Planning Commission

Regular Session Agenda

Cape Charles Civic Center – 500 Tazewell Avenue

October 4, 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
   B. Approval of Minutes: None.

4. Public Hearings:
   A. Zoning Text Amendment (ZTA) 2022-02 application from the Town of Cape Charles to amend Section 4.2 (J) – Accessory Dwelling Units - and Section 2.9 Definitions associated with Accessory Dwelling Units.
   B. Zoning Text Amendment (ZMA) 2022-03 application from the Town of Cape Charles to remove proffers that were accepted and approved on November 13, 2008 as part of the "Keck Property Rezoning" and recorded in Northampton County Clerk of Courts as Instrument #090002549 and affecting the following parcels:

Tax Map #:	OWNER:	LOCATION
90-19-B	Town of Cape Charles	2443 Old Cape Charles Road
90-19-A	General Builders LLC	Old Cape Charles Road
90-29-3	General Builders LLC	2401 Old Cape Charles Road
90-29-4	General Builders LLC	2403 Old Cape Charles Road
90-29-2	CEM Investments, LLC	2405 Old Cape Charles Road
90-29-1	General Builders LLC	2407 Old Cape Charles Road

5. Citizen Comment Period, for any item not subject to an advertised public hearing

6. Unfinished Business:
   A. Zoning Text Amendment (ZTA) 2022-02 application from the Town of Cape Charles to amend Section 4.2 (J) – Accessory Dwelling Units - and Section 2.9 Definitions associated with Accessory Dwelling Units.
   B. Zoning Text Amendment (ZMA) 2022-03 application from the Town of Cape Charles to remove proffers that were accepted and approved on November 13, 2008 as part of the "Keck Property Rezoning" and recorded in Northampton County Clerk of Courts as Instrument #090002549 and affecting the following parcels:

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7. New Business: NONE

8. Report of Officers and Committees
   A. Housing Committee re: Land Use Ordinance Barriers to Housing Development

9. Standing Staff Reports
   A. Interim Planning & Zoning Administrator Monthly Report for October 2022
      1.) Subdivision Agent Report
      2.) Report on Applications filed with Board of Zoning Appeals, pursuant to Code of Virginia §15.2-2310

10. Announcements - Next Meetings:
    - Public Forum: Thursday, October 6, 2022 @ 6:30 p.m. Draft 5-Year Comprehensive Plan – Rollout & Open Discussion with Consultant, Summit Engineering
    - Joint Meeting: Thursday, October 27, 2022 @ 6:30 pm – Joint Meeting of Town Council and Planning Commission on Draft 5-Year Update of the Comprehensive Plan
    - Regular Session**: <u>Wednesday, November 9, 2022 @ 6:00 pm – Joint Public Hearing with Town Council & Consultant, Summit Engineering, on Adoption of Comprehensive Plan 5-Year Update</u>**
      - ***<u>Town Council Regular Session is November 17, 2022 and they are anticipated to vote on adoption of Comprehensive Plan 5-Year Update</u>***
    - Regular Session: Tuesday, December 6, 2022 – Joint Public Meeting with Town Council re: Zoning Text Amendment on Article VIII – Historic District Overlay & Map
      - ***Town Council Regular Session is December 15, 2022 and they are scheduled to take action on the Adoption of the Historic District Guidelines and the Zoning Text Amendment of Article VIII (Historic District Overlay & Map)***

11. Adjourn

TOWN OF CAPE CHARLES
Planning Commission
Public Hearings

The Cape Charles Planning Commission will hold public hearings on Tuesday, October 4, at 6:00 pm in the Cape Charles Civic Center, 500 Tazewell Avenue, to receive comment on the following applications:

A. A Zoning Text Amendment (ZTA) 2022-02 application from the Town of Cape Charles to amend Section 4.2 (J) – Accessory Dwelling Units - and Section 2.9 Definitions associated with Accessory Dwelling Units.
B. A Zoning Text Amendment (ZMA) 2022-03 application from the Town of Cape Charles to remove proffers that were accepted and approved on November 13, 2008 as part of the "Keck Property Rezoning" and recorded in Northampton County Clerk of Courts as Instrument #090002549 and affecting the following parcels:

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90-29-2	CEM Investments, LLC	2405 Old Cape Charles Road
90-29-1	General Builders LLC	2407 Old Cape Charles Road

These applications are available for public review on our website at www.capecharles.org, under Agendas & Minutes / Planning Commission. Please contact the Planning Department at 1-757-331-2036, or by email at planner@capecharles.org if you have any questions or require additional information.

AD PLACED: Eastern Shore Post on Tuesday, September 20, 2022
AD TO RUN: Friday, September 23, 2022 and Friday, September 30, 2022

PLANNING COMMISSION
STAFF REPORT

Meeting Date: October 4, 2022
Prepared by: Katie H. Nunez, Planning/Zoning Administrator
Date: September 28, 2022
Item # 4A & 6A: Zoning Text Amendment (ZTA) 2022-02 application from the Town of Cape Charles to amend Section 4.2 (J) – Accessory Dwelling Units - and Section 2.9 Definitions associated with Accessory Dwelling Units.

At the September 15, 2022 regular Town Council meeting, I reviewed the proposed zoning text amendment with Town Council as discussed by the Planning Commission. After some discussion and revision to the definition of kitchen, Town Council voted to authorize staff to send Zoning Text Amendment (ZTA) 2022-02, with the Town of Cape Charles as applicant, to public hearing to amend Section 4.2 (J) – Accessory Dwelling Units – and Section 2.9 Definitions associated with Accessory Dwelling Units.

Attached is the Proposed Zoning Text Amendment for public hearing and Planning Commission discussion and recommendation following the public hearing. Town Council is scheduled for their public hearing on this matter on Thursday, October 20, 2022.

Staff is recommending favorable consideration of ZTA 2022-02, as presented.

Attachments: Proposed ZTA on Accessory Dwellings
Rental Housing Inspection Checklist

ZONING TEXT AMENDMENT 2022-09

PROPOSED ZONING TEXT AMENDMENTS RE: ACCESSORY DWELLING UNITS

Legend of Changes in the document:
Current Zoning Text: Regular Text
Proposed Deletions: Shown as ~~**bold, strike-through text**~~
Proposed Additions, first version: 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. 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 and to provide flexibility to property owners to be able to utilize the ADUs as overflow space for their own family use and guests.*

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, one bathroom, and a *sleeping area.*
   d. Accessory buildings ~~**and**~~ shall not have the appearance of a single-family dwelling.

2. Occupancy characteristics.
   a. Transient Occupancy (also referred to Short Term Rentals [STRs]) 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. Accessory Dwelling Units may not be rented on a Transient Occupancy basis.
   b. Length of stay – ~~**No**~~ *An* accessory dwelling unit ~~**shall**~~ *may* be occupied by any person or persons, ~~**whether paying a fee for such occupancy or not**~~, for a period *no* less than thirty (30) consecutive calendar days *either paying a fee for such occupancy at his own expense or at the expense of another (30-day rental or greater).* 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.**~~

c. The property owner where the Accessory Dwelling Unit (ADU) is located may utilize the ADU as overflow residential space for members of their family and guests.

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) & (2) 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.

~~c.~~ 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 owner 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. <u>PROPOSED ZONING TEXT AMENDMENTS TO SECTION 2.9 – Definitions</u>

1. Add the following Definitions to Section 2.9

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

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).*

CAPE CHARLES

ACCESSORY DWELLING UNIT
ANNUAL SAFETY INSPECTION
CHECKLIST & AFFIDAVIT

INSTRUCTIONS:

Each Accessory Dwelling Unit established pursuant to Cape Charles Zoning Ordinance Section 4.2 (J) is required to conduct and complete this Annual Safety Inspection Checklist by May 1 annually and return to the Building Office at (INSERT ADDRESS). You must sign and get this affidavit notarized, confirming that you have conducted the inspection, either yourself as the property owner, or your agent on your behalf, and you are attesting to the accuracy of all information provided.

The Building/Code Official retains the right to conduct an in-person inspection of the property to determine compliance with the Safety and Health Requirements for Accessory Dwelling Units and will schedule said inspection within 5 days of providing written notice to the property owner.

If "N" or "NO" is checked in any category, the property owner must provide a date in the NOTES COLUMN when the item will be corrected and complete and submit a second form confirming that all items are now in working and functional order.

PROPERTY ADDRESS		**Person Completing Inspection:**	
PROPERTY OWNER NAME:		**Date of Inspection:**	
MAILING ADDRESS			
PHONE #:		**EMAIL:**	

SAFETY INSEPCTION ITEMS		**Answer**		**NOTES**
ITEM # and CATEGORY		N	NA	
1	SMOKE DETECTORS Please list the location of each smoke detector and # of smoke detectors total for the structure. Are they located and installed, as previously approved by the Building Official during the initial inspection, with one on each level and in each bedroom, if separated by walls?			
2	CARBON MONOXIDE (CO) ALARM Please list the location of each carbon monoxide alarm and # of carbon monoxide alarms total for the structure.			
3	STAIRS & STAIRWAY Are all steps and handrails securely fastened and anchored, free from trip hazards and no loose or broken boards or stair treads? Is the stairway in sound condition and free from any obtstacles? Is the stairway illumination still functional and working?			
4	DOORS Are all exits out of the building free ofobstructions and able to be used?			

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SAFETY INSEPCTION ITEMS		Answer		NOTES
	Does the egress door for the Accessory Dwelling Unit open from the inside without a key?			
5	WINDOWS Is the egress window easily openable? Is the egress window free from obstructions or obstacles?			
6	GARAGE SEPARATION to LIVING SPACE Is the separation from garage to living space in the same condition as approved by the Building Official during his initial inspection?			
7	ELECTRICAL Are all electrical components in safe working conditions, including: • No missing cover plates • No exposed open wiring • All outlets are working			
8	WATER HEATER • Is the water heater in sound, working condition?			
9	HEATING Does the living space have heating ability to a minimum of 68 degrees? Please Note: space heaters are not permitted to meet this requirement.			
10	FIRE EXTINGUISHER Is there a fire extinguisher in the kitchen? Please provide location where it is. Is it expired or current?			
11	GENERAL Interior areas, including the garage, shall be kept free from excessive accumulation of rubbish or garbage. No grills are permitted on balconies			

AFFIDAVIT STATEMENT & NOTARY

I, _____, hereby certify that I have the authority to conduct the safety inspection for _____ (Property Address) and that the answers provided to the checklist items are correct and true..

Self Inspection conducted by: _____ _____

PRINT NAME **SIGN NAME & DATE**

Has appeared before me in the City of County of _____, Virginia on the ____ day of _____, 20___in the presence of the undersigned notary.

_____

Notary Public

My Commission expires on the ____ day of _____, 20___.

