

Planning Commission
Public Hearing and Special Meeting
Cape Charles Civic Center – 500 Tazewell Avenue
via Electronic Communications
April 6, 2021 6:00 P.M.

1. Introduction
2. Call to Order
 - a. Roll call and establish a 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) – set public hearing.
 - c. Close public hearing.
4. Public Comments re: Agenda Items Only
5. Consent Agenda
 - a. Approval of agenda format
 - b. Approval of minutes
6. Unfinished 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 – 1 (C-1) – review and make recommendation to Town Council.
 - b. 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) – review and make recommendation to Town Council.
 - c. 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) – review and make recommendation to Town Council.
7. New Business
 - a. None
8. Adjourn

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

Item 1 – Introduction to Meeting by Chairman Bill Stramm

- This joint public hearing and special meeting of the Planning Commission 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 meeting is to i) hear public comment on an Application for Conditional Use Permit at 1 Fig Street; ii) hear public comment on an Application for Conditional Use Permit at 301 Mason Avenue; iii) review and make a recommendation to Town Council on an application for a zoning map amendment to rezone 303 Jefferson Avenue and 309 Jefferson Avenue from Residential-1 to Commercial-1; iv) review and make a recommendation to Town Council on an Application for Conditional Use Permit at 1 Fig Street; and v) review and make a recommendation to Town Council on 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 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 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. Please contact the Planning Department at 331-2036, or by email at planner@capecharles.org if you have any questions or require additional information.



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)

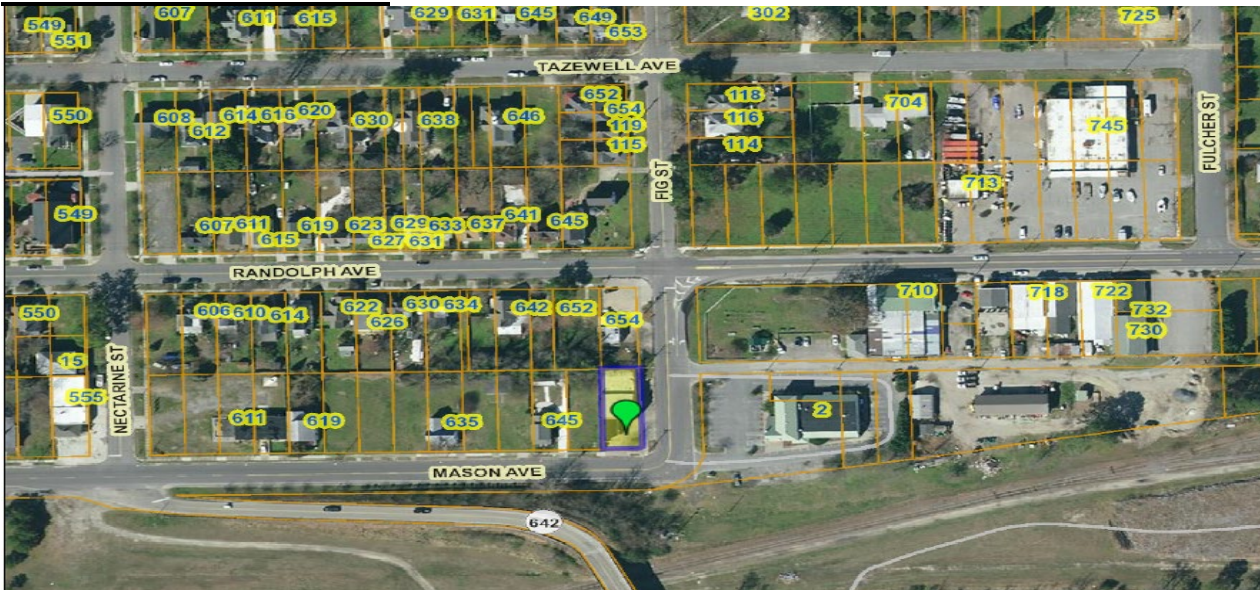
LEGAL DEADLINES: Planning Commission Review Period (45 Days after Public Hearing): 5/21/2021
Town Council Decision (generally 90 days but not restrictive): 7/4/2021

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.

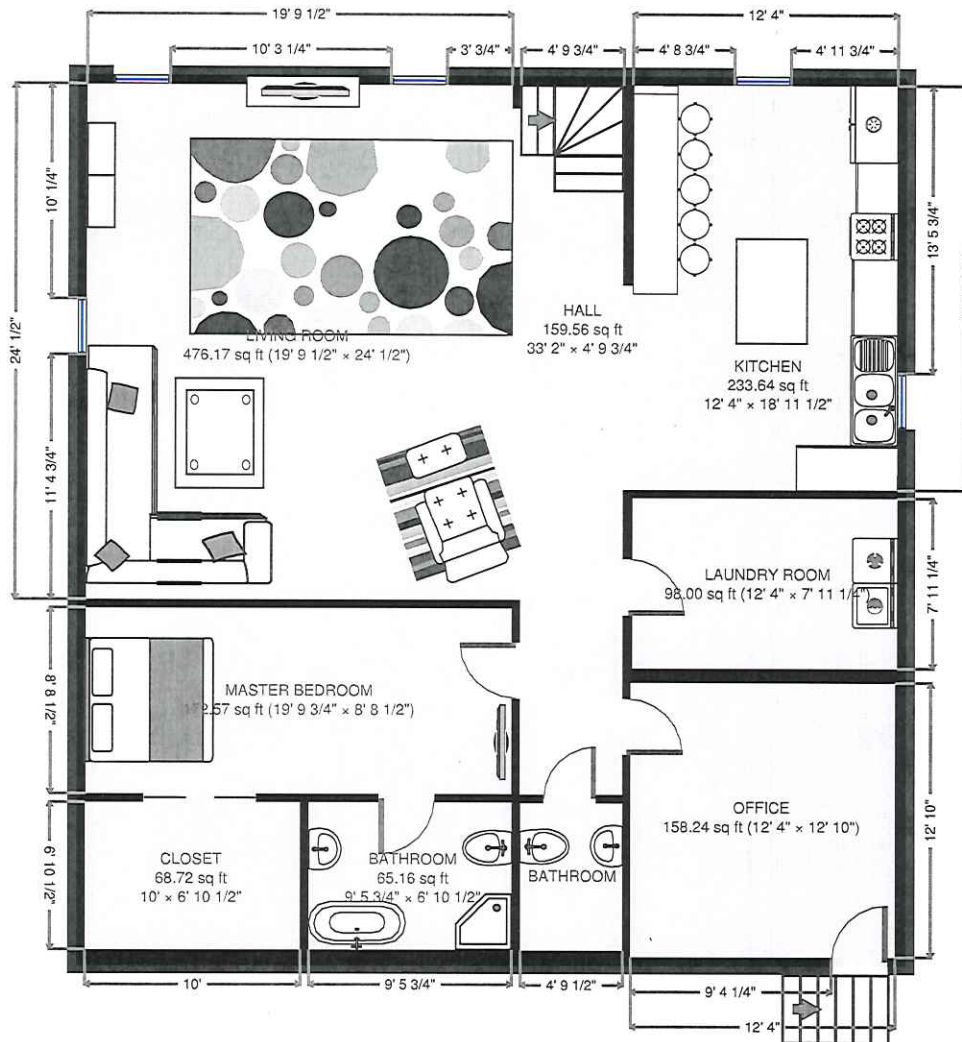
Thank you for your consideration. Please let me know if you need any further information.

Regards,



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

2nd Floor



THIS FLOORPLAN IS PROVIDED WITHOUT WARRANTY OF ANY KIND. SENSOPIA DISCLAIMS ANY WARRANTY INCLUDING, WITHOUT LIMITATION, SATISFACTORY QUALITY OR ACCURACY OF DIMENSIONS.



Plan 2

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



2016-11-29

1465 sq ft

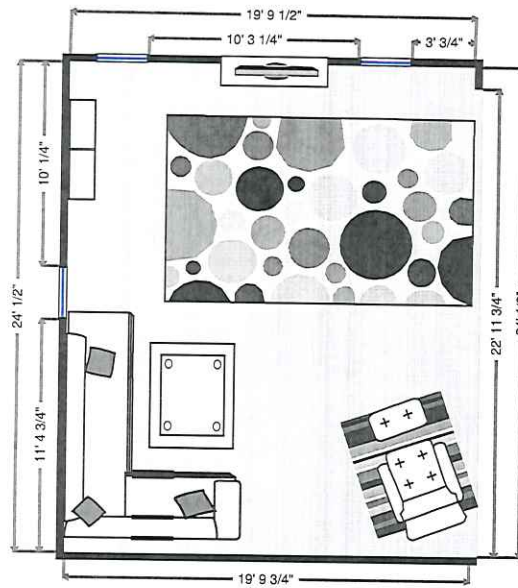
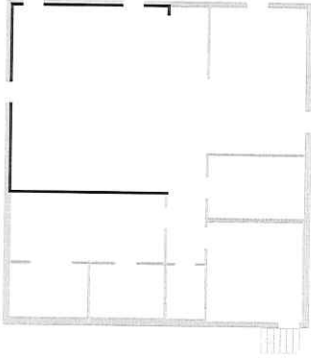
1 Floor

1 Bedroom

2 Bathrooms

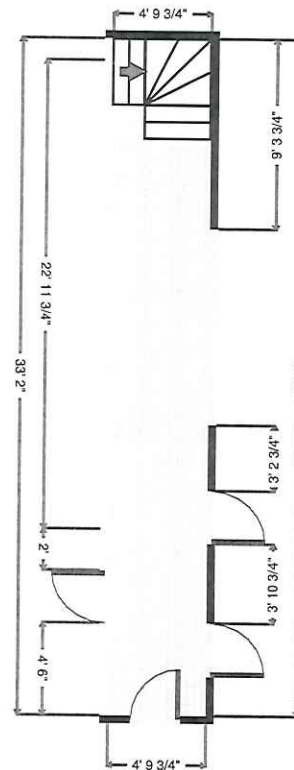
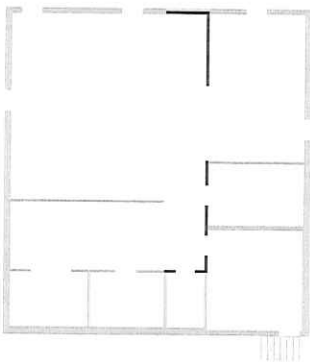
Living Room

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"



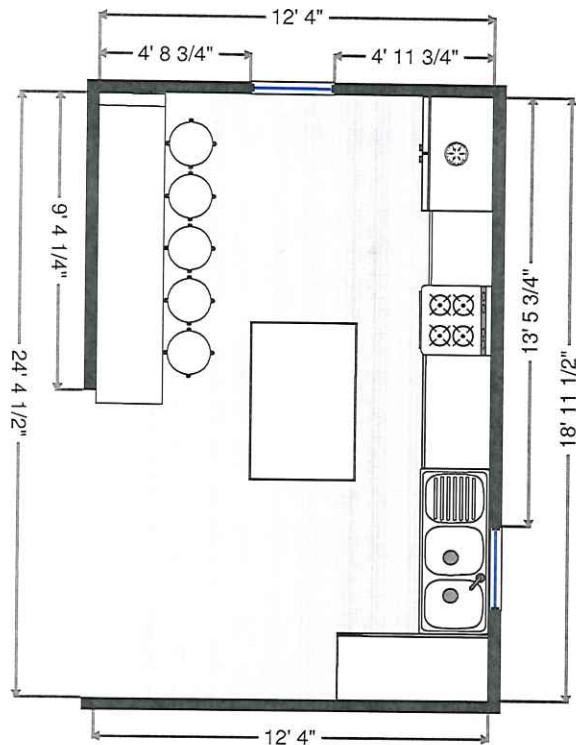
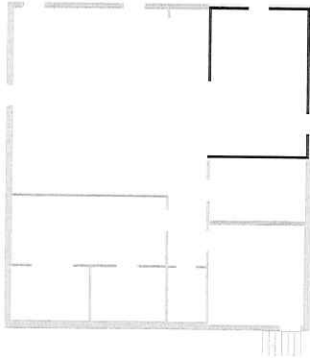
Plan 2

2016-11-29

THIS FLOORPLAN IS PROVIDED WITHOUT WARRANTY OF ANY KIND. SENSOPIA DISCLAIMS ANY WARRANTY INCLUDING, WITHOUT LIMITATION, SATISFACTORY QUALITY OR ACCURACY OF DIMENSIONS.

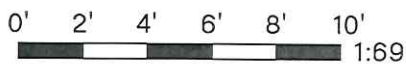
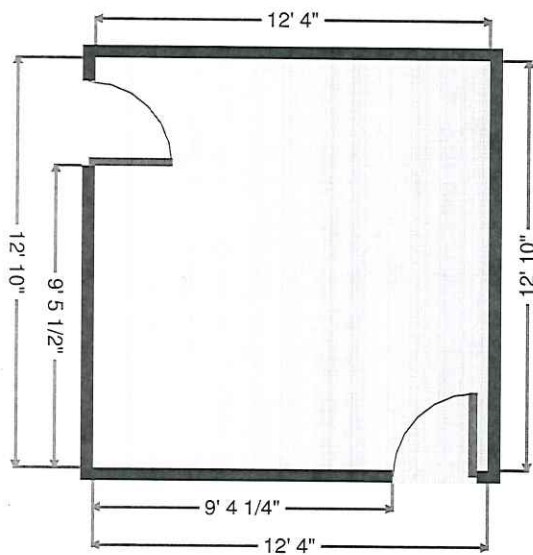
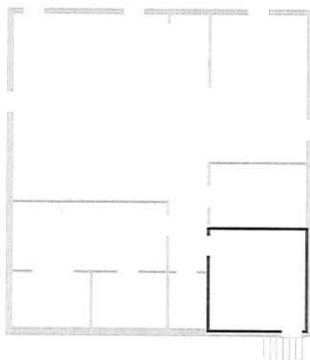
Kitchen

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"



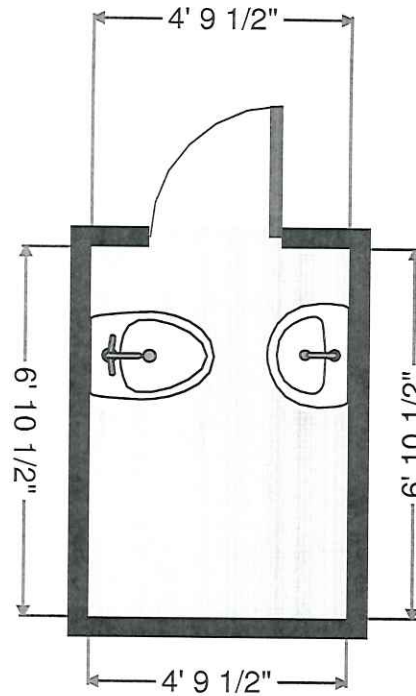
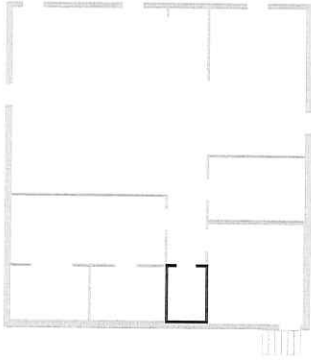
Plan 2

2016-11-29

THIS FLOORPLAN IS PROVIDED WITHOUT WARRANTY OF ANY KIND. SENSIOPIA DISCLAIMS ANY WARRANTY INCLUDING, WITHOUT LIMITATION, SATISFACTORY QUALITY OR ACCURACY OF DIMENSIONS.

