Planning Commission

Regular Session Agenda

Cape Charles Civic Center – 500 Tazewell Avenue

November 4, 2020 6:00 P.M.

1. Call to Order
    a. Roll call and establish a quorum

2. Invocation and Pledge of Allegiance

3. Public Comments

4. Consent Agenda
    a. Approval of agenda format

5. Unfinished Business
    a. Application for Conditional use permit to allow an accessory dwelling unit at 401 Madison Avenue (tax map #83A1-1-182A) – review and make recommendation to Town Council.

6. New Business
    a. Town Zoning Ordinance text amendment discussion.

7. Other Business

8. Announcements

9. Adjourn

PLANNING COMMISSION
STAFF REPORT

Meeting Date: November 4, 2020
Revisions from October 6, 2020
Item #: 5A

Prepared By:	Allyson Finchum – Town Planner
Site Address:	401 Madison Ave (tax map #83A1-1-182A)
Applicant:	Scott and Robin Simms
Owner:	Scott and Robin Simms
Proposed Development:	Conditional use permit to allow an accessory dwelling unit at 401 Madison Avenue
Current Zoning:	Single-Family Residential (R-1)

Zoning Regulations:
This zoning district is intended to provide quiet, medium density, single-family residential development plus provide open areas where similar residential development appears likely to occur. The regulations for this district are designed to stabilize and protect the essential characteristics of the district, to promote and encourage a suitable environment for family life where there are children, and to restrict all activities of a commercial nature as described in Section 3.6-A of this ordinance, known as Commercial District C-1, which states "These commercial activities are characterized by heavy traffic, noise, and congestion of people and passenger vehicles and by large office buildings and retail establishments," and to promote a convenient, attractive, and harmonious community. This section is created in recognition of the existence of developed areas where single-family and duplex dwelling currently exist on lots of 5,600 square feet and where the characteristics of the neighborhood include both permanent as well as seasonal residents.

Historic District Overlay Regulations:
The purpose of this district is to provide for protection against destruction or encroachment upon historic areas, buildings, monuments, or other features, or buildings and structures of recognized architectural significance which contribute or will contribute
to the cultural, social, economic, political, artistic, or architectural heritage of the Town of Cape Charles and the Commonwealth of Virginia. It is the purpose of the district to preserve the designated historic areas and historic landmarks and other historic or architectural features, and their surroundings within a reasonable distance, from
destruction, damage, defacement, and obvious incongruous development or uses of land and to ensure that buildings, structures, streets, walkways, or signs shall be erected, reconstructed, altered,

or restored so as to be kept architecturally compatible with the character of the general area in which they are located and with the historic buildings or structures within the district.

Accessory Dwelling Unit Regulations:
Article 4, Section 4.2 (J) states one accessory dwelling may be maintained on a property in the R-E, R-1, R-2 and CR zoning districts, contingent upon approval as a conditional use in accordance with Section 4.3, and subject to the following:

A. Physical characteristics.
    1. Accessory dwellings shall be located in an accessory building.
    2. Accessory dwellings shall not have a floor area exceeding 45 percent of the floor area of the main building.
    3. Accessory dwellings shall have one kitchen and one bathroom.
    4. Accessory buildings containing an accessory dwelling shall maintain the exterior appearance of an accessory building and shall not have the appearance of a single-family dwelling.
B. Occupancy characteristics.
    1. Length of stay – No accessory dwelling unit shall be occupied by any person or persons, whether paying a fee for such occupancy or not, for a period less than thirty (30) consecutive calendar days. Upon request from any building, zoning, finance, or public safety official acting on behalf of the Town of Cape Charles the owner of the subject lot of record upon which the accessory dwelling unit sits shall provide occupancy documentation and/or information as requested, either verbally or in writing. Failure to do so may result in the revocation by the Cape Charles Town Council of the conditional use status for the accessory dwelling unit according to Article IV, Section 4.3.F.
    2. Inspections – All accessory dwelling units shall be inspected annually not later than fifteen (15) days from the anniversary date of the conditional use permit being approved by Town Council.
C. Other requirements.
    1. Accessory dwellings located in accessory buildings may have a separate water meter from the principal dwelling.
    2. The lot on which an accessory dwelling is located shall have the required minimum lot area for the district in which it is located.
    3. Parking shall be considered on a case-by-case basis as part of the conditional use permit application process, ensuring adherence to Section 4.5.1 C. 6. (Table of Parking Standards) using both on and off-street parking areas. An accessory dwelling unit must have one off-street parking space per dwelling unit bedroom.
    4. Exterior elevations shall also be approved by the Historic District Review Board when required by Article VIII, Historic District Overlay.

Conditional Use Permit Regulations:
The purpose of a conditional use permit 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."

Description of Proposed Project:
The applicant has finished a detached garage and would like to convert the second story to an accessory dwelling unit. The garage area will remain located on the first floor of the structure. The applicant has stated they would use the accessory dwelling unit as a long-term rental.
A Certificate of Appropriateness was approved by the Historic District Review Board on June 20, 2017. The original construction of both the principal dwelling and accessory structure occurred in 2017/2018.

