



TOWN COUNCIL & PLANNING COMMISSION

Joint Public Hearing

April 6, 2021

via Electronic Communications

6:00 PM

1. Call to Order – Planning Commission
 - A. Roll Call
 - B. Establish quorum

2. Call to Order – Town Council
 - A. Roll Call
 - B. Establish quorum

3. Public Hearing:
 - A. Application for Conditional Use Permit to allow a second-floor residential dwelling unit above the first floor commercial at 1 Fig Street (tax map #83A3-1-534)

 - B. Application for Conditional Use Permit to allow two residential dwelling units above the first floor commercial at 301 Mason Avenue (tax map #83A3-1-615B)

4. Town Council Adjournment

April 6, 2021 Planning Commission/Town Council Joint Public Hearing

Item 1 – Introduction to Meeting by Chairman Bill Stramm

- This joint public hearing of the Planning Commission and Town Council is being held with some members physically present at the Civic Center and some participating electronically as provided under Code of Virginia Section 2.2-3708.2 Subsection A.3 which permits public bodies to meet by electronic communications without a quorum physically assembled at one location since, on March 12, 2020, Governor Northam declared a state of emergency for the Commonwealth of Virginia arising from the novel Coronavirus (COVID-19) pandemic.
- The purpose of this hearing is to receive public comment on i) an Application for Conditional Use Permit at 1 Fig Street; and ii) an Application for Conditional Use Permit at 301 Mason Avenue.
- An audio recording is being made of this meeting. This meeting is also being live-streamed on Facebook.
- Public comments will be accepted this evening via Facebook Live and emails to planner@capecharles.org. Comments were also solicited to be emailed to the Clerk, Planner, and Planning Technician prior to the meeting.
- All votes taken this evening will be by roll call vote and recorded in the minutes.
- Any Commission or Council members who leave the meeting or arrive after start of the meeting must verbally note their attendance.
- Only essential business of the Town of Cape Charles can be done in this manner.
- These procedures will remain in effect until the COVID-19 crisis has been alleviated.
- Do any of the Commission or Council members have any questions about this process?

TOWN OF CAPE CHARLES
Notice of Joint Public Hearing

The Cape Charles Planning Commission and Town Council will hold a joint public hearing via electronic communications on Tuesday, April 6, 2021 at 6:00 pm in the Cape Charles Civic Center, 500 Tazewell Avenue, to receive comment on the following requests:

- A. A Conditional Use Permit application from Penelope and Derrick Kinsey with consent from property owner Joshua Lattimore at 1 Fig Street (Tax Map 83A4-A-21) for a residential unit above first floor commercial, pursuant to Cape Charles Zoning Ordinance Section 3.7 (C)
- B. A Conditional Use Permit application from Chris Elam, AIA, on behalf of the property owners John & Clelia Shephard, Lemon Tree Gallery at 301 Mason Avenue (Tax Map 83A3-1-615B) for two residential units above first floor commercial, pursuant to Cape Charles Zoning Ordinance Section 3.6 (C)

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

The application is available for public review on our website at www.capecharles.org, under Agendas and Minutes, Planning Commission. Please contact the Planning Department at 331-2036, or by email at planner@capecharles.org if you have any questions or require additional information.

(To run in Eastern Shore Post on 3/26)



JOINT MEETING REPORT FOR PLANNING COMMISSION & TOWN COUNCIL STAFF REPORT

Meeting Date: April 6, 2021

Item #: 3a & 6b

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

Date: March 30, 2021

APPLICANT: Penelope & Derrick Kinsey
w/consent from property owner
Joshua Lattimore, Kellogg, LLC
SITE ADDRESS: 1 Fig Street

TAX MAP: 83A4-A-21

TYPE OF APPLICATION: Conditional Use Permit
REQUEST: Section 3.7 (C) – Residential Unit
above first floor commercial
CURRENT ZONING: Commercial C-2 District &
Historic District Overlay
LOT SIZE: 6,183 sq. ft.

DATE RECEIVED: February 1, 2021

DATE APPLICATION DEEMED COMPLETE: February 10, 2021

PLANNING COMMISSION PUBLIC HEARING: April 6, 2021

TOWN COUNCIL PUBLIC HEARING: April 6, 2021 (held jointly with Planning Commission)

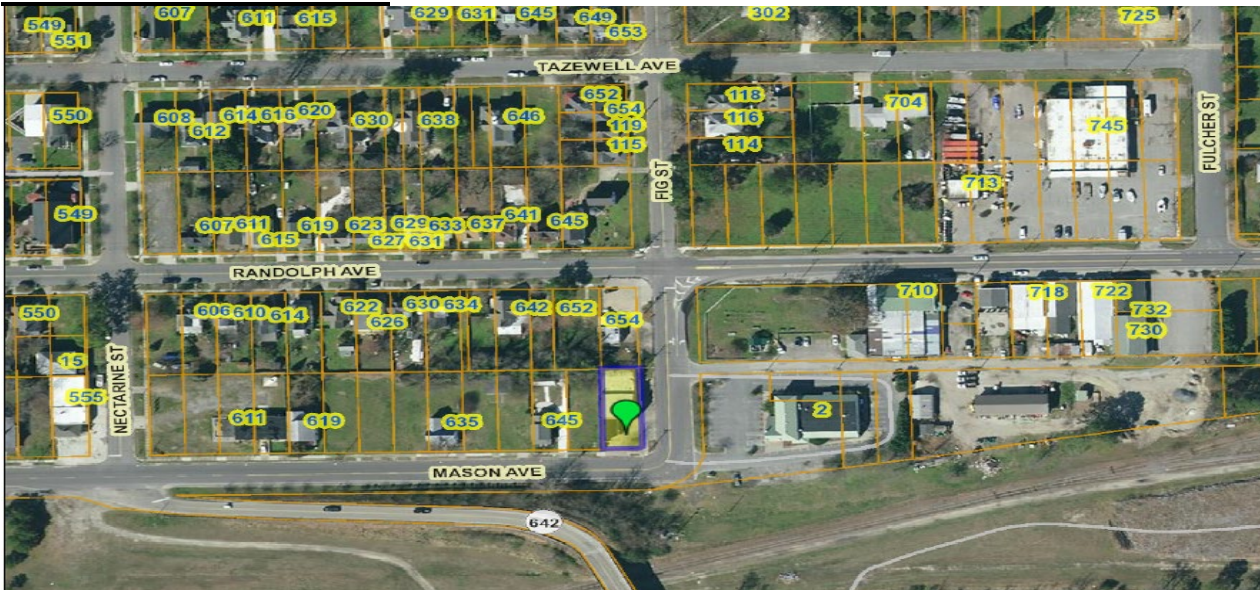
LEGAL DEADLINES: Planning Commission Review Period (45 Days after Public Hearing): 5/21/2021
Town Council Decision (generally 90 days but not restrictive): 7/4/2021

On February 1, 2021, an application was received from Joshua Lattimore, applicant, for a Conditional Use Permit for the property located at 1 Fig Street (Tax Map 83A4-A-21) which has since been amended to substitute Penelope and Derrick Kinsey as the applicant with intent to purchase the property from the current owner and with the owner's full consent for said substitution.

The property is zoned Commercial District C-2 which allows for a dual use of Commercial/Residential. The applicant has submitted a floor plan for one residential unit on the second floor of this building. The Cape Charles Zoning Order, pursuant to Section 3.7 (C), allows for a residential unit above first floor commercial provided that no such dwelling is located at street level and all dwelling units have direct access to the street level (no access through the commercial establishment on the first floor) through a Conditional Use Permit.

The applicant is seeking to renovate the second floor into a dwelling unit with one bedroom and two bathrooms with access through the front.

LOCATION/AERIAL MAP



STREET VIEW



This property previously applied for and was approved for a Conditional Use Permit for a residential unit on the second floor of the building with the first floor as a commercial establishment by the Town Council on January 3, 2017. However, the Conditional Use Permit was not acted upon in a timely manner, as outlined in the Cape Charles Zoning Ordinance Section 4.3 (D) and became null and void one year from its approval date by Town Council.

ORDINANCE REQUIREMENTS:

Cape Charles Zoning Ordinance Section 4.3 states that “conditional use permits may be issued for any of the conditional uses for which a use permit is required by the provision of this ordinance in the specific districts provided that the Town Council, upon recommendation by the Planning Commission, shall find that after duly advertised public hearing the use will not:

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

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

Additionally, approval of a conditional use permit shall be valid for only the specific use it covers in the specific location designated for a period of one year after approval by the Town Council and the completion of the additional permit process as requested in the application. Applicant shall apply or have applied for all additional permits as provided to the Planning Commission and as required by the Zoning Administrator within one (1) month of the approval by the Town Council. If Applicant fails to apply for any such permit within this time period, the conditional use permit shall be effective as of this date, thirty (30) days after the Town Council approval, unless the Town Council allows for additional time for such application or applications. If not acted upon within one (1) year, the conditional use permit shall become null and void, unless an extension of time is approved by the Town Council for good cause shown before the expiration of the Conditional Use Permit.

STAFF ANALYSIS:

The application for the renovation of the second story into a residential unit with the first floor to be developed for commercial usage is consistent with the intent of the Cape Charles Zoning Ordinance Commercial C-2 District which is to recognize the existing commercial areas which are less densely developed than the C-1 District and to encourage compatible commercial uses and density. This area generally has been developed with larger lots and larger individual buildings. The specific intent of this district is to recognize the existing and possibly new freestanding commercial development.

The Cape Charles Comprehensive Plan Section III.2.1.1. recognizes that the Commercial District is a mix of small-scale, mixed use buildings characterized by retail, office, restaurant, educational, civic and entertainment uses on the street level, with residential uses on upper floors. Section III-A.5.1.3 has stated an overall policy to promote the mixed use as the preferred form of development in the Commercial District, specifically allowing residential and retail/commercial uses within the same building.

