



Board of Zoning Appeals Regular Meeting

April 14, 2026 at 9:00 AM

Cape Charles Civic Center - 500 Tazewell Avenue

Agenda

1. Call to Order

- A. Roll Call
- B. Establish Quorum

2. Invocation and Pledge of Allegiance

3. Adoption of Agenda

4. Review and Approval of Minutes

- A. May 13th, 2025 Board of Zoning Appeals Minutes
- B. October 14th, 2025 Board of Zoning Appeals Minutes
- C. December 9th, 2025 Board of Zoning Appeals Minutes

5. New Business

- A. Application from Brad and Kimberly Goldstein, for a variance from Accawmacke Plantation Planned Unit Development Section 9.17 and Town Code Chapter 32, Article VII, Section 32-186 (Development Criteria for Resource Protection Areas), to allow for a patio to encroach into the Resource Protection Area (RPA)

6. Other Matters

- A. Review and Amend BZA Bylaws and Rules of Procedure

7. Next Meeting

- A. Next Meeting is May 12th @ 9:00 am

8. Adjournment

Board of Zoning Appeals
Public Hearing and Regular Meeting
Cape Charles Civic Center
May 13th, 2025

At 10:00 a.m., having established a quorum, Chairwoman Dolores Blackburn called to order the Board of Zoning Appeals Public Hearing and Regular Meeting for May 13th, 2025. Also present were Members Baumann, McMath, Stramm, and Weigand.

Also present were Director of Planning/Zoning Administrator Katie Nunez, Zoning Compliance Officer Jack Steinmay, Town Clerk Libby Hume, and Town Manager Rick Keuroglan.

There were 3 members of the public in attendance and 9 watching online.

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

Consent Agenda

The consent agenda was approved by unanimous consent.

Old Business

- 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.*

Chairwoman Blackburn made a motion to take this application off the table. The motion was seconded by Vice-Chair Weigand. Motion was carried unanimously.

The applicant's representative, Chris Pocta, appeared before the Board of Zoning Appeals and provided a recap of arguments previously presented. He clarified that the Gentry's are not seeking to overturn the Zoning Administrator's determination in its entirety, but rather obtain a partial modification allowing them to operate a Short-Term Rental in the ADU – while committing not to rent the main house. He then went on to explain the four primary justifications previously brought up in support of the appeal: (1) a documented history of rental activity in the ADU before

adoption of the Short-Term Rental Ordinance, (2) the unique nature of the property and the circumstances under which the Gentry's acquired it, including the pre-existing violations they did not cause and were actively working to remedy, (3) a nearby precedent at the intersection of Madison and Jefferson involving two structures on a single-lot with an active short-term rental operations, and (4) substantial support from adjacent property owners and the Cape Charles Historic District Civic League.

Chairwoman Blackburn clarified for the record that the smaller structure should not be referred to as a cottage, but an Accessory Dwelling Unit under the Zoning Ordinance, and that per the Ordinance, an ADU should not be designed or built to resemble a standalone house.

The Board of Zoning Appeals then began to deliberate amongst themselves and discussed the following:

Vice-Chair Weigand reported that her independent research found that the property carries two separate property addresses, though both share the same Tax Map ID number, confirming that it is a single undivided lot. She also noted that the county's recordkeeping recognizes the two structures as Building 1 and Building 2. She then acknowledged the complexity of the situation but stated that the property is clearly one lot.

Member Baumann stated that his preliminary inclination had been to deny the appeal request based on his review of the record; he further referenced the applicable legal standard – preponderance of the evidence – as the evidentiary threshold applicable to the Board's review of this application.

Member McMath expressed her view that the structure does not clearly meet the Zoning Ordinance definition of an ADU, noting that the additional second story altered the building's character in a way that did not fit any defined zoning category and that the ambiguity of the application should be resolved by the Town Council rather than the Board of Zoning Appeals. She then acknowledged that resolving the underlying issue is beyond the Board's scope, and that the question that they need to answer is whether the Zoning Administrator applied the ordinance correctly.

Member Stramm noted three key findings that support upholding the Zoning Determination: (1) the property cannot be legally subdivided as doing so would create two non-conforming lots, (2) the applicant's stated goal of having two

principal residences on the property would not be permitted under the Zoning Ordinance, and (3) the structure is an ADU in which short-term rentals are not permitted. He further noted that the applicants retain the ability to rent the ADU as a long-term rental of 30 days or more.

Chairwoman Blackburn stated that while she was uncertain whether she would fully characterize the structure as an ADU, the question before the Board was whether the Zoning Administrator had ruled correctly – and on that question, she agreed that the ruling was correct. She then mentioned to the applicant that the owner may wish to bring the matter to the Town Council, given the property’s unique circumstances.

Zoning Administrator Katie Nunez then added some clarification regarding questions raised by the Board of Zoning Appeals. In response to Member McMath regarding the legal non-conforming use status, Ms. Nunez clarified that the secondary structure had predated the Town’s Zoning Ordinance, making it a legal non-conforming use. She then further noted that the previous owners had occupied the ADU as their primary residence while renovating the main house from 2018 through 2024. She then advised the Board that the legal non-conforming use had run out due to the prior owners occupying it for 6 years. She also confirmed that there was an active building permit on the property since the violation order was enforced.

Chairwoman Blackburn made a motion to uphold the Zoning Administrator’s Determination and deny the appeal application, seconded by Member Baumann. Following the discussion, the Board voted 4-1 in favor of denying the appeal, with Member McMath dissenting.

Motion to adjourn the Board of Zoning Appeals May 13th, 2025 Regular Meeting was made by Vice-Chair Weigand, seconded by Member Stramm. The motion passed unanimously. The Board of Zoning Appeals dismissed at 10:33 a.m.

Chairman Stramm

Zoning Compliance Officer

**Board of Zoning Appeals
Public Hearing and Regular Meeting
Cape Charles Civic Center
October 14th, 2025**

At 10:00 a.m., having established a quorum, the Board of Zoning Appeals Public Hearing and Regular Meeting for May 13th, 2025, was called to order. Present were Members Baumann, McMath, and Weigand. Member Stramm was not in attendance.

Staff in attendance were Director of Planning/Zoning Administrator Katie Nunez, Zoning Compliance Officer Jack Steinmayer, and Assistant to the Town Manager Pam Endlein.

There was 1 member of the public in attendance, and 5 watching online.

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

Old Business/Matters Deferred from Previous Meetings

Chairwoman Blackburn tendered her resignation as Chairwoman, effective immediately, as she was moving out of state. The Board then decided to postpone reorganizing until a full complement was present.

Consent Agenda

The consent agenda was approved by unanimous consent.

New Business

- A. *Application from Martin Mayer, for a variance from Article 3 Section 3.2 of the Cape Charles Zoning Ordinance to allow for a rear deck to extend 1.5' into the side setback and 5' into the rear setback at 502 Plum Street.*

Zoning Compliance Officer Jack Steinmayer summarized the staff report.

After summarizing the staff report, Martin Mayer, owner of 502 Plum Street, came forward and explained the reasoning behind requesting the variance.

After explaining everything to the Board of Zoning Appeals, Vice-Chair Weigand had one question, in which she wanted to know if there was an empty lot next to his house. Mr. Mayer responded in the negative, and that lot was simply a large right-of-way easement, and no house could ever be built there.

Member McMath made a motion to approve the variance application and allow for a rear deck to extend 1.5' into the side setback and 5' into the rear setback at 502 Plum Street. The motion was seconded by Vice-Chair Weigand. The motion passed unanimously.

Member Baumann made a motion to adjourn, seconded by Member McMath. The motion passed unanimously. The Board of Zoning Appeals adjourned at 10:13 a.m. on October 14th, 2025.

Chairman Stramm

Zoning Compliance Officer

DRAFT

**Board of Zoning Appeals
Public Hearing and Regular Meeting
Cape Charles Civic Center
December 9th, 2025**

At 10:00 a.m., having established a quorum, the Board of Zoning Appeals Public Hearing and Regular Meeting was called to order by Zoning Administrator Katie Nunez. In addition, members Stramm, Murphy, McMath, and Baumann were present.

Also present were Inspector & Compliance Officer Casey Quilter, Code Official Jeb Brady, Harbor Master Paula Davis, and Zoning Compliance Officer Jack Steinmayer.

There was 1 member of the public in attendance, and 7 watching online.

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

Re-Organization and Election of Officers

Member Stramm was elected as the new chair of the Board of Zoning Appeals by a 3-0 vote. Member McMath was elected as the new vice-chair of the Board of Zoning Appeals by a 3-0 vote.

Consent Agenda

The consent agenda was approved by common consent.

New Business

- A. *Application from Derek Roncaioli appealing a decision from the Zoning Administrator dated October 3rd, 2025, which provided a Zoning Determination letter, which was further amended on November 10th, 2025, regarding licensing a houseboat as a Short-Term Rental (STR) in the Harbor Commercial (HAR-C) District that stated:*
- i. *The houseboat is not a structure and is not exclusively used for human habitation; therefore, it does not fit the definition of a Short-Term Rental, and*
 - ii. *The houseboat is a non-navigable, floating home; therefore, it is not within the US Coast Guard's jurisdiction and falls under the Town's Zoning Ordinance. The Town's Zoning Ordinance Section 3.8 does not permit single-family homes in the Harbor Commercial District (HAR-C)*

STR Compliance Officer Casey Quilter summarized the staff report.

After summarizing the staff report, Harbor Master Paula Davis appeared before the Board and stated that her main concern was the water infrastructure. The Town drains its harbor water lines each winter, as was done the previous day, and the lines near the vessel's mooring would not be restored until around March. She also noted that the Town is currently dealing with an active water leak buried in concrete that requires contractor repair, and that the Town lacks the equipment to quickly address a water line failure. In response to a question from Chairman Stramm, Harbor Master Davis confirmed that shutting off water to the entire harbor for the winter is standard procedure.

After Harbor Master Paula Davis, Code Official Jeb Brady appeared before the Board and advised the Board of Zoning Appeals that the Building Code does not regulate boats, which created a regulatory gap preventing him from evaluating the matter through an STR lens, as there was no applicable building code framework to apply. He stated that this matter would be more appropriately addressed as a zoning issue. Mr. Brady expressed particular concern regarding sewage disposal, noting that the residential building code requires connection to an approved sanitary sewer system or septic system. Mr. Brady further noted that he had consulted with another building official in another jurisdiction that oversees a floating campground and was advised of numerous problems associated with floating vessels operating as short-term rentals.

After the staff presented their view of the application and the problems associated with allowing the houseboat to be rented as an STR, Mr. Roncaioli came forward to explain his perspective.

Mr. Roncaioli first explained that his intention was not necessarily to obtain a permit at this hearing, but to open a conversation about how the property might be used as an STR.

Mr. Roncaioli presented the following arguments to the Board of Zoning Appeals:

He contended that the houseboat is a legally registered vessel with the Commonwealth of Virginia and that this classification trumps the Town's ability to impose local zoning ordinances that would classify it as a home. He explained further that the vessel is registered and has a hull number.

