

Planning Commission
Regular Session Agenda
Cape Charles Civic Center – 500 Tazewell Avenue
July 11, 2023, at 6:00 P.M.

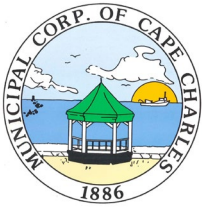
1. Call to Order
 - A. Roll call and establish a quorum.
2. Invocation and Pledge of Allegiance
3. Consent Agenda
 - A. Approval of agenda format
 - B. Approval of Minutes:
 1. January 3, 2023 Public Hearing & Regular Meeting
 2. January 30, 2023 Work Session
 3. February 7, 2023 Regular Meeting
 4. April 4, 2023 Regular Meeting
 5. May 2, 2023 Public Hearing & Regular Meeting
4. Public Hearings:
 - A. Zoning Map Amendment (ZMA) 2023-02 application from Nancy T. Rooney to rezone 107 Mason Avenue (Tax Map #83A3-2-1-74 & #83A3-2-1-75A) from Commercial-1 (C-1) Zoning District to Commercial Residential (CR) Zoning District for proposed use pursuant to CCZO Section 3.5.

Zoning Map Amendment (ZMA) 2023-02 application from RL & B Seaside Investments, LLC to rezone Tax Map #83A3-2-1-75B and #83A3-2-1-77 from Commercial-1 (C-1) Zoning District to Commercial Residential (CR) Zoning District for proposed use pursuant to CCZO Section 3.5.
5. Citizen Comment Period, for any item not subject to an advertised public hearing
6. Unfinished Business: Continued discussion of possible zoning text amendments - Sign Ordinance & Comparison of Industrial Districts
7. New Business:
 - A. Zoning Map Amendment (ZMA) 2023-02 application from Nancy T. Rooney to rezone 107 Mason Avenue (Tax Map #83A3-2-1-74 & #83A3-2-1-75A) from Commercial-1 (C-1) Zoning District to Commercial Residential (CR) Zoning District for proposed use pursuant to CCZO Section 3.5.

Zoning Map Amendment (ZMA) 2023-02 application from RL & B Seaside Investments, LLC to rezone Tax Map #83A3-2-1-75B and #83A3-2-1-77 from Commercial-1 (C-1) Zoning District to Commercial Residential (CR) Zoning District for proposed use pursuant to CCZO Section 3.5.
8. Report of Officers and Committees
9. Standing Staff Reports
 - A. Planning & Zoning Administrator Monthly Report for May & June 2023
 - 1.) Subdivision Agent Report
 - 2.) Report on Applications filed with Board of Zoning Appeals, pursuant to Code of Virginia §15.2-2310
 - 3.) Harbor Development Certificates submitted to HARB & Town Council
 - 4.) Department Staffing
10. Announcements - Next Meetings:
 - Regular Session: Tuesday, August 1, 2023 @ 6:00 pm
11. Adjourn

Agenda Item 3B

Minutes



PLANNING COMMISSION

Public Hearing & Regular Meeting

Cape Charles Civic Center
January 03, 2023

At 6:00 p.m., Chairman Bill Stramm, having established a quorum, called to order the Public Hearing and Regular Meeting of the Planning Commission. In addition to Chairman Stramm, present were Commissioners Paul Grossman, Jim Holloway, Dennis McCoy, Shannon Smith, and Bill Ashworth. Also, in attendance were Planning/Zoning Administrator Katie Nunez, Town Clerk Libby Hume, and Town Manager John Hozey. There were five members of the public in attendance and six viewers on Facebook Live.

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

Chairman Stramm thanked the two new members of the board Shannon Smith and Bill Ashworth.

Annual reorganization of the Board - Commissioner Stramm asked for nominations of Chairman and Vice-Chairman. Commissioner Grossman nominated Commissioner Stramm as Chairman and was seconded by Commissioner Ashworth. There were no other nominations for Chairman. All were in favor.

Chairman Stramm asked for nominations of Vice-Chairman. Commissioner Grossman nominated Dennis McCoy and was seconded by Commissioner Ashworth. All were in favor.

Update and adoption of revised planning commission bylaws - Katie Nunez asked that this item be deferred to February as she had not had the opportunity to review the bylaws.

CONSENT AGENDA:

Hearing no objections, Chairman Stramm approved the Consent Agenda as presented.

Chairman Stramm read the public hearing notice and opened the public hearing.

PUBLIC HEARING COMMENTS:

- A. *Zoning Text Amendment (ZTA) 2023-01 application from Lot 4 Holdings, LLC c/o Winmar Advisory to amend Article III to create a new zoning district called Bay Crossing Planned Unit Development and to amend any other sections of the Zoning Ordinances deemed appropriate to achieve the purposes described herein. 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 Map Amendment (ZMA – 2023-01) application from Lot 4 Holdings, LLL c/o Winmar Advisory to rezone Tax Map #90-19-A from Residential-R3 to the new zoning district called Bay Crossing Planned Unit Development District if so created.*

Ms. Nunez gave a summary of the staff report.

Lance Marine, Lot 4 Holdings, LLC

Mr. Marine explained the concept to the Commission. Mr. Marine indicated that he had reached out to the mayor just about a year ago with the concept of this project and the vision and scope of the project has been honed after dialogue with business owners and refined based upon design work and in concert with cost consideration for all project costs. While there are some small differences

in the proposed PUD to the R-3 District, the one significant text amendment that he is seeking is to build residential units under 1,000 square feet.

The proposed design includes a main road to set the tone to create a neighborhood with a median as part of that proposal and a strong flavor of pedestrian access with raised sidewalks. He is seeking increased parking above the requirements of the Town zoning ordinance. 63 Units proposed in the 1st building for workforce housing. The plan shows the concept of a possible Phase 2, which is a mirror of the first building area. His second use beyond the residential development is the commercial use of an Electric Charging Station. He has included a 100 ft buffer from Old Cape Charles Road and does not intend to have an access point onto the property from Old Cape Charles Road unless required by VDOT which he believes would be limited to public safety vehicles only. He is proposing several community amenities, such as firepits, grills, etc. to create a community gathering space through the outdoor space. He did not include balconies since he believes that is contrary to the community outdoor space he is trying to create.

There was a question about what consideration has been made about high-speed internet access being brought to this property. Mr. Marine indicated that he has not focused on that utility for this property but will be exploring this. There was a question about Mr. Marine's understanding of the demand for this type of project and the take rate for these units. Mr. Marine indicated that there would need to be a marketing and educational campaign about the specifics of these units and that is why he is focused only on a Phase I build of 63 units initially. There was a question about the changing work/home model where so much of work was funneled into the home space and the need for some time of business center affiliated with the multi-family housing space. Mr. Marine indicated that there is some flexibility space within the proposed building that could meet that need.

Sam Jones, 530 Monroe Avenue

Mr. Jones stated that he is supportive of workforce housing. He serves on the board for Eastern Shore Habitat for Humanity and sees the need for all types of housing options. He did the math based upon the range indicated in the Statement of Intent and felt that the wage range seems correct based upon the workforce on the Shore. He wanted to ensure the Town was evaluating this project proposal not just from a 63-unit consideration but rather from, if the project is highly successful, then it is possible that there could be 4 buildings with a total of 252 units. Also, he hopes that the Town could also ensure through the ordinance that these units be long-term for work force housing and not converted into short-term rentals at all.

There were no other public comments.

Motion made by Commissioner Grossman and seconded by Commissioner McCoy to close the public hearing on Zoning Text Amendment (ZTA) 2023-01 application from Lot 4 Holdings, LLC c/o Winmar Advisory to amend Article III to create a new zoning district called Bay Crossing Planned Unit Development and to amend any other sections of the Zoning Ordinances deemed appropriate to achieve the purposes described herein.

CITIZEN COMMENTS:

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

UNFINISHED BUSINESS

- A. Request from Town Council to draft Zoning Text Amendments to Section 4.5 – Off-Street Parking and Loading Standards re: add golf cart parking spaces – appoint subcommittee. Commissioner Grossman was concerned with the definition of the parking of golf carts both municipal and public. Ms. Nunez explained.
Dennis McCoy and Shannon Smith volunteered for the Golf Cart Parking subcommittee.

NEW BUSINESS

- A. *Zoning Text Amendment (ZTA – 2023-01) application from Lot 4 Holdings, LLC c/o Winmar Advisory to amend Article III to create a new zoning district called Bay Crossing Planned Unit Development and to amend any other sections of the Zoning Ordinances deemed appropriate to achieve the purposes described herein.*

The discussion and questions were as follows: (i) Commissioner Smith asked if the EVC station would be a revenue generating proposal and Mr. Marine confirmed that it would be. (ii) She also asked if the EV station would be draining power from the local electric grid or if he planned to use solar. Mr. Marine replied that he was researching other means of powering the EV stations. (iii) She also asked if he consulted with the power company to see if they can generate enough power to support the EV station and he confirmed that there was no concern there. (iv) Commissioner Grossman asked if the plan is essentially a concept that may have some minor tweaks as it progresses, and Mr. Marine confirmed. (v) Commissioner Grossman asked for Mr. Marine's position for these units being used for short-term rental or subletting. Mr. Marine stated that short-term rental is totally misaligned with his vision for this project. (vi) Commissioner Grossman asked how Mr. Marine is interpreting how the 30% component contained in the Statement of Intent is applicable to the project. Mr. Marine stated that he believes the 30% component would be far more than the rent he would be charging. (vii) Commissioner Grossman then asked staff how this can be included since there is no space in zoning for oversight of rent or income-based housing. Ms. Nunez indicated that she provided the information to put the Statement of Intent into some numerical context for the public and it shows the range from the top to the bottom. (viii) Mr. Marine indicated that there would be no private sector debt on this project, and he is in discussion with Virginia Housing for financing and there are several models that could be applicable and will have to adhere to their requirements. For example, one program states that 60% of the units would have to be at 80% of AMI. He would seek to maximum his offerings and finance options since he does not intend any of his units to be "luxury" units. The other factor that is not viable for this project is that the unit size must be less than 1,000 square feet. (ix) Based upon that information from Mr. Marine, then Commissioner Grossman feels there is a disconnect in the Statement of Intent specific to the inclusion of the following sentence: "The targeted workforce housing segment income range is 80% to 150% of the Area Median Income (\$55,104 for Cape Charles) and no greater than 30% of income to be spent for housing costs (rents and utilities)". (x) Mr. Marine indicated that he believes the 80% re: income level should be removed based upon feedback he has received and believes that it was provided to illustrate for people what type of housing was intended, and he believes that this seems to lean closer to a pro-forma statement vs. a zoning ordinance and the actual request which is only to remove the minimum 1,000 square foot housing unit requirement. (xi) Commissioner Grossman believes that the Planning Commission may be overstepping its bounds by imposing what he would call "rent control". He does not believe state code provides that authority to the Planning Commission and he does not think the applicant is willing to live with this condition being imposed upon him, whether it is the range of the AMI or the 30% of income being spent on housing costs (Rent and Utilities). (xii) Ms. Nunez stated that the Planning Commission did not impose this upon Mr. Marine but rather this zoning text amendment was proposed by the applicant, including the Statement of Intent, and the Planning Commission is reviewing and commenting on whether the text amendment is ok as presented. (xiii) Mr. Marine indicated that based upon the conversations at this point then he does think the AMI reference, specifically the 80% reference, should be omitted and the 30% of income spent on housing costs (rent and utilities) should also be omitted, especially since this is not a public/private partnership and there is no funding from the County or the Town for this project. He stated that the term of workforce housing is a made-up term, and that stuff was included to be illustrative of what he would consider the workforce population that this type of development would serve. (xiv) Chairman Stramm indicated that the Town does not have a definition of workforce housing and the housing sub-committee is working on that issue.

(xv) Commissioner Grossman asked what the “SC-District” is since the ordinance stated that this PUD would be allowed any use which is also allowed in the SC District. Ms. Nunez indicated that the SC District is the Specialty Commercial District of the Accawmacke Plantation Planned Unit Development Ordinance, and she has already informed Mr. Marine that this would be proposed for removal of this reference from Article 3 of the Cape Charles Zoning Ordinance when the Accawmacke Plantation PUD is advanced this year for amendment before the Town. (xvi) Commissioner Grossman asked for clarification regarding Item 6B and Ms. Nunez stated that the use of the word “Chapter” means the entire Zoning Ordinance. (xvii) Ms. Nunez asked the Planning Commission to take note of the Resolution of Intent from the Town Council since it includes the reference to the various evaluations staff conducted of these applications against our policy documents. Ms. Nunez asked the Planning Commission to take note of the Resolution of Intent from the Town Council since it includes the reference to the various evaluations staff conducted of these applications against our policy documents.

REVIEW WITH RESPECT TO COMPREHENSIVE PLAN

The Cape Charles Comprehensive Plan, within its Housing Chapter (page 35), has stated as the primary intent is to “pursue land use, zoning and housing policies to meet and maintain the housing needs of all Cape Charles residents and support a strong local workforce, while preserving local character”.

The Plan has identified the lack of affordable housing as a key factor contributing to a worker shortage both in the Town as well as in Northampton County (page 44) and the Town has adopted as one of its goals and objectives in the Comprehensive Plan to “Encourage development of affordable workforce housing” (page 45).

REVIEW WITH RESPECT TO ZONING ORDINANCE: ZONING DISTRICTS – INTENT

The Cape Charles Zoning Ordinance allows for the creation and consideration of a Planned Unit Development (PUD) and specifically includes a statement of intent in Section 3.12 which states:

“The intent of this district is to promote creative and imaginative development designs for residential and commercial uses by allowing greater flexibility than is possible under the restrictions of conventional zoning regulations. It is further intended to promote more efficient use of land while encouraging variety and convenience for the overall development and the development of recreational areas and open spaces within the project.”

The proposed Bay Crossing PUD presumes the basis of a R-3 Zoning District concept but within the confines and requirements of the PUD Template. The R-3 Zoning District has a statement of intent which states that:

“to provide for relatively high density, multi-family residential development. This district is designed to promote and encourage a suitable environment for family life and to restrict activities of a commercial nature to those which serve the needs of the surrounding residential neighborhood.”

Motion made by Commissioner Grossman and seconded by Commissioner McCoy to recommend to Town Council to approve Zoning Text Amendment (ZTA) 2023-01 with the following amendment to the text ordinance:

Under Section 1, Item 1 “Statement of Intent”, second sentence, delete the sentence (~~The targeted workforce housing segment income range is 80% to 150% of the Area Median Income (\$55,104 for Cape Charles) and no greater than 30% of income to be spent for housing costs (rent and utilities)~~) and replace with the following: “The targeted housing market is the workforce housing segment.”

Under Section 1, Item 4: add to end of sentence – Minimum of 5 Acres for PUD District”.

The motion was unanimously approved.

- B. *Zoning Map Amendment (ZMA – 2023-01) application from Lot 4 Holdings, LLL c/o Winmar Advisory to rezone Tax Map #90-19-A from Residential-R3 to the new zoning district called Bay Crossing Planned Unit Development District if so created.*

Motion made by Commissioner Grossman and seconded by Commissioner Holloway to recommend to Town Council to approve Zoning Map Amendment (ZMA) 2023-01 to rezone Tax Map #90-19-A from R-3 to new zoning district called Bay Crossing PUD and was seconded by Commissioner Holloway. The motion was unanimously approved.

- C. *Planning Commission Annual Work Plan with proposed calendar for 2023*

Ms. Nunez summarized to the Planning Commission and presented a list of items that need to be addressed in 2023.

REPORT OF OFFICERS AND COMMITTEES

Housing Committee re: Land Use Ordinance Barriers to Housing Development.

Ms. Nunez presented the review of the Berkeley Group Study Factors 1 – 6 and suggested recommencing the housing subcommittee discussions and take recommendation back to the consultant. Two factors, 7 and 8 still need to be addressed. The housing subcommittee to meet on the 5th Monday of the month, January 30, 2023, from 3 – 5 pm. All agreed.

STANDING STAFF REPORTS

Ms. Nunez gave updates on the following: (i) Board of Zoning Appeals: application received for a rear yard setback at 112 Churchill Downs pursuant to the Accawmake plantation plan unit development.

2022 Annual Report of the Planning Commission and review of annual reports of the Zoning Appeals, Wetlands Board, Historic District Review Board and Harbor Area Review Board. Deferred.

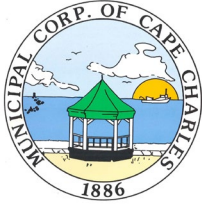
ANNOUNCEMENTS

- Work Session January 30, 2023, at 3:00 to 5:00 PM at the Civic Center
- Regular Planning Commission Meeting on Tuesday February 07, 2023, at the Civic Center

Motion made by Commissioner McCoy, seconded by Commissioner Ashworth, to adjourn the Planning Commission Public Hearing and Regular Meeting at 7:27 p.m. The motion was approved by unanimous vote.

Chairman Bill Stramm

Planning Technician



PLANNING COMMISSION

Work Session

Cape Charles Civic Center

January 30, 2023

3:00 p.m.

At approximately 3:00 p.m., Chairman, Bill Stramm having established a quorum, called to order the Work Session of the Planning Commission. In addition to Chairman Stramm, present were Commissioners Dennis McCoy, Paul Grossman, Michael Strub, Shannon Smith, and Bill Ashworth. Also, in attendance were Town Planner/Zoning Administrator Katie Nunez, and Planning Administrative Assistant Alyce Crockett. There were no members of the public in attendance.

APPROVAL OF AGENDA

Chairman Bill Stramm approved the agenda format as presented by unanimous consent.

ORDER OF BUSINESS

- A. *Discussion of Housing Subcommittee work and reach consensus on possible zoning ordinance changes relative to housing.*

Ms. Nunez started the discussion regarding the initial review and recommendations from the Berkeley Group's report and each finding that was addressed in our own ordinances was highlighted in green. The Commission was instructed to concentrate on the highlighted areas.

Discussions and questions were as followed:

Factor 1 – Diversity of Housing Stock

Item 1 – some discussion regarding accessory dwelling units in a planned unit development. No further action needed be taken.

Item 2 – Impacts of tourism and transient housing -some discussion regarding short term rentals and the definition of use of Tour Home. Need better direction from the Town Council and who will be tasked with this.

Item 3- Alternate structures for housing – discussion regarding the minimum dwelling size. Duplexes no longer a use by right. Need to open a discussion regarding this. There was also discussion regarding parking and the number of trees on the lots. The issue of sidewalks to be taken up by the town council. Recommendation to reconsider minimum square footage as a percent of lot and not square footage – agreement on this was reached.

Item 4 – Setbacks list in a table format – agreement was reached. Cleanup formatting across the zoning district.

Item 5 – Modify/modernize expanding permitted uses. – discussion regarding options for incentivizing housing options.

Item 7 - Manufactured homes – Ms. Nunez read the definition of manufactured home and Commissioner Grossman expressed that these home need to be placed on a permanent foundation and treated as a single family home. All agreed.

Item 8 – Zoning provisions for temporary family health structures – all agreed that this be inserted into the ordinance.

Factor 2 – Permitted Housing Densities

No changes to be made.

Factor 3 – Regulation Consistency/Clarity

Item 5 page 2 – with regard to consistent definitions at the county level – No action at this time.

Appendix A page 3 – regarding affordable housing definition – Commissioner Grossman recommended as a percentage of income. Ms. Nunez asked where a good location would be for these types of properties. Paul Grossman mentioned that the definition should allow many income levels.

Commissioner McCoy said or as needed regarding circumstances.

Appendix A page 5 – Area of Median Income -Commissioner Grossman stated that this is defined by HUD each year. All agree to the definition and adding it to the ordinance. Also agreed to merging household and family.

Appendix A page 7 – Elimination of definition of manufactured housing – All agree that manufactured homes must have a permanent foundation. Also agreed that there should be a separate definition for modular buildings, home and industrial.

Appendix A page 10 – Define Workforce Housing – Chairman Stramm stated that the income level should be changed from 120 to 150. Commissioner McCoy asked if we would give preferential treatment to service workers and military. Ms. Nunez stated that she didn't want to change the ordinance. Stramm suggested to add for more than 30 days to prevent short term rentals. All agreed to tweak the definition of multifamily. All agreed to the continuing care requirement community definition.

Appendix B page 13 – Lot coverage of how calculations are measured. Definition of Residence – no change. Basement changed; all agree. Crawl space tweaked. Attic, defer to building code. Story height requirement of 2.5. remove story above grade. Gross floor area – tie into parking requirements. Height of the building – propose a tweak. Parcel building – remove. Change apartment house to building. Change Tourist Home to bed and breakfast (owner or manager permanent dweller on site). Remove Boarding House. Remove extended stay hotel/motel. Tweak motel. Delete Inn, Lodging House, Guest House and Guest.

Factor 4 – Development Standards –

Item 3 – What percentage of coverage should be multi family to no more than 60% of lot.

Item 5 – reduced parking requirements – 2 spaces for a single-family home. Change to one space per ADU.

Factor 5 – Standards for livable communities –

Commissioner Grossman recommended moving sidewalks out of the town code and into ordinance. All agreed. Manufactured home parks – not applicable.

Motion made by Chairman Stramm, seconded by Commissioner Grossman, to adjourn the February 7 , 2023 Planning Commission Session at 6:00 p.m. The motion was approved by unanimous vote.

Chairman Bill Stramm

Planning Technician



PLANNING COMMISSION

Regular Meeting

Cape Charles Civic Center

February 7, 2023

At 6:00 p.m., Chairman Bill Stramm, having established a quorum, called to order the Regular Meeting of the Planning Commission. In addition to Chairman Stramm, present were Commissioners Bill Ashworth, Paul Grossman, Jim Holloway, Dennis McCoy, Michael Strub, and Shannon Smith. Also, in attendance were Planning/Zoning Administrator Katie Nunez and Town Clerk Libby Hume. There were no members of the public in attendance and two viewers on Facebook Live.

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

CONSENT AGENDA:

Hearing no objections, Chairman Stramm approved the Consent Agenda as presented.

Discussion regarding selecting representatives to the two vacant seats on the Harbor Area Review Board

Commissioner Ashworth and Commissioner Smith volunteered to fill those vacant seats.

A joint meeting has been scheduled with the Harbor Area and Historic Area Review Boards for February 22, 2023.

All Agreed

PUBLIC HEARING COMMENTS:

There were no public hearings to be heard.

CITIZEN COMMENTS:

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

UNFINISHED BUSINESS

Continued review of the work of the housing sub-committee on the land use ordinance barriers to housing development - excel spreadsheets for factors 6, 7 and 8.

Factor 6 – Development Approval Process

- Item 2 -subdivision ordinance standards need to be consistent with the code of Virginia. Deferred to the consultant to review for compliance.
- Item 4 – need to review the recording of the plats and plans to determine state code compliance and timelines.
- Item 5 – ease of access to ordinances, Comprehensive Plans, and zoning maps to assist developers, community stakeholders, officials, and staff. Proposed text amendments updating town code to Municode. GIS mapping is being constructed on a platform that would show Town of Cape Charles and made available to the public. Working with Summitt Consulting on this.
- Item 6 – Consultant contracted to review ordinance for state code compliance.

Factor 7- Maintenance of Existing Housing

- Item 2 – Non-conforming manufactured homes must be permitted to be replaced by-right. Consultant is reviewing ordinance against the state code.
- Item 3 – Additions to non-conforming dwellings for accessibility for seniors. Zoning ordinance needs to be updated to codify.
- Item 6 - Consider comprehensive plan and ordinance amendments outside of zoning to support preservation of existing housing stock. Town council needs to address.
- Item 7 – in regard to adopting ordinances to address unsafe, substandard housing, discussion ensued regarding that no further action be taken because the town codes already allow for articles in column three. The Building Code has already been updated.

Factor 8 – Location of Housing Growth

- Item 1 – Housing diversity and affordability – consultant is reviewing the comprehensive plan against the ordinance. Ms. Nunez read the finding. Discussion on how the code defines affordable housing.
- Item 2 – Zoning should align with the comprehensive plan goals for housing diversity and affordability. Consultant is reviewing the comprehensive plan against the zoning ordinances.
- Item 4 – Incentivize development of housing variety in growth areas. Ms. Nunez read the item. Cape Charles already offers a variety of housing within the town. Parking in the historic district will be reviewed.
- Item 5 – Adopt inclusionary zoning regulations allowed by the Code of Virginia in targeted growth areas. The consultant is reviewing the zoning ordinances against the state code requirements.
- Item 8 – Support comprehensive plan and rezoning that allow for adaptive re-use of existing buildings for affordable housing. Ms. Nunez recommended Town staff and Main Street invite owners of underdeveloped buildings to a work session to discuss further opportunities afforded to them. The work session will be compiled and sent to the consultant.
- Notes: Changes agreed to by Planning Commission

NEW BUSINESS

A. Zoning ordinance review:

1 - Split Zoning - how to address a parcel that may have two types of zoning separately on the parcel. Consultant advised in this matter. Table the discussion until hearing from the consultant on findings.

2. Special exception – if special exceptions are included in the zoning ordinance but do not actually list examples. Commissioner Grossman suggested removing the special exceptions but wished to wait for the consultant's report.

3. View shed - definition provided by Ms. Nunez – it is unclear how to use the terminology – Commissioner Grossman stated this was to protect line of sight to the harbor. Need to clean up the ordinance wording.

4. Under CCZO section 3.2 (C) (6), this is a zoning district section for Residential -1 and through a conditional use permit, this listed use is possible
- adaptive reuse - understand where this would apply. Church to residential. Relates in R1 district - strike the "50 year old" component - already in article 8.

5. Under CCZO Section 3.3 exists a zoning district called Residential Mixed District R2 although this has not been applied to any parcel in the town. Need to add Multi Family to the ordinance.

6. CCZO Article 3 details various zoning districts. Regarding Development standards – questions regarding if this is in the right place in the zoning ordinance or should have its

own chapter. Items are covered in the historic district guidelines.
Wait for the findings of the consultant.

7. General formatting notes – Ms. Nunez read the paragraph.

8. The term FAR - not in the ordinance and how to calculate - in the harbor district – Town Clerk Hume explained where the term comes from. Discussion regarding the FAR. Consultant wants to discuss this issue.

Agreed to call consultant in March with feedback to her regarding another potential work session.

Draft calendars - zoning text changes joint meetings with town council.

- B. Item 8B - Consideration by the Planning Commission to serve as the applicant for a Zoning Map Amendment (ZMA) Application for four lots on the corner of Mason Avenue and Harbor Avenue (Tax Map #83A2-1-77; 83A3-2-1-75B; 83A3-2-1-75A; & 83A3-2-1-74).from Commerical-1 (C-1) to Commercial-Residential (CR)

Discussion ensued regarding a solution to this zoning issue – Ms. Nunez stated that the Planning Commission should serve as the applicant for a zoning amendment change from C-1 to CR. There was discussion as to why the owners of these lots were not applying for the change. Jim Holloway motioned to accept the Planning Commission to be the applicants but was then withdrawn due to further discussions. Commissioner Grossman preferred that the owners be the applicants.

REPORT OF OFFICERS AND COMMITTEES

STANDING STAFF REPORTS

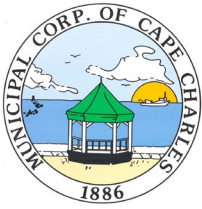
Ms. Nunez summarized.

Next Meeting: March 3, 2023, at 6:00 pm

Motion made by Commissioner Holloway, seconded by Commissioner Ashworth, to adjourn the Planning Commission Regular Meeting at 8:22 p.m. The motion was approved by unanimous vote.

Chairman Bill Stramm

Planning Technician



PLANNING COMMISSION

Public Hearing & Regular Meeting

Cape Charles Civic Center
April 04, 2023

At 6:00 p.m., Vice Chairman Dennis McCoy, having established a quorum, called to order the Regular Meeting of the Planning Commission. In addition to Commissioner McCoy, present were Commissioners Paul Grossman, and Shannon Smith. Also, in attendance were Planning/Zoning Administrator Katie Nunez, Town Clerk Libby Hume, Anne Darby and Noah Holmes Foster from Summitt Design and Engineering Services. There were no members of the public in attendance and two viewers on Facebook Live.

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

CONSENT AGENDA:

Hearing no objections, Vice Chairman McCoy approved the Consent Agenda as presented.

PUBLIC HEARING COMMENTS:

There were no public comments.

UNFINISHED BUSINESS

Continued review of the possible zoning ordinance amendments as prepared by consultants from Summit Engineering and golf cart parking committee. There was much discussion regarding how to incorporate golf cart parking into the ordinance. Commissioner Grossman suggested that the regulations be reviewed. Vice Chairman McCoy suggested that there be a consideration to develop a "strawman" for a shared parking agreement. What would the shared parking agreement look like as there are no parameters in the ordinance for parking logistics. Ms. Nunez commented on the issues regarding the expansion of the business district, specifically the addition of floors for residential. She expressed a concern about addressing additional parking needs when there is no space. Anne Darby suggested that there be no requirement for a business owner to have a shared parking agreement. The concerns expressed by Ms. Nunez include distance away from the business, valet parking, length of agreement, time period, and seasonality of the agreement. A second option discussed was to conduct a study to submit to the Town for review. The Town encourages mixed use capacity so flexibility in the parking regulations is required to accommodate. Ms. Nunez suggested that parking should not be constructed of hard surfaces due to stormwater runoff. There should be a limit to what is required in the ordinance. Vice Chairman McCoy suggested a study to determine parking availability and parking use.

Dumpster requirements and practicality

Ms. Nunez summarized the issues with the dumpsters and trash receptacles. These requirements are a challenge to administer. Commissioner Grossman mentioned that the dumpster requirements are hard to comply with and are inflexible. Access gates and fencing should be removed or modified to make it more realistic. These must be considered in the site plan development and can be written in a different fashion.

Section 4.7 – Swimming Pool Regulations

The Building Code has been modified so no fence is required if the pool has an electric pool cover. The concerns here for safety during power outages. Commissioner Grossman suggested adopting the building code with additional requirements such as for fences and locking gate.

Section 6.3 – Flood Plain District

FEMA maps were updated in 2015 and Cape Charles is not in the flood plain. Ms. Nunez suggested adding a layer to the map to address the flood plain and involve the building official for discussion.

Section 6.5 – Variances in the Flood Plain District

BZA to review the variances.

Section 7.4 – Areas of Applicability

The requirements of the Chesapeake Bay Act need to be represented and layered in the overlay map. The public needs to be educated and the requirements need to be understood by the general public.

Section 7.9 – Resource Protection Area and Boundary

Add a layer to the zoning map to guide interpretation of the RPAs. The suggestion is to delete paragraph B under section 7.9.

Section 7.10 – Performance Standards

Marijuana and Zoning Ordinance

Up for discussion at a later date

Former Town Planner, Zach Ponds Proposed Revision to Sign Regulations

The Planning Commission received a copy but did not address. This needs to be in a more condensed version. A discussion needs to take place regarding the regulations. The document needs to be more simplified.

Former Town Planner Zach Ponds Proposed Revision to Home Occupation Ordinance

What was proposed is good and will be sent to Anne Darby for a better written ordinance. The objective is to not ban home occupancy. Ms. Nunez mentioned that storm water erosion and sediment is controlled by the state. There may be a need for new regulations with these issues addressed. Commissioner Grossman mentioned that duplexes that are converted to single family residences can't be reverted back to duplexes in the ordinance. To change these back, the owner would have to adopt new requirements and would not be grandfathered in.

NEW BUSINESS

No New Business

REPORT OF OFFICERS AND COMMITTEES

STANDING STAFF REPORTS

Ms. Nunez gave updates on the following: (i) Subdivision Agent report: Approved the Bayside Village Section 2 – the Forest Lots B-205-208 and Open Space 3 (5 lots). (ii) Approved Bayside Village Lots B-138 to B 146 (9 lots) changing from commercial to residential. (iii) Approved the re-subdivision Plat of Village L – Phase 1C- Lots L-105 and L-106 considered Muirfield Village. (iv) Approved the vacation of Lot Line between Tax Map #83A3-1-534 and 83A3-1-535 on Fig Street and the Kellogg building. This parcel will be commercial with residential above and the site plan shows 4 parking

spaces. Three additional residences will be added, making a total of four. There will be no added parking for the restaurant. (v) Approved two additional apartment buildings on Old Cape Charles Road where there is already one constructed.

BOARD OF ZONING APPEALS

- BZA Meeting on April 11, 2023, at 10:00 am to hear the appeal of the decision of the Zoning Administrator regarding the alley between Strawberry and Pine and Jefferson and Washington.
- BZA meeting on May 09, 2023, at 10:00 am regarding the Parking Variance Application for 413 Jefferson Ave.