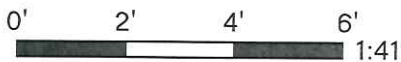
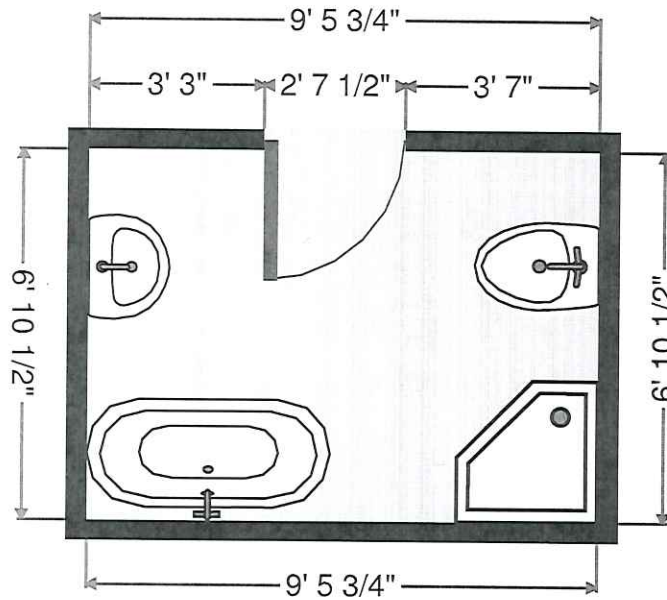
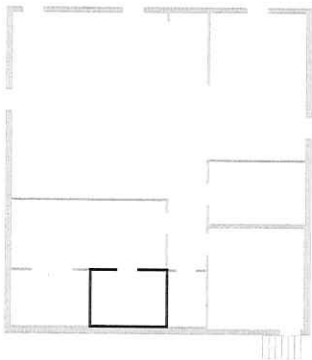
Bathroom

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"



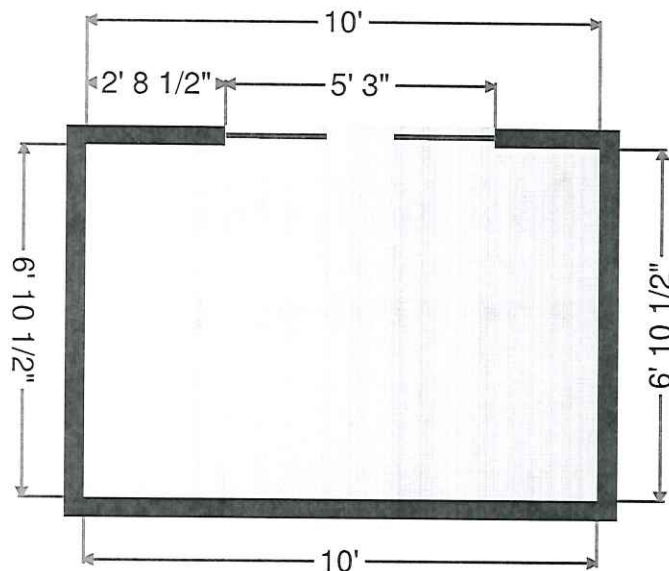
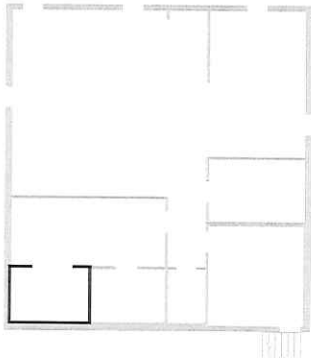
Plan 2

2016-11-29

THIS FLOORPLAN IS PROVIDED WITHOUT WARRANTY OF ANY KIND. SENSOPIA DISCLAIMS ANY WARRANTY INCLUDING, WITHOUT LIMITATION, SATISFACTORY QUALITY OR ACCURACY OF DIMENSIONS.

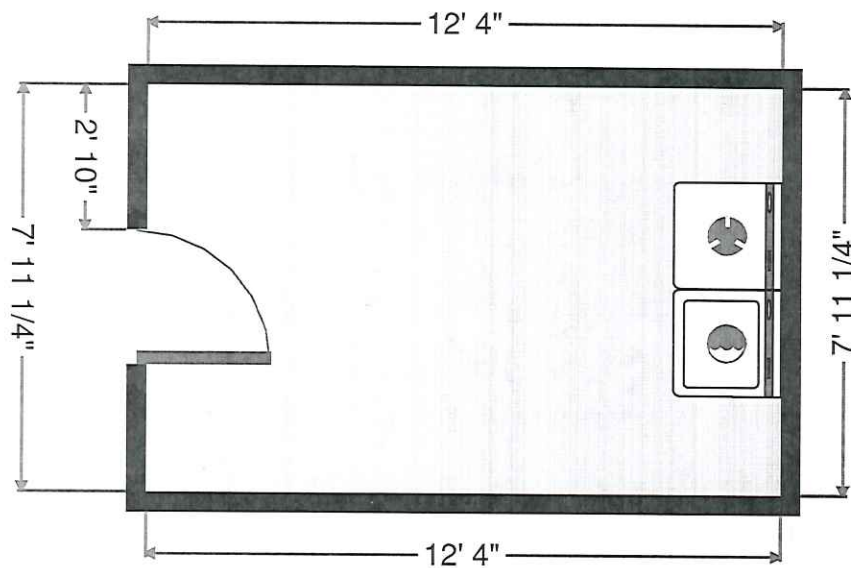
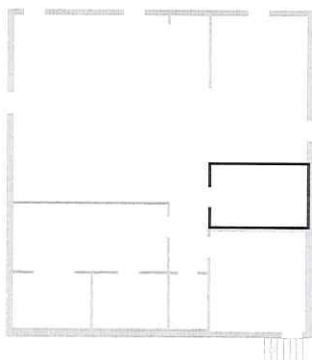
Closet

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"



THIS FLOORPLAN IS PROVIDED WITHOUT WARRANTY OF ANY KIND. SENSOPIA DISCLAIMS ANY WARRANTY INCLUDING, WITHOUT LIMITATION, SATISFACTORY QUALITY OR ACCURACY OF DIMENSIONS.

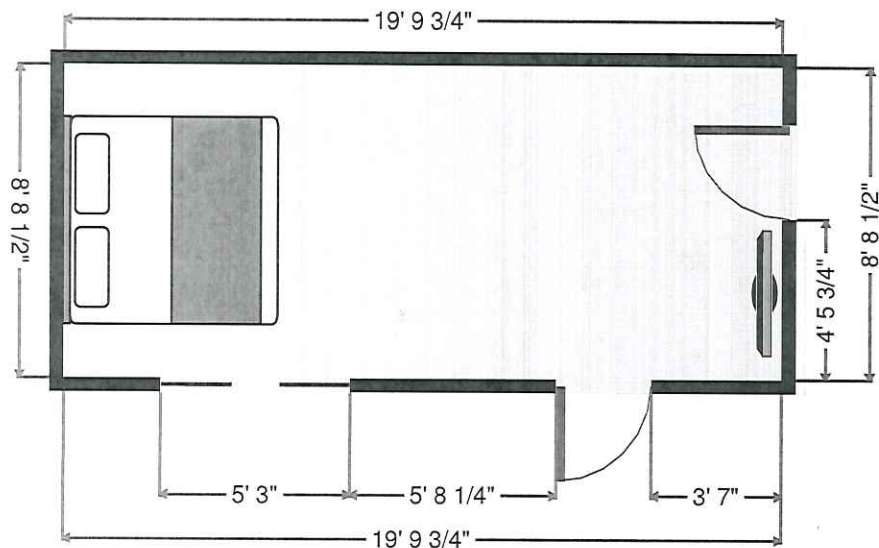
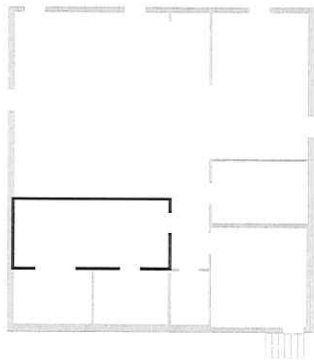


Plan 2

2016-11-29

Master Bedroom

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



THIS FLOORPLAN IS PROVIDED WITHOUT WARRANTY OF ANY KIND. SENSOPIA DISCLAIMS ANY WARRANTY INCLUDING, WITHOUT LIMITATION, SATISFACTORY QUALITY OR ACCURACY OF DIMENSIONS.



Plan 2

2016-11-29

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.

A street-level view of a red brick building with a large tree in front. A silver car is parked on the right. A blue banner is visible in the foreground.

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.

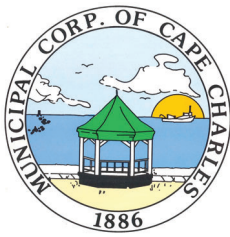
RECOMMENDED ACTION FOR TOWN COUNCIL:

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

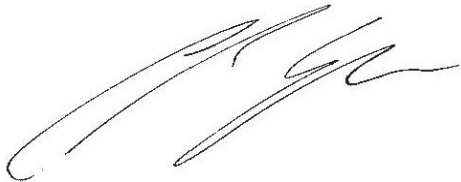
February 17, 2021

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:

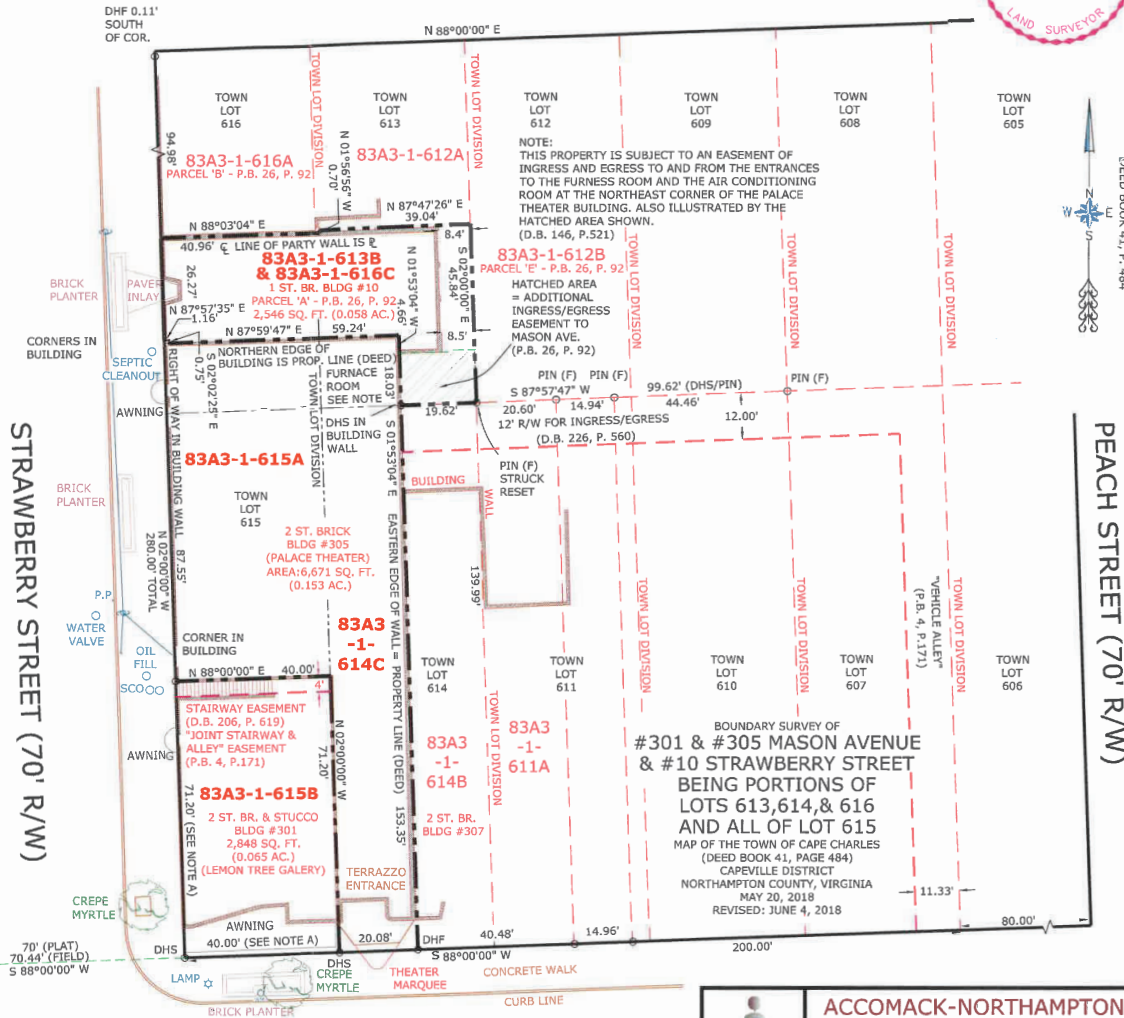
1. A SURVEY WAS PERFORMED ON THIS PROPERTY IN MAY 2018 WITH A BOUNDARY CLOSURE WHOSE PRECISION EXCEEDS 1:10,000.
2. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A CURRENT TITLE REPORT AND MAY NOT SHOW ANY/ALL EASEMENTS OR RESTRICTIONS THAT MAY AFFECT SAID PROPERTY AS SHOWN OR WETLANDS, ENVIRONMENTAL 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)



DEED BOOK 41, P. 484

PEACH STREET (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

© GMF ASSOCIATES 2020

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

CODE ANALYSIS

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 V-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 CALCULATIONS

ALLOWABLE AREA PER STORY TABULAR
R3- UNLIMITED
M- 27,000 SF

ALLOWABLE STORIES ABOVE GRADE PLANE TABULAR
R3- 4
M- 2

AREA TABULATION

GROUND FLOOR RETAIL SPACE
APPROXIMATELY 2,140 SQFT

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

APARTMENT UNIT #2
APPROXIMATELY 912 SQFT

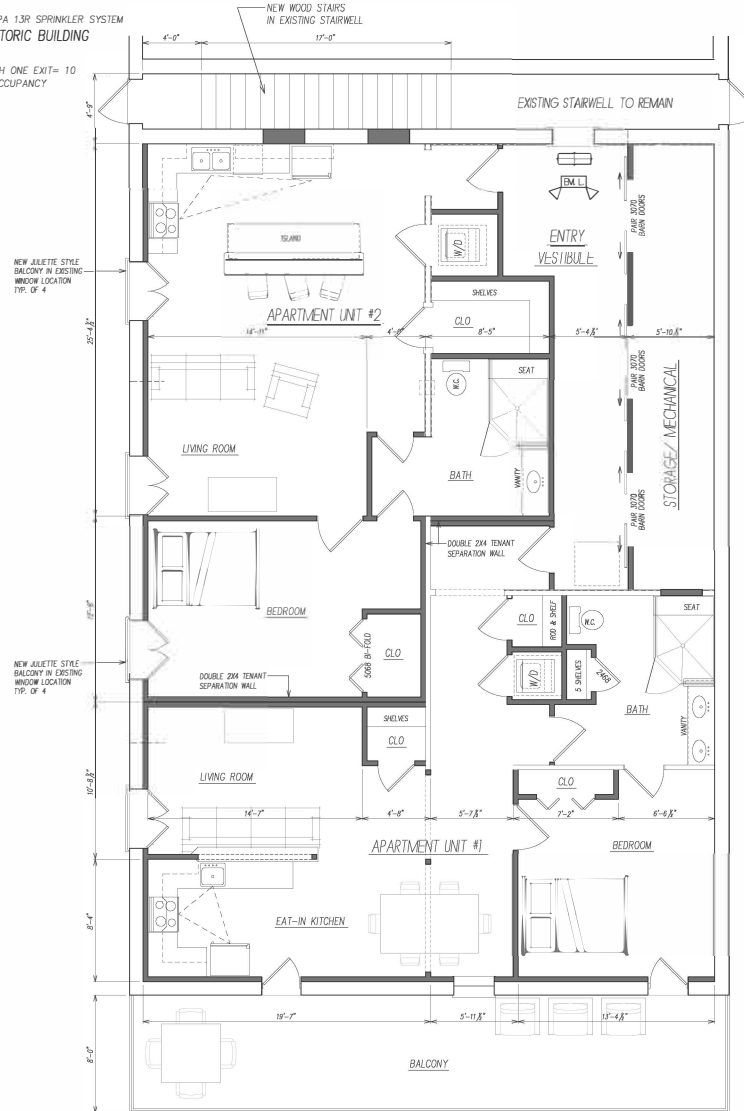
SHARED CORRIDOR
APPROXIMATELY 185 SQFT

ACCESSORY STORAGE SPACE
APPROXIMATELY 178 SQFT

PLAN LEGEND

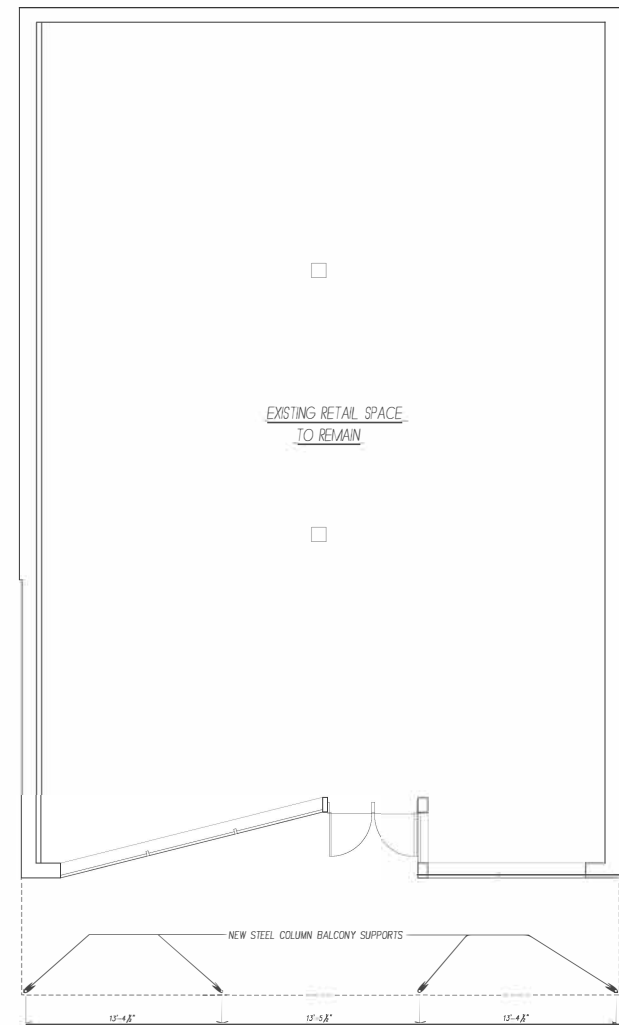
EXISTING CONSTRUCTION
TO REMAIN

NEW FULL HEIGHT WALL



1 SECOND FLOOR NEW CONSTRUCTION PLAN

SCALE 1/4" = 1'-0"



