



TOWN COUNCIL & PLANNING COMMISSION

Joint Public Hearing

June 1, 2021

Cape Charles Civic Center

6:00 PM

Call to Order – Planning Commission

- A. Roll Call
- B. Establish quorum

2. Call to Order – Town Council

- A. Roll Call
- B. Establish quorum

3. Public Hearing:

- A. Proposed text amendments to the Cape Charles Zoning Ordinance
 - Article II – Definitions
 - Article VIII – Historic District Overlay

4. Town Council Adjournment

TOWN OF CAPE CHARLES
Notice of Joint Public Hearing

The Cape Charles Planning Commission and Town Council will hold a joint public hearing on Tuesday, June 1, 2021, at 6:00 p.m., in the Cape Charles Civic Center, 500 Tazewell Avenue, to receive comment on proposed text amendments to the Cape Charles Zoning Ordinance:

- A. Article II – Definitions
- B. Article VIII – Historic District Overlay

These two items will be discussed at the regular meeting of the Planning Commission immediately following the public hearing and brought to a vote for recommendation to the Cape Charles Town Council.

Detailed information regarding the proposed changes is available for public review at www.capecharles.org, under Agendas and Minutes, Planning Commission.



PLANNING COMMISSION

STAFF REPORT

Meeting Date: June 1, 2021

Item #: 3a & 6a

Type of Application:	Zoning Text Amendment
Date:	May 25, 2021
Prepared By:	Katie H. Nunez, Interim Zoning Administrator
Applicant:	Cape Charles Town Council
Zoning Ordinance Section:	Article VIII – Historic District Overlay & Article II - Definitions
Request:	The Cape Charles Town Council is seeking amendments to the Historic District Overlay Ordinance and updating definitions in the ordinance as they relate to the Historic District Overlay Ordinance.

The Cape Charles Town Council has indicated that amendments are needed to Zoning Ordinance Article VIII – Historic District Overlay and Article II – Definitions to address issues related to the application and administration of the overlay district. A joint meeting with the Town Council, Planning Commission and Historic District Review Board was held on April 13, 2021 to discuss the Overlay District and to reach certain consensus which were captured in a document prepared by Town Manager John Hozey on April 14, 2021 called “Guiding Philosophy” and e-mailed to all meeting participants.

At that time, a draft revision of the Historic District Overlay Ordinance was also provided for review and input to the members of Town Council and the Planning Commission. The proposed changes to the ordinance are shown in colored text or shown as “struck through” text meant for deletion and the most recent additions, dated April 20, 2021, are attached.

The changes focus on clarifying which work is to be reviewed for administrative compliance by the Zoning Administrator as a standard within the zoning ordinance provisions and which work requires Historic District Review Board review and approval through the Certificate of Appropriateness process.

Minor changes have also been proposed to the Appeals Process and moving the definitions to incorporate into the main Definitions section of the Zoning Ordinance which is in Article II. Lastly, there is a new section proposed (Section 8.21 – Demolition – Alternate Process).

RECOMMENDATION: Staff recommends that the Planning Commission consider the proposed text amendment changes to Article VIII and Article II and determine if the changes proposed are in keeping with the intent and consensus position of the joint meeting held on April 13, 2021 and to develop a recommendation to Town Council.

Staff is prepared to assist the Planning Commission in developing the motion based upon the Public Hearing and any revisions or changes they wish to propose to the text amendments.

Attachments:

Attachment 1 & 2 – Email dated April 14, 2021 from Town Manager John Hozey which included a document called “Guiding Philosophy”

Attachment 3 & 4 – Proposed Zoning Text Amendments, dated April 20, 2021, to Article VIII Historic District Overlay Ordinance and Article II, Section 2.9 Definitions

From: [John Hozey](#)
To: [Mayor William "Smitty" Dize](#); [Councilman Paul Grossman](#); [Councilman Andrew Follmer](#); [Councilman Andy Buchholz](#); [Councilman Chris Bannon](#); [Councilwoman Tammy Holloway](#); [Commissioner Bill Stramm](#); [Commissioner Dennis McCoy](#); [Diane D'Amico](#); [Commissioner Diane D'Amico](#); [Jim Holloway](#); [Commissioner Jim Holloway](#); [Kenneth Butta](#); [Commissioner Michael Strub](#); [Michael Strub](#); [Andrew Follmer](#); [andy Buchholtz](#); [Tammy Holloway](#); [Vice Mayor Steve Bennett](#); [Steve Bennet email](#); [Martin Mayer](#); [Commissioner Michael Strub](#); [Herb Thom](#); [Edward Wells](#); [Kathy Glaser](#)
Cc: [Katie Nunez](#); [Jeb Brady](#); [Tracy Outten](#); [Libby Hume](#)
Subject: RE: Historic District Planning
Date: Wednesday, April 14, 2021 9:50:33 AM
Attachments: [Guiding Philosophy.pdf](#)