Registration #:

DRAFT

PLANNING COMMISSION
STAFF REPORT

Meeting Date: October 4, 2022
Item #4B & 6B – ZMA/ZTA 2022-03
Prepared by: Katie H. Nunez, Planning/Zoning Administrator
Date: September 28, 2022

APPLICANT: Town of Cape Charles

SITE ADDRESS: Old Cape Charles Road

TAX MAP: 90-19-B, 90-19-A, 90-29-1 thru 4

TYPE OF APPLICATION: Zoning Map/Text Amendment – remove proffers from conditional rezoning

SPECIFIC REQUEST: Remove proffers that were accepted and approved on 11/13/2008 as part of the "Keck Property Rezoning

DATE RECEIVED: September 15, 2022
DATE DEEMED COMPLETE: September 15, 2022
LEGAL DEADLINE (100 days from notification of application): January 14, 2023

NARRATIVE OF PROPOSAL

The Town has been in conversations with a representative of Lot 4 Holdings, LLC, who is conducting due diligence relative to the purchase of the Remainder or Residual lot of 11.5 acres (now identified as Tax Map #90-19-A). Lance Marine has indicated an interest in a workforce housing development and as we have identified the issues or elements that must be addressed in order for such a project to proceed successfully, the proffers that cover this property (identified and referred to as the Keck Property Proffer Statement) are proving to be an impediment to moving forward and he has provided a letter outlining his project intentions (see letter from Winmar Advisory dated September 12, 2022 and signed by Lance Marine, Managing Principal).

Town Council reviewed this request at their September 15, 2022 meeting and voted to send this matter to public hearing as quickly as possible.

BACKGROUND:

On November 13, 2008, the Town of Cape Charles agreed to conditionally rezone a portion of then Tax Map #90-3-A, comprising of 33.195 acres off of Old Cape Charles Road and more commonly identified as the Keck Property with proffers; said rezoning change on the left side of the property (marked in Yellow Hatching) went from R-E to R-3 and the right side of the property (marked in Blue Angled Lines) remained R-E. Said proffers were accepted and recorded on December 31, 2008.

The proffers were the following:

(1) The Grantors proffer by dedication 17.751 +/- acres of unimproved land currently identified as tax map #90-30-A zoned Residential Estate, RE, adjoining the property to be rezoned, to be deeded to the Town of Cape Charles as unimproved land. The purse of the dedication is for the dedicated property to become Town property and be developed by the Town in the future in a manner that will best serve the interests of the Town.

The following restrictions shall apply:

A. The Town shall use the property for public purposes, excluding residential and commercial development.
B. The Town shall retain ownership of the property for a minimum of 15 years.
C. Any future Town buildings, other structures constructed on the property and the storage of heavy equipment shall have a minimum 100 ft. setback from the common boundary with the rezoned R-3 property. The common boundary shall be planted with a Class III vegetated buffer, as identified in the Town's Zoning Ordinance, by the developer of the adjoining R-3 property. All future structures on the town property shall be designed and constructed in terms of both visual appearance and potential sound pollution in a manner that is compatible, complementary, and otherwise consistent with being adjacent to a residential community.
D. The proffered property shall have the same 100 ft. setback and Class III vegetated buffer from Old Cape Charles Road as the rezoned R-3 property, continuing east around the existing residential properties to the eastern boundary. This buffer is to be planted by the Town as a Class III Buffer at such time as any construction, other than water wells, is undertaken, ensuring the entire frontage of the two properties retains a rural appearance from the road and neighboring properties.
E. The Town may rezone the property to a zoning category that allows Town uses as per A. above, but all deed restrictions shall remain in force.

(2) The Grantors proffer the following regarding 15.611 +/- acre portion of the property being retained and rezoned R-3:

A. A maximum density of 100 dwelling units.
B. A 100 ft. setback and Class III vegetated buffer on the western boundary of the property and on Old Cape Charles Road. Upon commencement of construction of buildings on the property, the buffers must be landscaped with trees a minimum of 6 ft. in height at the time of planting. Trees are to be selected from the varieties listed in the Town Zoning Ordinance regarding Class III buffers. In addition, the developer

of the property, at the tie of construction of buildings on the property, shall also plant a Class III vegetated buffer along the common border with the eastern neighbor, the Town of Cape Charles, incorporating appropriate species within the existing tree line.

C. Any future site plan for development of the property must provide for access to a possible public road in the future, which road may be constructed on the adjoining land on the norther boundary of the property.

(3) This proffer agreement may be recorded by Grantee against the Property and the appropriate officials of Grantee are hereby authorized by Grantor to do so.

(4) The conditions set forth in this agreement shall continue in full force and effect until they are amended as provided herein but otherwise until a subsequent amendment changes the zoning on the Property covered by such conditions; provided, however, that such conditions shall continue despite a subsequent amendment if the subsequent amendment is part of the comprehensive implementation of a new or substantially revised zoning ordinance.

Subsequent to the proffer statement, a deed was recorded on November 30, 2009 from Allan and Gail Keck to the Town of Cape Charles for the property on the right side at 17.705 acres. Said deed references a plat which was also recorded (Instrument #090002548) that shows this subdivision of the main parcel into 2 parcels with the Town parcel being referred to as Tract B and this plat includes as Notes the Proffer Conditions relative to setbacks and vegetated buffer requirements.

Additionally**, the remaining parcel on the left side, referred to as Tract A was sold on June 13, 2016 from Allan and Gail Keck to General Builders, LLC.** Said deed references the same plat that was utilized for the Town parcel. Lastly, **a subdivision of Tract A was approved by the Town on January 30, 2017 which created 4 one acre lots and a remainder or residual parcel of 11.5 acres**; this subdivision plat also includes as Notes the Proffer Conditions relative to setbacks and vegetated buffer requirements

ITEM SPECIFICS:

As stated at outset of this staff report, the Town has been in conversations with a representative of Lot 4 Holdings, LLC, who is conducting due diligence relative to the purchase of the Remainder or Residual lot of 11.5 acres (now identified as Tax Map #90-19-A). Lance Marine has indicated an interest in a workforce housing development and as we have identified the issues or elements that must be addressed in order for such a project to proceed successfully, the proffers that cover this property are proving to be an impediment to move forward and he has provided a letter outlining his project intentions (see letter from Winmar Advisory dated September 12, 2022 and signed by Lance Marine, Managing Principal).

The Town has spoken with our attorney to ascertain the process to remove or amend the proffers and have been advised that following an advertised public hearing and with concurrence from the current legal owners of the land affected by the proffers, the Town can amend and/or repeal the proffers.

The current owners of the land are: Town of Cape Charles, General Builders, LLC acting through its principal representative Angelo Manuel, and CEM Investments, LLC who recently purchased the developed one acre lot from General Builders, LLC that fronts on Old Cape Charles Road. Based upon conversations, it is our understanding that all current owners would be supportive of removing the proffers.

In addition, there has been conversation with the original property owner, the Kecks, who no longer reside in Cape Charles and are no longer a party to the Proffer Conditions except by being the originator of said proffer and rezoning request, and they would pose no objection to the removal of the proffers from all of the land originally covered by the proffers.

Please note that, if approved following the public hearing, then a legal document will be drafted to repeal the Proffer Statement and all associated mentions to said conditions of the Proffer Statement included in any subdivision plat subsequently approved and recorded.

RECOMMENDATION:

I would recommend that the Planning Commission hold the public hearing and receive all public comment, review the staff report, and consider a favorable recommendation to Town Council as follows:

- to remove the proffers originally accepted and approved on November 13, 2008 and further identified as part of the Keck Property Rezoning by the Town and recorded in the Northampton County Clerk of Courts office as Instrument #090002549 since the proffers are inhibiting consideration and development of a workforce housing proposal which is one of the Town's strategic goals. Said proffers would be removed from the following properties:

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90-19-B	Town of Cape Charles	2443 Old Cape Charles Road
90-19-A	General Builders LLC	Old Cape Charles Road
90-29-3	General Builders LLC	2401 Old Cape Charles Road
90-29-4	General Builders LLC	2403 Old Cape Charles Road
90-29-2	CEM Investments, LLC	2405 Old Cape Charles Road
90-29-1	General Builders LLC	2407 Old Cape Charles Road

Attachments: (8)

Town Council Staff Report
Exhibit 1 – Proffer Statement 2008-12-31
Exhibit 2 – Plat from Kecks to Town recorded 2009-12-18 – Tracts A and B
Exhibit 3 – Deed from Kecks to Town recorded 2009-12-18 – Tracts A and B
Exhibit 4 – Deed from Kecks to General Builders LLC recorded 2016-06-17
Exhibit 5 – Subdivision of Plat for Tract A recorded 2017-01-30
Letter from WinMar Advisory
Letter to Adjacent Property Owners

TOWN OF CAPE CHARLES	**AGENDA TITLE:**	**AGENDA DATE** September 15, 2022
	SUBJECT/PROPOSAL/REQUEST: Request to Schedule Public Hearing to Remove Proffer Statement as part of the Keck Property Rezoning	**ITEM NUMBER:**
	ATTACHMENTS: (1) Letter from Winmar Advisory dated 2022-09-12 (2) Exhibit 1 - Proffer Statement 2008-12-31; (3) Exhibit 2 – Plat from Kecks to Town recorded 2009-12-18 – Tracts A and B; (4) Exhibit 3 - Deed from Kecks to Town recorded 2009-12-18 Tract B; (5) Exhibit 4 - Deed from Kecks to General Builders LLC recorded 2016-06-17; (6) Exhibit 5 – Subdivision Plat for Tract A recorded 2017-01-30	**FOR COUNCIL:** Action (X) Information ( )
	STAFF CONTACT (s): Katie H. Nunez, Planning & Zoning Administrator	**REVIEWED BY:** John Hozey, Town Manager

The Town has been in conversations with a representative of Lot 4 Holdings, LLC, who is conducting due diligence relative to the purchase of the Remainder or Residual lot of 11.5 acres (now identified as Tax Map #90-19-A). Lance Marine has indicated an interest in a workforce housing development and as we have identified the issues or elements that must be addressed in order for such a project to proceed successfully, the proffers that cover this property (identified and referred to as the Keck Property Proffer Statement) are proving to be an impediment to move forward and he has provided a letter outlining his project intentions (see letter from Winmar Advisory dated September 12, 2022 and signed by Lance Marine, Managing Principal).

BACKGROUND:

On November 13, 2008, the Town of Cape Charles agreed to conditionally rezone a portion of then Tax Map #90-3-A, comprising of 33.195 acres off of Old Cape Charles Road and more commonly identified as the Keck Property with proffers; said rezoning change on the left side of the property (marked in Yellow Hatching) went from R-E to R-3 and the right side of the property (marked in Blue Angled Lines) remained R-E. Said proffers were accepted and recorded on December 31, 2008.

The proffers were the following:

(1) The Grantors proffer by dedication 17.751 +/- acres of unimproved land currently identified as tax map #90-30-A zoned Residential Estate, RE, adjoining the property to be rezoned, to be deeded to the Town of Cape Charles as unimproved land. The purse of the dedication is for the dedicated property to become Town property and be developed by the Town in the future in a manner that will best serve the interests of the Town.

The following restrictions shall apply:

A. The Town shall use the property for public purposes, excluding residential and commercial development.
B. The Town shall retain ownership of the property for a minimum of 15 years.
C. Any future Town buildings, other structures constructed on the property and the storage of heavy equipment shall have a minimum 100 ft. setback from the common boundary with the rezoned R-3 property. The common boundary shall be planted with a Class III vegetated buffer, as identified in the Town's Zoning Ordinance, by the developer of the adjoining R-3 property. All future structures on the town property shall be designed and constructed in terms of both visual appearance and potential sound pollution in a manner that is compatible, complementary and otherwise consistent with being adjacent to a residential community.
D. The proffered property shall have the same 100 ft. setback and Class III vegetated buffer from Old Cape Charles Road as the rezoned R-3 property, continuing east around the existing residential properties to the eastern boundary. This buffer is to be planted by the Town as a Class III Buffer at such time as any construction, other than water wells, is undertaken, insuring the entire frontage of the two properties retains a rural appearance from the road and neighboring properties.
E. The Town may rezone the property to a zoning category that allows Town uses as per A. above but all deed restrictions shall remain in force.

