



TOWN COUNCIL, PLANNING COMMISSION & HISTORIC DISTRICT REVIEW BOARD

Work Session

Cape Charles Volunteer Fire Company

April 13, 2021

6:30 p.m.

At approximately 6:30 p.m., Mayor William "Smitty" Dize called to order the Town Council Work Session. In addition to Mayor Dize, present were Councilmen Buchholz, Follmer and Grossman, and Councilwomen Holloway and O'Brien. Vice Mayor Bennett arrived at 7:13 p.m. Also, present were Town Manager John Hozey, Interim Planner & Zoning Administrator Katie Nunez, Planning Technician Tracy Outten, Code Official Jeb Brady, and Town Clerk Libby Hume.

Planning Commission Vice Chair Dennis McCoy called to order the Planning Commission Work Session. In addition to Commissioner McCoy, present were Commissioners D'Amico, Holloway, Strub, and Councilman Grossman-Town Council representative to the Planning Commission. Chairman Stramm and Commissioner Butta were not in attendance.

Historic District Review Board Chair Edward Wells called to order the Historic District Review Board (HDRB) Work Session. In addition to Chairman Wells, present were Kathy Glaser, Martin Mayer, Herbert Thom, and Commissioner Strub-Planning Commission representative to the HDRB.

There were four members of the public in attendance.

Mayor Dize thanked everyone in attendance for taking the time to participate in this work session to discuss the historic district ordinances, procedures and philosophy to obtain a consensus for the development/update of historic district governing documents. Mayor Dize also welcomed new interim Council member Ellen O'Brien who would serve on the Council until the special election in November. Mayor Dize went on to state that Town Manager John Hozey would be facilitating this evening's work session and turned the floor over to Mr. Hozey.

John Hozey began by stating the following: i) He apologized for the meeting environment but there were few options in Town for such a large group; ii) He asked everyone to lower their mask when speaking so all participants could hear what was being said; iii) Typically a facilitator was a third party, disinterested person. He was a member of the Town staff, a resident of Town, and planned to voice his opinion; iv) A lot of material was included in the agenda packet which was distributed allowing two weekends for review. He thanked everyone for the time put in to prepare for this evening's meeting; v) The discussion was important to determine the main characteristic(s) of the Town and obtaining a consensus from the three bodies represented here tonight in order to move forward; vi) The two main documents were the 1996 Preservation Plan, which was the first serious attempt to define the historic value of Town and what to do about it. The second document was the 2019 survey on public perceptions regarding preservation; vii) The final document was the draft Article VIII of the zoning ordinance; viii) The only way to get through everything was to move quickly and stay on point; ix) He read the Preservation Plan and, in his opinion, thought it was a good plan that was very well done, but it was more of a master plan than a preservation plan. He found conflicting ideas. Depending on personal viewpoints, it could be interpreted in different ways. He drafted a background document which went over some of the highlights and proceeded to review the document; x) Earlier this year, the Town Council adopted a new strategic plan and one of the goals was "To maintain the authentic character of the historic district," with the metric "maintain status on the national registry and a satisfactory audit from the Dept. of Historic Resources." He had tried reaching out to the Dept. of Historic Resources by phone and email over the last couple of weeks, but had not received any response; xi) The last part of the Background document was a table extracted

from the Public Perceptions survey. The first two questions in this table related to whether the perception of Cape Charles was as a beach community or historic town with the results being so close with “historic town” having a slight edge. Councilman Grossman added that this table included results from both residents and visitors. There was another table in the survey that split out the residents of Cape Charles, but the results had a similar split; xii) The survey was finalized last summer (2020) and due to other priorities, had not yet been presented to the Town Council or Planning Commission for their review. Only the HDRB had seen the document; xiii) The Preservation Plan included language stating that it was a companion plan equal to the comprehensive plan and was a good document for that purpose.

John Hozey opened the floor for comments relating to the Preservation Plan or survey.

There were comments as follows: i) Councilman Follmer did not have the feeling that the Preservation Plan was self-contradictory and noted that it was stated repeatedly within the document that the guidelines should be flexible. He had not thought about historical evolution. Overall, he thought the Preservation Plan, in general, coincided with his views; ii) Councilman Grossman stated that in previous discussions people thought that we needed to determine whether we were a beach or historic town. That was not the case. If we picked one, the other would suffer. In his opinion, we could be both. John Hozey agreed. The take-away from the survey was that both had equal priority; iii) Councilwoman Holloway agreed that a lot of people around the table felt that we had to choose between the two, but she felt that Cape Charles was a coastal town, but could respect the integrity of its historic aspects. The beach and our history were two of our best assets; iv) Martin Mayer stated that he was extremely hesitant to make any decisions based on the survey questions since they were not explained and advised all to be very cautious; v) Kathy Glaser agrees that the questions were very vague, and the survey did not ask the right questions. It asked if people liked the “look and feel” of a historic town which could be varied, rather than asking if someone liked wood or vinyl; vi) Dennis McCoy suggested going through the process to lay out the strategy for moving forward. The Town could consider reworking the survey with the proper questions to get the needed results. We needed to make sure we used data that had value. Edward Wells interjected that the Town had been going through these issues for years and needed to get to work. John Hozey expressed his agreement to both adding that as part of the new process, the Town would initiate an annual citizen survey and questions could be added asking citizens if they felt we were moving in the right direction; vii) Edward Wells asked what the Town was trying to accomplish with the HDRB. John Hozey explained that we had to go through this process to provide everyone here the opportunity to give their opinion regarding what we were trying to achieve by having a historic district – authenticity or character.

John Hozey went around the room and asked each participant for their opinion/preference regarding authenticity of character.

Mayor Dize stated that it was important to do our best to maintain the character of each building but in certain situations we had to go with the look and feel of the neighborhood. He did not believe we should ask someone to put wood windows back in when they could use more energy efficient materials that looked like wood until you were right at the window. We needed to do all we could to maintain the character but still accommodate new and improved energy saving materials.

Michael Strub stated that the Town had three sections that overlapped: the historic town, the beach and the harbor. There were differences in each, but we had to work it all together. He heard the Mayor and his opinion regarding wood, but there were very good reasons for requiring wood. Some people say we were too strict, but we could not deny the importance of integrity. Work was needed to straighten out the ordinance and update the guidelines. He leaned toward integrity over the look and feel.

Councilman Follmer stated that historical integrity was Colonial Williamsburg. We can maintain the character and historic integrity but needed to be within reason. We could not impose something that

was cost prohibitive. Other options were needed. The windows in Ken Butta's house were wood but had a polymer coating to achieve some modern advantages. We could achieve our objectives and still be flexible. From the street, there were many products for windows and siding that would achieve the character and "look" of the original. It made no sense to absolutely require wood or HardiPlank. Cape Charles was not a museum like Colonial Williamsburg. We wanted nice, houses that would hold up.

Councilwoman O'Brien stated that in Massachusetts, she lived in a house that was 250 years old. It was in an area where the average income was over six figures. Rather than using "look and feel" she preferred thoughtful restoration. "Look and feel" sounded like a description for clothing. Thoughtful restoration was more of an opportunity to guide people and provide effective alternatives or cost-effective substitutes that offered energy efficiency. She tended to prefer thoughtful restoration without an iron-clad rule book for restoration. The Town needed to support the citizens. If someone wanted to replace their porch, they needed to stick within what currently existed, but should be able to use other materials within reason.

John Hozey clarified that the phrase used in the document was historic character versus hard core preservation.

Councilman Grossman stated that two sets of criteria were needed – one for contributing structures and one for non-contributing structures. When talking about restoration, economics needed to be factored in. In most cases, the Town used the Secretary of Interior's Standards for Rehabilitation (SISR) for contributing structures which were pretty straight forward. We needed to look at the degree that we wanted to implement this. Some communities, like Colonial Williamsburg, accept the SISR verbatim, and others were more flexible. We needed a compromise. Cape Charles would never be removed from the National Registry. Some homes would be added and others would be removed. The Town had flexibility on how we applied the SISR.