Harbor Development Certificates

- The Downtown Visitor Center and Public Restrooms off Strawberry Street have been approved.
- Train Car Renovations and associated site work of Strawberry Plaza have been approved.
- The new Municipal Building off Old Cape Charles Road has been approved.
- The renovations to the Rosenwald School Property have been approved.

Announcements

Next Meeting of the Planning Commission Regular Meeting will be held Tuesday, May 02, 2023, at the Civic Center.

Adjourn:

Motion to adjourn at 7:18 pm made by Commissioner Grossman and seconded by Commissioner Smith.

Vice Chairman Dennis McCoy

Planning Technician

Planning Commission

Regular Session Agenda

Cape Charles Civic Center – 500 Tazewell Avenue
May 2, 2023, at 6:00 P.M.

At approximately 6:00 pm, Chairman Stramm, having established a quorum, called to order the Planning Commission Regular Meeting. In addition to Chairman Stramm, in attendance were Commissioners Mike Strub, Dennis McCoy, Jim Holloway, Paul Grossman. Commissioners Bill Ashworth and Shannon Smith attended via video conference. Also in attendance was Katie Nunez, Planning/Zoning Administrator and Town Clerk Libby Hume. There were 6 members of the public in attendance and 5 viewers on Facebook Live.

Chairman Stramm led a moment of silence followed by the pledge of allegiance.

A motion was made by Chairman Stramm to approve the agenda. The motion was approved by unanimous vote.

Chairman Stramm read the public hearing notice and opened the public hearing.

PUBLIC HEARING COMMENTS:

- A. A Conditional Use Permit application from Liquor Distillation Society LLC at 1 Fig Street (Tax Map #83A3-1-534) in the Commercial-2 (C-2) Zoning District for 3 single-family dwelling units located on the second floor above commercial space pursuant to CCZO Section 3.7 (C).*
- B. A Conditional Use Permit application from Cape Marine Services LLC at 6 Mason Avenue (Tax Map#83A3-A-5) in the Harbor Zoning District to operate a paid parking lot on 72,000 square feet (approximately 22.3% of the total lot size of 322,498 square feet), pursuant to CCZO Section 3-9 (E) (7) (f); said request is seeking a one-time seasonal approval until September 5, 2023 with relief from the landscaping requirements contained in CCZO Section 4.5 (J).*

Ms. Nunez gave a summary of the conditional use permit for 1 Fig Street.

Discussion was as follows: (i) Commissioner Strub asked and received clarification that there will be four total residential units on the second floor which the applicants have indicated will be provided as housing for their employees and the site plan shows four parking spaces which will be assigned to the residential units on the second floor.

The applicants for the conditional use permit were not present.

Citizen Comments

There were no Public Comments

Motion made by Commissioner Grossman and seconded by Commissioner Holloway to close the public hearing on 1 Fig Street. The motion was approved by unanimous vote.

- A. A Conditional Use Permit application from Cape Marine Services LLC at 6 Mason Avenue (Tax Map#83A3-A-5) in the Harbor Zoning District to operate a paid parking lot on 72,000 square feet (approximately 22.3% of the total lot size of 322,498 square feet), pursuant to CCZO Section 3-9 (E) (7) (f); said request is seeking a one-time seasonal approval until September 5, 2023 with relief from the landscaping requirements contained in CCZO Section 4.5 (J).*

Ms. Nunez summarized the project.

Commissioner Holloway asked about the single-entry way, will it be mobile homes, tractor trailers, or just passenger vehicles.

Henry Harris - 150 Mason Ave

Resident lives above Gull Hummock and wondered if this is the best use of the property. He was concerned about landscaping for the property and the seasonal operation of a parking lot and was unclear how the Town and the applicant would determine if the seasonal conditional use permit was successful and merited a longer-term application and approval by the Town.

Robert Shrieves – 654 Randolph Avenue

Resident indicated that he was concerned about the noise and parking for the restaurant. At that time, the Chairman informed him that Mr. Shrieves was commenting on the prior public hearing matter for 1 Fig Street and not this application.

Motion made by Commissioner Grossman and seconded by Commissioner Holloway to close the public hearing on 6 Mason Avenue. Motion accepted by unanimous vote.

CITIZEN COMMENTS:

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

UNFINISHED BUSINESS

1. Discussion regarding possible zoning ordinance amendment submitted by Cape Charles Main Street

Ms. Nunez summarized the request from Karen Zamorski, Executive Director of Cape Charles Main Street, asking for the Town to consider amending the Sign Regulations specific to adding lights to the commercial district during certain seasonal events and possible to remain in place for longer periods of time.

The discussion was as follows: (i) Commissioner McCoy mentioned that an individual had to have medical attention due to the poor lighting which indicates that there is a need for lighting. Chairman Stramm mentioned that Strawberry Street is dark at night and Ms. Zamorski contact the company that puts up the lights on the trees during the holidays and she was told that because of the trees, overhead lighting could not be connected from building to building. A request has been submitted to ANEC to see if they could use the two telephone poles to string lights. (iii) Ms. Nunez stated that from a zoning perspective that request is a “no”. She told the commission that this may be a request to amend the zoning ordinance and does the council wish to investigate further. (iv) Commissioner Strub asked about the seasonality of the lighting. Ms. Nunez stated that the zoning ordinance does not allow string type lighting other than the Christmas Holidays. Cannot have this type of lighting year-round.

(v) Commissioner Strub stated that with daylight savings time there is light until 8:00 pm. He asked if there were any establishments that are open after 8:00 pm. Ms. Nunez replied that there needs to be further investigation regarding this. (vi) Commissioner Smith stated that lighting would also be beneficial to residents and would like to learn more about this. (vii) Commissioner Ashworth asked if there will be guidelines for year-round lighting and would like to follow up on this. Ms. Nunez asked the council if they want more research done. As it stands, the limited lighting resides in the sign ordinance do you want me to do the research – there is no lighting section in the ordinance and resides in the sign ordinance. (viii) Commissioner Grossman stated that there needs to be restrictions and boundaries regarding how lighting is displayed throughout the town. Ms. Nunez asked the council if they wanted her to continue the research. All were in favor.

NEW BUSINESS:

- A. *A Conditional Use Permit application from Liquor Distillation Society LLC at 1 Fig Street (Tax Map #83A3-1-534) in the Commercial-2 (C-2) Zoning District for 3 single-family dwelling units located on the second floor above commercial space pursuant to CCZO Section 3.7 (C).*

Discussion was as follows: (i) Commissioner Grossman was concerned if the 35ft height limitations have been met on the new construction of the second floor. Ms. Nunez assured him that they would not be exceeded. He also asked regarding the setbacks involving the patio and would it meet the 5 ft setback. She also mentioned that the frontage is on Fig Street and that the setbacks would be met. He asked if the applicants were ok with no short-term rentals. Ms. Nunez has already made that recommendation to the applicants. (ii) Commissioner Holloway questioned if these new units would have to meet the same requirements as current ADUs in the terms of the requirements Ms. Nunez stated that they are not ADU but single-family dwellings according to the ordinance and would have to meet the same requirements.

Commissioner Grossman motioned to recommend to Town Council to approve CUP2023-001: Conditional Use Permit for 4 single family dwelling units above 1st floor Commercial Space based upon the site plan and application submitted and with the condition that the minimum lease term of no less than 30 days be assigned to the 3 residential units at 1 Fig Street. He was seconded by Commissioner Holloway and the motion was carried unanimously.

- B. *A Conditional Use Permit application from Cape Marine Services LLC at 6 Mason Avenue (Tax Map#83A3-A-5) in the Harbor Zoning District to operate a paid parking lot on 72,000 square feet (approximately 22.3% of the total lot size of 322,498 square feet), pursuant to CCZO Section 3-9 (E) (7) (f); said request is seeking a one-time seasonal approval until September 5, 2023 with relief from the landscaping requirements contained in CCZO Section 4.5 (J).*

Discussion as follows: (i) Ms. Nunez summarized that the applicant is seeking relief from zoning ordinance section 4.5 (J) regarding landscaping requirements for parking lots. Since the project is temporary (seasonal), the applicant does not want to install landscaping. The project is a trial run and does not seek a permanent solution. (ii) Commissioner McCoy asked if the lot will be manned. Ms. Nunez replied that there would be an attendant during operating hours. (iii) Commissioner Holloway expressed his concern regarding the parking surface and a trial run of the parking lot would be beneficial. (iv) Commissioner Grossman clarified that that there will be no overnight parking. (v) Commissioner Strub asked who the target audience would be. Mostly shoppers and beach goers. Mr. Dize said there would be signage. (vi) Commissioner Stramm was concerned about the lighting, but Mr. Dize assured him that there would be no nighttime parking.

Smitty Dize – Cape Marine Services, LLC

The applicant confirmed the staff presentation and reaffirmed the operating details re: hours of operation and the clear understanding that this lot would not be for overnight or long-term parking but daily, short-term parking only. He recognizes that there is a parking issue but is not sure if paying for parking will work, hence the request for a seasonal permit. The lot would be open to all types of vehicles that can traverse on the public roads, including motor homes, trailers, boats being towed. However, the larger vehicles may be charged a different rate from a regular car. The lot is seasonal only and will be staffed. If there is rain, no parking will be permitted. The fencing around the property will be repaired and will be chained off in the off hours with the exception of July 4, which will be open for fireworks displays. Mr. Dize explained that adding landscaping would impair the profitability of the project. He also explained that there would be trash receptacles available. There would also be no other entrances to the lot other than from Mason Avenue.

Commissioner Grossman motioned to recommend to Town Council the approval of Conditional Use Permit (CUP) 2023-002 at 6 Mason Avenue on a one-time seasonal basis until 9/5/2023 with the following conditions:

1. A waiver from the landscape requirements in CCZO Section 4.5 (J) and other paved surface requirements during this “seasonal” one-time permit timeframe.
2. Sufficient trash receptacles be provided by the property owner and emptied on a regular basis at the expense of the property owner.
3. The entrance and exit to/from the parking lot is from the center entrance on Mason Avenue directly across from Harbor Avenue only.
4. Approved and permitted signage indicating the hours of operation of 8 am to Dusk & Daily Parking Only; NO OVERNIGHT PARKING, and Towing of Cars will be at Owner’s Expense.

The motion was seconded by Commissioner McCoy and the motion was carried unanimously.

REPORT OF OFFICERS AND COMMITTEES - NONE

STANDING STAFF REPORTS

- A. Planning & Zoning Administrator Monthly Report for April 2023
- a. Subdivision Agent Report

Ms. Nunez summarized that the Town Council has come to agreement with Bay Creek on a proposed annexation agreement, paused subdivision applications. might become a more active

- B. Report on Applications filed with Board of Zoning Appeals, pursuant to Code of Virginia §15.2-2310.

413 Jefferson Avenue – vacant lot with a new house and ADU – can’t get a car back there. Seeking a parking variance.

- C. Harbor Development Certificates submitted to HARB & Town Council

- 3/28/2023 – Rosenwald School Renovation Project has been approved with conditions.
- Cape Marine Services application for golf cart parking. Town Council denied this application.

HARB meetings have been set up and are posted on the website.

ANNOUNCEMENTS:

- Next Regular Session: Tuesday, June 6, 2023

D. Motion made by Commissioner Holloway, seconded by Commissioner McCoy, to adjourn the Planning Commission Regular Meeting at _____ pm. The motion was approved by unanimous vote.

Chairman Bill Stramm

Planning Technician

Agenda Item 4A & 7A

Public Hearing (Item 4A)

Review for recommendation to Town Council (Item 7A)

ZMA 2023-02

Rezone C-1 to CR

107 Mason Avenue (Tax Map #83A3-2-1-75A)

and Tax Map # 83A3-2-1-75A

&

Tax Map #83A3-2-1-75B and #83A3-2-1-77

TOWN OF CAPE CHARLES
Planning Commission – Public Hearing

The Cape Charles Planning Commission will hold a public hearing on Tuesday, July 11, 2023 at 6:00 pm in the Cape Charles Civic Center, 500 Tazewell Avenue, to receive comment on the following requests:

- A. A Zoning Map Amendment (ZMA) 2023-02 application from Nancy T. Rooney to rezone 107 Mason Avenue (Tax Map #83A3-2-1-74) and Tax Map #83A3-2-1-75A from Commercial-1 (C-1) Zoning District to Commercial Residential (CR) Zoning District for proposed use pursuant to CCZO Section 3.5.

A Zoning Map Amendment application from RL & B Seaside Investments, LLC to rezone Tax Map #83A3-2-1-75B and Tax Map #83A3-2-1-77 from Commercial-1 (C-1) Zoning District to Commercial Residential (CR) Zoning District for proposed use pursuant to CCZO Section 3.5.

The applications are available for public review on our website at www.capecharles.org under Agendas and Minutes/Planning Commission. Please contact the Planning Department at 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, June 27, 2023
AD TO RUN: Friday, June 30, 2023 and Friday, July 7, 2023



PLANNING COMMISSION PUBLIC HEARING STAFF REPORT

Meeting Date: July 11, 2023

Item #4A & 7A – ZMA-2023-02

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

Date: July 3, 2023

APPLICANT: Nancy T. Rooney & RL&B Seaside Investments, LLC	TYPE OF APPLICATION: Zoning Map Amendment (ZMA) 2023-02
SITE ADDRESS: 4 Lots at corner of Mason Avenue & Harbor Avenue	SPECIFIC REQUEST: Rezone from C-1 to CR
TAX MAP: 83A3-2-1-74, 75A, 75B, & 77	ZONING ORDINANCE: CCZO Section 2.7.2
LOT SIZE: 13,833.79 sq. ft total	CURRENT ZONING: Commercial – 1 (C-1)
	PROPOSED ZONING: Commercial Residential (CR)

DATE RECEIVED: May 26, 2023

DATE DEEMED COMPLETE: June 1, 2023

LEGAL DEADLINE: 100 days from 1st Receiving Application: September 8, 2023

NARRATIVE OF PROPOSAL

During the Comprehensive Plan update in 2022, we discussed these 4 lots and the possibility of rezoning them from Commercial-1 to Commercial Residential - 2 of the lots are under common ownership by RL & B Seaside Investments LLC and these lots are vacant; 2 of the lots are under common ownership by Nancy T. Rooney with one lot being vacant and one lot with a 3,300 square foot, one-story building.

This matter was discussed further with the Planning Commission at your February 7, 2023 meeting to determine if you would carry this item forward as the applicant and it was decided at this meeting that you wished for the property owners to apply for this rezoning. I met jointly with the owners and they agreed to submit a joint application for the 4 lots in total to petition for rezoning from Commercial-1 to Commercial Residential (CR).

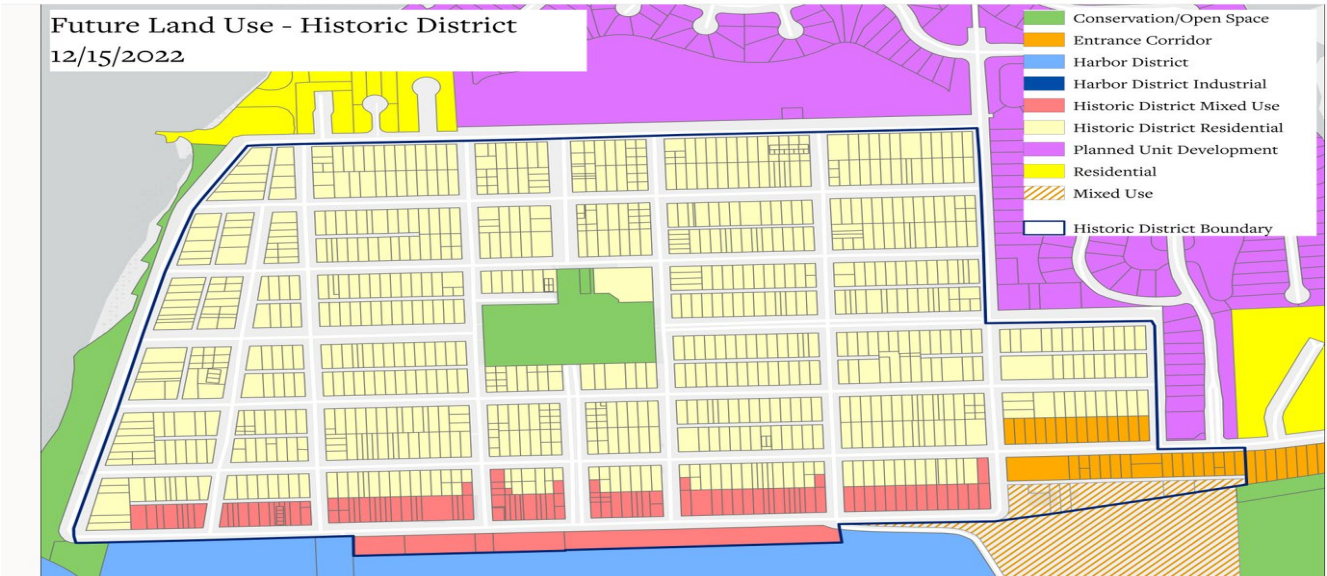
As previously reported, over the last 5 or more years, the owners of the building at Tax Map #83A3-2-1-74 (Ms. Rooney and her family) have approached the Town on several occasions for this property to be permitted for residential use. Under the Commercial-1 zoning district, the only way to approve residential use is through a conditional use permit process with a key criteria that residential use would only be considered for second story or above, never on the first floor. The owners indicated that they were not in a position to consider an addition to the property to meet this requirement. The current owner has indicated that she would like to have the back half of the building utilized as a residence and the front half of the building used as commercial space.

The adjacent property owner concurred that his two lots have never been developed and may be better served with a transitional zoning designation with mixed commercial and residential use to blend the commercial district on Mason with the residential district at the end of Mason on Bay Avenue.



REVIEW WITH RESPECT TO COMPREHENSIVE PLAN

When the Town was putting together the Future Land Use Map, the whole of Mason Avenue is designated as Historic District Mixed Use and we indicated that it is possible that the blocks closer to the beachfront may move to a mixed zoning designation of Commercial-Residential (CR), especially this ½ block starting at the corner of Harbor and heading east along Mason Avenue, thus serving as a transition zone between the residential lots closer to the beach and the full commercial that starts in the adjacent building to Nancy Rooney’s building which currently is being rented by Buskey Cider and continues with several establishments with the corner lot on Pine Street and Mason Avenue being occupied by Kelly’s Gingernut Pub.



As we went through the Future Land Use Map deliberations, it made sense to reconsider this particular ½ block on Mason Avenue and discuss a different Land Use designation and possibly zoning designation, especially since 3 of the 4 lots have remained vacant and there has not been any interest expressed to bring full commercial development to these lots since the Town adopted zoning in 1992. Additionally, the block on Mason Avenue between Bay Avenue up to Harbor Avenue is mostly zoned Residential-1 with the exception of the Northampton Hotel who petitioned the Town several years ago to conditionally rezone to Harbor for those particular lots.

Therefore, when we were putting together the Future Land Use Map, the whole of Mason Avenue is designated as Historic District Mixed Use and we indicated that it is possible that the blocks closer to the beachfront may move to a mixed zoning designation of Commercial-Residential (CR), especially this ½ block starting at the corner of Harbor and heading east along Mason Avenue, thus serving as a transition zone between the residential lots closer to the beach and the full commercial that starts in the adjacent building to Nancy Rooney's building which currently is being rented by Buskey Cider and continues with several establishments with the corner lot on Pine Street and Mason Avenue being occupied by Kelly's Gingernut Pub.

The applicant included the 1921 Sanborn Fire Insurance Map of Cape Charles which also documented that this corner block did not have any structures, even though the surrounding lots show structures which underscores the ambiguity of these lots and whether they are more inclined to residential development vs commercial development. Since the lots for the most part have never been developed, it supports a reconsideration of a zoning district that is blended between commercial and residential.

REVIEW WITH RESPECT TO ZONING ORDINANCE: ZONING DISTRICTS – INTENT

The Cape Charles Zoning Ordinance provides a statement of intent for the current zoning district of Commercial -1 as follows:

The intent of this zoning district is to preserve and enhance the traditional mixed use urban nature of Cape Charles commercial districts, to encourage the location of regional and local business and professional activities, to facilitate the development of buildings in keeping with its largely National Historic District character, and to protect against destruction of or undesirable encroachment on these areas.

The proposed rezoning district of Commercial Residential (CR) provides the following statement of intent as follows:

The purpose of this district is to recognize the unique juxtaposition of the existing residential structures within the central business district and the future needs of Cape Charles commercial districts. It is the intent of this zone to promote the continued residential character of these areas while allowing commercial uses to be introduced.

The specific intent of this district is (1) to encourage retention of the existing residential buildings and character of the area and (2) to encourage compatible uses for these buildings.

ANAYLSIS – Uses by Right and Conditional Use between the 2 Districts

<u>COMMERCIAL-1</u>	<u>COMMERCIAL RESIDENTIAL</u>
Permitted Uses by Right 1. Art or antique shops 2. Auditoriums, theaters, and assembly halls 3. Automobile repair and small engine repair 4. Automobile service stations 5. Bakeries, confectionaries, delicatessens, and catering services 6. Barber shops and beauty parlors 7. Bicycle and moped sales and rentals 8. Blueprinting shops 9. Boat sales 10. Business and vocational schools 11. Business studios, offices, and clinics 12. Childcare and childcare education centers 13. Commercial schools of instruction 14. Drug stores 15. Dressmaking, tailoring, and millinery shops, dry cleaning shops 16. Eating and drinking establishments 17. Financial institutions 18. Florists, gift shops, card shops, and stationery shops 19. Funeral homes 20. Furniture repair, sales and household appliance sales and repair, carpet and flooring sales 21. Greenhouses and plant nurseries 22. Grocery stores 23. Hotels and motels 24. Liquor stores 25. Libraries, museums, or galleries 26. Music stores 27. Medical or dental or other laboratories 28. Offices, office supply stores 29. Public facilities, public buildings 30. Restaurants 31. Pet shops and pet supply stores 32. Radio and television sales 33. Upholstering shops and fabric stores 34. Watch and jewelry stores 35. Any use allowable in the S-C District. 36. Any other commercial or professional use which is compatible in nature with the foregoing uses and which the Zoning Administrator determines to be compatible with the intent of the district and is concurred with by the Planning Commission	Permitted Uses by Right 1. Accessory buildings 2. Antique shops 3. Art galleries 4. Athletic clubs 5. Beauty and barber shops 6. Bed and breakfasts 7. Camera shops 8. Candy stores 9. Clothing stores 10. Day spas 11. Dry goods stores 12. Florists 13. Gift shops 14. Leather goods 15. Newsstands 16. Offices 17. Real estate sales 18. Single-family dwellings 19. Tobacco stores 20. Video stores 21. Any other use which is compatible in nature with the foregoing uses and which the Zoning Administrator determines to be compatible with the intent of the district and is concurred with by the Planning Commission.

<u>CONDITIONAL USES</u> Single family and multi-family dwellings provided that no such dwelling is located at street level and all dwelling units have direct access to the street level (not access through commercial establishment on the first level.	<u>CONDITIONAL USES</u> 1. Bakeries 2. Bicycle shops 3. Cafes and coffee shops 4. Conference centers 5. Day care centers 6. Delicatessens 7. Ice cream parlors 8. Restaurant
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Staff believes the Commercial Residential zoning district has a healthy balance of residential and low-impact commercial uses that better suits these 4 parcels and provides a better opportunity for development to occur on these lots that strikes a reasonable transition zone between the residences on the first block of Mason from Bay Avenue to the full commercial district on Mason Avenue ½ up the block from Harbor Avenue.

STAFF RECOMMENDATION

Staff is requesting the Planning Commission to convene and hold the public hearing and consider all comments received and determine if there are additional issues raised that were not considered by staff which may need to be considered. Staff is recommending favorable consideration of the rezoning of Tax Map Parcels# 83A3-2-1-74, 75A, 75B, & 77 from Commercial -1 to Commercial Residential.

POSSIBLE PLANNING COMMISSION MOTION

I would recommend the following motion for the Planning Commission's consideration: ***Motion to recommend the rezoning of Tax Map Parcels # 83A3-2-1-74, 75A, 75B, & 77 from Commercial -1 to Commercial Residential.***

Attachments:

Attachment 1 – ZMA Packet



Zoning Map Amendment Application

Planning & Zoning Department
2 Plum Street; Cape Charles, VA 23310
757-331-2036

planner@capecharles.org

Revised 03/2023

Taxes

✓

Violations

Yes

Fee

\$

Decision

PART 1: APPLICATION NOTES

1. A pre-application conference is mandatory prior to submission of an application for a zoning map amendment.
2. A zoning map amendment application should be consistent with the Comprehensive Plan and therefore, may also require a Comprehensive Plan amendment, which should be approved prior to the zoning map amendment application.
3. The Town Council may not add conditions of approval to a zoning map amendment application.
4. If proffers are being offered, the proffer statements may not be less restrictive than the requested base zoning district standards.
5. If proffers are being offered, proffer statements may not be amended after the public notification of a public hearing to consider the application has been sent. The applicant may voluntarily offer proffered conditions as part of their application, which must be listed in a separate voluntary proffer statement using the template found on our website.
6. The fee associated with this process is \$500

PART 2: PROPERTY INFORMATION

Property Address: 4 lots on the NE corner of Mason and Harbor Ave. – see photo below and 1921 map at the end of this document.

Tax Map #s:

- 83A3-2-1-75A
- 83A3-2-1-74 ✓
- 83A3-2-1-77
- 83A3-2-1-75B ✓



Project name: Mason and Harbor Ave. (Rooney and Jones) Joint rezoning request

Current Zoning District: C-1

Does this application include proffers? ☒ No ☐ Yes, if so, attach separate form

Proposed Zoning District:
Commercial-Residential (CR)

PART 3: PROPERTY OWNER INFORMATION

Applicant Names:

Nancy Rooney (Tax Map #83A3-2-1-75A &v 83A3-2-1-74) and

RL & B Seaside Investments LLC (Tax Map #83A3-2-1-77 & 83A3-2-1-75B) POC: Will Jones

Mailing Addresses:

Nancy Rooney - 107 Mason Ave. Cape Charles VA 23310;

Will Jones - RL & B Seaside Investments PO Box 401, Cape Charles, VA 23310

Email address:

Nancy Rooney sakabaka@me.com

Will Jones wfjones7796@gmail.com

Phone:

Nancy Rooney 757- 323-4057

Will Jones 571-212-2525

If property is owned by an LLC, LP, or other form of corporation, list all landowners and their contact information.

Will Jones - RL & B Seaside Investments, PO Box 401, Cape Charles, VA 23310

Email wfjones7796@gmail.com

Phone 571-212-2525

Zoning Map Amendment Application (also referred to as a Rezoning or Conditional Rezoning) may be submitted by a Cape Charles property owner and may be advanced to public hearing, after this application is submitted to Town Council who authorizes said applications to public hearings, first to the Planning Commission in compliance with the Code of Virginia Section 15.2-2285 and 15.2-2204.

The applicant will be required to make a presentation to fully explain the request and demonstrate the need for said request and how the Comprehensive Plan supports and maintains compliance with the goals and objectives of the Comprehensive Plan

Additionally, the Planning Commission or Town Council may prepare and apply for a zoning map amendment with either the Town Manager or the Zoning Administrator or Planning Director representing the application on behalf of the Town.

PART 4: Written Description of Request – Answer all questions in this section. Attach additional sheets as needed.

- A) Describe the existing conditions on the property including existing land uses and buildings as well as the land uses and zoning districts on the abutting properties.

The 2 Lots directly on the corner of Mason and Harbor Avenue are under common ownership of RL & B Seaside Investments LLC and are vacant – Tax Map #83A3-2-1-77 & 83A3-2-1-75B.

The 2 Lots adjacent to those are under the common ownership of Nancy Rooney with one lot being vacant and one lot with a 3,300 square foot, one story building (107 Mason Ave.) – Tax Map #83A3-2-1-75A and 83A3-2-1-74.

- B) Describe how existing conditions have changed, thereby making the proposed amendment needed.

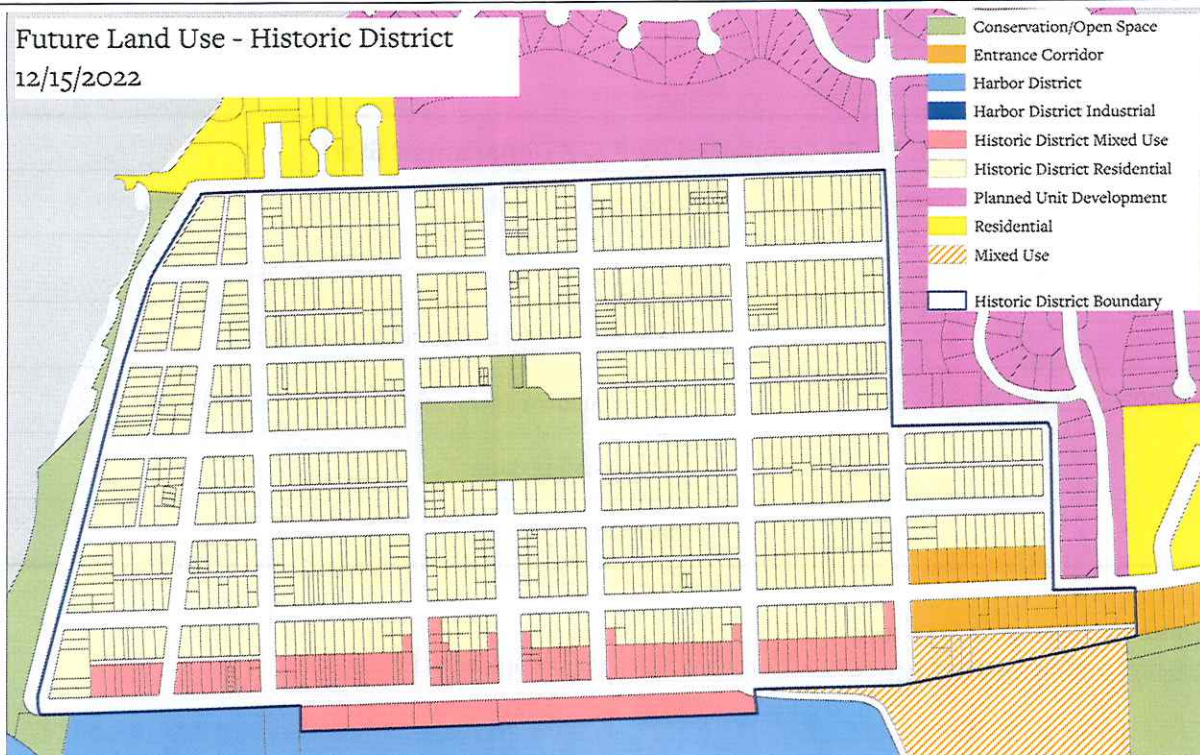
Consistent with the town's future mixed land use plan dated 12/15/22 for all of Mason Ave. (see map below), the applicants would like to have the capacity for both residential and commercial year-round use in all of these properties. Tax Map #83A3-2-1-75A and 83A3-2-1-74: These lots appear to have never been developed, per the 1921 map (inserted at the end of this application). The applicant seeks to develop them in the future.

Tax Map #83A3-2-1-74: By changing the zoning from C-1 to CR the property will be zoned historical, residential and commercial which pertains to the marketing best use of the town for function year-round economy as shown in the above future land use plan.

Tax Map #83A3-2-1-75A. This is a 20-foot wide, vegetated strip of land, which is part of the building property.

Future Land Use - Historic District

12/15/2022



C) Describe how the proposed amendment furthers the objectives of the Comprehensive Plan.

In the town's 1922 Future Land Use Map deliberations, the whole of Mason Avenue was designated as Historic District Mixed Use. The Zoning Administrator stated in her Staff Report dated 2/7/23 stated that it makes sense for the town to reconsider a different Land Use (zoning) designation for this particular ½ block on Mason Avenue for the following reasons:

- the block on Mason Avenue between Bay Avenue up to Harbor Avenue is mostly zoned Residential-1 (except the Northampton Hotel lots which the Town several years ago conditionally rezoned to Harbor).
- these 4 lots closer to the beachfront (½ block starting at the corner of Harbor and heading east along Mason Avenue) could move to the mixed zoning designation of Commercial-Residential (CR), thus serving as a transition zone between the residential lots (R-1) closer to the beach and the full commercial (C-1) that starts in the adjacent building, which currently occupied by Buskey Cider in the front and office space rentals behind Buskey Cider.

D) Describe why the proposed rezoning is necessary.

This rezoning of the empty lots (Tax Map #83A3-2-1-75A and 83A3-2-1-74) to CR would be in accordance and consistent with the town's future mixed-use plan along Mason Ave. as stated above.