(2) The Grantors proffer the following regarding 15.611 +/- acre portion of the property being retained and rezoned R-3:
A. A maximum density of 100 dwelling units.
B. A 100 ft. setback and Class III vegetated buffer on the western boundary of the property and on Old Cape Charles Road. Upon commencement of construction of buildings on the property, the buffers must be landscaped with trees a minimum of 6 ft. in height at the time of planting. Trees are to be selected from the varieties listed in the Town Zoning Ordinance regarding Class III buffers. In addition the developer of the property, at the tie of construction of buildings on the property, shall also plant a Class III vegetated buffer along the common border with the eastern neighbor, the Town of Cape Charles, incorporating appropriate species within the existing tree line.
C. Any future site plan for development of the property must provide for access to a possible public road in the future, which road may be constructed on the adjoining land on the norther boundary of the property.

(3) This proffer agreement may be recorded by Grantee against the Property and the appropriate officials of Grantee are hereby authorized by Grantor to do so.

(4) The conditions set forth in this agreement shall continue in full force and effect until they are amended as provided herein but otherwise until a subsequent amendment changes the zoning on the Property covered by such conditions; provided, however, that such conditions shall continue despite a subsequent amendment if the subsequent amendment is part of the comprehensive implementation of a new or substantially revised zoning ordinance.

Subsequent to the proffer statement, a deed was recorded on November 30, 2009 from Allan and Gail Keck to the Town of Cape Charles for the property on the right side at 17.705 acres. Said deed references a plat which was also recorded (Instrument #090002548) that shows this subdivision of the main parcel into 2 parcels with

the Town parcel being referred to as Tract B and this plat includes as Notes the Proffer Conditions relative to setbacks and vegetated buffer requirements.

Additionally**, the remaining parcel on the left side, referred to as Tract A was sold on June 13, 2016 from Allan and Gail Keck to General Builders, LLC.** Said deed references the same plat that was utilized for the Town parcel. Lastly, **a subdivision of Tract A was approved by the Town on January 30, 2017 which created 4 one acre lots and a remainder or residual parcel of 11.5 acres**; this subdivision plat also includes as Notes the Proffer Conditions relative to setbacks and vegetated buffer requirements

ITEM SPECIFICS:

As stated at outset of this staff report, the Town has been in conversations with a representative of Lot 4 Holdings, LLC, who is conducting due diligence relative to the purchase of the Remainder or Residual lot of 11.5 acres (now identified as Tax Map #90-19-A). Lance Marine has indicated an interest in a workforce housing development and as we have identified the issues or elements that must be addressed in order for such a project to proceed successfully, the proffers that cover this property are proving to be an impediment to move forward and he has provided a letter outlining his project intentions (see letter from Winmar Advisory dated September 12, 2022 and signed by Lance Marine, Managing Principal).

The Town has spoken with our attorney to ascertain the process to remove or amend the proffers and have been advised that following an advertised public hearing and with concurrence from the current legal owners of the land affected by the proffers, the Town can amend and/or repeal the proffers.

The current owners of the land are: Town of Cape Charles, General Builders, LLC acting through its principal representative Angelo Manuel, and CEM Investments, LLC who recently purchased the developed one acre lot from General Builders, LLC that fronts on Old Cape Charles Road. Based upon conversations, it is our understanding that all current owners would be supportive of removing the proffers.

In addition, there has been conversation with the original property owner, the Kecks, who no longer reside in Cape Charles and are no longer a party to the Proffer Conditions except by being the originator of said proffer and rezoning request, and they would pose no objection to the removal of the proffers from all of the land originally covered by the proffers.

Therefore, staff is requesting authorization from Town Council to schedule a public hearing at the October 20, 2022 Town Council meeting to remove the proffers.

Please note that, if approved following the public hearing, then a legal document will be drafted to repeal the Proffer Statement and all associated mentions to said conditions of the Proffer Statement included in any subdivision plat subsequently approved and recorded.

RECOMMENDATION:

I would recommend that the Town Council vote to schedule a public hearing at the October 20, 2022 Town Council meeting to remove the proffers originally accepted and approved on November 13, 2008 and further identified as part of the Keck Property Rezoning by the Town and recorded in the Northampton County Clerk of Courts office as Instrument #090002549.

THIS PROFFER AGREEMENT made this 31 day of December, 2008 by and between Allan Randle Keck and Gail Minoff-Keck (hereinafter referred to as the "Grantor"), and the Town of Cape Charles, a municipal corporation of the Commonwealth of Virginia (hereinafter referred to as the "Grantee").

WITNESSETH:

WHEREAS, the Grantor has initiated an amendment to the Zoning Map of the Town of Cape Charles, Virginia, which requests the rezoning of the parcel located as tax map parcel # 90-3-A, commonly known as 2461 Old Cape Charles Road (hereinafter referred to as the "Property") from Residential Estate District RE to Multi-Family District R-3; and

WHEREAS, the Grantee's policy is to provide for the orderly development of land, for various purposes, including residential, commercial and business purposes, through zoning and other land development legislation; and

WHEREAS, THE GRANTOR HAS VOLUNTARILY PROFFERED IN WRITING IN ADVANCE OF AND PRIOR TO THE Town Council public hearings before the Grantee, the following conditions; and

WHEREAS, Grantor understands and agrees that if Grantee accepts these proffers as part of the rezoning requested by Grantor, Grantee may record these proffers against the Property.

NOW, THEREFORE, the Grantor, for itself and its successors, assigns, grantees and other successors in title or interest, voluntarily submits and grants the following proffers, which shall be binding upon the Property and upon all parties and persons claiming under or through the Grantor, its heirs, personal representatives, assigns, grantees and other successors in interest or title, namely:

(1) The Grantors proffer by dedication 17.751 +/- acres of unimproved land currently identified as tax map parcel # 90-3-A zoned Residential Estate, RE, adjoining the property to be rezoned, to be deeded to the Town of Cape Charles as unimproved land. The purpose of the dedication is for the dedicated property to become Town property and be developed by the Town in the future in a manner that will best serve the interests of the Town.

The following deed restrictions shall apply:

A. The Town shall use the property for public purposes, excluding residential and commercial development.
B. The Town shall retain ownership of the property for a minimum of 15 years.
C. Any future Town buildings, other structures constructed on the property and the storage of heavy equipment shall have a minimum 100 ft. setback from the common boundary with the rezoned R-3 property. The common boundary shall

be planted with a Class III vegetated buffer, as identified in the Town's Zoning Ordinance, by the developer of the adjoining R-3 property at the time of any construction on the R-3 property. All future structures on the town property shall be designed and constructed in terms of both visual appearance and potential sound pollution in a manner that is compatible, complementary and otherwise consistent with being adjacent to a residential community.

D. The proffered property shall have the same 100 ft. setback and Class III vegetated buffer from Old Cape Charles Road as the rezoned R-3 property, continuing east around the existing residential properties to the eastern boundary. This buffer is to be planted by the Town as a Class III Buffer at such time as any construction, (other than water wells) is undertaken, insuring the entire frontage of the two properties retains a rural appearance from the road and neighboring properties.

E. The Town may rezone the property to a zoning category that allows Town uses as per A. above but all deed restrictions shall remain in force.

(2) The Grantors proffer the following regarding the 15.611 +/- acre portion of the property being retained and rezoned R-3:

A. A maximum density of 100 dwelling units.

B. A 100 ft. setback and Class III vegetated buffer on the western boundary of the property and on Old Cape Charles Road. Upon commencement of construction of buildings on the property, the buffers must be landscaped with trees a minimum of 6ft. in height at the time of planting. Trees are to be selected from the varieties listed in the Town Zoning Ordinance regarding Class III Buffers. In addition the developer of the property, at the time of construction of buildings on the property, shall also plant a Class III vegetated buffer along the common border with the eastern neighbor, the Town of Cape Charles, incorporating appropriate species within the existing tree line.

C. Any future site plan for development of the property must provide for access to a possible public road in the future, which road may be constructed on the adjoining land on the northern boundary of the property.

(3) This proffer agreement may be recorded by Grantee against the Property and the appropriate officials of Grantee are hereby authorized by Grantor to do so.

(4) The conditions set forth in this agreement shall continue in full force and effect until they are amended as provided herein but otherwise until a subsequent amendment changes the zoning on the Property covered by such conditions; provided, however, that such conditions shall continue despite a subsequent amendment if the subsequent amendment is part of the comprehensive implementation of a new or substantially revised zoning ordinance.

All references hereinabove to zoning districts and to regulations applicable thereto refer to the Zoning Ordinance for the Town of Cape Charles, Virginia, adopted June 16, 1997, in force as of the date of approval of Grantor's rezoning petition by the Grantee,

WITNESS the following signatures and seal:

Allan Randle Keck

Allan Randle Keck

Gail Minoff-Keck

STATE OF Rhode Island
COUNTY/CITY OF Newport, to-wit:

Subscribed and sworn to before me this 19 day of Dec, 2008 by Allan Randle Keck and Gail Minoff-Keck.

CB Sheekey

Notary Public

CHERI B. SHEEKEY
NOTARY PUBLIC, STOF RHODE ISLAND
NO. 43077
QUALIFIED IN NEWPORT COUNTY
COMMISSION EXPIRES APRIL 152 010

My Commission Expires:_____

MUNICIPAL CORP. OF CAPE CHARLES

BY: Dora Sullivan

Mayor

Attested: Libby Hume

Town Clerk

STATE OF VIRGINIA
COUNTY OF NORTHAMPTON, to-wit:

Subscribed and sworn to before me this 31ST day of December, 2008 by DORA SULLIVAN, Mayor of the Municipal Corporation of Cape Charles, Virginia.

