above the line of the structural roof.

PARCEL: See **LOT**.

PARK means a tract of land designated and used by the public for active and passive recreation.

PARKING LOT OR PARKING GARAGE shall mean an area or building designated and designed for the temporary storage of vehicles.

PARKING SPACE shall mean a marked or striped usable hard-surfaced area enclosed within a main or accessory building, or unenclosed, permanently reserved for the temporary storage of one vehicle.

PATIO is an uncovered courtyard composed of a paved surface such as concrete, tile, or brick which lies directly on the ground.

PAVERS shall mean preformed paving blocks that are installed on the ground to form patterns while at the same time facilitate pedestrian and vehicular travel.

PEDESTRIAN WALKWAY shall mean a walking surface similar to a sidewalk, which facilitates the safe, unobstructed and convenient flow of pedestrians internally on a private property.

PEN means a small enclosure used for the concentrated confinement and housing of animals, a place for feeding and fattening animals, or a coop. Enclosed pastures or range with an area in excess of one hundred square feet for each animal shall not be regarded as a pen.

PERIOD OF SIGNIFICANCE: The National Register of Historic Places recognizes buildings, sites, and districts for their historic significance, and has documented that the significance be associated with a discrete chronological period for the Cape Charles Historic District from 1883 to 1964.

PERMEABILITY is the ease with which air, water, or other fluids can move through soil or rock.

PERMIT is any written governmental permission issued by an authorized official, empowering the holder thereof to do some act not forbidden by law but not allowed without such authorization.

PERMITTED USE means any allowable use in a zoning district and subject to the restrictions applicable to the zoning district.

PERSON means any individual or group of individuals, corporation, partnership, association, or any other entity, including state and local governments and agencies.

PERVIOUS is any surface or element through which water can infiltrate directly into the ground.

PERVIOUS PAVING is any paving surface that presents an opportunity for precipitation to infiltrate or percolate directly into the ground.

PHASE or **PHASED** is subparts or segments of construction projects where the subpart or segment is constructed and stabilized prior to completing construction activities on the entire construction site.

PICNIC AREA means a place equipped with tables, benches, grills, and trash receptacles for people to assemble, cook, eat, and relax.

PLACE OF WORKSHIP shall mean a building where persons regularly assemble for religious purposes and related social events and which is maintained and controlled by a religious body organized to sustain religious ceremonies and purposes.

PLANNED UNIT DEVELOPMENT means a form of development characterized by unified site design for a variety of housing types and densities, clustering of buildings, common open space, and a mix of building types and land uses in which project planning and density calculation are performed for the entire development rather than on an individual lot basis.

PLAN OF DEVELOPMENT means the process for site plan or subdivision plat review to ensure compliance with § 62.1-44.15:67 et seq. of the Code of Virginia and this Article prior to any clearing or grading of a site or the issuance of a building permit.

PLAT or **PLAT OF SUBDIVISION** means the schematic representation of land divided or to be divided and information in accordance with the provisions of §§ 15.2-2241, 15.2-2242, 15.2-2258, 15.2-2262, and 15.2-2264, and other applicable statutes.

PLAYGROUND means an active recreational area with a variety of facilities, including equipment for younger children as well as court and field games.

PLOT means a single-family parcel of land or a parcel of land that can be identified and referenced to a recorded plat or map.

PORCH means a roofed area, which may be screened, usually attached to or part of and with direct access to or from a building. A porch becomes a room when the enclosed space is heated or air conditioned, or has water and sewer service, and when the percentage of window area to wall area is less than fifty percent.

PREMISES shall mean any building, lot, parcel of land, or portion of land whether improved, or unimproved including adjacent sidewalks and parking strips.

PRESERVATION is the process of applying measures necessary to sustain the existing form, integrity, and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction. The limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a preservation project. However, new exterior additions are not within the scope of this treatment.

PRINCIPAL BUILDING shall mean a building in which is conducted the principal permitted use(s) of the lot on which said building is situated.

PRINCIPALLY ABOVE GROUND means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

PRIVATE shall mean property owned by individuals, corporations, and other organizations and not by city, county, state or federal governments.

PROFFER is an offer of restrictions on use of property presented by an applicant for conditional rezoning or a special exception.

PROJECT shall mean the entire proposed development.

PROPERTY means a lot, parcel, or tract of land together with the building and structures located thereon.

PUBLIC, when used as a modifier shall mean "government-owned" or "government-operated."

PUBLIC AREA means any park, playground, trail, path, or other recreational area and open space; scenic and historical sites; schools and other public buildings and structures; and other places where the public is directly or indirectly invited to congregate.

PUBLIC ART is a fountain, sculpture, painting, mural, or similar object that is sited within a planned development as a focal point and is intended for the enjoyment of the general public.

PUBLIC ROAD means a publicly owned road designed and constructed in accordance with water quality protection criteria at least as stringent as requirements applicable to the Virginia Department of Transportation, including regulations promulgated pursuant to (i) the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq. of the Code of Virginia). This definition includes those roads where the Virginia Department of Transportation exercises direct supervision over the design or construction activities, or both, and cases where secondary roads are constructed and maintained, or both, by the Town of Cape Charles in accordance with the standards of the Town of Cape Charles.

PUBLIC UTILITY means a closely regulated enterprise with a franchise for providing to the public a utility service deemed necessary for the public health, safety, and welfare.

PUBLIC UTILITY FACILITY means any building, structure, and facility including generating and switching stations, poles, lines, pumping stations, repeaters, antennas, transmitters, and receivers, valves, and all buildings and structures relating to the furnishing of utility services, such as electric, gas, telephone, water, sewer, and public transit, to the public.

RECONSTRUCTION is any or all work needed to remake or rebuild all or part of any building to a sound condition, but not necessarily of original materials. It is the process of depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location. Reconstruction is different from the other historic treatments in that it is undertaken when there are often no visible historic materials extant or only a foundation remains.

RECREATION, ACTIVE means leisure-time activities, usually of a formal nature and often performed with others, requiring equipment and taking place at prescribed places, sites, or fields.

RECREATION, PASSIVE means activities that involve relatively inactive or less energetic activities, such as walking, sitting, picnicking, card games, checkers, and similar games.

RECREATIONAL VEHICLE means a vehicle which is:

1. built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection;
3. designated to be self-propelled or permanently towable by a light-duty truck; and
4. designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational camping, travel, or seasonal use.

REDEVELOPMENT means the process of developing land that is or has been previously developed.

REHABILITATION is the process of making possible a compatible use for a property through repair, alterations, and additions while retaining to the maximum extent practicable those portions or features which convey its historical, cultural, or architectural values.

REGULATION shall mean any rule, development standard, or other requirement adopted by the governing body pursuant to the requirements of this Zoning Ordinance.

REPAIRS are any or all work involving the replacement of existing work with equivalent material for the purpose of maintenance, but not including any addition, change, or modification in construction.

RESIDENCE means a home or abode or place where an individual is actually living at a specific point in time.

RESIDENTIAL PROPERTY shall mean all property used for single-family detached, single-family attached, or multifamily residences, or mixed-use development that contains one or more dwelling units.

RESOURCE MANAGEMENT AREA or **RMA** means that component of the Chesapeake Bay Preservation Area that is not classified as the Resource Protection Area. RMAs include land types that, if improperly used or developed, have the potential for causing significant water quality degradation or for diminishing the functional value of the Resource Protection Area.

RESOURCE PROTECTION AREA or **RPA** means that component of the Chesapeake Bay Preservation Area comprised of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of state waters.

RESTAURANT means an establishment where food and drink are prepared and served and consumed primarily within the principal building.

RESTORATION is any or all work connected with the returning to or restoring of a building or a part of any building to its original condition through the use of original or nearly original materials. It is the process of accurately depicting the form, features, and character of a

property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a restoration project.

RETAIL is the selling of goods, wares, or merchandise directly to the ultimate consumer or persons without a resale license.

RETAIL SALES mean an establishment engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods.

RETAINING WALL is a structure constructed and erected between lands of different elevations to protect structures and/or to prevent erosion.

RIGHT-OF-WAY means (1) a strip of land acquired by reservation, dedication, forced dedication, prescription or condemnation and intended to be occupied by a road, crosswalk, railroad, electric transmission lines, oil or gas pipelines, water line, sanitary storm sewer, and other similar uses; (2) generally the right of one to pass over the property of another.

ROOF LINE. The top edge of a peaked roof or, in the case of an extended facade or parapet, the uppermost point of said facade or parapet.

SAND DUNES means naturally occurring accumulations of sand in ridges or mounds landward of the beach.

SATELLITE EARTH STATION ANTENNA means a parabolic or dish-shaped antenna over 24 inches in diameter or any other apparatus or device that is designed for the purpose of receiving radio waves.

SETBACK is the minimum distance allowable between a building or structure and any lot line.

SIGN means any letters, words, numbers, figures, devices, designs, emblems, trademarks, or any parts or combinations thereof, by which anything is made known. The structure, supports, or uprights on which any sign is supported shall be considered a part of the sign.

SIGN. Any device visible from a public place that displays either commercial or noncommercial messages by means of graphic presentation of alphabetic or pictorial symbols or representations. Noncommercial flags or any flags displayed from flagpoles or staffs will not be considered to be signs.

SILVICULTURAL ACTIVITIES means forest management activities, including but not limited to the harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of property for reforestation that are conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to § 10.1-1105 of the Code or Virginia and are located on property defined as real estate devoted to forest use under § 58.1-3230 of the Code of Virginia.

SITE PLAN means the proposal for a development or a subdivision including all covenants, grants or easements and other conditions relating to use, location and bulk of buildings, density of development, common open space, public facilities and such other information as required by the subdivision ordinance to which the proposed development or subdivision is subject.

SLEEPING AREA is an area in a room or house where a person can sleep and may utilize a bed, bunk beds, daybed, or other furniture identified for sleeping purposes, including and without limitation, a pull-out couch or futon.

SPOT ZONING means the rezoning of a lot or parcel of land to benefit an owner for a use incompatible with the surrounding land uses and that does not further the comprehensive plan.

STANDARDS are Zoning Ordinance requirements that are evaluated by the Zoning Administrator or Code Official and not under the discretion of the Historic District Review Board or the Harbor Area Review Board.

START OF CONSTRUCTION means the date the building permit was issued, provided the actual START OF CONSTRUCTION, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the state of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation of property or accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual START OF CONSTRUCTION means the first alteration on any wall, ceiling, floor, or other structural part of a building, whether or not the alteration affects the external dimensions of the building.

STOOP is a small porch (covered or uncovered) and the step(s) to it.

STORY means that portion of a building included between the surface of any floor and the floor next above it or, if there is no floor above it, the space between the floor and the ceiling next above it. A basement shall be counted as a story if over 50 percent of its height is above finished grade.

STORY, HALF, HABITABLE ATTIC, means a finished or unfinished area, not considered a full story, complying with all of the following requirements:

- The occupiable floor area is at least 70 square feet.
- The occupiable floor area has a ceiling height of not less than 7 feet. For rooms with sloped ceilings, ceiling height shall not be less than 5 feet and not less than 50 percent of the required floor area shall have a ceiling height of not less than 7 feet. A shower or tub equipped with a shower head shall have a ceiling height in accordance with the Virginia Residential Building Code.

- The occupiable space is enclosed by the roof assembly above, knee walls (if applicable) on the sides and the floor-ceiling assembly below.
- Total occupiable space shall not exceed 50 percent of the greatest story floor area.

STREET means highway, street, avenue, boulevard, road, lane, alley, or any public way.

STREET, ARTERIAL means a street which moves or is designed to move large volumes of traffic from one part of town to another, connecting residential areas with employment centers and centers of commercial activity. Traffic volumes are usually 500 vehicles per day or greater.

STREET, COLLECTOR means a street that collects traffic from local streets and connects with minor and major arterial.

STREET, LOCAL means a street designed to provide vehicular access to abutting property and to discourage through traffic.

STREET SCAPE means a design term referring to all the elements that constitute the physical makeup of a street and that, as a group, define its character, including building frontage, landscaping, street paving, street furniture, trees and other plantings, awnings, and marquee signs and lighting.

STRUCTURAL ALTERATION means any change in either the supporting members of a building, such as bearing walls, columns, beams and girders, or in the dimension or configuration of the roof or exterior walls.

STRUCTURE means a combination of materials to form a construction for use, occupancy, or ornamentation whether installed on, above, or below the surface of land or water.

STRUCTURE, APPURTENANT means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

SUBDIVISION unless otherwise defined in an ordinance adopted pursuant to § 15.2-2240, means the division of a parcel of land into three or more lots or parcels of less than five acres each for the purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided and solely for the purpose of recordation of any single division of land into two lots or parcels, a plat of such division shall be submitted for approval in accordance with § 15.2-2258. Nothing in this definition, section, nor any ordinance adopted pursuant to § 15.2-2240 shall preclude different owners of adjacent parcels from entering into a valid and enforceable boundary line agreement with one another so long as such agreement is only used to resolve a bona fide property line dispute, the boundary adjustment does not move by more than 250 feet from the center of the current platted line or alter either parcel's resultant acreage by more than five percent of the smaller parcel size, and such agreement does not create an additional lot, alter the existing boundary lines of localities, result in greater street frontage, or interfere with a recorded easement, and such agreement shall not result in any nonconformity with local

ordinances and health department regulations. Notice shall be provided to the zoning administrator of the locality in which the parcels are located for review. For any property affected by this definition, any division of land subject to a partition suit by virtue of order or decree by a court of competent jurisdiction shall take precedence over the requirements of Article 6 (§ 15.2-2240 et seq.) and the minimum lot area, width, or frontage requirements in the zoning ordinance so long as the lot or parcel resulting from such order or decree does not vary from minimum lot area, width, or frontage requirements by more than 20 percent. A copy of the final decree shall be provided to the zoning administrator of the locality in which the property is located.

SUBSTANTIAL ALTERATION means expansion or modification of a building or development that would result in a disturbance of land exceeding an area of 2,500 square feet in the Resource Management Area only.

SUBSTANTIAL DAMAGE means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENTS means any construction, rehabilitation, addition, or other improvements of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage regardless of the actual repair work performed. The term does not include either: (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (2) any alteration of a historic structure, provided that the alteration will not preclude the structure as continued designation as a historic structure.

TAKING means to take, expropriate, acquire, or seize property without compensation.

TEMPORARY STRUCTURE shall mean a structure without any foundation or footing and removed when the designated time period, activity, or use of which the temporary structure was erected has ceased.

TIDAL SHORE or **SHORE** means land contiguous to a tidal body of water between the mean low water level and the mean high-water level.

TIDAL WETLANDS means the vegetated and non-vegetated wetlands as defined in Section 28.2-1300 of the Code of Virginia.

TOWER (WIND ENERGY). The structure on which the wind system is mounted.

TOWER HEIGHT (WIND ENERGY). The height above grade of the fixed portion of the tower, including the nacelle and excluding the rotor blades.

TRACT is an area, parcel, site, piece of land, or property that is the subject of development applications.

TRAILER means a structure standing on wheels, towed or hauled by another vehicle, and used for short-term human occupancy, carrying materials, goods, or objects or as a temporary office.

TRANSPORTATION FACILITY is any structure or facility that is primarily used, as part of a transit system, for the purpose of loading, unloading, or transferring passengers or accommodating the movement of passengers from one mode of transportation to another.

USE means the purpose or activity for which land or buildings are designed, arranged, or intended or for which land or buildings are occupied or maintained.

UTILITY INSTALLATION. See Public Utility Facility.

VACANCY means any unoccupied land, structure, or part thereof that is available and suitable for occupancy.

VARIANCE means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

VIEWSHEDS are the areas of land extending south from Washington Avenue to Bayshore Lane, that align in width and angle with the existing streets to the north (including Harbor Street and Peach Street), that shall be restricted to only ground- level development and their amenities, including but not limited to streets, pedestrian or multi-modal trails, or linear parks, so as to maintain the view from the north to the south and vice-versa.

WATER-DEPENDENT FACILITY means a development of land that cannot exist outside the Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include but are not limited to: (1) ports; (2) the intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers; (3) marinas and other boat docking structures; (4) beaches and other public water-oriented recreation areas; and (5) fisheries or other marine resources facilities.

WETLANDS means tidal and non-tidal wetlands.

WIND ENERGY FACILITY. An electric generating facility, whose main purpose is to supply electricity, consisting of one or more Wind Turbines and other accessory structures and buildings, including substations, meteorological towers, electrical infrastructure, transmission lines and other appurtenant structures and facilities.

WIND ENERGY FACILITY, LARGE SYSTEM. A system which has a rated capacity of not more than 999kW.

WIND ENERGY FACILITY, MICRO SYSTEM. A building mounted wind system that has a manufacturer's rating of 10kW or less and projects no more than 18 feet above the highest point of the roof and shall not be considered a small wind energy system in terms of the area or setback requirements. Only one facility is allowed per dwelling unit.

WIND ENERGY FACILITY, SMALL SYSTEM. A system which has a rated capacity of not more than 25kW and primarily used for onsite consumption.

WIND ENERGY FACILITY, UTILITY SCALE. A wind energy conversion system consisting of one or more wind turbine(s), tower(s), and associated control or conversion electronics, which has a rated capacity of 1mW or greater.

WIND FARM. See "Wind Energy Facility – Utility Scale."

WIND POWER. Electrical Power generated by wind driven turbine blades turning an electrical generator.

WIND PUMP. A type of windmill used for pumping water from a well or pond.

