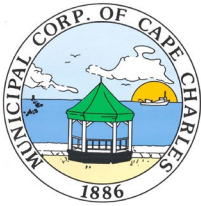


Planning Commission Regular Meeting and Public Hearing
Cape Charles Civic Center – 500 Tazewell Avenue
June 3, 2025, at 6:00 P.M.

- 1. Call to Order**
- 2. Roll Call**
- 3. Invocation and Pledge of Allegiance**
- 4. Consent Agenda -**
 - a. Approval of Agenda Format
 - b. Approval of Minutes:
 - i. April 10th, 2025 Minutes
- 5. Public Hearing - NONE**
- 6. Unfinished Business:** Review of proposed changes to CCZO Section VII – Chesapeake Bay Preservation Act – markup of Model Ordinance as a result of state law changes, as well as proposed edits to the Definitions Chapter (Appendix A) and the Site Plan Ordinance (Appendix C)
- 7. New Business:** Review of proposed changes to CCZO Section VIII – Historic District Overlay Ordinance regarding the review process for the three categories of work: Routine Maintenance, Minor Work, Major Work, and proposed addition of a new Appendix to the Historic District Guidelines.
- 8. Standing Staff Reports –**
 - a. March 2025 Monthly Report
- 9. Announcements –**
 - a. Next Planning Commission Meeting – July 1, 2025
- 10. Adjourn**

Minutes: April 10th, 2025



Planning Commission
Public Hearing and Regular Hearing
Cape Charles Civic Center
April 11th, 2025
6:00 p.m.

At approximately 6:01 p.m., on April 10th, in the Cape Charles Civic Center, Chairman Bill Stramm, having established a quorum, called to order the Planning Commission Public Hearing and Regular Meeting. In attendance were Vice-Chair Bill Ashworth, Members Jim Holloway, Ian McDonald, Shannon Smith, Libby Wright, and Clayton Newman.

Also present were Planning and Zoning Administrator Katie Nunez, Zoning Compliance Officer Jack Steinmayer, Finance Clerk Ryan Silvey, and Town Manager John Hozey.

Councilman Paul Grossman was also in attendance, along with 9 members of the public and 15 residents watching via Facebook Live.

After establishing a quorum, a moment of silence was observed, followed by the recitation of the Pledge of Allegiance.

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Consent Agenda

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

Chairman Stramm then read both public hearing notices and opened the public hearings.

Public Hearing

- A. Zoning Text Amendment (ZTA) 2025-01: application from the Town of Cape Charles to amend Article III, Section 3.3 (E) of the Cape Charles Zoning Ordinance by deleting the provision requiring a 3-acre lot minimum for a Multi-Family Project Development.***

Planning and Zoning Administrator Katie Nunez summarized the staff report for the Planning Commission.

The applicant, Town of Cape Charles, represented by Town Manager John Hozey, was available to take any questions from the Planning Commission.

Seeing as there were no immediate questions for John Hozey, Chairman Stramm moved on to public comments.

Public Comments

A. *Peter Alpern (3 Bay Vista Way)*

Mr. Alpern explained that there was no plan. He further explained that the buildings were unsalvageable because there were vermin and birds entering and exiting the buildings. Mr. Alpern then spoke on how he saw men in orange HAZMAT suits going in and out of the buildings.

Motion was made by Commissioner Holloway, seconded by Commissioner Wright, to close the public hearing. The motion was approved unanimously.

B. *Zoning Map Amendment (ZMA) 2025-01: application from Seabreeze Associates, LP, to conditionally rezone with proffers 201-209 Washington Avenue (Tax Map #83A1-3-B2 & 83A1-3-3) from Residential-1 (R-1) to Residential-3 (R-3) pursuant to Cape Charles Zoning Ordinance Section 2.7.2 and Section 3.3.*

Planning and Zoning Administrator Katie Nunez summarized the staff report for the Planning Commission.

The applicant, Seabreeze Associates, LP, represented by Bill Parr, then spoke on the application and offered clarifying information for the Commission.

Commissioner Ashworth wanted to know the price point for the units and condos. Mr. Parr stated that it would cost anywhere from \$450,000 to \$500,000.

Commissioner Ashworth then wanted to know about any possible parking considerations that have been made. Mr. Parr detailed the current parking situation and explained that if they needed to increase parking on-site, then some clean-up would need to be done on the property. If they had to move the dumpster to add spaces and find a new arrangement for trash pickup, that would be a possibility.

Commissioner Ashworth then followed up by asking why they decided to proffer short-term rentals (STRs). Mr. Parr explained that after talking with the Town staff and understanding the Town's position on the matter, they were willing to forgo this use on the property to help move their application forward. He further explained that the buyers of the units would not want STRs as it's a little tight.

Mr. Parr then explained that it is a costly proffer to give up as some owners would want the extra cash flow and business, but they were willing to give it up to offer a better product.

Commissioner Ashworth explained that Mr. Parr would find general support for short-term rentals as there was a recent election in which the 3 new Town Council

Members ran on being in favor of short-term rentals. He further explained that he was confused as to why a developer would offer a proffer that would possibly reduce resale value. Mr. Parr explained that the Commission could reject the proffer if the Commission saw fit to allow short-term rentals, and they would make business decisions later on the sensibility of whether they would allow them or not.

Commissioner Smith explained that 230 on Mason Avenue had the same restrictions.

Commissioner Ashworth explained that he was concerned with the precedent that this could be setting, as the Town has a Zoning Ordinance, and an accessory use is short-term rentals, and what wasn't able to be codified during those discussions is now trying to be achieved administratively, contrary to public opinion.

Commissioner McDonald then asked why this property couldn't stay Residential-1 (R-1) and do all of the items that they are requesting. Ms. Nunez explained that it is primarily a density issue as the sheer number of units would not be allowed within the R-1 zoning district. She then explained that they are seeking improvements that would not be allowed to occur under the R-1 zoning as they do not meet the density requirements.

Councilman Newman wanted to know if there was any plan to increase the density. Mr. Parr explained that they were considering turning the office/laundry building into 2 housing units. They were also looking at the feasibility of limiting the number of units by making the existing apartments larger, as they would be more valuable.

Commissioner Wright had the same concerns on the short-term rental proffer as Commissioner Ashworth. She sensed that these condominiums being on the bay would be pretty luxurious and that the owners of these future condominiums would not need the extra income that short-term rentals would bring in. Mr. Parr explained that if they stuck with the 28 original units, they would have plenty of interest from people who would not need to utilize these units as short-term rentals.

Commissioner Ashworth was concerned that the Town was going to throw the short-term rental proffer back at property owners looking to expand their houses, as if they agreed to never use their dwellings as STR, only then would they be allowed to expand their homes.

Ms. Nunez explained that proffers are only a functionality of rezoning from one zoning district to another. Commissioner Ashworth wondered about the other

properties in the R-3 district. Ms. Nunez explained that the Zoning Text Amendment stands by itself, and the proffer only sits with the parcel in question.

Town Manager John Hozey then wanted to address the point that somehow staff was pressuring proffers to achieve some sort of agenda. He explained that when a developer comes to the Town, it is the town's job to try to make it happen, not knowing how things are going to play out because of how new the STR ordinance is. It is simply providing them an option to move forward; if the Commission was not favorable to the proffer, then they can reject it. He mentioned that STRs generally have a greater requirement for parking, so if STRs were permitted at this location, then the odds are that parking would spill out onto Washington Avenue. The Town staff is simply trying to help the developer accomplish their goal, not trying to push any sort of agenda.

Commissioner Ashworth was simply building upon Ms. Nunez's comments and the developers' comments.

Commissioner Smith stated that the developer was trying to appeal to the market, as when she purchased her unit, one of the items that made it attractive was the inability to have STRs as it is tight living.

Seeing as there were no more comments from the Planning Commission, Chairman Stramm opened the public comment portion of the hearing.

Public Comments

A. Peter Alpern (3 Bay Vista Way)

Mr. Alpern explained that there was no plan. He further explained that the buildings were unsalvageable because there were vermin and birds entering and exiting the buildings. Mr. Alpern then spoke on how he saw men in orange HAZMAT suits going in and out of the buildings. Finally, he stated that fixing and flipping these buildings was an abomination and would only benefit the developers, not anyone else.

Written Comments

Zoning Compliance Officer Jack Steinmayer then read the following written comments into the record:

A. Erin and Don Sedgley (TX #83A1-18-BV2)

B. Devon and Linda Johnson (2 Bay Vista Way)

C. Fabien and Shashi Baksh (4 Bay Vista Way)

D. John and Antoinette Payne (TM #83A1-18-BV4)

Bill Parr was then granted time to rebut the comments. Mr. Parr explained that Seabreeze has been very contentious and all the issues that were brought up in the public comments would not be happening again. He then explained that when the Bay Vista Way residents bought their properties were aware that there was a low incoming housing development next door, and what will be occurring on the property is going to be far superior to what was previously there.

Commissioner Holloway wanted to know if Seabreeze was within the Historic District. Ms. Nunez explained that it was not within the Historic District and does not need to adhere to those guidelines, however, it does have to adhere to other developmental standards.

Commissioner Wright wanted to know if changes were going to be made, would they have to come before the Planning Commissioner. Ms. Nunez explained it would not come before the Planning Commission; however, it would come before the Town Staff. Any new structures proposed would have to adhere to the setback requirements and parking requirements. This is not the case for the buildings that are currently on the property.

Ms. Nunez explained that the bulk of this property does not fall within the 100 ft. RPA line as outlined by the CBPA.

Commissioner McDonald wanted to know for clarification purposes if 207 or 209 would not meet the rear setback requirements as of today. Ms. Nunez explained that she would need to look at their survey.

Commissioner McDonald also wanted to know if they could convert them to condominiums or if they would need to stay as apartments. Ms. Nunez explained that it is simply a form of ownership.

Motion to close the public hearing was made by Commissioner McDonald, seconded by Commissioner Wright. The vote was approved unanimously.

New Business

- A. Zoning Text Amendment (ZTA) 2025-01: application from the Town of Cape Charles to amend Article III, Section 3.3 (E) of the Cape Charles Zoning Ordinance by deleting the provision requiring a 3-acre lot minimum for a Multi-Family Project Development.***

Commissioner McDonald wanted to know if they did not approve the zoning text amendment, would they need to revisit the map and change the current R-3 zoned

parcels back. Ms. Nunez explained that they could not be changed back because the Residential Estate (RE) district was eliminated. This would have to be addressed one way or another, the Commission could lower the threshold for the R-3 district. The 8 parcels that are zoned R-3 are not in danger as no development has occurred on the parcels.

Councilman Newman wanted to know if any of the parcels are being considered for Town projects for affordable housing. Ms. Nunez explained that the Town-owned parcel is in consideration.

Commissioner McDonald expressed his discomfort with having no limit.

Councilman Newman wanted to know how many units the Bay Lake Condominiums had. Ms. Nunez believed there were 16 units and that it consisted of several parcels combined to create that development. She thought it involved 7 lots coming together to form Bay Lake. Councilman Newman supported Commissioner McDonald, stating that it was challenging to discuss acreage without a reference point for what is considered reasonable.

Commissioner Wright noted that the minimum lot size for Multi-Family Developments is 1,500 square feet, which translates to 29 units per acre. Ms. Nunez then explained that other developments would reduce the available developable area due to parking, trash, and utilities.

Motion was made by Commissioner McDonald, seconded by Commissioner Holloway, to table the topic until the town staff comes back with other options. Motion died with a 4-2 no vote. Commissioners Smith, Ashworth, Wright, and Newman voted against.

Town Manager John Hozey explained that one of the reasons staff was comfortable removing the 3-acre requirement was because of all the other requirements. Putting in an arbitrary size requirement when other requirements would eat at the usable land wouldn't make sense. If tabled, this application would fall to the bottom of the priority list and will come back in time.

Ms. Nunez followed this by explaining that developers were looking at constructing more affordable housing, and removing the acreage requirement would allow for smaller parcels to be utilized for affordable housing.

Motion was made by Commissioner Smith, seconded by Commissioner Ashworth, that the Planning Commission recommend to Town Council that they move forward with

their review for removing the requirement of three acres on R-3 lots. The motion was approved by a vote of 5-1, with Commissioner McDonald being the lone dissenting vote.

B. Zoning Map Amendment (ZMA) 2025-01: application from Seabreeze Associates, LP, to conditionally rezone with proffers 201-209 Washington Avenue (Tax Map #83A1-3-B2 & 83A1-3-3) from Residential-1 (R-1) to Residential-3 (R-3) pursuant to Cape Charles Zoning Ordinance Section 2.7.2 and Section 3.3.

Council Member Newman stated that he was sympathetic whenever people who are stakeholders in Cape Charles come to meetings and express their feelings and emotions about things like this. He feels conflicted about the comments that were submitted, as they were contradictory in some ways. It is hard for him to place the evil hat on developers when they want to come in and approve things. It is hard for him to think that it is a bad improvement for the Town. Finally, he hopes no one blames the Town as they are not the owners of the property.

Commissioner McDonald's concern with the property was that two of the buildings did not meet the setback requirements and did not meet the Chesapeake Bay setback requirements. They can still make upgrades even if they stay zoned as R-1. Rezoning this to make it easier for them to make upgrades is a problem.

Commissioner Ashworth did have his concerns with not allowing STRs on this property, as it would limit dollars going into the town's economy, especially during the summer months. If those dollars go away, then we will not be able to enjoy those businesses.

Motion made by Councilman Newman, seconded by Commissioner Wright, to recommend to the Town Council to approve the Conditional Rezoning (ZMA2025-01) of 201-209 Washington Avenue (Tax Map #83A1-3-B2 & 83A1-3-3) from Residential-1 (R-1) to Residential-3 (R-3) with the proffers provided by the applicant. The vote was approved unanimously.

Standing Staff Report

Ms. Nunez summarized the monthly staff report.

Motion to adjourn at 7:24 p.m. was made by Commissioner Smith, seconded by Commissioner Ashworth. The motion was approved unanimously.

Chairman Stramm

Zoning Compliance Officer

DRAFT

Planning Commission Public Hearing and Regular Meeting

April 10th, 2025

Citizen Written Comments Received

A. Zoning Text Amendment (ZTA) 2025-01: Town of Cape Charles

1. Peter Alpern (3 Bay Vista Way)

B. Zoning Map Amendment (ZMA): Seabreeze Associates, LP.

1. Erin and Don Sedgley (TM #83A1-18-BV2)
2. Devon and Linda Johnson (2 Bay Vista Way)
3. Fabien and Shashi Baksh (4 Bay Vista Way)
4. John and Antoinette Payne (TM #83A1-18-BV4)
5. Peter Alpern (3 Bay Vista Way)

Peter Alpern
3 Bay Vista
Cape Charles, VA 23310

April 7, 2025

Cape Charles Zoning
2 Plum Street
Cape Charles, VA 23310

RE: ZTA 2025-01

To whom it may concern:

This letter is intended to be read by me in person at the April 10, 2025 meeting of the Board of Zoning and is regarding the Zoning Text Amendment ZTA 2025-01.

To wit:

- My wife Elizabeth and I own the house at 3 Bay Vista in the Bay Vista Planned Unit Development in Cape Charles, VA.
- The Bay Vista PUD is currently being encroached upon by the Cape Charles Planning Department from the East by a variance requested by “Dreams by the Water” to reduce the back yard set back by 10 feet, and from the West by a ridiculous and inappropriate plan to rezone the Seabreeze Apartments so that they can be “fix and flipped” by another developer.
- In 1992 and again twice last fall, the Cape Charles zoning rules were ratified requiring R-3 parcels to sit on no less than 3 acres of land to avoid overcrowding and resource scarcities.
- The Planning Department is looking to remove the 3 acre requirement of R-3 properties to facilitate the proposed buyer of the 1.5 acre Seabreeze parcel who would like its zoning changed from R-1 to R-3.
- The Planning Department’s Agenda on March 20 as prepared by Katie Nunez and reviewed by John Hozey noted that the thought of changing the R-3 zoning to no longer require a minimum of 3 acres was originated from a conversation with a single developer who would like to fix and flip the existing unsalvageable Seabreeze apartment buildings.

- If approved the entire Town of Cape Charles must deal with this change to the Zoning rule putting all single family homes at risk to their next door properties being rezoned for multi family housing.
- Why would the Town planning department change a zoning requirement for the entire town at the request of one business person?
- If the 3 acre requirement for R-3 parcels is an important requirement for the Town, why wasn't it taken up at either zoning amendment review last fall (2024)?
- The fixing and flipping of the Seabreeze Apartments is an abomination that will benefit the builder only. What kind of people would buy a luxury condo that was retrofitted from a condemned low income apartment? What kind of people does the Planning Department want to draw to Cape Charles so that this developer can make their \$ while the rest of Cape Charles suffers with the inappropriate fixing and flipping of condemned apartments? Advantage takers?

I respectfully request that the planning department retain the 3 acre requirement for R-3 zoned properties in Cape Charles to relieve over crowding and resource scarcity. Please do not let one profit motivated developer put the entire Town's (and my family's) investments at risk by drawing "advantage takers" to Cape Charles.

Deny ZTA 2025-01

Sincere regards,
 Peter Alpern
 908-868-8350

Erin & Don Sedgley

Bay Vistas

Cape Charles, VA

April 8, 2025

Cape Charles Zoning Department

2 Plum Street

Cape Charles, Virginia 23310

To Whom it May Concern,

This letter is to be read at the April 10, 2025 Cape Charles Planning Commission Meeting.

As property owners on Bay Vistas, Erin & Don Sedgley, we are vehemently opposed to the following:

- Proposed rezoning of 201-209 Washington Avenue from Residential-1 (R-1) to Residential-3 (R-3) (being non-compliant against rezoning property)
- Altering town R-3 parameters (Vote against Resolution of Intent 20250320A) The R-3 requirements of minimum 3 acres, for inhabitants of the property and surrounding properties, are very appropriate and should remain. Three acres is adequate for this purpose
- Inhabitation of the existing apartments on the property

Previous town elders were wise and thoughtful when they rezoned this Seabreeze property at 201-209 Washington Avenue) to R-1. They used great thought in establishing overall R-3 town land usage limits as well. It is highly recommended that the Municipal Corporation of Cape Charles channel that same wisdom and uphold the current zone requirements. Have appropriate residential units developed on these parcels under the existing R-1 and existing town R-3 restrictions remain as they stand.

Most people at this meeting are homeowners who understand the need for regular and preventative maintenance. Some also understand that a property can get to a point of no return. This is the case here.

The thought of building reuse is preposterous. Don having worked for Gensler, a global architecture design firm, part of his role was to determine if a proposed space and parcel were viable (i.e. codes, traffic flow, existing conditions, etc.) for a proposed use.

The situation at 201-209 Washington Avenue is worse than we all are aware. These apartments are not suitable to inhabit, and the parcel is not and should not be rezoned for reuse. They need to be demolished, and the property reestablished within appropriate existing zoning regulations.

These buildings have been a health hazard and an eye sore to the town since owner neglect began many years ago. It was an injustice to have the residents in them as long as they did. To appropriately retrofit would not be cost effective besides 8-foot ceilings are not apropos to “luxury” living.

Previous Seabreeze residents reported that they lived in abhorrent conditions with non-existent engagement of the management company. Issues include plumbing, electrical, foundational, mechanical, roofing and structural. Building #3 is in serious structural jeopardy, appearing to be sinking into the bay. This is another example of property disregard and deterioration.

As an aside, we miss seeing and chatting with the previous Seabreeze residents and look to welcome them back. We are in favor of Cape Charles supporting the development of new cost-friendly housing on appropriate parcels within the town proper or on its periphery.

Thank you for accepting and sharing our letter with the zoning leadership and the parties impacted by this decision.

Thank you,

Don & Erin Sedgley

704.838.6393

From: [Linda Johnson](#)
To: [Katie Nunez](#)
Cc: [Devon Johnson](#)
Subject: RE: ZMA2025 - 01 - Application from Seabreeze Associates, LP
Date: Friday, March 28, 2025 9:15:26 PM

To: Katie Nunez, Director of Planning/Zoning Administrator and
Subdivision Agent

From: Devon and Linda Johnson, 2 Bay Vistas Way, Cape Charles, VA 23310

Dear Ms. Nunez,

My wife and I are opposed to the rezoning application from Seabreeze Associates LP from Residential-1 (R-1) to Residential-3 (R-3).

My wife and I are against changing the current zoning which will affect the Town's comprehensive plan for this non-conforming property. Why should this property be the change agent for the Town zoning/comprehensive plan?

The eight parcels cited who's zoning will be affected will not have the same effect on the Town historic character and the residents that live in the Washington St corridor.

The Town now has the opportunity to have this non-conforming property developed within the current zoning ordinance and in a manner that is representative of the housing within the Town. Look at what is being built and renovated on Washington Avenue.

As far as the Town's affordable housing and adding units issue. Yes if this rezoning is approved it will add back units however affordability will not be addressed. Look at what one bedroom condo's are being listed for in Cape Charles.

I truly believe that by changing this zoning it will have unintended consequences for the Town and all property owners.

The current zoning has benefited everyone and this property should not be used as the foundation to change it.

Sincerely, Devon and Linda Johnson

Drs. Fabien and Shashi Baksh,
4 Bay Vistas Way,
Cape Charles VA
4/8/2025

Planning Commission,
Town of Cape Charles,
2 Plum St.,
Cape Charles, VA

Re: 1. Zoning Text Amendment (ZTA) 2025-01: application from the Town of Cape Charles to amend Article III, Section 3.3 (E) of the Cape Charles Zoning Ordinance by deleting the provision requiring a 3-acre lot minimum for a Multi-Family Project Development.

2. Zoning Map Amendment (ZMA) 2025-01: application from Seabreeze Associates, LP., to Conditionally Rezone with Proffers 201-209 Washington Avenue (Tax Map #83A1-3-B2 & 83A1-3-3) from Residential-1 (R-1) to Residential-3 (R-3) pursuant to CCZO Section 2.7.2 and Section 3.3.

We purchased our home at Bay Vistas Way in 2018 as a vacation home, and we plan to eventually retire there. We fell in love with the quiet and historic town of Cape Charles, with well-developed zoning plans and controlled growth to preserve the town's character. We are not fans of busy beach towns, as our “too busy” daily lives leave us yearning for a quiet getaway location, which Cape Charles provides.

Our first point is that the above two proposals appear to be intimately linked but have quite different consequences and should be decoupled. The removal of the R-3 - 3-acre minimum has long-term implications for the development of the entire town and should not be pushed through to facilitate the singular Seabreeze application, as appears to be the case. We would recommend tabling the R-3 3-acre minimum and reviewing it as a separate issue after the Seabreeze application has been considered. This approach ensures that the matter is evaluated as a long-term issue impacting the entire town, thereby eliminating any perception that decisions are being made exclusively to favor the Seabreeze application. If the proposal is still however considered, then we would like to register our objection to the removal of this clause.

Regarding the Seabreeze application, firstly we would like to acknowledge that most of us purchased our homes with the multi-unit dwelling in existence. While it obviously was an outlier as far as structure and use, we certainly understood that it served an important social purpose and had no issues with the community or the residents. This however is significantly different from a developer trying to flip the structure to make a profit, leaving us, the neighbors to live with it. Any argument that we have been living with Seabreeze for so long that we can just continue with a similar structure, in our opinion leaves us closed minded as to what “could be” rather than “what is”.

The Seabreeze property is prime bayfront property, and we should not pretend otherwise. The fact that the town planners made this property R-1 even though it already had an R-3 structure in place speaks volumes as to their long-term intent for the neighborhood – “The intent of this basic zoning district is to provide quiet, medium density, single-family residential development plus provide open areas where similar residential development appears likely to occur”. This is compared to R-3, which allows for high density housing including limited commercial activity.