Regarding the concerns with sewage, he described two Coast Guard-approved marine sanitation systems on board: a dry composting toilet utilizing a self-contained sealed sock system disposed of as solid waste, and an electrocan system

that treats waste through a saltwater and electrical current process before discharging treated water overboard.

Regarding water, he described a 200-gallon onboard storage tank that could be filled via a water delivery service, which he argued would eliminate concerns related to the Town's winter water shutoff.

He further argued that the structure meets all applicable building codes in all respects other than utility connections, noting proper door and window sizing, egress, fire extinguishers, smoke detectors, a heat pump, and full-size appliances.

At the end of Mr. Roncaioli's presentation, the staff noted that Section 3.8, not 3.9, is the correct citation for the Harbor Commercial District. Staff also noted that the applicant's earlier characterization of the vessel as non-navigable had formed based on the Town's amended position, and that the applicant's claim of Coast Guard registration as a navigable vessel constituted new information not previously provided. Nevertheless, staff maintained that regardless of vessel classification, the structure does not meet the requirements for an STR license under the Town's Zoning Ordinance.

Motion to close the public hearing made by Vice-Chair McMath, seconded by Member Murphy. The vote passed unanimously, and the public hearing was closed at 10:45 a.m.

The Board of Zoning Appeals then discussed the matter and reached a consensus that the existing framework does not permit the requested use. Members then suggested that the applicant consider participating in the Town's Railroad/Harbor Master Planning Process as a means of pursuing the change he would like to see.

Motion made by Chairman Stramm to deny the appeal application and uphold the Zoning Administrator's determination letter dated October 3rd, 2025, further amended on November 10th, 2025, and found that the Town's Zoning Ordinance Section 3.8 does not allow a single-family home which the houseboat meets that designation as a permitted use in the Harbor-Commercial District, thus there is no ability to have a Short-Term Rental be licensed and permitted by the Town for the houseboat, and residential is only allowed above commercial in the Harbor Commercial. The motion passed by unanimous consent.

The Board of Zoning Appeals then reviewed the proposed 2026 meeting calendar. Following discussion regarding scheduling considerations for members with daytime professional commitments, the Board of Zoning Appeals agreed to amend the regular meeting time from 10:00 a.m. to **9:00** a.m. on the second Tuesday of each month. Staff then

noted that meetings are only convened when an application has been filed and that members would receive notice approximately one month in advance. The January 13th, 2026, meeting was cancelled due to no applications being received before the December 2nd filing date.

Staff then noted that the complete bylaws were not included in the meeting packet and will be distributed at the next meeting. Staff also advised that the Virginia Department of Environmental Quality (DEQ) has requested a language amendment to the Board's operating documents pertaining to exception hearings under the Chesapeake Bay Act, and staff is working on incorporating the appropriate language into the Board of Zoning Appeals Member Manual.

Motion to adjourn made by Vice-Chair McMath, seconded by Member Baumann. The motion was approved unanimously, and the Board of Zoning Appeals Regular Meeting and Public Hearing for December 9th, 2025, was adjourned at 10:59 a.m.

Chairman Stramm

Zoning Compliance Officer



Board of Zoning Appeals Staff Report

Agenda Title: Variance Application

Agenda Date: April, 14th, 2026

Prepared by: Jack Steinmayer, Zoning Compliance Officer

Reviewed By: Katie Nunez, Director of Planning

Date: March 19th, 2026

Applicant: Brad and Kimberly Goldstein **Type Of Application:** Exception to the CBPA

Site Address: 165 Sunset Boulevard **Specific Request:** Allow for the rear patio and walking path from the house to the patio (totaling 150 sq. ft) to encroach into the 50-foot landward portion of the 100-foot Resource Protection Area.

Tax Map: 83A1-1-84 **Zoning:** PUD-R2

Lot Size: 8712 sq. ft. **Current Zoning:** PUD-R2

Date Received: March 13th, 2026

Date Deemed Complete: March 13th, 2026

Legal Deadline (90 Days from Complete Application – Directory, not Mandatory): June 11th, 2026

Legal Ad

- A. Application from Brad and Kimberly Goldstein, for a variance from the Accawmacke Plantation Planned Unit Development Section 9.17 and Town Code Chapter 32, Article VII, Section 32-186 (Development Criteria for Resource Protection Areas) & Section 32-189 (C), to allow for a patio to encroach into the Resource Protection Area (RPA).

Narrative of Proposal

In 2025, the Department of Planning and Zoning received notice of a possible zoning violation at 165 Sunset Boulevard. The alleged violation involved the unauthorized construction of a patio within the 50-foot landward part of the Resource Protection Area

(RPA). Zoning Compliance Officer Jack Steinmayer then conducted a site inspection and verified that the violation had occurred.

Following the violation's confirmation, a Notice of Violation was issued on January 28th, 2026, to the property owner. The notice explained the nature of the infraction and listed the required corrective actions – specifically, the complete removal of the patio encroaching into the RPA – to be completed within thirty (30) days of receipt, along with a \$1000 fine.

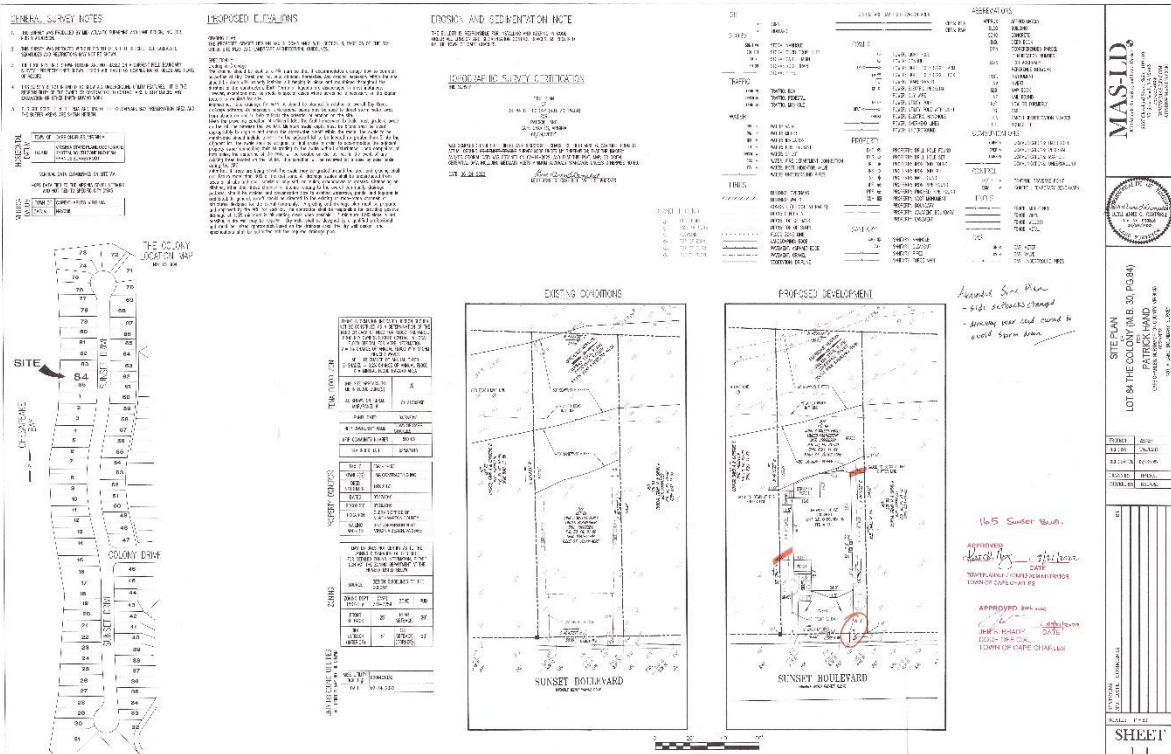
Following receipt of the Notice of Violation, the property owner, Kimberly Goldstein, contacted the Department of Planning and Zoning to schedule a meeting with staff to discuss the violation and explore potential solutions that would not require the removal of the patio. After consulting with staff, it was decided that instead of filing a formal appeal of a Zoning Administrator's Decision, Mrs. Goldstein would be better off submitting a variance application specifically requesting an exception from Accawmacke Plantation Planned Unit Development Section 9.17 and Town Code Chapter 32, Article VII, Section 32-186 (Development Criteria for Resource Protection Areas) & Section 32-189 (C).

History of Property

On July 27th, 2022, developer Patrick Hand began the necessary approval processes with the Departments of Planning and Zoning and Building for constructing a single-family home on Lot 84 of the Colony, later addressed as 165 Sunset Boulevard. After receiving approvals from both the Zoning Administrator and Building Official, Patrick Hand started construction of the home.

During construction, Patrick Hand transferred the property to Brad and Kimberly Goldstein on January 8th, 2024.

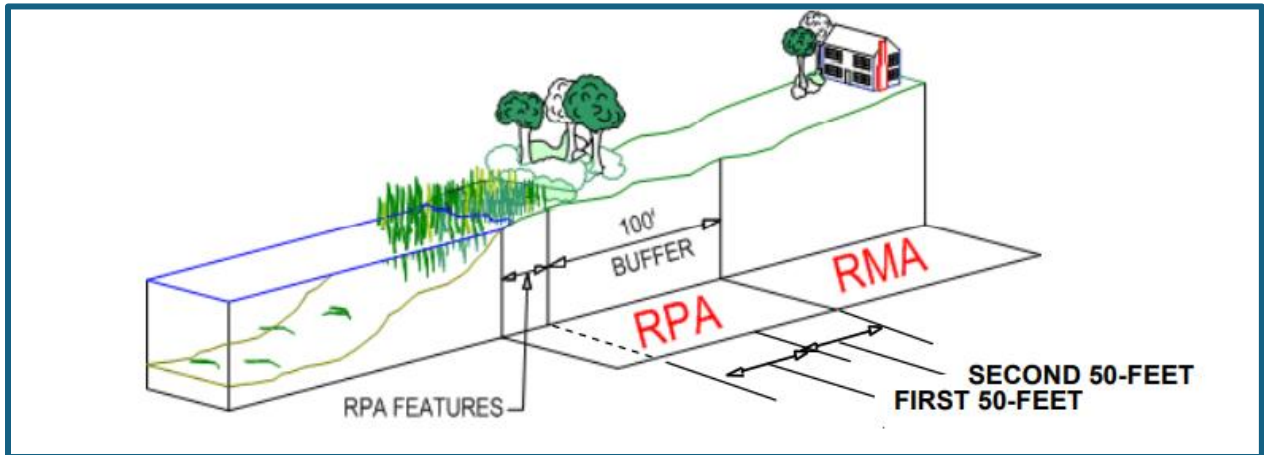
Notably, the dwelling was built to the maximum extent of the 50-foot landward RPA buffer, leaving no room for future improvements or expansion into the rear yard. The approved site plan below shows how the structure was constructed right up to this buffer boundary. (see attachment 2)



Aerial Map



A key part of the Chesapeake Bay Preservation Act is the requirement for a 100-foot vegetated buffer measured from the water's edge, wetlands, or stream. This buffer is called the Resource Protection Area (RPA). Within the RPA, the 100-foot buffer is divided into the Seaward 50 feet, closest to the water, and the Landward 50 feet, closest to the structure. Through an exception process, some development can occur in the landward 50 feet of the RPA, but never in the Seaward 50 feet.