1 GROUND FLOOR PLAN

SCALE 1/4" = 1'-0"



GMFF + ASSOCIATES
4356 BONNEY ROAD
BUILDING 3, SUITE 100
VIRGINIA BEACH, VA 23452
(757) 499-9100
WWW.GMFFA.COM

PRELIMINARY
NOT FOR
CONSTRUCTION

DATE	REVISIONS

LEMON TREE MIXED USE

A PROPOSED MIXED USE REMODEL / RENOVATION
100 MARKET STREET
CAPE CHARLES, VA

PLANS & TABULATIONS

SHEET # A-10

DATE : OCTOBER 2020

SCALE : AS NOTED

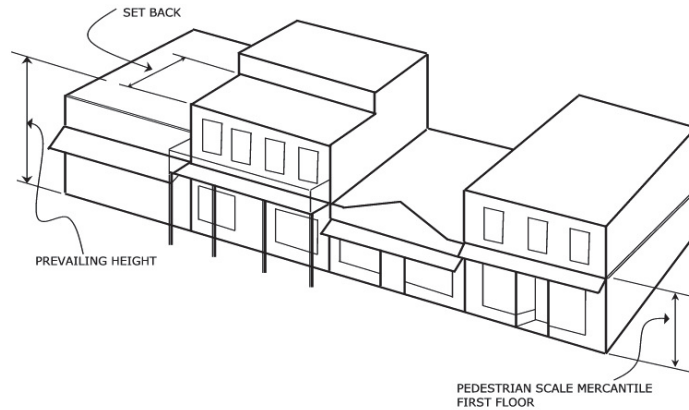
DRAWN : CLE

CHECKED BY: CLE

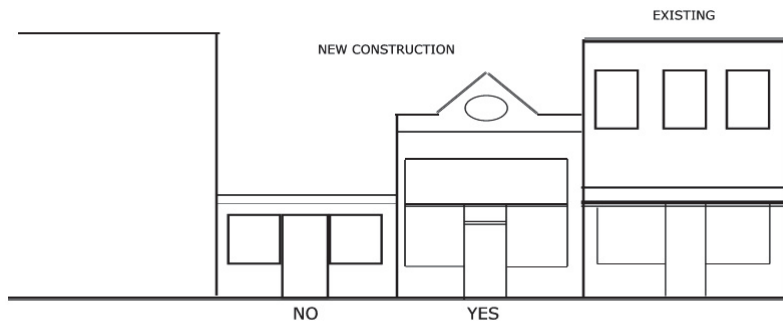
Section 3.6 Commercial District C-1

- 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.



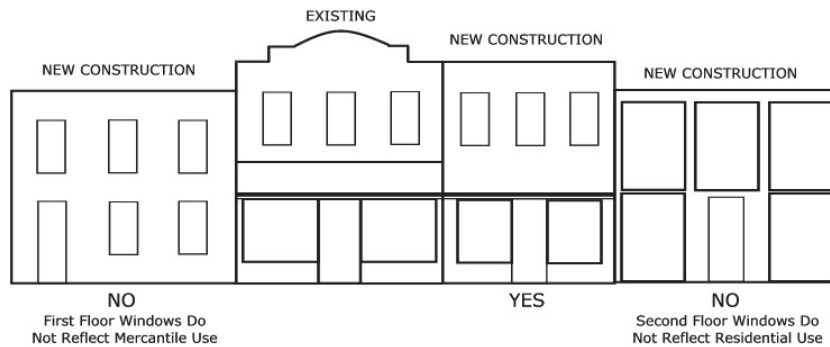
- b. **Floor-to-Floor Heights.** This important element of scale is often ignored in new construction, which tends toward lower ceiling heights. Floor-to-floor heights of new construction should be within 10 percent of neighborhood construction, where a relatively consistent floor-to-floor height is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



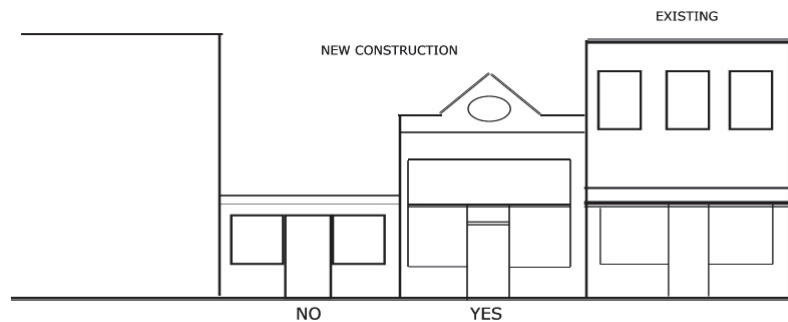
Single Story Buildings Should Reflect Scale of Neighborhood

- 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.

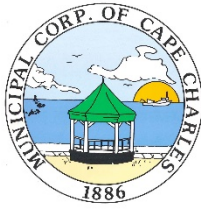
Section 4.3 Conditional Use Permits

- 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.



DRAFT
PLANNING COMMISSION
Regular Meeting
Cape Charles Civic Center
December 1, 2020
6:00 p.m.

At 6:00 p.m., Chairman Bill Stramm, having established a quorum, called to order the Public Hearing and Regular Meeting of the Planning Commission. In addition to Chairman Stramm, present were Commissioners Ken Butta, Diane D'Amico, Paul Grossman, Jim Holloway, and Dennis McCoy. Michael Strub attended via telephone. Also, in attendance were Town Planner Allyson Finchum and Planning Technician Tracy Outten. There was one member of the public in attendance.

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

Bill Stramm welcomed new commissioner Ken Butta.

PUBLIC COMMENTS:

There were no public comments.

CONSENT AGENDA

Motion made by Michael Strub, seconded by Dennis McCoy, to approve the agenda as formatted. The motion was approved by unanimous vote.

The Commissioners reviewed the minutes from the October 6, 2020 Planning Commission Joint Public Hearing with Town Council and Regular Meeting, the October 20, 2020 Planning Commission Work Session, the November 4, 2020 Planning Commission Regular Meeting, and the November 17, 2020 Planning Commission Work Session.

Paul Grossman would like the following summary statement to be included in the November 17, 2020 Planning Commission Work Session: (v) Paul Grossman suggested converting the 2008 Comprehensive Plan chapter into a word document so that it could be edited. The updated chapter would be the 2019-2020-chapter appendix containing the detailed data. Then, extract the pertinent/salient points from the appendix that would summarize the chapter material along with the goals and strategies.

Motion made by Paul Grossman, seconded by Dennis McCoy, to approve the minutes from the October 6, 2020 Planning Commission Joint Public Hearing with Town Council and Regular Meeting, the October 20, 2020 Planning Commission Work Session, and the November 4, 2020 Planning Commission Regular Meeting as presented; and minutes from the November 17, 2020 Planning Commission Work Session as amended. The motion was approved by unanimous vote.

UNFINISHED BUSINESS

There was no unfinished business.

NEW BUSINESS

A. Annual Election of Officers

Paul Grossman nominated Bill Stramm for chair and Dennis McCoy for vice-chairman.

Motion made by Paul Grossman, seconded by Michael Strub, to elect Bill Stramm as the Chair and Dennis McCoy as Vice-Chairman for the Planning Commission. The motion was approved by unanimous vote.

B. *Town Zoning Ordinance text amendment discussion.*

Paul Grossman thought the “Story” definition in the Town of Cape Charles Zoning Ordinance needed to be clearer. He added that various definitions needed to be deleted or added when dealing with the words “Story” or “Stories” in the zoning ordinance. He said that Town Planner Allyson Finchum and Code Official Jeb Brady had to agree with any changes. (Please see attached.)

Discussion was as follows: (i) Dennis D’Amico said that the words “finish grade” needed to be defined and then some wording may need to be changed; (ii) Dennis McCoy liked the proposed definition of “Story”. Allyson Finchum agreed the definition was clearer; (iii) Paul Grossman suggested deleting the definition for “Story Above Grade”; (iv) Diane D’Amico asked why the wording “retaining walls” was in the explanation for “Height of the Main Structure”. Paul Grossman answered that this would help people avoid doing this; (v) Ken Butta asked what the floor area of half a story was. Paul Grossman said half of the maximum of a story; (vi) Diane D’Amico wanted to know if neighborhood buildings were defined; Article III; (vii) Paul Grossman would get feedback from Jeb Brady, change the definition of a “Story”, and define “Finish Grade”.

Allyson Finchum thought the definition for motel needed to be amended to be clearly defined and in sync with other agencies. (Please see attached)

Allyson Finchum presented a text amendment for Condominiums and Cooperatives for the commissioners to review. (Please see attached) The commissioners would like to know the Town attorney’s opinion and asked that this be added to a work session agenda.

Allyson Finchum informed the commission of an upcoming application for a food truck to be placed on private property on Mason Avenue. She would like the following to be considered: (i) the distance from the food truck and a brick-and-mortar food establishment; (ii) the noise abatement; and (iii) research ordinances in other localities.

OTHER BUSINESS

There was no other business.

ANNOUNCEMENTS

There were no announcements.

Motion made by Paul Grossman, seconded by Jim Holloway, to adjourn the Planning Commission Regular Meeting. The motion was approved by unanimous vote.

The meeting adjourned at 7:38 p.m.

Chairman Bill Stramm

Planning Technician

'Story' and 'Stories' search in Cape Charles Ordinances

Article II

BASEMENT means that portion of a building that is partly or completely below grade. A basement is a level within a building that has its floor surface below the adjoining ground level. ~~Often due to grading conditions, a basement will also be considered as a story above grade, thereby contributing to the building height.~~

CRAWL SPACE is a space between the ceiling of one **story** and floor of the next **story**, which usually contains pipes, ducts, wiring and lighting fixtures, and permits access but is too low for standing.

FLOOR AREA shall mean the gross horizontal areas of a building, including mezzanines and lofts, exclusive of garages, parking structures, basements, open balconies and porches, and equipment and service areas, measured from the exterior face of the exterior walls of a building. *For a half story, the useable floor area shall be considered to be only that portion having a clear height above it of five feet or more.*

STORY is that portion of a building included between the surface of any floor and the surface of the floor above it, then the space between the floor and the ceiling above it. ~~,and including those basements used for principal use.~~

OR

STORY means that portion of a building included between the surface of any floor and the floor next above it or, if there is no floor above it, the space between the floor and the ceiling next above it. A basement shall be counted as a story if over 50 percent of its height is above finished grade.

AND STRIKE STORY ABOVE GRADE [too complicated]

STORY ABOVE GRADE is any story having its finished floor surface entirely above grade plane, except that a basement shall be considered as a story above grade plan where the finished surface of the floor above the basement is: 1. More than 6 feet above grade plane; or 2. More than 6 feet above the finished ground level for more than 50% of the total building perimeter; or 3. More than 12 feet above the finished ground level at any point.

STORY, HALF, means the part of a building between a pitched roof and the uppermost full story, such part having a floor area which does not exceed one-half the floor area of the full story.

DWELLING, MOBILE HOME or MANUFACTURED HOME means a special form of one-family dwellings with the following characteristics:

4. intended to be used other than as a component in a structure two or more **stories** in height.

***HEIGHT OF THE MAIN STRUCTURE** is the difference between grade and the highest point of elevation of the building or structure (excluding roof structures such as chimneys or ventilation stacks). Retaining walls cannot be used to raise 'grade' and increase the allowable height of the structure.*

Article III

District: C-1

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.

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.

District: R-1

E. Height Regulations. Buildings may be erected up to 2 ½ **stories** and to a height up to 40 feet from the adjacent ground elevation.

District: Harbor, Mainstreet Mixed-Use Area

Each building shall be a minimum of two **stories** and shall have only residential uses above the first floor.

Article IV

Accessory Buildings

5. A two-**story** building shall not be located any closer than five feet (5') to any lot line.

9. Where the main structure possesses no more than one **story** above grade, no accessory structure shall be higher than the main structure.

10. Where the main structure possesses more than one story above grade, no accessory structure shall be higher than two-thirds **the height of the main structure** or twenty-four feet (24'), whichever is lesser.

Date: December 1, 2020

To: Planning Commission

From: Allyson Finchum, Planner

Re: Text Amendment – Motel

The Town of Cape Charles Zoning Ordinance defines motel as stated below. The definition varies from the Town's Zoning Ordinance for the definition of hotel as well as the definition of the Virginia Health Department of motel, which, in both cases, require continual on-sight supervision. The definition of motel, as it currently exists, is allowing probable unintended use that is unregulated due to the discrepancy between local building code, zoning ordinance and state health regulations. The consequences of lack of oversight by VDH or the property owner may be problematic for the Town. Staff is recommending correcting the discrepancy which will enable regulatory agencies to operate together for the benefit of the Town citizens.

The proposed text amendment is shown underlined in red below.

HOTEL is a building in which lodging or boarding and lodging facilities are provided for transient guests, and offered to the public for compensation and in which ingress and egress to and from all rooms are through an inside lobby or office supervised by a person in charge at all hours.

MOTEL is one or more buildings in which lodging or board and lodging are provided for transient guests for compensation. Ingress and egress to and from all rooms are made primarily directly from an exterior walkaway rather than from an inside lobby. An inside lobby or office shall exist on premise and be supervised by a person in charge at all hours.

Date: December 1, 2020

To: Planning Commission

From: Allyson Finchum, Planner

Re: Text Amendment – Condominiums and Cooperatives

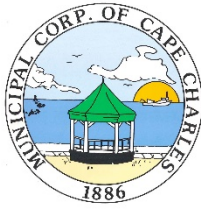
The Town of Cape Charles Zoning Ordinance allows conversion condominiums and cooperatives by right in all residential zoning districts. The Town Attorney has provided an opinion that in the case where there is no ordinance in Cape Charles providing for the necessity of a special use permit, special exception, or a variance, then the Town cannot require further review or approval to record condominium instruments that merely provide for the same nonconforming physical use of the property, just under a different form of ownership.

By Town ordinance, new construction of condominiums presently requires a special use permit from the Board of Zoning Appeals. However, local government oversight may also be helpful for all condominium conversions to provide assurance that each parcel is reviewed on an individual basis by the process of a public hearing allowing for merits and concerns to be considered by the governing body.

The proposed text amendment is shown underlined in red below.

Section 2.8 Condominiums and Cooperatives

Condominiums and cooperative real estate develop must meet all requirements and regulations of the Virginia Condominium Act or Virginia Real Estate Cooperative Act, as appropriate (Code of Virginia Section 55-79.39 et seq.; Section 55-424 et seq.). Condominiums and cooperatives of new construction are permitted only with a special use permit from the Town Council Board of Zoning Appeals of the Town of Cape Charles in Districts C-1, CR, R-1, R-2, R-3 and H. Conversion condominiums and cooperatives (governed by the Code of Virginia, Sec 55-79.43 and Sec. 55-429, respectively) are permitted by right in all districts in which residential uses are permitted by right or conditional use.



DRAFT
PLANNING COMMISSION
Special Meeting
Cape Charles Civic Center
February 2, 2021
6:00 p.m.

This 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 input on the potential rezoning to expand the concrete plant, to schedule a public hearing date for an application to rezone 303 Jefferson Avenue and 309 Jefferson Avenue, to discuss future concurrence use of miniature golf in the Commercial - 3 District and the comprehensive plan update. 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 planner and clerk.