We would also like to address the overall housing issues that have been raised, outlining the need for diverse and affordable housing. This property, as previously mentioned, is prime bayfront property, and should not be used to provide affordable housing. There is no shortage of land around Cape Charles that can be used for this purpose. The town will be better served by keeping the waterfront developed in the manner that it is currently, with R-1 housing. Flipping an old and dilapidated, previously condemned structure and giving it a face lift will not provide long-term benefit for Cape Charles but ONLY short-term profit for the investors, leaving us to live with it for years to come.

Additionally, we have not heard the 100ft Chesapeake Bay setback addressed, as the front Seabreeze buildings do not appear to conform to this stipulation.

In summary, as property owners immediately adjacent to Seabreeze, we strenuously object to rezoning this land parcel to R-3 as it will result in a permanent change in the nature of the neighborhood from quiet, medium density housing to high density housing. The previous non-conforming use was inherently temporary and should not be the basis for a change in zoning. One of the attractive features of Cape Charles is the quiet, small town feel that embodies this community. It is what drew us to this location. There is no shortage of busy, crowded beach towns but people visit and buy in Cape Charles specifically for the opposite experience, and we would like it to stay that way.

Sincere Regards,
Fabien and Shashi Baksh

We had plans to be at this meeting, however my work schedule has interfered with me being there. I'm hoping the following can be read on our behalf.

Planning Commission Members and staff;

I would like to introduce myself John and my wife Antoinette, as the land owners of lot 0 Bay Vista Way. We have owned this lot for six years with plans to build our house on the lot. We recently had a site plan prepared by MAS of Virginia Beach and are moving closer to construction of our home. When we bought the property, we were aware of Sea Breeze, as an attainable housing development, and had no issue with the development. As lot owners we are aware of many of the changes forcing this property to not be habitable. Since this property is in transition, in ownership, and use, it is our opinion it should not be changed from R-1 zoning to R-3. We believe it is zoned appropriately in this category consistent with adjoining properties including Dreams by the Water. The consistency continues with all single family developments along Washington Avenue in this area. The intent of the R-3 zone stated in the ordinance is to provide high density multi family development. The intent of the R-1 zone is to provide quiet medium density single family; the regulations are "designed to stabilize and protect the essential characteristics of the district". To rezone this property to R-3 in my opinion would be arbitrary, and capricious, and inconsistent with the current future land use of the latest adopted Comprehensive Plan. It is also my read, (subject to correction)that rezoning to R-3 would not allow the existing property to meet current required setbacks of the R-3 zone. Because this has been a non-conforming use I believe it does not guarantee redevelopment of the property in R-3. We do believe that reducing the minimum required acreage of R-3 from 3 to a 2 acres minimum is a better balance of the needs of the town and its future multi-family needs. We therefore recommend, as directly adjacent property owners, the denial of the elimination of the minimum acreage requirement for R-3, and recommend denial of the rezoning of Sea Breeze to R-3. We believe maintaining the current zoning would be consistent with character of the town and particularly Washington Street and the land use pattern in the Comprehensive Plan . We thank you for your consideration, of our thoughts, and expectations in your deliberations.

Sincerely,

John and Antoinette Payne
11219 Lake Jackson Drive
Manassas Virginia 20111
johnpayneuptown@gmail.com
phone
5713328106

Peter Alpern
3 Bay Vista
Cape Charles, VA 23310

April 7, 2025

Cape Charles Zoning
2 Plum Street
Cape Charles, VA 23310

RE: ZMA 2025-01

To whom it may concern:

This letter is intended to be read by me in person at the April 10, 2025 meeting of the Board of Zoning and is regarding the Zoning Map Amendment ZMA 2025-01.

To wit:

- My wife Elizabeth and I own the house at 3 Bay Vista in the Bay Vista Planned Unit Development in Cape Charles, VA.
- The Bay Vista PUD is currently being encroached upon by the Cape Charles Planning Department from the East by a variance requested by “Dreams by the Water” to reduce the back yard set back by 10 feet, and from the West by a ridiculous and inappropriate plan to rezone the Seabreeze Apartments so that they can be “fix and flipped” by another developer.
- In 1992 and again twice last fall, the Cape Charles zoning rules were ratified requiring R-3 parcels to sit on no less than 3 acres of land to avoid overcrowding and resource scarcities.
- The Seabreeze Apartments is on 1.5 acres and was built in the early 80s. The drafters of the 1992 zoning map zoned the property R-1 knowing at the time that the property was not in compliance with “single family housing”; R-1 zoning. It must have been the case that they saw a moment in time when the town would want to reclaim the property and develop it in compliance with R-1 codes, Historic District guidelines, and CBPA setbacks. Now is that time.
- Over the years, the Seabreeze buildings in no way received the maintenance required of waterfront property and as a result they arrived at the unsalvageable condition they are in. They are vermin infested with birds flying in and out of the rafters. The residents poured things from their kitchen windows (I can only suspect)

because the drains don't work. Labor Day weekend 2023, one of the Seabreeze buildings was on fire; 10 feet from our house.

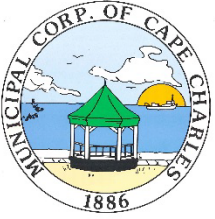
- Look at the property from the King's Creek channel and you will see the rear retaining wall falling into the Bay. This particular building was nearly condemned in 2013 after Hurricane Sandy almost took out the north facing wall. I also have video of men in orange HAZMAT suits randomly going in and out of one of the buildings. The conditions of the Seabreeze buildings were so bad, upon inspection in February of 2024 the residents were evacuated.
- The fixing and flipping of the Seabreeze Apartments is an abomination that will benefit the builder only. The town planners in 1992 and twice last fall intended for the property to be developed as an R-1 parcel; not a low-income apartment building retrofitted for gullible, rich advantage takers from out of town? Will these advantage takers have a sufficient critical eye to recognize that the builder is merely polishing up a dilapidated, condemned facility?
- What kind of people would buy a luxury condo that was retrofitted from a condemned low-income apartment? What kind of people does the Planning Department want to draw to Cape Charles so that this developer can make their \$ while the rest of Cape Charles suffers with the inappropriate fixing and flipping of condemned apartments? Out of town advantage takers – that's who.

I respectfully request that the planning department retain the R-1 zoning of the Seabreeze properties in Cape Charles. Please do not let one profit motivated developer put the entire Town's (and my family's) investments at risk by drawing "advantage takers" to Cape Charles.

Deny ZMA 2025-01

Sincere regards,
Peter Alpern
908-868-8350

Staff Report



STAFF REPORT PLANNING COMMISSION REGULAR METING

MEETING DATE: June 3, 2025

AGENDA ITEM: Item 6

PREPARED BY: Katie H. Nunez, Planning Director & Zoning Administrator

DATE: May 29, 2025

RE: Chesapeake Bay Preservation Act – State Code Changes

At the October 1, 2024 Planning Commission meeting, we began discussion on the state code changes made by the General Assembly regarding the Chesapeake Bay Preservation Act (CBPA). At that time, the state had developed a model ordinance which I shared with the Planning Commission. However, the state agency charged with administration and oversight of the CBPA, the Virginia Department of Environmental Quality (DEQ), had not completed the proposed changes to the department regulations and Administrative Code regarding the CBPA. Staff was working with DEQ staff and it was suggested that we delay our work on the CBPA Overlay Ordinance revisions until the DEQ regulations and Administrative code changes were finalized and then DEQ staff would work to provide comments/edits to our mark-up of the Model Ordinance.

In addition, over the last year, the Town has been engaged with DEQ in our 5-year CBPA compliance audit. There are some corrective action items that we need to implement to address full compliance with the statute and it was noted that we need to bring our CBPA Overlay Ordinance and CBPA Overlay Zoning Map (which may require amendments to our Comprehensive Plan) in compliance with the new state code and regulations. As part of that compliance audit, the Town has signed an action plan with timelines of achieving compliance. We have indicated that we will update our Zoning Ordinance re: CBPA Overlay by end of March 2026.

I have now received the comments to our marked-up draft MODEL CBPA Overlay Ordinance as well as some proposed revisions to Appendix A – Definitions and Appendix C – Site Plan Ordinance. I have reviewed all documents and have included some comments from me which I have reviewed with the Town Manager to make him aware of certain local decisions that will need to be made in several areas of this document. Additionally, I am attaching as a cover document to all three marked-up attachments (MODEL CBPA Overlay Ordinance – which will replace our existing Article VII; Appendix A – Definitions; and Appendix C – Site Plan Ordinance.

So, we will be going through all three attachments in detail to develop a final draft document that can be forwarded to Town Council to begin the public hearing process in the late fall/early spring timeframe to amend the zoning ordinance regarding the CBPA. In the interim, DEQ has recommended the Town add some additional checklist processes re: CBPA during site plan review for all development projects in the Town which the staff is in the process of developing those items to be reviewed by DEQ before they are implemented. We indicated a completion date of that recommendation by the end of August 2025.

As I referenced above, our compliance audit resulted in a finding concerning our Zoning Map relative to the CBPA. Specifically, it said:

The Town of Cape Charles shall amend its comprehensive plan to include required mapping elements including the location of CBPA areas, shoreline and streambank erosion problems, existing and potential water pollution sources, in addition to required implementation measures for goals and objectives relevant to potential water quality impacts.

To that end, the State has grant funding to assist the Town in doing this mapping work and assisting the Town in the development of implementation measures for goals and objectives relative to potential water quality impacts and I am in process of applying for said funding. Again, we have until March 2026 to complete this work as well.

Article VII: CBPA

KATIE'S
NOTES

Town of Cape Charles Zoning Ordinance
Article VII – Chesapeake Bay Preservation Area

ARTICLE VII - Chesapeake Bay Preservation Area Overlay District

Section 7.1: Title

This ordinance shall be known and referenced as the Chesapeake Bay Preservation Area Overlay District of the Town of Cape Charles.

Section 7.1.1: Findings of Fact

The Chesapeake Bay and its tributaries is one of the most important and productive estuarine systems in the world, providing economic and social benefits to the citizens of Cape Charles and the Commonwealth of Virginia. The health of the Bay is vital to maintaining the Town of Cape Charles' economy and the welfare of its citizens.

The Chesapeake Bay has been degraded significantly by many sources of pollution, including non-point source pollution from land uses and development. Existing high-quality waters are worthy of protection from degradation to guard against further pollution. Certain lands that are proximate to shorelines have intrinsic water quality value due to the ecological and biological processes they perform. Other lands have severe development constraints from flooding, erosion, and soil limitations. With proper management, they offer significant ecological benefits by providing water quality maintenance and pollution control, as well as flood and shoreline erosion control. These lands together, designated by the Town Council of Cape Charles as Chesapeake Bay Preservation Areas (hereinafter CBPA), need to be protected from destruction and damage in order to protect the quality of life in Cape Charles and the Commonwealth of Virginia.

Section 7.2: Purpose and Intent

- A. This ordinance is enacted to implement the requirements of [§ 62.1-44.15:67](#) et seq. of the Code of Virginia, 1988 as amended, (The Chesapeake Bay Preservation Act) and amends the Zoning Ordinance of Cape Charles. The intent of the Town Council and the purpose of the Overlay District is to: (1) protect existing high quality state waters; (2) restore all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them; (3) safeguard the clean waters of the Commonwealth from pollution; (4) prevent any increase in pollution; (5) reduce existing pollution; and (6) promote water resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of the Town of Cape Charles.
- B. This district shall be in addition to and shall overlay all other zoning districts where they are applied so that any parcel of land lying in the Chesapeake Bay Preservation Area Overlay District shall also lie in one or more of the other zoning districts provided for by the Zoning Ordinance. Unless otherwise stated in the Overlay District, the review and approval procedures provided for in other applicable ordinances shall be followed in reviewing and approving development, redevelopment, and uses

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governed by this Article.

- C. This Article is enacted under the authority of [§ 62.1-44.15:67](#) et seq., The Chesapeake Bay Preservation Act, and [§ 15.2-2283](#) of the Code of Virginia, which states that zoning ordinances may “also include reasonable provisions, not inconsistent with applicable state water quality standards, to protect surface water and groundwater as defined in Section 62.1-255.”

Section 7.3: Areas of Applicability

A. The Chesapeake Bay Preservation Act Overlay District shall apply to all lands identified as CBPAs as designated by the Town Council and as shown on the Zoning District Map. Such map, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Article. The Resource Protection Area includes the following components:

1. tidal wetlands
2. non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow
3. tidal shores
4. a 100-foot vegetated buffer area located adjacent to and landward of the components listed in subsections [1a](#) through [3e](#) above and along both sides of any water body with perennial flow

B. The Resource Management Area is composed of the following land categories: flood plains; highly erodible soils, including steep slopes; highly permeable soils; non-tidal wetlands not included in the RPA; other lands necessary to protect the quality of state waters or a minimum of 100 feet in width landward of the Resource Protection Area, whichever is greatest.

C. The Zoning District Map shows the general location of CBPAs and should be consulted by persons contemplating activities within Cape Charles prior to engaging in a regulated activity.

D. Portions of RPAs and RMAs designated by the Town Council as Intensely Developed Areas shall serve as redevelopment areas. Areas so designated shall comply with all erosion and sediment control requirements and the performance standards for redevelopment in Section [7.109](#), Performance Standards.

Section 7.4: Use Regulations

Permitted uses, special permit uses, accessory uses, and special requirements shall be as established by the underlying zoning district unless specifically modified by the requirements set forth herein.

Section 7.5: Lot Size

Lot size shall be subject to the requirements of the underlying zoning district(s) provided that any lot shall have sufficient area outside the RPA to accommodate an intended development in accordance with the performance standards in Section 7.10 when such

Commented [CM1]: Could consider language such as: "100' minimum linear measurement contiguous to entire inland boundary of RPA." As we discussed, here is language of "whole lot inclusion".

Commented [CM2R1]: "If the boundaries of an RMA include only a portion of a lot or parcel, the entire lot or parcel shall comply with the requirements of the overlay district..." and if you wanted to include exceptions to this requirement I can share examples. The Town of Claremont is where I pulled this language from.

Commented [HM3]: The IDA may also allow Development, not just Redevelopment. Has the Town decided to be more stringent in the IDA than the Regs? If so, that's ok, just need to change back some of the edits I made to 7.6 A

Commented [HM4]: Minus the buffer requirements wh will be moved to 7.6

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development is not otherwise allowed in the RPA.

Section 7.6: Development Criteria for Resource Protection Areas

A. Development in RPAs may be allowed only if it: (1) is water dependent, (2) constitutes redevelopment, (3) constitutes development or constitutes redevelopment or development within IDAs, or (34) constitutes redevelopment is a new use established pursuant to subsection 107(C) of this Ordinance; (45) is a road or driveway crossing satisfying the conditions set forth in subdivision 5 of this section; or (56) is a flood control or stormwater management facility. In addition, the following conditions shall apply:

1. A water quality impact assessment shall be required for any proposed land disturbance, development or redevelopment within RPAs and for any development within RMAs when required by the Zoning Administrator because of the unique characteristics of the site or intensity of development in accordance with the provisions of Section 7.10 of this Article.

2. A resiliency assessment as set forth in Section 7.10G of this Ordinance shall be required for any proposed land development during the plan of development or other project review process in the RPA.

3. 2.-A new or expanded water dependent facility may be allowed provided that the following criteria are met:

- a. It does not conflict with the comprehensive plan;
- b. It complies with the performance criteria set forth in Section 7.910 of this Article;
- c. Any non water dependent component is located outside of the RPA; and

Access to the water dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided.

4.3. Redevelopment on isolated redevelopment sites outside of the designated IDAs shall be permitted only if there is not an increase in the amount of impervious cover and no further encroachment within the RPA and it shall conform to the Virginia Erosion and Stormwater Management Act, stormwater management requirements outlined under Section 7.10.B.8 and erosion and sediment control requirements outlined under Section 7.10.B.4 of this Article.

5.4. Roads and driveways not otherwise exempt from the provisions of this Ordinance, as per subsection 7.13 of this Ordinance, may be constructed in or across Resource Protection Areas provided each of the following conditions is met:

- a. The Town Zoning Administrator finds that there are no reasonable alternatives to aligning the road or driveway in or across the Resource Protection Area.
- b. The alignment and design of the road or driveway are optimized, consistent with other requirements, to minimize encroachment into the Resource Protection Area and adverse effects on water quality.
- c. The design and construction of the road or driveway satisfy all applicable criteria of this Ordinance, including submission of a water quality impact assessment.

*This is the new
Coke of VA changes.*

Commented [MC5]: Moved up here to not get lost at the bottom, with the below additional requirements per 9VAC25-830-140(1)(d,e)

Commented [MC6]: Required new resiliency language

d. The Town Zoning Administrator reviews the plan for the road or driveway proposed in or across the Resource Protection Area in coordination with the Town's site plan, subdivision, and other plan of development reviews.

65. Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in Resource Protection Areas, provided that:

- a. Such facilities are allowed and constructed in accordance with the Virginia Stormwater Management Act and Regulations.
- b. The Town Zoning Administrator conclusively establishes that the location of the facility within the Resource Protection Area is the optimum location.
- c. The size of the facility is the minimum necessary to provide necessary flood control or stormwater treatment, or both.
- d. The facility is consistent with a comprehensive stormwater management plan developed and approved in accordance with Virginia Stormwater Management Program (VSMP) regulations.
- e. All applicable State and Federal permits are obtained from the appropriate federal and state agencies having jurisdiction, such as the U.S. Army Corps of Engineers, the Department of Environmental Quality, and the Virginia Marine Resources Commission.
- f. Approval is received from the Town Zoning Administrator prior to construction.
- g. Routine maintenance is performed on such facilities to assure that they continue to function as designed.

It is not the intent of this subdivision to allow a best management practice that collects and treats runoff from an individual lot or portion thereof to be located within a Resource Protection Area.

B. Buffer Area Requirements. To minimize the adverse effects of human activities on the other components of Resource Protection Areas, state waters, and aquatic life, a 100-foot buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist. The buffer area shall be located adjacent to and landward of other RPA components and along both sides of any water body with perennial flow. The full buffer area shall be designated as the landward component of the RPA in accordance with Section 7.3, Areas of Applicability, and Section 7.11, Plan of Development Process, of this Article. The planting of trees shall be incorporated into the reestablishment of the 100-foot buffer, as appropriate to site conditions and in such a manner to maximize the buffer function. Inclusion of native species in tree planting is preferred.

Commented [HM7]: Move all of subsection 7.9 C under 7.6 RPA Development Criteria - these requirements only apply within the RPA -

- a. The 100-foot buffer area shall be deemed to achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients. Notwithstanding permitted uses, encroachments, and vegetation clearing, as set forth in this section, the 100-foot wide buffer area is not reduced in width.
- b. Where land uses such as agriculture or silviculture within the area of the buffer cease and the lands are proposed to be converted to other uses, the full 100-foot wide buffer shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions set forth in this chapter. The planting of trees shall be incorporated into the reestablishment of the 100-foot buffer, as appropriate to site conditions and in such a manner to maximize the buffer function. Inclusion of native species in tree

Commented [MC8]: Required new mature tree language

planting is preferred.

Does this mean yes
Commented [MC9]: Required new mature tree language

C. Permitted Encroachments into the buffer area.

1. When the application of the buffer areas would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, the Zoning Administrator may allow encroachments into the buffer area in accordance with Section 7.11, Plan of Development Process, and the following criteria:

Commented [HM10]: So there are no "tweener lots in Cape Charles, meaning those that were recorded between 10/1/89 and 3/1/02? If not, ok. Otherwise need to add 9VAC 25-830-140(4)(b)

- a. Encroachments into the buffer areas shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;
- b. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel. Where established, such vegetated area shall include the planting of trees as appropriate to site conditions. Inclusion of native species in tree planting is preferred.
- c. The encroachment may not extend into the seaward 50 feet of the buffer area; and
- d. Encroachments into the buffer area processed through an administrative review shall be subject to the findings required by Section 7.14 of this Ordinance but without the requirement for a public hearing, such findings to be made instead by the Zoning Administrator.

Commented [HM11]: FYI - then this provision would only apply to those projects that disturb greater than 2500 SF b/c of the POD trigger

Does this mean yes
Commented [MC12]: Required new mature language

D. Permitted modifications the buffer area

The buffer area shall be maintained to meet the following additional performance standards:

Commented [MC13]: Suggested language to clarify requirements, from the Model Ordinance

Commented [MC14]: Added additional heading to better align with regulation sections

Commented [MC15]: Added recommended Model Ordinance language regarding mature trees & resiliency. Highlighted in yellow is the required language.

1. In order to maintain the functional value of the buffer area, indigenous vegetation may be removed, subject to approval by the Zoning Administrator, only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices including those that prevent upland erosion and concentrated flows of stormwater, shoreline erosion control projects, or adaptation measures. Such buffer modifications shall be permitted under the following conditions, and consistent with the requirements of this Ordinance:

- a. In general, where the removal of trees within the buffer area is proposed, mature trees shall be preserved and trimmed or pruned in lieu of removal as site conditions permit and removal should be limited to the fewest number of trees feasible. Where tree planting for mitigation, conservation landscaping, or for buffer reestablishment is proposed.
- b. Trees may be pruned or removed as necessary to provide for sight lines and vistas provided that, where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff.

1. When trees are proposed for removal to provide for site lines, vistas, and access paths they shall be replaced with trees as appropriate to site conditions and in such a manner as to maximize the buffer function and to protect the quality of state waters. The boundaries of this area shall be determined in a manner acceptable to the Zoning Administrator and be based on identified vantage points and the portion of the shoreline to be viewed.

2. A written request for a determination by the Zoning Administrator that the proposed removal of vegetation from the RPA buffer is in

accordance with the requirements of this subsection is required. Such request shall include a plan showing the following: (i) the vantage points for the sight lines, vistas, and access paths (ii) the portion of the shoreline to be viewed or accessed, (iii) the area in which trees are to be pruned or removed, (iv) the location of all trees six inches or greater in diameter at breast height or as required by the Zoning Administrator, and (v) the location of the trees to be removed or pruned. The request shall also indicate the type, location and number of replacement vegetation proposed.

3. Trees may not be pruned or removed from the buffer area until a written determination is obtained from the Zoning Administrator that the proposed activity is in accordance with the requirements of this Ordinance.

- c. Any path shall be constructed and surfaced so as to effectively control erosion.
- d. Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu and multiflora rose) may be removed and thinning of trees allowed, pursuant to standards adopted by the Town of Cape Charles.

e. For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best of available technical advice and applicable permit conditions or requirements.

1. The removal of mature trees for the installation and maintenance of proposed shoreline erosion control projects shall only be permitted as necessary and consistent with the best available technical advice, approved project plans, and applicable permit conditions or requirements.
2. Where vegetation is proposed for removal within the buffer area as part of a shoreline erosion control project, a water quality impact assessment with vegetative mitigation equal to the area of encroachment is required. Trees shall be incorporated, as appropriate to the site conditions and the project specifications. In addition, vegetation in the form of a mixture of grasses, sedges, flowers, and shrubs can be used by property owners to provide natural stabilization of shorelines. Inclusion of native species is preferred.
3. Existing trees, proposed plantings, and clearing limits must be shown on the Joint Permit Application and/or Water Quality Impact Assessment.
4. Shoreline erosion control within the RPA shall be consistent with the Wetlands Act (Chapter 13 Title 28.2), the Virginia Marine Resources Commission (VMRC) Tidal Wetlands Guidelines which provide for "minimum standards for the protection and conservation of wetlands," and "ensure protection of shorelines and sensitive coastal habitat from sea level rise and coastal hazard."