WIND TURBINE. A wind energy conversion system that converts wind energy into electricity through the use of a wind turbine generator, and may include a nacelle, rotor, tower, and pad transformer.

WIND TURBINE HEIGHT. The distance measured from the grade to the highest point of the turbine rotor or tip of the turbine blade when it reaches its highest elevation.

WINDMILL. A machine designed to convert the energy of the wind into more useful forms using rotating blades to turn mechanical machinery to do physical work, such as crushing grain or pumping water.

WORKFORCE HOUSING means housing commonly targeted at "essential workers" in a community (e.g., police officers, firefighters, teachers, nurses, medical personnel, service workers). Workforce housing is targeted more generally at income levels from 80% to 120% of Area Median Income (AMI), regardless of type of employment.

YARD is an open space that lies between the principal building or buildings and the nearest lot.

YARD, FRONT means a space extending the full width of the lot between any building and the front lot line and measured perpendicularly to the building at the closest point to the front lot line.

YARD, REAR means a space extending across the full width of the lot between the principal building and the rear of the lot and measured perpendicularly to the building to the closest point of the rear lot line.

YARD, SIDE means a space extending from the front yard to the rear yard between the principal building and the side lot line and measured perpendicularly from the side lot line to the closest point of the principal building.

ZONING or **TO ZONE** means the process of classifying land within a locality into areas and districts, being generally referred to as "zones," and the prescribing and application in each of these areas and district regulations concerning buildings and structural designs, building and structure placement, and uses to which the land, buildings, and structures within such designated areas may be put.

APPENDIX B - Subdivision Ordinance

An ordinance to regulate the subdivision of property into lots, streets, alleys, and other public areas, to provide for the making and recording of plats of such subdivision and the certification of same and provide for the approval of plats.

Whereas, (pursuant to) § 15.2-2241 of the Code of Virginia, the governing body of the Town of Cape Charles, Virginia, is authorized to adopt regulations to provide:

A. For plat details which shall meet the standard for plats as adopted under § 42.1-82 of the Virginia Public Records Act (§ 42.1-76 et seq.) and are compliant with Virginia State Code Section 17.1-236

B. For the coordination of streets within and contiguous to the subdivision with other existing or planned streets within the general area as to location, widths, grades and drainage, including, for ordinances and amendments thereto adopted on or after January 1, 1990, for the coordination of such streets with existing or planned streets in existing or future adjacent or contiguous to adjacent subdivisions;

C. For adequate provisions for drainage and flood control, for adequate provisions related to the failure of impounding structures and impacts within dam break inundation zones, and other public purposes, and for light and air, and for identifying soil characteristics;

D. For the extent to which and the manner in which streets shall be graded, graveled or otherwise improved and water and storm and sanitary sewer and other public utilities or other community facilities are to be installed;

E. For the acceptance of dedication for public use of any right-of-way located within any subdivision or section thereof, which has constructed or proposed to be constructed within the subdivision or section thereof, any street, curb, gutter, sidewalk, bicycle trail, drainage or sewerage system, waterline as part of a public system or other improvement dedicated for public use, and maintained by the locality, the Commonwealth, or other public agency, and for the provision of other site-related improvements required by local ordinances for vehicular ingress and egress, including traffic signalization and control, for public access streets, for structures necessary to ensure stability of critical slopes, and for storm water management facilities, financed or to be financed in whole or in part by private funds only if the owner or developer (i) certifies to the governing body that the construction costs have been paid to the person constructing such facilities or, at the option of the local governing body, presents evidence satisfactory to the governing body that the time for recordation of any mechanics lien has expired or evidence that any debt for said construction that may be due and owing is contested and further provides indemnity with adequate surety in an amount deemed sufficient by the governing body or its designated administrative agency; (ii) furnishes to the governing body a certified check or cash escrow in the amount of the estimated costs of construction or a personal, corporate or property bond, with surety satisfactory to the governing body or its designated administrative agency, in an amount sufficient for and conditioned upon the construction of such facilities, or a contract for the construction of such facilities and the contractor's bond, with like surety, in like amount and so conditioned; or (iii) furnishes to the governing body a bank or savings institution's letter of credit on certain designated funds satisfactory

to the governing body or its designated administrative agency as to the bank or savings institution, the amount and the form. The amount of such certified check, cash escrow, bond, or letter of credit shall not exceed the total of the estimated cost of construction based on unit prices for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs, inflation, and potential damage to existing roads or utilities, which shall not exceed 10 percent of the estimated construction costs. If the owner or developer defaults on construction of such facilities, and such facilities are constructed by the surety or with funding from the aforesaid check, cash escrow, bond or letter of credit, the locality shall be entitled to retain or collect the allowance for administrative costs to the extent the costs of such construction do not exceed the total of the originally estimated costs of construction and the allowance for administrative costs. "Such facilities," as used in this section, means those facilities specifically provided for in this section.

F. If a developer records a final plat which may be a section of a subdivision as shown on an approved preliminary subdivision plat and furnishes to the governing body a certified check, cash escrow, bond, or letter of credit in the amount of the estimated cost of construction of the facilities to be dedicated within said section for public use and maintained by the locality, the Commonwealth, or other public agency, the developer shall have the right to record the remaining sections shown on the preliminary subdivision plat for a period of five years from the recordation date of any section, or for such longer period as the local commission or other agent may, at the approval, determine to be reasonable, taking into consideration the size and phasing of the proposed development, subject to the terms and conditions of this subsection and subject to engineering and construction standards and zoning requirements in effect at the time that each remaining section is recorded. In the event a governing body of a county, wherein the highway system is maintained by the Department of Transportation, has accepted the dedication of a road for public use and such road due to factors other than its quality of construction is not acceptable into the secondary system of state highways, then such governing body may, if so provided by its subdivision ordinance, require the subdivider or developer to furnish the county with a maintenance and indemnifying bond, with surety satisfactory to the governing body or its designated administrative agency, in an amount sufficient for and conditioned upon the maintenance of such road until such time as it is accepted into the secondary system of state highways. In lieu of such bond, the governing body or its designated administrative agency may accept a bank or savings institution's letter of credit on certain designated funds satisfactory to the governing body or its designated administrative agency as to the bank or savings institution, the amount and the form, or accept payment of a negotiated sum of money sufficient for and conditioned upon the maintenance of such road until such time as it is accepted into the secondary system of state highways and assume the subdivider's or developer's liability for maintenance of such road. "Maintenance of such road" as used in this section, means maintenance of the streets, curb, gutter, drainage facilities, utilities or other street improvements, including the correction of defects or damages and the removal of snow, water or debris, so as to keep such road reasonably open for public usage.

G. As used in this section, "designated administrative agency" means the planning commission of the locality or an agent designated by the governing body of the locality for such purpose as set forth in §§ 15.2-2258 through 15.2-2261;

H. For conveyance of common or shared easements to franchised cable television operators furnishing cable television and public service corporations furnishing cable television, gas, telephone and electric service to the proposed subdivision. Once a developer conveys an easement that will permit electric, cable or telephone service to be furnished to a subdivision, the developer shall, within 30 days after written request by a cable television operator or telephone service provider, grant an easement to that cable television operator or telephone service provider for the purpose of providing cable television and communications services to that subdivision, which easement shall be geographically coextensive with the electric service easement, or if only a telephone or cable service easement has been granted, then geographically coextensive with that telephone or cable service easement; however, the developer and franchised cable television operator or telephone service provider may mutually agree on an alternate location for an easement. If the final subdivision plat is recorded and does not include conveyance of a common or shared easement as provided herein, the local planning commission or agent designated by the governing body to review and act on submitted subdivision plats shall not be responsible to enforce the requirements of this subdivision;

I. For monuments of specific types to be installed establishing street and property lines;

J. That unless a plat is filed for recordation within six months after final approval thereof or such longer period as may be approved by the governing body, such approval shall be withdrawn and the plat marked void and returned to the approving official; however, in any case where construction of facilities to be dedicated for public use has commenced pursuant to an approved plan or permit with surety approved by the governing body or its designated administrative agency, or where the developer has furnished surety to the governing body or its designated administrative agency by certified check, cash escrow, bond, or letter of credit in the amount of the estimated cost of construction of such facilities, the time for plat recordation shall be extended to one year after final approval or to the time limit specified in the surety agreement approved by the governing body or its designated administrative agency, whichever is greater;

K. For the administration and enforcement of such ordinance, not inconsistent with provisions contained in this chapter, and specifically for the imposition of reasonable fees and charges for the review of plats and plans, and for the inspection of facilities required by any such ordinance to be installed; such fees and charges shall in no instance exceed an amount commensurate with the services rendered taking into consideration the time, skill and administrator's expense involved. All such charges heretofore made are hereby validated;

L. For reasonable provisions permitting a single division of a lot or parcel for the purpose of sale or gift to a member of the immediate family of the property owner in accordance with the provisions of § 15.2-2244; and

M. For the periodic partial and final complete release of any bond, escrow, letter of credit, or other performance guarantee required by the governing body under this section in accordance with the provisions of § 15.2-2245.

Therefore, be it ordained by the Town Council of Cape Charles, Virginia, that the following regulations are hereby adopted for the subdivision of land within the jurisdiction of the Town of Cape Charles from and after the effective date of this ordinance. Every owner or proprietor of any tract of land to which these regulations apply who subdivides such tract as provided in these regulations shall cause a plat of such subdivision developed and prepared in accordance with these regulations, with reference to known or permanent monuments, to be made and recorded in the office of the clerk of the court wherein deeds conveying such land are required by law to be recorded.

Section 1 Purpose, Title, and Interpretation

A. Purpose. The purpose of this ordinance is to establish subdivision standards and procedures for the Town of Cape Charles, Virginia, as provided for by the 1950 Code of Virginia, as amended. These are part of a long-range plan to guide and facilitate the orderly beneficial growth of the community and to promote the public health, safety, convenience, comfort, prosperity, and general welfare. More specifically, the purposes of these standards and procedures are to provide a guide for the change that occurs when lands and acreage become urban in character as a result of development for residential, business, or industrial purposes; to provide assurance that the purchasers of lots are buying a commodity that is suitable for development and use; and to make possible the provision of public services in a safe, adequate, and efficient manner. Subdivided land sooner or later becomes a public responsibility in that roads and streets must be maintained and numerous public services customary to urban areas must be provided. This ordinance assists the community in meeting these responsibilities.

B. Title. This ordinance is known and may be cited as the "Subdivision Ordinance of the Town of Cape Charles, Virginia."

C. Interpretation
   1. The standards and procedures contained herein are declared to be the minimum requirements for the promotion of the public safety, health, convenience, comfort, prosperity, and general welfare.
   2. This ordinance is not intended to interfere with, abrogate, or annul any easement, covenant, restriction, or any other agreement between parties provided, however, that where this ordinance imposes a greater restriction upon the use of buildings or land or imposes additional standards or requires additional improvements or larger open spaces than are imposed or required by other restrictions, ordinances, rules, regulation, or by easements, covenants or agreements, the provisions of this ordinance shall govern.
   3. Nothing in this ordinance to the contrary withstanding, where there is or appears to be conflict between the provisions of this ordinance and the zoning ordinance of the Town of Cape Charles, then the provisions of the zoning ordinance shall govern.

Section 2 Definitions

Words and Terms. For the purpose of this ordinance, certain words and terms used herein shall be interpreted or defined as follows: Words used in the present tense include the future, words in the singular number include the plural, and the plural the singular, unless the natural construction of the word indicates otherwise; the word **LOT** includes the word **PARCEL**; the

word **SHALL** is mandatory and not directly; the word **APPROVED** shall be considered to be followed by the words OR **DISAPPROVED**; any reference to this ordinance includes all ordinance amending or supplementing the same; all distances and areas refer to measurement in a horizontal plane.

ADMINISTRATOR is the representative of the Town Council who has been appointed to serve as the agent of the Council in approving the subdivision plats.

BUILDING SETBACK LINE means a line showing the minimum distance by which any structure (exclusive of signs) must be separated from the front lot line of a lot or from the center line of the surveyed right-of-way on which the lot fronts.

COMMISSION means the Planning Commission of Cape Charles, Virginia.

CUL-DE-SAC means a street with only one outlet and having an appropriate turn-around for a safe and convenient reverse traffic movement.

DEVELOPER is an owner of property being subdivided whether or not represented by an agent.

EASEMENT means a grant running with the land by a property owner of the use of land for a specific purpose or purposes.

ENGINEER is an engineer licensed by the Commonwealth of Virginia.

GOVERNING BODY means the Town Council of the Town of Cape Charles, Virginia.

HEALTH OFFICIAL is the health director serving the Town of Cape Charles, Virginia, or his deputy.

HIGHWAY ENGINEER is the resident engineer serving the Town of Cape Charles of the Department of Highways and Transportation or his deputy.

JURISDICTION means the area or territory subject to the legislative control of the governing body.

LOT means a parcel of land occupied by a main structure or to be occupied by a main structure or group of main structures and accessory structures, together with such yards, open space, and lot areas as are required by this ordinance, and having frontage upon a street, either shown on a plat of record or considered as a unit of property and described by metes and bounds.

LOT, CORNER means a lot abutting upon two or more streets at their intersection; the shortest side fronting upon a street shall be considered the front of the lot, and the longest side fronting upon a street shall be considered the side of the lot.

LOT, DEPTH OF is the mean horizontal distance between the front and rear lot lines.

LOT, DOUBLE FRONTAGE is an interior lot having frontage on two streets.

LOT, FLAG means a lot having the same area as other lots but with a reduced frontage on an existing street with such frontage being not less than twenty feet to allow for driveway and utilities lines.

LOT, INTERIOR is a lot other than a corner lot.

LOT OF RECORD is a lot which has been recorded in the office of the clerk of the appropriate court.

LOT, WIDTH OF is the mean horizontal distance between the side lot lines.

PERSON means an individual, a partnership, a corporation, or any other legal entity by whatever term customarily known.

PLAT includes the terms map, plan, plot, re-plat, or re-plot; a map or plan of a tract or parcel of land which is to be or which has been subdivided. When used as a verb, PLAT is synonymous with SUBDIVIDE.

RESUBDIVIDE means to make any change in any dimension of any lot as shown on a recorded plat except in the case of a plat recorded for the purpose of a security release to a lending agency.

PROPERTY is any tract, lot, parcel, or several of the same collected together for the purpose of subdividing.

STREET means highway, street, avenue, boulevard, road, lane, alley, or any public way.

STREET, PUBLIC USE OF means the unrestricted use of a specified area or right-of-way for ingress and egress to two or more abutting properties.

STREET, MAJOR means any existing or future street or any heavily traveled thoroughfare or highway that carries a large volume of through traffic or anticipated traffic exceeding 500 vehicles per day.

STREET, MINOR means a street that is used primarily as a means of public access to the abutting properties with anticipated traffic of less than 500 vehicles per day.

STREET, SERVICE DRIVE is a public right-of-way generally parallel and contiguous to a major highway, primarily designated to promote safety by eliminating promiscuous ingress and egress to the right-of-way by providing safe and orderly points of access to the highway.

STREET WIDTH is the total width of the strip of land dedicated or reserved for public travel including roadway, curbs, gutters, sidewalks, and planting strips.

SUBDIVISION unless otherwise defined in an ordinance adopted pursuant to § 15.2-2240, means the division of a parcel of land into three or more lots or parcels of less than five acres

each for the purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided and solely for the purpose of recordation of any single division of land into two lots or parcels, a plat of such division shall be submitted for approval in accordance with § 15.2-2258. Nothing in this definition, section, nor any ordinance adopted pursuant to § 15.2-2240 shall preclude different owners of adjacent parcels from entering into a valid and enforceable boundary line agreement with one another so long as such agreement is only used to resolve a bona fide property line dispute, the boundary adjustment does not move by more than 250 feet from the center of the current platted line or alter either parcel's resultant acreage by more than five percent of the smaller parcel size, and such agreement does not create an additional lot, alter the existing boundary lines of localities, result in greater street frontage, or interfere with a recorded easement, and such agreement shall not result in any nonconformity with local ordinances and health department regulations. Notice shall be provided to the zoning administrator of the locality in which the parcels are located for review. For any property affected by this definition, any division of land subject to a partition suit by virtue of order or decree by a court of competent jurisdiction shall take precedence over the requirements of Article 6 (§ 15.2-2240 et seq.) and the minimum lot area, width, or frontage requirements in the zoning ordinance so long as the lot or parcel resulting from such order or decree does not vary from minimum lot area, width, or frontage requirements by more than 20 percent. A copy of the final decree shall be provided to the zoning administrator of the locality in which the property is located.

The word **SUBDIVIDE** and any derivative thereof shall have reference to the term **SUBDIVIDER** as defined for **SUBDIVIDER.**

SUBDIVIDER is an individual, corporation, or registered partnership owning any tract, lot, or parcel of land to be subdivided or a group of two or more persons owning any tract, lot, or parcel of land to be subdivided, who have given their power of attorney to one of their group or to another individual to act on their behalf in planning, negotiating for in representing, or executing the legal requirements of the subdivision.

SURVEYOR means a certified land surveyor as licensed by the State of Virginia.

ZONING ORDINANCE is the Zoning Ordinance of the Town of Cape Charles, Virginia.

Section 3 Administration

Section 3.1 Administrator

The agent appointed by the governing body is hereby delegated to administer this ordinance. In so doing, the agent shall be considered the agent of the governing body, and approval or disapproval by the agent shall constitute approval or disapproval as though it were given by the governing body. The agent may also consult with the Planning Commission on matters contained herein.