At approximately 6:00 p.m., Chairman Bill Stramm, having established a quorum, called to order the Special Meeting of the Planning Commission. Physically present at the Civic Center were Commissioner Jim Holloway, Town Planner Allyson Finchum, and Planning Technician Tracy Outten. In attendance via Zoom were Commissioners Ken Butta, Diane D'Amico, Paul Grossman, Dennis McCoy, and Michael Strub. Also in attendance were Bill Ballard and Mollie Pickron. There were no members of the public physically in attendance, but there were 25 viewers on Facebook Live.

PUBLIC COMMENTS RE: Agenda Items Only

Planning Technician Tracy Outten read comments submitted in writing from David J. Parham, Margot and Scot Gorske, Bill and Margaret Ballard, Marrow Barrow, Vonnice Malek, James and Nancy Turner, and Phil Goetkin.

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

CONSENT AGENDA

Motion made by Paul Grossman, seconded by Michael Strub, to approve the agenda format as presented. The motion was approved by unanimous vote. Roll call vote: Dennis McCoy, yes; Michael Strub, yes; Paul Grossman, yes; Jim Holloway, yes; Ken Butta, yes; Diane D'Amico, yes.

SPECIAL MEETING ORDER OF BUSINESS

A. *Public Input to Potential Rezoning of Concrete Plant Expansion*

Bill Stramm stated that no formal proposal has been received and this agenda item was just to hear public comment on the matter. He continued by introducing the speakers Bill Ballard and Mollie Pickron, representatives from the Concerned Citizens of Cape Charles, (CCCC). (Please see attached.)

Bill Stramm asked if the planning department had any comments. Allyson Finchum said no formal comments at this time.

Discussion and questions were as followed: (i) Diane D'Amico wanted to know why comments were being heard if nothing has been filed and what outcome was the CCCC hoping to get tonight. Bill Ballard stated that the planning commission was a governing body that handled rezoning and wanted them to be aware of the concerns; (ii) There was much discussion on if the zoning ordinance was being followed and if the current zoning was light industrial. Allyson Finchum would do some research; and (iii) Diane D'Amico wanted to know if the Tree Preservation Plan was being enforced. Allyson Finchum would need to reach out to the town attorney for some answers.

B. *Future Rezoning of 303 Jefferson and 309 Jefferson Avenue – set public hearing.*

Allyson Finchum informed the commissioners that a rezoning application has been received requesting to rezone 303 Jefferson Avenue and 309 Jefferson Avenue, and Town Council referred it to the Planning Commission to have a public hearing and give their recommendation.

Discussion and questions were as follows: (i) Dennis McCoy asked if a buffer was required between a residential zoned property and a commercial zoned property. Allyson Finchum would research buffer requirements; (ii) Dennis McCoy questioned if the hours of operation would possibly have a noise concern during the neighboring church's service. Allyson Finchum was looking into the hours. Michael Strub thought the church was not active; (iii) Diane D'Amico stated that there was a special condition currently in place for them to operate; (iv) Paul Grossman said normally a staff report along with the full application was presented to the commissioners before a public hearing was scheduled; and (v) Jim Holloway asked how this could be rezoned commercial. Allyson Finchum explained that a non-conforming use could not be expanded so, rezoning was an option.

A public hearing to hear comment on an application to rezone 303 Jefferson Avenue and 309 Jefferson Avenue from residential to commercial would be scheduled for March 2, 2021.

C. *Concurrence on use of Miniature Golf in Zoning District C-3*

Allyson Finchum read the staff memo and email that was received.

Some discussion ensued on potential complaints, setbacks, parking requirements, and visual aesthetics on Stone Road. Allyson Finchum said once an actual plan has been submitted, these issues would be addressed.

Motion made by Paul Grossman, seconded by Dennis McCoy, to agree to proceed with allowing a golf course in the Commercial-3 District under the condition that a Conditional Use Permit was reviewed by the Planning Commission. The motion was approved by majority vote. Roll call vote: Dennis McCoy, yes; Michael Strub, yes; Paul Grossman, yes; Jim Holloway, yes; Ken Butta, yes; Diane D'Amico, no.

D. *Comprehensive Plan Update Discussion*

Bill Stramm would like work sessions to be scheduled and suggested having one on a Saturday. Ken Butta was willing to help with any chapter.

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

The meeting adjourned at 7:44 p.m.

Chairman Bill Stramm

Planning Technician

**Comments submitted in writing
February 2, 2021 Planning Commission Special Meeting**

David J. Parham

Subject: Negative Economic effects on Cape Charles from Industrial Zone

Dear Honorable Commissioners;

I am writing to request your support in addressing the growing noise and air pollution problems from the Coastal Precast Concrete Plant (CPC). As a resident of Cape Charles I am voicing my concerns over the damage to the town this plant's operation is causing.

The town has experienced a revitalization of it's economy, largely due to expanded tourist industry and relocated retirees who appreciate the historic fabric and peaceful, quiet qualities of the town, beach & marina. However, since March 2020 the operation of the Coastal Precast Concrete Plant has greatly damaged these qualities which made Cape Charles a destination and will negatively hurt the long term economic growth of the town going forward.

The noise & air pollution from the plant is a large annoyance and major health concern to residents and renters. The dust from the plant can cause serious health issues to residents and renters and is damaging to boats in the marina not to mention possible chemicals which could be carried into the harbor. The noise while greatly upsetting the peace and serenity of the town also presents health concerns to our residents.

My request to the Commission is twofold. First that the light industrial zoning requirements for the Coastal Precast Concrete plant are enforced and actions are taken to reduce the noise and air pollution emitted from the plant to acceptable levels at acceptable times. Secondly, that the Commission does NOT endorse or approve any expanded or new Industrial zoning of any kind in the town limits or surrounding environs.

As the plant in its current configuration is greatly damaging the Town we love, no plant expansion or new industrial zoning should be permitted as that would further damage the Town and its economic future. I believe that the Commission has always believed and taken action to revitalize the economy of the town through expanded tourism and strongly agree that the economic benefits of a robust Tourism industry and a vibrant active group of residents supporting the local businesses and real estate market far outweighs the income from the Precast Concrete Plant. I respectfully request your consideration and support of this position.

Best regards & stay safe;

David J. Parham

8 Bay Avenue

Cape Charles, Virginia

Margot Gorske

Subject: Cape Charles Planning and Zoning Commission Meeting

To all;

I have written previously and cited cogent town articles and ordinance. I will not repeat here.

I do have specific requests for the town's officials to consider for the next town meeting scheduled for the second of February.

1. Do not rezone or amend any existing area from residential or commercial to heavy or light industry.
2. Do not rezone light industry areas to heavy industry areas.
3. Do not rezone any other lands, not mentioned above, to light or heavy industry areas.

4. Do not expand the current designated land area of the industrial park.

Thank you,
Margot and Scot Gorske
205 Madison Ave.
Cape Charles, VA

Bill Ballard

Subject: Land use issues affecting the future of Cape Charles

Dear Chairman Stram and Members of the Cape Charles Planning Commission:

My wife, Margaret, and I are members of Concerned Citizens of Cape Charles (CCCC). Last Thursday, January 21, 2021, I spoke to Town Council to voice the concerns of CCCC and the concerns of many others apart from CCCC, regarding the future of our town. I mentioned in my remarks that there are many residents and property owners in Cape Charles who believe the issues of noise and dust, not to mention others of slightly less importance, are so detrimental to the identity, vitality, and prosperity of the town, that should they go unresolved, they could lead to the demise of the community as we know it.

A lot of time, effort, and money has gone into the development and implementation of a comprehensive plan to assure the future of Cape Charles is positive. That plan calls for a vision “that gives all citizens the opportunity for prosperity, cultural enrichment, access to environmental treasures, and secure, sustainable homes.” It goes on further to say “citizens stated they want Cape Charles to be a clean, diverse, family friendly place where the young can find jobs and affordable housing and the old can continue to live in their homes.” These visions and expressed desires cannot be achieved if those issues are not mitigated and resolved.

Of particular interest is the Preservation Plan, written by John Milner Associates, commissioned in 1994 and adopted in 1996, and readopted in 2016 as part of the Comprehensive Plan for the town. It is a treasure of information regarding the past and the future of Cape Charles. It appears that it was not only adopted but embraced as a guide for what Cape Charles has become.

It cites four “Alternative Economic Futures” (p.3-3 – 3-4). The first is “no-change”. That scenario envisions a future with “a depressed economy and little increase in economic activity”. This approach would result in “a loss of historic buildings, a loss of significant building fabric, a degrading of the streetscape, and a diminishing of community character.” Thankfully, the town decided that no change was not acceptable.

The second proposes “a concerted promotion of tourism in Cape Charles” that “would lead to a gradual improvement of the town’s economic climate.” This would result in “an increased interest in town properties as a second residence and a gradual increase of tourism-based commercial activity” and “would help increase tourism and outside investment by potential homebuyers.”

The third scenario talks about implementation of the Accawmacke Plantation proposal, which has become the Bay Creek development. As with the second, the scenario envisions that “tourism, commercial activity, and land values would increase.”

Finally, the fourth alternative is related to the sustainable development industrial park initiative. **“A fundamental tenet of this initiative is the preservation, enhancement, and compatible use of the town’ natural and cultural resources.”**

The study goes further (p.8-2) to say “the concept of sustainable development is fully compatible with the principles and objectives of historical preservation, adaptive reuse, economic development and enhancement of community character”.

The noise and dust generated by Coastal Precast Systems threatens these last four objectives, particularly the community character. They jeopardize the preservation, enhancement, and compatible use of the town’s natural and cultural resources. Without resolution, we may see Cape Charles revert to a condition similar to that of “no change” envisioned in the Preservation Plan.

CCCC looks to the Planning Commission to take steps to address these issues. CCCC is in favor of compatible light industrial development that heightens Cape Charles as a clean, diverse, family friendly place.

Sincerely,
Bill and Margaret Ballard

Mary Barrow
Subject: Rezoning
January 28, 2021

Dear Members of the Town of Cape Charles,

Please do not sell or rezone any more property for heavy industry or for the use of Precast.

For the past several months my concerns about the cement plant have been dismissed when mentioned to town officials. As these concerns are becoming ever more paramount, please don’t tell me again that the cement plant was already there when I moved here four years ago so now I just have to ‘put up and shut up.’

Yes, Bayshore was there when I bought the house, but it was barely operating. Yes, I was aware of it and asked about it, but was assured the harbor area was going to be expanding marina services and would become more attractive for visitors – NOT BECOME AN INDUSTRIAL SITE.

So, let me describe what has changed for me since the arrival of Precast.

1) The rumblings and vibrations.

My house was built in 1921. In the past 100 years it had settled. During the first three years of our living in it, there were no indications that it was settling further. In 2020, that changed. There are now days of continuous vibrations during the loading and unloading of boulders at Precast. The result is that we have new cracks in the house, as well as floor slanting, and doors not closing. Further, the old addition at the back is pulling away from the main frame of the house. Could I prove a direct correlation? With the help of engineers, yes. Is it obvious? Yes.

If I can feel the vibrations from Precast throughout the house, will the vibrations cause damage to the foundation? Yes, of course.

CONSEQUENCE: I am in the midst of making arrangements for a full, two story extension to the back of the house. I've worked with a wonderful architect, (Leon Parham) and look forward to working with an excellent local contractor (Scott Simms). I've paid for the drawings, a survey and for a building permit, so I'm ready to start. WHAT WOULD YOU DO?

2) The noise. I know that many residents of the Historic District are complaining about the time, consistency and the effects of the endless noise from the plant. I don't think I need to reiterate their complaints or arguments. They all apply to me and to my house. Simply add my name to their list.

3) Dust. Cement dust is clearly a health threat. Clouds can be seen rolling towards the Historic District. Soot is wiped from the porch. Plants are being washed with it and our lungs? Read Margot Gorske's letter with this attachment:
<https://www.epa.gov/newsreleases/owners-portland-cement-plant-martinsburg-west-virginia-pay-more-15-million-penalty-air>

4) The boardwalk through the Nature Reserve was the perfect distance for a healthy walk, and a delight. Sadly, as the plant has expanded to within feet of the railings, it is destroyed.

I don't expect closure of Precast. I do hope, however, the town will not compound one mistake with another. Please do not rezone so Precast can expand.

Thank you,
Mary Barrow
206 Monroe Avenue

Vonnie Malek

Subject: Concrete Plant

I would like to express my concern about the proposed expansion of the physical plant as well as hours of operation. The main issues are the noise and pollution. I am so excited about the renewal of our downtown. Having outdoor dining and events would be difficult with both the noise and pollution. Also, I have lung disease and my health would be directly affected. I am hoping a compromise can be reached so we all can live together. Thank you.

Vonnie Malek
304 Fig Street

Jim Turner

Subject: Public feedback to Cape Charles planning commission regarding rezoning for Coastal Concrete

Dear Planning Commission Planner of Cape Charles,

We are residents of Cape Charles, residing about one mile south of the Coastal Concrete operation in Bay Creek. We strongly object to any consideration zoning changes that allow expansion of that industrial operation because of the potential increase in noise and air pollution that already emanates from the plant.

We purchased our property in December 2018, while the old Bayshore plant was dormant and seemingly abandoned. Visits to Cape Charles a number of times over the preceding 2-3 years never demonstrated any issues with noise or air pollution during that time. Inquiries with our real estate agent indicated no known firm plans were in place for the site, though it was for sale as an industrial site. So we plunged ahead with building our vacation/retirement home.

In the last 10 months since moving here we have noticed dramatically increased noise and air pollution coming from the plant site, particularly noticeable when winds are from the North. Particularly noticeable are industrial back up warning bells on heavy equipment, noise of rocks being dumped into barges, and general Diesel engine noises. In addition, in the last few months there have been frequent episodes of heavy smoke and particulate matter coming from the work site. Smoke is so heavy that it interferes with breathing necessitating going inside and closing up the house. One day in mid-December we alerted the Bay Creek Golf shop that we thought there was a forest/brush fire north of the Nicklaus golf course. After investigation by the course superintendent, we were reassured it was simply coming from "Coastal Concrete".

We appreciate the importance of job-producing businesses in the community; but don't think we should have to constantly have our quality of life impacted, living nearly a mile away. We are also concerned about the health impact of the air pollution, as well as protecting the environs of downtown Cape Charles. Finally, the successful development of Bay Creek in and around the Nicklaus golf course is threatened by the consequences of Coastal Concrete's operation.

Thank you for the opportunity to provide input to the Planning Commission.

James and Nancy Turner
518 Walbridge Bend
Cape Charles, Virginia

Phil Goetkin

From: Phil Goetkin 602 Jefferson Ave Cape Charles, VA 23310

To: Chairman Stramm and Members of the Cape Charles Planning Commission

Subject: Coastal Precast Systems Potential Rezoning of Plant Expansion Date: February 2, 2021

Background and Issues: I have lived with my wife at 602 Jefferson Avenue in Cape Charles since June of 2015. Prior to that time, we lived for six months in Bay Creek. One of the primary reasons we moved to Cape Charles was its incredible natural beauty including the Chesapeake Bay, its vast wildlife and other natural areas. During this time, I have been generally supportive of the activities of Bayshore Concrete Products. However, since the new owners, Coastal Precast Systems (CPS), have taken over operation, I have become quite disturbed especially from the standpoint of

pollution and the degradation of Cape Charles' natural assets, resources and environment. Not only has the viewshed of our natural resources been adversely affected by CPS's development, sound and air pollution has put these precious assets at serious risk.

Just make a visit to the Cape Charles Natural Area Preserve; take a walk along the beach; or take a ride in a boat in the harbor out into the Bay. Sound, air and light pollution being generated by CPS is extensive.

As stated in section II.5 of the current Comprehensive Plan:

An abundance of natural resources exist in Cape Charles. Critical wildlife habitats, such as wetlands, natural areas, and the public beach, are present within the town's boundaries and nearby. These natural environments are delicate and should be protected from degradation. **Land use policies must continue to take into account the importance of the local environment to protect these resources for present and future generations.**

The intent of the Cape Charles Master Tree Plan, an addendum to the Comprehensive Plan, is to develop vibrant green infrastructure in all town districts by promoting the planting of appropriate new trees, and protecting appropriate existing trees. The plan's purpose is to ensure the beauty and ecological health of Cape Charles for its citizens and guests. In the last few months, CPS has cut down virtually every tree right up to the Cape Charles Natural Area Preserve property line. Tens if not hundreds of mature native trees have been cut down. I walk the Preserve boardwalk almost every day. Now, with no buffer between CPS and the Preserve, the noise, dust and light pollution is dramatic, not only for me, but more importantly for the plants and animals that live in this preserve. Recently, CPS has been conducting open fires that have produced smoke and ash that has further degraded the preserve. Nothing better than enjoying nature while having problems seeing and breathing.