Councilman Buchholz expressed his agreement with Councilman Grossman's comments adding that when the Dept. of Historic Resources reviewed the HDRB appeals to Town Council, they did not object to any of the Council's rulings. As long as the character of the Town was kept, he was okay with the use of modern features. One of the reasons that he moved to Cape Charles was the character of the Town, not just the historic aspect. More than half or three-quarters of the homes in Town had been modified, and 40-50% had vinyl siding. We needed to take other materials into consideration. HardiPlank was not used during the turn of the century either. As long as it looked good and maintained the historic look of the Town, it should be okay to use.

Jim Holloway stated that it was all about the character of the Town. He did not believe in the deep pockets needed to restore a property. He did not see the necessity of requiring wood being replaced with wood just so it could rot. If it could be done using modern materials, it would be okay. A couple of years ago, one of his 150-year-old windows was broken. Although it hurt him to lose the window, it was common sense to replace the window using newer materials.

Councilwoman Holloway expressed her agreement with Councilman Grossman. She truly believed that we needed to be practical. She did not want to lose the historic integrity but there were materials available with the same look and feel of wood which would keep the character of the Town.

Diane D'Amico stated that everyone was aware of the cost of housing in the Town. What people were paying for houses were a disaster. She did not think we would push for integrity due to the costs. If people were willing to pay the prices to buy a house in Cape Charles, they should also be willing to restore the property. There was a wide spectrum of houses in the Town and the 1960s ranch homes needed to be preserved as well. With the number of people visiting Cape Charles, not just for the beach or shopping, but to look around. We could possibly have tours of the historic area and provide information regarding restoration. You would have to prove to her that using new materials was that

much better than wood. If you owned an older home, you had to get used to putting up and taking down storm windows. It was something you had to do for integrity.

Edward Wells stated that some participants had not done their homework, adding that there was not one house in Town that was preserved to 1880 standards. Vinyl windows were allowed on many homes. It was not true that the HDRB kept insisting on wood siding. When reference was made to Colonial Williamsburg, it was a bad analogy. The HDRB permitted different foundations, roofing systems, siding from what was used years ago. There were lots of differences.

John Hozey interjected expressing his understanding that the HDRB members felt defensive about the process. The HDRB was not being put on trial. He was asking everyone for their personal opinions.

Edward Wells continued to state that the guidelines for Bayside Village in Bay Creek used much of the Town's historic guidelines and was basically what the Town's guidelines should be. They did not allow plastic. The Town permitted builders to use prefabricated buildings and the builders dictated what they were going to do. Edward Wells stated that he was supportive of the use of synthetic materials if they were of the right quality, opposed to vinyl.

Herb Thom stated that he had given John Hozey a copy of the ordinance that the HDRB spent much time working on. Vinyl siding was permitted but the thickness was increased which would give it a more authentic look. Replacement windows were permitted with increased sills from 1.75" to 2" to give it added dimension. From the street, it would look like those in the older homes. The HDRB never had the opportunity to complete their work. The HDRB had become more flexible. He provided evidence of that with the new guidelines that were being worked on.

Martin Mayer stated that a lot had been discussed but he tended to reject questions regarding integrity. Historic integrity was a moving target. He agreed on the flexibility of materials. There was a need for a more thoughtful process in procedure from start to finish. He was in favor of smart, sustainable development which was a challenge for anyone.

Kathy Glaser stated that she would probably alienate her fellow HDRB members. She asked why tourists were asked about historic integrity. Would they care? They should have no say regarding HardiPlank versus wood or windowsills, etc. To them it was not relevant. If newer, more energy efficient materials were available, which were not obvious from the street, we needed to permit their use. All the original residents of Town were outpriced. We could not provide affordable housing due to the expense. If we continued to stick to the guidelines, it would become even more expensive. We have alienated people with the process which could take years. We needed to be more reasonable. We needed to allow new products if it achieved the character.

Dennis McCoy stated his preference was for character.

Vice Mayor Bennett thanked John Hozey for including the 1996 Preservation Plan in the packet. He had not read it previously. The amount of work taken in preparing the document was incredible. He was not as impressed with the survey conducted by Christopher Newport University. He heard a lot of good opinions this evening. The bottom line was that Chapter 7 of the 1996 Preservation Plan described what guidelines were and were not. Reasonableness had to be a mandate of the HDRB. Guidelines were not rules, nor were they the building code. The HDRB needed to do what they could to help the applicant get what they wanted. Kathy Glaser's opinion expressed his exactly.

John Hozey concluded that the vast majority of participants agreed to a similar concept of not holding strictly to rules. The discussion regarding how to get there would come later. The next item of discussion was a determination of what period of significance to use.

Councilman Grossman stated that the initial survey of homes performed in 1990 used a 50-year cutoff of 1940 for the period of significance. A listing of buildings contributing to the historic fabric of the Town and others that were non-contributing was created. When the new survey was done in 2017, the period of significance used was 1964 and it was stated in the document that the date correlated to the opening of the Chesapeake Bay Bridge Tunnel. An amended list of contributing and non-contributing structures was developed. The list grew significantly even with over 50 homes being demolished between the surveys. Going forward, we needed to determine whether we wanted to use 50 years or period of significance. Article II showed 1940 as the timeframe and Article VIII reestablished 1964 as the timeframe.

John Hozey stated that the rules for contributing and non-contributing were significantly different. It was important to define the period of significance.

There was discussion as follows: i) Edward Wells responded that there was not much difference between contributing and non-contributing in the HDRB guidelines; ii) John Hozey reiterated that tonight's meeting was to determine which direction the Town wanted to go. Updating the guidelines would come next; iii) Diane D'Amico stated that Article VIII spoke to the whole layout of the Town including the layout of the streets, medians, alleys, etc. Councilman Buchholz noted that the median at Peach Street was installed by VDOT to their modern-day standards; iv) Edward Wells stated that if building in the historic district, all buildings should be considered as historic. There was no 50-year cutoff. There were no defining guidelines for a cutoff date. Several sets of guidelines were needed – one from the 1880s to 1940s, then from the 1940s to 1964, and now; v) John Hozey added that the Preservation Plan stated that history was an ongoing continuum. If we used 50 years as the cutoff, someone would have to survey the structures annually to determine what was contributing or non-contributing and that was not possible. There was almost 20 years between the existing surveys and the 2017 survey using 1964 as the period of significance supported the most current historic inventory.

John Hozey stated that issue was not for discussion this evening and went on to ask for opinions regarding using 1940 or 1964 as the period of significance to define what structures were contributing and non-contributing. At some time in the future, these dates would change again, but at this time, we had two choices, 1940 and 1964.

There was more discussion regarding a rolling date or 50 years. John Hozey stated that age was not the only criteria. If a building was updated, it potentially would be classified as non-contributing and who would make the decision? The National Park Service had certain criteria they were looking for in determining whether a structure was contributing or non-contributing. It was not as simple as picking a date. We had to know what inventory we were applying the criteria to and right now our choices were 1940 and 1964.

The responses were:

Mayor Dize, Michael Strub, Councilwoman O'Brien, Councilman Grossman, Councilman Buchholz, Jim Holloway, Councilwoman Holloway, Dennis McCoy, and Kathy Glaser preferred using 1964 as the period of significance.

Vice Mayor Bennett had no preference.

Herb Thom preferred 1940.

Diane D'Amico did not want to use dates and suggested that the Town create our own list of structures versus relying on the National Park Service. There was much discussion regarding the process of doing this.

Edward Wells did not want to use dates and added that all structures in the historic district should be considered as historic.

Martin Mayer suggested using 50 years as a rolling target versus picking an arbitrary date.

John Hozey announced the general consensus was to use 1964 adding that there would be complications of developing our own list.

John Hozey stated that the next philosophical discussion was how to treat non-contributing structures. Was it desirable to strive to maintain the look and feel of when the structure was built? He added that if a house was built in 1975, it was a period in history. Would it be beneficial to preserve that point and time? If an owner wanted their 1970s house to have a 1920s feel, would that be okay? The Preservation Plan talked about confusing the integrity of the real structures. If someone wanted to build a brand-new home, could they include features of a 1920s home?

