

Planning Commission

Regular Session Agenda

Cape Charles Civic Center – 500 Tazewell Avenue
April 5, 2022, at 6:00 P.M.

1. Call to Order
 - A. Roll call and establish a quorum
2. Invocation and Pledge of Allegiance
3. Consent Agenda
 - A. Approval of agenda format
4. Public Hearing: None
5. Citizen Comment Period, for any item not subject to an advertised public hearing
6. Unfinished Business: None
7. New Business:
 - A. Schedule public hearing on Zoning Text Amendment (ZTA) 2022-01: Accessory Dwelling Unit and Definitions
 - B. Schedule public hearing on Zoning Map Amendment (ZMA) 2022-01: Application from Cape Charles Ventures, LLC to conditionally rezone 238 Randolph Avenue (Tax Map # 83A3-1-625A) from Residential-1 to Commercial-1 with proffers to limit the commercial activity of said proposed rezoning
 - C. Schedule public hearing on Conditional Use Permit (CUP) 2022-002: Application from Cynthia Emrich & Charles van Dyck at 420 Randolph for an Accessory Dwelling Unit Permit After the Fact
8. Report of Officers and Committees
9. Standing Staff Reports
 - A. Interim Planning & Zoning Administrator Monthly Report for March 2022
 - 1.) Subdivision Agent Report
 - 2.) Report on Applications filed with Board of Zoning Appeals, pursuant to Code of Virginia §15.2-2310
 - 3.) CAMP Training: April 27 and April 29 8:30 am – 1:00 pm
10. Announcements - Next Meetings:
 - Regular Session: May 3, 2022 @ 6:00 pm
11. Adjourn

From: [Main inbox](#)
To: [Mayor William "Smitty" Dize](#); [vice mayor](#); [Councilwoman Tammy Holloway](#); [Councilwoman Ellen O'Brien](#); [John Hozey](#); [Libby Hume](#); [Councilman Andy Buchholz](#)
Cc: [Katie Nunez](#)
Subject: Accessory Dwelling Units
Date: Thursday, March 17, 2022 9:29:08 AM

Mr. Mayor, members of the Town Council and Town Manager:

First, thank you for your service to the community. It is much appreciated.

My name is Sam Jones and I live at 538 Monroe Avenue.

As you consider the issue of accessory dwelling units (ADU's), to date the discussion has centered on the use of these units as long-term rentals to address workforce/affordable housing. While an important issue and one that can be addressed through the permitting process, there are other uses of accessory dwelling units that should be considered as well. These include:

1. When the main house is a short-term rental and the owner of the property intends to live in the ADU. This can also be addressed through the permitting process.
2. When the owner wants to include the ADU as part of a short-term rental. This can be addressed in the Town's annual approval of short-term rentals. Note that the ADU should be included as part of the short-term rental of the main house so there are not two short-term rentals at the same time/address.
3. Finally, there is the situation where the owner is not renting either the main house or the ADU at all but wants to use the ADU for overflow housing for family and friends who visit. This should be a "by right" use of the property and not require a permit since there is no rental involved.

All of these uses have come before the Planning Commission as requests for Conditional Use Permits. Addressing these issues in any ordinances or policies you approve will streamline the approval process in the future.

Thank you.

Sam Jones

Sent from [Mail](#) for Windows



PLANNING COMMISSION PRELIMINARY STAFF REPORT

Meeting Date: April 5, 2022

Item #: 7A

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

Date: March 29, 2022

APPLICANT: Planning Commission &
Town Council

TYPE OF APPLICATION: Zoning Text Amendment

SITE ADDRESS: All Zoning Districts

SPECIFIC REQUEST: ZTA2022-01: to amend Accessory Dwelling Unit section and associated definitions

Attached is 3-page document titled "PROPOSED ZONING TEXT AMENDMENTS
SECTION 4.2 (J) – ACCESSORY DWELLING UNITS & SECTION 2.9 – DEFINITIONS
AS OF 3/1/2022"

NARRATIVE OF PROPOSAL

Cape Charles Zoning Ordinance §4.2 (J) – Accessory Dwelling Units was adopted in November 2018 and a review was recently performed to ascertain if the ordinance was working as intended by the Planning Commission and Town Council, including a review of §2.9 – Definitions for terms associated with the Accessory Dwelling Units zoning ordinance. Since January 2022, you have conducted three meetings focused on this review and reached a final draft text amendment which was forwarded to Town Council for their meeting on March 17, 2022.

A staff report was provided that detailed the significant proposed changes to the zoning ordinance and received input from the Town Council which included the following comments, which are not unanimous from the Town Council but offered by individual members:

- Glad to see that this is still focused on a long-term rental concept and would not mind a requirement of owner occupancy of one of the 2 structures on the property with the other structure being allowed for rental.
- Concerned about having too many requirements or regulations, including too extensive of definitions relative to kitchens; recognize that people would like the flexibility to use these types of structures as overflow housing for relatives or friends visiting.
- Appreciative and support of the 2 affidavits verifying annual compliance with zoning ordinance and safety components of the Building Code.
- Want to ensure that we have sufficient staff to continue to administer and monitor issued permits for ADUs

Staff is requesting the Planning Commission to authorize staff to schedule a public hearing on this application for your May 3, 2022 meeting; said public hearing would be held jointly with the Town Council.

Staff will prepare a comprehensive staff report for that public hearing which details the proposed changes and the information and discussion that occurred which led to the proposed changes in the zoning text.

STAFF RECOMMENDATION:

Staff recommends that the Planning Commission schedule a joint public hearing on May 3, 2022, for ZTA2022-01 to amend Section 4.2 (J) and Section 2.9 - Definitions of the Cape Charles Zoning Ordinance for Accessory Dwelling Units.

Attachments:

- (1) PROPOSED ZONING TEXT AMENDMENTS - SECTION 4.2 (J) – ACCESSORY DWELLING UNITS & SECTION 2.9 – DEFINITIONS AS OF 3/1/2022
- (2) Staff Report to Town Council 2022-03-17
- (3) Planning Commission Work Session Agenda Packet of 1/24/2022
- (4) Planning Commission Work Session Agenda Packet of 2/1/2022
- (5) Planning Commission Work Session Agenda Packet of 3/1/2022

Attachment

1

PROPOSED ZONING TEXT AMENDMENTS
SECTION 4.2 (J) – ACCESSORY DWELLING UNITS &
SECTION 2.9 – DEFINITIONS
AS OF 3/1/2022

Legend of Changes in the document:

Current Zoning Text: Regular Text

Proposed Deletions: Shown as **bold, strike-through text**

Proposed Additions: Shown in *Red Italic Font*

A. PROPOSED ZONING TEXT AMENDMENTS TO CCZO SECTION 4.2 (J)

1. ADD A NEW SECTION AS THE FIRST PARAGRAPH in SECTION 4.2 (J)
STATEMENT OF INTENT: *To establish criteria and standards for Accessory Dwelling Units to implement one component of the goal from the Town's Comprehensive Plan to add diversity of housing type while maintaining the neighborhood character and providing affordable housing options. The intent is to allow an increased density on a lot in specific zoning districts to provide opportunity in the creation of long-term rental units to assist in meeting the housing needs of the Town and County.*
2. ORIGINAL ORDINANCE of SECTION 4.2 (J):
Accessory Dwellings. One accessory dwelling may be maintained on a property in the R-E, R-1, R-2 and CR zoning districts, ~~contingent upon approval as a conditional use in accordance with Section 4.3,~~ and subject to the following:
 1. Physical characteristics.
 - a. Accessory dwellings shall be located in an accessory building.
 - b. Accessory dwellings shall not have a floor area exceeding forty-five (45) percent of the floor area of the main building.
 - c. Accessory dwellings shall have one kitchen *area*, one bathroom, and a *sleeping area*.
 - d. Accessory buildings ~~and~~ shall not have the appearance of a single-family dwelling.
 2. Occupancy characteristics.
 - a. Length of stay – ~~No~~ *An* accessory dwelling unit shall be occupied ~~by any person or persons~~, whether paying a fee for such occupancy or not, *by the same person or persons* for a period *no* less than ~~thirty (30)~~ *sixty (60)* consecutive calendar days. Upon request from any building, zoning, finance, or public safety official acting on behalf of the Town of Cape Charles the owner of the subject lot of record upon which the accessory dwelling unit sits shall provide occupancy documentation and/or information as requested, ~~either verbally or in writing. Failure to do so may result in the revocation by the Cape Charles~~

~~Town Council of the conditional use status for the accessory dwelling unit according to Section 4.3.F.~~

~~b. Inspections—All accessory dwelling units shall be inspected annually not later than fifteen (15) days from the anniversary date of the conditional use permit being approved by Town Council.~~

3. Other requirements.

a. Accessory dwellings located in accessory buildings may have a separate water meter from the principal dwelling.

b. Accessory dwellings will be required to have its own municipally issued trash receptacle, separate from the main residence/structure.

c. Accessory dwellings meeting the requirements of all of the physical characteristics of 4.2 (J) (1) above must obtain a Certificate of Completion for Accessory Dwellings from the Code Official, which is equivalent to a Certificate of Occupancy. In order to issue said Certificate, the Code Official will conduct an inspection to determine compliance with the Building Code.

~~b.~~ d. The lot on which an accessory dwelling is located shall have the required minimum lot area for the district in which it is located.

~~e.~~ e. Parking shall ~~be considered on a case-by-case basis as part of the conditional use permit application process, ensuring adherence to~~ *be in compliance with* Section 4.5.1.C.6. ~~(Table of Parking Standards)~~ using both on and off-street parking areas.

~~d.~~ f. Exterior elevations shall also be approved by the Historic District Review Board when required by Article VIII, Historic Overlay.

~~e.~~ g. *Annual Certifications to be submitted to the Town by March 15 of each year to the Building and Planning Department.*

1. The property owner will submit an annual affidavit on Town Affidavit Form for Accessory Dwellings attesting to their acknowledgement and adherence to the Zoning Ordinance requirements for Accessory Dwelling Units .

2. The property owner will submit an annual affidavit on Town Affidavit Form for Safety Compliance for Accessory Dwellings Units.

3. If the property owner changes between March 16 and December 31 of the calendar year, the new property will be required to submit both a new Town Affidavit Form for Accessory Dwellings and a Town Affidavit Form for Safety Compliance for Accessory Dwelling Units no later than 30 days from the property transfer.

B. PROPOSED ZONING TEXT AMENDMENTS TO SECTION 2.9 – Definitions

1. Add the following Definitions to Section 2.9

KITCHEN means a space within a structure designated for the preparation of food that includes a sink.

BATHROOM means a room or area that includes a sink and toilet. It may also include a bathtub, shower, or bidet.

BEDROOM is a room, or space within a structure intended for sleeping. Requirements include:

- *A minimum size of 70 sq. ft; if more than one person occupies the room, there must be 50 sq. ft per occupant.*
- *Access to a bathroom without crossing another bedroom.*
- *Every bedroom must have access to natural ventilation and have a permanent heat source.*
- *Two means of egress: one that leads to the rest of the home without going through another bedroom and one that leads directly to the outside. If the outside egress is a window, it must be at least 5.7 sq. ft and can be no more than 44 inches from the room floor, unless there is a permanent step installed. It shall be illegal to have locking bars or grates covering an egress window.*
- *Ceiling height must be no less than 7 feet.*

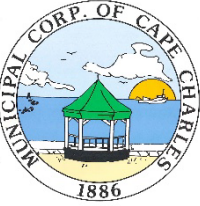
SLEEPING AREA is an area in a room or house where a person can sleep and may utilize a bed, bunk beds, daybed, or other furniture identified for sleeping purposes, including ad without limitation, a pull-out couch or futon.

2. Correct the following definition in Section 2.9

BUILDING, ACCESSORY means a subordinate and separate building located upon the same lot occupied by the main structure or where a main structure was previously located. Accessory buildings shall not be used as dwelling units, unless a **conditional permit is issued for an accessory dwelling** *zoning permit is issued in compliance with Section 4.2 (J).*

Attachment

2

 TOWN OF CAPE CHARLES	AGENDA TITLE: Resolution of intent to consider zoning text amendments to Section 4.2 (J) and Section 2.9 regarding Accessory Dwelling Units and Associated Definitions		AGENDA DATE March 17, 2022
	SUBJECT/PROPOSAL/REQUEST: Consideration of referral to Planning Commission		ITEM NUMBER:
	ATTACHMENTS: Proposed Zoning Text Amendments re: Accessory Dwelling Units and Resolution of Intent #20220317A		FOR COUNCIL: Action (X) Information ()
	STAFF CONTACT (s): Katie H. Nunez, Interim Planning/Zoning Director	REVIEWED BY: John Hozey, Town Manager	

BACKGROUND:

Both the Town Zoning Ordinance and Virginia Code §15.2-2286 (A) (7) requires a resolution of intent from the governing body to initiate any change to a zoning ordinance or zoning map.

ITEM SPECIFICS:

The Planning Commission has conducted a review of the Accessory Dwelling Unit zoning ordinance over the last 2 months, as contained in Section 4.2 (J) which was originally adopted on November 1, 2018 with an effective date of February 1, 2019. With two full years of data available to the Town and based upon feedback through its implementation, we wanted to see if there needed to be any proposed revisions of this section of the zoning ordinance or if it was working as intended to expand the long-term rental units available in Town. Additionally, the Town Manager affirmed that the Town Council is seeking this review as part of its overall conversation about housing types and uses occurring in the Town. While our discussions did end up overlapping with some other housing uses, specifically short-term vacation rentals, we kept our mission and intent very focused on only Accessory Dwelling Units.

The Planning Commission did affirm that the original purpose and intent of allowing an increase in the density allowances of the Residential Zoning Districts through specific criteria for the provision of a required longer-term rental time frame is still in keeping with the Comprehensive Plan but felt that there were some loopholes in the original ordinance language that needs to be addressed.

The current zoning ordinance utilizes a conditional use permit process but it was felt that this process was cumbersome and added at least 4 months to the process just to obtain said approval from the Town without any substantive information or concerns forthcoming from the public hearing process about a particular lot; rather, it was felt that if the criteria could be better defined and to remove ambiguity from the zoning language in this section, then adherence to the zoning criteria for an Accessory Dwelling Unit through a simple zoning review and clearance and issuance of a Zoning Permit for an Accessory Dwelling Unit as well as obtaining a Certificate of Completion from the Code Official to certify that the space identified is compliant with the Building Code for sleeping and occupancy as a residential rental unit. Therefore, the proposed zoning text amendment would eliminate the Conditional Use Permit requirement for an Accessory Dwelling Unit.

In addition, we discussed ensuring that there is an annual process not only for the safety components of the property (through the Code Official) but also to re-affirm an understanding and acknowledgment of the requirements of this zoning ordinance. Therefore, we have included language in the proposed zoning text amendment regarding an annual affidavit affirming the zoning requirements and the submission of an annual Safety Compliance Affidavit completed by the homeowner and subject to inspection, if needed, by the Code Official.

We are recommending that the length of stay requirement go from thirty days to a minimum of sixty consecutive days, thus clearly distinguishing that these units are meant to provide a truly longer-term rental capacity within the Town and not just an adjunct to the short-term rental usage that is occurring in Town.

We are recommending changes to the definitions section to help clarify certain terms relative to Accessory Dwelling Units: specifically, we are seeking to add a definition of Kitchen, Bathroom, Bedroom, and Sleeping Area and to amend the existing definition of “Building, Accessory”.

As part of the Planning Commission discussions, we did touch upon issues of Guest Houses or “In-Law Apartments” but felt that these items were not part of the original intention and purpose of the Accessory Dwelling Unit ordinance when it was adopted in fall 2018. The Planning Commission is willing to consider whether the zoning ordinance should be further amended to address those if the Town Council would like this to be examined further.

A resolution is prepared below; approving this resolution does not constitute approval of any change. It merely identifies that sufficient public necessity, convenience, general welfare, or good zoning practice exists within the proposal to conduct a public process that more fully explores the proposed changes. This resolution will formally establish that the proposed changes meet the requirements to be referred to the Planning Commission for public hearing and their recommendation. Final and formal consideration of any change will be brought back to the Town Council following action by the Planning Commission.

OTHER

During our meetings, there were items that were raised by Code Official Jeb Brady and Town Treasurer Debbie Pocock that the Town may wish to review and address (either thru Town Policy or in Town Code) if these proposed zoning text changes are favorably considered by the Town.

1. House Addressing associated with the Accessory Dwelling Unit vs. the Main House for Emergency Response Personnel/Vehicles
2. Utility Regulations and Practices
For Town Council to Discuss:
Town Code, Chapter 71 – Sewers and Sewer Use, Article IV: Building Sewers and Connections, Section 71-42 (b) includes a provision regarding accessory dwelling units that are approved by town council as a conditional use permit and allowing them to be billed at 50% of the residential monthly minimum bill. It also states that “ accessory dwelling units occupied by family member(s) of the principal property owner or non-rent paying occupants may be exempt from this monthly bill upon the town receiving affidavit signed by the principal property owner attesting to such occupancy.

RECOMMENDATION:

Staff recommends adoption of Resolution of Intent #202203017A Zoning Ordinance Text Amendment to Section 4.2 (J) Accessory Dwelling Units and Section 2.9 Definitions

Attachments:

Planning Commission Work Session Agenda Packet of 1/24/2022
Planning Commission Work Session Agenda Packet of 2/1/2022
Planning Commission Work Session Agenda Packet of 3/1/2022

RESOLUTION OF INTENT #20220317A

ZONING TEXT AMENDMENT regarding SECTION 4.2 (J) -ACCESSORY DWELLING UNITS and SECTION 2.9 - DEFINITIONS

WHEREAS, in accordance with Code of Virginia § 15.2-2286.A, the Cape Charles Zoning Ordinance § 2.7.1 includes regulations pertaining to initiation of amendments, supplements, change in the regulations, district boundaries or classifications of property contained in the zoning ordinance; and

WHEREAS, the need to update the current zoning ordinance has been discussed in the past; and

WHEREAS, Cape Charles Zoning Ordinance §4.2 (J) – Accessory Dwelling Units was adopted in November 2018 and a review was performed to ascertain if the ordinance was working as intended by the Planning Commission, including a review of §2.9 – Definitions for terms associated with the Accessory Dwelling Units zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED that for purposes of public necessity, convenience, general welfare or good zoning practice, the Cape Charles Town Council hereby adopts a resolution of intent to consider amending the Cape Charles Zoning Ordinance §4.2 (J) and 2.9 – Definitions, as proposed by the Planning Commission and any other sections of the Zoning Ordinance deemed to be appropriate to achieve the purposes described herein.

Adopted by the Town Council of the Town of Cape Charles on _____.

By: _____
Mayor Dize

Attest:

Town Clerk

Attachment

3

Planning Commission

Work Session Agenda

Cape Charles Civic Center – 500 Tazewell Avenue

January 24, 2022, 3:00 P.M.

1. Call to Order
 - a. Roll call and establish a quorum
2. Consent Agenda
 - a. Approval of agenda format
3. Order of Business
 - i. Discussion on Accessory Dwelling Units
4. Adjourn



PLANNING COMMISSION STAFF REPORT

Meeting Date: January 24, 2022

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

Date: January 19, 2022

WORK SESSION: Accessory Dwelling Unit Zoning Ordinance Review

During 2021, the matter of accessory dwelling units has come up repeatedly, both from an application request as well as reports of violation requiring investigation and enforcement from the department to bring these violations into compliance with the ordinance requirements.

As these applications/enforcement actions have proceeded through the public hearing process for Conditional Use Permits, as required by the zoning ordinance, several questions have been raised:

- 1) Is the definition/requirement of LONG-TERM STAYS (currently 30 days or longer), whether for a fee or not, appropriate and creating housing units that meet the Comprehensive Plan goals relative to housing?
 - 1a) Need to ensure we have a clear understanding of “affordable housing” - please see Attachments 8 & 9 for information on terminology and stats regarding this for Northampton County. During the various public hearings to date on the Conditional Use Permits for ADUs, I have heard various interpretations as to the type of rental housing the Town is seeking to encourage, such as workforce housing. We need clarity on this issue.
- 2) Does the owner need to reside in the principal structure or can the principal structure be rented out, either for longer than 30 days or on a short-term rental basis and still have an accessory dwelling unit?
- 3) How does the Town monitor and enforce the requirements of the ordinance, especially the 30 day or longer LONG-TERM STAY requirement?
- 4) Can relatives of the principal structure owners utilize the accessory dwelling unit if the LONG-TERM STAY requirement is met?

It is difficult not to enter into this conversation about Accessory Dwelling Units without having some conversation regarding Short-Term Rentals (a person who lodges or obtains lodging at any hotel, motel, tourist home or other facility for not more than 30 consecutive days at his expense or at the expense of another) – this is governed by Cape Charles Town Code Chapter 66 (Taxation), Article IV (Transient Occupancy Tax). So, I am including this provision of the Town Code in our packet so that we are all clear as to these requirements for 30-day or less lodging stays and how they differ from the Accessory Dwelling Unit Zoning Ordinance requirements.

I have invited Town Treasurer Deborah Pocock and Code Official Jeb Brady to participate in this work session since they are closely involved in the administration of these ordinances from certifying compliance with building code requirements to imposition and collection of business license fees and water and sewer fees.

I have included an article that discusses affordable vs. subsidized vs. workforce housing and provided some housing and income stats from the Community Survey (US Census Bureau) to provide a context to Area Median Income (AMI) and acceptable use of income for housing costs as portion of total expenses.

Finally, I have also included the section from the Town Code regarding Building Sewers and Connections since there is reference to how the sewer connection is to be done for Accessory Dwellings, dependent upon the use by family members vs. rental for a fee. I want to ensure that we have consistency across our governing documents and to ensure we inform Town Council if there may be conflicts between the Zoning Ordinance and any other provisions of Town Code. Additionally, I want to ensure that any applicant is being informed of these requirements and I only recently became aware of this Sewer Regulation and will be ensuring that it is called out and included as a new affidavit that will be required for completion as part of an application into our department for an Accessory Dwelling Unit and provided to the Public Works Department for their processing.

There may be additional questions that arise during our discussion that will need to be added to this list to ensure that we are addressing any potential issues/questions as a comprehensive review and possible recommendation for Zoning Text Amendments to the Town Council so that the Accessory Dwelling Unit Zoning Ordinance is meeting the Comprehensive Plan goals.

The following information is provided to assist in this discussion:

- ATTACHMENT 1: Comprehensive Plan (2016) statements relative to ADUs
- ATTACHMENT 2: Planning Commission and Town Council discussions relative to ADU definition of 'long-term'
- ATTACHMENT 3: Current ordinance requirements for accessory structures and ADUs
- ATTACHMENT 4: Current ordinance definitions for terms associated with accessory structures
- ATTACHMENT 5: Current Town Code for Chapter 66, Article IV – Taxation: Transient Occupancy Tax
- ATTACHMENT 6: Comparison Table of VA Towns and Cities re: ADU Owner Occupancy Requirements – compiled by Commissioners Paul Grossman and Ken Butta
- ATTACHMENT 7: ADU Regulations with Suggested Changes from Paul Grossman, Ken Butta and Katie Nunez
- ATTACHMENT 8: Article from HousingForwardVA.org – Affordable vs. Subsidized vs Workforce Housing
- ATTACHMENT 9: HOUSING & INCOME STATS FOR Northampton County
- ATTACHMENT 10: Current Town Code for Chapter 71, Article IV Building Sewers and Connections

Please note that Virginia released a study commissioned through the State Legislature called “State of the Market and Local Policy: Accessory Dwelling Units in the Commonwealth of Virginia” which was e-mailed to you several weeks ago and it can also be found at the following link:

<https://www.vml.org/wp-content/uploads/pdf/ADU-HB2053-Final.pdf>

ATTACHMENT 1

COMPREHENSIVE PLAN 2016

Accessory Dwelling Units

Section II – Settings

II.3 Housing

“Although rising property values have benefited many homeowners, increased rents and housing prices create difficulties for low and moderate income households. If the current trend continues as expected, availability of quality affordable housing will decrease. An analysis of the town’s 2010 Census data shows that 41% of town households are cost burdened. The U.S. Department of Housing and Urban Development defines cost burdened households as families who pay more than 30% of their income for all of their housing expenses including utilities. For example, a household that had a \$30,000 income would be cost burdened if it paid more than an average of \$750 per month on their rent or mortgage, property taxes, property insurance, utilities, and housing maintenance costs. The largest cost burdened group are households who own a home with a mortgage (76), renters (56) and households who own a home without a mortgage (38).

