

PLANNING COMMISSION
Public Hearing & Special Meeting
Cape Charles Civic Center
March 2, 2021
6:00 p.m.

This Public Hearing and Special Meeting of the Planning Commission was held by video conference in accordance with Code of Virginia § 2.2-3708.2, subsection A.3, resulting from Governor Northam's March 12, 2020 declaration of a state of emergency for the Commonwealth of Virginia arising from the Novel Coronavirus (COVID-19) pandemic. It was deemed impractical and unsafe to assemble physically due to the highly contagious nature of COVID-19.

The purpose of this meeting was to hear public comment on an application for a zoning map amendment to rezone properties from residential to commercial, to review the application for a zoning map amendment to rezone properties from residential to commercial, to review two applications for conditional use permits and schedule a public hearing date. An audio recording was made of the meeting, and the meeting was also live-streamed on Facebook, as well as video-taped for viewing from the Town's website after processing. Public comments were accepted in writing prior to the meeting. Viewers could also submit their comments via Facebook Live, emails to the clerk, town planner, and by calling the clerk's office and leaving a voicemail during the public hearing.

At approximately 6:00 p.m., Chairman Bill Stramm, having established a quorum, called to order the Public Hearing and Special Meeting of the Planning Commission. In addition to Chairman Stramm, physically present at the Civic Center was Planning Technician Tracy Outten. In attendance via Zoom were Commissioners Kenneth Butta, Diane D'Amico, Paul Grossman, Jim Holloway, Dennis McCoy, Michael Strub, Interim Town Planner/Zoning Administrator Katie Nunez, Town Clerk Libby Hume, and the applicants. There were no members of the public physically in attendance, but there were 21 viewers on Facebook Live.

PUBLIC HEARING COMMENTS:

Chairman Bill Stramm welcomed Interim Town Planner and Zoning Administrator Katie Nunez. He then read the Notice of Public Hearing and opened the floor for comments.

Planning Technician Tracy Outten read comments submitted in writing from Odessa Sullivan, Jo Ann Bawiec, Lori Smith, and Tyrone Beach. (Please see attached.)

There were no other comments received in writing prior to the meeting or during the public comments period.

Motion made by Paul Grossman, seconded by Michael Strub, to close the public hearing portion of the Planning Commission meeting. The motion was approved by unanimous vote. Roll call vote: Dennis McCoy, yes; Kenneth Butta, yes; Michael Strub, yes; Diane D'Amico, yes; Paul Grossman, yes; Jim Holloway, yes; Bill Stramm, yes.

PUBLIC COMMENTS RE: Agenda Items Only

Planning Technician Tracy Outten read comments submitted in writing from Joshua E. Lattimore and Penelope Kinsey. (Please see attached.)

There were no other comments received in writing prior to the meeting or during the public comments period.

SPECIAL MEETING ORDER OF BUSINESS

- A. *Application for Zoning Map amendment – Rezoning of 303 Jefferson Avenue (tax map #83A1-1-84C) and 309 Jefferson Avenue (tax map #83A1-1-81C) from Residential – 1 (R-1) to Commercial (C-1) – review and make recommendation to Town Council.*

Dennis McCoy wanted Katie Nunez to state for the record that if Planning Commission did not recommend approval for this request, it was still the Town Council that gets the final call.

Katie Nunez read the staff report. Jim Holloway asked if there have been any deliberations with the owners about comments that were received. Katie Nunez answered the applicant would be supplying a sufficient amount of trash receptacles.

Suzanne Baker, applicant, stated the following to the commissioners: (i) The application was for a single lot; (ii) She thought providing a place off-street to sit and for parking was a safe option; (iii) The renovations would be a great addition to the neighborhood; (iv) The corner lot has always been commercial; (v) This would not be a hang out and the area would be kept clean; and (vi) The issues mentioned tonight had been previously addressed and the comments were unfair.