Conclusion: CPS's development and operation has had significant negative impacts on Cape Charles' natural assets and the quality of life for its citizens. As CPS continues to expand its operations on its current property, it is also planning to further expand its operation through additional land acquisition and rezoning.

I am totally against rezoning on any property that CPS now owns or acquires in the future.

Signed, Phil Goetkin

Mollie Pickron

Good Evening Chairman Stramm and members of the Planning Commission:

The purpose for this message is to ask you for support and action to protect the economic and lifestyle well being of the Cape Charles residents, businesses, and visitors.

My name is Mollie Pickron and my husband and I have owned the house at 501 Monroe Ave since 2000. We are members of the Concerned Citizens group relating to the noise, dust, and ugly landscape of the concrete plant (which I never noticed much in the previous 18 years before the plant was sold to the current owners). The Concerned Citizens group approached the plant with a good neighbor relationship attitude last year but unhappily the noise and dust are still huge problems.

I recently reviewed the Town Comprehensive Plan updates from 2019 where workshops collected important data on priorities and vision from the public. These priorities include among other things, Healthy Living, Economic Development, Economic Resiliency, and Concrete Plant Cleanup.

The current state of the concrete plant's excessive noise and dust negatively impacts each of these items and it seems as if the plant is operating as if they are zoned heavy industrial. Here are some of the impacts I see to the Comprehensive Plan updates:

- **Healthy Living**-It is obvious to anyone that the dust and noise generated by the plant are health hazards.
- **Economic Development**-Cape Charles has made great strides in this area. The Treasurer's Report from Oct 31, 2020 shows great growth even considering the pandemic. I believe the continued excess noise will adversely affect the attraction and satisfaction of tourists and cause current residents to seek retirement elsewhere where there is peace and quiet. All this will certainly affect the bottom line for our businesses and for the Town. We have made great strides in our growth previous to the new owners getting established.
Transient Occupancy Tax -**21.9% increase** over the previous fiscal year
Sales & Use Tax - **2.2% increase**
Business License Tax - **97.5% increase**
Harbor dockage - **61.8% increase**
- **Concrete Plant Cleanup**- The visual impact of the plant is a big negative and the plant intends to continue to grow. The promise by the Plant to build a shielding wall to help with noise and negative visual appeal has stalled and there is no definitive timeline on its completion.
- **Economic resiliency**- If our residents move away and tourists choose to visit elsewhere, our economic condition will certainly deteriorate, and businesses will falter and close.

I've worked with the Cape Charles Main Street organization for several years and have witnessed the tremendous effort expended in partnership with the Town to support and grow the town businesses, attract new businesses, enhance the sense of community pride and the quality of life for the local residents, and solidify our area as a valued destination for visitors. Neither tourists nor residents want to be awakened at 5 am by the plant noise. Who wants to enjoy a cocktail outside at a local establishment overlooking the beautiful bay or in a backyard gathering and have to shout over the beeping and crashing of heavy equipment? In addition, we have already heard from some boaters who were in the CC Harbor this past summer who say they will not come back because of the noise and dust.

I am concerned that all the effort and progress of the Town will be negated if we cannot find a solution to the adverse environmental impact of the plant.

We are not asking for the plant to be shut down! The plant provides jobs and contributes to the town tax revenues. We are concerned about the quality of life for the residents and tourists which will preserve and encourage the growth of the town!

Specifically, we are asking you to: 1) Support light industrial zoning ONLY in the future; 2) Ensure the plant operates consistently with their light industrial zoning requirements 3) Pressure the plant to finish the wall the owners promised to build.

Thank you for your consideration.

Mollie Pickron
501 Monroe Ave
pickronm@gmail.com
410-440-3236



PLANNING COMMISSION SUPPLEMENTAL STAFF REPORT REZONING APPLICATION

Meeting Date: April 6, 2021

Item #: 6a

Prepared By: Katie H. Nunez, Interim Planning/Zoning Administrator
Site Address: 303 & 309 Jefferson Avenue (Tax Map #83A1-184C &81C)
Applicant: Suzanne B. Baker
Owner: Patina Green, LLC dba Suzy's Old Fashioned Frozen Custard
Rezoning Application: To rezone two parcels from Residential-1 (R-1) to Commercial-1 (C-1)

At the Planning Commission meeting on March 2, 2021, a public hearing was held on the rezoning application for 303 & 309 Jefferson Avenue. Comments were received expressing concern over the application and the impact to the neighborhood; the possibility of other types of commercial development that may occur on these two lots in the future, if the property is rezoned to Commercial-1 and the list of uses allowed by right in that district; and concern over the addition of a drive-thru for golf carts to this property and how this may impact the traffic and parking in the neighborhood. There was also a recognition from the public comment that this property has had a long history of low-impact commercial activity and expressed support for the type of business similar to the prior owner, Kool EatZ, but not the drive-thru component being sought; and concern over behavior observed at the establishment in prior years, including littering and loitering at the outdoor seating areas outside of the hours of operation of the business.



Members of the Planning Commission also recognized the long history of this property having a commercial business but also concerned about what possible expansion or type of business that could occur if rezoned to C-1, such as a full-service restaurant with alcohol, which would be

allowed by right in the C-1 district. Also, questions were raised if the building itself could be expanded since the 2 lots were now being combined into one lot, which could be out of character to the development standards of the R-1 District.

Ms. Nunez indicated that there is another type of rezoning called conditional rezoning (CCZO Section 2.7.4 thru 2.7.9) and provided a summary of what is involved. She stated that the applicant could submit voluntary proffers that could address the concerns raised, such as limiting the by-right uses for the C-1 District. Any proffers would need to be submitted prior to the public hearing before the Town Council and preferably submitted to the Planning Commission prior to taking a position on this application. Ms. Nunez would provide the applicant information on conditional zoning and proffers to see if that is something she would like to proceed with and the matter was tabled until the April meeting.

On March 11, 2021, the applicant submitted a Proffer Statement (attached) limiting the by-right uses that would apply in the C-1 district to this property, specifically to bakeries, confectionaries, delicatessens, and catering services (Section 3.6 (B) (5)) and restaurants (Section 3.6 (B) (30)). She has proffered to retain the existing building footprint and height with no expansion and no additional sales spaces of any kind on the vacant land and that there would be no food preparation (grills, smokers, etc) outside. She has proffered to limit the product offerings of the establishment to items intended for immediate consumption and take-away service items (coffee, baked goods, frozen custard single servings. She has proffered to post signage to detract from certain conduct and appearance on the property. She has proffered to have no liquor sales on the premises. She has proffered to provide 3 golf cart parking spaces on the property. Lastly, she has proffered to provide a maximum of \$2,000 to install cement sidewalks on the two Strawberry Street lots between Jefferson and Washington with the caveat that her business logo (at 5-inch diameter) be imbedded in one of the new sidewalk squares closest to her property.

The Planning Commission needs to review the proffers offered by the applicant to see if they sufficiently address the concerns raised to support a rezoning of the property from Residential-1 (R-1) to Commercial-1 (C-1). Please note that the office has received three additional letters from residents in this area after the Planning Commission public hearing – we have provided you copies of these letters and they will also be provided to the Town Council for their public hearing on April 15, 2021 on this matter.

BACKGROUND & REVIEW OF ORDINANCE ITEMS

The property was a barbershop for approximately 50 years and ceased as such in 2014. This use was deemed a non-conforming use pursuant to the Cape Charles Zoning Ordinance Section 2.5.

In 2015, the property was purchased by John Hanson, Dawn Hanson and Carol Selby to convert the use of the structure from a barbershop to a restaurant, specifically an ice cream and sandwich shop/restaurant. They filed an application with the Town and were advised to seek a variance from the Board of Zoning Appeals to receive a determination if this proposed use would be considered a use of a similar nature, pursuant to Cape Charles Zoning Ordinance Section 2.5.4 which states that *“the use of a non-conforming building or structure may be changed to the same use or a use of a more restrictive classification, but where the use of a non-conforming building or structure is hereafter changed to a use of a more restrictive nature, it shall not thereafter be*

changed to a use of a less restrictive nature with the exception of existing duplexes specifically designed as such.”

It was deemed that the use would be a continuation of the non-conforming use of the property & structure since the barbershop use would have been considered a personal services usage which was a use allowed by right under the Commercial District uses and a restaurant is also a use allowed by right under the Commercial District uses, thus a “like” or similar use. During this hearing, the adjacent vacant lot was referenced and noted that this lot may have been used informally as on-site parking but was not part of the non-conforming use and could not be considered for any expansion of the non-conforming use since that is not allowed per the Cape Charles Zoning Ordinance Section 2.5.1 (A) (1) which states that *“No such non-conforming use, building, or structure shall be enlarged or increased or extended to occupy a greater area of land than was occupied at the effective date of the adoption of this ordinance, unless said enlargement does not result in an increase in nonconformity or result in a change to a use permitted in the district.”*

From 2015 to 2020, the building was home to Kool Eatz Ice Cream and Sandwich Shop which had indoor seating of approximately 10 seats and outdoor seating directly adjacent to the building on both Jefferson and Strawberry Street.

The property was sold in fall 2020 to Patina Green, LLC and the applicant submitted a business plan and site plan for the property which included a drive-thru window service for golf carts only and the location of the drive-thru would be on the adjacent parcel, which is also owned by Patina Green, LLC. This expansion is not allowed under the Non-Conforming Uses Section 2.5.1 (A) (1) of the Zoning Ordinance which states “No such non-conforming use, building, or structure shall be enlarged or increased or extended to occupy a greater area of land than was occupied at the effective date of the adoption of this ordinance, unless such enlargement does not result in an increase in nonconformity or result in a change to a use permitted in the district.”

Therefore, the applicant was advised that the expansion and offering of a drive-thru service for golf carts could only be considered if the property was rezoned commercial and that she would need to pursue a rezoning application.

As a point of clarification and amplification, the business that the applicant is proposing to operate at 309 Jefferson Avenue – a frozen custard shop – is consistent with the legal, non-conforming use of this property and is allowed by right. The addition of a drive-thru window and accompanying drive-thru space on the adjacent lot of 303 Jefferson Avenue is dictating the rezoning application. If the rezoning application is not approved by the Town, the legal, non-conforming use of 309 Jefferson Avenue can continue unless the use or structure ceases for any reason for a period of more than two years.

Current Zoning:

Single-Family Residential (R-1): 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: 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.

PROPOSED REQUESTED ZONING:

Commercial (C-1): 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.

The Historic District Overlay would remain on this property and in conjunction with the underlying zoning.

Staff Analysis:

As previously noted in the Staff Report at the March 2, 2021 meeting, the building located on 309 Jefferson Street is deemed a legal, non-conforming use since it has had a business for over 54 years (first a barbershop then transitioned to a restaurant in 2015 which was deemed a similar use in accordance with the non-conforming ordinance requirements. There appeared to be nominal impact to the neighborhood with the hours of operation during the daytime hours and the customer base was both vehicular and pedestrian. The proposed expansion of the business into the vacant adjacent lot for expanded outdoor seating and a drive-thru window for golf cart patrons is changing the character and nature of the historic nature of the usage on this property and the neighborhood as a whole.

The Comprehensive Plan Future Land Use (Section III.2.1.3) lists this area as continued Traditional Residential which is described as primarily as single-family dwellings with some

multi-family housings, including row houses containing two to four dwelling units per structure and single-family house which have been converted into two-or multi-family dwelling units. This category is intended to promote and encourage a suitable environment for family life where there are children, and to restrict all activities of a commercial nature. Uses that support the civic, social and recreational needs of the town residents should be compatible with this category.

While the Comprehensive Plan does support the provision and expansion of economic activity that supports the commercial needs of the community, including the tourists/vacation/and second home owners as well as full-time residents and the type of establishment being proposed by the applicant fits within these economic objectives (Section III-1 thru 4), the type of expanded commercial activity being sought by rezoning from Residential-1 to Commercial-1 within the confines of a residential neighborhood is not fully compatible with the Comprehensive Plan, since a rezoning without any limitations opens up the property and the neighborhood to all of the uses allowed by-right in the Commercial-1 district.

As noted, the applicant has voluntarily proffered certain conditions to restrict the use of the property. The Commission will need to review the Proffer Statement and determine if this addresses the concerns raised sufficiently to support a rezoning of 309 and 303 Jefferson Avenue from Residential-1 to Commercial-1.

If the Town supports favorably this rezoning application, Historic District Review Board review and approval is still required as well as all required zoning clearances and building permits.

Staff is prepared to assist the Planning Commission in crafting a motion with supportive reasoning language regarding your recommendation on this rezoning application.

Attachments:

Attachment 1 – Application and Packet

Attachment 2 – Letters from Adjacent Property Owner received as of 3/30/2021

Attachment 3 – Staff Report from March 2, 2021 Planning Commission meeting

Attachment 4 – Cape Charles Zoning Ordinance Sections

- 2.5 – Non-Conforming Uses
- 2.7.4 thru 2.7.9 – Conditional Zoning
- 3.6 – Commercial District C-1 (A thru E)



ZONING MAP AMENDMENT APPLICATION

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

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

- ☒ Completed application
- ☒ Letter of intent
- ☒ Existing site plan or survey
- ☒ Proposed site plan or survey (if applicable)
- ☒ Names and addresses of adjacent property owners
- ☒ Payment of fees (\$1,000)

PROJECT INFORMATION

Name of Project: Suzy's Old Fashioned Frozen Custard
Property Address: 303 and 309 Jefferson Avenue, Cape Charles, VA 23310
Brief Description of Project: Food/beverage prep/sales-bldg; cart drive-thru/seating on lot
Current Zoning District: R-1 Proposed Zoning District: _____
Current Use: Commercial bldg/vacant lot Proposed Use: Commercial

OWNER INFORMATION

Name and Company: Patina Green, LLC dba Suzy's Old Fashioned Frozen Custard
Mailing Address: 208 Bay Avenue
Phone Number: 484-809-0875 Email: cinnamonsuzy@gmail.com

APPLICANT INFORMATION

☒ check here if applicant is owner

Name: SUZANNE B. BAKER
Mailing Address: 208 Bay Ave, Cape Charles, VA 23310
Phone Number: 484-809-0875 Email: cinnamonsuzy@gmail.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: Suzanne B Baker Date: 1 FEB 2021

Town of Cape Charles Planning & Zoning Department
2 Plum St. • Cape Charles, VA 23310 • 757-331-2036 • capecharles.org



SUZANNE BAKER

Owner-Operator

CONTACT

PHONE:
484-809-0875

Patina Green, LLC
208 Bay Avenue
Cape Charles, VA 23310

EMAIL:
cinnamonsuzy@gmail.com

Planning & Zoning Department
Town of Cape Charles
2 Plum Street
Cape Charles, VA 23310

1 February 2021

Dear Ms. Finchum,

I am requesting a zone map amendment to allow commercial use of my property on the corner of Strawberry Street and Jefferson Avenue in Cape Charles.

Currently the lots are 303 and 309 Jefferson Avenue owned by Patina Green, LLC dba Suzy's Old Fashioned Frozen Custard. The building is vacant, awaiting Town modification authorizations.

By 2 February 2021, the enclosed proposed survey will be notarized and delivered to the Town for approval.

VDOT approved a curb cut and plans for a concrete apron and landscaping on the State right of way.

My intention is to operate the consolidated lot as small business for drive up and carry out food and beverage production and sales.

Two existing ground level decks provide seating for two parties of 4, on the carry out entrance side of the building. There is no customer seating inside the building. My intention is to build an at-grade deck in the center of the cart path "U", seating four parties of 2, and a smaller deck against the low (4 foot) fence on the East property line, seating 4.

I cannot offer a safe and comfortable area for customers, other than the public sidewalk, if not allowed to use the whole property commercially. Realistically, I won't have the capability to stop customers from congregating on the lot that is obviously Suzy's real estate. In short, I need to have authorization for the building and the outside area, to operate the business successfully.

Regards.