- a. Installation of living shorelines is the required adaptation measure for stabilizing tidal shorelines unless the best available science indicates that such approaches are not suitable for the site on which the practice is being considered, as determined by the Virginia Marine Resources Commission. Such projects should be coordinated to address the requirements of the VMRC Tidal Wetlands Guidelines current at the time of application submission in conjunction with the requirements of this Ordinance [and the local wetlands ordinance].
- b. Approval from the VMRC is also required for adaptation measures proposing the use of sea walls, riprap, groins, or other structural

Commented [MC16]: Not required but potentially beneficial language to better clarify requirements for vegetation removal in the RPA, from the model ordinance

was need to review
Tree Ordinances
to include
Consistency
language

means of stabilization within tidal wetlands. Such projects shall demonstrate to the satisfaction of the Zoning Administrator that vegetative techniques cannot be effectively utilized and shall incorporate elements of living shoreline approaches into permitted projects to the maximum extent possible.

- c. If a hardened shoreline structure is allowed, the applicant shall be required to incorporate elements of living shoreline approaches into permitted projects, to the maximum extent possible.

f. Adaptation measures proposed for location within the Resource Protection Area, shall meet the following conditions:

1. The selected adaptation measure shall be a nature-based solution that uses environmental processes, natural systems, or natural features identified as being appropriate for existing site conditions.
2. An identified adaptation measure shall be selected from one of the following sources: Chesapeake Bay program approved BMP list, the Virginia Stormwater BMP Clearinghouse, the VMRC Tidal Wetlands Guidelines, or be a project that is eligible for funding by the Virginia Community Flood Preparedness Fund Grant.
 - a. Adaptation measures should consist of trees, vegetation, stone or enhance existing natural elements.
3. Adaptation measures approved for use in the RPA shall be designed, installed, and maintained in accordance with the applicable specifications for the selected adaptation measure.
4. Adaptation measures should be placed channelward of the proposed development whenever possible and should maximize the preservation of mature trees and other natural vegetation to minimize adverse impacts to the RPA and to maximize water quality benefits.
5. The use of fill as a component of an adaptation measure may be permitted, provided it meets the following conditions:
 - a. The grading and slope created by the use of fill shall be no greater than necessary based upon the project specifications and implemented in a manner that minimize the impact of run-off.
 - i. Slopes should be equal to or less than 10% to support water quality conditions, including infiltration.
 - ii. Slopes less than or equal to 5% or that convey sheet flow of velocities less than one and one-half (1.5) feet/second are preferred, to reduce runoff and tidal wave energies.
 - iii. Slopes greater or different than the above may be necessary based upon certain site conditions and adaptation measure specifications. In such instances, submittal of additional calculations and engineering plans, and assessments of the impacts of the use of fill on existing vegetation, wetland migration and water movement, both landward and channelward, in support of the proposed slope shall be required.
 - b. Fill shall have the necessary biogeochemical characteristics, including sufficient organic content, to support the growth of vegetation and adequate permeability to allow infiltration consistent with project specifications. The applicant shall:
 - i. Provide documentation specifying the proposed depth, extent, and type of fill material proposed for use.
 - ii. Provide documentation that the proposed soils are compliant with the requirements governing the use of lightly contaminated soil consistent with the Virginia Solid Waste Management Regulations (9 VAC 20-81 et

seq.) or permitting requirements for upland placement of dredge soil, if applicable.

iii. Provide documentation that the newly placed fill is revegetated with multi-strata vegetation inclusive of canopy and understory trees, shrubs, and ground cover consistent with the guidance found in the *Buffer Manual*. Inclusion of native species is encouraged.

iv. Ensure that the fill area is vegetatively stabilized within seven (7) days.

c. The use of fill shall not exacerbate stormwater run-off, and lateral flow onto adjacent properties shall be controlled.

i. Appropriate erosion and sediment control and stormwater management measures shall be incorporated into the design specifications, including the establishment of positive and proper drainage.

ii. If the adaptation measure triggers separate stormwater management requirements, then these criteria should be considered in conjunction with those requirements.

iii. Larger scale adaptation measures may require the use of stormwater calculations to ensure these criteria are met.

iv. Any impacts on the management of stormwater upland of the Resource Protection Area created by the use of fill shall be mitigated, as necessary.

d. The use of fill for an adaptation measure shall not negatively impact septic systems and drainfields located within the RPA. Where present, the proximity of the adaptation measure using fill should be considered such that the fill will not interfere with the proper function or maintenance of either of these features.

e. The use of fill shall be consistent with floodplain requirements.

f. The placement of fill allowed by either the Living Shoreline Group 1 or Group 2 general permits to establish appropriate elevations to support required vegetation shall be consistent with the fill requirements of this subsection, in that a change in slope or land elevation may not alter water flow in contravention with the fill requirements of this subsection.

6. The preservation of existing natural vegetation shall be maximized, including mature trees, and land disturbance consistent with design specifications shall be minimized.

7. Adaptation measures shall comply with all federal, state and local requirements, including any required permits and conditions such as the need for a Water Quality Impact Assessment.

8. Nothing in these provisions shall be construed to authorize approval or allowance of an adaptation measure in contravention of floodplain management requirements, including [the local floodplain ordinance].

2. In Intensely Developed Areas the Zoning Administrator may exercise discretion regarding whether to require establishment of vegetation in the 100-foot wide buffer area. However, while the immediate establishment of vegetation in the buffer area may be impractical, the Zoning Administrator shall give consideration to implementing measures that would establish vegetation in the buffer in these areas over time in order to maximize water quality protection, pollutant removal, and water resource conservation. When considering the reestablishment of a buffer within an Intensely Developed Area, the Zoning Administrator shall consider the planting of trees as a component of such buffer reestablishment measure. Inclusion of native species in tree planting is preferred.

3. On agricultural lands the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and appropriate measures may be taken to prevent noxious weeds from invading the buffer area. Agricultural activities may encroach into the buffer area as follows:

Commented [CM17]: added missing 9 VAC 25-830-140

7

- a. Agricultural activities may encroach into the landward 50 feet of the 100-foot wide buffer area when at least one agricultural best management practice, which, in the opinion of the [local soil and water conservation district board], addresses the more predominant water quality issue on the adjacent land – erosion control or nutrient management – is being implemented on the adjacent land, provided that the combination of the undisturbed buffer area and the best management practice achieves water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot wide buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil test, must be developed consistent with the “Virginia Nutrient Management Training and Certification Regulations (4 VAC 50-85 et seq.)” administered by the Virginia Soil and Water Conservation Board.
- b. Agricultural activities may encroach within the landward 75 feet of the 100-foot-wide buffer area where agricultural best management practices which address erosion control, nutrient management, and pest chemical control, are being implemented on the adjacent land. The erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as “T”, as defined in the “National Soil Survey Handbook” of November 1996 in the “Field Office Technical Guide” of the U. S. Department of Agriculture Natural Resource Conservation Service. A nutrient management plan, including soil test, must be developed consistent with the “Virginia Nutrient Management Training and Certification Regulations (4 VAC 50-85 et seq.)” administered by the Virginia Soil and Water Conservation Board. In conjunction with the remaining buffer area, this collection of best management practices shall be presumed to achieve water quality protection at least the equivalent of that provided by the 100-foot-wide buffer area.
- c. The buffer area is not required to be designated adjacent to agricultural drainage ditches if the adjacent agricultural land has in place at least one best management practices as considered by the Eastern Shore Soil and Water Conservation District to address the more predominant water quality issue on the adjacent land – either erosion control or nutrient management
- d. If specific problems are identified pertaining to agricultural activities that are causing pollution of the nearby water body with perennial flow or violate performance standards pertaining to the vegetated buffer area, the town, in cooperation with soil and water conservation district, shall recommend a compliance schedule to the landowner and require the problems to be corrected consistent with that schedule. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.
- e. In cases where the landowner or the landowner's agent or operator has refused assistance from the local soil and water conservation district in complying with or documenting compliance with the agricultural requirements of this chapter, the district shall report the noncompliance to the Town. The Town shall require the landowner to correct the problems within a specified period of time not to exceed 18 months from their initial notification of the deficiencies to the landowner. The local government, in cooperation with the district, shall recommend a compliance schedule to the landowner. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.
- f. When agricultural or silvicultural uses within the buffer area cease, and the lands are proposed to be converted to other uses, the full 100-foot wide buffer area shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer

Commented [MC18]: Added missing 9 VAC 25-830-140 (b)(4,5)

~~functions are maintained or established.~~

Commented [MC19]: Moved above to beginning of buffer area requirements as is written in the regulations

Section 7.7: Conflict With Other Regulations

In any case where the requirements of this Article conflict with any other provision of the Cape Charles Zoning Ordinance and other regulations or existing state or federal regulations, whichever imposes the more stringent restrictions shall apply.

Section 7.8: Interpretation of Resource Protection Area Boundaries

- A. Delineation by the Applicant. The site-specific boundaries of the Resource Protection Area shall be determined by the applicant through the performance of an environmental site assessment, subject to approval by the Zoning Administrator and in accordance with Section 7.12, Plan of Development Process or Section 7.11 Water Quality Impact Assessment, of this Article. The Zoning District Map may be used as a guide to the general location of Resource Protection Areas.
- B. Where Conflict Arises Over Delineation. When the applicant provides a site- specific delineation of the RPA, the Zoning Administrator will verify-confirm the accuracy of the boundary delineation. In determining the site-specific RPA boundary, the Zoning Administrator may render adjustments to the applicant's boundary delineation in

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accordance with Sections [7.10 Water Quality Impact Assessment](#) or 7.12, Plan of Development Process, of this Article. In the event the adjusted boundary delineation is contested by the applicant, the applicant may seek relief in accordance with the provisions of Section 7.12.H of this ordinance.

Section 7.9: [General Performance Standards](#)

- A. Purpose and Intent. The performance standards establish the means to minimize erosion and sedimentation potential, reduce land application of nutrients and toxins, and maximize rainwater infiltration. Natural ground cover, especially woody vegetation, is most effective in holding soil in place and preventing site erosion. Indigenous vegetation, within its adaptability to local conditions without the use of harmful fertilizers or pesticides, filters stormwater runoff. Minimizing impervious cover enhances rainwater infiltration and effectively reduces stormwater runoff potential.

The purpose and intent of these requirements are also to implement the following objectives: prevent a net increase in nonpoint source pollution from new development; achieve a 10 percent reduction in nonpoint source pollution from redevelopment; and achieve a 40 percent reduction in nonpoint source pollution from agricultural uses.

B. General Performance Standards for Development and Redevelopment

1. Land disturbance shall be limited to the area necessary to provide for the proposed use or development.
 - a. Ingress and egress during construction shall be limited to one access point unless otherwise approved by the Zoning Administrator.
2. Indigenous vegetation shall be preserved to the maximum extent practicable consistent with the use or development proposed and in accordance with the Virginia [Erosion and Sediment Control Stormwater Management Handbook Version 1.1](#).
 - a. ~~Mature trees shall be protected during development and only removed where necessary, including to provide for the proposed use or development.~~
 - a.b. Site clearing for construction activities shall be allowed as approved by the Zoning Administrator through the plan of development review process.
 - b.c. Prior to clearing or grading, suitable protective barriers, such as safety fencing, shall be erected five feet outside of the drip line of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
3. Land development shall minimize impervious cover to promote infiltration of storm water into the ground consistent with the proposed use or development.
 - a. Grid and modular pavements may be used for any required parking area, alley, or other low traffic driveway unless otherwise approved by the Zoning Administrator.

Commented [HM20]:

Commented [HM21R20]: You might consider inserting the RPA development criteria as C, in front of the buffer area requirements, which belong in the RPA development criteria anyway.

Commented [MC22]: Required new mature tree language.

4. Notwithstanding any other provision of this Article or exceptions or exemptions thereto, any land-disturbing activity exceeding 2,500 square feet, including construction of all single-family houses, shall comply with the

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requirements of Cape Charles' Erosion and Sediment Control Ordinance.

5. All development and redevelopment exceeding 2,500 square feet of land disturbance shall be subject to a plan of development process including the approval of a site plan in accordance with the provisions of the Site Plan Ordinance.

6. All on-site sewage disposal systems not requiring a VPDES permit shall be pumped out at least once every five years in accordance with the provisions of the State Health Code. Effective July 1, 2023, requirements of this section directly related to compliance with onsite sewage system pump-outs shall be managed and enforced by the Virginia Department of Health in Accomack, Essex, Gloucester, King and Queen, King William, Lancaster, Mathews, Middlesex, Northampton, Northumberland, Richmond, and Westmoreland Counties, and the incorporated towns within those counties.

a. Subject to conditions established by the local Health District of the Virginia Department of Health (VDH), the owners of such systems may, in lieu of pumping out such systems every five (5) years, have a plastic filter installed and maintained in the outflow pipe from the septic tank to filter solid material from the effluent while sustaining adequate flow to the drainfield to permit normal use of the septic system. Such a filter shall satisfy standards established in the Sewage Handling and Disposal Regulations (12 VAC 5-610) administered by VDH; and

b. In lieu of requiring proof of septic tank pump out every five (5) years, the Town may allow owners of on-site sewage treatment systems to submit documentation every five (5) years, certified by a an operator or onsite soil evaluator licensed or certified under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia as being qualified to operate, maintain, or design onsite sewage systems, that the septic system has been inspected, is functioning properly, and that – as of the date of inspection – pump-out of the effluent was not deemed necessary.

c. For new construction not served by public sewer or other system requiring a VPDES permit, a reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site shall be provided. This requirement shall not apply to any lot or parcel recorded prior to October 1, 1989 if such lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local Health District. Building or construction of any impervious cover shall be prohibited on the area of all sewage disposal sites, including reserve sewage disposal sites, until the property is served by public sewer or an on-site sewage treatment system operating under a VPDES permit. All sewage disposal site records shall be administered to provide adequate notice and enforcement. As an alternative to the reserve sewage disposal site, the owners of such systems may install an alternative drainfield system meeting the following conditions:

1. Each of the two (2) alternating drainfields in the system shall have at a minimum, an area not less than fifty (50) percent of the area that would otherwise be required if a single primary drainfield were constructed.
2. An area equal to fifty (50) percent of the area that would otherwise be required for the primary drainfield site shall be reserved for subsurface absorption systems that utilize a flow diversion device, to provide for future replacement or repair to meet the requirements for a sewage disposal system. Expansion of the primary system shall require an expansion of the reserve system.
3. The two (2) alternating drainfields shall be connected by a diversion valve,

Commented [MC23]: Added missing 9VAC25-830-130(7) requirements below.

approved by the local Health District, located in the pipe between the septic tank and the distribution boxes. The diversion valve shall be used to alternate the direction of effluent flow to one (1) drainfield or the other at a time. Diversion valves shall not be used for the following types of treatment systems:

- (a). Sand mounds.
- (b). Low pressure distribution systems.
- (c). Repair situations when installation of a valve is not feasible.
- (d). Any other approved system for which the use of a valve would adversely affect the design of the system, as determined by the local Health District.
- d. The diversion valve shall be a three-port, two-way valve of approved materials (i.e., resistant to sewage, leak-proof and designed so that the effluent from the tank can be directed to flow into either one (1) of the two (2) distribution boxes).
- e. There shall be a conduit from the top of the valve to the ground surface with an appropriate cover to be level with or above the ground surface.
- f. The valve shall not be located in driveways, recreational courts, parking lots, or beneath sheds or other structures.
- g. In lieu of a diversion valve, any device that can be designed and constructed to direct the flow of effluent from the tank into either one (1) of the two (2) distribution boxes may be approved if plans are submitted to the local Health District and determined to be satisfactory.
- h. Owners shall alternate using the drainfields every 12 months to permit the yearly resting of half of the absorption system.
- i. The Zoning Administrator shall ensure that the owners are notified annually of the requirement to switch the valve to the opposite drainfield.

7. ~~—A reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site shall be provided in accordance with the State Health Code. This requirement shall not apply to any lot or parcel recorded prior to October 1, 1989, if such lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site as determined by the local health department. Building or construction of any impervious surface shall be prohibited on the area of all sewage disposal sites or on an on-site sewage treatment system which operates under a permit issued by the State Water Control Board until the structure is served by public sewer.~~

7. Any Chesapeake Bay Preservation Act land-disturbing activity as defined in Section 62.1-44.1515:24 of the Code of Virginia shall comply with the requirements of 9 VAC 25-875. For any development or redevelopment, stormwater runoff shall be controlled by the use of best management practices that achieve the following:

- a. For development, the post-development nonpoint source pollution runoff load shall not exceed the pre-development load based on the calculated average land cover condition of the Town of Cape Charles.
- b. For sites within IDAs or other isolated redevelopment sites, the non-point source pollution load shall be reduced by at least 10 percent. The Zoning Administrator may waive or modify this requirement for redevelopment sites that originally incorporated best management practices for storm water runoff quality control provided the following provisions are satisfied:
 - i. In no case may the post-development non-point source

Commented [MC24]: Stormwater requirements no longer included in CBPA regs.

Commented [HM25R24]: The code citation provided is for the new combined E&S and SWM regs in the Virginia Erosion and Stormwater Management Act and Regulations

- ~~pollution runoff load exceed the pre-development load.~~
- ~~ii. Runoff pollution loads must have been calculated and the BMPs selected for the expressed purpose of controlling non-point source pollution.~~
 - ~~iii. If best management practices are structural, evidence shall be provided that the facilities are currently in good working order and performing at the design levels of service. The Zoning Administrator may require a review of both the original structural design and maintenance plans to verify this provision. A new maintenance agreement may be required to ensure compliance with this Article.~~
 - ~~c. For redevelopment, both the pre- and the post-development loadings shall be calculated by the same procedures. However, where the design data is available, the original post-development non-point source pollution loadings can be substituted for the existing development loadings.~~
9. Prior to initiating grading or other on-site activities on any portion of a lot or

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parcel, all wetlands permits required by federal, state, and local laws and regulations shall be obtained and evidence of such submitted to the Zoning Administrator in accordance with Section 7.12 of this Article.

10. Land upon which agricultural activities are being conducted shall have a soil and water quality conservation assessment. Such assessments shall evaluate the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management and management of pesticides, and where necessary, results in a plan that outlines additional practices needed to ensure that water quality protection is accomplished consistent with the Article.

a. Recommendations for additional conservation practices need address only those conservation issues applicable to the tract or field being assessed. Any soil and water quality conservation practices that are recommended as a result of such an assessment and are subsequently implemented with financial assistance from federal or state cost-share programs must be designed, consistent with cost-share practice standards effective in January 1999 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service or the June 2000 edition of the "Virginia Agricultural BMP Manual" of the Virginia Department of Conservation and Recreation, respectively. Unless otherwise specified in this section, general standards pertaining to the various agricultural conservation practices being assessed shall be as follows:

(1) For erosion and sediment control recommendations, the goal shall be, where feasible, to prevent erosion from exceeding the soil loss tolerance level, referred to as "T," as defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service. However, in no case shall erosion exceed the soil loss consistent with an Alternative Conservation System, referred to as an "ACS", as defined in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service.

(2) For nutrient management, whenever nutrient management plans are developed, the operator or landowner must provide soil test information, consistent with the Virginia Nutrient Management Training and Certification Regulations (4VAC50-85).

(3) For pest chemical control, referrals shall be made to the local cooperative extension agent or an Integrated Pest Management Specialist of the Virginia Cooperative Extension Service. Recommendations shall include copies of applicable information from the "Virginia Pest Management Guide" or other Extension materials related to pest control.

b. A higher priority shall be placed on conducting assessments of agricultural fields and tracts adjacent to Resource Protection Areas. However, if the landowner or operator of such a tract also has Resource Management Area fields or tracts in his operation, the assessment for that landowner or operator may be conducted for all fields or tracts in the operation. When such an expanded assessment is completed, priority must return to Resource Protection Area fields and tracts.

c. The findings and recommendations of such assessments and any resulting soil and water quality conservation plans will be submitted to the Eastern Shore Soil and Water Conservation District Board, which will be the plan-approving authority.

Commented [MC26]: Added missing required 9VAC25-830-130(8) language

C. Buffer Area Requirements. To minimize the adverse effects of human activities on the

Commented [HM27]: Move all of subsection 7.9 C under 7.6 RPA Development Criteria - these requirements only apply within the RPA -

other components of Resource Protection Areas, state waters, and aquatic life, a 100-foot buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist. The buffer area shall be located adjacent to and landward of other RPA components and along both sides of any water body with perennial flow. The full buffer area shall be designated as the landward component of the RPA in accordance with Section 7.4, Areas of Applicability, and Section 7.12, Plan of Development Process, of this Article. The 100-foot buffer area shall be deemed to achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients.

Notwithstanding permitted uses, encroachments, and vegetation clearing, as set forth in this section, the 100-foot wide buffer area is not reduced in width.

~~The 100-foot buffer area shall be deemed to achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients.~~

~~The buffer area shall be maintained to meet the following additional performance standards:~~

- ~~1. In order to maintain the functional value of the buffer area, indigenous vegetation may be removed, subject to approval by the Zoning Administrator, only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices including those that prevent upland erosion and concentrated flows of stormwater, as follows:~~
 - ~~a. Trees may be pruned or removed as necessary to provide for sight lines and vistas provided that, where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff.~~
 - ~~b. Any path shall be constructed and surfaced so as to effectively control erosion.~~
 - ~~c. Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu and multiflora rose) may be removed and thinning of trees allowed, pursuant to standards adopted by the Town of Cape Charles.~~
 - ~~d. For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best of available technical advice and applicable permit conditions or requirements.~~
- ~~2. When the application of the buffer areas would result in the loss of a buildable~~

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~~area on a lot or parcel recorded prior to October 1, 1989, the Zoning Administrator may allow encroachments into the buffer area in accordance with Section 7.12, Plan of Development Process, and the following criteria:~~

- ~~a. Encroachments into the buffer areas shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;~~
 - ~~b. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel; and~~
 - ~~c. The encroachment may not extend into the seaward 50 feet of the buffer area.~~
3. ~~In Intensely Developed Areas the Zoning Administrator may exercise discretion regarding whether to require establishment of vegetation in the 100-foot wide buffer area. However, while the immediate establishment of vegetation in the buffer area may be impractical, the Zoning Administrator shall give consideration to implementing measures that would establish vegetation in the buffer in these areas over time in order to maximize water quality protection, pollutant removal, and water resource conservation. Redevelopment within IDAs may be exempt from establishing vegetation within the buffer area in accordance with Section 7.12, Plan of Development Process, of this Article.~~
4. ~~On agricultural lands the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and appropriate measures may be taken to prevent noxious weeds from invading the buffer area. Agricultural activities may encroach into the buffer area as follows:~~
- ~~a. Agricultural activities may encroach into the landward 50 feet of the 100-foot wide buffer area when at least one agricultural best management practice, which, in the opinion of the [local soil and water conservation district board], addresses the more predominant water quality issue on the adjacent land — erosion control or nutrient management — is being implemented on the adjacent land, provided that the combination of the undisturbed buffer area and the best management practice achieves water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot wide buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil test, must be developed consistent with the "Virginia Nutrient Management Training and Certification Regulations (4-VAC-5-15-50-85 et seq.)" administered by the Virginia Department of Conservation and Recreation Soil and Water Conservation Board.~~
 - ~~b. Agricultural activities may encroach within the landward 75 feet of the 100-foot wide buffer area where agricultural best management practices which address erosion control, nutrient management, and pest chemical control, are being implemented on the adjacent land. The erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as "T", as defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U. S. Department of Agriculture Natural Resource Conservation Service. A~~

~~nutrient management plan, including soil test, must be developed consistent with the "Virginia Nutrient Management Training and Certification Regulations (4-VAC-50-815 et seq).~~

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~~administered by the Virginia Department of Conservation and Recreation Soil and Water Conservation Board. In conjunction with the remaining buffer area, this collection of best management practices shall be presumed to achieve water quality protection at least the equivalent of that provided by the 100-foot-wide buffer area.~~

~~c. The buffer area is not required to be designated adjacent to agricultural drainage ditches if the adjacent agricultural land has in place at least one best management practices as considered by the local Soil and Water Conservation District to address the more predominant water quality issue on the adjacent land – either erosion control or nutrient management~~

~~5. When agricultural or silvicultural uses within the buffer area cease, and the lands are proposed to be converted to other uses, the full 100-foot-wide buffer area shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions are maintained or established.~~

Section 7.10: Water Quality Impact Assessment *and Resiliency Assessment*

- A. Purpose and Intent. The purpose of the water quality impact assessment is to: (1) identify the impact of proposed development on water quality and lands within RPAs and other environmentally sensitive lands; (2) ensure that, where development does take place within RPAs and other sensitive lands, it will be located on those portions of a site and in a manner that will be least disruptive to the natural functions of RPAs and other sensitive lands; (3) to protect individuals from investing funds for improvements proposed for location on lands unsuited for such development because of high ground water, erosion, or vulnerability to flood and storm damage; and (4) specify mitigation and to demonstrate compliance with the local program.
- B. Water Quality Impact Assessment Required. A water quality impact assessment is required for (1) any proposed land disturbance, redevelopment or development within a RPA, including any buffer area modification or encroachment as provided in Section 7.10 of this Article; (2) any development in a RMA as deemed necessary by the Zoning Administrator due to the unique characteristics of the site or intensity of the proposed development. There shall be two levels of water quality impact assessments--a minor assessment and a major assessment.
- C. Minor Water Quality Impact Assessment. A minor water quality impact assessment pertains only to a development within CBPAs which causes no more than 5,000 square feet of land disturbance and requires any modification or encroachment into the landward 50 feet of the 100- foot buffer area. A minor assessment must demonstrate that the undisturbed buffer area, enhanced vegetative plantings, and any required best management practices will result in removal of no less than 75 percent of sediments and 40 percent of nutrients from post-development stormwater runoff and that the remaining buffer area will retard runoff, prevent erosion and filter nonpoint source pollution the equivalent of the full undisturbed 100-foot buffer area. A minor assessment shall include a site drawing to scale which shows the following:

Commented [CM28]: (per Resiliency Adoption Checklist) **decide if WQIA will be required when installing living shorelines, OR exemption,** provided the locality has approved the project, the project minimizes land disturbance and maintains or establishes a vegetative buffer inland of the living shoreline and complies with the fill conditions, and is approved by the VMRC or local wetlands board as applicable.