Section 3.2 Duties

The agent shall perform his duties regarding subdivisions and subdividing in accordance with this ordinance and the Land Subdivision and Development Act.

Section 3.3 To Consult
In the performance of his duties the agent may call for opinions or decisions, either verbal or written, from other departments in considering details of any submitted plat. This authority of the agent shall have particular reference to the resident highway engineer and the health officer.

Section 3.4 Additional Authority
In addition to the regulations herein contained for the platting of subdivisions, the agent may, from time to time, establish any additional reasonable administrative procedures deemed necessary for the proper administration of this ordinance, including the administrative approval of recombination of four or fewer plats of land.

Section 4 Procedure for Making and Recording Plats

Section 4.1 Platting Required
Any owner or developer of any tract of land situated within the Town of Cape Charles who subdivides the same shall cause a plat of such subdivision, with reference to known or permanent monuments, to be made and recorded in the office of the clerk of the appropriate court. No such plat of subdivision shall be recorded unless and until it shall have been submitted, approved, and certified by the agent in accordance with the regulations set forth in this ordinance. No lot shall be sold in any such subdivision before the plat shall have been recorded.

In the event a plan for subdivision is disapproved by the agent, the sub-divider may appeal to the governing body which may then override the recommendation of the agent and approve said plat.

Section 4.2 Draw and Certify
Every such plat shall be prepared by a surveyor or engineer duly licensed by the State of Virginia, who shall endorse upon each plat a certificate signed by him setting forth the source of the title of the land subdivided and the place of record of the last instrument in the chain of title. When the plat is of land acquired from more than one source of title, the outlines of the several tracts shall be indicated upon such plat within an inset block or by means of a dotted boundary line upon the plat.

Section 4.3 Owner's Statement
Every such plat, or the deed of dedication to which such plat is attached, shall contain in addition to the surveyor's or engineer's certificate a statement to the effect that "the above and foregoing subdivision of (here insert correct description of the land subdivided) as appears in the plat is with the free consent and in accordance with the desire of the undersigned owners, proprietors, and trustees, if any," which shall be signed by the owners, proprietors, and trustees, and shall be duly acknowledged before some officer authorized to take acknowledgment of deeds and, when thus executed and approved as herein specified, shall be filed and recorded in the office of the clerk of the appropriate court and indexed under the names of the land owners signing such statements and under the name of the subdivision.

Section 4.4 No One Exempt

No person shall subdivide any tract of land that is located within the Town except in conformity with the provision of this ordinance.

Section 4.5 Necessary Changes
No changes, erasures, or revision shall be made on any preliminary or final plat nor on accompanying data sheets after approval of the agent has been endorsed in writing on the plat or sheets unless authorization for such changes has been granted in writing by the agent.

Section 4.6 Fees
All fees shall be governed as set forth by the Town Council of the Town of Cape Charles.

Section 4.7 Vacating Plat
Any plat of record may be vacated in accordance with the provisions of § 15.2-2278 of the Code of Virginia.

Section 5 General Regulations

Section 5.1 Mutual Responsibility
There is a mutual responsibility between the sub-divider and the Town of Cape Charles to divide the land so as to improve the general use pattern of the land being subdivided.

Redevelopment of any office, commercial, industrial, duplex or multi-family site, or single-family site consisting of more than three lots not currently served by water quality or best management practices shall achieve at least a 10 percent reduction in non-point source pollution and run-off compared to the pre-existing run-off load from the site.

Section 5.2 Land Must Be Suitable
The agent shall not approve the subdivision of land if, from adequate investigations conducted by all public agencies concerned, it has been determined that in the best interest of the public the site is not suitable for platting and development purposes of the kind proposed. In this connection the agent may require the sub-divider to furnish topographical maps, elevations, flood profiles, or other relevant data.

Section 5.3 Flooding
Land subject to flooding and land deemed to be topographically unsuitable may be platted for residential occupancy, subject to the approval of the administrator and Town Council. Such land within the subdivision subject to severe flooding shall be set aside on the plat for such uses as shall not be endangered by periodic or occasional inundation or shall not produce conditions contrary to public welfare.

Section 5.4 Improvements
All required improvements shall be installed by the sub-divider at his cost. In cases where specifications have been established either by the Virginia Department of Highways and Transportation for streets, curbs, etc., or by the Virginia Department of Health, or by local ordinances and codes, such specifications shall be followed. The sub- divider's bond shall not be released until construction has been inspected and approved by the appropriate engineer. All improvements shall be in accordance with the following requirements.

Section 5.4.1 Streets
All streets in the proposed subdivision shall be designed and constructed in accordance with the following minimum requirements by the sub-divider at no cost to the locality.

Section 5.4.1 Alignment and Layout
The arrangement of streets in new subdivisions shall make provision for the continuation of existing streets in adjoining areas. The street arrangement must be such as to cause no unnecessary hardship to owners of adjoining property when they plat their own land and seek to provide for convenient access to it. Where, in the opinion of the agent, it is desirable to provide for street access to adjoining property, proposed streets shall be extended by dedication to the boundary line of such property. Half streets along the boundary of land proposed for subdivision may not be permitted. Wherever possible, streets should intersect at right angles. Offset and jogs shall be avoided.

Section 5.4.1.2 Access and Circulation
Streets, drives, parking, and service areas shall provide immediate, safe and convenient access and circulation for dwelling units and project facilities and for service and emergency vehicles including fire fighting equipment and snow removal. Streets shall not be laid out so as to encourage outside traffic to traverse the development on minor streets, or to create unnecessary fragmentation of the development into small blocks.
Vehicular access to other streets or portions of streets from off-street parking and service areas shall be so combined, limited, located, designed, and controlled as to channel traffic from and to such areas conveniently, safely, and in a manner which minimizes marginal traffic friction and promotes free traffic flow on streets without excessive interruption.

Section 5.4.1.3 Service Drives
Whenever a proposed subdivision contains or is adjacent to a state primary highway, provision shall be made for a service drive or marginal street approximately parallel to such right-of-way at a distance suitable for an appropriate use of the land between such highway and the proposed subdivision. Such distances shall be determined with due consideration of the minimum distance required for ingress and egress to the main thoroughfare. The right-of-way of any major highway or street projected across any railroad, limited access highway, or expressway shall be of adequate width to provide for the cuts or fills required for any future separation of grades.

Section 5.4.1.4 Approach Angle
Major streets shall approach major or minor streets at an angle of not less than 80 degrees unless the agent, upon recommendation of the highway engineer, shall approve a lesser angle of approach for reasons of contour, terrain, or matching of existing development patterns.

Section 5.4.1.5 Minimum Widths
The minimum width of proposed streets, measured from lot line to lot line, shall be specified by the Virginia Department of Highways and Transportation for acceptance in the State Secondary Road System but not less than 50 feet.

Section 5.4.1.6 Street Width
When lots in a subdivision abut on one side of any street which has been included in the State Secondary Road System, the sub-divider shall be required to dedicate enough land so that one-

half the width of such street, as measured from the center line to the subdivision property line, shall be 25 feet or one-half the standard width of such highway, whichever is greater, but he shall not be responsible for grading or surfacing said existing street or highway.

Section 5.4.1.7 Street Construction
Streets shall be constructed in compliance with the requirements of the Virginia Department of Highways and Transportation.

Where required by the highway engineer, a drainage system shall be provided for by means of culverts, ditches, catch basins, and any other facilities that are necessary to provide adequate drainage and disposal of surface and storm waters from or across all streets and adjoining properties. Curb and gutter and sidewalks shall be required for all new subdivisions in accordance with standard specifications for the Town of Cape Charles.

Street signs shall be installed at all street intersections in any subdivision by the sub- divider. The grades of streets submitted on subdivision plats shall be approved by the agent upon recommendation of the highway engineer prior to final action by the agent.

Section 5.4.1.8 Cul-de-sac
Generally, minor terminal streets (cul-de-sacs), designed to have one end permanently closed, shall be no longer than 400 feet to the beginning of the turn-around. Each cul- de-sac must be terminated by a turn-around of not less than 100 feet in diameter.

Section 5.4.1.9 Private Streets and Reserve Strips
There shall be no private streets platted in any subdivision. Every subdivision property shall be serviced from a publicly dedicated street. There shall be no reserve strip controlling access to streets.

Section 5.4.1.10 Names
Proposed streets which are obviously in alignment with other already existing and named streets shall bear the names of the existing streets. In no case shall the names of proposed streets duplicate existing street names irrespective of the use of the suffix street, avenue, boulevard, drive, way, place, lane, or court. Street names shall be indicated on the preliminary and final plats and shall be approved by the agent. Names of existing streets shall not be changed except by approval of the governing body.

Section 5.4.1.11 Identification Signs
Street identification signs of a design approved by the agent shall be installed at all intersections readable from either side.

Section 5.4.2 Monuments
As required by this ordinance, all monuments must be installed by the sub-divider and shall meet the minimum specifications. Upon completion of subdivision streets, sewers, and other improvements, the sub-divider shall make certain that all monuments required by the agent are clearly visible for inspection and use. Such monuments shall be inspected and approved by the agent before any improvements are accepted by the governing body.

Section 5.4.2.1 Location - Concrete

Concrete monuments four inches in diameter or square, three feet long, with a flat top, shall be set at all street corners, at all points where the street line intersects the exterior boundaries of the subdivision, and at right angle points, and points of curve in each street. The top of the monument shall have an appropriate mark to identify properly the location and shall be set six inches above finished grade.

Section 5.4.2.2 Location - Iron Pipe
All other lot corners shall be marked with iron pipe not less than 3/4 inch in diameter and 24 inches long and driven so as to be flush with the finished grade.

Section 5.4.3 Water Facilities
Public water connections shall be extended from the designated main to all lots within a subdivision and all fire hydrants by the sub-divider in accordance with the design standards and specifications for water construction and improvement in Cape Charles, Virginia, and meeting the approval of the agent. Individual wells will not be permitted.

Section 5.4.4 Sewerage Facilities
Public sewer connections shall be extended from the designated main to all lots within a subdivision. Septic tanks will not be permitted. Every subdivision shall be provided by the sub-divider with a satisfactory and sanitary means of sewage collection and disposal in accordance with the design standards and specifications for sewerage construction and improvements in the Town of Cape Charles, Virginia, and meeting the approval of the agent.

Section 5.4.5 Storm Drainage Facilities
The sub-divider shall provide all necessary information needed to determine what improvements are necessary to properly develop the subject property including contour intervals, drainage plans, and flood control devices. The sub-divider shall also provide plans for all such improvements together with a properly qualified certified engineer's or surveyor's statement that such improvements when properly installed will be adequate for proper development. The highway engineer shall then approve or disapprove the plans. The sub-divider shall also provide any other information required by the highway engineer.

Section 5.4.6 Street Lights
Installation of street lights shall be required in accordance with design and specification standards approved by the administrator as deemed appropriate.

Section 5.4.7 Fire Protection
Adequate fire hydrants in a subdivision at locations approved by the agent shall be required. The location of the fire hydrants shall meet the National Board of Fire Underwriters specifications.

Section 5.4.8 Easements
The agent shall require that easements for drainage through adjoining property be provided by the sub-divider. Easements of not less than 12 feet in width shall be provided for water, sewer, power lines, and other utilities in the subdivision when required by the agent. A larger easement width may be required if determined by the agent.

Section 5.4.9 Bond

The sub-divider shall furnish a cash bond or equivalent, a surety bond of a surety company, or a certified check payable to the Treasurer of the Town of Cape Charles in an amount equal to the total cost as determined by the agent of such improvements so as to guarantee they will be installed within a designated reasonable length of time in a manner acceptable to the agent. Said bond or check shall accompany the final plat when it is submitted to the agent. In the absence of a performance bond or check, no final plat shall be approved or recorded until the required improvements have been installed and approved by the agent.

Section 5.4.10 Plans and Specifications
Five blue or black line prints of the plans and specifications for all required physical improvements to be installed shall be prepared by an engineer and shall be submitted to the agent for approval or disapproval within 45 days. If approved, one copy bearing certification of such approval shall be returned to the sub-divider. If disapproved, all papers shall be returned to the sub-divider with the reason for disapproval in writing. In the event no action is taken in 45 days, such subdivision shall be deemed approved.

Section 5.5 Lots
Lots shall be arranged in order that the following considerations are satisfied.

Section 5.5.1 Shape
The lot arrangement, design, and shape shall be such that lots will provide satisfactory and desirable sites for buildings, be properly related to topography, and conform to requirements of this ordinance. Lots shall not contain peculiarly shaped elongations solely to provide necessary square footage of area which would be unusable for normal purposes.

Section 5.5.2 Location
Each lot shall abut on a street dedicated by the subdivision plat or on an existing publicly dedicated street or on a street which has become public by right of use. If the existing streets are not 50 feet in width, the sub-divider shall make provisions in the deeds to the lots for all buildings to be so constructed as to permit the widening by dedication of such roads or streets to a width of 50 feet.

Section 5.5.3 Corner Lots
Corner lots shall have extra width sufficient for maintenance of any required lines on both streets as determined by the agent.

Section 5.5.4 Side Lines
Side lines of lots shall be approximately at right angles or radial to the street line.

Section 5.5.5 Remnants
All remnants of lots below minimum size left over after subdividing of a tract must be added to adjacent lots or otherwise disposed of rather than allowed to remain as unusable parcels.

Section 5.5.6 Separate Ownership
Where the land covered by a subdivision includes two or more parcels in separate ownership and lot arrangement is such that a property ownership line divides one or more lots, the land in each lot so divided shall be transferred by deed to single ownership, simultaneously with the

recording of the final plat. Said deed is to be deposited with the clerk of the court and held with the final plat until the sub-divider is ready to record same, and they both shall then be recorded together.

Section 5.5.7 Business or Industrial
Lots intended for business or industrial use shall be designed specifically for such purposes with adequate space set aside for off-street parking and delivery facilities.

Section 5.6 Blocks
Where created by the subdivision of land, all new blocks shall respect viewsheds and shall comply with the following requirements.

Section 5.6.1 Length
Generally, the maximum length shall be six hundred (600) feet, and the minimum length of blocks upon which lots have frontage shall be five hundred (500) feet. Block lengths along the south side of Mason Avenue shall align with the blocks on the north side of Mason Avenue.

Section 5.6.2 Width
Blocks shall be wide enough to allow two tiers of lots of minimum depth, except where fronting on major streets, unless prevented by topographical conditions or size of the property, in which case the agent may approve a single tier of lots of minimum depth.

Section 5.6.3 Orientation
Where a proposed subdivision will adjoin a major road, the agent may require that the greater dimension of the block shall front or back upon such major thoroughfare to avoid unnecessary ingress or egress.

Section 5.7 Dedication of Land
Where the size of the subdivision warrants, the sub-divider shall dedicate to the Town of Cape Charles such reasonable amount of land for parking lots, parks, and playgrounds as determined necessary to protect the safety (fire and traffic hazards considered) and the general public welfare of the area. The size, location, and character of the land dedicated, if any, shall be determined by the agent after (a) consideration of the purpose of this ordinance, (b) consideration of any related objective approved by the Town Council, and (c) consideration of the Town's officially adopted Comprehensive Plan.

Section 6 Approval of Plats

Section 6.1 Approval Required Before Sale
Whenever any subdivision of land is proposed and before any permit for the erection of a structure shall be granted, the sub-divider or his agent shall apply in writing to the agent for the approval of the subdivision plat. No lot shall be sold until a final plat for the subdivision shall have been approved and recorded in the following manner.

Section 6.2 Preliminary Sketch
The sub-divider may, if he so chooses, submit to the agent a preliminary sketch of the proposed subdivision prior to his preparing engineered preliminary and final plats. The purpose of such preliminary sketch is to permit the agent to advise the sub-divider whether his plans in general

are in accordance with the requirements of this ordinance. The agent, upon submission of any preliminary sketch, shall study it and advise the sub- divider wherein it appears that changes would be necessary. The agent may mark the preliminary sketch indicating necessary changes, and any such marked sketch shall be returned to the commission with the preliminary plat. The preliminary sketch shall be as follows.

Section 6.2.1 Specifications, Contents
It shall be drawn on white paper or on a print of a topographic map of the property. It shall be drawn to a scale of 100 feet to the inch. It shall show the name, location of all proposed streets, lots, parks, playgrounds, and other proposed uses of the land to be subdivided and shall include the approximate dimensions.

Section 6.2.2 Part of Tract
Whenever part of a tract is proposed for platting and it is intended to subdivide additional parts in the future, a sketch plan for the entire tract shall be submitted with the preliminary plat. This sketch is merely for informational purposes and is not binding on the sub-divider or the governing body.

Section 6.3 Preliminary Plat
The sub-divider shall present to the agent five prints of a preliminary layout at a scale of 100 feet to the inch as a preliminary plat. The preliminary plat shall include the following information:

Section 6.3.1
Name of subdivision (the name shall not duplicate nor too closely approximate that of any existing subdivision in this or neighboring counties), owner, sub-divider, surveyor, or engineer, date of drawing, number of streets, north point, and scale. If true north is used, method of determination must be shown.

Section 6.3.2
Location of proposed subdivision by an insert map at a scale of not less than two inches equal one mile showing adjoining roads, their names and number, towns, subdivisions, and other landmarks if any within 2,000 feet.

Section 6.3.3
The boundary survey or existing survey on record provided such survey shows a closure with an accuracy of not less than one in 2,500; total acreage, acreage of subdivided area, number and approximate area and frontage of all building sites, existing buildings within the boundaries of the tract, names of owners and their property lines within the boundaries of the tract and adjoining such boundaries.

