Planning Commission & Town Council

Joint Work Session Agenda

Cape Charles Civic Center – 500 Tazewell Avenue

April 15, 2024

6:00 p.m.

1. Call to Order - Planning Commission
    a. Roll call and establish a quorum.

2. Call to Order - Town Council
    a. Roll call and establish a quorum

3. Consent Agenda
    a. Approval of agenda format

4. Order of Business
    a. Staff Report - Draft Zoning Ordinance Review (new sections as prepared by Katie Nunez as a result of prior 2 work sessions)
        1. Attachment 1 - Demolition Policy
        2. Attachment 2 - Proposed Outdoor Lighting Ordinance
        3. Attachment 3 - Proposed Solar Panels
        4. Attachment 4 - Proposed Sidewalk Ordinance
        5. Attachment 5 - Proposed Language for ADA/Disability Consideration
        6. Attachment 6 - Erosion and Sediment Ordinance Draft
        7. Attachment 7 - HRDB Appeals to Town Council Consistency Review
        8. Attachment 8 - Draft Sign Ordinance
        9. Attachment 9 - Industrial Zoning District Revision (being proofed as of 3/8/2024)
        10. Attachment 10 - Tracking Chart (in process as of 3/8/2024)
        11. Attachment 11 - Updated Redline Document (in process as of 3/8/2024)
        12. Attachment 12 - Chesapeake Bay Preservation Act Revisions (in process as of 3/8/2024)

    b. Discussion of future meeting schedule

5. Town Council Adjournment

6. Planning Commission Adjournment

PLANNING COMMISSION
STAFF REPORT

Meeting Date: February 29, 2024
Prepared by: Katie H. Nunez, Planning & Zoning Administrator
Date: February 12, 2024
JOINT WORK SESSION: DRAFT ZONING ORDINANCE REVIEW

From our last joint work session, this is the list of items that I was tasked to draft new language for consideration by the Town Council and Planning Commission:

1. Demolition Policy (consistency review between CCZO Section 4.9, CCZO Article VIII (Historic District Overlay) and Town Code (Chapter 8, Article III – Unsafe Buildings or Structures – **SEE CONSISTENCY REVIEW by KATIE NUNEZ**

2. Dark Skies Lighting Provision/Section – **SEE PROPOSED OUTDOOR LIGHTING ORDINANCE – this will go into CCZO Section 4 as its own section, either before or after the Landscaping and Screening Regulations (Section 4.4) and I would delete from Section 4.4 (E) – Exterior Lighting**

3. Wind Turbines/Solar Panels or Power – **SEE PROPOSED SOLAR PANELS – PERFORMANCE STANDARDS/DESIGN REGULATIONS and recommendation to delete WIND TURBINE Section in CCZO today.**

4. Sidewalk language -add to the Development Standards for Residential Zoning Districts – **SEE PROPOSED SIDEWALK ORDINANCE**

5. ADA Compliance language for housing development components in the Commercial Zoning Districts as well as requirements of Fair Housing Act – **SEE PROPOSED LANGUAGE FOR ADA/DISABILITY CONSIDERATION RE ZONING ORDINANCE**

6. The state released the Model Erosion & Sediment Control Ordinance on December 27, 2023. **SEE PROPOSED EROSION AND SEDIMENT CONTROL ORDINANCE DRAFT THAT HAS BEEN MODIFIED FOR CAPE CHARLES WHICH WOULD COMPLETELY REPLACE THE CURRENT APPENDIX D.**

7. As a result of a recent appeal to Town Council of an HDRB Decision, it was noted that we need to revise the section of Article VIII, Section 8.33 Appeals to be consistent with the Historic District Guidelines - **SEE CONSISTENCY REVIEW DOCUMENT by KATIE NUNEZ**

8. Combine Current Industrial Zoning Districts. **KATIE STILL WORKING ON THIS.**

9. All changes reached during our two work sessions are being made to the draft zoning ordinance document and will be reflected in the document that will be distributed for the Joint Work Session Meeting on February 29, 2024. **THIS IS STILL BEING PROOFED BY KATIE NUNEZ.**

10. The only section of the Draft Zoning Ordinance that the group as a whole has not gone through is the DEFINITIONS Section. At the Joint Work Session, we will provide an opportunity to review and propose changes to the DEFINITIONS Section. – **PLEASE BRING YOUR GREEN BINDER FROM LAST FALL OF THE DRAFT ZONING ORDINANCE so that we can review the DEFINITIONS SECTION.**

11. The Sign Ordinance draft is almost completed by the Planning Commission. As you may recall, the PC formed a Sign Subcommittee last year and they worked on & developed a proposed ordinance from the Model Template Sign Ordinance from the Local Government Attorney's Association. This draft document is now being vetted by the Planning Commission with further changes and they hope to conclude this review at their meeting on Wednesday, February 21, 2023. **This draft document will be released as soon as it is finalized by the Planning Commission.**

Attachment 1

Demolition Policy (consistency review between CCZO Section 4.9, CCZO Article VIII (Historic District Overlay) and Town Code (Chapter 8, Article III – Unsafe Buildings or Structures

REVIEW OF DEMOLITION and DEMOLITION BY NEGLECT ORDINANCES/CODES

for CONSISTENCY

By Katie H. Nunez, Planning Director & Zoning Administrator

Below are the three provisions in our various legislative documents that address demolition of buildings.

A. There is a general provision under CCZO Article IV, Section 4.9 (the blue chart below) that governs both the right for demolition and if a property is being maintained (or rather, not maintained), then there is a provision within this section that addresses Demolition-By-Neglect. This section applies to all properties, regardless of zoning district***. I am recommending a chance in Section 4.9 (A) that directs any property located in the Historic District to the Historic District Overlay Ordinance and specifically to Section 8.21 and then under Section 4.9 (B), I am recommending just a little tweak to the language that references properties in Historic District Overlay and states that they need to comply with both this section and Section 8.22.***

B. Within the Historic District Overlay Ordinance (Article VIII), Section 8.21 is called "Demolition: Alternate Procedure: Offer to Sell" and there is Section 8.22 called "Maintenance and Repair Required" – PINK CHART BELOW

   I am proposing a minor correction in Section 8.21 (B) to reflect Code of Virginia Section 15.2-2306. Razing or demolition of a contributing structure must follow the appraisal procedures and notification to Town Council before any such action could occur. At the end of this section, I am recommending adding a new Item (7) to make it clear that a building permit is required for demolition, if Town Council approved it for demolition.

   I am proposing a minor addition in Section 8.22 that indicates that zoning violations may be pursued simultaneously by the Zoning Administrator with any violation proceedings initiated by the Code Official under the Town Code section.

C. Town Code Chapter 8, Article III – Unsafe Buildings or Structures (GREEN CHART BELOW. This lays out the authority of the Building Official relative to the Building Code for the Town as a whole.

   I am not recommending any changes to this section of the Town Code and I find referencing back to it within the context of the above two Zoning Ordinance Articles appropriate.

ZONING ORDINANCE SECTION 4.9 – DEMOLITION POLICY GUIDELINES

A. The owner of a building or structure within the Town shall be entitled to raze or demolish such building or structure provided that he has applied to the Building Official for such right.

1.If the property is located in the Historic District Overlay, then the owner must follow Section 8.21. ~~The owner must first try to sell the property at the appraised price (the appraisal to be at the owner's expense).~~

~~2. The owner must have the property for sale, actively marketing and advertising it for sale for that appraised price for a period of one year.~~

~~3. If unsold, the Town may elect to purchase the property at the appraised price or permit the demolition.~~

B. Demolition-By-Neglect. Any officially designated contributing building, structure or site within the Historic District Overlay must not only comply with this section but also with Section 8.22. All other properties, structures or sites within the Town shall not be ~~No officially designated contributing building, structure, or site within the Town shall be~~ allowed to deteriorate due to neglect by the owner which would result in violation of the intent of this ordinance. Demolition-by-neglect shall include any one or more of the following courses of action or inaction:

1. Deterioration of the exterior of a building to the extent that it creates or permits a hazardous or unsafe condition.

2. Deterioration of exterior walls or other vertical supports, horizontal members, roofs, chimneys, exterior wall elements such as siding, wooden walls, windows, brick, plaster or mortar to the extent that it adversely affects the character of the district or could lead to irreversible damage to the structure.

3. Defective or deteriorated flooring or floor supports, or flooring or floor supports of insufficient size to carry imposed loads with safety.

4. Any fault in the building or structure which renders the same structurally unsafe or not properly watertight. If the Building Official determines that a structure is being demolished by neglect, he or she shall send notification to the owners stating the reasons therefore and shall give the owner thirty days to respond with a plan of action and ninety days from the date of the notice in which to commence work. If appropriate action is not taken at this time, the Zoning Administrator may initiate appropriate legal action as provided further in this chapter.

C. Penalties for Noncompliance.

1. Failure to correct a defect after a notice that the Building Official has determined that a property is being demolished by neglect shall constitute a misdemeanor. Such misdemeanor shall be punished as set forth in §§18.2-9, 18.2-11 and §15.2- 1429 of the Code of Virginia 1950 as amended. Each day that the violation continues is a separate offense.

2. Any property owner in the District who does not obtain approval as required within this ordinance shall be guilty of a misdemeanor and may be punished as set forth in §§18.2-9, 18.2-11 and §15.2-1429 of the Code of Virginia 1950 as amended.

3. Nothing in this chapter shall be deemed to restrict or prohibit the Town Council to acquire in any legal manner any historic area, site, building, or structure or the land pertaining thereto for the use, observation, education, pleasure, and welfare of the citizens of the Town.

ZONING ORDINANCE SECTION 8.21 – DEMOLITION: ALTERNATE PROCEDURE: OFFER TO SELL

A. Prior to approval of any application for demolition, modification, moving, or removal of a contributing structure within the Cape Charles Historic District; the zoning administrator, the Historic District Review Board, or the Town Council, as applicable, shall review the application for its compatibility with each of the following guidelines.

1. Whether or not the contributing structure is of such architectural or historic interest that its removal would be to the detriment of the character and integrity of the Historic District.
2. Whether or not the contributing structure is of such interest or significance that it would qualify as a National, State, or local historic landmark.
3. Whether or not retention of the contributing structure would help to preserve and protect a historic place or area of historic interest in the Town.
4. Whether or not plans for future use of the site after demolition are appropriate, compatible, sympathetic, and complimentary to the character and integrity of the Historic District.

No subsequent application under Section 8.21A regarding the contributing structure may be made until more than one year after a final denial by the Town Council.