Background of the Chesapeake Bay Act

It is important to understand the history and requirements of the Chesapeake Bay Preservation Act as they relate to Cape Charles and the state's land-use development rules. The goal of the Act is to *protect and improve the water quality of the Chesapeake Bay, its tributaries, and other state waters by reducing the impact of human activities and enforcing the Act, which defines and safeguards certain lands called Chesapeake Bay Preservation*

Areas. Improper use or development of these areas can significantly degrade water quality in the Chesapeake Bay and its tributaries.

The Code of Virginia requires each locality to adopt a subdivision ordinance, which the Town of Cape Charles completed on January 11th, 1977. However, adopting a zoning ordinance is a permissive legislative action rather than a statutory obligation. If a locality chooses to adopt a Zoning Ordinance, the Code of Virginia outlines the necessary components and standards that must be followed.

However, the Town of Cape Charles did not consider adopting a Zoning Ordinance until after the state enacted the Chesapeake Bay Preservation Act (CBPA) in 1989, codified in Code of Virginia Sections 10.1-2100 to 10.1-2115. Under this law, each locality within the CBPA watershed was given a timeline to progressively adopt compliance measures, including the CBPA Overlay District and Map, with specific ordinance requirements for establishing the Resource Protection Areas (RPAs), Resource Management Areas (RMAs), and Intensely Developed Areas (IDAs) of the CBPA.

On September 11th, 1990, the Town of Cape Charles adopted the first required component—an overlay district with a map and a necessary Zoning Ordinance component describing the CBPA. The Town then adopted an Erosion and Sediment Control (E & S) Ordinance on June 11th, 1991, and finally a full Zoning Ordinance on July 14th, 1992. In the early 1990s, the Town annexed land from the County, which led to the development and adoption of the Planned Unit Development (PUD) Ordinance, also known as the Accawmacke Plantation Planned Unit Development Ordinance, on February 9th, 1993.

The development of the PUD happened at the same time as the Town adopted the CBPA (Town Code Section 32, Article VII), the E&S Ordinance, and the Town Zoning Ordinance. As a result, the PUD initially did not fully meet or align with the state requirements of the CBPA and the related provisions of the Town Zoning Ordinance. To fix these issues, the Town and Bay Creek engaged in a multi-year process with the Virginia oversight agency for the CBPA – the Chesapeake Bay Local Assistance Department (CBLAD). Through this cooperative effort, the Town made necessary updates to the Comprehensive Plan and received the first of several recognitions of its progress in meeting CBPA requirements on February 26th, 1999.

Ordinance Requirements of the Chesapeake Bay Preservation Act Overlay District
Sec. 32-186. - Development criteria for resource protection areas.

(a) Development in RPAs may be allowed only if it: (1) is water dependent, (2) constitutes redevelopment or development within IDAs, or (3) constitutes redevelopment.

(1) 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 32-190](#) of this article;
- c. Any non-water dependent component is located outside of the RPA; and
- d. Access to the water-dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided.

(2) 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 stormwater management requirements outlined under [section 32-189](#) and erosion and sediment control requirements outlined under [section 32-189](#) of this article.

(b) 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 32-190](#) of this article.

Town Code Chapter 32, Article VII, Section 32-189 - 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 the potential for stormwater runoff. 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% reduction in nonpoint source pollution from redevelopment; and achieve a 40% 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 Handbook.*
 - a. *Site clearing for construction activities shall be allowed as approved by the Zoning Administrator through the plan of development review process.*
 - b. *Before clearing or grading, suitable protective barriers, such as safety fencing, shall be erected five feet outside of the drop 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.*
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 requirements of Cape Charles' Erosion and Sediment Control Ordinance.*
5. *All development and redevelopment exceeding 2,500 sq. ft. 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.*
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 before October 1989 if such lot or parcel is insufficient 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 that operates under a permit issued by the State Water Control Board until the structure is served by a public sewer.*
8. *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 the IDAs and other isolated redevelopment sites, the non-point source pollution load shall be reduced by at least 10%. The Zoning*

Administrator may waive or modify this requirement for redevelopment sites that originally incorporated best management practices for stormwater runoff quality control, provided the following provisions are satisfied.

- i. In no case may the post-development non-source 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. Before initiating grading or other on-site activities on any portion of a lot or parcel, all wetlands permits required by federal, state, and local laws and regulations shall be obtained, and evidence of such shall be submitted to the Zoning Administrator in accordance with section 32-191 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 about soil erosion and sediment control, nutrient management, and pesticide management, and, where necessary, result in a plan outlining additional practices needed to ensure that water quality protection is accomplished in a manner consistent with the article.*

C. Buffer Area Requirements

To minimize the adverse effects of human activities on 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.

(c). 2. When the application of the buffer areas would result in the loss of a buildable area on a lot or parcel recorded before October 1st, 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.

Ordinance Requirements to be Considered when Evaluating an Exception Application under the Chesapeake Bay Preservation Act Overlay Ordinance:

The Board of Zoning Appeals shall review the request for an exception pursuant to Section 32-186 & 32-189 (C) and the minor water quality impact assessment provided by the applicant. The Board *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 favorably to meet all of the conditions and requirements contained in Section 32-194 (C) (1 through 5) (full section of ordinance below:*

Section 32-194 Exceptions

- A. *A request for an exception to the requirements of 32-186 and 32-189 (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 the RPA through the performance of a water quality impact assessment that complies with the provisions of section 32-190.*
- B. *The Town of Cape Charles shall notify the affected public of any such exception requests. It 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. It 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 this 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 conditionals 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. *A request for an exception to the requirements of the provisions of this article other than those in sections 32-186 and 32-189 (c) shall be made in writing by the zoning administrator. The zoning administrator may grant these exceptions provided that:*
- 1) Exceptions to the requirements are minimum necessary to afford relief; and 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.*
 - 2) Exceptions to 32-189 (b) may be provided that the findings noted in section 32-194 (c) are made.*

Discussion Points

- a. Does the Board feel that allowing the exception for 165 Sunset Boulevard, as requested, is reasonable? If yes, why? If not, why?
- b. Has the applicant demonstrated that the buffer plantings will provide an equivalent – or greater level – of water quality protection compared to what would have existed had the RPA buffer remained undisturbed?
- c. Are there other mitigation efforts that can be included on this property to increase the impact of runoff reduction impact on the land and into the Bay?

Staff Recommendation

Staff acknowledges that the unauthorized construction of a patio within the 50-foot landward RPA buffer constitutes a violation of the applicable zoning and environmental standards; however, after careful consideration of the totality of circumstances, staff has found several factors that warrant a favorable recommendation.

First, it is important to note that the original dwelling was built right up to the maximum extent of the 50-foot landward RPA buffer, leaving no space for future improvements or expansion in the rear yard. The staff's position is that the new owner may not have had sufficient knowledge or understanding about the CBPA and the RPA requirement, and the specific location of said on the property, and may not have had a practical or reasonable way to determine the exact location of the RPA boundary line when constructing the patio. Considering how close the dwelling is to the buffer boundary; it is entirely plausible that the applicants were unaware that the patio would extend into the protected area.

The RPA is determined on a lot-by-lot basis at the time development occurs. The development of the various homes on the Bay-facing side of Sunset Boulevard has spanned 20 years. Therefore, the actual RPA buffer of 100 feet varies by lot, with some lots having a larger "yard" that is outside the RPA buffer, where additional house amenities such as a patio can be placed. This particular lot was one of the more recently constructed homes, and the RPA measurements and its placement on the lot reflect the coastal erosion that has occurred in this north beach area of the Bay Creek development, and the application of the RPA extends further into the lot.

Furthermore, staff notes that Mrs. Goldstein has demonstrated a good-faith willingness to cooperate with the Department of Planning and Zoning since receiving the Notice of Violation. Rather than pursuing a formal appeal, she has proactively engaged with staff to explore remedies. She has expressed a genuine commitment to achieve compliance in a manner that upholds the intent and purpose of the Chesapeake Bay Preservation Act.

The 400 plantings identified in the supplemented Minor Water Quality Impact Assessment will improve water filtration on the lot and more than adequately offset the impervious coverage caused by the patio and walkway within the RPA buffer. The applicant even expresses willingness to continue planting along the dune to further enhance water filtration. They then suggest various grasses and plants for consideration: American Beach Grass, Saltmeadow Cordgrass, Sea Oats, Bitter Seabeach Grass, Seaside Litter Bluestream, Wax Myrtle, Groundsel Bush, Switchgrass, March Hibiscus, and Beach Plum. However, even with this willingness, **staff recommends that a condition be placed on the approval of this exception application for the applicant to install an additional 100 native plantings of their choosing to fully offset the lot's total impervious coverage.**

For the reasons set forth herein, the staff finds that, given the circumstances of the case, granting a variance with certain conditions would represent a reasonable and equitable resolution for all parties.

Proposed Motion for Consideration

Staff will assist in developing any motion by the Board of Zoning Appeals after the public hearing and thorough discussion and review of public comments, the application, and the staff report. If approved, staff recommends that a condition be placed on the approval, requiring the applicant to install an additional 100 native plantings of their choosing to fully offset the lot's total impervious coverage, as outlined above.

Attachments:

- Attachment 1: Application
- Attachment 2: Site Plan
- Attachment 3: Minor Water Quality Impact Assessment
- Attachment 4: Chesapeake Bay Preservation Act Overlay Map
- Attachment 5: Cape Charles Resolution for 1999-04-12
- Attachment 6: Cape Charles Zoning Ordinance Article VII – Chesapeake Bay Preservation Act Overlay

Reference Materials

- Exhibit A: VA DCR RPA Permitted Development Activities Guidance Sheet
- Exhibit B: VA DCR Exceptions Guidance Sheet
- Exhibit C: VA DCR RPA Buffer Area Encroachments Guidance Sheet

Attachment 1 – Application



Zoning Variance Application

Planning & Zoning Department
 412 Tazewell Avenue
 Cape Charles, VA 23310
 757-331-3259 x30
planner@capecharles.org

Revised 11/2025	
Taxes	✓ up to date
Violations	—
paid at Fee 3087	\$500
BZA Date	4-14-26
Decision	

BUDGET CODE: MISPL 100-3100-1070

PART 1: APPLICATION NOTES

- 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.**
- The burden of proof shall be on the applicant for a variance to prove by the greater amount of evidence that the application meets the standard as defined, and the criteria set in number 3.
- The Board of Zoning Appeals shall grant a variance if the evidence shows that the following conditions exist:
 - The strict application of the terms of the ordinance would reasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, or alleviate a hardship granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability, and
 - The property interest for which the variance is being requested was acquired in good faith, and any hardship was not created by the applicant; and
 - The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; and
 - Such condition or situation is not shared or recurring by other properties in the same zoning district and same vicinity; and
 - The granting of the variance does not result in a use that is not permitted on such property or a change in the zoning classification of the property; and
 - The remedy sought is not available through a conditional use process that is authorized in the ordinance.
- If a variance is approved for a property only the minimum required to alleviate hardship will be granted.
- *FEES: \$500 & Payment of advertising costs, actual and adjacent property owner notification mailing, costs.**

All items from this checklist must be submitted prior to the application being evaluated.