Linda Frances Carola

Notary Public

My Commission Expires: 7/31/2012

LINDA FRANCES CAROLA
NOTARY PUBLIC
COMMONWEALTH OF VIRGINIA
NOTARY REGISTRATION NUMBER: 7199648
MY COMMISSION EXPIRES JULY 31, 2012

INSTRUMENT #20200228-6
RECORDED IN THE CLERK'S OFFICE OF
NORTHAMPTON COUNTY, VA
DECEMBER 18, 2020 AT 03:29PM

TRACI L. JOHNSON, CLERK
RECORDED BY: ASB

GENERAL NOTES:

1. OWNER: ALLAN RANDLE KECK & GAIL MINOFF-KECK
2. TAX PARCEL: 90-3-A
3. SOURCE OF TITLE: INSTRUMENT #2002001045
4. THE BOUNDARY FOR PARCEL A WAS TAKEN FROM PLAT BOOK 28, PAGE 86 AS AMENDED BY PLAT BOOK 30, PAGE 55, MSA, P.C. PERFORMED LIMITED BOUNDARY SURVEY WORK OF THE SUBJECT PROPERTY.
5. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT AND MAY NOT SHOW ANY/ALL EASEMENTS OR RESTRICTIONS THAT MAY AFFECT SAID PROPERTY AS SHOWN OR WETLANDS, ENVIRONMENTAL HAZARDS, CEMETERIES AND UNDERGROUND STRUCTURE NOT OBSERVED DURING THE COURSE OF THE SURVEY.
6. ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY (F.E.M.A.) FLOOD INSURANCE RATE MAP, COMMUNITY PANEL NO. 51131C0295E, DATED AUGUST 28, 2008. THE PROPERTY SHOWN HEREON LIES IN FLOOD ZONE X. FLOOD ZONE DETERMINATION IS BASED ON THE FLOOD INSURANCE RATE MAP AND DOES NOT IMPLY THAT THIS PROPERTY WILL OR WILL NOT BE FREE FROM FLOODING OR DAMAGE. FLOOD ZONE INFORMATION SHOWN HEREON IS NOT GUARANTEED AND WAS APPROXIMATELY SCALED FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY (F.E.M.A.) FLOOD INSURANCE RATE MAPS. MSA, P.C. IS NOT A PARTY IN DETERMINING THE REQUIREMENTS FOR FLOOD INSURANCE ON THE PROPERTY SHOWN HEREON. FOR FURTHER INFORMATION AND TO CONFIRM THE FLOOD ZONE FOR THIS PROPERTY, CONTACT THE LOCAL COMMUNITY FLOOD OFFICIAL.
7. TOTAL AREA ENCOMPASSED BY THIS SUBDIVISION: 1,453,231 SF OR 33.36 AC INCLUDING 7,107 SF OR 0.163 AC DEDICATED TO THE VIRGINIA DEPARTMENT OF TRANSPORTATION FOR ROAD WIDENING PURPOSES.
8. CURRENT ZONING: RE (RESIDENTIAL ESTATE)
   PROPOSED: R-3 (TRACT A); R-E (TRACT B)
9. FOR INFORMATION REGARD CURRENT SETBACK REQUIREMENTS REFER TO ARTICLE III, THE TOWN OF CAPE CHARLES ZONING ORDINANCE, LATEST EDITION.
10. ZONING AND SETBACK INFORMATION IS ACCURATE AS OF THE DATE OF PLAT APPROVAL AND IS SHOWN FOR INFORMATIONAL PURPOSES ONLY.
11. IN ACCORDANCE WITH PROFFER AGREEMENTS BETWEEN THE OWNER OF PARCEL A (TAX PARCEL 90-A-3) AND THE TOWN OF CAPE CHARLES. THE FOLLOWING SETBACK AND BUFFER AREAS SHALL APPLY:

    TRACT A
    - A 100' BUILDING SETBACK AND CLASS III VEGETATED BUFFER SHALL BE PLANTED ALONG THE WESTERN AND SOUTHERN BOUNDARY OF TRACT A (ALONG OLD CAPE CHARLES ROAD), TOGETHER WITH A CLASS III VEGETATED BUFFER ALONG THE EASTERN BOUNDARY OF TRACT A (COMMON LINE OF TRACT B). SAID BUFFERS SHALL BE PLANTED AT THE COMMENCEMENT OF CONSTRUCTION OF BUILDINGS ON THE PROPERTY IN ACCORDANCE WITH THE TOWN OF CAPE CHARLES, ACCAWMACKE PLANTATION (BAY CREEK) - PUD, APPENDIX A.

    TRACT B
    - A 100' BUILDING SETBACK ALONG WESTERN BOUNDARY OF TRACT B (COMMON LINE OF TRACT A) AND ALONG THE SOUTHERN BOUNDARY OF TRACT B (ALONG OLD CAPE CHARLES ROAD AND TAX PARCELS 90-3-A1 &2), TOGETHER WITH A CLASS III VEGETATED BUFFER ALONG THE AFOREMENTIONED SOUTHERN BOUNDARY OF TRACT B (ALONG OLD CAPE CHARLES ROAD & TAX PARCELS 90-3-A1 & A2) TO BE PLANTED BY THE TOWN OF CAPE CHARLES AT SUCH TIME AS ANY CONSTRUCTION, (OTHER THAN WATER WELLS) IS UNDERTAKEN.

12. FOR ADDITIONAL INFORMATION REGARDING THE PROFFER AGREEMENTS NOT SHOWN HEREON SEE INSTRUMENT #_____ RECORDED IN THE LAND RECORDS OF NORTHAMPTON COUNTY, VIRGINIA.

OWNER'S CERTIFICATION

THE SUBDIVISION OF LAND SHOWN ON THIS PLAT AND KNOWN AS "SUBDIVISION OF PARCEL A, AS SHOWN IN PLAT BOOK 30, PAGE 55, TOWN OF CAPE CHARLES, CAPEVILLE DISTRICT, NORTHAMPTON COUNTY, VIRGINIA, JUNE 16, 2009" IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRE OF THE UNDERSIGNED OWNERS, PROPRIETORS AND/OR TRUSTEES.

Allan Randle Keck
P.O. Box 190
Cape Charles, VA, 23310

STATE OF Rhode Island
COUNTY OF Newport

THE FOREGOING STATEMENT OF CONSENT WAS ACKNOWLEDGED BEFORE ME BY Allan Randle Keck THIS 31st DAY OF July 2009

NOTARY PUBLIC

MY COMMISSION EXPIRES: 3/20/2010 ID # 511957

JOYCE L. HACKETT
NOTARY PUBLIC
STATE OF RHODE ISLAND
MY COMMISSION EXPIRES MAR. 20, 2010

OWNER'S CERTIFICATION

THE SUBDIVISION OF LAND SHOWN ON THIS PLAT AND KNOWN AS "SUBDIVISION OF PARCEL A, AS SHOWN IN PLAT BOOK 30, PAGE 55, TOWN OF CAPE CHARLES, CAPEVILLE DISTRICT, NORTHAMPTON COUNTY, VIRGINIA, JUNE 16, 2009" IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRE OF THE UNDERSIGNED OWNERS, PROPRIETORS AND/OR TRUSTEES.

Gail Minoff Keck
P.O. Box 190
Cape Charles, VA, 23310

STATE OF Rhode Island
COUNTY OF Newport

THE FOREGOING STATEMENT OF CONSENT WAS ACKNOWLEDGED BEFORE ME BY ~~Allan Randle Keck~~ Gail Minoff-Keck THIS 31st DAY OF July 2009

NOTARY PUBLIC

MY COMMISSION EXPIRES: 3/20/2010

JOYCE L. HACKETT
NOTARY PUBLIC
STATE OF RHODE ISLAND
MY COMMISSION EXPIRES MAR. 20, 2010

TOWN OF CAPE CHARLES

THIS PLAT, CONSISTING OF TWO (2) PAGES, HAS BEEN APPROVED BY THE SUBDIVISION AGENT OF TOWN OF CAPE CHARLES, AND MAY BE ADMITTED TO THE LAND RECORDS OF THE AFORESAID COUNTY

SUBDIVISION AGENT, TOWN OF CAPE CHARLES — DATE 9-15-09

VIRGINIA DEPARTMENT OF TRANSPORTATION

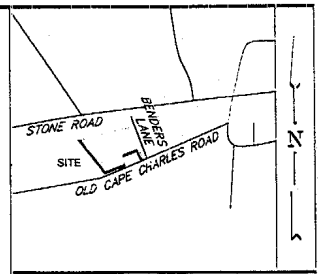
THIS SUBDIVISION SHOWN HEREON DEDICATING 7,128 S.F.± (0.164 ACRES±) FOR ROAD WIDENING PURPOSES HAS BEEN REVIEWED AND FOUND TO MEET SPECIFICATIONS OF THE VIRGINIA DEPARTMENT OF TRANSPORTATION

VIRGINIA DEPARTMENT OF TRANSPORTATION — DATE Sept 12, 2009

SURVEYOR CERTIFICATION

I, JEFFREY J. VIERRETHER, A LICENSED LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF, THIS PLAT COMPLIES WITH ALL OF THE REQUIREMENTS REGARDING THE PLATTING OF SUBDIVISIONS WITHIN THE TOWN OF CAPE CHARLES.

COMMONWEALTH OF VIRGINIA
JEFFREY J. VIERRETHER
Lic. No. 2306
9.14.09
LAND SURVEYOR



LOCATION MAP - SCALE: 1" = 2000'

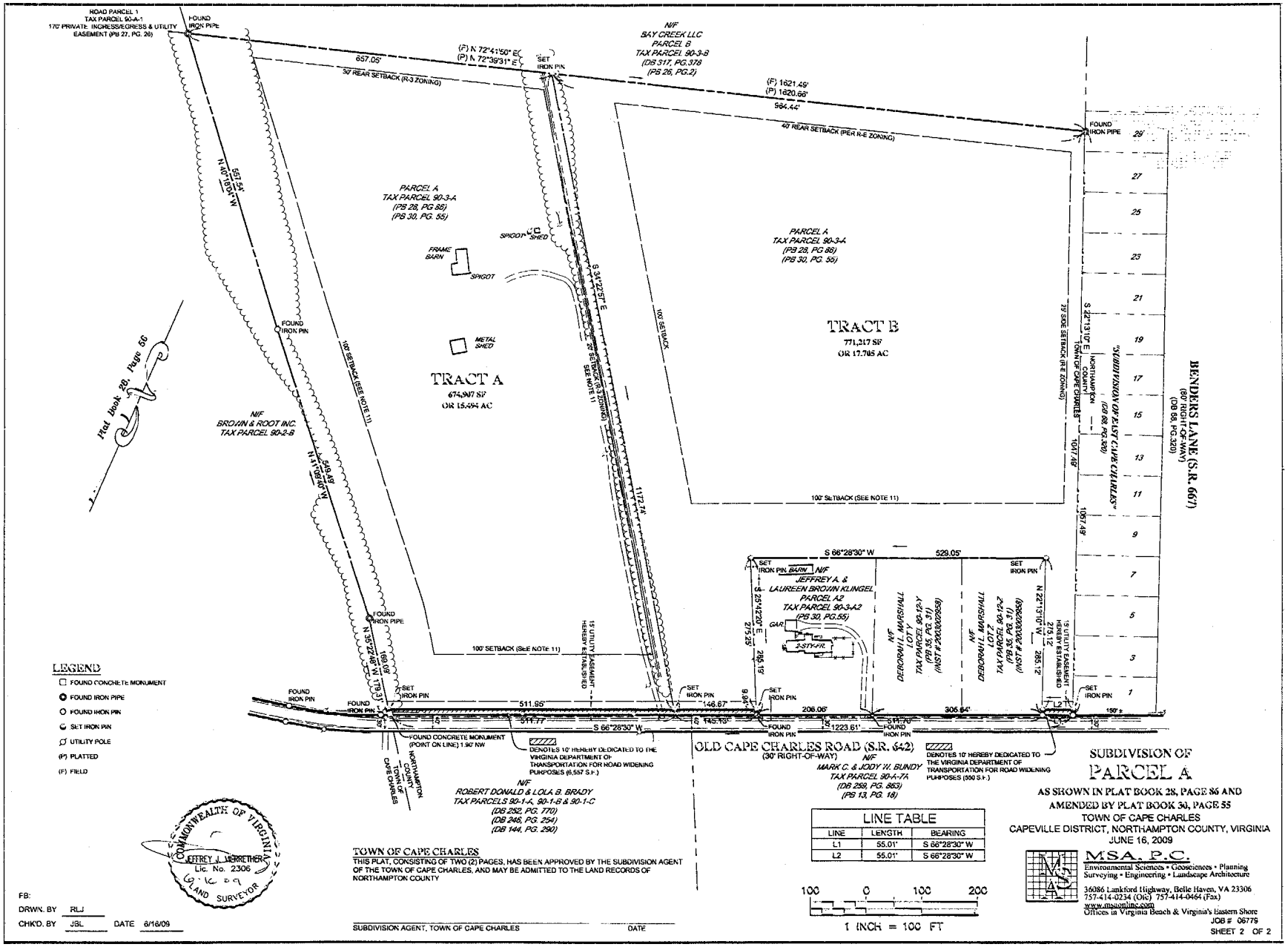
SUBDIVISION OF PARCEL A

AS SHOWN IN PLAT BOOK 28, PAGE 86 AND AMENDED BY PLAT BOOK 30, PAGE 55
TOWN OF CAPE CHARLES
CAPEVILLE DISTRICT, NORTHAMPTON COUNTY, VIRGINIA
JUNE 16, 2009