Further, the current owner of 107 Mason Ave. building (Tax Map #83A3-2-1-74) and the green space on the south side (Tax Map #83A3-2-1-75A), could reside and work, i.e., business, on the property in accordance with the town's future land use plan, Historic District Mixed Use.

E) Describe the proposed use of the rezoned property including a site plan with the proposed types of site improvements and buildings.

There is no plan for additional development at this time, nor any changes proposed for the existing building as of today. However, this provides options for the owners in the future.

Applicant signatures:

Kenny J. Rooney

[Signature]

Date: _____

Zoning Administrator's Signature: _____

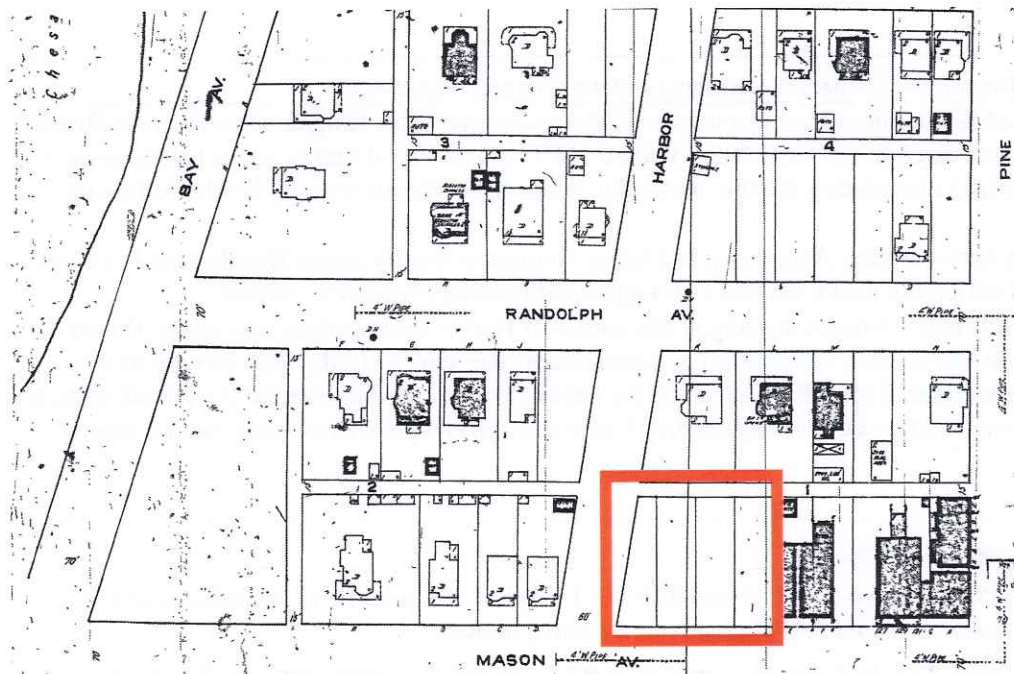
Date: _____

PART 5: To Be Completed by P & Z Department Staff

Date Application Received in Office:	Application #: ZMA
Planning Commission	Town Council
Date referred:	Date received from Planning Commission:
Action deadline (100 days from receipt):	Action deadline (max. 365 days from referral to PC):
Public hearing date:	Public hearing date:
Decision:	Decision:

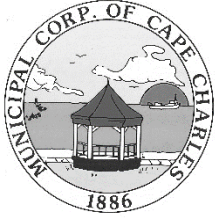
1921 Sanborn Fire Insurance Map of Cape Charles

<https://www.capecharles.org/files/documents/1921SanbornFireInsMap21468114830112717AM.pdf>



Agenda Item 6A

Continued discussion of possible zoning text amendments – Sign Ordinance & Comparison of Industrial District



PLANNING COMMISSION STAFF REPORT

Meeting Date: July 11, 2023

Prepared by: Katie H. Nunez, Planning & Zoning Administrator

Date: July 3, 2023

Regular Session: Item 6A: Zoning Ordinance Review

As a continuation of the Zoning Ordinance review, I would like us to focus on two items which I need your input on: 1) Sign Regulations & 2) Comparison of the Industrial Type Zoning districts.

This memo focuses only on the Sign Regulations. There will be a separate cover memo and chart regarding the Industrial Type Zoning Districts.

SIGN REGULATIONS

According to the “History of Changes made to the Zoning Ordinance”, it appears that the sign regulation came into being on September 9, 2010 and was amended on December 19, 2013 & August 1, 2017. However, the last revision in August 2017 did not bring the ordinance into compliance with the issued Supreme Court decision in 2015 that said that sign ordinances could not be content based. I have enclosed our current zoning ordinance to let you see how complex and, ultimately, in non-compliance with federal law it is on this issue (ATTACHMENT 1)

Therefore, I was aware that the Virginia Local Government Attorneys’ Association (LGA) had developed a model ordinance for Towns, Cities and Counties to consider adopting with minor modifications by each locality. I have enclosed a memo prepared by the Sign Subcommittee of the LGA that outlines the legal issues associated with the Supreme Court’s ruling in the Reed v. Town of Gilbert Arizona, et.al., & a detailed analysis of Signs and the First Amendment - Relevant Jurisprudence (Attachments 2 & 3)

We need to discuss and decide the following items contained in the Draft Model Ordinance (ATTACHMENT 4):

Section 2: Definitions

- 1) Banner – pick one of the two definitions offered.
- 2) Minor Signs – review and concur that this will suffice to replace a host of small signs.
- 3) Public Art – this is a new item that we did not have under our current sign ordinance. There is case law that supports treating public art as a sign.
- 4) Sign – pick one of the two definitions offered.
- 5) Temporary Sign – pick one of the two definitions offered.

Section 3: Permit Required

(e) - Only signs that are proposed to be affixed to a building or structure in the Historic District will require Historic District Review Board approval. Otherwise, those sign permit applications will be reviewed and approved by the Zoning Administrator.

(f) – Our current zoning ordinance does not require any sign permit application to be reviewed through a Special Exception, Special Use Permit or Conditional Use Permit process. I am proposing that we strike this section completely and edit the rest of the document to reflect this change.

Section 4 – Permit Not Required

(4) – Temporary Signs

(b) Choose between the two versions offered re: real estate either based upon zoning districts or road speed limits.

Section 5 – Prohibited Signs

(c) – Prohibitions based on location

(2) Review this section and state code and determine if we wish to include this in the ordinance. (ATTACHMENT 5 for State Code Section)

Section 8 – General Requirements

(b) – Illumination – what is the position of the Town regarding illumination of signage? If we want signage that is Dark Skys friendly, then I will need to amend our ordinance to write a Dark Skys ordinance that can be administered.

(d) – Residential Property – temporary signs – just want to call attention to this and discuss so that everyone is clear what this section means.

Section 10 – Non-commercial signs

(b) – Off-site Signs for Noncommercial use of limited duration – need to discuss if we want this provision in our ordinance

Section 21 – Residential District Signs

(b) – Accessory to Non-residential uses in residential uses: I need to fill in this chart for your consideration – will have something to distribute at the meeting.

Section 22 – Commercial District Signs

We need to fill in this chart based upon our districts. I will work on this and will have something for your consideration to distribute at the meeting.

(c) – Off-site signs for Commercial use of Limited Duration – we need to discuss and determine if we want this in our ordinance.

Section 23 – Industrial District Signs

We need to fill in this chart based upon our districts. I will work on this and will have something for your consideration to distribute at the meeting.

Will need to also create a chart for the Harbor District & PUD District(s).

ATTACHMENTS:

Attachment 1: Current Cape Charles Zoning Ordinance Article 4 – Sign Regulations

Attachment 2: Memo from LGA Sign Subcommittee dated 7/29/2015

Attachment 3: Signs & the First Amendment: Relevant Jurisprudence and the Importance of *Reed v. Town of Gilbert* – prepared by LGA of VA Sign Ordinance Committee August 2015

Attachment 4: MODEL SIGN ORDINANCE – DRAFT

Attachment 5: Code of Virginia Section 24.2-310E – Election Signs

General Regulations Applicable to All Districts

Section 4.1 Sign Regulations

A. Purpose

The purpose of this sign ordinance is to encourage the effective use of signs as a means to communicate in the Town, to maintain and enhance the aesthetic environment and the Town's ability to attract sources of economic development and growth; to improve the pedestrian and traffic safety, to minimize the possible adverse effect of signs on nearby public and private property, and to enable the fair and consistent enforcement of these sign restrictions.

B. Definitions

The following words and terms shall, for the purposes of this chapter and as used elsewhere in this code, have the meanings shown herein.

ANIMATED SIGN. A sign employing actual motion or the illusion of motion. Animated signs, which are differentiated from changeable signs as defined and regulated by this code, include the following types:

Electrically activated. Animated signs producing the illusion of movement by means of electronic, electrical or electro-mechanical input and/or illumination capable of simulating movement through employment of the characteristics of one or both of the classifications noted below:

1. Flashing. Animated signs or animated portions of signs whose illumination is characterized by a repetitive cycle.
2. Patterned illusionary movement. Animated signs or animated portions of signs whose illumination is characterized by simulated movement through alternate or sequential activation of various illuminated elements for the purpose of producing repetitive light patterns designed to appear in some form of constant motion.

Environmentally activated. Animated signs or devices motivated by wind, thermal changes or other natural environmental input. Includes spinners, pinwheels, pennant strings, and/or other devices or displays that respond to naturally occurring external motivation.

Mechanically activated. Animated signs characterized by repetitive motion and/or rotation activated by a mechanical system powered by electric motors or other mechanically induced means.

ARCHITECTURAL PROJECTION. Any projection that is not intended for occupancy and that extends beyond the face of an exterior wall of a building, but that does not include signs as defined herein. See also "Awning;" "Backlit awning;" and "*Canopy*, Attached and Free-standing."

AWNING. An architectural projection or shelter projecting from and supported by the exterior wall of a building and composed of a covering of rigid or nonrigid materials and/or fabric on a supporting framework that may be either permanent or retractable, including such structures that are internally illuminated by fluorescent or other light sources.

AWNING SIGN. A sign displayed on or attached flat against the surface or surfaces of an awning. See also "Wall or fascia sign."

BACKLIT AWNING. An awning with a translucent covering material and a source of illumination contained within its framework.

BANNER. A flexible substrate on which copy, or graphics may be displayed.

BANNER SIGN. A sign utilizing a banner as its display surface.

BILLBOARD. Any large sign/panel including supporting structure used as an outdoor display for the purpose of displaying advertisements; the product, business, or service so advertised or displayed being remote from the site of the sign. This sign is typically seen alongside roadways or on the sides of buildings. (Sometimes referred to as "Off-premise sign" or "Outdoor advertising sign.")

BUILDING ELEVATION. The entire side of a building, from ground level to the roofline, as viewed perpendicular to the walls on that side of the building.

CANOPY (Attached). A multisided overhead structure or architectural projection supported by attachments to a building on one or more sides and either cantilevered from such building or also supported by columns at additional points. The surface(s) and/or soffit of an attached *canopy* may be illuminated by means of internal or external sources of light. See also "Marquee."

CANOPY (Free-standing). A multisided overhead structure supported by columns, but not enclosed by walls. The surface(s) and or soffit of a free-standing *canopy* may be illuminated by means of internal or external sources of light.

CANOPY SIGN. A sign affixed to the visible surface(s) of an attached or free-standing *canopy*. For reference, see Section C.

CHANGEABLE SIGN. A sign with the capability of content change by means of manual or remote input, including signs which are:

Electrically activated. Changeable sign whose message copy or content can be changed by means of remote electrically energized on-off switching combinations of alphabetic or pictographic components arranged on a display surface. Illumination may be integral to the components, such as characterized by lamps or other light-emitting devices; or it may be from an external light source designed to reflect off the changeable component display. See also "Electronic message sign or center."

Manually activated. Changeable sign whose message copy or content can be changed manually.

COMBINATION SIGN. A sign that is supported partly by a pole and partly by a building structure.

COPY. Those letters, numerals, figures, symbols, logos and graphic elements comprising the content or message of a sign, excluding numerals identifying a street address only.

DEVELOPMENT COMPLEX SIGN. A free-standing sign identifying a multiple-occupancy development, such as a shopping center or planned *industrial* park, which is controlled by a single owner or landlord, approved in accordance with Section I.2 of this chapter.

DIRECTIONAL SIGN. Any sign that is designed and erected for the purpose of providing direction and/or orientation for pedestrian or vehicular traffic.

DOUBLE-FACED SIGN. A sign with two faces, back to back.

ELECTRIC SIGN. Any sign activated or illuminated by means of electrical energy.

ELECTRONIC MESSAGE SIGN OR CENTER. An electrically activated changeable sign whose variable message capability can be electronically programmed.

EXTERIOR SIGN. Any sign placed outside a building.

FASCIA SIGN. See "Wall or fascia sign."

FLASHING SIGN. See "Animated sign, electrically activated."

FREE-STANDING SIGN. A sign principally supported by a structure affixed to the ground, and not supported by a building, including signs supported by one or more columns, poles or braces placed in or upon the ground. Maximum size of 10 square feet. For visual reference, see Section C.

FRONTAGE (Building). The length of an exterior building wall or structure of a single premise orientated to the public way or other properties that it faces.

FRONTAGE (Property). The length of the property line(s) of any single premise along either a public way or other properties on which it borders.

GROUND SIGN. See "Free-standing sign."

ILLUMINATED SIGN. A sign characterized by the use of artificial light, either projecting through its surface(s) (internally illuminated); or reflecting off its surface(s) (externally illuminated). Lighting fixtures must be dark sky compliant.

INTERIOR SIGN. Any sign placed within a building, but not including "window signs" as defined by this ordinance. Interior signs, with the exception of window signs as defined, are not regulated by this chapter.

MANSARD. An inclined decorative roof-like projection that is attached to an exterior building facade.

MARQUEE. See "Canopy (attached)."

MARQUEE SIGN. See "Canopy sign."

MENU BOARD. A free-standing sign orientated to the drive-through lane for a restaurant that advertises the menu items available from the drive-through window, and which has no more than 20 percent of the total area for such a sign utilized for business identification. Maximum size of 10 square feet.

MULTIPLE-FACED SIGN. A sign containing three or more faces.

OFF-PREMISE SIGN. See "Billboard."

ON-PREMISE SIGN. A sign erected, maintained or used in the outdoor environment for the purpose of the display of messages appurtenant to the use of, products sold on, or the sale or lease of, the property on which it is displayed.

OUTDOOR ADVERTISING SIGN. See "Billboard."

PARAPET. The extension of a building facade above the line of the structural roof.

POLE SIGN. See "Free-standing sign."

POLITICAL SIGN. A temporary sign intended to advance a political statement, cause or candidate for office during an election. A legally permitted outdoor advertising sign shall not be considered to be a political sign.

PORTABLE SIGN. Any *sign* not permanently attached to the ground or to a building or building surface. See "Temporary Sign."

PROJECTING SIGN. A *sign* other than a wall sign that is attached to or projects more than 18 inches (457 mm) from a building face or wall or from a structure whose primary purpose is other than the support of a sign. For visual reference, see Section C.

REAL ESTATE SIGN. A temporary *sign* advertising the sale, lease or rental of the property or premises upon which it is located.

REVOLVING SIGN. A *sign* that revolves 360 degrees (6.28 rad) about an axis. See also "Animated sign, mechanically activated."

ROOF LINE. The top edge of a peaked roof or, in the case of an extended facade or parapet, the uppermost point of said facade or parapet.

ROOF SIGN. A *sign* mounted on, and supported by, the main roof portion of a building, or above the uppermost edge of a parapet wall of a building and which is wholly or partially supported by such a building. Signs mounted on mansard facades, pent eaves and architectural projections such as canopies or marquees shall not be considered to be roof signs. For a visual reference, and a comparison of differences between roof and fascia signs, see Section C.

SANDWICH BOARD. A freestanding temporary sign, constructed of two large boards hinged at the top, held together by a chain or rope, with no other moving parts or lights; displayed outside a business, during business hours, to advertise the business, hours of operation, an event, a promotion, etc. Maximum size of 10 square feet.

SIGN. Any device visible from a public place that displays either commercial or noncommercial messages by means of graphic presentation of alphabetic or pictorial symbols or representations. Noncommercial flags or any flags displayed from flagpoles or staffs will not be considered to be signs.

SIGN AREA. The simple geometric measure of the sign material substrate.

SIGN COPY. Those letters, numerals, figures, symbols, logos and graphic elements comprising the content or message of a *sign*, exclusive of numerals identifying a street address only.

SIGN FACE. The surface upon, against or through which the *sign* copy is displayed or illustrated, not including structural supports, architectural features of a building or sign structure, nonstructural or decorative trim, or any areas that are separated from the background surface upon which the sign copy is displayed by a distinct delineation, such as a reveal or border. see Section C.

1. In the case of panel or cabinet type signs, the sign face shall include the entire area of the sign panel, cabinet or face substrate upon which the *sign* copy is displayed or illustrated, but not open space between separate panels or cabinets.
2. In the case of *sign* structures with routed areas of sign copy, the *sign* face shall include the entire area of the surface that is routed, except where interrupted by a reveal, border, or a contrasting surface or color.
3. In the case of signs painted on a building, or individual letters or graphic elements affixed to a building or structure, the *sign* face shall comprise the sum of the geometric figures or combination of regular geometric figures drawn closest to the edge of the letters or separate graphic elements comprising the *sign* copy, but not the open space between separate groupings of sign copy on the same building or structure.
4. In the case of *sign* copy enclosed within a painted or illuminated border or displayed on a background contrasting in color with the color of the building or structure, the *sign* face shall comprise the area within the contrasting background, or within the painted or illuminated border.

SIGN STRUCTURE. Any structure supporting a sign.

TEMPORARY SIGN. A sign intended to display either commercial or noncommercial messages of a transitory or temporary nature. Portable signs or any sign not permanently embedded in the ground, or not permanently affixed to a building or *sign* structure that is permanently embedded in the ground, are considered temporary signs.

UNDER CANOPY SIGN OR UNDER MARQUEE SIGN. A sign attached to the underside of a *canopy* or marquee.

V SIGN. Signs containing two faces of approximately equal size, erected upon common or separate structures, positioned in a "V" shape with an interior angle between faces of not more than 90 (1.57 rad) degrees with the distance between the sign faces not exceeding 5 feet (1524 mm) at their closest point.

WALL OR FASCIA SIGN. A *sign* that is in any manner affixed to any exterior wall of a building or structure and that projects not more than 18 inches (457 mm) from the building or structure wall, including signs affixed to architectural projections from a building provided the copy area of such signs remains on a parallel plane to the face of the building facade or to the face or faces of the architectural projection to which it is affixed. For a visual reference and a comparison of differences between wall or fascia signs and roof signs, see Section C.

WINDOW SIGN. A *sign* affixed to the surface of a window with its message intended to be visible to and readable from the public way or from adjacent property.

C. General

Sign types and the computation of *sign* area shall be as depicted in Figures C.1(1) through C.1(4).

Figures depicted beginning on next page.

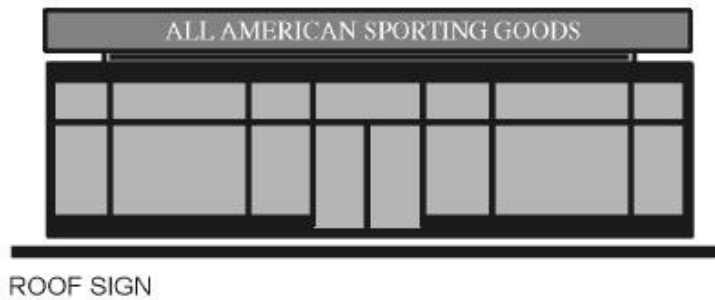
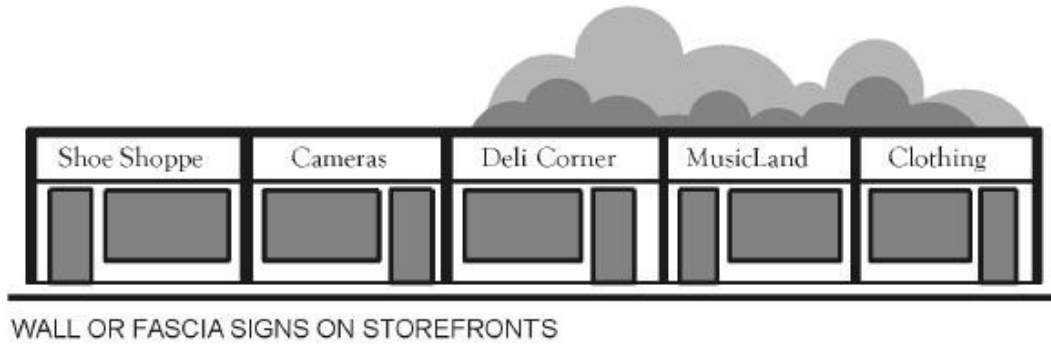
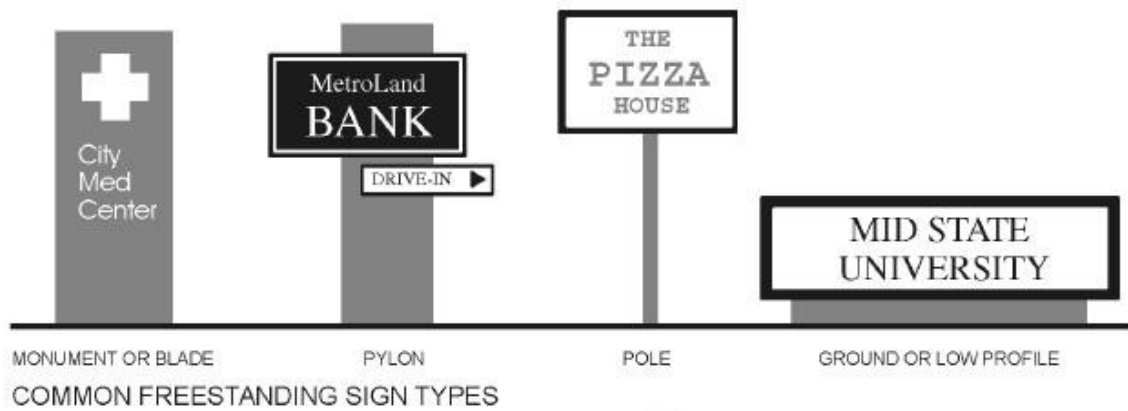


FIGURE C.1(1) GENERAL SIGN TYPES

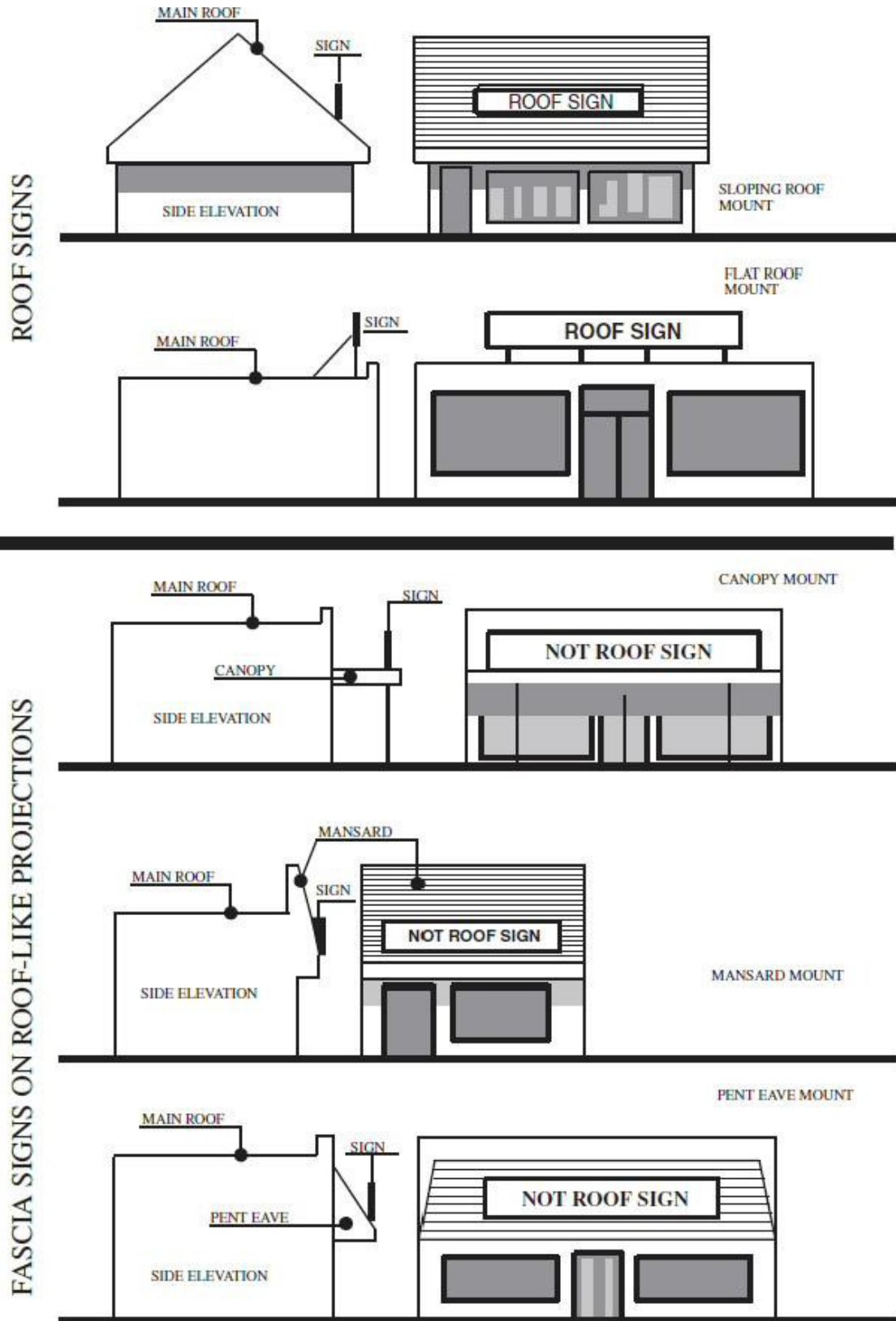


FIGURE C.1(2) COMPARISON—ROOF AND WALL OR FASCIA SIGNS

D. General Provisions

1. Conformance to codes

Any sign hereafter erected shall conform to the provisions of this ordinance and of any other ordinance or regulation within this jurisdiction.

2. Signs in rights-of-way

No sign other than an official traffic sign or similar sign shall be erected within any public way, unless specifically authorized by other ordinances or regulations of this jurisdiction or by specific authorization of the Zoning Administrator and the Virginia Department of Transportation (VDOT).

3. Projections over public ways

Signs projecting over public walkways shall be permitted to do so only with the approval of the Town Manager on a temporary basis. These signs are subject to the projection and clearance limits either defined herein or, if not so defined, at a minimum height of 8 feet (2438 mm) from *grade* level to the bottom of the sign. Signs, architectural projections or *sign* structures projecting over vehicular access areas must conform to the minimum height clearance limitations imposed by the jurisdiction for such structures.

4. Traffic visibility.

No sign or sign structure shall be erected at the intersection of any street in such a manner as to obstruct free and clear vision, nor at any location where by its position, shape or color it may interfere with or obstruct the view of or be confused with any authorized traffic sign, signal or device.

5. Computation of frontage

Business signs with an area of two square feet for each foot of facade width to a maximum of fifty square feet in sign area (where more than one business exists in a building, each maximum sign area is to be proportionate to the business square footage). For buildings with more than one wall facing a street, each side of the building will be computed separately.

6. Animation and changeable messages

Animated signs are not permitted in any areas of the Town.

7. Maintenance, repair and removal

Every sign permitted by this ordinance shall be kept in good condition and repair. When any sign becomes insecure, in danger of falling or is otherwise deemed unsafe by the zoning administrator, or if any sign shall be unlawfully installed, erected or maintained in violation of any of the provisions of this ordinance, the owner thereof or the person or firm using same shall, upon written notice by the zoning administrator forthwith in the case of immediate danger, and in any case within not more than 10 days, make such sign conform to the provisions of this ordinance, or shall remove it. If within 10 days the order is not complied with, zoning administrator shall be permitted to remove or cause such sign to be removed at the expense of the owner and/or the user of the sign. The Town will store the sign for 30 days to give the owner an opportunity to reclaim the sign. The sign will be destroyed if unclaimed after 30 days. If ownership of the sign cannot be determined, the sign shall be removed and destroyed after 30 days if unclaimed.

8. Obsolete sign copy

Any *sign* copy that no longer advertises or identifies a use conducted on the property on which said *sign* is erected must have the sign copy covered or removed within 10 days after written notification from the zoning administrator; and upon failure to comply with such notice, the zoning administrator is hereby authorized to cause removal of such sign copy, and any expense incident thereto shall be paid by the owner of the building, structure or ground on which the sign is located.

In some instances, the historic significance of the sign will exempt the property from adherence to this ordinance. Such cases will be determined by the zoning administrator.

9. Nonconforming signs

Any sign legally existing at the time of the passage of this ordinance that does not conform in use, location, height or size with the regulations of the zone in which such *sign* is located, shall be considered a legal nonconforming use or structure and shall be permitted to continue in such status until such time as it is either abandoned or removed by its owner, subject to the following limitations:

- a. Structural alterations, enlargement or re-erection are permissible only where such alterations will not increase the degree of nonconformity of the signs.
- b. Any legal nonconforming *sign* shall be removed or rebuilt without increasing the existing height or area if it is damaged, or removed if allowed to deteriorate to the extent that the cost of repair or restoration exceeds 50 percent of the replacement cost of the sign as determined by the zoning administrator.
- c. Signs that comply with either Item 1 or 2 above need not be permitted.

E. Exempt Signs

The following signs shall be exempt from the provisions of this chapter but no sign shall be exempt from Section D.4.

1. Official notices authorized by a *court*, public body or public safety official.
2. Directional, warning or information signs authorized by federal, state or municipal governments.
3. Memorial plaques, building identification signs, historical markers and building cornerstones when cut or carved into a masonry surface or when made of noncombustible material and made an integral part of the building or structure.
4. The flag of a government or noncommercial institution, such as a school.
5. Religious symbols and seasonal decorations within the appropriate public holiday season.
6. Works of fine art or historical signs displayed in conjunction with a commercial enterprise where the enterprise does not receive direct commercial gain.
7. Street address signs and combination nameplate and street address signs which do not exceed 4 square feet in area.
8. Freestanding signs or signs attached to fences, no more than one and one half square feet in area, to warn the public against hunting, fishing, trespassing,

dangerous animals, swimming, the existence or danger of such, when placed on the periphery of the property or at a location where the warning is necessary.

9. Political signs during the election season. All requirements shown in § H.2.f must be followed.

F. Prohibited Signs

The following devices and locations shall be specifically prohibited:

1. Signs located in such a manner as to obstruct or otherwise interfere with an official traffic sign, signal or device, or obstruct or interfere with a driver's view of approaching, merging or intersecting traffic.
2. All signs encroaching upon or overhanging public right-of-way. No sign shall be attached to any utility pole (with the exception of the utility pole located at the Post Office on Randolph Avenue), light standard, street tree or any other public facility located within the public right-of-way.
3. Signs which blink, flash or are animated by lighting in any fashion that would cause such signs to have the appearance of traffic safety signs and lights, or municipal vehicle warnings from a distance.
4. Signs, any part of which moves by any means, including but not limited to rotating signs, propellers, discs, and such but excluding pennants and signs indicating time and temperature.
5. Portable signs except as allowed for temporary signs.
6. Any *sign* attached to, or placed on, a vehicle or trailer parked on public or private property, except for signs meeting the following conditions:
 - a. The primary purpose of such a vehicle or trailer is not the display of signs.
 - b. The signs are magnetic, decals or painted upon an integral part of the vehicle or equipment as originally designed by the manufacturer, and do not break the silhouette of the vehicle.
 - c. The vehicle or trailer is in operating condition, currently registered and licensed to operate on public streets when applicable, and actively used or available for use in the daily function of the business to which such signs relate.
7. Vehicles and trailers are not used primarily as static displays, advertising a product or service, nor utilized as storage, shelter or distribution points for commercial products or services for the general public.
8. Balloons, streamers or pinwheels except those temporarily displayed as part of a special sale, promotion or community event. For the purposes of this subsection, "temporarily" means no more than 20 days in any calendar year.
9. Any signs that use the word "stop" or "danger" or otherwise present or imply the need or requirement to stop or take caution of the existence of danger or which is a copy of, imitation of, or which for any reason is likely to be confused with any sign displayed or authorized by a public authority.
10. Any non-shielded illumination of a sign within 200 feet of a residential district.
11. Billboard signs

12. Illuminated tubing or strings of lights solely for the purpose of illumination, except when displayed as decorations during the holiday seasons. This includes any lighting arrangement which outlines any portion of a building or structure by exposed tubing or strings of lights.
13. Signs advertising activities which are illegal under federal, state, or local laws and regulations.