- | | | |
|---|---|--|
| <input checked="" type="checkbox"/> Completed application & Justification Letter | <input checked="" type="checkbox"/> Existing site plan/survey | <input checked="" type="checkbox"/> Photos of existing conditions. |
| <input checked="" type="checkbox"/> Photos/elevation drawings of proposed project | <input type="checkbox"/> Proposed site plan/survey | <input checked="" type="checkbox"/> Payment of Fees * |

PART 2: PROPERTY INFORMATION

Property Address: [REDACTED]	Tax Map #: [REDACTED]
Existing Use: Private Residence	Zoning District:
Has a previous application been filed for a variance in connection with this property? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, attach an explanation	
Has a Conditional Use Permit been issued for the existing use? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, provide a copy	
Are there any proffers associated with this property? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, provide a copy	
Is the property located within an Overlay District? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, which one _____	
Is this property located within a Subdivision? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes, which one <u>Bay Creek - The Colony</u>	
Is this property located within a Resource Protection Area? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	

B) CRITERIA

1. Does strict application of the zoning ordinance to the subject property result in a hardship to the owner? (Answer A or B)

A. Explain how the variance would alleviate a hardship caused by the physical characteristics of the property?

When this house was first being designed and constructed, it was built to reach within the RPA to maximize indoor space; with no consideration for outdoor use.

B. Explain how the zoning ordinance unreasonably restricts the use of the property?

The limitation of the RPA unseemingly restricting us from even putting a nominal, least intrusive, area pavers out to enjoy the property; and we installed not knowing that prior approval was needed. It

2. Is the hardship unique to the property?

A. Explain if the hardship is shared by other properties in the neighborhood.

Yes, especially as some of the vacant lots are getting developed; and there are other vacant lots that need to contend with waterfront lifestyle erosion.

B. Explain how this situation or condition of the property applies generally to the other properties in the same zone.

Many waterfront properties on Sunset Blvd have the use of their beach front yards; however here are other vacant lots that need to contend with waterfront lifestyle erosion post construction.

3. Was the hardship created or caused by the applicant? We did so without knowledge; we thought pavers were more reasonable than a deck.

A. Did the condition exist when the property was purchased?

We added the patio after our home was completed so we could sit outside.

B. Did the applicant purchase the property without knowing of this hardship?

We did not think it was an issue when we installed the patio. We removed trees that were planted to ensure that we did not obstruct the view of our neighbors.

C. How and when did the condition which created the hardship first occur?

After purchase was made, we discovered the property line was built tight to the RPA line; Also, builder misrepresented property line.

D. Did the applicant create the hardship and, if so, how was it created?

We put the patio in as an enhancement to the property to allow us to sit outside; not knowing the property hinderance.

E. What could have been done to avoid hardship?

We should have better understood the process and sought prior approval. It would have also helped to receive accurate plans from builder.

4. Will the variance if granted be harmful to others? We do not believe so.

A. Explain if the proposed variance will be detrimental to the adjacent properties or the neighborhood?

The patio is stone pavers, we also have been replacing in kind with indiginous planting. We are willing to add more planting in kind.

B. Explain how the proposed variance will affect the values of the adjacent and nearby properties.

We believe nice well cared for homes increase the value of everyones proeprty.

C. Have you shown the proposed plans to the adjacent neighbors and other affected property owners? Have any of them objected, or have any of them written a letter of support for the proposed variance? If so, please attach the letter or submit it before the hearing.

Not as of yet.

D. Explain how the proposed variance will change the character of the neighborhood?

The patio matches the driveway, and we don't believe changes the character of the neighborhood.

5. Is there any other administrative or procedural remedy to relieve the hardship?

Not that we know of.

Part 7: ALTERNATIVE SOLUTIONS

Have alternative plans or solutions been considered so a variance would not be needed? Please explain solutions that have been considered, and why it is unsatisfactory.

A variance is needed to retain the pavers however we have extended the planting to offset the impervious surface created.

Part 8: STATEMENT OF INTENT

Describe the planned use and explain why a variance from the district ordinance is needed. State the sections of the Town Zoning Ordinance or the Accawmacke Plantation PUD for which you are requesting a variance. Include the standards listed in the Zoning Ordinance/PUD and the amount of a variance you are requesting.

To enjoy outdoor living, variance is requested because we unknowingly installed in violation of the RPA act.

CERTIFICATION

I hereby certify that I have the authority to make the foregoing application, that the information given is true and correct, and that the construction or improvements will conform to the regulations in the Virginia Statewide Building Code, all pertinent Town Ordinances, including fire, sewer and water ordinances, and private building restrictions, if any, which may be imposed on the property by deed. Before any work begins, a zoning clearance request must be approved. I understand that for any changes made in the historic district, a Certificate of Appropriateness must be received, and any changes made in the Accawmacke Plantation PUD, an Architectural Review Committee approval letter must be received.

[Redacted signature area]

Date: 3/13/21

Zoning Administrator's signature: _____

Date: _____

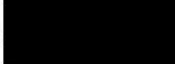


Municipal Corporation of Cape Charles

Notice of Violation and Corrective Action

January 28th, 2026




RE: Notice of Violation for Construction of a Patio within the RPA at 



This is to inform you that you are in violation of the Cape Charles Zoning Ordinance (CCZO) as follows:

- 1. Cape Charles Zoning Ordinance Section 7.6: Development Criteria for the Resource Protection Area;
- 2. Cape Charles Zoning Ordinance Section 7.9: Performance Standards, and;
- 3. Cape Charles Zoning Ordinance Section 7.11: Plan of Development Process

For the unauthorized construction of a rear patio within the Chesapeake Bay Resource Protection Area (RPA) at 

Zoning Violation

A complaint was filed with our office regarding the construction of a patio within the 50-foot landward portion of the Resource Protection Area (RPA). After further investigation from the Zoning Compliance Officer, it was confirmed that your constructed patio encroaches on the landward portion of the RPA. This violation is serious in nature and needs to be remedied quickly.

Photos



Under Cape Charles Zoning Ordinance Section 7.6: Development Criteria for Resource Protection Area, the only developments allowed in the RPAs are if they are (1) water dependent; (2) constitutes redevelopment or development within an Intensely Developed Area (IDA); or (3) constitutes redevelopment. The construction of the patio at the rear of [REDACTED] is none of these and, therefore, in violation of the ordinance.

Furthermore, I have attached the original site plan that was approved in 2022, which shows that a patio was not included in the original development plans.

Corrective Order and Penalties

Remove the entire patio that encroaches into the RPA within 30 days of the date of this letter (February 27) and pay the associated \$1000 fine.

Right to Appeal

You have the right to appeal this Notice of Violation and Corrective Action order by applying to the Cape Charles Board of Zoning Appeals within 30 days of the date of this letter, according to Cape Charles Zoning Ordinance Section 2.6.4; the forms are attached to this letter, and you must include the filing fee of \$500. You will also be responsible for the actual advertising costs and mailing costs for any adjacent property owner’s notification letters, which the town is responsible for handling.

ALL PAYMENTS are to be made out to the Town of Cape Charles.

Please note that until this violation is corrected, no permit can be applied for and obtained from the Offices of Planning & Zoning and Building. We appreciate your cooperation in advance.

If you have any questions, please call (757)-331-3259 x32 or visit the Municipal Building at [REDACTED]

Sincerely,



Katie Nunez
Director of Planning/Zoning Administrator & Subdivision Agent

Attachments

- Attachment 1: Board of Zoning Appeals Application
- Attachment 2: Cape Charles Zoning Ordinance Sections 7.6, 7.10, and 7.11

[REDACTED]



Municipal Corp. of Cape Charles

CAPE CHARLES ZONING ORDINANCE ADOPTED DECEMBER 19, 2024

Section 2.6.4: Appeals and Procedure of Appeals

CCZO Section 2.6.4: Appeals and Procedure of Appeals

- A. An appeal to the Board of Zoning Appeals may be taken by any person aggrieved or by an officer, department, board, or bureau of the county or municipality affected by any decision of the Zoning Administrator or Administrative Officer in the administration or enforcement of this ordinance. The decision may be appealed within thirty (30) days thereof by filing a notice of appeal specifying the grounds of appeal. Said appeal shall be filed with the Zoning Administrator and with the Board of Zoning Appeals. The Zoning Administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

- B. The board shall fix a reasonable time for the hearing of an application for appeal, give the public notice thereof as well as due notice to the parties of interest, and decide the same within sixty (60) days of the filing application for appeal. In exercising its powers, the board may reverse or affirm wholly in part or may modify an order, requirement, decision, or determination of an administrative officer or decide in favor of the applicant on any matter which it is required to effect any variance from the ordinance. The board shall keep minutes of its proceedings and other official actions, which shall be filed in the office of the Zoning Administrator and shall be public record. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses.

- C. In accordance with 15.2-2313 of the Code of Virginia, where a building permit has been issued and the construction of the building for which such permit was issued is subsequently sought to be prevented, restrained, corrected, or abated as a violation of the zoning ordinance, by suit filed within fifteen (15) days after the start of construction by a person who had no actual notice of the issuance of the permit, the court may hear and determine the issues raised in the litigation even though no appeal was taken from the decision of the administrative officer to the Board of Zoning Appeals

Attachment 2 – Site Plan

GENERAL SURVEY NOTES:

- 1. THIS SURVEY WAS PRODUCED BY MID-ATLANTIC SURVEYING AND LAND DESIGN, INC. FOR KRISTY ANDERSON.
2. THIS SURVEY WAS PRODUCED WITHOUT BENEFIT OF A TITLE REPORT. ALL EASEMENTS, SERVITUDES AND RESTRICTIONS MAY NOT BE SHOWN.
3. THE PROPERTY LINES SHOWN HEREON ARE NOT BASED ON A CURRENT FIELD BOUNDARY SURVEY. PROPERTY LINES SHOWN HEREON ARE BASED ON COMPILATION OF DEEDS AND PLATS OF RECORD.
4. THIS SURVEY IS NOT INTENDED TO SHOW ALL UNDERGROUND UTILITY FEATURES. IT IS THE RESPONSIBILITY OF THE OWNER OR CONTRACTOR TO CONTACT MISS UTILITY BEFORE ANY EXCAVATION OR OTHER EARTH MOVING WORK.
5. THIS SITE DOES LIE IN THE RMA AND RPA OF THE CHESAPEAKE BAY PRESERVATION AREA AND THE BUFFER AREAS ARE SHOWN HEREON.

