

PLANNING COMMISSION

Public Hearing & Regular Meeting

Cape Charles Civic Center
June 7, 2022

At 6:00 p.m., Vice-Chairman Dennis McCoy, having established a quorum, called to order the Public Hearing and Regular Meeting of the Planning Commission. In addition to Vice-Chairman McCoy, present were Commissioners Kenneth Butta, Paul Grossman, Jim Holloway, and Michael Strub. Chairman Bill Stramm was not in attendance and there was one vacancy on the commission. Also, in attendance were Interim Planning/Zoning Administrator Katie Nunez, Planning Technician Tracy Outten, Town Clerk Libby Hume, and the applicant. There were three members of the public in attendance and twenty-four viewers on Facebook Live.

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

AGENDA

Motion made by Paul Grossman, seconded by Michael Strub, to approve the agenda format as present. The motion was approved by unanimous vote.

Motion made by Paul Grossman, seconded by Jim Holloway, to approve the minutes from the February 2, 2022 Town Council Joint Work Session with Planning Commission and the March 22, 2022 Town Council, Planning Commission, and Harbor Area Review Board Joint Work Session as presented. The motion was approved by unanimous vote.

Dennis McCoy informed all that Commissioner Diane D'Amico had resigned from the Planning Commission. (Please see attached.)

Dennis McCoy read the public hearing notice and opened the public hearing.

PUBLIC HEARING COMMENTS:

- A. *Conditional Use Permit (CUP) 2022-003: Application from Michelle and Nathan Davidson at 211 Madison Avenue for an Accessory Dwelling Unit and In-Ground Pool.*
Katie Nunez summarized the staff report.

There were no public comments to be heard nor any written comments submitted prior to the meeting.

Motion made by Paul Grossman, seconded by Jim Holloway, to close the public hearing portion of the Planning Commission meeting. The motion was approved by unanimous vote.

CITIZEN COMMENTS:

There were no citizen comments to be heard nor any written comments submitted prior to the meeting.

UNFINISHED BUSINESS

- A. *Continued discussion 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.*

Motion made by Paul Grossman, seconded by Jim Holloway, to take off the table and to reopen for discussion the application for Zoning Map Amendment (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 until Interim Zoning Administrator Katie Nunez could explore a possible solution that would not involve rezoning. The motion was approved by unanimous vote.

Katie Nunez updated the commissioners on the research that was conducted to explore a possibility of leaving 238 Randolph Avenue zoned Residential-1 but allowing limited trash collection and servicing as well as propane delivery by classifying the lot legal, non-conforming. Based on her extensive title research, she was not able to do come to that conclusion and therefore, continued by saying there was a legal alley which was privately owned by the current owner, Cape Charles Ventures, LLC, for the use and traversing on and off the alley for propane services.

Paul Grossman indicated that he does not agree with this Zoning Determination and felt that it was possible that the uses were still occurring by the hotel property from 2010 to 2014 on the residential lot, even though the residential lot was owned by a different party than the owner of the Hotel Lot. Katie Nunez stated that she had no information to confirm or contradict his assumption but did not find it necessary to know that since the two lots had different owners and unless there was a signed agreement from the owners of the residential lot to allow that lot to be used by the owners of the Hotel Lot then any use on the residential lot by the Hotel Lot during that time frame would not be legal and she stood by her Zoning Determination.

The Planning Commission reviewed each section of the Proffer Statement, and the affiliated Site Plan and comments were as follows:

- (i) Section II Land Use – B. Permitted Uses (1) Deliveries: The commissioners needed clarification regarding “other service-related deliveries”. As currently written, this statement was too broad and uncertainty about what falls under that umbrella.
- (ii) Section II Land Use – B. Permitted Uses (2) Waste Management: Katie Nunez had conversations with the applicant discussing the number of Town issued trash receptacles are being used and asked if a dumpster placed on site would be an option. This would eliminate the concern about timely placement of trash bins on the sidewalk on pick-up days as well as removal of the emptied bins back onto the hotel property. If the dumpster approach was amenable to both parties, then the site plan would need to be revised accordingly and some sort of screening, such as a fence around the dumpster, would need to be part of this condition.

Additionally, if this was an amenable approach, there may need to be consideration of considering the frequency of emptying of the dumpster beyond once a week, especially during the summer season. The summer season should be considered March to November.