Section 6.3.4
All existing, platted, and proposed streets, their names, numbers, and widths; existing utility or other easements, public areas, and parking spaces; culverts, drains, and water courses, their names and other pertinent data.

Section 6.3.5
The complete drainage layout, including all pipe sizes, types, drainage easements, and means

of transporting the drainage to a well-defined open stream which is considered natural drainage.

Section 6.3.6
A cross section showing the proposed street construction, depth, and type of base, type of surface, etc.

Section 6.3.7
A profile or contour map showing the proposed grades for the streets and drainage facilities including elevations of existing and proposed ground surface at all street intersections and at points of major grade change along the center line of streets together with proposed grade lines connecting therewith.

Section 6.3.8
Location of each proposed lot line showing dimensions.

Section 6.3.9
The proposed building setback lines shown as dotted lines, to scale with dimensions to front property or street center lines.

Section 6.3.10
Proposed block and lot numbers and the area of each lot.

Section 6.3.11
Proposed deed covenants, by reference to outlines of same which shall accompany the preliminary plat.

Section 6.3.12
A location map tying the subdivision into our present road system either by aerial photographs or topographic maps of the U.S. Department of Interior.

Section 6.3.13
Proposed connections with existing sanitary sewers and existing water supply or alternate means of sewage disposal and water supply.

Section 6.3.14
All parcels of land to be dedicated for public use and the condition of such dedication.

Section 6.4 Items to Accompany Preliminary Plat

Section 6.4.1
Items as described in the following paragraphs of this section shall accompany the preliminary plat at the time the latter is submitted to the agent or, in any event, no later than 12 days thereafter.

Section 6.4.2
Statement by the Health Official that the sub-divider has consulted with him with respect to the certificate which will be required before the final plat can be approved. State Health

Department's Subdivision Evaluation Procedures must be followed in order to receive Health Department approval.

Section 6.4.3
Statement by the sub-divider acknowledging that any percolation tests, topographic studies, or other requirements of the health official will be carried out at the expense of the sub-divider.

Section 6.4.4
If streets or parking areas are included in the subdivision, a statement by the highway engineer that the sub-divider has consulted with him as to the plans, specifications, and any special treatment which will be required in their construction, together with the drainage system which will be required.

Section 6.4.5
If it is proposed to dedicate or reserve land (other than for streets) for public use or for the common use of future property owners in the subdivision, a statement by the sub- divider to that effect, giving an outline of the terms proposed and the acreage involved.

Section 6.4.6
If town water or sewerage is to be provided, a certificate from the town officer. Said certificate may require that certain specifications be met as a condition to furnishing or operating town water or sewerage. (The agent shall transfer this certificate to the final plat when this is filed.)

Section 6.4.7
Statement by the sub-divider as to whether any part of the proposed subdivision lies within the area of applicability of any other effective subdivision ordinance.

Section 6.4.8
Outline of deed covenants, if any, pertaining to the subdivision.

Section 6.4.9
Check payable to the Town Treasurer to cover fees required.

Section 6.5 Procedure
The agent or his appointed representative shall discuss the preliminary plat with the sub-divider in order to determine whether or not his preliminary plat generally conforms to the requirements of the subdivision ordinance and of the zoning ordinance. The sub- divider shall then be advised in writing within 60 days, which may be by formal letter or by legible markings on his copy of the preliminary plat, concerning any additional data that may be required, the character and extent of public improvements that will have to be made, an estimate of the cost of construction of improvements, and the amount of the performance bond which will be required as a prerequisite to approval of the final subdivision plat.

In determining the cost of required improvements and the amount of the performance bond, the agent may consult with a duly licensed engineer who shall prepare this data for the agent or preferably may require a bona fide estimate of the cost of improvements to be furnished by

the sub-divider.

Section 6.6 No Guarantee
Approval by the agent of the preliminary plat does not constitute a guarantee of approval of the final plat.

Section 6.7 Six Months' Limit
The sub-divider shall have not more than six months after receiving official notification concerning the preliminary plat to file with the agent a final subdivision plat in accordance with this ordinance. Failure to do so shall make preliminary approval null and void. The agent may, on written request by the sub-divider, grant an extension of the time limit.

Section 6.8 Final Plat
The subdivision plat submitted for final approval by the governing body and subsequent recording shall be clearly and legibly drawn in ink upon tracing cloth at a scale of 100 feet to the inch on sheets having a size of 15 inches by 20 inches or size of plat book. In addition to the requirements of the preliminary plat, the final plat shall include the following:

Section 6.8.1
A blank oblong space three inches by five inches shall be reserved for the use of the approving authority.

Section 6.8.2
Certificates signed by surveyor or engineer setting forth the source of title of the owners of the land subdivided and the place of record of the last instrument in the chain of title.

Section 6.8.3
A statement to the effect that the subdivision as it appears on this plat is with the free consent and in accordance with the desires of the owners, proprietors, and trustees, if any, which shall be signed by the owners, proprietors, and trustees, if any, and shall be duly acknowledged before some officer authorized to take acknowledgments of deeds.

Section 6.8.4
When the subdivision consists of land acquired from more than one source of title, the outlines of the various tracts shall be indicated by dash-lines, and identification of the respective tracts shall be placed on the plat.

Section 6.8.5
The accurate location and dimensions by bearings and distances with all curve data on all lots and street lines and center lines of streets; boundaries of all proposed or existing easements, parks, school sites; all existing public and private streets, their names, numbers and widths; existing utilities and those to be provided such as sanitary sewers, storm drains, water mains, manholes and underground conduits including their size and type; water courses and their names; names of owners and their property lines both within the boundary of the subdivision and adjoining said boundaries.

Section 6.8.6
Distances and bearings must balance and close with an accuracy of not less than one in 10,000.

Section 6.8.7
The data of all curves along the street frontage shall be shown in detail on the curve data table containing the following: delta, radius, arc, tangent, chord, and chord bearings.

Section 6.9 Conditions
The plat shall not be approved until the sub-divider has complied with the general requirements and minimum standards of design in accordance with this ordinance, and has made satisfactory arrangements for performance bond, cash, or cash bond to cover the cost of necessary improvements, in lieu of construction, to the satisfaction of the agent. Approval of final plat shall be written on the face of the plat by the agent. The sub-divider shall record plat within six months after final approval; otherwise, agent shall mark plat "void" and return same to sub-divider.

Section 6.9.1
Within sixty days after recordation of the approved final plat, the sub-divider shall file a copy thereof in the office of the Northampton County Commissioner of Revenue pursuant to the Virginia Land Subdivision Act.

Section 6.9.2
Recordation of the final plat of a subdivision shall not be deemed to be the acceptance by the Town of any street or road or other public place shown on the plat for maintenance, repair, or operation thereof.

Section 7 Effectual Clauses

Section 7.1 Exception
Where the sub-divider can show that a provision of these standards in cases of unusual situations or when strict adherence to the general regulations would result in substantial injustice or unnecessary hardship, and where, because of topographical or other conditions peculiar to the site, in the opinion of the administrator, a departure may be made without destroying the intent of such provision, the administrator may authorize an exception. Any exception shall be authorized in writing and shall state the reasons why the exception was granted. If an applicant is aggrieved by the administrator's decision, he may appeal that decision to the Town Council. Appeals of the administrator's decision for purposes of the Subdivision Ordinance shall be to the Town Council and not the Board of Zoning Appeals (BZA). If an applicant is aggrieved by the decision of the Town Council, he may appeal that decision to the Northampton County Circuit Court as provided by law.
(Ord. of 7-14-92, 7-1)

Section 7.2 Penalties
Any owner or proprietor of any tract of land who subdivides that tract of land and who violates any of the provisions of this ordinance shall be guilty of a misdemeanor, punishable by a fine of not more than $500 for each lot or parcel of land so subdivided or transferred or sold; every day thereafter shall constitute a separate offense; and the description of such lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties or from the remedies herein provided.

The clerk of the Circuit Court of Northampton County shall not file or record a plat of a subdivision, under the penalties provided by Code of Virginia, 17-59, until such plat has been approved as required herein.

Section 7.3 Validity

Should any article, section, subsection or provision of this subdivision (ordinance) be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of this subdivision ordinance as a whole or any part thereof other than the part so declared to be invalid or unconstitutional.

Section 7.4 Repeal

Subject to Section 7.6 of this ordinance, all ordinances or portions of ordinances in conflict with this ordinance are hereby repealed to the extent of their conflict. (Ord. of 7-14-92, 7-4)

Section 7.5 Amendments

This ordinance may be amended in whole or in part by the Town Council of Cape Charles provided that any such amendment shall either originate with or be submitted to the Cape Charles Planning Commission for recommendation; and further provided that no such amendment shall be adopted without a public hearing having been held by the governing body. Notice of the time and place of the hearing shall have been given in accordance with § 15.2-2204 of the Code of Virginia.

Section 7.6 Interaction with Other Ordinances

The provisions of this Subdivision Ordinance may be modified by the terms of a PUD rezoning application filed pursuant to the provisions of the Cape Charles PUD Ordinance. (Ord. of 7-14-92, 7-6)

Section 8 Effective Date

This ordinance was duly considered following a required public hearing held on January 3, 1977, and was adopted by the Town Council of Cape Charles, Virginia, at its regular meeting held on January 11, 1977, the members voting:

Mary B. Bowen: Aye
Frank C. Fitzhugh: Aye
Thomas G. Godwin: Aye
J. Crawley Lewis: Aye
Clement Pruitt: Aye
Earl Scott, Jr.: Aye

This ordinance shall be effective on and after 12:01 a.m., January 11, 1977.

Amended by Town Council on July 11, 1995, and ratified and confirmed by Town Council on June 16, 1997.

Modifications to Section 2-Definitions approved by Town Council on February 9, 2012.

APPENDIX C - Site Plan Ordinance

Section 1 Purpose of Article

The purpose of these requirements is to provide for the orderly development of certain activities in the Town and to ensure that such activities are developed in a manner harmonious with surrounding properties and in the interest of the general public welfare. To achieve these ends and to assure compliance with all applicable requirements of this chapter, site plans for certain uses of land shall be submitted to and reviewed by the Zoning Administrator.

Section 2 Developments and Uses Requiring a Site Plan

All development which exceeds 2,500 square feet of land disturbance, including single- family residential development, shall submit either a plot plan or site plan prior to the initiation of the development process. Land-disturbing activities shall not include minor activities such as home gardening, individual home landscaping, and home maintenance, nor shall it include access or staging areas provided they do not result in land disturbance.

Any changes to an existing multi-family, commercial, and industrial use that increase the improved square footage by more than 100 square feet or as deemed necessary by the Zoning Administrator or increase the number of units within the previously approved site plan.

Churches, church schools, public and private schools, hospitals, nursing homes, and government offices.

Section 3 Procedures for Preparation

Site plans or any portion thereof involving engineering, architecture, landscape architecture, or land surveying shall be certified by an engineer, architect, or land surveyor authorized by the Commonwealth to practice as such.

Site plans shall be prepared to a scale of not more than one inch equals 100 feet (1" = 100') or other scale acceptable to the administrator.

A site plan may be prepared in one or more sheets to show clearly the information required by the Article and to facilitate the review and approval of the site plan. If prepared in more than one sheet, match lines shall clearly indicate where the several sheets join.

All horizontal dimensions shown on the site plan shall be in feet and decimal fractions to a foot to the closest one-hundredths of a foot (.00), and all bearings in degrees, minutes, and seconds to the nearest ten seconds.

Every site plan shall show the name and address of the owner or developer, the north point, the date, the scale of drawing, and the number of sheets. In addition, it shall reserve a blank space at least three inches wide and five inches for the approving authority.

Six copies of the site plan shall be submitted to the Zoning Administrator for administrative review.

Section 4 Required Information

A. Plot Plans. One copy of a plot plan, drawn to scale, for individual single-family dwellings or accessory structures for single-family residences or for commercial development which results in a land disturbance less than 5,000 square feet and which will result in an area of impervious surface of less than 16 percent of any lot or parcel shall be submitted to the Zoning Administrator for review and approval. Any encroachment into an RPA shall require an applicant to prepare a site plan as outlined in Subsection B below including the submission of a water quality impact assessment in accordance with Subsection 7.11 of the Chesapeake Bay Preservation Ordinance.

1. At a minimum, the plot plan shall be drawn to scale and contain the following information:
   a. a boundary survey of the site drawn to scale or site drawing showing the north arrow and property line boundaries and distances;
   b. area of the lot/parcel;
   c. location, dimension, and use of proposed and existing structures including marine and temporary structures. In the case of temporary structures, the date when the structures will be removed must be indicated;
   d. location of all building restriction lines, setbacks, easements, covenant restrictions, and rights-of-way;

Adopted December 2010

   e. dimensions and location of all existing driveways, parking areas, or other impervious surfaces;
   f. limits of clearing and grading;
   g. specifications for the protection of existing trees and vegetation during clearing, grading, and all phases of construction;
   h. location of Resource Protection Area (RPA) boundary, as specified in Subsection 7.4.A of the Chesapeake Bay Preservation Ordinance, including any additional required buffer areas and RPA maintenance and use restrictions; [revision adopted by Town Council 12/2010]
   i. location of all erosion and sediment control devices;
   j. amount of impervious surface proposed for the site.

B. A site plan shall be required for any single-family, residential, or commercial development which results in 5,000 square feet or more of land disturbance or for any multi-family or industrial development or for development specified in Subsections 2.B and 2.C or for any other development deemed necessary by the Zoning Administrator. All site plans shall contain the following information:

1. Location of the tract by an insert map at a scale of not less than one inch equals two thousand feet (1" = 2,000'), unless otherwise acceptable to the administrator, indicating the scale, the north arrow, and such information as the names and numbers of the adjoining roads, streams and bodies of water, railroads, subdivisions, or other landmarks sufficient to clearly identify the location of the property.
2. A boundary survey of the tract by bearings and distances certified by a licensed land surveyor.
3. Certificate signed by the surveyor or engineer setting forth the source of title of the owner of the tract and the place of record of the last instrument in the chain of title.
4. All existing property lines; existing streets and easements, their names, numbers,

and width; the location and sizes of existing sanitary and storm sewers, gas lines, water mains, culverts, and other utilities and their easements; existing buildings; existing watercourses, waterways, or lakes and their names; and other existing physical features in or adjoining the project.

5. Existing zoning and zoning district boundaries on the property in question and on immediately surrounding properties, including all Resource Protection Area and Resource Management Area boundaries, and present use of adjoining tracts.
6. Existing topography with a maximum of two-foot contour levels. Where existing ground is on a slope of less than two percent, either one-foot contours or spot elevations where necessary but not more than fifty feet apart in both directions.
7. The location, dimensions, and materials proposed for the construction of proposed streets, alleys, driveways, and the location, type, and size of vehicular entrance(s) to the site.
8. The location and amount (in square feet) of all existing and proposed impervious surface including but not limited to all off-street parking, loading spaces, and walkways. The type of surfacing, size, angle of stalls, width of aisles and a specific schedule showing the number of parking spaces provided should also be indicated.
9. All proposed water and sanitary sewer facilities indicating all pipe sizes, types, and grades and where connection is to be made to town or to other utility system; all proposed gas lines and other utilities and their easements.
10. The proposed location, general use, number of floors, height and floor area for each building, accessory and main, and where applicable, the number, size, and type of dwelling units.
11. Proposed finished grading by contours supplemented where necessary by spot elevations.
12. The location, sizes, types, and grades of ditches, catch basins, and pipes and connections to existing drainage system.
13. Provisions for the adequate control of erosion and sedimentation indicating the proposed temporary and permanent control practices and measures that will be implemented during all phases of clearing, grading, and construction.
14. Delineation of any floodplain limits.
15. Location, type, size, and height of fencing, retaining walls, and screen planting where required under the provisions of the chapter.
16. A landscape plan, drawn to scale, delineating dimensions and distances and the location, type, size, and description of all existing and proposed plant materials. Any required buffer area and all existing trees on site six inches or greater DBH shall be clearly shown on the landscape plan. Where there are groups of trees, stands may be outlined instead. Trees to be removed to create a desired construction footprint shall be clearly delineated on the plan. The landscape plan will include specifications for the protection of existing trees and buffer areas during clearing, grading, and all phases of construction.
17. The location and dimensions of proposed recreation, open space, and required amenities and improvements including details of disposition.
18. A storm water management plan to include maps, graphs, tables, narrative descriptions, and citations to support references as appropriate to communicate the information required by the Town Code. At a minimum, the storm water management plan shall contain: (a) location and design of all planned storm water control devices; (b) procedures for implementing non-structural storm water

control practices and techniques as applicable; (c) pre- and post-development non-point source pollutant loadings with supporting documentation of all utilized coefficients and calculations; and (d) for facilities, verification of structural soundness including a Professional Engineer or Class IIIB Surveyor Certification. All engineering calculations must be performed in accordance with procedures outlined in the current edition of the Local Assistance Manual, the Virginia Erosion and Sediment Control Handbook, or the Virginia Department of Transportation Drainage Manual.

C. All features and elements of the site plan required by this Article shall in all respects conform to all applicable provisions and standards of the Code of Virginia and this Code, including, but not limited to: The Cape Charles Comprehensive Zoning Ordinance, Subdivision Ordinance, Erosion and Sediment Control Ordinance, or any PUD zoning ordinance approved by Town Council.

Section 5 Procedure for Processing

A. All applicants for site plan review shall submit to the Zoning Administrator a site plan for the proposed development. The site plan review fee, as established by the Council, shall be paid at this time.