Table with 2 columns: HORIZONTAL DATUM, TOWN OF CAPE CHARLES, VIRGINIA; DATUM, VIRGINIA STATE PLANE COORDINATE SYSTEM, SOUTH ZONE NAD 83/94 HARN US SURVEY FOOT

VERTICAL DATA ESTABLISHED ON SITE VIA:
-GPS DATA TIED TO THE VIRGINIA SOUTH NETWORK AND NOT TIED TO SPECIFIC CITY DISKS

Table with 2 columns: VERTICAL DATUM, TOWN OF CAPE CHARLES, VIRGINIA; DATUM, NAVD88

PROPOSED ELEVATIONS

GRADING PLAN
THE PROPOSED GRADES HEREON ARE IN COMPLIANCE WITH SECTION 8, PAGE 66 OF THE BAY CREEK SITE PLAN AND LANDSCAPE ARCHITECTURAL GUIDELINES.

SPECIFICALLY:
Grading & Drainage
Site grading should be kept to a minimum so that it accommodates drainage flow to common properties of Bay Creek and not onto adjacent homesites. Any grading necessary within the site should be done with properly installed silt fencing in place and maintained throughout the duration of the construction. Earth berms or logjams are discouraged in most instances. However, exceptions may be made in special cases where screening is necessary or the logjam feature is required for site engineering. Site drainage for each lot should be planned in relation to overall Bay Creek drainage patterns. As necessary, underground piping may be used to direct storm water away from structures and to help mitigate the potential of erosion on the site.
Given the prevailing condition of adjacent lots, the first homeowner to build must grade a swale on the lot line between the two lots. Minimum swale depth must be 6" and shall be sized appropriately to capture and convey the stormwater runoff within the swale. The swale to be constructed should include a berm on the adjacent lot to be located no greater than 5' into the adjacent lot. The swale shall be designed to final grade in order to accommodate the adjacent property owner connecting their lot grading to the swale without disturbance. Upon completion of both sides, the centerline of the swale will be located on the lot line. In the event of any existing trees located on the lot line, this condition will be reviewed on a case by case basis during the ARC.
If trees are being saved, the swale may be graded around the tree, and grading shall not disturb more than 30% of the root zone. All drainage swales shall be unobstructed from trees or shrubs and shall consist of only sod, or mulch, groundcover or grasses. Channeling or ditching, other than those channels or ditches relating to the overall community drainage patterns, should be avoided and concentration flow to existing waterways, ponds, and logjams is prohibited. In general, runoff should be directed to the existing or man-made channels or structures designed for the overall community. A grading and drainage plan must be prepared and approved by the ARC for each lot. The contractor shall be responsible for providing positive drainage at 1.5% minimum in all planting areas when possible. If minimum 1.5% slope is not possible, a dry well may be required. Dry wells shall be designed by a qualified professional and must be sized appropriately based on the drainage area. The dry well design and specifications shall be submitted with the required drainage plan.

EROSION AND SEDIMENTATION NOTE

THE BUILDER IS RESPONSIBLE FOR INSTALLING AND KEEPING IN GOOD ORDER ALL EROSION AND SEDIMENTATION CONTROL DEVICES, AS REQUIRED BY THE TOWN OF CAPE CHARLES.

TOPOGRAPHIC SURVEY CERTIFICATION

THIS SURVEY

SITE PLAN OF LOT 84 THE COLONY (M.B. 30, PG.84) FOR PATRICK HAND CAPE CHARLES, VIRGINIA 06/24/2022

WAS COMPLETED UNDER THE DIRECT AND RESPONSIBLE CHARGE OF, BETH ANNE G. CAMPBELL FROM AN ACTUAL GROUND OR REMOTE-SENSING SURVEY MADE UNDER MY SUPERVISION, THAT THE IMAGERY AND/OR ORIGINAL DATA WAS OBTAINED ON 02-16-2022; AND THAT THIS PLAN, MAP, OR DIGITAL GEOSPATIAL DATA INCLUDING METADATA MEETS MINIMUM ACCURACY STANDARDS UNLESS OTHERWISE NOTED.

DATE: 06-24-2022

Beth Anne G. Campbell, BETH ANNE G. CAMPBELL, VA L.S. #003316

GRADE LEGEND

- CENTERLINE
FACE OF CURB
FLOWLINE
TOP OF BANK
TOP OF CURB
TOE OF SLOPE

SITE

- STORM: MANHOLE
STORM: CURB DROP INLET
STORM: CATCH BASIN
STORM: ROOF DRAIN
STORM: PIPES

TRAFFIC

- TRAFFIC: BOX
TRAFFIC: PEDESTAL
TRAFFIC: MANHOLE

WATER

- WATER: VALVE
WATER: METER
WATER: IRRIGATION
WATER: FIRE HYDRANT
WATER: SPIGOT
WATER: FIRE DEPARTMENT CONNECTION
WATER: POST INDICATOR VALVE
WATER: UNDERGROUND PIPES

LINE

- BUILDING: OVERHANG
BUILDING: WALLS
CONTOUR (1 FOOT INTERVALS)
DITCH: CENTERLINE
DITCH: TOP OF BANK
DITCH: TOE OF SLOPE
FLOOD ZONE LINE
LANDSCAPING: EDGE
PAVEMENT: ASPHALT EDGE
PAVEMENT: GRAVEL
VEGETATION: DRIFLINE

SANITARY

- SANITARY: MANHOLE
SANITARY: CLEANOUT
SANITARY: PIPES
SANITARY: FORCE MAIN

POWER

- POWER: LIGHT POLE
POWER: CONDUIT
POWER: LIGHT POLE: SINGLE ARM
POWER: LIGHT POLE: SINGLE BOX
POWER: TRANSFORMER
POWER: ELECTRIC PEDESTAL
POWER: GUY WIRE
POWER: UTILITY POLE
POWER: UTILITY POLE WITH LIGHT
POWER: ELECTRIC HANDHOLE
POWER: OVERHEAD LINES
POWER: UNDERGROUND

PROPERTY

- PROPERTY: DRILL HOLE FOUND
PROPERTY: DRILL HOLE SET
PROPERTY: IRON ROD FOUND
PROPERTY: IRON ROD SET
PROPERTY: NAIL FOUND
PROPERTY: IRON PIPE FOUND
PROPERTY: PINCHED PIPE FOUND
PROPERTY: VDOT MONUMENT
PROPERTY: BOUNDARY
PROPERTY: ADJACENT BOUNDARY
PROPERTY: EASEMENT

GAS

- GAS: METER
GAS: VALVE
GAS: UNDERGROUND PIPES

ABBREVIATIONS

- APPROX BLDG: APPROXIMATELY BUILDING
CONC: CONCRETE
D.B.: DEED BOOK
G.P.N.: GEOREFERENCED PARCEL IDENTIFICATION NUMBER
H.A.R.N.: HIGH ACCURACY REFERENCE NETWORK
INST.: INSTRUMENT
I.N.V.: INVERT
M.B.: MAP BOOK
N.F.: NAIL FOUND
N.O.W.: NOW OR FORMERLY
P.G.: PAGE
P.I.N.: PARCEL IDENTIFICATION NUMBER
S.F.: SQUARE FEET

COMMUNICATIONS

- COMM: COMMUNICATIONS: HAND HOLE
COMM: COMMUNICATIONS: PEDESTAL
COMM: COMMUNICATIONS: MANHOLE
COMM: COMMUNICATIONS: UNDERGROUND

CONTROL

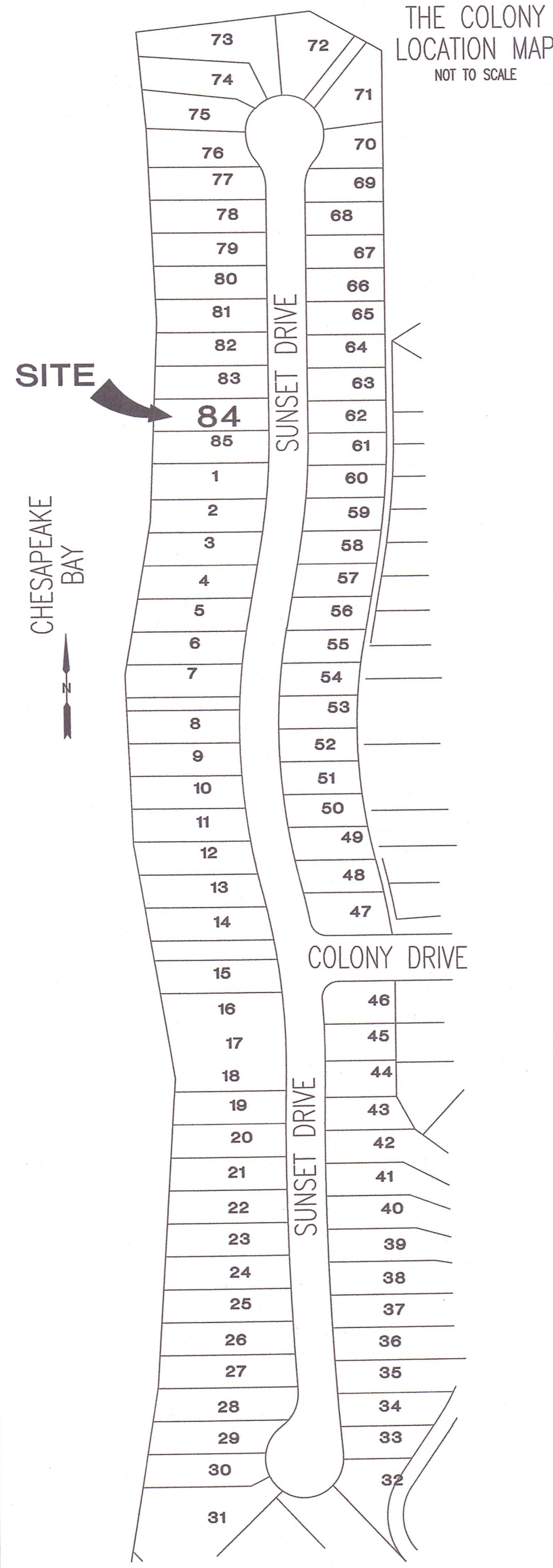
- CONTROL: TRAVERSE POINT
CONTROL: TEMPORARY BENCHMARK