MSA, P.C.
Environmental Sciences • Geosciences • Planning
Surveying • Engineering • Landscape Architecture
36086 Lankford Highway, Belle Haven, VA 23306
757-414-0234 (Ofc) 757-414-0464 (Fax)
www.msaonline.com
Offices in Virginia Beach & Virginia's Eastern Shore

JOB # 06775

FB:
DRWN. BY RLJ
CHK'D. BY JBL DATE 6/16/09



SUBDIVISION OF
PARCEL A

AS SHOWN IN PLAT BOOK 28, PAGE 86 AND
AMENDED BY PLAT BOOK 30, PAGE 55
TOWN OF CAPE CHARLES
CAPEVILLE DISTRICT, NORTHAMPTON COUNTY, VIRGINIA
JUNE 16, 2009

TOWN OF CAPE CHARLES

THIS PLAT, CONSISTING OF TWO (2) PAGES, HAS BEEN APPROVED BY THE SUBDIVISION AGENT OF THE TOWN OF CAPE CHARLES, AND MAY BE ADMITTED TO THE LAND RECORDS OF NORTHAMPTON COUNTY

SUBDIVISION AGENT, TOWN OF CAPE CHARLES — DATE

FB:
DRWN. BY RLJ
CHKD. BY JSL DATE 8/18/09

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JOB # 06779
SHEET 2 OF 2

Prepared by: Paul G. Watson IV
Paul G. Watson IV, P.C.
Post Office Box 600
Eastville, Virginia 23347

THIS DEED IS EXEMPT FROM RECORDATION TAXES
PURSUANT TO VA. CODE § 58.1-113.
THERE IS NO TITLE INSURANCE FOR THIS PROPERTY.

THIS DEED, made this 30th day of November, 2009, by and between Allan Randle KECK and Gail MINOFF-KECK, Grantors and the TOWN OF CAPE CHARLES, Grantee whose address is 2 Plum Street, Cape Charles, Virginia 23310.

WITNESSETH:

THAT for and in consideration of the sum of TEN DOLLARS ($10.00), cash in hand, paid and other good and valuable consideration as set forth below, the receipt of which is hereby acknowledged, the said Grantors do hereby grant and convey with SPECIAL WARRANTY, unto the Grantee, the following described property, to wit:

> The certain lot or parcel of land identified as "Tract B", containing 771,217 SF or 17.705 AC, as set forth on the "SUBDIVISION OF PARCEL A AS SHOWN IN PLAT BOOK 28, PAGE 86 AND AMENDED BY PLAT BOOK 30, PAGE 55, TOWN OF CAPE CHARLES, CAPEVILLE DISTRICT, NORTHAMPTON COUNTY, VIRGINIA, JUNE 16, 2009, "by MSA, P.C. recorded in the Clerk's Office of Northampton County, Virginia on 12/18/2009, as Instrument Number 090002548.

The Grantors and Grantee as part of the consideration for this conveyance agree to the covenants and restrictions binding upon and running with the title of both Tract A, retained by Grantors, and Tract B as set forth in the Proffer Agreement dated December 31, 2008 and attached as Exhibit A.

This conveyance is made expressly subject to the easements, conditions, restrictions and reservations of record, if any, affecting the aforesaid property and constituting constructive

notice. All taxes, rents and assessments for the current year are to be prorated as of the date of delivery of this deed and possession shall be immediately vested in the Grantee.

In compliance with the provisions of Virginia Code § 15.2-1803 (1950), this deed is in the form approved by Paul G. Watson IV, attorney for the Town of Cape Charles, Virginia, and it is accepted by him on behalf of the Town of Cape Charles, he having been authorized to so act on behalf of the Town by a resolution adopted by the Town Council at the meeting held on December 10, 2009, which approval and acceptance is evidenced by the execution of this conveyance by Paul G. Watson IV.

WITNESS the following signatures:

Allan Randle Keck (SEAL)
Allan Randle Keck

Gail Minoff-Keck (SEAL)
Gail Minoff-Keck

STATE of Rhode Island
COUNTY/CITY of Jamestown to wit:
The foregoing instrument was acknowledged before me this 30th day of November 2009 by Allan Randle Keck.

Notary Public

My Comm. Expires:
Reg. number:

WILLIAM WILLIAMS
NOTARY PUBLIC
STATE OF RHODE ISLAND
MY COMMISSION EXPIRES JUNE 25, 2011

STATE of Rhode Island
COUNTY/CITY of Jamestown to wit:
The foregoing instrument was acknowledged before me this 30th day of November 2009 by Gail Minoff-Keck.

Notary Public

My Comm. Expires:
Reg. number:

WILLIAM WILLIAMS
NOTARY PUBLIC
STATE OF RHODE ISLAND
MY COMMISSION EXPIRES JUNE 25, 2011

Tax Map #: 90-3-A

TOWN OF CAPE CHARLES,
A Virginia Municipal Corporation

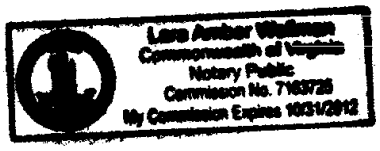
By: _____(SEAL)
Paul G. Watson IV, Attorney for the
Town of Cape Charles

COMMONWEALTH of Virginia
COUNTY of Northampton to wit:

The foregoing instrument was acknowledged before me this 16th day of ~~November~~ December 2009 by Paul G. Watson IV, attorney for the Town of Cape Charles, on behalf of the Town of Cape Charles.

_____

Notary Public
My Comm. Expires: 10/31/2012
Reg. number: 7183725



Tax Map #: 90-3-A

[redacted]

THIS PROFFER AGREEMENT made this 31 day of December, 2008 by and between Allan Randle Keck and Gail Minoff-Keck (hereinafter referred to as the "Grantor"), and the Town of Cape Charles, a municipal corporation of the Commonwealth of Virginia (hereinafter referred to as the "Grantee").

WITNESSETH:

WHEREAS, the Grantor has initiated an amendment to the Zoning Map of the Town of Cape Charles, Virginia, which requests the rezoning of the parcel located as tax map parcel # 90-3-A, commonly known as 2461 Old Cape Charles Road (hereinafter referred to as the "Property") from Residential Estate District RE to Multi-Family District R-3; and

WHEREAS, the Grantee's policy is to provide for the orderly development of land, for various purposes, including residential, commercial and business purposes, through zoning and other land development legislation; and

WHEREAS, THE GRANTOR HAS VOLUNTARILY PROFFERED IN WRITING IN ADVANCE OF AND PRIOR TO THE Town Council public hearings before the Grantee, the following conditions; and

WHEREAS, Grantor understands and agrees that if Grantee accepts these proffers as part of the rezoning requested by Grantor, Grantee may record these proffers against the Property.

NOW, THEREFORE, the Grantor, for itself and its successors, assigns, grantees and other successors in title or interest, voluntarily submits and grants the following proffers, which shall be binding upon the Property and upon all parties and persons claiming under or through the Grantor, its heirs, personal representatives, assigns, grantees and other successors in interest or title, namely:

(1) The Grantors proffer by dedication 17.751 +/- acres of unimproved land currently identified as tax map parcel # 90-3-A zoned Residential Estate, RE, adjoining the property to be rezoned, to be deeded to the Town of Cape Charles as unimproved land. The purpose of the dedication is for the dedicated property to become Town property and be developed by the Town in the future in a manner that will best serve the interests of the Town.

The following deed restrictions shall apply:

A. The Town shall use the property for public purposes, excluding residential and commercial development.
B. The Town shall retain ownership of the property for a minimum of 15 years.
C. Any future Town buildings, other structures constructed on the property and the storage of heavy equipment shall have a minimum 100 ft. setback from the common boundary with the rezoned R-3 property. The common boundary shall

be planted with a Class III vegetated buffer, as identified in the Town's Zoning Ordinance, by the developer of the adjoining R-3 property at the time of any construction on the R-3 property. All future structures on the town property shall be designed and constructed in terms of both visual appearance and potential sound pollution in a manner that is compatible, complementary and otherwise consistent with being adjacent to a residential community.

D. The proffered property shall have the same 100 ft. setback and Class III vegetated buffer from Old Cape Charles Road as the rezoned R-3 property, continuing east around the existing residential properties to the eastern boundary. This buffer is to be planted by the Town as a Class III Buffer at such time as any construction, (other than water wells) is undertaken, insuring the entire frontage of the two properties retains a rural appearance from the road and neighboring properties.

E. The Town may rezone the property to a zoning category that allows Town uses as per A. above but all deed restrictions shall remain in force.

(2) The Grantors proffer the following regarding the 15.611 +/- acre portion of the property being retained and rezoned R-3:

A. A maximum density of 100 dwelling units.

B. A 100 ft. setback and Class III vegetated buffer on the western boundary of the property and on Old Cape Charles Road. Upon commencement of construction of buildings on the property, the buffers must be landscaped with trees a minimum of 6ft. in height at the time of planting. Trees are to be selected from the varieties listed in the Town Zoning Ordinance regarding Class III Buffers. In addition the developer of the property, at the time of construction of buildings on the property, shall also plant a Class III vegetated buffer along the common border with the eastern neighbor, the Town of Cape Charles, incorporating appropriate species within the existing tree line.

C. Any future site plan for development of the property must provide for access to a possible public road in the future, which road may be constructed on the adjoining land on the northern boundary of the property.

(3) This proffer agreement may be recorded by Grantee against the Property and the appropriate officials of Grantee are hereby authorized by Grantor to do so.

(4) The conditions set forth in this agreement shall continue in full force and effect until they are amended as provided herein but otherwise until a subsequent amendment changes the zoning on the Property covered by such conditions; provided, however, that such conditions shall continue despite a subsequent amendment if the subsequent amendment is part of the comprehensive implementation of a new or substantially revised zoning ordinance.

All references hereinabove to zoning districts and to regulations applicable thereto refer to the Zoning Ordinance for the Town of Cape Charles, Virginia, adopted June 16, 1997, in force as of the date of approval of Grantor's rezoning petition by the Grantee,

WITNESS the following signatures and seal:

Allan Randle Keck
Allan Randle Keck

Gail Minoff-Keck
Gail Minoff-Keck

STATE OF Rhode Island
COUNTY/CITY OF Newport, to-wit:

Subscribed and sworn to before me this 19 day of Dec, 2008 by Allan Randle Keck and Gail Minoff-Keck.