Hello again,

I wanted to follow up my earlier email with two points. First, the version of Article VIII that you've been asked to review still needs additional tweaks to address some of last night's discussion (like the shed/other contributing structures on a property issue). So, please understand that it is still a work in progress.

Second, I wanted to put down on paper my understanding of the take-aways from last night. So I've drafted a Guiding Philosophy document that I believe captures the consensus view. I'm attaching for your review as well. Please let know if you feel this is inconsistent with the majority view.

Thanks again

John
John Hozey
Town Manager
Cape Charles, VA

From: John Hozey
Sent: Wednesday, April 14, 2021 8:00 AM
To: Mayor William "Smitty" Dize <mayor@capecharles.org>; Councilman Paul Grossman <councilmangrossman@capecharles.org>; Councilman Andrew Follmer <councilmanfollmer@capecharles.org>; Councilman Andy Buchholz <councilmanbuchholz@capecharles.org>; Councilman Chris Bannon <councilmanbannon@capecharles.org>; Councilwoman Tammy Holloway <councilwomanholloway@capecharles.org>; Commissioner Bill Stramm <commissionerstramm@capecharles.org>; Commissioner Dennis McCoy <commissionermccoy@capecharles.org>; 'Dennis McCoy' <dennis.mccoy@mindspring.com>; 'Diane D'Amico' <damicodiane@gmail.com>; Commissioner Diane D'Amico <commissionerdamico@capecharles.org>; 'Jim Holloway' <tammyandjim@yahoo.com>; Commissioner Jim Holloway <commissionerholloway@capecharles.org>; 'Kenneth Butta' <kbutta54@gmail.com>; Commissioner Michael Strub <commissionerstrub@capecharles.org>; 'Michael Strub' <mhstrub@hotmail.com>; 'Andrew Follmer' <andrewfollmer@gmail.com>; 'andy Buchholtz' <andy@easternshoresigns.com>; 'Tammy Holloway' <tammy@bayhaveninnbnb.com>; Vice Mayor Steve Bennett <councilmanbennett@capecharles.org>; 'Steve Bennet email' <Sbennett@ClarkNexsen.com>; Martin Mayer <martinmayer.HDRB@capecharles.org>; Commissioner Michael Strub <commissionerstrub@capecharles.org>; herbthom.hdrb@capecharles.org; edwardwells.hdrb@capecharles.org; Kathy Glaser

<kathyglaser.HDRB@capecharles.org>

Cc: Katie Nunez <knunez@capecharles.org>; Jeb Brady <codeofficial@capecharles.org>; Tracy Outten <tracy.outten@capecharles.org>; Libby Hume <clerk@capecharles.org>

Subject: Historic District Planning

I want to thank you all again for a very long, but very productive work session last night. I felt there was consensus direction provided on most points sufficient to allow this review process to continue. That said, I would still like each of you to review the provided draft revisions to Article VIII of the Zoning Ordinance in the context of last night's discussion. Please let me know if you feel these changes are consistent with the current discussion. When ready, this revision will have to go through the full normal process of public hearings and approval at both the PC and TC levels.

Again, I really appreciate everyone's time and effort on this!

John
John Hozey
Town Manager
Cape Charles, VA

Cape Charles Historic District Guiding Philosophy

The goal of the historic district and the historic district review board (HDRB) is to help maintain the authentic character associated with the town's historic resources. For Cape Charles, this means making all reasonable efforts to preserve the look and feel of our past, without taking a strict preservationist approach. We are a living, evolving town who must be mindful of safeguarding our unique charm through facilitating the maintenance or update of historic buildings for continuing and new uses, while supporting their character-defining features and their overall contribution to the district.