B. In addition to the right of appeal herein elsewhere set forth, the owner of a contributing structure in the Cape Charles Historic District shall as a matter of right be entitled to ~~move, remove, modify~~, raze or demolish ~~all or part of such~~ a contributing structure provided that:

1. The owner has applied to the Town Council for such right.

2. The owner has for the applicable period of time set forth in the time schedule in Section 8.21.B.4., and at a price reasonably related to the fair market value of the contributing structure and the land, other improvements and appurtenances pertaining thereto (assuming the buyer will be required to preserve and restore the contributing structure in place on the property) as determined by the average of two (2) real estate appraisals from two (2) different appraisers, made a bona fide, public offer (pursuant to the requirements of this Section 8.21 B.) to sell such contributing structure, and the land, other improvements and appurtenances pertaining thereto (collectively, the "Property"), to the Town and any other person, firm, corporation, government or political subdivision or agency thereof, which gives reasonable assurance that it is willing to preserve and restore the contributing structure in place. If the two (2) required real estate appraisals submitted by the Owner differ by more than ten percent (10%), the owner must have the Property appraised a third time at his own expense by a third real estate appraiser selected by the Town. The bona fide offer to sell must be at a price not more than the average of the two such appraisals that are closest to one another.

3. No bona fide contract, binding upon all parties thereto, shall have been executed for the sale of any such Property thereto, prior to the expiration of the applicable time period set forth in the time schedule in Section 8.21.B.4. Any appeal which may be taken to the court from the decision of the Town Council, whether instituted by the owner or by any other proper party, notwithstanding the provisions heretofore stated relating to a stay of the decision appealed from, shall not affect the right of the owner to make the bona fide offer to sell referred to above.

4. The time schedule for offers to sell shall be as follows:

a. Three (3) consecutive months when the offering price is less than twenty-five thousand dollars.
b. Four (4) consecutive months when the offering price is twenty-five thousand or more but less than forty thousand dollars.
c. Five (5) consecutive months when the offering price is forty thousand or more but less than fifty-five thousand dollars.
d. Six (6) consecutive months when the offering price is fifty-five thousand dollars or more but less than seventy-five thousand dollars.
e. Seven (7) consecutive months when the offering price is seventy-five thousand dollars or more but less than ninety thousand dollars.
f. Twelve (12) consecutive months when the offering price is ninety thousand dollars or more.

5. Before making a bona fide offer to sell, the owner shall first file a statement with the Zoning Administrator along with the appraisals required by Section 8.21.B.2. The statement shall identify the Property, state the offering price, the date the offer of sale is to begin, the names and addresses of adjacent property owners, and the names and addresses of listing real estate agents, if any. The owner shall be required to maintain the Property in at least its current condition during the term of the public offer. No time period set forth in the time schedule contained in Section 8.21.B.4. shall begin to run until the statement has been filed. Within five (5) business days after receipt of a statement, copies of the statement shall be delivered by the Zoning Administrator to the Town Manager, the Town Council, and the Historic District Review Board. Within thirty (30) days after the receipt of a statement, the Zoning Administrator: (a) shall place notice of the statement once a week for two successive weeks in a newspaper having general circulation in the Town, (b) post a notice of the statement prominently on the Property, and (c) send notice of the offer, accompanied by the statement, to the adjacent property owners by certified or registered mail.

6. During the time period for the offer to sell, the Town may take steps as it deems necessary to preserve the contributing structure in accordance with the purposes of this article. Such steps may include, but are not limited to, consultation with civic groups, public agencies, and interested citizens, recommendations for acquisition of the Property by public or private bodies or agencies, and exploration of the possibility of moving structures or other features on the Property.

6. The fact that an offer to sell a Property is made at a price reasonably related to fair market value as described previously may be questioned by any party who files with the Zoning Administrator, on or before sixty (60) days after the offer for sale has begun, a petition in writing signed by at least twenty-five (25) persons owning real estate within Cape Charles, questioning such valuation. Upon receipt of such a petition, one (1) disinterested real estate appraiser shall be appointed by the petitioners, and the cost of the appraisal shall be borne by the petitioners. Said appraiser shall forthwith make an appraisal of the Property on the same basis as described in B.2. above, and the Town shall use the average of the lower two appraisals to establish fair market value under Section 8.21.B. In the event such valuation indicates that the price at which the applicant offered to sell the Property was at a price that is higher than the Property's fair market value, the offer to sell shall be void and of no force and effect for purposes of satisfying the requirements set forth in this Section 8.21.B.

7. If the Town Council authorizes any such demolition or razing of said structure after the above procedures were complied with, then said demolition will proceed after obtaining applying for and obtaining approval from the Building Official.

Section 8.22 Maintenance and Repair Required

A. The purpose of this section is solely to stop demolition by neglect, whereby owners of property in the Historic District allow the structure, or historic attributes of the structure, to become a hazardous building or structure. Any building or structure which is determined to be in such an unsafe condition that it would endanger life or property is governed by Town Code Chapter 18, Article III, Unsafe Buildings or Structures and under the sole jurisdiction of the Town's Code Official. The Zoning Administrator may also pursue violations of this provision of the ordinance jointly with the Town's Code Official.

B. All buildings and structures in the Historic District shall be preserved against decay and deterioration and maintained free from structural defects to the extent that such decay, deterioration, or defects may, in the opinion of the Historic District Review Board and Town Council, result in the irreparable deterioration of any exterior appurtenance or architectural feature or produce a detrimental effect upon the character of the district as a whole or upon the life and character of the structure itself, including but not limited to:

1. The deterioration of exterior walls or other vertical supports, including broken doors and windowpanes;

2. The deterioration of roofs or horizontal members;

3. The deterioration of exterior chimneys;

4. The deterioration or crumbling of exterior plaster, wood, or mortar;

5. The deterioration of any feature so as to create or permit the creation of any hazardous or unsafe condition or conditions.

C. After notice by the Zoning Administrator or Code Official by certified mail of specific instances of failure to maintain or repair and of an opportunity to appear before the Historic District Review Board, the owner or person in charge of said structure shall have ninety (90) days to remedy such violation. Thereafter, each day during which there exists any violation of this section shall constitute a separate offense and shall be punishable as provided in this ordinance. In the alternative, if the owner fails to act, the Historic District Review Board may recommend to the Town Council that the Zoning Administrator, after due notice to the owner, enter the property and make or cause to be made such repairs as are necessary to preserve the integrity and safety of the structure and the reasonable costs thereof shall be placed as a lien against the property

TOWN CODE - Chapter 8: BUILDINGS & BUILDING REGULATIONS
ARTICLE III – UNSAFE BUILDINGS OR STRUCTURES

Sec. 8-63. Applicability of article.

This article shall apply to all buildings and structures which are determined to be unsafe under the terms of this article or under the terms of the code, regardless of when such structures were erected. In such cases, the code official appointed pursuant to this chapter, in the official's sole discretion, may choose to enforce the provisions of this article or the applicable provisions of the code, as may be appropriate. However, regardless of which enforcement provisions are utilized, the notice provisions contained in section 8-64 shall apply.

(Code 2002, § 18-20; Ord. of 3-9-1999)

Sec. 8-64. Notice.

(a) Whenever the code official shall find any building or structure or portion thereof to be unsafe, said official shall give the owner, agent or person in control of such building or structure written notice via certified or registered mail, return receipt requested, stating the defects thereof. This notice shall require the owner, within the stated time, either to complete specified repairs or improvements or to demolish or remove the building or immediately declare to the code official the owner's acceptance or rejection of the terms of the order. In the event no such person can be found within the town, such notice shall be sent by registered or certified mail, return receipt requested, to the owner of such real estate, as shown on the town tax records, or, in the event the property is not assessed for taxation, to the last-known address of the owner, agent or person in control of such building or structure, and a copy of such notice shall be deemed the equivalent of personal notice. If the identity or location of one or more persons having or appearing to have an ownership interest in the building, wall or other structure cannot be determined, then notice may be given through publication of same once a week for two successive weeks in a newspaper having general circulation in the town. No action shall be taken by the town to remove, repair or secure any buildings, wall or other structure for at least 30 days following the latter of the return of the mailing receipt or newspaper publication.

(b) If necessary, such notice shall also require the building, structure or portion thereof to be vacated forthwith and not re-occupied until the specified repairs and improvements are completed, inspected and improved by the code official. The code official shall cause to be posted at each entrance to such building a notice as follows:

"This building is unsafe, and its use or occupancy has been prohibited by the Town Building Code Official."

Such notice shall remain posted until the required repairs are made or demolition is completed. It shall be unlawful for any person, or said person's agents or other servants, to remove such notice without written permission of the code official or for any person to enter the building, except for the purpose of making the required repairs or demolishing the same.

(Code 2002, § 18-21; Ord. of 3-9-1999)

Sec. 8-65. Appeals from decisions of the building code official or zoning administrator.

The owner, agent or person in control cited pursuant to this article shall have the right, except in cases of emergencies, to appeal from the decision of the code official under this article as provided hereinafter, and to appear before the building code board of appeals at a specified time and place to show cause why said person could not comply with such notice. Such appeal shall be made within 30 days of such notice by notification to the code official in writing.

(Code 2002, § 18-22; Ord. of 3-9-1999)

Sec. 8-66. Action by town upon failure of owner, etc., to comply with notice.

In the case owner, agent or person in control of a building or structure cited pursuant to this article cannot be found within the stated time limit, or if such owner, agent or person in control shall fail, neglect or refuse to comply with the notice to repair, rehabilitate or demolish and remove such building or structure or portion thereof, the code official after having ascertained the cost, shall cause such building or structure, or portion thereof, to be demolished, secured or required to remain vacant.

(Code 2002, § 18-23; Ord. of 3-9-1999)

Sec. 8-67. Emergency procedures by code official.

The decision of the code official shall be final in cases of emergency which, in the official's opinion, involve imminent danger to human life or health. The code official shall promptly cause such building, structure or portion thereof to be made safe or removed. For this purpose, the code official may at once enter such structure or the land on which it stands, or abutting land or structure, with such assistance and at such cost as the official may deem advisable. The code official may vacate adjacent structures and protect the public by an

appropriate fence or such other means as may be necessary, and for this purpose may close a public or private way.

(Code 2002, § 18-24; Ord. of 3-9-1999)

Sec. 8-68. Owner to bear costs of enforcement; lien.

Any costs or expenses in connection with the enforcement of this article shall be the responsibility of the owner of such real estate, and any portion thereof which shall be billed to such owner and which remains unpaid after having been billed for 30 days shall constitute a lien against such real estate on parity with the lien for unpaid real estate taxes and shall be collected by the town in the same manner as real estate taxes are collected. A bill mailed to the last mailing address of the owner shall constitute billing for the purpose of this action.