There was some discussion as follows: i) Diane D'Amico stated that her house was a manufactured home but had some detailing. There were a lot of other manufactured homes which should really be considered as trailers. Was the Town saying they would be okay; ii) Mayor Dize stated that at some point, all houses could be historical. The structures should maintain the look and feel of the time it was built. If built in 1975, it should look like it was built in 1975. If building a new house, it should look new. Stick with the timeframe of construction; iii) Michael Strub noted the historic overlay. Cape Charles was a historic town, and he wanted the dwelling to reflect that and have respect for the historic character of the Town. Diane D'Amico's house had features added that maintained the character. Houses in the historic district should not detract from the character of the district; iv) Vice Mayor Bennett stated that the more discussion, the more he thought that we might be creating a monster by having multiple sets of guidelines. It would be a large task to create two sets of guidelines. John Hozey asked if Vice Mayor Bennett favored one set of guidelines, would he be in favor of retaining the character of the home regardless of the year it was built. Vice Mayor Bennett stated that if someone had a one-story bungalow and wanted to make it a two-story with a Victorian look, they should be allowed to do so. He did not see where it would harm the integrity of a real Victorian; v) Councilman Follmer stated that he would not encourage that but did not think we should legislate against someone doing it. If someone was building a porch and wanted to make it look like the others on the street, they should be permitted to do so rather than making them add the details to make it look like an authentic porch from the 1940s. Some new homes were built with a look that conformed to the look of the neighborhood, but not to look like an imitation of an old house. It should be up to the homeowner; vi) Councilwoman O'Brien asked if someone wanted to build a 1960s or 1970s brick ranch now, how would that be handled? Edward Wells stated that it would depend on the neighborhood. John Hozey added that any new structure would have to be consistent with the existing environment, including setbacks, massing, windows, etc. That was already defined. There was much discussion about specific houses in Town being built to look like those from a previous period. What was permissible depended on the surrounding houses in the particular neighborhood.

The general consensus of the group was that new and other non-contributing structures should be compatible with other houses in the surrounding neighborhood.

John Hozey asked the group if all other compatibility criteria were met, could synthetic materials be considered if the appearance was indistinguishable from the public right of way?

The majority of the participants answered yes with the exception of Diane D'Amico, Edward Wells, and Herb Thom.

John Hozey went on to ask whether the design guidelines should be considered as firm or as recommended options with the HDRB having the authority to approve applications.

The responses were as follows: i) Mayor Dize stated that guidelines were guidelines and the HDRB should have as much leeway as needed to make it work. If the HDRB felt strongly about an issue, they should present it the Town Council for approval; ii) Michael Strub stated that Chapter 7 of the Preservation Plan made a lot of sense and preferred giving the HDRB the discretion to make the decisions; iii) Vice Mayor Bennett stated that the HDRB should be given the latitude to interpret the guidelines to help the applicants obtain what they want; iv) Councilman Follmer stated that if the guidelines were considered to be firm, the board would be unnecessary. If qualified people were appointed to the board, they should be given the authority to make the decisions; v) Councilwoman O'Brien stated her agreement with Councilman Follmer; vi) Councilman Grossman agreed that the HDRB needed a level of discretion and the guidelines needed to be interpretive for the board's use. The National Park Service provided information on how to develop guidelines that were not "black and white;" vii) Councilman Buchholz agreed with Councilman Grossman but added that safety needed to be considered. Some historic windows were unsafe, and safety must supersede history; viii) Jim Holloway agreed that the HDRB should have the discretion to interpret the guidelines to make their decision; ix) Councilwoman Holloway stated that the commonsense factor must come into play as well as safety by using the materials currently available. This needed to be included in the guidelines; x) Diane D'Amico stated that the HDRB needed the discretion to make decision adding that the board had been trying to rewrite the guidelines for a long time. She felt that the board believed in discretion; xi) Edward Wells stated that he felt passionate about the historic district. The guidelines definitely needed to be updated with clear and concise definitions. The HDRB tried to help the applicants. He agreed there had been some inconsistencies in the past and that lately the board had come to consensus; xii) Herb Thom stated that he provided John Hozey with a set of guidelines that the HDRB had worked on. The number of appeals had decreased. The board had taken on a new philosophy and did not want to be the "bad guys." The HDRB should have the discretion to make the appropriate decisions; xiii) Martin Mayer stated that discretion was critical adding that it was equally or more so to update the guidelines since it contained contradictory information; xiv) Kathy Glaser agreed that the HDRB needed discretion adding that when the guidelines were updated, it should not be so specific that the board could not have discretion. The HDRB's purpose was not to tell people what they could or could not do, but to help them figure out what could be done; xv) Dennis McCoy agreed that the HDRB should have the discretion to make their decisions.

Councilman Follmer commented that it was stated in the 1996 Preservation Plan that grants were available to write guidelines and added that he hoped grant funding was still available.

Councilman Grossman talked to Aubrey Von Lindern of the Dept. of Historic Resources regarding grants, and they did not have any grants available, but they were not the only avenue for grants.

John Hozey stated that the guidelines had to be updated and the Town would figure out the resources later.

John Hozey went on to state that the current system was not sustainable, and it was good to hear a general consensus regarding providing the board with the discretion to use their judgement to make their decision. Much could be done administratively. When rewriting the guidelines and ordinance, his goal was to move the black and white issues to the zoning ordinance for an administrative ruling by the building official or zoning administrator.

John Hozey continued on stating that in the more recent listing, other structures, such as sheds and garages were added.

Councilman Grossman added that in the 2017 update, sheds were considered important to define the historic character. A total of 128 structures such as gazebos, sheds, garages, were defined as contributing structures and another 160 were included as non-contributing. Now the Town was seeing cases where property owners were wanting to upgrade their sheds into accessory dwelling units. He contacted Aubrey Von Lindern and she confirmed that accessory buildings were important and typically added to the historic registers.

John Hozey stated that the consensus was to use 1964 as the period of significance so now, exceptions needed to be discussed. He asked how the group felt about including other structures, such as sheds, garages, etc. in the inventory and whether they should meet the standard criteria.

Dennis McCoy stated that he did not think the decision could be made this evening as more research was needed. After some discussion, he stated that the accessory buildings should not have to meet the standards.

Kathy Glaser responded that she felt that the majority of the accessory buildings were not structurally sound, and it would be difficult to put the same criteria on them.

Martin Mayer stated that he went in front of the HDRB several years ago for a shed and agreed that sheds or other accessory buildings should not be held to the same standard.

Herb Thom stated no, adding that it would be too complex.

Edward Wells stated that if the accessory building was a contributing structure, it should be held to the same standard.

Diane D'Amico stated that if it was a contributing structure, it should be required to follow the standards.

Councilwoman Holloway agreed that if it was a contributing structure, it should have to follow the standards.

Jim Holloway stated that if the structure was on a permanent foundation and on the list as a contributing structure, it should fall under the standards.

Councilman Buchholz stated that he would base it on the size of the structure. If it was on the list as a contributing structure and of a substantial size, like a garage, it should follow the standards.

Councilman Grossman stated that contributing sheds should be viewed with the design guidelines that would be written. Perhaps an exclusion could be included if a property owner wanted to convert the structure into an accessory dwelling unit. For new sheds, criteria was needed regarding size and foundation. Buildings without foundations should be exempt from HDRB review. Any structure could come before the HDRB but some could be excluded. The information must be in the zoning ordinance. For new structures, the design guidelines could state that it had to match the house.

Councilwoman O'Brien stated that she wanted to say no, but part of her felt that accessory dwellings, car ports, garages, etc. should be included in a separate category from sheds.

Councilman Follmer stated his agreement that accessory buildings, if contributing, should be included with some exceptions.

Michael Strub responded that if contributing, accessory buildings should follow the standards.

Mayor Dize stated that the Town was looking to add affordable housing, so if a property owner wanted to demolish a shed to construct an accessory dwelling unit, they should be permitted to do so.

John Hozey noted an area on the zoning map which was outlined in black which showed an area with a combination of R-1, C-1 and CR zoning districts, and asked whether the historic overlay should be amended to include all three areas which were different zones.