G. Permits Required

1. Unless specifically exempted, a permit must be obtained from the zoning administrator for the erection and maintenance of all signs erected or maintained within this jurisdiction and in accordance with other ordinances of this jurisdiction. Exemptions from the necessity of securing a permit, however, shall not be construed to relieve the owner of the sign involved from responsibility for its erection and maintenance in a safe manner and in a manner in accordance with all the other provisions of this ordinance.
2. Construction documents
Before any permit is granted for the erection of a sign or sign structure requiring such permit, construction documents shall be filed with the zoning administrator showing the dimensions, materials and required details of construction, including loads, stresses, anchorage and any other pertinent data. The permit application shall be accompanied by the written consent of the owner or lessee of the premises upon which the sign is to be erected and by engineering calculations signed and sealed by a registered design professional where required by the *International Building Code*.
3. Changes to signs
No sign shall be structurally altered, enlarged or relocated except in conformity to the provisions herein, nor until a proper permit, if required, has been secured. The changing or maintenance of movable parts or components of an approved sign that is designed for such changes, or the changing of copy, business names, lettering, sign faces, colors, display and/or graphic matter, or the content of any sign shall not be deemed a structural alteration.
4. Permit fees
Permit fees to erect, alter or relocate a sign shall be in accordance with the fee schedule adopted within this jurisdiction.
5. Permit number. Permit must be made available upon request.
6. Permit expiration. If a sign is not erected within twelve months following the issuance of a sign permit, such permit shall be null and void.
7. Church, school, or other public or semi-public institutions may have one name sign or bulletin board not exceeding twenty square feet in area.
8. Landscaping shall be integrated with each individual freestanding sign. Landscaping plans will be approved by the Zoning Administrator.
9. Signs and advertising structures shall not obstruct any window, door, fire escape, stairway, ladder, or opening intended to provide light, air, or ingress and egress for any building structure.

H. Specific Sign Requirements

1. Identification signs.
Identification signs shall be in accordance with Sections H.1.a through H.1.b.

a. Wall signs

Every single-family residence, multiple-family residential complex, commercial or *industrial* building, and every separate nonresidential building in a residential zone may display wall signs per street frontage subject to the limiting standards set forth in Table H.1.a. For shopping centers, planned *industrial* parks or other multiple occupancy nonresidential buildings, the building face or wall shall be calculated separately for each separate occupancy.

TABLE H.1.a IDENTIFICATION SIGN STANDARDS—WALL SIGNS

LAND USE	AGGREGATE AREA (square feet)
Single-family residential	2 SQFT
Multiple-family residential	2 SQFT per residential dwelling

For SI: 1 square foot = 0.0929 m².

a. Free-standing signs

In addition to any allowable wall signs, every single-family residential subdivision, multiple-family residential complex, commercial or *industrial* building, and every separate nonresidential building in a residential zone shall be permitted to display free-standing or combination signs per street frontage subject to the limiting standards set forth in Table H.1.b.

TABLE H.1.b IDENTIFICATION SIGN STANDARDS—
FREE-STANDING SIGNS^{a,b,c}

LAND USE	NUMBER OF SIGNS	MAXIMUM HEIGHT (feet)	AREA (square feet)	SPACING
Residential Subdivision	1	6'	12 Sq Ft	1 per subdivision entrance ^a
Multiple-family residential	1	6'	12 Sq Ft	1 per driveway ^a
Commercial and industrial	<u>1</u>	6'	64 Sq Ft	150 ^b
Mason Avenue Commercial	1 per store front	6'	12 Sq Ft	1 per store front

For SI: 1 foot = 304.8 mm, 1 square foot = 0.0929 m², 1 acre = 4047 m².

a. For shopping centers or planned *industrial* parks, two monument-style free-standing signs not exceeding 50 percent each of the permitted height and area, and spaced not closer than 100 feet to any other free-standing identification sign, shall be permitted to be allowed in lieu of any free-standing sign otherwise permitted in Table H.1.b.

b. For any commercial or *industrial* development complex exceeding 1,000,000 square feet of gross leasable area, or 40 acres in size, such as regional shopping centers, auto malls or planned *industrial* parks, one free-standing sign per street front shall be permitted to be increased in sign area by up to 50 percent.

2. Temporary signs
Temporary signs shall be in accordance with Sections H.2.a through H.2.f.
- a. Real estate signs
Real estate signs shall be permitted in all zoning districts, subject to the following limitations:
- (1) Real estate signs, including Open House Signs, located on a single residential lot shall be limited to one sign, not greater than 4 square feet in area.
 - (2) Real estate signs advertising the sale of lots located within a subdivision shall be limited to one sign per entrance to the subdivision, and each *sign* shall be no greater than 32 square feet in area nor 6 feet in height. All signs permitted under this section shall be removed within 7 days after sale of the last original lot.
 - (3) Real estate signs advertising the sale or lease of space within commercial or *industrial* buildings shall be no greater than 12 square feet in area nor 8 feet in height, and shall be limited to one sign per street front.
 - (4) Real estate signs advertising the sale or lease of vacant commercial or *industrial* land shall be limited to one sign per street front, and each sign shall be no greater than 8 feet in height, and 20 square feet for property of 10 acres or less, or 32 square feet for property exceeding 10 acres.
 - (5) Real estate signs shall be removed not later than 7 days after execution of a lease agreement in the event of a lease, or the closing of the sale in the event of a purchase.
 - (6) Real estate auction signs advertising the sale of residential, commercial or *industrial* property shall be no greater than 32 square feet, and may be displayed for up to 30 days.
- b. Development and construction signs
Signs temporarily erected during construction to inform the public of the developer, contractors, architects, engineers, the nature of the project or anticipated completion dates, shall be permitted in all zoning districts, subject to the following limitations:
- (1) Such signs on a single residential lot shall be limited to one sign, not greater than 6 feet in height and 4 square feet in area.
 - (2) Such signs for a residential subdivision or multiple residential lots shall be limited to one sign, at each entrance to the subdivision or on one of the lots to be built upon, and shall be no greater than 6 feet in height and 32 square feet in area.
 - (3) Such signs for commercial or *industrial* projects shall be limited to one sign per street front, not to exceed 6 feet in height and 12 square feet for projects on parcels 5 acres or less in size, and not to exceed 6 feet in height and 32 square feet for projects on parcels larger than 5 acres.
 - (4) Development and construction signs may not be displayed until after the issuance of construction permits by the building official, and must be removed not later than 7 days following issuance of an occupancy permit for any or all portions of the project.

- c. Special promotion, event and grand opening signs
Signs temporarily displayed to advertise special promotions, events and grand openings shall be permitted for nonresidential uses in a residential district, and for all commercial and *industrial* districts subject to the following limitations:
 - (1) Such signs shall be limited to one sign per street front.
 - (2) Such signs may be displayed for not more than 30 consecutive days in any 3-month period, and not more than 60 days in any calendar year. The signs shall be erected no more than 7 days prior to the event or grand opening and shall be removed not more than 1 day after the event or grand opening.
 - (3) The total number of all such signs shall not exceed 5 in any single-family residential district, limited to 4 square feet in any multiple-family residential district and in any commercial or *industrial* district.
 - d. Political signs
Political signs shall be permitted in all zoning districts, subject to the following limitations:
 - (1) Such signs shall not exceed an area of 4 square feet per sign.
 - (2) Such signs for election candidates or ballot propositions shall be displayed only for a period of 45 days preceding the election and shall be removed within 7 days after the election.
 - (3) Such signs shall not be placed in any public right-of-way or obstruct traffic visibility.
 - e. Other Temporary Signs
This category includes temporary signs that do not conform to any of the other categories listed above.
 - (1) Such signs on a single residential lot shall be limited to one sign per lot which shall not exceed an area of 4 square feet.
3. Requirements for specific sign types
Signs of specific type shall be in accordance with Sections H.3.a through H.3.g.
- a. Canopy and marquee signs
 - (1) The permanently affixed copy area of *canopy* or marquee signs shall not exceed an area equal to 25 percent of the face area of the *canopy*, marquee or architectural projection upon which such sign is affixed or applied.
 - (2) Graphic striping, patterns or color bands on the face of a building, *canopy*, marquee or architectural projection shall not be included in the computation of sign copy area.
 - b. Awning signs
 - (1) The copy area of awning signs shall not exceed an area equal to 25 percent of the background area of the awning or awning surface to which such a sign is affixed or applied, or the permitted area for wall or fascia signs, whichever is less.
 - (2) Neither the background color of an awning, nor any graphic treatment or embellishment thereto such as striping, patterns or valances, shall be included in the computation of sign copy area.

- c. Projecting signs
 - (1) Projecting signs shall be permitted in lieu of free-standing signage on any street frontage limited to one sign per occupancy along any street frontage with public entrance to such an occupancy, and shall be limited in area to 2 square feet per each lineal foot of building frontage, except that no such sign shall exceed an area of 50 square feet.
 - (2) No such *sign* shall extend vertically above the highest point of the building facade upon which it is mounted.
 - (3) Such signs shall not extend over a public sidewalk without approval of the Zoning Administrator.
 - (4) Such signs shall maintain a clear vertical distance above any public sidewalk a minimum of 8 feet.
- d. Under *canopy* signs
 - (1) Under *canopy* signs shall be limited to no more than one such sign per public entrance to any occupancy.
 - (2) Such signs shall maintain a clear vertical distance above any sidewalk or pedestrian way a minimum of 8 feet.
- e. Roof signs
 - (1) Roof signs shall not be permitted in any districts.
- f. Window signs (Inside).
 Window signs shall be permitted for any nonresidential use in a residential district, and for all commercial and *industrial* districts, subject to the following limitations:
 - (1) Any signs attached to windows or glass walls advertising weekly specials or special services offered for a limited time by a business establishment.
 - (2) The aggregate area of all such signs shall not exceed 25 percent of the window area on which such signs are displayed. Window panels separated by muntins or mullions shall be considered as one continuous window area.
 - (3) Window signs shall not be assessed against the sign area permitted for other sign types.
- g. Menu boards
 Menu board signs shall not be permitted to exceed 10 square feet and are limited to one sign per business.
- h. Sandwich boards
 Sandwich boards on public right-of-way shall be removed at daily close of business. The signs shall not exceed 10 square feet and are limited to one sign per business.

I. Signs for Development Complexes

- 1. Master sign plan required
 All landlord or single-owner controlled multiple-occupancy development complexes on parcels exceeding 8 acres (32 376 m²) in size, such as shopping centers or planned *industrial* parks, shall submit to the zoning administrator a master sign plan prior to issuance of new sign permits. The master sign plan shall establish

standards and criteria for all signs in the complex that require permits, and shall address, at a minimum, the following:

- a. Proposed sign locations.
 - b. Materials.
 - c. Type of illumination.
 - d. Design of free-standing sign structures.
 - e. Size.
 - f. Quantity.
 - g. Uniform standards for nonbusiness signage, including directional and informational signs.
 2. Development complex sign
In addition to the free-standing business identification signs otherwise allowed by this ordinance, every multiple-occupancy development complex shall be entitled to one free-standing sign per street front, at the maximum size permitted for business identification free-standing signs, to identify the development complex. No business identification shall be permitted on a development complex sign. Any free-standing sign otherwise permitted under this ordinance may identify the name of the development complex.
 3. Compliance with master sign plan
All applications for sign permits for signage within a multiple-occupancy development complex shall comply with the master sign plan.
 4. Amendments
Any amendments to a master sign plan must be signed and approved by the owner(s) within the development complex before such amendment will become effective.
- J. Other Permitted Signs
1. Commercial Districts
 - a. Barber poles.
 - b. Theater marquees, including chaser lights, neon, and backlit changeable letterings appropriate to its use.
- K. Sign Illumination
1. External Illumination. External lighting shall be limited to light fixtures utilizing white, not colored, lighting and shall not be blinking, fluctuating, or moving. External lighting shall be provided by concealed and/or screened spots or floods and shall be arranged and installed so that direct or reflected illumination does not exceed (0.5) foot candles above background measured at the lot line of any adjoining residential or agricultural parcel or public right-of-way.
 2. Internal Illumination. Internal lighting shall be limited to internal light contained within translucent letters and internal illuminated sign boxes provided the background or field on which the copy and/or logos are placed is opaque. The area illuminated is restricted to the sign face only. The direct or reflected illumination shall not exceed (0.5) foot candles above the background measured at the lot line of any adjoining residential or agricultural parcel or public right-of-way.

L. Violations of Signs

The Zoning Administrator shall have the authority to determine violations of this preceding section and notify the owner of such violation in writing. In addition to penalties described in Section 2.4.3, if it is determined that a sign is unlawfully installed, erected or maintained in violation of any of the provisions of this ordinance, the owner thereof or the person or firm using same shall, upon written notice by the zoning administrator forthwith in the case of immediate danger, and in any case within not more than 10 days, make such sign conform to the provisions of this ordinance, or shall remove it. If within 10 days the order is not complied with, zoning administrator shall be permitted to remove or cause such sign to be removed at the expense of the owner and/or the user of the sign. The Town will store the sign for 30 days to give the owner an opportunity to reclaim the sign. The sign will be destroyed if unclaimed after 30 days. If ownership of the sign cannot be determined, the sign shall be removed and destroyed after 30 days if unclaimed. For repeat offenses, the Zoning Administrator is authorized to immediately remove any unlawfully placed sign.

ATTACHMENT 2

To: LGA Members

From: Sign Ordinance Ad Hoc Committee

Subj.: U.S. Supreme Court Decision - Reed v. Town of Gilbert

Date: July 29, 2015

MEMORANDUM

On June 18, 2015, the United States Supreme Court decided the case of Reed v. Town of Gilbert Arizona, et. al., wherein the Court examined whether or not a locality's sign ordinance that assigns different size and posting requirements based on the type of noncommercial speech displayed violates the First Amendment of the U.S. Constitution. This memorandum is intended to assist Virginia local government attorneys in the enforcement of your locality's sign ordinance in light of the decision in this case.

The traditional model sign ordinance, which is most often used to classify temporary signs, identifies different types of signs with monikers like "real estate sign," "political sign," "ideological sign," "directional sign," "construction site sign," and "garage sale sign." The model then sets out standards, which control quantity, placement, size, timing of display, and potentially other characteristics of each category of sign. In other words, the quantity, placement, size, timing of display, and other features of a sign are limited not on the basis of the structure of the sign itself, but instead entirely on the basis of the message the sign displays.

In the Reed decision, the U.S. Supreme Court ruled that where a local ordinance defines the categories of temporary, political, and ideological signs solely on the basis of their messages and then subjects each category to different restrictions, the ordinance is "content based" requiring strict scrutiny review. In other words the ordinance must further a "compelling governmental interest", be "narrowly tailored" to achieve that interest and must leave open "ample alternative channels of communication."

The Town of Gilbert's ordinance failed to survive strict scrutiny review; however, the Court stated that its decision will not prevent governments from enacting ordinances that are content neutral to "resolve problems with safety and aesthetics, including regulating size, building materials, lighting, moving parts, and portability." The decision further states that localities "may be able to forbid postings on public property, so long as it does so in an evenhanded, content neutral manner." The Court also suggested that an ordinance that is "narrowly tailored to the challenges of protecting the safety of pedestrians, drivers and passengers" (such as warning signs marking hazards on private property or signs directing traffic) might survive strict scrutiny.

In the wake of the Reed decision, it is important to note that:

- Content-based sign laws – those that differentiate speech based on its communicative content – are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests and leave open ample alternative channels of communication.
- Government regulation of speech is content-based if a law applies to particular speech because of the topic discussed or the idea or message expressed.
- Previously, the Fourth Circuit has used the following test for determining if a regulation is not content-based: “1) the regulation is not a regulation of speech, but rather a regulation of places where speech may occur; 2) the regulation was not adopted because of disagreement with the message the speech conveys; or 3) the government’s interests in the regulation are unrelated to the content of the affected speech.” Brown v. Town of Cary, 706 F. 3d 294 (4th Cir. 2013). The Fourth Circuit’s test has been overruled by the Reed decision.
- An ordinance regulating temporary directional signs will be considered to be content-based to the extent that it differentiates what regulations apply based solely on the message that it conveys (*i.e.* conveying the message of directing the public to a church or some other “qualifying event”).
- The locality will bear the burden of demonstrating that the Code’s differentiation of signs based on content (*i.e.* between temporary directional signs and other types of signs, such as political signs and ideological signs) furthers a compelling governmental interest and is narrowly tailored to that end.

In the coming months, the Local Government Attorneys of Virginia hope to provide a Model Ordinance to address the issues raised by the Reed decision. Until that time, localities are encouraged to adhere to these guidelines for enforcing their current ordinance in light of the Court’s ruling. In the context of the recommendations below, keep in mind that if your ordinance differentiates its sign restrictions in a manner that is not content-neutral, you can still enforce those restrictions if you can justify the differentiation under a strict scrutiny analysis; however, since that standard is a difficult one to reach, the advice below presumes that the portions of your ordinance that are not content-neutral will not be justifiable under a strict scrutiny standard.

1. Severability. Does your ordinance have a severability provision? If so, then you should consider reviewing your ordinance to enforce the provisions that are still enforceable, since the enforceable portions can be severed from the unenforceable portion. For example, limitations on banner size, materials, methods to affix and display period can be enforced, but you can no longer enforce a regulation that banners only be used to convey certain messages (such as “Now Hiring”, “Community Event”, “Grand Opening”, etc.) or regulations that differentiate amongst banners based on the messages they convey.

2. Permissible Regulation. A concurring opinion in the Reed decision suggests that regulations can differentiate based on these categories: content-neutral size regulations, building-mounted versus free-standing, sign location and setbacks, illumination, fixed versus electronic messages, private versus public property, commercial versus residential property, on-premises versus off-premises, temporary versus permanent, and number of signs per street frontage/mile of roadway. To the extent your ordinance regulates these categories in a content-neutral manner, these portions of your sign ordinance can still be enforced.

3. Commercial vs. Noncommercial Speech. There is nothing in the Reed decision which overtly overrules the Court's long-standing jurisprudence that regulations can distinguish between commercial and noncommercial speech. Then again, the Reed decision involved sign regulation that made distinctions amongst types of noncommercial speech, so the Court had no reason to discuss the difference between commercial and noncommercial speech. Accordingly, while the distinction between the regulation of commercial and noncommercial speech still exist after Reed, the language and analysis of the unanimous Reed decision raises a doubt about the continuation of that distinction in the future.

4. Risk Assessment. In reviewing your ordinance for provisions that can still be enforced, your first review should be from a "grammar" perspective: what regulations are content-neutral and still enforceable? However, once you review the words of your ordinance, you need to also do a risk assessment. First Amendment rights receive strong protections from the courts and, once violated, they are impossible to remedy. If you think enforcement of part of your ordinance is a "gray area", then don't enforce it at this time. One example of a risk assessment is discussed in the following paragraph, about temporary signs.

5. Temporary Signs. The Supreme Court has long held that citizens' First Amendment rights require that they have the opportunity to express their noncommercial ideas or opinions through temporary signs. Of course, like in the Town of Gilbert, the temporary sign regulations are often content-based. When considering how much of your current ordinance to enforce, it is recommended that you allow as much as possible – or all – temporary signs up to the maximum number, size and location limits afforded under your current ordinance. Moreover, allowing more temporary signs is a decision with relatively low long-term risk, since these types of signs typically are not sufficiently permanent to become nonconforming uses that would be allowed to remain or continue after the adoption of a new ordinance.

6. Nonconforming use. Perhaps one of the biggest concerns about signs that are erected in this interim period between the issuance of Reed and your new sign ordinance is the possibility of a sign epidemic and thereafter all of those overly-large or unappealing signs being claimed as nonconforming uses. To become a nonconforming use, the use has to have been legal when erected. If your larger or more permanent signs have to go through a sign permit process, see the paragraph below.

7. Sign permits. If permanent signs in your locality have to go through a sign permit process, then the issuance of a sign permit will be a governmental act that may allow that sign to become legally nonconforming even after your new ordinance is adopted. So be careful about what permits you issue in the interim. If your sign permit process does not have a stated deadline for decision, consider using more review time than you have typically in the past to try to negotiate with the applicant, especially if you are trying to act quickly to adopt a new sign ordinance. Keep in mind, though, that even without a time frame identified in your ordinance, the time you take to analyze a sign permit application has to be reasonable, or else it could be considered an illegal prior restraint of speech.

8. Interim ordinance. There are typically a large number of stakeholders interested in a new sign ordinance – commercial businesses, developers, homeowners’ associations and residents. It will take forever to get input and feedback from all of these groups on a new sign ordinance. Consider drafting an interim sign ordinance in which you revise existing regulations using only the content-neutral categories that were championed by the concurring opinion in Reed and get it adopted without (or with little) stakeholder input. Then, with a content-neutral ordinance in place and enforceable, you can take more time to revise and improve your sign ordinance and obtain feedback from the stakeholder groups. See the permissible regulation section, above, for the broad categories of regulation you could impose in a content-neutral manner in an interim ordinance.

9. Signs in Rights of Way. To the extent your locality works with VDOT, temporary signs placed in the roadway median or in the grassy right of way adjacent to VDOT roads are still illegal because the state law prohibiting such signs (Virginia Code § 33.2-1224) is content neutral. If your locality controls your own rights of way, check to see if your prohibition on signs in rights of way is content-neutral and, therefore, enforceable.

10. Regulation of signs through Zoning Conditions. Though the conditions of a zoning case or special use permit approved by your locality become amendments to your zoning ordinance, they can also be analyzed as a request by an applicant for approval of the signs that it seeks to use in its development. Analyzed in this manner, the conditions in a zoning case or special use permit should be able to be more specific than the general sign ordinance provisions. However, be mindful of your risks in analyzing zoning conditions regulating signs; Virginia Code § 15.2-2208.1 provides that any unconstitutional zoning condition can be declared void and further provides for the recovery of compensatory damages, costs and attorney fees.

ATTACHMENT 3

Signs and the First Amendment: Relevant Jurisprudence and the Importance of *Reed v. Town of Gilbert*

BY:

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Adam D. Melita, City of Norfolk
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LGA of Virginia – Sign Ordinance Committee
August 2015

INTRODUCTION

This outline is intended to provide a summary of the legal issues that the local government attorney should consider when evaluating how local sign regulations will be analyzed for compliance with the Free Speech Clause of the First Amendment. The primary reason for this outline is to aid localities in the wake of the U.S. Supreme Court's recent decision in *Reed v. Town of Gilbert, Ariz.*, 135 S.Ct. 2218 (2015), which significantly affects most localities' sign ordinances. The information is presented in 4 parts.

The first part of this outline, which begins on page 3, summarizes the U.S. Supreme Court's decision in *Reed*, its immediate impact on local sign regulations and on Fourth Circuit jurisprudence on this issue.

The second part of this outline, which begins on page 10, summarizes key U.S. Supreme Court and Fourth Circuit opinions addressing First Amendment challenges to various localities' sign regulations. These opinions are organized chronologically. They reveal the courts' ongoing efforts to balance the government's interest in mitigating the harms caused by uncontrolled signs against a citizen's or business's right to free speech. In general, the courts have held that sign regulations may be unconstitutional if they are too comprehensive in their coverage ("overbroad") or too selective ("underinclusive"). This historical jurisprudence also reveals a trend of increasing protection for commercial speech, from a time when it was thought that the First Amendment did not protect it at all, until the present, where it appears to enjoy nearly as much protection as noncommercial speech. These opinions are also intended to provide context for and demonstrate the significance of the U.S. Supreme Court's decision in *Reed v. Town of Gilbert*.

The third part of this outline, which begins on page 24, discusses in depth the Supreme Court's decision in *Reed v. Town of Gilbert*. Principally, it addresses how the court's opinion defines the "content-neutral" vs. "content-based" test. The language employed by the court is subject to being read in different ways. The broadest reading, which may not be the most favored one, would purport to make the majority of sign regulations presumptively unconstitutional. This discussion is intended to provide sufficient context to *Reed* to enable a local government attorney to begin to determine whether changes the local sign regulations/ordinance are necessary or appropriate.

The fourth part of this outline, which begins on page 31, presents a short (non-exhaustive) discussion of other First Amendment mandates that affect the constitutionality or content-neutrality of a sign code. Because *Reed* is essentially a case about how to test for content-neutrality, it does not directly discuss some of the other lines of attack that are often used against sign codes, such as underinclusivity and overbreadth. The information in this last part is intended to help a local government attorney spot weaknesses in the overall structure of sign regulations so that they can be amended to better withstand potential First Amendment challenges.

PART 1. A SUMMARY OF REED AND THE CURRENT STATE OF THE LAW

I. Introduction

Signs take up space, obstruct views, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation. *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2232 (2015), quoting *City of Ladue v. Gilleo*, 512 U.S. 43, 114 S. Ct. 2038 (1994).

It is within the constitutional power of a locality to improve its appearance. *Members of the City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 104 S. Ct. 2118 (1984); *Brown v. Town of Cary*, 706 F.3d 294, 305 (4th Cir. 2013) (“It is beyond dispute that the Town’s stated interests in promoting aesthetics and traffic safety are substantial”); *Arlington County Republican Committee v. Arlington County*, 983 F.2d 587 (4th Cir. 1993). Localities “have a weighty, essentially esthetic interest in proscribing intrusive and unpleasant formats for expression.” *Taxpayers for Vincent*, *supra*. As explained by Edward T. McMahon, “More enlightened communities recognize that community appearance is important. . . . [C]ontrolling outdoor signs is probably the most important step a community can take to make an immediate visible improvement in its physical environment. . . . Almost all of America’s premier tourist destinations have strong sign ordinances because they understand that attractive communities attract more business than ugly ones.” Edward T. McMahon, *Responsible Tourism: How to Preserve the Goose that Lays the Golden Egg*, *Virginia Town & City*, May 2015.

Likewise, improving traffic safety is a substantial governmental goal. *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 491, 101 S. Ct. 2882, 2884 (1981); *Brown*, 706 F.3d at 305.

II. In *Reed*, the United States Supreme Court concluded that content-based regulations are unconstitutional unless they are narrowly tailored to serve a compelling governmental interest

Under the First Amendment’s Free Speech Clause, a locality “has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *Police Department of Chicago v. Mosley*, 408 U.S. 92, 95, 92 S. Ct. 2286 (1972). “Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.” *Reed*, 135 S. Ct. at 2226.

In *Reed*, the United States Supreme Court explains when a regulation is content-based:

“Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. [citations omitted] This commonsense meaning of the phrase ‘content based’ requires a court to consider whether a regulation of speech “on its face” draws distinctions based on the message a

speaker conveys. [citation omitted]. Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose. Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny.” *Reed*, 135 S. Ct. at 2227.

The Court identifies another category of content-based regulations: “laws that cannot be justified without reference to the content of the regulated speech, or that were adopted by the government because of disagreement with the message [the speech] conveys [citation and internal quotation marks omitted].” *Reed*, 135 S. Ct. at 2227.

In *Reed*, the town’s sign ordinance required a sign permit for most signs, but contained 23 categories of “exempt” signs, including ideological signs, political signs, and temporary directional signs. Temporary directional signs (4 square feet, placed not more than 12 hours before event, removed within 1 hour after event) were subject to more restrictive size and durational standards than those for ideological signs (20 square feet, no durational limit) and political signs (16 square feet [residential districts], 32 square feet [commercial districts], placed not more than 60 days before election, removed within 15 days after election).

A church posted temporary directional signs announcing its Sunday services on Saturday mornings, earlier than allowed under the town’s sign regulations (not more than 12 hours prior to the “qualifying event”). The church was cited for violating the sign regulations. The church and its pastor, Reed, (collectively, the “church”) filed a complaint in federal court, arguing that the town’s sign regulations violated the First Amendment. Both the trial court and the Ninth Circuit Court of Appeals held in favor of the town and upheld the town’s sign regulations. The church appealed the Ninth Circuit’s decision to the United States Supreme Court.

The issue in *Reed* was whether the town’s sign ordinance was content-based because it created sign categories based entirely on the sign’s message. The United States Supreme Court held that the town’s sign regulations were content-based on their face because temporary directional signs were defined on the basis of whether a sign conveys the message of directing the public to church or some other “qualifying event”; political signs were defined on the basis of whether the signs message is “designed to influence the outcome of an election”; ideological signs were defined on the basis of whether a sign “communicat[es] a message or ideas” that do not fit within the sign regulations’ other categories.

The Court in *Reed* rejected the following three arguments that the town’s sign regulations were not content-based:

- *The town’s justifications for regulating the signs were unrelated to the signs’ content:* The Court rejected the argument that the sign regulations should be found to be content-neutral because the town’s justifications for regulating temporary directional signs were unrelated to the content of the

sign. The Court said that the “government’s benign motive, content neutral justification, or lack of ‘animus toward the ideas contained’ in the regulated speech” was not relevant when the regulations are content-based on their face.

- *The town’s sign regulations neither endorsed nor suppressed ideas:* The Court then dismissed the town’s argument that its sign regulations for temporary directional signs raised no concerns that the government was endorsing or suppressing ideas or viewpoints, and the regulations for political and ideological signs were neutral as to particular ideas or viewpoints. The Court explained that “‘the First Amendment’s hostility to content based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic.’ [citation omitted] Thus, a speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter. [citation omitted].” Under the town’s sign regulations, ideological signs were given more favorable treatment than political signs, and both were give more favorable treatment than temporary directional signs. The Court said that this was “a paradigmatic example of content-based discrimination.”
- *The town’s sign regulations turned on who was speaking through the sign:* The Court found that the town’s argument that the sign regulations were content-neutral because they turned on “the content neutral elements of who is speaking through the sign and whether and when an event is occurring” was mistaken on both factual and legal grounds. The Court said that speech regulations based on the identity of the speaker “are all too often simply a means to control content. [citation omitted]” and that laws “favoring some speakers over others demand strict scrutiny. [citation omitted].” Lastly, the Court observed that “a regulation that targets a sign because it conveys an idea about a specific event is no less content based than a regulation that targets a sign because it conveys some other idea.”

Reed, 135 S. Ct. at 2227-2230.

Content-based regulations must satisfy *strict scrutiny* by the courts, and will be upheld only if the regulations are *narrowly tailored* to serve *compelling governmental interests*. In *Reed*, the town relied on aesthetics and traffic safety as justifications for its regulations. As for aesthetics, the Court said that temporary directional signs were “no greater an eyesore” than ideological and political signs, yet the town allowed unlimited proliferation of larger ideological signs while strictly limiting the number, size, and duration of smaller, temporary directional signs. The Court said, “The Town cannot claim that placing strict limits on temporary directional signs is necessary to beautify the Town while at the same time allowing unlimited numbers of other types of signs that create the same problem.” *Reed*, 135 S. Ct. at 2231. As for traffic safety, the Court concluded that the town had failed to show that limiting temporary directional signs was necessary to eliminate threats to traffic safety, but limiting other types of signs was not. The Court

observed that a “sharply worded” directional sign seemed more likely to distract a driver than a sign directing traffic to a church meeting. *Reed*, 135 S. Ct. at 2232.

The court’s opinion in *Reed* indicates that it may find that certain content-based sign distinctions do satisfy strict scrutiny:

“[The] presence of certain signs may be essential, both for vehicles and pedestrians, to guide traffic or to identify hazards and ensure safety. A sign ordinance narrowly tailored to the challenges of protecting the safety of pedestrians, drivers, and passengers—such as warning signs marking hazards on private property, signs directing traffic, or street numbers associated with private houses—well might survive strict scrutiny.” *Reed*, 135 S. Ct. at 2232.

The classes of signs referred to by the Court in the foregoing paragraph are presumably private signs because the messages on public signs erected by the government are “government speech” that escape First Amendment strictures. *Walker v. Texas Division, Sons of Confederate Veterans, Inc.*, 135 S. Ct. 2239, 2245-2246 (2015) (“When government speaks, it is not barred by the Free Speech Clause from determining the content of what it says”); see *Rust v. Sullivan*, 500 U.S. 173, 193–94, 111 S. Ct. 1759 (1991), cited in *Reed*, 135 S. Ct. at 2235 (Breyer concurring).