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1. Location of the components of the RPA, including the 100-foot buffer area;
2. RPA and RMA boundaries;
3. Location and nature of the proposed encroachment into the RPA buffer area if needed necessary; including type of paving material; areas limits of clearing or grading; location of any structures, drives, area of impervious surface within the RPA; or other impervious cover;
4. Area of land disturbance and impervious cover proposed within the RPA;
5. Type and location of proposed best management practices to mitigate the proposed encroachment.
6. Location of existing vegetation onsite, including the number and type of trees and other vegetation to be removed in the buffer to accommodate the encroachment or modification;
7. Revegetation plan that supplements the existing buffer vegetation in a manner that provides for pollutant removal, erosion and runoff control; and mitigates for the removal of vegetation in the buffer;
8. Limits of land disturbance and the area of land disturbance within the RPA.

Commented [MC29]: And the RMA boundaries (or a note that the entire parcel outside of the RPA is RMA, if you chose to do whole-lot inclusion)

Commented [MC30R29]: Example, In lieu of delineating the individual RMA features, the applicant may designate the portion of the site that is outside of the RPA as RMA.

- D. Major Water Quality Impact Assessment. A major water quality impact assessment shall be required for any development which (1) exceeds 5,000 square feet of land disturbance within CBPA and requires any modifications or encroachment into the landward-seaward 50 feet of the 100-foot buffer area; (2) proposes to disturb any portion of any other component of an RPA or proposes to disturb any portion of the buffer area within 50 feet of any other component of any RPA; or (3) is located in an RMA and is deemed necessary by the Zoning Administrator. The information required in this section shall be considered a minimum unless the Zoning Administrator determines that some of the elements are unnecessary due to the scope and nature of the proposed use and development of land.

Commented [HM31]: The buffer area is a component of the RPA.

1. The following elements shall be included in the preparation and submission of a major water quality assessment:
 - a. All of the information required in a minor water quality impact assessment as specified in Section 7.11.C;
 - b. A hydro-ecological element that:
 - i. describes the existing topography, soils, hydrology, and geology of the site and adjacent lands
 - ii. indicates the following:
 1. disturbance or destruction of wetlands and justification for such action
 2. disruptions or reductions in the supply of water to wetlands, streams, or other water bodies
 3. disruptions to existing hydrology including wetlands and stream circulation patterns
 4. source location and description of proposed fill material
 5. location of dredge material and location of dumping area for such material
 6. location of and impacts on shellfish beds or submerged aquatic vegetation
 7. estimation of pre- and post-development pollutant loads in runoff
 8. estimation of percent increase in impervious surface on

9. site and type(s) of surfacing materials used
percent of site to be cleared for project

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10. anticipated duration and phasing schedule of construction project
11. listing of all requisite permits from all applicable agencies necessary to develop project
- iii. describes the proposed mitigation measures for the potential hydrogeological impacts. Potential mitigation measures include:

1. proposed erosion and sediment control concepts; concepts should include minimizing the extent of the cleared area, perimeter controls, reduction of runoff velocities, measures to stabilize disturbed areas, schedule and personnel for site inspection
2. proposed water quality and quantity stormwater management system
3. creation of wetlands to replace those lost
4. minimizing cut and fill

c. A landscape element that:

- i. identifies and delineates the location of plant material on site, including all trees two inches or greater diameter at breast height. Where there are groups of trees, stands may be outlined.
- ii. describes the impacts the development or use will have on the existing vegetation. Information should include:
 1. limits of clearing based on all anticipated improvements including buildings, drives, and utilities
 2. clear delineation of all trees and other woody vegetation proposed to be removed
 3. description of plant species to be disturbed or removed
- iii. describes the potential measures for mitigation. Possible mitigation measures should include:
 1. replanting schedule for trees and other significant vegetation removed for construction including a list of possible plants and trees to be used
 2. demonstration that the design of the plan will preserve to the greatest extent possible any significant trees and vegetation on the site and will provide maximum erosion control and overland flow benefits from such vegetation
 3. demonstration that native plants are to be used to the greatest extent possible

E. Submission and Review Requirements

1. Eight copies of all site drawings and other applicable information as required by Subsections C and D above shall be submitted to the Zoning Administrator for review.
2. All information required in this section shall be certified as complete and accurate by a professional engineer or certified land surveyor.
3. A minor water quality impact assessment shall be prepared and submitted to and reviewed by the Zoning Administrator in conjunction with Section 7.1211.

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Plan of Development Process, of this Article.

4. A major water quality impact assessment shall be prepared and submitted to and reviewed by the Zoning Administrator in conjunction with a request for rezoning, special use permit, or in conjunction with Section 7.12 of this Article as deemed necessary by the Zoning Administrator.
5. As part of any major quality impact assessment submittal, the Zoning Administrator may require review by the ~~Chesapeake Bay Local Assistance Department (CBLAD)~~Department of Environmental Quality (DEQ). Upon receipt of a major water quality impact assessment, the Zoning Administrator will determine if such review is warranted and may request ~~CBLAD-DEQ~~ to review the assessment and respond with written comments. Any comments by such ~~CBLAD-DEQ~~ will be incorporated into the final review by the Zoning Administrator provided that such comments are provided by ~~CBLAD-DEQ~~ within 90 days of the request.

F. Evaluation Procedure

1. Upon the completed review of a minor water quality impact assessment, the Zoning Administrator will determine if any proposed encroachment into the buffer area is consistent with the provisions of this Article and make a finding based upon the following criteria:
 - a. the necessity of the proposed encroachment and the ability to place improvements elsewhere on the site to avoid disturbance of the buffer area;
 - b. impervious surface is minimized;
 - c. proposed best management practices, where required, achieve the requisite reductions in pollutant loadings;
 - d. the development, as proposed, meets the purpose and intent of this Article;
 - e. the cumulative impact of the proposed development, when considered in relation to other development in the vicinity both existing and proposed, will not result in a significant degradation of water quality.
2. Upon the completed review of a major water quality impact assessment, the Zoning Administrator will determine if the proposed development is consistent with the purpose and intent of this Article and make a finding based upon the following criteria in conjunction with Section 7.12.
 - a. Within an RPA, the proposed development is water dependent.
 - b. The disturbance of any wetlands will be minimized.
 - c. The development will not result in significant disruption of the hydrology of the site.
 - d. The development will not result in significant degradation to aquatic vegetation or life.
 - e. The development will not result in unnecessary destruction of plant materials on site.
 - f. Proposed erosion and sediment control concepts are adequate to achieve the reductions in runoff and prevent off-site sedimentations.
 - g. Proposed storm water management concepts are adequate to control the storm water runoff to achieve the required performance standard

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- for pollutant control.
- h. Proposed re-vegetation of disturbed areas will provide optimum erosion and sediment control benefits.
 - i. The development as proposed is consistent with the purpose and intent of the Overlay District.
3. The Zoning Administrator shall require additional mitigation where potential impacts have not been adequately addressed. Evaluation of mitigation measures will be made by the Zoning Administrator based on the criteria listed above in Subsections 1 and 2.
4. The Zoning Administrator shall find the proposal to be inconsistent with the purpose and intent of this Article when the impacts created by the proposal cannot be mitigated. Evaluation of the impacts will be made by the Zoning Administrator based on the criteria listed in Subsections 1 and 2.

G. Resiliency assessment.

(A) Submittal of a resiliency assessment that considers the potential impacts of sea level rise, storm surge, and flooding on buffer function in light of a proposed RPA encroachment is required during the review of a plan of development or other review process. Such an assessment is to be based upon the RPA as delineated at the time of the proposed land development and is required in addition to all other requirements of this and other local ordinances. At a minimum the resiliency assessment should contain the following information:

(1) A scaled drawing or aerial image of the proposed project that includes the RPA and RMA boundary, required setbacks, existing topography, and a graphic depiction of the anticipated impacts of sea level rise, flooding, and storm surge on the parcel and the proposed project, based upon a review of approved models and forecasts, to include the following:

- (a) For sea level rise, use the 2017 National Oceanographic and Atmospheric Administration (NOAA) Intermediate-High scenario projection curve for any subsequently updated version thereof on the project site. Sea level rise data can be accessed on the AdaptVA website, maintained by the Virginia Institute of Marine Science (VIMS). When determining potential sea-level rise impacts, the applicant should use the model to identify both the extent of anticipated inland migration, as well as the water depth.
- (b) For storm surge, use the most up to date NOAA hydrodynamic Sea, Lake, and Overland Surges Hurricanes (SLOSH) model on the project site. Storm surge data can be accessed on the AdaptVA website. Selection of a default storm category should be determined by the locality based upon historical frequency and specified for use in conducting resiliency assessments by the applicant. If additional storm surge analysis is being used by the locality, it should be referenced here.
- (c) For flooding, use the most up to date Special Flood Hazard Area and the Limit of Moderate Wave Action (LiMWA) model on the project site according to the Virginia Flood Risk Information System (VFRIS) model in conjunction with the requirements and application of the local floodplain management ordinance. VFRIS includes the Flood Insurance Rate Maps, flood insurance studies, and associated models produced by the Federal Emergency Management Agency, and is available on the Virginia Department of Conservation and Recreation (DCR) website. When identifying flooding impacts, the applicant may rely on existing use and application of the relevant Special Flood Hazard Area. This data is also accessible on the AdaptVA website.

Commented [MC32]: The Town can consider making this its own section, below the WQIA section. The highlighted portion is the required language, highlighted green are decisions the Town needs to make on how to carry out the resiliency assessment in your local program.

Commented [CM33]: needs clarification if a separate resiliency assessment form will be used, or if incorporated into WQIA.

(d) The anticipated impacts shall be based upon a thirty (30) year timeframe, unless the applicant demonstrates that the lifespan of the project proposed for development is less than thirty (30) years based upon the information in 2(b) as approved by the Zoning Administrator. Where a lifespan of less than 30 years is proposed, the applicant shall provide documentation of proposed building materials, anticipated quality of construction, design specifications, and other materials or information in support of a predicted lifespan of less than 30 years for the project. [Alternatively, the applicant or locality may base the assessment on the default 30-year lifespan].

(2) A [narrative report or form] that analyzes the results of the data and graphic research, and provides the following information:

- (a) Define the intended service life of the proposed structure(s).
- (b) Identification of any proposed impact directly from proposed impervious cover or structures in the RPA and the extent of such impact.
- (c) Identification of extent of impact on the current buffer area including impacts to existing vegetation from the landward movement of water and vegetative migration.
- (d) Describe the extent to which anticipated impacts can be or have been mitigated by altering the location design, size, or orientation of proposed structures or impervious cover, by preserving and/or supplementing existing buffer areas as provided for in Section 108 of this Ordinance, and/or by considering other limiting site conditions including required setbacks and parcel size, and/or by proposing an adaptation measure in accordance with the provisions of Section 108.
- (e) Identification of the utilization of existing local programs that already take potential impacts into account through the building permit or site design review processes, such as freeboard requirements enacted through the [local floodplain ordinance].

(3) Apply the results of the resiliency assessment to the proposed development. The Zoning Administrator will review the [narrative report or form from (2)] along with the water quality impact assessment and determine whether the anticipated impacts necessitate an alteration or conditions to the proposed project or implementation of an adaptation measure for approval.

- (a) In considering whether a requirement for project alteration or adaptation measure is appropriate, the Zoning Administrator will ensure that the proposed alteration or adaptation measure is practical, achievable, and necessary to mitigate the identified impact.
- (b) Where possible, consideration will be given to modifying the proposed development size or location, such that the extent of land disturbance or impervious cover can be reduced to avoid or minimize the area or areas of the parcel that the assessment indicates will be impacted.
- (c) If the resiliency assessment reveals that impacts on the parcel can be addressed by structural design or siting alterations, then supplemental information on the potential alterations shall be provided for consideration by the Zoning Administrator. Supplemental information may include additional sketches or plans, including plan and section views, building specifications, and other supporting materials.
- (d) Approval may be conditioned on the implementation of the proposed alterations, conditions, or adaptation measure.

(e) The resiliency assessment may also indicate that no alterations, conditions, or adaptation measures are required, in which case the applicant may proceed through the remainder of the approval process.

(4) *Identify conditions, alterations, or adaptation measures for the proposed development.* Should an impact from sea-level rise, storm surge, or flooding be identified that exceeds available design alterations, approval of the proposed project should then be conditioned with the requirement for an adaptation measure and the following information provided:

(a) Describe the proposed adaptation measure(s) for the site as selected from one of the sources listed in subsection 7.6(D) of this Ordinance and submit documentation of the proposed adaptation measure and its suitability for use on the site, such as design specifications, construction methods and materials that will provide shoreline stabilization until vegetation is established, and a proposed maintenance plan.

(b) Describe how the selected adaptation measure meets the requirement for being a nature-based solution.

(c) Describe how the selected adaptation measure(s) comply with applicable regulatory or permitting requirements. Submit a water quality impact assessment pursuant to Section 7.10 of this Ordinance and a site plan pursuant to Appendix C of this Ordinance detailing the proposed placement of the adaptation measure, existing and proposed topography and vegetation, proposed limits of clearing and grading, and mitigation for the area of land disturbance within the RPA. Additionally, provide documentation of as-built documentation of the final design and installation, including photographs, and final inspection is required upon completion of installation.

(5) The resiliency assessment may be submitted as a standalone document as part of the plan of development process or it may be submitted as part of a water quality impact assessment pursuant to Section 7.10 of this Ordinance for those projects disturbing less than 2,500 square feet.

Section 7.11: Plan of Development Process

Any development or redevelopment within Chesapeake Bay Preservation Areas exceeding 2,500 square feet of land disturbance shall be accomplished through a plan of development process prior to any clearing or grading of the site or the issuance of any building permit to assure compliance with all applicable requirements of this Article.

A. Required Information. In addition to the requirements of this Ordinance or the requirements of the Cape Charles Subdivision Ordinance, the plan of development process shall consist of the plans and studies identified below. These required plans and studies may be coordinated or combined as deemed appropriate by the Zoning Administrator. The Zoning Administrator may determine that some of the following information is unnecessary due to the scope and nature of the proposed development.

1. ~~Except as otherwise provided herein, the plan of development process for any development or redevelopment in a CBPA, shall consist of the plans and information identified below: The following plans or studies shall be submitted unless otherwise provided for:~~

- a. A site plan in accordance with the provisions of this ordinance; or a subdivision plat in accordance with the provisions of the Subdivision Ordinance of Cape Charles;
- b. An environmental site assessment;

- ~~c.~~ A landscaping plan;
- ~~d.~~ A water quality impact assessment, according to Section 7.10 of this Ordinance.
- ~~e.e.~~ A resiliency assessment, according to Section 7.10 of this Ordinance.
- ~~d.f.~~ f. A storm water management plan;
- ~~e.~~ g. An erosion and sediment control plan in accordance with the provisions of the Cape Charles Erosion and Sediment Control Ordinance.

B. Environmental Site Assessment. An environmental site assessment shall be submitted in conjunction with preliminary site plan, ~~or~~ preliminary subdivision plan approval, or water quality impact assessment review.

1. The environmental site assessment shall be drawn to scale and clearly delineate the following environmental features:
 - a. tidal wetlands
 - b. tidal shores
 - c. non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow

Commented [HM34]: This means it is only required for land disturbance > 2500 SF

Commented [HM35R34]: Unless we add WQIA

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- d. a 100-foot buffer area located adjacent to and landward of the components listed in Subsections a through c above, and along both sides of any water body with perennial flow
 - e. other sensitive environmental features as determined by the Zoning Administrator
2. Wetlands delineations shall be performed consistent with the methods and procedures used and accepted from time to time by the U.S. Army Corps of Engineers.
3. The environmental site assessment shall delineate the site-specific geographic extent of the RPA and RMA, as necessary.
4. The environmental site assessment shall be drawn at the same scale as the preliminary site plan or subdivision plat and shall be certified as complete and accurate by a professional engineer or a certified land surveyor. [This requirement may be waived by the Zoning Administrator when the proposed use or development would result in less than 5,000 square feet of disturbed area; however, the requirement may not be waived for projects located on parcels impacted by Chesapeake Bay Preservation Areas.]

Commented [HM36]: The ESA is the vehicle for requiring a site-specific RPA determination for land disturbance greater than 2500 SF therefore it may not be waived if the parcel has CBPAs on them

- C. Landscaping Plan. A landscape plan shall be submitted in conjunction with site plan approval or as part of subdivision plat approval. No clearing or grading of any lot or parcel shall be permitted without an approved landscaping plan.

1. Landscaping plans when required shall be prepared and/or certified by design professionals practicing within their areas of competence as prescribed by the Code of Virginia and must meet the following requirements:

- a. The landscaping plan shall be drawn to scale and clearly delineate the location, size, and description of existing and proposed plant material within the RPA and the RMA. All existing-mature trees on the site two four (4) inches or greater DBH shall be shown on the landscaping plan. Where there are groups of trees, stands may be outlined instead, except for mature trees, which shall be individually identified. Mature trees shall be protected during development and only removed where necessary, including to provide for the proposed use or development. The location and specific number of trees two inches or greater DBH to be preserved outside of this construction footprint shall be indicated on the plan. Trees to be removed to create a desired construction footprint shall be clearly delineated on the landscaping plan.
- b. Any required buffer area shall be clearly delineated and any plant material to be added to establish or supplement the buffer area, as required by this Article, shall be shown on the landscaping plan.
- c. Within the buffer area, trees to be removed for sight lines, vistas, access paths, shoreline erosion control projects, and best management practices, as provided for in this Article, shall be shown on the plan. Vegetation required by this Article to replace any existing trees within the buffer area shall also be shown on the landscaping plan. Mature trees shall be preserved and trimmed or pruned in lieu of removal as site conditions permit. Any removal of mature trees should be limited to the fewest number of trees feasible. When mature trees are removed in the RPA to provide for sight lines and vistas, access paths or BMPs, they shall be replaced with trees as appropriate to site conditions.

Commented [MC37]: Required mature tree language.

d.c. Trees to be removed for shoreline stabilization projects and any replacement vegetation required by this Article shall be shown on the landscaping plan.

e.d. The plan shall depict grade changes or other work adjacent to trees which would affect them adversely. Specifications shall be provided as to how grade, drainage, and aeration would be maintained around

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- trees to be preserved.
- f. The landscaping plan will include specifications for the protection of existing trees during clearing, grading, and all phases of construction.
2. Plant specifications
- a. All plant materials necessary to supplement the buffer area or vegetated areas outside the construction footprint shall be installed according to standard planting practices and procedures.
- b. All supplementary or replacement plant materials shall be living and in a healthy condition. Plant materials shall conform to the standards of the most recent edition of the American Standard for Nursery Stock, published by the American Association of Nurserymen.
- b.c. The landscaping plan should include a demonstration that where the planting of new trees or vegetation is required, native species will be used to the greatest extent
3. Maintenance
- a. The applicant shall be responsible for the maintenance and replacement of all vegetation as may be required by the provision of the Article.
- b. In buffer areas and areas outside the construction footprint, plant material shall be tended and maintained in a healthy growing condition and free from refuse and debris. Unhealthy, dying, or dead plant materials shall be replaced during the next planting season as required by the provisions of this Article.

Commented [MC38]: Required mature tree language

D. Stormwater Management Plan. A stormwater management plan shall be submitted in accordance with the requirements of the Virginia Erosion and Stormwater Management Regulations, as

part of the plan of development process required by this Article and in conjunction with site plan or subdivision plan approval.

1.
Contents of the plan. The storm water management plan shall contain maps, charts, graphs, tables, photographs, narrative descriptions, explanations, and citations to supporting references as appropriate to communicate the information required by this Article. At a minimum, the storm water management plan must contain the following:

location and design of all planned storm water control devices;

procedures for implementing non-structural storm water control practices and techniques;

pre- and post-development non-point source pollutant loadings with supporting documentation of all utilized coefficients and calculations;

for facilities, verification of structural soundness, including a professional engineer or Class III B surveyor certification.

2.

_____. Site specific facilities shall be designed for the ultimate development of the contributing watershed based on zoning, comprehensive plans, local public facility master plans, or other similar planning documents.

3. All engineering calculations must be performed in accordance with procedures outlined in the current edition of the Virginia Storm water Management Handbook.

_____.^{4.}
_____. The plan shall establish a long-term schedule for inspection and maintenance of storm water management facilities that includes all maintenance requirements and persons responsible for performing maintenance. If the designated maintenance responsibility is with a party other than the Town of

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~~Cape Charles, then a maintenance agreement shall be executed between the responsible party and the Town of Cape Charles.~~

E. Erosion and Sediment Control Plan. An erosion and sediment control plan shall be submitted that satisfies the requirements of this Article and in accordance with the Cape Charles Erosion and Sediment Control Ordinance in conjunction with site plan or subdivision plan approval.

F. Final Plan. Final plan for property within CBPAs shall be final plats for land to be subdivided or site plans for land not to be subdivided as required in the Cape Charles Subdivision Ordinance and this Ordinance.