(Code 2002, § 18-25; Ord. of 3-9-1999)

Attachment 2

Proposed Outdoor Lighting Ordinance

KATIE NUNEZ: I am proposing to delete the current Section 4.4 (E) – Exterior Lighting and propose a new section called Outdoor Lighting. Additionally, in the Parking Regulations & in the Sign Regulations, any lighting reference shall be updated to either refer to this section or have the appropriate components of the Outdoor Lighting Section

CURRENT CAPE CHARLES ZONING ORDINANCE Section 4.4 - Landscaping and Screening Regulations, Item (E) – Exterior Lighting

~~1. All exterior lighting shall be arranged and installed so that the direct or reflected illumination does not exceed (0.5) foot candles above the background measured at the lot line of any adjoining parcel.~~

~~2. Lighting standards shall be of a directional type capable of shielding the light source from direct view from any adjoining parcel.~~

~~4. All lighting shall comply with Dark Sky standards.~~

PROPOSED NEW SECTION

Sec. ____ Outdoor Lighting

1.1.1 Purpose and Intent

The purpose of this section is to establish outdoor lighting standards that reduce the impacts of glare, light trespass and over lighting; promote safety and security; and encourage energy conservation.

1.1.2 Applicability

A. This section shall apply to the installation of new outdoor lighting fixtures or the replacement of existing outdoor lighting fixtures in all zoning districts. Replacement of a fixture shall mean a change of fixture type or change to the mounting height or location of the fixture. Routine lighting maintenance, such as changing lamps or light bulbs, ballast, starter, photo control, housing and other similar components shall not constitute replacement and shall be permitted provided such changes does not result in a higher lumen output.

B. Outdoor lighting fixtures, legally installed and existing prior to _____, 2024 that do not conform to the provisions of this section shall be deemed to be a lawful nonconforming use and may remain. A nonconforming lighting fixture that is changed to or replaced by a conforming lighting fixture shall no longer be deemed nonconforming.

1.1.3 Definitions.

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Foot Candle is the illumination on a one-square foot surface from a consistent light source. One foot candle is enough light to saturate a one-foot square with one lumen of light. A foot candle doe not measure the intensity of light at its source but instead measures the brightness of the space being lit.

Cutoff. A fixture that emits no more than 2.5% of its light above 90 degrees and no more than 10% above 80 degrees from horizontal. (Illuminating Engineering Society of North America definition)

Full Cutoff. A fixture that emits 0% of its light above 90 degrees and no more than 10% above 80 degrees from horizontal. (IESNA definition)

1.1.4 Standards

A. Full cut-off lighting fixtures shall be mounted horizontal to the ground and shall be used for all walkway, parking lot, canopy and building/wall mounted lighting and all lighting fixtures located within those portions of open-sided parking structures that are above ground.

B. Lighting used to illuminate flags, statues, signs or any other objects mounted on a pole, pedestal or platform, spotlighting or floodlighting used for architectural or landscape purposes, 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 object intended to be illuminated. Directional control shields shall be used where necessary to limit stray light. In addition, such lighting shall be shielded to protect motorists and pedestrians from glare.

C. All construction site lighting, with the exception of lighting that is used to illuminate the interiors of buildings under construction, shall use full cut-off or directionally shielded fixtures that are aimed and controlled so the directed light shall be substantially confined to the object intended to be illuminated. Directional control shields shall be used where necessary to limit stray light. Frosted light bulbs shall be used to light the ten foot outermost perimeter area of the interiors of the buildings under construction.

D. High intensity light beams in the form of outdoor search lights, lasers or strobe lights are prohibited.

E. Light poles in all parking lots areas shall not exceed a maximum height of 25 feet including the base.

F. Wherever possible, illumination of outdoor seating areas, building entrances and walkways is accomplished by use of ground mounted fixtures not more than four feet in height.

G. All exterior lighting fixtures shall be located a minimum of ten feet from a property line.

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H. Wall mounted lights, other than entry lights of 100 watts or less, shall be fully shielded luminaries, such as shoebox or can fixtures, to direct all light downward and to prevent the light source from being visible from any adjacent residential properties and public street right-of-way. Wall pack lights on buildings may be used at entrances to a building to light unsafe areas. Such lights cannot be used to draw attention to the building or provide general building or site lighting. Wall packs on the exterior of the building shall be fully shielded, full cut-off, to direct light vertically downward at an angle that shall limit output to prevent glare onto adjacent properties and be 100 watts or less. Wall pack lights visible from any location off site are prohibited.

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1.1.5 Plan Required

A photometric plan shall be provided that indicates all outdoor lighting fixtures exclusive of street lights will not have a source of illumination that is visible beyond the site or cause illumination of adjacent properties in excess of 0.5 foot-candles, as measured at the site boundary. Where lighting is located along a street with existing street lights and/or along a common property line with another commercial parking lot with pre-existing lighting levels exceeding the 0.5 foot-candle maximum, the 0.5 foot-candle requirement may be waived when it can be demonstrated to the satisfaction of the Zoning Administrator that compliance is not possible due to pre-existing non-conforming overlapping light sources, and the proposed lighting does not intensify the non-conforming condition.

1.1.6 Standards for Certain Uses

In addition to section 1.1.4, outdoor lighting fixtures associated with service stations, service station/mini-mart and vehicle sale, rental and ancillary service establishments shall be subject to the following:

A. Service station and service station/mini-mart canopy lighting shall not exceed a maintained level of 20 foot-candles under the canopy as measured horizontally at grade at the inside of the outside edge of the canopy. All underside canopy lighting shall consist of full cut-off lighting fixtures.

B. Outdoor display area lighting used in conjunction with a vehicle sale, rental and ancillary service establishment shall not exceed a maintained lighting level of 20 foot-candles as measured horizontally at grade. For the purpose of this section, outdoor display areas shall include all display/storage areas for vehicles offered for sale or rent and the associated travel lanes.

1.1.7 Exemptions

The following shall be exempt from the provisions of this section:

A. Lighting fixtures and standards required by the Federal Communications Commission, Federal Aviation Administration, Federal and State Occupational Safety and Health Administrations or other federal, state or town agencies, to include street lights within the public right-of-way.

B. Outdoor lighting fixtures required by law enforcement, fire and rescue, the Virginia Department of Transportation or other emergency response agencies to perform emergency or construction repair work, or to perform nighttime road construction on major thoroughfares.

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Attachment 3

Proposed Solar Panels –

Performance Standards/Design Regulations

ADD TO CCZO ARTICLE 4 – NEW SECTION AFTER SECTION 4.10 relative to SOLAR PANELS - PERFORMANCE STANDARDS/DESIGN REGULATIONS

PLEASE NOTE: Code of Virgina Section 15.2-2288.7 indicates that an owner of a residential dwelling until may install a solar facility on the roof of such dwelling to serve the electric needs of that dwelling provided that such installation is (i) in compliance with any height and setback requirements in the zoning district where located and (ii) in compliance with any provisions pertaining to any local historic district. Said requirements also apply to commercial or industrially zoned property.

Does the Town wish to allow for solar panels on commercial or industrial property as well as residential property?

INTENT: Solar Panels are to be considered accessory structures on residentially zoned properties provided they serve the residence on the property and are subordinate in purpose, area and extent to the dwelling served.

REQUIREMENTS: Solar energy systems shall be installed in compliance with applicable provisions of the Uniform State Building Code (USBC) and the Virginia State Fire Prevention Code (VSFPC). No ground-mounted solar energy generation facilities shall be permitted.

Solar Panels may be installed on rooftops subject to the following:

a. Rooftop. All rooftop solar panel/s shall be screened from view. This shall be accomplished for pitched roofs by placing the panels on the back half of the building or concealing the equipment within the roof structure, or for flat roofs by a parapet wall. Parapets shall match the primary building material of the facade below and shall blend with the design of the building in terms of color and scale. All such screening shall be integrated into the building design. In the Historic Overlay District, all solar panel installations need to be flush with the roofline and blended in appearance so as not to be evident and/or visible from the street.

   In general, rooftop solar panels shall be screened from view, which can be accomplished by placing it/them on the back half of the building. When used as a compatible and integral architectural element to a structure, it may be found allowable that they are visible to the public view. Solar panels that are visible to the public view shall be screened in such a way as to minimize glare and reflectance.

   Placement of solar panels on roofs shall not exceed the total height allowance for a structure in the Residential Zoning Districts, as stipulated in Article III – Height Regulations for each type of zoning district.

ADDITIONALLY, AMEND ARTICLE VIII – HISTORIC DISTRICT OVERLAY ORDINANCE AS FOLLOWS:

Section 8.17 Certain Minor Actions Exempted from Review by the Historic District Review Board

Item (D). Addition or deletion of television and radio antennas or skylights and solar ~~collectors~~ panels ~~in locations not visible from a public street or a waterway~~ consistent with Section ____ Solar Panels – Performance Standards/Design Regulations.

I would propose to delete all of Section 4.11 re: Wind Turbines. The Code of Virginia does not stipulate that wind turbines or wind power are allowed by right in any zoning district. It does allow for a locality to establish regulations for said in agriculturally zoned districts; however, Cape Charles does not have a agricultural zoning district.

~~**Section 4.11 Wind Turbines**~~

~~A. Statement of Intent.~~

~~The intent of this ordinance is to regulate the placement, construction and modification of wind energy systems while promoting the safe, effective and efficient use of the wind energy resource and wind energy systems while not interfering with the development of independent renewable energy sources. Wind Energy Systems meeting the requirements will be allowed by Conditional Use Permit. The Zoning Administrator shall maintain an inventory of wind energy systems to include their installation, operation and removal dates to be updates annually.~~

~~B. Applicability~~

~~The requirements set forth in this section shall govern all zones and wind energy systems used to generate electricity or perform work which may be connected to the utility grid pursuant to Virginia's net metering laws (Code of Virginia, 56-594), serve as an independent source of energy or serve in a hybrid system.~~

Wind Energy Systems Setback Matrix

	Minimum Lot Size	Minimum Setback Requirements[1]					Maximum Height From Grade
		Occupied Buildings (Subject Property)[2]	Occupied Buildings (Adjacent Prop.)[2,3]	Property Lines	Public/ Private Right-of-Way	Hwys 184 & 642	
Anemometers	20,000 Sq. Ft.	1.0	1.5	1.0	1.5	2.5	Nacelle Height
Micro System	5,600 Sq. Ft.	0.0	1.0	1.0	1.5	1.0	Note 4
Small System	20,000 Sq. Ft.	0.0	1.5	1.0	1.5	2.5	120 Ft.
Large System	5 Acres	1.0	2.0	1.0	1.5	2.5	250 Ft.
Utility System	25 Acres	1.5	2.5	1.5	1.5	2.5	500 Ft.

[1] Measured from the center of the wind turbine base to the property line, ROW, or nearest point on the fountain of an occupied building.

[2] Calculated by multiplying the required setback number by the wind turbine height.