The town's historic district enabling ordinance and design guidelines are intended to balance the welfare of the general public and the interests of individual property owners. They are not intended to prevent property owners from making changes to their property. They are meant to ensure that those changes enhance the historic qualities that are enjoyed by all members of the community and which make an area a special place in which to live and work.

The enabling ordinance (Zoning Ordinance, Article VIII) outlines the historic district processes and requirements. The design guidelines on the other hand, are not based in law and should only be considered helpful, interpretive, explanatory options that may be considered by the HDRB. Both Article VIII and the design guidelines are approved by the Town Council.

The HDRB is expected to use independent judgement and discretion when referring to the design guidelines and 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. If the board determines that due to unique circumstances a request should be granted outside the design guidelines, they may do so, but will document their rationale.

Standards are different than guidelines. Standards are requirements mandated by ordinance and will not be considered by the HDRB. The design guidelines will not contain standards. Compliance with standards will be determined by the zoning administrator or building official.

Synthetic materials will not be prohibited simply because they are synthetic. The appropriate metric in determining material or detail selection will be that it has a genuine authentic appearance, such that a typical observer would not be able to discern a visual difference from the original materials/design from any public right of way. Note: the complete removal of specific historic elements or features from contributing properties shall be avoided.

New construction and non-contributing structures within the historic district will have separate design guidelines from those of contributing structures; however, they will strive to complement contributing structures as much as practicable. This includes encouragement for detailing that may enhance the look and feel of the chosen period of significance, or the period of building's original construction.

Draft Revision
04/20/21

Town of Cape Charles 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 ~~provide for protection 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 ~~from destruction, damage, defacement 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 ~~an inventory~~^a map covering the area included in the Historic District, based on the criteria set forth in this ordinance. This map ~~herein after called the inventory map~~ shall be as much a part of this ordinance as if fully described herein ~~and shall be filed as a part of this ordinance by the Town Clerk of the Town of Cape Charles.~~ Pending further amendment of this ordinance, the period of significance for the Town will be from the 1880s to 1964 as delineated in the Cape Charles Historic District National Register of Historic Places (amended 2019). As identified in the National Register, structures~~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 ~~inventory~~ 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 be a licensed architect or engineer, Planning Commission member, or licensed building contractor.

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 ~~conduct-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 ~~adopt-recommend~~ standards and guidelines for ~~review-adoption by the Town Council~~ 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~~ 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. ~~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 Historic District Review Board acting with original jurisdiction, or, in the most serious cases, action by the Town Council following action by the Historic District Review Board.~~

- A. Actions related to "Standards" will be exclusively the purview of the Zoning Administrator or Code Official.
- B. Actions related to "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 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 right of way and which will not significantly alter the character of the building. Alleys in this context are not to be considered public places.
- I. Covered by other zoning ordinance requirements as administered 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 8.17 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 8.18 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 primary 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. In such cases, the accessory structure will be considered non-contributing.
- 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 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, decks, fences, 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. 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 8.19. Certificate of Appropriateness

Evidence of the approval required under the terms of the Historic District shall be a certificate of appropriateness issued ~~by 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; Standards-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.
- 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 §15.22204 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 8.21-22 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 are 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.

- B. After notice by the ~~Historic District Review Board~~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 8.22-23 File of Actions to be Maintained

In order to provide guidance for the consistent 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 Zoning Administrator ~~and the Historic District 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 Zoning Administrator or the Historic District Review Board in each case. The file documents shall be complied 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 8.23-24 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 8.24 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~~Forthwith~~ 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. ~~Maintain in his office~~Compile a record of all such applications and of ~~his handling and the~~ final disposition of the same, to be maintained by the Town Clerk;
- D. Require applicants to submit three (3) hard copies and one electronic version of material required to permit compliance with the foregoing.

Section 8.25-26 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 ~~his~~their agent.

Section 8.26-27 Other Approvals Required

The Zoning Administrator will review submitted applications for COA 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. ~~Final~~In this case, final action by the Historic District Review Board shall be taken prior to consideration of proposals requiring site plan approval.

Section 8.27-28 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 ~~sixty (60)~~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)~~sixty (60)~~ 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 ~~he~~they will make the suggested changes ~~and does so in writing~~, the Historic District Review Board may issue the Certificate of Appropriateness. Agreed to changes will be so stipulated on the Certificate of Appropriateness.

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 COA, and that the applicant takes full responsibility to bear whatever consequences result from the appeal's final decision.