III. *Reed* abrogates the content neutrality analysis of the Fourth Circuit Court of Appeals and other Circuits in which sign regulations making message-based distinctions were found to be constitutional on their face if the distinctions were viewpoint neutral

Before the Supreme Court’s decision in *Reed*, many localities’ sign regulations included distinctions based on the function or the message of the sign (e.g., “political signs” that pertain to a candidate or an issue in an upcoming election; “real estate signs” that advertise the sale of a land or buildings). Sign regulations such as these, which neither promoted nor discouraged a particular viewpoint, were considered to be *viewpoint neutral* and were found by many courts to not be content-based regulations that violated the First Amendment. The Fourth Circuit Court of Appeals followed this approach. See, e.g., *Central Radio Company, Inc. v. City of Norfolk*, 776 F.3d 229 (4th Cir. 2015) (vacated and remanded to the Fourth Circuit for reconsideration in light of *Reed*); *Brown v. Town of Cary*, 706 F.3d 294 (4th Cir. 2013); *Wag More Dogs v. Cozart*, 680 F.3d 359 (4th Cir. 2012).

The *Reed* court explained that the crucial first step in the content neutrality analysis is to “determin[e] whether the law is content neutral on its face.” *Reed*, 135 S. Ct. at 2228. In the second step, a facially content neutral law will still be categorized as content-based if it “cannot be justified without reference to the content of the regulated speech, or [it was] adopted by the government because of disagreement with the message [the speech] conveys [citation and internal quotation marks omitted].” *Reed*, 135 S. Ct. at 2227. As explained by the Fourth

Circuit Court of Appeals in *Cahaly v. Larosa*, 2015 WL 4646922 at *4 (August 6, 2015) (invalidating a South Carolina ban on certain robocalls):

“This formulation conflicts with, and therefore abrogates, our previous descriptions of content neutrality in cases such as *Brown v. Town of Cary*. See 706 F.3d at 303 (‘[I]f a regulation is ‘justified without reference to the content of regulated speech,’ [citation omitted] ‘we have not hesitated to deem [that] regulation content neutral even if it facially differentiates between types of speech.’”) (quoting *Wag More Dogs, Ltd. Liab. Corp. v. Cozart*, 680 F.3d 359, 366 (4th Cir.2012) (last alteration in original)). Our earlier cases held that, when conducting the content-neutrality inquiry, ‘[t]he government’s purpose is the controlling consideration.’ *Clatterbuck v. City of Charlottesville*, 708 F.3d 549, 555 (4th Cir.2013) (quoting *Ward*, 491 U.S. at 791). But *Reed* has made clear that, at the first step, the government’s justification or purpose in enacting the law is irrelevant. 135 S. Ct. at 2228–29.”

In sum, *Reed* rejects the defense of viewpoint neutrality in a facial analysis that had been applied by the Fourth Circuit Court of Appeals and other courts. The *Reed* Court explained that

“‘[T]he First Amendment’s hostility to content based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic.’ [citation omitted] Thus, a speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter. [citation omitted].” *Reed*, 135 S. Ct. at 2230 (under the town of Gilbert’s sign regulations, ideological signs were given more favorable treatment than political signs, and both were given more favorable treatment than temporary directional signs).

IV. Content neutral time, place, and manner regulations are permitted under *Reed* and prior cases, provided they further a substantial governmental interest, are narrowly tailored, and leave open alternative forms of communication

If a regulation is determined to be content neutral, reasonable time, place, and manner restrictions may be imposed on commercial or noncommercial signs. The following is a brief, not exhaustive, list of sign qualities that may be regulated in a content neutral manner:

- The maximum square footage of a sign’s “face” and the aggregate square footage of all signs allowed on a parcel.
- The number of signs allowed on a parcel.
- The height of a sign.
- Where a sign may be located on a parcel, such as through setback regulations applicable only to signs.

- The physical nature of the sign, such as whether it may be a freestanding sign, a wall sign, or a sign affixed to another element of a building such as a canopy or awning.
- The materials that may be used in a sign.
- Whether a sign may have moving elements.
- Whether and how a sign may be illuminated.
- Whether the message on a sign must be fixed or whether it may have an electronic message that changes.
- If an electronic message may change, how frequently it may do so.
- Whether a sign must be permanently attached to the ground (e.g., a freestanding sign) or whether it may be portable and under what circumstances.
- Whether a sign may be permanent or temporary (duration) and under what circumstances.

Whether regulations pertaining to the foregoing sign qualities survive a First Amendment challenge depends on whether they pass all of the following additional tests:

- *Further a substantial governmental interest:* A locality has a substantial governmental interest in preserving its aesthetic character and promoting traffic safety. *Brown*, 706 F.3d at 305; *American Legion Post 7 v. City of Durham*, 239 F.3d 601 (4th Cir. 2001).
- *Are narrowly tailored to further that interest:* A regulation is narrowly tailored if the governmental interest promoted would be achieved less effectively absent the regulation. *Ward v. Rock Against Racism*, 491 U.S. 781, 109 S. Ct. 2746 (1989), cited in *American Legion Post 7* (preserving aesthetic character would be undermined by exempting flags or noncommercial entities from regulations). See, Part 4, Section II of this outline (discussing underinclusivity).
- *Leave open ample alternative channels of communication:* Whether a regulation leaves open ample alternative channels of communication depends on the scope of the regulation and the nature and location of the sign. See *American Legion Post 7* (comparing the permissible regulation of signs on public property, on private property, and residential private property).

V. Two open questions after *Reed*: distinctions between commercial v. noncommercial signs and on-site v. off-site signs

Commercial speech is “expression related solely to the economic interests of the speaker and its audience.” *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557, 561, 100 S. Ct. 2343, 2349

(1980). It does no more “than propose a commercial transaction.” *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 96 S. Ct. 1817 (1976). *Noncommercial speech* is speech that is not commercial speech.

Historically, the content-based regulation of commercial speech has been subject to a lower standard than that accorded noncommercial speech. For commercial speech, the locality must show that it has a *substantial interest* in the regulation, the regulation directly advance that interest, and the regulation may not be more extensive than necessary to serve that interest. *Central Hudson*.

Under the test established in *Central Hudson*, the regulation of a commercial sign is evaluated under the following factors: (1) whether the commercial speech was entitled to First Amendment protection; (2) whether the state has a *substantial* interest in regulating the speech; (3) whether the sign regulations directly advance the governmental interest asserted; and (4) whether there is a reasonable fit between the means and ends of the sign regulations.

As discussed in Section II, above, the content-based regulation of noncommercial speech is justified only if the locality can show that the regulation serves a compelling governmental interest.

In *Reed*, the signs at issue pertained to noncommercial speech and the Court did not need to address the commercial-noncommercial speech distinction. Whether *Reed* has eliminated the distinction between commercial and noncommercial speech remains an open question. However, one should be mindful that the Court’s analysis does not appear to leave much room for a content-neutral distinction.

Another open question is whether the on-site/off-site sign distinction is content-based or whether it may survive judicial review as a content neutral “place” regulation. Under the actual court opinion in *Reed*, such a distinction might be found to be content-based because one must consider the content of the message in order to determine whether it pertains to, for example, an onsite business or a business located elsewhere. One of the *Reed* concurrences—joined entirely by justices who had signed on to the official court opinion—states that the on-site/off-site sign distinction is content-neutral. *Reed*, 135 S. Ct. at 2233.

PART 2. CASE SUMMARIES OF DECISIONS INCLUDED IN THIS SURVEY

Taken together, the cases below describe the legal landscape up to and including the *Reed* decision handed down on June 18, 2015, in which the Court attempted to resolve a split among the circuits regarding the proper test for determining whether a sign regulation is “content-neutral” or “content-based.” The reviewed cases include:

- *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976) (factual commercial speech is protected under 1st Amend.).
- *Linmark Assocs., Inc. v. Willingboro Twp.*, 431 U.S. 85 (1977) (prohibition against commercial “For Sale” signs was content-based and unconstitutional).
- *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981) (sign code allowing commercial billboards and noncommercial billboards with certain messages but prohibiting all other noncommercial billboards was unconstitutional).
- *Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789 (1984) (sign code prohibiting signs on public property, including rights-of-way, but allowing signs on private property was constitutional).
- *Arlington County Republican Comm. v. Arlington County, Va.*, 983 F.2d 587 (4th Cir. 1993) (rule prohibiting more than two, political yard signs on residential property was unconstitutional).
- *City of Ladue v. Gilleo*, 512 U.S. 43 (1994) (sign code that prohibited all signs, but exempted ten types, was so underinclusive that it was unconstitutional).
- *Am. Legion Post 7 of Durham, N.C. v. City of Durham*, 239 F.3d 601 (4th Cir. 2001) (restrictions on size, number, and location of noncommercial flags was constitutional).*
- *Covenant Media of S.C., LLC v. City of N. Charleston*, 493 F.3d 421 (4th Cir. 2007) (sign code treating off-premises signs differently than on-premises signs was constitutional).*
- *Wag More Dogs, LLC v. Cozart*, 680 F.3d 359 (4th Cir. 2012) (sign code that did not regulate paintings but regulated business signs was constitutional).*
- *Brown v. Town of Cary*, 706 F. 3d 294 (4th Cir. 2013) (regulations allowing all works of art and holiday decorations but prohibiting other signs larger than maximum square footage were constitutional).*
- *Reed v. Town of Gilbert, Ariz.*, 135 S.Ct. 2218 (2015) (sign code with different size, number and display period rules for various temporary signs based entirely on the type of message being displayed was unconstitutional).

* *Note:* the holdings in these cases may have relied on interpretations that are no longer reliable after *Reed v. Town of Gilbert, Ariz.*

- I. ***Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976)** — 4 opinions: 5 justices for court opinion (Blackmun), 1 concurring (Burger), 1 concurring (Stewart), 1 dissenting (Rehnquist), 1 did not participate (Stevens).
- a. Statute made pharmacist who publishes, advertises or promotes the sale of any prescription drug guilty of unprofessional conduct. *Id.* at 749-50.
 - b. In the past, U.S. Sup. Ct. precedent indicated that purely commercial speech was not protected by the 1st Amend. *Id.* at 758.
 - c. But in *Bigelow v. Virginia*, 421 U.S. 809, 825 (1975) the Court clearly stated that commercial speech is covered by the 1st Amend.:

“We conclude, therefore, that the Virginia courts erred in their assumptions that advertising, as such, was entitled to no First Amendment protection and that appellant Bigelow had no legitimate First Amendment interest. We need not decide in this case the precise extent to which the First Amendment permits regulation of advertising that is related to activities the State may legitimately regulate or even prohibit.”
 - d. Factual commercial speech is protected. *Va. State Bd. of Pharmacy*, 425 U.S. at 770.

“If there is a kind of commercial speech that lacks all First Amendment protection, therefore, it must be distinguished by its content. Yet the speech whose content deprives it of protection cannot simply be speech on a commercial subject. No one would contend that our pharmacist may be prevented from being heard on the subject of whether, in general, pharmaceutical prices should be regulated, or their advertisement forbidden. Nor can it be dispositive that a commercial advertisement is noneditorial, and merely reports a fact. Purely factual matter of public interest may claim protection.”

Id. at 761-62.
 - e. “Commercial speech” defined:
 - i. Speech which does “no more than propose a commercial transaction” is commercial speech. *See, Bd. of Trustees of State Univ. of New York v. Fox*, 492 U.S. 469, 473-74 (1989); *Posadas de Puerto Rico Associates v. Tourism Co. of Puerto Rico*, 478 U.S. 328, 340 (1986).
 - ii. Where commercial and noncommercial speech are inextricably intertwined, courts apply the test appropriate to the most protected (i.e., noncommercial) speech. *Riley v. Nat'l Fed'n of the Blind of N. Carolina, Inc.*, 487 U.S. 781, 796 (1988)

- f. Commercial speech can be regulated in a variety of ways. “Some forms of commercial speech regulation are surely permissible. We mention a few only to make clear that they are not before us and therefore are not foreclosed by this case.” *Va. State Bd. of Pharmacy*, 425 U.S. at 770.
 - i. Time, place, manner restrictions on speech. *Id.* at 771.
 - ii. False or misleading advertisements:
 - 1. “Untruthful speech, commercial or otherwise, has never been protected for its own sake.” *Id.*
 - 2. “The First Amendment, as we construe it today, does not prohibit the State from insuring that the stream of commercial information flow cleanly as well as freely.” *Id.* at 771-72.
 - iii. Illegal activity. *Id.* at 772.
- II. ***Linmark Assocs., Inc. v. Willingboro Twp.*, 431 U.S. 85 (1977)** — unanimous opinion (Marshall).
- a. Sign code prohibited “For Sale” and “Sold” signs on residential properties. Thus, the speech at issue was commercial speech, not political speech. *Id.* at 86.
 - b. Before the prohibition, such signs were allowed. In the few years prior to enacting the ban, the white population declined and the non-white population rose from 11.7% to 18.2%. The evidence indicated that this demographic shift was due to “white flight.” *Id.* at 86-87.
 - c. Purpose of the prohibition was to prevent a perception of white homeowners fleeing a racially integrated community. *Id.* at 86.
 - d. Court found that the prohibition was a regulation of content. *Id.* at 94. Thus, township was required to prove that it was enacted to achieve an important governmental objective. *Id.* But the evidence was insufficient. *Id.* at 95.

“The Township Council...acted to prevent its residents from obtaining certain information. That information, which pertains to sales activity in Willingboro, is of vital interest to Willingboro residents, since it may bear on one of the most important decisions they have a right to make: where to live and raise their families. The Council has sought to restrict the free flow of these data because it fears that otherwise homeowners will make decisions inimical to what the Council views as the homeowners’ self-interest and the corporate interest of the township: they will choose to leave town. The Council’s concern, then, was not with any commercial aspect of ‘For Sale’ signs with offerors communicating offers to offerees but with the substance of the information communicated to Willingboro citizens.” *Id.* at 96.

- III. ***Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981)** — 5 opinions: 4 justices for plurality (White), 2 justices concurring in the judgment only (Brennan), 1 dissenting (Stevens), 1 dissenting (Burger), 1 dissenting (Rehnquist).
- a. San Diego adopted a prohibition against all signs used for the display of a commercial or other advertisement to the public. *Id.* at 493-94. Two exemptions from this prohibition were created:
 - i. On-site signs were exempt. *Id.* at 494.
 - ii. 12 specific sign types were exempt, some but not all of which were defined by content: e.g., government signs, signs at public bus stops, religious symbols, signs at shopping malls, “for sale”/“for lease” signs, and temporary political campaign signs. *Id.* at 494-95.
 - b. Thus, under the sign code all commercial, on-site signs were allowed but all off-site commercial signs and all non-commercial signs (except for the 12 exempt ones) were prohibited. *Id.* at 503.
 - c. Plurality (4) of the justices found that the ordinance violated the 1st Amendment for two reasons.
 - i. First, the prohibition against on-site *noncommercial* billboards did not extend to on-site *commercial* billboards, thereby unconstitutionally restricting noncommercial speech in a manner that was not justified by the city’s stated concern about distracting and unattractive sign displays. *Id.* at 513.
 - ii. Second, the ordinance permitted billboards to carry *some* noncommercial messages (e.g. religious symbols, news items, and temporary campaign signs) while *other* messages were prohibited. *Id.* at 515. Thus, the regulations unlawfully prescribed “appropriate subjects for public discourse.” *Id.* at 514-515.
 - d. Court upheld the prohibition against off-site commercial signs. *Id.* at 512.
 - i. Restrictions on commercial speech are evaluated using the 4-part *Central Hudson* test (*Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n*, 477 U.S. 557, 507 (1980)):
 1. 1st Amend. does not protect illegal or misleading commercial speech.
 2. The restriction seeks to implement a substantial governmental interest.
 3. The restriction directly advances that interest.
 4. The restriction reaches no further than necessary to accomplish the given objective.

- ii. Court rejected underinclusivity argument, holding that “[O]ffsite commercial billboards may be prohibited while onsite commercial billboards are permitted.” *Id.* at 512.
- e. Citywide ban on all noncommercial billboards was unconstitutional. *Id.* at 521.
 - i. Noncommercial speech enjoys greater protection under 1st Am. than commercial speech. *Id.* at 513.
 - ii. “Although the city may distinguish between the relative value of different categories of commercial speech, the city does not have the same range of choice in the area of noncommercial speech to evaluate the strength of, or distinguish between, various communicative interests.” *Id.* at 514.

IV. *Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789 (1984) — 2 opinions: 6 justices for court opinion (Stevens), 3 dissenting (Brennan).

- a. City of Los Angeles prohibited the posting of any sign on public property, but exempted all of the following signs (*Id.* at 792):
 - i. Metal plaque or plate or individual letters or figures in a sidewalk commemorating an historical, cultural, or artistic event, location or personality for which the Board of Public Works, with the approval of the Council, has granted a written permit.
 - ii. The painting of house numbers upon curbs done under permits issued by the Board of Public Works under and in accordance with city code.
- b. Challengers argued that the prohibition was unconstitutional because it was (1) facially invalid, and (2) overbroad. *Id.* at 796.
 - i. Facts did not support an overbreadth challenge. *Id.* at 802.
 - ii. Facial challenge was based on argument that city’s justification of eliminating blight is not sufficient to justify the restriction. *Id.* at 802.
- c. Prohibition was content-neutral. *Id.* at 804.
 - i. A content-neutral restriction on signs must be narrowly tailored to serve the city’s goal of eliminating visual clutter. *Id.* at 808.
 - 1. Advancing esthetic values falls within the exercise of a state’s police powers. *Id.* at 805-06.

“Justice WHITE, writing for the plurality [in *Metromedia*], expressly concluded that the city’s esthetic interests were sufficiently substantial to provide an acceptable justification for a content-

neutral prohibition against the use of billboards; San Diego's interest in its appearance was undoubtedly a substantial governmental goal. We reaffirm the conclusion of the majority in *Metromedia*." *Id.* at 807 (internal citations omitted).

2. Fact that ordinance prohibited signs on public property, but allowed them on private property, does not undermine the city's justification for the restriction. *Id.* at 810-11. A partial ban still addresses the problem of visual blight, even if it does not entirely eliminate it. *Id.* at 811.
- ii. A content-neutral restriction on signs must leave open other modes of communication that are adequate. *Id.* at 812.
- d. In dicta, court expresses concern with creating an exemption for political campaign signs, since such an exemption might have to allow a number of other political messages (e.g., "Jesus Saves"; "Abortion is Murder") in order to avoid the risk of creating illegal, content-based discrimination. *Id.* at 816.

V. *Arlington County Republican Comm. v. Arlington County, Va.*, 983 F.2d 587 (4th Cir. 1993)

- a. County had a sign rule limiting number of temporary signs in residential districts to a maximum of 2 per property. *Id.* at 589.
- b. Court applied test for noncommercial speech (*Id.* at 593):
 - i. Does the rule burden speech?
 - ii. If so, is it content-neutral or content-based?
 - iii. If content-neutral, does the rule serve some substantial interest of the government?
 - iv. If so, is the rule narrowly tailored to further that interest?
 - v. If so, does the rule leave open ample alternative channels of communication?
- c. Court assumed the rule was content-neutral, since plaintiffs conceded that that argument was not the gravamen of their complaint. *Id.* at 594.
- d. Rule promotes aesthetics and traffic safety. Both are legitimate substantial governmental interests. *Id.*
- e. But the rule fails the "narrowly tailored" test.
 - i. Portion of the rule that *allows as many as 2* signs satisfies the narrowly tailored test because the legislature decided that the rule was sufficient to promote its interests and because the legislature is not required to eliminate all less restrictive alternatives. *Id.*

- ii. Portion of the rule that *prohibits more than 2* signs is not narrowly tailored, since other methods can be used to address aesthetics (like regulating the condition or design of the sign) and traffic safety (like setback requirements). *Id.*
 - f. The two-sign maximum also fails the “ample alternative channels of communication” test. There is no alternative to a homeowner’s posting a political message on his own property. *Id.* at 595.
- VI. ***City of Ladue v. Gilleo*, 512 U.S. 43 (1994)** — 2 opinions: unanimous (Stevens); 1 concurrence (O’Connor).
- a. City prohibited all signs but exempted the following types (*Id.* at 47):
 - i. Municipal signs.
 - ii. Subdivision and residence identification signs.
 - iii. Road signs and driveway signs for danger, direction, or identification.
 - iv. Health inspection signs.
 - v. Signs for churches, religious institutions, and schools.
 - vi. Identification signs for other not-for-profit organizations.
 - vii. Signs identifying the location of public transportation stops.
 - viii. Ground signs advertising the sale or rental of real property limited only to the fact of proposed sale or rental and the seller or agent’s name and address or telephone number.
 - ix. Commercial signs in commercially or industrially zoned districts. (Note: only 3% of the land in the City of Ladue was zoned commercial or industrial).
 - x. Signs that identify safety hazards.
 - b. Homeowner plaintiff desired to post an 8.5 x 11 in. sign in the window of her house reading “For Peace in the Gulf.” *Id.* at 46. Because it was a window sign, it was illegal under the applicable sign code. *Id.* at 47.
 - c. Court recognized two grounds for a constitutional challenge to a sign code (*Id.* at 50-51):
 - i. It restricts too little speech because the exemptions discriminate speech based on content.
 - ii. It prohibits too much protected speech.
 - d. Court held that the regulatory scheme was unconstitutionally underinclusive. *Id.* at 58-59.

- i. Court assumed that the prohibition against window signs was content-neutral. *Id.* at 53.
- ii. The regulations “almost completely foreclosed a venerable means of communication that is both unique and important.” *Id.* at 54.

“Often placed on lawns or in windows, residential signs play an important part in political campaigns, during which they are displayed to signal the resident’s support for particular candidates, parties, or causes. They may not afford the same opportunities for conveying complex ideas as do other media, but residential signs have long been an important and distinct medium of expression.” *Id.* at 55.
- iii. Even though the restriction may have been content-neutral, it did not leave open ample alternative channels for communication. *Id.* at 56.
- e. This case specifically involves a “ban” on certain types of sign. *See id* at 54-55. The justices were “not confronted here with mere regulations short of a ban.” *Id.* at 58 n.17.

VII. *Am. Legion Post 7 of Durham, N.C. v. City of Durham*, 239 F.3d 601 (4th Cir. 2001)

- a. The city’s sign code restricted flags. “Flag” was defined as “a piece of fabric or other flexible material solely containing distinctive colors, patterns, standards, words or emblems used as a symbol of an organization or entity, including but not limited to political jurisdictions....” *Id.* at 604.
 - i. In nonresidential districts, maximum size was 216 sq. ft.
 - ii. In residential districts, maximum size was 25 sq. ft.
 - iii. Maximum number was 6 per property (2 per pole, max. of 3 poles).
 - iv. Commercial flags were subject not to these rules, but to more stringent rules found in the sign code. (“[f]lags displaying a logo, message, statement, or expression relating to commercial interests...must also conform with all sign regulations under Section 12’ of the City/County Zoning Ordinance.” *Id.* at 608.)
- b. American Legion Post 7 desired to display a 238 sq. ft. flag at its property, which was located in a residential district. *Id.*
- c. Court applied test for noncommercial speech.
 - i. Regulations do burden speech. *Id.* at 607.
 - ii. Flag rules are content-neutral.
 - 1. Even though the regulations restrict commercial flags more strictly than noncommercial flags, the Legion did not allege that it was content-based. *Id.* at 608. Rather it argued that

the rule was overbroad because the City should only be concerned with commercial flags. *Id.*

2. “We conclude that the 1998 ordinance is content-neutral because it does not facially distinguish between noncommercial messages based on content and because there is no evidence of a content-based purpose.” *Id.* at 609.

[Note: the latter half of this analysis is likely inconsistent with the rule in *Reed*.]

- iii. City had a substantial governmental interest in the aesthetic character of the community. *Id.* at 609-10.
- iv. Regulations are narrowly tailored to promote that interest because all flags are regulated in some way, which contributes to the city’s goal regarding aesthetics. *Id.* at 610.
- v. Ample alternative channels of communication exist because the flag display has not been entirely *banned*. Rather the “ordinance merely establishes a relatively liberal set of limits on flag size and provides a procedure for obtaining temporary and permanent waivers by means of a ‘special use’ permit....” *Id.* at 611.

VIII. *Covenant Media of S.C., LLC v. City of N. Charleston*, 493 F.3d 421 (4th Cir. 2007)

- a. City had sign regulations that treated all off-premises signs as billboards, and established special rules for them. *Id.* at 425. The difference between an off-premises sign and an on-premises sign was defined as:
 - i. Off-premises: all signs “identifying or advertising a business, person, or activity, or goods, products, services or facilities not located on the premises where the sign is installed or directing persons to a different location from where the sign is installed.” *Id.* at 424-25.
 - ii. On-premises: all signs “identifying or advertising a business, person, or activity, or goods, products, services or facilities located on the premises where the sign is installed.” *Id.* at 425.
- b. District Court ruled that this distinction between on-premises and off-premises signs was content-based. *Id.* at 433.
- c. 4th Cir. reversed, finding that the sign code’s differing treatment of signs based on location was not content-based. *Id.*

“Expanding on [*Ward v. Rock Against Racism*, 491 U.S. 781 (1989)]’s formulation for determining the content neutrality of a regulation, the Supreme Court has explained that a regulation is not a content-based regulation of speech if (1) the regulation ‘is not a ‘regulation of speech,’ but rather ‘a regulation of the places where some speech may occur;’ (2) the regulation ‘was not

adopted ‘because of disagreement with the message [the speech] conveys;’ or (3) the government’s interests in the regulation ‘are unrelated to the content of the [affected] speech.’” *Id.* at 432-33 (citing *Hill v. Colorado*, 530 U.S. 703, 719–20 (2000)).

[Note: Reliance on this test from *Hill* is likely inconsistent with *Reed*.]

“Examined in light of these criteria, it is clear that North Charleston’s Sign Ordinance was not a content-based regulation. North Charleston was not concerned with the message that a sign (such as a billboard) conveyed but instead with where particular signs were located.” *Id.* at 433.

“A city can regulate the location of a particular type of signs, as long as the type of signs are not distinguished by the messages they convey.” *Id.* (citing *Metromedia*, 453 U.S. at 512).

IX. *Wag More Dogs, LLC v. Cozart*, 680 F.3d 359 (4th Cir. 2012)

- a. Owner of a doggy daycare business installed a 960 sq. ft. painting on the side of the building in which the business was located, seeking to create goodwill among people using an adjacent dog park, many of whom were her customers. *Id.* at 363.
- b. County’s sign code defined this sort of sign as a “business sign” because it was a sign that identified “the products or services available on the premises or advertising a use conducted thereon.” *Id.* at 362. Under this classification, the property owner could put up a sign no larger than 60 sq. ft. *Id.* at 369.
- c. Facial challenge was rejected:
 - i. Sign code was found to be content-neutral:
 1. Even though county officials need to evaluate the sign’s content to know how to regulate it, that fact “is not an augur of constitutional doom.” *Id.* at 368.
 2. Plaintiff was required to prove that county adopted the challenged sign regulation “because of disagreement with the message in conveys,” and she failed to do so. *Id.* at 368 (citing *Hill v. Colorado*, 530 U.S. 703, 719 (2000)).
 - [Note: Reliance on this test from *Hill* is likely inconsistent with *Reed*.]**
 - ii. Sign code passes intermediate scrutiny test because it was adopted to address traffic safety and aesthetics, both of which are substantial governmental interests. *Id.* at 369.

- iii. Ample alternative channels of communication test is met because the store owner could put up a 60 sq. ft. sign. *Id.*
- d. As applied challenge was rejected:
 - i. Because the sign related to the business, its message was commercial speech. *Id.* at 370.
 - ii. Because the “business sign” limitation was a content-based restriction on commercial speech, it must advance a substantial governmental interest and be narrowly tailored to achieve that interest (intermediate scrutiny). *Id.* at 370. It passes this test the same way it passed the same test under the facial challenge. *Id.*
- e. Plaintiff also alleged that the definition of “sign” was vague.
 - i. “Sign” was defined as: “[a]ny word, numeral, figure, design, trademark, flag, pennant, twirler, light, display, banner, balloon or other device of any kind which, whether singly or in any combination, is used to direct, identify, or inform the public while viewing the same from outdoors.” *Id.* at 362.
 - ii. Two ways that the definition could be found to be vague:
 - 1. “[A] regulation can ‘fail[] to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits.’” *Id.* at 371 (citing *Hill v. Colorado*, 530 U.S. 703, 732 (2000)).
 - 2. “[A] regulation can ‘authorize[] or even encourage[] arbitrary and discriminatory enforcement.’” *Id.*
 - iii. Court found that the sign code passed these tests and was not vague. *Id.*

X. *Brown v. Town of Cary*, 706 F. 3d 294 (4th Cir. 2013)

- a. Town’s sign code limited signs in residential districts to 2 signs no more than 5 sq. ft. per face and no more than 42 in. in height. *Id.* at 298. It also allowed a wall sign up to 2 sq. ft. in area. *Id.*
- b. Using fluorescent orange paint, homeowner painted a sign on his house that read “Screwed by the Town of Cary” and ran to 15 ft. in length with letters that varied from 12 to 21 in. in height. *Id.* Town issued violation notices for sign that was too large and contained illegal “high intensity colors or fluorescent pigments.” *Id.*
- c. Sign code was found to be content neutral.
 - i. Sign code exempted “holiday decorations” and “public art” from any restrictions. *Id.* at 298.

- ii. Court expressly rejected the “absolutist reading” of content neutrality, in which a sign code is content-based if it requires that the content of the message be examined. *Id.* at 302.
- iii. Court used the same *Hill*-based test that was used in *Wag More Dogs*:

“A regulation is not a content-based regulation of speech if (1) the regulation is not a regulation of speech, but rather a regulation of the places where some speech may occur; (2) the regulation was not adopted because of disagreement with the message the speech conveys; or (3) the government's interests in the regulation are unrelated to the content of the affected speech.” *Id.* at 302.

[Note: Reliance on this test from *Hill* is likely inconsistent with the rule in *Reed*.]

- iv. “[I]t is clear that while the Sign Ordinance distinguishes content, the distinctions themselves are justified for reasons independent of content.” *Id.* at 304. The exemptions are based solely on the Town’s “asserted and legitimate interests of traffic safety and aesthetics.” *Id.* at 304-05.
 - 1. Exemptions for holiday decorations and public art are justified because they are assumed to enhance, not harm, aesthetic appeal. *Id.*
 - 2. Seasonal displays have a more temporary effect on traffic than permanent signs. *Id.*
- v. Regulations are narrowly tailored to promote that interest because the size and color limitations target exactly the evils that the regulatory scheme is designed to prevent. *Id.* at 305.
- vi. Ample alternative channels of communication test is met because signs are allowed on this property. *Id.*
- d. Plaintiff also alleged that the definition of “sign” was vague. This claim was rejected by the court. *Id.* at 305.
 - i. Both “holiday decorations” and “public art” are defined in the code. *Id.* at 298, 306.
 - ii. It is not possible to confuse the sign at issue with “public art” or a “decoration.” *Id.*

XI. *Reed v. Town of Gilbert, Ariz.*, 135 S.Ct. 2218 (2015) — 4 opinions: 6 justices for court opinion (Thomas), 3 concurring (Alito), 1 concurring in the judgment (Breyer), 2 concurring in the judgment (Kagan).

- a. Town's sign code required a permit for any outdoor sign except for 23 exempt types. Of those types, three are relevant to this lawsuit (*Id.* at 2224):
 - i. Ideological Sign – Max. 20 sq. ft. size; no time limit on display; no limit on number.
 - ii. Political Sign – Max 16 sq. ft. (residential) or 32 sq. ft. (nonresidential); display time limited to 60 days before primary election and 15 days after general election; no limit on number.
 - iii. Temporary Directional Signs Relating to a Qualifying Event – Max. 6 sq. ft.; display time limited to 12 hrs. before event and 1 hour after; max. number of 4 per property.
- b. Plaintiff was cited for violating sign code because he was displaying “Temporary Directional Signs Relating to a Qualifying Event” longer than the allowable display period. *Id.* at 2225.
- c. Court held that these sign regulations are content-based.

“The restrictions in the Sign Code that apply to any given sign thus depend entirely on the communicative content of the sign.” *Id.* at 2227.

“[A] speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter.” *Id.* at 2230.
- d. As a result, constitutionality is tested under the strict-scrutiny standard.

“A law that is content based on its face is subject to strict scrutiny regardless of the government’s benign motive, content-neutral justification, or lack of ‘animus toward the ideas contained’ in the regulated speech.” *Id.* at 2222. (quoting from *Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 429 (1993)).
- e. The sign code fails strict scrutiny because the rules are not narrowly tailored to achieve a *compelling* governmental interest.
 - i. Rules are too underinclusive to promote aesthetics, since other, larger signs with longer durational limits are allowed with no limit on the total number. *Id.* at 2231.
 - ii. Rules are too underinclusive to promote traffic safety and town has not proven that these signs are any more distracting than the ideological and political signs that are also allowed. *Id.* at 2232.
- f. Governments can still regulate signs in a content-neutral way by restricting size, materials, lighting, moving parts, portability, and those located on public property. *Id.*

- g. Concurrence of 3 of the 6 justices who signed on to the opinion of the court lists at least 9 regulatory tools “that would not be content based” (*Id.* at 2233):
- i. Sign size.
 - ii. Sign location, including distinctions between freestanding signs and wall buildings.
 - iii. Whether a sign is lighted or unlighted.
 - iv. Whether a sign has a fixed messages or an electronic, changeable message.
 - v. Placement of signs on private or public property.
 - vi. Placement of signs on commercial or residential property.
 - vii. Whether a sign is on-premises and off-premises.
 - viii. Restricting the total number of signs allowed per mile of roadway.
 - ix. Imposing time restrictions on signs advertising a one-time event.