The renovation of this building through the addition of a residential dwelling unit on the second floor and the intent of commercial usage on the first floor would be a tremendous improvement to this area of the town and would be harmonious within that Town block and across the street at Rayfield's Pharmacy. All exterior proposed improvements are subject to Historic District Review Board approval and obtaining a

building permit for all proposed work to the interior and exterior work as required by the Building Code and Town Ordinances.

Staff finds that the application for a Conditional Use Permit pursuant to Section 3.7 (C) for a residential dwelling unit above commercial usage with the provision that the entrance for the residential dwelling unit have direct access to the street level and not be through the commercial use meets and satisfies the requirements of the Town Zoning Ordinance, Section 4.3, as follows:

- 1) it does not adversely affect the health, safety, or welfare of the persons residing or working in the neighborhood or adversely affect other land uses within the particular surrounding neighborhood;
- 2) it is not detrimental to the public welfare or injurious to property or improvements in the neighborhood; and
- 3) it is not in conflict with the purpose of the comprehensive plan of the town.

Staff acknowledges that additional issues or comments may arise through the public hearing on this matter and request that the Planning Commission consider said issues and/or comments as part of their deliberations.

RECOMMENDED ACTION FOR PLANNING COMMISSION:

Staff recommends that the Planning Commission consider recommending approval of the Conditional Use Permit to the Town Council with the following motion:

The Cape Charles Planning Commission recommends approval of a Conditional Use Permit at 1 Fig Street (Tax Map #83A4-A-21), pursuant to Cape Charles Zoning Ordinance Section 3.7 (C) for a residential dwelling unit above commercial usage with the following conditions:

- 1.) the entrance for the residential unit has direct access to the street level and not be through the commercial use space;*
- 2.) the applicant applies and obtain Historic District Review Board approval for all exterior improvements, in accordance with the Historic District Overlay and Guidance Documents; and*
- 3.) the applicant obtains all required permits and approvals from the Building and Planning Department for all interior and exterior renovations;*

and further finds that the CUP standards in Section 4.3 are satisfied and that the issuance of the CUP is in general accord with the current Comprehensive Plan.

RECOMMENDED ACTION FOR TOWN COUNCIL:

Staff recommends that the Town Council accept the Planning Commission's recommendation and consider approval of the Conditional Use Permit application at their scheduled meeting on April 15, 2021.

Attachments:

Attachment 1 - Application dated February 1, 2021

Attachment 2 – Cape Charles Zoning Ordinance Sections 3.7 & 4.3



CONDITIONAL USE PERMIT APPLICATION

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

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

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

PROJECT INFORMATION

Name of Project: Kellogg Building
Property Address: 3 Fig Street
Brief Description of Project: Dual Use
Zoning District: _____ Current Use: _____ Proposed Use: Commercial/Residential

OWNER INFORMATION

Name and Company: Kellogg, LLC
Mailing Address: P.O. Box 135, Nassawadox VA 23413
Phone Number: 757-710-3381 Email: josh@northamptonlumber.com

APPLICANT INFORMATION

☒ check here if applicant is owner

Name: Joshua E Lathmore
Mailing Address: P.O. Box 135, Nassawadox VA 23413
Phone Number: 710-3381 Email: josh@northamptonlumber.com

CERTIFICATION OF APPLICANT

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

Signature of Applicant: Joshua E Lathmore Date: 2-1-2021

Penelope Kinsey
2274 Doc Holiday Drive, Park City, Utah 84060

Tracy Outten
Planning Technician
757.331.3259 x24
tracy.outten@capecharles.org

March 10, 2021

Dear Tracy,

I am writing in regards to the pending conditional use permit application for Three Fig Street, or the Kellogg Building. I understand the original application was put in by Mr. Joshua Lattimore proposing to make the second-floor residential space. I am informing you that my husband, Derrick Kinsey, and myself are purchasing Three Fig Street, or the Kellogg Building, from Joshua Lattimore, Kellogg, LLC. Closing is set for March 16, 2021. Attached in this packet is Mr. Lattimore's project plan. We have the same plan in mind as Mr. Lattimore, to turn the second floor in to residential space, an apartment and would like to use his attached plan.

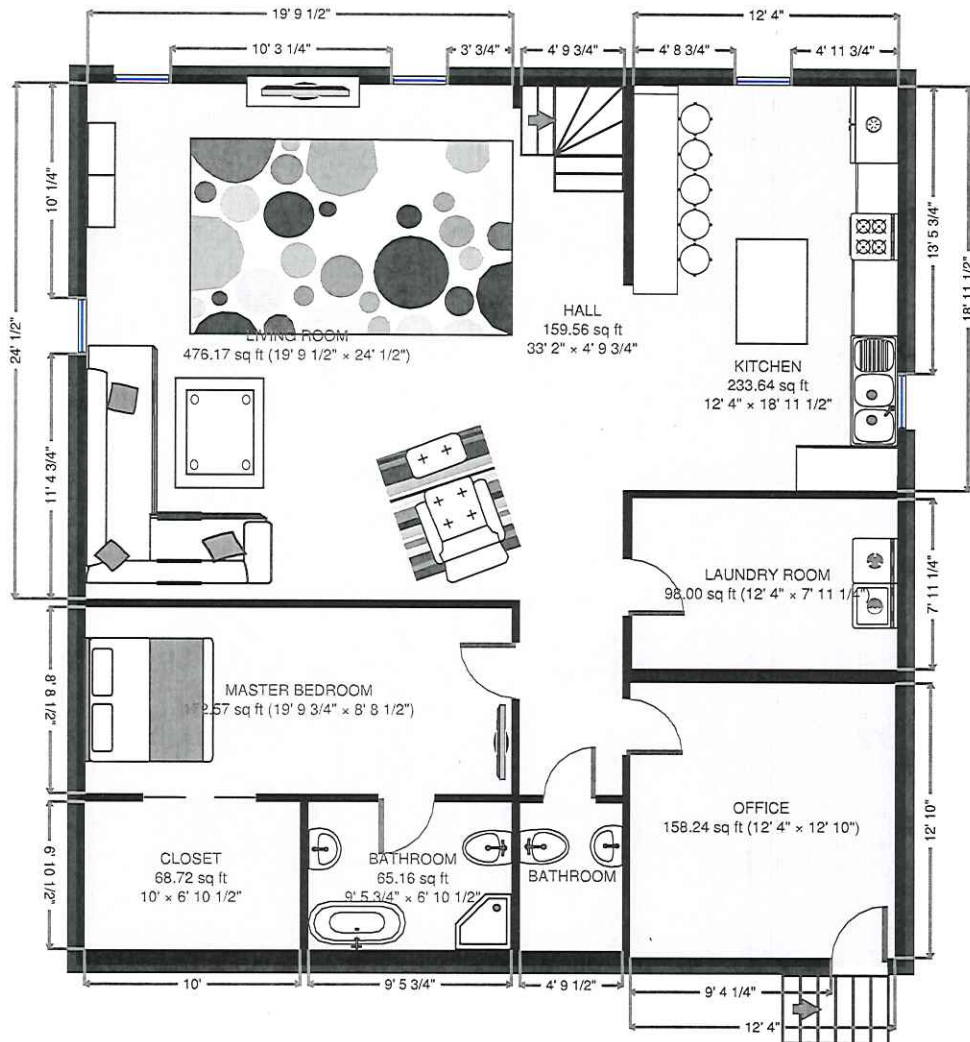
Thank you for your consideration. Please let me know if you need any further information.

Regards,



Penelope Kinsey
pennkinsey@gmail.com
435-640-6061

2nd Floor



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Plan 2

7907-11314 Hotze Street, Indianapolis, Indiana, United States 46259



2016-11-29

1465 sq ft

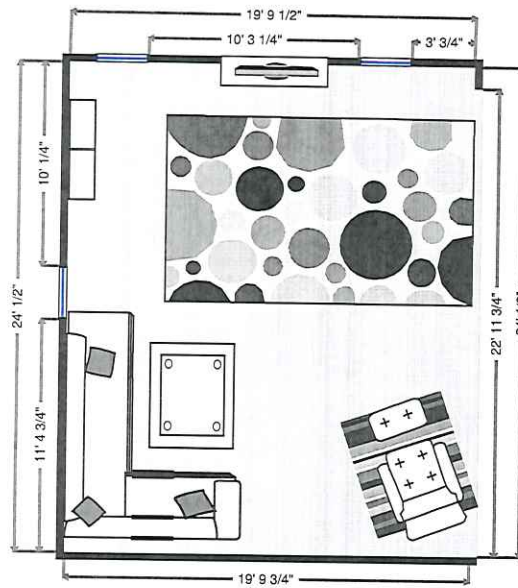
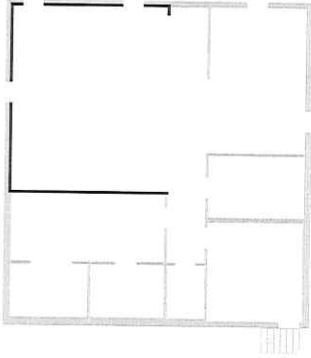
1 Floor