The Town needs to be concerned with planning for quality affordable housing as its economy grows. It is necessary to reduce the percent of cost burdened households since this will help encourage people to live in stable neighborhoods in town instead of moving out into the unincorporated areas of the county and this in turn will help keep the town economically viable throughout the year.”

Section III – A – Quality and Diverse Neighborhoods

III-A.5.1 Overall Policies for Cape Charles Neighborhoods

“2. **Promote compatible infill development** and renovation within established neighborhoods.”

“Expansion of each policy

- **Promote accessory dwelling units to add diversity of housing types, while maintaining the neighborhood character and providing affordable housing options.”**

ATTACHMENT 2

HISTORY RE: 30 DAY MINIMUM REQUIREMENT ORIGINATION

PLANNING COMMISSION Regular Meeting Cape Charles Civic Center February 6, 2018 6:00 p.m.

D. Accessory Dwelling Unit Proposed Draft Text Amendment – Length of Stay:

Larry DiRe stated that he provided an update to Town Council at their November 16, 2017 regular meeting. Questions were raised regarding regulating length of stay and size of bedrooms. Council was concerned that accessory dwelling units would become part of the short-term rental market vs. long-term housing rentals. The Commissioners reviewed the following proposed language regarding length of stay: **“No accessory dwelling unit shall be occupied, whether by a lease holding tenant or other, for a period less than sixty consecutive calendar days.”** There was much discussion regarding the following:

- i) For Cape Charles’ purposes, accessory dwelling units would be permitted by conditional use, not by-right;
- ii) Was there a difference between vacation rental and short-term rental? **Transient occupancy tax (TOT) was collected for rentals less than 30 consecutive days. The proposed language could cause a problem regarding the gap between 30 and 59 days.** Larry DiRe would ensure that the language was reconciled with TOT and the inspection standard and would develop language based on the inspections;

PLANNING COMMISSION Regular Meeting Cape Charles Civic Center March 6, 2018 6:00 p.m.

B. Accessory Dwelling Unit Proposed Draft Text Amendment – Length of Stay:

Larry DiRe stated that following discussion at the February 6 regular meeting, staff reviewed language from the town’s transient occupancy tax form and the building code and found uniformity in both instances referring to transient stays as **“not more than 30 consecutive days.”** Larry DiRe went on to review the proposed draft language regulating the length of stay for accessory dwelling units in conformity with the language and intent of other town documents.

Motion made by Dan Burke, seconded by Dennis McCoy, to approve the proposed language as presented. The motion was approved by unanimous vote.

TOWN COUNCIL Special Meeting Cape Charles Civic Center November 1, 2018 6:30 p.m.

The amended zoning ordinance to become effective February 1, 2019. The motion was approved by unanimous vote.

ATTACHMENT 3

CURRENT ZONING ORDINANCE Requirements re: Accessory Dwellings

The Cape Charles Zoning Ordinance Section 4.2 (J) states that:

Accessory Dwellings. One accessory dwelling may be maintained on a property in the R-E, R-1, R-2 and CR zoning districts, contingent upon approval as a conditional use in accordance with Section 4.3, and subject to the following:

1. Physical characteristics.

- a. Accessory dwellings shall be located in an accessory building.*
- b. Accessory dwellings shall not have a floor area exceeding forty-five (45) percent of the floor area of the main building.*
- c. Accessory dwellings shall have one kitchen and one bathroom.*
- d. Accessory buildings shall not have the appearance of a single-family dwelling.*

2. Occupancy characteristics.

- a. Length of stay – No accessory dwelling unit shall be occupied by any person or persons, whether paying a fee for such occupancy or not, for a period less than thirty (30) consecutive calendar days. Upon request from any building, zoning, finance, or public safety official acting on behalf of the Town of Cape Charles the owner of the subject lot of record upon which the accessory dwelling unit sits shall provide occupancy documentation and/or information as requested, either verbally or in writing. Failure to do so may result in the revocation by the Cape Charles Town Council of the conditional use status for the accessory dwelling unit according to Section 4.3.F.*
- b. Inspections – All accessory dwelling units shall be inspected annually not later than fifteen (15) days from the anniversary date of the conditional use permit being approved by Town Council.*

3. Other requirements.

- a. Accessory dwellings located in accessory buildings may have a separate water meter from the principal dwelling.*
- b. The lot on which an accessory dwelling is located shall have the required minimum lot area for the district in which it is located.*
- c. Parking shall be considered on a case-by-case basis as part of the conditional use permit application process, ensuring adherence to Section 4.5.1.C.6. (Table of Parking Standards) using both on and off-street parking areas.*
- d. Exterior elevations shall also be approved by the Historic District Review Board when required by Article VIII, Historic Overlay.*

ATTACHMENT 4

CURRENT ZONING ORDINANCE DEFINITIONS **that are applicable to Accessory Dwelling Unit Ordinance**

ARTICLE II General Provisions **Section 2.9 Definitions**

BUILDING, ACCESSORY means a subordinate and separate building located upon the same lot occupied by the main structure or where a main structure was previously located. Accessory buildings shall not be used as dwelling units, unless a conditional use permit is issued for an accessory dwelling.

BUILDING FOOTPRINT is the land area on which a proposed building is located.

BUILDING, MAIN means the principal structure or the principal building on a lot or the building or the principal building housing the principal use on a lot.

DWELLING, ACCESSORY is a dwelling unit which is an accessory use to a single family dwelling or commercial use in the Commercial – Residential District.

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.

FRONTAGE is the width in linear feet of each lot where it abuts the right-of-way of any public or private street.

GUEST HOUSE means living quarters on the same premises with the main building for use by temporary guest(s) of the occupant of the premises, such quarters having no separate utility meters and not rented or otherwise as a separate building. [NOTE: This definition is in our Zoning Ordinance but is not a listed use, either by-right or by conditional use permit, in any zoning district.]

LOT means a parcel of land occupied by a main structure or to be occupied by a main structure or group of main structures and accessory structures, together with such yards, open space, and lot areas as are required by this ordinance, and having frontage upon a street, either shown on a plat of record or considered as a unit of property and described by metes and bounds.

LOT COVERAGE is that portion of the lot that is covered by buildings

MINIMUM LOT AREA for R-1 taken from ARTICLE III District Regulations Section 3.2
Single Family Residential District R-1
F. Area Regulations

1. The minimum lot size shall be 5,600 square feet. Dwelling units existing on lots at the time of adoption of this ordinance which are generally on lots 40 feet by 140 feet are considered to be

conforming lots. However, new construction taking place within this district shall meet all standards and requirements of this district.

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.

RESIDENCE means a home or abode or place where an individual is actually living at a specific point or time.

ATTACHMENT 5

- CODE
Chapter 66 - TAXATION
ARTICLE IV. TRANSIENT OCCUPANCY TAX

ARTICLE IV. TRANSIENT OCCUPANCY TAX¹

Sec. 66-55. Violations and penalties.

Any person who shall willfully violate or fail to comply with any provision of this article or who shall file a false or misleading monthly report hereunder shall be guilty of a class 2 misdemeanor and fined an amount of not more than \$1,000.00.

(Ord. No. 20140424, 5-1-14)

Sec. 66-56. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Hotel means any public or private hotel, inn, hostel, tourist home or house, bed and breakfast, tourist camp, tourist cabin, camping grounds, motel, rooming house or other lodging place within the town offering lodging, for compensation, to any transient.

Lodging means any room, lodging or space furnished to any transient.

Transient means any person(s) who, for any period of not more than 30 consecutive days, either at his own expense or at the expense of another, lodges or obtains lodging at any hotel, motel, tourist home, or other facility.

(Ord. No. 20140424, 5-1-14)

Sec. 66-57. Amount of levy.

There is hereby levied and imposed on each transient a tax equivalent to three and seven-tenths percent of the total amount paid for lodging, by or for any such transient, to any hotel, motel, bed and breakfast, campground, and other facilities offering guest rooms rented out for continuous occupancy for 30 consecutive days or less. The revenue collected from the transient occupancy tax shall be allocated for tourism-related initiatives.

(Ord. No. 20140424, 5-1-14; Ord. No. 20150917, § 2, 9-17-15)

¹Editor's note(s)—Ord. No. 20140424, adopted May 1, 2014, repealed the former Art. IV., §§ 66-55—66-67, and enacted a new article as set out herein. The former Art. IV pertained to similar subject matter and derived from Ord. No. 33, § 1—9, adopted June 28, 1984; Ord. 364, adopted January 14, 1992; an ordinance of June 8, 1993; Ord. No. 021103, adopted February 11, 2003; and Ord. No. 20100408A, adopted April 8, 2010.

Sec. 66-58. Exemptions.

The tax imposed by this article shall not apply to the rental of condominiums, apartments, townhouses or single-family houses which are rented for occupancy for periods exceeding 30 consecutive days.

(Ord. No. 20140424, 5-1-14)

Sec. 66-59. Collection.

Every person receiving any payment for lodging with respect to which a tax is levied under this article shall collect the amount of such tax so imposed from the transient on whom such tax is levied, or from the person paying for such lodging, at the time payment for such lodging is made. The taxes required to be collected under this section shall be deemed to be held in trust by the person required to collect such taxes until remitted as required in this article.

(Ord. No. 20140424, 5-1-14)

Sec. 66-60. Reports required.

Every person collecting any tax levied by this article shall make out a report thereof, upon such forms and setting forth such information as the town treasurer may prescribe and require, showing the amount of lodging charges collected and taxes required to be collected. Such person shall sign and deliver such report to the town treasurer with the remittance of the taxes collected. Such reports and remittances shall be remitted to the town treasurer on or before the 20th day of each month covering the amount of tax collected during the preceding month.

(Ord. No. 20140424, 5-1-14)

Sec. 66-61. Collector's records.

It shall be the duty of every person liable for the collection and remittance to the town of any tax imposed by this article to keep and to preserve, for a period of four years, all suitable records as may be necessary to determine the amount of tax to have been collected and remitted to the town. The town treasurer, or a designated representative, may inspect such records at all reasonable times.

(Ord. No. 20140424, 5-1-14)

Sec. 66-62. Compensation for collection.

For the purpose of compensating sellers for the collection of tax imposed by this article, every seller shall be allowed five percent of the amount of the tax due and accounted for in the form of a deduction on the monthly return, provided the amount due is not delinquent at the time of payment.

(Ord. No. 20140424, 5-1-14)

Sec. 66-63. Penalty and interest for late payment.

If any person shall fail or refuse to remit to the town treasurer the tax required to be collected and paid under this article within the time and in the amount specified, there shall be added to such tax a penalty in the

amount of ten percent thereof and interest thereon at the rate of ten percent per annum, which shall be computed upon the taxes and penalty from the first day of the month next following the month in which such are due and payable.

(Ord. No. 20140424, 5-1-14)

Sec. 66-64. Failure to collect taxes or make reports.

If any person, whose duty it is so to do, shall fail or refuse to collect the tax imposed under this article and make timely report and remittance thereof, the town treasurer shall proceed in such manner as is practicable to obtain facts and information on which to base an estimate of the tax due. As soon as the treasurer has procured whatever facts and information which may be obtainable, upon which to base the assessment of any tax payable by any person who has failed to collect, report or remit such tax, the treasurer shall proceed to determine and assess against such person the tax, penalty and interest provided in this article and shall notify such person, by registered mail, sent to his last known address, of the total amount of such tax, penalty and interest. The total amount thereof shall be payable ten days after the date such notice is sent.

(Ord. No. 20140424, 5-1-14)

Sec. 66-65. Northampton County.

Northampton County also collects two percent transient occupancy tax. The report and payment of Northampton County's two percent should be remitted directly to the Northampton County Commissioner of Revenue.

(Ord. No. 20140424, 5-1-14)

Sec. 66-66. Date; effective.

This article shall become effective on April 1, 2003, for all transient tax on that date or thereafter.

Revisions made to this article by Ordinance No. 20140424, shall become effective on July 1, 2014.

(Ord. No. 20140424, 5-1-14)

Sec. 66-67—66-76. Reserved.

ATTACHMENT 6

Comparison of Owners Occupancy Requirements AND Length of Stay Requirements relative to ADUs

1/7/2022

P Grossman

<u>Location</u>	<u>Terminology</u>	<u>Owner Occupancy Req't</u>	<u>Accessory Dwelling Length of Stay Req't</u>	<u>Source</u>
Cape Charles, VA	Accessory Dwelling Unit	None	Occupancy characteristics. a. Length of stay – No accessory dwelling unit shall be occupied by any person or persons, whether paying a fee for such occupancy or not, <u>for a period less than thirty (30) consecutive calendar days</u> . Upon request from any building, zoning, finance, or public safety official acting on behalf of the Town of Cape Charles the owner of the subject lot of record upon which the accessory dwelling unit sits shall provide occupancy documentation and/or information as requested, either verbally or in writing. Failure to do so may result in the revocation by the Cape Charles Town Council of the conditional use status for the accessory dwelling unit	Article IV Section 4.2.J
James City County, VA	Accessory Apartment	Property owner or immediate family as defined I Sec 19-17 shall reside in either single family dwelling or accessory apartment <i>Sec 19-17 'immediate family' as natural or legally defined offspring 18 years of age or older, or an emancipated minor under §16.1-331, et.seq., or parent of owner.</i>	None found	Sec. 24-212, Accessory Apts, detached
Blacksburg, VA	Accessory Apartment	The owner <u>must reside on the premises for at least nine calendar months cumulatively in a calendar year</u> . If owner residence is less than none months, owner will not be permitted to rent the accessory apt during that year.	Owners participating in the accessory apartment permit program are not eligible to rent the property as a homestay (regulated in Chapter 6, Town Code). <i>Homestay means the accessory or secondary use of a residential dwelling unit or a portion thereof by a host to provide <u>room or space that is intended for short term transient rental purposes</u> in exchange for a charge for the occupancy. The primary use of the homestay unit shall remain residential.</i>	Ordinance 1816 (2017) Town Code 6-601
Charlottesville, VA	Accessory Apartment	The property owner must live on-site in either the accessory apartment or the primary residence.	Accessory apartments <u>can be rented on a short term basis</u> compliant with the City's homestay ordinance or it may be rented in a more traditional landlord/tenant arrangement.	ADUs, A guide to Accessory Apts in

ATTACHMENT 6

<u>Location</u>	<u>Terminology</u>	<u>Owner Occupancy Req't</u>	<u>Accessory Dwelling Length of Stay Req't</u>	<u>Source</u>
				Charlottesville, VA (2015) Basic Rules P. 2-4
Fairfax, VA	Accessory Living Unit [ADU means affordable dwelling units]	The owner of the home must live on the premises either within the principal dwelling or the accessory living unit. Only one (either the principal or the accessory unit) may be rented out. Only properties with at least two acres may apply for a detached accessory living unit. All detached units require a special permit application and a public hearing with the Board of Zoning Appeals.	None found	Zoning Ordinance Modernization Project – Summary of Adopted Acc. Living Unit Provisions April 2021
Roanoke County, VA	Accessory Apartment	Only one (1) accessory apartment shall be allowed on any one (1) lot or parcel, and the owner of the property shall reside on the premises.	None found	Sec. 30-82-1. - Accessory Apartments.
Arlington, VA	Accessory Dwelling	In addition to the applicant owning the property where the AD will be located, the property owner/applicant must use either the main dwelling or the AD as their primary residence. <u>If the property owner does not use either the main dwelling or the AD as their primary residence, the entire property cannot be occupied by more than one (1) family.</u>	Accessory uses shall not be allowed in the accessory dwelling except home occupations, including accessory homestay, as permitted and regulated in §12.9.11 (Home Occupation) and §12.9.12 (Homestay Accessory). <i>For the purposes of this §12.9.12, the term resident shall mean either the owner or a tenant. Accessory homestay shall be accessory only to household living use as defined in §12.2.3.A.1, and shall be allowed only where:</i> <i>(a) The dwelling unit is used by the resident of the dwelling unit as his/her primary residence, which means that he or she resides there for at least 185 days during each year; and</i> <i>(b) The bedroom(s) rented to overnight lodgers shall be within the main building of the dwelling unit that the resident occupies as his/her primary residence and shall be</i>	§12.9.2 of the Zoning Ordinance.

ATTACHMENT 6

<u>Location</u>	<u>Terminology</u>	<u>Owner Occupancy Req't</u>	<u>Accessory Dwelling Length of Stay Req't</u>	<u>Source</u>
			<u>allowed in a detached accessory building only where such building is approved as an accessory dwelling.</u> <i>Accessory homestay shall be allowed in dwelling units that have an accessory dwelling, subject to the following:</i> <i>(a) <u>Either the main dwelling, the accessory dwelling, or both may be rented to lodgers by the resident; and</u></i> <i>(b) <u>Occupancy in the accessory dwelling is limited to a maximum of three lodgers.</u></i> <i>12.2.3.A.1</i> <i>Household Living is characterized by residential occupancy of a dwelling unit by a family. Tenancy is arranged on a month-to-month or longer basis. Principal uses where tenancy may be arranged for a shorter period are not considered residential; they are considered a form of transient lodging</i>	
Worcester County, Md	Accessory Apartment	Previously, the owner of the residential dwelling unit in which the accessory apartment is to be located shall occupy at least one of the dwelling units on the premises. HOWEVER , in Nov 2020, the Worcester County Commissioners approved a text amendment that eliminates the requirement that the property owner reside in either the primary dwelling unit or the accessory apartment on the premises. Commissioner Jim Bunting, who with Commissioner Chip Bertino opposed the change, said it would only exacerbate the county's rental problems.	None found	The Dispatch November 19,2020 Passage of Bill 20-8
Town of Duck,NC	Accessory Dwelling Unit	None found	None found	§ 156.140 Accessory Dwelling Units

ATTACHMENT 6

<u>Location</u>	<u>Terminology</u>	<u>Owner Occupancy Req't</u>	<u>Accessory Dwelling Length of Stay Req't</u>	<u>Source</u>
Dare County, NC	Accessory Dwelling Unit	None found	Any ADU approved under these guidelines <u>shall be used for long-term occupancy as defined in Section 22-2</u> of the Zoning Ordinance. Any ADU approved under these guidelines shall not be used for commercial or business activity. However, this limitation shall not prevent the ADU from being authorized as a home occupation according to the definition in Section 22-2. Long-term occupancy - A residential dwelling that is occupied and used for residency and housekeeping purposes for a <u>period of 31 days or more</u> . (Adopted 10-15-2018)	SECTION 22-58.6
Virginia Beach	<i>Flex suite</i>	No flex suite may be constructed or occupied in any dwelling unless (i) the owner of record personally resides in such dwelling, (ii) the dwelling in which the flex suite is located is occupied by a person or group of persons meeting the definition of "family" set forth in section 111, or (iii) the flex suite or dwelling in which it is located is occupied by at least one (1) person who is sixty-two (62) years of age or older or disabled;	No flex suite or dwelling in which a flex suite is located shall be used for purposes of transient occupancy. For purposes of this section, the term "transient occupancy" shall mean occupancy for periods of less than ninety (90) consecutive days	§507
	<i>Garage Apartment</i>	None Allowed as an accessory use in Old Beach overlay district	None Garage apartment, except that the living area shall not be less than five hundred (500) square feet of floor area nor greater than eight hundred (800) square feet, and provided further that such garage apartment shall be at least thirty (30) feet from the structure containing the principal dwelling.	§1903.b.1
	Z runirufh# krxvlgj# +Z IK,1	None Housing that is generally affordable to households with working members who live or work in the City of Virginia Beach. ...For rentals, it is housing that is priced to be affordable to households with annual incomes within a range prescribed in section 16-51 of the City Code.	None The household's gross annual income shall, at the time of application, be between forty (40) percent and ninety (90) percent of area median income	§2102.h
Review of Localities (Eastern Shore) Originally Reviewed during Development of ADU Ordinance Requirements				

ATTACHMENT 6

<u>Location</u>	<u>Terminology</u>	<u>Owner Occupancy Req't</u>	<u>Accessory Dwelling Length of Stay Req't</u>	<u>Source</u>
Northampton County	Accessory Dwelling	The accessory dwelling shall be owned by the same owner as the detached principle single-family dwelling to which it is accessory and the <u>owner shall reside in the detached principal single-family dwelling or the accessory dwelling.</u>	None found	§154.2.117
Cheriton	Accessory Dwelling	None found	None found	
Exmore	<i>Accessory Bldg</i>	None found <i>shall not be used for housekeeping purposes</i>	None found	
Wachapreague				
Parksley				
Onancock	<i>Detached Accessory Living not found</i>	None found	None found	
Onley				
Accomack County	Accessory Dwelling	None found	None found	

ADU REGULATIONS WITH PROPOSED CHANGES – DEVELOPED BY PAUL GROSSMAN, KEN BUTTA, AND

KATIE NUNEZ

1/19/2022

CHANGES SHOWN IN YELLOW HIGHLIGHTING or BLUE STRIKETHROUGH

Section 4.2

J. Accessory Dwellings. One accessory dwelling may be maintained on a property in the RE, R-1, R-2 and CR zoning districts, ~~contingent upon approval as a conditional use in accordance with Section 4.3, and~~ subject to the following:

1. Physical characteristics.

- a. Accessory dwellings shall be located in an accessory building.
- b. Accessory dwellings shall not have a floor area exceeding forty-five (45) percent of the floor area of the main building.
- c. Accessory dwellings shall have one kitchen **area** and one bathroom.
- d. Accessory buildings ~~and~~ shall not have the appearance of a single-family dwelling.

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2. Occupancy characteristics.

- a. Length of stay – ~~No~~ Accessory dwelling unit shall be occupied, ~~by any person or persons,~~ whether paying a fee for such occupancy or not, **by the same person or persons** for a period **no** less than thirty (30) consecutive calendar days. Upon request from any building, zoning, finance, or public safety official acting on behalf of the Town of Cape Charles the owner of the subject lot of record upon which the accessory dwelling unit sits shall provide occupancy documentation and/or information as requested, either verbally or in writing. Failure to do so may result in the revocation by the Cape Charles Town Council of the conditional use status for the accessory dwelling unit according to Section 4.3.F. **(IF CUP requirement is removed, this section will need to be revised.)**
- b. Inspections – All accessory dwelling units shall be inspected annually not later than fifteen (15) days from the anniversary date of the conditional use permit being approved by Town Council **(or, if CUP requirement is removed, from the issuance of the Zoning Permit).**

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3. Other requirements.

- a. Accessory dwellings located in accessory buildings may have a separate water meter from the principal dwelling.
- b. The lot on which an accessory dwelling is located shall have the required minimum lot area for the district in which it is located.