Councilman Grossman stated that in Article III of the zoning ordinance, the R-1 district had certain criteria regarding what was compatible with the district. The criteria could be removed from Article

III and placed in the guidelines. Former planner Allyson Finchum used to take Article III items to the HDRB for their decision versus making the decision as the zoning administrator.

John Hozey stated that he also included suggested amendments to Article VIII of the zoning ordinance regarding the Historic District Overlay. He felt that most of what was suggested was in line with the consensus received this evening. He wanted to give everyone the opportunity to comment on the suggested changes.

Councilman Grossman added that the suggested changes to Article VIII also updated the process.

There was some discussion regarding the issue of demolition by neglect: i) Councilman Follmer thought that it was very important to focus on the proactivity aspects, dealing with existing houses and the demolition by neglect issues. There was no sense spending all this time talking about those who were taking care of their houses versus allowing others to be demolished. Some people neglected their houses until they got to a state where they could tear them down. The Town had options and needed to be willing to do what was needed. It should be a priority and teeth needed to be added to the ordinances with strict enforcement; ii) Herb Thom added that the Town had a building code that covered derelict homes; iii) Councilman Follmer stated that the code was not being enforced; iv) Code Official Jeb Brady stated that it was a very slippery slope. If something was deemed as inhabitable, the Town had to fix it, spending hundreds of thousands of dollars of taxpayer money to bring it up to Code or tear it down for \$10K or so.

John Hozey asked everyone to take another look at Article VIII, and based on this evening's discussion, email him with any input. He noted that § 8.21 was previously deleted by mistake and was just being put back in. He thanked everyone for their participation and input. It had been a long night of good discussion.

Edward Wells stated that there was nothing in the guidelines regarding violations and fines.

Councilman Grossman stated that violations were covered in Article II of the zoning ordinance as misdemeanors. That section could probably be updated as well. He did not think there was anything in the State Code over \$1K per incident. Currently any violations had to go to court for the judge to decide. It was a lot of work and costly. This issue should be another discussion.

Motion made by Herb Thom, seconded by Martin Mayer, to adjourn the Historic District Review Board Work Session. The motion was approved by unanimous vote.

Motion made by Councilman Grossman, seconded by Commissioner Jim Holloway, to adjourn the Planning Commission Work Session. The motion was approved by unanimous vote.

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

The meeting adjourned at 9:05 p.m.

Mayor Dize

Town Clerk

**Information from April 13, 2021 Town Council, Planning Commission
and Historic District Review Board Work Session**



**Town of Cape Charles
Joint Work Session**

**Town Council
Town Planning Commission
Historic District Review Board**

April 13, 2021

Outline

- 1) Review the 1996 Preservation Plan and 2020 Perceptions Survey (background document)
- 2) **Main Philosophical Questions/Discussion**

What are we trying to achieve by having a historic district; authenticity or character? For example: for contributing structures, is the goal preservation and the maintenance of historic integrity, or is it just to retain the “character” (look and feel) of the period of significance?

What Period of Significance should we choose?

While always requiring compatibility with contributing structures, should non-contributing structures also be encouraged to:

- maintain the look and feel of the period of their original construction
- have a similar look and feel as structures from an earlier period

If all other compatibility criteria are met, can synthetic materials be considered if their appearance is indistinguishable by a typical observer from a public ROW?

Should design guidelines be considered a firm range of allowable options (i.e., nothing allowed outside that range); or should design guidelines be considered only recommended options with the review board having the authority to approve applications that in their judgement, achieve the desired character/integrity, whether portions of the project are in the guidelines or not?

Should sheds on the property of a contributing structure be included as contributing structures? Should there be exceptions for accessory dwelling units, and should there be cutoffs for size, permit requirements, permanent foundations, etc.?

Should we adjust the historic district overlay to be consistent with the R-1, C-1, and C-R districts?

- 3) Review the draft revisions to article VIII of the zoning ordinance; is this the right direction?

BACKGROUND

1996 Preservation Plan

Introduction

In many respects, this document is more of a generalized master plan for the future development of the town, building on the town's historic character, than it is a preservation plan. It views preservation as a means of inducing, or at least supporting, economic development. It does not advocate preservation for preservation's sake, as much as the quality of the town's historic resources may warrant it.

Preservation Approach

The preservation plan for the Town of Cape Charles seeks to identify features that contribute to the physical character of the town and to develop a design approach toward those features that will enhance community character as future change occurs.

Preservation of Historic Fabric

Most important to the preservation of the town's existing character is the preservation of original historic fabric. Wherever possible, the preservation plan should strive to preserve original historic fabric, even if that fabric is not in good condition. At the scale of the town, the preservation of historic fabric involves preserving the overall organization and layout of the community. This means preserving the street system, boundaries, lot configurations, and areas of usage in the town (Mason Avenue for commercial usage, the park and beach for recreation, and the basic character of the various residential areas).

At the scale of the neighborhood, the preservation of historic fabric means preserving historic buildings and streetscapes. Preventing the loss of historic buildings through vacancy, neglect, and decay is an important issue in Cape Charles. Preventing building loss as a result of proposed new development could become an issue as the town's economy is revitalized. Preserving the streetscape means preserving the character and relationship of site features, such as streets, curbs, sidewalks, fences, and vegetation.

At the scale of individual buildings, the preservation of historic fabric means preserving original materials and detailing. The terms "historical integrity" and "building condition" are often used with respect to historic buildings. "Historical integrity" refers to the amount of original historic fabric that a building has, irrespective of the condition of that fabric. A building can have a high degree of historical integrity but be in very poor condition. Conversely, a building can be in very good condition, but have very little significant historic fabric remaining.

The preservation plan places a great deal of value upon retaining a building's or landscape's historical integrity. In rehabilitating a historic building, it is always preferable to retain and repair existing historic building elements rather than to replace them. This is true even if the

repaired element will have visible flaws. The same is true at the scale of the neighborhood and the scale of the town.

When repair is not possible, in-kind replacement is recommended. In-kind replacement refers not only to appearance, but to materials and construction techniques as well. Replacements should attempt to use materials and craftsmanship that match as closely as possible that of the existing historic fabric being removed. At the scale of a building, replacing a severely deteriorated, unrepairable wood double hung window with a metal window, for example, significantly reduces the building's level of integrity. Like that of a fine antique, a loss of integrity results in a loss of real value.

The term "restoration" refers to returning a building or landscape to a specific, previous condition or appearance at a particular period of its history. Restoration of a historic building or landscape is frequently neither necessary nor recommended. Alterations, additions, and changes to a historic resource are considered part of the resource's historical development or evolution. Such alterations and changes can be of historical significance. Because history accrues to a resource over time, it is usually recommended that later historic fabric should not be removed in order to restore a resource to an earlier appearance. "Restoration" of a historic building, landscape, or site feature should be undertaken only when there is good reason and only when there is sufficient documentation or evidence existing to determine what the actual appearance and conditions were at the period to which the resource is being restored.

When a resource has lost its historical integrity because of changes and alterations that are not significant to its historical development and are not sympathetic to its character, both contemporary alteration and restoration are options to be considered. When adequate documentation is not available to restore a resource accurately to a previous appearance, speculative restoration should not be attempted. In such a circumstance, which is the case more often than not, it is recommended that a contemporary design be developed that is sympathetic and complementary to the character of the resource.

In addition to above-ground historic resources, as previously noted, archeological resources are significant to the history of Cape Charles. Archeological resources include potential resources both within the historic portion of the town as well as potential resources in the undeveloped landscapes north and south of the town. As these areas are developed, the ground will be disturbed and the information available through the archeological record will be lost. Preliminary archeological investigations have been undertaken on the land associated with the proposed development of the Accawmacke Plantation. The town should be aware of archeologically sensitive areas in Cape Charles and should plan for appropriate treatment of significant sites as part of the planning and development process.

In Cape Charles, the town, the neighborhoods, the streetscape, and the buildings have a very high degree of historical integrity. On the whole, these resources have had very few adverse changes or alterations. In adapting these resources to new uses, or in rehabilitating them to be attractive to new markets, it is recommended that existing historic fabric be retained wherever possible.