CB Sheekey
Notary Public

CHERI B. SHEEKEY
NOTARY PUBLIC, STOF RHODE ISLAND
NO. 43077
QUALIFIED IN NEWPORT COUNTY
COMMISSION EXPIRES APRIL 152 010

My Commission Expires:_____

MUNICIPAL CORP. OF CAPE CHARLES

BY: Dora Sullivan
Mayor

Attested: Libby Hume
Town Clerk

STATE OF VIRGINIA
COUNTY OF NORTHAMPTON, to-wit:

Subscribed and sworn to before me this 31ST day of December, 2008 by Dora Sullivan, Mayor of the Municipal Corporation of Cape Charles, Virginia .

Linda Frances Carola
Notary Public

My Commission Expires: 7/31/2012

LINDA FRANCES CAROLA
NOTARY PUBLIC
COMMONWEALTH OF VIRGINIA
NOTARY REGISTRATION NUMBER: 7199648
MY COMMISSION EXPIRES JULY 31, 2012

INSTRUMENT #090002549
RECORDED IN THE CLERK'S OFFICE OF
NORTHAMPTON COUNTY ON
DECEMBER 18, 2009 AT 03:29PM

TRACI L. JOHNSON, CLERK
RECORDED BY: SBS

Circuit Court Deed Calculation for Northampton Circuit

Court uses its own cover sheet. Please contact the court for instructions.

Deed Type:	DBS --> DEED (BARGAIN AND SALE)
Grantor Exempt:	N
Grantee Exempt:	N
Consideration Amount:	$225,000.00
Assume/Value Amount:	$0.00
Locality Percent:	100.00000%
Pages:	4
Names:	0
O/P:	0
Date:	6/17/2016

Fee	Amount
Clerk Recording and Indexing Fee (301)	$ 14.50
VSLA (145)	1.50
Technology Trust Fund (106)**	5.00
State Grantee Tax (039)	562.50
Local Grantee Tax (213)	187.50
State Grantor Tax (038)	112.50
Local Grantor Tax (220/223)	112.50
Transfer Fee (212)	1.00
Regional Congestion Relief Fee (014)	0.00
Virginia Outdoors Foundation (035)	1.00
Processing Fee (036)*	20.00
Copy Fee (236)	0.00
Total:	**$ 1,018.00**

*Clerk and Deed Processing Fees do not appy to any agency of the Commonwealth of Virginia.
**The Technology Trust Fund fee does not apply to any federal, state, or local government.

JUN17 4:51PM

Return to when recorded:
A&N Title & Settlement
P.O. Box 668
Exmore, VA 23350

GPIN or Tax Id No. 0090-19-00-000000A

CONSIDERATION: $225,000.00
ACTUAL VALUE: $225,000.00

Pursuant to §17.1-223 (B), of the Code of Virginia, the title insurer is unknown.

THIS DEED, made this 13th day of June, 2016, by and between, **GAIL MINOFF-KECK** and **ALLAN R. KECK**, Grantors, and **GENERAL BUILDERS, LLC, a Virginia limited liability company,** Grantee, whose tax mailing address is 7707 Leafwood Drive, Virginia Beach, VA 23451.

WITNESSETH:

The Grantors and Grantee as part of the consideration for this conveyance agree to the covenants and restrictions binding upon and running with the title of both Tract A, and Tract B as set forth in the Proffer Agreement dated December 31, 2008.

That for and in consideration of Two Hundred Twenty-Five Thousand Dollars 00/100 ($225,000.00), and other good and valuable consideration, the receipt and or acceptance of which is hereby acknowledged, the said Grantors does hereby grant, bargain, sell and convey, with GENERAL WARRANTY AND ENGLISH COVENANTS OF TITLE, unto the said Grantee, in fee simple, the following described property, to-wit:

FOR PROPERTY DESCRIPTION, SEE ATTACHED SCHEDULE "A"

Prepared by: ALPERIN LAW PLLC, VSB #39500 500 Viking Drive, Ste. 202, Virginia Beach, VA 23452, 757-490-3500. The attorney who prepared this instrument has not performed a title examination of the subject property and therefore makes no opinion or warranty as to the quality of title.

This conveyance is made expressly subject to the easements, conditions, restrictions, and rights of way of record contained in the deeds forming the chain of title to said property.

WITNESS the following signatures and seal:

GAIL MINOFF-KECK

STATE/COMMONWEALTH OF Rhode Island
CITY/COUNTY OF Newport to-wit:

I, the undersigned Notary Public, in and for the City/County and State/Commonwealth aforesaid, do hereby certify that GAIL MINOFF-KECK has acknowledged the same before me in the City/County and State/Commonwealth aforesaid, on this 13th day of June, 2016.

Notary Public

Print Name: Matthew Adam Lavoie
Registration Number: 757364
My Commission Expires: 12/8/2018

MATTHEW ADAM LAVOIE
NOTARY PUBLIC
STATE OF RHODE ISLAND
MY COMMISSION EXPIRES DEC. 08, 2018

MATTHEW ADAM LAVOIE NOTARY PUBLIC STATE OF RHODE ISLAND

WITNESS the following signatures and seal:

Allan R. Keck
ALLAN R. KECK

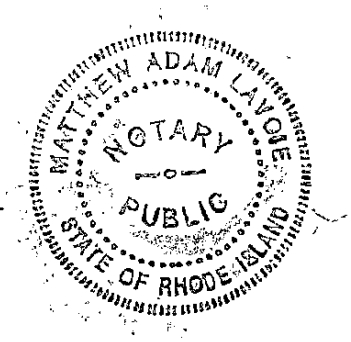
STATE/COMMONWEALTH OF Rhode Island
CITY/COUNTY OF Newport to-wit:

I, the undersigned Notary Public, in and for the City/County and State/Commonwealth aforesaid, do hereby certify that ALLAN R. KECK has acknowledged the same before me in the City/County and State/Commonwealth aforesaid, on this 13th day of June, 2016.

Matthew Adam Lavoie
Notary Public

Print Name: Matthew Adam Lavoie
Registration Number: 757364
My Commission Expires: 12/8/2018

MATTHEW ADAM LAVOIE
NOTARY PUBLIC
STATE OF RHODE ISLAND
MY COMMISSION EXPIRES DEC. 08, 2018



SCHEDULE A

The certain lot or parcel of land identified as "Tract A", containing 15.49 AC, as set forth on the "SUBDIVISION OF PARCEL A AS SHOWN IN PLAT BOOK 28, PAGE 86 AND AMENDED BY PLAT BOOK 30, PAGE 55, TOWN OF CAPE CHARLES, CAPEVILLE DISTRICT, NORTHAMPTON COUNTY, VIRGINIA, JUNE 16, 2009, "by MSA, P.C. recorded in the Clerk's Office of Northampton County, Virginia on December 18, 2009, as Instrument Number 090002548.

It being a part of the property conveyed to Gail Minoff-Keck and Allan R. Keck from Paul E. FORST and Kathleen M. FORST, by Deed dated April 23, 2002, filed for record on April 29, 2002 in the Clerk's Office of the Circuit Court of Northampton County, Virginia in Instrument 020001045.

INSTRUMENT #160000888
RECORDED IN THE CLERK'S OFFICE OF
NORTHAMPTON COUNTY ON
JUNE 17, 2016 AT 04:51PM
$225.00 GRANTOR TAX WAS PAID AS
REQUIRED BY SEC 58.1-802 OF THE VA. CODE
STATE: $112.50 LOCAL: $112.50

TRACI L. JOHNSON, CLERK
RECORDED BY: TLJ

GENERAL NOTES:

1. OWNER: GENERAL BUILDERS, LLC
2. TAX PARCEL: 90-19-A
3. SOURCE OF TITLE: INSTRUMENT #160000888
4. THE BOUNDARY FOR TAX PARCEL 90-19-A WAS TAKEN FROM INSTRUMENT #090002548, MSA, P.C. PERFORMED LIMITED BOUNDARY SURVEY WORK OF THE SUBJECT PROPERTY.
5. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT AND MAY NOT SHOW ANY/ALL EASEMENTS OR RESTRICTIONS THAT MAY AFFECT SAID PROPERTY AS SHOWN OR WETLANDS, ENVIRONMENTAL HAZARDS, CEMETERIES AND UNDERGROUND STRUCTURE NOT OBSERVED DURING THE COURSE OF THE SURVEY.
6. ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY (F.E.M.A.) FLOOD INSURANCE RATE MAP, COMMUNITY PANEL NO. 51131C0315F, DATED MARCH 2, 2015. THE PROPERTY SHOWN HEREON LIES IN FLOOD ZONE X. FLOOD ZONE DETERMINATION IS BASED ON THE FLOOD INSURANCE RATE MAP AND DOES NOT IMPLY THAT THIS PROPERTY WILL OR WILL NOT BE FREE FROM FLOODING OR DAMAGE. FLOOD ZONE INFORMATION SHOWN HEREON IS NOT GUARANTEED AND WAS APPROXIMATELY SCALED FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY (F.E.M.A.) FLOOD INSURANCE RATE MAPS. MSA, P.C. IS NOT A PARTY IN DETERMINING THE REQUIREMENTS FOR FLOOD INSURANCE ON THE PROPERTY SHOWN HEREON. FOR FURTHER INFORMATION AND TO CONFIRM THE FLOOD ZONE FOR THIS PROPERTY, CONTACT THE LOCAL COMMUNITY FLOOD OFFICIAL.
7. TOTAL AREA ENCOMPASSED BY THIS SUBDIVISION: 574,906 SF OR 15.49 AC.
8. CURRENT ZONING: R-3 (RESIDENTIAL MULTI-FAMILY DISTRICT)
9. FOR INFORMATION REGARD CURRENT SETBACK REQUIREMENTS REFER TO ARTICLE III, THE TOWN OF CAPE CHARLES ZONING ORDINANCE, LATEST EDITION.
10. ZONING AND SETBACK INFORMATION IS ACCURATE AS OF THE DATE OF PLAT APPROVAL AND IS SHOWN FOR INFORMATIONAL PURPOSES ONLY.
11. IN ACCORDANCE WITH PROFFER AGREEMENTS BETWEEN THE OWNER OF TRACT A (TAX PARCEL 90-19-A) AND THE TOWN OF CAPE CHARLES. THE FOLLOWING SETBACK AND BUFFER AREAS SHALL APPLY:

    TRACT A
    - A 100' BUILDING SETBACK AND CLASS III VEGETATED BUFFER SHALL BE PLANTED ALONG THE WESTERN AND SOUTHERN BOUNDARY OF TRACT A (ALONG OLD CAPE CHARLES ROAD), TOGETHER WITH A CLASS III VEGETATED BUFFER ALONG THE EASTERN BOUNDARY OF TRACT A (COMMON LINE OF TRACT B). SAID BUFFERS SHALL BE PLANTED AT THE COMMENCEMENT OF CONSTRUCTION OF BUILDINGS ON THE PROPERTY IN ACCORDANCE WITH THE TOWN OF CAPE CHARLES, ACCAWMACKE PLANTATION (BAY CREEK) - PUD, APPENDIX A.
    - A DEDICATED RIGHT-OF-WAY PROFFER MUST PROVIDE FOR ACCESS TO A POSSIBLE FUTURE PUBLIC ROAD WHICH MAY BE CONSTRUCTED ON THE ADJOINING LAND TO THE NORTH OF THE OWNER'S PROPERTY.
12. THE LOTS TO BE SUBDIVIDED ARE FROM A LARGER CONCEPTUAL DEVELOPMENT AREA FOR MULTI-FAMILY UNITS.