B. The Zoning Administrator shall review all site plans which are submitted to him pursuant hereto. The administrator shall check the site plan for general completeness and compliance with all applicable requirements. The administrator shall circulate the site plan to the relevant town departments, agencies, and officials for written comments as to the proposed development's conformance to all applicable standards and requirements and whether approval of the site plan is recommended.

C. Except under abnormal circumstances, within 45 days from the receipt of the site plan in his office, the Zoning Administrator shall approve, approve subject to conditions, or disapprove the site plan and notify the applicant in writing of the action taken. If the site plan is denied approval, the administrator, in notifying the applicant of the decision, shall set forth in detail the reasons for the denial, which shall be limited to any defect in form or required information, any violation of any provision or standard of this chapter or any other ordinance, or the inadequacy of any utility and shall state any changes which would make the site plan acceptable.

Section 6 Time for Obtaining Building Permit After Approval; Extension of Time

Approval of a site plan submitted under the provisions of this Article shall expire five years after the date of such approval unless building permits have been obtained for construction in accordance therewith. A single one-year extension may be given upon written request by the applicant to the Zoning Administrator and Town Manager made within ninety days before the expiration of the approved site plan. The Zoning Administrator and Town Manager shall acknowledge the request and shall make a decision regarding the requested extension within thirty days after receipt of the request.

Section 7 Revision of Site Plan; Waiver of Requirements of Article

The Zoning Administrator may approve minor revisions to an approved site plan, providing that Town requirements and specifications are not affected. Major revisions shall require that a new

site plan be drawn, and the review and approval process begun anew. Any revision to an approved site plan that does not change the proposed use and which exceeds the ordinance requirements of the previously approved plan shall be approved by the Zoning Administrator.

Section 8 Appeals

Any applicant aggrieved of any decision of the Zoning Administrator on a site plan review may, within ten days of such decision, appeal to the Town Council. The Town Council shall act upon such an appeal by the owner at its next regularly scheduled meeting. The applicant may appeal Town Council's decision to the Northampton County Circuit Court as provided by law.

Section 9 Building Permits to Comply with Site Plans

No permit shall be issued for any structure in an area covered by the site plan that is required under the provisions of this Article in conformity to such a plan which has been duly approved or revised as provided in Section 7.

Section 10 Agreement and Bond for Construction of Certain Improvements; Establishment of Fees for Examination and Issuance of Building Permits

A. Prior to the issuance of any building permits for which an approved site plan is required, there shall be executed by the owner, developer, or their contractor, an agreement to construct the agreed-upon physical improvements that are located within the public right-of-way or public easements in a form approved by the Town. Such agreements shall be in accordance with this ordinance and be accompanied by a letter of credit, escrow, or a bond with surety acceptable to the Town (hereinafter "security") in the amount of the estimated cost of the required physical improvements as determined by the town departments, divisions, or agencies responsible for such improvements.

B. Such security shall remain in force until the completion of the secured improvements within the public right-of-way or public easements shown on the approved site plan. Such security shall be partially and proportionally released within thirty days of receipt by the Town of written notice from the contractor certifying completion of a distinguishable part of the secured improvements. If the Town notifies the contractor in writing of any defects or deficiencies in the secured improvements within this 30-day period, then corrective measures must be taken by the contractor prior to any partial or complete release of the security.

C. Such security shall be with a firm or bank acceptable to the Town Manager which approval shall not be unreasonably withheld.

D. "Best Management Practices" imposed by these regulations that require regular or periodic maintenance in order to continue their function shall be regulated by a maintenance agreement submitted to the Town by the owner, developer, homeowner association, or other entity responsible for said BMPs and, where approved by the Town, shall run with the land and be binding upon the entity that assumes responsibility for said BMPs.

Section 11 Compliance with Approved Site Plan

A. Unless otherwise specifically provided in this chapter, the construction standards for all offsite improvements and site improvements required by this Article shall comply with approved site plan.

B. Inspections during the installation of the offsite improvements and required onsite improvements shall be made by the department responsible for such improvements as are required to certify compliance with the approved site plan.

C. The owner shall notify the Town Manager in writing three days prior to the beginning of all street or storm sewer work shown to be constructed on the site plan.

D. The owner or owner's contractor shall provide adequate supervision on the site during the installation of all required improvements within the public right-of-way or public easements and have a responsible superintendent or foreman, together with one set of approved plans, profiles, and specifications, available at the site at all times when work is being performed.

E. Upon satisfactory completion of the installation of the required improvements, the owner shall receive a certificate of approval from the Zoning Administrator. The Town Manager will authorize the release of any bond which may have been furnished for the guarantee of satisfactory installation of such improvements or parts thereof upon notice by the Zoning Administrator that the improvements have been satisfactorily completed.

F. The installation of improvements as required in this Article shall in no case serve to bind the Town except such improvements for the maintenance, repair, or operation thereof, but such acceptance shall be subject to the existing regulations concerning the acceptance of each type of improvement. Upon acceptance, the Town shall assume all ownership, maintenance, and repair obligations of the dedicated improvements.

Section 12 Occupancy Certificates

A final occupancy permit may be issued for any appropriately completed building or part of building located in a part of the total area of an approved site plan, such part of the total area to be known as a section provided that:

A. The other onsite construction and improvements included in the approved site plan for the section have been completed and have been inspected and accepted by the Zoning Administrator, the Town Manager, and the county health officer or their agents.

B. The offsite improvements related to and necessary to service the section has been completed, inspected, and accepted by the Town Manager or his agents, or the developer has provided surety acceptable to the Town.

This ordinance was adopted by the Town Council of Cape Charles, Virginia, on July 14, 1992, amended July 11, 1995, and ratified and confirmed on June 16, 1997.

Section 4.A, Item 1.h. was amended and adopted by the Town Council of Cape Charles, Virginia on December 9, 2010.

APPENDIX D - Cape Charles/Coastal Primary Sand Dune Zoning Ordinance

Section 1 Authorization

The governing body of the Town of Cape Charles, acting pursuant to § 28.2-1403 of the Code of Virginia, adopts this ordinance regulating the use and development of coastal primary sand dunes. Whenever coastal primary sand dunes are referred to in this ordinance, such references shall also include beaches.

Section 2 Definitions

As used in this ordinance, unless the context requires a different meaning:

BEACH means the shoreline zone comprised of unconsolidated sandy material upon which there is a mutual interaction of the forces of erosion, sediment transport and deposition that extends from the low water line landward to where there is a marked change in either material composition of physiographic form such as a dune, bluff, or marsh, or where no such change can be identified, to the line of woody vegetation (usually the effective limit of storm waves), or the nearest impermeable manmade structure, such as a bulkhead, revetment, or paved road.

COASTAL PRIMARY SAND DUNE or **DUNE** means a mound of unconsolidated sandy soil which is contiguous to mean high water, whose landward and lateral limits are marked by a change in grade from ten percent or greater to less than ten percent, and upon which is growing any of the following species: American beach grass (Ammophilla breviligualata); beach heater (Hudsonia tometosa); dune bean (Strophostylis spp.); dusty miller (Artemisia stelleriana); saltmeadow hay (Spartina patens); seabeach sandwort (Arenaria peploides); sea oats (Uniola paniculata); sea rocket (Caiile edentula); seaside goldenrod (Solidago sempervirens); and short dune grass (Panicum ararum). For purposes of this ordinance, COASTAL PRIMARY SAND DUNE shall not include any mound of sand, sandy soil, or dredge spoil deposited by any person for the purpose of temporary storage.

COMMISSION means the Virginia Marine Resources Commission.

COMMISSIONER means the Commissioner of Marine Resources.

COUNTY, CITY, AND TOWN means the governing body of the county, city, and town.

GOVERNMENTAL ACTIVITY means any of the services provided by the Commonwealth or a county, city, or town to its citizens for the purpose of maintaining public facilities, including but not limited to, such services as constructing, repairing, and maintaining roads; providing street lights and sewage facilities; supplying and treating water; and constructing public buildings.

WETLANDS BOARD or **BOARD** means the board created pursuant to § 28.2-1303 of the Code of Virginia.

Section 3 Uses and Activities

The following uses of and activities in dunes are authorized if otherwise permitted by law:

A. the construction and maintenance of noncommercial walkways which do not alter the

contour of the coastal primary sand dune;

B. the construction and maintenance of observation platforms which are not an integral part of any dwelling and which do not alter the contour of the coastal primary sand dune;

C. the planting of beach grasses or other vegetation for the purpose of stabilizing coastal primary sand dunes;

D. the placement of sand fences or other material on or adjacent to coastal primary sand dunes for the purpose of stabilizing such features, except that this provision shall not be interpreted to authorize the placement of any material which represents a public health or safety hazard;

E. sand replenishment activities of any private or public concern, provided no sand shall be removed from any coastal primary sand dune unless authorized by lawful permit;

F. the normal maintenance of any groin, jetty, riprap, bulkhead, or other structure designed to control beach erosion which may abut a coastal primary sand dune;

G. the normal maintenance or repair of existing roads, highways, railroad beds, and facilities of the United States, this Commonwealth or any of its counties, cities, or towns, or of any person provided no coastal primary sand dunes are altered;

H. outdoor recreational activities provided the activities do not alter the natural contour of the coastal primary sand dune or destroy the vegetation growing thereon;

I. the conservation and research activities of the Commission, Virginia Institute of Marine Science, Department of Game and Inland Fisheries, and other conservation-related agencies;

J. the construction and maintenance of aids to navigation which are authorized by governmental authority;

K. activities pursuant to any emergency declaration by the governing body of any local government or the Governor of the Commonwealth or any public health officer for the purposes of protecting the public health and safety; and

L. governmental activity in coastal primary sand dunes owned or leased by the Commonwealth or a political subdivision thereof.

Section 4 Use Regulations

A. Any person who desires to use or alter any coastal primary sand dune within this Town, other than for the purpose of conducting the activities specified in Section 3 of this ordinance, shall first file an application directly with the Wetlands Board or with the Commission.

B. The permit application shall include the following: the name and address of the applicant; a detailed description of the proposed activities and a map, drawn to an appropriate and

uniform scale, showing the area of dunes directly affected, the location of the proposed work thereon, the area of any proposed fill and excavation, the location, width, depth, and length of any disposal area, and the location of all existing and proposed structures, sewage collection and treatment facilities, utility installations, roadways, and other related appurtenances or facilities, including those on adjacent uplands; a description of the type of equipment to be used and the means of equipment access to the activity site; the names and addresses of owners of record of adjacent land; an estimate of cost; the primary purpose of the project; any secondary purposes of the project, including further projects; the public benefit to be derived from the proposed project; a complete description of measures to be taken during and after the alteration to reduce detrimental offsite effects; the completion date of the proposed work, project, or structure; and such additional materials and documentation as the Wetlands Board may require.

C. A non-refundable processing fee shall accompany each permit application. The fee shall be set by the applicable governing body with due regard for the services to be rendered, including the time, skill, and administrator's expense. No person shall be required to file two separate applications for permits if the proposed project will require permits under this ordinance and Chapter 14 of Title 28.2 (§ 28.2-1400 et seq.) of the Code of Virginia. Under those circumstances, the fee shall be established pursuant to this ordinance.

Section 5 Public Inspection

All applications, maps, and documents submitted shall be open for public inspection at the office of the recording secretary of the Town of Cape Charles.

Section 6 Public Hearing Requirements

Not later than 60 days after receipt of a complete application, the Wetlands Board shall hold a public hearing on the application. The applicant, local governing body, Commissioner, owner of record of any land adjacent to the coastal primary sand dunes in question, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, the State Water Control Board, the Department of Transportation, and any governmental agency expressing an interest in the application shall be notified of the hearing. The board shall mail these notices not less than 20 days prior to the date set for the hearing. The Wetlands Board shall also cause notice of the hearing to be published at least once a week for two weeks prior to such hearing in a newspaper of general circulation in the Town of Cape Charles. The costs of publication shall be paid by the applicant.

Section 7 Permit Procedure

A. Approval of a permit application shall require the affirmative vote of three members of a five-member board or four members of a seven-member board.

B. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. Any person may appear and be heard at the public hearing. Each witness at the hearing may submit a concise written statement of his testimony. The board shall make a record of the proceedings, which shall include the application, any written statements of witnesses, a summary of statements of all witnesses, the findings and decision of the board, and the rationale for the decision.

C. The board shall make its determination within 30 days of the hearing. If the board fails

to act within that time, the application shall be deemed approved. Within 48 hours of its determination, the board shall notify the applicant and the Commissioner of its determination. If the board fails to make a determination with the 30-day period, it shall promptly notify the applicant and the Commission that the application is deemed approved.

D. If the board's decision is reviewed or appealed, the board shall transmit the record of its hearing to the Commissioner. Upon a final determination by the Commission, the record shall be returned to the board. The record shall be open for public inspection at the office of the recording officer of the Town of Cape Charles.

Section 8 Bond

The board may require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it, securing to the Commonwealth compliance with the conditions and limitations set forth in the permit. The board may, after a hearing held pursuant to this ordinance, suspend or revoke a permit if the applicant has failed to comply with any of the conditions or limitations set forth in the permit or has exceeded the scope of the work described in the application. The board may, after a hearing, suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application.

Section 9 Preservation

In fulfilling its responsibilities under this ordinance, the board shall preserve and protect coastal primary sand dunes and beaches and prevent their despoliation and destruction. However, whenever practical, the board shall accommodate necessary economic development in a manner consistent with the protection of these features.

Section 10 Criteria

A. In deciding whether to grant, grant in modified form, or deny a permit, the board shall consider the following:
   1. the testimony of any person in support of or in opposition to the permit application;
   2. the impact of the proposed development on the public health, safety, and welfare; and
   3. the proposed development's conformance with standards prescribed in § 28.2-1408 of the Code of Virginia and guidelines promulgated pursuant to § 28.2-1401 of the Code of Virginia.

B. The board shall grant the permit if all of the following criteria are met:
   1. The anticipated public and private benefit of the proposed activity exceeds its anticipated public and private detriment.
   2. The proposed development conforms with the standards prescribed in § 28.2-1408 of the Code of Virginia and guidelines promulgated pursuant to § 28.2-1401 of the Code of Virginia.
   3. The proposed activity does not violate the purposes and intent of this ordinance or Chapter 14 of Title 28.2 (§ 28.2-1400 et seq.) of the Code of Virginia.

C. If the board finds that any of the criteria listed in Subsection B of this section are not met, the board shall deny the permit application but allow the applicant to resubmit the application in modified form.

Section 11 Commissioner's Copy
The permit shall be in writing, signed by the chairman of the board, and notarized. A copy of the permit shall be transmitted to the Commissioner.

Section 12 Expiration Date
No permit shall be granted without an expiration date established by the board. Upon proper application, the board may extend the permit expiration date.

Section 13 Compensation Rights
No permit granted by a wetlands board shall in any way affect the right of any person to seek compensation for any injury in fact incurred by him because of the permitted activity.

This ordinance was duly considered following a required public hearing held on June 14, 1994, and was adopted by the Town Council of Cape Charles, Virginia, at its regular meeting held on July 12, 1994, the members voting unanimously.

This ordinance shall be effective on or after 12:01 a.m., July 12, 1994.

Amended by Town Council on July 11, 1995, and ratified and confirmed by Town Council on June 16, 1997.

APPENDIX E - Erosion and Sediment Control Ordinance

Section 22.1 Chapter Title
This ordinance shall be known as the "Erosion and Sediment Control Ordinance of the Town of Cape Charles, Virginia."

Section 22.2 Purpose of Chapter
The purpose of this ordinance is to prevent degradation of properties, stream channels, water, and other natural resources of the Town of Cape Charles and to promote the public health and welfare of the people in Cape Charles by establishing requirements for the control of erosion and sedimentation from non-agricultural land disturbance and by establishing procedures whereby these requirements shall be administered and enforced. (Ord. No. 17, 6-11-91)

This chapter is authorized by the Code of Virginia, Title 62.1, Chapter 3.1, Article 2.4 (§ 62.1-44.15:51 et seq.) known as the "Erosion and Sediment Control Law." This law provides for a comprehensive statewide program with standards and guidelines to control soil erosion and sedimentation on the local level (Ord. No. 17, 3, 6-11-91).

Section 22.3 Definitions
As used in this Ordinance, unless the context requires a different meaning:

AGREEMENT IN LIEU OF A PLAN means a contract between the plan-approving authority and the owner that specifies conservation measures that must be implemented in the construction of a single-family residence; this contract may be executed by the plan-approving authority in lieu of a formal site plan.

APPLICANT means any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

BOARD means the Virginia Soil and Water Conservation Board.

CERTIFIED INSPECTOR means an employee or agent of the Town of Cape Charles who (i) holds a certificate of competence from the Board in the area of project inspection or (ii) is enrolled in the Board's training program for project inspection and successfully completes such program within one year after enrollment.

CERTIFIED PLAN REVIEWER means an employee or agent of the Town of Cape Charles who (i) holds a certificate of competence from the Board in the area of plan review, (ii) is enrolled in the Board's training program for plan review and successfully completes such program within one year after enrollment, or (iii) is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (Sec. 54.1-400 et seq.) of Chapter 4 of Title 54.1.

CERTIFIED PROGRAM ADMINISTRATOR means an employee or agent of the Town of Cape Charles who (i) holds a certificate of competence from the Board in the area of program administration or (ii) is enrolled in the Board's training program for program administration and successfully completes such program within one year after enrollment.

CLEARING means any activity which removes the vegetation ground cover including, but not limited to, root mat removal and/or topsoil removal.