[3] This setback proposes to reduce noise and shadow flicker impacts to any previously existing occupied buildings on adjacent property or work site.

[4] One system per lot with a maximum of 18 feet above the roof.

~~1 Measured from the center of the wind turbine base to the property line, ROW, or nearest point on the fountain of an occupied building.~~

~~2 Calculated by multiplying the required setback number by the wind turbine height.~~

3 This setback proposes to reduce noise and shadow flicker impacts to any previously existing occupied buildings on adjacent property or work site.
4 One system per lot with a maximum of 18 feet above the roof.
1. As part of the Conditional Use Permit Process the setback requirements may be waived if the following conditions are met:

a. Property owners may waive the occupied building setback requirements on both the subject property and/or the adjacent properties, and the property line setback requirements for wind turbines, by executing a signed waiver that sets forth the applicable setback provisions and proposed changes.

b. The written waiver shall notify the applicable property owners of the setback required by this ordinance, describe how the proposed wind turbine and/or wind energy facility is not in compliance and state that the consent is granted for the wind turbine and/or wind energy facility to not be setback as required by this ordinance.

c. Any such waiver shall be signed by all affected property owners and be recorded in the Northampton County Clerk's office. The waiver shall describe the properties benefited and/or burdened and advise all subsequent purchasers of any burdened property that waiver of setback shall run with the land and may forever burden the subject property.

C. Definitions
Anemometer – Measures the wind speed and may transmit wind speed data to the controller.

Hybrid System – An energy system that uses more than one technology to produce energy to work (for example a wind/solar system).

kW – Kilowatt

mW – Megawatt

Nacelle – The cover housing surrounding the turbine, usually at the center of the blades.

Tower – The structure on which the wind system is mounted.

Tower Height – The height above grade of the fixed portion of the tower, including the nacelle and excluding the rotor blades.

Wind Energy Facility – An electric generating facility, whose main purpose is to supply electricity, consisting of one or more Wind Turbines and other accessory structures and buildings, including substations, meteorological towers, electrical infrastructure, transmission lines and other appurtenant structures and facilities.

Wind Energy Facility, Large System – A system which has a rated capacity of not more than 999kW.

~~Wind Energy Facility, Micro System – A building mounted wind system that has a manufacturer's rating of 10kW or less and projects no more than 18 feet above the highest point of the roof and shall not be considered a small wind energy system in terms of the area or setback requirements. Only one facility is allowed per dwelling unit.~~

~~Wind Energy Facility, Small System – A system which has a rated capacity of not more than 25kW and primarily used for onsite consumption.~~

~~Wind Energy Facility, Utility Scale – A wind energy conversion system consisting of one or more wind turbine(s), tower(s), and associated control or conversion electronics, which has a rated capacity of 1mW or greater.~~

~~Wind Farm – See "Wind Energy Facility – Utility Scale."~~

~~Wind Power – Electrical Power generated by wind driven turbine blades turning an electrical generator.~~

~~Wind Pump – A type of windmill used for pumping water from a well or pond.~~

~~Wind Turbine – A wind energy conversion system that converts wind energy into electricity through the use of a wind turbine generator, and may include a nacelle, rotor, tower, and pad transformer.~~

~~Wind Turbine Height – The distance measured from the grade to the highest point of the turbine rotor or tip of the turbine blade when it reaches its highest elevation.~~

~~Windmill – A machine designed to convert the energy of the wind into more useful forms using rotating blades to turn mechanical machinery to do physical work, such as crushing grain or pumping water.~~

~~D. Conditional Use Permit Requirements~~

~~1. The application shall demonstrate that the proposed wind energy facility will comply with this ordinance and shall contain at a minimum the following:~~

~~a. A narrative describing the proposed wind energy facility;~~

~~b. The approximate generating capacity of the wind energy facility;~~

~~c. The specific number, representative types and heights or range of heights of the wind turbines to be constructed, including their generating capacity, dimensions and respective manufacturers and description of ancillary facilities;~~

~~d. Identification and location of the properties on which the proposed wind energy facility will be located;~~

~~e. A plot plan showing the planned location of each wind turbine, property lines, setback lines, access road and turnout locations, substation(s), electrical cabling from the wind energy facility to the substation(s), ancillary equipment, buildings and structures, including permanent meteorological towers, associated transmission lines, and location of all structures and properties with the geographical boundaries of any applicable setback;~~

f. Evidence of compliance with Federal Aviation Administration regulations;
g. Signed and approved copies of any negotiated power purchase agreement and the utility company's approved schematics.
h. An Environmental Assessment is required for small, large and utility scale wind energy facilities, which shall include review and comments from the applicable state and federal agencies, including but not limited to, Virginia Department of Mines, Minerals and Energy, DNR, USACE, US Fish and Wildlife and a completed Virginia Renewables Siting Scoring System (VRS3). The Planning Commission may require an additional Environmental Impact Statement (EIS) for the installation of three (3) or more turbines or if significant impacts could result from the installation.
i. Decommissioning plans that describe the anticipated life of the wind power project, the estimated decommissioning costs in current dollars, the method for ensuring that funds will be available for the decommissioning and restoration and the anticipated manner in which the wind power project will be decommissioned and the site restored. This obligation shall be recorded and goes with the land.
j. Signature of the property owner(s) and the facility owner/operator of the energy facility;
k. Other relevant studies or reports that may be reasonably requested by the Town of Cape Charles to ensure compliance with this ordinance.

2. Throughout the permit process the applicant shall promptly notify the Town of any changes to the information contained in the permit application.

3. Changes to the pending application that do not materially alter the initial site plan may be adopted administratively.

4. Historic District Review Board or Harbor Area Review Board approval is required for systems within the Historic District Overlay District or Harbor District.

E. Installation and Design

1. The installation and design of the wind energy facility shall conform to applicable industry standards, including those of ANSI (American National Standards Institute).

2. All electrical and mechanical components of the wind energy facility shall conform to relevant and applicable town, state and national codes and ordinances. A Cape Charles Building Permit is required.

3. Small and Micro wind energy facilities shall not exceed 60 decibels as measured at the property line. The level, however, may be exceeded during short term events such as utility outages and/or severe windstorms.

4. Any on-site transmission or power lines shall, to the maximum extent possible, be placed underground.

5. The visual appearance of wind energy facilities shall at a minimum:

a. Maintain a galvanized finish and be a non-obtrusive color such as white, off-white or gray;
b. Not be artificially lighted, except to the extent required by the FAA or other applicable authority that regulates air safety;
c. Not display advertising, including flags, streamers or decorative items, except for the identification of the turbine manufacturer, facility owner and operator.

F. Decommissioning or Abandonment

1. The wind energy facility owner, and/or operator and/or property owner shall have 3 months to complete decommissioning of the facility if no electricity is generated for a continuous period of 12 months. Repair, maintenance or redesign plans shall be submitted to the zoning administrator if turbines will be off-line for 12 months or more.

2. Decommissioning shall include removal of the wind turbines, buildings, cabling, electrical components, roads and any other associated facilities. Foundations shall be removed to a depth of 48" below finished grade.

3. Disturbed earth shall be graded and re-seeded, unless the landowner requests in writing that the access roads or other land surface areas not be restored. The required Erosion and Sediment measures shall be put in place per the Virginia Erosion and Sediment Control Handbook.

Attachment 4

Proposed Sidewalk Ordinance

SIDEWALKS

The Town Code Chapter 26, **Section 26-3 Construction and Maintenance of Sidewalks generally** states that:

> *(a) The town council may require and compel the owner of property within the town to construct or maintain sidewalks abutting on the property of such owner along existing streets.*
>
> *(b) Upon the failure of any property owner to construct or maintain sidewalks after said owner has been required to do so pursuant to this section, within such time as may be reasonably necessary to construct or maintain such sidewalks, the council may construct or maintain them and the cost of such work shall constitute a charge upon the property and the collection thereof may be enforced in the same manner as is provided by law for the enforcement of the collection of taxes on real estate in the town.*

The Cape Charles Zoning Ordinance Subdivision Ordinance already requires the construction of sidewalks for new subdivisions (Section 5.4.1.7). However, the rest of the zoning ordinance does not address Infill Development relative to sidewalk obligations.

The Town Code should be rewritten to have Town Council authorize the Planning & Zoning Administrator, pursuant to Zoning Ordinance Section ____ (a new section being proposed) to require the construction and maintenance of sidewalks for infill development and Section 5.4.1.7 for new subdivisions.

> *(a) The town council authorizes the Planning & Zoning Ordinance to require the construction and maintenance of sidewalks for infill development, pursuant to Cape Charles Zoning Ordinance Section ____ and for new subdivisions, pursuant to Cape Charles Zoning Ordinance Section 5.4.1.7 ~~may require and compel the owner of property within the town to construct or maintain sidewalks abutting on the property of such owner along existing streets.~~*
>
> *(b) Upon the failure of any property owner to construct or maintain sidewalks after said owner has been required to do so pursuant to this section, within such time as may be reasonably necessary to construct or maintain such sidewalks, the council may construct or maintain them and the cost of such work shall constitute a charge upon the property and the collection thereof may be enforced in the same manner as is provided by law for the enforcement of the collection of taxes on real estate in the town.*
> ***NOTE: Code of Virginia §15.2-2404 authorizes a locality the authority to impose taxes or assessments for local improvements.***

In the Cape Charles Zoning Ordinance, 2 new definitions should be added as well as the following to Article IV – General Regulations Applicable to All Districts, Section 4.2 – Exceptions to the Regulations as a new Item:

DEFINITON:

INFILL DEVELOPMENT: Development that takes place on vacant or underutilized parcels within an area that is already characterized by residential and/or commercial development and has access to municipal services.

SIDEWALK: A hard-surfaced walk or raised path and any curb ramps or blended transitions along and generally paralleling the side of the streets for pedestrians. Sidewalks do not include the curb or gutter structures.

NEW SECTION

Section 4.2 (__) – SIDEWALKS for INFILL DEVELOPMENT

For infill development in any zoning district, construction of a sidewalk is required along the entire street frontage of a lot or parcel that abuts a primary or secondary road at the time when an application is filed for the development of a lot or parcel, whether for residential, commercial, municipal or industrial development. If lot is a corner lot, then sidewalk development may be required for both the frontage of the lot as well as the for the side yard if there is an existing sidewalk network parallel to the road system.

Said sidewalk must be equal to the same width size of the existing network infrastructure and to be no lesser than five feet in width; said sidewalk construction shall blend any new segment of sidewalk to become part of a continuous and connected and level sidewalk.

At least one walkway must be provided from an adjacent sidewalk to each building entrance designed for use by the general public that is located on the side of the building facing the sidewalk.