Design Guidelines

Design guidelines have two purposes. The first is educational. Design guidelines educate property owners in the appreciation of their buildings, in appropriate maintenance techniques, and in making decisions regarding potential changes. The second purpose of design guidelines is for use in a design review process. Design guidelines represent the level of consensus that the community has reached with regard to physical change in the community. It outlines the framework and informs the judgments around which design decisions are made. It is not a set of rules. Rules are an easy way to gain compliance but are authoritarian, lack flexibility, and are counterproductive. In order to allow the maximum flexibility in accommodating change, design goals and principles should be established, not rules. Design guidelines outline and illustrate the desired *goals and principles* that will contribute toward, reinforce, and work with the *character of a building* or a neighborhood. The owner or designer are encouraged to exercise their creativity or personal preferences in determining how to achieve those goals and principles.

With regard to new structures, it is not the purpose of design guidelines to require "historical" designs or the adherence to a particular style, formula, or set of architectural elements. "Period architecture" and the strict quotation of architectural elements and details is distinctly not their intent. There is a wide range of building periods, styles, and types that contribute to the character of Cape Charles' residential neighborhoods. This diversity itself is a key element of the town's character. To walk in Cape Charles is to see virtually every architectural style from the town's founding in 1883 through the 1940s. There is no strictly "correct" style in Cape Charles. The slavish and literal copying of architectural styles and elements would trivialize and confuse the genuine historic architecture of the town. What is fascinating about the buildings in Cape Charles is that they are real, the genuine article, not copies. In order to contribute to the clarity of the town's history and development, new construction should appear to be at the end of the architectural continuum, and not mistaken to be somewhere in the middle. Contemporary architecture should be representative of the time in which it is created and should thus contribute to Cape Charles' architectural diversity for the appreciation of future generations.

New buildings, however, can be contemporary while at the same time being sympathetic and compatible with existing buildings and an existing historic context or character. This is achieved through compatible scale, massing, siting, orientation, materials, and forms. Because there are a variety of ways in which a new building can be compatible with existing buildings, there are no simple rules that can be written. This is why design guidelines and an informed design review process are the most flexible and fair way to achieve the intended goal of preserving neighborhood character.

2021 Community Strategic Plan

Goal

To maintain the authentic character of the historic district

Metric: maintain status on the national registry and a satisfactory audit from the Dept of Historic Resources

2020 (2019) Public Perceptions of Historic Preservation

Table 1: Summary of Likert-Style Items

Survey Items	Usable Responses	Mean	Standard Deviation
Q1. Cape Charles is primarily a <i>beach community</i> that also has a historic town center.	356	3.23	1.35
Q2. Cape Charles is primarily a <i>historic town</i> that also has a beach.	359	3.73	1.22
Q3. Owners of real estate in the historic district (“overlay”) should conform to their property’s historic look and feel when making <i>renovations and repairs</i> .	362	3.97	1.06
Q4. <i>New construction</i> in the historic district of Cape Charles should conform to the look and feel of neighboring homes and buildings.	364	4.18	0.99
Q5. The charming, historic nature of the town’s homes and buildings contributes to property values of real estate in Cape Charles.	362	4.28	0.97
Q6. To reduce demolition of derelict buildings, the Town of Cape Charles should establish a fund that can help low income homeowners make historically accurate repairs and improvements.	363	2.83	1.36
Q7. Such a fund should be financed from fines levied against property owners who do not conform to the historic preservation zoning guidelines.	359	2.50	1.40
Q8. Cape Charles should restrict the amount of new development in areas near the historic center to preserve the small-town nature of the community.	358	3.34	1.40

As Table 1 indicates, on the whole, the respondents to the mailed survey had a somewhat stronger agreement with CC being primarily a historic town, with the importance of the beach being secondary. The higher score for Q2 than Q1 supports this, although the numbers are close enough that the difference is not of a very large magnitude.

CHESAPEAKE BAY



ZONING LEGEND:

- RESIDENTIAL ESTATE DISTRICT (R-1)
- SINGLE FAMILY RESIDENTIAL DISTRICT (R-1)
- RESIDENTIAL MIXED DISTRICT (R-2)
- RESIDENTIAL MULTI-FAMILY DISTRICT (R-3)
- COMMERCIAL RESIDENTIAL (CR)
- COMMERCIAL DISTRICT (C-1)
- COMMERCIAL DISTRICT (C-2)
- COMMERCIAL DISTRICT (C-3)
- HARBOR DISTRICT
- GENERAL BUSINESS / LIGHT INDUSTRIAL (GBI)
- INDUSTRIAL DISTRICT (M-1)
- STIP DISTRICT (SUSTAINABLE TECHNOLOGIES INDUSTRIAL PARK)
- PD-STIP DISTRICT (PLANNED SUSTAINABLE TECHNOLOGIES INDUSTRIAL PARK)
- OPEN SPACE
- CONDITIONAL ZONING

CAPE CHARLES HARBOR

CHESAPEAKE BAY

OLD PLANTATION CREEK

- 1. BLUE HEAVEN ROAD
- 2. BURNING COURT
- 3. KANAKA COURT
- 4. AMERICAN COURT
- 5. ENGLISH COURT
- 6. FORTY COURT
- 7. HILLS STEVENS COURT
- 8. FERRY COURT
- 9. HIRSHY COURT

- 24. BAYVIEW AVENUE
- 25. PALMER PLACE
- 26. EAST OAKS DRIVE
- 27. CASSETT ROAD
- 28. WALTON ROAD
- 29. MARKET PLACE
- 30. BRISBANE AVENUE
- 41. CAROLINE PLACE
- 42. PARK STREET

- 22. BANANA DRIVE
- 23. BANANA DRIVE
- 24. CHARLES DRIVE
- 25. INDUCTION DRIVE
- 26. WATERS EDGE DRIVE

- 27. OLD COURSE LOOP
- 28. LYTTON COURT
- 29. TROON COURT
- 30. LINDSEY LANE
- 31. CLARET COURT

- 32. ARCHER COURT
- 33. MOON COURT
- 34. BEY COURT
- 35. DEACON COURT

PUD ZONING LEGEND:

- PLANNED URBAN DEVELOPMENT (PUD)
- PUD-R1 (LOW DENSITY RESIDENTIAL)
- PUD-R2 (MEDIUM DENSITY RESIDENTIAL)
- PUD-R3 (MULTI-FAMILY RESIDENTIAL)
- PUD-SC (SPECIALTY COMMERCIAL)
- PUD-C (COMMERCIAL)
- PUD-GBI (GENERAL BUSINESS / INDUSTRIAL)
- PUD-VILLAGE DISTRICT (RESIDENTIAL / COMMERCIAL)
- PUD OPEN SPACE

TOWN OF CAPE CHARLES
OFFICIAL ZONING MAP

REV. JUNE 2, 2008



Town of Cape Charles**Article VIII****Historic District Overlay**

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

- 1989 National Register of Historic Places Registration Form Section 7, page 1.

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

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

Section 8.1 Purpose of the District [revised – 08/16/18]

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

Section 8.2 Criteria for Establishing Historic Districts--General Character

The boundaries of the Historic District shall in general be drawn to include areas containing buildings or places in which historic events occurred or having special public value because of notable architectural or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation. The district may include either individual buildings or places of such character, and a reasonable distance beyond, or it may include areas or groupings of structures which have significance relative to their patterns of development or social and

economic or architectural interrelationships even though some structures in the area might not possess significant merit when considered alone.