CONSERVATION PLAN (see **Erosion and Sediment Control Plan**)

COUNCIL means the Cape Charles Town Council

DEPARTMENT, or **DCR** means the Department of Conservation and Recreation

DISTRICT or **EASTERN SHORE SOIL AND WATER CONSERVATION DISTRICT** means a political subdivision of this Commonwealth organized in accordance with the provisions of Article 3 of this Chapter, § 62.1-44.15:51 of the Code of Virginia, as amended.

EROSION AND SEDIMENT CONTROL PLAN, **CONSERVATION PLAN**, or **PLAN** means a document containing material for the conservation of soil and water resources of a unit or a group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The Plan shall contain all major conservation decisions to assure that the entire unit or units of land will be so treated to achieve the conservation objective.

EROSION IMPACT AREA means an area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

GOVERNING BODY means the Cape Charles Town Council.

LAND-DISTURBING ACTIVITY means any land change which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the Commonwealth, including but not limited to, clearing, grading, excavating, transporting, and filling of land, except that the term shall not include:

1. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs, and maintenance work;
2. Individual service connections;
3. Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street, or sidewalk provided the land-disturbing activity is confined to the area of the road, street, or sidewalk which is hard surfaced;
4. Septic tank or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
5. Surface or deep mining activities authorized under a permit issued by the Department of Mines, Minerals, and Energy;
6. Exploration or drilling for oil and gas including the well site, roads, feeder lines, and off-site disposal areas;

7. Tilling, planting, or harvesting of agricultural, horticultural, or forest crops or livestock feedlot operations; including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the Dam Safety Act, Article 2, (Sec. 10.1-604 et seq.) of Chapter 6, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (Sec. 10.1-1100 et seq.) of this title or is converted to bona fide agricultural or improved pasture use as described in Subsection B of Sec. 10.1-1163;
8. Repair or rebuilding of the tracks, right of way, bridges, communication facilities, and other related structures and facilities of a railroad company;
9. Disturbed land areas of less than 2,500 square feet in size; however, the governing body of the program authority may reduce this exception to a smaller area of disturbed land and/or qualify the conditions under which this exception shall apply;
10. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
11. Shore erosion control projects on tidal waters when all of the land disturbing activities are within regulatory authority of and approved by local wetlands boards, the Marine Resources Commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this article and the regulations adopted pursuant thereto; and
12. Emergency work to protect life, limb, or property, and emergency repairs; however, if the land-disturbing activity would have required an approved erosion and sediment control plan if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirement of the plan-approving authority.

LOCAL EROSION AND SEDIMENT CONTROL PROGRAM or **LOCAL CONTROL PROGRAM** means an outline of the various methods employed by a program authority to regulate land-disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and may include such items as local ordinances, policies, and guidelines, technical materials, inspection, enforcement, and evaluation.

NATURAL CHANNEL DESIGN CONCEPTS means the utilization of engineering analysis and fluvial geomorphic process to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.

OWNER means the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.

PEAK FLOW RATE means the maximum instantaneous flow from a given storm condition at a particular location.

PERMITTEE means the person to whom the permit authorizing land-disturbing activities is issued or the person who certifies that the approved erosion and sediment control plan will be followed.

PERSON means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the Commonwealth, any interstate body, or other legal entity.

PLAN-APPROVING AUTHORITY means the program administrator of the Town, responsible for determining the adequacy of a conservation plan submitted for land-disturbing activities on a unit or units of land and for approving plans.

PROGRAM AUTHORITY means the Town of Cape Charles, which has adopted a soil erosion and sediment control program approved by the Board.

RESPONSIBLE LAND DISTURBER means an individual from the project or development team, who will be in charge of and responsible for carrying out a land-disturbing activity covered by an approved plan or agreement in lieu of a plan, who (i) holds a Responsible Land Disturber certificate of competence, (ii) holds a current certificate of competence from the Board in the areas of Combined Administration, Program Administration, Inspection, or Plan Review, (iii) holds a current Contractor certificate of competence for erosion and sediment control, or (iv) is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (Sec. 54. 1-400 et seq.) of Chapter 4 of Title 54.1.

RUNOFF VOLUME means the volume of water that runs off the land development project from a prescribed storm event.

SIGNIFICANT WEATHER EVENT means rainfall in excess of 1" within a 24 hr. period or winds in excess of 25 MPH for a period of more than 24 hrs.

SINGLE-FAMILY RESIDENCE means a noncommercial dwelling that is occupied exclusively by one family.

STATE EROSION AND SEDIMENT CONTROL PROGRAM or **STATE PROGRAM** means the program administered by the Board pursuant to § 62.1-44.15:51 of the Code of Virginia, as amended, including the regulations designed to minimize erosion and sedimentation.

STATE WATERS means all waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdiction.

TOWN means the Municipal Corporation of Cape Charles.

WATER QUALITY VOLUME means the volume equal to the first half inch of runoff multiplied by the impervious surface of the land development project.

Cross Reference - Definitions and rules of construction generally, 1-2. State Law Reference - Similar definitions, § 62.1-44.15:51 of the Code of Virginia.

Section 22.4 Severability

If any portion of this article is held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the remainder of the provision.

Section 22.5 Local Erosion and Sediment Control Program

A. The minimum standards of local program effectiveness established by the Board, pursuant to Subsection D of § 62.1-44.15:52 of the Code of Virginia, shall be maintained by the Town program and who hereby adopts the regulations, references, guidelines, standards and specifications promulgated by the Board for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources. Said regulations, references, guidelines, standards and specifications for erosion and sediment control are included in but not limited to the "Virginia Erosion and Sediment Control Regulations" and the Virginia Erosion and Sediment Control Handbook, as amended.

B. A local program shall contain a certified program administrator, a certified plan reviewer, and a certified project inspector, who may be the same person. Any person who holds a certificate of competence from the Board in the areas of plan review, project inspection, or program administration which was attained prior to the adoption of the mandatory certification of Subsection A of this section shall be deemed to satisfy the requirements of that area certification.

C. The Town of Cape Charles hereby appoints the E&S Administrator and Plan Reviewer as the plan approving authority.

D. The program and regulations provided for in this ordinance shall be made available for public inspection at the office of the program administrator. The regulations may be revised from time to time as necessary. Before adopting or revising regulations, the Town shall give due notice and shall conduct a public hearing on the proposed or revised regulations except that a public hearing shall not be required when the district is amending its program to conform to revisions in the state program. However, a public hearing shall be held if the Town is proposing regulations that are more stringent than the state program.

(Ord. No. 9372, I, 7-14-93)

Cross Reference - Similar provisions, § 62.1-44.15:53 of the Code of Virginia. State Law Reference - See Editor's note to 22-4.

Section 22.6 Regulated Land-Disturbing Activities; Submission and Approval of Control Plan

A. The owner or lessee of the land being developed has the responsibility for plan preparation and submission. The owner or lessee may designate someone (e.g. an engineer, architect, contractor, etc.) to prepare the plan, but the owner or lessee retains the ultimate responsibility.

B. Except as provided in § 62.1-44.15:56 of the Code of Virginia, no person may engage in any land-disturbing activity until he has submitted to the Town Program Administrator an erosion and sediment control plan for the land-disturbing activity and the plan has been reviewed and approved by said Administrator. Where land-disturbing activities involve lands under the jurisdiction of more than one local control program, an erosion and sediment control plan, at the option of the applicant, may be submitted to the Soil and Water Conservation Board for review and approval rather than to each jurisdiction concerned.

C. Where the land-disturbing activity results from the construction of a single-family residence, an "agreement in lieu of a plan" may be substituted for an erosion and sediment control plan, if approved by the program administrator. The Program Administrator may waive the certificate of competence requirement in (D) below for an agreement in lieu of a plan for construction of a single family residence. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of an individual holding a certificate of competence, as provided by § 10.1-561 of the Virginia Erosion and Sediment Control Law. Failure to provide the name of an individual holding a certificate of competence may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be in violation of this ordinance.

D. The Certified Plan Reviewer shall review E&S plans submitted to it and grant written approval within 45 days of the receipt if it is determined that the plan meets the requirements of the Board's regulations and if the person responsible for carrying out the plan certifies that he will properly perform the conservation measures included in the plan and will conform to the provisions of this article. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence, to the program authority, as provided by § 10.1-561, of the Virginia Erosion and Sediment Control Law, who will be in charge of and responsible for carrying out the land-disturbing activity. Failure to provide the name of an individual holding a certificate of competence prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this ordinance.

E. The standards contained within the "Virginia Erosion and Sediment Control Regulations", the Virginia Erosion and Sediment Control Handbook and Chapters 22 & 74 of "The Cape Charles Town Code" are to be used by the applicant when making a submittal under the provisions of this ordinance and in the preparation of an erosion and sediment control plan. The plan approving authority, in considering the adequacy of a submitted plan, shall be guided by the same standards, regulations and guidelines. When the standards vary between the publications, the State regulations shall take precedence.

F. When a plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall specify the modifications, terms, and conditions that will permit approval of the plan. If no action is taken by the plan approving authority within 45 days, the plan

will be deemed approved and the person authorized to proceed with the proposed activity.

G. An approved plan may be changed by the Town in the following cases:
   1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations; or
   2. Where the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this article, are agreed to by the Program Administrator and the person responsible for carrying out the plan.

H. In order to prevent further erosion, the Program Administrator may require approval of a plan for any land identified in the local program as an erosion impact area.

I. When land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission and approval of an erosion and sediment control plan shall be the responsibility of the owner.

J. The Department of Conservation and Recreation will be responsible for plan approval of state agencies and these agencies are exempt from this ordinance except as provided for in § 62.1-44.15:56 of the Code of Virginia.

K. Electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, and railroad companies shall file general erosion and sediment control specifications annually with the Board for review and written comments. The specifications shall apply to:
   1. Construction, installation, or maintenance of electric and telephone utility lines; and
   2. Construction of the tracks, rights of way, bridges, communication facilities and other related structures and facilities of the railroad company.

L. The Program Administrator may waive or modify any of the regulations that are deemed inappropriate or too restrictive for site conditions, by granting a variance. A variance may be granted under these conditions:
   1. At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the plan-approving authority shall be documented in the plan.
   2. During construction, the person responsible for implementing the approved plan may request a variance in writing from the plan-approving authority. The plan-approving authority shall respond in writing either approving or disapproving such a request. If the plan-approving authority does not approve a variance within 10 days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.

(Ord. No. 9372, I, 7-14-93)

State Law Reference - Similar provisions, § 62.1-44.15:55 of the Code of Virginia.
Note - See the Editor's note to 22-4.

Section 22.7 Permit Required for Land-Disturbing Activities

A. No person may engage in any land-disturbing activity until he has acquired a land-disturbing permit, unless the proposed land-disturbing activity is specifically exempt from the provisions of this ordinance, and has paid the fees and posted the required bond.

B. No land-disturbing permit shall be issued by the Program Administrator or any employee of the Town until the applicant submits an approved Erosion and Sediment Control Plan (unless exempted by the provisions of this ordinance) and certification that the plan will be followed.

C. No land-disturbing permit shall be issued for a portion of a site for which a wetlands permit is required until evidence of necessary permits from the local wetlands boards, the Marine Resources Commission, or the United States Army Corps of Engineers, as applicable, is submitted to the program administrator.

Section 22.8 Erosion and Sediment Control Program Fees

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

Section 22.9 Application for Approval

Application for approval of an Erosion and Sediment Control Plan submitted to the Program Administrator shall include the following items:

A. Standard Town of Cape Charles application form;

B. The Erosion and Sediment Control Plan including:
   1. A contoured site plan showing elevations and all E&S measures to be installed,
   2. A detailed narrative to support the site plan describing all E&S measures to be installed, and
   3. Any calculations needed to support the narrative.

C. A certification by the person responsible for carrying out the plan that he will properly perform the control measures included in the plan, and proof of the responsible person's certification by DCR.

D. Payment of the plan review and inspection fees listed in Section 22.8.

E. Documents under Subsections 1, 2, and 3 above shall be submitted in triplicate.

Reference: Code of Virginia E&S Law & Regs. § 62.1-44.15:54, § 62.1-44.15:55.

Section 22.10 Bond or Other Security for Land-Disturbing Activities

A. Prior to the issuance of any permit for grading, land disturbing, building, or other activity

involving land-disturbing activities, the applicant shall provide a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement as is acceptable to the Town to ensure that emergency measures could be taken by the Town at the applicant's expense should he fail, within the time specified, to initiate appropriate conservation action which may be required of him as a result of his land-disturbing activity. If the Town takes such conservation action upon such failure by the permittee, the Town may collect from the permittee for the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within 60 days of the achievement of adequate stabilization of the land-disturbing activity, such bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated, as the case may be.

B. The requirements of this section are in addition to all other provisions of law which relate to the issuance of such permits and shall not be construed to otherwise affect the requirements for such permits.

Reference: Code of Virginia, E&S Law & Regs. § 62.1-44.15:57.

Section 22.11 Monitoring, Reports, and Inspections

A. The Program Administrator of the Town shall provide for inspections of the land disturbing activity based on a two week regular inspection schedule for each site and may require monitoring and reports from the person responsible for carrying out the plan, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation. Inspections shall also be performed within 48 hours of a significant weather event, immediately following initial installation of erosion and sediment controls, and at the completion of a project prior to the release of any performance bonds. A certified inspector of the Town shall be responsible for performing inspections on all land disturbing activity and shall report findings to the program administrator. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspections. Subsequent to inspections a list of items to be corrected, installed or repaired will be hand delivered or mailed first class to the permittee or the person responsible for carrying out the plan. An alternative inspection program which ensures compliance with the approved erosion and sediment control plan may be established by the Program Administrator. Any alternative inspection program shall be:
   1. Approved by the Board prior to implementation.
   2. Established in writing.
   3. Based upon a system of priorities that at a minimum, address the amount of disturbed project area, site conditions and stage of construction; and
   4. Documented by inspection records.

B. If the program administrator determines that there is a failure to comply with the inspections list by the time specified on the inspections report, a "notice to comply" shall be served upon the permittee or person responsible for carrying out the plan. The notice to comply shall be delivered by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the land disturbing activities to the agent or employee supervising such activities. The notice to

comply shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the specified time, the permit shall be deemed revoked and the owner, permittee or person responsible for carrying out the plan shall be deemed in violation of this article and shall be subject to the penalties provided by § 62.1-44.15:63 of the Code of Virginia, as amended.

C. Upon determination of a violation of this ordinance, the Program Administrator may in conjunction with, or subsequent to, a notice to comply as specified in subsection "B" above, issue an order requiring that all or part of the land- disturbing activities permitted on the site be stopped until specified corrective measures have been taken. Such an order may be issued only after the alleged violator has failed to comply with a notice to comply. The order shall be served in the same manner as a notice to comply, and shall remain in effect for seven days from the date of service pending application by the enforcing authority or alleged violator for the appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have occurred. Any person violating or failing, neglecting or refusing to obey an order issued by the chief administrative officer or his designee may be compelled in a proceeding instituted in the circuit court of jurisdiction wherein the violation was alleged to have occurred to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted. Nothing in this section shall prevent the chief administrative officer or his designee from taking any other action specified in Code of Virginia, E&S Law & Regs. § 62.1-44.15:63.

D. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved plan or any required permits, such an order may be issued whether or not the alleged violator has been issued a notice to comply as specified in subsection "B" above.

Reference: Code of Virginia, E&S Law & Regs. § 62.1-44.15:58.

Section 22.12 Penalties, Injunctions, and Other Legal Actions

A. Violators of § 62.1-44.15:55, § 62.1-44.15:56, or § 62.1-44.15:58 of the Code of Virginia shall be guilty of a Class I misdemeanor.

B. In lieu of criminal sanctions, any person who violates any provision of this ordinance, and condition of a permit, and any provision of this program shall, upon a finding of the appropriate general district court, be assessed the following civil penalties:

1. With the exception of a violation arising from commencement of land disturbing activities without a Town-approved plan and land-disturbing permit, a civil penalty in the amount of $100.00 per violation shall be assessed when any person violates any regulation or order of this ordinance, any condition of a permit, or any provision of this program, or for failure to provide, implement, maintain, or properly install any of the following erosion and sediment control measures required by an approved plan:
   a. vegetative controls including, but not limited to, permanent or temporary

ground cover,

b. structural controls including, but not limited to, construction entrances, storm drain and drop inlet protection, outlet protection, and sediment traps and basins,

c. transporting sediment or debris onto paved public roads by vehicular traffic runoff, and

d. perimeter controls including, but not limited to, straw bales or silt fences,

2. A civil penalty in the amount of $1,000.00 shall be assessed for commencement of land disturbing activities without a Town-approved plan and land-disturbing permit.

3. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of $3,000.00 except that a series of violations arising from the commencement of land disturbing activities without a Town approved plan and land disturbing permit for any person shall not result in civil penalties which exceed a total of $10,000.00.

4. The Program Administrator for the Town may issue a summons for collection of the civil penalty and the action may be prosecuted by the Town's legal resources.

5. In any trial for a scheduled violation, it shall be the burden of the locality to show the liability of the violator by a preponderance of the evidence. An admission or finding of liability shall not be a criminal conviction for any purpose. Any civil penalties assessed by a court shall be paid into the treasury of the Town, except that where the violator is the Town itself, or its agent, the court shall direct the penalty to be paid into the State treasury.