Attachment 5

Proposed Language for ADA/Disability Consideration

Add to CCZO Article IV – GENERAL REGULATIONS APPLICABLE TO ALL DISTRICTS, Section 4.2 - EXCEPTIONS TO THE REGULATIONS, new ITEM after (F) to read as follows:

ACCOMMODATIONS RELATIVE TO the AMERCIANS WITH DISABILITIES ACT (AD) and the FAIR HOUSING ACT

A property owner may request a reasonable accommodation to rules, polices, practices and procedures for the siting, development and use of housing if you meet all of the following criteria:

1) You have a disability as defined under the Americans with Disabilities Act (AD) or the housing is for people with disabilities;
2) You may need a reasonable accommodation to existing rules and regulations to have an equal opportunity to housing; and
3) The request for accommodation would not be an undue burden on the Town.

Administrative Review and Approval: These types of accommodations may be granted administratively through the Zoning Administrator: the provision of ramps, exterior chair lift and other similar type facilities or equipment, or accessible parking spaces.

Board of Zoning Appeals Variance Application Review and Determination: If the accommodation is seeking a deviation from setback requirements, lot coverage allowances or other similar dimensional requirements specific to the primary structure and its placement and or renovation or expansion of said structure, this will require seeking a variance from the Board of Zoning Appeals. **[PLEASE NOTE THAT SECTION 2.6.2 (B) (1) is already proposed for amendment to reflect an allow for variance consideration for a disability application.]**

Attachment 6

Erosion and Sediment Ordinance Draft

DELETE APPENDIX D – EROSION AND SEDIMENT CONTROL ORDINANCE and replace with the new Model Ordinance from the State (DEQ) as modified to meet the Town's requirements, per Katie Nunez and Jeb Brady

EROSION AND SEDIMENT CONTROL ORDINANCE

Section 1.1. TITLE, PURPOSE, AND AUTHORITY

A. This ordinance shall be known as the 'Erosion and Sediment Control Ordinance of the Town of Cape Charles." The purpose of this ordinance is to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources of the Town of Cape Charles by establishing requirements for the effective control of soil erosion, sediment deposition and non-agricultural runoff and by establishing procedures whereby these requirements shall be administered and enforced.

B. This ordinance is authorized by § 62.1-44.15:54 of the Code of Virginia.

Section 1.2. DEFINITIONS

The following words and terms, when used in this ordinance, shall have the following meanings, unless the context clearly indicates otherwise.

"Agreement in lieu of a plan" means a contract between the Town of Cape Charles and the owner that specifies conservation measures that must be implemented to comply with the requirements of this ordinance for the construction of a (i) single-family detached residential structure or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent; this contract may be executed by the Town of Cape Charles in lieu of formal site plan.

"Applicant" means any person submitting an erosion and sediment control plan for approval in order to obtain authorization for land-disturbing activities to commence.

"Board" means the State Water Control Board.

"Certified inspector for ESC" means an employee or agent of the VESCP authority who (i) holds a certificate of competence from the department in the area of project inspection or (ii) is enrolled in the department's training program for project inspection and successfully completes such program within one year after enrollment.

"Certified plan reviewer for ESC" means an employee or agent of the VESCP authority who (i) holds a certificate of competence from the department in the area of plan review, (ii) is enrolled in the department's training program for plan review and successfully completes such program within one year after enrollment, or (iii) is licensed as a professional engineer, architect, landscape architect, land

surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia, or professional soil scientist as defined in § 54.1-2200.

"Certified program administrator for ESC" means an employee or agent of the VESCP authority who holds a certification from the department in the classification of program administrator or (ii) is enrolled in the department's training program for program administration and successfully completes such program within one year after enrollment.

"Chesapeake Bay Preservation Act" means Article 2.5 (§ 62.1-44.15:67 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Chesapeake Bay Preservation Area" means any land designated by a local government pursuant to Part III (9VAC25-830-70 et seq.) of the Chesapeake Bay Preservation Area Designation and Management Regulations and § 62.1-44.15:74 of the Code of Virginia. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area as defined in the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830).

"Clearing" means any activity which removes the vegetative ground cover including, root mat removal or topsoil removal.

"Department" means the Virginia Department of Environmental Quality.

"District" or "Soil and Water Conservation District" refers to the Eastern Shore Soil and Water Conservation District.

"Erosion and sediment control plan" or "plan" means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.

"Erosion impact area" means an area of land that is not associated with a current land-disturbing activity but is subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes [or to shorelines where the erosion results from wave action or other coastal processes.]

"Farm building or structure" means the same as that term is defined in § 36-97 of the Code of Virginia and also includes any building or structure used for agritourism activity, as defined in § 3.2-6400, and any related impervious surfaces including roads, driveways, and parking areas.

"Excavating" means any digging, scooping or other methods of removing earth materials.

"Filling" means any depositing or stockpiling of earth materials.

"Grading" means any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions.

"Land disturbance" or “land-disturbing activity” means a man-made change to the land surface that may result in soil erosion or has the potential to change its runoff characteristics, including the clearing, grading, excavating, transporting, and filling of land.

"Land-disturbing permit or approval" means a permit or an approval allowing a land-disturbing activity to commence issued by the Town of Cape Charles after the requirements of § 62.1-44.15:55 of the Code of Virginia have been met.

"Natural channel design concepts" means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.

"Owner" means the same as provided in § 62.1-44.3 of the Code of Virginia. For a land-disturbing activity that is regulated under Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia and this ordinance, "owner" also includes the owner or owners of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.

"Peak flow rate" means the maximum instantaneous flow from a prescribed design storm at a particular location.

"Percent impervious" means the impervious area within the site divided by the area of the site multiplied by 100.

"Permittee" means the person to whom the permit is issued.

"Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the Commonwealth, governmental body, including a federal or state entity as applicable, any interstate body, or any other legal entity.

"Responsible Land Disturber" or "RLD" means an individual holding a certificate issued by the department who is responsible for carrying out the land-disturbing activity in accordance with the approved erosion and sediment control plan. The RLD may be the owner, applicant, permittee, designer, superintendent, project manager, contractor, or any other project or development team member. The RLD must be designated on the erosion and sediment control plan or permit as defined in the Virginia Erosion and Stormwater Management Regulation (9VAC25-875) as a prerequisite for engaging in land disturbance. The RLD must be designated on the erosion and sediment control plan or permit as defined in this ordinance as a prerequisite for engaging in land disturbance.

"Runoff volume" means the volume of water that runs off the land development project from a prescribed storm event.

"Single-family detached residential structure" means a noncommercial dwelling that is occupied exclusively by one family.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"Transporting" means any moving of earth materials from one place to another place other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

"Town" means the incorporated town of Cape Charles.

"Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by the department that is established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, policies and guidelines, technical materials, and requirements for plan review, inspection, and evaluation consistent with the requirements of the Erosion and Sediment Control Law (ESCL).

"Virginia Erosion and Sediment Control Program authority" or "VESCP authority," for purposes of this ordinance means the Town of Cape Charles, through the Code Official, that has been approved by the department to operate a Virginia Erosion and Sediment Control Program in accordance with Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1, the State Water Control Law, of Title 62.1 of the Code of Virginia.

"VESCP plan-approving authority" means the Cape Charles Code Official responsible for determining the adequacy of a plan submitted for land-disturbing activities on a unit or units of lands and for approving plans.

"VPDES Permit" means a General VPDES (Virginia Pollutant Discharge Elimination System) Permit for Discharges of Stormwater from Construction Activities, 9VAC25-880, issued by the department pursuant to § 62.1-44.15 of the Code of Virginia for stormwater discharges from a land-disturbing activity.

Section 1.3. LOCAL EROSION AND SEDIMENT CONTROL PROGRAM

Pursuant to § 62.1-44.15:54 of the Code of Virginia, the Town of Cape Charles hereby establishes a Virginia Erosion and Sediment Control Program (VESCP) and adopts the regulations promulgated by the Board (for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources) and the Virginian Stormwater Management Handbook. In accordance with § 62.1-44.15:52 of the Code of Virginia, any plan approved prior to July 1, 2014 that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5, 2, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels.

A. For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements for natural and man-made channels shall be satisfied by compliance with

water quantity requirements specified 9VAC25-875-600, unless such land-disturbing activities are in accordance with the grandfathering provisions of 9VAC25-875-490.

B. Pursuant to § 62.1-44.15:53 of the Code of Virginia, an erosion control plan shall not be approved until it is reviewed by a certified plan reviewer for ESC. Inspections of land-disturbing activities shall be conducted by a certified inspector for ESC. The Erosion and Sediment Control Program of Cape Charles shall contain a certified program administrator for ESC, a certified plan reviewer for ESC, and a certified inspector for ESC(who may be the same person.)

C. The Town of Cape Charles hereby designates the Cape Charles Code Official as the SCP plan-approving authority.

D. The program and regulations provided for in this ordinance shall be made available for public inspection at the office of the Code Official for the Town of Cape Charles.

Section 1.4. REGULATED LAND-DISTURBING ACTIVITIES

A. Land-disturbing activities that meet one of the criteria below are regulated as follows:

1. Land-disturbing activity that disturbs 10,000 square feet or more, is less than one acre, not in an area of a locality designated as a Chesapeake Bay Preservation Area, and not part of a common plan of development or sale, is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) of Part V of the Virginia Erosion and Stormwater Management Regulation (Regulation).

2. Land-disturbing activity that disturbs 2,500 square feet or more, is less than one acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq) of Part V of the Regulation is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.]

Section 1.5. ACTIVITIES NOT REQUIRED TO COMPLY WITH THE ESCL

A. Notwithstanding any other provisions of the Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Program (ESCL), the following activities are not required to comply with the ESCL unless otherwise required by federal law:

1. Disturbance of a land area of less than 10,000 square feet in size and not in the CBPA;

2. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs, and maintenance work;

3. Installation, maintenance, or repair of any individual service connection;

4. Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;

5. Installation, maintenance, or repair of any septic tank line or drainage field unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;

6. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.2 of the Code of Virginia;

7. Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; agricultural engineering operations, including construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; or as additionally set forth by the board in regulations. However, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163 of the Code of Virginia;

8. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

9. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Virginia Marine Resources Commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to the ESCL and the regulations adopted pursuant thereto;

10. Land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the VESCP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of subsections 1.6, 1.7 and 1.8 of this ordinance are required within 30 days of commencing the land-disturbing activity;

11. Discharges to a sanitary sewer or a combined sewer system that are not from a land-disturbing activity; and

12. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company.

Section 1.6. SUBMISSION AND APPROVAL OF PLANS; CONTENTS OF PLANS

A. Except as provided herein, no person may engage in any regulated land-disturbing activity until he or she has submitted to the Town of Cape Charles an erosion and sediment control plan for the regulated land-disturbing activity and such plan has been approved by the Town of Cape Charles. No approval to begin a land disturbing activity will be issued unless evidence of VPDES permit coverage is obtained where it is required. Where the land-disturbing activity results from the construction of a (i) single-family detached residential structure or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the VESCP plan-approving authority.