Suzanne Baker

Existing Site plan / Survey

Parcel 1: All that certain lot or parcel of land beginning at the northeast corner of Strawberry Street and Jefferson Avenue, thence running in a northerly direction thirty-four feet (34 ft.) along Strawberry Street to a certain stob, thence in an easterly direction forty feet (40 ft.) to Lot No. 81, thence in a southerly direction along Lot No. 81, thirty-four feet (34 ft.) to Jefferson Avenue, and thence in a westerly direction along Jefferson Avenue to the point of beginning. It being the most southerly thirty-four feet (34 ft.) of Lot No. 84, according to a map or plat of the Town of Cape Charles recorded in the Clerk's Office of Northampton County Circuit Court, with a deed from William L. Scott and wife to William Bauman, in Deed Book 41, at pages 483, 484 and 485, and more particularly described on the plat made by G. W. Doult, on February 25, 1951, and attached to a certain deed dated March 2, 1961 and recorded in Deed Book 144 at page 7, in the aforesaid Clerk's Office.

And being the same parcel of land conveyed to the Grantors by deed from Barkley E. Sample, Evelyn Sample-Oates, Sabrina Sample, John Barkley Sample, IV and Courtney Alyce Sample, dated May 20, 2015, and recorded in the aforementioned Clerk's Office as Instrument Number 150000734.

(For Identification Purposes Only: Tax Map #83A1-1-84C)

Parcel 2: All that certain lot or parcel of land, with the buildings thereon, situate and being on the easterly side of Strawberry Street, between Jefferson and Washington Avenues, in the Town of Cape Charles, Virginia, consisting and comprising a part of the lot numbered with the number Eighty-One (81) according to the plat of the said Town of record in the Clerk's Office of Northampton County, Virginia, with a deed from William

L. Scott et ux, to William Bauman, et als, in Deed Book 41, pages 483 et seq, unto which reference is made. This land is further described as starting from the southeast corner of Lot Number 81 and running a due westerly course forty feet, thence in a due northerly course a distance of thirty-four feet, thence a due easterly course a distance of forty feet, thence a due southerly course a distance of thirty-four feet to the starting point. It being the most southerly thirty-four feet (34 ft.) of Lot No. 81, according to a map or plat of the Town of Cape Charles recorded in the Clerk's Office of Northampton County Circuit Court, with a deed from William L. Scott and wife to William Bauman, in Deed Book 41, at pages 483, 484 and 485.

And being the same parcel of land conveyed to the Grantors by deed from James W. Elliott, Special Commissioner, on behalf of Paul Edward Sample, Louise W. Battle and Oliver C. Battle, dated April 28, 2015, and recorded in the aforementioned Clerk's Office as Instrument Number 150000580.

(For Identification Purposes Only: Tax Map #83A1-1-81C)

Proposed Survey

GENERAL NOTES:

1. TAX PARCEL: 83A1-1-81C & 83A1-1-84C
2. OWNERS: PATINA GREEN LLC
3. SOURCE OF TITLE: INST #200001386.
4. A SURVEY WAS PERFORMED ON THIS PROPERTY IN JULY 2015 WITH A BOUNDARY CLOSURE WHOSE PRECISION EXCEEDS 1:10,000.
5. 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.
6. ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY (F.E.M.A.) FLOOD INSURANCE RATE MAP COMMUNITY PANEL NO. 51131C 0295 F, DATED 3-2-15, 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.
7. PLAT REFERENCES:
 - A) MAP OF THE TOWN OF CAPE CHARLES (D.B. 41, P. 484 - PLAT)
 - B) PROPERTY TO BE CONVEYED BY ROSS SAWYER WILSON TO JOHN SAMPLE, JR. (D.B. 144, P. 09)
 - C) THE PURPOSE OF THIS PLAT IS TO VACATE THE PROPERTY LINE BETWEEN PARCELS 83A1-1-81C & 83A1-1-84C. NO PHYSICAL FEATURES SHOWN.

SURVEYORS 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'S CONSENT AND DEDICATION

THE PROPERTY LINE VACATION AND CREATION OF "PARCEL A" IS WITH FREE CONSENT AND IN ACCORDANCE WITH THE DESIRE OF THE UNDERSIGNED OWNER. ALL STATEMENTS AFFIXED TO THIS PLAT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

DATE: _____

MANAGING MEMBER PATINA GREEN LLC

COUNTY OF _____, STATE OF _____, TO WIT:

I, _____, A NOTARY PUBLIC IN, AND FOR

THE COUNTY AND STATE AFORESAID, DO HEREBY CERTIFY THAT

WHOSE NAME IS SIGNED TO THE FOREGOING WRITING,

BEARING DATE ON THE _____ DAY OF _____, 20____

HAS ACKNOWLEDGED THE SAME BEFORE ME IN MY COUNTY

AND STATE AFORESAID, GIVEN UNDER MY HAND THIS _____

DAY OF _____, 20____.

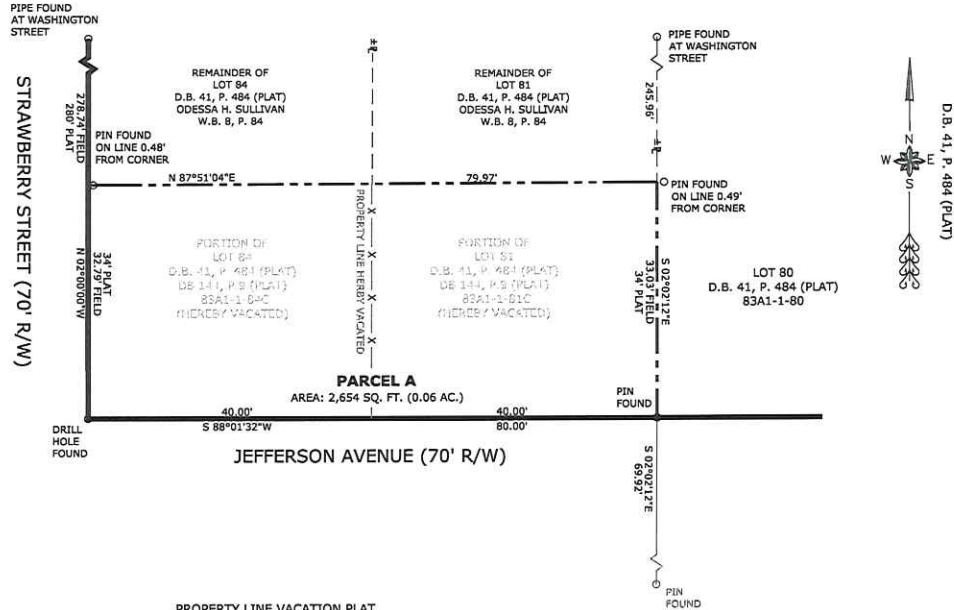
NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

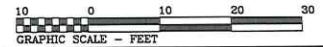
APPROVED:

THIS PLAT OF SURVEY IS APPROVED TO BE RECORDED INTO THE LAND RECORDS OF NORTHAMPTON COUNTY, VIRGINIA.

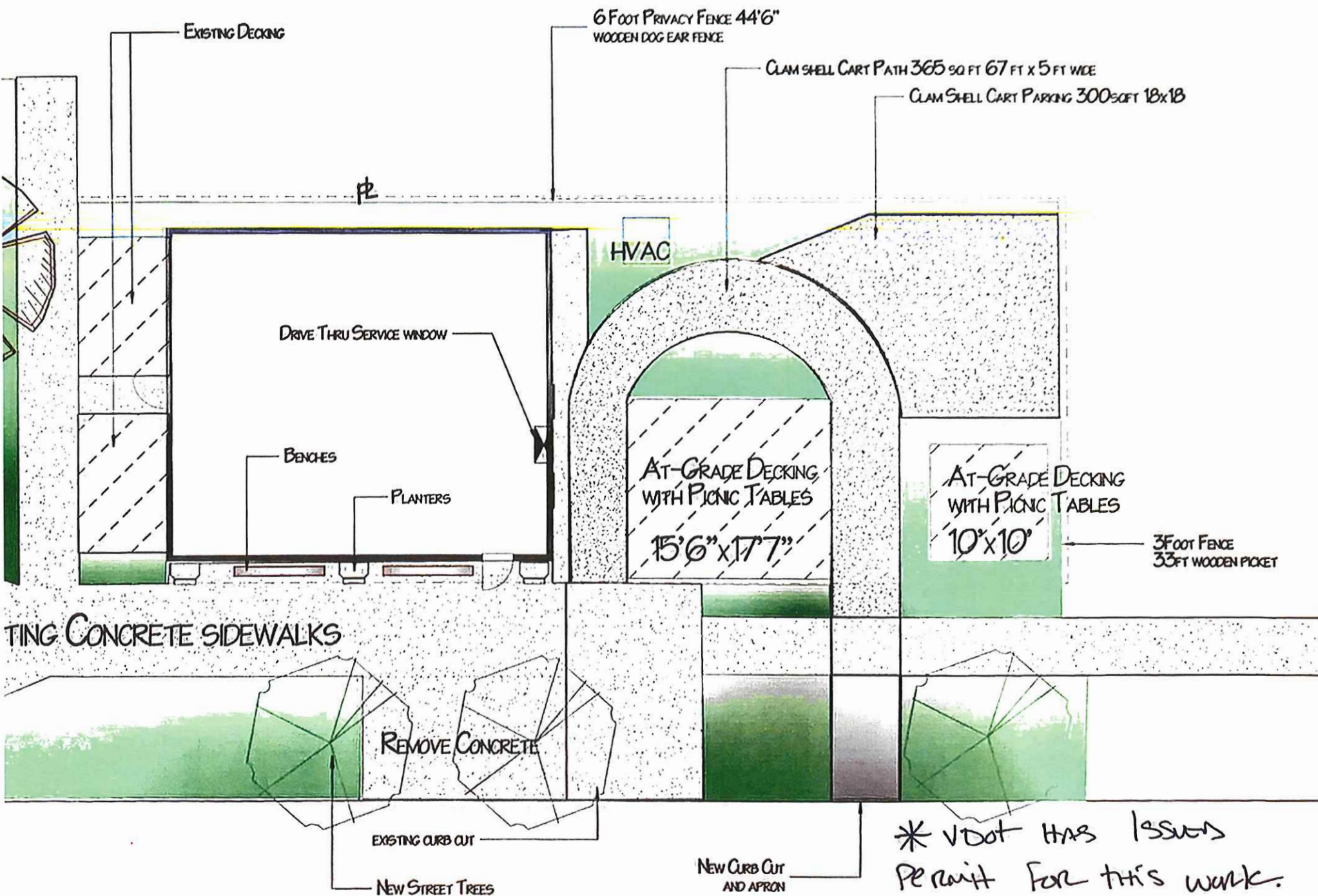
DATE: _____
TOWN OF CAPE CHARLES, VIRGINIA



PROPERTY LINE VACATION PLAT
CREATING
"PARCEL A"
PORTIONS OF
LOTS 81 & 84
MAP OF THE
TOWN OF
CAPE CHARLES
(DEED BOOK 41, PAGE 484-PLAT)
CAPEVILLE DISTRICT
NORTHAMPTON COUNTY, VIRGINIA
JANUARY 30, 2021



ACCOMACK-NORTHAMPTON SURVEYING & MAPPING PLLC		
36308 Lankford Highway, Belle Haven, Virginia 23306		
MAIL: 22248 Parker's Landing Road Bloxom, Virginia 23308		
Phone: (757) 709-4192		
DRAWN BY: PARKS	SCALE:	1"=10'
CHKD BY: 2995	BACK TRAV. BY: MBP	
FIELD BOOK: NEVO	JOB NUMBER:	1134



From: cinnamonsuzy@gmail.com
To: [Tracy Outten](mailto:Tracy.Outten)
Subject: FW: Suzy's Old Fashioned Frozen Custard Zoning Application - Amplification
Date: Monday, February 15, 2021 11:13:33 AM
Attachments: [VDOT PERMIT 536-124194.pdf](#)

Email address correction...

From: cinnamonsuzy@gmail.com <cinnamonsuzy@gmail.com>
Sent: Monday, February 15, 2021 10:37 AM
To: tracyoutten@capecharles.org
Subject: Suzy's Old Fashioned Frozen Custard Zoning Application - Amplification

Tracy,

Katie Nunez requested the attachment (VDOT permit to install curb cut on 309 Jefferson) and following clarifications:

- 1 – **GOLF CART PATH:** Building drive through service window height and adjacent drive up path are restricted via width, stabilizing underlayment, design, and sign to GOLF CART and SURREY use only.
- 2 – **OPERATING HOURS:** 7 days a week, 0600 to 2100.
- 3 – **EMPLOYEES:** 2 employees will be on-site from 0530 to 2200 Monday – Thursday. 3 employees will be on-site from 0530 to 2200 Friday-Sunday. A maximum of 6 employees will be in the building on weekends, during shift change.
- 4 – **LIGHTING:** The building already has under-eave recessed lights. After awnings are installed (over all windows), the drive through windows will probably need additional illumination. The planned Victorian era 5-globe streetlight centered at top of the golf cart path is powder-coated aluminum (that looks like cast iron) 11-foot lamp post with commercial grade polycarbonate globes (clear cracked ice texture). Metal-Halide 100 watt bulbs (8,500 lumens) (typical streetlights are 150 watt/13,300 lumens). Exterior lighting will be energized during business hours (0600 to 0800 on sunny days; 1630 to 2100 every day; 0600-2100 stormy days).
- 5 – **TRASH:** 4 replicas of the Town's blue-roof trash boxes will be staged around the property and emptied daily (minimum) by staff into the Town's wheeled carts. Water, Sewer, Trash utility is already active.

Regards,
Suzanne Baker

Commonwealth Of Virginia

Department Of Transportation

Land Use Permit



Permit No 536-124194

Status APPROVED

This permit only grants permission to use whatever rights the Commonwealth Transportation Board and the Department of Transportation have in the right of way and no more, and it is the obligation of the permittee to secure any other releases or permission that may be needed in order to perform the work.

Effective Date Oct 06, 2020

Expiration Date Apr 04, 2021

Reinstatement Date

Permittee Information		Your Job#	Surety & Account Receivable Information
Owner & Address	Patina Green 208 Bay Avenue Cape Charles Virginia 23310	Agent	Name Patina Green / Navy Federal Credit Union
Contact	Suzanne B. Baker	Contact	Surety Account 1195
Phone#	484-809-0875	Phone#	Surety Type Cash/Check
Fax#		Fax#	Amount 500.00
24 Hr#	484-723-3572	24 Hr#	Obligation Amount 500.00
			Surety Holder CUSTOMER

AUTHORIZATION: In compliance with your application, permission is hereby given insofar as the Commonwealth Transportation Board has the right, power, and authority under sections 33.2 - 210;33.2 - 240;33.2 - 241 of the Code of Virginia as amended, to grant by Special Agreement and/or by Land Use Permit for you to perform the work and or activity(s) described below:

Location			
County/City/Town	Northampton County	Highway Route(s)	1103 - Jefferson Avenue
From Route Number		From Route Name	
To Route Number		To Route Name	

Work Description

Install 6' wide depressed curb and concrete golf cart entrance at Tax Map No. 83A1-01-81C in Cape Charles. Also remove old concrete driveway and landscaping between sidewalk and curb and replace with three new crepe myrtle trees planted at least 3' behind curb. All construction methods and materials shall be in accordance with current VDOT standards and specifications. Contact Dale Pusey @ 757-787-5932 with any other technical questions and to provide at least 48 hours notice prior to commencement of ANY work approved by this permit. All areas of the VDOT R/W disturbed by this work shall be restored, stabilized, and seeded prior to acceptance.

NOTES: TRAFFIC CONTROLS, SIGNAGE, FLAGGING OPERATIONS, ETC. REQUIRED SHALL CONFORM TO THE 2011 (REVISION 2) VA WORK AREA PROTECTION MANUAL AND MUTCD GUIDELINES

Fee Description	Fee
Permit Fee	\$100.00

Applicant has compiled with VA Code Section 56-265.15 Affidavit is attached.

TERMS:Applicable as stated in the VDOT Land Use Permit Regulations (current edition) and/or as per approved plans, and/or regulatory instructions, including but not limited to the LUP-SPG and/or agreement(s) attached hereto.

COMMONWEALTH TRANSPORTATION BOARD



By:

Oct 07, 2020

Dale Pusey, PE

- C** Call before you dig
- A** Allow the required time for marking
- R** Respect and protect the marks/flags
- E** Excavate carefully

Call Miss Utility
811

[] When checkbox is marked, by approving this permit, the issuing official certifies that the entrance was designed in accordance with Appendix F of the Road Design Manual

FINAL INSPECTION & SURETY REQUIREMENTS: Upon completion of the work or activity(s) authorized under this Land Use Permit, the permittee shall contact the following office in writing or by electronic communication to request final inspection and release of the surety obligation for this permit.