Section 8.3 Inventory of Landmarks and Contributing Properties Established

The Town of Cape Charles has established as part of this ordinance ~~a an inventory~~ map covering the area included in the Historic District, based on the criteria set forth in this ordinance. This map herein ~~after called the inventory map~~ shall be as much a part of this ordinance, ~~as if fully described herein and shall be filed as a part of this ordinance by the Town Clerk of the Town of Cape Charles. Until such time as it is changed in this ordinance, the period of significance for the Town will be 1880s to 1964 as delineated in the Cape Charles Historic District National Register of Historic Places (amended 2019). As identified in the National Register, s~~Structures or sites designated as properties which contribute to the historic character of the Town shall be known as contributing properties for the purpose of this Ordinance. ~~Should a building or structure within the boundaries of the historic district not be listed in the national register, the age of the house or structure will be used to determine classification (i.e., built before 1965 will be considered as contributing). The board may be presented with evidence of extensive changes previously made or other information that may warrant the board in changing a property's classification.~~ Structures or sites not designated as landmark or contributing properties shall be known as noncontributing properties. ~~Should a building or structure within the boundaries of the historic district not be listed in the national register, the building or structure will be classified as noncontributing.~~ The ~~inventory~~ map may be amended from time to time in the same manner as the zoning district map.

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

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

Section 8.5 Permitted Uses [revised – 08/16/18]

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

Section 8.6 Historic District Review Board; Creation

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

Section 8.7 Historic District Review Board; Membership [revised – 08/16/18]

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

Section 8.8 Historic District Review Board; Terms *[revised – 08/16/18]*

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

Section 8.9 Historic District Review Board; Qualifications *[revised – 08/16/18]*

Members of the Historic District Review Board shall have demonstrated interest and knowledge in the historical and architectural development of the Town and when possible be a licensed architect or engineer, Planning Commission member, or licensed building contractor.

Section 8.10 Historic District Review Board; Organization *[revised – 08/16/18]*

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

Section 8.11 Historic District Review Board; Rules *[revised – 08/16/18]*

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

Section 8.12 Historic District Review Board; Meetings; Hearings *[revised – 08/16/18]*

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

Section 8.13 Historic District Review Board; Procedures

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

Section 8.14 Historic District Review Board; Powers and Duties

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

- A. To assist and advise the Town Council, the Planning Commission, and other Town departments, agencies, and property owners in matters involving historically significant sites at buildings or other properties in historic districts such as, but not limited to, appropriate land usage, parking facilities, and signs.
- B. To continuously evaluate conditions and advise owners of historic landmarks or contributing structures or other properties in historic districts on problems of preservation.
- C. To ~~conduct-oversee~~ studies deemed necessary by the Town Council or Planning Commission concerning location of historic districts and means of preservation, utilization, improvement, and maintenance of historic assets in the Town.
- D. To propose additional historic districts or additions or deletions to districts.
- E. To ~~adopt-recommend~~ standards and guidelines for adoption by the Town Council review to supplement the standards set forth in this Ordinance.
- F. To formulate recommendations to the Town Council concerning the establishment of an appropriate system of markers for selected historic sites and buildings, including proposals for the installation and care of such historic markers.
- G. To cooperate with and enlist assistance from the Virginia Department of Historic Resources, the National Trust for Historic Preservation, and other interested parties both public and private in its efforts to preserve, restore, and conserve historic landmarks, buildings, sites, or areas within the Town.

Section 8.15 Summary of Administration Review Procedures *[revised – 08/16/18]*

In general, it is the purpose of this ordinance to establish review procedures for actions affecting properties in the Historic District. ~~To this end, some actions are exempted from special historic and architectural review altogether, except as normal review may be necessary for issuance of a building permit. Other actions, depending on the possible consequences thereof, may be reviewed by the Zoning Administrator or by the Historic District Review Board acting with original jurisdiction, or, in the most serious cases, action by the Town Council following action by the Historic District Review Board.~~

- A. Actions related to "Standards" will be exclusively the purview of the Zoning Administrator.
- B. Actions related to "Guidelines" will be the purview of the Historic District Review Board, except that guidelines that are relatively straight forward may be delegated to the Zoning Administrator at the discretion of the Historic District Review Board.
- C. In all cases the decisions of the Zoning Administrator shall be appealed to the Board of Zoning Appeals as stated in §2-2.6.2.C, the decisions of the Historic District Review Board may be appealed to the Town Council, and the final decisions of the Town Council may be appealed to the Circuit Court of Northampton County.

**Section 8.16 Certain Minor Actions Exempted from Review by the Historic District
Review Board [revised – 08/16/18]**

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

- A. Repainting the structure. (Original painting of masonry surfaces is not exempted from review.)
- B. Replacement of missing or broken windowpanes, roofing slates, tiles, porch floor, posts, rails, shingles, window frames, or shutters where no substantial change in design or material is proposed.
- C. Addition or deletion of storm doors or storm windows, window gardens, or similar appurtenances and portable air conditioners located in existing windows, doors, or other existing wall openings (if no building permit is required for such addition or deletion).
- D. Addition or deletion of television and radio antennas or skylights and solar collectors in locations not visible from a public street or a waterway.
- E. Landscaping involving minor grading, walks, low retaining walls, temporary fencing, fencing immediately surrounding trash receptacles or outdoor ventilation units, small fountains, outdoor showers and ponds which will not substantially affect the character of the property and its surroundings.
- F. Construction of off-street loading areas and off-street parking areas.
- G. Creation of outside storage in a commercial or industrial district which does not require structural changes or major grading and is not visible from a public street or waterway.

~~Any changes to a structure (contributing and noncontributing) that are not visible from a public street or public place, i.e., alteration that is obscured from view from the street by the original structure and not merely obscured by fencing landscaping, non-historic additions, or other impermanent obstructions. Alleys in this context are not to be considered public places.~~

- H. Additions or deletions to an existing building which are not subject to public view and which will not significantly alter the character of the building. Alleys in this context are not to be considered public places.

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

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

K. Demolition of non-contributing buildings or structures.

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

~~Demolition of non-contributing buildings or structures.~~

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

~~H.~~

Section 8.17 Delegation of Authority [revised – 08/16/18]

- A. The Zoning Administrator or Building Official shall have authority to order that work be stopped and that an appropriate application be filed for review by the Historic District Review Board in any case where the action has an adverse effect on the Historic District.
- B. The Historic District Review Board shall periodically review the design guidelines contained in this section.

Section 8.18 Approval of Historic District Review Board Required [revised – 08/16/18]

- A. Except as herein otherwise provided in this article, no building or structure, including signs, shall be erected, reconstructed, restored, or substantially altered in exterior appearance and no contributing buildings or structures shall be razed or demolished within a historic district and no permit authorizing same shall be granted unless and until the same is approved by the Historic District Review Board and a Certificate of Appropriateness has been issued by that body, with right of direct appeal to the Town Council as hereinafter provided, as being architecturally compatible with the historical, cultural, and/or architectural aspects of the structure and its surroundings.
- B. "Substantial alterations" shall be defined as any and all work done on buildings, structures, or sites in a historic district other than those specifically exempted herein:
 - 1. General examples of "non-substantial" alterations:
 - a. Work done to prevent deterioration or to replace parts of a structure with similar materials in order to correct any deterioration, decay of, or damage to any structure or on any part thereof, or
 - b. To restore same as nearly as practical to its condition prior to such deterioration, decay, or damage.
 - 2. Examples of work not constituting "substantial alteration" include those minor actions exempted from review by §8.16 of this article.
 - 3. General examples of work constituting "substantial alterations" include:

- a. Construction of a new building at any location or a new ~~permanent~~permanent accessory building requiring a building permit on a landmark or contributing property or on a site within the Historic District.
 - b. Any addition to or alteration of a building which increases the square footage of the building or otherwise alters substantially its size, height, contour, or outline.
 - c. Any change or alteration of the exterior architectural style of a structure, including removal or rebuilding of porches, openings, dormers, window sashes, chimneys, columns, structural elements, stairways, terraces, and the like. (What about decks, patios, and fences?)
 - d. Any change or alteration of ~~the exterior color scheme of the structure or~~ any of its significant elements, including porches, openings, dormers, window sashes, awnings, canopies, chimneys, columns, stairways, terraces, decks, fences or any other structural elements. This also applies to all structures on the site.
 - e. Addition to or removal of one or more stories or alteration of a roof line.
 - f. Any other major actions not specifically covered by the terms of this section, but which would have an effect on the character of the historic district.
- C. In any case in which there might be some question as to whether a project may be exempted from review, may constitute a minor action, or may constitute "substantial alteration," the Zoning Administrator shall be contacted for an interpretation prior to commencement of work.