1 Bedroom

2 Bathrooms

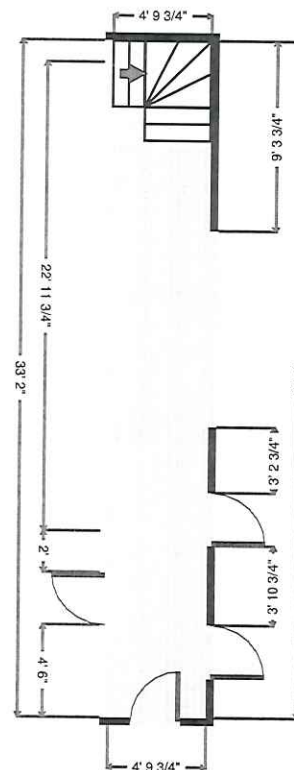
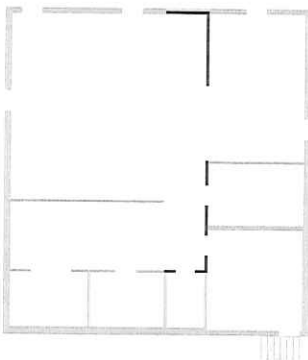
Living Room

Width: 19' 9 1/2"
 Length: 24' 1 1/2"
 Area: 476.17 sq ft
 Perimeter: 87' 8 1/4"



Hall

Width: 4' 9 3/4"
 Length: 33' 2"
 Area: 159.56 sq ft
 Perimeter: 75' 11 1/2"



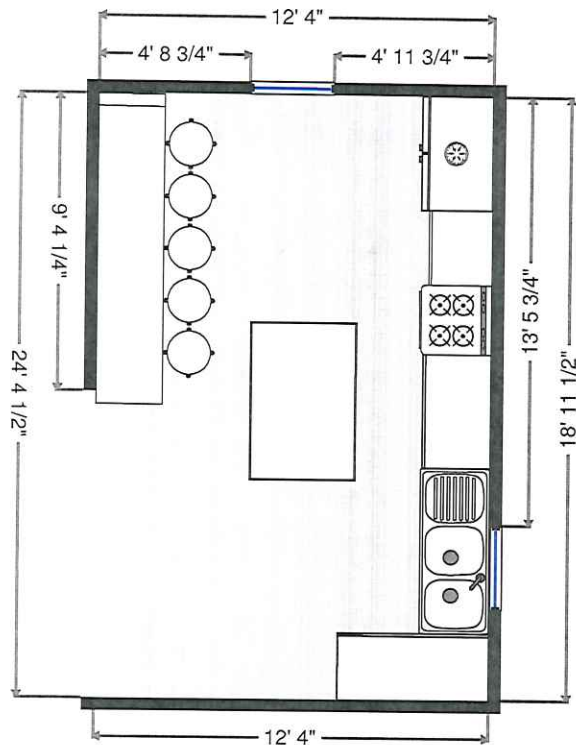
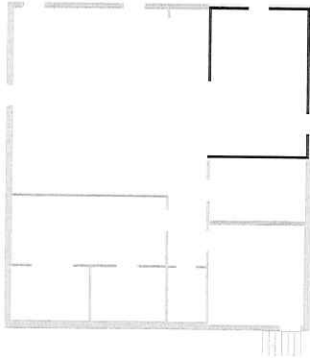
Plan 2

2016-11-29

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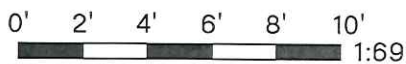
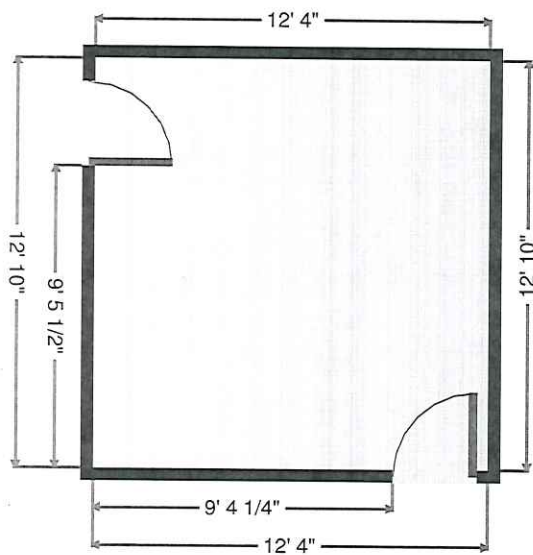
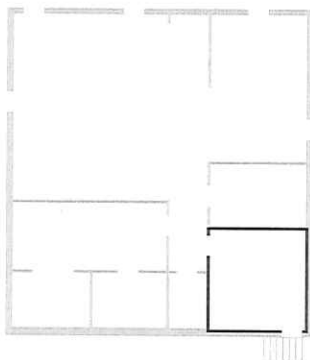
Kitchen

Width: 12' 4"
 Length: 18' 11 1/2"
 Area: 233.64 sq ft
 Perimeter: 62' 6 3/4"



Office

Width: 12' 4"
 Length: 12' 10"
 Area: 158.24 sq ft
 Perimeter: 50' 4"



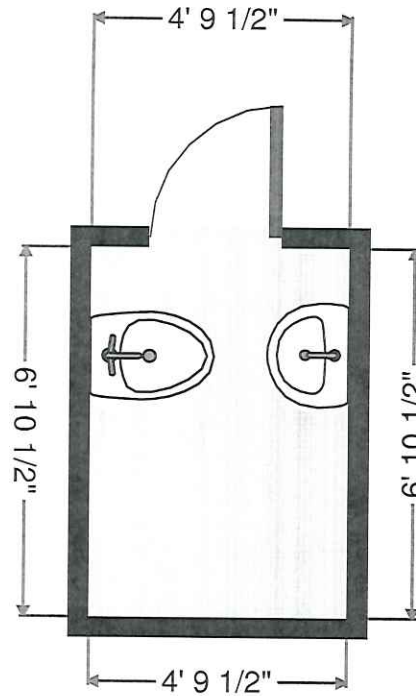
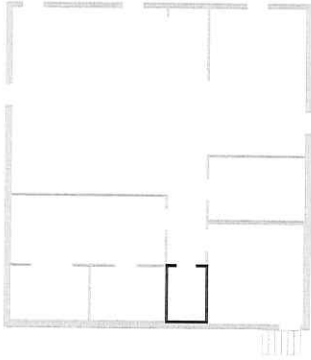
Plan 2

2016-11-29

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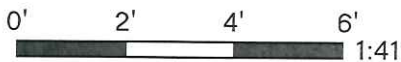
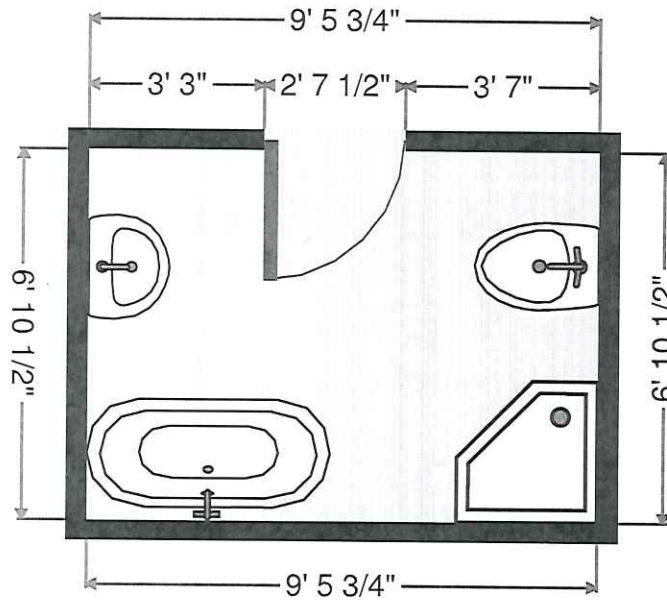
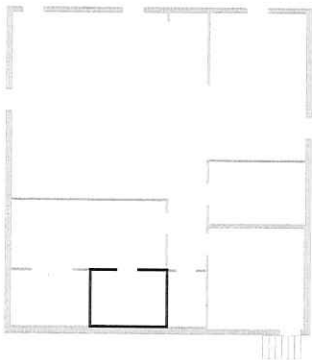
Bathroom

Width: 4' 9 1/2"
 Length: 6' 10 1/2"
 Area: 32.94 sq ft
 Perimeter: 23' 4"



Bathroom

Width: 6' 10 1/2"
 Length: 9' 5 3/4"
 Area: 65.16 sq ft
 Perimeter: 32' 8 1/2"



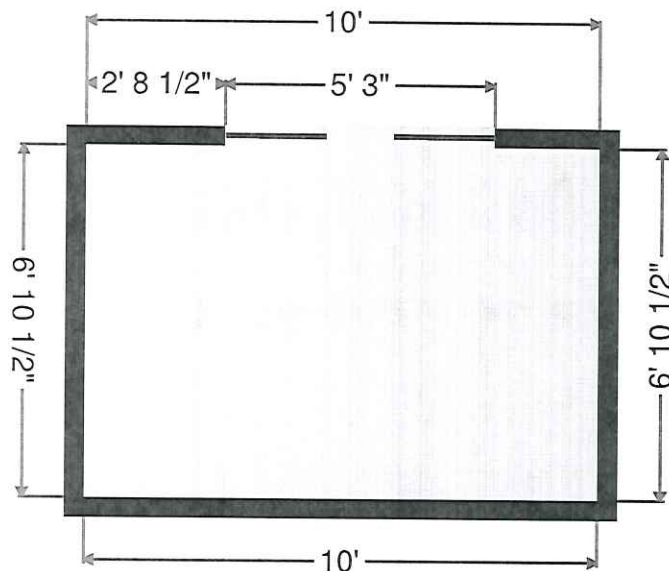
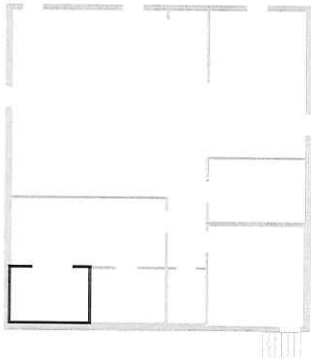
Plan 2