FB:
DRWN. BY RLJ/CJS
CHK'D. BY JBL/JJV DATE 12-15-16

OWNER'S CERTIFICATION

THE ABOVE AND FOREGOING SUBDIVISION OF LAND SHOWN ON THIS PLAT AND KNOWN AS "SUBDIVISION OF TRACT A, (INSTRUMENT #090002548) TOWN OF CAPE CHARLES, CAPEVILLE DISTRICT, NORTHAMPTON COUNTY, VIRGINIA, SEPTEMBER 14, 2016" AS APPEARS IN THIS PLAT IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRE OF THE UNDERSIGNED OWNERS, PROPRIETORS AND TRUSTEES IF ANY.

ANGELO MANUEL
GENERAL BUILDERS, LLC
7707 LEAFWOOD DRIVE
NORFOLK, VA. 23518

STATE OF Virginia
COUNTY OF Northampton

THE FOREGOING STATEMENT OF CONSENT WAS ACKNOWLEDGED BEFORE ME BY ANGELO MANUEL THIS 20th DAY OF December, 2016

NOTARY PUBLIC

MY COMMISSION EXPIRES: 6/30/2017

REGISTRATION NUMBER: 256796

WANDA H. FITCHET NOTARY PUBLIC REG. #256796 MY COMMISSION EXPIRES 06/30/2017 COMMONWEALTH OF VIRGINIA

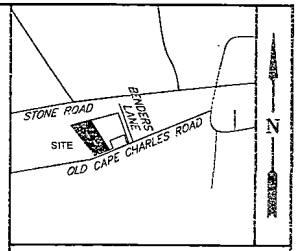
INSTRUMENT #170000133
RECORDED IN THE CLERK'S OFFICE OF
NORTHAMPTON COUNTY ON
JANUARY 30, 2017 AT 02:34PM

TRACI L. JOHNSON, CLERK
RECORDED BY: SBS

SURVEYOR CERTIFICATION

I, JEFFREY J. VIERRETHER, A LICENSED LAND SURVEYOR, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF, THIS PLAT COMPLIES WITH ALL OF THE REQUIREMENTS REGARDING THE PLATTING OF SUBDIVISIONS WITHIN THE TOWN OF CAPE CHARLES.

COMMONWEALTH OF VIRGINIA
JEFFREY J. VIERRETHER
Lic. No. 2306
12.16.2016
LAND SURVEYOR



LOCATION MAP - SCALE: 1" = 2000'

TOWN OF CAPE CHARLES

THIS PLAT, CONSISTING OF TWO (2) PAGES, HAS BEEN APPROVED BY THE SUBDIVISION AGENT OF TOWN OF CAPE CHARLES, AND MAY BE ADMITTED TO THE LAND RECORDS OF THE AFORESAID COUNTY

SUBDIVISION AGENT, TOWN OF CAPE CHARLES — DATE 1/20/17

NORTHAMPTON COUNTY PUBLIC HEALTH OFFICER

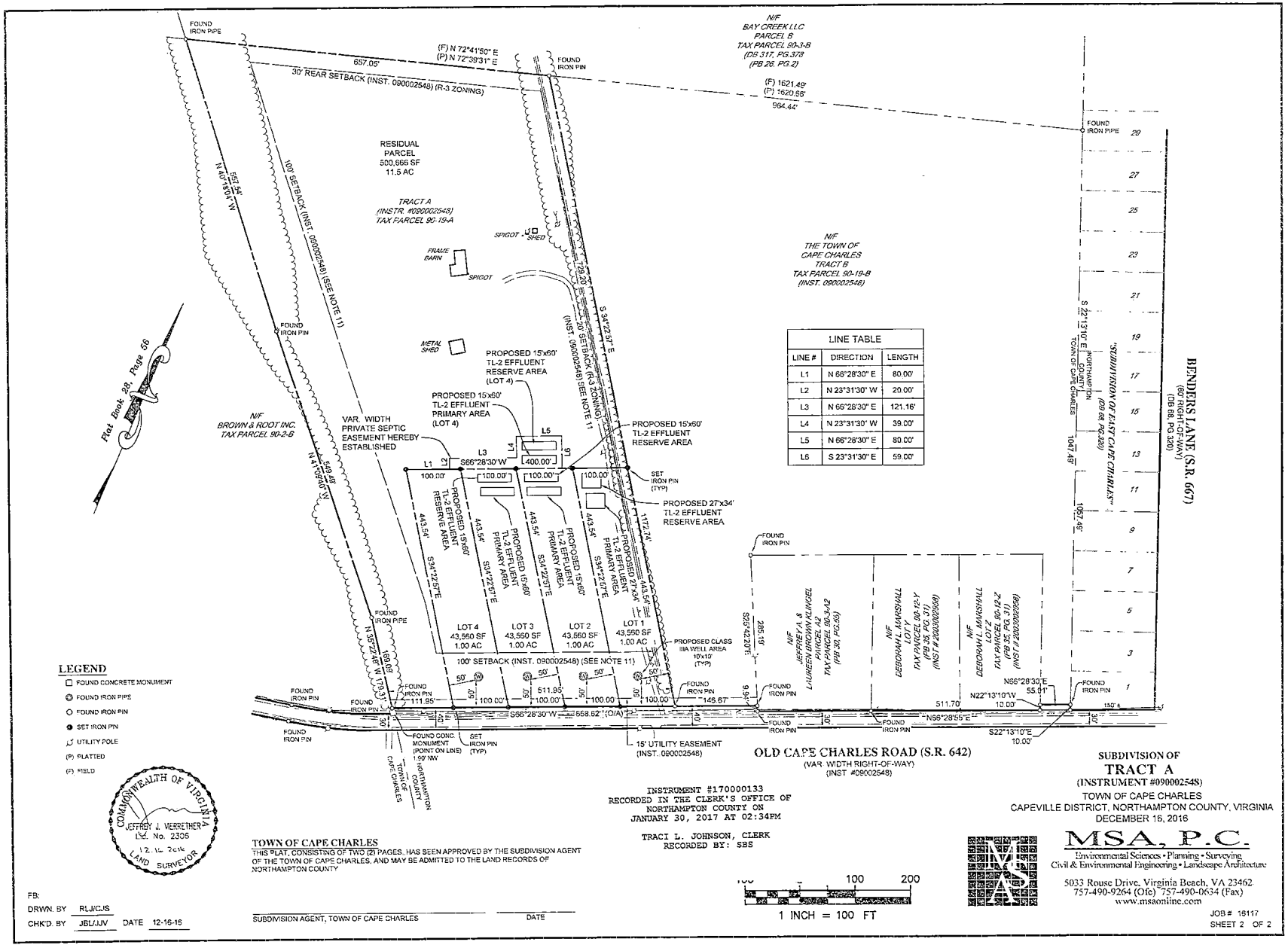
THE PROPOSED SUBDIVISION HEREIN IS FOUND TO BE GENERALLY SATISFACTORY FOR THE INSTALLATION OF SEWAGE DISPOSAL SYSTEMS, AND THE INSTALLATION OF SEWAGE DISPOSAL SYSTEMS, SO FAR AS CAN BE DETERMINED, WILL NOT CREATE HAZARDS TO PUBLIC HEALTH. THIS APPROVAL IS ONLY WITH THE UNDERSTANDING THAT WHERE SEWAGE DISPOSAL SYSTEMS ARE TO BE INSTALLED, EACH APPLICATION MUST BE APPROVED ON AN INDIVIDUAL LOT BASIS BY THE HEALTH DEPARTMENT AT THE TIME THAT APPLICATION IS MADE.

HEALTH OFFICER, NORTHAMPTON COUNTY, VIRGINIA — DATE 1/25/17

SUBDIVISION OF
TRACT A
(INSTRUMENT #090002548)
TOWN OF CAPE CHARLES
CAPEVILLE DISTRICT, NORTHAMPTON COUNTY, VIRGINIA
DECEMBER 16, 2016

MSA, P.C.
Environmental Sciences • Planning • Surveying
Civil & Environmental Engineering • Landscape Architecture
5033 Rouse Drive, Virginia Beach, VA 23462
757-490-9264 (Ofc) 757-490-0634 (Fax)
www.msaonline.com

JOB # 16117
SHEET 1 OF 2



LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	N 66°28'30" E	80.00'
L2	N 23°31'30" W	20.00'
L3	N 66°28'30" E	121.16'
L4	N 23°31'30" W	39.00'
L5	N 66°28'30" E	80.00'
L6	S 23°31'30" E	59.00'

September 12, 2022

Town of Cape Charles
c/o John Hozey
Town Manager
2 Plum Street
Cape Charles, VA 23310

RE: Proffer Agreement of 2008 | Request to Vacate
Workforce Housing | BAY CROSSING Development

Dear John –

Pursuant to our discussions, on behalf of Lot 4 Holdings, LLC, I am requesting your assistance to vacate the Proffer restricting development of the proposed Workforce Housing Project at Tax Parcel 90-19-A.

With respect to the proffer, we believe the proffer's limitations for development are no longer applicable given the proposed intent to activate this property by developing Workforce Housing to satisfy an immeasurable demand in the Town and greater Northampton County. In addition to the density restriction, the Proffer requires a 100' setback and vegetative buffer. Not only does this requirement present a financial hinderance, but the adjacent parcel whose intent it was to provide a visual shelter, has since been dedicated as a conservation easement which runs with the land in perpetuity. As such, there is no longer a need to *shield* this parcel's development from the adjacent conservation easement.

It is with great pleasure to share the vision for the **BAY CROSSING** development as we transition from concept-to-design. Our vision is to develop a transformative residential project with the primary target of Workforce Housing - rooted with the history of Cape Charles and refreshed with the love for nature and community. Often referred to as a passion project, this development is a long-term investment in the Town and community intended as a legacy holding with a decades long vision for the future potential.

The first phase of the project will be residential centric delivering a high-quality multi-family project leveraging state-of-the-art design standards ensuring maximum quality with industry-leading efficiency. Ranging from studios to two-bedroom units, there will be an emphasis on activating outdoor spaces to promote and sustain a unique sense of community and *desire to gather*. Such features contemplated include:

+ Outdoor firepits
+ Community barbeques
+ Fishing pier at storm water pond
+ Trail to the Main Street
+ EV Charging Stations
+ Purposeful landscaping
+ Built-in desks, docking stations and furniture
+ Smart-home lighting and controls

The statement *It Takes A Village* not only applies to this collective effort but underscores the overwhelming support and commitments by a growing number of **BAY CROSSING** proud partners and project Team, including but not limited to:

- Town of Cape Charles
- Northampton County
- Virginia Housing
- Cape Charles Rosenwald School Restoration Initiative
- WINMAR Construction
- ThompsonMcMullan, P.C.
- Jeff Klingel Landscape Design
- AES Consulting Engineers
- Gentry Locke
- Consortium of local business owners
- Preserve Communities
- Area's leading employers

With the support of the Town and County, we are making great strides toward securing public utilities to enable the development of this property currently restricted by well and septic limitations.