Section 8.19. Certificate of Appropriateness *[revised – 08/16/18]*

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

Section 8.20 Design Guidelines; Standards for Review *[revised – 11/21/19]*

- A. The Historic District Review Board shall be guided in its decisions by the design guidelines.

- B. It shall be the duty of the Historic District Review Board to ~~prepare-recommend~~ amendments to the design guidelines.
- C. The Town Council shall adopt and amend the design guidelines after conducting at least one public hearing pursuant to §15.22204 Code of Virginia.
- D. Guidelines shall offer general recommendations for all new infill buildings in Cape Charles' historic district. New infill construction building is not to diminish, detract, or distract from the character of surrounding historic buildings or the overall historic district. ~~However, the intent of these infill guidelines is not to be overly specific or to dictate certain designs but to allow for the creation of new buildings that are compatible with their historic settings.~~ The Historic District Review Board may be more flexible in applying these new construction guidelines.
- ~~C.E.~~ Alterations and additions to non-contributing structures that affect the exterior appearance of the structure or additions should be compatible with the district following ~~separately-created the~~ guidelines for New (Infill) Construction, ~~and should not aim to replicate historic buildings, nor return the structure to its original form.~~ Criteria for non-contributing structures ~~are to may~~ be less restrictive than that applied to contributing structure rehabilitation.

Section 8.21 Demolition: Alternate Procedure: Offer to Sell

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

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

- B. In addition to the right of appeal herein elsewhere set forth, the owner of a contributing structure in the Cape Charles Historic District shall as a matter of right

be entitled to move, remove, modify, raze or demolish all or part of such contributing structure provided that:

1. The owner has applied to the Town Council for such right.
2. The owner has for the applicable period of time set forth in the time schedule in Section 8.21.B.4., and at a price reasonably related to the fair market value of the contributing structure and the land, other improvements and appurtenances pertaining thereto (assuming the buyer will be required to preserve and restore the contributing structure in place on the property) as determined by the average of two (2) real estate appraisals from two (2) different appraisers, made a bona fide, public offer (pursuant to the requirements of this Section 8.21 B.) to sell such contributing structure, and the land, other improvements and appurtenances pertaining thereto (collectively, the "Property"), to the Town and any other person, firm, corporation, government or political subdivision or agency thereof, which gives reasonable assurance that it is willing to preserve and restore the contributing structure in place. If the two (2) required real estate appraisals submitted by the Owner differ by more than ten percent (10%), the owner must have the Property appraised a third time at his own expense by a third real estate appraiser selected by the Town. The bona fide offer to sell must be at a price not more than the average of the two such appraisals that are closest to one another.
3. No bona fide contract, binding upon all parties thereto, shall have been executed for the sale of any such Property thereto, prior to the expiration of the applicable time period set forth in the time schedule in Section 8.21.B.4. Any appeal which may be taken to the court from the decision of the Town Council, whether instituted by the owner or by any other proper party, notwithstanding the provisions heretofore stated relating to a stay of the decision appealed from, shall not affect the right of the owner to make the bona fide offer to sell referred to above.
4. The time schedule for offers to sell shall be as follows:
 - a. Three (3) consecutive months when the offering price is less than twenty-five thousand dollars.
 - b. Four (4) consecutive months when the offering price is twenty-five thousand or more but less than forty thousand dollars.
 - c. Five (5) consecutive months when the offering price is forty thousand or more but less than fifty-five thousand dollars.
 - d. Six (6) consecutive months when the offering price is fifty-five thousand dollars or more but less than seventy-five thousand dollars.
 - e. Seven (7) consecutive months when the offering price is seventy-five thousand dollars or more but less than ninety thousand dollars.

f. Twelve (12) consecutive months when the offering price is ninety thousand dollars or more.

5. Before making a bona fide offer to sell, the owner shall first file a statement with the Zoning Administrator along with the appraisals required by Section 8.21.B.2. The statement shall identify the Property, state the offering price, the date the offer of sale is to begin, the names and addresses of adjacent property owners, and the names and addresses of listing real estate agents, if any. The owner shall be required to maintain the Property in at least its current condition during the term of the public offer. No time period set forth in the time schedule contained in Section 8.21.B.4. shall begin to run until the statement has been filed. Within five (5) business days after receipt of a statement, copies of the statement shall be delivered by the Zoning Administrator to the Town Manager, the Town Council, and the Historic District Review Board. Within thirty (30) days after the receipt of a statement, the Zoning Administrator: (a) shall place notice of the statement once a week for two successive weeks in a newspaper having general circulation in the Town, (b) post a notice of the statement prominently on the Property, and (c) send notice of the offer, accompanied by the statement, to the adjacent property owners by certified or registered mail.
6. During the time period for the offer to sell, the Town may take steps as it deems necessary to preserve the contributing structure in accordance with the purposes of this article. Such steps may include, but are not limited to, consultation with civic groups, public agencies, and interested citizens, recommendations for acquisition of the Property by public or private bodies or agencies, and exploration of the possibility of moving structures or other features on the Property.
7. The fact that an offer to sell a Property is made at a price reasonably related to fair market value as described previously may be questioned by any party who files with the Zoning Administrator, on or before sixty (60) days after the offer for sale has begun, a petition in writing signed by at least twenty-five (25) persons owning real estate within Cape Charles, questioning such valuation. Upon receipt of such a petition, one (1) disinterested real estate appraiser shall be appointed by the petitioners, and the cost of the appraisal shall be borne by the petitioners. Said appraiser shall forthwith make an appraisal of the Property on the same basis as described in B.2. above, and the Town shall use the average of the lower two appraisals to establish fair market value under Section 8.21.B. In the event such valuation indicates that the price at which the applicant offered to sell the Property was at a price that is higher than the Property's fair market value, the offer to sell shall be void and of no force and effect for purposes of satisfying the requirements set forth in this Section 8.21.B.

Section 8.224 Maintenance and Repair Required [revised – 08/16/18]

- A. The purpose of this section is solely to stop demolition by neglect, whereby owners of property in the Historic District allow the structure, or historic attributes of the structure, to become a hazardous building or structure. Any building or structure which is determined to be in such an unsafe condition that it would endanger life or

property are governed by Town Code Chapter 18, Article III, Unsafe Buildings or Structures and under the sole jurisdiction of the Town's Code Official.

- B. All buildings and structures in the Historic District shall be preserved against decay and deterioration and maintained free from structural defects to the extent that such decay, deterioration, or defects may, in the opinion of the Historic District Review Board and Town Council, result in the irreparable deterioration of any exterior appurtenance or architectural feature or produce a detrimental effect upon the character of the district as a whole or upon the life and character of the structure itself, including but not limited to:
1. The deterioration of exterior walls or other vertical supports, including broken doors and windowpanes;
 2. The deterioration of roofs or horizontal members;
 3. The deterioration of exterior chimneys;
 4. The deterioration or crumbling of exterior plaster, wood, or mortar;
 5. The deterioration of any feature so as to create or permit the creation of any hazardous or unsafe condition or conditions.
- C. After notice by the ~~Historic District Review Board~~ Zoning Administrator or Building Official by certified mail of specific instances of failure to maintain or repair and of an opportunity to appear before the Historic District Review Board, the owner or person in charge of said structure shall have ninety (90) days to remedy such violation. Thereafter, each day during which there exists any violation of this section shall constitute a separate offense and shall be punishable as provided in this ordinance. In the alternative, if the owner fails to act, the Historic District Review Board may recommend to the Town Council that the Zoning Administrator, after due notice to the owner, enter the property and make or cause to be made such repairs as are necessary to preserve the integrity and safety of the structure and the reasonable costs thereof shall be placed as a lien against the property.

Section 8.22-23 File of Actions to be Maintained *[revised – 08/16/18]*

In order to provide guidance for the consistent application of standards and guidelines, ~~for the improvement of standards and guidelines~~, and for assistance to future applicants and the promotion of consistent policies in guiding applicants toward better standards of design, the Zoning Administrator ~~and the Historic District Review Board~~ shall maintain a file containing a record of all applications ~~brought before them~~, including drawings and photographs pertaining thereto and the decision of the Zoning Administrator or the Historic District Review Board in each case. The file documents shall be complied by the Zoning Administrator and maintained by the Town Clerk and remain the property of the Town ~~but, which~~ shall be held-made available for public review.