2016-11-29

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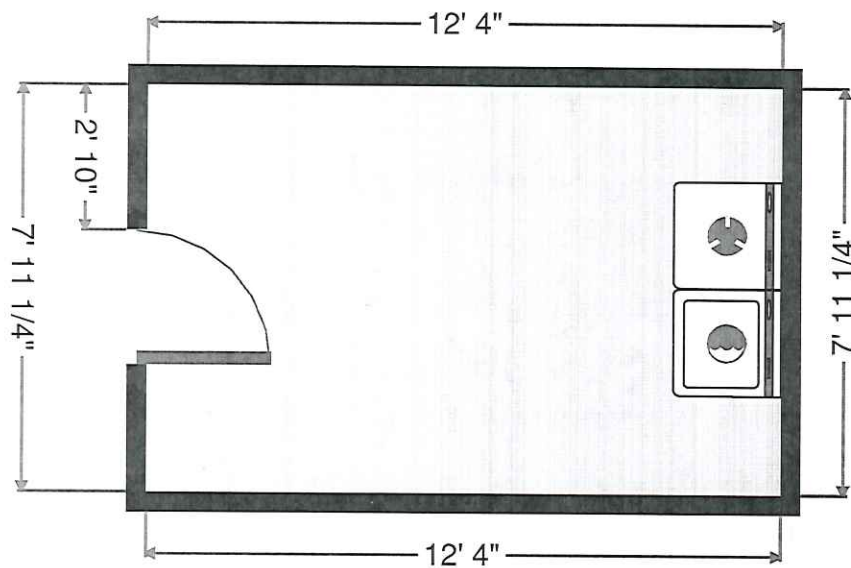
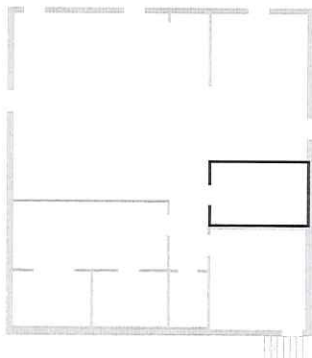
Closet

Width: 6' 10 1/2"
 Length: 10'
 Area: 68.72 sq ft
 Perimeter: 33' 9"



Laundry Room

Width: 7' 11 1/4"
 Length: 12' 4"
 Area: 98.00 sq ft
 Perimeter: 40' 6 3/4"



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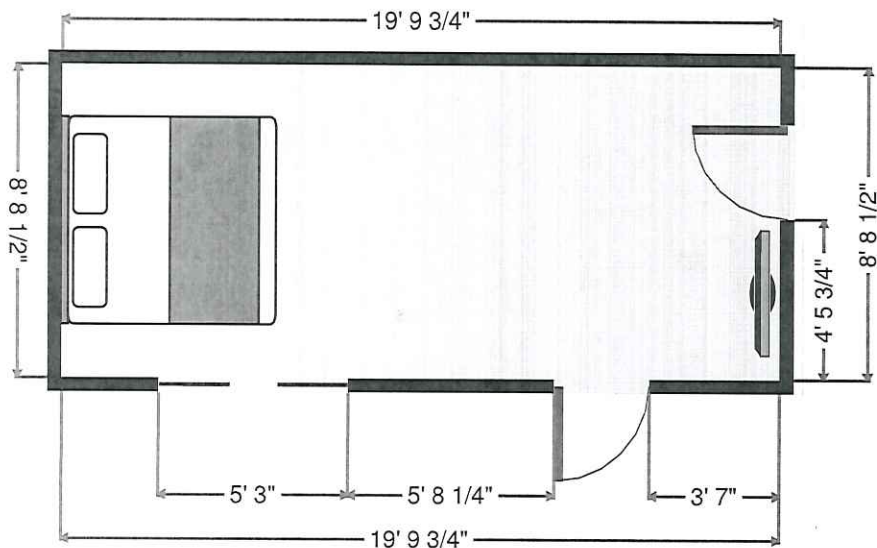
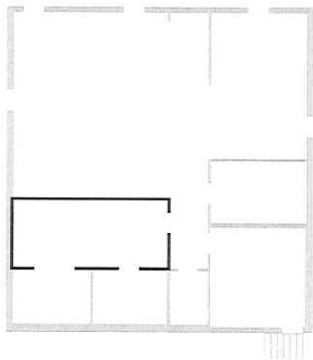


Plan 2

2016-11-29

Master Bedroom

Width: 8' 8 1/2"
 Length: 19' 9 3/4"
 Area: 172.57 sq ft
 Perimeter: 57' 3/4"



Plan 2

2016-11-29

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Section 3.7 Commercial District C-2

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

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

- B. Permitted Uses. The following uses are permitted by right:
1. All uses as allowed in C-1
 2. Nursing/retirement homes
 3. Any other commercial or professional use which is compatible in nature with the allowed uses and which the Zoning Administrator determines to be compatible with the intent of the district and is concurred with by the Planning Commission.
- C. Conditional Uses: Single family and multi-family dwellings provided that no such dwelling is located at street level and all dwelling units have direct access to the street level (not access through commercial establishment on the first level).
- D. Height Regulations: Buildings may be erected up to 35 feet in height from the adjacent ground elevations.
- E. Area Regulations: The following area regulations shall apply as minimums for new development in this district:
1. Lot width at setback line 60
 2. Area requirements (60 x 150) 9,000
 3. Side yard 10
 4. Rear yard 10 or prevailing rear yard if less
 5. Front setback shall be determined by the average setback of the existing built up commercial area.
- F. Development/Redevelopment Standards, Other Requirements, and Accessory Uses. The standards for development and/or redevelopment, specific additional requirements, and accessory uses shall be the same as those listed and described for the C-1.
- G. Sign design shall relate to the architectural character of the building and, if ground mounted, shall be appropriately landscaped.

Section 4.3 Conditional Use Permits

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

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

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

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

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

1. Action by the Zoning Administrator. The Zoning Administrator shall study the application and determine whether the proposed conditional use conforms to the general purpose and intent of the comprehensive plan, any applicable regulations that have been adopted, and the requirements of this ordinance. Upon completion of such review, if the administrator shall determine that any proposal in the application does not meet the requirements of this ordinance, he/she shall reject the application and return it to the applicant. If the applicant does meet the requirements of this ordinance, the administrator shall transmit all the findings and recommendations to the Planning Commission. However, nothing herein shall prohibit the administrator from accepting a conditional use permit application if failure to meet applicable requirements is due solely to area or dimension insufficiency of the lot upon which it is proposed. Any appeal of the Zoning Administrator may be made directly to the town manager.
 2. Action by the Planning Commission. After receiving the report of the administrator with all pertinent materials, the Planning Commission shall give notice of and hold a public hearing. Within 45 days after the hearing, the Commission shall submit its recommendations to the Town Council through the Zoning Administrator. Upon mutual agreement between the Commission and the applicant, such time may be extended.
 3. Action by the Town Council. After receiving the recommendations of the Zoning Administrator and the Planning Commission, the Town Council shall hold a public hearing and act upon the proposed conditional use permit, granting the applicant in whole or in part, with or without modifications, or denying the proposed application. In addition to the general or specific requirements set forth in the ordinance concerning the proposed use, which shall be considered minimum requirements with respect to the permit, additional requirements, conditions, and safeguards may be added by the Town Council as required for the protection of the public interest in the specific case.
- D. Approval of a conditional use permit shall be valid for only the specific use it covers in the specific location designated for a period of one year after approval by the Town Council and the completion of the additional permit process as requested in the application. Applicant shall apply or have applied for all additional permits as provided to the Planning Commission and as required by the Zoning Administrator within one (1) month of the approval by the Town Council. If Applicant fails to apply for any such permit within this time period, the conditional use permit shall be effective as of this date, thirty (30) days after the Town Council approval, unless the Town Council allows for additional time for such application or applications.
1. Staff shall notify Town Council of the date that all additional permits have been approved which date shall be the commencement date for the one (1) year Conditional Use Permit
 2. Staff shall notify Town Council of the status of the project at a regular meeting prior to the expiration of the one (1) year Conditional Use Permit.
- If not acted upon within one (1) year, the conditional use permit shall become null and void, unless an extension of time is approved by the Town Council for good cause shown

before the expiration of the Conditional Use Permit. Town Council may make additional one-year extensions for good cause. To be considered acted upon one (1) or more of the following is required:

1. The procurement of a Cape Charles Building Permit
 2. Payment of Water and Wastewater Connection and Facility Fees
 3. Completed Plans stamped by a Virginia Licensed Professional
- E. No application for a use permit for the same conditional use on a lot, parcel, or tract shall be considered by the Town Council within a one-year period from its last consideration. The provisions, however, shall not impair the right of the Town Council to propose a use permit on its own motion if it finds that there is public benefit to be gained.
- F. Revocation of a Conditional Use. If the provisions of this ordinance or the requirements of the conditional use permit are not met, then the Town Council may revoke the conditional use permit provided that ten days' written notice is given to the applicant.



JOINT MEETING REPORT FOR PLANNING COMMISSION & TOWN COUNCIL STAFF REPORT

Meeting Date: April 6, 2021

Item #: 3b & 5c

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

Date: March 30, 2021

APPLICANT: Chris Elam, AIA,
w/consent from property owner
John & Clelia Shephard

SITE ADDRESS: 301 Mason Avenue

TAX MAP: 83A3-1-615B

TYPE OF APPLICATION: Conditional Use Permit

REQUEST: Section 3.6 (C) – Residential Units
above first floor commercial

CURRENT ZONING: Commercial C-1 District &
Historic District Overlay

LOT SIZE: 2,848 sq. ft.

