

TOWN COUNCIL
Public Hearing & Regular Meeting
May 19, 2022
Cape Charles Civic Center
6:30 PM

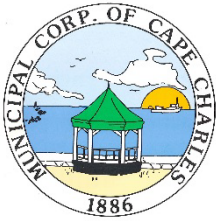
1. Call to Order
 - A. Roll Call
 - B. Establish quorum
2. Moment of Silence and Pledge of Allegiance
3. Public Hearing:
 - A. [Proposed Lease of a Portion of the Harbor Boardwalk to the West of and Contiguous to the Portion of Tax Parcel #83A3-OA-00-010 Currently Leased to The Hungry Crab, LLC for the Purpose of Expanding Restaurant Operations](#)
4. Recognition of Visitors / Presentations / Recognitions
 - A. None
5. Public Comments for items not subject to the advertised public hearing (3 minutes per speaker)
6. *Consent Agenda
 - A. Approval of Agenda Format
 - B. [Approval of Minutes](#)
 - C. Approval of March 31, 2022 Financial Report
7. Unfinished Business: None
8. New Business:
 - *A. [Zoning Text Amendments – § 4.2\(J\) Accessory Dwelling Units and § 2.9 Definitions](#)
 - *B. [Conditional Use Permit After the Fact – 420 Randolph Avenue for Accessory Dwelling Unit](#)
 - C. [Update re: Conditional Rezoning Request from Cape Charles Ventures, LLC – 238 Randolph Ave](#)
 - *D. [Proposed Lease of a Portion of the Harbor Boardwalk to The Hungry Crab, LLC](#)
 - *E. [Adoption of 2021 Eastern Shore of Virginia Hazard Mitigation Plan](#)
 - *F. [ARPA Funding for New Police Car](#)
 - *G. [Cape Charles Public Hearing Procedures](#)
9. Town Manager Comments
10. Mayor & Council Comments (5 minutes per speaker)
11. Announcements
 - May 26, 2022 – Town Council Work Session, 6:30 PM
 - May 30, 2022 – Town Offices Closed for Memorial Day Holiday
 - June 9, 2022 – Town Council Public Hearing, 6:30 PM (*tentative*)
 - June 16, 2022 – Town Council Regular Meeting, 6:30 PM
 - June 20, 2022 – Town Offices Closed for Juneteenth (State Holiday)
 - May 26, 2022 – Town Council Work Session, 6:30 PM
12. Adjournment

Town of Cape Charles Public Hearing

The Cape Charles Town Council will hold a public hearing on Thursday, May 19, 2022, beginning at 6:30 p.m. in the Cape Charles Civic Center located at 500 Tazewell Avenue, to hear public comment regarding the following:

- Proposed lease of a portion of the harbor boardwalk to the west of and contiguous to the portion of Tax Parcel 83A3-OA-00-010 currently leased to The Hungry Crab, LLC, for the purpose of expanding restaurant operations
- The lease will be for a period of one (1) year, with four (4) one (1) year renewal periods.

Additional information is available for review at www.capecharles.org, under Agendas and Minutes, Town Council. A hard copy of the information is available for review in the Clerk's office located at 2 Plum Street.



DRAFT
TOWN COUNCIL
Regular Meeting
Cape Charles Civic Center
April 21, 2022
6:30 PM

At approximately 6:30 p.m. Mayor William “Smitty” Dize, having established a quorum, called to order the Regular Meeting of the Cape Charles Town Council. In addition to Mayor Dize, in attendance were Vice Mayor Bennett, Councilmen Buchholz, Follmer and Grossman, and Councilwomen Holloway and O’Brien. Also, in attendance were Town Manager John Hozey, Police Chief Jim Pruitt, Code Official Jeb Brady, Public Works Manager John Lockwood, Public Works crew members Ralph Bowen and Joe Gittinger, Assistant to the Town Manager Julie Pruitt, and Town Clerk Libby Hume. There were eight members of the public physically in attendance, and 14 viewers on Facebook.

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

RECOGNITION OF VISITORS / PRESENTATIONS:

A. Tree City USA Presentation – Phil Goetkin

Phil Goetkin, representing the Cape Charles Tree Advisory Board (TAB), began by stating that the TAB was a group that was formed to promote and support the safety of the tree canopy in Cape Charles. The group provided advice to the Town staff and residents regarding trees within the town. TAB regularly pruned the 40 willow oaks along Washington Avenue that were planted as part of the community trail, about 15 trident maples along Peach Street, and recently pruned 139 crape myrtles along Stone Road coming into town from Route 13. Members of the Cape Charles Rotary Club, Master Gardeners as well as some citizens helped with the crape myrtle project. The Public Works crew also assisted by cleaning up what was trimmed off the trees and provided safety vests and other equipment. Mr. Goetkin continued by stating that Cape Charles had been recognized as a Tree City USA by the Arbor Day Foundation and detailed some of the requirements for obtaining this designation. One of the requirements was the annual observance of National Arbor Day and the adoption of a proclamation recognizing Arbor Day. This year’s celebration was scheduled for April 30 from 9:00 a.m. to noon at the Strawberry Street Plaza. Native trees and shrubs, along with seedlings and seeds would be given away to attendees. Mr. Goetkin showed a sign which showed the town’s designation as a Tree City USA which would be placed at the entrance to Central Park. TAB previously provided a similar sign for the entrance into town.

Mayor Dize asked Mr. Goetkin to have TAB monitor the tree that was planted in memory of Melvin Dudley. The original tree had died and a new one was replanted. He wanted to ensure that this tree would be taken care of.

B. New Roots Youth Garden Presentation – Phil Goetkin

Mr. Goetkin stated that he was also representing the New Roots Youth Garden (NRYG) this evening. He was the president of NRYG which was originally established in 2010 as a partnership between the NRYG Board and the town. It’s been 13 years and the partnership was still strong and the garden was flourishing. It has evolved over the years and continued to do so with a number of new beds being added. With COVID issues over the last couple years, children were not permitted into the garden. The demographic had also changed over the past several years with fewer children living in town. Most of the children were only here part-time or while on vacation. The NRYG was trying to establish partnerships to get all the elementary-aged children in the area to participate in the garden. The Cape Charles Christian School first graders came every week, and the second graders would also probably start coming. The NRYG was trying to work with Kiptopeke Elementary School to have their students participate as well. There was a

summer program for an open garden so any children visiting would have the opportunity to participate in the garden as well. Mr. Goetkin concluded by announcing that the Blessing of the Worms was scheduled for May 1 from 2:00 to 3:30 p.m.

C. Building Safety Month Proclamation

Mayor Dize read Proclamation 20220421A for Building Safety Month 2022.

Motion made by Councilman Grossman, seconded by Councilwoman O'Brien, to adopt Proclamation 20220421A designating May 2022 as Building Safety Month. The motion was approved by unanimous vote.

Mayor Dize presented the proclamation to Code Official Jeb Brady.

D. National Public Works Week Proclamation

Mayor Dize read Proclamation 20220421B for National Public Works Week 2022.

Motion made by Councilman Grossman, seconded by Vice Mayor Bennett, to adopt Proclamation 20220421B designating the week of May 15-21, 2022 as National Public Works Week. The motion was approved by unanimous vote.

Mayor Dize presented the proclamation to Public Works Manager John Lockwood.

E. National Peace Officers' Memorial Day and National Police Week Proclamation

Mayor Dize read Proclamation 20220421C for National Peace Officers' Memorial Day and National Police Week 2022.

Motion made by Councilman Grossman, seconded by Councilman Buchholz, to adopt Proclamation 20220421C designating May 15, 2022 as Peace Officers' Memorial Day and the week of May 15-21, 2022 as National Police Week. The motion was approved by unanimous vote.

Mayor Dize presented the proclamation to Chief Jim Pruitt adding that we lived in one of the safest towns in the country due to our dedicated officers.

PUBLIC COMMENTS: (3 MINUTES PER SPEAKER)

Sam Jones, resident

Mr. Jones addressed Council regarding town facilities. (Please see attached.)

Town Clerk Libby Hume read comments submitted in writing from Susan Burger and Sherri Landon. (Please see attached.)

There were no other comments to be heard nor any other comments received in writing prior to the meeting.

CONSENT AGENDA

A. Approval of Agenda Format

B. Approval of Minutes:

- i. March 3, 2022 Town Council Special Meeting & Executive Session
- ii. March 17, 2022 Town Council Regular Meeting
- iii. March 17, 2022 Town Council Executive Session
- iv. March 22, 2022 Town Council, Planning Commission & Harbor Area Review Board Joint Work Session
- v. March 31, 2022 Town Council Work Session

C. Approval of February 28, 2022 Financial Report

Motion made by Vice Mayor Bennett, seconded by Councilman Buchholz, to approve the Consent Agenda as presented. The motion was approved by unanimous vote.

UNFINISHED BUSINESS:

There was no unfinished business for review.

NEW BUSINESS:

A. *Town Facilities Options:*

Town Manager John Hozey stated that four options for the renovation of existing buildings and construction of a new building on Cassatt Parkway were presented to Council at the March 31st work session. Council added a fifth option to be considered and requested that the matter be brought back for a decision. Cost estimates were obtained for all five options. Once Council made the decision regarding which option to pursue, a formal proposal for design costs would be obtained from the consultant. The design phase would take about eight or nine months after the contract was executed. There would be further discussion during the upcoming budget work sessions regarding the funding for the design phase. Last year, Council set a ceiling of 8% of core revenue for debt service. Treasurer Deborah Pocock did a quick review, and the current debt service was approximately 6.5%. This was for the General Fund only as the utility debt was included in the enterprise fund. We had about \$1M of debt available for the General Fund unless Council wished to increase the ceiling. With the cost estimates received, he recommended Council approval of option 1 as the one that appeared to be the most cost effective.

There was much discussion regarding the following: i) Councilman Buchholz noted the numerous houses under construction which would increase tax revenue next year. John Hozey stated that the tax revenue projections for new construction would be discussed during the budget work sessions; ii) Councilwoman Holloway expressed her concern with option 1 and asked about available space for future growth, and the inclusion of meeting space which was desperately lacking in the current buildings; iii) There were questions about the displacement of staff during renovations of the Town Hall building. John Hozey responded that the new building for the police department and Council chambers would be constructed first. After the police department was relocated, the first floor of the Town Hall would be renovated. Upon completion, all second-floor staff would be moved to the first floor during the renovation of the second floor. There were concerns expressed regarding the noise affecting the staff during the renovation as well as the cost of having to move staff around; iv) Vice Mayor Bennett stated that in spite of the additional cost, the Town Hall building was too old, and he felt it best that all staff be moved into the new building. The phasing of renovations would extend the construction period which would make it more expensive. Renovations to an old building was difficult with the discovery of issues which would make the costs skyrocket. He cited the Cavalier Hotel in Virginia Beach as an example, stating that due to findings during the renovation, each room cost about \$1M. He recommended Council approval of option 5; v) Mayor Dize stated that there would be continued issues with the lack of parking at the Town Hall; vi) Councilman Follmer expressed his agreement with Vice Mayor Bennett adding that once renovation began on the Town Hall building, many issues and deficiencies would be discovered as seen on the majority of the buildings along Mason Avenue; vii) John Hozey added that the buildings had been evaluated and considered structurally sound.

Motion made by Vice Mayor Bennett, seconded by Councilwoman Holloway, to move forward with Option 5 for the construction of a new municipal building. The motion was approved by unanimous vote.

TOWN MANAGER COMMENTS

John Hozey commented as follows: i) He conveyed exciting news that had been premature to state publicly until now. There was a workforce housing project coming to fruition. A potential developer now had the land located by the town's Keck well site under contract. He and Councilman Grossman had been working closely with the developer whose motivation seemed very genuine and selfless. A lot of time had been spent on this and he wanted to make Council aware of the possibility. Workforce housing was on his list of 15 things to do, but in light of this news, he would be moving this item up

to a higher priority on the list; ii) He was very close to crossing another item off the priority list. The Town currently had ongoing projects updating the zoning ordinance, comprehensive plan and historic district design guidelines, but the Town Code was also being reviewed and was very close to completion. Staff's comments were currently being reviewed by Mike Sterling, and he was hopeful that the completed draft could be provided to Council in May or June for approval; iii) He received a call from Mike Sterling announcing the merger of Vandeventer Black with Woods Rogers becoming one of the largest firms in Virginia. Mike Sterling would still dedicate his time to the Town but would be stepping back from management to allow more time with his clients and family. They would have more resources to pull from which would benefit the Town; iv) He met with Cape Charles Main Street (CCMS) earlier today and discussed some short and long-term items related to parking and restrooms. CCMS secured a grant for more temporary restrooms until permanent ones could be constructed. The municipal parking lot needed some upgrades including reversal of the direction and entry point. If signage was developed for the restrooms, he would like to move forward with the direction reversal of the parking lot and installation of the signage at the same time; v) A joint public hearing was scheduled for May 3 with the Planning Commission. He wanted to make Council aware of the Planning Commission's new procedure for public hearings where an explanation of the items for public hearing were provided to the public prior to hearing their comments. The public hearing would take a little longer with this new process, but it better served everyone to have the information presented at the beginning.

MAYOR AND COUNCIL COMMENTS

Councilmen Buchholz and Follmer, and Councilwoman O'Brien did not have any additional comments.

Councilman Grossman commented as follows: i) The Berkley Group was reviewing the Northampton County and Town ordinances which staff provided to the county. We should be receiving an informational package from the Berkley Group relating to affordable housing. John Hozey was unaware of this project or that the Town had provided any information regarding our ordinances but would check with County Administrator Charlie Kolakowski; ii) Myrtle Landing came to the Northampton County Economic Development Authority and were approved for a \$10M bond to renovate the facilities. Myrtle Landing would have to come to Council for adoption of a resolution. McGuire Woods was handling the process and would be contacting the Town regarding the resolution; iii) The regional housing study was complete. It has to be approved by the Accomack-Northampton Planning District Commission management. Congresswoman Elaine Luria would be holding a developers' forum on May 9, coupling with the study and bringing developers here to look at the area and possible housing development; iv) Katie Nunez was going through some tough times and he asked for Council's thoughts regarding the service for her husband scheduled for tomorrow morning at St. Charles Catholic Church.

Vice Mayor Bennett stated that he was sorry that Phil Goetkin had already left the meeting because he wanted to thank the TAB for the work done along Stone Road which was unbelievable.

Councilwoman Holloway commented as follows: i) She reminded everyone of the LOVE Run scheduled for this Saturday beginning at 10:00 a.m. There were about 150 registrants. She invited everyone to come out to cheer on the runners and walkers. They also had a lot of good sponsors and appreciated the support; ii) She announced that her term as president of CCMS was completed and she would serve another year as past president. Councilman Buchholz had completed his terms. Bill Stramm was elected as the new president with Patsy Harris the new vice president; iii) CCMS received grant funding for four additional porta potties for the summer to be placed by the existing restroom trailer along Mason Avenue; iv) The Town had an exciting Monday with Congresswoman Elaine Luria here to present a \$2.5M check for the Rails & Trails Project.

Mayor Dize stated that three proclamations were adopted earlier this evening for building safety, public works and the police officers. He appreciated the jobs done by staff in all three departments, but it all started at the top, so he thanked John Hozey for his leadership.

Mayor Dize read the announcements, adding that the 15th Annual Blessing of the Fleet was scheduled for 6:00 p.m. on Friday, April 22. There would be live music after the ceremony, and he hoped everyone could attend.

Motion made by Councilman Buchholz, seconded by Councilwoman O'Brien, to adjourn the Town Council Regular Meeting. The motion was approved by unanimous vote.

The Regular Meeting adjourned at 7:31 p.m.

Mayor Dize

Town Clerk

**April 21, 2022 Town Council Regular Meeting
Comments and Information Provided in Writing**

Sam Jones, resident

Mr. Mayor, Members of the Town Council and Town Manager:

Thank you for the opportunity to speak and for your service to the community.

My name is Sam Jones and my wife, Julie, and I reside at 538 Monroe Avenue.

As you consider options to improve and expand town facilities, leaving the library in its current location is a critical element. The ability of families to walk to the library promotes its active use and helps promote literacy for our young people. My wife, Julie, and I look forward to bringing our grandson, Oliver, to the library.

The Council has also heard about the need for a basketball facility in town. As you consider moving many town functions to a new location, one option is to co-locate a basketball court adjacent to the facilities since they will already be paved and have lighting and parking.

Finally, just a general caution about selling town assets. They will never come back to you and the money can only be spent once. Again, thank you for taking the time to receive citizen comments.

Susan Burger, resident

I am Susan Burger and live at 550 Madison Ave.

I was just sitting out on my front porch and witnessed a man in a pickup truck with a boat on a boat trailer pull across Madison Ave on Nectarine and park on that corner across from the church and detach his boat trailer, presumably to park his boat there. I don't know who the man is or where he lives and I thought about the issue of boat parking on the streets. (I have been told that people from Bay Creek often park their boats in the historic district.) I, personally, don't have a problem with people parking boats on the streets....it's a beach town and so there will be boats....but I do have a problem with people just picking a street and parking their boats when they don't live where their boats are parked. I would like to make a suggestion (maybe it's been suggested before) that there be an ordinance that only owners of residences in the historic district can park their boats on the historic district streets. I would suggest that they register their boats with the Town, pay an annual fee of maybe \$25 (like we do for our golf carts), and get a "sticker" for their boat and then any boats parked without the sticker could be fined and eventually towed. I suggest the "sticker" actually be a magnet so that vacation rental property owners would only pay for one magnet and if a guest had a boat, they could stick it on their boat for the duration of their stay and then leave it in the home for the next guest with a boat.

I also have another suggestion:

State or National Parks often have signs that you have to take out your trash and they provide places where you can grab a plastic bag to take into the park and bring out with your trash in it. I think the Town should provide that for the beach. (they provide bags for dog poop all over town, they should provide bags for people's trash too)! I know there are trash cans on the beach during the season but off season they're not there and it can't hurt to give people bags to put their trash in either way. My husband and I walk on the beach all year long and are always picking up trash that either washes up or that is left by beach visitors - it would be nice to have a bag to bring along. The structure for the bags could be similar to those that house the doggy bags.

Thank you for your time to read this and your consideration of these suggestions.

~Susan Burger

Sherri Landon
Subject: Hotel Cape Charles

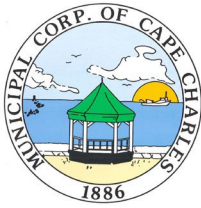
To Whom It May Concern,

We have just purchased the property at 234 Randolph Ave.
After speaking with the hotel manager, we wanted to let you know that we have no problems with them using their lot for golf carts and trash cans.

If you need to reach me for further clarification, please feel free to call me at 757-268-4399.

Sincerely,
Sherri Landon

DRAFT



DRAFT
PLANNING COMMISSION & TOWN COUNCIL
Joint Public Hearing
Cape Charles Civic Center
May 3, 2022
6:00 p.m.

At 6:00 p.m., Chairman Bill Stramm, having established a quorum, called to order the Public Hearing and Regular Meeting of the Planning Commission. In addition to Chairman Stramm, present were Commissioners Kenneth Butta, Diane D'Amico, Paul Grossman, Jim Holloway, Dennis McCoy, and Michael Strub. Also, in attendance were Interim Planning/Zoning Administrator Katie Nunez, and Planning Technician Tracy Outten. There were 18 members of the public in attendance and 22 viewers on Facebook.

Mayor William "Smitty" Dize, having established a quorum, called to order the Public Hearing of the Town Council. In addition to Mayor Dize, present were Vice-Mayor Bennett, Councilmen Buchholz, Follmer and Grossman, and Councilwomen Holloway and O'Brien. Also, in attendance were Town Manager John Hozey, Assistant to the Town Manager Julie Pruitt and Town Clerk Libby Hume.

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

PUBLIC HEARING PUBLIC COMMENTS:

Chairman Stramm read the Notice of Public Hearings:

- A. A Zoning Text Amendment 2022-01 application from the Town of Cape Charles to amend Section 4.2 (J) – Accessory Dwelling Units, and Section 2.9 – Definitions associated with Accessory Dwelling Units (ADU)
- B. A Zoning Map Amendment 2022-01 application from Cape Charles Ventures, LLC to conditionally rezone 238 Randolph Avenue (Tax Map #83A3-1-625A) from Residential-1 to Commercial-1 with proffers to limit the commercial activity of said proposed rezoning
- C. A Conditional Use Permit 2022-01 application from Cynthia Emrich and Charles van Dyck at 420 Randolph Avenue for an Accessory Dwelling Unit Permit After the Fact

Interim Planning/Zoning Administrator Katie Nunez provided a summary of each item scheduled for public hearing prior to the acceptance of public comments for the particular item.

- A. *Zoning Text Amendment 2022-01 – Section 4.2 (J) Accessory Dwelling Units, and Section 2.9 Definitions associated with Accessory Dwelling Units:*

There were no comments to be heard from the members of the public in attendance. Planning Technician Tracy Outten read comments submitted in writing from Sam Jones. (Please see attached.)