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c. Parking shall be considered on a case-by-case basis as part of the conditional use permit application process, ensuring adherence to Section 4.5.1.C.6. (Table of Parking Standards) using both on and off-street parking areas. (IF CUP requirement is removed, this section will need to be revised.)

d. Exterior elevations shall also be approved by the Historic District Review Board when required by Article VIII, Historic Overlay.

e. The property owner shall be required to sign an annual affidavit attesting to their understanding of this ordinance and willingness to abide by them. Failure to do so will be a violation of this ordinance and will be pursued as such.

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OTHER POSSIBLE CHANGES FOR DISCUSSION

- 1) Since our current Zoning Ordinance contains a definition of GUEST HOUSE, we may wish to consider having two subsets of Accessory Dwelling Units: Guest Houses and what we have been referring to as an ADU. The difference being in the length of stay and in the collection of money for the stay.
- 2) Additional definitions to add to our zoning ordinance (Research and Citations provided by Ken Butta):

KITCHEN means or space within a structure designated for the preparation of food that includes a sink.

BATHROOM means a room or area that includes a sink and toilet. It may also include a bathtub, shower, or bidet

BEDROOM is a room, or space within a structure intended for sleeping. Requirements include:

- A minimum size of 70 ft². If more than one person occupies the room, there must be 50 ft² per occupant.
- Access to a bathroom without crossing another bedroom
- Every bedroom must have access to natural ventilation and have a permanent heat source
- Two means of egress: one that leads to the rest of the home without going through another bedroom and one that leads directly to the outside. If the outside egress is a window, it must be at least 5.7 square feet and can be no more than 44 inches from the room floor, unless there is a permanent step installed. It shall be illegal to have locking bars or grates covering an egress window.
- Ceiling height must be no less than 7 feet.

RESEARCH and CITATIONS on Kitchen/Bedroom/Bathroom Definitions

Bedroom

A private room intended for sleeping, separated from other rooms by a door and accessible to a bathroom without crossing another bedroom. The Complete Illustrated Book of Development Definitions, 4th ed.

“a habitable room designed for sleeping purposes, and which has a minimum habitable floor area of 80 square feet” Fair Housing Advocates Assn. v. City of Richmond Heights (N.D. Ohio, 1998)

Here are some requirements for bedrooms that apply state-wide:

- 1. **Means of Egress:** A bedroom must have two ways to exit: one that leads to the rest of the home and one that leads directly to the outside. In most cases, the outside egress will be a window. A bedroom egress window must be at least 5.7 square feet. It can be no more than 44 inches from the room floor, unless there is a permanent step installed. In addition, it is illegal to have locking bars or grates covering an egress window. Also, in order to be considered a legal bedroom, its sole entrance must not be through another bedroom. Finally, the bedroom must have access to a bathroom without going through another bedroom.*
- 2. **Closet:** Contrary to popular belief, Virginia has no closet requirement for a bedroom.*
- 3. **Square Footage:** The minimum size of a bedroom is 70 square feet. If more than one person occupies the room, there must be 50 square feet per occupant.*
- 4. **Ceiling Height:** Ceiling height must be no less than 7 feet.*
- 5. **Heating and Ventilation:** Every bedroom must have access to natural ventilation (i.e. to the outside air), and must have a heat source. Portable heaters do not count as an adequate heat source.*

Northern Virginia Realtors <https://www.nvar.com/realtors/news/re-view-magazine/article/may-jun-2015/2015-05-06-ask-nvar-legal-definition-of-bedroom>

A room, or space within a structure intended for sleeping. Requirements include:

- A minimum size of 70 ft². If more than one person occupies the room, there must be 50 ft² per occupant.*
- Access to a bathroom without crossing another bedroom*
- Every bedroom must have access to natural ventilation and have a permanent heat source*
- Two means of egress: one that leads to the rest of the home without going through another bedroom and one that leads directly to the outside. If the outside egress is a window, it must be at least 5.7 square feet and can be no more than 44 inches from the room floor, unless there is a permanent step installed. It shall be illegal to have locking bars or grates covering an egress window.*
- Ceiling height must be no less than 7 feet.*

KITCHEN. Kitchen shall mean an area used, or designated to be used, for the preparation of food. Virginia Uniform Statewide Residential Building Code
<https://codes.iccsafe.org/content/VRC2018P1/chapter-2-definitions>

A room, or space within a structure designated for the preparation of food that includes a sink.

Bathroom

From the IRC: BATHROOM GROUP. A group of fixtures, including or excluding a bidet, consisting of a water closet, lavatory, and bathtub or shower. Such fixtures are located together on the same floor level.

From NEC: Bathroom. An area including a basin with one or more of the following: a toilet, a tub, or a shower.

A room or area that includes a sink and toilet. It may also include a bathtub, shower, or bidet.

ATTACHMENT 8

ARTICLE FROM HOUSINGFORWARDVA.ORG

What is affordable housing?

There is no single definition of affordable housing. What is considered “affordable” by a family earning \$100,000 a year will be out of reach for another family that earns only \$25,000 a year. Incomes and housing costs also vary by location. A typical home in one community might cost \$300,000, while that same house would cost half as much in another part of the country.

Rules of thumb are often used to determine affordability. For example, the federal government considers housing to be affordable if a family spends no more than 30% of its income on its housing costs, including utilities. Using this benchmark, a family earning \$30,000 a year could afford to pay up to \$9,000 a year (or \$750 a month) on housing. In the private sector, lenders underwriting home purchases typically require that families spend no more than some set percentage of income (such as 28%) for mortgage payments, taxes, and insurance.

Yet, these “rules” don’t tell the whole story. A family making \$200,000 per year can afford to spend more than 30% of its income on housing and have enough left over to meet other necessities, but a family making \$20,000 might not be able to make ends meet on the income left over after spending 30% for housing. A family’s capacity to meet other expenses depends on other factors such as family size and age of children.

Ultimately, families of all incomes need affordable homes- homes that are decent and accessible to jobs, shopping and other services, and available at a cost that allows them to provide for life’s other necessities, such as food, clothing, and medical care.

What is “subsidized” housing?

Most housing, affordable or otherwise, is provided by the private market place. That is, developers, homebuilders, or landlords compete to sell or rent units to potential homebuyers or tenants to buy or rent. Some households, particularly lower- income households, are at a great disadvantage when it comes to renting or buying market- rate homes. They may have to pay excessive portions of their income, crowd in with other families to pool resources, or live in substandard conditions. That is why various government programs have been created to help people obtain decent, affordable homes.

Subsidized housing is housing that is made available at below- market rates through the use of government subsidies. Unlike other government programs, such as food stamps or Medicaid, housing subsidies are not an entitlement and are generally in short supply. Many communities have long waiting lists for housing assistance.

What is workforce housing?

Workforce housing is housing for the occupations needed in every community, including teachers, nurses, police officers, fire fighters, and many other critical workers. In many communities, there is a mismatch between where these jobs are located and where affordable homes are located- a difficult situation for both working households and employers. Many working families must choose between paying exorbitant housing costs to live close to their jobs or enduring lengthy commutes from areas with more affordable housing. In areas with particularly high housing costs, employers may have difficulty retaining employees because the workers do not make enough to afford nearby homes and tire of long commutes.

Workforce housing is also an issue of equity. People who provide the bulk of essential services in their communities- teachers, police officers, fire fighters, hospital workers, laundry, and restaurant workers- often cannot afford to live in the communities they serve. The lack of affordable workforce housing is felt beyond working families, however. High housing costs force families to move further and

further from their place of work to afford housing. Cities become ever more sprawling, leading to increases in traffic congestion, air pollution, and road maintenance costs that negatively affect the quality of life for all residents in the community.

The families in need of workforce housing do not fall neatly into a single narrow income category. Employees in some industries (e.g. retail sales, food service, tourism) are likely to be in the lower income ranges. Seasoned workforce jobs with education or training requirements, such as teachers, police officers, nurses, etc., may fall into the middle income brackets but still find it difficult to afford homes in the community where they work.

ATTACHMENT 9
STATS ON NORTHAMPTON COUNTY VA FROM US COMMUNITIES SURVEY 2019
RE: HOUSING & INCOME

NORTHAMPTON COUNTY, VA – AFFORDABLE HOUSING SNAPSHOT	
Total Affordable Apartment Properties	13
Total Low Income Apartments	578
Total Housing Units with Rental Assistance	378
Percentage of Housing Units Occupied by Renters	31.14%
Average Renter Household Size	2.52
Average Household Size	2.26
Median Household Income	\$35,055 ± 2,997
Median Rent	\$694 ± 30
Percentage of Renters Overburdened	43.7% ± 6.14 pp
Total Population	12,184

13 low income housing apartment communities offering 578 affordable apartments for rent in Northampton County, Virginia.

- 378 Income Based Apartments. Tenants of income based apartments typically pay no more than 30% of their income towards rent and utilities.
- 166 Rent Subsidized apartments that do not provide direct rental assistance but remain affordable to low income households in Northampton County.

On average, Section 8 Housing Choice vouchers pay Northampton County landlords \$500 per month towards rent. The average voucher holder contributes \$300 towards rent in Northampton County.

The [maximum amount](#) a voucher would pay on behalf of a low-income tenant in Northampton County, Virginia for a two-bedroom apartment is between \$702 and \$858.

[Fair Market Rents](#) can be used to better understand the average housing costs of an area. Fair Market Rents are used by HUD to establish payment and rent standards for federal rental assistance programs like the Section 8 Housing Choice Voucher Program.

	Studio	One BR	Two BR	Three BR	Four BR
Northampton County, Va Fair Market Rent	\$533	\$685	\$780	\$1,095	\$1,160
Northampton County, Va Payment Standard Range	\$480 to \$586	\$617 to \$754	\$702 to \$858	\$986 to \$1,205	\$1,044 to \$1,276

INCOME and RENT OVERBURDEN in NORTHAMPTON COUNTY

The median gross income for households in Northampton County is \$35,055 a year, or \$2,921 a month. The median rent for the county is \$694 a month.

Households who pay more than thirty percent of their gross income are considered to be Rent Overburdened. In Northampton County, a household making less than \$2,313 a month would be considered overburdened when renting an apartment at or above the median rent. 43.7% of households whose rent are overburdened in Northampton County.

INCOME QUALIFICATIONS FOR HUD RENTAL ASSISTANCE IN NORTHAMPTON COUNTY

	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
30% AMI Income Limits Renters earning up to 30% of the Northampton County AMI may qualify for rental assistance programs that target Extremely Low Income households.	\$12,880	\$17,420	\$21,960	\$26,500	\$31,040	\$34,900	\$37,300	\$39,700
50% AMI Income Limits Renters earning up to 50% of the Northampton County AMI may qualify for rental assistance programs that target Very Low Income households.	\$21,050	\$24,050	\$27,050	\$30,050	\$32,500	\$34,900	\$37,300	\$39,700
80% AMI Income Limits Renters earning up to 80% of the Northampton County AMI may qualify for rental assistance programs that target Low Income households.	\$33,700	\$38,500	\$43,300	\$48,100	\$51,950	\$55,800	\$59,650	\$63,500

ATTACHMENT 10

TOWN CODE CHAPTER 71 – SEWERS AND SEWER USE ARTICLE IV: BUILDING SEWERS AND CONNECTIONS

Sec. 71-42. Connection charges.

- (a) Connection charges shall consist of a connection fee and a facility fee. The connection fee contributes to the town's costs associated with maintaining the treatment works. The facility fee covers the capital cost of creating treatment works capacity.
- (b) Class I. The connection fee shall be \$875.00, and the facility fee shall be \$6,600.00, for a total charge of \$7,475.00. For residences having fewer than two bedrooms, the charge shall be one-half of that amount.

Accessory dwelling units approved by town council as a conditional use shall be billed at 50 percent of the residential monthly minimum bill. Accessory dwelling units occupied by family member(s) of the principal property owner or non-rent paying occupants may be exempt from this monthly bill upon the town receiving affidavit signed by the principal property owner attesting to such occupancy.

- (c) Class II. The connection fee shall be \$875.00. The facility fee shall be calculated on a consumption-based formula as follows: Class I facility fee x residential equivalent x 75 percent. Residential equivalent shall be the estimated daily water consumption rate for the building, as shown below, divided by the residential daily water consumption rate of 125 gallons per day. For buildings with a proposed use not shown below, and for water incorporated into a manufactured or processed product, the town manager will develop an estimated daily water consumption rate for approval by the town council. In no case shall the facility fee be less than a class I fee for a residence having fewer than two bedrooms.

Building Use	Gallons Per Day
Food and beverage, principally sit down	10 per seat
Food and beverage, principally carry out	115
Lodging	45 per lodging room
Retail sales	20 up to 5,000 sq. ft., 4 per 1,000 sq. ft. above 5,000
Office	25 up to 5,000 sq. ft., 5 per 1,000 sq. ft. above 5,000
Medical office	50 per provider
Manufacturing*, distributing, servicing	135 up to 30,000 sq. ft., 5 per 1,000 sq. ft. above 30,000

* Excluding water incorporated into a product

For buildings qualifying under chapter 66, article VIII of this Code, the facility fee used in the consumption-based formula shall be \$1,375.00, rather than the class I facility fee, if construction activity is commenced after the submission of the application or within the ten-year period of tax exemption. For buildings being converted to a different use, a new facility fee shall be calculated, and the increment shall be either charged if higher or refunded if lower than the previous use.

- (d) Such charges, plus \$100.00 for inspection fees and review fees, shall be paid to the building department at the time of building permit issuance, or to the town treasurer pursuant to any payment programs authorized by town council and as outlined in section 71-42(e), prior to the initiation of connection related construction activities.
- (e) The following four payment options have been approved by the town council:
 - (1) Payment of one-half of the total connection and facility fees at the time of permit issuance and the payment of the remaining half at the time of the issuance of the certificate of occupancy.

ATTACHMENT 10

TOWN CODE

CHAPTER 71 – SEWERS AND SEWER USE

ARTICLE IV: BUILDING SEWERS AND CONNECTIONS

- (2) Payment of one-quarter of the total connection and facility fees at the time of permit issuance and payment of one-quarter of the fees every three months until paid-in-full. If the certificate of occupancy is issued earlier than nine months after permit issuance, the entire remaining amount due shall be paid at time of issuance of the certificate of occupancy.
 - (3) Payment of the total connection and facility fees at the time of issuance of the certificate of occupancy, not to exceed 18 months from date of permit issuance.
 - (4) Payment of the total connection and facility fees at the time of permit issuance.
 - (f) All utility connection and billing fees associated with accessory dwelling units approved by town council as a conditional use shall be imposed based on criteria established by town council.
- (Ord. No. 20110210, 2-10-11; Ord. No. 20120510A, 5-10-12; Ord. No. 20140918 , 9-18-14; Ord. No. 20180920 , 9-20-18; Ord. No. 20181206 , 12-6-18; Ord. No. 20181220 , 12-20-18)

Sec. 71-43. Connection costs.

The costs and expenses incidental to the building sewer installation and connection to the town's treatment works shall be borne by the owner. This shall include the installation of sewer laterals between the owner's property line and the sewer main or other mutually agreeable point. The owner shall indemnify the Town from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer and laterals.

(Ord. No. 20110210, 2-10-11)

Sec. 71-44. Separate connections required.

A separate and independent building sewer shall be provided for every building except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, courtyard, or driveway. When this occurs, the building sewer serving the front building may be extended to the rear building and the whole considered as one building sewer. The town assumes no obligation or responsibility for damage caused by or resulting from any single building sewer which serves two buildings.

(Ord. No. 20110210, 2-10-11)

State of the Market and Local Policy: Accessory Dwelling Units in the Commonwealth of Virginia

Prepared for:

Accessory Dwelling Unit Stakeholders Advisory Group

Sponsored and Led by:

Virginia Department of Housing and Community Development

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Center for Regional Analysis**



In collaboration with:

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and

Housing Forward Virginia



November 2021

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Acknowledgement

This report would not have been possible without the participation and input of members of the ADU Stakeholders Group, staff at the Virginia Department of Housing and Community Development, and the individuals who generously offered their time, provided access to data and information, and freely shared the successes and challenges their communities and organizations are facing in navigating the many policy, operational, and public perception issues related to this rapidly emerging housing issue. The research team deeply thanks all these individuals and supporting organizations.

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Introduction

The following reports the findings of a data and information gathering exercise to provide the Accessory Dwelling Unit Stakeholder Advisory Group (SAG) and the Virginia Department of Housing and Community Development (DHCD) input on key issues related to accessory dwelling units (ADUs) in the Commonwealth of Virginia. The work performed in this analysis and the SAG was implemented pursuant to House Bill 2053.

The research undertaken covers issues related to:

- Assessing local jurisdiction efforts in counting the number of ADUs in their communities;
- Consideration of market trends that impact the demand and supply of ADUs;
- Review policies and actions taken by selected Virginia localities regarding ADUs; and,
- Identifying best practices by localities or states regarding the role of ADUs as contributions to the local supply of housing.

The format of this report takes on the form of a briefing paper. The observations and findings reported here have been presented to the SAG with the assistance of DHCD staff in a series of virtual meetings held during the summer and early fall of 2021. This report summarizes the data and information provided in those briefings.

The report is organized into four sections. Section 1 reports the findings of several stakeholder interviews with local officials, businesses, professional organizations, and others with special knowledge of the policies and market conditions for ADUs in Virginia. Section 2 offers a review of the extensive professional and academic literature that has emerged over the past several years as governments explore the role of ADUs in the housing market and the potential for this type of housing to contribute to the supply of workforce housing or to meet specific homeowner needs. Section 3 provides examples from jurisdictions across the nation that can be considered best practices for policies and programs to encourage the development/creation of ADUs. Finally, Section 4 offers some insights from the research team on the specific issue of how local jurisdictions could improve upon existing strategies for counting existing ADUs.

Section 1: Key Informant Interviews

In pursuing information on specific ADU-related issues and policies within Virginia localities, we interviewed several local government officials, business leaders, and others with special knowledge of this topic. Some of the individuals interviewed are members of the SAG. Participants were requested to provide data and information of several topics and to freely offer their professional insights under the condition that their insights would not be personally attributed to encourage frank conversations. The subject areas covered in the interviews included:

- Counting existing ADUs;
- Current and future market demand;
- Local actions and ordinances;
- Policy issues;
- Creation and use of specific codes or regulations; and,
- Exploring how the state could help localities.

The sampling approach use to identify localities for participation is purposive with emphasis on geographic diversity, market diversity, and over-representing localities with notable recent efforts in studying and implementing programs and policies regarding ADUs. Participants in the interview represented the following jurisdictions and key subject matter experts:

Public Sector

Cities

- Alexandria
- Blacksburg
- Charlottesville
- Richmond
- Harrisonburg
- Norfolk
- Virginia Beach

Counties

- Chesterfield County (two perspectives)
- Fairfax County
- James City County

Private Sector

- Bayse (HOA resort community in Shenandoah)
- Virginia Association of Counties
- Mercer Trigiani (legal firm for HOAs and condo associations)
- The Gaston Group (government relations firm for realtor associations and others)

The interview guide used for these participant interactions can be found in the appendix to this report. The interviews were performed in a qualitative manner and subjects and interviewers were free to explore topics not specifically listed in the interview guide. If the interviewee offered specific numbers relevant to a subject area, they are reported below.

The following reviews the findings of these key informant interviews organized by topic.

ADU Counts

Undercounted:

Interviewees with counts reported between 14-164 total approved units using registration applications. However, all acknowledge that these numbers are undercounts. They do not include ADUs with expired registrations nor those that were never registered. For some jurisdictions it is suspected that official counts severely underrepresent the number of units in the market.

Vocabulary matters:

Special Use Permits (SUP) and Conditional Use Permits (CUP) probably include many ADUs, but they are usually counted separately. Other terms used to describe ADUs among the jurisdictions include “duplex,” “flex suite,” “AA” (accessory accommodation), and “in-home rental space.”

Limited resources:

Most jurisdictions interested in improving the accuracy of ADU counts report that they do not have enough staff or time resources to investigate further. There is little incentive to collect the data in areas not politically motivated to promote ADUs.

ADU Registration

Complaint-based penalties

Most jurisdictions have systems in place to register ADUs. Encouragement to register is based primarily upon the threat of penalties. However, investigations into unapproved ADUs are based almost completely in response to (usually) neighbor complaints. Most participating jurisdictions will waive any penalties if an owner comes into compliance. However, this is not public knowledge, so it is not perceived to be particularly impactful on owners coming forward. There were various views on incentivizing the registration of existing un-registered units by waiving fees with some being concerned about revenue impacts of waivers.

No registrations

Some jurisdictions have no registration system for ADUs, although nearly all interviewees referenced CUP/SUP zoning permit systems that likely include many ADUs.

Current & Future Market Demand

Inferred Demand

Interviewees were familiar with their communities' housing demands in general.

Based on increasing real estate prices and shortages of affordable housing in nearly all areas, most interviewees reporting stable or rising demand for ADUs. However, descriptions of ADU-specific market demand are anecdotal and are driven more by local market factors such as being a college town, tourism destination, and other factors. Many noted the role of ADUs in addressing immediate family needs (granny-flats, units for returning children, see below) but noted that these needs change over time and as unit ownership changes. Multiple interviewees described ADUs as a small piece of a much larger picture. Therefore, some jurisdictions have not focused much attention on this issue.

HOA-Represented Neighborhoods

Areas with a substantial portion of housing represented by Homeowners Associations (HOAs) are not looking to expand or increase density. These organizations are highly concerned about policy changes that would erode owner property rights in maintaining neighborhood character. Interviewees from the private sector agreed that HOAs could be expected to oppose policies that overrule by-laws and deed restrictions (neighborhood control) regarding the number of housing units on a given property.

Housing for Family Members

Interviewees described an increase in multi-generational households driving the demand for ADUs. The family members who could occupy them are either elderly or adult children. Interviewees that expressed interest in the specific use of the ADUs all hypothesized that owners could register under the guise of housing a family member but instead use it as a rental property. Monitoring the use of the ADU and then enforcing the rules is a universal challenge.

Housing for Students

Among the four university towns (i.e., Charlottesville, Norfolk, Harrisonburg, and Blacksburg), all but Harrisonburg expect students to occupy most ADUs in their markets.

Rental Income

Most participating jurisdictions allow long-term rentals but have restrictions on short-term rentals. Policies range from disallowing most rental properties and all short-term rentals to allowing nearly all income-generating rentals. These policies mostly align with observer expectations of the structure of the local economy. Identifying best practices regarding short-term rentals requires consideration of the overall policy goals related to the role of these units in the local economy.

Actions & Ordinances

Active Discussions

Nearly all communities have ongoing conversations regarding ADUs among policymakers. They are generally in favor of ADUs as a means of increasing housing stock. Respondents report that enthusiasm for allowing and promoting the creation of new ADUs varies greatly across neighborhoods and constituencies in their jurisdictions.

Policy Development

Communities vary widely in their level of development of ADU policies. Some currently have no relevant policies with very little discussion, while others have well-developed, fully implemented policies. Many interviewees expect even fully implemented policies to be revised and updated in the near future.

Four municipalities are currently creating or implementing new ADU initiatives:

- Alexandria (implemented March 2021),
- Richmond City (expected enactment Fall 2021),
- Virginia Beach (currently under consideration),
- Blacksburg (currently revising the 2017 ordinance).

None are promoting ADU development directly, though some have incentives for building affordable housing units that could potentially be applied to ADUs.