DATE RECEIVED: February 15, 2021

DATE APPLICATION DEEMED COMPLETE: February 17, 2021

PLANNING COMMISSION PUBLIC HEARING: April 6, 2021

TOWN COUNCIL PUBLIC HEARING: April 6, 2021 (held jointly with Planning Commission)

LEGAL DEADLINES: Planning Commission Review Period (45 Days after Public Hearing): 5/21/2021
Town Council Decision (generally 90 days but not restrictive): 7/4/2021

On February 15, 2021, an application was received from Chris Elam, applicant, with consent from the property owner John & Clelia Sheppard, for a Conditional Use Permit for the property located at 301 Mason Avenue (Tax Ma 83A3-1-615B) with the project name of Lemon Tree Apartments.

The property is zoned Commercial District C-1 which allows for a dual use of Commercial/Residential. The applicant has submitted a floor plan for two residential units on the second floor of this building. The Cape Charles Zoning Order, pursuant to Section 3.6 (C), allows for a residential unit above first floor commercial provided that no such dwelling is located at street level and all dwelling units have direct access to the street level (no access through the commercial establishment on the first floor) through a Conditional Use Permit.

The applicant, Chris Elam, AIA, has stated that the property owner is seeking to remodel/renovate the second floor of the existing structure to create 2 apartment suites. If the Conditional Use Permit is acted upon favorably by the Town, they would also be seeking all required Town approvals to add a column-supported porch above the existing front entry thus creating a second story outdoor balcony and adding “juliette” style balconies at the existing second floor windows along Strawberry Street.

TAZEWELL AVE

PINE ST

PEACH ST

RANDOLPH AVE

STRAWBERRY ST

PLUM ST

MASON AVE

301

Cape Charles Zoning Ordinance Section 4.3 states that “conditional use permits may be issued for any of the conditional uses for which a use permit is required by the provision of this ordinance in the specific districts provided that the Town Council, upon recommendation by the Planning Commission, shall find that after duly advertised public hearing the use will not:

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

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

Additionally, approval of a conditional use permit shall be valid for only the specific use it covers in the specific location designated for a period of one year after approval by the Town Council and the completion of the additional permit process as requested in the application. Applicant shall apply or have applied for all additional permits as provided to the Planning Commission and as required by the Zoning Administrator within one (1) month of the approval by the Town Council. If Applicant fails to apply for any such permit within this time period, the conditional use permit shall be effective as of this date, thirty (30) days after the Town Council approval, unless the Town Council allows for additional time for such application or applications. If not acted upon within one (1) year, the conditional use permit shall become null and void, unless an extension of time is approved by the Town Council for good cause shown before the expiration of the Conditional Use Permit.

STAFF ANALYSIS:

The application for the renovation of the second story into two residential units with the first floor remaining as active commercial usage is consistent with the intent of the Cape Charles Zoning Ordinance Commercial C-1 District which is to preserve and enhance the traditional mixed use urban nature of Cape Charles commercial districts, to encourage the location of regional and local business and professional activities, to facilitate the development of buildings in keeping with its largely National Historic District character, and to protect against destruction of or undesirable encroachment on these areas.

The Cape Charles Comprehensive Plan Section III.2.1.1. recognizes that the Commercial District is a mix of small-scale, mixed use buildings characterized by retail, office, restaurant, educational, civic and entertainment uses on the street level, with residential uses on upper floors. Section III-A.5.1.3 has stated an overall policy to promote the mixed use as the preferred form of development in the Commercial District, specifically allowing residential and retail/commercial uses within the same building.

The renovation of this building through the addition of two residential dwelling units on the second floor and the commercial usage on the first floor is complementary to the district and provides a residential dwelling opportunity in space that was previously underutilized and it would be harmonious within the main commercial district. All exterior proposed improvements are subject to Historic District Review Board approval and obtaining a building permit for all proposed work to the interior and exterior work as required by the Building Code and Town Ordinances.

Staff finds that the application for a Conditional Use Permit pursuant to Section 3.6 (C) for a residential dwelling unit above commercial usage with the provision that the entrance for the 2 residential dwelling

units have direct access to the street level and not be through the commercial use meets and satisfies the requirements of the Town Zoning Ordinance, Section 4.3, as follows:

- 1) it does not adversely affect the health, safety, or welfare of the persons residing or working in the neighborhood or adversely affect other land uses within the particular surrounding neighborhood;
- 2) it is not detrimental to the public welfare or injurious to property or improvements in the neighborhood; and
- 3) it is not in conflict with the purpose of the comprehensive plan of the town.

Staff acknowledges that additional issues or comments may arise through the public hearing on this matter and request that the Planning Commission consider said issues and/or comments as part of their deliberations.

RECOMMENDED ACTION FOR PLANNING COMMISSION:

Staff recommends that the Planning Commission consider recommending approval of the Conditional Use Permit to the Town Council with the following motion:

The Cape Charles Planning Commission recommends approval of a Conditional Use Permit at 301 Mason Avenue (Tax Map #83A3-1-615B), pursuant to Cape Charles Zoning Ordinance Section 3.6 (C) for a residential dwelling unit above commercial usage with the following conditions:

- 1.) the entrance for the residential units have direct access to the street level and not be through the commercial use space;*
- 2.) the applicant applies and obtain Historic District Review Board approval for all exterior improvements, in accordance with the Historic District Overlay and Guidance Documents; and*
- 3.) the applicant obtains all required permits and approvals from the Building and Planning Department for all interior and exterior renovations;*

and further finds that the CUP standards in Section 4.3 are satisfied and that the issuance of the CUP is in general accord with the current Comprehensive Plan.

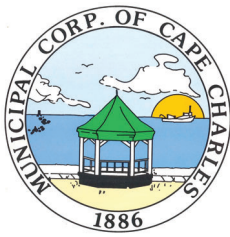
RECOMMENDED ACTION FOR TOWN COUNCIL:

Staff recommends that the Town Council accept the Planning Commission's recommendation and consider approval of the Conditional Use Permit application at their scheduled meeting on April 15, 2021.

Attachments:

Attachment 1 - Application dated February 15, 2021

Attachment 2 – Cape Charles Zoning Ordinance Sections 3.6 & 4.3



CONDITIONAL USE PERMIT APPLICATION

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

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

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

PROJECT INFORMATION

Name of Project: Lemon Tree Apartments

Property Address: 301 Mason Ave.

Brief Description of Project: remodel of existing second floor to be used as 2 apartments

Zoning District: C-1 Current Use: business Proposed Use: residential

OWNER INFORMATION

Name and Company: John & Clelia Sheppard_ Lemon Tree Gallery

Mailing Address: 301 Mason Ave.

Phone Number: 757-651-1000 Email: cleliart@hotmail.com

APPLICANT INFORMATION

☐ check here if applicant is owner

Name: Chris Elam, AIA

Mailing Address: 4356 Bonney Rd., Bldg #3, suite #102, Virginia Beach, VA 23452

Phone Number: 757-498-9800 Email: celam@gmfplus.com

CERTIFICATION OF APPLICANT

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

Signature of Applicant: Chris Elam Digitally signed by Chris Elam
Date: 2021.02.15 14:04:53 -05'00' Date: 2-15-21

GMF+ ASSOCIATES

4356 BONNEY RD. BLDG 3, SUITE 102, VIRGINIA BEACH, VA 23452
(757) 498-9800

Planning Department
Town of Cape Charles
2 Plum Street
Cape Charles, Virginia 23310

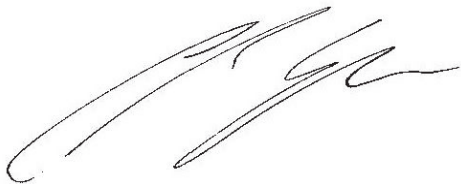
February 17, 2021

Subject: 301 Mason Ave. Conditional Use Application Letter of Intent

The proposed project includes remodeling of the existing second floor space at 301 Mason Ave. to convert existing, non-occupied commercial space into two (2) apartment units. One unit is planned to be 932 sf of rentable square feet with a 320 square foot balcony. The second unit is planned to be 912 sf of rentable square feet. The new balcony will be constructed in the area currently covered by an awning and currently enclosed at the street level by an existing metal railing.

The existing stairwell which provides access to the second floor, and which serves two properties and is within an easement, will be left in place with new stairs being constructed within.

If you have any other questions regarding the information provided here, please do not hesitate to inform us. We will do everything possible to respond quickly.



Sincerely,

Christopher Elam, AIA



SURVEYOR'S CERTIFICATION

I, MARSHALL B. PARKS, A LICENSED LAND SURVEYOR, HEREBY CERTIFY THAT THIS PLAT WAS MADE BY ME AT THE REQUEST OF THE OWNERS AND THAT THIS SURVEY IS ENTIRELY WITHIN THE BOUNDARIES OF LAND COVERED BY THE DEED DESCRIBED HEREON AND THAT MONUMENTATION IS ACTUALLY IN PLACE OR WILL BE SET AT POINTS MARKED AS SHOWN HEREON AND THAT THEIR LOCATIONS ARE CORRECTLY SHOWN. THIS SURVEY IS CORRECT AND COMPLIES WITH THE MINIMUM PROCEDURES AND STANDARDS ESTABLISHED BY THE VIRGINIA BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS, AND LANDSCAPE ARCHITECTS. THIS PLAT IS BASED ON A CURRENT FIELD SURVEY.