Katie Nunez stated that the Commissioners should consider the comments received, determine whether additional changes should be considered as a result of the comments, and the recommendation for Town Council approval of the proposed amendments.

Motion made by Commissioner Grossman, seconded by Commissioner Butta, to recommend Council adoption of the proposed text amendments to Sections 4.2 (J) and 2.9.

Commissioner D'Amico expressed her concerns as follows: i) Making ADUs a by-right use could prompt every property owner who could meet the requirements to have an ADU. It would affect the Town's population and add to parking problems. This would only impact the properties in

the Historic District. Could the Commission look at possibly including Bay Creek; ii) In looking at the criteria, the explanation was to make it easier for staff to enforce, but the criteria was not much different from the current criteria; iii) Allowing increased density in certain zoning districts was also a concern. The stated reason was to assist in meeting the housing needs of the town, but the needs had not been spelled out. Were we looking for workforce housing, affordable housing or long-term vacation rentals? iv) People did not understand what an ADU was. The letter received from Mr. Jones asked that ADUs could be used for relatives to stay in regardless of the length of their stay. If that were to be permitted, the definition of an ADU needed to be changed; v) Did we want to make it so that an ADU would be rented long-term, but the main house be used as a short-term vacation rental with the owner living out of town; vi) The Commission had discussed the definitions of kitchen, bathroom, and sleeping areas versus a bedroom. The parking requirement was one space per bedroom, but if a sleeping area had three bunkbeds and could house six people, how many parking spaces would be required; vii) She did not see any hurry to get these changes completed. The Commission needed to take more time for further review and get everything right.

Bill Stramm stated that a motion and second had been received and asked for a vote.

The motion was approved by majority vote with Commissioner D'Amico opposed.

Mayor Dize requested for the next two items of the public hearing, that the content be limited to the staff summary and citizen comments, and the Commission's deliberations be done after the closing of the public hearing. The Town Council would adjourn their public hearing, then the Commission could proceed with their regular meeting.

- B. *Zoning Map Amendment 2022-01 – Application from Cape Charles Ventures, LLC to conditionally rezone 238 Randolph Avenue (Tax Map #83A3-1-625A) from Residential-1 to Commercial-1 with proffers to limit the commercial activity of said proposed rezoning:*

Applicant David Gammino stated the following: i) He was served a notice of violation indicating that if the rezoning request was not approved, he would be sanctioned with penalties going back to February 10th until the violation was alleviated. His dilemma was that he could not alleviate the violations and still operate the hotel. The lot in question was used for trash service, location of the propane tank, fire department access, etc. An 8-foot easement was also provided to the Town for utility maintenance; ii) He apologized to Mrs. Loomis, a property owner and resident of an adjacent lot, for stating in his original submission that she was not opposed to his application. He did not think she was opposed to the application and did not mean to misrepresent his case; iii) Ms. Nunez' report stated that she could not support approval of the application since it was not consistent with the comprehensive plan. She indicated the need for further study. He suggested a possible new zoning district that would address this situation; iv) In the meantime, he was doing all that he could to reasonably mitigate the commercial activity on the lot. It was a unique situation. He had been operating in this manner for 10 years without any complaints until an investor recently purchased a house, renovated it and resold it; v) The Town needed to address this situation with the comprehensive plan. He proffered the best way he could so some commercial activity could be performed on the lot; vi) He purchased the hotel and lot 10 years ago. Many years ago, Northampton County and the Town allowed the lot to be split into a 32-foot parcel and an 8-foot easement. He consolidated the two lots when he purchased them and granted the 8-foot easement to the Town; vii) When the Cape Charles Coffee House needed a new sewer line, he permitted the Town to install it on this lot as he had no intention of developing the lot; viii) He recognized that the comprehensive plan talked about retaining the historic character of the neighborhood, and realized the impact to the neighbors. He did not think the neighbors had a problem with the current activity on the lot; ix) The hotel brought in \$7M to 10M in gross revenue to the Town and he could not operate the hotel without the lot being rezoned. He

narrowly tailored his application so that he could get along with the neighbors and still operate the business and asked that his request be looked upon favorably.

The floor was opened for public comments relating to this item.

Steve Loomis, resident

Mr. Loomis addressed the Commission and Council as follows: i) He was opposed to the rezoning adding that he did not think anyone would want a commercial lot between two residential lots; ii) He provided historical information regarding the lot in question adding that the 1924 Sanborn maps showed the 8-foot easement. The easement went to the end of the block behind the Parsons building for the use of the businesses for trash pickup, etc. The corner two lots of this block were commercial and according to the 1910 Sanborn map, there was a hotel located at the corner. There was also a duplex on the 32-foot lot although it was very tight for trucks to get by; iii) The back of the Hotel Cape Charles building, where the patio and courtyard were now located, was the area where the trash was picked up; iv) He asked, as a resident of the Town, that the zoning request be denied.

Chica Golibart, resident

Ms. Golibart expressed her support for Mrs. Loomis and her wishes for the lot next to her house to remain zoned for residential. The lot was currently being used for commercial purposes. Mrs. Loomis had a beautiful house and property with windows facing this lot and every vehicle entering the property day and night affects Mrs. Loomis' property.

Jawn Dolph, General Manager of Hotel Cape Charles

Mr. Dolph addressed the Commission and Council as follows: i) He had served as the general manager of the hotel since 2017; ii) The lot served a critical use with shared access for the Cape Charles Coffee House, The Almeta Café, Cravings, Eastern Shore Popcorn and the credit union for trash services and propane. With the rezoning of the lot, the five businesses would be able to continue to operate and six to ten additional parking spaces would become available along Mason Avenue; iii) There was a large electrical transformer on the lot to service the hotel so the lot would never be used for residential purposes; iv) He had worked in many hotels and was also a travel consultant. Credit needed to be given to Mr. Gammino and the hotel. It was a very nice hotel and small towns like Cape Charles did not have nice, \$300 per night hotels. The Commission and Council needed to keep this in mind; v) He had never encountered an owner so aggressively wanting to provide a financial commitment to a town and hotel. A lot of work had been put into the hotel and continued to be completed on the hotel annually when they closed for the season.

Judy Loomis, resident/property owner

Mrs. Loomis stated that she owned four lots in the Town – two commercial and two residential. Her house was the only one adjacent to Mr. Gammino's lot. She had lived in her house for 50 years so was very familiar with the commercial and residential areas. When Mr. Gammino bought the hotel, all services were located at the back of the hotel behind her property. Mr. Gammino later purchased the residential lot next to hers, put in a courtyard behind the hotel, and proceeded to gradually use the residential lot as he needed to service the hotel. She never complained. She could see that when expanding the hotel more space was needed but it was now out of hand. How were golf carts a necessity for the hotel? If the lot was rezoned for commercial, the hotel and all its equipment would continue to be placed on that lot. She did not think there should be one commercial lot permitted amongst all the other residential lots. She requested that the rezoning application be denied.

There were no additional comments to be heard from the members of the public in attendance. Planning Technician Tracy Outten read comments submitted in writing from Sherri Landon, Laurie Klingel, Eddie Compo, Amy Townsend, Karen Duer-Potts, Margaret Van Clief, Patsy Harris,

and Alana Smith. (Please see attached.)

Chairman Stramm stated that Commissioner deliberation and action would be done after conclusion of the public hearing to accommodate Council's request.

C. *Conditional Use Permit 2022-002 – Application from Cynthia Emrich & Charles van Dyck for an Accessory Dwelling Unit Permit After the Fact at 420 Randolph Avenue*

Katie Nunez stated that the Town was permitting any existing reservations to be honored but no new reservations could be accepted until finalization of the ADU permit application.

The applicant, Cynthia Emrich, stated that she would not be speaking on the application but was available to answer any questions.

There were no comments to be heard from the members of the public in attendance, nor any written comments submitted prior to the hearing.

Motion made by Commissioner Grossman, seconded by Commissioner Strub, to close the public hearing portion of the Planning Commission meeting. The motion was approved by unanimous vote.

Motion made by Councilman Buchholz, seconded by Vice-Mayor Bennett, to adjourn the Town Council Public Hearing. The motion was approved by unanimous vote.

The joint public hearing was adjourned at 7:31 p.m.

Planning Commission Chair

Mayor Dize

Town Clerk

**May 3, 2022 Planning Commission & Town Council Joint Public Hearing
Comments and Information Provided in Writing**

Interim Planner/Zoning Administrator PowerPoint Presentation

JOINT MEETING PLANNING COMMISSION & TOWN COUNCIL

TUESDAY, MAY 3, 2022

6:00 PM

1



PUBLIC HEARING ZTA 2022-01: ACCESSORY DWELLING UNIT & DEFINITIONS

- Addition of Intent Statement
- Conditional Use Permit process vs. By-Right process
- Expansion/addition of definitions for kitchen, bathroom, bedroom, sleeping area
- Expansion of timeframe for occupancy of unit from 30 to 60 days
- Added additional requirements
 - ADUS to have own trash receptacle separate from main house
 - Obtain Certificate of Completion from Building Official , similar to C of O
 - Annual Certifications for Zoning Compliance and Safety Compliance

2

PUBLIC HEARING
ZMA 2022-01 - Rezone 238 Randolph Avenue from
Residential-1 to Commercial-1 with Proffers

Cape Charles Ventures, LLC dba Hotel Cape Charles petitioned to rezone 238 Randolph Avenue, which they own, from R-1 to C-1 with proffers limiting commercial use the uses specified in the Proffer Statement with a proposed Site Plan as an Exhibit to the Proffer Statement.

Proffers:

- Deliveries: Propane and other service related deliveries fro the Hotel Parcel and properties at 227, 231, 239, and 241 Mason Avenue
- Waste Management for Hotel Parcel and properties at 237, 239 Mason & 7 Strawberry St, if this property is acquired by Applicant or utilized as part of the hotel.
- Golf Cart & Bicycle Storage
- Landscaping & Screening

3



GIS AERIAL MAP – Properties Outlined



GIS MAP without AERIAL – Properties Outlined



4

Cape Charles Ventures, LLC granted an easement to the Town of Cape Charles on 4/25/2014 to utilize the 8 ft easement area on Lot 625 (now being referred to as Lot 625B on surveys) for a sewer easement via Instrument # 140001422 – the thin blue line in the 2 maps below that extends from the back of the hotel to Randolph Avenue. Said easement is to provide sewer service for the Grantor (Cape Charles Ventures, LLC) as well as reserves the right to the Grantor to grant to other parties the nonexclusive right to use the Easement Area for any and all purposes that are not inconsistent with the easement rights granted.

Cape Charles Ventures, LLC purchased the residentially zoned lot behind the hotel located at 238 Randolph Avenue (aka Lot 625A on surveys) on 12/18/2014 – the parcel outlined in yellow in the 2 maps below.

Since then, the property owner (Cape Charles Ventures, LLC) consolidated the lots by vacating the lot lines between the individual parcels which was submitted to the Town and approved in March 2019 and recorded in the Clerk's office on June 4, 2019. It is important to note that this is a legal process allowed under the Code of Virginia to vacate lot lines for common ownership but does not alter the zoning designation that the Town has delegated to the parcels and contained in the Town and approved in March 2019 and recorded in the Clerk's office on June 4, 2019. It is important to note that this is a legal process allowed under the Code of Virginia to vacate lot lines for common ownership but does not alter the zoning designation that the Town has delegated to the parcels and contained in the Town

7

Sam Jones, resident/property owner
Subject: New Language; Accessory Dwelling Unit

Dear Town Council and Planning Commission members:

I am Sam Jones and my wife and I live at 538 Monroe Avenue.

Thank you for your work to clarify issues regarding accessory dwelling units (ADU) in Town. In reviewing the proposed language, it does not appear to adequately address the personal use of ADU's by the property owner.

To address this issue I suggest the following language be added at the end of the proposal:

"Nothing in this ordinance shall prevent or restrict the "by right" use of an Accessory Dwelling Unit by the homeowner to house family members or family guests at the homeowners discretion and with no time requirements."

Thank you for considering this additional language.
Sam Jones

Sherri Landon, property owner
Subject: Hotel Cape Charles

To Whom It May Concern,

We have just purchased the property at 234 Randolph Ave.

After speaking with the hotel manager, we wanted to let you know that we have no problems with them using their lot for golf carts and trash cans.

If you need to reach me for further clarification, please feel free to call me at 757-268-4399.

Sincerely,
Sherri Landon

Laurie Klingel, owner of Chuckletown Productions

Chuckletown Productions
237 Mason Avenue
Cape Charles, VA 23310
laurie@capechuck.com
757-695-1029

May 2nd 2022

Dear Planning Commissioners & Town Council,

I own and operate Chuckletown Productions, a boutique souvenir store located at 237 Mason Avenue on the ground floor of the Hotel Cape Charles. I have maintained tenancy of this location for eight years.

My store is one of the several mentioned in the application as relying upon the use of 238 Randolph for trash removal. Our trash cans do not fit in our store and cannot move through our store. If they did, they would occupy several parking spaces on Mason Avenue. We rely on a few very basic support services, but reasonable trash removal is a critical component of maintaining a busy retail establishment.

Two thirty-eight Randolph has always been available for these critical-to-business activities and has been impeccably maintained by the applicant during my tenure there. For these reasons, I wholeheartedly support this application.

Respectfully submitted,
Laurie Klingel
Owner, Chuckletown Productions

Eddie Compo, owner of The Almeta Cafe
Subject: Hotel Cape Charles support
To whom it may concern,

My name is Eddie Compo and I own The Almeta Cafe on Mason Avenue. I'm writing this to show my support for approving the variance request made by Hotel Cape Charles. Myself and 4 other Mason Avenue businesses rely on their "alley" for trash disposal, propane, and loading/unloading without adding to the traffic on Mason Avenue. Denying their request would have a negative impact on the successful operation of my business as well as multiple others.

Thank you for your time,
Eddie Compo
The Almeta

Amy Townsend & Rev. Clark Cundiff, property owners
Subject: Opposition to Mr. Gamino's Rezoning Request

Good afternoon,

My husband and I own a condominium in the Wilson Building (Unit 203) on Mason Avenue. We purchased the property many years ago. As so many others, we fell in love with the charm and friendliness of the town and spend as much time as possible there.

It has recently been brought to our attention that a property owner (Mr. Gammino) is requesting a zoning change (from residential to commercial) for the property he owns on Randolph Ave. We strongly oppose the encroachment of commercial property within the residential area. If this is approved, it will set precedents for other buildings in the area and we believe this to be in conflict with the comprehensive plan for Cape Charles.

Thank you for your careful consideration of this important matter.

With kind regards,
Amy Townsend
Rev. Clark Cundiff

Karen Duer-Potts, resident

May 2, 2022

Katie H. Nunez
Interim Planning/Zoning Administrator at Town of Cape Charles
2 Plum Street
Cape Charles, VA 23310

Dear Katie, Planning Commission and Town Council:

Good morning. I am writing in regards to the request to reclassify the zoning of the property located at 238 Randolph Avenue by Mr. Gammino of Hotel Cape Charles Ventures LLC.

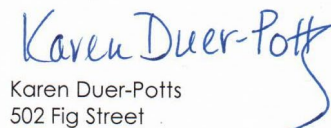
As a native Eastern Shoreman, I have watched how the Town of Cape Charles has transformed itself back into the days I remember growing up as a child. The Historic District is such a wonderful, lively place for friends and family to gather.

Having watched the tide turn in Cape Charles over the last several years, I caution turning a property that is located in the residential Historic District into something other than residential. Doing so will set a precedent for other residential properties in the Historical District and once the door is opened, it's open.

I strongly encourage a no vote to this request.

Thank you for your service to the town and thank you for allowing me the opportunity to voice my concern.

Sincerely,


Karen Duer-Potts
502 Fig Street

Margaret Van Clief, resident

Subject: for 5/3 Planning Commission & Town Council Joint Public Hearing

As a full-time resident of Cape Charles and the family member of a full-time resident of the Wilson's Building, I'm concerned about news that I've heard regarding the possibility of building a four-story expansion of the Hotel Cape Charles on top of the Betis Building. First there is the "close to home" worry about covering residential windows of those with north facing condos in the Wilson's and the added parking issue on Strawberry Street which is already often too full for residents to find a spot. But more perhaps more importantly in the long term is the concern of residential space being possibly rezoned as commercial and the precedent that sets in town as we struggle to find places for the people who work in the town and county to live even now. I would urge the town to think very carefully about the encroachment of new commercial property within the residential area of historic Cape Charles. Given the information I've gathered so far, I am opposed to this proposed rezoning. It does not sound to me to be in the best interest of our town culture.

Thank you for your time and consideration.

Best,
Margaret Van Clief
Tazewell Avenue

Patsy Harris, resident

Subject: Attn: TC and Planning commission members

To Whom it May Concern,

I am in favor of the request by Hotel Cape Charles to have the empty lot behind the hotel rezoned to use for golf cart parking and trash can storage going forward.

Hotel Cape Charles has been a boon to this town and I think we should do whatever we can to help them operate the business in the best way possible.

Thank you for your consideration

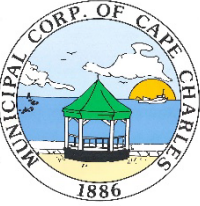
Patsy Harris
630 Carousel Place
Cape Charles

Alana Smith, owner of Eastern Shore Popcorn

Subject: Empty lot Randolph Ave

I support the hotels proposal to rezone the empty lot behind the hotel on Randolph Ave. We rely on access from that lot for utilities.

Sincerely,
Eastern Shore Popcorn
Alana Smith
757-672-0752

 TOWN OF CAPE CHARLES	AGENDA TITLE: Zoning Text Amendments - §4.2 (J) Accessory Dwelling Units and §2.9 Definitions		AGENDA DATE May 19, 2022
	SUBJECT/PROPOSAL/REQUEST: ZTA2022-01 – TO Amend Dwelling Unit section and associated definitions with Planning Commission Recommendation		ITEM NUMBER: 8A
	ATTACHMENTS: Proposed Zoning Text Amendments – Section 4.2 (J) – Accessory Dwelling Units & Section 2.9 – Definitions as of 3/1/2022		FOR COUNCIL: Action (X) Information ()
	STAFF CONTACT (s): Katie H. Nunez, Interim Planning & Zoning Administrator	REVIEWED BY: John Hozey, Town Manager	

BACKGROUND:

Cape Charles Zoning Ordinance §4.2 (J) – Accessory Dwelling Units was adopted in November 2018 and a review was recently performed to ascertain if the ordinance was working as intended by the Planning Commission and Town Council, including a review of §2.9 – Definitions for terms associated with the Accessory Dwelling Units zoning ordinance. Since January 2022, the Planning Commission has conducted three meetings focused on this review and reached a final draft text amendment which was forwarded to Town Council for their meeting on March 17, 2022.

At that meeting, a staff report was provided that detailed the significant proposed changes to the zoning ordinance and input was received from the Town Council which included the following comments, which were not unanimous from the Town Council but offered by individual members:

- Glad to see that this is still focused on a long-term rental concept and would not mind a requirement of owner occupancy of one of the 2 structures on the property with the other structure being allowed for rental.
- Concerned about having too many requirements or regulations, including too extensive of definitions relative to kitchens; recognize that people would like the flexibility to use these types of structures as overflow housing for relatives or friends visiting.
- Appreciative and support of the 2 affidavits verifying annual compliance with zoning ordinance and safety components of the Building Code.
- Want to ensure that we have sufficient staff to continue to administer and monitor issued permits for ADUs

ITEM SPECIFICS:

On May 2, 2022, a Joint Public Hearing was held at the Planning Commission meeting where one written comment was received from Sam Jones who stated that he would like ADUs to be more permissive to allow for intermittent use as overflow space for family members and guests.

The staff report was presented that provided an expanded explanation of the debate and work done by the Planning Commission concerning the proposed changes to the ordinance, which is detailed below:

Section 4.2 (J) – removal of Conditional Use Permit requirement

Based upon the process to date, we felt that if we could improve and strengthen the criteria and requirements for an Accessory Dwelling Unit and make them components of the application for a Zoning Permit for an Accessory Dwelling Unit, then it was not necessary to secure this through a Conditional Use Permit process. Staff noted that a Conditional Use Permit (CUP) process requires a public hearing through the Planning Commission and the Town Council and also requires a legal advertisement in the local paper and notification by letter to the adjacent property owners and generally takes approximately 4 to 5 months from when an application is received to when Town Council is able to vote on the matter and requires an application fee of \$600. Typically, a CUP process is utilized when the proposed use may be unique and consideration of

conditions imposed due to unique site conditions/noise/traffic or other business operational issues that could impact a neighborhood which may need to be mitigated.

The request for an Accessory Dwelling Unit is not unique or requiring imposition of conditions to address any unique property constraints or operational concerns. Additionally, as long as the square footage lot requirement is met and that the accessory dwelling unit conforms to its maximum size limitation as a result of the lot size, principal structure square footage and height relationship (which are contained in the Zoning Ordinance) and all parking requirements as well as compliance with any other required elements of an ADU, such as length of stay are acknowledged and adhered to, then this could all be handled by a specific application being completed that obtains all of this information and includes places for affidavit acknowledgment of these requirements by the property owner, then this could be handled by the Zoning Administrator and the Department's issuance of a Zoning Permit for an Accessory Dwelling Unit.