Staff Analysis:
Section 4.3 of the zoning ordinance states "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.

The proposed project appears to meet all of these provisions.

Section III-A.5.1.2 of the Comprehensive Plan discusses the overall policies for Cape Charles neighborhoods, specifically promoting compatible infill development and renovation within established neighborhoods. The Comprehensive Plan states to "promote accessory dwelling units to add diversity of housing types, while maintaining the neighborhood character and providing affordable housing options."
The proposed project appears to meet the Comprehensive Plan goal of promoting accessory dwelling units within established neighborhoods.

Section 4.2(J)(3)(C) of the zoning ordinance states "parking shall be considered on a case-by-case basis as part of the conditional use permit application process, ensuring adherence to Section 4.5.1.C.6 (Table of Parking Standards) using both on and off-street parking areas." Section 4.5.1.C.6 requires a minimum of one space per accessory dwelling unit bedroom.
The proposed project meets the requirements of the zoning ordinance. The concrete driveway area contains ample space for two parking spaces for the principal structure and additional parking space for the proposed accessory dwelling.

Following are conditions proposed by staff for review and recommendation by the Planning Commission to Town Council. The Planning Commission and Town Council may modify the conditions provided all requirements of federal, state, and local ordinance are in compliance:

1) The accessory dwelling shall comply with all local, state and federal regulations.

~~2) The accessory dwelling must be built in accordance with the layout marked exhibit A dated _____~~

3) The accessory dwelling shall comply with all provisions of the Town of Cape Charles Zoning Ordinance Article IV, Section 4.2(J) Accessory Dwellings and subject to the following:
    1. Physical characteristics.
        a. Accessory dwellings shall be located in an accessory building.
        b. Accessory dwellings shall not have a floor area exceeding forty-five (45) percent of the floor area of the main building.
        c. Accessory dwellings shall have one kitchen and one bathroom.
        d. Accessory buildings and shall not have the appearance of a single-family dwelling.
    2. Occupancy characteristics.
        a. Length of stay – No accessory dwelling unit shall be occupied by any person or persons, whether paying a fee for such occupancy or not, for a period less than thirty (30) consecutive calendar days. Upon request from any building, zoning, finance, or public safety official acting on behalf of the Town of Cape Charles the owner of the subject lot of record upon which the accessory dwelling unit sits shall provide occupancy documentation and\or information as requested, either verbally or in writing. Failure to do so may result in the revocation by the Cape Charles Town Council of the conditional use status for the accessory dwelling unit according to Section 4.3.F.
        b. Inspections – All accessory dwelling units shall be inspected annually not later than fifteen (15) days from the anniversary date of the conditional use permit being approved by Town Council.
    3. Other requirements.
        a. Accessory dwellings located in accessory buildings may have a separate water meter from the principal dwelling.
        b. The lot on which an accessory dwelling is located shall have the required minimum lot area for the district in which it is located.

c. Three on-site parking spaces shall be provided at all times.
d. Exterior elevations shall also be approved by the Historic District Review Board when required by Article VIII, Historic Overlay.

4) The accessory dwelling unit shall be limited to no more than a one-bedroom accommodation

5) The property owner (which shall include title holders and contract purchasers) must occupy either the principal unit or the accessory dwelling unit as a permanent residence. If at any time the owner occupies neither unit, the accessory dwelling unit shall automatically become a non-habitable space, shall not be used as a dwelling, and shall not be rented.

6) The effective period of the conditional use permit shall be three years. At the end of every three years, renewal shall be automatically extended upon receipt of certification by the Town Planner that the primary dwelling unit remains the principal residence of the owner and that all other conditions met at the time of the original application remain unchanged.

7) The accessory dwelling unit shall not be sold separately from the single-family home.

8) Prior to issuance of a building permit for the accessory dwelling unit, the owner shall record a covenant in a form approved by the Town to notify subsequent owners of the requirements of this permit.

9) Upon approval of final inspection or occupancy permit for an accessory dwelling unit a separate utilities account shall be required.

10) Violation of any of these conditions may result in review and revocation of the Conditional Use permit by Town Council.

Update:
The Planning Commission and Town Council held a joint public hearing on October 6, 2020. The Planning Commission discussed the issue of accessory dwelling units. The Town of Cape Charles Comprehensive Plan outlines a need to provide affordable housing within the Town. To meet the need, an amendment to the zoning ordinance providing accessory dwelling units by conditional use on a case-by-case basis was adopted. The intent was not to provide more bedrooms for short-term, transient rentals. The Planning Commission discussed the proposed conditions and staff updated the conditions based on the concerns. The updated conditions are in this report for Planning Commission review.

Staff Recommendation:
To date, the applicant has not requested deferral of this application. Staff recommends the Planning Commission continue their review and provide recommendation to Town Council. Staff recommends the conditional use permit is approvable with the proposed conditions.