Lastly, if the hotel expansion was pursued, possibly through the acquisition of 7 Strawberry Street, then an increase to at least two dumpsters should be an acknowledged stipulation or an increase in the frequency of the weekly emptying of the one trash dumpster to reflect the increase in the number of hotel rooms and the increased trash generation that would come from an increase in the number of hotel rooms.

- (iii) Section II Land Use – B. Permitted Uses (3) Golf Carts: Katie Nunez indicated that golf carts were not deemed essential in the provision of services needed for the operation and management of the hotel and was an expansion of the services that historically were provided from the rear of the hotel property such as propane deliveries, trash collection and storage. After much discussion, the commissioners agreed that the offering of golf carts were an amenity and not a necessity for a hotel to function. They continued by adding that providing a charging station for said golf carts and the noted screening are not essential to the hotel and support the removal of this condition of use on the lot addressed 238 Randolph Avenue as well as the associated screening in Section III (D).
- (iv) Section III Landscaping & Screening – C.: The commissioners asked what the term “convenience containers” referred to. Katie Nunez did not know. Since “convenience containers” was not clearly defined, a decision could not be made.
- (v) The commissioners would like clarification regarding the addresses listed in the Proffer Statement and what businesses were associated with those addresses. Katie Nunez stated that these addresses reflected businesses located in real estate owned by Cape Charles Ventures II, LLC which was the corporate entity for Hotel Cape Charles. The businesses benefiting from this zoning application were the Hotel itself, subsidiary businesses of the Hotel’s LLC entity operating within space of the hotel building or third parties that have leased from the Hotel’s LLC to operate a business such as the PenFed Credit Union or the Almeta Coffee Shop.

Kenneth Butta still did not support the rezoning of this lot from Residential-1 to Commercial-1 even with certain concerns raised and addressed during the discussion, since he believed the design and construction of the hotel created this issue, specifically the courtyard which was at the back of the building where the zoning was Commercial-1 and where the trash receptacles used to be stored. He added that the courtyard could be relocated to the residential lot and the other uses be moved to operate from the portion of the Commercial-1 zoned lot that the hotel sits on. Kenneth Butta does not think the rezoning was supported by the Comprehensive Plan, which Michael Strub agreed.

Katie Nunez explained that Proffer Statements were voluntary offers submitted by an applicant to place specific conditions or stipulations to either restrict by-right usage of the zoning ordinance or supplement any named improvements above the minimum requirements of the ordinance. The Proffer Statement needs to be submitted prior to the convening of the public hearing (which these were) and may be further tweaked if they were not materially changed from what was part of the public hearing process and were fully and voluntarily offered by the applicant.

Katie Nunez said that any motion for recommendation for approval should include an update to the Comprehensive Plan to reflect the rezoning.

Motion made by Paul Grossman, seconded by Jim Holloway, to recommend Town Council approve the application for Zoning Map Amendment (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 with the following conditions to the terms of the Proffer Statement, with the understanding that the Town can not require the Applicant to amend the Proffer Statement:

- (1) Section II Land Use: B. Permitted Uses – 1. Deliveries: Provide clarification regarding "other service-related deliveries" to eliminate ambiguity and clearly**

specify the type and purpose of said deliveries; if unable to do so, then the phrase “other service-related deliveries” should be stricken.

- (2) Section II Land Use: B. Permitted Uses – 2. Waste Management: All trash should be collected and stored in a dumpster (not the trash receptacle supplied by the Town) on the site and said dumpster shall be serviced by a third-party vendor at the expense of the property owner/applicant and said dumpster shall be serviced at least twice a week during the summer season of March to November. Revise the site plan to show the location of the dumpster and provide appropriate screening of dumpster through a fence. If the hotel expands its number of rooms from the acquisition of 7 Strawberry Street expansion, then this site plan will be amended to either accommodate two dumpsters or the property owner/applicant will increase the frequency of weekly servicing of the trash dumpster.
- (3) Section II Land Use: B. Permitted Uses – 3. Golf Carts: Remove any mention or allocation of land on this lot for the storage, charging or holding of golf carts for the hotel and any associated screening and / or landscaping for golf carts.
- (4) Section III Landscaping & Screening: C.: Fully explain/define the term “convenience containers” to be reviewed and determined if acceptable by the Town; otherwise, this term should be removed.