1. Final plans for all lands within CBPAs shall include the following additional information:

~~a. Evidence of the site-specific RPA boundary determination, inclusive of perennial flow determinations and wetland delineation studies, as appropriate to the site conditions, the delineation of the Resource Protection Area boundary~~
the delineation of required buffer areas

~~b. Evidence that all applicable wetland permits required by law have been obtained prior to authorization of grading or other on-site activities shall be provided. all wetlands permits required by law~~

~~c. Limits of land disturbance and all areas of clearing, grading, access ways and staging areas and the total area of land disturbance, as well as total area of land disturbance proposed within the RPA.~~

~~d. Location of all approved existing and proposed septic tanks and drainfield areas, including reserve areas, and the location of all existing and proposed wells and utilities.~~

~~e. A statement that excavation material and debris from construction shall be disposed of in a lawful manner.~~

~~f. Existing and proposed impervious cover and the total amount of impervious cover proposed for the site, as well as total amount of impervious cover proposed within the RPA~~

~~g. A~~ maintenance agreement as deemed necessary and appropriate by the Zoning Administrator to ensure proper maintenance of best management practices in order to continue their functions

2. ~~The following notations are required on plats:~~

~~a. the requirement to retain an undisturbed and vegetated 100-foot wide buffer area~~

~~b. the requirement for pump-out and 100% reserve drainfield sites for onsite sewage treatment systems, when applicable~~

~~c. the permissibility of only water dependent facilities or redevelopment in Resource Protection Areas, including the 100-foot wide buffer area~~

3. Installation and bonding requirements

- a. Where buffer areas, landscaping, storm water management facilities, or other specifications of an approved plan are required, no certificate of

Commented [MC39]: Required 9 VAC25-830-190(A)(4)(i-iii) plan and plat notations

Commented [MC40R39]: These could also be added to site plan ordinance or section

Commented [HM41R39]: Also RMA/RPA boundaries are required to be shown on plats and plans - is that somewhere else?

Commented [CM42R39]: included in site plan ordinance section and environmental site assessment

occupancy shall be issued until the installation of required plant materials or facilities is completed in accordance with the approved site plan.

- b. When the occupancy of a structure is desired prior to the completion of the required landscaping, storm water management facilities, or other specifications of an approved plan, a certificate of occupancy may be issued only if the applicant provides Cape Charles a form of surety satisfactory to the Zoning Administrator in an amount equal to the remaining plant materials, related materials, and installation costs of the required landscaping or facilities and/or maintenance costs for any required storm water management facilities during the construction period.
- c. All required landscaping shall be installed and approved by the first planting season following issuance of a certificate of occupancy or the surety may be forfeited to the Town of Cape Charles.
- d. All required storm water management facilities or other specifications shall be installed and approved within 18 months of project commencement. Should the applicant fail, after proper notice, to initiate, complete, or maintain appropriate actions required by the approved plan, the surety may be forfeited to the Town of Cape Charles. Cape Charles may collect from the applicant the amount by which the reasonable cost of required actions exceed the amount of the surety held.

e. After all required actions of the approved site plan have been
e.f.

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completed, the applicant must submit a written request for a final inspection. If the requirements of the approved plan have been completed to the satisfaction of the Zoning Administrator, such unexpended or un-obligated portion of the surety held shall be refunded to the applicant or terminated within 60 days following the receipt of the applicant's request for final inspection. The Zoning Administrator may require a certificate of substantial completion from a professional engineer or Class IIIB surveyor before making a final inspection.

- G. Administrative Responsibility. Administration of the plan of development process shall be in accordance with this ordinance or the Cape Charles Subdivision Ordinance.
- H. Denial of Plan, Appeal of Conditions or Modifications. In the event the final plan or any component of the plan of development process is disapproved and recommended conditions or modifications are unacceptable to the applicant, the applicant may appeal such administrative decision to the Planning Commission. In granting an appeal the Planning Commission must find such plan to be in accordance with all applicable ordinances and include necessary elements to mitigate any detrimental impact on water quality and upon adjacent property and the surrounding area or such plan meets the purposes and intent of the performance standards in this Article. If the Planning Commission finds that the applicant's plan does not meet the above-stated criteria, they shall deny approval of the plan. In the event of a denial of appeal to the Planning Commission, the applicant may appeal such decision to the Cape Charles Town Council. Said appeal shall be made within 15 days of the negative decision. Further appeals by the applicant shall be established by law.

Section 7.12: Non-Conforming Use and Development Waivers

- A. The lawful use of a building or structure which existed on September 11, 1990,
or
which exists at the time of any amendment to this Article, and which is not in conformity with the provisions of the Overly District may be continued in accordance Section 2.5 of this Ordinance. No change or expansion of use shall be allowed with the exception that:
 - 1. The Zoning Administrator may grant a non-conforming use and development waiver for structures on legal non-conforming lots or parcels to provide for remodeling and alterations to such non-conforming structures provided that:
 - a. there will be no increase in non-point source pollution load;
 - b. any development or land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of this Article;
 - c. the intent of Section 2.5, Non-Conforming Uses, is upheld.
 - 2. An application for a non-conforming use and development waiver shall be made to and upon forms furnished by the Zoning Administrator and shall include, for the purpose of proper enforcement of this Article, the following information:
 - a. name and address of applicant and property owner;

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- b. legal description of the property and type of proposed use and development;
 - c. a sketch of the dimensions of the lot or parcel, location of buildings and proposed additions relative to the lot lines, and boundary of the Resource Protection Area;
 - d. location and description of any existing private water supply or sewerage system.
3. ~~3.~~ A non-conforming use and development waiver shall become null and void twelve months from the date issued if no substantial work has commenced.
4. An application for the expansion of a nonconforming structure may be approved by the Zoning Administrator through an administrative review process provided that the following findings are made:
- a. The request for the waiver is the minimum necessary to afford relief;
 - b. Granting the waiver will not confer upon the applicant any specific privileges that are denied by this Article to other property owners in similar situations;
 - c. The waiver is in harmony with the purpose and intent of this Article and does not result in water quality degradation;
 - d. The waiver is not based on conditions or circumstances that are self-created or self-imposed;
 - e. Reasonable and appropriate conditions are imposed, as warranted, that will prevent the waiver from causing a degradation of water quality;
 - f. Other findings, as appropriate and required by the Town of Cape Charles are met; and
 - g. In no case shall this provision apply to accessory structures.
5. In accordance with Code of Virginia §15.2-2283, additions to nonconforming structures for the purpose of providing reasonable modifications in accordance with the American with Disabilities Act of 1990 shall not be considered an expansion of a nonconforming structure.
6. In accordance with the Code of Virginia § 15.2-2307.H, nothing in this ordinance shall be construed to prevent the owner of a valid nonconforming mobile or manufactured home from replacing that home with a newer manufactured home, either single- or multisection, that meets the current HUD manufactured housing code. Any such replacement home shall retain the valid nonconforming status of the prior home.
7. ~~This chapter shall not be construed to prevent the reconstruction of pre-existing structures within Chesapeake Bay Preservation Areas from occurring as a result of casualty loss unless otherwise restricted by this Ordinance.~~

Commented [MC43]: Added Missing (VAC25-830-150(A)(2))

Section 7.13: Exemptions

- A. Exemptions for Utilities, Railroads, and Public Roads.
- 1. Construction, installation, operation, and maintenance of electric, natural gas, fiber-optic, and telephone transmission lines, railroads, and public roads and their appurtenant structures in accordance with (i) regulations promulgated pursuant to the ~~Virginia Erosion and Sediment Control Law (§ 62.1-44.15:51 et~~

~~seq. of the Code of Virginia) and the~~ Stormwater Management Act ([§ 62.1-44.15:24](#) et seq. of the Code of Virginia), (ii) an erosion and sediment control plan and a stormwater management plan approved by the Virginia Department of

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Environmental Quality, or (iii) local water quality protection criteria at least as stringent as the above state requirements are deemed to comply with this Article. The exemption of public roads is further conditioned on the following:

- a. ~~_____~~ The road alignment and design has been optimized, consistent with ~~_____~~ all applicable requirements, to prevent or otherwise minimize the encroachment in the Resource Protection Area and to minimize the adverse effects on water quality.
 2. Construction, installation, and maintenance of water, sewer, and natural gas and underground telecommunication and cable television lines, owned, permitted or both by the Town of Cape Charles, shall be exempt from the Overlay District provided that:
 - a. to the degree possible, the location of such utilities and facilities shall be outside RPAs;
 - b. no more land shall be disturbed than is necessary to provide for the proposed utility installation;
 - c. all construction, installation, and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal requirements and permits and designed and conducted in a manner that protects water quality; and
 - d. any land disturbance exceeding an area of 2,500 square feet complies with all Cape Charles erosion and sediment control requirements.
- B. Exemptions for Silvicultural Activities. Silvicultural activities located within designated CBPAs are exempt from the requirements of this Article provided that silvicultural operations adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in the Fifth Edition (March 2011) of "Virginia's Forestry Best Management Practices for Water Quality Technical Manual." The Virginia Department of Forestry will oversee and document installation of best management practices and will monitor in-stream impacts of forestry operations in Chesapeake Bay Preservation Areas, in the 1997 edition of "Best Management Practices Handbook for Forestry Operations [Technical Guide]."
- C. Exemptions in Resource Protection Areas. The following land disturbances in Resource Protection Areas may be exempted from the Overlay District: (1) water wells; (2) passive recreation facilities such as boardwalks, trails, and pathways; and (3) historic preservation and archaeological activities provided that it is demonstrated to the satisfaction of the Zoning Administrator that:
1. Any required permits, except those to which this exemption specifically applies, shall have been issued;
 2. Sufficient and reasonable proof is submitted that the intended use will not deteriorate water quality;
 3. The intended use does not conflict with nearby planned or approved uses; and
 4. Any land disturbance exceeding an area 2,500 square feet shall comply with all Cape Charles erosion and sediment control requirements.

D. Exemptions for living shorelines. A living shoreline, as defined by Va. Code § 28.2-104.1 [is or may be] exempt from additional performance criteria requirements of Section 107, including a

What?

Go see which
section in our ordinance,
not Model
Ordinances
reference

water quality impact assessment in Section 7.10, provided the project minimizes land disturbance, maintains or establishes a vegetative buffer inland of the living shoreline, complies with the fill conditions in subsection 7.10(G) of this Ordinance, and receives approval from the VMRC or the local wetlands board, as applicable.

Commented [MC44]: Required new Resiliency language, need to decide if living shorelines exemption status

Section 7.14: Exceptions

- A. A request for an exception to the requirements of Sections 7.6 In 7.7 and 7.10.C of this Overlay District shall be made in writing to the Board of Zoning Appeals. It shall identify the impacts of the proposed exception on water quality and on lands within

Commented [HM45]: 7.6 in the commented upon version is the RPA development criteria and exceptions from this section requires a public hearing w/ BZA and meeting the findings

Commented [HM46]: This just needs to be 7.9 the general performance criteria. 7.9 C is the Buffer criteria (which need to be moved to 7.6)

Commented [MC47]: To simplify, I inserted the Model ordinance language here. Helpful to clarify the difference for a "Formal Exception" versus "Administrative Exception"

I believe the current version is missing the requirement of findings for exceptions to the 9VAC25-830-130. General performance criteria and RPA development criteria.

If you'd prefer to incorporate those changes into your existing language, and make edits accordingly that is fine too.

Commented [HM48R47]: In case you prefer to keep the Town's original language, I plugged in the missing language

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the RPA through the performance of a water quality impact assessment which complies with the provisions of Section 7.10.

- B. The Town of Cape Charles shall notify the affected public of any such exception requests and shall consider these requests in a public hearing in accordance with § 15.2-2204 of the Code of Virginia, except that only one hearing shall be required.
- C. The Board of Zoning Appeals shall review the request for an exception and the water quality impact assessment and may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this Article if the Board of Zoning Appeals finds:
1. Granting the exception will not confer upon the applicant any special privileges that are denied by this Article to other property owners in the Overlay District;
 2. The exception request is not based upon conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels;
 3. The exception request is the minimum necessary to afford relief;
 4. The exception request will be consistent with the purpose and intent of the Overlay District and not injurious to the neighborhood or otherwise detrimental to the public welfare, and is not of substantial detriment to water quality; and
 5. Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a degradation of water quality.
- D. If the Board of Zoning Appeals cannot make the required findings or refuses to grant the exception, the Board of Zoning Appeals shall return the request for an exception together with the water quality impact assessment and the written findings and rationale for the decision to the applicant.
- E. Exceptions to § 7.10.B/7.9 may be made by the zoning administrator provided that the findings noted in § 7.1514.C are made.
- F. A request for an exception to the requirements of provisions of this Article other than those in Sections 7.7 and 7.10.C/7.6 and 7.9 shall be made in writing to the Zoning

Commented [HM49]: General performance criteria

Commented [HM50]: RPA development criteria and GPC

*Talk to Maura (DEQ)
how best to
include.*

Administrator. The Zoning Administrator may grant these exceptions provided that Exceptions to the requirements are minimum necessary to afford relief; and Reasonable reasonable and appropriate conditions are placed upon any exception that is granted, as necessary, so that the purpose and intent of this Article is preserved.

1. ~~Exceptions to § 7.10.B may be made provided that the findings noted in § 7.15.C are made.~~

(A) General requirements. Applications for variances [waivers] and exceptions from the requirements of Section 7.9 general performance standards, and 7.6, development standards for RPAs, shall be made in writing and filed with the Zoning Administrator. Such applications shall identify any potential impacts of the proposed variance [waiver] or exception on water quality and on lands within the RPA through the performance of a water quality impact assessment, pursuant to Section 7.10 of this Ordinance, and shall examine the impacts of sea level rise, storm surge, and flooding on the project through the performance of a resiliency assessment, pursuant to Section 7.10(G). Each application for a variance [waiver] and exception shall be approved, denied, or approved with conditions according to the review process outlined in the following subsections. No application for a variance [waiver] or exception to sections 7.9 and 7.6 of this Ordinance shall be granted under this Section without meeting the following findings:

- (1) The requested variance [waiver] or exception to the criteria is the minimum necessary to afford relief.
- (2) Granting the variance [waiver] or exception will not confer upon the applicant any special privileges that are denied by this Ordinance to other property owners who are subject to its provisions and who are similarly situated.
- (3) The variance [waiver] or exception is in harmony with the purpose and intent of this Ordinance and is not of substantial detriment to water quality.
- (4) The variance [waiver] or exception request is not based upon conditions or circumstances that are self-created or self-imposed.
- (5) Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality.
- (6) Other findings, as appropriate to the Zoning Administrator are met.

(B) Administrative variances [waivers]. The Zoning Administrator shall approve, deny, or approve with conditions an application requesting an administrative variance [waiver] following the review of a complete application, as defined under subsection 113(A) of this Ordinance. No such application shall be accepted by the Zoning Administrator unless accompanied by a nonrefundable fee in the amount of [\$\$\$0.00] dollars.

- (1) The Zoning Administrator may establish such review policies as they deem expedient in implementing the intent of this Ordinance. In approving an application, the Zoning Administrator shall, if warranted, include reasonable and appropriate conditions that will prevent the degradation of water quality.
- (2) No administrative variance [waiver] or exception shall be granted to Section 7.9 of this Ordinance, general performance standards, unless the Zoning Administrator makes the findings required in subsection 7.14(A) of this Ordinance.
- (3) Administrative variances [waivers] to provisions within sections of this Ordinance other than 7.9 or 7.6 may be granted, provided that:

(a) Variances [waivers] to the criteria shall be the minimum necessary to afford relief.

(b) Reasonable and appropriate conditions upon any variance [waiver] granted shall be imposed, as necessary, so that the purpose and intent of this Ordinance is preserved.

(C) Formal exceptions. Exceptions from the criteria of Section 7.6 of this Ordinance, development criteria for Resource Protection Areas, require public notice and a public hearing before the Board of Zoning Appeals. Complete applications for an exception shall be submitted to the Zoning Administrator for review and evaluation prior to being forwarded to the Board for consideration. No such application for an exception shall be accepted by the [County City Town] Administrator unless accompanied by a nonrefundable fee in the amount of [\$\$\$X.XX] dollars. Such fee shall include all costs of notification and advertising.

(1) The Zoning Administrator shall review complete applications for an exception to the requirements of Section 7.6 of this Ordinance, including the water quality impact assessment and resiliency assessment, and provide the Board and the applicant with copies of the submitted materials, an evaluation of the required findings and potential impacts of the proposed exception, and such other information as may aid the Board in considering the application no less than five (5) days prior to the scheduled hearing.

(2) Not later than 60 days after the receipt of a complete application, the Board shall hold a public hearing on such application. Notice of the time and place of the hearing shall be published no less than once per week for two (2) consecutive weeks prior to such hearing in a newspaper having a general circulation in the Town. The second such notice shall appear not less than five (5) days nor more than 21 days prior to the hearing.

(3) The Board shall notify, by first class mail, all property owners adjacent to the subject property and each waterfront property owner across the waterway from the subject property, if the water body is less than 500-feet wide, of the public hearing at least five (5) days prior to the hearing.

(4) The Board may make, alter and rescind rules for its procedures not inconsistent with the provisions of this Ordinance; provided, however, that a quorum shall be not less than a majority of the members of the Board, and provided further, that the concurring vote of a majority of the members of the Board present and voting shall be required to grant any exception.

(5) The Board shall approve, deny, or approve with conditions an application requesting an exception to the requirements of Section 7.6 following the review of a complete application and a determination that the proposed project meets the findings required by subsection 7.14(A) above.

(D) No application for relief from sections 7.9 or 7.6 of this Ordinance shall be considered complete where a resiliency assessment, as outlined in Section 7.10(G) of this Ordinance has not occurred or the proposed adaptation measure allows for the use of fill in a Resource Protection Area in contravention to the requirements of subsection 7.6(E)(1)(f)5 of this Ordinance.

Commented [MC51]: Required new Resiliency language.

Section 7.15: Enforcement

- A. Any person who: (i) violates any provision of this ordinance or (ii) violates or fails, neglects, or refuses to obey any Town of Cape Charles or its official Designee's final notice, order, rule, regulation, or variance or permit condition authorized under this ordinance shall, upon such finding by an appropriate circuit court be assessed a civil

**Town of Cape Charles Zoning Ordinance
Article VII – Chesapeake Bay Preservation Area**

penalty not to exceed \$5,000 for each day of violation. Such civil penalties may, at the discretion of the court assessing them, be directed to be paid into the treasury of the Town of Cape Charles for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, in such a manner as the court may direct by order, except that where the violator is the Town of Cape Charles itself or its agent, the court shall direct the penalty to be paid into the state treasury.

- B. With the consent of any person who: (i) violates any provision of any Town of Cape Charles ordinance related to the protection of water quality in Chesapeake Bay Preservation Areas or (ii) violates or fails, neglects, or refuses to obey any Town of Cape Charles or its official Designee's order, rule, regulation, or variance or permit condition authorized under such ordinance, the Town of Cape Charles may provide for the issuance of an order against such person for the one-time payment of civil charges for each violation in specific sums, not to exceed \$10,000 for each violation. Such civil charges shall be paid into the treasury of the Town of Cape Charles for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, except that where the violator is the Town of Cape Charles itself or its agent, the civil charges shall be paid into the state treasury. Civil charges shall be in lieu of any appropriate civil penalty that could be imposed under subdivision 1 of this subsection. Civil charges may be in addition to the cost of any restoration required or ordered by the Town of Cape Charles body or official.

Section 7.16: Severability

The provisions of this ordinance shall be deemed to be severable, and if any of the provisions hereof are adjudged to be invalid or unenforceable, the remaining portions of this ordinance shall remain in full force and effect and their validity shall remain unimpaired.

Section 7.17: Effective Date

This ordinance was duly considered following a required public hearing held on November 12, 2003, and was adopted by the Town Council of Cape Charles, Virginia, at its regular meeting held November 12, 2003. (Ord. No. 11122003; 11-12-03)

Resiliency Amendments Implementation Checklist

Chesapeake Bay Preservation Act Bay Act Resiliency Provisions Adoption Checklist

The following provides the general steps that a locality should take to ensure all applicable regulatory changes and provisions from 9 VAC 25-830-155 are addressed and incorporated into the local Bay Act program. This checklist may be used in conjunction with the Model Ordinance language provided by the Department. Specifically, localities should follow these steps prior to and after updating applicable ordinance provisions and programs to ensure all required elements have been considered.

Initial Steps/Locality Decisions

- ☒ Determine if Bay Act resiliency assessment will be conducted by **applicant** or locality.
- ☐ Determine if Bay Act resiliency assessment will be incorporated into Water Quality Impact Assessment or be a stand-alone requirement.
- ☐ Review Sea-Level Rise mapping for jurisdiction to identify potentially affected properties or areas.
- ☐ Review existing local requirements for storm surge and flooding to identify which requirements would apply to potential properties and/or address potential Bay Act resiliency impacts.
- ☐ Determine category of storm surge (select from Categories 1-4) that will be applied for storm surge impact analysis based upon historic trends for the area.
- ☒ Determine which model (**AdaptVa**, VFRIS, locality based) will be used to conduct resiliency assessment.
- ☒ Determine if adaptation measures will be added as a permitted development in Resource Protection Areas or as a permitted buffer modification.
- ☐ Determine the allowable lifespan for the assessment: either 30 years or less than 30 years if the applicant can support a claim that the lifespan of the proposed development is less than 30 years.
- ☐ Determine if a Water Quality Impact Assessment will be required when installing living shorelines, provided the locality has approved the project, the project minimizes land disturbance and maintains or establishes a vegetative buffer inland of the living shoreline and complies with the fill conditions, and is approved by the VMRC or local wetlands board as applicable.
- ☐ Determine if additional information or resources will be considered for use during the assessment review process (e.g., additional storm surge model/forecast or VIMS Adapt VA shoreline management model).
- ☐ Determine ordinance effective date and applicability date to plan development process and WQIA review for proposed projects.

Commented [MC1]: Based on our conversations during the close-out meeting. The Town can change this to the locality if interested.

Commented [MC2]: Use the example [Resiliency Assessment](#) to decide this

Commented [MC3]: Highlighted in ordinance to make decision -7.10(G)(1)(b)

Commented [MC4]: AdaptVA is what I included in the ordinance edits, The Town can change this if interested.

Commented [MC5]: Added in the ordinance edits as a permitted modification of buffer area (7.6)(D)(1)(f), but can be moved around.