This would eliminate costs to the property owner as well as reduce the workload of staff by removing the public hearing requirement which includes the drafting and placing of a legal ad, the adjacent property owner notification and mailing and at least 3 staff reports bringing this matter through the public hearing process.

Section 4.2(J) – add a new Statement of Intent:

It was determined that adding a Statement of Intent at the beginning of the section would help provide the proper context as to the discussions regarding the addition of Accessory Dwelling Units to the zoning ordinance and the specific type of housing need this is seeking to fill in the community. **Additionally, we wanted to emphasize that the ability to provide for an increased housing density allowance on a minimum lot size in the residential districts is being offered under very specific conditions and criteria which were identified through the Comprehensive Plan to help bring additional housing units for long-term rental use to help fill an identified void in the housing market.**

Section 4.2(J) (1) – expansion of physical characteristics requirements of one kitchen area, one bathroom, and a sleeping area as well as including a definition for each of these terms and the term BEDROOM:

These terms are not currently defined in the Cape Charles Zoning Ordinance and there has been ambiguity and confusion over the exact meaning and intent of these terms, particularly the term kitchen. The Building Code requires the inclusion of a stove as part of the definition of kitchen; however, based upon the changes and proliferation of kitchen equipment for cooking/heating/baking, we did not feel that a stove is an essential element of a kitchen, especially one for an accessory dwelling unit which is square footage limited in relation to the principal residence and the utilization of these other types of kitchen equipment (microwave, toaster oven, slow cooker, air fryer, etc) may be a more reasonable inclusion as part of equipping a kitchen from a space consideration.

Section 4.2 (J) (2) – Changes to the length of stay section from 30 to sixty (60) consecutive days:

This proposed change was discussed extensively and researched among other Virginia localities. The increased # of days is proposed to strengthen the Statement of Intent that this type of housing unit is being provided to encourage the development and provision of rental units for longer-term rentals, such as work force housing, and not to be confused or intermingled with a short-term vacation rental which many of the principal houses are being utilized in such a fashion.

We discussed if additional requirements, such as owner-occupied requirements for one of the structures on the property, should be proposed but ultimately, we did not include this requirement. We recognized that it is not an uncommon occurrence in town that an individual may own more than one residential property in town.

Section 4.2 (J) (3) – Addition of new criteria re: separate trash cans for ADUS, annual safety inspection checklist and zoning compliance affidavits

Each of these changes are proposed to strengthen our administrative oversight of the ADUS and to place some responsibility to the property owner of the requirements and obligations annually in verifying compliance with the zoning ordinance and building code re: safety inspections.

The hearing was closed to public comment and a motion was proposed by Commissioner D'Amico to table the matter for further discussion but not second was offered so the motion died.

RECOMMENDATION:

Commissioner Grossman motioned to favorably recommend adoption of ZTA 2022-01 to amend Section 4.2 (J) and Section 2.9 – Definitions of the Cape Charles Zoning Ordinance for Accessory Dwellings to Town Council and was seconded by Commissioner Butta and the motion was carried by a vote of 6 AYES and 1 NAY by Commissioner D'Amico.

Below is a proposed Ordinance for adoption of ZTA2022-01 for Accessory Dwelling Units and associated Definitions.

The previously provided attachments can be viewed as part of the 3/17/2022 Town Council Agenda Packet: Here is link if you wish to re-review that material: <https://www.capecharles.org/files/documents/7A-ResolutionofIntent-Considerationoagenda119781468031122-103108AMd.pdf>

- (1) Staff Report to Town Council 2022-03-17
- (2) Planning Commission Work Session Agenda Packet of 1/24/2022
- (3) Planning Commission Work Session Agenda Packet of 2/1/2022
- (4) Planning Commission Work Session Agenda Packet of 3/1/2022

ORDINANCE 20220519
ADOPTING TEXT AMENDMENTS TO CAPE CHARLES ZONING ORDINANCE
SECTION 4.2 (J) -ACCESSORY DWELLING UNITS and SECTION 2.9-DEFINITIONS

WHEREAS, the Cape Charles Zoning Ordinance is a compilation of ordinances establishing zoning regulations for the Town of Cape Charles and providing for the administration and enforcement of the regulations; and

WHEREAS, the Zoning Ordinance classifies the territory under the Town's jurisdictions into districts and within each district a set of regulations for the use of land, buildings, structures, and their size, construction, etc.; and

WHEREAS, there are uses and requirements that are deemed general and potentially applicable to more than one zoning district and are contained in Article IV, specifically Section 4.2 (J) and further defined in Section 2.9; and

WHEREAS, at their March 17, 2022 regular meeting, the Cape Charles Town Council indicated that further zoning text amendments should be considered for Accessory Dwelling Units and associated definitions; and

WHEREAS, pursuant to Code of Virginia §§ 15.2-2285 and 15.2-2204, after proper notice public hearings were each held by the Planning Commission and Town Council, and the Planning Commission reviewed and deliberated the proposed revisions, and approved by majority vote, making recommendation for Town Council approval of the revisions made to Section 4.2 (J) and Section 2.9 attached; now

THEREFORE, BE IT ORDAINED by the Town Council of Cape Charles, this 19th day of May 2022, that Cape Charles Zoning Ordinance Section 4.2 (J) and Section 2.9 be revised as shown in the attached, as may be amended by Council, to become effective immediately.

Adopted by the Town Council of Cape Charles on May 19, 2022

By: _____
Mayor

ATTEST: _____
Town Clerk

PROPOSED ZONING TEXT AMENDMENTS
SECTION 4.2 (J) – ACCESSORY DWELLING UNITS &
SECTION 2.9 – DEFINITIONS
AS OF 3/1/2022

Legend of Changes in the document:

Current Zoning Text: Regular Text

Proposed Deletions: Shown as **bold, strike-through text**

Proposed Additions: Shown in *Red Italic Font*

A. PROPOSED ZONING TEXT AMENDMENTS TO CCZO SECTION 4.2 (J)

1. ADD A NEW SECTION AS THE FIRST PARAGRAPH in SECTION 4.2 (J)
STATEMENT OF INTENT: *To establish criteria and standards for Accessory Dwelling Units to implement one component of the goal from the Town's Comprehensive Plan to add diversity of housing type while maintaining the neighborhood character and providing affordable housing options. The intent is to allow an increased density on a lot in specific zoning districts to provide opportunity in the creation of long-term rental units to assist in meeting the housing needs of the Town and County.*
2. ORIGINAL ORDINANCE of SECTION 4.2 (J):
Accessory Dwellings. One accessory dwelling may be maintained on a property in the R-E, R-1, R-2 and CR zoning districts, ~~contingent upon approval as a conditional use in accordance with Section 4.3,~~ and subject to the following:
 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 *area*, one bathroom, and a *sleeping area*.
 - d. Accessory buildings ~~and~~ shall not have the appearance of a single-family dwelling.
 2. Occupancy characteristics.
 - a. Length of stay – ~~No~~ *An* accessory dwelling unit shall be occupied ~~by any person or persons~~, whether paying a fee for such occupancy or not, *by the same person or persons* for a period ~~no~~ less than ~~thirty (30)~~ *sixty (60)* consecutive calendar days. Upon request from any building, zoning, finance, or public safety official acting on behalf of the Town of Cape Charles the owner of the subject lot of record upon which the accessory dwelling unit sits shall provide occupancy documentation and/or information as requested, ~~either verbally or in writing. Failure to do so may result in the revocation by the Cape Charles~~

~~Town Council of the conditional use status for the accessory dwelling unit according to Section 4.3.F.~~

~~b. Inspections—All accessory dwelling units shall be inspected annually not later than fifteen (15) days from the anniversary date of the conditional use permit being approved by Town Council.~~

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 municipally issued 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) 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.

~~b.~~ 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.~~ e. Parking shall ~~be considered on a case-by-case basis as part of the conditional use permit application process, ensuring adherence to~~ *be in compliance with* Section 4.5.1.C.6. ~~(Table of Parking Standards)~~ using both on and off-street parking areas.

~~d.~~ f. Exterior elevations shall also be approved by the Historic District Review Board when required by Article VIII, Historic Overlay.

~~e.~~ g. *Annual Certifications to be submitted to the Town by March 15 of each year to the Building and Planning Department.*

1. 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.

2. The property owner will submit an annual affidavit on Town Affidavit Form for Safety Compliance for Accessory Dwellings Units.

3. If the property owner changes between March 16 and December 31 of the calendar year, the new property 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.

B. PROPOSED ZONING TEXT AMENDMENTS TO SECTION 2.9 – Definitions

1. Add the following Definitions to Section 2.9

KITCHEN means a space within a structure designated for the preparation of food that includes a sink.

BATHROOM means a room or area that includes a sink and toilet. It may also include a bathtub, shower, or bidet.

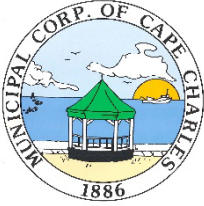
BEDROOM is a room, or space within a structure intended for sleeping. Requirements include:

- *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.*

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.

2. Correct the following definition in Section 2.9

BUILDING, ACCESSORY means a subordinate and separate building located upon the same lot occupied by the main structure or where a main structure was previously located. Accessory buildings shall not be used as dwelling units, unless a **conditional permit is issued for an accessory dwelling** *zoning permit is issued in compliance with Section 4.2 (J).*

 TOWN OF CAPE CHARLES	AGENDA TITLE: Conditional Use Permit After the Fact – 420 Randolph Avenue for Accessory Dwelling Unit		AGENDA DATE May 19, 2022
	SUBJECT/PROPOSAL/REQUEST: CUP 2022-02: Conditional Use Permit After the Fact – 420 Randolph Avenue for Accessory Dwelling Unit – Recommendation from Town Council		ITEM NUMBER: 8B
	ATTACHMENTS: Planning Commission Staff report dated 3-16-2022 & Conditional Use Permit Application Packet		FOR COUNCIL: Action (X) Information ()
	STAFF CONTACT (s): Katie H. Nunez, Interim Planning & Zoning Administrator	REVIEWED BY: John Hozey, Town Manager	

BACKGROUND:

The applicant is seeking to obtain an After the Fact Permit for a 548 sq ft accessory dwelling unit which was constructed in 2018/2019. Based upon a complaint to the Planning & Zoning Department, we investigated and determined that the accessory structure met the definition of accessory dwelling unit and that it was being rented on a weekly basis in conjunction with the main house on the property.

In working with the applicants/property owners to resolve the violation, we reached a corrective action plan to have them file an application for a Conditional Use Permit and bring the property into compliance with the elements of the Zoning Ordinance. I have recognized that this occurred during the transition time when the Town was crafting and adopting the Accessory Dwelling Unit ordinance and the applicant has responded swiftly in cooperation with the office to correct this violation.

Staff agreed to allow any confirmed reservations for summer 2022 to be honored and we have obtained a list of these bookings. No other bookings will be allowed that does not comport with the ordinance requirements.

ITEM SPECIFICS:

A Joint Public Hearing was held on May 3, 2022 with Town Council and Planning Commission at the Planning Commission meeting. No public comments were received; the staff report was presented; and the public hearing was closed. There was discussion by the Commission whether the property fully complies with all the ordinance requirements, including parking. Ms. Nunez stated that there is no parking available on this lot; however, this structure was permitted to be built on this lot by the Town so the parking requirement, after the fact, was not being imposed but focused only on getting the use approved.

RECOMMENDATION:

Commissioner Grossman motioned to favorably recommend approval of the Conditional Use Permit for an Accessory Dwelling Unit After-the-Fact at 420 Randolph Avenue on an application filed by Cynthia Emrich and Charles van Dyck to Town Council, pursuant to Cape Charles Zoning Ordinance Section 4.2 (J) and was seconded by Commissioner Holloway and the motion was approved.



JOINT PUBLIC HEARING PLANNING COMMISSION & TOWN COUNCIL STAFF REPORT

Meeting Date: May 3, 2022

Item #: 4C – CUP 2022-002

Prepared by: Katie H. Nunez, Interim Planning/Zoning Administrator

Date: April 26, 2022

APPLICANT: Cynthia Emrich & Charles van Dyck

SITE ADDRESS: 420 Randolph Avenue

TAX MAP: 83A3-1-593

LOT SIZE: 5,600 sq ft

TYPE OF APPLICATION: Conditional Use Permit 2022-02

SPECIFIC REQUEST: After the Fact Approval for an Accessory Dwelling Unit

ZONING ORDINANCE: Section 4.2 (J)

CURRENT ZONING: Residential (R-1)

DATE RECEIVED: March 16, 2022

DATE DEEMED COMPLETE: March 30, 2022

LEGAL DEADLINE (90 Days from Complete Application – Directory, not Mandatory): June 28, 2022

NARRATIVE OF PROPOSAL

The applicant is seeking to obtain an After the Fact Permit for a 548 sq ft accessory dwelling unit which was constructed in 2018/2019. Based upon a complaint to the Planning & Zoning Department, we investigated and determined that the accessory structure met the definition of accessory dwelling unit and that it was being rented on a weekly basis in conjunction with the main house on the property.

In working with the applicants/property owners to resolve the violation, we reached a corrective action plan to have them file an application for a Conditional Use Permit and bring the property into compliance with the elements of the Zoning Ordinance. I have recognized that this occurred during the transition time when the Town was crafting and adopting the Accessory Dwelling Unit ordinance and the applicant has responded swiftly in cooperation with the office to correct this violation.

Staff agreed to allow any confirmed reservations for summer 2022 to be honored and we have obtained a list of these bookings. No other bookings will be allowed that does not comport with the ordinance requirements.

AERIAL MAP: Property outlined in blue



ORDINANCE REQUIREMENTS

The Cape Charles Zoning Ordinance Section 4.2 (J) states that:

Accessory Dwellings. One accessory dwelling may be maintained on a property in the R-E, R-1, R-2 and CR zoning districts, contingent upon approval as a conditional use in accordance with Section 4.3, and subject to the following:

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 and one bathroom.*
- d. Accessory buildings shall not have the appearance of a single-family dwelling.*

2. Occupancy characteristics.

- a. Length of stay – No accessory dwelling unit shall be occupied by any person or persons, whether paying a fee for such occupancy or not, for a period less than thirty (30) consecutive calendar days. Upon request from any building, zoning, finance, or public safety official acting on behalf of the Town of Cape Charles the owner of the subject lot of record upon which the accessory dwelling unit sits shall provide occupancy documentation and/or information as requested, either verbally or in writing. Failure to do so may result in the revocation by the Cape Charles Town Council of the conditional use status for the accessory dwelling unit according to Section 4.3.F.*
- b. Inspections – All accessory dwelling units shall be inspected annually not later than fifteen (15) days from the anniversary date of the conditional use permit being approved by Town Council.*

3. Other requirements.

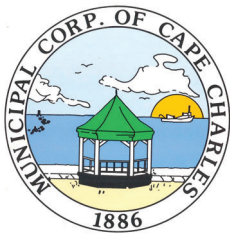
- a. Accessory dwellings located in accessory buildings may have a separate water meter from the principal dwelling.*
- b. The lot on which an accessory dwelling is located shall have the required minimum lot area for the district in which it is located.*
- c. Parking shall be considered on a case-by-case basis as part of the conditional use permit application process, ensuring adherence to Section 4.5.1.C.6. (Table of Parking Standards) using both on and off-street parking areas.*
- d. Exterior elevations shall also be approved by the Historic District Review Board when required by Article VIII, Historic Overlay.*

STAFF RECOMMENDATION:

Staff recommends that the Planning Commission review the application and favorably recommend approval of the Conditional Use Permit for an Accessory Dwelling Unit After-the-Fact at 420 Randolph Avenue on an application filed by Cynthia Emrich and Charles van Dyck, pursuant to Cape Charles Zoning Ordinance Section 4.2 (J).

Attachments:

Attachment 1 – CUP Application Packet



CONDITIONAL USE PERMIT APPLICATION

Town of Cape Charles
2 Plum Street
Cape Charles, VA 23310
757-331-2036 Fax: 757-331-4820
planner@capecharles.org

CONDITIONAL USE PERMIT CHECKLIST - all documents can be emailed to the above email

- ☒ Completed application (if applicable, attach accessory dwelling checklist and documents)
- ☒ Letter of intent clearly explaining project
- ☒ Existing site plan or survey
- ☐ Proposed site plan or survey (if applicable)
- ☒ Names and addresses of adjacent property owners
- ☒ Payment of Fees (single-family detached residential \$600; all other \$800)

PROJECT INFORMATION

Name of Project: 420 Randolph Avenue - Accessory Dwelling Unit
Property Address: 420 Randolph Avenue
Brief Description of Project: ADU for use by family members of property owner
Zoning District: R-1 Current Use: R-1 Proposed Use: R-1

OWNER INFORMATION

Name and Company: Cynthia Gillian Emrich & Charles Tucker Van Dyck
Mailing Address: 3 Pollard Park, Williamsburg, VA 23185
Phone Number: Cynthia: 757-332-4230 Email: cynthia.emrich@gmail.com

APPLICANT INFORMATION

☒ check here if applicant is owner

Name: _____
Mailing Address: _____
Phone Number: _____ Email: _____

CERTIFICATION OF APPLICANT

I hereby certify that I have the authority to make the foregoing application, that the information given is true and correct, and that the construction or improvements will conform to the regulations in the Virginia Statewide Building Code, all pertinent Town Ordinances, including fire, sewer and water ordinances, and private building restrictions, if any, which may be imposed on the property by deed. Furthermore, I certify that the changes to the improvement before or during construction will be provided to the Zoning Administrator and Building Official before such changes are constructed.

Signature of Applicant: Cynthia Gillian Emrich & Charles Tucker Van Dyck Date: 16 March 2022

Conditional Use Permit - Accessory Dwelling Unit Checklist

Date: 22 March 2022

Address: 420 Randolph Avenue

The following criteria are required for one accessory dwelling to be maintained on a property in the R-E, R-1, R-2, and CR zoning districts, contingent upon approval as a conditional use in accordance with Section 4.3:

1. Is the accessory dwelling unit located in an accessory building? YES ☒ NO ☐
2. Does the accessory dwelling floor area exceed of forty-five (45) percent of the floor area of the main building? YES ☐ NO ☒ Accessory Dwelling Unit square footage 548 sf, incl. front porch
3. Does the accessory dwelling have one kitchen and one bathroom? YES ☒ NO ☐
4. Does the accessory building/dwelling differentiate from the single-family dwelling? YES ☒ NO ☐

The following conditions must be maintained for an accessory dwelling unit on a property in the R-E, R-1, R-2, and CR zoning districts, contingent upon approval as a conditional use in accordance with Section 4.3:

1. Occupancy characteristics.
 - a. Length of stay – No accessory dwelling unit shall be occupied by any person or persons, whether paying a fee for such occupancy or not, for a period less than thirty (30) consecutive calendar days. Upon request from any building, zoning, finance, or public safety official acting on behalf of the Town of Cape Charles the owner of the subject lot of record upon which the accessory dwelling unit sits shall provide occupancy documentation and/or information as requested, either verbally or in writing. Failure to do so may result in the revocation by the Cape Charles Town Council of the conditional use status for the accessory dwelling unit according to Section 4.3.F.
 - b. Inspections – All accessory dwelling units shall be inspected annually not later than fifteen (15) days from the anniversary date of the conditional use permit being approved by Town Council.
2. Other requirements.
 - a. Accessory dwellings located in accessory buildings may have a separate water meter from the principal dwelling.
 - b. The lot on which an accessory dwelling is located shall have the required minimum lot area for the district in which it is located.
 - c. Parking shall be considered on a case-by-case basis as part of the conditional use permit application process, ensuring adherence to Section 4.5.1.C.6. (Table of Parking Standards) using both on and off-street parking areas.
 - d. Exterior elevations shall also be approved by the Historic District Review Board when required by Article VIII, Historic Overlay.

CERTIFICATION OF APPLICANT

I hereby certify that I have the authority to make the foregoing application, that the information given is true and correct, and that the construction or improvements will conform to the regulations in the Virginia Statewide Building Code, all pertinent Town Ordinances, including fire, sewer and water ordinances, and private building restrictions, if any, which may be imposed on the property by deed. Furthermore, I certify that the changes to the improvement before or during construction will be provided to the Zoning Administrator and Building Official before such changes are constructed. I am providing authorization to the town authorities to enter my properties to confirm accuracy of information contained in this application.

Signature of Owner: Cynthia Gillian Emrich & Charles Tucker Van Dyck

Signature of Applicant: Cynthia Gillian Emrich & Charles Tucker Van Dyck

LETTER OF INTENT – CUP APPLICATION

Cynthia Gillian Emrich & Charles Tucker Van Dyck
420 Randolph Avenue, Cape Charles, VA 23310

Town of Cape Charles
2 Plum Street
Cape Charles, VA 23310
757-331-2036
planner@capecharles.org

DEAR KATIE NUNEZ & KEN BUTTA,

Thank you for a very productive conversation on 4 March 2022 regarding bringing our Guest Cottage at 420 Randolph Avenue into compliance as an Accessory Dwelling Unit that we will occupy ourselves (i.e., Cynthia & Tucker). As you know, we constructed it starting in May 2018 as part of a broader project that included a sensitive restoration of the original ca. 1890 Victorian and addition of a screen porch and in-ground pool.