B. The standards contained within the "Virginia Erosion and Stormwater Management Regulation (9VAC25-875)" and the Virginia Stormwater Management Handbook, as amended, are to be used by the applicant when making a submittal under the provisions of this ordinance and in the preparation of an erosion and sediment control plan. The VESCP plan-approving authority, in considering the adequacy of a submitted plan, shall be guided by the same standards, regulations and guidelines. When the standards vary between the publications, the Virginia Erosion and Stormwater Management Regulation shall take precedence.

C. The VESCP plan-approving authority shall review erosion and sediment control plans submitted to it and grant written approval within 60 days of the receipt of the plan if it determines that the plan meets the requirements of the Erosion and Sediment Control Law for Localities not Administering a Virginia Erosion and Stormwater Management Program and 9VAC25-875, and if the person responsible for carrying out the plan certifies that he or she will properly perform the erosion and sediment control measures included in the plan and will comply with the provisions of this ordinance. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of the responsible land disturber to the VESCP authority, as required by 9VAC25-875-300 and 9VAC25-875-550 , who will be in charge of and responsible for carrying out the land-disturbing activity. Failure to provide the name of the responsible land disturber, prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this ordinance.

However, the VESCP plan-approving authority may waive the Responsible Land Disturber certificate requirement for an agreement in lieu of a plan for construction of a single-family detached residential structure. If a violation occurs during the land-disturbing activity associated with the construction of the single-family detached residential structure, then the person responsible for carrying out the agreement in lieu of a plan shall correct the

violation and provide the name of the responsible land disturber to the VESCP authority. Failure to provide the name of the responsible land disturber shall be a violation of this ordinance.

D. When the plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall specify such modifications, terms and conditions that will permit approval of the plan. If no action is taken within 45 days, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.

E. The Town of Cape Charles shall act on any erosion and sediment control plan that has been previously disapproved within 45 days after the plan has been revised, resubmitted for approval, and deemed adequate.

F. The Town of Cape Charles may require changes to an approved plan when:

1. The inspection reveals that the plan is inadequate to satisfy applicable regulations; or

2. The person responsible for carrying out the plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this ordinance, are agreed to by the VESCP plan-approving authority and the person responsible for carrying out the plans.

G. Variances: The VESCP plan-approving authority may waive or modify any of the standards that are deemed to be inappropriate or too restrictive for site conditions, by granting a variance. A variance may be granted under these conditions:

1. At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the VESCP plan-approving authority shall be documented in the plan.

2. During construction, the person responsible for implementing the approved plan may request a variance in writing from the VESCP plan-approving authority. The VESCP plan-approving authority shall respond in writing either approving or disapproving such a request. If the VESCP plan-approving authority does not approve a variance within 10 days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.

3. The Town of Cape Charles shall consider variance requests judiciously, keeping in mind both the need of the applicant to maximize cost effectiveness and the need to protect off-site properties and resources from damage.

H. In order to prevent further erosion, the Town of Cape Charles may require approval of a plan for any land identified in the local program as an erosion impact area.

I. When a land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.

J. As an alternative to submitting soil erosion control and stormwater management plans pursuant to § 62.1-44.15:34 of the Code of Virginia to the Town of Cape Charles, any person engaging in more than one jurisdiction in the creation and operation of a wetland mitigation or stream restoration bank that has been approved and is operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of (i) a wetlands mitigation or stream restoration bank, pursuant to a mitigation banking instrument signed by the Department, the Marine Resources Commission, or the U.S. Army Corps of Engineers, or (ii) a stream restoration project for purposes of reducing nutrients or sediment entering state waters may submit standards and specifications for Department approval that describe how land-disturbing activities shall be conducted.

Section 1.7. EROSION AND SEDIMENT CONTROL PLAN; CONTENTS OF PLANS

A. An erosion and sediment control plan shall be filed for a development and the buildings constructed within, regardless of the phasing of construction. The erosion and sediment control plan shall be consistent with the criteria, techniques, and methods in 9VAC25-875-560. The erosion and sediment control plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives in 9VAC25-875-560. The erosion and sediment control plan may include:

1. Appropriate maps;

2. An appropriate soil and water plan inventory and management information with needed interpretations; and

3. A record of decisions contributing to conservation treatment.

B. The person responsible for carrying out the plan shall provide the name of an individual holding a certificate who will be in charge of and responsible for carrying out the land-disturbing activity to the VESMP authority. [Note: The VESMP authority may waive the Responsible Land Disturber certificate requirement for an agreement in lieu of a plan in accordance with § 62.1-44.15:34 or § 62.1-44.15:55 of the Code of Virginia.]

C. If individual lots or sections in a residential development are being developed by different property owners, all land-disturbing activities related to the building construction shall be covered by an erosion and sediment control plan or an "Agreement in Lieu of a Plan" signed by the property owner.

D. Land-disturbing activity of less than 10,000 square feet on individual lots in a residential development shall not be considered exempt from the provisions of the VESMA, ESCL, or this ordinance if the total land-disturbing activity in the development is equal to or greater than 10,000 square feet.

Section 1.8. PERMITS; FEES; SECURITY FOR PERFORMANCE

A. Agencies authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities shall not issue any such permit unless the applicant submits with his application an approved erosion and sediment control plan, certification that the plan will be followed and evidence of VPDES permit coverage where it is required.

B. No person may engage in any land-disturbing activity until he or she has acquired a land-disturbing permit (unless the proposed land-disturbing activity is specifically exempt from the provisions of this ordinance), has paid the fees and has posted the required bond.

C. An administrative fee as determined by the Cape Charles Town Council as part of an adopted fee structure for the Building, Planning & Zoning Department as part of the Annual Budget Ordinance shall be paid to the Town of Cape Charles at the time of submission of the erosion and sediment control plan.

D. No land-disturbing permit shall be issued until the applicant submits with his or her application an approved erosion and sediment control plan [or agreement in lieu of an approved erosion and sediment control plan] and certification that the plan will be followed.

E. All applicants for permits shall provide to the Town of Cape Charles a performance bond with surety, cash escrow, or an irrevocable letter of credit acceptable to the Cape Charles Code Official, to ensure that measures could be taken by the Town of Cape Charles at the applicant's expense should the applicant fail, after proper notice, within the time specified to initiate or maintain appropriate conservation measures required of him or her by the approved plan as a result of his land-disturbing activity.

The amount of the bond or other security for performance shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty-five percent of the cost of the conservation action. Should it be necessary for the Town of Cape Charles to take such conservation action, the Town may collect from the applicant any costs in excess of the amount of the surety held. Within sixty (60) days of adequate stabilization, as determined by the Cape Charles Code Official in any project or section of a project, such bond, cash escrow or letter of credit, or the unexpended or unobligated portion thereof, shall be either refunded to the applicant or terminated, based upon the percentage of stabilization accomplished in the project or project section. These

requirements are in addition to all other provisions relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

Section 1.9. MONITORING, REPORTS, AND INSPECTIONS

A. The responsible land disturber, as provided by § 62.1-44.15:52, shall be in charge of and responsible for carrying out the land-disturbing activity and provide for periodic inspections of the land-disturbing activity. The person responsible for carrying out the plan shall monitor the land-disturbing activity. The person responsible for carrying out the plan will maintain records of these inspections and maintenance, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.

B. The Cape Charles Code Official shall periodically inspect the land-disturbing activity in accordance with 9VAC25-875-330 to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection and shall such inspection in accordance with § 62.1-44.15:60 and the land-disturbing permit.

   If the Cape Charles Code Official determines that there is a failure to comply with the plan, notice to comply may be served upon the permittee or person responsible for carrying out the plan. Such notice shall be served by delivery by facsimile, e-mail, or other technology; by mailing with confirmation of delivery to the address specified in the permit application or in the plan certification, if available, or in the land records of the locality; or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities.

   The notice to comply shall specify the measures needed to comply with the land-disturbance approval conditions or shall identify the plan approval or land-disturbance approval needed to comply with this article and shall specify a reasonable time within which such measures shall be completed. Upon failure to comply within the specified time, any plan approval or land-disturbance approval may be revoked and the permittee or person responsible for carrying out the plan shall be subject to the penalties provided by this ordinance.

C. Upon issuance of an inspection report denoting a violation of § 62.1-44.15:55 of the Code of Virginia, the Cape Charles Code Official may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken.

   If land-disturbing activities have commenced without an approved plan, the Cape Charles Code Official may issue an order requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained.

Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved plan , such a stop work order may be issued without regard to whether the alleged violator has been issued a notice to comply as specified in this ordinance. Otherwise, such an order may be issued only after the alleged violator has failed to comply with such a notice to comply.

The stop work order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven days from the date of service pending application by the Town or permit holder for appropriate relief to the Circuit Court of Northampton County. The Town shall serve such order for disturbance without an approved plan upon the owner by mailing with confirmation of delivery to the address specified in the land records. The order shall be posted on the site where the disturbance is occurring, and shall remain in effect until permits and plan approvals are secured, except in such situations where an agricultural exemption applies.

If the alleged violator has not obtained an approved plan within seven days from the date of service of the stop work order, the Cape Charles Code Official may issue an order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan has been obtained. Such an order shall be served upon the owner by mailing with confirmation of delivery to the address specified in the plan or the land records of Northampton County.

The owner may appeal the issuance of an order to the Circuit Court of Northampton County.

Any person violating or failing, neglecting or refusing to obey an order issued by Cape Charles Code Official may be compelled in a proceeding instituted in the Circuit Court of Northampton County to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.

Upon completion and approval of corrective action or obtaining an approved plan, the order shall immediately be lifted.

Nothing in this section shall prevent the Cape Charles Code Official from taking any other action authorized by this ordinance or other applicable laws.

Section 1.10. PENALTIES, INJUNCTIONS, AND OTHER LEGAL ACTIONS

A. Any person who has violated or failed, neglected, or refused to obey any order, notice, or requirement of the Town of Cape Charles, any condition of a land-disturbance approval, or any provision of this ordinance shall, upon a finding of the District Court of Northampton County, be assessed a civil penalty. The civil penalty for any one violation shall be not less than $100 nor more than $1,000, except that the civil penalty for commencement of land-disturbing activities without an approved plan shall be $1,000.

Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of $10,000, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of $10,000.

B. The Cape Charles Code Official, or the owner or property which has sustained damage, or which is in imminent danger of being damaged, may apply to the Circuit Court of Northampton County to enjoin a violation or a threatened violation of §§ 62.1-44.15:55 or 62.1-44.15:58 of the Code of Virginia, without the necessity of showing that an adequate remedy at law does not exist.