Commented [MC6]: Highlighted in ordinance to make decision -7.10(G)(1)(d)

Commented [MC7]: See comment on Section 7.10(B) of ordinance

Ordinance Revisions

- ☒ Update Regulatory Definitions to add:
 - ☒ Adaptation Measure (regulatory)
 - ☒ Fill
 - ☒ Freeboard
 - ☒ Limit of Moderate Wave Action
 - ☒ Living Shoreline
 - ☒ Nature-based solution (regulatory)
 - ☒ Storm Surge
- ☒ Update Performance Criteria for Development in RPAs:
 - ☒ Add “adaptation measure” as permitted development within the RPA (if locality intends to adopt)
 - ☒ Add requirement for Resiliency Assessment for development in the RPA.
 - ☒ Add to either Water Quality Impact Assessment or stand-alone requirement.
- ☒ Add Resiliency Assessment Requirements
 - ☒ Establish minimum project lifespan of 30 years.
 - ☒ Establish required information/submission to request a project lifespan of less than 30-years.
 - ☒ Incorporate required models/forecasts:
 - ☒ 2017 NOAA Intermediate-High scenario for sea-level rise
 - ☒ NOAA Hydrodynamic Sea, Lake, and Overland Surges Hurricanes model
 - ☒ Special Flood Hazard Area for flooding
 - ☒ Limit of Moderate Wave Action for flooding
 - ☐ Establish content of Resiliency Assessment submission (if having applicant submit)
 - ☒ Require that impacts from models/forecasts be identified on the proposed Plan of Development/site plan/plat.
 - ☒ Require an assessment of the projected impacts on the buffer:
 - ☒ Extent of impact on existing vegetation
 - ☒ Extent of migration of water and vegetation in light of impacts

Commented [MC8]: Need to determine default storm category

Commented [MC9]: Town to decide this (example form available)

- ☒ Extent of impacts to any structures being proposed.
- ☒ Provide for alterations, conditions, or adaptations measures considering:
 - ☒ Site conditions
 - ☒ Nature, type, and size of proposed land development
 - ☒ Extent of potential impacts
 - ☒ Location within an Intensely Developed Area, if applicable
 - ☒ Minimizing future land disturbance and impervious surfaces and preserving buffer vegetation within the RPA
- ☒ Provide for local government review and approval including the addition of alterations, conditions, or adaptation measures as necessary and appropriate.
- ☒ Establish Adaptation Measures Requirements if Allowing:
 - ☒ Establish nature-based solution adaptation measure requirement.
 - ☒ Provide list of approved sources:
 - ☐ Chesapeake Bay Program Partnership Best Management Practice
 - ☐ Virginia Stormwater Best Management Practice
 - ☐ Shoreline Protection Project under Tidal Wetlands Guidelines
 - ☐ Approved or Eligible Virginia Community Flood Preparedness Fund Project
 - ☒ Provide requirement that adaptation measures be installed with applicable specifications.
 - ☒ Establish Fill Conditions in Adaptation Measure
 - ☒ Grading/slope necessary for project specification
 - ☒ Run-off impacts minimized including uplands.
 - ☒ Characteristics (i.e., sufficient organic content) for vegetative growth and infiltration
 - ☒ Flow onto adjacent properties controlled.
 - ☒ Not negatively impacting septic systems or drainfields
 - ☒ Consistent with additional requirements including floodplain.
 - ☒ Maximize vegetation preservation and minimize land disturbance and impervious surfaces.
 - ☒ Comply with all requirements and permits.
- ☒ Establish that projects within the RPA (including adaptation measures and shoreline erosion control projects) will be consistent with VMRC Tidal Wetlands Guidelines.
- ☐ Add Living Shorelines exemption (if adopting).

Commented [MC10]: Town needs to decide and add to 7.10 and 7.13 sections to clarify

- ☐ Remove requirement for WQIA and additional performance criteria (if adopting).
- ☐ Minimize land disturbance.
- ☐ Maintain or establish vegetative buffer inland.
- ☐ Comply with fill conditions.
- ☐ Receive VMRC permit/approval.

☒ Update Exceptions:

- ☒ Prohibit exceptions for proposed development that do not include a resiliency assessment.
- ☒ Prohibit the use of fill in a Resource Protection Area for a proposed adaptation measure in contravention of the requirements.

Post-Adoption Steps

- ☐ Update/Create Forms: including Water Quality Impact Assessment and development of a new Resiliency Assessment checklist.
- ☐ Update Plan of Development Review Process documents: applications, checklists, policy, and procedures documents.
- ☐ Update website and outreach materials for locality Bay Act program.

Appendix A: Definitions

Town of Cape Charles Zoning Ordinance
Appendix A-Definitions

authority to enforce the provisions of the building code.

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

BUILDING, PARCEL means a fraction of a tract of land containing one or more building lots.

BUILDING PERMIT is an approval statement signed by the Building Permit Office authorizing the construction, alteration, reconstruction, repair, restoration, demolition, or razing of all or a part of any building.

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

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

CANOPY TREE means a tree that typically reaches 35 feet in height or taller when mature.

CAREGIVER is an adult who provides care for a mentally or physically impaired person within the Commonwealth. A caregiver shall be either related by blood, marriage or adoption to or the legally appointed guardian of the mentally or physically impaired person for whom he is caring.

CARRY-OUT RESTAURANT means an establishment that, by design of the physical facilities, service, or packaging sells prepared ready-to-eat foods intended primarily to be consumed off the premises.

CEMETERY means property used for interring the dead.

CERTIFICATE OF APPROPRIATENESS is a certificate or other statement indicating approval by the Administrator, the Harbor Area Review Board or the Historic District Review Board as the case may require, of plans for construction, alteration, reconstruction, repair, restoration, demolition, or razing of a building or structure or part thereof.

CHESAPEAKE BAY PRESERVATION AREA or CBPA means any land designated by the Town Council pursuant to Part III of the Chesapeake Bay Preservation Area Designation and Management Regulations, 9VAC25-830-10 et seq., § 62.1-44.15:68 of the Code of Virginia. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area.

CHILD CARE CENTER means any facility, other than a family home, established for providing childcare, supervision, and protection of children.

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Town of Cape Charles Zoning Ordinance
Appendix A-Definitions

§8.20 and §9.20 of this Code.

DEVELOPER means the owner or any person with written authorization for the owner who intends to improve or to construct improvements upon any given property.

DEVELOPMENT means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units. The term "development" shall not be construed to include any tract of land which will be principally devoted to agricultural production.

Need to include this

Commented [HM52]: For Bay Act purposes, "Development" means the construction or substantial alteration of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures.

DIAMETER AT BREAST HEIGHT or DBH means the diameter of a tree measured outside the bark at a point 4.5 feet above ground.

DISTRICT is a part, zone, or geographical area within the municipality within which certain zoning or development regulations apply.

DRIPLINE means a vertical projection to the ground surface from the furthest lateral extent of a tree's leaf canopy.

DRIVE-THROUGH ESTABLISHMENT/RESTAURANT shall mean a business establishment so developed that its retail or service character includes providing a driveway approach and service window for motor vehicles so as to serve patrons as they are seated in the motor vehicle and passing by the service window rather than serving them from within a building.

DRIVEWAY shall mean a vehicular connection between the right-of-way of a street and to a vehicle parking, loading, or maneuvering facility, lots, building sites, uses, or other divisions of land and not intended to be public ingress and egress. A driveway is not considered a street.

DWELLING means a structure or portion thereof that is used exclusively for human habitation.

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

DWELLING, CONDOMINIUM shall mean a single, separately owned dwelling unit in a multi-unit development or structure, with jointly owned and shared areas and facilities.

DWELLING, DUPLEX shall mean a building designed as a single structure, containing two separate dwelling units joined side-by-side, has direct access to the outside, and each of which is designed or arranged to be occupied by two families living independently of each other.

Town of Cape Charles Zoning Ordinance
Appendix A-Definitions

and trade organizations.

EXISTING CONSTRUCTION means, for the purpose of determining rates, structures for which the start of construction commenced before the effective date of the FIRM. EXISTING CONSTRUCTION may also be referred to as **EXISTING STRUCTURES**.

EXISTING USE is the use of a lot or structure at the time of the enactment of the zoning ordinance.

FARM or FARMLAND is a parcel of land used for agricultural activities.

FENCE means an artificially constructed barrier of any material or combination of materials erected to enclose, screen, or separate areas.

FILL means material such as sand, soil, gravel, or crushed stone which is placed in an area, often to adjust elevation or create land contouring.

FLEX SPACE, INDUSTRIAL USE: Flex buildings are, by design, "flexible" and allow for a wide range of office and warehouse uses. They can be used for many purposes and are easier to retrofit to meet a company's needs than typical warehouse buildings.

FLOOD or FLOODING means:

1. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - A. The overflow of inland or tidal waters.
 - B. The unusual and rapid accumulation or runoff of surface waters from any source.
 - C. Mudslides (i.e., mudflows) which are approximately caused or precipitated by accumulations of water on or under the ground.
2. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in 1.a of this section.

FLOOD INSURANCE RATE MAP (FIRM) means the official map of the community, on which the administrator has delineated both special hazard areas and the risk premium zones applicable to the community. **FLOOD PLAIN** means (1) a relatively flat land area adjoining a river, stream, or watercourse which is subject to partial or complete inundation; (2) an area subject to the unusual and rapid accumulation of runoff of surface water from any source.

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Town of Cape Charles Zoning Ordinance
Appendix A-Definitions

FLOOD PLAIN MANAGEMENT means the operation of an overall program of corrective and preventive measures for reducing flood damage including but not limited to emergency preparedness plans, flood control works, and flood plain management regulations.

FLOOD PROOFING means any combination of structural and nonstructural additions, changes, or adjustments to structure which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOOR AREA shall mean the gross horizontal areas of a building, including mezzanines and lofts, exclusive of garages, parking structures, basements, open balconies and porches, and equipment and service areas, measured from the exterior face of the exterior walls of a building.

FOOT CANDLE means a standard measurement of light intensity, defined as the illuminance on a one- square foot surface from a uniform source of light.

FORESTRY means an establishment primarily engaged in the operation of timber tracts, tree farms, forest nurseries, the gathering of forest products, or in performing forest services.

FREEBOARD means an additional amount of height above the Base Flood Elevation used as a factor of safety (e.g., 2 feet above the Base Flood) in determining the level at which a structure's lowest floor must be elevated or floodproofed to be in accordance with state or community floodplain management regulations.

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

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

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

FUNCTIONALLY DEPENDENT USE means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

FUNERAL HOME is a building used for the preparation of the deceased for burial and the display of the deceased and rituals connected therewith before burial or cremation.

Need to include:

FLOOD PLAIN means the channel and the relatively flat area adjoining the channel of a natural stream, river, or body of water that has been or may be covered by floodwater.

Commented [HM53]: For BayAct purposes, "Floodplain" means all lands that would be inundated by floodwater as a result of a storm event of a 100-year return interval.

Town of Cape Charles Zoning Ordinance
Appendix A-Definitions

dogs, cats, or other domesticated pets of at least six months of age.

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

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 construction activity such as the clearing, grading, excavating, or filling of land.

LAND USE means a description of how land is occupied or utilized.

LANDSCAPE means an expanse of natural scenery; lawns, trees, plants, and other natural materials, such as rock and wood chips and decorative features, including sculptures, patterned walks, fountains, and pools.

LANDSCAPE PLAN is a plan indicating the location, size, quantity and species of replacement trees and shrubbery.

LANDSCAPE ZONE is an area reserved for the growing and maintenance of landscape materials, including approved street trees and ground cover.

LIMIT OF MODERATE WAVE ACTION (LiMWA) is an informational line that can be found on flood maps for some coastal areas. On a flood map, it is shown as a black line with black arrows that point to areas where wave heights are between one and one-half (1.5) and three (3) feet. It also marks the inland limit of the Coastal Zone A.

LIVING SHORELINE is a shoreline management practice that: provides erosion control and water quality benefits; protects, restores, or enhances natural shoreline habitat; and maintains coastal processes through the strategic placement of plants, stone, sand fill, and other structural and organic materials. When practicable, a living shoreline may enhance coastal resilience and attenuation of wave energy and storm surge. Pursuant to Va. Code §28.2-104.1, living shorelines are recognized as the preferred alternative for stabilizing shorelines in the Commonwealth. Only living shorelines shall be permitted for shoreline management unless the best available science shows that such approaches are not suitable.

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

LOT AREA means the total area within the lot lines of a lot, excluding any street rights-of-

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Town of Cape Charles Zoning Ordinance

Appendix A-Definitions

MATURE TREE means a canopy tree with a diameter at breast height (DBH) of 12 inches or greater or an understory tree with a DBH of four (4) inches or greater.

MEAN SEA LEVEL means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum to which base flood elevations shown on the Flood Insurance Rate Map are referenced.

MENTALLY or PHYSICALLY IMPAIRED PERSON is a person who is a resident of Virginia and who requires assistance with two or more activities of daily living, as defined in § 63.2-2200 of the Code of Virginia, as certified in writing by a physician licensed in the Commonwealth of Virginia.

MIXED USE DEVELOPMENT means property that incorporates two or more different uses, and may include a variety of housing types, within a single development.

MOBILE HOME PARK is a site containing space with the required improvements and utilities that are leased for the long-term placement of manufactured houses and that may include services and facilities for the residents.

MODULAR BUILDING, OR HOMR OR INDUSTRIALIZED BUILDING means, but is not limited to, single and multifamily houses, apartment units, commercial buildings, and permanent additions thereof, a combination of one or more sections or modules, subject to state regulations and including the necessary electrical, plumbing, heating, ventilating, and other service systems, manufactured off-site and transported to the point of use for installation or erection, with or without other specified components, to comprise a finished building. Unlike Manufactured Homes, the design, installation, and construction of modular or industrialized homes are regulated by the Uniform Statewide Building Code.

MOTEL is one or more buildings in which lodging or board and lodging are provided for transient guests for compensation and supervised by a person in charge at all hours. Ingress and egress to and from all rooms are made primarily directly from an exterior walkway rather than from an inside lobby.

MUNICIPAL COMMUNITY CENTER. See "Neighborhood Community Center."

NATURE-BASED SOLUTION means an approach that reduces the impacts of sea-level rise, flooding, and storm events through the use of environmental processes and natural systems.

NEIGHBORHOOD is an area of the community with characteristics that distinguish it from other areas and that may include distinct ethnic or economic characteristics, housing types, schools, or boundaries defined by physical barriers, such as roads, railroads, or other natural features.

NEIGHBORHOOD COMMUNITY CENTER is a facility within Residential Districts intended for the use of Town citizens for recreational and educational use.

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Town of Cape Charles Zoning Ordinance
Appendix A-Definitions

PLAN OF DEVELOPMENT For the purposes of this Ordinance, plan of development means any process for site plan review in local zoning and land development regulations designed to ensure compliance with Va. Code § 62.1-44.15:74 and with this Ordinance, prior to issuance of a building permit.

PLANNED UNIT DEVELOPMENT means a form of development characterized by unified site design for a variety of housing types and densities, clustering of buildings, common open space, and a mix of building types and land uses in which project planning and density calculation are performed for the entire development rather than on an individual lot basis.

PLAT or PLAT OF SUBDIVISION means the schematic representation of land divided or to be divided and information in accordance with the provisions of §§ 15.2-2241, 15.22242, 15.2-2258, 15.2-2262, and 15.2-2264, and other applicable statutes.

PLAYGROUND means an active recreational area with a variety of facilities, including equipment for younger children as well as court and field games.

PLOT means a single-family parcel of land or a parcel of land that can be identified and referenced to a recorded plat or map.

PORCH means a roofed area, which may be screened, usually attached to or part of and with direct access to or from a building. A porch becomes a room when the enclosed space is heated or air conditioned, or has water and sewer service, and when the percentage of window area to wall area is less than fifty percent.

PREMISES shall mean any building, lot, parcel of land, or portion of land whether improved, or unimproved including adjacent sidewalks and parking strips.

PRESERVATION is the process of applying measures necessary to sustain the existing form, integrity, and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction. The limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a preservation project. However, new exterior additions are not within the scope of this treatment.

PRINCIPAL BUILDING shall mean a building in which is conducted the principal permitted use(s) of the lot on which said building is situated.

PRINCIPALLY ABOVE GROUND means that at least 51 percent of the actual cash

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Town of Cape Charles Zoning Ordinance
Appendix A-Definitions

PROFFER is an offer of restrictions on use of property presented by an applicant for conditional rezoning or a special exception.

PROJECT shall mean the entire proposed development.

PROPERTY means a lot, parcel, or tract of land together with the building and structures located thereon.

PUBLIC, when used as a modifier shall mean "government-owned" or "government-operated."

PUBLIC AREA means any park, playground, trail, path, or other recreational area and open space; scenic and historical sites; schools and other public buildings and structures; and other places where the public is directly or indirectly invited to congregate.

PUBLIC ART is a fountain, sculpture, painting, mural, or similar object that is sited within a planned development as a focal point and is intended for the enjoyment of the general public.

PUBLIC ROAD means a publicly owned road designed and constructed in accordance with water quality protection criteria at least as stringent as requirements applicable to the Virginia Department of Transportation, including regulations promulgated pursuant to (i) the Erosion and ~~Sediment Control Law~~ **Stormwater Management Act** (§ 62.1-44.15:2451 et seq. of the Code of Virginia). This definition includes those roads where the Virginia Department of Transportation exercises direct supervision over the design or construction activities, or both, and cases where secondary roads are constructed and maintained, or both, by the Town of Cape Charles in accordance with the standards of the Town of Cape Charles.

PUBLIC UTILITY means a closely regulated enterprise with a franchise for providing to the public a utility service deemed necessary for the public health, safety, and welfare.

PUBLIC UTILITY FACILITY means any building, structure, and facility including generating and switching stations, poles, lines, pumping stations, repeaters, antennas, transmitters, and receivers, valves, and all buildings and structures relating to the furnishing of utility services, such as electric, gas, telephone, water, sewer, and public transit, to the public.

RECONSTRUCTION is any or all work needed to remake or rebuild all or part of any building to a sound condition, but not necessarily of original materials. It is the process of depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location. Reconstruction is different from the other historic treatments in that it is undertaken when there are often

Town of Cape Charles Zoning Ordinance
Appendix A-Definitions

work beyond the state of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation of property or accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual START OF CONSTRUCTION means the first alteration on any wall, ceiling, floor, or other structural part of a building, whether or not the alteration affects the external dimensions of the building.

STOOP is a small porch (covered or uncovered) and the step(s) to it.

STORM SURGE is the resulting temporary rise in sea level due to the action of wind stress on the water surface and low atmospheric pressure created during storms which can cause coastal flooding. Surge is the difference from expected tide level. Storm tide is the total water level.

STORY means that portion of a building included between the surface of any floor and the floor next above it or, if there is no floor above it, the space between the floor and the ceiling next above it. A basement shall be counted as a story if over 50 percent of its height is above finished grade.

STORY, HALF, HABITABLE ATTIC, means a finished or unfinished area, not considered a full story, complying with all of the following requirements:

- The occupiable floor area is at least 70 square feet.
 - The occupiable floor area has a ceiling height of not less than 7 feet. For rooms with sloped ceilings, ceiling height shall not be less than 5 feet and not less than 50 percent of the required floor area shall have a ceiling height of not less than 7 feet. A shower or tub equipped with a shower head shall have a ceiling height in accordance with the Virginia Residential Building Code.
 - The occupiable space is enclosed by the roof assembly above, knee walls (if applicable) on the sides and the floor-ceiling assembly below.
- Total occupiable space shall not exceed 50 percent of the greatest story floor area.

STREET means highway, street, avenue, boulevard, road, lane, alley, or any public way.

STREET, ARTERIAL means a street which moves or is designed to move large volumes of traffic from one part of town to another, connecting residential areas with employment centers and centers of commercial activity. Traffic volumes are usually 500 vehicles per day or greater.

STREET, COLLECTOR means a street that collects traffic from local streets and connects with minor and major arterial.

STREET, LOCAL means a street designed to provide vehicular access to abutting

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Appendix A-Definitions

UNDERSTORY TREE means a tree that typically reaches 12 to 35 feet in height when mature.

USE means the purpose or activity for which land or buildings are designed, arranged, or intended or for which land or buildings are occupied or maintained.

UTILITY INSTALLATION. See Public Utility Facility.

VACANCY means any unoccupied land, structure, or part thereof that is available and suitable for occupancy.

VARIANCE means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

VIEWSHEDS are the areas of land extending south from Washington Avenue to Bayshore Lane, that align in width and angle with the existing streets to the north (including Harbor Street and Peach Street), that shall be restricted to only ground-level development and their amenities, including but not limited to streets, pedestrian or multi-modal trails, or linear parks, so as to maintain the view from the north to the south and vice-versa.

WATER-DEPENDENT FACILITY means a development of land that cannot exist outside the Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include but are not limited to: (1) ports; (2) the intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers; (3) marinas and other boat docking structures; (4) beaches and other public water-oriented recreation areas; and (5) fisheries or other marine resources facilities.

WETLANDS means tidal and non-tidal wetlands.

WORKFORCE HOUSING means housing commonly targeted at "essential workers" in a community (e.g., police officers, firefighters, teachers, nurses, medical personnel, service workers). Workforce housing is targeted more generally at income levels from 80% to 120% of Area Median Income (AMI), regardless of type of employment.

YARD is an open space that lies between the principal building or buildings and the nearest lot.

YARD, FRONT means a space extending the full width of the lot between any building and the front lot line and measured perpendicularly to the building at the closest point to the

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Appendix C: Site Plan Ordinance

Town of Cape Charles Zoning Ordinance
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Section 4: Required Information

- A. Plot Plans. One copy of a plot plan, drawn to scale, for individual single-family dwellings or accessory structures for single-family residences or for commercial development which results in a land disturbance less than 5,000 square feet and which will result in an area of impervious surface of less than 16 percent of any lot or parcel shall be submitted to the Zoning Administrator for review and approval. Any encroachment into an RPA shall require an applicant to prepare a site plan as outlined in Subsection B below including the submission of a water quality impact assessment in accordance with Subsection 7.11 of the Chesapeake Bay Preservation Ordinance.
1. At a minimum, the plot plan shall be drawn to scale and contain the following information:
 - a. a boundary survey of the site drawn to scale or site drawing showing the north arrow and property line boundaries and distances;
 - b. area of the lot/parcel;
 - c. location, dimension, and use of proposed and existing structures including marine and temporary structures. In the case of temporary structures, the date when the structures will be removed must be indicated;
 - d. location of all building restriction lines, setbacks, easements, covenant restrictions, and rights-of-way;
 - e. dimensions and location of all existing driveways, parking areas, or other impervious surfaces;
 - f. limits of clearing and grading;
 - g. specifications for the protection of existing trees and vegetation during clearing, grading, and all phases of construction;
 - h. location of Resource Protection Area (RPA) and Resource Management Area (RMA) boundary, as specified in Subsection 7.4.A of the Chesapeake Bay Preservation Ordinance, including any additional required buffer areas and RPA maintenance and use restrictions; [revision adopted by Town Council 12/2010]
 - i. plat notations as required in Section 7.11(F)(2)
 - j. location of all erosion and sediment control devices;
- j.k. amount of existing and proposed impervious surface ~~proposed~~ for the site, as well as total amount of impervious cover proposed within the RPA.
- B. A site plan shall be required for any single-family, residential, or commercial development which results in 5,000 square feet or more of land disturbance or for any multi-family or industrial development or for development specified in Subsections 2.B and 2.C or for any other development deemed necessary by the Zoning Administrator. All site plans shall contain the following information:
1. Location of the tract by an insert map at a scale of not less than one inch equals two thousand feet (1" = 2,000'), unless otherwise acceptable to the administrator; indicating the scale, the north arrow, and such information as the names and numbers of the adjoining roads, streams and bodies of water, railroads, subdivisions, or other landmarks sufficient to clearly identify the location of the property.