Discussion and questions were as followed: (i) Diane D'Amico asked if zoning were changed did that mean the property could be used for any C-1 business in the future; yes, but suggestions could be made by the council. She agreed with staff not to rezone and understood why neighboring properties were unhappy; (ii) Katie Nunez said another option for the applicant would be to submit a proffer letter as part of the rezoning approval that would establish conditions and limits. The letter would need to be approved before the town council meeting, and then after approval by council it would need to be recorded at the Northampton County land use office. Diane D'Amico asked for a little more clarification. Katie Nunez explained that the applicant had to voluntarily do the proffer letter, and this would ensure certain conditions and restrictions as part of this rezoning for the property not just the current owner. Dennis McCoy would all fees be funded by the applicant; yes; (iii) Paul Grossman was looking for an alternate path and added that the properties have a variance to conduct a business without a use being dictated by the Board of Zoning Appeals (BZA). He asked if that board should be the one defining the uses allowed. Katie Nunez answered the BZA errored in approving both lots, while there was discussion and conversation about both lots, the vacant lot was not considered part of the original barber shops operation, and non-conforming uses cannot be expanded per the zoning ordinance, but the vacant lot could be used for parking. Diane D'Amico asked if the applicant could open tomorrow without using the vacant lot; yes, but the applicant would like to have a drive thru window; (iv) The applicant expressed how upset she was with the town and her confusion on why such a small lot was causing so many issues Dennis McCoy explained that every decision had to be defensible in the court of law, specific process, the boundaries had to be clear, and to law had to be followed and not dithering; (v) Michael Strub said the commissioners needed to focus on the application in front of them and the word "quiet" was in the definition of residential and his concern was that rezoning would be disruptive so, therefore he did not think it should be approved; (vi) Diane D'Amico said the comprehensive plan had a very distinctive commercial district; (vii) There was much discussion on a conditional rezoning approval. Katie Nunez reiterated the proffer letter option; (viii) Michael Strub asked for clarification on why the Planning Commission was reviewing this application and not the BZA; a non-conforming use can not be expanded; (ix) Paul Grossman asked if the recommendation to town council was for them to deny this request could it still be approved; yes, and (x) Diane D'Amico clarified again that the applicant could open for business regardless of how long this approval takes; yes. The commissioners agreed.

Motion made by Paul Grossman, seconded by Jim Holloway, to table the application for the zoning map amendment to rezone 303 Jefferson Avenue and 309 Jefferson

Avenue from Residential – 1 to Commercial – 1 until the April 6, 2021 meeting. The motion was approved by unanimous vote. Roll call vote: Dennis McCoy, yes; Kenneth Butta, yes; Jim Holloway, yes; Michael Strub, yes; Diane D’Amico, yes; Paul Grossman, yes; Bill Stramm, yes.

- B. *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) – review application and set public hearing.* Katie Nunez said that all information for this application was included in the packet.

Discussion and questions were as followed: (i) Dennis McCoy asked why this use was not by-right. Katie Nunez answered that zoning requires a conditional use permit (CUP) and the one approved in the past expired per the zoning ordinance; (ii) Paul Grossman wanted to know if the proposed layout included all the second floor; yes; and (iii) Jim Holloway said the submitted drawings showed additional windows. Josh Lattimore stated that the exterior of the building would not change.

Motion made by Paul Grossman, seconded by Dennis McCoy, to schedule a public hearing on April 6, 2021 for the Conditional Use Permit to allow a second-floor residential dwelling unit above the first floor commercial at 1 Fig Street. The motion was approved by unanimous vote. Roll call vote: Dennis McCoy, yes; Kenneth Butta, yes; Michael Strub, yes; Diane D’Amico, yes; Paul Grossman, yes; Jim Holloway, yes; Bill Stramm, yes.

- C. *Conditional Use Permit to allow two second-floor residential dwelling units above the first floor commercial at 301 Mason Avenue (tax map #83A3-1-615B) – review application and set public hearing.*

Katie Nunez said there was no additional information to the staff report but asked the applicant if the second-floor units had been residential before. Chris Elam, architect and representative, answered the spaces appear to be offices.

Motion made by Paul Grossman, seconded by Michael Strub, to schedule a public hearing on April 6, 2021 for the Conditional Use Permit to allow two second-floor residential dwelling units above the first floor commercial at 301 Mason Avenue. The motion was approved by unanimous vote. Roll call vote: Dennis McCoy, yes; Kenneth Butta, yes; Michael Strub, yes; Diane D’Amico, yes; Paul Grossman, yes; Jim Holloway, yes; Bill Stramm, yes.

Motion made by Dennis McCoy, seconded by Jim Holloway, to adjourn the Planning Commission Public Hearing and Special Meeting. The motion was approved by unanimous vote. Roll call vote: Dennis McCoy, yes; Diane D’Amico, yes; Kenneth Butta, yes; Michael Strub, yes; Paul Grossman; yes; Jim Holloway; yes; Bill Stramm; yes.

The meeting adjourned at 7:30 p.m.

Chairman Bill Stramm

Planning Technician

**Comments submitted in writing
March 2, 2021 Planning Commission Public Hearing & Special Meeting**

Odessa Sullivan

Subject: Request of rezoning at 303 Jefferson Ave

My name is Odessa Sullivan. My address is 606 Strawberry St. at Jefferson Ave. I am contacting you regarding rezoning at 303 Jefferson Ave. at Strawberry St. My answer is NO.

I lived here for many years. This area has always been residential. I was born on this very spot 74 years ago. I do not wish to live in a commercial area.

With the previous owners of the eatery, several times I had to go in and request that the car be moved from blocking my driveway. There was a lot of traffic without a golf-cart window. Adding a drive thru will increase traffic. I as well want to enjoy my summer, but without commercial traffic.

The more people in commercial area the more careless they become discarding their trash. It's a NO for me.