Section 8.23-24 Administration; Zoning Administrator

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

Section 8.24-25 Receipt of Application

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

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

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

~~B.C.~~ Maintain in his their office ~~Compile~~ a record of all such applications and of ~~his handling and the~~ final disposition of the same, records to be maintained by the Town Clerk;

~~C.D.~~ Require applicants to submit three (3) hard copies or one electronic version of material required to permit compliance with the foregoing.

Section 8.265 Material to be Submitted for Review [revised – 08/16/18]

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

Section 8.276 Other Approvals Required

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

Section 8.27-28 Action by the Historic District Review Board; Issuance of Certificates

of Appropriateness [revised – 08/16/18]

The Historic District Review Board shall render a decision upon any request or application for a Certificate of Appropriateness within ~~sixty (60)~~ ninety (90) days after the filing of an application accepted as complete. Failure of the Historic District Review Board to render such a decision within said ~~sixty (60)~~ ninety (90) day period, unless such period be extended with the concurrence of the applicant, shall entitle the applicant to proceed as if the Historic District Review Board had granted the Certificate of Appropriateness applied for prior to denying the Certificate of Appropriateness. The Historic District Review Board, on the basis of the review of information received, shall, upon request, indicate to the applicant the changes in plans and specifications, if any, which in the opinion of the Historic District Review Board, would protect and/or preserve the historical aspects of the landmark, building, structure, or district. If the applicant determines that ~~they~~ he will make the suggested changes ~~and does so in writing~~, the Historic District Review Board may issue the Certificate of Appropriateness. Agreed to changes will be so indicated on the Certificate of Appropriateness.

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

Section 8.28-29 Expiration of Certificates of Appropriateness [revised – 08/16/18]

Any certificate issued pursuant to this article shall expire of its own limitation twelve (12) months from the date of issuance if the work authorized thereby is not commenced by the end of such twelve (12) month period; and further, any such certificate shall also expire and become null and void if such authorized work is suspended or abandoned for a period of twelve (12) months after being commenced. Any period or periods of time during which the right to use any such certificate is stayed pursuant to this article shall be excluded from the computation of the twelve (12) months.

Section 8.29-30 Inspection by Administrator After Approval

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

Administrator or Town Building Official may revoke the certificate or the building permit if violations are not corrected by the applicant in a timely manner.

Section 8.30-31 Delay of Approval

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

Section 8.34-32 Conditions Imposed by the Historic District Review Board

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

Section 8.32-33 Appeals; Decisions of the Historic District Review Board

[revised – 11/15/18]

An appeal from a decision of the Historic District Review Board may be taken to the Town Council by the owner of the property in question or by any party aggrieved and must show that he has an immediate, pecuniary and substantial interest in the litigation, and not a remote or indirect interest, which shall be taken within thirty (30) days after the decision appealed from by filing with the Zoning Administrator the following: a notice of appeal specifying the grounds thereof; a signed statement listing any personal or business relationship with any general or subcontractors associated with the project under appeal; a signed statement that all real and personal property taxes are current as of the date of the filed appeal notice; a signed statement listing any personal or business relationship or partnership with the property owner(s) associated with the project under appeal; a fee equal in value to the fee paid by the property owner(s) associated with the project under appeal. The person submitting the appeal shall not be allowed to present any evidence that was not presented to the Historic District Review Board, nor are they allowed to contact individual members of the Town Council prior to appeal meeting. Council members having any relevant interaction with the applicant shall disclose such interaction prior to considering the appeal. The Zoning Administrator ~~shall transmit to the Town Council within five (5) days~~will prepare a document of all the papers constituting the record upon which the action appealed from was taken. The Town Council shall fix a reasonable time for the hearing, give public notice thereof and decide the same within sixty (60) days from the date the person submitted a request for appeal. At the hearing the appealing party may appear in person or by agent. In exercising its powers, the Town Council may, in conformity with the provisions of this Ordinance, reverse or affirm, wholly or partly, or may modify any order, requirement, decision, or determination appealed from

and make such order, requirement, decision or determination as ought to be made and to that end shall have all the powers of the Historic District Review Board.

Section 8.33-34 Appeals; Decisions of the Zoning Administrator [revised – 11/15/18]

An appeal from a decision of the Zoning Administrator may be taken to the Board of Zoning Appeals by the owner of the property in question or by any party aggrieved and must show that he has an immediate, pecuniary and substantial interest in the litigation, and not a remote or indirect interest, which shall be taken within thirty (30) days after the decision appealed from by filing with the Zoning Administrator the following: a notice of appeal specifying the grounds thereof; a signed statement listing any personal or business relationship with any general or subcontractors associated with the project under appeal; a signed statement that all real and personal property taxes are current as of the date of the filed appeal notice; a signed statement listing any personal or business relationship or partnership with property owner(s) associated with the project under appeal. The Zoning Administrator shall transmit to the Board of Zoning Appeals within five (5) days all the papers constituting the record upon which the action appealed from was taken. The Board of Zoning Appeals shall fix a reasonable time for the meeting, give public notice thereof as required pursuant to §15.2-2204; Code of Virginia, and decide the same within sixty (60) days. At the meeting the party may appear in person or by agent. In exercising its powers, the Board of Zoning Appeals may reverse or affirm, wholly or partly, or may modify, any order, requirement, decision, or determination appealed from and make such order, requirement, decision or determination as ought to be made.

Section 8.34-35 Appeal to the Circuit Court from a Decision of the Town Council

[revised – 11/15/18]

An appeal from a final decision of the Town Council may be filed with the Circuit Court within thirty (30) days after said decision in the manner prescribed by law by the owner of the property in question, by any party aggrieved and must show that he has an immediate, pecuniary and substantial interest in the litigation, and not a remote or indirect interest, or by the Historic District Review Board. The filing of an appeal shall stay the decision of the Town Council pending the outcome of the appeal to the court, except that the filing of such petition shall not stay the decision of the Town Council if such decision denies the right to raze or demolish a designated landmark, building, or structure. The court may reverse or modify the decision of the Town Council, in whole or part, if it finds upon review that the decision of the governing body is contrary to law or that its decision is arbitrary and constitutes an abuse of discretion, or it may affirm the decision of the Town Council.

Section 8.35-36 Violations and Penalties

Any violation of this Article and the penalties for all such violations shall be as set forth in §2.4.3 of the Zoning Ordinance.

Section 8.36-37 Definitions [revised – 08/16/18]

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

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

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

~~**ADMINISTRATOR, THE ZONING ADMINISTRATOR**, is that person appointed by the Town Council as the individual who issues the permit for the construction, alteration, reconstruction, repair, restoration, demolition, or razing of all or part of any building.~~

~~**BUILDING PERMIT** is an approval statement signed by the Building Permit Office authorizing the construction, alteration, reconstruction, repair, restoration, demolition, or razing of all or a part of any building.~~

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

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

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

~~**Guidelines** are parameters within which the Historic District Review Board has the discretion to act and make decisions.~~

~~**HISTORIC DISTRICT** means an area containing buildings or places in which historic events occurred or having special public value because of notable architectural or other features relating to the cultural or artistic heritage of the community of such significance as to warrant conservation and preservation.~~

~~**HISTORIC LANDMARK** is defined as any building or place listed on the National Register of Historic Places or on the Register of the Virginia Historic Landmarks Commission.~~

~~**RECONSTRUCTION** is any or all work needed to remake or rebuild all or part of any building to a sound condition, but not necessarily of original materials.~~

~~**REPAIRS** are any or all work involving the replacement of existing work with equivalent material for the purpose of maintenance, but not including any addition, change, or modification in construction.~~

RESTORATION is any or all work connected with the returning to or restoring of a building or a part of any building to its original condition through the use of original or nearly original materials.

Standards are requirements that are evaluated by the Zoning Administrator and not under the discretion of the Historic District Review Board.

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