PART 3. EVALUATING CONTENT NEUTRALITY AFTER *REED* v. *TOWN OF GILBERT, ARIZ.*

I. The test for “content-based”

a. *Reed*:

“Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. This commonsense meaning of the phrase ‘content based’ requires a court to consider whether a regulation of speech ‘on its face’ draws distinctions based on the message a speaker conveys.” *Reed*, 135 S.Ct. at 2227 (citations omitted).

b. The narrow reading (favored by localities): A sign code is content-based if it prescribes different regulatory treatment for different signs when the only distinguishing feature between the two is the content.

i. There is nothing inconsistent between identifying “signs” as a discrete subject suitable for regulation and maintaining content-neutrality. After all, the *Reed* court acknowledges that a sign code—a collection of rules that only apply to those forms of speech defined as “signs”—can indeed be content-neutral.

“The Town has ample content-neutral options available to resolve problems with safety and aesthetics, including regulating size, building materials, lighting, moving parts, and portability.” *Id.* at 2223.

ii. *Reed* does not directly address sign regulations that involve a mixture of content and content-neutral distinctions. (For example, an “on-premises” sign involves an assessment of content—a message that references something related to the property where it is posted—and a content-neutral element—the location where it is posted.) Rather, *Reed* only deals with sign regulations where content is the *basis* for the distinction. The reason why the Town of Gilbert’s rules were content-based was because the “entire” difference in treatment of the relevant signs was determined by the message or idea displayed on the sign.

“The restrictions in the Sign Code that apply to any given sign thus depend *entirely* on the communicative content of the sign.” *Id.* at 2227 (emphasis added).

“Not ‘all distinctions’ are subject to strict scrutiny, only *content-based* ones are.” *Id.* at 2232 (emphasis in original).

iii. The Alito concurrence includes additional comments from 3 of the 6 justices who wrote for the court in the *Reed*.

1. Alito, Kennedy, and Sotomayor affirmatively state that the following regulations—among others—are content-neutral (*Id.* at 2233):
 - “Rules distinguishing between on-premises and off-premises signs.”
 - “Rules imposing time restrictions on signs advertising a one-time event.”
2. These distinctions clearly require some review of content. But they are not “based” or “entirely dependent” on content.
 - “Rules of this nature do not discriminate based on topic or subject....” *Id.* (justifying why different rules for one-time events would be treated as content-neutral).
- c. The broad reading (disfavored by localities): A sign code is content-based if it takes into consideration *any* element of the content of a sign in order to distinguish which restrictions apply.
 - i. This approach would implicitly overrule Supreme Court precedents, including:
 1. *Metromedia*, 453 U.S. at 512 (“offsite commercial billboards may be prohibited while onsite commercial billboards are permitted.”).
 2. *Taxpayers for Vincent*, 466 U.S. at 817 (prohibition against posting temporary signs on public property was content-neutral, despite fact that the code exempted commemorative plaques on sidewalks and house numbers on curbs).
 - ii. The broad reading could jeopardize the ability to regulate signs in a content-neutral way, since a “sign”—the target of every sign code—is defined in such a way that only a subset of all visual speech is captured within the ambit of the regulatory framework.
 - iii. In an effort to downplay fears that the rule it expresses might render nearly all sign regulations subject to the strict scrutiny of a content-based analysis, the *Reed* court observes that “some lower courts have long held that similar content-based sign laws receive strict scrutiny, but there is no evidence that towns in those jurisdictions have suffered catastrophic effects.” *Reed*, 135 S. Ct. at 2232. These circuits include the 1st, 5th, 8th, 9th, and 11th (but not the 4th).
 1. As early as 1985, the 1st Cir. Ct. App. held that a sign code was content-based because signs with different messages were subjected to different restrictions:
 - “No political signs are allowed in any district in the Town of Needham; yet such signs as ‘For Sale’

signs, professional office signs, contractors' advertisements, and signs erected for charitable or religious causes are allowed in all districts. Furthermore, in business and manufacturing zones, large commercial advertising signs are permitted which pertain to products, accommodations, services, or activities on the premises on which they are located, but no political signs are permitted. Thus, it appears that the bylaw is concerned with the content, as opposed to the time, place, or manner, of the speech." *Matthews v. Town of Needham*, 764 F.2d 58, 60 (1st Cir. 1985) (citation omitted).

2. When the City of Houston, Tex. was sued for restrictions on speech imposed under its sounds ordinance and parade permit rules, the 5th Cir. Ct. App. held that "[a] regulatory scheme that requires the government to 'examine the content of the message that is conveyed' is content-based regardless of its motivating purpose." *Serv. Emp. Int'l Union, Local 5 v. City of Houston*, 595 F.3d 588, 596 (5th Cir. 2010) (citing *Ark. Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 230 (1987)).
3. The 9th Cir. Ct. App. invalidated a sign code that prohibited off-site signs while exempting certain governmental signs and flags, memorial tablets, recreational signs, and temporary political, real estate, construction, and advertising signs, based on its rule that "[b]ecause the exceptions to the restriction on noncommercial speech are based on content, the restriction itself is based on content." *Nat'l Adver. Co. v. City of Orange*, 861 F.2d 246, 249 (9th Cir. 1988).
4. The 11th Cir. Ct. App. invalidated a sign code in the City of Neptune Beach, Fla. on the basis that "because some types of signs are extensively regulated while others are exempt from regulation based on the nature of the messages they seek to convey, the sign code is undeniably a content-based restriction on speech." *Solantic, LLC v. City of Neptune Beach*, 410 F.3d 1250, 1266 (11th Cir. 2005).
5. The 8th Cir. Ct. App. invalidated a sign code that defined signs in a way that exempted all of the following:
 - Flags of nations, states, and cities, and fraternal, religious, and civic organizations.
 - Merchandise, pictures of models of products, or services incorporated in a window display.

- Time and temperature devices.
- National, state, religious, fraternal, professional and civic symbols or crests, or on site ground based measure display device used to show time and subject matter of religious services.
- Works of art which in no way identify a product.

The constitutional defect lay in the fact that, “to determine whether a particular object qualifies as a ‘sign’ under § 26.68.020(17) and is therefore subject to the regulations, or is instead a “non-sign” under § 26.68.020(17)(a)–(e) or exempt from the sign regulations under §§ 26.68.030 or 26.68.050, one must look at the content of the object. ... Simply stated [§§ 26.68.020(17), 26.68.030, and 26.68.050] [are] content-based because [they] make[] impermissible distinctions based solely on the content or message conveyed by the sign.” *Neighborhood Enters., Inc. v. City of St. Louis*, 644 F.3d 728, 737 (8th Cir. 2011).

iv. A review of the definitions of “sign” presently being used by localities in these circuits reveals that content *is still considered* when assessing whether the visual speech falls under the scope of the sign code, but the definitions do not *depend entirely* on the content. In the following examples, the underlined language requires zoning officials to assess content in order to determine whether the sign code even applies. These practical examples suggest that a broad interpretation of the *Reed* test has not caught on in those areas of the country that have been using almost the same test for decades.

1. In the 1st Circuit, the Town of Needham, Mass. (which was the subject of the 1985 1st Cir. opinion cited above) now uses the following definition of “sign”:

Sign: Any device designated to inform or attract the attention of persons who are not on the premises on which the device is located. Any exterior building surfaces which are internally illuminated or decorated with gaseous tube or other lights are considered signs. The following, however, shall not be considered signs within the context of this article:

- a) flags and insignia of any government except when displayed in connection with commercial promotion;
- b) legal notices or informational devices erected or required by public agencies;

- c) standard gasoline pumps bearing thereon in usual size and form the name, type, and price of gasoline;
- d) integral decorative or architectural features of buildings, except letter, trademarks, moving parts or parts internally illuminated or decorated with gaseous tube or other lights;
- e) on-premises signs guiding and directing traffic and parking, not exceeding two square feet in area and bearing no advertising matter;
- f) devices hand-carried or mounted on vehicles, unless regularly or recurrently located for fixed display;
- g) signs on newspaper vending machines or newspaper racks, which are limited in context to the name and logo of the newspaper sold via such machine or rack and to the means of purchasing a newspaper from such machine or rack.

Needham Sign Bylaw § 5.2 (emphasis added).

2. The largest city in the 1st Circuit, Boston, Mass., defines a “sign” as follows:

Sign. Any structure, device, light, letter, word, model, banner, pennant, insignia, trade flag, or representation which is designed to be seen from outside a building and which advertises or announces a use conducted or goods, products, services or facilities available, including electric signs in windows or doors, but excluding window displays of merchandise and signs incidental to the display of merchandise.

Zoning Code, City of Boston § 2-1.

3. In the 5th Circuit, the City of Houston, Tex. (which was the subject of the 2010 5th Cir. opinion cited above) defines a “sign” as:

SIGN shall mean any outdoor display, design, pictorial or other representation that shall be so constructed, placed, attached, painted, erected, fastened or manufactured in any manner whatsoever so that the same shall be used for advertising. The term “sign” shall include the sign structure. Every sign shall be classified and conform to the requirements of each of such classifications set forth in this chapter.

The Houston Sign Code § 4802 (2008) (emphasis added)

4. The City of Orange, Cal. uses the following definitions in its sign code:

SIGN - Any writing (including letter, word, or numeral), pictorial presentation (including illustration or decoration), emblem (including device, symbol, or trademark), flag (including banner or pennant), or any other device, figure or similar character which:

- A. Is a structure or any part thereof, or is attached to, painted on, or in any other manner represented on a building or other structure or device; and
- B. Is used to announce, direct attention to or advertise;
and
- C. Is visible from outside the building or structure.

...

SIGN, COMMERCIAL - A sign whose message concerns goods or services offered for consideration by a person or entity engaged in a profit-oriented business.

...

SIGN, NONCOMMERCIAL - Any sign that is not intended to augment any commercial enterprise or to generate income. Noncommercial signs include, but are not limited to messages that are religious, civic or political in nature.

Orange Municipal Code § 17.04.038 (emphasis added).

5. In the 11th Circuit, the City of Neptune Beach, Fla. (which amended its sign code just a few months before the prior version was found to violate the 1st Amendment in *Solantic*, 410 F.3d 1250) defines a sign as:

“*Sign* means any identification, description, illustration, or device illuminated or nonilluminated, which is visible from any outdoor place, open to the public and which directs attention to a product, service, place, activity, person, institution, or business thereof, including any permanently installed or situated merchandise, or any emblem, painting, banner, pennant, placard, designed to advertise, identify, or convey information, with the exception of customary window displays, official public notices and court markers required by federal, state or local regulations; also excepting, newspapers, leaflets and

books intended for individual distribution to members of the public, attire that is being worn, badges, and similar personal gear. Sign shall also include all outdoor advertising displays as described within Section 3108.1.1, Florida Building Code, and all signs shall conform to the requirements of Section 3108 of the Florida Building Code. The term shall exclude architectural features or part not intended to communicate information.”

Code of Ordinances of the City of Neptune Beach, Florida
§ 27-576 (emphasis added).

6. In the 8th Circuit, the City of St. Louis, Mo. (which was the subject of the 2011 1st Cir. opinion cited above) defines a “sign” as:

26.08.385 – Sign

Any structure or part thereof, or any device attached to, painted on, or represented on a building or other structure, upon which is displayed or included any letter, word, model, banner, flag, insignia, decoration, device, or representation used as, or in the nature of, an announcement, direction, advertisement, or attention directing device.

Revised Code of the City of Saint Louis, 1994, Annotated
§ 26.08.385 (emphasis added).

PART 4. THE EFFECT OF *REED* ON OTHER COMMON FIRST AMENDMENT CHALLENGES

I. Commercial v. Noncommercial (a.k.a. “Political”) Speech

- a. *Reed* does not involve commercial signs, so it comes as no surprise that the concurrence in *Reed* does not list commercial v. noncommercial signs as a *per se* content-neutral distinction. And the Supreme Court has repeatedly expressed the prime importance of political (a.k.a. “noncommercial”) speech.

“We have recognized that the First Amendment reflects a ‘profound national commitment’ to the principle that ‘debate on public issues should be uninhibited, robust, and wide-open,’ and have consistently commented on the central importance of protecting speech on public issues.” *Boos v. Barry*, 485 U.S. 312, 318 (1988) (internal citations omitted).

“In analogous cases under the Speech Clause, this Court has noted the ‘Constitution’s special concern with threats to the right of citizens to participate in political affairs.’” *Borough of Duryea, Pa. v. Guarnieri*, 131 S. Ct. 2488, 2498 (2011) (citing *Connick v. Myers*, 461 U.S. 138, 145 (1983)).

“‘[S]peech on public issues occupies the ‘highest rung of the hierarchy of First Amendment values’ and is entitled to special protection.’” *Snyder v. Phelps*, 562 U.S. 443, 444 (2011) (citing *Connick v. Myers*, 461 U.S. 138, 145 (1983)).

- b. Nevertheless, there is an apparent trend towards providing more protection to commercial speech than was afforded historically. Therefore it is useful to keep in mind the current definitions and standards for recognizing commercial speech and testing restrictions of commercial speech for compliance with the 1st Amendment.

i. “Commercial speech” defined:

1. Speech which does “no more than propose a commercial transaction” is commercial speech. See, *Bd. of Trustees of State Univ. of New York v. Fox*, 492 U.S. 469, 473-74 (1989); *Posadas de Puerto Rico Associates v. Tourism Co. of Puerto Rico*, 478 U.S. 328, 340 (1986).
2. Where commercial and noncommercial speech are inextricably intertwined, courts apply the test appropriate to the most protected (i.e., noncommercial) speech. *Riley v. Nat’l Fed’n of the Blind of N. Carolina, Inc.*, 487 U.S. 781, 796 (1988).

- ii. For commercial speech, the test of constitutionality still seems to be the 4-part *Central Hudson* test (*Cent. Hudson Gas & Elec.*, 477 U.S. at 507):
 - 1. 1st Amend. does not protect illegal or misleading commercial speech.
 - 2. The restriction seeks to implement a substantial governmental interest.
 - 3. The restriction directly advances that interest.
 - 4. The restriction reaches no further than necessary to accomplish the given objective.
- iii. This test is very similar to the intermediate scrutiny test used for evaluating a content-neutral restriction on noncommercial speech (see *Arlington County Republican Comm.*, 983 F.2d at 593):
 - 1. The restriction serves a substantial governmental interest.
 - 2. The restriction is narrowly tailored to further that interest.
 - 3. Ample alternative channels of communication remain open.
- iv. By comparison, the standard strict scrutiny test requires showing that:
 - 1. The restriction is serves a compelling governmental interest.
 - 2. The restriction is narrowly tailored to serve that interest.

Williams-Yulee v. Florida Bar, 135 S. Ct. 1656, 1665-66 (2015) (see also *Reed*, 135 S. Ct. at 2231).
- v. All content-based restrictions on speech are tested using the “strict scrutiny” standard. This is a high hurdle.
 - 1. Content-based regulations will only satisfy strict scrutiny if they are “narrowly tailored” to serve a “compelling governmental interest.”
 - a. A compelling governmental interest is an interest of “the highest order.” *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 566 (1993) (regarding the free exercise of religion).
 - b. Traditional examples of compelling governmental interests include the allocation and collection of taxes, maintaining the integrity of the social security system, eradicating racial discrimination in education, the operation of military conscription laws, enforcing child labor laws, and protecting public health and safety.

Testimony of Steven K. Green, Legal Director, Americans United for Separation of Church and State, before the House Committee on the Judiciary, Subcommittee on the Constitution, July 14, 1998.

2. The court's opinion in *Reed* indicated that it may find certain content-based sign distinctions to satisfy strict scrutiny:

“[The] presence of certain signs may be essential, both for vehicles and pedestrians, to guide traffic or to identify hazards and ensure safety. A sign ordinance narrowly tailored to the challenges of protecting the safety of pedestrians, drivers, and passengers – such as warning signs marking hazards on private property, signs directing traffic, or street numbers associated with private houses – well might survive strict scrutiny.” *Reed*, 135 S. Ct. at 2232.

3. Promoting traffic safety and aesthetics are generally considered to be substantial governmental interests, see *Brown v. Town of Cary*, 706 F.3d 294, 305 (4th Cir. 2013) (“It is beyond dispute that the Town's stated interests in promoting aesthetics and traffic safety are substantial”), but that does not mean they will also be considered compelling.
- c. Because *Reed* does not expressly overrule earlier precedent, it may be that *both* the *Central Hudson* test and the strict scrutiny test could be used when a sign code imposes different standards based solely on whether the sign contains a commercial or a noncommercial message.
 - i. If the commercial version of the sign is treated more strictly than the noncommercial version, *Central Hudson* test should apply.
 - ii. If the noncommercial version of the sign is treated more strictly than the commercial version, then strict scrutiny test should apply.

II. Underinclusivity, Exemptions, and Prohibitions

- a. Underinclusivity.
 - i. Underinclusivity arguments attack the constitutionality of a regulatory scheme by attempting to prove that the restrictions do not effectively further the asserted governmental interest:

“Exemptions from an otherwise legitimate regulation of a medium of speech may be noteworthy for a reason quite apart from the risks of viewpoint and content discrimination: They may diminish the credibility of the government's rationale for restricting speech in the first place.” *City of Ladue v. Gilleo*, 512 U.S. 43, 52 (1994).

“[U]nderinclusiveness can raise ‘doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint.’” *Williams-Yulee v. Florida Bar*, 135 S. Ct. 1656, 1668 (2015) (citing *Brown v. Entm’t Merchants Ass’n*, 131 S. Ct. 2729, 2740 (2011)).

- ii. Thus, even a content-neutral regulation can be unconstitutional if the exemptions are too many or too broad, despite the fact that the exemptions themselves are content-neutral.

b. Exemptions under *Reed*.

- i. The sign code challenged in *Reed* created 24 exemptions from the default rule which prohibited the display of any sign without first securing a permit, 23 of which describe certain sign types. *Reed*, 135 S. Ct. at 2224. Some of these exemptions are based entirely on the sign’s content:

1. Real Estate Signs 6 square feet or less in area and a maximum of 6 feet in height, in compliance with Section 4.404: Real Estate Signs.
2. Residential Open House Signs.
3. Political Signs, in compliance with Section 4.402I: Political Signs.
4. Ideological Signs, in compliance with Section 4.402J: Ideological Signs.
5. Garage Sale Signs, in compliance with Section 4.402K: Garage Sale Signs.
6. Interim business identification banners, in compliance with Table 4.402: Temporary Banner Regulations.
7. Temporary Directional Signs Relating to a Qualifying Event, in compliance with Section 4.402P: Temporary Directional Signs Relating to a Qualifying Event.
8. Restaurant Menu Signs 6 square feet or less in area, not including Drive-Through Restaurant Menu Signs, displayed within 10 feet of the business entry.
9. Required street addresses or address directory signs.

Town of Gilbert, Land Development Code § 4.402(D).

- ii. *Reed* suggests that content-based exemptions may trigger strict scrutiny, since the maximum size and number limitations that define which signs require a permit and which are exempt vary depending on the sign’s content.

“The Town’s Sign Code is content based on its face. It defines ‘Temporary Directional Signs’ on the basis of whether a sign conveys the message of directing the public to church or some other ‘qualifying event.’ It defines ‘Political Signs’ on the basis of whether a sign’s message is “designed to influence the outcome of an election.” And it defines ‘Ideological Signs’ on the basis of whether a sign ‘communicat[es] a message or ideas’ that do not fit within the Code’s other categories. It then subjects each of these categories to different restrictions.” *Reed*, 135 S. Ct. at 2227 (citations omitted).

- iii. However, the *sole* difference between the three types of signs at issue in the *Reed* case was the content. None of the definitions of these three problematic signs incorporated content-neutral characteristics such as location, construction, or appearance. See, e.g., *Neighborhood Enters., Inc. v. City of St. Louis*, 644 F.3d 728, 737 (8th Cir. 2011) (distinctions that were “based *solely* on the content or message conveyed by the sign” held to be content-based) (emphasis added).

c. Can the definition of “sign” itself be content-based?

- i. Does it matter whether an exemption is expressed as such (as in *Reed*) or incorporated into the definition of “sign” itself (as in *Neighborhood Enters., Inc.*, 644 F.3d at 737)?

- 1. If the definition of “sign” is used to exclude certain visual speech which otherwise would be captured/defined as a “sign,” then the definition itself arguably functions in the same way as an exemption and should be analyzed as such. For example:

Sign. A communication device, structure, or fixture that incorporates graphics, symbols, written copy, and/or lighting intended to promote the sale of a product, commodity, or service, or to provide direction or identification for a business or a facility. Signs shall not include any flag, badge, or insignia of any governmental unit, nor shall it include any item of merchandise normally displayed in a business window. Murals, statuary, architectural features such as trademarked building forms, decorative canopies or awnings, and corporate color accents shall be considered signage where they are integral to the conveyance of a commercial message, except where determined by the Design Review Board to be architectural, rather than communicative, in nature.

2. But if certain speech that does not meet the general definition of “sign” is identified as such, by way of clarification, then those clarifications do not function as exemptions. For example:

Sign. Any object, device, display, or structure, or part thereof, visible from a public place, a public right of way, or any parking area or right of way open to use by the general public which is designed and used to attract attention to an object (other than the sign itself), person, institution, organization, business, product, service, event, or location by any means involving words, letters, figures, designs, symbols, fixtures, logos, colors, illumination, or projected images. For the purpose of clarification, examples of items which do not satisfy the necessary elements of this definition include, but are not limited to, works of art, architectural elements incorporated into the style or function of a building, and flags of any nation, state, or other geopolitical entity. For purposes of this definition a work of art is any item expressing creative skill or imagination in a visual form, such as a painting or sculpture, which is intended to beautify or provide an aesthetic influence to a public area or area which is visible from the public realm and which in no way identify or specifically relate to a product or service on the premises.

- ii. Regulating *all* visual speech is a constitutionally suspect approach because it exposes the government to a overbreadth challenge:

“A clear and precise enactment may nevertheless be ‘overbroad’ if in its reach it prohibits constitutionally protected conduct.” *Grayned v. City of Rockford*, 408 U.S. 104, 114 (1972).

“To be sure, [the narrow tailoring] standard does not mean that a time, place, or manner regulation may burden substantially more speech than is necessary to further the government’s legitimate interests. Government may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals.” *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989).

- iii. Governments are entitled to regulate less than every form of speech that might impact its stated substantial governmental interest:

“A State need not address all aspects of a problem in one fell swoop; policymakers may focus on their most pressing concerns. We have accordingly upheld laws—even under

strict scrutiny—that conceivably could have restricted even greater amounts of speech in service of their stated interests.” *Williams-Yulee v. Florida Bar*, 135 S. Ct. 1656, 1668 (2015).

“The First Amendment does not require States to regulate for problems that do not exist.” *Burson v. Freeman*, 504 U.S. 191, 207 (1992).

“It does not follow from the fact that the city has concluded that some commercial interests outweigh its municipal interests in this context that it must give similar weight to all other commercial advertising. Thus, offsite commercial billboards may be prohibited while onsite commercial billboards are permitted.” *Metromedia*, 453 U.S. at 512 (plurality opinion).

ATTACHMENT 4

LGA AD HOC COMMITTEE MODEL SIGN ORDINANCE

DIVISION I. - GENERAL PROVISIONS

- Sec. 1. – Purpose and intent.
- Sec. 2. – Definitions.
- Sec. 3. – Permit required.
- Sec. 4. – Permit not required.
- Sec. 5. – Prohibited signs.
- Sec. 6. – Measurements of sign area.
- Sec. 7. – Maintenance and removal.
- Sec. 8. – General requirements.
- Sec. 9. – Nonconforming signs.
- Sec. 10. – Non-commercial signs.
- Sections 11-20. – Reserved.

DIVISION II. - SIGN REGULATIONS BY USE AND DISTRICT

- Sec. 21. – Residential district signs.
- Sec. 22. – Commercial district signs.
- Sec. 23. – Industrial district signs.

ARTICLE __. - SIGNS

DIVISION I. - GENERAL PROVISIONS

Sec. 1. – Findings, purpose and intent; interpretation.

- (a) Signs obstruct views, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation. The purpose of this article is to regulate the size, color, illumination, movement, materials, location, height and condition of all signs placed on private property for exterior observation, thus ensuring the protection of property values, the character of the various neighborhoods, the creation of a convenient, attractive and harmonious community, protection against destruction of or encroachment upon historic areas, and the safety and welfare of pedestrians and wheeled traffic, while providing

Commented [MC1]: Quotation from *City of Ladue v. Gilleo*, 512 U.S. 43 (1994), quoted in *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2232 (2015)

Commented [MC2]: Quotation from Va. Code § 15.2-2283 (iii) and (v)

convenience to citizens and encouraging economic development. This article allows adequate communication through signage while encouraging aesthetic quality in the design, location, size and purpose of all signs. This article shall be interpreted in a manner consistent with the First Amendment guarantee of free speech. If any provision of this article is found by a court of competent jurisdiction to be invalid, such finding shall not affect the validity of other provisions of this article which can be given effect without the invalid provision.

- (b) Signs not expressly permitted as being allowed by right or by special use permit under this article, by specific requirements in another portion of this chapter, or otherwise expressly allowed by the [governing body] or Board of Zoning Appeals are forbidden.
- (c) A sign placed on land or on a building for the purpose of identification, protection or directing persons to a use conducted therein shall be deemed to be an integral but accessory and subordinate part of the principal use of land or building. Therefore, the intent of this article is to establish limitations on signs in order to ensure they are appropriate to the land, building or use to which they are appurtenant and are adequate for their intended purpose while balancing the individual and community interests identified in subsection (a) of this section.
- (d) These regulations are intended to promote signs that are compatible with the use of the property to which they are appurtenant, landscape and architecture of surrounding buildings, are legible and appropriate to the activity to which they pertain, are not distracting to motorists, and are constructed and maintained in a structurally sound and attractive condition.
- (e) These regulations distinguish between portions of the City/County/Town designed for primarily vehicular access and portions of the City/County/Town designed for primarily pedestrian access.
- (f) These regulations do not regulate every form and instance of visual speech that may be displayed anywhere within the jurisdictional limits of the City/County/Town. Rather, they are intended to regulate those forms and instances that are most likely to meaningfully affect one or more of the purposes set forth above.
- (g) These regulations do not entirely eliminate all of the harms that may be created by the installation and display of signs. Rather, they strike an appropriate balance that preserves ample channels of communication by means of visual display while still reducing and mitigating the extent of the harms caused by signs.

Commented [MC3]: Include the BZA only if it has the power to issue SUP's/CUP's/special exceptions.

Sec. 2. - Definitions.

A-Frame sign means a two-faced sign with supports that are connected at the top and separated at the base, forming an “A” shape not more than four feet high. These are also referred to as “sandwich board” signs. They are included in the term “portable sign.”

Advertising means any words, symbol, color or design used to call attention to a commercial product, service, or activity.

Animated sign means a sign or part of a sign that is designed to rotate, move or appear to rotate or move. Such a sign is sometimes referred to as a “moving sign.”

Awning sign means a sign placed directly on the surface of an awning.

Commented [MC4]: Not all these definitions are used in the model ordinance. Defined signs which are not expressly permitted are forbidden by §§ 1 (b) and 5 of the model ordinance.

Banner means a temporary sign of flexible material designed to be installed with attachments at each of four corners.

[OR]

Banner means a temporary sign of flexible material affixed to a framework or flat surface.

Commented [MC5]: Choose one of these definitions.

Building frontage means the length of the main wall of a building which physically encloses usable interior space and which is the architecturally designed wall that contains the main entrance for use by the general public. Said frontage shall be measured at a height of ten (10) feet above grade.

Business sign means a sign which directs attention to a product, service or commercial activity available on the premises.

Canopy sign means a sign attached to a canopy.

Chalk-board sign means a single-faced, framed slate or chalk-board that can be written on with chalk or similar markers.

Changeable copy sign means a sign or part of a sign that is designed so that characters, letters or illustrations can be changed or rearranged without altering the face or surface of the sign.

Comprehensive sign plan means a plan for the signage of a property that includes multiple tenants or owners with shared parking or other facilities.

Feather sign. A lightweight, portable sign mounted along one edge on a single, vertical, flexible pole the physical structure of which at may resemble a sail, bow, or teardrop.

Flag means a piece of cloth or similar material, typically oblong or square, attachable by one edge to a pole or rope and used as a symbol or decoration; this includes pennants.

Flashing sign means a sign that includes lights that flash, blink, or turn on and off intermittently.

Freestanding sign means any non-portable sign supported by a fence, retaining wall, or by upright structural members or braces on or in the ground and not attached to a building.

Ground mounted sign means a sign that is supported by structures or supports in or upon the ground and independent of any support from any building or wall.

Height, means the maximum vertical distance from the base of the sign at normal grade to the top of the highest attached component of the sign. Normal grade shall be construed to be the lower of:

- (1) Existing grade prior to construction; or
- (2) The newly established grade after construction, exclusive of any filling, berming, mounding or excavating primarily for the purpose of mounting or elevating the sign.

Holiday Displays mean displays erected on a seasonal basis in observance of religious, national, or state holidays which are not intended to be permanent in nature and which contain no advertising material.

Commented [MC6]: Adapted from ordinance approved by the Fourth Circuit court of appeals in *Brown v. Town of Cary* (2013)

Illegal sign means any sign erected without a required permit or which otherwise does not comply with any provisions of this article.

Illuminated sign means a sign that is backlit, internally lighted, or indirectly lighted, but does not include a neon sign.

Marquee means a permanent structure projecting beyond a building wall at an entrance to a building or extending along and projecting beyond the building's wall and generally designed and constructed to provide protection against the weather.

Marquee sign means a sign attached to and made a part of a marquee or any similar projections from a building, with changeable, fixed or both types of lettering in use.

Minor sign means a wall or freestanding sign not exceeding one (1) square foot in area, not exceeding four feet in height, and not illuminated.

Monument sign means a sign affixed to a structure built on grade in which the sign and the structure are an integral part of one another; not a pole sign.

Neon sign means a sign containing exposed tubes filled with light-emitting gas.

Nonconforming sign. Any sign which was lawfully erected in compliance with applicable regulations of the City/County/Town and maintained prior to the effective date of this chapter of the zoning ordinance and which fails to conform to current standards and restrictions of the zoning ordinance.

Off-premises sign means a sign that directs attention to a business, product, service or activity conducted, sold or offered at a location other than the premises on which the sign is erected.

Pole sign means a sign that is mounted on one (1) or more freestanding poles.

Portable sign means any temporary sign not affixed to a building, structure, vehicle or the ground. It does not include a flag or banner.

Projecting sign means any sign, other than a wall, awning or marquee sign, affixed to a building and supported only by the wall on which it is mounted.

Public area means any public place, public right-of-way, any parking area or right-of-way open to use by the general public, or any navigable body of water.

Public Art means items expressing creative skill or imagination in a visual form, such as painting or sculpture, which are intended to beautify or provide aesthetic influences to public areas or areas which are visible from the public realm.

Roof sign means a sign erected or constructed, in whole or in part, upon or above the highest point of a building with a flat roof, or the lowest portion of a roof for any building with a pitched roof.

Sign means any device (writing, letter work or numeral, pictorial presentation, illustration or decoration, emblem, device, symbol or trademark, flag, banner or pennant or any other device, figure or character) visible to and designed to communicate information to persons in a public area. However, the term "sign" does not include public art, holiday displays, or architectural features, except those that identify products or services or advertise a business use. The term "sign" also does not include the display of merchandise for sale on the site of the display.

Commented [MC7]: This is designed to replace a host of small signs formerly defined in terms of content, such as directional signs, entrance signs, and the like.

Commented [MC8]: Adapted from ordinance approved by the Fourth Circuit court of appeals in *Brown v. Town of Cary* (2013)

Commented [MC9]: Choose one of these two definitions.

Commented [MC10]: This portion of the definition ties to the purposes of regulation in terms of obstructing views and distracting motorists and is broader than some of the other versions.