Vacating the Proffer – which currently precludes viable development of the **BAY CROSSING** project – is a critical step to enable our vision to become your reality.

Warm Regards –

Lance LJ Marine
Managing Principal

Municipal Corporation of Cape Charles

September 22, 2022

RE: Public Hearing regarding Possible Removal of Proffers (Zoning Conditions) affixed to six parcels on Old Cape Charles Road

Dear Sir or Ma'am:

This letter is to inform you that the Town of Cape Charles is seeking to remove proffers or zoning conditions that were offered as part of a rezoning application and ultimately accepted by the Town in November 2008; said proffers are legally attached to a tract of land of 33.362 acres located off Old Cape Charles Road that had been owned by Allan & Gail Keck; said land has subsequently been subdivided into now six parcels which are currently identified as follows:

TAX MAP #	OWNER	LOCATION	SIZE	ZONING
90-19-B	Town of Cape Charles	2443 Old Cape Charles Rd	17.751 ac±	Residential Estates (RE)
90-19-A	General Builders LLC	Old Cape Charles Rd	11.611 ac±	Residential-3 (R-3)
90-29-4	General Builders LLC	2401 Old Cape Charles Rd	1.0 ac±	Residential-3 (R-3)
90-29-3	General Builders LLC	2403 Old Cape Charles Rd	1.0 ac±	Residential-3 (R-3)
90-29-2	CEM Investments, LLC	2405 Old Cape Charles Rd	1.0 ac±	Residential-3 (R-3)
90-29-1	General Builders LLC	2407 Old Cape Charles Rd	1.0 ac±	Residential-3 (R-3)

**Map provided at end of letter*

Since proffers are considered as part of the Town Zoning Ordinance, it requires a public hearing by the Town to consider voting to remove the proffers. It is important to note that the removal of the proffers does not undue or change or revert the zoning designation of each parcel as to what it was in 2008. The current zoning designation of each parcel remains the same.

There will be two public hearings with all meetings being held at 500 Tazewell Avenue aka Cape Charles Civic Center:

DAY	DATE	TIME:	MEETING
Tuesday	October 4, 2022	6:00 p.m.	Planning Commission
Thursday	October 20, 2022	6:30 p.m.	Town Council

The proffers were as following:

(1) The Grantors proffer by dedication 17.751 +/- acres of unimproved land currently identified as tax map #90-30-A zoned Residential Estate, RE **{THIS IS NOW TAX MAP #90-19-B}**, adjoining the property to be rezoned, to be deeded to the Town of Cape Charles as unimproved land. The purpose of the dedication is for the dedicated property to become Town property and be developed by the Town in the future in a manner that will best serve the interests of the Town.

The following restrictions shall apply:

A. The Town shall use the property for public purposes, excluding residential and commercial development.

B. The Town shall retain ownership of the property for a minimum of 15 years.

C. Any future Town buildings, other structures constructed on the property and the storage of heavy equipment shall have a minimum 100 ft. setback from the common boundary with the rezoned R-3 property. The common boundary shall be planted with a Class III vegetated buffer, as identified in the Town's Zoning Ordinance, by the developer of the adjoining R-3 property. All future structures on the town property shall be designed and constructed in terms of both visual appearance and potential sound pollution in a manner that is compatible, complementary, and otherwise consistent with being adjacent to a residential community.

D. The proffered property shall have the same 100 ft. setback and Class III vegetated buffer from Old Cape Charles Road as the rezoned R-3 property, continuing east around the existing residential properties to the eastern boundary. This buffer is to be planted by the Town as a Class III Buffer at such time as any construction, other than water wells, is undertaken, ensuring the entire frontage of the two properties retains a rural appearance from the road and neighboring properties.

E. The Town may rezone the property to a zoning category that allows Town uses as per A. above, but all deed restrictions shall remain in force.

(2) The Grantors proffer the following regarding 15.611 +/- acre portion of the property being retained and rezoned R-3: **{THIS IS NOW TAX MAP #90-19-A and 90-29-1 thru 4}**

A. A maximum density of 100 dwelling units.

B. A 100 ft. setback and Class III vegetated buffer on the western boundary of the property and on Old Cape Charles Road. Upon commencement of construction of buildings on the property, the buffers must be landscaped with trees a minimum of 6 ft. in height at the time of planting. Trees are to be selected from the varieties listed in the Town Zoning Ordinance regarding Class III buffers. In addition, the developer of the property, at the time of construction of buildings on the property, shall also plant a Class III vegetated buffer along the common border with the eastern neighbor, the Town of Cape Charles, incorporating appropriate species within the existing tree line.

C. Any future site plan for development of the property must provide for access to a possible public road in the future, which road may be constructed on the adjoining land on the northern boundary of the property.

(3) This proffer agreement may be recorded by Grantee against the Property and the appropriate officials of Grantee are hereby authorized by Grantor to do so.

(4) The conditions set forth in this agreement shall continue in full force and effect until they are amended as provided herein but otherwise until a subsequent amendment changes the zoning on the Property covered by such conditions; provided, however, that such conditions shall continue despite a subsequent amendment if the subsequent amendment is part of the comprehensive implementation of a new or substantially revised zoning ordinance.

The Town is considering the removal of these proffers because we have been approached by developers interested in some of this property for workforce housing. The interested developers have indicated that the existing proffers appear to be a barrier to this type of development. Please see their attached letter. The Town has indicated workforce housing is a priority.

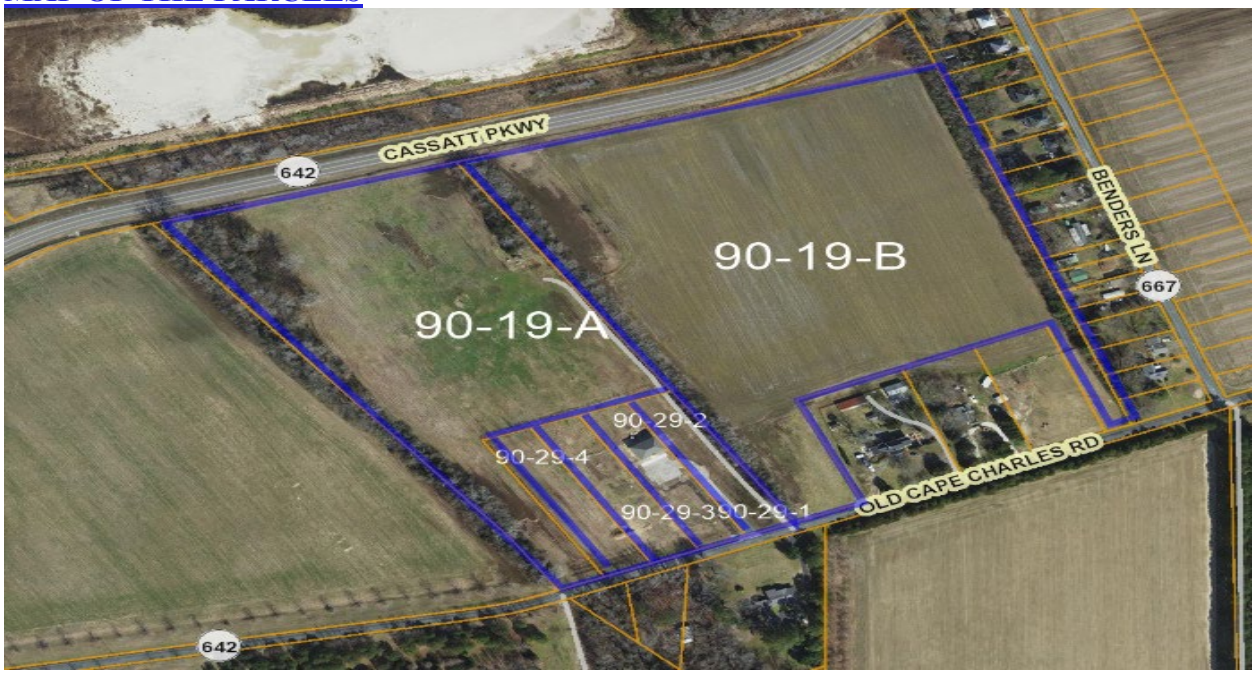
This Zoning Text Amendment 2022-03 application is available for public review on our website at www.capecharles.org. Anyone interested in attending and needing special assistance contact the Town at least 48 hours before the hearing. You can offer public comment in person at the hearings or in writing (via email or postal service), but all written comments must be received no later than 3:00 p.m. the date of the hearing.

Please contact Town Planner/Zoning Administrator Katie Nunez at 1-757-331-2036, or by email at planner@capecharles.org, if you have any questions or require additional information

Sincerely,
Katie Nunez

Katie Nunez
Town Planner and Zoning Administrator

MAP OF THE PARCELS



Municipal Corp. of Cape Charles

OCTOBER 2022
MONTHLY REPORT
Katie H. Nunez, Planning/Zoning Administrator

1. **Subdivision Agent:**
   Nothing to report.

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.]
   No applications filed for the October meeting.

3. **STATUS REPORT ON HISTORIC DISTRICT GUIDELINES**
   The consultants will have the entire month of October, if needed, to incorporate any further changes to the Guidelines and deliver a final version to the Town by Monday, November 14, 2022.

   The Town has established the following public hearing schedule:

   - Tuesday, December 6, 2022 – Joint Public Meeting with Town Council re: Zoning Text Amendment on Article VIII – Historic District Overlay & Map

   - Thursday, December 15, 2022 - Town Council Regular Session to take action on the Adoption of the Historic District Guidelines and the Zoning Text Amendment of Article VIII (Historic District Overlay & Map)

4. **STATUS REPORT ON UPDATE TO COMPREHENSIVE PLAN**
   Summit Design and Engineering Services, the Town's consultant for updating the Comprehensive Plan, has been diligently working on the various components of the Comprehensive Plan 5-Year Update and here is proposed schedule:

   - **THURSDAY, SEPTEMBER 29, 2022:** Hard copies will have been distributed in person to the Town Council and the Planning Commission and provided to each department head.
   - **MONTH OF OCTOBER**: Publicize through displays in the Eastern Shore Post, Town Website and an article in the October 2022 Town Gazette that the draft Comprehensive Plan is available for public comment throughout the month of October.
   - **THURSDAY, OCTOBER 6, 2022 @ 6:30 pm**: PUBLIC FORUM with Consultant, Summit Design and Engineering Services, and the general public – to role out the document, highlight the changes and components of the document and allow questions from the public and encourage the public to review and submit questions and/or comments concerning the draft 5-Year Comprehensive Plan Update to the Town by Monday, October 24, 2022 for review by Town Council & Planning Commission.

- **Thursday, October 27, 2022 @ 6:30 p.m.:** Joint meeting with Town Council and Planning Commission and our consultant, Summit Design and Engineering, for full discussion and review of the draft Comprehensive Plan update, including comments and questions received.
- **Wednesday, November 9, 2022 @ 6:00 pm** – Joint Public Hearing with Town Council & Consultant, Summit Engineering, on Adoption of Comprehensive Plan 5-Year Update
- **November 17, 2022 @ 6:30 pm – Town Council Regular Session** – it is anticipated they will vote on adoption of Comprehensive Plan 5-Year Update