Also, the Town Council should incorporate any update to the Comprehensive Plan and Cape Charles Zoning Ordinance and Zoning Maps to reflect the rezoning.

The motion was approved by majority vote with Kenneth Butta and Michael Strub opposing.

NEW BUSINESS

- A. *Discussion and Possible Vote on Conditional Use Permit Conditional Use Permit (CUP) 2022-003: Application from Michelle and Nathan Davidson at 211 Madison Avenue for an Accessory Dwelling Unit and In-Ground Pool.*

Motion made by Paul Grossman, seconded by Michael Strub, to recommend Town Council approve the Conditional Use Permit (CUP 2022-003) for an Accessory Dwelling Unit and an In-ground Pool at 211 Madison Avenue on an application filed by Michelle and Nathan Davidson pursuant to Cape Charles Zoning Ordinance Section 4.2 (J), and a Conditional Use Permit for an in-ground pool pursuant to Cape Charles Zoning Ordinance Section 3.2 (C) (5). The motion was approved by unanimous vote.

- B. *Schedule public hearing on Conditional Use Permit (CUP) 2022-004: Application from Barbara and Bill O'Hare at 11 Randolph Avenue for an Accessory Dwelling Unit pursuant to CCZO Section 4.2 (J).*

Katie Nunez briefly read through the staff report.

Motion made by Paul Grossman, seconded by Kenneth Butta, to schedule a public hearing on July 5, 2022 for a Conditional Use Permit (CUP 2022-004) for an Accessory Dwelling Unit at 11 Randolph Avenue on an application filed by Barbara and Bill O'Hare pursuant to Cape Charles Zoning Ordinance Section 4.2 (J). The motion was approved by unanimous vote.

REPORT OF OFFICERS AND COMMITTEES

There were no reports from the officers or committees.

STANDING STAFF REPORTS

Katie Nunez gave updates on the following: (i) Final Plats Approved: (1) Bayside Parcels: 90-30-P5 and 90-30-P8; (2) Bayside Section XIII: portion of 90-32-P91=1 lot; (3) The Forest at Bayside:

90-32-P91=8 lots and 2 open space lots; (4) Fairways: The Commons; (5) Plantation Pointe: 90-30-P3=4 lots; (ii) Board of Zoning Appeals: Two variance applications have been received. (iii) Town Council did not approve the Zoning Text Amendments 2022-001 for Accessory Dwelling Units and Definitions. and (iv) Town Council had revised the Public Hearing Procedure and commissioners needed to sign an acknowledgement form certifying that they received a copy of the revised Code of Ethics & Meeting Rules of Order Policy.

ANNOUNCEMENTS

- Regular Session – July 5, 2022, at 6:00 p.m. in the Civic Center
- Joint Meeting with Town Council and Comp Plan Consultants – July 12, 2022, at 6:30 p.m. in the Civic Center

Motion made by Paul Grossman, seconded by Jim Holloway, to adjourn the Planning Commission Public Hearing and Regular Meeting at 7:40 p.m. The motion was approved by unanimous vote.

Vice-Chairman Dennis McCoy

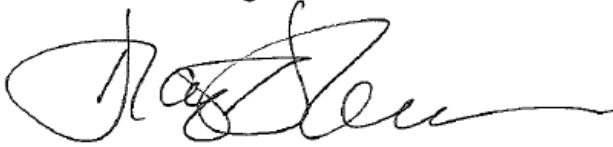
Planning Technician

Planning Commissioner Diane D'Amico Resignation

May 12, 2022

Mayor Smitty Dize, Bill Stramm, Katie Nunez, Town Council, and Planning Commission,

I agreed to be on the Planning Commission because I thought I could make a difference. Based on what's happened during my tenure and the basic differences I have with other members and staff, both philosophically and from the standpoint of personality, I believe it is time for me to resign. I'm a very direct person and I say what's on my mind. I also believe in the strict interpretation of Town Codes. Because of these differences I feel it would be better for me and for the Planning Commission for me to leave now.

A handwritten signature in black ink, appearing to read 'Diane D'Amico', with a long horizontal flourish extending to the right.

Diane D'Amico