   However, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the local program, and the program authority, that a violation of the local program has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the local program nor the program authority has taken corrective action within fifteen days to eliminate the conditions which have caused, or create the probability of causing, damage to his property.

C. In addition to any criminal or civil penalties provided under this ordinance, any person who violates any provision of the Erosion and Sediment Control Law may be liable to the Town in a civil action for damages.

D. Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed $2,000 for each violation. A civil action for such violation or failure may be brought by the Town.

   Any civil penalties assessed by a court shall be paid into the treasury the Town, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

E. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or condition of a permit or any provision of this ordinance, or order of the Town of Cape Charles, the Town may provide for the payment of civil charges for violations in specific sums, not to exceed the limit specified in Subsection D of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under Subsection A or D.

F. The Commonwealth's Attorney shall, upon request of the Town, take legal action to enforce the provisions of this ordinance.

Section 1.11. APPEALS AND JUDICIAL REVIEW

A. Final decisions of the Town under this ordinance shall be subject to review by the Northampton Circuit Court, provided an appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities.

Attachment 7

HRDB Appeals to Town Council
Consistency Review

CONSISTENCY REVIEW OF THE APPEALS PROCESS of HISTORIC DISTRICT REVIEW BOARD DECISIONS BY TOWN COUNCIL – ORDINANCE REQUIREMENTS AND GUIDELINES

By Katie H. Nunez, Planning Director & Zoning Administrator

February 14, 2024

Cape Charles Zoning Ordinance Section 8.33 (chart in GREEN BELOW) outlines the process for an applicant or aggrieved party with immediate, pecuniary and substantial interest to appeal a decision issued by the Historic District Review Board. This section was not amended when we adopted the revised Guidelines in December 2022 (chart in YELLOW BELOW).

I am proposing a revision to the last paragraph of this section to reflect the intent of Town Council governance over the narrow intent of its appeal review and authority relative to HDRB decisions.

Section 8.33 Appeals; Decisions of the Historic District Review Board

An appeal from a decision of the Historic District Review Board may be taken to the Town Council by the owner of the property in question or by any party aggrieved and must show that he has an immediate, pecuniary and substantial interest in the litigation, and not a remote or indirect interest, which shall be taken within thirty (30) days after the decision appealed from by filing with the Zoning Administrator the following: a notice of appeal specifying the grounds thereof; a signed statement listing any personal or business relationship with any general or subcontractors associated with the project under appeal; a signed statement that all real and personal property taxes are current as of the date of the filed appeal notice; a signed statement listing any personal or business relationship or partnership with the property owner(s) associated with the project under appeal; a fee equal in value to the fee paid by the property owner(s) associated with the project under appeal.

The person submitting the appeal shall not be allowed to present any evidence that was not presented to the Historic District Review Board, Council members having any relevant interaction with the applicant shall disclose such interaction prior to considering the appeal. The Zoning Administrator will prepare a document of all the papers constituting the record upon which the action appealed from was taken. The Town Council shall fix a reasonable time for the hearing, give public notice thereof and decide the same within sixty (60) days from the date the person submitted a request for appeal.

At the hearing, the appealing party may appear in person or by agent. In exercising its powers, the Town Council ~~may, in conformity with the provisions of this Ordinance, reverse or affirm, wholly or partly, or may modify any order, requirement, decision, or determination appealed from and make such order, requirement, decision or determination as ought to be made and to that end shall have all the powers of the Historic District Review Board.~~ will rely solely on the written record of decision from the Historic District Review Board and will refer to the Adopted Historic District Guidelines to determine if they were appropriately applied. The Town Council, through their appeal hearing, is determining only if a procedural or application error has occurred.

HISTORIC DISTRICT GUIDELINES 2.4 – HOW DO I APPEAL A DECISION?

If a COA application is denied by either the Zoning Administrator or the Historic District Review Board, the applicant or any aggrieved party demonstrating impact can appeal the decision to the Town Council; for all other zoning decisions made by the Zoning Administrator that are not part of a COA application, appeals should be made to the Board of Zoning Appeals. Section 8.34 of the Historic District Overlay Ordinance provides that the applicant has thirty (30) days to request an appeal of the Zoning Administrator's or HDRB's decision on a COA to the Town Council following the date of the decision.

When considering an appeal, the Town Council must rely on the written record of decision. Information not available to the HDRB during their deliberations is not admissible during an appeal to the Town Council. The Town Council must also refer to Design Guidelines to determine if they were appropriately applied when rendering their decisions. It is not sufficient that the appellant is unhappy with the outcome of the COA decision to pursue an appeal; however, there is nothing to preclude this type of appeal. Therefore, the Town Council is only obligated to determine whether or not a procedural or application error has occurred in rendering the initial decision and not to override the independent judgment of the HDRB. Town Council will only reivew the specific aspect(s) of the application that is being appealed. Otherwise, the appeals process would be entirely subjective. Review of a COA application and use of the Design Guidelines by the Zoning Administrator or Historic District Review Board is intended to be an objective process to the extent practical, reasonable, and feasible. Whether or not the Zoning Administrator or the HDRB followed that process appropriately and fully is what the Town Council must decide on appeal. The Town Council will refer to the Design Guidelines when considering the appeal.

PLANNING COMMISSION
STAFF REPORT

Meeting Date: February 29, 2024
Prepared by: Katie H. Nunez, Planning & Zoning Administrator
Date: February 23, 2024
JOINT WORK SESSION: DRAFT ZONING ORDINANCE REVIEW – SIGN ORDINANCE SECTION

The Sign Ordinance draft is now completed by the Planning Commission. As you may recall, the PC formed a Sign Subcommittee last year and they worked on & developed a proposed ordinance from the Model Template Sign Ordinance from the Local Government Attorney's Association which was developed in response to a Supreme Court decision in 2015 that stated sign ordinances need to be content neutral due to First Amendment rights.

This proposed sign ordinance would wholly replace the current Sign Ordinance (Section 4.1). I would recommend that we then list the sign ordinance as its own Chapter or Article within our zoning ordinance since we have structured the draft ordinance differently where each zoning district has its own chart listing the types of signs allowed, sign and quantity and placement of said signs on the property/building and there are general sections within the text of this document that outline the review/administration process of obtaining a sign, etc.

Relative to the dimensional requirements by zoning district, Commissioner Paul Grossman provided to the Planning Commission photos and existing measurements of signs in the various districts today that greatly assisted the Commission in selecting measurements that were appropriate and typical for the zoning district. If you are interested in seeing the detail review on the dimensional requirements component, I would refer you to the Planning Commission's agenda packet of February 6, 2024: https://www.capecharles.org/docview.aspx?doctype=packetDoc&docid=12156

I am calling your attention to one item that was discussed at length by the Planning Commission and it is found in Section 11 – Residential District Signs relative to temporary signs. There is a footnote that is indicating that vacation rental signs are prohibited from being considered a temporary sign, thus would not be allowed in the Residential District. In the absence of any recommendation for zoning text amendments from the Short Term Rental Committee, the Planning Commission addressed the signage related to Short Term Rentals within the sign ordinance draft. This was not a unanimous recommendation and there is concern that it may not withstand scrutiny under the Court rulings on signage over the last 8 years or so.

Attachment 8

Draft Sign Ordinance 02-21-2024

ARTICLE ___. - SIGNS

DIVISION I. - GENERAL PROVISIONS

Sec. 1 purpose and intent; interpretation.

(a) 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 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 by right or by conditional sign permit under this article, by specific requirements in another portion of this chapter, or otherwise expressly allowed by the Town Council 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 Town designed for primarily vehicular access and portions of the 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 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.

(h) Due to the difficulty of addressing all situations and sizes of signs, the Zoning Administrator may allow for signage that meets the intent of the individual zoning districts. Any exceptions granted will be presented at the next Planning Commission meeting.

Sec. 2. - Definitions.

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."

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.

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.

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

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.

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.

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 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. This does not include Temporary Signs for Special Events approved by the Town.

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.

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. 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, holiday displays, 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.

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.

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 (Prohibited Signs) as well as in Sections 11 through 14 (Sign Regulations by Use and Zoning District).

(b) *Application for permit.*

(1) An application for a sign permit shall be filed with the Planning & Zoning Department 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.

(2) The 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 5 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.

(3) If the application is rejected, the Town Zoning Administrator 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 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, the permit shall be void. The Town may revoke a sign permit under any of the following circumstances:

(1) The 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 sign reviews as required pursuant to Article VIII (Historic District Overlay ordinance) require approval of the Historic District Review Board (HDRB) except when a sign permit is not required as provided in Section 4.

(f) *Special exceptions.* Comprehensive sign plans may be approved as part of a conditional use permit in commercial, heavy and light industrial, and harbor districts. 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.

Sec. 4. - Permit not required.

Signs that do not require a permit are depicted in Section 11 through 14 (Sign Regulations by Use and Zoning District). In addition, a sign permit is not required for:

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

(2) The changing of messages on marquees and the repair of an existing permitted sign, except that repair of a nonconforming sign must comply with Section 9(e).

(3) Moveable Signs:

a. 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.

b. Town Seasonal Events: The Town or through its designated agents are allowed to place temporary moveable signage promoting Town sponsored seasonal events, festivals, or other marketing campaigns or Town permitted events for the Town up to 30 days prior to the event and must be removed 7 days after the conclusion of the event.

(4) Pavement markings. Any sign applied directly and entirely to and flush with an asphalt, concrete, or similar paved surface.

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 on public lands

(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) Any sign displayed without complying with all applicable regulations of this chapter.

(b) Prohibitions based on materials.

(1) Signs painted directly on any building that is a contributing structure in the Historic District Overlay, except where expressly permitted by this chapter.

(2) Animated signs

(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 unless permitted within this article.

(8) Strings of flags visible from, and within 50 feet of, any public right-of-way.

(c) Prohibitions based on location.

(1) Signs erected on public land other than those approved by an authorized 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.

(2) Signs on the roof surface or extending above the roofline of a building or its parapet wall.

(3) Neon signs, except in windows unless permitted in this article.

(4) Any sign located in the vision triangle formed by any two (2) intersecting streets, as regulated by the provisions of section _____.

Sec. 6. - Measurements of sign area

(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 provisions in section (c) below

(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.

Sec. 7. - Maintenance and removal.

(a) All signs, for which a building permit is required, shall be constructed and mounted in compliance with the Virginia Uniform Statewide Building Code, Appendix #H of the Construction Code.

(b) All signs and components thereof shall be maintained in good repair and in a safe, neat and clean condition.

(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 and nuisance abatement*

(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 Town under the requirements of Virginia Code § 15.2-900, 15.2-906, and/or 15.2-1115.

(3) The Code 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 8, Article III of the Town Code.