Priorities

All interviewed jurisdictions see ADUs as a tool to increase the housing supply and address affordable housing needs. Three described expanding the number of ADUs to address the economic issues of homeowners and the tourism industry. Only two interviewees described their jurisdictions as overall politically resistant to density and growth.

Network

Most interviewees were unaware of any efforts to collaborate with neighboring jurisdictions on creating consistencies in policies or programs related to ADUs. At least two interviewees cited Norfolk as a possible model for relevant policies. The City of Williamsburg was also cited multiple times as a model and potential collaborator.

Issues regarding Policies & Codes

Current Zoning Ordinances

By-Right and Conditional Use Permits (CUPs)

Most jurisdictions represented have at least some residential zones where ADUs are by-right. Exceptions are James City County and Chesterfield County, where all ADUs require CUPs. There are a variety of conditions that impact the zoning of a property. In some areas, ADUs are allowed by-right in any residential property, while others allow ADUs only on properties in specific zoning categories, even when the properties are in the same neighborhood.

Enforcement

Nearly all interviewees, including those from the private sector, recognize that enforcing ADU ordinances are difficult.

- In a development that plans to include ADUs, any checks on compliance after the initial plan is approved is perceived as overly burdensome.
- An approved addition to an existing property is resource-heavy in that enforcing building codes requires comparison to the original plans.
- Once approved, enforcing the type of occupant is difficult, if not impossible. Several participants expressed concern that ADUs approved for housing family members would actually be or become short-term rentals.
- Complaints are the only tool that is used to learn of ADU ordinance violations.

HOAs

Municipalities have little authority over HOAs to change their covenants and restrictions to include ADUs if they are not explicitly included in the original development plans. Three themes were described concerning HOAs and ADUs:

1. Density, especially parking, is a primary concern
2. Wear and tear on common facilities are accelerated by additional residents.
3. Enforcing architecture that maintains the neighborhood's character is a significant responsibility of an HOA; therefore, additions are problematic.

Parking and Density

All private and public sector interviewees who described challenges with increasing the number of ADUs reported that parking density is a major concern. It is a source of political conflict in some jurisdictions. Many interviewees believe that parking concerns are related to the misconception that ADUs equate to changes in type of housing/zoning on a given property. Some report addressing parking as part of the requirements for current ADU registration processes.

Commercial Use

Long-Term Rentals

Long-term rentals are generally allowed if the principal dwelling is owner-occupied. For jurisdictions wanting to increase the number of ADUs, this is the target market, so restrictions on this use are relatively few.

Short-Term Rentals (STR)

There is a wide range of attitudes regarding the regulation of ADUs as STRs. Some jurisdictions, including most HOAs, prohibit STRs. Several allow short-term rentals for a maximum of 90 days in a calendar year. All of the jurisdictions included in this analysis have some type of regulation on STRs,

though it is likely that some small communities outside of usual tourism areas may have found little need to develop such policies.

Architecture

Some interviewees described the importance of ensuring structures complement existing forms and characters of the neighborhood. This is more of an issue for detached structures than interior units.

Restrictive Codes

Three interviewees discussed building codes in detail. Some regulations are cumbersome and are disincentives to either build or register ADUs. Fire-rated walls were cited multiple times as an example of a building code that may be unnecessary in some ADUs. The research did not specifically ask if participants are aware of recent building code amendments or the process for future changes to building codes relevant to ADUs. Several interviewees characterized the permitting process as too complex.

During the 2018 Code Development Cycle (2019 - 2020), Uniform Statewide Building Code (USBC) requirements related to accessory dwelling units (ADUs) were discussed by DHCD's Residential Uses Sub-Workgroup. The Sub-Workgroup, made up of a diverse group of stakeholders, developed and submitted a code change proposal that was approved by the Board of Housing and Community Development for the 2018 edition of the USBC, which became effective on July 1, 2021. The changes provided a new compliance path for ADUs that eliminates or provides trade-offs for some of the most costly construction requirements that were required by previous editions of the Code.

Initial Site Plans

Including ADUs in a site's building plan is widely supported as the simplest measure to ensure that aesthetic and functional requirements are fulfilled. Some interviewees indicated that community members are more likely to be resistant to later additions.

Role of the State

Resistance to Broad-stroke Regulations

Many interviewees expressed interest in the guidance from the state, including standardized definitions for auxiliary structures or transient occupants. However, several expressed concern that state land-use mandates would restrict county processes and be "destructive to communities."

Influence of HOAs

According to the private-sector interviewees, HOA covenants and restrictions (C&R) are durable, and even state legislation can have a limited effect. ADUs will only be allowed in HOA communities if they are written into the original C&R or if the community changes its rules. Public-sector interviewees requested support from the state to encourage HOAs to consider flexibility on ADUs, especially in areas with ample developable space (large lots).

Support Local Incentives

Dedicated affordable housing

Interviewees suggested that increases in state funding could support local incentive programs for potential ADU homeowners and builders. Most would prefer to offer loan forgiveness or tax incentives in exchange for dedicating an ADU as an affordable housing unit.

Development fee waivers/tax incentives

The inclusion of an ADU in initial home construction is considered easier than adding to an existing residence. For that reason, state level support of fee waivers or tax incentives for developers would be helpful. One interviewee was explicit that the state allows developers to choose to either provide affordable units or contribute to county proffers. Their jurisdiction would prefer to have the actual units rather than the cash contribution.

Public Perception

A frequent theme among participants was the discrepancy between public perception of ADUs, along several topic dimensions, and market and governance realities. Multiple participants suggested that the state could educate the public on the potential and real roles ADUs play in supporting economic resilience, do not change neighborhoods from single-family dwellings to multi-family complexes, and likely already exist, even if they are not registered.

Section 2: Literature Review

The diverse terminology of Accessory Dwelling Units (ADUs) including secondary units, secondary suites, second units, ancillary units, accessory apartments, accessory living units, accessory suites, backyard cottages, back houses, alley flats, carriage flats, coach houses, garage apartments, granny flats, companion units, mother-in-law apartments, in-law units, in-law suites, outlaw in-laws, and laneway houses, reflects local variations in housing market, regulatory environment, available resources, urban forms, and policy goals. (Anacker & Niedt, 2019). Although ADUs are recognized as a useful means of supplying housing without changing the neighborhood physically, the use of ADUs for housing supply varies widely from region to region (Stacy et al., 2020). For example, in Arlington, Virginia, only 20 units were built between 2009 and 2017 due to stringent regulations on ADUs, whereas in Portland, Oregon, 4,047 ADU permits were issued between 1995 and 2019 with a clear and streamlined permitting process (Anacker, 2018; Chapple et al., 2018). Recent interest in ADUs has stemmed from the various advantages ADUs offer, especially the ability to create housing units without significant side effects in environments where available land is limited. Several cities have actively removed obstacles to promote ADU construction, and their actions have been followed by significant increases in supply.

In this review, we discuss the relevant academic and professional literature available on ADUs and ADUs' role in housing markets. The findings of such a review can guide other research elements and provide insights into a wide range of related issues that will inform recommendations developed by the Stakeholder Advisory Group.

Expected benefits from ADUs and outcomes in reality

The construction of ADUs can offer a number of advantages over conventional housing construction. However, the expected benefits are not always realized due to barriers such as financing, access, and concerns among neighbors. The following subsections outline common barriers inhibiting popular goals of ADU construction.

An ADU can provide rental income to owners, but construction financing can be a barrier. Creating a living space for family members and helpers is one of the important motivations for building ADUs, but gaining additional income is the most powerful motivation (Chapple et al, 2017). According to surveys in California, Portland, Seattle, and Vancouver, about half of new ADUs serve as rental units, including long-term and short-term rentals (Chapple et al, 2017; Chapple et al, 2021). This means that ADUs can

serve as an additional income source for homeowners and provide rental housing to the housing market. Since building ADUs can generate a high return in income, owners have an incentive to construct them where it is feasible. However, not all landlords who are able to build generate ADUs. Although construction costs are relatively low, building an ADU is not easy if owners do not have cash or cannot refinance the primary home. Since the construction of an ADU effectively has no land cost, it is possible to add housing units at a lower cost than building a new home or buying an existing home. The 2019 data in California show that the cost of ADUs are \$450/sf less than the average construction cost of Low-Income Housing Tax Credit units (Chapple et al., 2021). However, an ADU is not duly recognized as a formal housing unit, and ADUs have been denied mortgages by some lenders (Buker, 2015; Chapple et al., 2017; Peterson, 2018). Several surveys point out that cost and difficulty in financing is a key barrier (Chapple et al., 2021; Gebhardt et al., 2018; Salvador, 2020). According to a Portland survey, ADUs are commonly constructed with cash savings (45%) and 56% of respondents said more than 50% of construction costs came from cash savings (Gebhardt et al., 2018).

In summary, while ADUs can bring additional income to homeowners, building an ADU has higher financial barriers than building a typical home.

ADUs can provide affordable housing, but only affordable for acquaintances.

Stabilizing rent prices through additional supply of housing units and incentives such as waiving fees for units rented to low or very low-income renters are reasons why ADUs are considered as an approach to achieve affordable housing goals. California mandated ADUs as suitable housing for seniors, college students, and low-income households in 1982 (Ramsey-Musolf, 2018). Negative views prevail as to whether ADUs fulfill their role as affordable housing. While the median rental price of an ADU is reported to be affordable to the median household of two people in the San Francisco Bay Area and the Central Coast regions (Chapple et al., 2021), there is no evidence that affordable units contribute to the stock of housing affordable to low-income households. In California, very few cities imposed covenants on ADUs such as maximum rent and occupant income limits. This reduced the efficacy of ADUs produced as low-income housing units because of the lack of oversight (Ramsey-Musolf, 2018). Moreover, while planners planned to dedicate more than 80% of new ADUs to low-income households, none of the 749 new units were actually identified as suitable for low-income households (Ramsey-Musolf, 2018). Reports on whether ADU rental prices are lower than comparable units and market-rate are mixed (Brown & Palmeri, 2014; Salvador, 2017; Wegmann & Chapple, 2012). Research suggests that the key determinant of rental price is who becomes the tenant. The affordability benefits of ADUs appear to be reserved for family and friends (Palmeri, 2014; Salvador, 2017; Salvador, 2020). In Edmonton, Canada, ADUs rented to friends and family tend to be much lower than the market rate, while units rented to unrelated people are slightly above the market rate (Salvador, 2020). 58% of ADU units for long-term rental in Portland are occupied by acquaintances (Gebhardt et al., 2018). This affordability is recognized as “voluntary affordability” and is seen as a unique phenomenon in ADUs.

In summary, attempts have been made to provide affordable housing units through ADUs to low-income and select groups, but that goal has not been consistently achieved because there are no affordability guidelines or ordinances that city administration can or have the capacity to enforce. Rather, it is the ADU owner's acquaintances (including family members and friends) who get the affordable benefits. The main affordability benefit of ADUs is they increase the overall market supply of housing options.

Most residents are concerned about overcrowding, not mixed-income communities.

ADUs distributed across low-rise units can contribute to diverse and mixed-income neighborhoods without Not-In-My-Backyard (NIMBY) community opposition that often blocks multifamily affordable housing offers (Buker 2015; Chapple et al. 2017; Fischel 2001; Galster et al. 2003; Mukhija et al. 2014; Rudel 1984). There is no study that directly addresses whether ADUs contribute to the creation of a mixed-income community. However, the contribution to mixed-income communities can be seen through the concerns of local residents in the construction of ADUs, the characteristics of the neighborhood where ADUs are built, the ADU owner profile, and the ADU renter profile.

In the past, ADU construction was more likely to take place in neighborhoods featuring slightly lower incomes, younger households, less children, and lower concentrations of white households (Wegmann and Chapple 2012). However, recent evidence shows that most activity occurs in areas with high house prices and rents, even though there are variations from region to region (Chapple et al., 2020). According to recent evidence in Edmonton Canada, two types of neighborhoods were identified as having the highest proportion of ADUs. The first type has exceptionally high household incomes, but lower rental potential. The second type has lower household incomes, but still comparable to or higher than Edmonton's average household income, and they have high rental potential and are located in close proximity to the University and commercial district (Salvador, 2020).

The typical ADU homeowner is white, with an average age of 49 years, well-educated, and affluent (Chapple et al., 2012). Until recently, this trend was still maintained in California and Portland (Chapple et al., 2021; Gebhardt et al., 2018). According to a Portland survey, half of the renters living in ADUs are young people under 35, 86% are white, 93% have at least some college degree, and a median household income of \$50,000-\$59,999. (Gebhardt et al., 2018). Income ranges from zero to more than \$150,000, with half of the renters earning less than \$50,000.

Local residents raise issues with ADUs such as increased traffic, scarce parking, and a reduced sense of privacy. The growing population due to the construction of ADUs can strain existing infrastructure and public services (S. A. Moore and Palleroni 2008; Mukhija et al. 2008). Residents and local officials in single-family neighborhoods fear the possibility of a change in their neighborhood's characteristics (Morales, 2019). They worry that the social structure will collapse as the increased ADUs are used for short-term rentals such as Airbnb. Residents included in several surveys are more concerned about parking and congestion issues caused by overcrowding than the influx of low-income or minority households (Mukhija et al, 2014; Stacy et al., 2020).

In summary, local residents are more concerned about the problems of overcrowding than being a mixed-income community, perhaps because ADUs are not explicitly or exclusively low-income housing or because they are more likely to be populated by young people.

ADUs and Regulation

For many neighborhoods, residents have been concerned about the negative impact the construction of ADUs could have. Accordingly, the localities that allow ADUs try to maintain the neighborhood's identity through various regulations. However, these regulations can hinder the construction of ADUs significantly. Local governments removed unnecessary regulations in areas where ADU construction is active, and suggested that these actions gave owners flexibility and facilitated construction. So, which

regulations should be maintained, and which should be relaxed for the prosperity of ADUs? In this section, we will discuss the negative impact that ADUs can have on the neighborhood, and the ambivalence of regulation from local experience.

The main regulations related to ADUs are listed in the table below.

Regulation	Description
Owner Occupancy Requirement	Homeowners must live in the main house or the accessory unit.
Parking Requirement	There are specific parking requirements for the main house or an off-street parking requirement based on the location and attributes for the ADU.
Short-Term Rental	Prohibit the exclusive use of an ADU as a short-term rental.
Occupant Income Limit	Units built for affordable housing could be subject to the renter's income limit.
Maximum Rent	Units built for affordable housing could be subject to maximum rent.
Setbacks	ADUs shall be setback a minimum distance from side and rear lot lines.
Unit Size Limit	ADUs cannot exceed a certain size.
Minimum Lot Size	Regions have minimum lot size based on the main housing type.
Impact Fee	Impact fees for parks, sewers, water, and streets are charged for new units.

Regulations to Protect the Neighborhood, But Why Controversial?

Neighbors and local officials fear that the social fabric can be destroyed (Morales, 2019). Building an ADU can increase assets and income, so they are an attractive option for homeowners. To make more money, they are likely to use the ADU as a short-term rental (STR), make several small units, or even rent the main house. As the proportion of transient and renter-occupied units increases in single-family neighborhoods and the number of travelers using the STR increases, the identity of the neighborhood and social fabric among neighbors may be disrupted.

Owner occupancy requirements and STR restrictions can act as guards, protecting neighborhoods from the threats mentioned above. Ironically, it is argued that these two regulations should be eliminated or relaxed to promote the creation of ADUs. In most cities with an owner-occupancy requirement, it does not work properly (Peterson, 2018). In Portland, only 35% of owners in regulated neighborhoods live on their properties, while 90% live in the rest of the city. It's not clear how to check or enforce whether an owner occupies their home. Although more than half of the residents still insist that owner-occupancy requirement is necessary (Stacy et al, 2020), cities where ADUs thrive show that this regulation not only undermines landlords' willingness to build ADUs, but it is also ineffective (Chapple et al, 2017; Peterson, 2018; Peterson; 2021).

STR regulation also faces challenges. 32% of units are used as STR in Portland Oregon, and 8% of new units are used for STR in California (Chapple et al, 2021; Gebhardt et al, 2018). Given that owners operate ADUs as STRs for a while in the absence of tenants, advocates argue that this figure is an

overestimation (Peterson, 2018). Banning the STR use would eliminate a flexible and attractive option for homeowners to earn an income when the ADU is not occupied by long-term tenants. Moreover, even if STR is banned among ADUs, owners can operate their main house as a STR. However, many residents still feel hostile towards STRs.

Areas where ADUs thrive do not have owner-occupancy requirements and do not completely ban STR (Chapple et al, 2017). In the past, they also made such restrictions, but gradually relaxed them. It is evaluated that this was an important factor in facilitating construction (Chapple et al, 2017; Peterson, 2018). For example, some cities have relaxed regulations by limiting the number of days an STR operates or have waived fees to landlords who do not register STR (Stacy et al, 2020). However, it is not well-known whether the identity of the neighborhood has been maintained or whether there are complaints from the residents after the relaxed regulation. Most of the areas implementing ADUs are struggling with housing supply. If the policy goal of allowing ADUs is building more housing units, a transition from complete ban to conditional ban or no ban may be appropriate. Nevertheless, as it is likely to face opposition from existing residents, policy design should be enforceable, clear, and detailed to reduce residents' concerns.

Parking Requirement for Converting Garages into Housing, Is It Excessive?

Parking does matter. As ADUs often involve converting a garage into a housing unit, residents' concerns about parking and congestion are inevitable. Many cities have created off-street parking requirements. ADU advocates and developers argue that this requirement is a significant barrier to ADU construction and should be removed. They offer two reasons. First, they argue that parking isn't as much of a problem as traditionally thought: 75% of garages have been used for storage, and renters living in ADUs are disproportionately not owning a car (Arnold et al, 2012; Chapple et al 2012). This means that the required parking space is exaggerated. In addition, a study found no evidence that ADUs cause congestion in Portland and Vancouver (Peterson, 2018).

Second, they argue that it is impossible or expensive to meet the conditions, which will significantly reduce construction of ADUs. Physically, the roads and spatial structures are not designed for off-street parking, so there are few neighborhoods where parking spaces can be secured. Financially, it costs \$3,000-\$5,000 to create a parking space, which is an overburden (Peterson, 2018).

Several studies and reports have also suggested that an off-street parking requirement is a major barrier to ADU construction and has a negative impact on housing supply (Brown et al, 2020; Peterson, 2018; Peterson, 2021; Stacy et al, 2020). In a survey of residents in the city of Alexandria, 49% were against requiring off-street parking and 36% supported the requirement (Stacy et al, 2020). This result may have reflected residents' interests as developers or the fact that the parking requirement could make the construction of an ADU impossible, even though they were concerned about congestion.

Equity Problem, Not Everyone Gets A Permit.

Even if a neighborhood meets ADU regulations, such as off-street parking requirements, and the homeowner is able to pay for the development, not all lots are allowed to include an ADU. A setback and minimum lot size requirement for the individual lot should be met. A setback is the distance that the foundation of a structure must be from a neighboring property line or public right-of-way. If more than 10 feet of setback is required, buildable lots are limited in urban areas with high housing demand (Peterson,

2018). Likewise, the construction possibility is determined by the minimum lot size setting. It is often not possible to build ADUs in places where smaller units are needed, such as the city center (Peterson, 2018). As important as the housing supply perspective is the equity perspective. Even within the same neighborhood, available and non-available lots are divided. Some people get a chance to increase their assets and income, while others don't. Unlike Zoning, it is not a rule that has been in existence for a long time and it has just been created in a certain city. A landlord who owns a lot for which an ADU cannot be built will have a complaint. Since it is not desirable to amend the ordinance frequently to accommodate such complaints, it is necessary to establish a more fair regulation through sufficient review in advance.

Success stories of some cities

Portland, Seattle, and Vancouver are considered North American ADU leaders because they have achieved remarkable ADU supply growth. Three factors are key to the success of ADU implementation (Chapple., 2017). First, in cities that have reformed their zoning regulations (particularly minimum lot size and floor area) production has jumped. Also important are minimizing design review and easing owner occupancy requirements. Second, waiving fees such as permit or utility connection fees can spur homeowners to build. Finally, cities that take steps to educate homeowners (for instance, via ADU manuals and prototype plans), as well as providing technical assistance, will likely see a payoff for relatively minimal cost and effort. It should be noted that these cities made incremental changes to arrive at their current policy positions. The individual factors that differentiate these cities from the past and other regions follow.

Portland

- The city has no owner occupancy requirement, no design review, a by-right process, and fee waivers.
- In 2010, the city waived one time System Development Charges (SDC) fees based on the new or increased use of a property (impact fees for parks, sewers, water, and streets that average 7% of the total cost of a new home)
- ADUs have a lower loan to value (LTV) than traditional housing, but advocates are working to increase the LTV to 80%.
- Currently, there is no form of financing designed exclusively for ADU, but in the case of financing with an existing main house, the maximum LTV is 96.5%.

Seattle

- Although Seattle has allowed attached ADUs since the mid-1990s and detached ADUs (DADUs) since 2006, there has been a rapid growth in ADU permitting and construction since 2016.
- While this growth may have been partly influenced by the housing market, the removal of existing barriers that made ADU construction difficult appears to have played a major role.
- The sharp increase in permitting activity coincides with the beginning of discussions and policy reform on removing barriers such as removing parking requirements and changing owner occupancy requirements.

Vancouver

- There is no owner-occupancy requirement and garage requirement.

- Institutions like Vancity, a local financial cooperative, provide loan products that are appropriate for ADUs, for instance by allowing homeowners to count rental revenue as part of their income.
- The city provides technical assistance to homeowners and has amended ordinances to make it easier for homeowners to build ADUs.

Section 3: Review of Best Practices

ADU policies and programs are developed through an iterative process of goal setting, public engagement, evaluation, public re-engagement, policy changes, and program additions. The literature has conveyed realities that jurisdictions face and evidence of program requirements for policies that substantially increase the housing supply or address affordable housing.

Among those Virginia localities that have adopted ADU ordinances, many are in the early stages of policy development, simply legalizing ADUs. Though Virginia jurisdictions have legalized to varying degrees, few have taken steps to minimize regulation and add financing, programming, education, and incentives necessary to encourage ADUs as a central part of their growth strategy or to address affordable housing challenges. Arlington and Charlottesville are two examples of Virginia communities offering support and incentives beyond legalization to achieve broader goals.

This section offers best practices across the country as a useful guide to address a variety of ADU goals:

- Registration and regulation
- ADUs for limited uses
 - Caregiving
 - Voucher holders
 - Students
 - Short-term rental
- Increase the housing supply
 - Minimize regulation
 - Mitigate impacts
 - Safety & accessibility
- Promote affordable housing
 - Financing
 - Education
 - Programing
- Central growth strategy
 - Equity and inclusion
 - Complementary infrastructure
 - Safety & accessibility.

See Appendix 2 for a visual synthesis.

However, this section does not rehash discussion from the literature review, so elements of the later, broader goals are not discussed. Seattle, Portland, and Vancouver are the best examples of the development of an ADU policy and program to substantially impact the housing stock or to make ADUs a central component of an overall growth strategy. They have been discussed substantially in the literature review and are well documented by resources from the HUD User database and other well-known sources such as the American Planning Association.

Legalization of illegal and nonconforming ADUs

- Watsonville, CA

Homeowners can legalize unauthorized ADUs by bringing a structure up to code, as long as the issues are not related to health and safety.

14.23.100 Deferred code enforcement [Watsonville Municipal Code]

Until 2030, any ADU constructed without permits before January 1, 2020, that face code enforcement action may request a delay of up to five (5) years in enforcement so long as the illegally constructed unit complies with Section 17980.12 of the California Health and Safety Code. Additionally, a property owner may request amnesty from code enforcement if the property owner discloses the code violation to the City before January 1, 2030.