Accomac Residency
23096 Courthouse Ave Email:HRpermits@vdot.virginia.gov
Accomac VA 23301

Permit No.536-124194

VDOT's Web Site: www.vdot.virginia.gov

Permittee Copy



PRE-APPLICATION INFORMATION FORM

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

APPLICANT INFORMATION

Name: Patina Green, LLC dba Suzy's Old Fashioned Frozen Custard
Mailing Address: 208 Bay Avenue; Cape Charles VA 23310
Phone Number: 484-809-0875 Email: cinnamonsuzy@gmail.com

PROJECT SUMMARY

Address of Project: 303 and 309 Jefferson Avenue
Application Type (rezoning, variance, etc.): Zoning variance & window/door replacement
Total Acreage of Project: .04 Each Parcel (i.e., .08 acre)

Detailed Description (Include proposed use(s) and square footage of floor area for each use):
Provide Golf Cart drive-thru window service (replace and enlarge windows with vertical
"double hung" pass through windows on 303 Jefferson East Wall), landscape 309
Jefferson with golf cart one-way path, 3 space parking, at-grade decks umbrella 4-top
table seating.

Signature of Applicant: *Stephanie Baker* Date: 23 Nov 2020

For Internal Use Only:

Pre-Application Meeting Date: _____

Staff Printed Name: _____ Signed: _____

HDRB Rep Printed Name: _____ Signed: _____

Patina Green, LLC
DBA Suzy's Old Fashioned Frozen Custard
208 Bay Avenue
Cape Charles, VA 23310
484-809-0875

Town of Cape Charles Planning & Zoning Department
2 Plum Street
Cape Charles, VA 23310

6 November 2020

Ms. Allyson Finchum,

Patina Green, LLC purchased two parcels of land identified by emergency calling as 303 Jefferson (land and building) and 309 Jefferson Avenue (land) with intent to own and operate Suzy's Old Fashioned Frozen Custard. 303 Jefferson is zoned commercial; CC Kool Eatz operated from the site since 2015. 309 Jefferson is the adjacent 34' X 40' vacant lot, zoned residential. To the passerby, the lot appears to be the small side yard of 303 Jefferson.

The intended use of 303 and 309 Jefferson is a contiguous business location of Suzy's Old Fashioned Frozen Custard, purveying seasonal (April through October) desserts constructed primarily with soft-serve frozen custard made on premises, 7 days a week. Food and beverages will be prepared and purchased from the existing 303 Jefferson building (after painting, awnings, windows, A/C compressor relocation approved by Historic Review Board). Walk up customers will enter the building from the existing Strawberry Street door. There will not be indoor customer seating. Upon approval of this Variance Application, customers of Suzy's Old Fashioned Frozen Custard will be able to drive a golf cart onto 309 Jefferson via an existing curb cut on 303 Jefferson (currently zoned commercial), purchase food and beverages from 303 Jefferson's drive through window, park in three cart spaces on 309 Jefferson parcel, or exit the property via the curb cut on 309 Jefferson. Per the attached landscaping plan, 309 Jefferson will have outdoor seating similar in construction and appearance to the existing decks on the Strawberry Street entrance side of the property, furthering a cohesive street appearance.

VDOT issued Patina Green, LLC a permit on 10/6/2020 to install a curb cut and concrete apron on 309 Jefferson (the vacant lot) and to maintain the existing curb cut with concrete apron on 303 Jefferson, enabling a one-way golf cart path to enter 303 Jefferson and exit 309 Jefferson. The path on the North side of the sidewalk will be reinforced and covered with oyster shells. Going forward with the VDOT permit and with our Landscape contract relies on receiving the Town zoning variance allowing commercial use of the 309 Jefferson parcel. Your earliest approval of our application is greatly appreciated.

Suzanne B. Baker
Member/Owner

cinnamonsuzy@gmail.com
484.809.0875

Original Proffers: _____

Amendment: _____

PROFFER STATEMENT

Applicant: Suzanne B. Baker

Project Name: Suzy's Old Fashioned Frozen Custard

Street Address: 303 & 309 Jefferson Avenue

Tax Map and Parcel Number(s): 83A1-1-84C & 81C

Owner(s) of Record: Patina Green, LLC

Date: 9 March 2021

Approximately 2,654.00 square feet (0.06 AC) to be rezoned from Residential-1 (R-1) to Commercial-1 (C-1).

Patina Green, LLC is the owner (the "Owner") of Tax Map and Parcel Number 83A1-1-84C and 83A1-1-81C (the "Property"), which is the subject of a rezoning application ("Application") submitted by Suzanne B. Baker, principal of Patina Green, LLC for a project known as "Suzy's Old Fashioned Frozen Custard" (the "Project"). The Application seeks to rezone Tax Map Parcel 83A1-1-84C and 83A1-1-81C from Residential -1 (R-1) to Commercial -1 (C-1) ("Rezoned Property").

Pursuant to Section 2.7.5 of the Cape Charles Zoning Ordinance, the Owner hereby voluntarily proffers the conditions listed below, which shall be applied to the Property if it is rezoned to the zoning district identified above. These conditions are proffered as a part of the requested rezoning and the Owner acknowledges that the conditions are reasonable:

1. Permitted Uses:

(a) Under the Cape Charles Zoning Ordinance Commercial-1 (C-1) Permitted Uses, the Owner will continue to use the structure and property as allowed under Section 3.6 (B) (5) – Bakeries, confectionaries, delicatessens, and catering services – and Section 3.6 (B) (30) – Restaurants and is relinquishing the rights to all other permitted uses provided in Section 3.6 (B).

(b) The owner voluntarily proffers the following restrictions on existing 29-foot X 33-foot structure and 30' x 40' adjacent land: The building footprint and height will not be expanded in any direction and no additional sales spaces will be erected on the adjacent land, in any form (permanent, temporary, sales table, booth, food cart). All product preparation will take place inside the building. The adjacent land will not be used for smokers, grills, butchering, or commerce.

(c) To address area residents' concerns regarding loitering: The owner voluntarily proffers to restrict the product line of the Project and to disallow indoor seating. The Project will sell comestibles clearly intended for immediate consumption (i.e., hot coffee, single serving baked goods, single serving frozen

custard, single serving bottled water and soda), and a small line of coffee and frozen custard accessories (i.e, store logo products, hand sanitizer, coffee mugs, custard toppings, daily newspaper).

(d) The owner voluntarily proffers to promote public safety and employee health, to prevent spread of contagious disease, and to allay residents' concerns over loitering by promoting visitor brevity through providing and cleaning outdoor umbrella tables and park benches, and by providing golf cart and surrey drive through window ordering and pick up service.

(e) The owner voluntarily proffers further restrictions to promote consideration of area residents: Posted and enforced No Smoking/Vaping/Spitting policies for employees and customers, posted and enforced modesty dress code (no bare or near-bare torsos or buttocks). There will be no sales of lottery or other games of chance sold, and no consumption or sales of alcohol except as used in coffee flavoring and baking (i.e, vanilla extract). There will be no outdoor audio visual equipment or entertainment.

(f) The owner voluntarily proffers providing a minimum of three 6-ft X 11-ft golf cart parking spaces on the Property, to reduce area street parking by customers and to promote driver safety. Employees will not be allowed to leave parked cars, carts, motorcycles in the R-1 District, while working at the Project. Cart parking signs posted on the Project screening fence will make clear the parking is free and provided for the duration of enjoying their purchase.

(g) To address residents' concerns of property trespass and street safety concerns, the owner voluntarily proffers to split the cost 50-50 with The Town of Cape Charles, up to \$2,000 maximum, to install VDOT approved cement sidewalks on the two Strawberry Street lots, east side of road, between Jefferson and Washington that currently have no public sidewalk. The new sidewalks will connect two existing lots' sidewalks (including The Project) to provide a continuous public walkway from the Promenade on Washington, to the Property. In exchange, the Owner would like the Project's 5-inch diameter logo imbedded in one of the new sidewalk squares closest to the Property.

Signature Page for Proffer Statement for Rezoning Application from Patina Green, LLC

OWNER:

Suzanne B Baker

Suzanne B. Baker



Notary Public: Tracy Penelope Outten Tracy Penelope Outten

Notary Registration Number: 7682533

My Commission Expires: 07/31/2024

Commonwealth of Virginia, County of ~~Accomack~~ ^{Northampton}, sworn and subscribed to before me this 10 day of March, 2021, whose name is signed to the above.

Notary Public: _____ Notary Registration
Number: _____ My Commission Expires: _____ Commonwealth of
Virginia, County of Accomack, sworn and subscribed to before me this _____ day of _____,
2020, whose name is signed to the above.

Adjacent Property Owner Comments submitted as of 3/30/2021

Jim Granger

Subject: Opposition to Rezoning of 303 and 309 Jefferson Avenue
Ms. Hume,

Please pass to the Planning Commission and Town Council as appropriate.

Members of the Planning Commission and Town Council,

I strongly oppose the rezoning of 303 and 309 Jefferson from R-1 to C-1. I have lived on Jefferson Avenue since 2015, first at 408 Jefferson, and now at 524 Jefferson, and feel that C-1 zoning is incompatible with the neighborhood.

The description of C-1 zoning - "These commercial activities are characterized by heavy traffic, noise, and congestion of people and passenger vehicles and by large office buildings and retail establishments," says it all. That location is surrounded by residences and a church, and is only a block from Central Park. Operating a small eating establishment under variance like CC Kool EatZ is acceptable, but rezoning to C-1 would potentially open the area up to any type of industry. With C-1 zoning, someone could open up an auto repair shop, nightclub, Porta Potty service, etc - all incompatible with the character of the surrounding area. We have worked very hard on Cape Charles Main Street as the ideal location and climate for businesses; Jefferson Avenue needs to stay residential.

Sincerely,
Jim Granger
524 Jefferson Avenue
Cape Charles, VA 23310
757-287-7245

Anthony Storey and Anne Stratton
Anthony Storey / Anne Stratton
223 Jefferson Ave
Cape Charles, VA 23310

March 12, 2021

Ms. Nunez,

We are writing of our concerns to the request by Patina Green, LLC dba Suzy's Old-Fashioned Frozen Custard to rezone 303, and 309 Jefferson Ave. to Commercial properties.

We have written to the town before concerning 303 Jefferson when Cool Eats, (when the Barber Shop was a business operating mostly on appointments, with a small clientele, and not a seven day a week schedule). Even so the Town gave permission and grandfathered in a much different seven day a week business that altered the look and feel of the surrounding quiet residential area.

Now we have been informed that the town is in conversation to allow new owners permission to rezone both lots from Residential to Commercial!

This rezoning would be a terrible decision. Not only for the additional traffic, people, and noise but to the opening of Jefferson Avenue (and possibly other Historic town Streets to more Commercial enterprise).

Upon the Town allowing these two lots to be rezoned, what is to stop other entrepreneurs requesting rezoning of any number of empty lots in town, especially if it was a store selling the same type of goods. The above rezoning would end up transforming the Town, especially its northern end.

The recently proposed Community Strategic Plans vision for the Town includes among other suggestions:

- Retain the small-town character of Cape Charles.
- Maintain the authentic character of the Historic District.

We agree 100 percent with those values and converting the lots to Commercial usage would not only be detrimental to the Town, but to the future of the Town of Cape Charles.

Sincerely

Anthony G Storey.

Anne W Stratton.

Elle O'Brien

Subject: Thursday, March 18, 2021 Town Council Regular Meeting, Work Session & Executive Session

Please see my letter to Town Council below re: Rezoning 303/309 Jefferson.

Thanks

Ellen O'Brien

631 Monroe

Hello Town Council,

I am writing to express my **opposition to the rezoning request for the properties at 303 and 309 Jefferson Avenue**. Thanks to the background provided by Katie Nunez, we now have an understanding of the accurate zoning of this property.

The Comprehensive Plan Future Land Use (Section III.2.1.3) lists this area as continued Traditional Residential, which is described as primarily as single-family dwellings with some multi-family housings, including row houses containing two to four dwelling units per structure and single-family house which have been converted into two-or multi-family dwelling units. **This category is intended to promote and encourage a suitable environment for family life where there are children, and to restrict all activities of a commercial nature.**

It is important to recognize that the owner is able to operate the business planned without rezoning the property.

However, it appears rezoning is sought to permit the addition of a 'golf cart drive thru'. Worth mentioning too, is there has **already been work completed to offer entrance and exit for golf cart passage.**

Jefferson Avenue is a two way street, that allows for on street parking on both sides of the street.

There is a residential driveway directly across from the area where the proposed 'golf cart drive thru' is proposed.

This request is clearly not considering the potential risks associated with current vehicle and pedestrian traffic. Furthermore, the property in question is **located on the corner of Jefferson and Strawberry**, vehicles and pedestrians on foot and bicycle's would be put at **risk** with the addition of a 'golf cart drive thru'.

The business owner has made the decision to NOT allow indoor seating and this decision should not drive the requirement or request for a 'golf cart drive thru', nor should it drive the requirement for off street golf cart parking.

It is important to point out: The owner is fully able to operate the business planned without rezoning the property and creating of a golf cart drive thru.

The proposed expansion of the business into the vacant adjacent lot for expanded outdoor seating and a drive-thru window for golf cart patrons is changing the character and nature of the historic nature of the usage on this property and the neighborhood as a whole.

It is not compatible with the Comprehensive Plan, and should NOT be considered for re-zoning with Special Conditions, especially since the business can open their doors today without making a zoning change that will have far reaching implications in the future.

Vote NO and you will be doing something today, that your future self will thank you for.

Respectfully,

Ellen O'Brien
631 Monroe Avenue

Odessa Sullivan

Subject: Request of rezoning at 303 Jefferson Ave

This is a follow-up of my letter to you on February 18, 2021. It has come to my attention that someone misspoke or there has been a misunderstanding of my complaint. Having a creamy in the area is a wonderful thing. I do not want rezoning to commercial.

There has been three (3) businesses in that same footprint dating back to the 1960. They did not require rezoning to conduct business, and they were very busy.

Summer is coming there is money to be made. I spoke with the new owners on this matter. Letting them know that the complaint was never about having a business. It is all about rezoning the business, and what comes after.

ODESSA Sullivan

Tyrone and Patricia Beach

Subject: Rezoning of 303/309 Jefferson Avenue to Commercial Property from Residential Property
Hello Members of the Planning Board and Town Council,

We would like to express our concern about the properties, 303/309 Jefferson Street and that they should remain zoned as residential. Since rezoning doesn't affect the current owners from opening their business, rezoning to commercial could allow the property to be use for any type of business.

With the opening up of this new business at this site rezoned as commercial, we are concerned about the heavy traffic, noise and congestion of people and passenger vehicles. We think that a golf cart drive thru could pose a hazard to pedestrians and bicyclists. As long people come and go and keep moving and not causing congestion at the corner of Jefferson and Strawberry Streets, everything should be fine.

Thanks for your consideration for our concerns.

Tyrone and Patricia Beach
230 Jefferson Street
Cape Charles, VA



PLANNING COMMISSION

STAFF REPORT

Meeting Date: March 2, 2021

Item #: 5a

Prepared By: Katie H. Nunez, Interim Planning/Zoning Administrator
Site Address: 303 & 309 Jefferson Avenue (Tax Map #83A1-184C &81C)
Applicant: Suzanne B. Baker
Owner: Patina Green, LLC dba Suzy's Old Fashioned Frozen Custard

Rezoning Application:

To rezone two parcels from Residential-1 (R-1) to Commercial-1 (C-1)

Proposed Development:

To expand the services of the previous business to offer the addition of a golf cart drive-thru service window and improve exterior seating; the intent is to operate a frozen custard shop in the existing structure with a golf-cart drive-thru service. The prior establishment at 309 Jefferson Avenue was a business called CC Kool EatZ (ice cream and sandwich shop) which operated under a variance granted on September 9, 2015; previous to that, the property had been a barbershop for approximately 50 years until 2014.

Current Zoning:

Single-Family Residential (R-1): 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: 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.

PROPOSED REQUESTED ZONING:

Commercial (C-1): 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.

The Historic District Overlay would remain on this property and in conjunction with the underlying zoning.

Site Description:

The subject property has an existing structure which has been used as a commercial property for almost 54 years. It is located on the corner of Jefferson Avenue and Strawberry Street. Directly adjacent to the north is a residence and to the east is a church. Across Jefferson Avenue to the south are several residences and across Strawberry Street to the west are two vacant house lots and then several residences.