OWNER TABLE

TAX PARCEL	OWNER(S)	SOURCE OF TITLE	REFERENCE PLAT(S)
83A3-1-613B	ARTS ENTER CAPE CHARLES, INC	D.B. 306, P.532	P.B. 26, P. 92
83A3-1-615A	ARTS ENTER CAPE CHARLES, INC.	D.B. 299, P. 30	P.B. 4, P. 171
83A3-1-615B	THOMAS & MALVINA FAMILY LIMITED PARTNERSHIP & GEORGE J. SAVAGE	D.B. 315, P. 575 W.B. 60, P. 481	P.B. 4, P. 171
83A3-1-614C	ARTS ENTER CAPE CHARLES, INC.	D.B. 299, P. 30	P.B. 4, P. 171
83A3-1-612A	PATRICK HAND	INST. 100001394	D.B. 144, P. 43 (PLAT)
83A3-1-616A	PATRICK HAND	INST. 100001394	D.B. 144, P. 43 (PLAT)
83A3-1-614B	AUSTIN C. DAVIS & KAREN JOLLY DAVIS	D.B. 315, P. 146	P.B. 4, P. 171
83A3-1-611A	PATRICK HAND	INST. 100001394	D.B. 144, P. 43 (PLAT)
83A3-1-616C	ARTS ENTER CAPE CHARLES, INC	D.B. 306, P.532 D.B. 293, P.120	P.B. 26, P. 92
83A3-1-612B	PATRICK HAND	INST. 100001394	D.B. 140, P. 40 (PLAT) P.B. 26, P. 92

GENERAL NOTES:

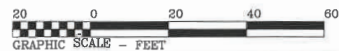
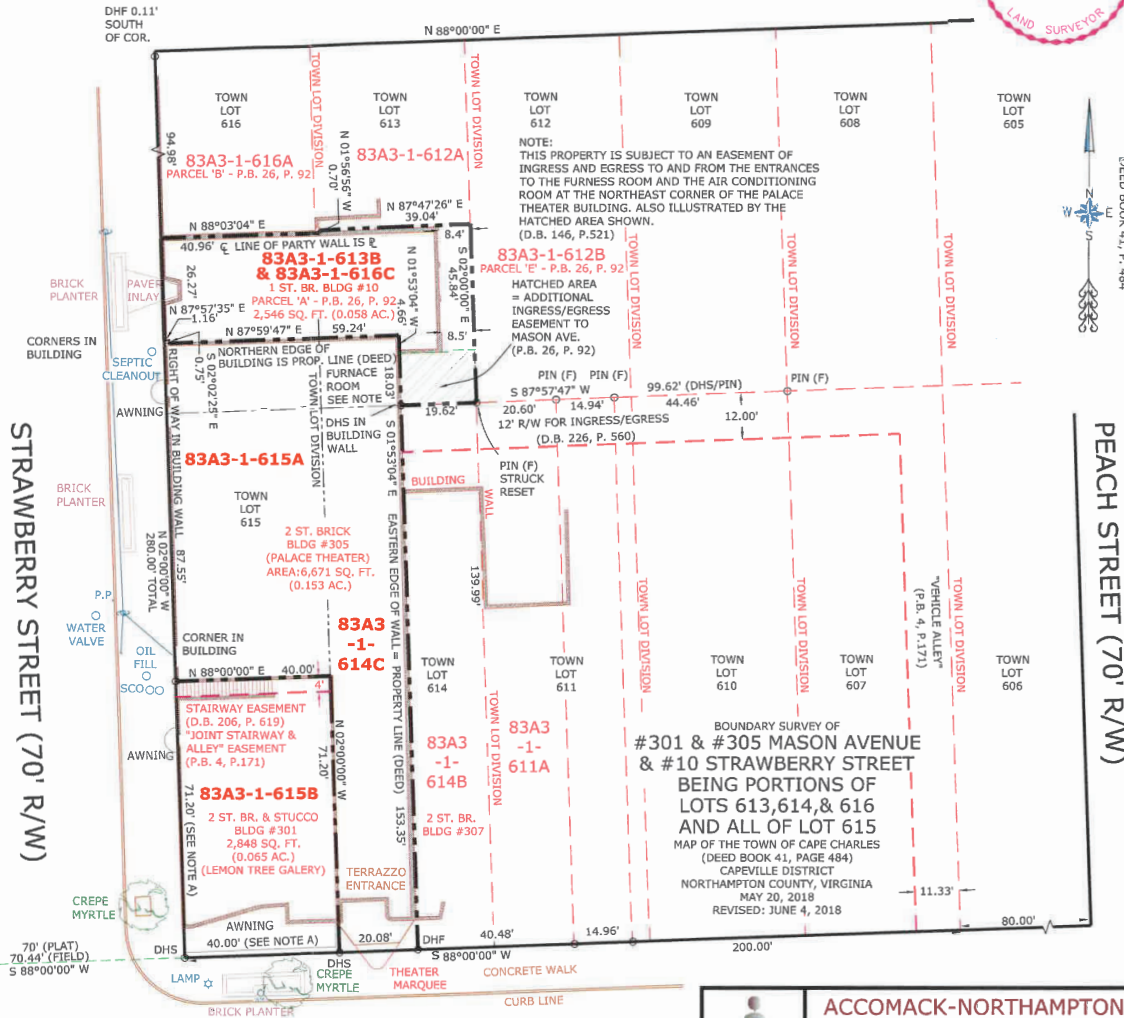
1. A SURVEY WAS PERFORMED ON THIS PROPERTY IN MAY 2018 WITH A BOUNDARY CLOSURE WHOSE PRECISION EXCEEDS 1:10,000.
2. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A CURRENT TITLE REPORT AND MAY NOT SHOW ANY/ALL EASEMENTS OR RESTRICTIONS THAT MAY AFFECT SAID PROPERTY AS SHOWN OR WETLANDS, ENVIRONMENTAL HAZARDS, CEMETERIES AND UNDERGROUND STRUCTURES NOT OBSERVED DURING THE COURSE OF THE SURVEY.
3. ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY (F.E.M.A.) FLOOD INSURANCE RATE MAP COMMUNITY PANEL NO. 51131C0295F, DATED 03-02-15, THE PROPERTY SHOWN HEREON LIES IN FLOOD ZONE X. FLOOD ZONE DETERMINATION IS BASED ON THE FLOOD INSURANCE RATE MAP AND DOES NOT IMPLY THAT THIS PROPERTY WILL OR WILL NOT BE FREE FROM FLOODING OR DAMAGE. FLOOD ZONE INFORMATION SHOWN HEREON IS NOT GUARANTEED AND WAS APPROXIMATELY SCALED FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY (F.E.M.A.) FLOOD INSURANCE RATE MAPS. FOR FURTHER INFORMATION AND TO CONFIRM THE FLOOD ZONE FOR THIS PROPERTY, CONTACT THE LOCAL COMMUNITY FLOOD OFFICIAL.
4. PLAT REFERENCES:
D.B. 144, P. 43 (PLAT)
D.B. 41, P. 484 (PLAT)
P.B. 25, P. 91
P.B. 26, P. 92
P.B. 4, P. 171
D.B. 97, P. 289 (PLAT)

NOTE A
D.B. 315, P. 575 : PARCEL 1-CAPEVILLE DRUG STORE
GIVES DIMENSIONS OF 40'8" X 63'3" FOR THE
BOUNDARY OF 83A3-1-615B. IT IS THE OPINION OF
THIS SURVEYOR THAT THE MEASUREMENTS REPORTED
WERE AS MEASURED BY J. THOMAS SAVAGE ALONG
THE BUILDINGS AND NOT ALONG THE PROPERTY LINE
AND RIGHT OF WAY LINE.

RANDOLPH AVENUE (70' R/W)

STRAWBERRY STREET (70' R/W)

MASON AVENUE (70' R/W)



ACCOMACK-NORTHAMPTON SURVEYING & MAPPING PLLC

36308 Lankford Highway, Belle Haven, Virginia 23306
Mail Address: 11403 Heron Drive, Machipongo, Virginia 23405
Phone: (757) 709-4192

DRAWN BY: CROCKETT SCALE: 1" = 20'
CHK'D BY: M.B.P. BACK TRAV. BY: CROCKETT
FIELD BOOK: 17, P. 13 JOB NUMBER: 770



VIEW FROM SOUTH WEST

LEMON TREE MIXED USE

A PROPOSED MIXED USE REMODEL/RENOVATION

301 MASON AVE.
CAPE CHARLES, VA

12/22/20

NEW JULIET BALCONY
& FRENCH DOORS AT
EXISTING WINDOW LOCATION

RESTORED HISTORIC MURAL

NEW BALCONY W/ BLACK
METAL GUARD RAIL & BLACK
METAL COLUMNS



AERIAL VIEW FROM WEST

LEMON TREE MIXED USE

A PROPOSED MIXED USE REMODEL/RENOVATION

301 MASON AVE
CAPE CHARLES, VA

12/22/20

GMF+ASSOCIATES

4356 BONNEY ROAD
BUILDING 3, SUITE 102
VIRGINIA BEACH, VA 23452
757 498-9900

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WEBSITE:
www.gmfplus.com

NEW JULIET BALCONY
& FRENCH DOORS AT
EXISTING WINDOW LOCATION

NEW BALCONY W/ BLACK
METAL GUARD RAIL & BLACK
METAL COLUMNS

NEW DOORS IN EXISTING
WINDOW LOCATIONS



AERIAL VIEW FROM SOUTH WEST

LEMON TREE MIXED USE

A PROPOSED MIXED USE REMODEL/RENOVATION

301 MASON AVE
CAPE CHARLES, VA

12/22/20

YEAR EDITION OF CODE	2015 VIRGINIA EXISTING BUILDING CODE W/ PROVISIONS OF THE 2015 VIRGINIA CONSTRUCTION CODE
OCCUPANCY	MIXED USE, UNSEPARATED OCCUPANCIES R-3 (APARTMENT) AND M (MERCANTILE)
CONSTRUCTION TYPE	CONSTRUCTION TYPE Y-B SPRINKLERS FULL BUILDING NFPA 13R SPRINKLER SYSTEM LEVEL 3 ALTERATIONS TO A HISTORIC BUILDING
REQUIRED EXITS	MAXIMUM OCCUPANT LOAD OF SPACE WITH ONE EXIT= 10 TABLE 1006.2.1 FOR SPRINKLERED R-3 OCCUPANCY