[OR]

Sign. Any object, device, display, or structure, or part thereof, visible from a public place, a public right-of-way, any parking area or right-of-way open to use by the general public, or any navigable body of water which is designed and used to attract attention to an institution, organization, business, product, service, event, or location by any means involving words, letters, figures, designs, symbols, fixtures, logos, colors, illumination, or projected images. The term does not include public art, architectural elements incorporated into the style or function of a building, or flags of any nation, state, or other geopolitical entity not related to a commercial business, product or service. The term “sign” also does not include the display of merchandise for sale on the site of the display.

Sign face means the portion of a sign structure bearing the message.

Sign structure means any structure bearing a sign face.

Temporary sign means any sign intended to be displayed for a limited period.

[ORI]

Temporary sign means a sign constructed of cloth, canvas, vinyl, paper, plywood, fabric, or other lightweight material not well suited to provide a durable substrate or, if made of some other material, is neither permanently installed in the ground nor permanently affixed to a building or structure which is permanently installed in the ground.

Vehicle or trailer sign means any sign attached to or displayed on a vehicle, if the vehicle or trailer is used for the primary purpose of advertising a business establishment, product, service or activity. Any such vehicle or trailer shall, without limitation, be considered to be used for the primary purpose of advertising if it fails to display current license plates, inspection sticker, or municipal decal, if the vehicle is inoperable, if evidence of paid-to-date local taxes cannot be made available, or if the sign alters the standard design of such vehicle or trailer.

Wall Sign means any sign attached to a wall or painted on or against a flat vertical surface of a structure.

Window sign means any sign visible outside the window and attached to or within 18 inches in front of or behind the surface of a window or door.

Sec. 3. - Permit required.

- (a) *In general.* A sign permit is required prior to the display and erection of any sign except as provided in section 4 of this Article.
- (b) *Application for permit.*
 - (1) An application for a sign permit shall be filed with the City/County/Town [Community Development Department or equivalent] on forms furnished by that department. The applicant shall provide sufficient information to determine if the proposed sign is permitted under the zoning ordinance and other applicable laws, regulations, and ordinances. An application for a temporary sign shall state the dates intended for the erection and removal of the sign.

Commented [MC11]: Choose one of these two definitions.

Commented [MC12]: Based on Norfolk’s draft ordinance.

Commented [MC13]: In light of the Attorney General’s Opinion 14-050, regulation of vehicles *when used as vehicles* is not a proper subject for a zoning ordinance.

Commented [MC14]: See Va. Code § 15.2-905

(2) The City/County/Town Zoning Administrator or designee shall promptly process the sign permit application and approve the application, reject the application, or notify the applicant of deficiencies in the application within 20 business days after receipt. Any application that complies with all provisions of this zoning ordinance, the building code, and other applicable laws, regulations, and ordinances shall be approved.

Commented [MC15]: A short time frame is necessary to avoid a challenge based on "prior restraint" due to a permitting process that has no end.

(3) If the application is rejected, the City/County/Town shall provide a list of the reasons for the rejection in writing. An application shall be rejected for non-compliance with the terms of the zoning ordinance, building code, or other applicable law, regulation, or ordinance.

(c) *Permit fee.* A nonrefundable fee as set forth in the uncodified fee schedule adopted by the City/County/Town Council shall accompany all sign permit applications.

(d) *Duration and revocation of permit.* If a sign is not installed within six months following the issuance of a sign permit (or within 30 days in the case of a temporary sign permit), the permit shall be void. The permit for a temporary sign shall state its duration, not to exceed 30 days unless another time is provided in the zoning ordinance. The City/County/Town may revoke a sign permit under any of the following circumstances:

- (1) The City/County/Town determines that information in the application was materially false or misleading;
- (2) The sign as installed does not conform to the sign permit application; or
- (3) The sign violates the zoning ordinance, building code, or other applicable law, regulation, or ordinance.

(e) *Overlay district regulations.* All signs in the Historic Overlay District (HOD) require approval of the Architectural Review Board (ARB) except when a sign permit is not required as provided in § 4.

(f) *Special exceptions.* Comprehensive sign plans may be approved by special use permit in districts. Comprehensive sign plans may be approved by special use permit in the districts for uses allowed by special use permit. The comprehensive sign plan shall establish the time, manner, and placement of signs, frequency of message changes, the materials, the hours of lighting, the height of signs, the total number of square feet of sign surface, and the number of signs to be placed on a site. Height of signs shall not be modified above the height permitted in the Zoning Ordinance.

Commented [MC16]: Substitute "Conditional Use Permit" or "Special Use Permit" if that's your preferred nomenclature.

Sec. 4. - Permit not required.

A sign permit is not required for:

- (1) Signs erected by a governmental body or required by law.

- (2) Flags up to 16 square feet in size not containing any commercial advertising; provided, that no freestanding pole shall be erected in the public right-of-way nor be within five (5) feet of a service drive, travel lane or adjoining street.
- (3) The changing of messages on marquees and the repair of an existing permitted sign, except that repair of a nonconforming sign must comply with § 9(e).

(4) Temporary signs as follows:

- a. One (1) sign, no more than twelve (12) square feet in area, located on property where a building permit is active.

- b. On any property for sale or rent, not more than one sign with a total area of up to twelve (12) square feet and a maximum height of six (6) feet when the sign abuts a road with a speed limit of 25 miles per hour or less, and when the sign abuts a road with a speed limit greater than 25 miles per hour not more than one sign with a total area of up to thirty two (32) square feet and a maximum height of eight (8) feet.

Commented [MC17]: Choose one of these two versions of paragraph (4) b.

Commented [MC18]: This alternative classifies based on activity and vehicular speed to tie into the purpose of vehicular safety while avoiding a content-based distinction.

[OR]

- b. On any property for sale or rent in _____ zoning districts, not more than one sign with a total area of up to twelve (12) square feet and a maximum height of six (6) feet, and on any property for sale or rent in _____ zoning districts, not more than one sign with a total area of up to thirty two (32) square feet and a maximum height of eight (8) feet.

Commented [MC19]: This alternative classifies based on zoning districts while avoiding a content-based distinction.

- c. Official notices or advertisements posted or displayed by or under the direction of any public or court officer in the performance of his official or directed duties; provided, that all such signs shall be removed no more than ten (10) days after their purpose has been accomplished.

- d. On residential property, one or more temporary signs with a total area of no more than twelve (12) square feet, and which are removed within 90 days after being erected.

Commented [MC20]: Permit is required on commercial property so that expirations can be tracked.

Commented [MC21]: Not putting a maximum number avoids challenges based on *Arlington County Republican Comm. v. Arlington County, Va.*, 983 F.2d 587 (4th Cir. 1993) (rule prohibiting more than two political yard signs on residential property was unconstitutional).

- e. On residential property, window signs, provided that the total extent of window signs do not obstruct more than 25% of the total area of all windows on each building façade.

Commented [MC22]: 90 day time limit serves the goal of esthetics as well as traffic safety, because temporary signs are more likely to deteriorate and blow away over time, but it may be safer not to include a time limit.

Commented [MC23]: Typical existing ordinances classify political signs and other content-based categories. Those distinctions are replaced here by reference to the temporary sign definition. An alternative method would be to focus on the materials of the sign.

Commented [MC24]: Without a percentage cap, there is a risk that—evaluated facially—this exemption could undermine the stated purpose of reducing clutter and promoting an “attractive and harmonious community,” since it seems to allow unlimited amounts of windows signs on residential property.

- (6) Not more than two minor signs per parcel. Additional minor signs are permitted in certain districts with a permit.
- (7) A-frame signs more than fifty (50) feet from the nearest public right of way.
- (8) Pavement markings. Any sign applied directly and entirely to and flush with an asphalt, concrete, or similar paved surface.
- (9) A permanent window sign, provided that the aggregate area of all window signs on each window or door does not exceed twenty-five percent (25%) of the total area of the window or door.

Sec. 5. – Prohibited signs

In addition to signs prohibited elsewhere in this Code or by applicable state or federal law, the following signs are prohibited:

(a) General prohibitions.

- (1) Signs that violate any law of the Commonwealth relating to outdoor advertising.
- (2) Signs attached to natural vegetation.
- (3) Signs simulating, or which are likely to be confused with, a traffic control sign or any other sign displayed by a public authority. Any such sign is subject to immediate removal and disposal by an authorized city official as a nuisance.
- (4) Vehicle or trailer signs.
- (5) Freestanding signs more than 25 feet in height.
- (6) Signs hanging from supports, except against the face of a building.
- (7) Any sign displayed without complying with all applicable regulations of this chapter.

Commented [MC25]: This content-based distinction is believed to be sufficiently narrowly tailored to meet a compelling state interest as to survive strict scrutiny.

(b) Prohibitions based on materials.

- (1) Signs painted directly on a building, except where expressly permitted by this chapter.
- (2) Animated signs. This subsection does not apply to flags expressly permitted under this article or the changing of the message content no more often than once every seven seconds.
- (3) Flashing signs or other signs displaying flashing, scrolling or intermittent lights or lights of changing degrees of intensity, except where such signs are expressly permitted within this article.
- (4) Signs consisting of illuminated tubing or strings of lights outlining property lines or open sales areas, rooflines, doors, windows or wall edges of any building, except for temporary decorations not to exceed three months per year.
- (5) Signs that emit smoke, flame, scent, mist, aerosol, liquid, or gas.
- (6) Signs that emit sound.
- (7) Any electronic sign that is generated by a series of moving images, such as an LED, digital display, or other video technology, whether displayed on a building, vehicle, or mobile unit.
- (8) Strings of flags visible from, and within 50 feet of, any public right-of-way.
- (9) Pole signs less than 6 feet in height.

(c) Prohibitions based on location.

- (1) Off-premises signs, unless specifically permitted by this chapter.
- (2) Signs erected on public land other than those approved by an authorized City/County/Town official in writing, required by law without such approval, or permitted under Virginia Code § 24.2-310 E. Any sign not so authorized is subject to immediate removal and disposal by any authorized official. Removal of the sign under this provision does not preclude prosecution of the person responsible for the sign.
- (3) Signs on the roof surface or extending above the roofline of a building or its parapet wall.
- (4) Neon signs, except in windows.
- (5) Any sign located in the vision triangle formed by any two (2) intersecting streets, as regulated by the provisions of section [REDACTED].
- (6) Window signs whose aggregate area on a window or door exceed twenty-five percent (25%) of the total area of the window or door.

Commented [MC26]: Note that some localities permit these. If the locality desires to permit them, this provision allows that but express language will need to be permitted in the appropriate section(s) of Division II of this Article. See Sections 10 and 22 of this model for one example.

Commented [MC27]: Insert cross-reference to provisions of ordinance or administrative code that governs sight distance at corners. Alternately, replace paragraph with "A sign that obstructs free or clear vision, or otherwise causes a safety hazard for vehicular, bicycle, or pedestrian traffic due to its location."

Sec. 6. - Measurements of sign area and height.

- (a) Supports, uprights or structure on which any sign is supported shall not be included in determining the sign area unless such supports, uprights or structure are designed in such a way as to form an integral background of the display; except, however, when a sign is placed on a fence, wall, planter, or other similar structure that is designed to serve a separate purpose other than to support the sign, the entire area of such structure shall not be computed. In such cases, the sign area shall be computed in accordance with the preceding provisions.
- (b) In instances where there are multiple tenants or users on a property or in a building, allowable sign area for all parties shall not exceed the maximum sign area computed as if there were a single tenant or user.
- (c) *Sign area.*
 - (1) Sign area is calculated under the following principles:
 - a. With signs that are regular polygons or circles, the area can be calculated by the mathematical formula for that polygon or circle. With signs that are not regular polygons or circles, the sign area is calculated using all that area within a maximum of three abutting or overlapping rectangles that enclose the sign face.
 - b. The permitted area of a double-faced sign shall be considered to be the area on one side only. If one face contains a larger sign area than the other, the larger face shall be used in calculating the sign area. A double-faced sign must have an internal angle between its two faces of no more than 45 degrees.

- c. For projecting signs with a thickness of four inches or more, the sign area also includes the area of the visible sides of the sign, calculated as a rectangle enclosing each entire side view.
- (2) The supports, uprights or structure on which any sign is supported shall not be included in determining the sign area unless such supports, uprights or structure area are designed in such a manner as to form an integral background of the display.
- (d) *Maximum height.* The maximum height for any sign shall be 25 feet unless otherwise specified within this chapter.

Sec. 7. - Maintenance and removal.

- (a) All signs shall be constructed and mounted in compliance with the Virginia Uniform Statewide Building Code.
- (b) All signs and components thereof shall be maintained in good repair and in a safe, neat and clean condition.
- (c) The building official may cause to have removed or repaired immediately without written notice any sign which, in his opinion, has become insecure, in danger of falling, or otherwise unsafe, and, as such, presents an immediate threat to the safety of the public. If such action is necessary to render a sign safe, the cost of such emergency removal or repair shall be at the expense of the owner or lessee thereof as provided in chapter ____ of this Code, [Buildings and structures or its equivalent].
- (d) The owner of any advertising sign, other than a permitted off-premises sign, located on commercial property where the use or business has ceased operating shall, within 60 days of the cessation of use or business operation, replace the sign face with a blank face until such time as a use or business has resumed operating on the property.
- (e) *Sign condition, safety hazard, nuisance abatement, and abandonment.*
 - (1) Any sign which becomes a safety hazard or which is not kept in a reasonably good state of repair shall be put in a safe and good state of repair within 30 days of a written notice to the owner and permit holder.
 - (2) Any sign which constitutes a nuisance may be abated by the City/County/Town under the requirements of Virginia Code §§ 15.2-900, 15.2-906, and/or 15.2-1115.

Commented [MC28]: Under Central Hudson, government can prevent misleading commercial speech.

Sec. 8. – General requirements.

- (a) *Placement.* Except as otherwise permitted, all freestanding signs shall be set back from any street right-of-way at least half the height of the sign.
- (b) *Illumination.* All permitted signs may be backlit, internally lighted, or indirectly lighted, unless such lighting is specifically prohibited in this article.

(1) In the case of indirect lighting, the source shall be so shielded that it illuminates only the face of the sign. However, shingle signs shall be indirectly illuminated or have shielded direct lighting, unless otherwise prohibited within this chapter. Indirect lighting shall consist of full cut-off or directionally shielded lighting fixtures that are aimed and controlled so that the directed light shall be substantially confined to the sign to minimize glare, sky glow, and light trespass. The beam width shall not be wider than that needed to light the sign.

(2) Internal illumination shall be limited to the illumination standards for parking lot lighting in [REDACTED]. No sign shall be permitted to have an illumination spread of more than .05 foot candle at the lot line, shine into on-coming traffic, affect highway safety, or shine directly into a residential dwelling unit. In no event shall the illumination of any sign resulting from any internal or external artificial light source exceed 100 lumens. All lighting fixtures used to illuminate a sign shall be full-cutoff, as defined by the Illuminating Engineering Society of North America (IESNA), and shall have fully shielded or recessed luminaires with horizontal-mount flat lenses that prevent upward light scatter and protect the dark night sky.

Commented [MC29]: Cross-reference to ordinance or regulation on parking lot lighting.

(c) *Landscaping.* All non-temporary ground-mounted or monument signs shall be installed with a minimum surround of three (3) feet of regularly maintained floral and shrubbery landscaping in every direction.

Commented [MC30]: This optional provision is based on the City of Norfolk's ordinance. If adopted, it will need to be made consistent with the locality's Dark Skies ordinance, if any.

Sec. 9. - Nonconforming signs.

- (a) Signs lawfully existing on the effective date of this chapter or prior ordinances, which do not conform to the provisions of this chapter, and signs which are accessory to a nonconforming use shall be deemed to be nonconforming signs and may remain except as qualified below. The burden of establishing nonconforming status of signs and of the physical characteristics/location of such signs shall be that of the owner of the property. Upon notice from the zoning administrator, a property owner shall submit verification that sign(s) were lawfully existing at time of erection. Failure to provide such verification shall be cause for order to remove sign(s) or bring sign(s) into compliance with the current ordinance.
- (b) No nonconforming sign shall be enlarged nor shall any feature of a nonconforming sign, such as illumination, be increased.
- (c) Nothing in this section shall be deemed to prevent keeping in good repair a nonconforming sign. Nonconforming signs shall not be extended or structurally reconstructed or altered in any manner, except a sign face may be changed so long as the new face is equal to or reduced in height and/or sign area.
- (d) No nonconforming sign shall be moved for any distance on the same lot or to any other lot unless such change in location will make the sign conform in all respects to the provisions of this article.

- (e) A nonconforming sign that is destroyed or damaged by any casualty to an extent not exceeding fifty (50) percent of its area may be restored within two (2) years after such destruction or damage but shall not be enlarged in any manner. If such sign is so destroyed or damaged to an extent exceeding fifty (50) percent, it shall not be reconstructed but may be replaced with a sign that is in full accordance with the provisions of this article.
- (f) A nonconforming sign which is changed to becoming conforming or is replaced by a conforming sign shall no longer be deemed nonconforming, and thereafter such sign shall be in accordance with the provisions of this article.
- (g) A nonconforming sign structure shall be subject to the removal provisions of section [REDACTED]. In addition, a nonconforming sign structure shall be removed if the use to which it is accessory has not been in operation for a period of two years or more. Such structure sign shall be removed by the owner or lessee of the property. If the owner or lessee fails to remove the sign structure, the zoning administrator or designee shall give the owner fifteen (15) days' written notice to remove it. Upon failure to comply with this notice, the zoning administrator or designee may enter the property upon which the sign is located and remove any such sign or may initiate such action as may be necessary to gain compliance with this provision. The cost of such removal shall be chargeable to the owner of the property. [REDACTED]

Commented [MC31]: Note that an obsolete sign under § 7 (d) merely has to have the face blanked; this provision, by contrast, deals with a situation where the sign is nonconforming due to its location, height, materials, or other characteristic.

Commented [MC32]: Cross-reference provision for abandonment of NCU's or non-use for 2 years.

Commented [MC33]: Derived from Virginia Code § 15.2-2307, seventh paragraph.

Sec. 10. –Non-commercial signs.

- (a) *Substitution.* Wherever this Article permits a sign with commercial content, non-commercial content is also permitted subject to the same requirements of size, color, illumination, movement, materials, location, height and construction.
- (b) *Off-site Signs for Noncommercial Use of Limited Duration.* With a permit, a noncommercial use may erect up to 3 off-site signs on properties in zoning districts [REDACTED] with the consent of the persons in charge of such properties. Each sign shall be no more than 16 square feet in area and 8 feet in height. The area of the sign counts against the maximum sign area permitted on that lot. No more than one permitted temporary sign may be displayed per lot. Display of signs shall be limited to 30 days at a time. Each organization shall be limited to the display of such signs no more than 4 times within any calendar year. [REDACTED]

Commented [MC34]: This optional provision is based on the City of Chesterfield's ordinance.

DIVISION II. - SIGN REGULATIONS BY USE AND DISTRICT

Section 21. – Residential district signs.

- (a) Except as otherwise prohibited in this Article, the following signs are permitted as accessory to residential uses in residential districts. Moving signs and electronic message signs are prohibited on residential properties in all residential districts.

TYPE	Flags	Temporary	Permanent
Size (each/total)	16 s.f./no limit	16 s.f./16 s.f.	3 s.f./3 s.f.
Illumination	As required by law	None	Indirect

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Setback	Height of flagpole	None	None
Maximum Height	25 ft.	4 ft.	4 ft.
Location	Flag pole $\leq$ 8" diameter	Freestanding, portable, wall, or window	Wall or window sign or affixed to mailbox
Duration	Unlimited	90 days	Unlimited

Commented [MC35]: Signs on property for sale, or where a building permit is active, are in addition to these temporary signs. See §§ 4(4)a. and b.

Commented [MC36]: Omit this row if duration is addressed elsewhere

Commented [MC37]: Such as schools and churches.

(b) Except as provided otherwise in this Article, the following signs are permitted as accessory to non-residential uses in residential districts. Moving signs are prohibited as accessory uses for non-residential uses in all residential districts.

TYPE	Flags	Temporary signs	Changeable Message signs	Other permanent signs
Size (each/total)				
Illumination				
Setback				
Maximum Height				
Materials				
Duration				

Section 22. – Commercial district signs.

(a) *Generally.* Except as provided otherwise in this Article, the following signs are permitted as accessory uses in commercial districts. In addition, up to one minor sign per business is permitted as a wall sign.

TYPE	Freestanding	Wall	Flags	Temporary signs
Size (each/total)				
Maximum Number				
Illumination				
Setback				
Maximum Height				
Materials				
Duration				

(b) *Window signs.* Window signs are permitted up to 25% of the area of a window and count toward the maximum square footage of wall signs. Window signs are permitted only on the first floor of a building unless the business advertised is only on the floor where the window sign is displayed.

(c) *Off-Site Signs for Commercial Use of Limited Duration.* Up to three off-site signs, each not to exceed 6 square feet and 7 feet in height, shall be permitted for a commercial use lasting for 3 or fewer days on property zoned _____. No more than one permitted temporary sign shall be displayed per lot. Display of signs shall be limited to 48 hours prior to commencement, and 48 hours after cessation, of the use or activity advertised.

Section 23. – Industrial district signs.

Except as provided otherwise in this Article, the following signs are permitted as accessory uses in industrial districts. In addition, up to one minor sign per business is permitted as a wall sign.

TYPE	Freestanding	Wall	Flags	Temporary signs
Size (each/total)				
Maximum Number				
Illumination				
Setback				
Maximum Height				
Materials				
Duration				

Window signs are permitted up to 25% of the area of a window and count toward the maximum square footage of wall signs. Window signs are permitted only on the first floor of a building unless the business advertised is only on the floor where the window sign is displayed.

Code of Virginia

Title 24.2. Elections

Chapter 3. Election Districts, Precincts, and Polling Places

Article 3. Requirements for Election Districts, Precincts, and Polling Places

§ 24.2-310. Requirements for polling places

A. The polling place for each precinct shall be located within the county or city and either within the precinct or within one mile of the precinct boundary, unless a waiver has been granted pursuant to subsection G. The polling place for a county precinct may be located within a city (i) if the city is wholly contained within the county election district served by the precinct or (ii) if the city is wholly contained within the county and the polling place is located on property owned by the county. The polling place for a town precinct may be located within one mile of the precinct and town boundary. For town elections held in November, the town shall use the polling places established by the county for its elections.

B. The governing body of each county, city, and town shall provide funds to enable the general registrar to provide adequate facilities at each polling place for the conduct of elections. Each polling place shall be located in a public building whenever practicable. If more than one polling place is located in the same building, each polling place shall be located in a separate room or separate and defined space.

C. Polling places shall be accessible to qualified voters as required by the provisions of the Virginians with Disabilities Act (§ 51.5-1 et seq.), the Voting Accessibility for the Elderly and Handicapped Act (52 U.S.C. § 20101 et seq.), and the Americans with Disabilities Act relating to public services (42 U.S.C. § 12131 et seq.). The State Board shall provide instructions to the local electoral boards and general registrars to assist the localities in complying with the requirements of the Acts.

D. If an emergency makes a polling place unusable or inaccessible, the electoral board or the general registrar shall provide an alternative polling place and give notice of the change in polling place, including to all candidates, or such candidate's campaign, appearing on the ballot to be voted at the alternative polling place, subject to the prior approval of the State Board. The general registrar shall provide notice to the voters appropriate to the circumstances of the emergency. For the purposes of this subsection, an "emergency" means a rare and unforeseen combination of circumstances, or the resulting state, that calls for immediate action.

E. It shall be permissible to distribute campaign materials on the election day on the property on which a polling place is located and outside of the building containing the room where the election is conducted except as specifically prohibited by law including, without limitation, the prohibitions of § 24.2-604 and the establishment of the "Prohibited Area" within 40 feet of any entrance to the polling place. However, and notwithstanding the provisions of clause (i) of subsection A of § 24.2-604, and upon the approval of the local electoral board, campaign materials may be distributed outside the polling place and inside the structure where the election is conducted, provided that the "Prohibited Area" (i) includes the area within the structure that is beyond 40 feet of any entrance to the polling place and the area within the structure that is within 40 feet of any entrance to the room where the election is conducted and (ii) is maintained and enforced as provided in § 24.2-604. The local electoral board may approve campaigning activities inside the building where the election is conducted when an entrance to the building is

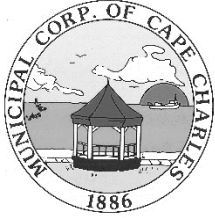
from an adjoining building, or if establishing the 40-foot prohibited area outside the polling place would hinder or delay a qualified voter from entering or leaving the building.

F. Any local government, local electoral board, or the State Board may make monetary grants to any non-governmental entity furnishing facilities under the provisions of § 24.2-307 or 24.2-308 for use as a polling place. Such grants shall be made for the sole purpose of meeting the accessibility requirements of this section. Nothing in this subsection shall be construed to obligate any local government, local electoral board, or the State Board to appropriate funds to any non-governmental entity.

G. The general registrar or the governing body of the locality may request from the Department of Elections a waiver to establish a polling place that does not meet the location requirements of subsection A in the event that there is no suitable building that could be used within the precinct or within one mile of the precinct boundary. The Department shall grant such a waiver and may impose any conditions on the waiver that it deems necessary or appropriate to ensure accessibility and security of the polling place and compliance with any other requirements of state or federal law.

Code 1950, §§ 24-45, 24-46, 24-171, 24-179 through 24-181; 1954, c. 375; 1956, c. 378; 1962, cc. 185, 536; 1970, c. 462, §§ 24.1-36, 24.1-37, 24.1-92, 24.1-97; 1971, Ex. Sess., c. 119; 1976, c. 616; 1977, c. 30; 1978, c. 778; 1980, c. 639; 1981, c. 425; 1984, c. 217; 1985, c. 197; 1986, c. 558; 1992, c. 445; 1993, cc. 546, 641; 1994, c. 307; 2003, c. 1015; 2004, c. 25; 2005, c. 340; 2008, cc. 113, 394; 2010, cc. 639, 707; 2012, cc. 488, 759; 2016, cc. 18, 492; 2022, c. 5.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.



PLANNING COMMISSION STAFF REPORT

Meeting Date: July 11, 2023

Prepared by: Katie H. Nunez, Planning & Zoning Administrator

Date: July 3, 2023

Regular Session: Item 6A: Zoning Ordinance Review

As a continuation of the Zoning Ordinance review, I would like us to focus on two items which I need your input on: 1) Sign Regulations & 2) Comparison of the Industrial Type Zoning districts.

This memo focuses only on the Industrial Type Zoning Districts. There will be a separate cover memo and chart regarding the Sign Regulations.

A chart comparing five districts has been provided for you: all of the Industrial Zoning Type Districts of which there are 4 as well as the Harbor District.

- The Town has two zoning districts for Industrial – one is M-1 & M-2
- The Town has two zoning districts for General Business/Light Industrial with one that has a Harbor focus.
- The Town also has a zoning district for Harbor.

All of the property that has one of these five zoning designations is located around the harbor and south and east of the harbor, bounded by Mason Avenue up the “hump” to Old Cape Charles Road and continues around to the Concrete Plant and stretches to the south, adjacent the Bay Creek Development. There is a stretch of industrially zoned properties as you head out of town on Randolph/Stone Road (the area where the dredge spoils are placed & the railroad parcel adjacent to Rayfield’s Pharmacy).

I am not recommending any changes at this time to the composition of the requirements of each district but felt that we should review and consider these, especially as we engage a consultant to assist us in developing a master plan and design guidelines/concepts for the Harbor area. There may be an opportunity to compress these districts down in number.

I have also enclosed the zoning map so that you can see the location of these districts as a whole for the Town.

USE COMPARISON CHART OF INDUSTRIAL DISTRICT M-2 to HARBOR DISTRICT

<u>NAME OF DISTRICT</u>	<u>Section 3.11 Industrial District M-1</u>	<u>Section 3.13 Industrial District M-2</u>	<u>Section 3.10 General Business/Light Industrial GBI</u>	<u>Section 3.14 General Business/Light Industrial H-1 (GBI H-1)</u>	<u>Section 3.9 Harbor District (revised 11-21-19)</u>
A. STATEMENT OF INTENT	The primary purpose of the M-1 District is to permit certain industries, which do not in any way detract from the residential desirability and will not be permitted to locate in any area adjacent to a residential area. The limitation on (or provisions relating to) height of a building, horsepower, heating, flammable liquids or explosives, controlling of emission fumes, odors and noise, landscaping, and the number of people employed are imposed to protect and foster adjacent desirability while permitting industry to locate near a labor supply and near existing available transportation.	The intent of this zoning district is to provide for mixed industrial and employment land uses in the community. The specific objectives of the M-2 District are to: 1. Encourage the revitalization of the local industrial economy and historic port of Cape Charles and Northampton County. 2. Create family-wage employment and training opportunities for local residents. 3. Serve as a model and national prototype of an integrated approach to land development and industrial operations, embodying sustainable approaches to the local economy, environment, and culture. 4. Serve as a model for advancing the traditional settlement patterns of the Eastern Shore's towns and employment centers. 5. Encourage cost-effective approaches to resource conservation, wise use of renewable resources, and ecologically-based industrial development.	The intent of this basic zoning district is to accommodate and develop a district for business, office, light industrial, and specific public purpose and to encourage the formation and continuance of a quiet, compatible, and uncontested environment for business, professional, and light industrial firms and to discourage any uses capable of adversely affecting the specialized commercial and housing character of the Town.	The GBI H-1 District is a planned mixed industrial and employment park with a comprehensive development plan. The purpose of the district is to: 1. Encourage the revitalization of the local industrial economy and historic port of Cape Charles and Northampton County. 2. Create family-wage employment and training opportunities for local residents. 3. Serve as a model and national prototype of an integrated approach to land development and industrial operations, embodying sustainable approaches to the local economy, environment, and culture. 4. Serve as a model for advancing the traditional settlement patterns of the Eastern Shore's towns and employment centers. 5. Incorporate comprehensive, cost-effective approaches to resource conservation, wise use of renewable resources, and ecologically based industrial development in all aspects of design and development of the project.	Statement of Intent. The intent of this zoning district is to encourage a vibrant working waterfront area that is both a strong economic benefit to the Town with compatible new industry and employment uses, and a strong public and recreational value, with public gathering places and access to the water, a place for people to conduct business and to live, meet, relax, encounter nature, and learn of Cape Charles' working maritime and rail heritage and its strong historic traditions. Any new development shall provide and encourage public access to the water's edge as well as emphasize the pedestrian environment throughout the harbor. The south side of Mason Avenue shall provide a visually inviting connection to the harbor via continuous environments for multi-modal means of transportation and connect to the other existing and future links to Cape Charles and environs. This zoning district is also intended to implement the Cape Charles Harbor Area Conceptual Master Plan and Design Guidelines as an overall guide to the future development and redevelopment of the harbor area.
SPECIALITY DESIGNED AND DESIGNATED AREA: Mainstreet Mixed-Use Area					Mainstreet Mixed-use Area. 1. The area of the Harbor District along the south side of Mason Avenue, beginning at the western edge of Parcel 83A3-A-5, and projecting eastward to Nectarine Street, and southward a distance of 120 feet from the south side of Mason Avenue, is defined as the "Mainstreet Mixed-Use Area." All buildings in the Mainstreet Mixed-use Area shall meet the following requirements: a. Each building shall be a minimum of two stories and shall have only residential uses above the first floor. i. Residential portions of the building shall have at least two entrances/exit ways to the ground floor that are separate from the entrances/exit ways used by occupants of nonresidential portions of the building. ii. The primary entrance for the residential portion of the building shall be clearly visible from Mason