C. The Program Administrator or the owner of property which has sustained damage may apply to the circuit court in Northampton County to enjoin a violation or a threatened violation of this ordinance without the necessity of showing that an adequate remedy at law does not exist. An aggrieved owner of property sustaining pecuniary damages resulting from a violation of an approved plan or required permit or from the conduct of land-disturbing activities commenced without an approved plan or required permit may also give written notice of the alleged violation to the Director (§ 62.1-44.15:64 of the Code of Virginia).

However, an owner of property shall not apply for injunctive relief unless:

1. He has notified in writing the person who has violated the local program, and the program authority, that a violation of the local program has caused, or creates a probability of causing, damage to his property, and

2. Neither the person who has violated the local program nor the program authority has taken corrective action within 15 days to eliminate the conditions which have cause, or create the probability of causing, damage to his property.

D. In addition to any criminal or civil penalties provided under this chapter, any person who violates any provision of this chapter may be liable to the Town in a civil action for damages.

E. Without limiting the remedies which may be obtained in this section, any person violating

or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed $2,000 for each violation. A civil action for such violation or failure may be brought by the Town. Any civil penalties assessed by a court shall be paid into the treasury of the Town, except that where the violator is the Town itself, or its agent, the court shall direct the penalty to be paid into the State treasury.

F. With the consent of any person who has violated or failed, neglected, or refused to obey any regulation or order of the Town or any condition of a permit or any provision of this article, the Program Administrator may provide for the payment of civil charges for violations in specific sums, not to exceed the limit specified in Subsection E of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under Subsection B or E.

G. The Commonwealth's Attorney shall, upon request of the Town, take legal action to enforce the provisions of this ordinance.

H. Compliance with the provisions of this article shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion or sedimentation that all requirements of law have been met and the complaining party must show negligence in order to recover damages.

I. Such civil penalties as are imposed pursuant to this chapter shall be deposited into the Town's treasury.

(Ord. No. 9372, I, 7-14-93)

State Law Reference - Similar provisions, § 62.1-44.15:63 of the Code of Virginia.
Note: See the Editor's note to 22-4.

Section 22.13 Appeals and Judicial Review

A. Any applicant under the provision of this ordinance who is aggrieved by any action of the Town or its agent in disapproving plans submitted or noncompliance issues cited in inspection reports pursuant to this ordinance shall have the right to apply for and receive a review of such action by the Town Manager provided an appeal is filed within 30 days from the date of the action. Any applicant who seeks an appeal hearing before the manager shall be heard provided that the manager and other involved parties have at least 30 days prior notice. In reviewing the agent's actions, the manager shall consider evidence and opinions presented by the aggrieved applicant and agent. After considering the evidence and opinions, the manager may affirm, reverse or modify the action. The manager's decision shall be final, subject only to review by the Circuit Court of Northampton County.

B. Final decisions of the Town under this ordinance shall be subject to review by the Northampton County Circuit Court, provided an appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities.

Reference: Code of Virginia, E&S Law & Regs. § 62.1-44.15:62.

APPENDIX F - Wetlands Ordinance

ARTICLE I - In General

Section 74.1 - 74.19 Reserved

ARTICLE II - Wetlands Zoning Ordinance

Division I - Generally

Section 74.20 Definitions
For the purpose of this article:

BACK BAY AND ITS TRIBUTARIES means the following as shown on the United States Geological Survey Quadrangle Sheets for Virginia Beach, North Bay, and Knotts Island: Back Bay north of the Virginia - North Carolina State line; Capsies Creek north of the Virginia - North Carolina State line; Deal Creek;
Devil Creek; Nawney Creek; Redhead Bay, Sand Bay, Shipps Bay, North Bay, and the waters connecting them; Beggars Creek; Muddy Creek; Ashville Bridge Creek; Hells Point Creek; Black Gut; and all coves, ponds, and natural waterways adjacent to or connecting with the above-named bodies of water.

COMMISSION means the Virginia Marine Resources Commission.

COMMISSIONER means the Commissioner of Marine Resources.

GOVERNMENTAL SERVICES means any or all of the services provided by this Town to its citizens for the purpose of maintaining this Town and shall include but shall not be limited to such services as constructing, repairing, and maintaining roads, sewage facilities, and street lights supplying and treating water, street lights, and construction of public buildings.

PERSON means any individual, corporation, association or partnership, business, trust, joint venture, or other legal entity.

NONVEGETATED WETLANDS means all that land lying contiguous to mean low water and which land is between mean low water and mean high water not otherwise included in the term "vegetated wetlands" as defined and also includes those non-vegetated areas of Back Bay and its tributaries and the North Landing River and its tributaries subject to flooding by tides including wind tides but not including hurricane or tropical storm tides.

NORTH LANDING RIVER AND ITS TRIBUTARIES means the following as based on the United States Geological Survey Quadrangle Sheets for Pleasant Ridge, Creeds, and Fentress: the North Landing River from the Virginia - North Carolina line to Virginia Highway 165 at North Landing Bridge; the Chesapeake and Albemarle Canal from Virginia Highway 165 at North Landing Bridge to the locks at Great Bridge; all named and unnamed streams, creeks, and rivers flowing into the North Landing River and the Chesapeake and Albemarle Canal except the following: West Neck Creek north of Indian River Road; Pocaty River west of Blackwater Road; Blackwater River west of its forks located at a point approximately 6,400 feet due west of the

point where the Blackwater Road crosses the Blackwater River at the village of Blackwater; Millbank Creek west of Blackwater Road.

VEGETATED WETLANDS means all that land lying between and contiguous to mean low water and an elevation above mean low water equal to the factor 1.5 times the mean tide range at the site of the proposed project in this Town; and upon which is growing on the effective date of this act or grows thereon subsequent thereto, any one or more of the following: saltmarsh cordgrass (Spartina alterniflora), saltmeadow hay (Spartina patens) saltgrass (Distichlis spicata), black needlerush (Juncus roemerianus), saltwort (Salicornia sp.), sea lavender (Limonium sp.), marsh elder (Iva frutescens), groundsel bush (Baccharis halimifolia), wax myrtle (Myrica sp.), sea oxeye (Borrichia frutescer), arrow arum (Peltandra virginica), pickerelweed (Pontederia cordata), big cordgrass (Spartina cynosuroides), rice cutgrass (Leersia oryzoides), wildrice (Zizania aquatica), bulrush (Scirpus validus), spikerush (Eleocharis sp.), sea rocket (Cakile ecentula), southern wildrice (Zizaniopsis Miliacea), cattails (Typha sp.), three-squares (Scirpus sp.), buttonbush (Cephalanthus occidentalis), bald cypress (Taxodium distichum), black gum (Nyssa sylvatica), tupelo (Nyssa aquatica), dock (Rumex sp.), yellow pond lily (Nuphar sp.), marsh fleabane (Pluchea purpurascens), royal fern (Osmunda regalis), marsh hibiscus (Hibiscus moscheutos), beggar's ticks (Bidens sp.), smartweed (Polygonum sp.), arrowhead (Sagittaria sp.), sweet flag (Acorus calamus), water hemp (Amaranthus cannabinus), reed grass (Phragmites communis), and switch grass (Panicum virgatum).

The VEGETATED WETLANDS OF BACK BAY AND ITS TRIBUTARIES and the VEGETATED WETLANDS OF THE NORTH LANDING RIVER AND ITS TRIBUTARIES shall mean all marshes subject to flooding by tides, including wind tides, provided this shall not include hurricane or tropical storm tides, and upon which one or more of the following vegetation species are growing or grows thereon subsequent to the passage of this amendment: saltmarsh cordgrass (Spartina alterniflora), saltmeadow hay (Spartina patens), black needlerush (Juncus roemerianus), marsh elder (Iva frutescens), groundsel bush (Baccharis halimifolia), wax myrtle (Myrica sp.), arrow arum (Peltandra virginica), pickerelweed (Pontederia cordata), big cordgrass (Spartina cynosuroides), rice cutgrass (Leersia oryzoides), wildrice (Zizania aquatica), bulrush (Scirpus validus), spikerush (Eleocharis sp.), cattails (Typha sp.), three-squares (Scirpus sp.), dock (Rumex sp.), smartweed (Polygonum sp.), yellow pond lily (Nuphar sp.), royal fern (Osmunda regalis), marsh hibiscus (Hibiscus moscheutos), beggar's tick (Bidens sp.), arrowhead (Sagittaria sp.), water hemp (Amaranthus cannabinus), reed grass (Phragmites communis), and switch grass (Panicum virgatum).

WETLANDS means both vegetated and non-vegetated wetlands.

WETLANDS BOARD or **BOARD** means a board created pursuant to § 28.2-1303 of the Code of Virginia.

(Ord. No. 9341, 2, 4-13-93)

Section 74.21 Permitted Uses of and Activities on Wetlands

The following uses of and activities on wetlands are permitted if otherwise permitted by law:

A. the construction and maintenance of noncommercial catwalks, piers, boathouses, boat

shelters, fences, duck blinds, wildlife management shelters, footbridges, observation decks and shelters, and other similar structures provided that such structures are so constructed on pilings as to permit the reasonably unobstructed flow of the tide and preserve the natural contour of the wetlands;

B. the cultivation and harvesting of shellfish and worms for bait;

C. noncommercial outdoor recreational activities, including hiking, boating, trapping, hunting, fishing, shell fishing, horseback riding, swimming, skeet and trapshooting, and shooting preserves provided that structure shall be constructed except as permitted in Subsection 1 of this section;

D. the cultivation and harvesting of agricultural, forestry, or horticultural products; grazing and haying;

E. conservation, repletion, and research activities of the Virginia Marine Resources Commission, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, and other related conservation agencies;

F. the construction or maintenance of aides to navigation which are authorized by governmental authority;

G. emergency measures decreed by any duly appointed health officer of a governmental subdivision acting to protect the public health;

H. the normal maintenance, repair, or addition to presently existing roads, highways, railroad beds, or the facilities of any person, firm, corporation, utility, federal, state, county, city, or town abutting on or crossing wetlands provided that no waterway is altered and no additional wetlands are covered;

I. governmental activity on wetlands owned or leased by the Commonwealth of Virginia or a political sub-division thereof.

J. the normal maintenance of man-made drainage ditches provided that no additional wetlands are covered and provided further that this paragraph shall not be deemed to authorize construction of any drainage ditch;

K. outdoor recreational activities provided that such activities do not impair the natural functions of the wetlands or alter the natural contour of the wetlands.

(Ord. No. 9341, 3, 4-13-93)

Section 74.22 - 74.30 Reserved

Division 2 - Permit to Use or Develop Wetlands

Section 74.31 Application Generally

A. Any person who desires to use or develop any wetland within this Town, other than for

those activities specified in Section 74.21 above, shall first file an application for a permit with the wetlands board directly or through the Commission.

B. An application shall include the following: the name and address of the applicant; a detailed description of the proposed work thereon, indicating the area of existing and proposed fill and excavation, especially the location, width, depth, and length of any proposed channel and the disposal area, all existing and proposed structures; sewage collection and treatment facilities, utility installations, roadways, and other related appurtenances of facilities, including those on adjacent uplands, and the type of equipment to be used and the means of equipment access to the activity site; the names and addresses of owners of record of adjacent land and known claimants of water rights in or adjacent to the wetlands of whom the applicant has notice; an estimate of cost; the primary purpose of the project; any secondary purposes of the project including further projects; the public benefit to be derived from the proposed project; a complete description of measures to be taken during and after the alteration to reduce detrimental offsite effects; the completion date of the proposed work, project, or structure and such additional materials and documentation as the wetlands board may deem necessary.

C. All fees shall be governed as set forth by the Town Council of the Town of Cape Charles.

(Ord. No. 9341, 4, 4-13-93)

Section 74.32 Application and Related Data Open for Public Inspection

All applications and maps and documents relating thereto shall be open for public inspection at the office of the Town Clerk of this Town. (Ord. No. 9341, 5, 4-13-93)

Section 74.33 Hearing on Application; Grant or Denial

A. Not later than 60 days after receipt of such application, the wetlands board shall hold a public hearing on such application. The applicant, the local governing body, the commissioner, the owner of record of any land adjacent to the wetlands in question, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, Water Control Board, the Department of Transportation, and governmental agencies expressing an interest therein shall be notified by the board of the hearing by mail not less than 20 days prior to the date set for the hearing. The wetlands board shall also cause notice of such hearing to be published at least once a week for two weeks prior to such hearing in the newspaper having a general circulation in this Town. Every such advertisement shall contain a reference to the place or places within the county or municipality where copies of the proposed application may be examined. The costs of such publication shall be paid by the applicant.

B. In acting on any application for a permit, the board shall grant the application upon the concurring favorable vote of three members of a five-member board or four members of a seven-member board. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. Any person may appear and be heard at the public hearing. Each witness at the hearing may submit a concise written statement of his testimony. The board shall make a record of the proceeding, which shall include the application, any written statements of witnesses, a summary of statements of all witnesses, the findings and decision of the board, and the rationale for

the decision. The board shall make its determination within 30 days from the hearing. If the board fails to act within such time, the application shall be deemed approved. Within 48 hours of its determination, the board shall notify the applicant and the commissioner of such determination; and if the board has not made a determination, it shall notify the applicant and the commission that 30 days has passed and that the application is deemed approved. The term "act" referred above shall be the action of taking a vote on the application. If the application receives less than four concurring favorable votes for a seven- member board and three concurring favorable votes for a five-member board, this will be a determination to deny the permit.

C. The board shall transmit a copy of the permit to the commissioner. If the application is reviewed or appealed, then the board shall transmit the record of its hearing to the commissioner. Upon a final determination by the commission, the record shall be returned to the board. The record shall be open for public inspection at the office of the Town Clerk of this Town.

D. In making its decision whether to grant, to grant in modified form, or to deny an application for a permit, the board shall base its decision on these factors:
1. such matters raised through the testimony of any person in support of or in opposition to the permit application;
2. impact of the development on the public health, safety, and welfare;
3. the proposed development's conformance with standards prescribed in § 28.2-1308 of the Code of Virginia, and guidelines promulgated pursuant to § 28.2-1301 of the Code of Virginia.

E. If the board, in applying the standards above, finds that the anticipated public and private benefit of the proposed activity exceeds the anticipated public and private detriment and that the proposed activity conforms with the standards prescribed in § 28.2-1308 of the Code of Virginia, and guidelines promulgated pursuant to § 28.2-1301 of the Code of Virginia, and the proposed activity does not violate the purpose and intent of this ordinance or Chapter 13 of Title 28.2 (§ 28.2-1300 et seq.) of the Code of Virginia.

F. If the board finds that any criteria listed in Subsection B of this section are not met, the board shall deny the permit application but allow the applicant to resubmit the application in modified form.

(Ord. No. 9341, 6, 7, 10, 4-13-93)

Section 74.34 Bond or Letter of Credit to Assure Compliance with Conditions and Limitations

The board may require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it securing to the commonwealth compliance with the conditions and limitations set forth in the permit. The board may, after a hearing as provided herein, suspend or revoke a permit if the board finds that the applicant has failed to comply with any of the conditions or limitations set forth in the permit or has exceeded the scope of the work as set forth in the application. The board, after hearing, may suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application. (Ord. No. 9341, 8, 4-13-93)

Section 74.35 Preservation and Development
In fulfilling its responsibilities under this article, the board shall preserve and prevent the despoliation and destruction of wetlands within its jurisdiction, while accommodating necessary economic development in a manner consistent with wetlands preservation. (Ord. No. 9341, 9, 4-13-93)

Section 74.36 Copy to be Transmitted to Commissioner
The permit shall be in writing, signed by the chairman of the board, and notarized. A copy of the permit shall be transmitted to the commissioner. (Ord. No. 9341, 11, 4-13- 93)

Section 74.37 Expiration
No permit shall be granted without an expiration date established by the board. The board, however, may upon proper application, therefore, grant extensions. (Ord. No. 9341, 12, 4-13-93)

Section 74.38 Not to Affect Zoning and Land Use Ordinances
No permit granted by a wetlands board shall affect in any way the applicable zoning and land use ordinance of this Town or the right of any person to seek compensation for any injury in fact incurred by him because of the proposed activity. (Ord. No. 9341, 13, 4- 13-93)

This ordinance was adopted by the Town Council of Cape Charles, Virginia, on April 13, 1993, amended July 11, 1995, and ratified and confirmed on June 16, 1977.

APPENDIX G - Tree Conservation and Preservation Ordinance

ARTICLE I - GENERAL

Section 1.1 Narrative

Trees are proven producers of oxygen, a necessary element for the survival of man. Trees appreciably reduce the ever-increasing and environmentally dangerous carbon dioxide contents in the air, and they play a vital role in purifying the air that man breathes.

Trees, through their root systems, stabilize the water table and play an important and effective part in soil conservation and erosion control.

Trees are an invaluable physical and psychological counterpart to the town setting, make town life more comfortable by providing shade and cooling of the air and land, reducing noise levels and glare.

The Town Council of Cape Charles has determined that the planting and preservation of trees within the Town of Cape Charles is not only desirable but essential to the present and future health, safety and welfare of all its citizens.

Section 1.2 Intent and Purpose

The intent of the Cape Charles Tree Master Plan is to develop vibrant green infrastructure in all town districts by promoting the planting of appropriate new trees, and protecting appropriate existing trees. The Plan's purpose is to ensure the beauty and ecological health of Cape Charles for its citizens and guests. The general intent and purpose of this Tree Conservation and Preservation Ordinance is to implement the Cape Charles Tree Master Plan.