FENCES

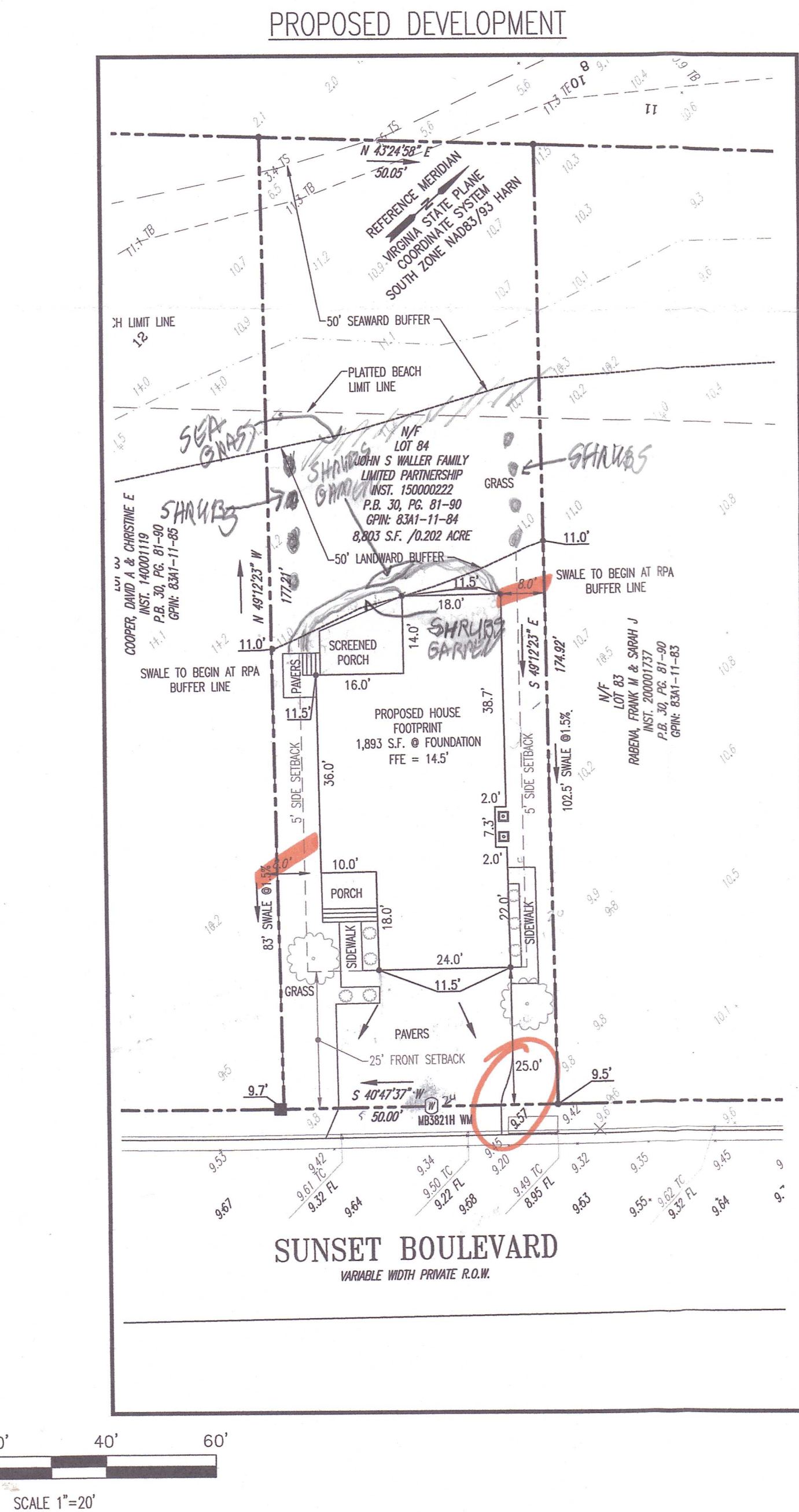
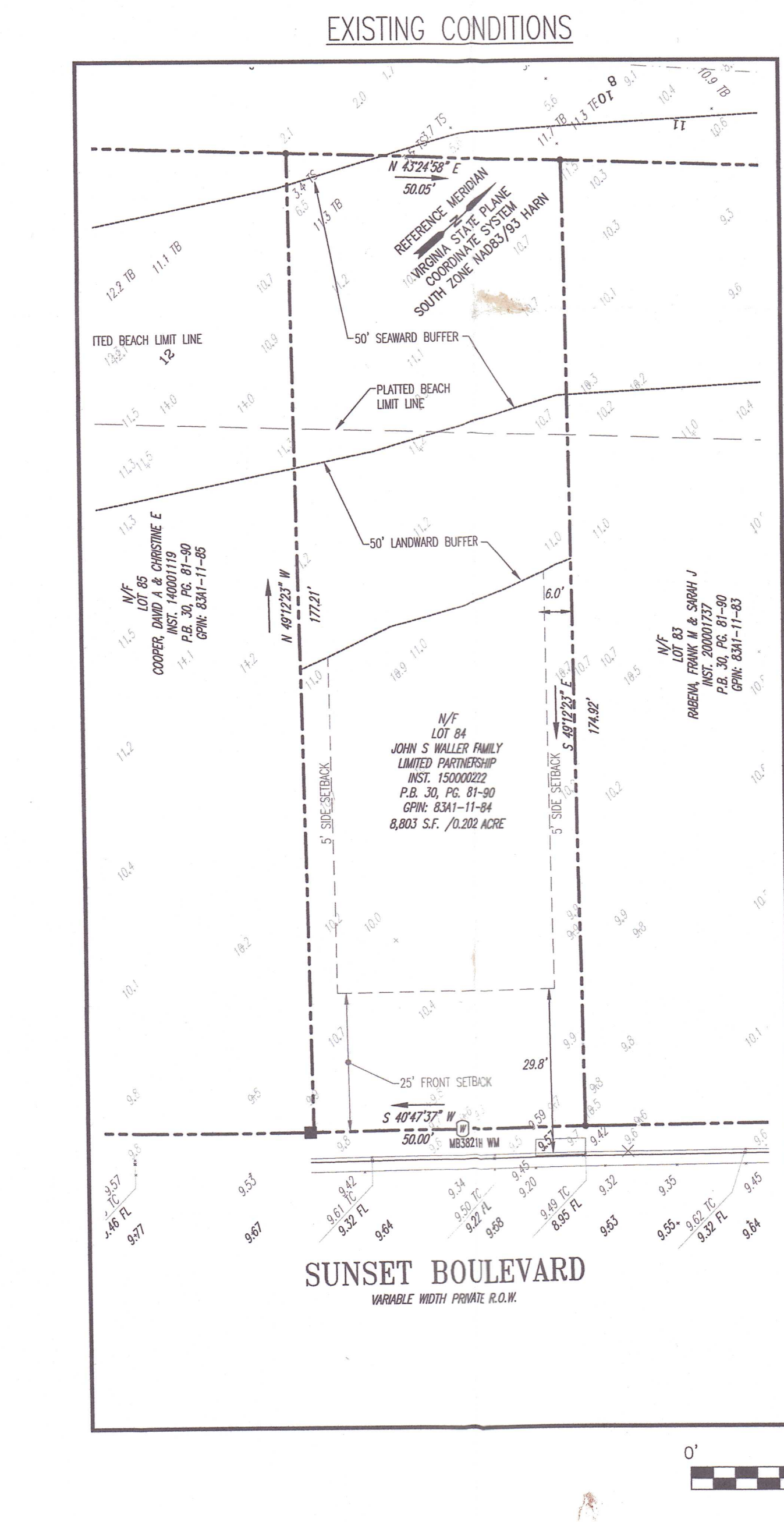
- FENCE: SILT FENCE
FENCE: VINYL
FENCE: WOODEN
FENCE: METAL

GAS

- GAS: METER
GAS: VALVE
GAS: UNDERGROUND PIPES



Tables containing: FEMA FLOOD ZONE (X), PROPERTY OWNER(S) (JMA CONTRACTING INC), ZONING (PUD), and UNDERGROUND UTILITIES (MISS UTILITY TICKET # B204101030).



Amended Site Plan
- side setbacks changed
- driveway near road curved to avoid storm drain.

165 Sunset Blvd.
APPROVED [Signature] DATE 1/9/21/2022
TOWN PLANNER / ZONING ADMINISTRATOR
TOWN OF CAPE CHARLES
APPROVED [Signature] DATE 1/07/21/2022
JEB S. BRADY
CODE OFFICIAL
TOWN OF CAPE CHARLES

MAS-LD logo and contact info. SITE PLAN OF LOT 84 THE COLONY (M.B. 30, PG.84) FOR PATRICK HAND. PROJECT # 22152.0, FIELD BY: TSC/LMD, FIELD DATES: 02/16/2022, DRAWN BY: JPM/NJL, CHECKED BY: BAC/OJL. SCALE: 1"=20'. SHEET 1 of 1.

Attachment 3 – Minor Water Quality Impact Assessment



Minor Water Quality Impact Assessment Application

Planning & Zoning Department
412 Tazewell Avenue
Cape Charles, VA 23310
757-331-3259 x30
planner@capecharles.org

Revised 11/2025	
Taxes	✓ up to date
Violations	—
Fee	\$200
Decision	

Budget Code: PLANR 100-3100-1150

PART 1: APPLICATION NOTES

Per Cape Charles Zoning Ordinance Article 7.11 (C) of the Chesapeake Bay Preservation Area Overlay District a water quality assessment is required for any proposed land disturbances within the Resource Protection Area (RPA) and may be required for the Resource Management Area (RMA). The purpose of this assessment is to identify the impacts of the proposed project on water quality and lands within these environmentally sensitive areas. This assessment ensures that development in these areas will be the least disruptive, and specifies what mitigation is required to address water quality impacts.

This form is to be used for any development or redevelopment on a property totaling less than 5,000 square feet of land disturbance. If greater than 5,000 square feet of land disturbance will occur in the RPA or if encroachment will occur in the seaward 50 feet of the RPA, a Major Water Quality Impact Assessment is required instead of this form. Please be aware that certain land disturbing activities cannot be administratively approved by Town staff and may require an exception by the Board of Zoning Appeals.

If greater than 2,500 square feet of land disturbance will occur, a Land Disturbance Permit from the Building Department is required. Some projects may require review and approval by the Cape Charles Wetlands and Coastal Dune Board, Virginia Marine Resources Commission, Virginia Department of Environmental Quality and/or US Army Corps of Engineers. Evidence that those required permits have been obtained must be provided prior to commencement of land disturbing activities.

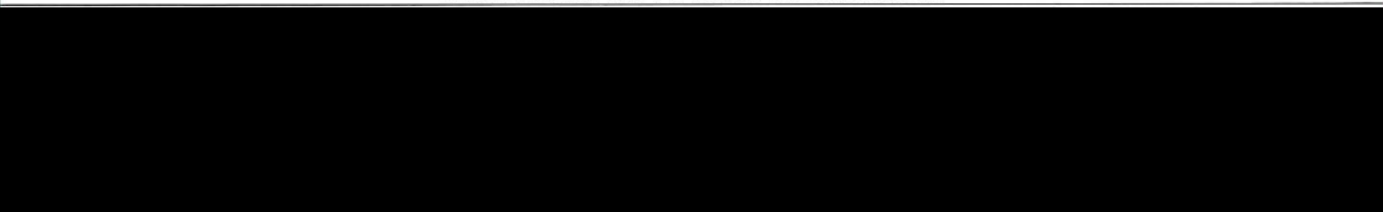
PART 2: PROPERTY INFORMATION



Tax Map #: 8381-11-103

Year lot/parcel was created/platted:

PART 3: PROPERTY OWNER INFORMATION



If owner is not the applicant, an Owner's Permission Affidavit must be attached.