<u>NAME OF DISTRICT</u>	<u>Section 3.11 Industrial District M-1</u>	<u>Section 3.13 Industrial District M-2</u>	<u>Section 3.10 General Business/Light Industrial GBI</u>	<u>Section 3.14 General Business/Light Industrial H-1 (GBI H-1)</u>	<u>Section 3.9 Harbor District (revised 11-21-19)</u>
					Avenue and shall face Mason Avenue. b. Ground floor uses shall be limited to non-motor vehicle related uses, including restaurants, sales and rental of goods, merchandise or equipment establishments, banks and financial institutions, or offices. c. Drive-through facilities are prohibited. d. The primary façade shall face Mason Avenue. On a corner lot, each side adjacent to a street shall be considered a primary façade. e. All blocks shall align with and be equal in frontage length to the blocks on the north side of Mason Avenue so that existing viewsheds to the harbor are maintained. f. No building or structure shall exceed 40 feet in height. g. The front setback shall be the prevailing setback of adjacent properties along the south side of Mason Avenue. h. Development design standards in this area shall be subject to both the Historic District Review Board and the Harbor Area Review Board. i. Whenever the provisions of subsection 3.9.B.1 impose standards that are more restrictive than are required in or under any other statute, ordinance or resolution, these standards shall prevail, unless otherwise specified in this Zoning Ordinance.
MAXIMUM FAR (Floor Area Ratio)					The maximum FAR for the Harbor District shall be 1.75 by right and up to 2.0 with a Conditional Use Permit. Nothing in this paragraph shall modify or waive the open space requirement set forth in subsection F of this Article III.
PERMITTED USES	The following uses will be permitted by right: 1. All uses permitted in the CR, C-1, C-2 and C-3 Districts 2. Assembly of electrical appliances, electronic instruments and devices, radios, and phonographs. Also, the manufacturing of small parts, such as	The following uses are permitted by right: 1. Park, plaza, or natural area 2. Museum, cultural center, arboretum 3. Agriculture, horticulture, forestry, and/or fishery/aquaculture 4. Offices for telecommunications 5. Fire, police, rescue station 6. Medical care facility, outpatient only 7. Mail courier and parcel services 8. Printing service 9. Office, administrative, business and professional 10. Research, experimental testing, or development activities	The following uses shall be permitted by right; however, any outdoor storage shall be screened from view of all adjacent streets and property lines: 1. All permitted uses within the CR, C-1, C-2, and C-3 districts 2. Animal hospital and kennels provided that all animals are kept in soundproof, air-conditioned buildings 3. Assembly, processing, and bottling provided that there shall be no outdoor storage of equipment and materials	1. Adult and/or child day care center 2. Agriculture (excluding livestock), horticulture, forestry, and/or fishery/aquaculture 3. Art gallery 4. Business service establishment (including mail order or electronic catalog sales) 5. Conference center 6. Communication and telecommunications centers 7. Commuter parking lot 8. Educational institution 9. Flex industrial use 10. Fire, police, rescue stations	1. Accessory uses customarily associated and clearly incidental and subordinate to a principal use. 2. Food service-related uses of the following types: a. Bakeries, confectionaries, delicatessens, and catering services b. Cafes and coffee shops c. Delicatessens d. Eating and drinking establishments e. Ice cream parlors f. Restaurants 3. Marine-related uses of the following types: a. Bait and tackle shops b. Boat rentals

<u>NAME OF DISTRICT</u>	<u>Section 3.11 Industrial District M-1</u>	<u>Section 3.13 Industrial District M-2</u>	<u>Section 3.10 General Business/Light Industrial GBI</u>	<u>Section 3.14 General Business/Light Industrial H-1 (GBI H-1)</u>	<u>Section 3.9 Harbor District (revised 11-21-19)</u>
	coils, condensers, transformers, and crystal holders. 3. Automobile and truck painting, upholstering, repairing, rebuilding, recapping, battery manufacturing; boat building, repairing, repainting, rebuilding and reconditioning. 4. Blacksmith shops, welding or machine shops. 5. Building materials sales yards, lumberyards, feed and seed stores 6. Coal and wood yard 7. Contractors' equipment storage yards or plant storage or rental of equipment commonly used by contractors. 8. Pharmaceutical and medical laboratories 9. Manufacturing, processing, compounding, packaging or treatment of such products as bakery goods, candy, cosmetics, dairy products, drugs, perfume, pharmaceutical,	11. Concrete plant; manufacturing, sales, and distribution of concrete and related products 12. Railroad tracks, sidings, yards, or roundhouses 13. Marinas, docks, and wharves, if contiguous to the Cape Charles Harbor 14. Port facilities; marine, rail, trucking, and/or intermodal terminals, including transfer, storage, handling, inspection, processing, and/or transport of containerized, bulk, and/or other cargo 15. Warehousing facility D. Accessory Uses. Within the M-2 District, the following accessory uses shall be allowed: 1. Only those that are customarily accessory and clearly incidental and subordinate to the principal uses and structures. 2. Temporary licensed uses such as art festivals, displays, educational exhibits, outdoor gatherings or performances, and outdoor food markets.	4. Fire, police, emergency medical services and facilities 5. Machinery shops 6. Shipping and warehouses and storage facilities 7. Utility installations and warehousing 8. Any other light industry as determined by the Zoning Administrator to be a compatible use in this district.	11. Food production, packaging, packing, and canning 12. Hotel, serving as an ancillary and interrelated component of the Park 13. Library or other municipal building 14. Manufacture, processing, fabrication, assembly and/or storage of products such as but not limited to scientific and precision instruments, renewable energy technology components, photographic equipment, communications equipment, aircraft or satellite parts, computation equipment, drugs, medicines, medical equipment, pharmaceuticals, household items, glass products, electric lighting and wiring equipment, service industry machines, industrial controls, optical goods, and electrical equipment. 15. Medical care facility, outpatient only 16. Museum, cultural center, arboretum 17. Offices--administrative, business, professional, and telecommunication 18. Outdoor storage provided it shall be surrounded by landscaping sufficient to screen storage area in accordance with Appendix A, applicable category 19. Park, plaza, or natural area 20. Parking structure 21. Performing arts center 22. Post office, drop off and pick up, mail courier and parcel services 23. Printing service 24. Public utility service center, without outdoor storage 25. Rail and/or intermodal terminals, including transfer, storage, handling, inspection, processing and/or transport of containerized bulk and/or other cargo 26. Recording studio 27. Recreational facilities 28. Recycling drop-off collection center serving the Park 29. Research, experimental testing or development activities	c. Marinas, docks and wharves if contiguous to harbor d. Sail and canvas making and repair e. Ship stores and chandleries 4. Office and institutional uses of the following types: a. Business studios b. Civic and government facilities c. Educational facilities d. Financial institutions b. Medical clinics c. Medical, dental and other laboratories d. Offices e. Office supply stores f. Real estate sales and rentals 5. Recreational, cultural, and entertainment uses of the following types: a. Art galleries and art studios b. Athletic clubs c. Conference centers d. Health and fitness facilities e. Libraries and galleries f. Museums and cultural centers g. Outdoor recreational uses h. Parks 6. Retail goods establishments of the following types with 2,500 square feet or less of gross floor area: a. Antique shops b. Bookstores, new and used c. Camera shops d. Candy stores e. Clothing stores f. Dry goods stores g. Florists, gift shops, card shops, and stationery shops h. Grocery stores i. Music stores j. Newsstands k. Tobacco stores l. Upholstering shops and fabric stores m. Video stores n. Watch and jewelry stores 7. Retail service establishments of the following types with 2,500 square feet or less of gross floor area:

<u>NAME OF DISTRICT</u>	<u>Section 3.11 Industrial District M-1</u>	<u>Section 3.13 Industrial District M-2</u>	<u>Section 3.10 General Business/Light Industrial GBI</u>	<u>Section 3.14 General Business/Light Industrial H-1 (GBI H-1)</u>	<u>Section 3.9 Harbor District (revised 11-21-19)</u>
	toiletries, and similar products 10. Manufacturing of pottery and figurines or similar ceramic products 11. Manufacturing of pottery and figurines or similar ceramic products 12. Monumental stone works 13. Manufacturing and maintenance of electric and neon signs, billboards, commercial advertising structures, and the like 14. Sheet metal shops 15. Wholesale business and storage warehouses 16. Any other use as determined by the Zoning Administrator to be a compatible use with this district			30. Restaurant, indoor and outdoor (excluding drive-through) 31. Telecommunications, television, or radio microwave dishes or antennas 32. Training center (excluding rehabilitation and institutional facilities) 33. Utility generating plant and transmission facilities using renewable energy sources 34. Utility installations 35. Utility substations provided storage or maintenance facilities shall not be permitted and provided further that utilities substations, other than transformers, shall be landscaped in accordance with Appendix A, applicable category, sufficient to screen area 36. Warehousing facility (excluding mini-storage facility) 37. Water storage tank 38. Wholesale trade establishment	a. Beauty and barbershops b. Bicycle, moped, and street legal golf cart sales and rentals c. Blueprinting shops d. Dressmaking, tailoring, millinery, dry cleaning 8. Public Utility Facility
CONDITIONAL USES	1. Heliports	Within the M-2 District, the following conditional uses shall be allowed, subject to the issuance of a Conditional Use Permit 1. Recycling drop-off collection centers 2. Recording studio 3. Manufacture, processing, fabrication, and/or assembly of products such as scientific and precision instruments, renewable energy technology components, photographic equipment, communication equipment, aircraft or satellite parts, computation equipment, drugs, medicines, medical equipment, pharmaceutical, household items, glass products, electrical	Within the GBI District, there shall be no conditional uses permitted.	Within the GBI H-1, the following conditional uses may be allowed, subject to the issuance of a Conditional Use Permit. 1. Structures, other than buildings, exceeding 50 feet 2. Buildings over 40 feet but equal or less than 50 feet or building or structure other than building may be constructed to a maximum height of 75 feet if the building is set back at least 125 additional feet from the required setback for all yards abutting residential properties.c	The following uses may also be permitted, subject to securing a conditional use permit as provided for in this ordinance: 1. Marine-related uses of the following types: a. Boat and marine engine repair shops b. Boatels c. Marine and sports equipment consignment stores 2. Markets of the following types: a. Crafts markets b. Farmers' markets c. Watermen's markets 3. Recreational, cultural, and entertainment uses of the following types:

<u>NAME OF DISTRICT</u>	<u>Section 3.11 Industrial District M-1</u>	<u>Section 3.13 Industrial District M-2</u>	<u>Section 3.10 General Business/Light Industrial GBI</u>	<u>Section 3.14 General Business/Light Industrial H-1 (GBI H-1)</u>	<u>Section 3.9 Harbor District (revised 11-21-19)</u>
		lighting and wiring equipment, service industry machines, lithographic and printing processes, industrial controls, optical goods, and electrical equipment 4. Food production, packaging, packing and canning 5. Wood products manufacturing 7. Educational institution 8. Conference center 9. Outdoor storage provided it shall be surrounded by wax myrtle or red tip photinia installed on 4-foot centers and by evergreen trees with a minimum caliper of 2.5 inches on 15-foot centers, except for entrances and exits. 10. Public utilities substations provided storage or maintenance facilities shall not be permitted and provided further that utilities substations, other than transformers, shall be surrounded by wax myrtle or red tip photinia installed on 4-foot centers and by evergreen trees with a minimum caliper of 2.5 inches on 15-foot centers, except for entrances and exits, and provided also transformer vaults for underground utilities and the like shall require only wax myrtle or red tip photinia installed on 4-foot centers, solid except for access opening 11. Any telecommunication, television, or radio microwave dishes or antennas 12. Utility generating plant and transmission facility using renewable energy sources 13. Performing arts center 14. Public utility service center 15. Water storage tank 16. Utility installations 17. Recreational facilities 18. Structures, other than buildings, exceeding 50 feet			a. Assembly halls b. Auditoriums c. Commercial recreational uses d. Entertainment establishments e. Theaters 4. Retail goods establishments of the following types with more than 2,500 square feet of gross floor area: a. Antique shops b. Bookstores, new and used c. Camera shops d. Candy stores e. Clothing stores f. Dry goods stores g. Florists, gift shops, card shops, and stationery shops h. Grocery stores i. Music stores j. Newsstands k. Tobacco stores l. Upholstering shops and fabric stores m. Video stores n. Watch and jewelry stores 5. Retail service establishments of the following types with more than 2,500 square feet of gross floor area: a. Beauty and barbershops b. Bicycle moped, and golf cart sales and rentals c. Blueprinting shops d. Dressmaking, tailoring, millinery, dry cleaning 6. Single-family and multi-family dwellings provided the following requirements are met: a. All dwelling units shall have direct access to the street level. Means of access may be shared with other dwelling units, but not commercial uses. Access through a commercial establishment on the first level is not permitted. b. Dwelling units shall occupy no more than 50 percent of the first floor of any building.

<u>NAME OF DISTRICT</u>	<u>Section 3.11 Industrial District M-1</u>	<u>Section 3.13 Industrial District M-2</u>	<u>Section 3.10 General Business/Light Industrial GBI</u>	<u>Section 3.14 General Business/Light Industrial H-1 (GBI H-1)</u>	<u>Section 3.9 Harbor District (revised 11-21-19)</u>
					c. The first floor of all building facades adjacent to a public street shall have a commercial appearance and shall not have a residential appearance. 7. Other miscellaneous uses of the following types: a. Bed and breakfasts and tourist homes, provided the following requirements are met: (1.) The owner and family must occupy the residence. The owner and his/her appointed agent are responsible for supervising guests. (2.) The single-family dwelling appearance must be maintained. (3.) Parking should be considered on a case-by-case basis as part of the conditional use application, ensuring adherence to Section 4.8.E.2 (Table of Parking Standards) using both on and off-street parking areas. (4.) A sign no larger than four square feet shall be permitted. (5.) The number of room accommodations shall be subject to recommendation by the Planning Commission and approved by the Town Council. (6.) The dwelling must meet all of the requirements of Section 3.9.D.6. b. Childcare and childcare education centers c. Hotels and motels d. Laundromats e. Liquor and package stores

<u>NAME OF DISTRICT</u>	<u>Section 3.11 Industrial District M-1</u>	<u>Section 3.13 Industrial District M-2</u>	<u>Section 3.10 General Business/Light Industrial GBI</u>	<u>Section 3.14 General Business/Light Industrial H-1 (GBI H-1)</u>	<u>Section 3.9 Harbor District (revised 11-21-19)</u>
					f. Off-site parking 8. Any other use which is compatible in nature with the foregoing permitted and conditional uses and which the Zoning Administrator determines to be compatible with the intent of the District and is concurred with by the Planning Commission.
ACCESSORY USES		Within the M-2 District, the following accessory uses shall be allowed: 1. Only those that are customarily accessory and clearly incidental and subordinate to the principal uses and structures. 2. Temporary licensed uses such as art festivals, displays, educational exhibits, outdoor gatherings or performances, and outdoor food markets.	Within the GBI District, the following accessory uses shall be permitted: 1. Those uses customarily associated and clearly incidental and subordinate to the principal uses and structures and temporary licensed uses such as festivals, displays, outdoor entertainment, outdoor gatherings, performances, outdoor open-air markets.	Within the GBI H-1 District, the following accessory uses shall be allowed: 1. Only those that are customarily accessory and clearly incidental and subordinate to the principal uses and structures. 2. Temporary licensed uses such as festivals, displays, educational exhibits, outdoor gatherings or performances, and outdoor food markets.	
HEIGHT REGULATIONS	45 ft in height from the adjacent ground level.	45 ft in height for buildings 50 ft in height for structures other than bldgs.	45 ft in height from the adjacent ground level.	40 ft. in height for buildings 50 ft. in height for structures other than bldgs..	40 ft in height (up to 55 ft with Conditional Use Permit) – limitation on block of building to 80 linear feet.
AREA REQUIREMENTS Lot Width @Setback Area Requirements Side Yard Rear Yard Front Setback	100 Feet 15,000 sq. ft 10 ft. 20 ft. 35 ft.	100 ft. 15,000 sq. ft None or 5 ft (between bldgs.) or 10 ft adjacent to street 20 ft. 10 ft min and 25 ft. max	75 ft. NONE 50 ft. 50 ft NONE	100 ft. 15,000 sq. ft. None or 5 ft (between bldgs.) or 10 ft adjacent to street 20 ft. 10 ft min	80 ft. and Lot Depth of 140 ft. 11,200 sq. ft NONE NONE 30 ft. of RPA (HARBOR) or Marina Road, Bayshore Road or Parcel 83A3-A-10 (exemptions for water-dependent facilities)
OTHER REQUIREMENTS		Building Coverage: No more than 60% of the lot may be covered by structures. Additional Buffer requirements if adjacent to Residential Districts – 50 ft. separation of road right-of way, golf course, lake, drainage easement, natural area, or landscaped buffer yard.		Building Coverage: No more than 50% of the lot may be covered by structures. Additional Buffer requirements: if adjacent to Residential Districts, a 200 ft. nature buffer and no loading docks, loading facilities or loading bays shall be permitted within 200 ft of residential zoning. Same requirement if adjacent to Conservation/Open Space but buffer is 100 ft.	Open Space Requirement: 25% of lot

<u>NAME OF DISTRICT</u>	<u>Section 3.11 Industrial District M-1</u>	<u>Section 3.13 Industrial District M-2</u>	<u>Section 3.10 General Business/Light Industrial GBI</u>	<u>Section 3.14 General Business/Light Industrial H-1 (GBI H-1)</u>	<u>Section 3.9 Harbor District (revised 11-21-19)</u>
ADDITIONAL DEVELOPMENT REQUIREMENTS		1. Placement of drives and parking areas. Excluding entrances and exits, no drive or parking area shall be located within any front yard or minimum side and rear yards. 2. Placement of drives and parking areas when adjacent to public right-of-way. Excluding entrances and exits, no drive or parking area shall be located closer than twenty feet from any public right-of-way line for a contiguous public street. Landscaping, hedges, or fast-growing shrubs on four-foot centers on a gradual berm shall be installed within a portion of this buffer area unless to do so will jeopardize existing natural vegetation within the buffer area. 3. No parking or drive aisles shall be located within the required buffer yards. 4. No outside storage of parts, materials, fossil fuels, raw materials, or petroleum shall be permitted within the M-2 District. 5. No outside manufacturing, assembly, or servicing of products used on the property or trucks or automobiles used in conjunction with or for the transport of materials to the district shall be allowed. 6. Any exterior lighting on the property shall be directed down and away from any area zoned R (Residential) or PUD where residential development is a permitted use, to prevent the disbursement or bleeding of light beyond the limits of the developed portions of the property. 7. No outside loudspeakers, intercoms, sirens, paging systems, whistles, horns, bells, or other devices designed to or which transmit a warning message or other communication or signal audible outside any building shall be allowed on the property. No equipment used outdoors, excluding half-ton trucks, shall be equipped with or use any device		1. Placement of drives and parking areas. Excluding entrances and exits, no drive or parking area shall be located within any front yard or minimum side or rear yards. 2. Placement of drives and parking areas when adjacent to public right-of-way. Excluding entrances and exits, no drive or parking area shall be located closer than twenty feet from any public right-of-way line for a contiguous public street. Landscaping, hedges, or fast-growing shrubs on a gradual berm shall be installed within a portion of this buffer area unless to do so will jeopardize existing natural vegetation within the buffer area. See Appendix A, Category I for requirements. 3. All parking must comply with Appendix B - Off Street Parking and Loading Requirements 4. Parking is not permitted in the front yard of a lot. 5. No parking or drive aisles shall be located within the required buffer yards. 6. No outside storage of parts, materials, fossil fuels, raw materials, or petroleum shall be permitted within the GBI H-1 District. 7. Any exterior lighting on the property shall be directed down and away from any area zoned R (residential) or PUD where residential development is a permitted use to prevent the disbursement or bleeding of light beyond the limits of the developed portions of the property. 8. No outside loudspeakers, intercoms, paging systems, whistles, horns, bells, or signals audible outside any buildings shall be allowed on the property. Any and all Occupational Safety and Health Administration (OSHA) requirements shall be adhered to; any OSHA-accepted alternative warning devices are encouraged.	

<u>NAME OF DISTRICT</u>	<u>Section 3.11 Industrial District M-1</u>	<u>Section 3.13 Industrial District M-2</u>	<u>Section 3.10 General Business/Light Industrial GBI</u>	<u>Section 3.14 General Business/Light Industrial H-1 (GBI H-1)</u>	<u>Section 3.9 Harbor District (revised 11-21-19)</u>
		to emit a warning noise or audible signal while in use on the property. 8. No dust, smoke, or noxious odors shall be released from any structure, building, or equipment used on the property. 9. No delivery or transmission of materials or products shall be permitted to or from the property by truck or rail before 8 a.m. and after 9 p.m. Monday through Saturday and no such deliveries to or from the property by rail or truck, excluding half-ton trucks, shall occur on Sunday.		9. No dust, smoke, or noxious odors shall be released from any structure, building, or equipment used on the property. 10. No delivery or transmission of materials or products shall be permitted to or from the property by truck or rail between 11 p.m. and 5 a.m. Monday through Sunday.	

OTHER REQUIREMENTS COMPARISON CHART BETWEEN INDUSTRIAL DISTRICT M-2 vs. HARBOR DISTRICT

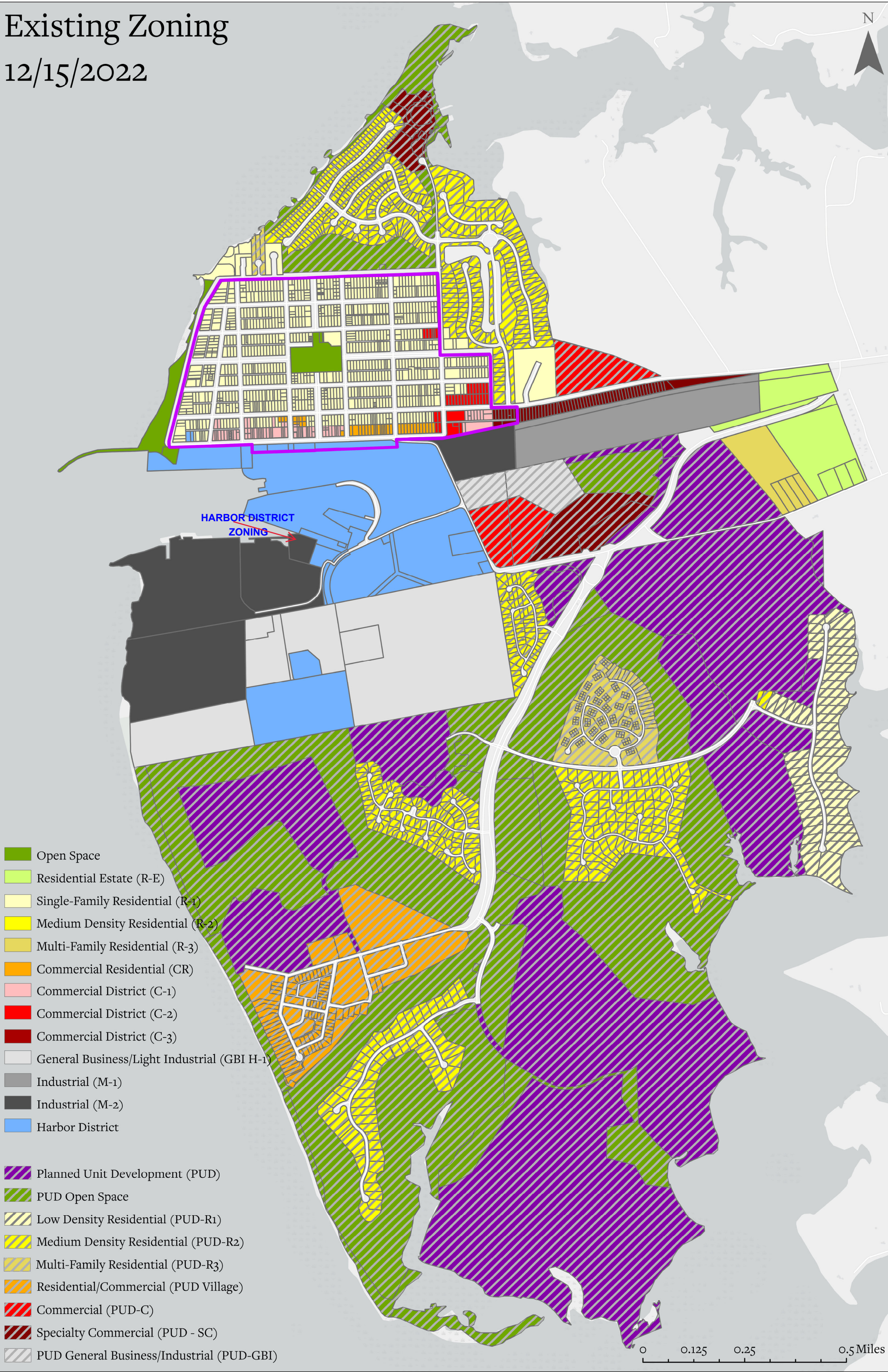
<u>Section 3.13 Industrial District M-2</u>	<u>Section 3.9 Harbor District (revised 11-21-19)</u>
Minimum lot requirements Lot Area - 15,000 square feet Lot Width - 100 feet at setback line Yard requirements Minimum Front Yard - 10 feet Maximum Front Yard - 25 feet Minimum side yard between buildings - none or 5 feet Minimum side yard adjacent to street - 10 feet Minimum rear yard - 20 feet	Minimum Lot Requirements: Lot Area – 11,200 square feet Lot Frontage – 80 feet Lot Depth – 140 feet
Maximum building height Buildings - 45 feet Structures other than buildings - 50 feet	HEIGHT: a. Measurement criteria. For the purpose of the Harbor District, height means the vertical distance measured from the crown of the nearest street to the top of the highest roof beams on a flat or shed roof, the deck level on a mansard roof, and the average distance between the eaves and the ridge level for gable, hip, and gambrel roofs. When the crown of the nearest street has an elevation greater than three feet above the adjacent ground elevation of the building, the adjacent ground elevation shall be used in place of the crown of the nearest street when measuring height. Note: Mechanical equipment, chimneys, air conditioning units, elevator penthouses, church spires and steeples, water towers, and similar appurtenances are exempted from height restrictions. However, these exclusive items may not exceed the height limit by more than fifteen feet. b. Maximum permitted height. No building shall have the same continuous elevation for a distance of more than 80 linear feet. Building heights greater than 40 feet and equal to or less than 55 feet may also be permitted in other parts of the Harbor District, subject to securing a conditional use permit as provided for in this ordinance. When reviewing a conditional use permit application for the height of a building in the Harbor District, the following criteria shall be met: (1.) On each block, the average height of all buildings greater than 40 feet and equal to or less than 55 feet in height shall not exceed 45 feet. For the purpose of this section, a block is defined as the property fronting on one side of a right-of-way or waterway, and lying between two intersecting rights-of-way or otherwise limited by a waterway or other physical barrier of such nature as to interrupt the continuity of development. (2.) The application shall adhere to policies established in the Cape Charles Harbor Area Conceptual Master Plan and Design Guidelines, the Comprehensive Plan, and other officially adopted plans of the Town.

<u>Section 3.13 Industrial District M-2</u>	<u>Section 3.9 Harbor District (revised 11-21-19)</u>
Building coverage. No more than 60 percent of the land area of the lot may be covered by structures Buffer yards. Where the M-2 District adjoins R-E, R-1, R-2, or R-3 Districts, buffer yards are required as follows: a. When a zoning lot within the M-2 District adjoins R-E, R-1, R-2, or R-3 Districts, the following shall be required along all lot lines within the M-2 District adjoining the R-E, R-1, R-2, or R-3 Districts: i. a 50-foot separation of road right-of-way, golf course, lake, drainage easement, natural area, or landscaped buffer yard	Setback Regulations. a. Waterfront setback requirement. No building or structure shall be located within 30 feet of the Cape Charles Harbor or within 30 feet of a Resource Protection Area not part of an Intensely Developed Area (IDA), or within 30 feet of Marina Road, Bayshore Road, or Parcel 83A3-A-10. This requirement shall not preclude any other applicable regulations, including but not limited to those associated Chesapeake Bay Preservation Areas. The following shall be exempt from the waterfront setback requirement when permitted by all other applicable regulations: (1.) Water-dependent facilities as defined by Zoning Ordinance Section 7.3. (2.) Walkways, promenades, decks, gazebos, permitted signs, and similar structures intended to accommodate or provide amenities for pedestrians
Additional Development Requirements 1. Placement of drives and parking areas. Excluding entrances and exits, no drive or parking area shall be located within any front yard or minimum side and rear yards. 2. Placement of drives and parking areas when adjacent to public right-of-way. Excluding entrances and exits, no drive or parking area shall be located closer than twenty feet from any public right-of-way line for a contiguous public street. Landscaping, hedges, or fast-growing shrubs on four-foot centers on a gradual berm shall be installed within a portion of this buffer area unless to do so will jeopardize existing natural vegetation within the buffer area. 3. No parking or drive aisles shall be located within the required buffer yards. 4. No outside storage of parts, materials, fossil fuels, raw materials, or petroleum shall be permitted within the M-2 District. 5. No outside manufacturing, assembly, or servicing of products used on the property or trucks or automobiles used in conjunction with or for the transport of materials to the district shall be allowed. 6. Any exterior lighting on the property shall be directed down and away from any area zoned R (Residential) or PUD where residential development is a permitted use, to prevent the disbursement or bleeding of light beyond the limits of the developed portions of the property.	Required open space. Open space shall be provided equivalent to twenty-five (25) percent of lot area. For the purpose of this section, the term open space shall be construed to consist of open space amenities and spacing between buildings. Open space amenities include plazas, esplanades, landscaped areas, walkways, public recreational facilities, and the like designed and maintained for use by pedestrians and open to the public. Such open space amenities shall not be open to vehicular uses except for public safety purposes, and shall be directly accessible from street level. Where feasible, open space shall be designed to serve as part of a coordinated pedestrian circulation system.
	Utilities. All utilities shall be installed underground.
	Harbor Development Certificate required. No zoning clearance shall be issued for location, construction, or enlargement of any building or structure within the Harbor District until a Harbor Development Certificate has been issued. Submission of a Harbor Development Certificate Application and approval by the Town Council shall be required to obtain a Harbor Development Certificate. [See Cape Charles Zoning Ordinance Section 3.9 (I) (1 thru 4) for full process and requirements of Harbor Development Certificate]

<u>Section 3.13 Industrial District M-2</u>	<u>Section 3.9 Harbor District (revised 11-21-19)</u>
7. No outside loudspeakers, intercoms, sirens, paging systems, whistles, horns, bells, or other devices designed to or which transmit a warning message or other communication or signal audible outside any building shall be allowed on the property. No equipment used outdoors, excluding half-ton trucks, shall be equipped with or use any device to emit a warning noise or audible signal while in use on the property. 8. No dust, smoke, or noxious odors shall be released from any structure, building, or equipment used on the property. 9. No delivery or transmission of materials or products shall be permitted to or from the property by truck or rail before 8 a.m. and after 9 p.m. Monday through Saturday and no such deliveries to or from the property by rail or truck, excluding half-ton trucks, shall occur on Sunday.	

Existing Zoning

12/15/2022



Agenda Item 9

Standing Staff Reports



Municipal Corporation of Cape Charles

JULY 2023 MONTHLY REPORT

Katie H. Nunez, Planning/Zoning Administrator

A. SUBDIVISION AGENT:

1. With the execution of the amendment to the Annexation Agreement which was done by the Town Council on 4/20/2023, the Town is able to resume receiving subdivision plats since there is now a mechanism regarding future water & sewer infrastructure capital costs.
 - Therefore, I have conducted the review of the Village N Preliminary Plat which is for 58 lots on Tax Map #90-30-P14A which is located as you come into Bayside Village on the right-hand side just before Muirfield Drive. Comments and corrections were provided to Bay Creek on this preliminary plat and were resubmitted and I approved the preliminary plat the week of May 12, 2023.
 - Therefore, I have informed Beacon Homes, the developer for the Village J Preliminary Plat, that they can move forward again on their subdivision project which is for 48 duplex units on Tax Map #90-30-P20 which is located to the west of the Maintenance Building and north of The Hollies Subdivision, just off Palmer Drive.
2. 600 Washington Avenue – subdivide parcel into 2 legal, conforming lots.
3. Reviewed re-subdivision plat for 3 lots off of Carousel Place and provided comments to engineer and attorney.
4. Reviewed and signed re-subdivision plat for Muirfield Lots 23 and 24 to combine into one lot.
5. Approved application to vacate the lot line between Tax Map #83A3-1-340 and 83A3-1-337 at 621 Tazewell Avenue for Kenneth & Jill Monarch

B. 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.]

1. April 11, 2023 @ 10 a.m. – Appeal of Decision of Zoning Administrator re: Alley behind Washington Avenue properties from Pine to Strawberry Street – BZA overturned Zoning Administrator decision – this alley is private, not a public alley, and does not get factored into the zoning ordinance requirements that mention alleys, since all alleys must meet the definition in the zoning ordinance for alleys which stipulate a public alley requirement.
2. May 9, 2023 @ 10:00 a.m.– Parking Variance Application for 413 Jefferson Avenue which was approved.

C. HARBOR DEVELOPMENT CERTIFICATES: None.

D. WETLANDS and COASTAL SAND DUNE BOARD

1. June 21, 2023 @ 5:30 pm - public hearing on JPA application from Bay Creek at Cape Charles Community Association Inc. for beach nourishment behind existing stone breakwaters on the Chesapeake Bay just off The Colony subdivision. Wetlands Permit approved with expiration date of 3 years from meeting date.

E. DEPARTMENTAL STAFFING

Alyce Crockett, PT Administrative Assistant, tendered her resignation and her last day was May 19, 2023. I have hired Maureen Meditz who already works for the Town in a part-time capacity for the library. She will begin with our department on Tuesday, July 11, 2023.