Consistent with our conversation on 4 March 2022, and as outlined in the “Notice of Violation & Corrective Action” dated 9 March 2022, we have undertaken the following, requested steps to be in full compliance with CCZO Sections 4.2.J and 4.2.J.2.

- **“Remove references to the availability of the Guest Cottage in your advertising.”**
We list our property solely on Airbnb and have removed references to the Guest Cottage from that listing, with one exception noted below. You can review our listing by following this link: <https://airbnb.com/h/eastofthesuncapecharles>

The Guest Cottage remains visible in a few photos of our home and backyard. Therefore, we do make one reference to the Guest Cottage in an attempt to pre-empt assumptions or queries regarding its availability: “There is a Guest Cottage on our property, but per the Town's zoning ordinance, it is not available for short-term rental. We (Cynthia & Tucker) are the only individuals permitted to occupy it”.

- **“Provide the dates for which you have already committed to renting or using the Guest Cottage. You have already done this, and the dates are acceptable to us.”** For ease of reference, we once again provide the dates when we are committed to renting the Guest Cottage in 2022. All weeks are weekly, and they commence on Saturdays:
 - 28 May, 4 June, 11 June, 25 June, 2 July, 16 July, 23 July, 30 July, 6 August

We are hosting family reunions the weeks of 18 June & 9 July. Otherwise, per our conversation with Katie Nunez & Ken Butta on 4 March 2022, only we will occupy Guest Cottage.

- **“Stop renting the accessory dwelling for periods of time less than 31 consecutive days after September 3, 2022.”** We agree to this condition and enclose an “Accessory Dwelling Affidavit,” in which we checked, “This unit will be used by family members or other non-paying guests of the principal property owner[s].”
- **“Apply for and receive a Conditional Use Permit for the Accessory Dwelling Unit.”** This letter is an enclosure to that Application.
- **“Complete and submit to this office a signed and notarized Accessory Dwelling Unit Affidavit.”** This Affidavit is enclosed as part of our CUP Application packet.

Thank you, again, for the spirit of positive intent and collaboration that the two of you brought to the conversation on 4 March 2022. We also thank you for clearly outlining a constructive path forward.

As we wrote in our email dated 28 February and repeated during our conversation, we never intended to run afoul of the Town’s zoning ordinances and believed at the time that we were taking all the right steps to be good citizens of the Town. We will be happy to truly be in full compliance with all ordinances going forward.

Thank you, and take care.

Cynthia Gillian Emrich & Charles Tucker Van Dyck

Cynthia Gillian Emrich & Charles Tucker Van Dyck

Enclosure

[illegible]

CONDITIONAL USE PERMIT APPLICATION –

420 Randolph Avenue, Cape Charles, VA 23301

Names & Addresses of Adjacent Property Owners

(South)

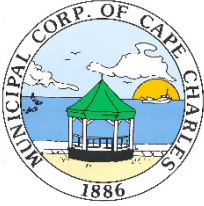
Lola May Young Bailey
433 Mason Avenue
Cape Charles, VA 23310

(East)

John P Tapscott & Paula Russo (424 Randolph Avenue)
3814 Mystic Cove Ct
Virginia Beach, VA 23455

(West)

June Pearlberg (416 Randolph Avenue)
405 Mount Carmel Rd
East Fallowfield, PA 19320

 TOWN OF CAPE CHARLES	AGENDA TITLE: Update re: Conditional Rezoning Request from Cape Charles Ventures, LLC – 238 Randolph Av		AGENDA DATE May 19, 2022
	SUBJECT/PROPOSAL/REQUEST: Update re: ZMA2022-01: Request from Cape Charles Ventures, LLC to rezone 238 Randolph Av from Residential-1 (R-1) to Commercial-1 (C-1)		ITEM NUMBER: 8C
	ATTACHMENTS: Revised Proffer Statement and Revised Site Plan		FOR COUNCIL: Action () Information (X)
	STAFF CONTACT (s): Katie H. Nunez, Interim Planning & Zoning Administrator		REVIEWED BY: John Hozey, Town Manager

BACKGROUND:

Cape Charles Ventures, LLC, on March 4, 2022, filed a conditional rezoning map amendment application to rezone 238 Randolph Avenue (Tax Map # 83A3-1-625A) from Residential-1 to Commercial-1 with proffers to limit the commercial activity of said proposed rezoning but to legally allow for the support services to be located on this lot and continue as the applicant has been utilizing this lot for the last few years and has expanded some services, such as golf carts for guest usage which are parked and charged on this lot. Additionally, the trash receptacles serving Hotel Cape Charles are stored on this lot and this lot is the entry point for limited utility deliveries, including propane for the Hotel as well as adjacent commercial properties which have been specifically listed in the Proffer Statement from the applicant.

This application was forwarded to the Town Council and on March 17, 2022, the Town Council adopted Resolution of Intent 20220317B to accept the application and forwarded to the Planning Commission who then scheduled this matter for joint public hearing with Town Council on May 3, 2022.

I met with the property owner in late summer/early fall 2021 to discuss his desire and intent to submit an expansion plan for the Hotel Cape Charles on the subject property itself. At that time, I informed the property owner that my office had received a complaint about activities occurring on the residential lot located directly behind the hotel, which is owned by Cape Charles Ventures, LLC, that are not in keeping with allowable residential uses pursuant to the zoning district. It was clear that the lot was being utilized by the hotel to handle the support functions for the hotel (locating the multiple trash collection containers there, using the lot as parking for the hotel golf carts which are utilized by staff and guests as a hotel amenity, and the lot was being used for employee parking). All of these uses are clearly supportive and incidental to the hotel operations and the Residential-1 Zoning District does not include, either by right or by conditional use permit, the ability to have this type of commercial activity on the lot.

I indicated to him that these violations (which were not being actively enforced by the department due to staffing shortage) would need to be resolved as part of any expansion concept.

In February, Cape Charles Ventures, Inc. submitted an application for a variance to the height requirements of the C-1 zoning district regarding 7 Strawberry Street (aka The Betis Building), indicating that they were under a purchase agreement to acquire this lot and would seek their expansion of hotel rooms by renovating and adding floors to this building. As part of the staff review of this application, I again noted that he had not sufficiently addressed the use of the residential lot at

238 Randolph Avenue and to move all of these activities onto commercially zoned property under his control. The applicant did withdraw this application before the public hearing could be held by the Board of Zoning Appeals and subsequently filed the Conditional Zoning Map Amendment application to rezone the residential lot from Residential-1 to Commercial-1 and included a proffer statement limiting the type of commercial activity that would occur on this property.

I have continued to speak with the applicant to review the proffers provided and he has submitted a revised proffer statement in a format recommended by staff. I continue to discuss the proposed proffers with the applicant and his representative and believe that an additional revision to the proffer statement will be submitted prior to the start of the public hearing.

PLEASE NOTE that my discussions with the applicant regarding operational issues re: trash, landscaping, golf cart charging area, etc. are intended to provide a complete and comprehensive application package with site plan and proffers, if the Town is favorably inclined toward approving the rezoning application; this assistance does not convey staff support for the rezoning application.

I indicated that he may wish to consider some other items to incorporate as proffers to address compatibility of this lot within the residential neighborhood it is located within, such as (1) language committing to the submitted landscaping plan on the proposed site plan, including a replacement commitment if the trees/shrubs should not survive, and (2) consideration of a seasonal commitment to increasing the frequency of trash collection at his expense to reduce the collection of a high volume of trash on the lot; and (3) if an expansion of the hotel is still under consideration, possibly through acquiring the commercial property at 7 Strawberry Street, then this would need to be reflected in the lots have been identified in the proffers to date, but making it conditional for inclusion only if he acquires 7 Strawberry Street as part of the hotel. I indicated that the Planning Commission may also raise issues or concerns with this rezoning application that I have not considered which may be able to be resolved, potentially through a proffer. He did indicate that he would be pursuing his hotel expansion plan through the acquisition of 7 Strawberry Street in the near future but wanted to first address a full resolution of the violations that the Town had indicated concerning his business. It is important to note that the Town has delayed the full pursuit of enforcement action of the violations at 238 Randolph Avenue while the property owner has been pursuing these applications (both the variance application and now zoning map amendment application) since Town action on these applications could resolve or alleviate the violations at this lot.

ITEM SPECIFICS:

A joint public hearing was held on May 3, 2022 with Town Council and Planning Commission at the Planning Commission meeting; the applicant provided an amended Proffer Statement with revised Site Plan prior to the opening of the Public Hearing and is attached for your consideration as part of the entire Zoning Map Amendment application. A staff report was provided at this meeting which also conducted a full analysis of the Zoning Map Amendment application relative to the Comprehensive Plan, the Zoning Ordinance and Impacts to Adjacent Property. Dave Gammino, the property owner & applicant, provided an overview of his request and the elements of the site plan and proffer statement seeking to address the concerns raised by staff and to minimize the impacts to adjacent properties as well as how this area is assisting in servicing not only his property (Hotel Cape Charles) but also the commercial tenants that reside in his building or are adjacent to his building. He also provided some history about this lot and the 8-ft easement.

The following public comments were received:

- Steve Loomis – opposed to application and stated that the 8 ft easement has been in existence since the 1920's as reflected on the Sanborn Maps.

- Chica Golibart – supportive of Judy Loomis, adjacent residential property owner, and her desire that this property remain residential
- Jawn Dolph, Hotel Manager – supportive of this application and stated that 5 businesses are supported through the hotel.
- Judy Loomis – opposed to application (she also supplied a written comment)
- Sherri Landon (written comment) – in support of application
- Laurie Klingel (written comment) – in support of application
- Eddie Compo (written comment) – in support of application
- Amy Townsend & Reverend Clark Cundifl (written comment) – opposed to application
- Karen Duer Potts (written comment) – opposed to application
- Margaret van Clief (written comment) – opposed to application
- Patsy Harris (written comment) – in support of application
- Alana Smith – in support of application

With no further comments, the public hearing was closed. The Planning Commission requested clarification about the businesses and/or properties that are referenced in the Proffer Statement as to which would be allowed propane delivery/access vs. trash collection/servicing which the applicant provided. Members of the Commission indicated that some resolution is needed to continue to allow the essential services to be provided and serviced for these businesses, particularly to see if there is a way to leave the lot as Residentially Zoned but provide a narrow and limited allowance for trash collection and servicing as well as propane delivery but nothing further.

PLANNING COMMISSION RECOMMENDATION:

Commissioner Grossman motioned to table ZMA2022-01 and direct staff to explore if there is a way to retain this lot as Residential-1 Zoning but provide a narrow allowance for trash and propane service, possibly as a Legal, Non-Conforming Use, and was seconded by Commissioner McCoy and was unanimously approved.

Staff will be providing a report to the Planning Commission for their June 7, 2022 to see if they will take the matter off the table and develop a recommendation for the Town Council. I will forward this recommendation, once provided, to the Town Council at their next available meeting for their consideration and possible action on ZMA2022-01.

This report is being provided as an update only and no action is required by Town Council this evening. I have only attached the revised Proffer Statement and Site Plan since these items were not viewed by the Town Council during the joint meeting since only one original was handed in prior to the commencement of the public hearing, as required by Code of Virginia.

Prepared by:

Christopher M. Mackenzie, Esquire (VSB# 84141)
Sands Anderson PC
2400 Bank of America Center
1111 East Main Street (23219), P.O. Box 1998
Richmond, Virginia 23218-1998

After recording return to:
Town of Cape Charles
Department of Planning & Zoning
2 Plum Street
Cape Charles, VA 23310

Tax Map #: 83A3-1-625A

VOLUNTARY PROFFER STATEMENT

Applicant & Owner: Cape Charles Ventures LLC (the “**Applicant**”)

Representative: Christopher M. Mackenzie, Esquire (VSB# 84141)
Sands Anderson PC
2400 Bank of America Center
1111 East Main Street (23219), P.O. Box 1998
Richmond, Virginia 23218-1998
Phone: 804-783-7280
Email: CMackenzie@SandsAnderson.com

Subject Property: Northampton County Tax Parcel 83A3-1-625A, with a street address of 238 Randolph Avenue, Cape Charles, Virginia, consisting of approximately 1 acre (the “**Property**”)

Benefited Properties: Northampton County Tax Parcel 83A3-1-623, with a street address of 235 Mason Avenue, Cape Charles, Virginia (the “**Hotel Parcel**”);
227, 231, 237, 239, and 241 Mason Avenue, Cape Charles, Virginia; and
7 Strawberry Street, Cape Charles, Virginia if acquired by Applicant

Date: May 3, 2022

Site Plan: Entitled “Site Plan – 238 Randolph”, prepared by Kendra Taylor
Landscape Architecture, LLC, dated April 6, 2022, as revised, attached
hereto as **Exhibit A** (the “**Site Plan**”)

Rezoning Request: From R-1 to C-1

Rezoning File No.: ZMA 2022-001

RECITALS

- A. Applicant is the owner of the Property and has initiated the conditional amendment to the zoning map of the Town of Cape Charles, Virginia, by petition addressed to the Town of Cape Charles, a municipal corporation of the Commonwealth of Virginia (the “**Town**”).
- B. The purpose of this Voluntary Proffer Statement (the “**Proffers**”) is to rezone the Property from the R-1 Zoning District to C-1 Zoning District.
- C. The Town’s policy is to provide for the orderly development of land for various purposes, including commercial purposes, through zoning and other land development legislation.
- D. Applicant desires to offer the Town the following conditions for the enhancement of the community and to provide for the highest quality and orderly development of the Property.
- E. The conditions outlined in this Agreement have been proffered by Applicant and allowed and accepted by Town as a part of the amendment of the Town Zoning Ordinance and the Zoning Map. These conditions shall continue in full force and effect until a subsequent amendment changes the zoning of the Property; provided, however, that such conditions shall continue if the subsequent amendment is part of the comprehensive implementation of a new or substantially revised zoning ordinance of the Town.

CONDITIONS

I. General Information.

The Applicant, and its successors and assigns, hereby agrees that the use and development of the Property, subsequent to the Town’s approval of the rezoning application to which these Proffers are attached, will be in conformance with the Site Plan and the below proffered conditions pursuant to §§ 15.2-2303 and 15.2-2303.4, et al. of the *Code of Virginia* (1950, as amended), and Section 2.7 of the Zoning Ordinance of the Town, as amended. The Proffers are the only conditions offered in this rezoning application, and any prior proffers affecting the Property are hereby superseded by these Proffers, and thus are void and of no further force and effect upon said approval. The Proffers will be effective only upon the Town’s full and final approval of rezoning application # ZMA 2022-001, submitted by the Applicant to reclassify the Property from R-1 to C-1.

These Proffers are made voluntarily and without any requirement by or exaction from the Town or its governing body and without any element or compulsion or quid pro quo for zoning, rezoning, site plan, building permit or subdivision approval, and covenants and agrees that these Proffers shall constitute covenants running with the Property, which shall be binding upon the Property, and upon all persons and entities claiming under or through the Applicant, its heirs successors and assigns, grantees and other successors in interest or title to the Property.

II. Land Use.

A. General Development. The Property will be developed in general conformance with the Site Plan. Notwithstanding the foregoing, all parcel lines, parcel sizes, improvement sizes and locations, private driveway and travelway locations, landscaping and lighting locations, utility locations, storm water management facilities, and dimensions of undeveloped areas shown on the Site Plan may be reasonably adjusted for purposes of the final site plans to allow the Applicant to address final development, engineering and design requirements, fulfill compliance with state and federal agency regulations including, but not limited to, DHR, VDOT, DEQ, DCR, Army Corps., etc., and compliance with the requirements of the Town's development regulations and design standards manual.

B. Permitted Uses. The use of the Property shall be limited to uses in support of and in association with the permitted uses for which the Hotel Parcel is utilized, and namely the following:

- 1. Deliveries.** Propane and other service related deliveries for the Hotel Parcel and the properties located at 227, 231, 237, 239, and 241 Mason Avenue, Cape Charles, Virginia.
- 2. Waste Management.** Storage and use of Town waste management receptacles for the Hotel Parcel and the properties located at 237, 239 Mason Avenue, Cape Charles, Virginia and 7 Strawberry Street, Cape Charles, Virginia, if acquired by the Applicant or an entity associated with the Applicant.
- 3. Golf Cart and Bicycle Storage.** Parking, storage, charging, and use of golf carts, bicycles, and similar recreation equipment owned and operated by the Applicant in association with the Hotel Parcel.

III. Landscaping & Screening.

The Applicant agrees to install, maintain, and, if necessary, replace, the landscaping and screening improvements shown on the Site Plan in conformance with the following:

A. The landscaped buffer areas shown on the Site Plan shall be maintained in good, healthy state by the owner of the Property. Fallen, diseased, and dead plant growth shall be removed and replaced with comparable (at maturity) healthy plant materials.

B. The Property may include additional plantings, signage, and/or fencing, as otherwise permitted under the Town's Zoning Ordinance.

C. Dumpsters and/or trash cans, not including convenience containers, shall be reasonably screened from public view at ground level.

D. Golf carts and bicycles shall be stored overnight in the locations designated on the Site Plan, with a maximum of six (6) golf carts stored therein and with the bicycles stored at the end of the shelter closer to Randolph Avenue, as shown on the diagram entitled “Newport 7-40” included in Exhibit A.

III. Lighting. Any lighting of the Property shall be directed in a way to minimize glare on public roads and adjacent structures.

[Signature pages follow]

The Applicant makes these proffers voluntarily, in support of its rezoning application.

WITNESS the following signatures:

APPLICANT & OWNER:

Cape Charles Ventures LLC,
a Virginia limited liability company

By: [Signature]

Name: David M. Gammino

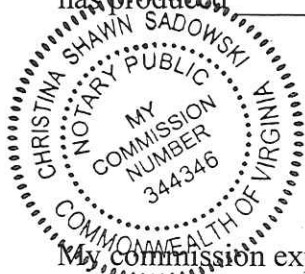
Title: Manager

Date: 5/3/22

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF Richmond

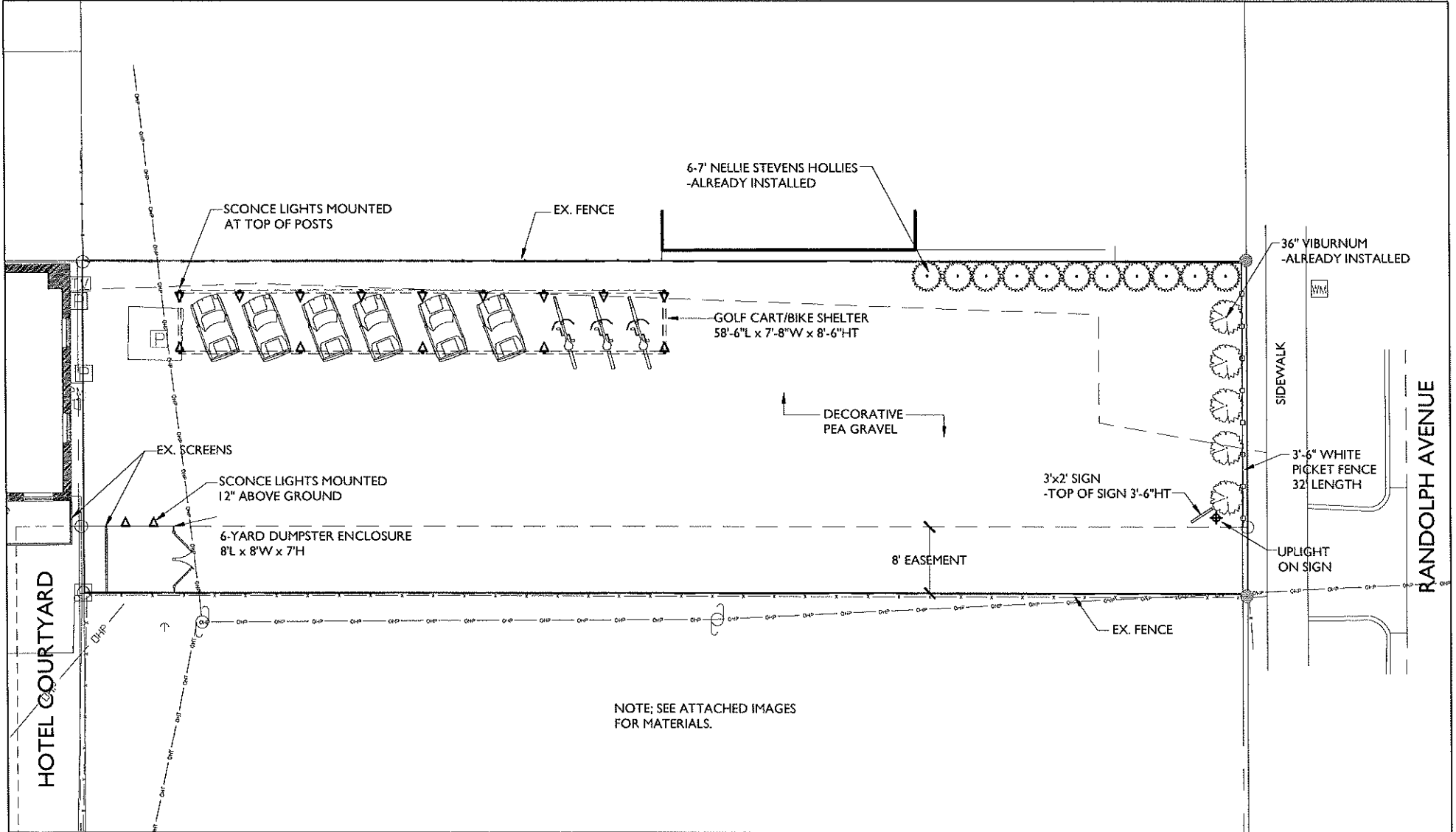
The foregoing was subscribed, sworn to and acknowledged before me this 3rd day of May, 2022 by that David M. Gammino, whose name is signed to the foregoing instrument as (title) owner of Cape Charles Ventures LLC, a Virginia limited liability company, on behalf of said company. He/she ☒ is personally known to me or ☐ has produced N/A as identification.