Section 8.28-29 Expiration of Certificates of Appropriateness

Any certificate issued pursuant to this article shall expire of its own limitation twelve (12) months from the date of issuance if the work authorized thereby is not commenced by the end of such twelve (12) 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 twelve (12) 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 twelve (12) months.

Section 8.29-30 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 8.30-31 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 8.31-32 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 8.32-33 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 ~~shall transmit to the Town Council within five (5) days~~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 8.33-34 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; 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 8.34-35 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 8.35-36 Violations and Penalties

Any violation of this Article and the penalties for all such violations shall be as set forth in §2.43 of the Zoning Ordinance.

Section 8.36-37 Definitions

For the purpose of this article, ~~certain~~ terms and words pertaining to the Historic District are ~~hereby~~ defined. ~~The general rules of construction contained in Article II of this Ordinance are applicable to these definitions.~~

~~**ALTERATION** is any change, modification, or addition to a part or all of the exterior of any building or structure.~~

~~**BUILDING** is any enclosed or open structure which is a combination of materials to form a construction for occupancy or use.~~

~~**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.~~

~~**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.~~

~~**CERTIFICATE OF APPROPRIATENESS** is a certificate or other statement indicating approval by the Administrator or the Historic District Review Board as the case may require of plans for construction alteration, reconstruction, repair, restoration, relocation, demolition, or razing of a building or structure or part thereof in a historic district.~~

CONTRIBUTING PROPERTIES are those properties constructed fifty (50) years or more ago.

DESIGN GUIDELINES are those set of guidelines, standards, and regulations adopted pursuant to §8.20 of this Code.

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.

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.

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.

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.

This ordinance was duly considered following a required public hearing held on December 11, 2001 and adopted by the Town Council of Cape Charles at its regular session on the same day. All members voted in favor of its adoption: Chris Bannon, Charles Brown, Donald Clarke, James Davis, Dave Flora, and Frank Lewis.

Cape Charles Article II
Definition Changes resulting from Article VIII Revision
April 20, 2021

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 ~~by formal resolution~~ designated to the position by the Town Council. The Administrator may serve with or without compensation as determined by the Council.

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.

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 PERMIT means written permission issued by proper authority for the construction, repair, alteration, ~~or~~ addition, restoration, demolition, or razing of all or a part of any building or structure. ~~to a structure.~~

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.

CONTRIBUTING STRUCTURE OR PROPERTY means a structure, building, or place constructed on or before ~~1964~~1940 OR which has special significance because of notable architectural or historic features relating to the cultural or artistic heritage of the community ~~which are of such importance as to warrant conservation and preservation and whose authentic look and character should be retained.~~ ~~(from 8.38)~~ 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.

DESIGN GUIDELINES are those set of guidelines, standards, and regulation and recommendations adopted pursuant to §8.20 and §9.20 of this Code. Guidelines are parameters within which the Historic District Review Board has the discretion to act and make will consult when making decisions.

HISTORIC ~~AREA-DISTRICT~~ is an area designated by the ~~state government~~ town within which buildings, structures, appurtenances, and places are of basic and vital importance because of their association with history; or because of their unique architectural style and scale and detail; or because of their being a part of or related to a square, park, or area or general arrangement of which should be preserved and/or developed according to cultural, historical, or architectural motives or purposes.

Cape Charles Article II
Definition Changes resulting from Article VIII Revision

April 20, 2021

NON-CONTRIBUTING STRUCTURE means a structure ~~built after 1940-1964 OR which has been altered to such a degree that is no longer representative of the period in which it was built or is in such poor physical condition that its retention is difficult- that is not a contributing structure.~~(from the Historic District guidelines)

PERIOD OF SIGNIFICANCE: The National Register of Historic Places recognizes buildings, sites, and districts for their historic significance, and ~~requires~~has documented that the ~~that~~ significance be associated with a discrete chronological period for the Cape Charles Historic District.

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.

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.

REHABILITATION is the process of making possible a compatible use for a property through repair, alterations, and additions while ~~preserving~~ retaining to the maximum extent practicable those portions or features which convey its historical, cultural, or architectural values.

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.~~ return to functionality of existing structures or elements with authentic looking materials.

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.

STANDARDS are requirements that are evaluated by the Zoning Administrator or Code Official and not under the discretion of the Historic District Review Board.