The specific purposes of this ordinance are: to perpetuate tree growth; to encourage tree preservation; to provide adequate tree canopy and density; and to protect water quality by minimizing erosion and sedimentation, enhancing the infiltration of storm water runoff, and maximizing nutrient intake. The intent of these regulations is also to preserve and enhance the aesthetics of the Town, and to reduce the negative impact such as noise and glare of uses and structures which are in close proximity to each other and which are generally regarded as incompatible, and to promote attractive landscaping in residential, commercial and industrial districts of the Town. A comprehensive plan for each individual lot or parcel is essential for the visual enhancement of the Town and for the protection and promotion of appearance, character, and economic values. The purpose and intent of such landscaping requirements are to reduce the visibility of paved areas from adjacent properties and streets, moderate climatic effects, minimize noise and glare, and enhance public safety. Landscaping will provide transition and buffers between neighboring properties.

The terms and provisions of this article shall apply to real property in the town as follows:

A. All undeveloped property and property undergoing redevelopment.

B. Streetscape area of all developed property including existing developed areas and the historic district.

C. Public rights-of-way, parks and public grounds.

Section 1.3 Definitions.
For the purposes of this ordinance, certain terms are defined as follows:

ARBORIST means a person trained and certified in arboriculture, forestry, horticulture and/or landscape architecture in the employ of or under contract to the town duly appointed by the town manager.

CALIPER is the diameter of a tree measured six (6) inches above existing grade.

CANOPY COVER: The crown "branch" area of a tree measured in square feet after twenty (20) years from installation as specified in this ordinance.

CULTIVAR: A "variety" of plant denoting an assemblage of cultivated individuals which are distinguished by any significant characteristics and which, reproduced, retain their distinguishing characteristics.

DESTROY: To cut down a tree or to perpetrate any intentional or negligent act which will cause a tree to decline or die within a period of two (2) years of such act. This shall include, but not be limited to, damage inflicted upon the root system of a tree by the application of toxic substances, by the operation of equipment and vehicles, landscape, by unapproved excavation or filling within the covered area of a tree, or damages caused by the unapproved alteration of natural physical conditions.

DEVELOPMENT means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units. The term "development" shall not be construed to include any tract of land which will be principally devoted to agricultural production.

DIAMETER AT BREAST HEIGHT (DBH): Diameter of a tree measured at a height of four and a half feet above ground.

DRIP LINE: An imaginary, perpendicular line that extends downward from the outermost tips of the branches to the ground.

HISTORIC TREE: A tree on public property which has been determined by the town council to be of notable historic interest because of its age, size, or historic association and has been so designated in the official records of the town.

INVASIVE SPECIES: A non-native species whose introduction does or is likely to cause economic or environmental harm to human, animal or plant health. (National Invasive Species Council, approved April 27, 2006)

LOT AREA: That portion of the lot allowed for use in determining the minimum lot size requirements as stated in the Town's zoning ordinance.

MEMORIAL TREE: A tree on public property that has been individually designated by the town council to be a special commemorating memorial.

MULTISTEM TREE: A tree having more than one stem "trunk" emerging from the root system.

PLANNING DIRECTOR: The director of the department of planning or his designee.

REDEVELOPMENT: The process of developing land that is or has been previously developed.

SIGNATURE TREE OR PLANTING: Types of trees notable for size age, and rarity, as well as those traditionally planted by residents of Cape Charles for food or shade. Among these signature trees are Crape Myrtle, Sycamore, Pecan, Sweet Gum, Carolina cottonwood, Linden, Basswood, Japanese Black Pine, Fig, Camellia, and Nandina.

SPECIES: The unit in the botanical classification of plants.

STANDARD TREE: A tree grown with a single erect stem.

STREETSCAPE AREA (DEVELOPED): The area including all public rights of way, all front yards to the plane of the front of the house, and on corner lots, all side yards to the plane of the side of the house. (See Fig. 1)

STREETSCAPE AREA (UNDEVELOPED): The area including all public rights of way, all front yards to the plane of the principal structure, and on corner lots, all side yards to the plan of the principal structure.

STREET TREE: Any tree which has been individually designated by the local governing body and which grows in the street right-of-way or on private property as authorized by the owner and placed or planted there by the local government.

TREE: Any self-supporting woody plant of a species which normally grows, in Town of Cape Charles, at a commonly accepted maturity, to an overall height of a minimum of fifteen (15) feet.

Section 1.4 Standards

Section 1.4.1 General Standards

A. A subdivision plat, site, or plot plan for any subdivision or site development activity shall include the planting and/or replacement of trees on the site to the extent that, at 20 years of growth, minimum tree canopy shall be provided in accord with the following standards:

B. Ten percent (10%) tree canopy for a site zoned business, commercial, or industrial. Existing trees which are to be preserved may be included to be all or in part of the canopy requirements and may include wooded preserves, if the approved site plan identifies such trees, and the trees meet the standards of appropriateness of the Cape Charles Tree Master Plan.

C. Twenty (20%) tree canopy for a residential site zoned 10 units or less per acre is provided as a maximum goal in § 15.2-961 of the Code of Virginia. On the typical 40′ x 140′ residential lot one (1) tree per twenty (20′) feet of lot frontage is required. The location

of the trees on the lot shall be at the owner's discretion. Existing trees which are to be preserved may be included to be all or in part of the canopy requirements if the approved site plan identified such trees, and the trees meet the standards of appropriateness (see the Cape Charles Tree Master Plan).

D. Trees shall be selected from the specifications and standards and shall conform with the following minimum size or height (at date of planting) standards:

1.	Deciduous shade trees	6′ height
2.	Streetscape trees	6′ height
3.	Ornamental and understory trees	6′ height
4.	Coniferous trees	6′ height
5.	Evergreen shrubs	18″ spread or height
6.	Deciduous shrubs	24″ spread or height

E. Tree canopy requirements may be reduced on a case-by-case basis by waiver of the Zoning Administrator during the site plan approval process where it can be clearly demonstrated by the applicant that either (a) the reduced canopy achieves the intended landscape design objective through a combination of alternative landscape architectural and landscaping techniques or (b) where the characteristics of the property are such that the canopy coverage would not be effective and other methods of landscaping provide equal and adequate design responses. The above stipulated sizes may be modified based on specific property conditions and site design requirements.

Section 1.4.2 General Requirements

A. Landscaping shall be required in all residential, commercial and industrial districts. The owner or his agent shall be responsible for the maintenance, repair, and replacement of all landscaping materials as may be required under Town ordinances.

B. All plant material, including trees, shall be tended and maintained in a healthy growing condition and free from refuse and debris and invasive species as identified by the Virginia Division of Forestry or the Virginia Department of Agriculture, at all times. All unhealthy, dying, or dead plant materials shall be replaced during the next planting season.

C. Commercial and industrial district uses that abut residential zones shall provide a landscape buffer or screened areas between districts.

D. All parking lots shall be screened and landscaped from adjoining properties or every other use and zoning district.

E. Land disturbance shall be limited to the area necessary to provide for the desired use or development.

F. The Cape Charles Historic District Guidelines referencing Street Trees and Plantings are incorporated by reference (Streetscape, pgs. 65-66).

Section 1.4.3 Streetscape tree planting

A. All streetscape trees shall be a minimum of 6′ in height at the time of planting. Trees shall be guaranteed to be in good physical condition as determined by the Zoning Administrator

or his designee, for a period of one year by the developer or owner. The one-year period shall commence from the time of final inspection.

B. Tree selection: Trees shall be selected from the specifications and standards identified in the Cape Charles Master Tree Plan 2006.

ARTICLE II - TREE REMOVAL, REPLACEMENT, AND CONSERVATION

The goal of the Cape Charles Master Tree Plan is to retain a "no net loss" in terms of trees in the streetscapes throughout the Town. However, the private property rights of landowners shall be respected in order to permit the uses of the property in accordance with the Town's Zoning Ordinance. Therefore, removal of trees is allowed within the building envelope. Removal of diseased or unsafe trees is also allowed. Clearing shall be allowed only to provide a building site, necessary access, positive site drainage, water quality BMPs, and the installation of utilities as approved by Town officials. Replacement should be provided as described herein.

The Virginia Department of Transportation ("VDOT") governs the public rights of way in Cape Charles and no work may be initiated in these rights of way without VDOT approval.

Section 2.1 Tree protection during construction.

A. Existing trees that are to be used to meet the requirements of Section 1.4 shall be protected in accordance with the following:
   1. Before construction activity begins, protective barriers must be securely in place.
   2. Minimum undisturbed areas shall be determined. This area is approximately the ground area covered by the outermost branches (drip line), as defined in the Virginia Erosion and Sediment Control Handbook.
   3. All construction activities shall also be prohibited within the minimum undisturbed areas provided for any tree(s) for which credit is given toward satisfying the residential canopy requirements.
   4. All temporary construction activities shall also be prohibited within the minimum undisturbed areas, including all excavating, filling, trenching, construction storage and dumping, and parking of construction equipment/vehicles or employee vehicles.

B. Inspection: Each lot shall be inspected and approved prior to the issuance of the certificate of occupancy or final inspection approval. All new trees must be identified with species identification tags and must remain tagged until after the inspection is complete. The inspection shall be performed by either the Zoning Administrator or a representative of the Department of Planning. Where additional residential lot trees are required, no certificate of occupancy or final inspection approval shall be issued until the required trees have been planted in accordance with Town of Cape Charles typical planting standards. When the occupancy of a structure is desired prior to the completion of the residential lot tree planting requirement, a temporary certificate of occupancy may be issued if the owner or developer provides to the Department of Code Enforcement a disclosure statement accepting responsibility for the installation of the required trees.

Section 2.2 Removal or treatment of trees on private property

A. Permit--Required.
   1. A tree removal permit shall be required before any tree (or shrub which is in tree form) on property described in Article I, Section 1.2 may be destroyed or removed.
   2. When a site plan, plot plan, or other development plan is required, application for a tree removal permit shall consist of a plan acceptable to the Zoning Administrator in form and content, submitted as part of the site plan or other development plan. The Zoning Administrator shall determine the plan's compliance with the requirements of the town. No plan shall be approved which does not comply with these requirements.
   3. When no site plan, plot plan, or other development plan is required, application for a tree removal permit shall be submitted to the Zoning Administrator in a form which provides the information deemed necessary by the Zoning Administrator. Where no emergency exists, the Zoning Administrator shall act upon a tree removal permit application within eight (8) days from receipt of application.
   4. Factors to consider: In addition to reviewing for conformance to standards and guidelines promulgated in the Cape Charles Master Tree Plan, the following factors shall also be taken into consideration:
      a. The extent to which tree clearing is shown to avoid excessive clearing and still permit the applicant to achieve the proposed development or land use.
      b. The extent to which the actual or intended use of the property is in accordance with the regulations of the zoning district in which the property lies requires clearing of trees.
      c. The hardship to the applicant which will result from a modification or rejection of the required permit.
      d. The desirability of preserving any tree by reason of its size, age or some other outstanding quality, such as uniqueness, rarity or status as a landmark or species specimen.
      e. The extent to which the area would be subject to environmental degradation due to removal of the trees.
      f. The heightened desirability of preserving tree cover in densely developed or densely populated areas.
      g. Whether the tree is diseased, injured beyond restoration, in danger of falling, interferes with utility services or creates unsafe visual clearance.

B. Replacement of trees. When warranted in the judgment of the Zoning Administrator, the applicant may be required to replace, in accordance with a tree replacement plan, any tree being removed with a suitable replacement tree elsewhere on the site. In determining whether the replacement of trees is reasonable and shall be required, the Zoning Administrator shall consider the intended use of the property together with an evaluation of the following:
   1. Existing tree coverage, size and type;
   2. Number of trees to be removed;
   3. Area to be covered with structures, parking and driveways;
   4. Grading plan and drainage requirements; and
   5. Character of the site and its environs.

C. Approval. If the permit application conforms to standards and guidelines and there are no objections resulting from consideration of the factors listed above in this section, the

permit application shall be approved.

D. Rejection. If the permit application does not conform to standards and guidelines or there is an objection resulting from consideration of the factors listed above in this section, the permit application shall be rejected. The Zoning Administrator may require that the application be modified to bring it into conformance with the standards and guidelines or to eliminate any objections to the application.

E. The area of land to be cleared of trees and other vegetation in conjunction with proposed development or land use shall not include any trees which are unique by reason of size, age or some other outstanding quality, such as rarity or status as a landmark or species specimen (see definition of "historic tree"). Subject to the Zoning Administrator's approval, the area to be cleared shall generally be limited to that area needed for:
   1. Street construction and necessary slope construction.
   2. Public service or utility easements and rights-of-way. This shall include area for utility line installation with any construction easements necessary for such installation and easements for maintenance access. These easements shall not be cleared prior to actual line installation.
   3. Building roof coverage area and ancillary structures such as patios and porches plus fifteen (15) feet on all sides for construction activity. (building envelope)
   4. Driveways, alleyways, walkways, parking lots and other land area necessary to the installation of the proposed development or use.
   5. Sediment basins. Only those trees within the area necessary for construction of the dam, the area in which sediment will collect, and the area necessary for construction and maintenance of the basin shall be cleared of trees.

Section 2.3 Activities of public utilities.

The authority of the zoning administrator shall extend to the control of the activities of utility companies in the matter of treating, trimming, planting or removing trees or shrubs on the public grounds and streets of the town.

It shall be unlawful for any such company to in any manner treat, trim, plant or remove trees or shrubs on any property, grounds or streets of the city without the written permission of the Zoning Administrator, who is hereby expressly given the right to withdraw any permission where inspection by the Zoning Administrator indicates that the work has not been or is not being done in compliance with good horticultural standards.

Section 2.4 Plantings along streets and public use easements (rights of way)

A. The planting, pruning or other treatment of trees upon the streets and public use easements shall be under the direction of the Town Manager or his designee. No tree upon any street or public use easement in the town shall be destroyed, cut down or otherwise removed without the consent of the Town Manager or his designee. No trees or plants of any kind shall be planted upon any street, public use easement or public property except with the consent of the Town Manager or his designee.

B. No trees shall be planted at public expense upon private property unless a public use easement has been granted; except, that, with the consent of the owner, trees may be planted upon the line between any street and the abutting private property, and trees

may be planted in connection with public works projects which have disturbed private property and where the town has easements, on condition that the planting, pruning, removal or other treatment of the trees so planted shall be under the control of the Town Manager or his designee.

C. It shall be unlawful to girdle, break, bend, wound, tack signs or notices upon or in any manner injure any tree planted upon any public use easement or street or on the line thereof within the corporate limits, except with the approval of the Town Manager or his designee.

Section 2.5 Failure to comply with plan.

If the Zoning Administrator determines that the permit holder has failed to comply with the plan, the Zoning Administrator shall immediately serve upon the permit holder a notice to comply which shall be sent by registered or certified mail to the address specified by the permit holder in his permit application. Such notice shall set forth specifically the measures needed to come into compliance with such plan and shall specify the time within which such measures shall be completed. If the permit holder fails to comply within the time specified, he may be subject to revocation of the permit and the town, at the direction of the Zoning Administrator, may correct the noted deficiencies at the permit holder's expense; furthermore, the permit holder may be deemed to be in violation of this article and upon conviction could be subject to the penalties provided by this article.

Section 2.6 Exceptions; waiver of chapter

A. In the event that any tree shall be determined to be in a hazardous or dangerous condition so as to endanger the public health, welfare or safety, and require immediate removal without delay, verbal authorization may be given by the Zoning Administrator and the tree removed without obtaining a permit as herein required.

B. During the period of an emergency, such as a tornado, ice storm, flood or any other act of nature, the requirements of this article may be waived by the town manager or his designee.

Section 2.7 Replacement of trees destroyed in violation of chapter

When trees are destroyed in violation of this article, replacement trees shall be required unless exemption is granted by the Zoning Administrator. The size, species and quantity of these replacements shall be determined by the Zoning Administrator based on the value of the trees removed as calculated by the latest formula published by the International Society of Arboriculture.

Section 2.8 Appeals

An appeal to the Board of Zoning Appeals may be taken by any person aggrieved by any decision of the Town Manager, his designee or Zoning Administrator relative to the administration of this chapter. An appeal shall be taken within thirty (30) working days from the date of the issuance of the Zoning Administrator's written order, by filing with the Zoning Administrator and the Town Manager a notice of appeal specifying the grounds thereof. The Zoning Administrator shall then transmit to the Board of Zoning Appeals the record upon which the appeal is based. All decisions by the Town Manager, his designee or the Zoning

Administrator shall be appealed first to the Board of Zoning Appeals, then to the Northampton County Circuit Court. An appeal stays all compliance with the action being appealed, unless the Zoning Administrator certifies to the Town Manager that by reason of stated facts a stay would, in his opinion, cause imminent endangerment to life or property. In such cases, compliance shall not be stayed other than by a restraining order which may be granted by a court of record, on application and on notice to the Zoning Administrator and on due cause shown.

Section 2.9 Violations and penalties; remedies

Any person, whether as an owner, lessee, principal, agent, employee or otherwise, who violates any of the provisions of this chapter or permits any such violation or fails to comply with any of the requirements, or who erects any building or who uses any building or any land in violation of any detailed statement of plan submitted by him and approved under the provision of this chapter shall be subject to a civil penalty not to exceed two thousand five hundred dollars ($2,500.00) for each violation. Each day upon which such violation continues shall constitute a separate violation. Furthermore the town manager, through the town attorney, may apply to the circuit court of the county for injunctive relief to enjoin a violation or a threatened violation of this chapter, it being determined that vegetation in general and trees in particular are unique and thus a proper subject of equitable relief.