(a) If the owner is requesting amnesty and/or a delay in code enforcement, the owner shall submit an application to the Building Official requesting that enforcement of the violation be delayed for five (5) years from the activation date of the code enforcement case, on the basis that correcting the violation is not necessary to protect health and safety.

(b) The Building Official may approve the application for delay in code enforcement action if the Building Official finds that correcting the violation is not necessary to protect health and safety...

In order to legalize an unauthorized ADU, the existing illegal ADU is evaluated first, and a site plan is submitted to the city to obtain a permit. When the paperwork is complete, the owner makes the necessary changes. Legalization is complete when an inspection is performed by the city officials.

- Santa Cruz County, CA

If there is a structure on property that was built without permits and it is not possible to bring that structure up to current building code standards without demolishing and rebuilding the structure, it may be eligible for the County's Safe Structures Program.¹ Under this program, a building inspector performs a health and safety inspection and, pending any required health and safety upgrades, a certificate is granted allowing the structure to be used as housing. ADUs are allowed in structures that have completed the Safe Structures program. Per state law and County code, property owners that receive a code enforcement notice regarding an illegally built ADU may request to wait to resolve the code enforcement issue for up to five years, as long as a building inspector does not identify a health and safety issue.

- San Francisco, CA

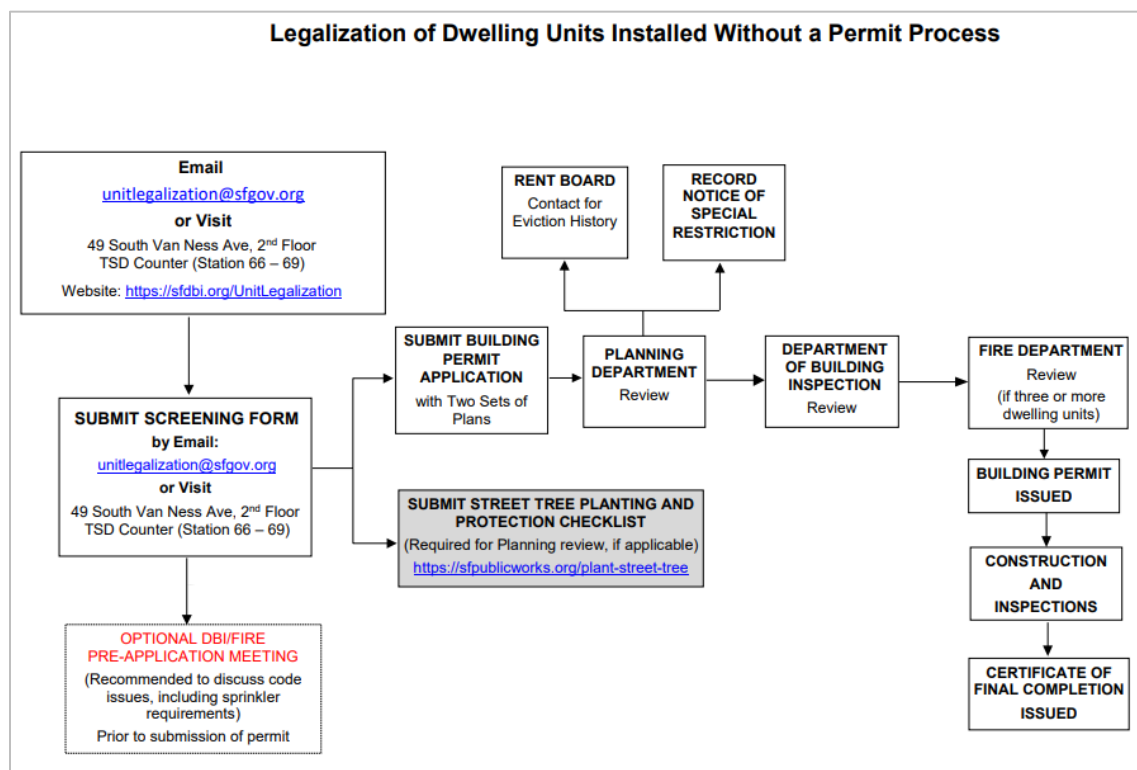
According to city and county of San Francisco, unauthorized dwelling units or ADUs may apply to be legalized.² This is a voluntary program that allows property owners to formally register and rent their ADUs assuming all life-safety conditions are met. These unauthorized units can be used as legal housing through this process.

To apply for the Unit Legalization Program, homeowners must hire a professional agent to assess the factors necessary for legalization and provide documentation that the home to be legalized existed prior to

¹ <http://sccoplanning.com/ADU.aspx>

² <https://sfdbi.org/UnitLegalization>

January 1, 2013. Afterwards, they may visit the Unit Legalization Counter to submit the screening form to be accepted into the Program. Following this screening process, when the owner has essential information needed for a decision, they may then formally apply for a building permit for legalization with the Planning Department and Department of Building Inspection (DBI).



- City of Oakland –from Oakland ADU Initiative

City of Oakland made ADU Initiative to develop a strategy to address the housing affordability crisis (City of Oakland, 2020).³ This initiative includes a legalization program to improve the safety of unpermitted ADUs. It couldn't be recognized as it's a fully established program because details of this program have not been reported anywhere. However, principles for legalization programs can be found from the initiative.

This program can legitimize units that comply with basic health and safety building standards. Legalization may be permissible for factors unrelated to health and safety, but should not cause displacement of existing tenants. The consequences and obligations of legalization must be clearly communicated to the landlord. If an illegal unit is discovered in the future, the legalization program will be terminated. To promote the program, reduction of program application fee or other fees may be considered. Additional incentives for legalization may be considered.

- Seattle, Tacoma – give penalty to promote legalization

After January 1, 1996, owners of illegal ADUs shall be guilty of a misdemeanor and, upon conviction thereof, subject to a fine not to exceed \$1,000, including all statutory costs, assessments, and fees, plus

³ City of Oakland (2020), *Oakland ADU Initiative: Existing Conditions and Barriers Report*

\$75 per day after notice of the violation has been made. All owners of illegal ADUs shall also be required to either legalize the unit or remove it. [Sec. 13.06.196(C)(11), Tacoma Municipal Code]

- Barnstable, Massachusetts – incentivize legalization (amnesty program)

Barnstable has an amnesty program to bring illegal ADUs into compliance with current requirements (HUD, 2008).⁴ The property owner must agree to rent to low-income tenants — those earning 80 percent or less of the area median income — with a minimum lease term of one year. The amnesty program provides fee waivers for inspection and monitoring and designates town staff to assist homeowners through the program’s administrative process. The town can access Community Development Block Grant (CDBG) funds to reimburse homeowners for eligible costs associated with the rehabilitation or upgrade of affordable ADUs. Homeowners are also offered tax relief to offset the negative effects of deed restrictions that preserve the affordability of the units.

Through the Amnesty program, the town of Barnstable has successfully converted many illegal accessory units into permitted units, made unsafe units safe, and increased the supply of affordable housing. The benefit to this program is twofold. It is increasing the affordable housing supply and it also makes units, that before were unsafe and illegal, safe and legal.

Incentives for specific use

Senior, Disabled & Caregiver

No explicit incentives for caregivers could be found. Incentives applying to caregivers could be tied to the eligibility of the person being cared for.

- Florida

If an ADU is constructed for family members of at least 62 years of age, Section 193.703, Florida Statutes, provides that a county may provide for a reduction in the assessed value of homestead property after the new construction.

193.703 Reduction in assessment for living quarters of parents or grandparents.—

(1) In accordance with s. 4(f), Art. VII of the State Constitution, a county may provide for a reduction in the assessed value of homestead property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive parents or grandparents of the owner of the property or of the owner’s spouse if at least one of the parents or grandparents for whom the living quarters are provided is at least 62 years of age.

- Santa Cruz, CA

The County of Santa Cruz has partnered with Habitat for Humanity Monterey Bay (Habitat) and Senior Network Services to create My House My Home in order to help low-income senior homeowners to build Accessory Dwelling Units (ADU). The goal of the program is to build ADUs on the properties of

⁴ HUD (2008). *Accessory Dwelling Units: Case Study*. Department of Housing and Urban Development Office of Policy Development and Research.

qualifying low-income seniors, 62 years of age or older, to provide additional income and adjustable living situations to help seniors age in place.⁵

Voucher holders

- Montpelier, VT

In July 2019 Vermont State Housing Authority (VSHA) was awarded funding for the development and implementation of a two-year pilot Accessory Dwelling Unit Program (ADUP) in Montpelier, Vermont. ADUP aims to assist with the building and initial leasing of an Accessory Dwelling Unit (ADU), including help with pre-construction design and securing of finances, permitting and compliance, contractor procurement and project management, and finally, tenant selection and lease up procedures. A tenant eligible for the ADU program is one who holds the Section 8 voucher or receives the other housing subsidy. Final tenant selection will be decided by the homeowner who will also be eligible for grant and loan funds.⁶

- Los Angeles, CA

A nonprofit in LA, the Backyard Homes Project, offers financing, building design, and construction support in exchange for a pledge to house Section 8 voucher holders (LA Más, 2019).⁷ The project was led by LA-MAS, a nonprofit-organization.

Student

- San Diego

Incentives may be given if ADUs are rented to low-income students. SB1227 contains a clause “projects that provide 20% of the pre-density bonus units as affordable to lower income students”. This is a provision for an affordable housing unit rather than a provision for an accessory dwelling unit. However, ADU owners can apply this to ADU development.

Low-Income Households

- Santa Cruz, CA

Homeowners may get incentives through the Accessory Dwelling Unit Forgivable Loan Program.⁸ Development fees are waived for ADUs made available for low- and very-low-income households. Santa Cruz offers loans up to \$40,000 to homeowners who construct an ADU that is rented out to low-income households at an affordable rate for 20 years.

⁵ <https://www.habitatmontereybay.com/adu>

⁶ <https://www.vsha.org/montpelier-adu>

⁷ LA Más (2019). *The Backyard Homes Project: An Affordable Housing Initiative*

⁸ Accessory Dwelling Unit Forgivable Loan Program. <https://www.aducalifornia.org/wp-content/uploads/2020/09/Forgivable-Loan-Program.pdf>

- Town of Wellfleet, Barnstable County, Massachusetts

Owners are required to rent to low- or moderate-income households. Maximum rents follow the Fair Market Rental Guidelines published by HUD and the property owners must submit annual information on rents to be charged.⁹

- San Diego

With State Law (AB 671), property owners are eligible if they agree to make one of the granny flats they build rent-restricted for low-income residents for at least 15 years.¹⁰

- Chicago

In Chicago, affordability requirements for ADUs are that property owners shall make one unit affordable (up to 60% of the area median income) for every two ADUs that they build.¹¹ This may be an ineffective rule because most property owners build one ADU on their property.

- San Rafael, CA

As an incentive, those renting out their ADUs will have permit fees waived up to \$10,000 if they rent to tenants with household incomes below 80% of the local median. There is a \$5,000 break on permits for ADUs that are rented between 80-120% of the median income.¹²

- Toronto

Toronto's Affordable Laneway Suites Pilot Program offers eligible homeowners a forgivable loan up to \$50,000 when they agree to rent their suite below market rates for fifteen years.¹³

Prohibiting STR

- Portland

The City Council has set up incentives to address the growing backlash against ADUs as some homeowners turn them into short-term rental units.¹⁴ The identifiable best practice is to have a reward for preferred action as a balance against only having penalties for discouraged actions.

"The resolution adopted by the council...requires ADU builders to attest that they won't rent the units as short-term rentals for 10 years. If homeowners do rent them out via Airbnb or similar platforms during the ensuing decade, the SDC fees must be paid, along with a 50 percent penalty."

⁹ <https://www.wellfleet-ma.gov/planning-board/pages/adu-articles>

¹⁰ https://www.sandiego.gov/sites/default/files/housing_legislation_package_table_webpost_20200707.pdf

¹¹ <https://www.chicago.gov/city/en/depts/doh/provdrs/homeowners/svcs/adu-ordinance.html>

¹² <https://www.marincounty.org/-/media/files/maringov/board-actions/2020/january/2001149cdajaduadufeewaiverltr.pdf?la=en>

¹³ https://www.toronto.ca/wp-content/uploads/2019/06/96e6-FINALAffordable-Laneway-Suites-Pilot-Program-Q-A_june26.pdf

¹⁴ <https://strpermit.com/blog/2019/9/4/city-of-portland-implementing-new-short-term-rental-law>

Financing

- Low construction loan – Santa Cruz and San Francisco

Some cities, like Santa Cruz and San Francisco, have started low-interest ADU loan programs to help homeowners better meet the costs of design and construction. Santa Cruz offers loans up to \$40,000 to homeowners who construct an ADU that is rented out to low-income households at an affordable rate for 20 years.¹⁵

- 0% interest loan for ADU - San Jose

“The launch of the first and only 0% interest loan for accessory dwelling units (ADU) on the market. The San Jose Scaling Accessory Dwelling Unit (ADU) pilot program will provide 20-30 qualifying applicants a 0% interest loan for six months to finance 100% of the costs associated with permitting and building an ADU.” The loan is intended as a bridge between building an ADU and accessing traditional loan options. After six months, interest rates increase to 9.95% to encourage homeowners to refinance through a traditional lender for long term financing.¹⁶

- Grant and 0% interest loan – Montpelier, Vermont

Qualifying ADU participants will be eligible for a grant of up to \$20,000 and a loan of up to \$10,000 at 0%. Grants will be a reimbursement directly to the homeowner and determined by calculating up to 50% of project costs upon completion, and loans may be made available before construction with a signed agreement. The money for this grant will come from a Community Development Block Grant (CDBG) through the city of Montpelier with at least 51% dispersed to clients meeting a target audience according to funder guidelines. The loan will come from the a Vermont State Housing Authority (VSHA) with a 5-year term and be secured the home’s deed, and returned to VSHA if the home is sold within 5 years or before the loan is repaid in full.¹⁷

- Huge amount of loan – San Francisco

Housing Trust Silicon Valley operates program called Small Homes, Big Impact. It offers educational workshops to homeowners wishing to build an accessory dwelling unit (ADU) and can offer a financing option through an ADU construction loan program. Maximum Loan Amount is up to \$200,000 or 97% of the property’s combined loan to value, whichever is lower.¹⁸

Section 4: Approaches for Identifying Existing ADUs

In this brief section, the research team explores a few ideas for how jurisdictions could approach identifying existing un-registered ADUs along with commentary on the advantages and disadvantages inherent in each approach. Some of these ideas were vetted with key informant interview participants and relevant officials. These do not include some of the incentive programs discussed earlier in the report to encourage self-reporting by owners of properties with an ADU, which are voluntary and therefore have

¹⁵ <https://www.sccoplanning.com/Portals/2/County/adu/Forgivable%20Loan%20Program.pdf>

¹⁶ <https://www.sanjoseca.gov/Home/Components/News/News/2840/4699>

¹⁷ <https://www.vsha.org/montpelier-adu/>

¹⁸ <https://housingtrustsv.org/programs/homeowner-programs/>

limited effect. In contrast to these incentive programs, all the solutions offered in this section would, we believe, face either significant cost or political challenges.

Active Primary Data Gathering

This approach requires the acquisition of data by a locality.

- Survey of Housing Units
 - This would be the most accurate assessment if owners/occupants accurately report the presence of an ADU.
 - In person interviews, similar to census taking.
 - Extremely expensive
 - Telephone interviews
 - High rejection rate for participation.
 - Accuracy in responses could be questionable with limited ways to verify responses.
 - Very expensive.
 - Written surveys/web surveys
 - Written
 - Could be done with other official communication such as a water bill.
 - Web survey
 - Recruit participation through mailings or electronic notices
 - Likely low response rate, especially from those with un-registered units.
 - Less expensive than in-person or telephone, but still costly.
- Actively encourage citizen reporting
 - Potential social and political consequences.
 - False/nuisance reports could be burdensome.
 - This approach could negatively impact community-government relations and have negative unintended consequences.

Using Secondary Data with Subsequent Confirmation

Secondary data gathering is a widely used research approach that uses data gathered by someone else and/or for other purposes. In this application, it is using public or private data sources to identify “potential” ADUs that would need to be subsequently verified using one or more of the primary data gathering approaches identified above.

- Public Records
 - Review permits issued for adding an electrical panel to an existing residence.
 - Review permits for structural changes that add living space.
 - Review U.S. Postal Service records for sub-address listings (unit number or other designation) indicating a separate delivery address.
- Other Records
 - Utility records
 - Applicable if unit is separately metered (water, electricity). This seems unlikely.
 - Real estate rental listings
 - Review listings for rental units focusing on key words that suggest an ADU
 - Examples: accessory, granny-flat, cottage, garage apartment, other

- Could be accomplished using web-scraping programs
 - Machine learning application.
- Challenges of precision versus recall:
 - Precision is accurately classifying lists as ADUs (narrowing the list).
 - Recall is finding all the units (broadening the list). For example, this approach would not identify ADUs that are not market available (granny-flats and the like).
- Multiple Listing Services Records for For-Sale Housing
 - There are no standard categories for MLS listings identifying the presence of an ADU, though that would have to be disclosed to a potential buyer if there were a tenant.
 - The presence of an ADU could appear as “other” information in a for-sale listing.
 - This is not likely a viable approach but may become so as ADUs increase in number and market attention. A mid-October 2021 review of data from Bright MLS, which provides listing services for several Virginia markets, though not all revealed that out of 118,694 Virginia listings from June 2019 through August 2021, a keyword search found reference to 24 ADUs. Of these 24, 14 were descriptions that the home for sale could potentially accommodate an ADU, 3 listings referenced space that could be rented (inconclusive), and 7 specifically mentioned having a “legal” or “permitted” ADU.
- Key Word Search of Social Media Posts
 - Highly imprecise.
 - Highly invasive
 - Could be expensive and would require notable technical expertise. Housing these data could come with liabilities.

There would be administrative and operational costs incurred to use any of the methods described to identify un-registered ADUs. Each jurisdiction would have to weigh the economic, social, and political impacts of undertaking such tasks. However, in communities where there is the potential for a notable number of un-registered units (college towns and tourism areas for example), there could be over-arching health and safety concerns that supersede data gathering costs or perceptions of government intrusion into private homeowner affairs. It is noted that some un-registered (illegal) ADUs do not meet health and safety standards that can pose real threats to community well-being. Having a clearinghouse of best practices for identifying un-registered ADUs, would be valuable for Virginia localities.

Areas for Continued Consideration

Based on informant interviews, literature review best practices, and stakeholder discussion, below is a list of key areas for future consideration. With some outliers, both informant interviews and stakeholder discussion indicated that future consideration should avoid specific mandates as a method to support creation of ADUs.

Though stakeholder input was not unanimous, there was significant interest in exploring grant opportunities to construct and/or maintain accessory dwelling units. This was seen as particularly important if ADUs are to be utilized as an affordable housing resource.

Continued investigation of financing options for ADU construction; consider both public and private options.

Consider methods for an education campaign about ADUs. This campaign could have a wide focus but based on interviewee input, would benefit from a component aimed at educating (without mandating) HOAs about ADUs.

Continue considering issues presented by stakeholders related to ADUs within the existing building code update process.

Consider opportunities for resource sharing including but not limited to the following areas:

- Consistent methodology for counting ADUs
- Ordinance and design guideline options

Though not released as of the writing of this report, Virginia is currently in the midst of significant housing studies via HB 854 and the Joint Legislative Audit & Review Commission (JLARC). There are also ongoing private studies specifically related to local land use. It may be advisable to examine ADUs and related issues in the context of the findings of these reports once they are released.

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Appendix 1: Key Informant Interview Guide

Topics for key informant Interviews

- 1) ADU counts
 - a. Does your jurisdiction have a count of the number of ADUs present?
 - i. Have you attempted a count?
 - b. Just based on your judgement, how accurate is that count?
 - c. What process/methodology do you use to count/estimate the number of ADUs in your jurisdiction?
 - d. Do you have programs to encourage the registration of existing ADUs?
 - i. Encourage registration (marketing)
 - ii. Penalize failure to register
 - iii. Forego penalties to register
 - iv. Waive/grandfather permitting
 - v. Other
- 2) Current and future market demand
 - a. Has there been/is there now demand for ADUs in your area?
 - b. How is that demand proportioned between: granny/children flats; rental units; transient lodging? For rental, is there a target market for most owners (students, non-students)?
 - c. Is demand increasing in scale and/or broadening in scope?
 - i. What is driving that change in demand?
- 3) Actions and ordinances
 - a. Has there been/is there now active discussions about ADUs in your community?
 - i. Policymakers/Staff/Targeted stakeholders/general public
 - ii. Have those discussions been favorable, neutral, or negative towards ADUs?
 - b. On a continuum of policy development, where does your community stand:
 - i. Early discussion
 - ii. Policies proposed, not adopted
 - iii. Policies adopted, not operational
 - iv. Operational policies
 1. Some steps
 2. Moderate steps
 - a. Zoning changes/allowances
 3. Full program implementation (coordinated policies in place includes related regulations for parking, commercial use, public communication strategies, etc.
 4. Incentivizing ADU development
 - c. How would you describe your jurisdiction's policy priorities that have driven these actions?
 - i. Limit the number of ADUs
 1. Control density
 2. Preserve neighborhood character
 3. Enough demand from property owners
 4. Protect property values
 5. Traffic/parking
 6. Other

- ii. Increase number of ADUs
 - 1. Increase number of affordable units
 - 2. Support family needs (aged care, returning children)
 - 3. Support housing affordability through homeowner income generation
 - 4. Property rights support
 - d. Are your neighboring jurisdictions addressing ADUs? Have you collaborated with your neighbors on strategies and policies related to ADUs?
 - e. Can you suggest other jurisdictions or other knowledgeable individuals we should speak with on this topic?
 - 4) Policy issues
 - a. Zoning
 - i. By rights
 - ii. Changing
 - b. HOAs
 - c. Parking
 - d. Commercial
 - i. Rental housing (long term)
 - ii. Transient (AirBNB, VRBO)
 - 5) Codes
 - a. Can you share any specific codes, statutes, zoning, or development standards you use to promote or impede the development of ADUs? We would like to show model language for others to follow.
 - b. Have you had any formal or informal challenges to codes, etc. that would inform other jurisdictions or the broader public debate on ADUs?
 - c. Do state codes help or hinder your efforts?
 - i. How?
 - 6) How could the state help?
 - a. Policy
 - i. By rights development
 - ii. Building codes
 - iii. What needs to change?
 - b. Funding/incentives?

Appendix 2: Best Practices Synthesis

Virginia jurisdictions that have elements of the recommended best practices

- Fairfax
- Blacksburg
- Norfolk

- Charlottesville

- Arlington
- B-burg & C-ville coming soon!

- Charlottesville

ADU Ordinance Types and Intent (increasing intensity)

Registration and regulation

Limited Uses

Increase housing supply

Promote affordable housing

Central strategy for growth

- Uses
- Occupancy
- Form

- Caregiving
- Voucher holders
- Students & senior
- STR

- Minimize regulation
- Financing
- Education
- Programming

- Planning
- Programming

- Equity and inclusion
- Complementary infrastructure
- Safety & accessibility

Best Practices

- Incentivize registration
- Establish use and form guidelines

- Incentivize ADUs for specific uses with favorable financing, fee waivers, tax abatement, etc.