ALLOWABLE AREA PER STORY	TABULAR R3- UNLIMITED M- 27,000 SF
ALLOWABLE STORIES ABOVE GRADE PLANE	TABULAR R3- 4 M- 2

GROUND FLOOR RETAIL SPACE
APPROXIMATELY 2,140 SQFT

APARTMENT UNIT #1
APPROXIMATELY 932 SQFT
BALCONY AREA: 320 SQFT

APARTMENT UNIT #2
APPROXIMATELY 912 SQFT

SHARED CORRIDOR
APPROXIMATELY 185 SQFT

ACCESSORY STORAGE SPACE
APPROXIMATELY 178 SQFT

EXISTING CONSTRUCTION
TO REMAIN

NEW FULL HEIGHT WALL



1 GROUND FLOOR PLAN

GMF+ASSOCIATES

4356 BONNEY ROAD
BUILDING 3, SUITE 102
VIRGINIA BEACH, VA 23452
(757) 498-9800

WEBSITE:
www.gmfplus.com

PRELIMINARY
NOT FOR
CONSTRUCTION

<i>DATE</i>	<i>REVISIONS</i>

LEMON TREE MIXED USE

A PROPOSED MIXED USE REMODEL/RENOVATION

SHEET # *A-10*

DATE : OCTOBER, 2020

SCALE : AS NOTED

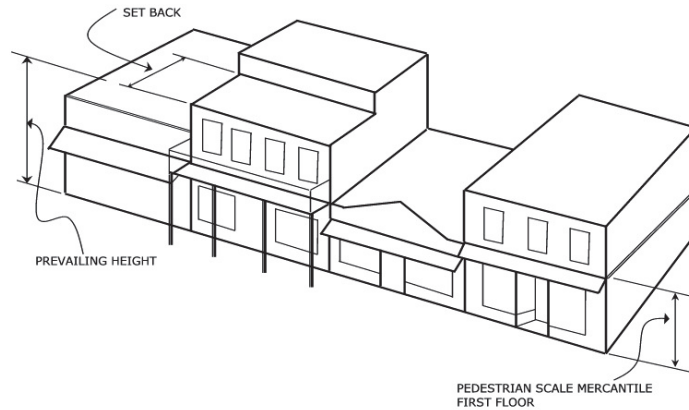
DRAWN : CLE

CHECKED BY: *QLE*

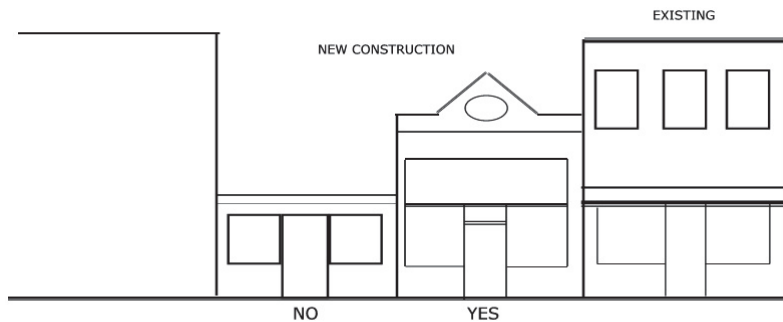
Section 3.6 Commercial District C-1

- A. Statement of Intent. The intent of this zoning district is to preserve and enhance the traditional mixed use urban nature of Cape Charles commercial districts, to encourage the location of regional and local business and professional activities, to facilitate the development of buildings in keeping with its largely National Historic District character, and to protect against destruction of or undesirable encroachment on these areas.
- B. Permitted Uses. The following uses are permitted by right:
1. Art or antique shops
 2. Auditoriums, theaters, and assembly halls
 3. Automobile repair and small engine repair
 4. Automobile service stations
 5. Bakeries, confectionaries, delicatessens, and catering services
 6. Barber shops and beauty parlors
 7. Bicycle and moped sales and rentals
 8. Blueprinting shops
 9. Boat sales
 10. Business and vocational schools
 11. Business studios, offices, and clinics
 12. Childcare and child care education centers
 13. Commercial schools of instruction
 14. Drug stores
 15. Dressmaking, tailoring, and millinery shops, dry cleaning shops
 16. Eating and drinking establishments
 17. Financial institutions
 18. Florists, gift shops, card shops, and stationery shops
 19. Funeral homes
 20. Furniture repair, sales and household appliance sales and repair, carpet and flooring sales
 21. Greenhouses and plant nurseries
 22. Grocery stores
 23. Hotels and motels
 24. Liquor stores
 25. Libraries, museums, or galleries
 26. Music stores
 27. Medical or dental or other laboratories
 28. Offices, office supply stores
 29. Public facilities, public buildings
 30. Restaurants
 31. Pet shops and pet supply stores
 32. Radio and television sales
 33. Upholstering shops and fabric stores
 34. Watch and jewelry stores
 35. Any use allowable in the S-C District.
 36. Any other commercial or professional use which is compatible in nature with the foregoing uses and which the Zoning Administrator determines to be compatible with the intent of the district and is concurred with by the Planning Commission.

- C. Conditional Uses: Single family and multi-family dwellings provided that no such dwelling is located at street level and all dwelling units have direct access to the street level (not access through commercial establishment on the first level).
- D. Height Regulations: Buildings may be erected up to 40 feet in height from the adjacent ground elevations.
- E. Area Regulations: The following area regulations shall apply as minimums for new development in this district:
 - 1. Lot width at setback line 40
 - 2. Area requirements (40 x 140) 5,600
 - 3. Side yard 0; 5 and 10 feet in Route 184 area
 - 4. Rear yard 10 or prevailing rear yard if less
 - 5. Front setback shall be determined by the average setback of the existing built up commercial area. Front setback along Route 184 (aka Randolph Avenue extended; Old Stone Road) where existing VDOT right of way is 70 feet shall be measured at 80 feet from the center of the right of way.
- F. Development/Redevelopment Standards:
 - 1. Statement of Intent. The development standards below are intended to help preserve the architectural character of the Town of Cape Charles' commercial districts by requiring that all façade reconstruction/ rehabilitation must conform to the building style as described in the U.S. Department of Interior National Register without the addition to or removal of contributing elements. New construction, additions, and alterations must be compatible, sympathetic, and complementary to the original or existing buildings in built-up areas. Development concepts are illustrated below to clarify the intent of the development standards.
 - a. Scale. When the scale of neighborhood buildings is relatively consistent, new construction should be discouraged from drastically altering these relationships. In the Town of Cape Charles, the two- and three-story structure is the norm, and structures which digress from this standard to any great degree seriously impact the character of the Town of Cape Charles. If construction is to be allowed, particular attention should be given to the location, siting, setbacks, and façade treatments of the proposed building. No matter what size of the new building, the base of the building should be scaled to pedestrians.



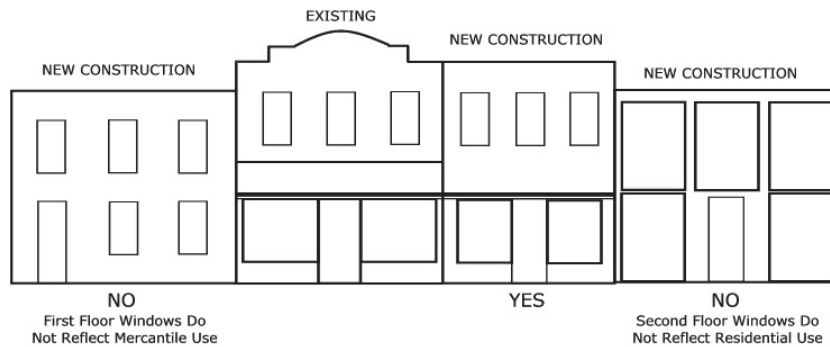
- b. **Floor-to-Floor Heights.** This important element of scale is often ignored in new construction, which tends toward lower ceiling heights. Floor-to-floor heights of new construction should be within 10 percent of neighborhood construction, where a relatively consistent floor-to-floor height is expressed in the facades of a given street.



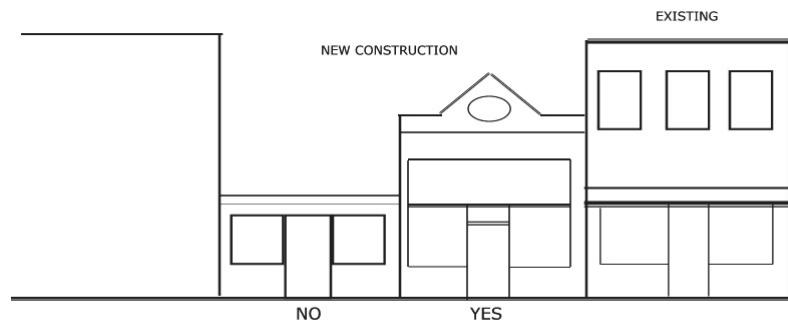
Single Story Buildings Should Reflect Scale of Neighborhood

- c. **Windows and Cornice Lines.** All first-floor facades shall have large glass areas which denote mercantile use. First-floor walls should be more than 50 percent glass. The first floor shall be distinguished from the upper floors by a cornice line if appropriate or other delineations such as transom windows, fabric awnings, or porches.

Windows above the first floor are to be more residential in scale and should be double hung, single or multiple, and vertical in proportion. Walls above the first floor should be more than 50 percent solid.