[Signature]
Notary Public

My commission expires: 6/30/2024
Registration No. 344346

Exhibit A
Site Plan



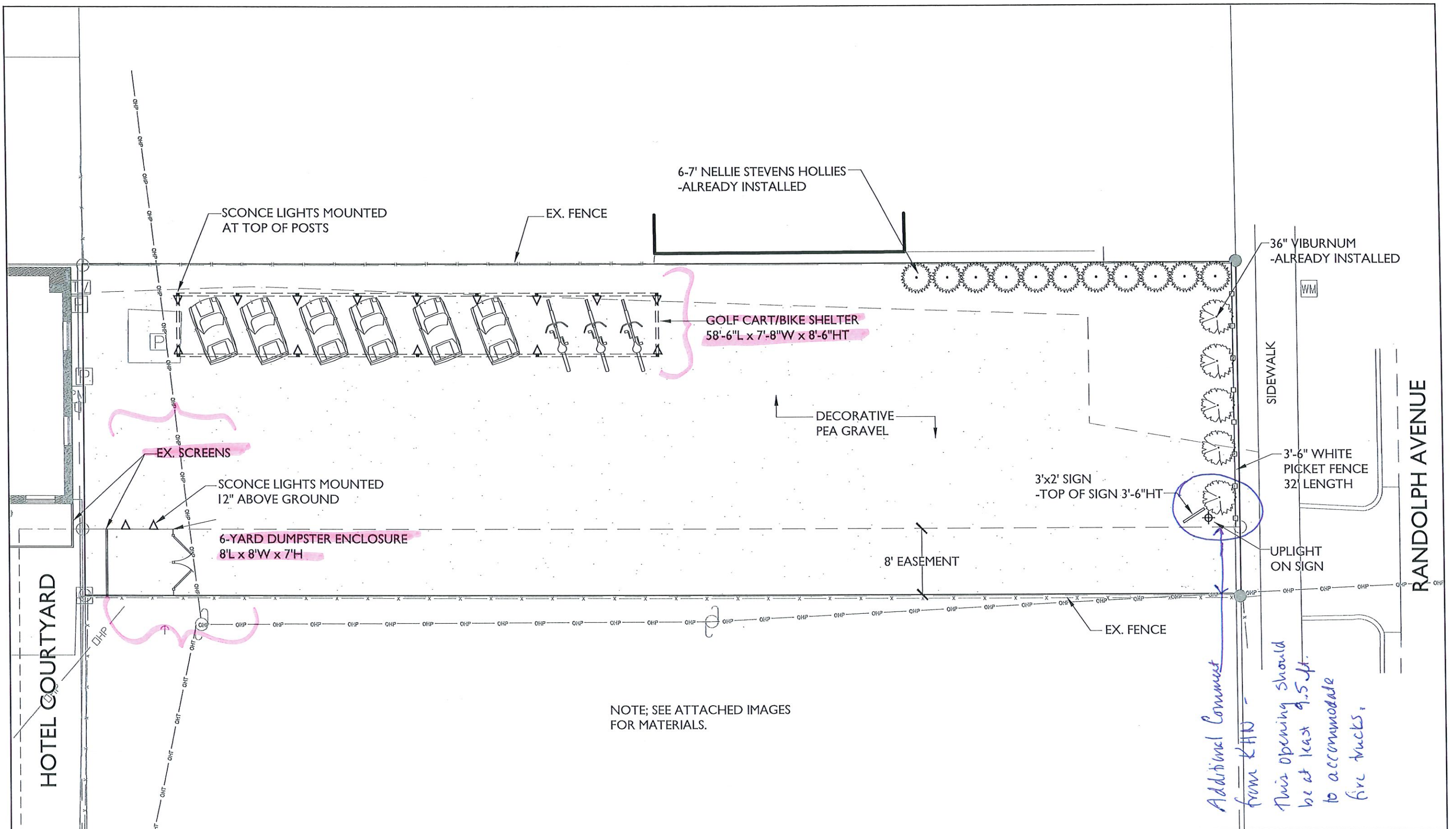
SITE PLAN - 238 RANDOLPH

KENDRA TAYLOR LANDSCAPE ARCHITECTURE, LLC



SCALE: 3/32" = 1'-0"

HOTEL CAPE CHARLES
CAPE CHARLES, VIRGINIA
MAY 03, 2022



SITE PLAN - 238 RANDOLPH

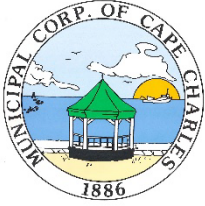
KENDRA TAYLOR LANDSCAPE ARCHITECTURE, LLC



SCALE: 3/32" = 1'-0"

HOTEL CAPE CHARLES
CAPE CHARLES, VIRGINIA

MAY 03, 2022

 TOWN OF CAPE CHARLES	AGENDA TITLE: Lease of Town Property		AGENDA DATE: May 19, 2022
	SUBJECT/PROPOSAL/REQUEST: Lease a portion of the harbor boardwalk to The Hungry Crab, LLC.		ITEM NUMBER: 8D
	ATTACHMENTS: 1. Existing lease of Town property to The Hungry Crab, LLC 2. Proposed lease. 3. Proposed ordinance.		FOR COUNCIL: Action (X) Information ()
	STAFF CONTACT (s): Bob Panek	REVIEWED BY: John Hozey, Town Manager	

BACKGROUND:

Approximately 0.4 acres of Tax Parcel 83A3-03-AO-00-010 was leased to the Hungry Crab, LLC, in 2012 to build and operate The Shanty restaurant for an initial term of 10 years with 3 renewal options of 10 years each. The first renewal option was exercised by the first amendment in 2019. The lease and amendment are at attachment 1. Under COVID-19 pandemic emergency authority, the Town granted permission to utilize the portion of the harbor boardwalk immediately to the west of The Shanty to offset reduced seating measures within the restaurant. This contributed to preserving sales volume and the associated percentage rent and meals tax revenue earned by the Town. The pandemic emergency authority is no longer in affect.

DISCUSSION:

The managing owner of The Shanty has requested that the Town lease that portion of the boardwalk so that the beneficial effect on sales volume may continue. The proposed lease is at attachment 2.

The term of the lease would be for one year, with four renewable terms of one year each, for a maximum of five years. This portion of the harbor boardwalk, which is part of the Community Trail, currently terminates just north of the restaurant and is not heavily transited. The plan includes a future connection from that point to the Bay Avenue boardwalk as the ferry dock property develops. The proposed annual lease term would provide flexibility for reevaluation as development proceeds.

The base rent would be \$100 per month. For comparison, the base rent in the current lease for The Shanty parcel is \$500 per month. The percentage rent would be 1% of gross revenue, the same as The Shanty lease.

The proposed lease incorporates by reference the remaining terms and conditions of the current lease for The Shanty parcel.

Code of Virginia, Section 15.2-1800.B requires a public hearing before town property may be leased. The public hearing was held today.

Code of Virginia, Section 15.2- 2100.B allows leasing of town property for a maximum period of five years without competitive bidding. The proposed lease would be for a maximum of five years if all four annual renewable terms were exercised.

Code of Virginia, Section 15.2-2100.A requires that a lease of town property be made by an ordinance passed by three-fourths of all members elected to council. The proposed ordinance is at attachment 3.

RECOMMENDATION:

Staff recommends a roll call vote to adopt the proposed ordinance.

DEED OF LEASE
FIRST AMENDMENT

THIS FIRST AMENDMENT to the DEED OF LEASE by and between the **MUNICIPAL CORPORATION OF CAPE CHARLES** ("Landlord") and **THE HUNGRY CRAB, LLC** ("Tenant"), dated January 12, 2012, is made this 21 day of May, 2019, to exercise the first Renewal Term as follows:

1. Paragraph 5.1 Tenant shall pay the following base rent ("Base Rent"):

<u>Period</u>	<u>Monthly Base Rent</u>
1/1/12 through 5/31/12	\$0.00 (zero dollars per month)
6/1/12 through 12/31/21	\$500.00 (five hundred dollars per month)
1/1/22 through 12/31/31	\$500.00 (five hundred dollars per month)
Subsequent Renewal Terms	Market Rate, but not less than the Base Rent in effect during the immediately preceding term

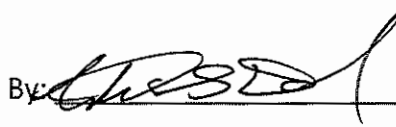
2. All other provisions remain unchanged.

Witness the following signatures and seals:

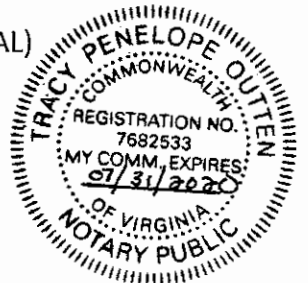
LANDLORD:

MUNICIPAL CORPORATION OF CAPE CHARLES,
a political subdivision of the Commonwealth of Virginia


Attest

By:  (SEAL)

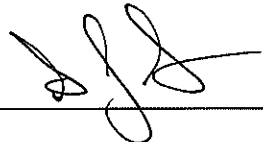
Name: William S. Oze Sr
Title: Mayor

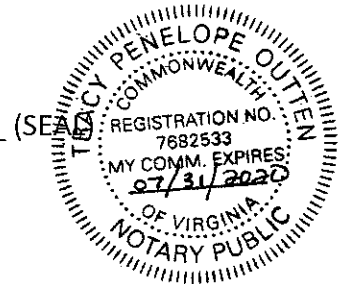


TENANT:

THE HUNGRY CRAB, LLC,
a Virginia limited liability company


Attest

By: 
Name: Gavin Dempster
Title: Owner



DEED OF LEASE

THIS DEED OF LEASE ("Lease") is made as of this 12TH day of JANUARY, 2012 ("Effective Date"), by and between the **MUNICIPAL CORPORATION OF CAPE CHARLES**, a political subdivision of the Commonwealth of Virginia ("Landlord"), and **THE HUNGRY CRAB, LLC**, a Virginia limited liability company ("Tenant"), as follows:

WHEREAS, Landlord owns real property in the Town of Cape Charles, Virginia consisting of approximately 0.4 acres, more or less, at the west end of the area commonly known as the "West Dock," consisting of Tax Parcel 83A3-03-OA-00-010, as more particularly described on Exhibit A attached hereto and incorporated herein (the "Property"); and

WHEREAS, Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, the Property on the terms set forth herein.

In consideration of the mutual promises and agreements set forth herein, and other good and valuable consideration, the parties hereto acknowledge and agree as follows:

1. Property.

1.1 Landlord hereby leases to Tenant, and Tenant hereby takes and leases from Landlord, the Property, on the terms and conditions set forth herein.

1.2 To the extent Landlord owns or controls boat slips or other docking facilities that it makes available to the general public ("Public Docks"), Tenant's customers may dock their boats at no charge at the Public Docks if space is available, provided that (i) such docking shall be limited to customers patronizing Tenant's business during normal business hours, (ii) no overnight docking shall be permitted, (iii) customers must have a receipt from Tenant's business from the same day that the boat is docked, and (iv) Tenant's indemnification and hold harmless obligations in Section 9.1 below shall apply to any injury, death, or damage to person or property occurring on the Public Docks or the surrounding waterways caused by Tenant's customers.

2. Term; Renewal Terms.

2.1 The term of this Lease shall commence on January 1, 2012 ("Commencement Date") and shall terminate at midnight on December 31, 2021, unless sooner terminated or unless extended as provided in this Lease.

2.2 So long as no event of default has occurred (and no event has occurred or condition exists which, with the passage of time or giving of notice or both, would constitute an event of default), Tenant shall have the option to renew this Lease for up to three (3) consecutive

renewal terms of ten (10) years each (each a "Renewal Term"), such that the maximum possible duration of the Lease term is forty (40) years. During the Renewal Terms, all provisions of this Lease shall remain in full force and effect except that, upon the commencement of each exercised Renewal Term, Base Rent shall be adjusted to Market Rate, as determined below.

Notwithstanding anything in this Lease to the contrary, under no circumstances shall Base Rent decrease during any Renewal Term from the Base Rent paid by Tenant during the immediately preceding initial term or Renewal Term, as the case may be, even if the then-prevailing Market Rate would be lower than the then-current Base Rent. Subject to the foregoing, Market Rate shall mean a base rent that a willing tenant leasing property comparable to the Property would pay and that a willing landlord of waterfront harbor property comparable to the Property would accept at arm's length. Each renewal option shall be exercised by Tenant's written notice to Landlord given a minimum of nine (9) months prior to the expiration of the then-current initial term or Renewal Term, as the case may be. Within sixty (60) days after receipt of a timely written request from Tenant, Landlord shall provide Landlord's good-faith determination of the proposed Market Rate for the Renewal Term (the "Proposed Renewal Rate"). Tenant shall within fifteen (15) days following delivery of the Proposed Renewal Rate by Landlord notify Landlord in writing of the acceptance or rejection of the Proposed Renewal Rate. If Tenant accepts the Proposed Renewal Rate, then the Proposed Renewal Rate shall be the Base Rent in effect during the exercised Renewal Term. Should Tenant reject Landlord's Proposed Renewal Rate during such fifteen (15) day period, then Landlord and Tenant shall in good-faith negotiate during the thirty (30) day period commencing upon Tenant's rejection of Landlord's Proposed Renewal Rate (the "Negotiation Period") to determine the Market Rate for the Renewal Term. In the event Landlord and Tenant do not agree upon the Market Rate within the Negotiation Period, then Landlord and Tenant shall submit to binding arbitration to determine the Market Rate for the Renewal Term. Each party, at its cost and by giving notice to the other party, shall appoint a competent and impartial commercial real estate broker with at least ten (10) years' full-time commercial real estate brokerage experience with waterfront property in the general geographical area of the Property to set the prevailing Market Rate for the Renewal Term. If either Landlord or Tenant does not appoint a broker within ten (10) days after the other party has given notice of the name of its broker, the single broker appointed shall be the sole broker and shall set the prevailing Market Rate for the Renewal Term. If two (2) brokers are appointed by Landlord and Tenant as stated in this paragraph, they shall meet promptly and attempt to set the prevailing Market Rate. If the two (2) brokers are unable to agree within ten (10) days after the second broker has been appointed, they shall attempt to select a third broker, meeting the qualifications stated in this paragraph within ten (10) days after the last day the two (2) brokers are given to set the prevailing Market Rate. If the two (2) brokers are unable to agree on the third broker, either Landlord or Tenant by giving ten (10) days' written notice to the other party, can apply to a duly appointed judge of the court of competent jurisdiction of the city or county in which the Premises is located for the selection of a third broker who meets the qualifications stated in this paragraph. Landlord and Tenant each shall bear one-half (1/2) of the cost of appointing the third broker and of paying the third broker's fee. The third broker, however selected, shall be a person who has not previously acted in any capacity for either Landlord or Tenant. Within thirty (30) days after the

selection of the third broker, the third broker shall select one of the two Market Rates submitted by the first two brokers as the Market Rate for the Renewal Term. If either of the first two brokers fails to submit their opinion of the Market Rate within the time frame set forth above, then the single Market Rate submitted shall automatically be the prevailing Market Rate for the Renewal Term. The Base Rent for the Renewal Term shall be adjusted to the Market Rate as finally determined pursuant to this paragraph; provided, however, that Base Rent shall never be reduced. A Lease amendment shall be promptly executed by Landlord and Tenant reflecting the Base Rent to be paid by Tenant during the Renewal Term. During any exercised Renewal Terms, Tenant shall continue to pay Percentage Rent as provided in this Lease.

2.3 As used in this lease, the "term" of this Lease shall include the original term and any Renewal Terms properly exercised by Tenant.

3. Delivery of the Property; Construction of Improvements.

3.1 Landlord shall deliver possession of the Property to Tenant on the Commencement Date. Tenant accepts the Property "AS IS WHERE IS", WITHOUT WARRANTY OR REPRESENTATION OF ANY KIND OR NATURE. LANDLORD MAKES NO REPRESENTATIONS OR WARRANTIES, AND EXPRESSLY DISCLAIMS SAME, WITH RESPECT TO ANY ASPECT OF THE PROPERTY INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY, THE PRESENCE OR ABSENCE OF HAZARDOUS OR TOXIC SUBSTANCES ON OR UNDER THE PROPERTY, THE SUITABILITY OF THE PROPERTY FOR DEVELOPMENT, OR THE COMPLIANCE OR NONCOMPLIANCE OF THE PROPERTY WITH ANY LAW, REGULATION, ORDINANCE, OR OTHER GOVERNMENTAL REQUIREMENT. Any prior statements regarding the foregoing matters are hereby deemed void and are superseded by this Lease.

3.2 Tenant shall, at its sole costs and expense, within seven (7) months after the Commencement Date, cause to be constructed all buildings, decks, walkways, drive aisles, parking areas, and other improvements necessary or proper for the operation of Tenant's business for the Permitted Use, including any site work and utility connections (the "Improvements"). Prior to constructing any portion of the Improvements, Tenant shall submit to Landlord for Landlord's written approval a full set of plans, specifications, and other information reasonably requested by Landlord showing all Improvements to be constructed on the Property (the "Plans"). Landlord's approval shall not be unreasonably withheld, conditioned, or delayed. Landlord's review and approval of the Plans is solely for Landlord's benefit and shall not constitute a representation or warranty by Landlord that the Improvements will be safe, architecturally sound, or will comply with any Laws. Tenant shall construct the Improvements in a good and workmanlike manner, in conformity with the Plans as approved in writing by Landlord and in full compliance with all applicable Laws. Notwithstanding Landlord's approval of the Plans, Tenant shall obtain, through regular application and review processes, all necessary permits,

certificates, and approvals for construction of the Improvements and for operation of the business for the Permitted Use from federal, state, and local authorities, including without limitation the Town of Cape Charles, Northampton County, and the Commonwealth of Virginia (including its Alcohol Beverage Control Board). The foregoing includes, without limitation, site plan approval, land disturbance and building permits, occupancy permits, and Virginia ABC licenses.

3.3 As used in this Lease, "Laws" shall mean all laws, regulations, rules, ordinances, codes, guidelines, requirements, and orders enacted, promulgated, issued, or imposed from time to time by any federal, state, or local government or agency thereof, including without limitation those of the federal government, the Commonwealth of Virginia, the Town of Cape Charles, and Northampton County, as the same may be amended or revised from time to time. Without limiting the generality of the foregoing, Laws includes the Zoning Ordinance and the Code of the Town of Cape Charles, and any special harbor district provisions.

4. Use of Property. Tenant covenants and agrees that the Property shall be used only for the operation of a casual, seafood-themed restaurant with sit down service, with an emphasis on local seafood products (the "Permitted Use") and for no other purpose, unless Landlord agrees otherwise in writing. Except as otherwise provided in this Lease, Tenant covenants to operate its business for the Permitted Use at a minimum from April 15 through October 15, at least five days per week during regular business hours, each year during the term of this Lease. Tenant acknowledges and agrees that (i) Landlord has a compelling and substantial interest in controlling the development and use of the property in the harbor and surrounding areas, (ii) that a significant portion of the Rent to be paid by Tenant will be based on Tenant's gross revenues, and (iii) that Tenant's covenant to continuously operate a business for the Permitted Use is a material part of the consideration for Landlord to enter into this Lease.

5. Rent. Landlord reserves, and Tenant covenants to pay to Landlord at Landlord's address for notices as set forth below (or to any other location requested by Landlord in writing), without right of deduction or offset and without prior demand therefor being made, as payment for the use of the Property, and for the rights herein granted Tenant, the following Rent:

5.1 Tenant shall pay the following base rent ("Base Rent"):

<u>Period</u>	<u>Monthly Base Rent</u>
1/1/12 through 5/31/12	\$0.00 (zero dollars per month)
6/1/12 through 12/31/21	\$500.00 (five hundred dollars per month)
Renewal Terms	Market Rate, but not less than the Base Rent in effect during the immediately preceding term

5.2 Such Base Rent shall be paid in advance on the first day of each month. Base Rent shall be prorated for any partial month based on a daily rate determined by dividing the above monthly figure by the number of days in the month.