- Allow ADUs by-right
- Minimize requirements
- Develop financing partnerships
- Expand forms

- Developing partnership with non-profit organizations
- Allow ADUs in multi-family zone
- Income restriction

- Incentivize all ADUs with fee waivers, favorable financing, design and development resources, etc.

Nationwide Examples

- Barnstable, MA (registration incentives)

- Los Angeles, CA (voucher holders)
- Wellfleet, MA (aging, STR)

- Santa Clara, CA
- Santa Cruz, CA

- Los Angeles, CA (partnership)

- Portland, OR
- Seattle, WA

Appendix 3: House Bill 2053

CHAPTER 411

An Act to direct the Department of Housing and Community Development to convene a stakeholder advisory group to evaluate the construction of internal, attached, and detached accessory dwelling units as a strategy to address the Commonwealth's growing demand for affordable and market-rate housing.

[H 2053]

Approved March 30, 2021

Be it enacted by the General Assembly of Virginia:

1. § 1. *That the Department of Housing and Community Development (Department) shall convene a stakeholder advisory group to evaluate the construction of internal, attached, and detached accessory dwelling units as a strategy to address the Commonwealth's growing demand for affordable and market-rate housing. The stakeholder advisory group shall (i) to the extent possible, collect data from stakeholders regarding the current state of the for-sale and rental accessory dwelling unit market in the Commonwealth and information regarding projected demand for accessory dwelling units; (ii) solicit input from stakeholders regarding the current implementation of local accessory dwelling unit ordinances in the Commonwealth; (iii) solicit input from stakeholders regarding locally and state-enacted impediments to the development or construction of accessory dwelling units, including state statutes, building codes, and local zoning ordinances and development standards; (iv) identify local tools to facilitate the construction of accessory dwelling units, including alternative permitting processes, waiver or modification of local parking requirements or ratios, expediting permitting processes, small lot ordinances, and density adjustments; and (v) develop recommendations for state policy changes to remove obstacles to local implementation of accessory dwelling units. The stakeholder advisory group shall include representatives from the Department, the Virginia Housing Development Authority, local planning departments, and local building departments; individuals with expertise in land development, construction, land-use and zoning laws and processes, affordable housing, the Virginia Uniform Statewide Building Code, sustainable development, public transit, common interest communities, property owners' associations, or other areas of expertise as determined by the Department; an affordable housing representative; representatives from social equity organizations; a union representative; a youth organizer; and a representative from the American Association of Retired Persons (AARP). To the extent possible, the Department shall endeavor to ensure balanced geographical representation among the members of the stakeholder advisory group, with representation of rural, suburban, and urban localities and regions of the Commonwealth. The stakeholder advisory group shall receive staff support from the Department. Prior to the first meeting of the stakeholder advisory group, to the extent possible, the Department shall solicit input from the stakeholder advisory group members on the issues enumerated by clauses (i), (ii), (iii), and (iv) and compile such information for presentation at the first meeting of the stakeholder advisory group, and the Department shall continually solicit and compile such input throughout the work of the stakeholder advisory group. The stakeholder advisory group shall report its findings, including any legislative recommendations, to the Director of the Department, the Secretary of Commerce and Trade, the commissioners of the Virginia Housing Development Authority, and the Virginia Housing Commission no later than November 1, 2021. The Department may, in its sole discretion, be permitted to continue its work beyond November 1, 2021, but no later than November 1, 2022.*

Appendix 4: Stakeholder Advisory Group

Allison Cook, Arlington County Inspection Services Division
Andrew Clark, Home Builders Association of Virginia
Carmen Romero, Arlington Partnership For Affordable Housing
Christopher Sigler, Fairfax County
George Homewood, City of Norfolk Department of City Planning
Gordon Walker, American Association of Retired Persons
James Moss, City of Galax Project Manager
Jeff Brown, Dept. of Housing and Community Development, State Building Codes Office
Joe Lerch, Virginia Association of Counties
Joel Franklin, Arlington County Housing Division
Kaycee Ensign, Dept. of Housing and Community Development, Community Development Housing Division
Kelly Harris-Braxton, Virginia First Cities
Lucia Anna "Pia" Trigiani, MercerTrigiani
Michelle Gowdy, Virginia Municipal League
Michelle Winters, Alliance for Housing Solutions
Mike Van Atta, McGuireWoods LLP
Mindy Hall-Sexton, Virginia Housing
Natalie Snider, American Association of Retired Persons
Randy Grumbine, Virginia Manufactured and Modular Housing Association
Steven Mikulic, McGuireWoods LLP
Thom Stanton, Go Tiny USA
Tim Murphy, Arlington County Planning Division
Tom Hardiman, Modular Home Builders Association
Vaughn Poller, James City County Neighborhood Development
Will Egen, Virginia Commission on Youth

Attachment

4

Planning Commission

Work Session Agenda

Cape Charles Civic Center – 500 Tazewell Avenue

February 1, 2022

**TIME: Immediately following conclusion of
Regular Session Meeting of Planning Commission**

1. Call to Order
 - a. Roll call and establish a quorum
2. Consent Agenda
 - a. Approval of agenda format
3. Order of Business
 - i. Continued Discussion on Accessory Dwelling Units
4. Adjourn



PLANNING COMMISSION STAFF REPORT

Meeting Date: February 1, 2022

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

Date: January 26, 2022

WORK SESSION: Accessory Dwelling Unit Zoning Ordinance Review

A work session was held on Monday, January 24, 2022 to discuss the current Accessory Dwelling Unit Zoning Ordinance. A broad discussion was held on the ordinance and administration by staff (Town Treasurer, Code Official and Interim Planning/Zoning Administrator).

Due to time, a continued work session was requested and added onto the February 1, 2022 Regular Session of the Planning Commission, once that meeting concludes then a work session will be convened to continue the discussion of the Accessory Dwelling Unit Zoning Ordinance.

Attached to this agenda is Attachment 7 from the 2/24/2022 work session – proposed zoning text amendments to the Accessory Dwelling Unit zoning ordinance.

We will commence the discussion where we ended: the consideration of adding a new Section 4.2 (J) (2) (c): residency requirement for the owner of the property in either the main house or the Accessory Dwelling Unit and allowing only one of the 2 structures on the property to be utilized in a rental capacity. The discussion will continue through the rest of the document, as time permits for the meeting.

Please bring with you or have it accessible via your iPads to reference the 1/24/2022 Work Session Agenda Packet for all of the remaining materials provided at that meeting for background and information.

ADU REGULATIONS WITH PROPOSED CHANGES – DEVELOPED BY PAUL GROSSMAN, KEN BUTTA, AND

KATIE NUNEZ

1/19/2022

CHANGES SHOWN IN YELLOW HIGHLIGHTING or BLUE STRIKETHROUGH

Section 4.2

J. Accessory Dwellings. One accessory dwelling may be maintained on a property in the RE, R-1, R-2 and CR zoning districts, ~~contingent upon approval as a conditional use in accordance with Section 4.3, and~~ subject to the following:

1. Physical characteristics.

- a. Accessory dwellings shall be located in an accessory building.
- b. Accessory dwellings shall not have a floor area exceeding forty-five (45) percent of the floor area of the main building.
- c. Accessory dwellings shall have one kitchen **area** and one bathroom.
- d. Accessory buildings ~~and~~ shall not have the appearance of a single-family dwelling.

2. Occupancy characteristics.

- a. Length of stay – ~~No~~ Accessory dwelling unit shall be occupied, ~~by any person or persons,~~ whether paying a fee for such occupancy or not, **by the same person or persons** for a period **no** less than thirty (30) consecutive calendar days. Upon request from any building, zoning, finance, or public safety official acting on behalf of the Town of Cape Charles the owner of the subject lot of record upon which the accessory dwelling unit sits shall provide occupancy documentation and\or information as requested, either verbally or in writing. Failure to do so may result in the revocation by the Cape Charles Town Council of the conditional use status for the accessory dwelling unit according to Section 4.3.F. **(IF CUP requirement is removed, this section will need to be revised.)**
- b. Inspections – All accessory dwelling units shall be inspected annually not later than fifteen (15) days from the anniversary date of the conditional use permit being approved by Town Council **(or, if CUP requirement is removed, from the issuance of the Zoning Permit).**

3. Other requirements.

- a. Accessory dwellings located in accessory buildings may have a separate water meter from the principal dwelling.
- b. The lot on which an accessory dwelling is located shall have the required minimum lot area for the district in which it is located.

- c. Parking shall be considered on a case-by-case basis as part of the conditional use permit application process, ensuring adherence to Section 4.5.1.C.6. (Table of Parking Standards) using both on and off-street parking areas. (IF CUP requirement is removed, this section will need to be revised.)
- d. Exterior elevations shall also be approved by the Historic District Review Board when required by Article VIII, Historic Overlay.
- e. The property owner shall be required to sign an annual affidavit attesting to their understanding of this ordinance and willingness to abide by them. Failure to do so will be a violation of this ordinance and will be pursued as such.

OTHER POSSIBLE CHANGES FOR DISCUSSION

- 1) Since our current Zoning Ordinance contains a definition of GUEST HOUSE, we may wish to consider having two subsets of Accessory Dwelling Units: Guest Houses and what we have been referring to as an ADU. The difference being in the length of stay and in the collection of money for the stay.
- 2) Additional definitions to add to our zoning ordinance (Research and Citations provided by Ken Butta):

KITCHEN means or space within a structure designated for the preparation of food that includes a sink.

BATHROOM means a room or area that includes a sink and toilet. It may also include a bathtub, shower, or bidet

BEDROOM is a room, or space within a structure intended for sleeping. Requirements include:

- A minimum size of 70 ft². If more than one person occupies the room, there must be 50 ft² per occupant.
- Access to a bathroom without crossing another bedroom
- Every bedroom must have access to natural ventilation and have a permanent heat source
- Two means of egress: one that leads to the rest of the home without going through another bedroom and one that leads directly to the outside. If the outside egress is a window, it must be at least 5.7 square feet and can be no more than 44 inches from the room floor, unless there is a permanent step installed. It shall be illegal to have locking bars or grates covering an egress window.
- Ceiling height must be no less than 7 feet.

RESEARCH and CITATIONS on Kitchen/Bedroom/Bathroom Definitions

Bedroom

A private room intended for sleeping, separated from other rooms by a door and accessible to a bathroom without crossing another bedroom. The Complete Illustrated Book of Development Definitions, 4th ed.

“a habitable room designed for sleeping purposes, and which has a minimum habitable floor area of 80 square feet” Fair Housing Advocates Assn. v. City of Richmond Heights (N.D. Ohio, 1998)

Here are some requirements for bedrooms that apply state-wide:

1. **Means of Egress:** *A bedroom must have two ways to exit: one that leads to the rest of the home and one that leads directly to the outside. In most cases, the outside egress will be a window. A bedroom egress window must be at least 5.7 square feet. It can be no more than 44 inches from the room floor, unless there is a permanent step installed. In addition, it is illegal to have locking bars or grates covering an egress window.*

Also, in order to be considered a legal bedroom, its sole entrance must not be through another bedroom. Finally, the bedroom must have access to a bathroom without going through another bedroom.

2. **Closet:** *Contrary to popular belief, Virginia has no closet requirement for a bedroom.*

3. **Square Footage:** *The minimum size of a bedroom is 70 square feet. If more than one person occupies the room, there must be 50 square feet per occupant.*

4. **Ceiling Height:** *Ceiling height must be no less than 7 feet.*

5. **Heating and Ventilation:** *Every bedroom must have access to natural ventilation (i.e. to the outside air), and must have a heat source. Portable heaters do not count as an adequate heat source.*

Northern Virginia Realtors <https://www.nvar.com/realtors/news/re-view-magazine/article/may-jun-2015/2015-05-06-ask-nvar-legal-definition-of-bedroom>

A room, or space within a structure intended for sleeping. Requirements include:

- *A minimum size of 70 ft². If more than one person occupies the room, there must be 50 ft² per occupant.*
- *Access to a bathroom without crossing another bedroom*
- *Every bedroom must have access to natural ventilation and have a permanent heat source*
- *Two means of egress: one that leads to the rest of the home without going through another bedroom and one that leads directly to the outside. If the outside egress is a window, it must be at least 5.7 square feet and can be no more than 44 inches from the room floor, unless there is a permanent step installed. It shall be illegal to have locking bars or grates covering an egress window.*
- *Ceiling height must be no less than 7 feet.*

KITCHEN. Kitchen shall mean an area used, or designated to be used, for the preparation of food. Virginia Uniform Statewide Residential Building Code

<https://codes.iccsafe.org/content/VRC2018P1/chapter-2-definitions>

A room, or space within a structure designated for the preparation of food that includes a sink.

Bathroom

From the IRC: BATHROOM GROUP. A group of fixtures, including or excluding a bidet, consisting of a water closet, lavatory, and bathtub or shower. Such fixtures are located together on the same floor level.

From NEC: Bathroom. An area including a basin with one or more of the following: a toilet, a tub, or a shower.

A room or area that includes a sink and toilet. It may also include a bathtub, shower, or bidet.

Attachment

5



PLANNING COMMISSION STAFF REPORT

Meeting Date: March 1, 2022

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

Date: February 23, 2022

WORK SESSION: Accessory Dwelling Unit Zoning Ordinance Review
- Draft Zoning Text Changes

At the January 24, 2022 and the February 1, 2022 work session meetings, the Planning Commission discussed the existing zoning ordinance relating to Accessory Dwelling Units contained in Section 4.2 (J) as well as Article 2 in the Definitions Section (Section 2.9).

Based upon the 2 meetings, I am presenting a draft amendment to the Zoning Ordinance relative to Section 4.2 and Section 2.9. In addition, I have also removed all reference to a Conditional Use Permit process to have an Accessory Dwelling Unit and proposed replacement language to include those components as criteria requirements that must be met to determine the Accessory Dwelling Unit in compliance as a by-right use.

Here is Legend of Changes in the document:

Current Zoning Text: Regular Text

Proposed Deletions: Shown as **~~bold, strike-through text~~**

Proposed Additions: Shown in *Red Italic Font*

Proposed Additions added by KHN -need PC input: Shown in *Blue Italic Font*

A. PROPOSED ZONING TEXT AMENDMENTS TO CCZO SECTION 4.2 (J)

1. ADD A NEW SECTION AS THE FIRST PARAGRAPH in SECTION 4.2 (J)
STATEMENT OF INTENT: To establish criteria and standards for Accessory Dwelling Units to implement one component of the goal from the Town's Comprehensive Plan to add diversity of housing type while maintaining the neighborhood character and providing affordable housing options. The intent is to allow an increased density on a lot in specific zoning districts to provide long-term rental units to meet the housing needs of the Town and County workforce population.
2. ADD A NEW SECTION OF DEFINITIONS of terms specific to Accessory Dwelling Units and show terms already defined in our zoning ordinance in Section 2.9 as well as to add new terms and definitions:
KITCHEN means a space within a structure designated for the preparation of food that includes a sink.

BATHROOM means a room or area that includes a sink and toilet. It may also include a bathtub, shower, or bidet.

BUILDING, ACCESSORY means a subordinate and separate building located upon the same lot occupied by the main structure or where a main structure was previously located. Accessory buildings shall not be used as dwelling units, unless a ~~conditional permit is issued for an accessory dwelling~~ *a zoning permit is issued in compliance with Section 4.2 (J).*

DWELLING UNIT means one or more rooms, designed, occupied, or intended for occupancy as a separate living quarter with cooking, sleeping, and sanitary facilities provided within the dwelling unit for the exclusive use of a single family maintaining a household.

3. ORIGINAL ORDINANCE of SECTION 4.2 (J):

Accessory Dwellings. One accessory dwelling may be maintained on a property in the R-E, R-1, R-2 and CR zoning districts, ~~contingent upon approval as a conditional use in accordance with Section 4.3,~~ and subject to the following:

1. Physical characteristics.

- a. Accessory dwellings shall be located in an accessory building.
- b. Accessory dwellings shall not have a floor area exceeding forty-five (45) percent of the floor area of the main building.
- c. Accessory dwellings shall have one kitchen *area*, one bathroom and *sleeping area*.
- d. Accessory buildings ~~and~~ shall not have the appearance of a single-family dwelling.

2. Occupancy characteristics.

- a. Length of stay – ~~No~~ Accessory dwelling unit shall be occupied ~~by any person or persons~~, whether paying a fee for such occupancy or not, *by the same person or persons* for a period *no* less than ~~thirty (30)~~ *sixty (60)* consecutive calendar days. Upon request from any building, zoning, finance, or public safety official acting on behalf of the Town of Cape Charles the owner of the subject lot of record upon which the accessory dwelling unit sits shall provide occupancy documentation and/or information as requested, either verbally or in writing. ~~Failure to do so may result in the revocation by the Cape Charles Town Council of the conditional use status for the accessory dwelling unit according to Section 4.3.F.~~
- b. ~~Inspections — All accessory dwelling units shall be inspected annually not later than fifteen (15) days from the anniversary date of the conditional use permit being approved by Town Council.~~

3. Other requirements.

- a. Accessory dwellings located in accessory buildings may have a separate water meter from the principal dwelling.
- b. Accessory dwellings will be required to have its own trash can, separate from the main residence/structure.*
- c. Accessory dwellings meeting the requirements of all of the physical characteristics of 4.2 (J) (1) above must obtain a Certificate of Completion for Accessory Dwellings from the Code Official, which is equivalent to a Certificate of Occupancy. In order to issue said Certificate, the Code Official will conduct an inspection to determine compliance with the Building Code.*
- ~~b.~~ d. The lot on which an accessory dwelling is located shall have the required minimum lot area for the district in which it is located.
- ~~e.~~ e. Parking shall ~~be considered on a case-by-case basis as part of the conditional use permit application process, ensuring adherence to~~ *be in compliance with* Section 4.5.1.C.6. (Table of Parking Standards) using both on and off-street parking areas.
- d. f. Exterior elevations shall also be approved by the Historic District Review Board when required by Article VIII, Historic Overlay.
- ~~e.~~ g. *Annual Certifications to be submitted to the Town by March 15 of each year to the Building and Planning Department.*
 - 1. The property owner will submit an annual affidavit on Town Affidavit Form for Accessory Dwellings attesting to their acknowledgement and adherence to the Zoning Ordinance requirements for Accessory Dwelling*
 - 2. The property owner will submit an annual affidavit on Town Affidavit Form for Safety Compliance for Accessory Dwellings.*

NOTE: STAFF still need to work on an owner-based inspection process to include verification of the following: Smoke alarms/detectors, carbon monoxide alarms, fire extinguishers, functional door and lock, windows free from any encumbrance (furniture blocking the window, etc.)

Additionally, we can discuss whether this should be required on an annual basis or some other calendar basis. As a point of information, in the research that Paul Grossman had done on this point, Blacksburg has required that an inspection be done within 90 days of the approval of the accessory dwelling unit and then every 4 years thereafter; said inspection is being done to determine compliance with the provisions of the building code that affect the safe, decent and sanitary living conditions for the tenants of such property. If the property is sold, the building department may require a new inspection.

B. PROPOSED ZONING TEXT AMENDMENTS TO SECTION 2.9 – Definitions

1. Add the following Definitions to Section 2.9

KITCHEN means a space within a structure designated for the preparation of food that includes a sink.

BATHROOM means a room or area that includes a sink and toilet. It may also include a bathtub, shower, or bidet.

BEDROOM is a room, or space within a structure intended for sleeping. Requirements include:

- *A minimum size of 70 sq. ft; if more than one person occupies the room, there must be 50 sq. ft per occupant.*
- *Access to a bathroom without crossing another bedroom.*
- *Every bedroom must have access to natural ventilation and have a permanent heat source.*
- *Two means of egress: one that leads to the rest of the home without going through another bedroom and one that leads directly to the outside. If the outside egress is a window, it must be at least 5.7 sq. ft and can be no more than 44 inches from the room floor, unless there is a permanent step installed. It shall be illegal to have locking bars or grates covering an egress window.*
- *Ceiling height must be no less than 7 feet.*

2. Correct the following definition in Section 2.9

BUILDING, ACCESSORY means a subordinate and separate building located upon the same lot occupied by the main structure or where a main structure was previously located. Accessory buildings shall not be used as dwelling units, unless a **conditional permit is issued for an accessory dwelling** a zoning permit is issued in compliance with Section 4.2 (J).

C. ISSUES RAISED DURING THE WORK SESSION BUT NOT DISCUSSED FURTHER:

1. House Addressing associated with the Accessory Dwelling Unit vs. the Main House for Emergency Response Personnel/Vehicles
2. Utility Regulations and Practices
For Town Council to Discuss:
Town Code, Chapter 71 – Sewers and Sewer Use, Article IV: Building Sewers and Connections, Section 71-42 (b) includes a provision regarding accessory dwelling units that are approved by town council as a conditional use permit and allowing them to be billed at 50% of the residential monthly minimum bill. It also states that “ accessory dwelling units occupied by family member(s) of the principal property owner or non-rent paying

occupants may be exempt from this monthly bill upon the town receiving affidavit signed by the principal property owner attesting to such occupancy.

THIS WILL NEED TO BE REVISED IF THE ZONING TEXT AMENDMENTS ARE FAVORABLY CONSIDERED BY THE TOWN COUNCIL.



PLANNING COMMISSION PRELIMINARY STAFF REPORT

Meeting Date: April 5, 2022

Item #: 7B – ZMA 2022-001

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

Date: March 23, 2022

APPLICANT: Cape Charles Ventures, LLC

SITE ADDRESS: 238 Randolph Avenue

TAX MAP: 83A3-1-625A

LOT SIZE: 5,600 sq ft

TYPE OF APPLICATION: Zoning Map
Amendment (ZMA) 2022-01

SPECIFIC REQUEST: Conditionally rezone parcel
from Residential-1 to Commercial-1

ZONING ORDINANCE: Section 2.7

CURRENT ZONING: Residential (R-1)

PROPOSED ZONING: Commercial-1 (C-1)

DATE RECEIVED: March 4, 2022

DATE DEEMED COMPLETE: March 16, 2022

LEGAL DEADLINE: 100 days from 1st Receiving Application: July 14, 2022

NARRATIVE OF PROPOSAL

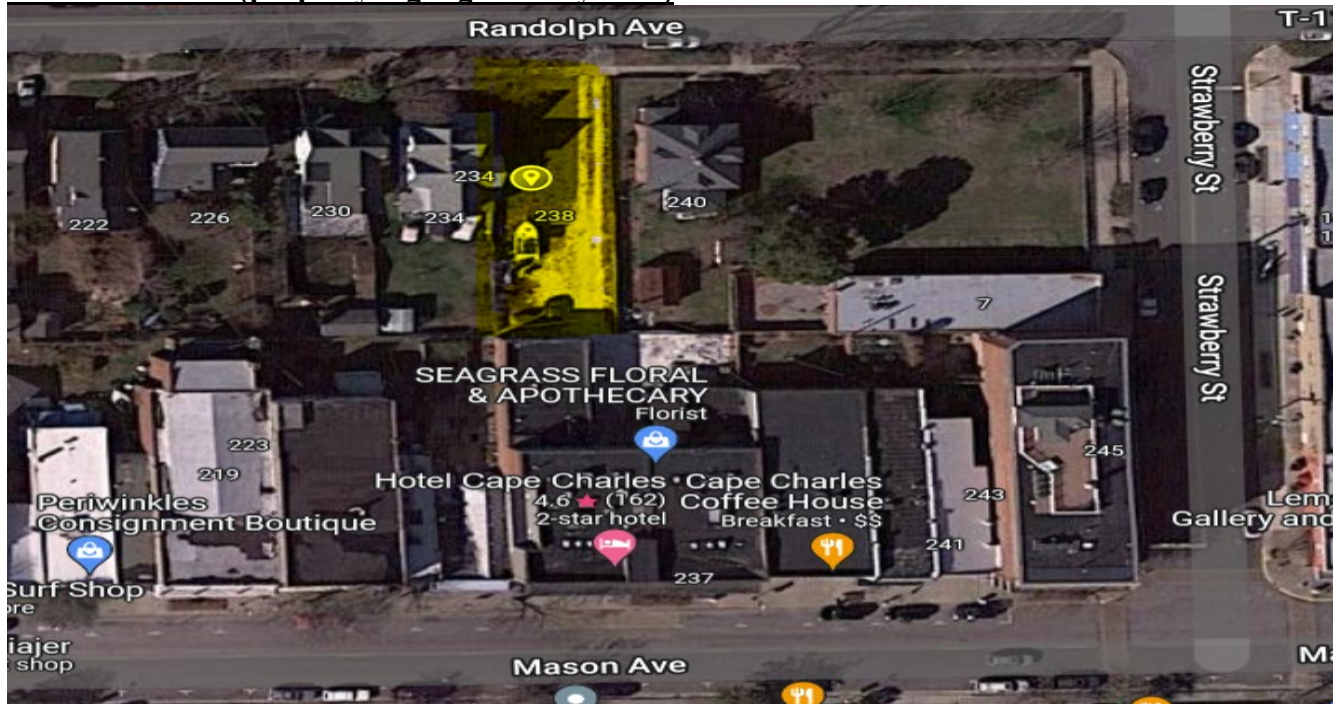
Cape Charles Ventures, LLC, on March 4, 2022, filed a conditional rezoning map amendment application to rezone 238 Randolph Avenue (Tax Map # 83A3-1-625A) from Residential-1 to Commercial-1 with proffers to limit the commercial activity of said proposed rezoning.