New construction of one-story buildings, such as some convenience stores and fast-food restaurants in commercial districts, intrude upon the character of the Town of Cape Charles and will only be permitted in infill situations and must meet all other development standards. There are many examples of convenience stores and fast-food chain restaurants being successfully integrated into a historic context.



Single Story Buildings Should Reflect Scale of Neighborhood

- d. Massing. The facades of new construction should reflect the sense of lightness or weight of neighboring buildings by using similar proportions of solids (siding or walls) to void (window and door openings) and projecting bays and overhangs.
- e. Materials. New construction should use materials in a manner sympathetic to the historic buildings in the Town of Cape Charles. Materials should be of similar or complementary color, size, texture, scale, craftsmanship, and applicability to function performed.

It should be noted that the sympathetic use of materials does not imply that materials used in new construction will replicate the old in detail nor that new construction will attempt to imitate historic structures. Rather, it is a matter of determining the compatibility of the new with the old. Certain materials are potentially so visually intrusive that their use for new construction in the Town will not be permitted. These materials include:

- aluminum or vinyl siding
- asphalt siding

- carpeted porch floors and steps
 - corrugated metal, except for roof applications
 - exposed concrete block above foundation level
 - exposed concrete masonry
 - faux brick and stone (brick face)
 - flush exterior doors
 - inappropriate window treatments
 - jalousie windows
 - picture windows
 - windows with horizontal glazing
 - metal or wood awnings
 - open mesh-type fencing
 - ornamental pierced concrete masonry screens and walls
 - painted concrete masonry
 - unpainted wood
 - vertical plywood siding
 - vertical wood siding on primary structures
 - wrought iron and aluminum porch columns
- f. Siting. The siting of new construction in the commercial district shall conform to the building line of adjacent buildings. New commercial buildings should occupy the full width of their lot at the street line except in the Route 184 corridor. Freestanding "object" buildings that do not conform to the street and lot lines will not be permitted in the Mason Avenue from Harbor to Peach historic context. Where a commercial building is built adjacent to a vacant lot, it should be built with a party wall in anticipation of subsequent new construction being built adjacent and up to the property line. Probably the single most damaging siting of a commercial building is toward the rear of the lot with parking between the building and the street.
- g. Utilities. Upon installation or replacement of utility access lines, such lines shall be installed underground.
1. Demolition. The owner of a building or structure within the Town shall be entitled to raze or demolish such building or structure provided that he has applied to the Building Official for such right. An owner is entitled to raze or demolish his property pursuant to the procedure outlined in Article IV of the Town Zoning Ordinance.
3. Demolition-By-Neglect. No officially designated contributing building, structure, or site within the Town shall be allowed to deteriorate due to neglect by the owner which would result in violation of the intent of this ordinance. Demolition-by-neglect shall include any one or more of the following courses of action or inaction:
- a. Deterioration of the exterior of a building to the extent that it creates or permits a hazardous or unsafe condition.
 - b. Deterioration of exterior walls or other vertical supports, horizontal members, roofs, chimneys, exterior wall elements such as siding, wooden walls, windows, brick, plaster or mortar to the extent that it adversely affects the character of the district or could lead to irreversible damage to the structure.

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

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

4. Penalties for Noncompliance.

- a. Failure to correct a defect after a notice that the Building Official has determined that a property is being demolished by neglect according to Section 4.11 of this ordinance shall constitute a misdemeanor. Such misdemeanor shall be punished as set forth in §§ 18.2-9, 18.2-11 and §15.2-1429 of the Code of Virginia 1950 as amended. Each day that the violation continues is a separate offense.
- b. Any property owner in the District who does not obtain approval as required within this ordinance shall be guilty of a misdemeanor and may be punished as set forth in §§ 18.2-9, 18.2-11 and §15.2-1429 of the Code of Virginia 1950 as amended.
- c. Nothing in this chapter shall be deemed to restrict or prohibit the Town Council to acquire in any legal manner any historic area, site, building, or structure or the land pertaining thereto for the use, observation, education, pleasure, and welfare of the citizens of the Town.

G. Additional Requirements

- 1. Architectural Treatment. No building exterior (whether front, side, or rear) will consist of architectural materials inferior in quality, appearance, or detail to any other exterior of the same building. Nothing in this section shall preclude the use of different materials on different building exteriors (which would be acceptable if representative of good architectural design) but rather shall preclude the use of inferior materials on sides which face adjoining property and thus might adversely impact existing or future development causing a substantial depreciation of property values. No portion of a building constructed of unadorned concrete or concrete block or corrugated and/or sheet metal shall be visible from any adjoining agricultural or residential district or public right-of-way. Mechanical equipment whether ground level or roof top shall be shielded and screened from public view and designed to be perceived as an integral part of the building.
- 2. Driveways and Parking Areas. Driveways and parking areas shall be paved with concrete, bituminous concrete, or other similar material. Surface penetration treated parking areas and drives shall be prohibited. Concrete curbs and gutters shall be installed around the perimeter of all driveways and parking areas. Other curbing material of similar quality like brick or cobblestone shall be permitted at

the discretion of the director of planning. Drainage shall be designed to meet the requirements of the Virginia Department of Transportation.

3. New in-fill structures or change of use projects on the first floor of structures in C-1 shall be exempt from complying with the exact requirements of Section 4.5.(A), Section 4.6, and Table 4.8. Owners are encouraged to provide off street parking for themselves, employees, and loading facilities where possible (i.e., alleys to backyard areas). Owners shall evaluate existing parking and access and submit proposed plan to Town for review. Projects will be evaluated on a case-by-case basis. New or change of use second- or third-floor projects shall be required to conform to the parking requirements as set forth herein.
4. Outside Storage Areas. All outdoor storage areas shall be visually screened from public streets, internal roadways, and adjacent property. Screening shall consist of either a ventilated solid board fence, masonry wall, dense evergreen plant materials, or such other materials as may be approved. All such screening shall be of sufficient height to screen storage areas from view. Outdoor storage shall include the parking of all company owned and operated vehicles with the exception of passenger vehicles.

H. Accessory Uses: Within the C-1 District the following accessory uses shall be permitted:

1. Only those uses which are customarily accessory and clearly incidental and subordinate to the principal use and structure;
2. Temporary licensed uses such as festivals, outdoor displays, gatherings, performances, and open-air food markets;
3. Porches, terraces, balconies, sun porches, decks, patios, etc. may not be enclosed without obtaining proper permits and variances from the Board of Zoning Appeals if required by the regulations of this ordinance.

Section 4.3 Conditional Use Permits

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

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

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

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

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

1. Action by the Zoning Administrator. The Zoning Administrator shall study the application and determine whether the proposed conditional use conforms to the general purpose and intent of the comprehensive plan, any applicable regulations that have been adopted, and the requirements of this ordinance. Upon completion of such review, if the administrator shall determine that any proposal in the application does not meet the requirements of this ordinance, he/she shall reject the application and return it to the applicant. If the applicant does meet the requirements of this ordinance, the administrator shall transmit all the findings and recommendations to the Planning Commission. However, nothing herein shall prohibit the administrator from accepting a conditional use permit application if failure to meet applicable requirements is due solely to area or dimension insufficiency of the lot upon which it is proposed. Any appeal of the Zoning Administrator may be made directly to the town manager.
 2. Action by the Planning Commission. After receiving the report of the administrator with all pertinent materials, the Planning Commission shall give notice of and hold a public hearing. Within 45 days after the hearing, the Commission shall submit its recommendations to the Town Council through the Zoning Administrator. Upon mutual agreement between the Commission and the applicant, such time may be extended.
 3. Action by the Town Council. After receiving the recommendations of the Zoning Administrator and the Planning Commission, the Town Council shall hold a public hearing and act upon the proposed conditional use permit, granting the applicant in whole or in part, with or without modifications, or denying the proposed application. In addition to the general or specific requirements set forth in the ordinance concerning the proposed use, which shall be considered minimum requirements with respect to the permit, additional requirements, conditions, and safeguards may be added by the Town Council as required for the protection of the public interest in the specific case.
- D. Approval of a conditional use permit shall be valid for only the specific use it covers in the specific location designated for a period of one year after approval by the Town Council and the completion of the additional permit process as requested in the application. Applicant shall apply or have applied for all additional permits as provided to the Planning Commission and as required by the Zoning Administrator within one (1) month of the approval by the Town Council. If Applicant fails to apply for any such permit within this time period, the conditional use permit shall be effective as of this date, thirty (30) days after the Town Council approval, unless the Town Council allows for additional time for such application or applications.
1. Staff shall notify Town Council of the date that all additional permits have been approved which date shall be the commencement date for the one (1) year Conditional Use Permit
 2. Staff shall notify Town Council of the status of the project at a regular meeting prior to the expiration of the one (1) year Conditional Use Permit.
- If not acted upon within one (1) year, the conditional use permit shall become null and void, unless an extension of time is approved by the Town Council for good cause shown

before the expiration of the Conditional Use Permit. Town Council may make additional one-year extensions for good cause. To be considered acted upon one (1) or more of the following is required:

1. The procurement of a Cape Charles Building Permit
 2. Payment of Water and Wastewater Connection and Facility Fees
 3. Completed Plans stamped by a Virginia Licensed Professional
- E. No application for a use permit for the same conditional use on a lot, parcel, or tract shall be considered by the Town Council within a one-year period from its last consideration. The provisions, however, shall not impair the right of the Town Council to propose a use permit on its own motion if it finds that there is public benefit to be gained.
- F. Revocation of a Conditional Use. If the provisions of this ordinance or the requirements of the conditional use permit are not met, then the Town Council may revoke the conditional use permit provided that ten days' written notice is given to the applicant.