5.3 In addition to Base Rent, Tenant shall pay rent based on a percentage of Tenant's Gross Revenues as follows ("Percentage Rent"):

<u>Period</u>	<u>Monthly Percentage Rent</u>
1/1/12 through 12/31/14	0.5% (one-half of one percent) of Gross Revenues per month
1/1/15 through 12/31/21	1.0% (one percent) of Gross Revenues per month
Renewal Terms	1.0% (one percent) of Gross Revenues per month

Within fifteen (15) days after the end of each month during the term, Tenant shall deliver to Landlord an itemized statement showing Gross Revenues for the preceding month, together with a payment of the applicable Percentage Rent according to the table above.

5.4 As used herein, "Gross Revenues" shall mean all revenues received by Tenant or its affiliates in connection with activities conducted on the Property, including without limitation the sale of goods, services, or both. Gross Revenues shall include revenues received from activities performed elsewhere if such activities are related to or arise out of the business operations of Tenant conducted on the Property. Without limiting the generality of the foregoing, "Gross Revenues" shall include all cash, checks, credit card payments, and other consideration received by Tenant or its employees (including tips but excluding sales tax) or any affiliate for the sale and service of food, beverages (regular and alcoholic), and merchandise, whether served on the Property, for take-out, or as part of catering operations conducted off the Property. Tenant shall maintain full, complete, and accurate records of all Gross Revenues and the supporting receipts, cash register reports, ledgers, and the like. Upon request, Tenant shall make available for inspection and copying all books and records documenting Gross Revenues and the individual items comprising Gross Revenues.

5.5 Base Rent, Percentage Rent, and all other sums due from Tenant under this Lease shall be referred to as "Rent." Tenant's obligations under this Section 5 shall survive the expiration or earlier termination of this Lease.

6. Late Payments. Tenant covenants and agrees to pay interest from 10 days after the due date of any Rent due to Landlord under this Lease to the date of payment at the rate of ten percent (10%) per annum, or the highest legal rate, if any legal limit is applicable to such past due obligations. In addition, Tenant shall pay a "late charge" in the amount of five percent (5%)

for each payment of Rent more than ten (10) days in arrears to cover the extra expense involved in handling delinquent payments. Tenant further agrees to pay (or to reimburse Landlord promptly if Landlord elects to pay) reasonable attorney's fees and court costs incurred by Landlord in connection with the collection of delinquent Rent and/or any enforcement of any provision under this Lease.

7. Responsibilities, Covenants, and Agreements of Tenant. Tenant covenants and agrees that:

7.1 It will comply with all Laws.

7.2 It will not use, or permit to be used, the Property for any illegal or immoral purpose, or for any purpose that generates a nuisance which affects adjacent property;

7.3 It will not use, or permit to be used, the Property in any manner that causes an accumulation of trash or debris on the Property, or allows an infestation of rodents, insects, or other pests on the Property;

7.4 It will not, without the prior written consent of Landlord, use, or permit to be used, any explosives or other hazardous chemicals or devices on the Property except in strict compliance with all applicable laws, regulations, and ordinances.

7.5 It will promptly pay all bills for all taxes and utilities, whether sent directly from the taxing authority or utility company or sent via Landlord. The foregoing includes, without limitation, real estate and personal property taxes on the Property and/or Improvements and utility charges from the Town of Cape Charles, Northampton County, and the Accomack Northampton Electric Cooperative.

7.6 It will not permit any mechanic's, materialman's or similar lien to stand against any portion of the Property for any labor performed or material furnished in connection with any work requested, performed or caused to be performed by Tenant, including without limitation construction of the Improvements.

7.7 It will not, without the Landlord's prior written consent, make any alterations, improvements, or renovations to the Improvements or any portion thereof. If approved by Landlord, such alterations, improvements, or renovations shall be deemed part of the Improvements.

7.8 It will, at its sole cost and expense, maintain the entire Property and all Improvements in good, clean, and slightly condition, in full compliance with all Laws, making such repairs and replacements as may be necessary or proper in connection therewith.

8. Surrender of Possession. Upon expiration or earlier termination of this Lease, Tenant shall promptly and peacefully surrender the Property to Landlord, at Landlord's option: (i) in the same condition as existed as of the Commencement Date, with all Improvements, fixtures, and personal property removed and properly disposed of, or (ii) with all Improvements and fixtures in place, title to which shall vest in Landlord without the need for further action by Landlord or Tenant except that Landlord shall pay Tenant for the then-current fair market value thereof as determined by an independent appraiser. If the Property is not surrendered in accordance with the terms of this Lease, Tenant shall indemnify Landlord and its agents, employees, independent contractors, officers, and officials against any loss or liability including reasonable attorneys' fees and costs, and including liability to succeeding tenants. This indemnification shall survive termination of this Lease.

9. Indemnification and Release.

9.1 Tenant will hold Landlord harmless from and indemnify Landlord for any and all claims, actions, suits, losses, liabilities, damages, judgments, penalties, fines, costs, expenses, and fees (including attorney's and expert witness fees), suffered or incurred by Landlord as a result of injury, death, or damage to person or property in, on, to, or about the Property; provided, however that this clause shall not apply to injury or damage caused by Landlord's willful act. It is the intention and agreement that Landlord, except as otherwise provided herein, shall not be liable for any personal injuries or damage to Tenant or its owners, officers, agents, employees, invitees and all persons having business with Tenant or to any other persons or to any occupant of any part of the Property and Tenant agrees to take such reasonable steps as may be necessary to safeguard its employees, agents, invitees and all persons having business with Tenant at all times during the term of this Lease.

9.2 Tenant and all those claiming by, through or under Tenant shall occupy and use the Property and any improvements therein and appurtenances thereto solely at their own risk, and Tenant and all those claiming by, through or under Tenant hereby release Landlord and Landlord's agents, employees, independent contractors, officers, and officials, to the full extent permitted by law, from all claims of every kind, including loss of life, personal or bodily injury, damage to merchandise, equipment, fixtures or other property, or damage to business or for business interruption, arising, directly or indirectly, out of or from or on account of such occupancy and use, or resulting from any present or future condition or state of repair thereof. Landlord shall not be responsible or liable at any time to Tenant, or to those claiming by, through or under Tenant, for any loss of life, bodily or personal injury or damage to property or business, or for business interruption, that may be occasioned by the acts, omissions or negligence of any person or entity other than Landlord by Landlord's willful act.

10. Insurance

10.1 Tenant will, at all times during the term of this Lease, commencing on the

date of delivery of possession of the Property to Tenant, and in any event prior to any entry by Tenant onto the Property, at its own cost and expense, carry with a company or companies, satisfactory to Landlord, commercial general liability insurance covering Tenant's use and occupancy of the Property and all risks of personal injury, death, and property damage (including without limitation damage to the Property) arising out of or related thereto, in a form satisfactory to Landlord. Such insurance shall have combined single liability limits of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate, and shall have Landlord as an additional named insured on such policy or policies. In addition, Tenant shall maintain commercial property insurance on all structures, improvements, fixtures, and equipment located on the Property at full replacement cost. The foregoing limits may be increased by Landlord from time to time during the term, consistent with the levels of insurance required for similar properties and/or operations.

10.2 Tenant covenants that all of the insurance policies required under this Lease, and their renewal or replacement, shall be delivered to Landlord prior to the Commencement Date. Such policy or policies shall not be subject to cancellation or modification without thirty (30) days prior written notice to Landlord. The policy or policies shall also provide that only the acts or omissions of Landlord may prejudice Landlord's rights under the policy. If any such insurance policy is not provided, Landlord is authorized to secure such policy from such companies as it deems appropriate and Tenant shall immediately pay the cost of such insurance. Tenant's failure to provide required insurance shall also be an event of default under this Lease, without the need for notice or an opportunity to cure. Tenant shall be responsible for complying with all requirements of any such insurance.

11. Net Lease. This is an absolute net Lease and Landlord shall not be required to provide any services, expend any funds, perform any repairs or maintenance, or do any other act or thing with respect to the Property, the Improvements, or the appurtenances thereto, and the payments reserved herein shall be paid to Landlord without claim on the part of Tenant for diminution, setoff, or abatement, and nothing shall suspend, abate or reduce any Rent or other sum to be paid hereunder, except as may otherwise be explicitly specified in this Lease.

12. Assignment and Subletting. Tenant covenants that it will not assign this Lease in whole or in part, or sublet or permit any other person to occupy all or any portion of the Property, without Landlord's express written consent. If Tenant is a corporation, limited liability company, or partnership, the sale or encumbrance of (i) a majority of its outstanding voting stock or membership or partnership interests (whether in one transaction or as the result of more than one transaction), or (ii) all or substantially all of its assets, shall be deemed an assignment of this Lease.

13. Waiver of Subrogation. All fire insurance, extended coverage, property insurance, and policies relating to other casualties carried by Tenant covering the Property and/or the contents thereof, shall expressly waive any right on the part of the insurer against Landlord, its

agents, and employees, which right is hereby expressly waived. Tenant agrees that its insurance policies required to be carried by this Lease will include such waiver clause or endorsement.

14. Default and Remedies.

14.1 Each of the following shall be an event of default under this Lease: (i) Tenant's failure to make any payment due under this Lease for a period of more than ten (10) days after its due date; or (ii) Tenant's failure to perform any of the nonpayment terms, covenants, conditions or provisions herein contained and such failure shall not be remedied within the applicable time period or, if none, within thirty (30) days after written notice thereof (or if such default cannot be fully cured within such thirty (30) day period, and Tenant does not continuously and diligently pursue the cure thereof to Landlord's satisfaction); or (iii) if Tenant shall file a petition, or if a petition shall be filed against Tenant, under the United States Bankruptcy Code or similar laws, or if Tenant shall be adjudicated a bankrupt, or shall become insolvent, or shall make a general assignment for the benefit of its creditors; or (iv) if a receiver shall be appointed for Tenant or a substantial part of its property and such receiver is not removed within thirty (30) days after appointment.

14.2 Following an event of default by Tenant, Landlord shall have the right (in addition to all other rights and remedies provided by law or equity) to reenter and take possession of the Property, peaceably or by force, with or without notice and with or without judicial process, and to remove any property thereon, without liability for damage to and without obligation to store, such property. Landlord may so recapture the Property with or without terminating this Lease. In the event of a termination, Landlord may (but shall be under no obligation to) relet the Property, or any part thereof, from time to time, in the name of Landlord or Tenant, without further notice, for such term or terms, on such conditions, and for such uses and purposes, as Landlord, in its sole discretion, may determine, and may collect and receive all rents derived therefrom and apply the same, after deduction of all appropriate expenses (including, without limitation, leasing commissions, the cost of preparing the Property for reletting; reasonable attorney's fees and other costs of collection) to the payment of the Base Rent and other sums due from Tenant hereunder. Further, in the event of a termination, to the extent permitted by law, Landlord may accelerate all Base Rent due for the remainder of the term, and such accelerated Base Rent shall be immediately due and owing. No repossession of the Property or any part thereof pursuant to this section, and no expiration or termination of this Lease by the terms hereof or by operation of law or otherwise, shall relieve Tenant of its responsibilities and obligations hereunder, all of which shall survive such expiration, termination or repossession. Tenant shall pay Landlord its reasonable attorney's fees in enforcing the terms of this Lease, including without limitation collecting amounts due hereunder and/or recapturing possession of the Property. All of Landlord's remedies shall be cumulative, and the exercise of one or more remedies shall not be deemed a waiver of any other rights or remedies.

15. Costs and Attorneys' Fees. In addition to any other rights of Landlord under this

Lease, if Landlord prevails against Tenant in any action arising out of this Lease, including without limitation, any suit by Landlord for the recovery of Base Rent or other sums hereunder, or possession of the Property, Tenant shall pay Landlord its reasonable attorneys' fees and costs in such suit, at trial and on appeal, and such attorneys' fees and costs shall be deemed to have accrued on the commencement of such action.

16. Notices. Any notice herein provided for to be given to shall be deemed to be given only if and when hand delivered, posted in United States registered or certified mail, postage prepaid, or delivered by reputable overnight courier requiring a receipt, addressed to the following:

If to Landlord:

Municipal Corporation of Cape Charles
Municipal Building
2 Plum Street
Cape Charles, Virginia 23310
Attention: Town Manager
Telephone: (757) 331-3259
Facsimile: (757) 331-4820

If to Tenant:

The Hungry Crab, LLC

~~23 HAZEL~~ 245 MASON AVE.

APT. 301 CAPE CHARLES, VA 23310

Attention: DAVID J. DEMPSTER

Telephone: (508) 284-3318

Facsimile: ()

(FID.) 45-3975982

Notwithstanding the foregoing, notice shall be deemed given upon the completion of a confirmed facsimile transmission if an identical copy of the notice is simultaneously sent by one of the other methods specified above. Either party may change its address for notices by sending notice thereof in compliance with this section.

17. Holding Over. Any holding over after the expiration of the term hereof, without the consent of Landlord, shall be construed to be a tenancy from month to month, at 200% of the Base Rent at the time of holding over. Landlord shall be deemed to have consented to any holding over by Tenant only if such consent is in a writing signed by Landlord.

18. Agents. Tenant represents and warrants to Landlord that Tenant has engaged no agent or broker in connection with this Lease. Tenant shall indemnify, defend, and hold

Landlord harmless from any claim for a commission or similar fee resulting from any breach of the preceding sentence.

19. Environmental Representations, Warranties and Covenants.

19.1 Tenant shall comply with all laws, regulations, rules, ordinances, permits, and Landlord's hazardous materials protocols, rules, and procedures in its use of the Property and shall not cause, allow, or permit any Hazardous Materials (as defined below) to be brought upon, kept or used in, leaked, spilled or disposed of on, under or about, the Property in violation of environmental laws. Without limiting the foregoing, if the presence of any Hazardous Materials on the Property which Tenant causes, allows, or permits to be brought upon, kept or used, leaked, spilled or disposed of on the Property results in any contamination of the Property, or if Hazardous Materials come into existence or onto the Property after the Commencement Date in violation of applicable law, except to the extent that such materials are present due to Landlord's actions, Tenant shall promptly take all actions at its sole expense as are necessary to comply with applicable laws, rules and regulations, to remove any and all such contamination and to restore the Property to its original condition. Upon termination of this Lease, Tenant shall remove all such Hazardous Materials whether or not Tenant is in violation of applicable law, except to the extent such materials are present due to Landlord's actions.

19.2 Tenant shall indemnify, defend and hold Landlord harmless from and against any and all claims, demands, suits, actions, damages, liability and expenses which Landlord may suffer as a result of such breach of environmental laws, as well as the presence of Hazardous Materials coming into existence or onto the Property after the Commencement Date. Such indemnification shall also include without limitation indemnification for diminution in value of the Property and Landlord's costs and attorney's fees.

19.3 For the purposes of this Lease, "Hazardous Materials" shall have the following meanings: Any and all substances or chemicals which are regulated by any law, ordinance, rule, regulation or otherwise by any governmental agency or governmental entity; any and all waste substances, wastes or other materials whose storage, handling, transportation, treatment and/or disposal is subject to regulation under any law, ordinance, rule, regulation or otherwise, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C §§ 9601 et seq., as amended ("CERCLA"), the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., as amended ("RCRA"), the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251, et seq., as amended ("the Clean Water Act"), the Clean Air Act, 42 U.S.C. §§ 7401, et seq., as amended, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 110001, et seq., as amended ("EPCRA"), the Pollution Prevention Act of 1990, 42 U.S.C. §§ 13101, et seq. and the Occupational Health and Safety Act, 29 U.S.C. §§ 651, et seq., as amended ("OSHA"); and any substances which have been shown or identified as having or potentially having adverse effects on human health or which are subject to regulation under any law, ordinance, rule, regulation or otherwise by any

governmental agency or governmental entity, including without limitation the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq., CERCLA, EPCRA and OSHA. To the extent not included in the foregoing, "Hazardous Materials" also includes, but is not limited to, polychlorinated biphenyls ("PCBs"), petroleum hydrocarbons and products, formaldehyde, radon gas, lead-based paints, and medical waste/infectious waste.

19.4 The provisions of this section shall survive the termination of this Lease.

20. Termination. This Lease shall terminate: (i) automatically at the end of the Lease term; (ii) immediately upon the dissolution of the Tenant; (iii) at Landlord's option, in the event Tenant fails to complete the construction of the Improvements and open for business to the public within seven (7) months after the Commencement Date; (iv) at Landlord's option, in the event the Property ceases to be used for the Permitted Use for a period of six (6) or more months, except for closures required by casualty, eminent domain, or approved remodeling or renovations; or (v) upon written agreement of Landlord and Tenant.

21. Guaranty. Notwithstanding anything to the contrary in this Lease, the obligations of Landlord hereunder shall be contingent upon Landlord's receipt of an executed and acknowledged guaranty from DAVID J. DEMPSEY in the form attached hereto as Exhibit B.

22. Reimbursement of Advertising Costs. Tenant shall, within ten (10) days of a notice from Landlord, reimburse Landlord for the costs of advertising the ordinance and other matters related to the award of this Lease to Tenant.

23. Miscellaneous Provisions.

23.1 Entire Agreement. This Lease contains the entire agreement between the parties hereto, and it cannot be altered or modified in any way except in writing signed by the parties hereto.

23.2 No Waivers. Any failure of either party hereto to insist upon strict observance of any covenant, provision or condition of this Lease in any one or more instances shall not constitute or be deemed a waiver, at that time or thereafter, of such or any other covenant, provision or condition of this Lease.

23.3 Marginal Headings. The headings appearing on the margin of this Lease are intended only for convenience of reference, and are not to be considered in construing this instrument.

23.4 Successors and Assigns. This Lease and all the terms, covenants, conditions and provisions herein contained, shall be binding upon and shall inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and (if and

when assigned in accordance with the provisions hereof) assigns.

23.5 No Partnership or Joint Venture. Nothing in this Lease or the course of dealings between Landlord and Tenant shall be construed as a partnership, joint venture, or any other business relationship between Landlord and Tenant other than that of landlord and tenant.

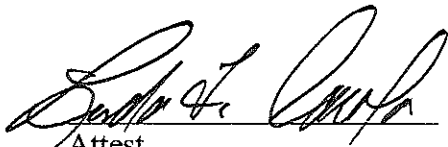
23.6 Counterparts. This Lease may not be executed with counterpart signature pages.