This application was forwarded to the Town Council and on March 17, 2022, the Town Council adopted Resolution of Intent 20220317B to accept the application and forward to the Planning Commission to schedule the matter for public hearing. Town Council indicated that this matter would be handled as a joint public hearing with Town Council and Planning Commission at the May 3, 2022 Planning Commission meeting.

AERIAL MAP: *Property outlined in blue*



GOOGLE MAP (property highlighted in yellow)



BACKGROUND

I met with the property owner in late summer/early fall 2021 to discuss his desire and intent to submit an expansion plan for the Hotel Cape Charles on the subject property itself. At that time, I informed the property owner that my office had received a complaint about activities occurring on the residential lot located directly behind the hotel, which is owned by Cape Charles Ventures, LLC, that are not in keeping with allowable residential uses pursuant to the zoning district. It was clear that the lot was being utilized by the hotel to handle the support functions for the hotel (locating the multiple trash collection containers there, using the lot as parking for the hotel golf carts which are utilized by staff and guests as a hotel amenity, and the lot was being used for employee parking). All of these uses are clearly supportive and incidental to the hotel operations and the Residential-1 Zoning District does not include, either by right or by conditional use permit, the ability to have this type of commercial activity on the lot.

I indicated to him that these violations (which were not being actively enforced by the department due to staffing shortage) would need to be resolved as part of any expansion concept.

In February, Cape Charles Ventures, Inc. submitted an application for a variance to the height requirements of the C-1 zoning district regarding 7 Strawberry Street (aka The Betis Building), indicating that they were under a purchase agreement to acquire this lot and would seek their expansion of hotel rooms by renovating and adding floors to this building. As part of the staff review of this application, I again noted that he had not sufficiently addressed the use of the residential lot at 238 Randolph Avenue and to move all of these activities onto commercially zoned property under his control. The applicant did withdraw this application before the public hearing could be held by the

Board of Zoning Appeals and subsequently filed the Conditional Zoning Map Amendment application to rezone the residential lot from Residential-1 to Commercial-1 and included a proffer statement limiting the type of commercial activity that would occur on this property.

I have continued to speak with the applicant to review the proffers provided and I believe that he will be submitting a revised proffer statement prior to the actual public hearing, which is legal and appropriate, to correct the lots identified that may utilize the lot at 238 Randolph Avenue for propane delivery, at a minimum. I indicated that he may wish to consider some other items to incorporate as proffers to address compatibility of this lot within the residential neighborhood it is located within, such as (1) language committing to the submitted landscaping plan on the proposed site plan, including a replacement commitment if the trees/shrubs should not survive, and (2) consideration of a seasonal commitment to increasing the frequency of trash collection at his expense to reduce the collection of a high volume of trash on the lot; and (3) if an expansion of the hotel is still under consideration, possibly through acquiring the commercial property at 7 Strawberry Street, then this would need to be reflected in the lots have been identified in the proffers to date, but making it conditional for inclusion only if he acquires 7 Strawberry Street as part of the hotel. I indicated that the Planning Commission may also raise issues or concerns with this rezoning application that I have not considered which may be able to be resolved, potentially through a proffer. He did indicate that he would be pursuing his hotel expansion plan through the acquisition of 7 Strawberry Street in the near future but wanted to first address a full resolution of the violations that the Town had indicated concerning his business. It is important to note that the Town has held enforcement action of the violations at 238 Randolph Avenue while the property owner has been pursuing these applications (both the variance application and now zoning map amendment application) since Town action on these applications could resolve or alleviate the violations at this lot.

I did stress to him that the Town fully understands that proffers can not be required by the Town from the applicant and that proffers are extended by the property owner to modify the regulations for the zoning district or to establish additional conditions for the uses sought based upon the zoning district regulations. Specifically, the law is as follows:

Conditional Rezoning is authorized by Virginia Code §15.2-2296 and more specifically authorized for the Town of Cape Charles thru §15.2-2303 and allows the ability of the petitioner to submit reasonable conditions (referred to as proffers) governing the use of the property, where the conditions are in addition to, or the modification of, the regulations provided for in a particular zoning district. Proffers are more specifically defined as an offer by a landowner during the rezoning process to perform an act or donate money, a product, or services to justify the propriety of a proposed rezoning. If the rezoning and proffers are accepted and approved by the Town, said proffers become part of the Zoning Ordinance.

ORDINANCE REQUIREMENTS

Section 2.7 Amendments of Chapter and Zoning Map; Conditional Zoning

Section 2.7.1 Amendments Permitted; How Initiated

In accordance with Virginia Code Section 15.2-2286.A.7, whenever public necessity, convenience, general welfare or good zoning practice require, the Town Council may amend, supplement, or change the regulations, district boundaries or classifications of property contained in this Chapter. Any such amendment may be initiated by (a) resolution of the Town Council, (b) motion of the Town's Planning Commission, or (c) the petition of the owner, contract purchaser with the owner's written consent, or the owner's agent therefore, of the property which is the subject of the proposed zoning map amendment, addressed to the Town Council or the Town's Planning Commission, which shall forward such petition to the Town Council.

Section 2.7.2 Procedures for Amending Chapter or Zoning Map

A. All proposed amendments or reenactments of this Chapter, and all proposed amendments to the zoning map, shall be referred by the Town Council to the Town's Planning Commission for its recommendations. Failure of the Planning Commission to report within 100 days after the first meeting of the Planning Commission after the proposed amendment or reenactment has been referred to it shall be deemed approval of the proposal by the Planning Commission, unless the proposal has been withdrawn by the applicant prior to the expiration of said time period. In the event of such withdrawal, processing of the proposal shall cease without further action.

B. Prior to issuing its recommendations, the Planning Commission shall hold at least one public hearing after notice of same has been published once a week for two successive weeks in some newspaper having general circulation in the Town. Such public hearing shall be held not less than six nor more than 21 days after the second advertisement appears. Such additional and further notice shall be given as required by Virginia Code Section 15.2-2204. The Planning Commission may make appropriate changes in the proposed amendments as a result of the public hearing. Upon the completion of its work, the Planning Commission shall present the proposed amendments, including revised district maps, to the Town Council together with its recommendations and appropriate explanatory materials.

C. Prior to approving and adopting any amendment to this Chapter or the zoning map, the Town Council shall hold at least one public hearing after giving such public notice as may be required by Virginia Code Section 15.2-2204, after which the Council may make appropriate changes or corrections in the proposed amendment. In the case of a proposed amendment to the zoning map, the public notice shall state the general usage and density range of the proposed amendment and the general usage and density range, if any, set forth in the applicable part of the Town's then effective comprehensive plan. No land may be zoned to a more intensive use classification than was contained in the public notice without an additional public hearing after such notice as is required by Virginia Code Section 15.2- 2204. Following

the required public hearing(s), the Town Council shall act on the proposed amendment in the same manner as adopting any other ordinance.

Section 2.7.3 Appeals

Every action contesting a decision of the Town Council adopting or failing to adopt a proposed amendment to this Chapter or the zoning map shall be filed within thirty days of the Town Council's decision with the Circuit Court of Northampton County.

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 2.7.10 Limitation on Reconsideration of Request for Amendment

No application for an amendment to this Chapter or the zoning map, including an application for conditional zoning, shall be considered by the Town Council within one year from the Council's last consideration of same. This limitation shall not apply to amendments proposed by either the Planning Commission or the Town Council on its own motion where that body finds it to be in the public interest to reconsider same.

STAFF RECOMMENDATION AND PROPOSED MOTION

A full staff report will be provided for the May public hearing meeting, providing a full review of the merits of the conditional rezoning application in accordance with the factors listed in Code of Virginia § 15.2-2284 which states that zoning ordinances and districts must be drawn and applied by reasonably considering the following:

- The existing use and character of property.
- The comprehensive plan.
- The suitability of the property for various uses.

- The trends of growth or change.
- The current and future requirements of the community as to land for various purposes as determined by population and economic studies and other studies.
- The transportation requirements of the community.
- The requirements for airports, housing, schools, parks, playgrounds, recreation areas and other public services.
- The conservation of natural resources, the preservation of flood plains, the protection of life and property from impounding structure failures, the preservation of agricultural and forestal land and the conservation of properties and their values.
- The encouragement of the most appropriate use of land throughout the locality.

It is important to note that every proposed rezoning should be accompanied by an analysis of how the amendment satisfies one or more of the factors listed above; however, some of these factors are closely related to one another and are considered together. The courts have ruled that a locality is not required to consider all nine factors in each zoning decision. Many of these factors may be addressed in the comprehensive plan and, in that case, the locality's analysis may focus on whether the proposed rezoning is consistent with the plan.

Staff is requesting the Planning Commission to review the application submitted and authorize staff to schedule a public hearing on this application for your May 3, 2022 meeting; said public hearing would be held jointly with the Town Council.

In addition, if there are other issues that you believe should be considered as part of the staff review regarding the use of 238 Randolph Avenue as ancillary and supportive to the commercial operations of the Hotel Cape Charles located at 235 Mason Avenue, please bring those forward as part of your discussion at this meeting.

Just as a point of information, the Code of Virginia (Sections 15.2-2297 & 2303) does state that the governing body may also accept amended proffers once the public hearing has begun if the amended proffers do not materially affect the overall proposal. Therefore, if the public hearing process and input identifies additional items or concerns that the staff or the Planning Commission have not considered, then those items can be considered and included in the Planning Commission recommendation on the application, which may result in the applicant choosing to amend the proffer statement, in compliance with the requirements of the Code of Virginia.

Staff recommends that the Planning Commission schedule a joint public hearing with Town Council on May 3, 2022, on ZMA 2022-01 from Cape Charles Ventures, LLC to conditionally rezone Tax Map #83A3-1-625A, located at 238 Randolph Avenue, from Residential-1 to Commercial-1.

Attachments:

Attachment 1 – ZMA Application Packet

Attachment 2 – Staff Report referring application to Town Council

Attachment

1



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: Hotel Cape Charles Commercial Services
Property Address: 238 Randolph
Brief Description of Project: reclassify zoning w/ conditions limiting development
Current Zoning District: R-1 Proposed Zoning District: C-1
Current Use: vacant lot hotel services/access Proposed Use: same - on going

OWNER INFORMATION

Name and Company: Cape Charles Ventures LLC
Mailing Address: 212 E Leigh St Suite 1 Richmond 23219
Phone Number: 8045395901 Email: david@hotelcapecharles.com

APPLICANT INFORMATION

☒ check here if applicant is owner

Name: same as above David Gemmino
Mailing Address: _____
Phone Number: _____ Email: _____

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: [Signature] Date: 3/4/22

March 3, 2022

Katie H. Nunez

Interim Planning/Zoning Administrator at Town of Cape Charles.

2 Plum Street, Cape Charles, VA 23310

Re: 238 Randolph Conditional Rezoning

Dear Ms. Nunez attached please find application and requisite documents for above captioned property/project.

As you are aware, the Hotel Cape Charles (and 6 other businesses on Mason Ave) currently utilize 238 Randolph Ave in apparent violation of the underlying R-1 Zoning Ordinance.

We seek a conditional rezoning to C-1 in order ensure that the ongoing operations of the Hotel Cape Charles is no longer in violation of the Town Zoning Ordinance. We would proffer to limit the commercial activity to the following **current uses**:

1. Deliveries-propane and other service-related deliveries for the benefit of:
 - a. 217, 219, 223, 235, 237, 239, and 241 Mason Ave
2. Waste Management-Town of Cape Charles receptacles and storage and conveyance to street for benefit of:
 - a. 235, 237, 239 Mason Avenue
3. Golf cart parking/charging as currently configured (6 carts/chargers)

In support of this request, we would note the following:

1. This lot has been utilized as detailed above by the Hotel Cape Charles (and others) since 2012, without complaint (until 2021 purchase of 234 Randolph Avenue). The Town of Cape has knowingly permitted commercial activity on 238 Randolph Avenue for at least the past 10 years and the businesses on Mason have come to rely upon that usage as essential to their operations.
2. The Hotel Cape Charles was granted a Certificate of Occupancy to open in 2012 by the Town of Cape Charles with the knowledge and consent that commercial trash storage and removal services were accessed on 238 Randolph Avenue.
3. The Town of Cape Charles permitted the installation of the electrical transformer which services the Hotel Cape Charles on 238 Randolph Ave.
4. The Town of Cape Charles permitted the installation of the propane tank which services the Hotel Cape Charles on 238 Randolph Avenue.

5. The current and long-time occupant of 240 Randolph (Judy Ann Loomis) does not oppose this reclassification.
6. Until recently consolidated as one lot, 238 Randolph was historically comprised of two separate parcels-one 32' wide parcel and one 8' strip of land which for decades served as an alley/easement to the rear of these Mason Ave commercial properties.
7. In 2014, the Town of Cape Charles sought the right to install a sewer lateral across applicant's property at 238 Randolph Ave to connect the Cape Charles Coffee House to the Town wastewater system. This applicant voluntarily granted this easement, to the detriment of his future development rights. This easement precludes applicant or any subsequent owners from building a residence which encroaches on eastern 8' of the vacant lot. With other zoning mandated setbacks, the buildable width is at a maximum 27'.
8. This rezoning will allow the Hotel guests to continue to use the rear lot for golf-cart parking, rather than adding 6 more carts on Mason Avenue.

Best Regards



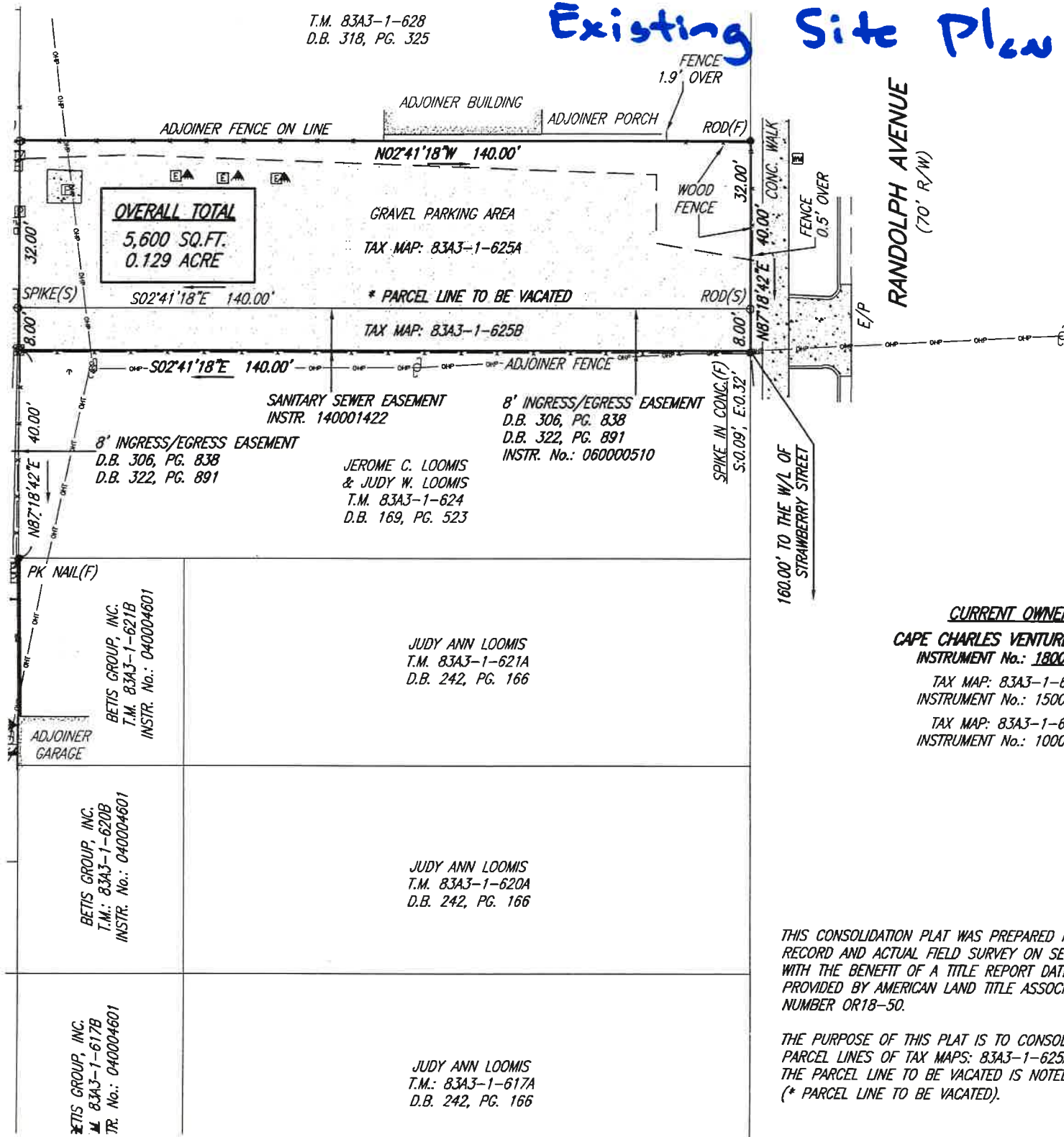
David M Gammino

Hotel Cape Charles Operating LLC

Cape Charles Ventures LLC

T.M. 83A3-1-628
D.B. 318, PG. 325

Existing Site Plan



HVAC
POWER METER
POWER TRANSFORMER
SIAMESE "FDC" CONNECTION
SIGN POST
STORM INLET (GRATE)
TELEPHONE PEDESTAL
UTILITY POLE
WALL/GROUND LIGHT
WATER METER

TEXT LEGEND

(SQ.FT.)	SQUARE FEET
(CONC.)	CONCRETE
(R/W)	RIGHT OF WAY
(C)	CENTERLINE
(P.B.)	PLAT BOOK
(D.B.)	DEED BOOK
(PG.)	PAGE
(O/H)	OVERHANG
(E/P)	EDGE OF PAVEMENT

LINETYPE LEGEND

OHP	OVERHEAD POWER
OHT	OVERHEAD TELEPH.
X	FENCE

(A) 10' RIGHT OF WAY
INSTR. No.: 090001950

CURRENT OWNER

CAPE CHARLES VENTURES, L.L.C.

INSTRUMENT No.: 180001858

TAX MAP: 83A3-1-625A

INSTRUMENT No.: 150000062

TAX MAP: 83A3-1-625B

INSTRUMENT No.: 100001310

THIS CONSOLIDATION PLAT WAS PREPARED FROM DEEDS/PLATS OF RECORD AND ACTUAL FIELD SURVEY ON SEPTEMBER 24, 2018 WITH THE BENEFIT OF A TITLE REPORT DATED OCTOBER 24, 2018 PROVIDED BY AMERICAN LAND TITLE ASSOCIATION, COMMITMENT NUMBER OR18-50.

THE PURPOSE OF THIS PLAT IS TO CONSOLIDATE THE INTERIOR PARCEL LINES OF TAX MAPS: 83A3-1-625A & 83A3-1-625B. THE PARCEL LINE TO BE VACATED IS NOTED AS SUCH (* PARCEL LINE TO BE VACATED).



160.00' TO THE W/L OF

ADJACENT PROPERTY OWNER INFORMATION

240 Mason Ave

Judy Ann Loomis

240 Mason Ave

Cape Charles Va 23310

234 Mason Ave

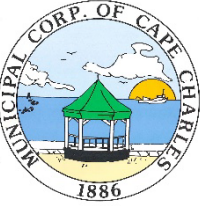
234 Mason Ave LLC

492 Hope Springs Lane

Manakin Sabot Va 23103

Attachment

2

 TOWN OF CAPE CHARLES	AGENDA TITLE: Resolution of intent to consider a change to the zoning map within the Commercial-I (C-1) Zoning District		AGENDA DATE March 17, 2022
	SUBJECT/PROPOSAL/REQUEST: Consideration of referral to Planning Commission		ITEM NUMBER:
	ATTACHMENTS: Conditional Rezoning Map Amendment Application from Cape Charles Ventures, LLC and Resolution of Intent 20220317B		FOR COUNCIL: Action (X) Information ()
	STAFF CONTACT (s): Katie H. Nunez, Interim Planning/Zoning Director	REVIEWED BY: John Hozey, Town Manager	

BACKGROUND:

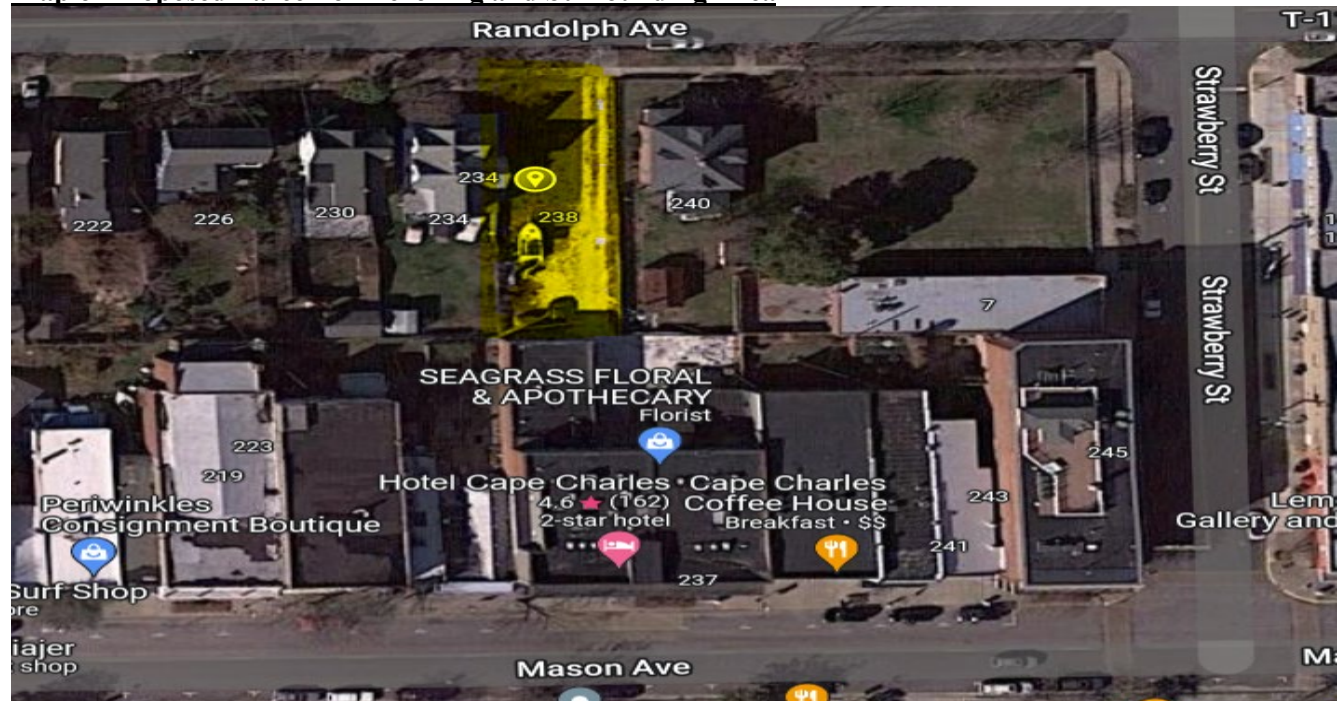
Both the Town Zoning Ordinance and Virginia Code §15.2-2286 (A) (7) requires a resolution of intent from the governing body to initiate any change to a zoning ordinance or zoning map.