ODESSA SULLIVAN

Jo Ann Bawiec

Subject: Rezoning: 303 / 309 Jefferson Street

Planning and Zoning Commission.

I am **opposed** to the rezoning of 303 / 309 Jefferson Street from residential to commercial.

My property is directly across from this location and would be directly impacted by this zoning change.

This area of town is made up mostly of full-time homeowners with limited vacation rentals which makes it a quieter section of Cape Charles.

Some issues that occurred with the previous business (ice cream, sandwich shop) operating in this space, which had very limited seasonal hours included:

- loitering on picnic tables outside of business hours
- increase in vehicles - sometimes blocking driveways as well as Jefferson Street
- increase in trash in yard from customers
- increase in loud music coming from golf carts

Changing to commercial zoning would double the current size of the existing business and change the makeup of the current neighborhood. It could potentially negatively impact property values. It will definitely enhance all the previous issues mentioned above and perhaps create more.

My understanding of the proposed plan would encourage more traffic by creating a drive through service, as well as double the outdoor dining space. This would be a much larger space than many commercial spots on Mason. This does not complement the existing low density residential homes in the immediate area. I also understand that there will be increased lighting on the property, changing the current look of the neighborhood.

Right now the plan by the current owners is to create an enhanced experience for a new frozen custard business. Rezoning to commercial does not protect the neighborhood from what could potentially be built in the rezoned area, should the current owners sell or wish to expand into a different business plan. Rezoning this space has unlimited potential for future developers. I don't think this is in the best interest of our community.

I'm disappointed that there has been work going on in this space as if the zoning has already happened. This has already changed the look of what is a residential space to a commercial looking space.

Please don't allow this rezoning to happen.

Thank you for your time and attention.

Jo Bawiec
526 Strawberry St
Cape Charles
434-547-3082

Lori Smith

Subject: For 3-2 meeting

Good afternoon,

I oppose rezoning the residential parcel to commercial. This is primarily due to the future exposure that this would allow should the current owners of 303 Jefferson choose to sell the property at any point in time. Having a commercial piece of property twice the current size lends itself to numerous types of structures and would certainly take away from the current style of this neighborhood.

I live directly across the street from this property as a full-time resident. The majority of the other homes in this area are full time residents as well. As a result, this is a wonderfully quiet area of town that I hope will stay that way.

When the previous owners ran the ice cream shop at its current size and with inconsistent hours of operation, the few picnic tables and benches encouraged late night loitering and trash, the noise and music from the golf carts was always present and our driveway was constantly blocked by vehicles on the street. Allowing this property to become a commercial space is only going to make this louder, messier, and increase traffic in this residential zone. I fully support the new owners opening their frozen custard shop in its current location but don't see the need to rezone the adjacent residential lot as it will double the commercial footprint for any future use.

It doesn't appear that adjacent homeowners received any notification of this rezoning request, so I would appreciate you taking my comments into consideration as the long-term future of this residential area should be protected.

Lori Smith |

Tyrone Beach

Subject: Concern request by Patina Green, Suzy's Old Fashioned Frozen Custard

Hello,

Concerning the rezoning 303 and 309 Jefferson from residential to commercial.

My concern is that parking will be under control and possible noise at night will be under control.

Can you submit this concern during the meeting on March 2nd or do I have to resubmit.

This is very important for senior citizens.

Thanks.

Tyrone and Patricia Beach
230 Jefferson Avenue
Cape Charles, Va 23310

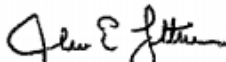
Joshua E. Lattimore

March 1, 2021

Dear Cape Charles Planning Commission and Town Council,

As the current property owner I am writing today to show my utmost support for the reinstatement of the multi-use permit for the Kellogg Building located at 3 Fig Street. The property is under contract and the proposed buyers are also in full support of this measure. Given the location, history, and overall stature as a Town landmark, it will be exciting to see the building get a breath of new life and create another wonderful addition to the Town of Cape Charles. I appreciate your time and consideration.

Thank you,


Joshua E. Lattimore

Penelope Kinsey

Subject: One Fig Street

Dear Cape Charles Planning Commission,

Thank you for the opportunity to comment on the proposal to renew an expired Mixed Use Residential/Commercial Conditional Use Permit that was granted by the Town Council in January, 2017, for the property known as the Kellogg Building located at 1 Fig St., Cape Charles, VA.

My husband, Derrick Kinsey, and myself have One Fig Street under contract and the renewal of the original conditional use permit will allow the flexibility necessary for us to economically develop the property into a much more productive asset in Cape Charles. The original conditional use permit was granted upon the request of contract buyer Chad and Beverly Petras, but the sale was never completed. More than a year later, the property was finally sold to the present owner.

We request that you grant the renewal of the Mixed Use Residential/Commercial Conditional Use Permit for One Fig Street, Cape Charles.

Thank you for your time and consideration,

Penelope Kinsey

Derrick Kinsey

Future Business Operators and Residents of Cape Charles