History of the Property

The property was a barbershop for approximately 50 years and ceased as such in 2014. This use was deemed a non-conforming use pursuant to the Cape Charles Zoning Ordinance Section 2.5.

In 2015, the property was purchased by John Hanson, Dawn Hanson and Carol Selby to convert the use of the structure from a barbershop to a restaurant, specifically an ice cream and sandwich shop/restaurant. They filed an application with the Town and were advised to seek a variance from the Board of Zoning Appeals to receive a determination if this proposed use would be considered a use of a similar nature, pursuant to Cape Charles Zoning Ordinance Section 2.5.4 which states that *“the use of a non-conforming building or structure may be changed to the same use or a use of a more restrictive classification, but where the use of a non-conforming building or structure is hereafter changed to a use of a more restrictive nature, it shall not thereafter be changed to a use of a less restrictive nature with the exception of existing duplexes specifically designed as such.”*

It was deemed that the use would be a continuation of the non-conforming use of the property & structure since the barbershop use would have been considered a personal services usage which was a use allowed by right under the Commercial District uses and a restaurant is also a use allowed by right under the Commercial District uses, thus a “like” or similar use. During this hearing, the adjacent vacant lot was referenced and noted that this lot may have been used informally as on-site parking but was not part of the non-conforming use and could not be considered for any expansion of the non-conforming use since that is not allowed per the Cape Charles Zoning Ordinance Section 2.5.1 (A) (1) which states that *“No such non-conforming use, building, or structure shall be enlarged or increased or extended to occupy a greater area of land than was occupied at the effective date of the adoption of this ordinance, unless said enlargement does not result in an increase in nonconformity or result in a change to a use permitted in the district.”*

From 2015 to 2020, the building was home to Kool EatZ Ice Cream and Sandwich Shop which had indoor seating of approximately 10 seats and outdoor seating directly adjacent to the building on both Randolph and Strawberry Street.

The property sold in 2020 and the new property owner, Patina Green, Inc., indicated that they would like to continue operating a similar type of business (restaurant, specifically frozen custard as well as coffee and pastries and other baked and prepared goods) but wished to add a drive-thru window component for golf cart use only with the drive-thru proposed to be located on the adjacent vacant lot and to expand the outdoor seating capacity on the adjacent vacant lot.

The proposed expansion of the business operation onto the vacant lot is not permissible under the non-conforming section of the Town Zoning Ordinance (Section 2.5.1 (A) (1) and the applicant was advised that the only way to proceed was to petition the Town to rezone this property from Residential to Commercial where the proposed use would be a use allowed by right.

Description of Proposed Project:

The owner has consolidated the two lots through a vacation of the lot lines between the parcels, which was approved by the Town on 2/2/2021 and recorded on February 9, 2021. The owner is seeking to rezone the property from Residential-1 (R-1) to Commercial (C-1) in order

to operate a small business for drive-up and carry out food and beverage production and sales; specifically, the addition of addition of a drive-thru window to the existing structure solely for golf-cart drive-thru usage and expanded outdoor seating.

The applicant has provided in a letter dated November 6, 2020 the following narrative:

“The intended use of 303 and 309 Jefferson is a contiguous business location of Suzy’s Old Fashioned Frozen Custard, purveying seasonal (April through October) desserts constructed primarily with soft-serve frozen custard made on premises, 7 days a week. Food and beverage will be prepared and purchased from the existing 303 Jefferson Building...Walk up customers will enter the building from the existing Strawberry Street door. There will not be indoor customer seating.”

The applicant, in this same letter, indicated that there would be a drive-thru window for golf cart drive-thru service, the ability of three golf carts to park on the property for customer usage only, and to have increased outdoor seating.

The applicant has supplemented her application via e-mail dated February 15, 2021 with clarifying information about the hours and days of operation, # of anticipated employees, and the manner in which lighting, and trash will be addressed on the property to mitigate the impact to any adjacent property. She has also included information regarding landscaping and materials for all improvements to the building and outside furniture/property improvements for Historic District Review Board compliance.

Staff Analysis:

The building located on 309 Randolph Street is deemed a legal, non-conforming use since it has had a business for over 54 years (first a barbershop then transitioned to a restaurant in 2015 which was deemed a similar use in accordance with the non-conforming ordinance requirements. There appeared to be nominal impact to the neighborhood with the hours of operation during the daytime hours and the customer base was both vehicular and pedestrian. The proposed expansion of the business into the vacant adjacent lot for expanded outdoor seating and a drive-thru window for golf cart patrons is changing the character and nature of the historic nature of the usage on this property and the neighborhood as a whole.

The Comprehensive Plan Future Land Use (Section III.2.1.3) lists this area as continued Traditional Residential which is described as primarily as single-family dwellings with some multi-family housings, including row houses containing two to four dwelling units per structure and single-family house which have been converted into two-or multi-family dwelling units. This category is intended to promote and encourage a suitable environment for family life where there are children, and to restrict all activities of a commercial nature. Uses that support the civic, social and recreational needs of the town residents should be compatible with this category.

While the Comprehensive Plan does support the provision and expansion of economic activity that supports the commercial needs of the community, including the tourists/vacation/and

second home owners as well as full-time residents and the type of establishment being proposed by the applicant fits within these economic objectives (Section III-1 thru 4), the type of expanded commercial activity being sought by rezoning from Residential-1 to Commercial-1 within the confines of a residential neighborhood is not fully compatible with the Comprehensive Plan, since a rezoning without any limitations opens up the property and the neighborhood to all of the uses allowed by-right in the Commercial-1 district

If the Town supports favorably this rezoning application, Historic District Review Board review and approval is still required as well as all required zoning clearances and building permits.

Staff Recommendation:

Staff recommends a recommendation of **DENIAL** of a Rezoning of 303 & 309 Jefferson Avenue (Tax Map #83A1-184C &81C) from Residential-1 to Commercial-1 for the reasons contained within the Staff Analysis Section of this report.

Attachments:

Attachment 1 – Application and Packet

Attachment 2 – Letter from Adjacent Property Owner received as of 2/23/2021

Section 2.5 Non-Conforming Uses

Section 2.5.1 Continuation of Existing Non-Conforming Uses and Permits

- A. Any legal use, building, or structure existing at the time of adoption of this ordinance or any amendment thereto may be continued even though such use, building, or structure may not conform with the provisions of this ordinance for the district in which it is located. Such use, building, or structure shall be deemed a "Non-Conforming Use." A non-conforming use, building, or structure may be continued provided by the following.
1. No such non-conforming use, building, or structure shall be enlarged or increased or extended to occupy a greater area of land than was occupied at the effective date of the adoption of this ordinance, unless said enlargement does not result in an increase in nonconformity or result in a change to a use permitted in the district.
 2. No such non-conforming use, building, or structure shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use, building, or structure at the effective date of adoption of this ordinance or amendment of this chapter, unless such move results in decreasing the degree of nonconformity with the requirements of this district.
 3. No additional structures which do not conform to the requirements of this ordinance shall be erected in connection with such non-conforming use of land. No additional uses of a nature which would be prohibited generally in the district involved shall be permitted.
 4. Any non-conforming use may be extended throughout any parts of the building which were manifestly arranged or designed for such use at the time of adoption or amendment of this ordinance.
 5. When any non-conforming use is superseded by a permitted use, the use shall thereafter conform to the regulations for the district, and no non-conforming use shall thereafter be resumed with the exception of existing duplexes specifically designed as such.
 6. If any such non-conforming use or structure ceases for any reason for a period of more than two years, except when government action impedes access to the premises, any subsequent use of such land or structure shall conform to the regulations specified by this chapter for the district in which such land or structure is located with the exception of existing duplexes specifically designed as such.
- B. The rights pertaining to a non-conforming use, building, or structure shall be deemed to pertain to the use or building itself, regardless of the ownership of the land or the building on or in which such non-conformity is conducted or of such non-conforming building or the nature of the tenure of the occupancy thereof.

Section 2.5.2 Restoration of Non-Conforming Use

No building or structure which has been damaged by any cause including neglect to the extent of more than fifty percent of the fair market value of the building immediately prior to damage shall be restored except in conforming with the regulations of this ordinance, and all rights as a non-conforming use are terminated. If a building or structure is damaged by less than fifty percent of the fair market value, it may be repaired or reconstructed and used as before the time of damage provided that such repairs or reconstruction be substantially completed within 12

months of the date of such damage. If delay of reconstruction is caused by reasons beyond the owner's control, extension may be given to substantially complete reconstruction.

Section 2.5.3 Changes in District Boundaries

Whenever the boundaries of a district are changed, any uses of structures or buildings which become non-conforming as a result of change shall be subject to the provisions of this ordinance.

Section 2.5.4 Change of Use

The use of a non-conforming building or structure may be changed to the same use or a use of a more restrictive classification, but where the use of a non-conforming building or structure is hereafter changed to a use of a more restrictive nature, it shall not thereafter be changed to a use of a less restrictive nature with the exception of existing duplexes specifically designed as such.

Section 2.5.5 Occupancy of Vacant Non-Conforming Buildings or Structures

A vacant non-conforming building or structure may be occupied by a use for which the building or structure was designed or intended if so occupied on or before the adoption of this ordinance; and the use of a non-conforming building or structure which becomes vacant after adoption of this ordinance may also be occupied by a use for which the building or structure was designed or intended provided that it is so occupied within a period of two years after becoming vacant. Existing duplexes, specifically designed as such, are exempt from the four-year vacancy stipulation.

Section 2.5.6-50 Reserved

Section 2.7.4 Conditional Zoning - Statement of Intent

In accordance with Virginia Code Sections 15.2-2296 et seq., it is the general policy of the Town of Cape Charles to provide for the orderly development of land, for all purposes, through zoning and other land development legislation. Frequently, where competing and incompatible uses conflict, traditional zoning methods and procedures are inadequate. In these cases, more flexible and adaptable zoning methods are needed to permit differing land uses and at the same time recognize effects of change. It is the purpose of Sections 2.7.4 through 2.7.10 to provide a more flexible and adaptable zoning method to cope with situations found in such zones through conditional zoning. Conditional zoning allows a zoning reclassification subject to certain conditions proffered by the zoning applicant for the protection of the community that are not generally applicable to land similarly zoned. The provisions of Sections 2.7.4 through 2.7.10 shall not be used for the purpose of discrimination in housing.

Section 2.7.5 Conditional Zoning - Conditions as Part of a Rezoning or Amendment to the Zoning Map

As part of a rezoning or amendment to the zoning map, the owner of the parcel for which the rezoning or amendment is sought may voluntarily proffer, in writing made prior to the Town Council's public hearing on same, reasonable conditions in connection with the proposed rezoning or amendment. Applications for conditional zoning shall be handled in the same manner and following the same procedures as provided in Section 2.7.2 with respect to amendments generally. Once proffered and accepted as part of an amendment to this Chapter or the zoning map, such conditions shall continue in effect until a subsequent amendment changes the zoning of the property covered by such conditions. However, such conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

Section 2.7.6 Conditional Zoning - Enforcement and Guarantees

The Zoning Administrator is hereby vested with all necessary authority on behalf of the Town Council to administer and enforce conditions attached to a rezoning or amendment to the zoning map, including (a) the ordering in writing of the remedy of any noncompliance with the proffered and accepted conditions; (b) the bringing of legal action to ensure compliance with the conditions, including injunction, abatement, or other appropriate action or proceeding; and (c) requiring a guarantee satisfactory to the Town Council, in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions, or a contract for the construction of the improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee shall be reduced or released by the Town upon the submission of satisfactory evidence that construction of the improvements has been completed in whole or in part. Failure to meet all conditions shall constitute cause to deny the issuance of any of the required use, occupancy, or building permits, as may be appropriate.

Section 2.7.7 Conditional Zoning - Records

The zoning map shall show by an appropriate symbol on the map the existence of conditions attaching to the zoning on the map. The Zoning Administrator shall keep in his or her office and shall make available for public inspection a Conditional Zoning Index. The Index shall provide ready access to the ordinance creating the conditions in addition to the regulations provided for in a particular zoning district or zone.

Section 2.7.8 Conditional Zoning - Petition for Review of Decision

Any zoning applicant or other person who is aggrieved by a decision of the Zoning Administrator made pursuant to the provisions of Section 2.7.6 may petition the Town Council for review of the decision of the Zoning Administrator. All petitions for such review shall be filed with the Zoning Administrator and the Town Clerk within thirty days from the date of the decision for which review is sought and shall specify the ground upon which the petitioner is aggrieved.

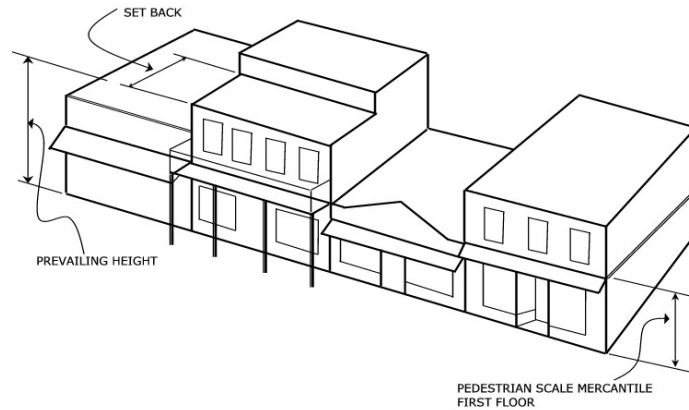
Section 2.7.9 Conditional Zoning - Amendments and Variations of Conditions

There shall be no amendment or variation of conditions created pursuant to the provisions of Section 2.7.5 until after the Town Council holds a public hearing which hearing is advertised as required by Virginia Code Section 15.2-2204.

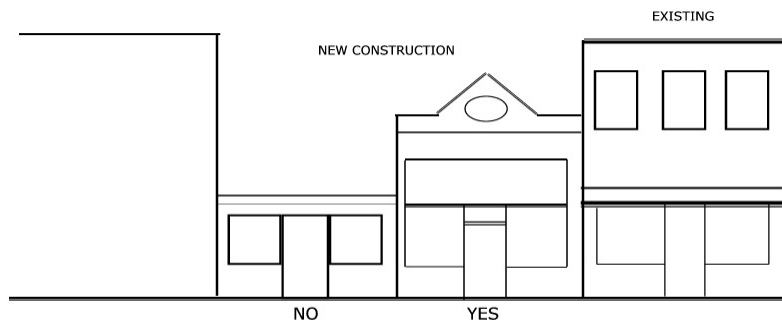
Section 3.6 Commercial District C-1

- 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.



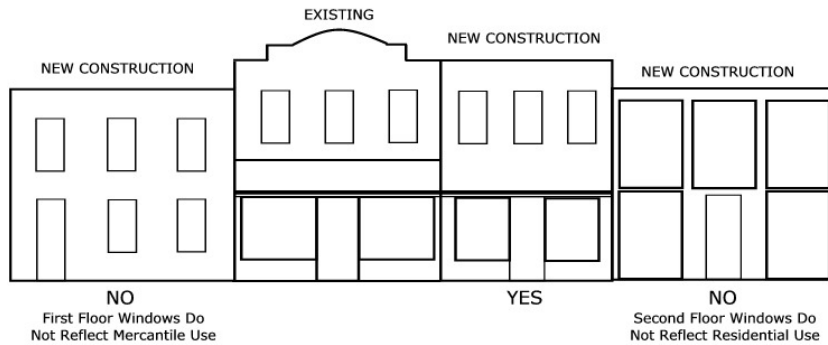
- b. Floor-to-Floor Heights. This important element of scale is often ignored in new construction, which tends toward lower ceiling heights. Floor-to-floor heights of new construction should be within 10 percent of neighborhood construction, where a relatively consistent floor-to-floor height is expressed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



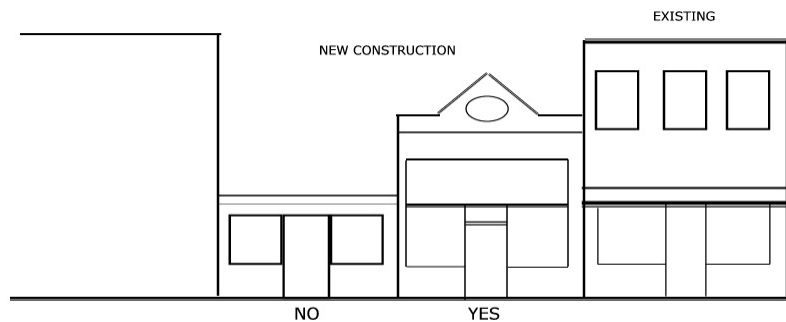
Single Story Buildings Should Reflect Scale of Neighborhood

- 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.