Conditional Rezoning is authorized by Virginia Code §15.2-2296 and more specifically authorized for the Town of Cape Charles thru §15.2-2303 and allows the ability of the petitioner to submit reasonable conditions (referred to as proffers) governing the use of the property, where the conditions are in addition to, or the modification of, the regulations provided for in a particular zoning district. Proffers are more specifically defined as an offer by a landowner during the rezoning process to perform an act or donate money, a product, or services to justify the propriety of a proposed rezoning. If the rezoning and proffers are accepted and approved by the Town, said proffers become part of the Zoning Ordinance.

ITEM SPECIFICS:

Cape Charles Ventures, LLC, on March 4, 2022, filed a conditional rezoning map amendment application to rezone 238 Randolph Avenue (Tax Map # 83A3-1-625A) from Residential-1 to Commercial-1 with proffers to limit the commercial activity of said proposed rezoning.

Map of Proposed Parcel for Rezoning and Surrounding Area



A resolution is prepared below to acknowledge and accept that a private property owner has petitioned the Town with the filing of a conditional rezoning map amendment application and finds that the application is complete for further consideration by the Town. It is important to know that consideration and approval of this resolution does not constitute approval of any change to the Town Zoning Map. It merely identifies that a Conditional Rezoning Map Amendment Application has been received and the application identifies that sufficient public necessity, convenience, general welfare or good zoning practice exists within the proposed Application to conduct a public process that more fully explores the proposed change.

This resolution will formally establish that the proposed changes meet the requirements to be referred to the Planning Commission for public hearing and their recommendation. The Planning Commission recommendation, once issued, will be returned to the Town Council to schedule their public hearing on the matter. Final and formal consideration of any change will be the responsibility of the Town Council, following their public hearing and in consideration of the recommendation by the Planning Commission.

POTENTIAL SCHEDULE:

The Code of Virginia provides a 100-day review time frame for the Planning Commission once an application is referred and received by them, unless the Town Council votes to establish a shorter period of review. Below is a potential calendar, assuming that the full time allowed by law is utilized, for both the Planning Commission and Town Council.

<u>DATE</u>	<u>BOARD</u>	<u>ACTION</u>
3/17/2022	Town Council Meeting	Receive and acknowledge Conditional Rezoning Map Amendment Application and vote, through Resolution, to refer it to the Planning Commission to commence the required public hearing process
4/5/2022	Planning Commission Meeting	Receive the referred Conditional Rezoning Map Amendment Application and authorize staff to schedule it for public hearing. The date of this meeting establishes the 100 day clock for the PC to reach a recommendation on this application, unless the Town Council has established a shorter time frame to provide their recommendation.
5/3/2022	Planning Commission Meeting	Public Hearing on Conditional Rezoning Map Amendment Application
7/14/2022*	Planning Commission	Deadline to provide recommendation to Town Council
7/21/2022*	Town Council Meeting	Receive Planning Commission recommendation and authorizes staff to advertise their public hearing
8/18/2022*	Town Council Meeting	Public Hearing on Conditional Rezoning Map Amendment Application.
4/5/2023	Town Council	No later than one year from referral to Planning Commission to act upon Conditional Rezoning Map Amendment

**These dates and associated tasks could occur sooner than the dates provided in this calendar and are dependent upon when the Planning Commission provides its recommendation on the application.*

RECOMMENDATION:

Staff recommends adoption of Resolution of Intent 20220317B of a Conditional Rezoning Map Amendment for 238 Randolph Avenue from Residential-1 to Commercial-1.

RESOLUTION OF INTENT 20220317B

CONDITIONAL REZONING MAP AMENDMENT APPLICATION for 238 Randolph Avenue from RESIDENTIAL-1 to COMMERCIAL-1

WHEREAS, in accordance with Code of Virginia § 15.2-2286.A, the Cape Charles Zoning Ordinance § 2.7.1 includes regulations pertaining to initiation of amendments, supplements, change in the regulations, district boundaries or classifications of property contained in the zoning ordinance; and

WHEREAS, the owner of 238 Randolph Avenue, a parcel within the Residential-1, has requested a conditional rezoning to Commercial-1 with proffers to limit the allowable commercial activity to provide support services to the adjacent commercial property, currently identified and operating as Hotel Cape Charles

NOW, THEREFORE, BE IT RESOLVED that for purposes of public necessity, convenience, general welfare or good zoning practice, the Cape Charles Town Council hereby adopts a resolution of intent to consider amending the Cape Charles Zoning Map by modifying the land use for one parcel from Residential-1 to Commercial-1 with proffers to match the land use of adjacent parcels to the south of it and to refer said application to the Planning Commission to initiate and undertake review and required public notification of said application.

Adopted by the Town Council of the Town of Cape Charles on March 17, 2022.

By: _____
Mayor Dize

Attest:

Town Clerk



PLANNING COMMISSION PRELIMINARY STAFF REPORT

Meeting Date: April 5, 2022

Item #: 7C – CUP 2022-001

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

Date: March 23, 2022

APPLICANT: Cynthia Emrich & Charles van Dyck

SITE ADDRESS: 420 Randolph Avenue

TAX MAP: 83A3-1-593

LOT SIZE: 5,600 sq ft

TYPE OF APPLICATION: Conditional Use Permit 2022-02

SPECIFIC REQUEST: After the Fact Approval for an Accessory Dwelling Unit

ZONING ORDINANCE: Section 4.2 (J)

CURRENT ZONING: Residential (R-1)

DATE RECEIVED: March 16, 2022

DATE DEEMED COMPLETE: March 30, 2022

LEGAL DEADLINE (90 Days from Complete Application – Directory, not Mandatory): June 28, 2022

NARRATIVE OF PROPOSAL

The applicant is seeking to obtain an After the Fact Permit for a 548 sq ft accessory dwelling unit which was constructed in 2018/2019. Based upon a complaint to the Planning & Zoning Department, we investigated and determined that the accessory structure met the definition of accessory dwelling unit and that it was being rented on a weekly basis in conjunction with the main house on the property.

In working with the applicants/property owners to resolve the violation, we reached a corrective action plan to have them file an application for a Conditional Use Permit and bring the property into compliance with the elements of the Zoning Ordinance. I have recognized that this occurred during the transition time when the Town was crafting and adopting the Accessory Dwelling Unit ordinance and the applicant has responded swiftly in cooperation with the office to correct this violation.

AERIAL MAP: *Property outlined in blue*



ORDINANCE REQUIREMENTS

The Cape Charles Zoning Ordinance Section 4.2 (J) states that:

Accessory Dwellings. One accessory dwelling may be maintained on a property in the R-E, R-1, R-2 and CR zoning districts, contingent upon approval as a conditional use in accordance with Section 4.3, and subject to the following:

1. Physical characteristics.

- a. Accessory dwellings shall be located in an accessory building.*
- b. Accessory dwellings shall not have a floor area exceeding forty-five (45) percent of the floor area of the main building.*
- c. Accessory dwellings shall have one kitchen and one bathroom.*
- d. Accessory buildings shall not have the appearance of a single-family dwelling.*

2. Occupancy characteristics.

- a. Length of stay – No accessory dwelling unit shall be occupied by any person or persons, whether paying a fee for such occupancy or not, for a period less than thirty (30) consecutive calendar days. Upon request from any building, zoning, finance, or public safety official acting on behalf of the Town of Cape Charles the owner of the subject lot of record upon which the accessory dwelling unit sits shall provide occupancy documentation and/or information as requested, either verbally or in writing. Failure to do so may result in the revocation by the Cape Charles Town Council of the conditional use status for the accessory dwelling unit according to Section 4.3.F.*
- b. Inspections – All accessory dwelling units shall be inspected annually not later than fifteen (15) days from the anniversary date of the conditional use permit being approved by Town Council.*

3. Other requirements.

- a. Accessory dwellings located in accessory buildings may have a separate water meter from the principal dwelling.*
- b. The lot on which an accessory dwelling is located shall have the required minimum lot area for the district in which it is located.*
- c. Parking shall be considered on a case-by-case basis as part of the conditional use permit application process, ensuring adherence to Section 4.5.1.C.6. (Table of Parking Standards) using both on and off-street parking areas.*
- d. Exterior elevations shall also be approved by the Historic District Review Board when required by Article VIII, Historic Overlay.*

Staff is requesting the Planning Commission to review the application submitted and authorize staff to schedule a public hearing on this application for your May 3, 2022 meeting; said public hearing would be held jointly with the Town Council.

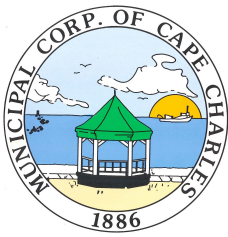
Staff will prepare a comprehensive staff report for that public hearing which evaluates the application in compliance with the requirements of the Cape Charles Zoning Ordinance and any other matters identified by the Planning Commission.

STAFF RECOMMENDATION:

Staff recommends that the Planning Commission schedule a public hearing on May 3, 2022, for a Conditional Use Permit for an Accessory Dwelling Unit at 420 Randolph Avenue on an application filed by Cynthia Emrich and Charles van Dyck, pursuant to Cape Charles Zoning Ordinance Section 4.2 (J).

Attachments:

Attachment 1 – CUP Application Packet



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: _____

Property Address: _____

Brief Description of Project: _____

Zoning District: _____ Current Use: _____ Proposed Use: _____

OWNER INFORMATION

Name and Company: _____

Mailing Address: _____

Phone Number: _____ Email: _____

APPLICANT INFORMATION

☐ check here if applicant is owner

Name: _____

Mailing Address: _____

Phone Number: _____ Email: _____

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: Cynthia Gullian Emrich & Charles Tucker Van Dyck Date: _____

Town of Cape Charles Planning & Zoning Department

2 Plum St. • Cape Charles, VA 23310 • 757-331-2036 • capecharles.org

Conditional Use Permit - Accessory Dwelling Unit Checklist

Date: 22 March 2022

Address: 420 Randolph Avenue

The following criteria are required for one accessory dwelling to be maintained on a property in the R-E, R-1, R-2, and CR zoning districts, contingent upon approval as a conditional use in accordance with Section 4.3:

1. Is the accessory dwelling unit located in an accessory building? YES ☒ NO ☐
2. Does the accessory dwelling floor area exceed of forty-five (45) percent of the floor area of the main building? YES ☐ NO ☒ Accessory Dwelling Unit square footage 548 sf, incl. front porch
3. Does the accessory dwelling have one kitchen and one bathroom? YES ☒ NO ☐
4. Does the accessory building/dwelling differentiate from the single-family dwelling? YES ☒ NO ☐

The following conditions must be maintained for an accessory dwelling unit on a property in the R-E, R-1, R-2, and CR zoning districts, contingent upon approval as a conditional use in accordance with Section 4.3:

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

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. I am providing authorization to the town authorities to enter my properties to confirm accuracy of information contained in this application.

Signature of Owner: Cynthia Gillian Emrich & Charles Tucker Van Dyck

Signature of Applicant: Cynthia Gillian Emrich & Charles Tucker Van Dyck



Municipal Corp. of Cape Charles

ACCESSORY DWELLING USE AFFIDAVIT

PROPERTY INFORMATION

Subject Property Street Address: 420 Randolph Avenue, Cape Charles, VA 23310

Subject Property Tax ID Number: PID 4125

OWNER INFORMATION

Name (Person, Firm, Corporation, or Agency): Cynthia Gillian Emrich & Charles Tucker Van Dyck

Mailing Address: 3 Pollard Park, Williamsburg, VA 23185

Phone number: Cynthia: 757-332-4230 Email: cynthia.emrich@gmail.com

- ☐ This unit will be used for monetary gain (long-term rental)
- ☒ This unit will be used by family members or other non-paying guests of the principal property owner

I am aware that accessory dwellings in the Town of Cape Charles can only be used for long-term (31 days or longer) occupation. If this unit is to be rented, a separate utility account is required, and annual rental inspections must be performed. By signing below, I agree to remain in compliance with all applicable regulations. Failure to do so can result in the loss of the conditional use permit as stated in Cape Charles Zoning Ordinance Section 4.3.F.

[Signature]
Commonwealth of Virginia, County of James City

The foregoing instrument was acknowledged before me this 17th day of March 2022, by
Cynthia Gillian Emrich & Charles Tucker Van Dyck (name of person acknowledged).

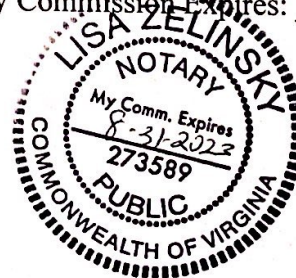
Date: 3-17-2022

Signature of Notarial Officer: [Signature]

Notary Registration Number: 273589

My Commission Expires: 8-31-2023

(Seal)



Municipal Building • 2 Plum Street • Cape Charles, Virginia 23310

(757) 331-3259

Fax (757) 331-4820

LETTER OF INTENT – CUP APPLICATION

Cynthia Gillian Emrich & Charles Tucker Van Dyck
420 Randolph Avenue, Cape Charles, VA 23310

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

DEAR KATIE NUNEZ & KEN BUTTA,

Thank you for a very productive conversation on 4 March 2022 regarding bringing our Guest Cottage at 420 Randolph Avenue into compliance as an Accessory Dwelling Unit that we will occupy ourselves (i.e., Cynthia & Tucker). As you know, we constructed it starting in May 2018 as part of a broader project that included a sensitive restoration of the original ca. 1890 Victorian and addition of a screen porch and in-ground pool.

Consistent with our conversation on 4 March 2022, and as outlined in the “Notice of Violation & Corrective Action” dated 9 March 2022, we have undertaken the following, requested steps to be in full compliance with CCZO Sections 4.2.J and 4.2.J.2.

- **“Remove references to the availability of the Guest Cottage in your advertising.”**
We list our property solely on Airbnb and have removed references to the Guest Cottage from that listing, with one exception noted below. You can review our listing by following this link: <https://airbnb.com/h/eastofthesuncapecharles>

The Guest Cottage remains visible in a few photos of our home and backyard. Therefore, we do make one reference to the Guest Cottage in an attempt to pre-empt assumptions or queries regarding its availability: “There is a Guest Cottage on our property, but per the Town's zoning ordinance, it is not available for short-term rental. We (Cynthia & Tucker) are the only individuals permitted to occupy it”.

- **“Provide the dates for which you have already committed to renting or using the Guest Cottage. You have already done this, and the dates are acceptable to us.”** For ease of reference, we once again provide the dates when we are committed to renting the Guest Cottage in 2022. All weeks are weekly, and they commence on Saturdays:
 - 28 May, 4 June, 11 June, 25 June, 2 July, 16 July, 23 July, 30 July, 6 August

We are hosting family reunions the weeks of 18 June & 9 July. Otherwise, per our conversation with Katie Nunez & Ken Butta on 4 March 2022, only we will occupy Guest Cottage.

- **“Stop renting the accessory dwelling for periods of time less than 31 consecutive days after September 3, 2022.”** We agree to this condition and enclose an “Accessory Dwelling Affidavit,” in which we checked, “This unit will be used by family members or other non-paying guests of the principal property owner[s].”
- **“Apply for and receive a Conditional Use Permit for the Accessory Dwelling Unit.”** This letter is an enclosure to that Application.
- **“Complete and submit to this office a signed and notarized Accessory Dwelling Unit Affidavit.”** This Affidavit is enclosed as part of our CUP Application packet.

Thank you, again, for the spirit of positive intent and collaboration that the two of you brought to the conversation on 4 March 2022. We also thank you for clearly outlining a constructive path forward.

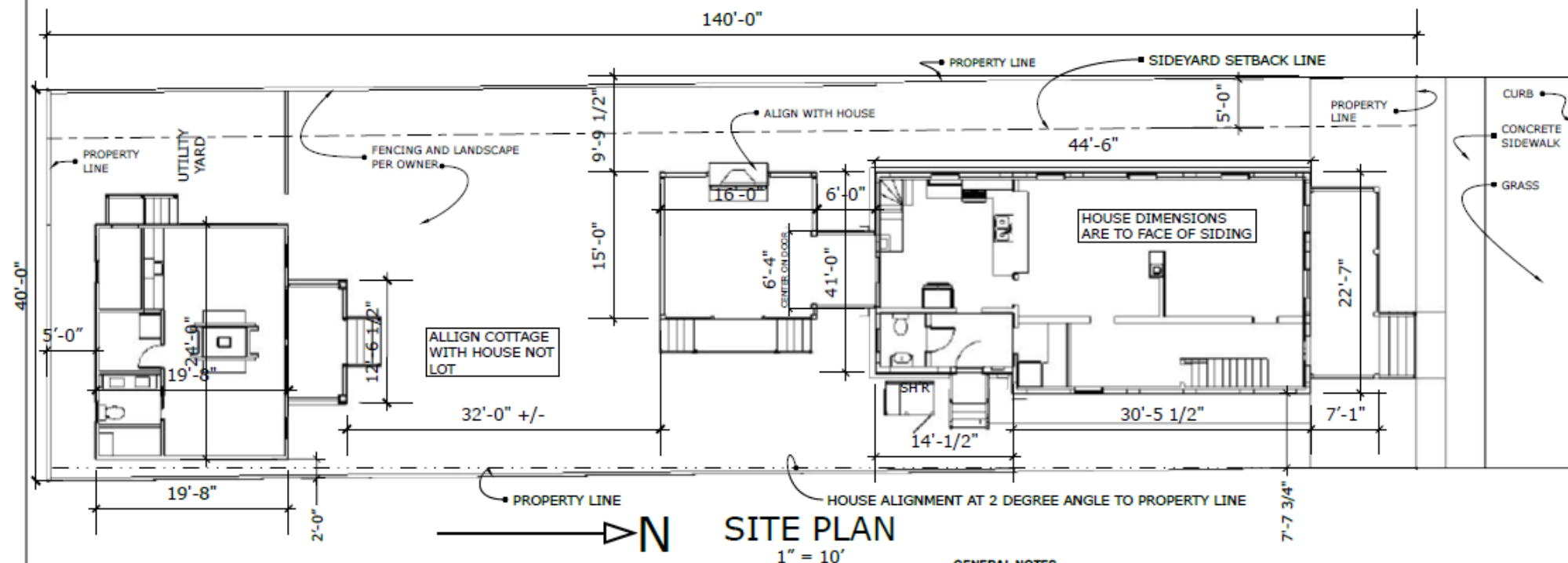
As we wrote in our email dated 28 February and repeated during our conversation, we never intended to run afoul of the Town’s zoning ordinances and believed at the time that we were taking all the right steps to be good citizens of the Town. We will be happy to truly be in full compliance with all ordinances going forward.

Thank you, and take care.

Cynthia Gillian Emrich & Charles Tucker Van Dyck

Cynthia Gillian Emrich & Charles Tucker Van Dyck

Enclosure



DEMOLITION SUMMARY

SITE PLAN

GENERAL NOTES



SHEET IS FORMATTED FOR PRINTING ON 12' X 18" SHEETS

REVISIONS
SEE DATE OF SHEET

EMRICH-VAN DYCK RESIDENCE
420 RANDOLPH AVE.
CAPE CHARLES, VA 23301

DATE	1-2-19
DRAWN BY	RSG
JOB. NO.	21607
SHEET NO.	2
	OF 28 SHEETS

CONDITIONAL USE PERMIT APPLICATION –

420 Randolph Avenue, Cape Charles, VA 23301

Names & Addresses of Adjacent Property Owners

(South)

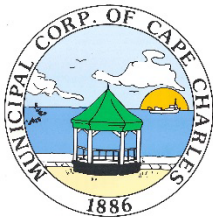
Lola May Young Bailey
433 Mason Avenue
Cape Charles, VA 23310

(East)

John P Tapscott & Paula Russo (424 Randolph Avenue)
3814 Mystic Cove Ct
Virginia Beach, VA 23455

(West)

June Pearlberg (416 Randolph Avenue)
405 Mount Carmel Rd
East Fallowfield, PA 19320



Municipal Corp. of Cape Charles

APRIL 2022 MONTHLY REPORT

Katie H. Nunez, Interim Planning/Zoning Administrator

- 1. Subdivision Agent:** No new applications filed.
- 2. Board of Zoning Appeals - Code of Virginia Section 15.2-2310**
[Planning Commission shall be provided any applications filed with the Board of Zoning Appeals.]
 - A.** No applications filed
- 3. Other**
 - Conference call with Commonwealth Preservation Group to review and confirm proposed changes to first round of draft document
 - Conference call with potential purchaser of 3 lots at corner of Bay and Washington Ave re: CBPA overlay and requirements and potential development plan and possibly amending the CBPA Overlay Map and variance process for encroachment in the RPA
 - CAMP Training Schedule – Historic District Review Board, Planning Commission & Town Council have been invited to attend at Civic Center

DAY 1 – April 27, 2022

9:00 - 9:15 Welcome and Introduction

9:15 - 10:15 Standards and Guidelines for Design Review: Reviewing the Federal Standards and Guidelines and learning to apply them to real world cases. Chris Skelly

10:15 - 11:15 Preservation Planning: Planning for the resource, the commission, and the community. Wade Broadhead

11:15 - 11:30 Break

11:30 - 12:30 Design Review Exercise: Participants will practice design review with a simplified application and set of design guidelines. Chris Skelly

DAY 2 – April 29, 2022

9:00 - 9:15 Follow-up Questions from Pt. 1

9:15 - 10:15 Alternative Materials: As fewer original materials are available to replace deteriorated or missing features, commissions need to consider alternative materials. Robin Zeigler

10:15 - 11:15 Mid-Century Resources: An overview of why the Mid-Century/Post-War Architecture and social history is significant from urban centers to small towns. Understand and articulate effective cases for saving these resources. Wade Broadhead

11:15 - 11:30 Break

11:30 - 12:30 Envisioning Infill Design: Explore how to envision new construction and how to find the appropriate balance for your community between the goals of compatible yet differentiated. Robin Zeigler

12:30 - 12:45 Wrap-up

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