Adopted
December
2010

Town of Cape Charles Zoning Ordinance
Appendix C – Site Plan Ordinance

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Town of Cape Charles Zoning Ordinance
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2. A boundary survey of the tract by bearings and distances certified by a licensed land surveyor.
3. Certificate signed by the surveyor or engineer setting forth the source of title of the owner of the tract and the place of record of the last instrument in the chain of title.
4. All existing property lines; existing streets and easements, their names, numbers, and width; the location and sizes of existing sanitary and storm sewers, gas lines, water mains, culverts, and other utilities and their easements; existing buildings; existing watercourses, waterways, or lakes and their names; and other existing physical features in or adjoining the project.
5. Existing zoning and zoning district boundaries on the property in question and on immediately surrounding properties, including all Resource Protection Area and Resource Management Area boundaries, and present use of adjoining tracts.
6. Existing topography with a maximum of two-foot contour levels. Where existing ground is on a slope of less than two percent, either one-foot contours or spot elevations where necessary but not more than fifty feet apart in both directions.
7. The location, dimensions, and materials proposed for the construction of proposed streets, alleys, driveways, and the location, type, and size of vehicular entrance(s) to the site.
8. The location and amount (in square feet) of all existing and proposed impervious surface including but not limited to all off-street parking, loading spaces, and walkways. The type of surfacing, size, angle of stalls, width of aisles and a specific schedule showing the number of parking spaces provided should also be indicated.
9. All proposed water and sanitary sewer facilities indicating all pipe sizes, types, and grades and where connection is to be made to town or to other utility system; all proposed gas lines and other utilities and their easements.
10. The proposed location, general use, number of floors, height and floor area for each building, accessory and main, and where applicable, the number, size, and type of dwelling units.
11. Proposed finished grading by contours supplemented where necessary by spot elevations.
12. The location, sizes, types, and grades of ditches, catch basins, and pipes and connections to existing drainage system.
13. Provisions for the adequate control of erosion and sedimentation indicating the proposed temporary and permanent control practices and measures that will be implemented during all phases of clearing, grading, and construction.
14. Delineation of any floodplain limits.
15. Location, type, size, and height of fencing, retaining walls, and screen planting where required under the provisions of the chapter.
16. A landscape plan, drawn to scale, delineating dimensions and distances and the location, type, size, and description of all existing and proposed plant materials. Any required buffer area and all existing trees on site six inches or greater DBH shall be clearly shown on the landscape plan. Where there are

Town of Cape Charles Zoning Ordinance
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groups of trees, stands may be outlined instead. Trees to be removed to create a desired construction footprint shall be clearly delineated on the plan. The landscape plan will include specifications for the protection of existing trees and buffer areas during clearing, grading, and all phases of construction.

17. The location and dimensions of proposed recreation, open space, and required amenities and improvements including details of disposition.
18. A storm water management plan to include maps, graphs, tables, narrative descriptions, and citations to support references as appropriate to communicate the information required by the Town Code. At a minimum, the storm water management plan shall contain: (a) location and design of all planned storm water control devices; (b) procedures for implementing nonstructural storm water control practices and techniques as applicable; (c) pre-and post-development non-point source pollutant loadings with supporting documentation of all utilized coefficients and calculations; and (d) for facilities, verification of structural soundness including a Professional Engineer or Class IIIB Surveyor Certification. All engineering calculations must be performed in accordance with procedures outlined in the current edition of the Local Assistance Manual, the Virginia Erosion and Sediment Control Handbook, or the Virginia Department of Transportation Drainage Manual.

- C. All features and elements of the site plan required by this Article shall in all respects conform to all applicable provisions and standards of the Code of Virginia and this Code, including, but not limited to: The Cape Charles Comprehensive Zoning Ordinance, Subdivision Ordinance, Erosion and Sediment Control Ordinance, or any PUD zoning ordinance approved by Town Council.

Section 5: Procedure for Processing

- A. All applicants for site plan review shall submit to the Zoning Administrator a site plan for the proposed development. The site plan review fee, as established by the Council, shall be paid at this time.
- B. The Zoning Administrator shall review all site plans which are submitted to him pursuant hereto. The administrator shall check the site plan for general completeness and compliance with all applicable requirements. The administrator shall circulate the site plan to the relevant town departments, agencies, and officials for written comments as to the proposed development's conformance to all applicable standards and requirements and whether approval of the site plan is recommended.
- C. Except under abnormal circumstances, within 45 days from the receipt of the site plan in his office, the Zoning Administrator shall approve, approve subject to conditions, or disapprove the site plan and notify the applicant in writing of the action taken. If the site plan is denied approval, the administrator, in notifying the applicant of the decision, shall set forth in detail the reasons for the denial, which shall be limited to any defect in form or required information, any violation of any provision or standard of this chapter or any other ordinance, or the inadequacy of any utility and shall state any changes which would make the site plan acceptable.

Section 6: Time for Obtaining Building Permit After Approval; Extension of Time

Approval of a site plan submitted under the provisions of this Article shall expire five years after the date of such approval unless building permits have been obtained for construction in accordance therewith. A single one-year extension may be given upon written request by the applicant to the Zoning Administrator and Town Manager made within ninety days before the expiration of the approved site plan. The Zoning Administrator and Town Manager shall acknowledge the request and shall make a decision regarding the requested extension within thirty days after receipt of the request.

Section 7: Revision of Site Plan; Waiver of Requirements of Article

The Zoning Administrator may approve minor revisions to an approved site plan, providing that Town requirements and specifications are not affected. Major revisions shall require that a new site plan be drawn, and the review and approval process begun anew. Any revision to an approved site plan that does not change the proposed use and which exceeds the ordinance requirements of the previously approved plan shall be approved by the Zoning Administrator.

Section 8: Appeals

Any applicant aggrieved of any decision of the Zoning Administrator on a site plan review may, within ten days of such decision, appeal to the Town Council. The Town Council shall act upon such an appeal by the owner at its next regularly scheduled meeting. The applicant may appeal Town Council's decision to the Northampton County Circuit Court as provided by law.

Section 9: Building Permits to Comply with Site Plans

No permit shall be issued for any structure in an area covered by the site plan that is required under the provisions of this Article in conformity to such a plan which has been duly approved or revised as provided in Section 7.

***Section 10: Agreement and Bond for Construction of Certain Improvements;
Establishment of Fees for Examination and Issuance of Building Permits***

- A. Prior to the issuance of any building permits for which an approved site plan is required, there shall be executed by the owner, developer, or their contractor, an agreement to construct the agreed-upon physical improvements that are located within the public right-of-way or public easements in a form approved by the Town. Such agreements shall be in accordance with this ordinance and be accompanied by a letter of credit, escrow, or a bond with surety acceptable to the Town (hereinafter "security") in the amount of the estimated cost of the required physical improvements as determined by the town departments, divisions, or agencies responsible for such improvements.
- B. Such security shall remain in force until the completion of the secured improvements within the public right-of-way or public easements shown on the approved site plan. Such security shall be partially and proportionally released within thirty days of receipt by the Town of written notice from the contractor certifying completion of a

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distinguishable part of the secured improvements. If the Town notifies the contractor in writing of any defects or deficiencies in the secured improvements within this 30-day period, then corrective measures must be taken by the contractor prior to any partial or complete release of the security.

- C. Such security shall be with a firm or bank acceptable to the Town Manager which approval shall not be unreasonably withheld.
- D. "Best Management Practices" imposed by these regulations that require regular or periodic maintenance in order to continue their function shall be regulated by a maintenance agreement submitted to the Town by the owner, developer, homeowner association, or other entity responsible for said BMPs and, where approved by the Town, shall run with the land and be binding upon the entity that assumes responsibility for said BMPs.

Section 11: Compliance with Approved Site Plan

- A. Unless otherwise specifically provided in this chapter, the construction standards for all offsite improvements and site improvements required by this Article shall comply with approved site plan.
- B. Inspections during the installation of the offsite improvements and required onsite improvements shall be made by the department responsible for such improvements as are required to certify compliance with the approved site plan.
- C. The owner shall notify the Town Manager in writing three days prior to the beginning of all street or storm sewer work shown to be constructed on the site plan.
- D. The owner or owner's contractor shall provide adequate supervision on the site during the installation of all required improvements within the public right-of-way or public easements and have a responsible superintendent or foreman, together with one set of approved plans, profiles, and specifications, available at the site at all times when work is being performed.
- E. Upon satisfactory completion of the installation of the required improvements, the owner shall receive a certificate of approval from the Zoning Administrator. The Town Manager will authorize the release of any bond which may have been furnished for the guarantee of satisfactory installation of such improvements or parts thereof upon notice by the Zoning Administrator that the improvements have been satisfactorily completed.
- F. The installation of improvements as required in this Article shall in no case serve to bind the Town except such improvements for the maintenance, repair, or operation thereof, but such acceptance shall be subject to the existing regulations concerning the acceptance of each type of improvement. Upon acceptance, the Town shall assume all ownership, maintenance, and repair obligations of the dedicated improvements.

**Town of Cape Charles Zoning Ordinance
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Section 12: Occupancy Certificates

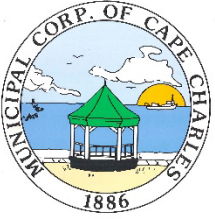
A final occupancy permit may be issued for any appropriately completed building or part of building located in a part of the total area of an approved site plan, such part of the total area to be known as a section provided that:

- A. The other onsite construction and improvements included in the approved site plan for the section have been completed and have been inspected and accepted by the Zoning Administrator, the Town Manager, and the county health officer or their agents.
- B. The offsite improvements related to and necessary to service the section has been completed, inspected, and accepted by the Town Manager or his agents, or the developer has provided surety acceptable to the Town.

This ordinance was adopted by the Town Council of Cape Charles, Virginia, on July 14, 1992, amended July 11, 1995, and ratified and confirmed on June 16, 1997.

Section 4.A, Item 1.h. was amended and adopted by the Town Council of Cape Charles, Virginia on December 9, 2010.

Staff Report



STAFF REPORT PLANNING COMMISSION REGULAR METING

MEETING DATE: June 3, 2025

AGENDA ITEM: Item 7

PREPARED BY: Katie H. Nunez, Planning Director & Zoning Administrator &
Tracy Outten, Planning & Zoning Assistant - Preservation &
Zoning Administrator

DATE: May 29, 2025

RE: CCZO Section VIII - Historic District Overlay Ordinance

In summer 2024, an appeal was filed with the Zoning Board of Appeals regarding a Zoning Administrator decision that found a property owner in violation of not completing an application and obtaining Zoning approval prior to conducting work on their property in compliance with the Historic District Overlay Ordinance and the Guidelines. The Board upheld the appeal and overturned the Zoning Administrator decision.

This entire file was reviewed by the Town's attorney and he noted that the ordinance did not clearly state that a zoning approval by the Town was required for all elements of repair/renovation or building additions within the Historic District. This was discussed with the Town Council in late summer/early fall 2024 and this discussion concluded that some amendments to the Zoning Ordinance should be proposed and considered to rectify this issue and clearly state the Town's intent of zoning review in the Historic District but that it would be useful to also improve the distinction between routine maintenance work on a property vs. minor work vs. major work and the levels of review required by either the Zoning Administrator or the Historic District Review Board leading to the issuance of a Certificate of Appropriateness of the approved work being sought by the property owner.

Staff has been working on developing draft language amendments to CCZO Section VIII – Historic District Overlay Ordinance which we have attached and show the proposed changes as “red strikethroughs of existing provisions” and additions are shown in “green font”. We have also developed a new Appendix “G” to give greater clarity as to the types of building work being conducted in the Historic District is classified under these proposed changes.

We would like to review all of this in detail with the Planning Commission to make any further changes or clarity corrections to this draft document before it is provided to the Town's Attorney and then Town Council for them to determine if this, in general concept, addresses the issues raised from last year and begin the public hearing process for a Zoning Text Amendment.

Article VIII: Historic District Overlay

Draft

Article VIII - Historic District Overlay

“The Cape Charles Historic District encompasses nearly all of the town of Cape Charles as it was originally laid out in 1883-1884 as well as the Sea Cottage addition, an area west of the original limits of the town, that was developed after 1909...The town was originally laid out in an unusual twenty-seven block grid pattern dominated by a central park with four landscaped streets that radiate from the park and serve as a main cross axis for the town’s circulation pattern. No other such plan is known to exist in Virginia.”

- 1989 National Register of Historic Places Registration Form Section 7, page 1.

“An interesting stock of architectural styles in both the residential area and the downtown commercial area contribute an historic style and authenticity. The street patterns, lot configurations and boundaries, which were laid out in a historic grid pattern, have remained largely unaltered, adding to the Town’s historical integrity. Cape Charles’ late nineteenth and early twentieth century character is a key element in the Town’s interest and attractiveness to tourists. The traditional downtown commercial area on Mason Avenue still serves as the commercial center for the Town. It is important that the Town’s historic character be protected, not only for its intrinsic value, but also to contribute to attract and expand tourism in Cape Charles.” – Town of Cape Charles 1999 Comprehensive Plan, page 40.

The Town of Cape Charles participates in the Certified Local Government program and in doing so demonstrates a commitment to keep what is significant from the past for the benefit of future generations. The architectural integrity of existing structures shall be recognized, and future development shall be compatible.

Section 8.1: Purpose of the District

The purpose of this district is to guard against destruction or encroachment upon historic areas, buildings, monuments, or other features, or buildings and structures of registered architectural significance which contribute or will contribute to the cultural, social, economic, political, artistic, or architectural heritage of the Town of Cape Charles and the Commonwealth of Virginia. It is also the purpose of the district to preserve the character of the designated historic areas and historic landmarks and other historic or architectural features and to ensure that buildings, structures, streets, walkways, or signs shall be erected, reconstructed, altered, or restored so as to be kept architecturally compatible with the character of the historic district.

Section 8.2: Criteria for Establishing Historic Districts - General Character

The boundaries of the Historic District shall in general be drawn to include areas containing buildings or places in which historic events occurred or having special public value because of notable architectural or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation. The district may include either individual buildings or places of such character, and a reasonable distance beyond, or it may include areas or groupings of structures which have significance relative to their patterns of development or social and economic or architectural interrelationships even though

some structures in the area might not possess significant merit when considered alone.

Section 8.3: Inventory of Landmarks and Contributing Properties Established

The Town of Cape Charles has established as part of this ordinance a map covering the area included in the Historic District, based on the criteria set forth in this ordinance. This map shall be as much a part of this ordinance as if fully described herein. Pending further amendment of this ordinance, the period of significance for the Town will be from 1883 to 1964 as delineated in the Cape Charles Historic District National Register of Historic Places (amended 2019). As identified in the National Register, structures or sites designated as properties which contribute to the historic character of the Town shall be known as contributing properties for the purpose of this Ordinance. Structures or sites not designated as landmark or contributing properties shall be known as noncontributing properties. Should a building or structure within the boundaries of the historic district not be listed in the national register, the building or structure will be classified as noncontributing. The map may be amended from time to time in the same manner as the zoning district map.

Section 8.4: Application of the District; Relation to Other Zoning Districts

To enable the district to operate in harmony with the plan for land use and population density embodied in these regulations, the Historic District is created as a special district to be superimposed on other districts contained in these regulations and is to be designated by a special symbol for its boundaries on the Zoning District Map. The uses, housing types, minimum lot requirements, minimum yard requirements, maximum height, and accessory uses and accessory signs shall be determined by the regulations applicable to the other districts over which the Historic District is superimposed except as these other district regulations may be modified by application of the regulations in the Historic District.

Section 8.5: Permitted Uses

A building or land shall be used only for any use or accessory use permitted in the zoning district in which the premises are situated and upon which the Historic District is superimposed.

Section 8.6: Historic District Review Board; Creation

For the general purposes of this Article as herein stated and specifically to preserve and protect historic places and areas in the Town through the control of demolition of such places and through the regulation of architectural design and uses of structures in such areas, there is created a board known as the Historic District Review Board.

Section 8.7: Historic District Review Board; Membership

The members of the Historic District Review Board shall be appointed by the Town Council. The Membership shall consist of five (5) citizens, at least three (3) of whom shall be residents of the local historic district.

Section 8.8: Historic District Review Board; Terms

Upon approval by the Town Council, members shall be appointed for a term of five years (5 yrs). Appointments to fill vacancies shall be only for the unexpired term. Members may be reappointed to succeed themselves. A member whose term expires shall continue to serve until a successor is appointed and qualifies.

Section 8.9: Historic District Review Board; Qualifications

Members of the Historic District Review Board shall have demonstrated interest and knowledge in the historical and architectural development of the Town and when possible, include a Planning Commission member, as well as professionals in the disciplines of architecture, history, historic preservation, archaeology, or related professions; and professionals in the disciplines of planning, building construction, or real estate.

Section 8.10: Historic District Review Board; Organization

The Historic District Review Board shall elect from its own membership a chairman and vice chairman who shall serve annual terms and may succeed themselves. The chairman shall preside over all meetings in addition to having the duties and responsibilities of other members of the Board. The vice chairman shall preside over meetings of the Board in the absence of the chairman.

Section 8.11: Historic District Review Board; Rules

The Board shall meet in regular session on the third (3rd) Tuesday of every month when an application has been filed requiring consideration. Special meetings of the Board may be called by the chairman or a majority of the members after public notice as required.

Section 8.12: Historic District Review Board; Meetings; Hearings

Written notice of a special meeting is not required if the time of special meeting has been fixed at a regular meeting or if all members are present at a special meeting or file a written waiver of notice. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all voting members of the Board. The Board may make, alter, or rescind rules and forms for its procedures, consistent with the ordinances of the Town and the general laws of the Commonwealth of Virginia.

Section 8.13: Historic District Review Board; Procedures

The Board shall, with the concurrence of the town manager, establish procedures for all matters coming before it for review, and all meetings shall be open to the public. The Board will have the right to appeal decisions of the town manager to the Town Council.

Section 8.14: Historic District Review Board; Powers and Duties

The Zoning Administrator will review all applications to determine the proper level of review and compliance with the Cape Charles Zoning Ordinance. The Historic District Review Board shall have the power and authority for issuing or denying Certificates of Appropriateness for construction, reconstruction, substantial exterior alteration, razing, or relocation within the historic district. In addition, the Board

shall have the following duties:

- A. To assist and advise the Town Council, the Planning Commission, and other Town departments, agencies, and property owners in matters involving historically significant sites and buildings or other properties in the historic districts such as, but not limited to, appropriate land usage, parking facilities, and signs.
- B. To continuously evaluate conditions and advise owners of historic landmarks or contributing structures or other properties in historic districts on problems of preservation.
- C. To oversee studies deemed necessary by the Town Council or Planning Commission concerning location of historic districts and means of preservation, utilization, improvement, and maintenance of historic assets in the Town.
- D. To propose additional historic districts or additions or deletions to districts.
- E. To recommend standards and guidelines for adoption by the Town Council to supplement the standards set forth in this Ordinance; the currently adopted guidelines are called "Cape Charles Historic District Guidelines revised October 2017."
- F. To formulate recommendations to the Town Council concerning the establishment of an appropriate system of markers for selected historic sites and buildings, including proposals for the installation and care of such historic markers.
- G. To cooperate with and enlist assistance from the Virginia Department of Historic Resources, the National Trust for Historic Preservation, and other interested parties both public and private in its efforts to preserve the character of historic landmarks, buildings, sites, or areas within the Town.

Section 8.15: Summary of Administration Review Procedures

~~In general~~, It is the purpose of this ordinance to establish review procedures for actions affecting properties in the Historic District. ~~Therefore, the Zoning Administrator will review all applications to determine the proper level of review and compliance with the Cape Charles Zoning Ordinance.~~

- A. Actions related to "Standards" will be exclusively the purview of the Zoning Administrator.
- B. Actions addressed by "Guidelines" will be the purview of the Historic District Review Board, except that guidelines that are relatively straightforward may be delegated to the Zoning Administrator at the discretion of the Historic District Review Board.
- C. In all cases the decisions of the Zoning Administrator shall be appealed to the

Board of Zoning Appeals as stated in §2-2.6.2.C, the decisions of the Historic District Review Board may be appealed to the Town Council, and the final decisions of the Town Council may be appealed to the Circuit Court of Northampton County.

Section 8.16: Approval of Historic District Review Board Required

- ~~A. Except as herein otherwise provided in this article, no building or structure, including signs, shall be erected, reconstructed, restored, or substantially altered in exterior appearance and no contributing buildings or structures shall be razed or demolished within a historic district and no permit authorizing same shall be granted unless and until the same is approved by the Historic District Review Board and a Certificate of Appropriateness has been issued by that body, with right of direct appeal to the Town Council as hereinafter provided, as being architecturally compatible with the historical, cultural, and/or architectural aspects of the structure and its surroundings.~~
- ~~B. Contributing accessory structures will be treated as contributing structures only under the following conditions:~~
- ~~1. It is on a permanent foundation; and~~
 - ~~2. It is of sufficient square footage that a new structure of that type would require a building permit; and it is not being used as, or being considered for, Accessory Dwelling Units.~~
- ~~C. "Substantial alterations" shall be defined as any and all work done on buildings, structures, or sites in a historic district other than those specifically exempted herein:~~
- ~~1. General examples of "non-substantial" alterations:~~
 - ~~a. Work done to prevent deterioration or to replace parts of a structure with similar materials in order to correct any deterioration, decay of, or damage to any structure or on any part thereof; or~~
 - ~~b. To restore same as nearly as practical to its condition prior to such deterioration, decay, or damage.~~
 - ~~2. Examples of work not constituting "substantial alteration" include those minor actions exempted from review by §8.16 of this article.~~
 - ~~3. General examples of work constituting "substantial alterations" include:~~
 - ~~a. Construction of a new building at any location or a new permanent accessory building requiring a building permit on a landmark or contributing property or on a site within the Historic District.~~
 - ~~b. Any addition to or alteration of a building which increases the square footage of the building or otherwise alters substantially its size, height, contour, or outline.~~
 - ~~c. Any alteration of the exterior architectural style of a structure or its significant elements; some examples being removal or rebuilding of porches, openings, dormers, window sashes, chimneys, columns, stairways, terraces, decks, fences, or any~~

~~other structural elements.~~

~~d.—Addition to or removal of one (1) or more stories or alteration of a roof line.~~

~~e.—Any other major actions not specifically covered by the terms of this section, but which would have an effect on the character of the historic district.~~

~~D.—In any case in which there might be some question as to whether a project may be exempted from review, may constitute a minor action, or may constitute "substantial alteration," the Zoning Administrator shall be contacted for an interpretation prior to commencement of work.~~

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

~~Within the Historic District certain minor actions which are deemed not to have permanent effects upon the character of the historic district are exempted from review for architectural compatibility by the Historic District Review Board. Such actions shall include the following and any similar actions which, in the opinion of the Zoning Administrator, will have no more effect on the character of the district than those listed:~~

~~A.—Repainting the structure. (Original painting of masonry surfaces is not exempted from review.)~~

~~B.—Replacement of missing or broken windowpanes, roofing slates, tiles, porch floor, posts, rails, shingles, window frames, or shutters where no substantial change in design or material is proposed.~~

~~C.—Addition or deletion of storm doors or storm windows, window gardens, or similar appurtenances and portable air conditioners located in existing windows, doors, or other existing wall openings (if no building permit is required for such addition or deletion).~~

~~D.—Landscaping involving minor grading, walks, low retaining walls, temporary fencing, fencing immediately surrounding trash receptacles or outdoor ventilation units, small fountains, outdoor showers, and ponds which will not substantially affect the character of the property and its surroundings.~~

~~E.—Construction of off-street loading areas and off-street parking areas.~~

~~F.—Creation of outside storage in a commercial or industrial district which does not require structural changes or major grading and is not visible from a public street or waterway.~~

~~G.—Additions or deletions to an existing building which are not visible from a public street or sidewalk. Alleys in this context are not to be considered public places.~~

~~H.—Covered by other zoning ordinance requirements as administrated by the~~

~~Zoning Administrator unless altered by the overlay ordinance.~~

~~I. Receiving historic preservation tax credits through state or federal offices.~~

~~J. Demolition of non-contributing buildings or structures.~~

~~K. Alterations or repairs made to a building or structure for the purpose of temporary emergency stabilization.~~

Section 8.16: Description of Proposed Work

Changes proposed to a property within the Historic District fall into one of the following categories. The nature of the work will determine whether the change proposed requires the department or Historic District Review Board (HDRB) approval. Not every project requires a property owner to obtain a Certificate of Appropriateness (COA). There are three (3) basic categories for projects: Routine Maintenance, Minor Work, and Major Work. The property owner must confirm with the department that the project is consistent with the appropriate work level. The following will give a brief description of each and indicate whether a COA is required by either staff or HDRB.

- A. ***Routine Maintenance** items are types of exterior work that keep the property in good condition. Such projects include any repair where no change is made to the appearance of the structure or site.