**REMAINDER OF PAGE INTENTIONALLY BLANK.
SIGNATURE PAGES TO FOLLOW.**

Witness the following signatures and seals:

LANDLORD:

MUNICIPAL CORPORATION OF CAPE CHARLES,
a political subdivision of the Commonwealth of Virginia


Attest

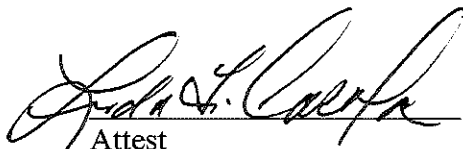
By:  (SEAL)

Name: Dora Sullivan

Title: Mayor

TENANT:

THE HUNGRY CRAB, LLC,
a Virginia limited liability company


Attest

By:  (SEAL)

Name: DAVID J. DEMPSTER

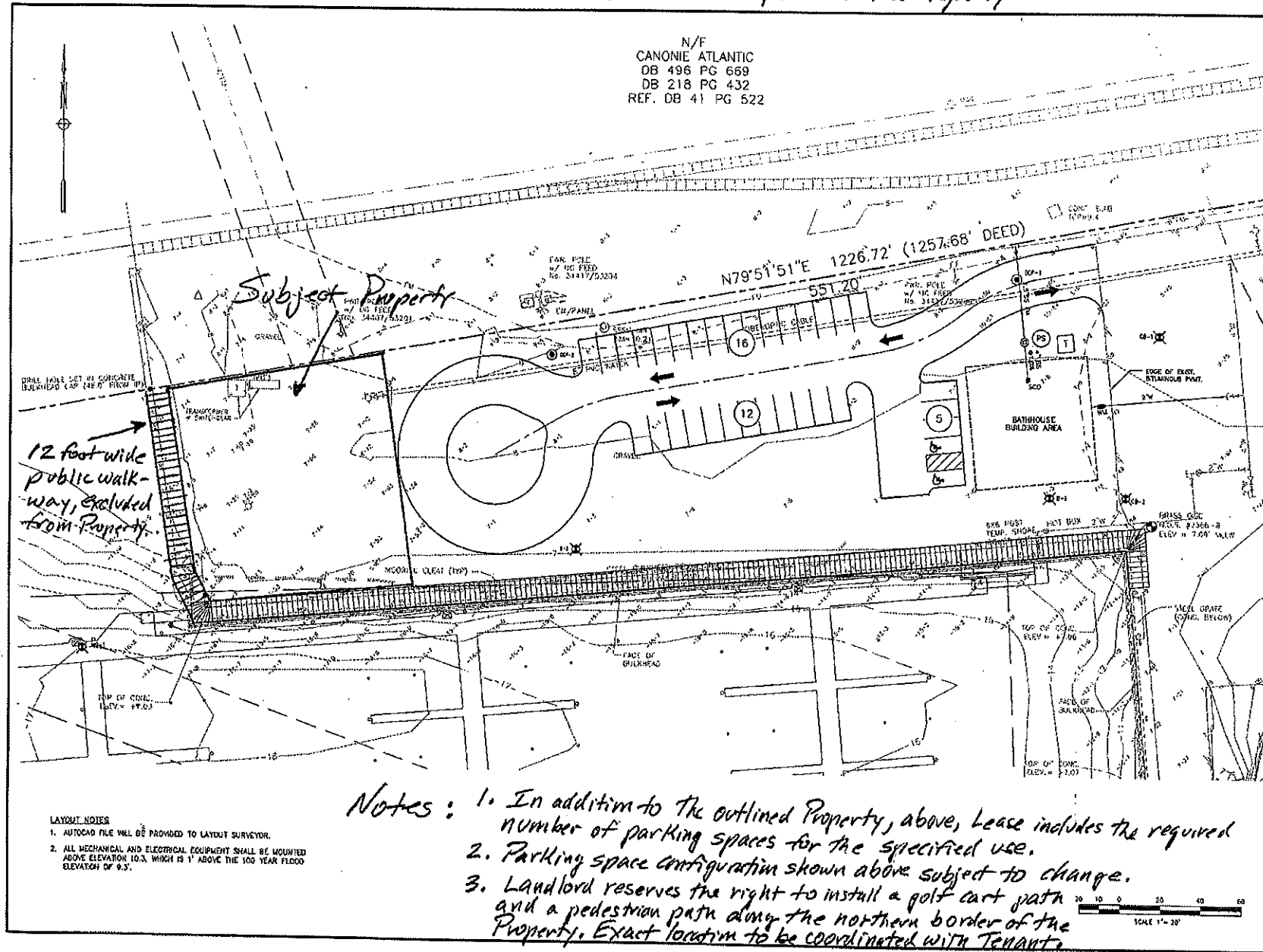
Title: OWNER

EXHIBIT A

DESCRIPTION OF THE PROPERTY

[Attached site plan, plat, or survey with leased Property outlined]

Exhibit A - Description of The Property



L&M

Langley & McDonald, Inc.
Engineering & Planning Services
2711 Lyndon Park Way
Virginia Beach, VA 23462
Tel: 757/461-1111 Fax: 757/461-1112

CAPE CHARLES HARBOR

PARKING CONCEPT PLAN

FOR TOWN OF CAPE CHARLES

CAPE CHARLES

VIRGINIA

REVISIONS

DATE

EXHIBIT B

GUARANTY

This Guaranty is made this 12th day of January, 2012 by DAVID J. DEMPSEY ("Guarantor"), whose principal address is 245 MURKIN AVE. APT 201, as follows:
CAPE CHARLES, VA 23310

WHEREAS, the Municipal Corporation of the Town Cape Charles, Virginia ("**Landlord**"), has leased certain property to The Hungry Crab, LLC, a Virginia limited liability company ("**Tenant**"), pursuant to that certain Deed of Lease between Landlord and Tenant dated Jan 12th, 2012, as may be amended from time to time (the "**Lease**"); and

WHEREAS, Guarantor is a principal or an affiliate of Tenant and derives substantial benefit from Tenant entering into the Lease; and

WHEREAS, as a material inducement for Landlord to lease the Property to Tenant, the Guarantor agrees to guarantee the Lease on the terms set forth herein;

NOW, THEREFORE, in consideration of the foregoing recitals, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby covenants, agrees, represents, and warrants as follows:

1. The recitals set forth above are incorporated as though fully set forth herein.
2. Guarantor hereby unconditionally guarantees to Landlord the full and timely payment and performance of all Rent and other sums owed to Landlord and guarantees all the other obligations of Tenant inuring to Landlord, its successors and assigns under the Lease and under all amendments, extensions, renewals and modifications thereof hereafter occurring, whether or not contemplated in the Lease and without any further requirement of notice to Guarantor thereof. This Guaranty shall apply to any separate lease executed by Landlord and Tenant for other premises within the Town of Cape Charles, Virginia, and such lease shall be deemed part of the "Lease" for purposes of this Guaranty. Guarantor further agrees to indemnify Landlord for and hold Landlord harmless from any claim, action, loss, liability, damage, judgment, attorney's fees, costs, or expense of any kind arising from the failure of Tenant to perform any of Tenant's Lease obligations and/or arising from the enforcement of this Guaranty. Upon Tenant's default under the Lease, Guarantor shall pay or perform Tenant's Lease obligations so in default, as applicable.
3. Guarantor shall pay all Enforcement Costs incurred by Landlord. As used herein, "Enforcement Costs" shall mean all costs incurred by Landlord in connection with the enforcement of this Guaranty, including without limitation court costs, filing fees, and fees and expenses of attorneys, expert witnesses, consultants, court reporters, and other professionals reasonably engaged by Landlord in connection with enforcement of this Guaranty.
4. This Guaranty shall be a continuing guaranty, not affected or diminished by any indulgence or

extension of time that may be granted by Landlord to Tenant, or by any amendment of the Lease, or by Tenant's discharge in bankruptcy, or the cessation from any cause whatsoever of the liability of Tenant under the Lease. This Guaranty shall also apply to any holdover period subsequent to expiration or termination of the Lease.

5. Any notice or demand to Tenant concerning any default or the exercise of any remedy of Landlord shall ipso facto be notice to Guarantor. Landlord is not obligated, under the terms of this Guaranty, to seek or exhaust its remedies for default against Tenant before recovering hereunder from Guarantor, and neither the release of any guarantors or release of any security for Tenant's obligations under the Lease shall constitute a defense to Landlord's recovery hereunder as to any party not expressly released in writing. It is understood and agreed that Guarantor may be joined in any action against Tenant and that recovery may be had against Guarantor in such action, or in any independent action against Guarantor without Landlord pursuing or exhausting any remedy or claim against Tenant. This Guaranty shall not in any way be affected or impaired by Landlord asserting against Tenant any rights or remedies reserved to Landlord pursuant to the Lease, or available at law or in equity. Guarantor waives notice of any breach or default by Tenant under the Lease, notice or acceptance of this Guaranty, and all suretyship defenses generally. The foregoing provisions shall apply without limitation to Landlord's waiver of or failure to enforce any of Tenant's Lease obligations and/or Landlord's granting extensions of time of performance to Tenant.

6. Until all Tenant's Lease obligations are fully satisfied and discharged, Guarantor (a) shall have no right of subrogation against Tenant by reason of Guarantor's performance hereunder, (b) waives any right to enforce any remedy which Guarantor now has or may hereafter have against Tenant by reason of Guarantor's performance hereunder, and (c) subordinates any liability or indebtedness of Tenant now or hereafter held by or owed to Guarantor to Tenant's Lease obligations.

7. In the event that this Guaranty shall be held ineffective or unenforceable by any court of competent jurisdiction, Guarantor shall be deemed to be a Tenant under the Lease with the same force and effect as if Guarantor were expressly named as a joint tenant with Tenant.

8. Guarantor acknowledges full knowledge of the terms and provisions of the Lease. This Guaranty shall be binding upon the heirs, personal representatives, successors and assigns of Guarantor, and inure to the benefit of Landlord's successors and assigns.

9. Guarantor and, if Guarantor is not an individual, the individual signing this Guaranty on behalf of Guarantor, jointly and severally, represent and warrant to Landlord: (i) that this Guaranty has been fully authorized by all necessary resolutions, consents, and votes required by Guarantor's organizational documents or by law, as applicable, (ii) that Guarantor's execution of this Guaranty and performance hereunder will not violate any order, judgment, or decree to which Guarantor is subject, (iii) that Guarantor's execution of this Guaranty and performance hereunder will not cause a violation or breach of any agreement, instrument, note, mortgage, or other document by which Guarantor is bound, and (iv) that no approvals or consents are required from any other person, entity, or governmental agency to render this Guaranty fully binding upon and enforceable against Guarantor upon execution.

10. Guarantor represents and warrants that its social security number or federal tax ID number is
014-70-8986

10. Unless specifically defined in this Guaranty, capitalized terms shall have the same meaning as in the Lease.

INTENTIONALLY BLANK. SIGNATURES TO FOLLOW.

[FOR INDIVIDUAL GUARANTOR]



(SEAL)
Name: DAVID J. DEMPSTER

STATE OF VIRGINIA
CITY/COUNTY OF Northampton

I, Linda Frances CAROLA, a Notary Public of the above referenced jurisdiction, do hereby certify that DAVID J. DEMPSTER appeared before me and duly executed the aforesaid instrument this 18 day of JANUARY, 2012. The person is personally known to me, or ☒ I examined the following type of identification: CALIFORNIA DRIVER LICENSE


Notary Public

My commission expires

7/31/2012
SEAL/STAMP

LINDA FRANCES CAROLA
NOTARY PUBLIC
COMMONWEALTH OF VIRGINIA
NOTARY REGISTRATION NUMBER: 7199648
MY COMMISSION EXPIRES JULY 31, 2012

4833-8544-7949, v. 1

Deed of Lease

THIS DEED OF LEASE ("Lease") is made as of this ____ day of _____, 2022, by and between the **MUNICIPAL CORPORATION OF CAPE CHARLES**, a political subdivision of the Commonwealth of Virginia ("Landlord"), and **THE HUNGRY CRAB, LLC**, a Virginia limited liability company ("Tenant"), as follows:

WHEREAS, Landlord owns real property in the Town of Cape Charles, Virginia, consisting of Tax Parcel 83A3-03-0A-00-010; and

WHEREAS, Tenant currently leases from Landlord approximately 0.4 acres, more or less, of said real property, per the Deed of Lease dated January 12, 2012; and

WHEREAS, Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, an additional portion of said real property, i.e., the boardwalk immediately to the west of and adjacent to the currently leased property (the "Property") on the terms set forth herein.

In consideration of the mutual promises and agreements set forth herein, and other good and valuable consideration, the parties hereto acknowledge and agree as follows:

1. Property.

1.1 Landlord hereby leases to Tenant, and Tenant hereby takes and leases from Landlord, the Property, on the terms and conditions set forth herein.

2. Term; Renewal Terms.

2.1 The term of this Lease shall commence on June 1, 2022 and shall terminate at midnight on May 31, 2023, unless sooner terminated or unless extended as provided in this Lease.

2.2 So long as no event of default has occurred (and no event has occurred or condition exists which, with the passage of time or giving of notice or both, would constitute and event of default), the parties may renew this Lease if mutually agreeable on an annual basis for up to four (4) additional years (each a "Renewal Term"), such that the maximum possible duration of the Lease term is five (5) years. During the Renewal Terms, all provisions of this Lease shall remain in full force and effect, except that the Base Rent may be renegotiated.

3. Use of Property. Tenant covenants and agrees that the Property shall be used for the same purposes as specified in the Deed of Lease dated January 12, 2012. Additionally, Tenant covenants and agrees to allow public access to the Property at all times, except for special events approved by the Town Manager.

4. Rent. Landlord reserves, and Tenant covenants to pay to Landlord at Landlord's address for notices as set forth in the Deed of Lease dated January 12, 2012 (or to any other location requested by Landlord in writing), without right of deduction or offset and without prior demand therefor being made, as payment for the use of the Property, and for the rights herein granted Tenant, the following Rent:

4.1 Base Rent of one hundred dollars (\$100.00) per month. Such Base Rent shall be paid in advance on the first day of each month. Base Rent shall be prorated for any partial month on a daily rate determined by dividing the monthly amount by the number of days in the month.

4.2 In addition to Base Rent, Tenant shall pay 1% (one percent) of Tenant's Gross Revenues derived from sales on the Property ("Percentage Rent") on the same terms and conditions as specified in the Deed of Lease dated January 12, 2012, and shall incorporate such payments into the Percentage Rent payments under said Deed of Lease.

5. Other Terms and Conditions. Unless addressed herein, all other terms and conditions specified in the Deed of Lease dated January 12, 2012 are fully incorporated into and apply to this Lease.

Witness the following signatures and seals:

LANDLORD:

MUNICIPAL CORPORATION OF CAPE CHARLES,
a political subdivision of the Commonwealth of Virginia

Attest
By: _____ (Seal)
Name: William S. Dize, Sr.
Title: Mayor

TENANT:

THE HUNGRY CRAB, LLC,
a Virginia limited liability company

Attest
By: _____ (Seal)
Name: _____
Title: _____

ORDINANCE 20220519A
GRANTING LEASE OF TOWN PROPERTY

WHEREAS, the Town of Cape Charles desires to lease for a period of one (1) year, with four (4) one (1) year renewal periods, a portion of the harbor boardwalk to the west of and contiguous to the portion of Tax Parcel 83A3-OA-00-010 currently leased to The Hungry Crab, LLC, for the purpose of expanding restaurant operations; and

WHEREAS, the use of the property for this purpose will have a beneficial effect on Town rent and meals tax revenues; and

WHEREAS, a public hearing has been held as required by Code of Virginia, Section 15.2-1800; and

WHEREAS, the proposed ordinance and lease conform with the requirements of Code of Virginia, Section 15.2-2100; now

THEREFORE, BE IT ORDAINED that the Town Manager be authorized to finalize the lease materially in conformance with the terms and conditions attached hereto; and

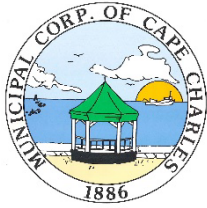
THEREFORE, BE IT FURTHER ORDAINED by the Town Council of Cape Charles, this 19th day of May 2022, that the Mayor be authorized to execute such lease between the Municipal Corporation of Cape Charles and The Hungry Crab, LLC.

Adopted by the Town Council of Cape Charles on May 19, 2022

By: _____
Mayor

ATTEST:

Town Clerk



**TOWN OF
CAPE CHARLES**

AGENDA TITLE: Eastern Shore Hazard Mitigation Plan
Adoption

AGENDA DATE
May 19, 2022

SUBJECT/PROPOSAL/REQUEST: Adopt Resolution
20220519

ITEM NUMBER:
8E

ATTACHMENTS: 2022 Adoption Resolution

FOR COUNCIL:
Action (X)
Information ()

STAFF CONTACT (s):
Jeb Brady, Code Official

REVIEWED BY:
John Hozey, Town Manager

BACKGROUND:

Certain funding opportunities through FEMA require localities to write and adopt a Hazard Mitigation Plan. The Eastern Shore of Virginia and the localities there forth with help from the ANPDC wrote and adopted a Mitigation Plan back in 2017. The plan is required to be updated every five years to maintain a FEMA-approved status.

ITEM SPECIFICS:

The Eastern Shore Hazard Mitigation Committee has been working on a re-write of the Plan throughout the past year. This includes updates to each localities section and to incorporate Mitigation projects that are necessities for each locality. The plan has been approved by VDEM (Virginia Department of Emergency Management) and FEMA has suggested some minor changes to the plan. Those changes have been made and the plan is in for final approval from FEMA. The plan has been accepted by FEMA. All localities must approve the plan prior to July 1, 2022.

RECOMMENDATION:

Recommend Council adoption of the [Eastern Shore Hazard Mitigation Plan](#) by approval of Resolution 20220519 with a roll call vote.

RESOLUTION 20220519

Eastern Shore of Virginia Hazard Mitigation Plan 2021 Town of Cape Charles, Virginia

WHEREAS, the Disaster Mitigation Act of 2000, as amended, requires that local governments develop and adopt natural hazard mitigation plans in order to receive certain federal assistance; and

WHEREAS, an Eastern Shore Hazard Mitigation Plan Steering Committee comprised of members of the business community, non-profit organizations, and local officials was convened in order to study the town's risks from and vulnerabilities to natural hazards and to make recommendations on mitigating the effects of such hazards on the Town of Cape Charles; and

WHEREAS, the Accomack-Northampton Planning District Commission updated a regional Hazard Mitigation Plan including the Town of Cape Charles; and

WHEREAS, the efforts of the Town of Cape Charles, Eastern Shore of Virginia Hazard Mitigation Plan Steering Committee members, and the Accomack-Northampton Planning District Commission have resulted in the development of a regional Hazard Mitigation Plan.

NOW, THEREFORE, BE IT RESOLVED by the Town of Cape Charles, Virginia that the sections pertaining to the town in the Eastern Shore of Virginia Hazard Mitigation Plan dated April 2022 is hereby approved and adopted for the Town of Cape Charles, Virginia.

Adopted by the Town Council of the Town of Cape Charles on May 19, 2022.

By: _____
Mayor Dize

Attest:

Town Clerk



**TOWN OF
CAPE CHARLES**

AGENDA TITLE: ARPA Expenditure for Police Car

AGENDA DATE
May 19, 2022

SUBJECT/PROPOSAL/REQUEST: Approve expenditure of
ARPA funding for a new police car

ITEM NUMBER:
8F

ATTACHMENTS: None

FOR COUNCIL:
Action (X)
Information ()

STAFF CONTACT (s):
Deborah Pocock

REVIEWED BY:
John Hozey, Town Manager

BACKGROUND:

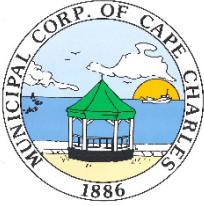
The Town of Cape Charles will receive ARPA funding of \$1,057,230 from the federal government. Half was received in May of 2021, and the remainder is expected in May of 2022. The Town has elected to use the funds for revenue replacement. This enables the Town to use the funds for a wide variety of purposes, one of which is support for first responders and emergency services. Of the total original authorization, \$935,850 remains to be allocated.

ITEM SPECIFICS:

The Town typically purchases one replacement police department vehicle annually under the USDA Rural Development grant/loan program. For fiscal year 2022, there was insufficient grant funding available to purchase the budgeted vehicle prior to June. The next grant pool begins in January 2023 for purchase in the Spring of 2023. This delay is creating difficulty keeping operable police vehicles in service.

RECOMMENDATION:

Staff recommends that Town Council vote to obligate \$42,000 of the already appropriated ARPA grant funding for the immediate purchase and outfitting of a replacement police vehicle per the FY 2022 budget, in lieu of using USDA Rural Development grant and loan.

 TOWN OF CAPE CHARLES	AGENDA TITLE: Public Hearing Procedures		AGENDA DATE May 19, 2022
	SUBJECT/PROPOSAL/REQUEST: Approve Standardized Public Hearing Procedures for the Town		ITEM NUMBER: 8G
	ATTACHMENTS: TOCC Guidelines for Citizen Participation; TOCC Code of Ethics & Meeting Rules of Order		FOR COUNCIL: Action (X) Information ()
	STAFF CONTACT (s): John Hozey, Town Manager	REVIEWED BY: John Hozey, Town Manager	

BACKGROUND:

On July 22, 2021 the Town Council adopted updated procedures for meeting rules of order, as well as guidelines for public participation. These procedures/guidance applied to meetings of the Town Council and all Town boards and commissions. However, procedures for standardizing public hearings were inadvertently overlooked.

ITEM SPECIFICS:

Public Hearings are an important part of local governance and are intended for the public to provide input on important issues being considered by the body. This is not a time for the body to discuss the business, but to just listen to the public. As such the following procedures are recommended:

1. Members of the public wishing to speak will sign up on a roster to be provided prior to the public hearing being called to order; those wishing to have comments read into the record will provide written comments to the clerk of the body no later than one hour prior to the scheduled start of the hearing
2. All public comments will conform to the *Guidelines for Citizen Participation* document as approved by the Town Council
3. The presiding officer of the body will call the public hearing to order and read the public hearing notice(s)
4. The responsible staff liaison will brief the public on the subject of the hearing
5. The members of the body will not ask questions about the staff liaison report or engage in any discussion regarding the subject of the hearing
6. The presiding officer will invite members of the public who signed up to speak
7. When all in-person testimony is heard, the clerk of the body will read all written comments into the record
8. The members of the body will not ask questions of the public or directly respond to any comments offered
9. If there was more than one topic advertised for public hearing, the subsequent topics will be heard repeating the procedure above
10. When all topics have been heard, the presiding officer of the body will request a motion to close the public hearing(s)

RECOMMENDATION:

Staff recommends adoption of the public hearing procedures outlined above, or as amended by the Town Council, and for these procedures to be published as an addendum to the July 22, 2021 *Meeting Rules of Order*.

Town of Cape Charles

Guidelines for Citizen Participation

Town Council meetings are open to the public, except when the Council invokes the provisions of the Virginia Freedom of Information Act to discuss an authorized topic under a closed (Executive) session. A period of Public Comment shall be provided as part of the Agenda for the Council's regular monthly meetings. The Public Comment period is an obligation of the Council to provide members of the public an opportunity to address the Council on legitimate matters of town business. This period shall be governed by the following provisions:

Eligibility

Only those citizens with standing in the Town of Cape Charles will be provided the opportunity to provide input during the Public Comment period. Citizens with standing include full-time residents, property owners, and business owners within the corporate boundaries of the Town of Cape Charles. State, federal, and county officials representing/serving the Town of Cape Charles are also eligible. When eligibility is called into question, input may be provided upon affirmative vote of the Council.