PART 3: PROJECT INFORMATION

1) What type of development / redevelopment is proposed in the Resource Protection Area (RPA – lands within 100 feet of a perennial body of water or wetland)? [Check and complete all that apply.]

New principal Structure: Describe structure and provide square footage.

There is an existing paver patio that we are seeking approval to maintain.

Expansion or Addition to existing principal structure

Accessory Structure: 150 ft² – If so, what type: Detached Shed Garage ^{Paver} Patio Swimming Pool

Retaining Wall Other _____

Road / Driveway: _____ ft²

Maintenance / Repair of existing structure in the RPA – Describe proposed work. _____

Other: _____

2) Will proposed development / redevelopment encroach into the seaward 50 feet of the 100-foot RPA buffer (the portion of the RPA buffer that is closest to the perennial waterbody or wetlands)? YES NO

3) Describe the existing condition of the RPA buffer vegetation below or on separate paper. What vegetation (trees, shrubs, groundcover, or turf grass) will be removed by the project? What impact will the project have on adjacent waters or wetlands? See Attachment

4) What is the total area (in square feet) of the proposed (new) encroachment into the RPA? 150 ft²

5) Determine vegetative mitigation required by project. Using the answer to Question 4, if the total area of encroachment is less than ¼ acre (up to 10,890 square feet), use “Restoration/Establishment Table A” (attached on page 4) to calculate required mitigation plantings. This table is typically used for construction projects that have a calculated total area disturbance.

If no new impervious surface is proposed by the project and only a small amount of vegetation will be removed, the attached “Vegetation Replacement Rates” table on page 4 may be used. This table is typically used for minor vegetation removal for sight lines, vistas, and access paths.

If the total area of encroachment is more than ¼ acre (over 10,890 square feet), a different restoration and establishment table will be used (attached on page 5). Contact Town staff to request additional information.

What mitigation planting is required?

Number of Canopy trees: _____

Type of Canopy trees: _____

Number of Understory trees: _____

Type of Understory trees: _____

Number of Small Shrubs or Woody Ground Cover: _____

Type of Shrubs: _____

Number of Grasses: _____

Type of Grasses: _____

If proposed mitigation will exceed requirements, or if requirements or not practical for the site, explain below:

We are very open to plantings but stopped because of the patio issue we are unclear on how to proceed.

Please see our proposed plan addressing question 6 below.

6) Attach a landscaping/vegetation plan to demonstrate how and where the mitigation will be achieved onsite. Indicate on the plan drawing the square feet of vegetation plantings to offset proposed RPA encroachment. All three layers of vegetation (groundcover, shrubs, and trees) should be clearly incorporated into the mitigation plantings, as practical.

Include a site plan/survey, pictures, and/or drawings to depict the work being proposed.

Native plants should be used as replacement vegetation. A list of native plants appropriate for this area is located at <https://www.dcr.virginia.gov/natural-heritage/document/riparian-nat-plants.pdf>.

The Eastern Shore Native Plant Guide dated December 2016 can be found at <https://www.capecharles.org/docview.aspx?docid=31248> and should be used in conjunction with Appendix A thru C - Plant Lists contained in the Riparian Buffers Modification & Mitigation Guidance Manual (<https://www.capecharles.org/docview.aspx?docid=31249>) by Department of Conservation and Recreation Chesapeake Bay Local Assistance and the Department of Environmental Quality.

I/We, the undersigned, certify that this application is complete, accurate and contains all required and requested information, documents, and other submittals, and that all statements made herein are, to the best of my knowledge, true and correct. I further certify that I have exercised due diligence to obtain the most recent, complete, and correct information available. I understand that any section not completed in its entirety may delay the processing of this application. I also understand that additional information may be required after the application is submitted.

Applicant's signature: _____

Date: _____

Owner's signature: _____

Date: _____

Zoning Administrator's signature: Kate M. Aug

Date: 3/27/2024

RESTORATION/ESTABLISHMENT TABLE A

A. ¼ acre or less of buffer

(Up to 10,890 square feet or less of buffer area.)

For every 400 square-foot unit (20'x20') or fraction thereof, plant:

- one (1) canopy tree @ 1½" - 2" caliper or large evergreen @ 6'*
- two (2) understory trees @ ¾" - 1 ½" caliper or evergreen @ 4'*
 or one (1) understory tree and two (2) large shrubs @ 3'-4'
- three (3) small shrubs or woody groundcover @ 15" - 18"*

Example:

A 100-foot wide lot x 100-foot wide buffer is 10,000 square feet.
 Divide by 400 square feet (20'x20' unit) to get:
 25 units

<u>Units</u>	x	<u>plant/unit</u>	<u>Number of plants</u>
25 units	x	1 canopy tree	25 canopy trees
		2 understory trees	50 understory trees
		3 small shrubs	<u>75 small shrubs</u>
			150 plants

VEGETATION REPLACEMENT RATES		
VEGETATION REMOVED	PREFERRED REPLACEMENT VEGETATION	ACCEPTABLE ALTERNATIVE VEGETATION
1 tree or sapling ½"-2 ½" caliper	1 tree @ equal caliper or greater	Or 2 large shrubs @ 3'-4' Or 10 small shrubs or woody groundcover *@ 15"-18"
1 tree ≥ 2 ½" caliper	1 tree @ 1½" - 2" caliper, or 1 evergreen tree @ 6' min. ht., per every 4" caliper of tree removed (ex: a 12" cal. tree would require 3 trees to replace it)	Or 75% trees @ 1½" - 2" and 25% large shrubs @ 3'-4' per every 4" caliper of tree removed. (ex: a 16" cal. tree removed would require 3 trees and 1 large shrub) Or 10 small shrubs or woody groundcover @ 15"-18" per 4" caliper of tree removed (ex: a 8" caliper tree removed requires 20 small shrubs)
1 large shrub	1 large shrub @ 3'-4'	Or 5 small shrubs or woody groundcover @ 15"-18"

* Woody groundcover is considered to be a woody, spreading shrub that remains close to the ground, to 18" high, such as a shore juniper, *juniperus conferta*. Vines may not be considered "woody groundcover" for the purpose of vegetation replacement.

RESTORATION/ESTABLISHMENT TABLE B

Greater than ¼ acre of buffer

More than 10,890 square feet

- A. Plant at the same rate as for ¼ acre or less.
- B. The waterside 50% of the buffer (from the waterline inland for the first 50 feet):
For every 400 square-foot unit (20'x20') or fraction thereof plant:

one (1) canopy tree @ 1½" - 2" caliper or large evergreen @ 6'
two (2) understory trees @ ¼" - 1 ½" caliper or evergreen @ 4'
or one (1) understory tree and two (2) large shrubs @ 3'-4'
three (3) small shrubs or woody groundcover @ 15" - 18"

AND

The landward 50% of buffer (from 50 feet inland to 100 feet inland):

either plant

Bare root seedlings or whips at 1,210 stems per acre¹, approximately 6'x6' on center (Minimum survival required after two growing seasons: 600 plants)

or

Container grown seedling tubes at 700 per acre approximately 8'x 8' on center (Minimum survival required after two growing seasons: 490 plants)

- C. If the applicant is willing to enter into a five year maintenance and performance guarantee:
100% of buffer planted with:
Bare root seedlings or whips at 1,210 per acre, approximately 6'x 6' on center (Minimum survival required after two growing seasons: 600 plants)
or
Container grown seedling tubes at 700 per acre approximately 8'x 8' on center (Minimum survival required after two growing seasons: 490 plants)

1 acre or more of buffer

With an evaluation from an arborist or forester or other professional, natural regeneration may be an acceptable method of buffer establishment, however, a forestry management plan must be in place prior to any vegetation being removed. A minimum of 35 feet next to the water must be left in forest and protected prior to any vegetation being removed. If over 20 percent of the vegetation must be removed for the health of the woodlot, within the 35 feet closest to the shoreline, vegetation must be reestablished by seedling plantings at the rates above.

¹ Palone, Roxanne S., and Al Todd, *Chesapeake Bay riparian handbook: A guide for establishing and maintaining riparian forest buffers*. May 1977. p. 7-20.

Source: Department of Conservation and Recreation Chesapeake Bay Local Assistance "Riparian Buffers Modification & Mitigation Guidance Manual" (reprinted 2006). [Riparian Buffers Manual link](#)

Q3 Describe the existing condition of the RPA buffer vegetation below or on separate paper. What vegetation (trees, shrubs, groundcover, or turf grass) will be removed by the project? What impact will the project have on adjacent waters or wetlands?

When we purchased the property mid-construction the dune was not growing indigenous grasses. It was full of garbage and debris we cleaned out the dune and left the indigenous grass that was there. In addition we planted four hundred additional indigenous grass (American Beach Grass *ammophila breviligulata*) started to help stabilize the dune and improve the water quality die filtering off runoff. The dune has performed better since we installed these native grasses. We left a buffer between the dune and the Bermuda grass area of the yard. If we can get approval our intention in that space is to continue planting indigenous plants with Oyster shells the plant species such as:

- American Beach Grass (*ammophila breviligulata*)
- Saltmeadow Cordgrass (*Spartina patens*)
- Sea Oats (*Uniola paniculata*)
- Bitter Seabeach Grass (*panicum amarum*)
- Seaside Little Bluestem (*schizachyrium littorale*)
- Wax Myrtle (*morella cerfera*)
- Groudsel Bush (*baccharis halimifolia*)
- Switchgrass (*panicum virgatum*)
- Marsh Hibiscus (*hibiscus moscheutos*)
- Beach Plum (*prunus maritima*)

Q6) Attach a landscaping/vegetation plan to demonstrate how and where the mitigation will be achieved onsite. Indicate on the plan drawing the square feet of vegetation plantings to offset proposed RPA encroachment. All three layers of vegetation (groundcover, shrubs, and trees) should be clearly incorporated into the mitigation plantings, as practical.

Include a site plan/survey, pictures, and/or drawings to depict the work being proposed.

Planting: Natural Dune + Coastal Modern

From Natural Dune Ecosystems:

- Use native dune-building grasses for authenticity and resilience.
- Allow natural movement & irregularity—plants drift and mingle.
- Emphasize wind-shaped forms and soft texture.
- Keep the palette low, sand-colored, muted greens/blues.

From Coastal Modern:

- Use clean masses of a single species for clarity and structure.
- Create bold linear plantings along paths and edges.
- Simple color palette with dramatic negative space (sand, stone).
- Use sculptural focal shrubs with architectural form.