Sec. 8. – General requirements.

(a) *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, 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 _____. 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.

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. If notice from the zoning administrator is issued, 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 _____. 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.

DIVISION II. - SIGN REGULATIONS BY USE AND DISTRICT

Section 11. – Residential District signs.

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 on Building Permit Site**	**Temporary Other** *(Note 1)*	**Permanent Non-commercial** *Notes: (2) (5) (6) (7)*
Permit Required	No	No	No	No
Size (each/total)	24 sf/ three (Only one flagpole)	12 sf/ max one each per contractor or sub	• 12 sf/ max one • 16 sf/ max one for multi-development site (Subdivision Plat – lots for sale)	Max 2 minor signs (≤ 3 sf) each per ~~parcel~~ building unit Historic markers exempted. Freestanding for identifying multi-family sites (apartment buildings) ≤ 32 sf/ max one
Illumination	U.S. Flag Code *(see Note 4 below)* For other flags (see Section 8)	None	None	None
Setback	Not in public right-of-way nor 5 ft from service drive, travel lane or adj street	None	None	None
Maximum Height	25 ft (flagpole)	4 ft	6 ft	4 ft for freestanding
Location	Allowed within the front, rear and side setbacks provided that such structure shall not create a visual obstruction or hindrance to traffic on abutting streets	Freestanding, portable, wall or window	Freestanding, portable, wall or window	Wall or window sign
Duration	Unlimited	Duration of project	≤ 90 days per 365-day calendar year period *(see Note 3 below)*	Unlimited

(1) Includes signs on property for sale. Vacation rental signs are prohibited.
(2) Exceptions can be granted *by Zoning Administrator* for non-residential property in Residential districts (e.g., churches, funeral parlors, distributors, schools, bed & breakfasts, multi-tenant directory, multi-family establishments)
(3) For sale of property, 90 days may be exceeded. Sign to be removed within 2 weeks after closing.
(4) Flag Code, U.S. Code Title 36, Chapter 10, Section 174
(5) Home occupations are not permitted commercial signs.
(6) Minor sign means a wall or window sign not exceeding three (3) square foot in area and not exceeding four feet in height if freestanding, and not illuminated.
(7) Art is not considered a sign.

Section 12. – Commercial District signs. & Harbor District signs

Generally. Except as provided otherwise in this Article, the following signs are permitted as accessory uses in commercial districts.

TYPE	Flags	Freestanding (including monument)	Wall and Window Signs	Moveable Signs (e.g. A-Frame, Banner, Chalk-board, Feather, Off-Premise, Portable)	Other (e.g., Canopy, Projecting, Awning, Marquee, Directory, Canopy)
Definitions	***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.* ***Pole sign** means a sign that is mounted on one (1) or more freestanding poles.*	***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* ***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.* ***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.*	***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.*	***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."* ***Banner** means a sign of flexible material affixed to a framework or flat surface.* ***Chalk-board sign** means a single-faced, framed slate or chalk-board that can be written on with chalk or similar markers* ***Feather sign**. A lightweight, portable sign mounted along one edge on a single, vertical, flexible pole the physical structure of which that may resemble a sail, bow, or teardrop.* ***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.* ***Portable sign** means any temporary sign not affixed to a building,*	***Awning sign** means a sign placed directly on the surface of an awning.* ***Canopy sign** means a sign attached to a canopy.* ***Directory sign** (also identified as Multi-Tenant Sign): A sign which identifies tenants in a multi-tenant building or complex and which is located in the development for which it is advertising. Said sign will list the tenants or occupants of a building or group of buildings and may also indicate their respective professions or business activities.* ***Entrance canopy** means a fixed or stationary canopy or hood constructed to provide protection at the entrance of a building, either supported entirely from a building, or supported partly from a building or from posts.* ***Hanging sign** means a sign supported by the extended arm of a single post or from a commercial establishment (parallel to the building façade).* ***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.*

TYPE	Flags	Freestanding (including monument)	Wall and Window Signs	Moveable Signs (e.g. A-Frame, Banner, Chalk-board, Feather, Off-Premise, Portable)	Other (e.g., Canopy, Projecting, Awning, Marquee, Directory, Canopy)
				structure, vehicle or the ground. It does not include a flag or banner	***Projecting sign** means a sign that is wholly or partly dependent on the building for support and that projects more than twelve (12) inches from such building.*
Permit Required	Yes – flagpole only	Yes	Wall: Yes Window: No	No	Yes
Size/Number (each/total)	24 sf/ max 3 (Only one flagpole)	Permanent On-site: 24 sf/ one. Permanent Off-site for Commercial use: Up to 3 signs, each not to exceed 18 sf and 7 ft in height located on commercial property with owner permission. No more than one permitted sign displayed per lot.	12 sf per 5 lineal ft of building frontage ≤ 8 sf per 5 lineal ft of building side wall Window signs are permitted	≤ 16 sf/ max 3	Directory – Limited to one sign per ingress/egress onto a primary road access. Projecting signs perpendicular to bldg. frontage ≤ 10 sf Hanging sign parallel to bldg. frontage ≤ 5 sf per 5 lineal ft Awning signs ≤ 12 sf Entrance canopy sign by ZA
Illumination	U.S. Flag Code (See Note 1) Other Flags – See Section 8	If illuminated, see Section 8 req'ts	If illuminated, see Section 8 req'ts	Not to be illuminated	If illuminated, see Section 8 req'ts
Setback	Not in public right-of-way nor 5 ft from service drive, travel lane or adj street.	All freestanding signs shall be set back from any street right-of-way at least half the height of the sign and5 ft from service drive, travel lane or adj street.	NA	Not in public right-of-way nor 5 ft from service drive, travel lane or adj street. Not to impede pedestrian traffic on the sidewalk.	NA
Maximum Height	25 ft - flagpole	10 ft	NA	10 ft	NA
Location	Allowed within the front, rear and		Bldg wall, or window.	If located on another property, property owner concurrence needed.	Signs cannot impede public right-of-way.

TYPE	Flags	Freestanding (including monument)	Wall and Window Signs	Moveable Signs (e.g. A-Frame, Banner, Chalk-board, Feather, Off-Premise, Portable)	Other (e.g., Canopy, Projecting, Awning, Marquee, Directory, Canopy)
	side setbacks provided that such structure shall not create a visual obstruction or hindrance to traffic on abutting streets		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.	No more than one sign shall be displayed per lot. Signs cannot impede public right-of-way.	Directory or Multi-Tenant Sign: Limited to one monument sign per ingress/egress onto a primary road access.
Duration	Unlimited	Unlimited	Unlimited	See Section 4	Unlimited

(1) U.S. Code Title 36, Chapter 10, Section 174

Section 13. – Heavy and Light Industrial District signs.

Except as provided otherwise in this Article, the following signs are permitted as accessory uses in industrial districts.

TYPE	Flags	Freestanding (including monument)	Wall & Window Signs	Moveable Signs (e.g. A-Frame, Banner, Chalk-board, Feather, Off-Premise, Portable)	Other (e.g., Canopy, Projecting, Awning, Marquee, Directory)
Definitions	***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.* ***Pole sign** means a sign that is mounted on one (1) or more freestanding poles.*	***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.* ***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.* ***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.*	***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.*	***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."* ***Banner** means a sign of flexible material affixed to a framework or flat surface.* ***Chalk-board sign** means a single-faced, framed slate or chalk-board that can be written on with chalk or similar markers* ***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.* ***Off-premises sign** means a sign that directs attention to a business, product, service or*	***Awning sign** means a sign placed directly on the surface of an awning.* ***Canopy sign** means a sign attached to a canopy.* ***Directory sign** (also identified as Multi-Tenant Sign): A sign which identifies tenants in a multi-tenant building or complex and which is located in the development for which it is advertised. Said sign will list the tenants or occupants of a building or group of buildings and may also indicate their respective professions or business activities.* ***Entrance canopy** means a fixed or stationary canopy or hood constructed to provide protection at the entrance of a building, either supported entirely from a building, or supported partly from a building or from posts.*

TYPE	Flags	Freestanding (including monument)	Wall & Window Signs	Moveable Signs (e.g. A-Frame, Banner, Chalk-board, Feather, Off-Premise, Portable)	Other (e.g., Canopy, Projecting, Awning, Marquee, Directory)
		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.*		*activity conducted, sold or offered at a location other than the premises on which the sign is erected.* ***Portable sign*** *means any moveable sign not affixed to a building, structure, vehicle or the ground. It does not include a flag or banner*	***Hanging sign*** means a sign supported by the extended arm of a single post or from a commercial establishment (parallel to the building façade). ***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.* ***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.*
Permit Required	No	Yes	Wall: Yes Window: No	No	Yes
Size/Number (each/total)	24 sf/ max 3 (Only one flagpole)	Permanent On-site: 40 sf/ one. Permanent Off-site for Commercial use: Up to 3 signs, each not to exceed 18 sf and 7 ft in height located on commercial property with owner permission. No more than one permitted sign displayed per lot.	Front Wall: 12 sf per 5 lineal ft of building frontage Side Wall: 8 sf per 5 lineal ft.	16 sf/ max 3	Directory – Limited to one sign per ingress/egress onto a primary road access. Projecting signs perpendicular to bldg. frontage $\leq$ 10 sf Hanging sign parallel to bldg. frontage $\leq$ 5 sf/ 5 lineal ft Awning signs $\leq$ 12 sf Entrance canopy sign by ZA

TYPE	Flags	Freestanding (including monument)	Wall & Window Signs	Moveable Signs (e.g. A-Frame, Banner, Chalk-board, Feather, Off-Premise, Portable)	Other (e.g., Canopy, Projecting, Awning, Marquee, Directory)
Illumination	U.S. Flag Code (See Note 1) Other Flags – See Section 8 req'ts	If illuminated, see Section 8 req'ts	If illuminated, see Section 8 req'ts	Not to be illuminated	If illuminated, see Section 8 req'ts
Setback	Not in public right-of-way nor 5 ft from service drive, travel lane or adj street	All freestanding signs shall be set back from any street right-of-way at least half the height of the sign, and 5 ft from service drive, travel lane or adj street.	NA	Not in public right-of-way nor 5 ft from service drive, travel lane or adj street. Not to impede pedestrian traffic on the sidewalk.	NA
Maximum Height	25 ft -flagpole	10 ft	NA	10 ft	NA
Location	Allowed within the front, rear and side setbacks provided that such structure shall not create a visual obstruction or hindrance to traffic on abutting streets.		Bldg wall or window 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.	If located on another property, property owner concurrence needed. No more than one sign shall be displayed per lot. Signs cannot impede public right-of-way.	Signs cannot impede public right-of-way.
Duration	Unlimited	Unlimited	Unlimited	See Section 4	Unlimited