Registering

Persons having an interest in making in-person comments to the Town Council during the Public Comment period must register on a sign-up sheet, including their name and basis for standing, indicating the item or topic on which they wish to speak. The sign-in sheet is available at the main entrance to the Council meeting and must be completed prior to the start of the meeting. The Mayor will recognize speakers at the appropriate time.

Persons having an interest in providing written comments to the Town Council during the Public Comment period must provide such comments to the Town Clerk no later than 60 minutes prior to the start of the meeting. Written comments must include a full name, basis for standing, and the agenda item or topic on which they wish to comment. The Clerk will read authorized comments into the record following all in-person speakers during the Public Comment period.

Members of Council are not permitted to sign-up and make comment during the Public Comment period unless an agenda item being considered has a direct impact upon the Council member or his/her interests, they have declared a potential conflict of interest, and the remaining Council members have voted to excuse that Council member from official action on the related item.

Regulations:

Cell Phone and Recordings

- Ringers on cell phones or pagers shall be turned off during the time that persons are at a Town Council meeting.
- The taking of photographs and video or audio recordings of a speaker or the activities during a meeting of Town Council shall be no closer than the front row of seating or other location designated by the Mayor or presiding officer to avoid disruption to the meeting and to promote public safety. The photographer or recorder shall take steps to avoid obstructing the aisles or other areas for any length of time in such a manner as to prevent other citizens from taking photographs, or to block the view of other citizens attending the meeting. No flashes or lighting devices may be used by photographers or operators of video recording equipment.

Speaking

When a speaker is called by the Mayor or presiding officer, the following is required:

- Speakers shall speak into the microphone to ensure that their name and remarks are heard and recorded as a part of the record of the meeting.
- Speakers shall state their full name and basis for standing and topic to which they are speaking.
- If a speaker represents a group or organization, the speaker shall indicate the name of the organization and the speaker's relationship to the group or organization. Speakers may ask others from their group or organization to stand at their seats to be recognized while the group's or organization's name is announced, but non-speakers or individual members are not permitted to stand with the speaker at the podium and for safety reasons, no members of the group or organization are permitted to stand in the aisles or doorways at Town Council meetings. Those members of a group or organization who do stand when the name of the group or organization is announced shall then be seated.
- Speakers shall address remarks to the Mayor and members of Council and not to the audience.
- Speakers shall state their position, give the facts to substantiate their position, and relate the concerns they believe the Town Council should consider.
- Speaker's comments will be made part of the record and a written copy should be delivered to the Town Clerk for inclusion. If other supportive material is available, it should also be delivered to the Town Clerk for the record.
- Speakers shall refrain from campaigning for public office, personal attacks upon members of the Town Council, Town employees or officials, or any other person.
- Speakers shall refrain from words or statements which, from their usual construction and common acceptance, are construed as insults or which have a tendency to cause an act of violence or a breach of the peace.
- Speakers shall refrain from abusive language, obscenity, vulgarity, and profanely cursing or swearing.
- Speakers shall refrain from actions that would interrupt the public meeting.
- All comments must come directly from the speaker.

Time limitations for remarks

- In-person speakers shall confine their remarks to no more than three (3) minutes. Speakers will be advised when their three (3) minutes have concluded.
- Persons providing written input must limit their comments to no more than can be read by the Town Clerk within three (3) minutes. Written comments provided beyond what can be read during the allotted time will not be entered into the record.
- Speakers cannot "yield," "transfer" or "designate" their time to another speaker in an effort to provide another speaker more than the allotted three (3) minutes.
- The Mayor or other presiding officer shall have the right to limit redundant remarks, as well as the overall time provided for remarks based on consideration of the time available and the need to complete the meeting efficiently.
- After a speaker has concluded his or her remarks, the speaker shall be seated.

Decorum and order

- For safety reasons, petitioning, picketing, displaying signs or posters, solicitation, demonstrating, pamphlet distribution, conducting polls, and blocking of the entryway shall not be permitted at a Town Council meeting or within one hundred (100) feet of any doorway to the meeting location.
- These guidelines do not preclude speakers, when addressing the Town Council, from delivering to the Council members by way of the Town Clerk written materials including reports, statements, exhibits, letters, or signed petitions. Nor do these guidelines preclude those addressing the Town Council from using a chart or graph during their remarks.
- Speakers and members of the audience shall be respectful of others, even if they do not agree with others' comments.
- The Mayor or other presiding officer shall preserve decorum and shall decide all questions of public order.
- At the request of the Mayor or Town Manager, one or more persons, including Town police officers shall act as sergeant-at-arms or sergeants-at-arms at all Town Council meetings. The sergeant-at-arms or sergeants-at-arms shall, under the direction of the Mayor or other presiding officer, have charge of the Council meeting location, and shall prevent disorder or interruption of the business of Town Council.
- Applause shall be permitted only during awards and presentations. Flash photography will be permitted at this time.
- Violation of these rules by speakers or members of the audience shall enable the Mayor or other presiding officer to rule the speaker or member of the audience out of order and by directive to have the speaker or member of the audience removed from the meeting, if necessary, and to take such other steps the Mayor or other presiding officer deems appropriate. The Mayor's or other presiding officer's decision to remove or rule a speaker or member of the audience out of order shall be final. One (1) warning will be given and if not heeded, the speaker or member(s) of the audience shall be escorted from the meeting.
- Any citizen is welcome to address their concerns informally with the Mayor, Town Council or Town Manager at any time outside of a Town Council meeting.

Town Council Response

Council members or Town employees shall not respond to questions posed nor address or rebut speaker's statements made during the Public Comment period. The Council, at its discretion, may direct matters raised during the Public Comment period be placed on the Agenda of a future meeting.

The Town Council hopes these Guidelines will encourage the greatest possible participation by citizens in the Town Government.

Applicability

While these guidelines reference the Town Council specifically, they shall also apply to all Town boards, commissions, and committees as appropriate.

Thank you for your interest and participation in your Town Council meeting. The Mayor and Town Council invite and encourage you to attend whenever possible because good, responsive government depends on the interest and involvement of all citizens.



Town of Cape Charles Code of Ethics & Meeting Rules of Order

Adopted July 22, 2021

Preamble

The citizens and businesses of the Town of Cape Charles, Virginia, are entitled to have fair, ethical and accountable local government, which has earned the public's full confidence for integrity. The effective functioning of representative government requires that public officials, both elected and appointed, comply with both the letter and spirit of the laws and policies affecting the operations of government; that public officials be independent, impartial, and fair in their judgment and actions; that public office be used for the public good, not for personal gain; and that public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, the Town of Cape Charles Town Council has adopted this Code of Ethics and Rules of Order for members of the Town Council and of the Town's boards, commissions, and committees to assure public confidence in the integrity of local government and its effective and fair operations.

Code of Ethics

1. Act in the Public Interest

Recognizing that stewardship of the public interest must be their primary concern, members will work for the common good of the people of the Town of Cape Charles and not for any private or personal interest, and they will assure fair and equitable treatment of all persons, claims, and transactions coming before the Town of Cape Charles Town Council, boards, commissions, and committees.

2. Comply with the Law

Members shall comply with the laws of the nation, the Commonwealth of Virginia, and the Town of Cape Charles in the performance of their public duties. These laws include but are not limited to the United States and Virginia Constitutions; the Charter of the Town of Cape Charles; laws pertaining to conflicts of interest, election campaigns, employer responsibilities, open processes of government; and Town ordinances and policies.

3. Conduct of Members

The professional and personal conduct of members must be above reproach and avoid even the appearance of impropriety. Members shall refrain from abusive conduct or language, personal charges or verbal attacks upon the character or motives of other members of the Town Council, boards, commissions, committees, the staff, or the public.

4. Respect for Process

Members shall perform their duties in accordance with the processes and Rules of Order established by the Town Council; they shall respect the deliberation of public policy issues of other bodies, the meaningful involvement of the public, and the Town staff's implementation of policy decisions of the Town Council.

5. Conduct of Public Meetings

Members shall prepare themselves for public business; listen courteously and attentively to all public discussions before the body; and focus on the issues at hand. They shall refrain from interrupting other speakers; making personal comments not germane to the business of the body; or otherwise interfering with the orderly conduct of meetings.

6. Decisions Based on Merit

Members shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations.

7. Communication

Members shall publicly share substantive information that is relevant to a matter under consideration by the Town Council or boards, committees, and commissions, which they may have received from sources outside of the public decision-making process.

8. Gifts and Favors

A member should never accept for himself or herself or for family members, gifts, favors, or benefits under circumstances which might be construed by reasonable persons as influencing the performance of governmental duties.

9. Confidential Information

Members shall respect the confidentiality of information concerning the property, personnel, or affairs of the Town. They shall neither disclose confidential information without proper legal authorization, nor use such information to advance their personal, financial, or other private interests.

10. Use of Public Resources

Members shall not use public resources that are not available to the public in general, such as Town staff time, equipment, supplies, or facilities, for private gain or personal purposes.

11. Advocacy

Members shall represent the official policies or positions of the Town Council, boards, commissions, or committees to the best of their ability when designated as delegates for this purpose. When representing their individual opinions and positions in any venue, members shall explicitly state they do not represent their body of Town of Cape Charles, nor will they allow the inference that they do.

12. Policy Role of Members

The Town Council determines the policies of the Town with the advice, information, and analysis provided by the public boards, commissions, committees, and Town staff. The Town Council delegates authority for the administration of the Town to the Town Manager.

Members, therefore, shall not interfere with the administrative functions of the Town or the professional duties of Town staff, nor shall they impair the ability of staff to implement Town Council policy decisions. Inquiries to staff shall be made through the Town Manager or the appropriate department manager or director as authorized by the Town Manager.

13. Independence of Town Council and Commissions

Because of the value of the independent advice of boards, committees, and commissions to the public decision-making process, members of the Town Council shall refrain from using their positions to unduly influence the deliberations or outcomes of board, committee, or commission proceedings.

14. Positive Workplace Environment

Members shall support the maintenance of a positive and constructive workplace environment for Town employees, citizens, and businesses dealing with the Town. Members shall recognize their special role in dealings with Town employees and in no way create the perception of inappropriate direction to staff. All requests for staff resources must be approved by the Town Manager.

15. Implementation

Ethical standards shall be included in the regular orientations for candidates for the Town Council, applicants to boards, committees, commissions, and newly elected and appointed officials. Members entering office shall sign a statement affirming they have read and understood the Town of Cape Charles Code of Ethics and Rules of Order. In addition, the Town Council, boards, committees, and commissions, shall annually review the Code of Ethics and Rules of Order, and the Town Council shall consider recommendations from boards, committees, and commissions to update it as necessary.

16. Compliance and Enforcement

The Town of Cape Charles Code of Ethics expresses standards of ethical conduct expected of Members of the Town of Cape Charles Town Council, boards, committees, and commissions. Members themselves have the primary responsibility to assure that ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of government.

The chairs of boards, committees, and commissions and the Mayor of the Town of Cape Charles have the additional responsibility to intervene when actions of Members that appear to be in violation of the Code of Ethics are brought to their attention.

A violation of this Code of Ethics shall not be considered a basis for challenging the validity of a Town Council, board, committee, or commission decision. However, it may be considered when the Town Council is determining the suitability of any person to serve in any appointed position.

Conflict of Interest

In order to assure their independence and impartiality on behalf of the common good, members shall not use their official positions to influence government decisions in which they have a material financial interest and shall disclose any substantial organizational responsibility or personal business relationship to the parties in any matter coming before them. In accordance with the law, members shall disclose investments, interests in real property, sources of income, and gifts; and they shall abstain from participating in deliberations and decision-making where conflicts are determined to exist. This paragraph is not intended to unduly restrict members who have minor business or professional dealings with clients whose matter comes before them.

1. Abstention

As elected or appointed officials, members have a duty/obligation to represent their constituents in all public matters coming before their body. It is not appropriate for individual members to decide in which matters they should abstain. If a member believes they have a conflict of interest on any matter before their body, they are REQUIRED to disclose it before deliberations on that business begins. However, it shall be up to the remaining members of that body to determine if an actual conflict exists and if the member disclosing the potential conflict can be excused from participating in the business. If the body votes to allow the member to recuse him/herself, that member will not participate in any of the discussions or vote related to that business. Failing a vote to allow recusal, the member shall participate as normal.

2. Representation of Third-Party Interests

In keeping with their role as stewards of the public interest, members of the Town Council shall not appear on behalf of the private interests of third parties before the Town Council or any board, committee, commission, or proceeding of the Town; nor shall members of boards, committees, or commissions appear before their own bodies or before the Town Council on behalf of the private interests of third parties on matters related to the areas of service of their bodies. This provision should not unduly restrict a member's participation who is associated with, but not representing, community or non-profit organizations serving the Town, whose matter comes before them.

Meeting Rules of Order

The following rules of order are to serve as a non-binding guide to the conduct of business. It is the duty of the Mayor or other presiding officer to conduct meetings in accordance with the Code of Virginia, the Town Charter, applicable Bylaws, and in a manner intended to promote open, civil, and fair discussion of all issues.

1. Meeting Types

All meetings of the Town of Cape Charles fall under the provisions of the Virginia Freedom of Information Act (FOIA). All members will receive training on VA FOIA requirements upon initial appointment, as well as periodic refreshers. The Town Clerk will ensure FOIA training is completed, and that all records of the training are maintained. This document is not to be considered a substitute for FOIA training and offered only as a summary overview.

The public must be provided notice and access to all Town meetings.

- **Regular Meeting:** Meetings required by Charter or Bylaws to occur on a regular interval to conduct the primary business of the body. These meetings are conducted more formally, with established procedure. The Mayor or presiding officer will enforce these procedures to ensure proper decorum and efficient flow of business. Agendas will include a public comment period on any topic in accordance with public comment procedures established by the Town Council.
- **Special Meeting:** Meetings to conduct official business of the body that are deemed necessary in addition to Regular Meetings. Special Meetings are also conducted formally but may not include all Regular Meeting agenda items. Public comments will be permitted but limited to only business items on the agenda. Special meetings may be called by the Mayor, Chairperson, Town Manager, or any three members of a body.
- **Work Session:** Informal meetings of the body that allow for relaxed procedure enabling freer flowing discussion. No official action may be taken during a work session, however determining consensus on items to be brought forward to a Regular or Special meeting is appropriate. Work Sessions are generally used for (but not limited to) brainstorming, information gathering, planning efforts, budget review, or when more time is needed on a particular item than is typically afforded during formal meetings. The public must be permitted the opportunity to observe work sessions but are not typically permitted an opportunity to provide comments. The Mayor or presiding officer may on special circumstance, allow public comment. Work sessions may be called by the Mayor, Chairperson, Town Manager, or any three members of a body.
- **Closed Session:** Closed Sessions (Executive Sessions) are authorized by FOIA to discuss certain confidential matters limited to specific purposes, while using very specific procedures. Though a portion of this meeting is closed to the public, other portions are open. The public must be permitted to observe the motion to go into Closed Session as well as the certification upon leaving the Closed Session.
- **Public Hearing:** Public Hearings are intended to solicit public feedback on specific topics. These topics will be advertised in advance. Input may be made in person or in writing. All comments will adhere to the Town Council approved guidelines. Comments will be directed to the body and not to any individual. Members shall not respond to questions posed nor address or rebut speaker's statements made during the Public Hearing.
- **Town Hall Meeting:** An informal meeting where no official action is taken. A Town Hall Meeting is essentially a Work Session that involves the public. These meetings are typically focused on one or two topics and encourages dialog between members and the public. A primary goal of a Town Hall meeting is to provide decision makers with in-depth public perspectives prior to taking an official action.

- Social or Community Events: These are gatherings where no official business is conducted, but where Town issues may be informally discussed. If more than two members will be present in their capacity as a Town official, the gathering should be posted. There are no agendas or minutes associated with these functions.

2. Motions

- Unanimous Consent: Routine business is typically conducted by unanimous consent. This is an informal process that allows business to be conducted expeditiously. The procedure is for the presiding officer to ask whether anyone objects to a particular action and then to state, "Hearing no objection the action will be taken by unanimous consent." Note that even when a member is not in favor of a particular action the member may choose not to object in the interest of moving the agenda forward. In other words, unanimous consent does not mean that everyone was actually in favor of the action. If anyone objects, then the action must be addressed with a formal motion and vote.
- Main Motion: This is the motion that brings business before the council or other body. Such motions should be stated in a concise form and should generally be in writing to avoid misunderstandings. It must be seconded and when voted upon will ordinarily require a simple majority vote. There are circumstances where a super majority may be required, such as in the disposition of real estate. Before voting on the motion the presiding officer should call for discussion. The presiding officer should allow for discussion until it terminates by *unanimous consent* or is formally terminated by a subsidiary motion (discussed below).

When the motion is ripe for a vote the presiding officer should call for "all in favor" and then "all opposed." The presiding officer should then clearly state either the "motion passes" or the "motion fails." Generally, in the event of a tie the presiding officer may cast the deciding vote. The Town Charter expressly allows the Mayor to vote in the event of a tie. Any member may request a roll call vote.

- Subsidiary Motions:
 - Motion to Postpone Indefinitely (sometimes incorrectly called a motion to table): Normally used to put aside business that is not ripe for consideration, such as when further study is required. It requires a second, is debatable and is not amendable.
 - Motion to Amend: This is a motion to amend the wording and sometimes the meaning of the main motion. It requires a second and is debatable. It is also amendable *one time*. Note that a vote to adopt the amendment is not a vote on the main motion. Once the motion to amend is adopted the amended main motion must then be voted on as well. Often, simple motions to amend are adopted by unanimous consent. Also, note that whether the member that offered the original motion is willing to accept the proposed amendment or not is irrelevant. It must still be seconded and voted upon or adopted by unanimous consent.

- Motion to Refer: This is a motion to refer a matter to a committee or other body for action. In effect, when the motion is to refer the matter to a "workshop, it is a motion to refer the matter to a committee comprised of the entire council or other body (a committee of the whole). It requires a second and is debatable.
- Postpone to a Certain Time: Used when a matter is best considered at a different time to allow for the orderly conduct of business. It requires a second and is debatable.
- Motion to Limit Debate: Used to put a limit on the time permitted for debate of a motion. It requires a second, is not debatable and traditionally requires a two-thirds vote. Since the Town Charter allows for business to be conducted based on a majority vote, if a motion to limit debate does not pass by a two-thirds vote, then after further debate for a reasonable time the motion shall require only a majority vote.
- Motion of the Previous Question (often referred to as "a motion to call the question" or "motion to bring the matter to a vote"): Used to end debate and bring the pending motion to a vote. It requires a second, is not debatable, and traditionally requires a two-thirds vote. Since the Town Charter allows for business to be conducted based on a majority vote, if a motion of the previous question does not pass by a two-thirds vote, then after further debate for a reasonable time the motion shall require only a majority vote.
- Motion to Lay on the Table (often confused with a motion to postpone indefinitely): Used to temporarily interrupt pending business so that another matter can be considered first. It requires a second and is not debatable. This is often done by unanimous consent to move business forward.
- Motion to Recess: This is a motion to take a short break in the proceeding. It requires a second and is not debatable.
- Motion to Adjourn: This motion closes the meeting. It requires a second and is not debatable.

3. Agenda

The presiding officer should make a reasonable effort to conduct business in accordance with a consent agenda. The agenda should be organized to promote the orderly conduct of business. If the members cannot agree on the agenda, it should be presented by motion and subject to a vote. Keep in mind that even after an agenda is approved it can be amended. Often that is done by unanimous consent at the suggestion of the presiding officer to expedite the meeting. The procedure is for the presiding officer to state, "Is there any objection to amending the agenda [explain]. Hearing no objection, the agenda is so amended by unanimous consent."

4. Other Issues

- Mayor's Veto: The Town Charter provides the Mayor with "the power of veto over the ordinances and resolutions of the council, but such ordinances and resolutions may be passed over such veto by a two-thirds vote of the members of the town council present and meeting." With a six-member council the override requires a vote of four members if all are present and voting.
- Quorum: The Town Charter provides that "four members of the town council shall constitute a quorum for the transaction of business at any meeting." The bylaws of other bodies establish the number of members required for a quorum. The Code of Virginia provides that if a member is disqualified due to a conflict of interest "the remaining member or members shall constitute a quorum for the conduct of business and have authority to act for the agency by majority vote, unless a unanimous vote of all members is required by law, in which case authority to act shall require a unanimous vote of remaining members." 2.2-3112.C.

Acknowledgement

I _____ (printed name), a sitting member of
_____ (body), hereby certify that I have
been given a copy, read, understand, and will abide by the above Town of Cape Charles Code of
Ethics & Meeting Rules of Order, adopted on July 22, 2021.

_____ (signature)

_____ (date)