Routine Maintenance may not require the issuance of a COA by staff or the HDRB. The property owner must check with the department that the project is consistent with routine maintenance. At the discretion of the department, an application for routine maintenance may be forwarded to the HDRB if the work is questionable as to whether it is consistent with the Cape Charles Historic Overlay District Design Guidelines (HDODG).

- B. ***Minor Work** projects do not substantially alter the visual character of the structure or site.

Minor Work projects require an application and issuance of a COA. They may be approved by the department if the proposed work is consistent with the HDODG. If the department does not approve the application or if the work is questionable as to whether it is consistent with the HDODG, an application for minor work may be forwarded to the HDRB.

- C. ***Major Work** projects that involve change in the appearance of a building or site and are more substantial than routine maintenance or minor projects. They include changes from the original design or material, or replacement, alteration, or removal of an original feature.

Major Work projects require an application and issuance of a COA by the HDRB.

*A detailed Classification of Work Chart can be found in Appendix G of the Cape Charles Historic Overlay District Design Guidelines.

*The property owner must schedule an inspection if required in the Cape Charles Historic Overlay District Design Guidelines Appendix G Classification of Work Chart.

Section 8.17: Declaration of Unsafe or Dangerous Conditions

Nothing in this Ordinance shall be construed to prevent any measures necessary to correct an unsafe or dangerous condition of a property in the Historic District. Temporary measures may be taken as directed by the Zoning Administrator and Code Official without obtaining a Certificate of Appropriateness.

Section 8.18: Delegation of Authority

- A. The Zoning Administrator or Code Official shall have authority to order that work be stopped and that an appropriate application be filed for review by the Historic District Review Board in any case where the action has an adverse effect on the Historic District.
- B. The Historic District Review Board shall periodically review the design guidelines contained in this section.

Section 8.19: Certificate of Appropriateness

Evidence of the approval required under the terms of the Historic District shall be a certificate of appropriateness issued on behalf of the Historic District Review Board, stating that the demolition, moving, or changes in the exterior architectural appearance of the proposed construction, reconstruction, alteration, or restoration for which application has been made are approved by the Historic District Review Board or the Zoning Administrator. The Historic District Review Board may permit modifications of original proposals if such modifications are formally acknowledged, clearly described, and recorded in the records of the case. A certificate of appropriateness shall be in addition to any other permits required. Any action by applicants following issuance of a permit-requiring certificate of appropriateness shall be in accord with the application and material approved and any conditions appended thereto.

Section 8.20: Design Guidelines; Recommendations for Review

The intent of the guidelines is to ensure that changes within the district are compatible with the district's historic and architectural character.

- A. The Historic District Review Board shall be guided in its decisions by the design guidelines but must also use independent judgement and discretion to consider the unique characteristics of each request. The board is expected to work with each applicant to assist them in achieving their goal while preserving the character of the district. The board shall utilize the pre-application review process as defined in §8.25 (A).
- B. It shall be the duty of the Historic District Review Board to prepare recommended amendments to the design guidelines.

- C. The Town Council shall adopt and amend the design guidelines after conducting at least one public hearing pursuant to [§15.2-2204](#) of the Code of Virginia.
- D. Separate guidelines shall be developed for all new infill buildings in Cape Charles' historic district. New infill construction will not diminish, detract, or distract from the character of surrounding historic buildings or the overall historic district.
- E. Alterations and additions to non-contributing structures that affect the exterior appearance of the structure or additions should be compatible with the district following the guidelines for new (infill) construction. Criteria for non-contributing structures may be less restrictive than that applied to contributing structures.

Section 8.21 Demolition: Alternate Procedure: Offer to Sell

- A. Prior to approval of any application for demolition, razing, 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 §8.21 (A) regarding the contributing structure may be made until more than one year (1 yr) 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 raze or demolish 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 §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 §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 (2) 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 §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 (\$25,000) or more but less than forty thousand dollars (\$40,000).
 - c. Five (5) consecutive months when the offering price is forty thousand (\$40,000) or more but less than fifty-five thousand dollars (\$50,000).
 - d. Six (6) consecutive months when the offering price is fifty-five thousand dollars (\$50,000) or more but less than seventy-five thousand dollars (\$75,000).
 - e. Seven (7) consecutive months when the offering price is seventy-five thousand dollars (\$75,000) or more but less than ninety thousand dollars (\$90,000).
 - f. Twelve (12) consecutive months when the offering price is ninety thousand dollars (\$90,000) 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 §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 §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 (2) 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.
7. 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 §8.21 (B) (2) above, and the Town shall use the average of the lower two (2) appraisals to establish fair market value under §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 §8.21 (B).
8. 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 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 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.

Section 8.23: File of Actions to be Maintained

In order to provide guidance for the consistent application of standards and guidelines, and for assistance to future applicants and the promotion of consistent policies in guiding applicants toward better standards of design, the Zoning Administrator shall maintain a file containing a record of all applications, including drawings and photographs pertaining thereto and the decision of the Zoning Administrator or the Historic District Review Board in each case. The file documents shall be compiled by the Zoning Administrator, maintained by the Town Clerk, and remain the property of the Town but shall be held available for public review.

Section 8.24: Administration; Zoning Administrator

Except as authorized herein, the Zoning Administrator or Code Official shall not authorize a permit for any erection, reconstruction, integral exterior facade change, demolition, or razing of a building or structure in the Historic District until the same has been approved by the Historic District Review Board as set forth in the following procedures.

Section 8.25: Receipt of Application

Upon receipt of an application by the Zoning Administrator for each permit in the

historic district, the Zoning Administrator shall oversee the following:

- A. Pre-application review: Persons considering action that requires a certificate of appropriateness, as set forth in this ordinance, are to request an informal informational meeting with the Zoning Administrator and at least one member of the Historic District Review Board prior to submitting a formal application for a certificate of appropriateness. Requests for such informational meetings can be made to the zoning administrator, who will contact a member of the board. The informational meeting will occur within thirty (30) days of receipt of such a request. The purpose of an informational meeting is to review the design guidelines and standards and the procedures for obtaining a certificate of appropriateness. Neither the applicant nor the zoning administrator/board member(s) shall be bound by any informational meeting or conceptual review. Zoning administrator can use discretion on the need for a pre-application meeting or the inclusion of a board representative depending on the nature of project proposed;
- B. Once accepted by the zoning administrator as a fully completed application, the zoning administrator will forward to the Historic District Review Board a copy of the application, together with a copy of the site plan and the building plans and specifications filed by the applicant if such application requires the Historic District Review Board to meet and render a decision;
- C. Compile a record of all such applications and of the final disposition of the same, to be maintained by the Town Clerk;
- D. Require applicants to submit one (1) hard copy and one (1) electronic version of material required to permit compliance with the foregoing.

Section 8.26: Material to be Submitted for Review

By general rule, or by specific request in a particular case, the Historic District Review Board may require submission of any or all of the following in connection with the application: architectural plans, site plans, landscaping plans, construction methods, proposed exterior lighting arrangements, elevations of all portions of structures with important relationships to public view and such other exhibits and reports as are necessary for its determinations. Requests for approval of activities proposed in historic districts shall be accepted only from the record owner of the land involved in such proposal, or their agent.

Section 8.27: Other Approvals Required

The Zoning Administrator will review submitted applications for Certificates of Appropriateness against appropriate zoning requirements before forwarding application to the Historic District Review Board for pre-application review and approval. In any case in which an applicant's proposal also requires the approval of the Board of Zoning Appeals, final action by the Board of Zoning Appeals shall precede final action by the Historic District Review Board. The Board of Zoning Appeals may, however, table a proposal in order to request the comments of the Historic District Review Board. In this case, final action by the Historic District Review Board shall be taken prior to consideration of proposals requiring site plan

approval.

Section 8.28: Action by the Historic District Review Board; Issuance of Certificates of Appropriateness

The Historic District Review Board shall render a decision upon any request or application for a Certificate of Appropriateness within ninety (90) days after the filing of an application accepted as complete. Failure of the Historic District Review Board to render such a decision within said ninety (90) day period, unless such period be extended with the concurrence of the applicant, shall entitle the applicant to proceed as if the Historic District Review Board had granted the Certificate of Appropriateness applied for prior to denying the Certificate of Appropriateness. The Historic District Review Board, on the basis of the review of information received shall, upon request, indicate to the applicant the changes in plans and specifications, if any, which in the opinion of the Historic District Review Board, would protect and/or preserve the historical aspects of the landmark, building, structure, or district. If the applicant determines that they will make the suggested changes, the Historic District Review Board may issue the Certificate of Appropriateness. Agreed to changes will be stipulated on the Certificate of Appropriateness.

All conditions required for the approval of a certificate of appropriateness will also be included on the building plan and will be reviewed by the Code Official during routine inspections.

The Zoning Administrator will be responsible for issuance of the Certificate of Appropriateness to the applicant and the Town's Code Official office within five (5) business days. Denials of applications are to be stated in writing to the applicant along with the reasons for such denials by the zoning administrator and issued within five (5) business days. Once a Certificate of Appropriateness is granted, the applicant may obtain permits to start work with the understanding that work may be stopped should an appeal be filed to the board's decision within a 30-day period following approval of the Certificate of Appropriateness, and that the applicant takes full responsibility to bear whatever consequences result from the appeal's final decision.

Section 8.29: Expiration of Certificates of Appropriateness

Any certificate issued pursuant to this article shall expire of its own limitation six (6) months from the date of issuance if the work authorized thereby is not commenced by the end of such six (6) month period; and further, any such certificate shall also expire and become null and void if such authorized work is suspended or abandoned for a period of six (6) months after being commenced. Any period or periods of time during which the right to use any such certificate is stayed pursuant to this article shall be excluded from the computation of the six (6) months.

Section 8.30: Inspection by Administrator After Approval

When a Certificate of Appropriateness has been issued, the Zoning Administrator or Town Building Official shall from time to time inspect the alteration or construction approved by such certificate and shall give prompt notice to the applicant of any work not in accordance with such certificate or violating any ordinances of the

Town. The Zoning Administrator or Town Building Official may revoke the certificate or the building permit if violations are not corrected by the applicant in a timely manner.

Section 8.31: Delay of Approval

In the case of a proposal other than for demolition or moving but involving a designated landmark where the Historic District Review Board or, on appeal, the Town Council cannot reach a satisfactory agreement with the owner and whereas the Historic District Review Board or, on appeal, the Town Council decides such action to be in the public interest and not in conflict with any provision of law, it may delay the effective date of an approval for a period of three (3) months from the date of application or appeal to enable negotiations to be undertaken and completed for acquisition of the property for preservation or public use. Failure of negotiations within this period shall be the equivalent of a denial of the application by the Historic District Review Board or, on appeal, by the Town Council.

Section 8.32: Conditions Imposed by the Historic District Review Board

In approval of any proposal under this section, the Historic District Review Board or, on appeal, the Town Council may limit such approval by such reasonable conditions as the case may require, including but not limited to, the specifications enumerated for conditional uses and for the Town Council.

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 an agent. In exercising its powers, the Town Council 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.

Section 8.34: Appeals; Decisions of the Zoning Administrator

An appeal from a decision of the Zoning Administrator may be taken to the Board of Zoning Appeals 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 property owner(s) associated with the project under appeal. The Zoning Administrator shall transmit to the Board of Zoning Appeals within five (5) days all the papers constituting the record upon which the action appealed from was taken. The Board of Zoning Appeals shall fix a reasonable time for the meeting, give public notice thereof as required pursuant to [§ 15.2-2204](#) of the Code of Virginia; and decide the same within sixty (60) days. At the meeting the party may appear in person or by agent. In exercising its powers, the Board of Zoning Appeals may 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.

Section 8.35: Appeal to the Circuit Court from a Decision of the Town Council

An appeal from a final decision of the Town Council may be filed with the Circuit Court within thirty (30) days after said decision in the manner prescribed by law by the owner of the property in question, 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, or by the Historic District Review Board. The filing of an appeal shall stay the decision of the Town Council pending the outcome of the appeal to the court, except that the filing of such petition shall not stay the decision of the Town Council if such decision denies the right to raze or demolish a designated landmark, building, or structure. The court may reverse or modify the decision of the Town Council, in whole or part, if it finds upon review that the decision of the governing body is contrary to law or that its decision is arbitrary and constitutes an abuse of discretion, or it may affirm the decision of the Town Council.

Section 8.36: Violations and Penalties

Any violation of this Article and the penalties for all such violations shall be as set forth in §2.4.3 of the Zoning Ordinance.

Section 8.37: Definitions

For the purpose of this article, terms and words pertaining to the Historic District are defined in Appendix A of this Ordinance.

Appendix G: Historic Overlay Design Guidelines Draft

APPENDIX G – CLASSIFICATION OF WORK – GENERAL GUIDELINES

The following chart has been provided as a reference for Routine Maintenance, Minor Work, and Major Work as defined in the Cape Charles Zoning Ordinance Article VIII.

	Type of Work	Routine Maintenance	Minor Work	Major Work	Inspection Required
1)	Accessory Structures* or Buildings, Additions to existing that can be seen from the public right-of-way		X		X
2)	Accessory Structures or Buildings, Additions to existing that cannot be seen from the public right-of-way		X		X
3)	Accessory Structures* or Buildings, Alterations to existing that can be seen from the public right-of-way			X	X
4)	Accessory Structures or Buildings, Alterations to existing that cannot be seen from the public right-of-way		X		X
5)	Accessory Structures* or Buildings, New Construction that can be seen from the public right-of-way			X	X
6)	Accessory Structures or Buildings, New Construction that cannot be seen from the public right-of-way		X		X
7)	Accessory Structures or Buildings, Repairs to existing when there is no change in design, materials, or general appearance	X			Case-by-case basis
8)	Accessory Structures* or Buildings, Replacement of existing		X		X
9)	Architectural Details, Alteration/Addition/Removal of existing			X	X
10)	Architectural Details, Repair/Replacement to existing when there is no change in design, materials, or appearance	X			X
11)	Awnings, Canopies, or Shutters, Additions/Installation of new			X	X
12)	Awnings, Canopies, or Shutters, Alterations/Removal when there is no change in design or materials		X		X
13)	Awnings, Canopies, or Shutters, Repair/Replacement when there is no change in design, materials, or appearance	X			Case-by-case basis
14)	Buildings, Relocation			X	X
15)	Carports, Alteration/Addition/Removal		X		X
16)	Carports, New Construction that can be seen from the public right-of-way				
17)	Carports, New Construction that cannot be seen from the public right-of-way		X		

	Type of Work	Routine Maintenance	Minor Work	Major Work	Inspection Required
18)	Certificate of Appropriateness, Modification to previously approved		X		
19)	Certificate of Appropriateness, Renewal of Expiring				
20)	Chimneys, Alteration/Construction/Removal			X	X
21)	Chimneys, Reflash existing when there is no change in design, materials, or appearance		X		
22)	Decks, Alteration/Addition/Removal		X		X
23)	Decks, Repair/Replace of existing when there is no change in design, materials, dimensions, appearance		X		X
24)	Doors (Exterior), Alterations/Addition/Removal			X	X
25)	Doors (Exterior), New Installation			X	X
26)	Doors (Storm), Installation/Removal			X	X
27)	Driveways, Alteration/Addition/Removal/Repair/Replacement of existing when there is a change in design, materials, dimensions, or appearance			X	X
28)	Features not specifically listed, Addition/Alteration/Removal			X	Case-by-case basis
29)	Features not specifically listed, Repair/Replacement when there is no change in design, materials, or appearance		X		Case-by-case basis
30)	Fences, New Construction		X		X
31)	Fences, Repair/Replacement of		X		X
32)	Foundations, Alteration/Replacement of exposed			X	X
33)	Foundations, Repair of exposed when there is no change in design, materials, or general appearance	X			X
34)	Foundation Vents and Ventilators, Alteration/Installation/Removal		X		Case-by-case basis
35)	Foundation Vents and Ventilators, Repair/Replacement of existing when there is no change in design, materials, or general appearance	X			
36)	Gutters and Downspouts, Repair/Minor Replacement when there is no change in design, materials, or appearance	X			
37)	Gutters and Downspouts, Replacement/Installation/Addition/Removal		X		
38)	Lighting Fixtures (Exterior), Alteration/Installation/Removal		X		X
39)	Lighting Fixtures (Exterior), Repair/Replacement when there is no change in design, materials, or	X			

	Type of Work	Routine Maintenance	Minor Work	Major Work	Inspection Required
	appearance				
40)	Masonry, Alteration/Construction/Removal			X	X
41)	Masonry, Repainting only when using existing color. Painting to another color or treatment and painting of unpainted masonry not allowed.		X		X
42)	Masonry, Repairs/Replacement when the color and composition of the mortar match the original, and new brick or stone matches the original	X			
43)	Masonry, Repointing		X		
44)	Patios, Alteration/Addition/Removal of existing		X		Case-by-case basis
45)	Patios, New Construction		X		X
46)	Patios, Repair/Replacement of existing when there is no change in design (including dimensions), materials, or appearance	X			
47)	Porches, Addition/Expansion/Removal of existing			X	X
48)	Porches, Alteration of existing			X	X
49)	Primary Buildings, Additions of Commercial or Residential that can be seen from the public right-of-way			X	X
50)	Primary Buildings, Additions of Commercial or Residential that cannot be seen from the public right-of-way		X		X
51)	Primary Buildings, New Construction of Commercial or Residential			X	X
52)	Primary building, Repainting non-masonry	X			
53)	Roof Covering, Alteration/Replacement of existing when there is a change in design, materials, or general appearance			X	X
54)	Roof Coverings, Repair/Replacement when there is no change in design, materials, or appearance		X		X
55)	Roof Forms, Alteration			X	X
56)	Satellite Dishes and/or Television Antennas, Installation		X		Case-by-case basis
57)	*Screening (hedges, plants, or other visual buffer) that is utilized to mitigate the public viewpoint of an Accessory Structure. This may be a designated condition for an approved Certificate of Appropriateness		X		X
58)	Significant Features, Alteration/Removal			X	X

	Type of Work	Routine Maintenance	Minor Work	Major Work	Inspection Required
59)	Signs, Alteration/Installation/Removal		X		X
60)	Signs, Repair/Replacement when there is no change in design (including dimensions), materials, or general appearance	X			
61)	Solar Panels, Installation of new that can be seen from the public right-of-way			X	X
62)	Solar Panels, Installation of new that cannot be seen from the public right-of-way		X		X
63)	Solar Panels, Repair/replacement when there is no change in design, materials, or general appearance		X		X
64)	Stairs and Steps (Exterior), Alteration/Addition/Removal			X	X
65)	Stairs and Steps (Exterior), New Construction			X	X
66)	Stairs and Steps (Exterior), Repair/Replacement when there is no change in design, materials, or general appearance	X			X
67)	Surfaces (Exterior) not specifically listed, Addition/Alteration/Removal			X	X
68)	Surfaces (Exterior) not specifically listed, Repair/Replacement when there is no change in design, materials, or appearance		X		X
69)	Structure, Demolition of Contributing in whole or part			X	X
70)	Structure, Demolition of Non-Contributing in whole or part		X		X
71)	Structure, Emergency Stabilization		X		X
72)	Swimming Pools, Addition/Alteration/New Construction. A fence is required to be placed around the perimeter of the pool.		X		Case-by-case basis
73)	Swimming Pools, Removal		X		Case-by-case basis
74)	Swimming Pools, Repairs to existing. A fence is required to be placed around the perimeter of the pool.	X			
75)	Temporary Features, Emergency Installation/Emergency Stabilization to protect a historic property that do not alter the resource		X		X
76)	Temporary Features, Installation/Alteration/Removal that are necessary due to a medical condition		X		Case-by-case basis
77)	Walkways, Addition/Alteration/New Construction/Removal/Repair/Replacement		X		X
78)	Walls, New Construction		X		X

	Type of Work	Routine Maintenance	Minor Work	Major Work	Inspection Required
79)	Walls, Repair/Replacement of existing		X		X
80)	Windows, Alteration/Removal of existing			X	X
81)	Windows, Caulking and weatherstripping when there is no change in design, materials, or general appearance	X			
82)	Windows, Installation of new			X	X
83)	Windows, Repair/Replacement when there is no change in design, materials, or general appearance		X		X
84)	Windows (Storm), Installation/Alteration/Removal		X		Case-by-case basis
85)					
86)					
87)					
88)					
89)					
90)					

Standing Staff Report: March 2025



Municipal Corporation of Cape Charles

APRIL & MAY 2025 MONTHLY REPORT

Katie H. Nunez, Planning/Zoning Administrator

This monthly report encompasses the months of April & May 2025.

A. SUBDIVISION AGENT: No items to report

B. BOARD OF ZONING APPEALS - CODE OF VIRGINIA SECTION 15.2-2310

[Planning Commission shall be provided any applications filed with the Board of Zoning Appeals.]

The Cape Charles Board of Zoning Appeals will hold a public hearing on Tuesday, April 8th, 2025, at 10:00a.m., in the Cape Charles Civic Center, 500 Tazewell Avenue, to receive public comment on the following:

- A. Application from Greg and Emily Gentry appealing a decision from the Zoning Administrator dated February 4th, 2025, which provided a Zoning Determination concerning 542 Jefferson Avenue that stated:
 - i) The Accessory Building is a legal, non-conforming use as an Accessory Dwelling Unit (ADU) and Short – Term Rentals are not permissible in the ADU and;
 - ii) This lot does not have 2 principal houses but a main house and an accessory dwelling unit.

The applicant is seeking to have 2 primary residences on this property.

Said appeal application is authorized pursuant to Cape Charles Zoning Ordinance Section 2.6.2 (C) and 2.6.4. This property is located in the Residential – 1 (R-1) Zoning District.

The Board of Zoning Appeals upheld the decision of the Zoning Administrator and denied the appeal filed by the Gentrys for 542 Jefferson Avenue.

- B. Application from Bay Creek Resort, LLC., for a variance from the Accawmacke Plantation Planned Unit Development (PUD) Section 9.9 for a fence over the allowable 6' height requirement at 111 Palmer Way. **Variance approved.**
- C. Application(s) from Chris Larmore, Developer of Dreams by the Water Subdivision on Washington Avenue for a variance from the Cape Charles Zoning Ordinance (CCZO) Section 3.1 (E) for a 10' reduction in the front and rear setbacks, for the following lots:
 - a) Lot 1 (TM #83A1-21-1) –Variance of 10 ft. to front setback and 10 ft. to rear setback.

- b) Lot 2 (TM #83A1-21-2) – Variance of 10 ft. to front setback and 10 ft. to rear setback.
- c) Lot 3 (TM #83A1-21-3) – Variance of 10 ft. to front setback and 10 ft. to rear setback.
- d) Lot 4 (TM #83A1-21-4) – Variance of 10 ft. to front setback and 10 ft. to rear setback.
- e) Lot 5 (TM #83A1-21-5) – Variance of 10 ft. to front setback and 10 ft. to rear setback.
- f) Lot 6 (TM #83A1-21-6) – Variance of 10 ft. to front setback and 10 ft. to rear setback.
- g) Lot 7 (TM #83A1-21-7) – Variance of 10 ft. to front setback and 10 ft. to rear setback.
- h) Lot 8 (TM #83A1-21-8) – Variance of 10 ft. to front setback and 10 ft. to rear setback.
- i) Lot 9 (TM #83A1-21-9) – Variance of 10 ft. to front setback and 10 ft. to rear setback.
- j) Lot 10 (TM #83A1-21-10) – Variance of 10 ft. to front setback and 10 ft. to rear setback.

The Board of Zoning Appeals voted to approve a front setback variance of 10 ft for each lot but did not approve any modification to the rear yard setback requirement.

C. HARBOR DEVELOPMENT CERTIFICATES: No applications were filed.

D. WETLANDS and COASTAL SAND DUNE BOARD: No applications were filed.