LAYOUT (Four Zones)

Zone A – Shoreline / Primary Dune

Goal: restore/stabilize dunes → airy, wild, ecological look.

Plant Palette:

- American Beachgrass (*ammophila breviligulata*)
- Bitter Panicgrass (*panicum amarum*)
- Coastal Little Bluestem (*schizachyrium scoparium* var. *littorale*)
- Beach Pea (*Lathyrus japonicus*)
- Seaside Goldenrod (*Solidago sempervirens*)

Planting Style:

- Let grass grow in loose drifts, not rigid rows.
- Intermix Panicgrass + Beachgrass for multi-season texture.
- Use Beach Pea to knit sand in bare patches.
- Add Seaside Goldenrod as occasional vertical accents (4–6 ft spacing).

Modern Touch:

- Keep a consistent height band (1–3 ft) along the water for visual calm.
 - Ensure that we are not blocking our neighbors' views.
 - Leave open sandy swales as minimalist "voids" between grasses.
-

Zone B – Secondary Dune / Mid-Yard Transition

Goal: shift from wild dune to stylized landscape.

Plant Palette:

- Switchgrass (*Panicum virgatum* — coastal ecotype)
- Little Bluestem ('The Blues' or native ecotypes)
- Bayberry (*Morella pensylvanica*)
- Wax Myrtle (*Morella cerifera* — northern range)

Planting Style:

- Create large, modern sweeps of a single species (20–40 sq ft blocks).
- Keep Bayberry and Wax Myrtle in geometric clusters (triangles or lines).
- Layer height gradually from low grasses → mid shrubs.

Modern Touch:

- Sharp massing:
 - One large rectangle of Switchgrass
 - Adjacent oval of Little Bluestem
 - Repeat patterns for rhythm.
-

Zone C – Foundation Planting (Near the House)

Goal: simplified, tidy, sculptural background.

Plant Palette:

- Inkberry (*Ilex glabra*) – evergreen structure
- Northern Sea Oats (*Chasmanthium latifolium*) – modern arching texture
- Blue Wild Rye (*Elymus glaucus*)

Planting Style:

- Inkberry in a continuous hedge line (3 ft spacing).
- Sea Oats are evenly spaced in grid patterns for a modern look.
- Blue Wild Rye is used in rhythmic rows along walkways.

Modern Touch:

- Use stone or shell mulch for clean surfaces.
 - Create breaks with an impervious wood pathway.
 - Strong horizontal lines to contrast the wild dune areas.
-

Zone D – Paths, Entry, Outdoor Rooms

Plant Palette:

- Beach Plum (*Prunus maritima*) – sculptural spring focal point
- Purple Lovegrass (*eragrostis spectabilis*) – airy, modern color
- Coastal Joe-Pye Weed (*eutrochium dubium*) – tall seasonal accent.
- Black-Eyed Susan (*rudbeckia hirta*) – spots of color

Planting Style:

- Beach Plum as minimalist focal shrubs (3–5 spaced widely).
 - Purple Lovegrass in low drifts lining pathways.
 - Joe-Pye placed sparingly for vertical contrast.
-

SPACING & DENSITY

Plant Type	Spacing
Dune grasses	12–18 in.
Mid-size grasses	18–24 in.
Low shrubs	3–4 ft
Medium shrubs	5–6 ft
Accent perennials	18–24 in.

COLOR & TEXTURE PALETTE

Natural dune:

- Sandy beige
- Silvery blue
- Wind-blown textures
- Soft movement

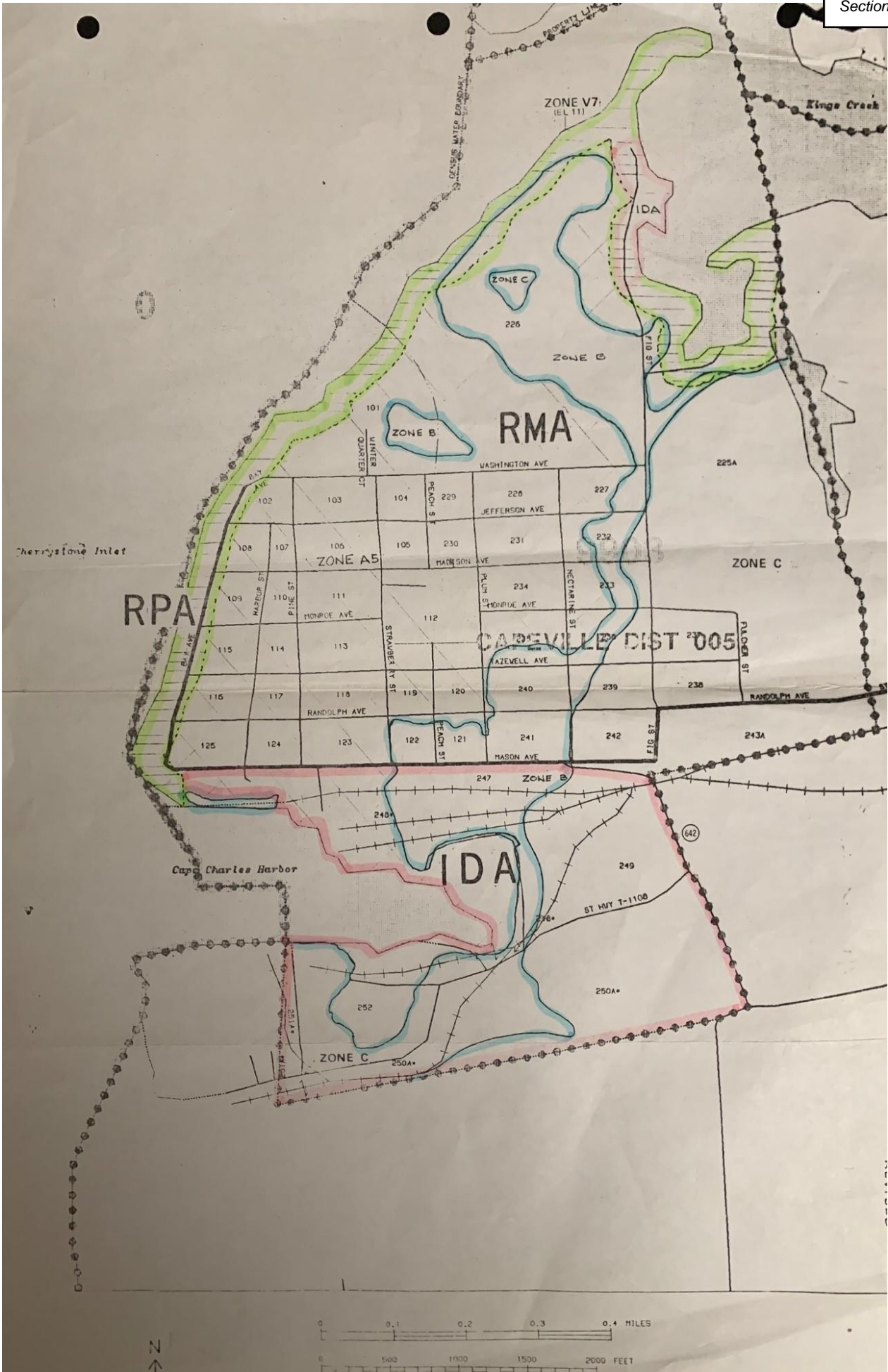
Coastal modern:

- Clean vertical spikes
- Monochrome plant masses repeatedly.
- Strong, architectural evergreen shapes

Combined effect: a landscape that feels native, wild, and authentic—but with modern clarity and intention.



Attachment 4 – Chesapeake Bay Preservation Act Overlay Map



Attachment 5 – Cape Charles Resolution

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
April 12, 1999

RESOLUTION

LOCAL PROGRAM, PHASE I
TOWN OF CAPE CHARLES - #14

Determination of Consistency - Final

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and,

WHEREAS § 9VAC10-20-60 of the *Chesapeake Bay Preservation Area Designation and Management Regulations* states that the elements in subsections A (a map delineating Chesapeake Bay Preservation Areas) and B (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments no later than November 15, 1991; and,

WHEREAS the Town of Cape Charles adopted a local program to comply with § 9VAC10-20-60 A and B on September 11, 1990; and,

WHEREAS the Town of Cape Charles' adopted program was reviewed by the Board on February 5, 1991, and on September 21, 1995 at which time it was found to be consistent with § 10.1-2109 of the Act and §9VAC10-20-60 A and B of the Regulations subject to one condition; and,

WHEREAS the Town Cape Charles' adopted program, as amended, has been reviewed by the Department, which recommended a finding by the Local Program Review Committee for the Southern Area that the Town's Phase I Program should be deemed consistent with § 10.1-2109 of the Act and 9VAC10-20-69 A and B of the Regulations; and,

WHEREAS the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report for its meeting of March 3, 1999, along with testimony by CBLAD staff and the Town, and made its recommendation to the Board; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation made by the Local Program Review Committee for the Southern Area; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds that the Town of Cape Charles' Phase I Program, as amended on February 26, 1999, is determined to be Consistent with §10.1-2109 of the Act and §9VAC10-20-60 A and B of the Regulations.

Attachment 6 – Cape Charles Zoning Ordinance Article VII

ARTICLE VII. CHESAPEAKE BAY PRESERVATION AREA OVERLAY DISTRICT

Sec. 32-180. Title.

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

(Ord. No. 20241219A, 12-19-2024)

Sec. 32-181. 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 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.

(Ord. No. 20241219A, 12-19-2024)

Sec. 32-182. 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 water 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 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 § 62.1-255."

(Ord. No. 20241219A, 12-19-2024)

Sec. 32-183. 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.
- (b) The resource protection area includes:
 - (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 a. through c. above and along both sides of any water body with perennial flow.
- (c) 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.
- (d) 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.
- (e) 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 32-189, performance standards.

(Ord. No. 20241219A, 12-19-2024)

Sec. 32-184. 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.

(Ord. No. 20241219A, 12-19-2024)

Sec. 32-185. 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 32-189 when such development is not otherwise allowed in the RPA.

(Ord. No. 20241219A, 12-19-2024)

Sec. 32-186. Development criteria for resource protection areas.

- (a) Development in RPAs may be allowed only if it: (1) is water dependent, (2) constitutes redevelopment or development within IDAs, or (3) constitutes redevelopment.
 - (1) 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 32-190. of this article;
 - c. Any non-water dependent component is located outside of the RPA; and
 - d. Access to the water-dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided.
 - (2) 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 stormwater management requirements outlined under section 32-189 and erosion and sediment control requirements outlined under section 32-189 of this article.
- (b) 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 32-190 of this article.

(Ord. No. 20241219A, 12-19-2024)

Sec. 32-187. 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.

(Ord. No. 20241219A, 12-19-2024)

Sec. 32-188. 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 32-191, plan of development process, or section 32-190 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 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 accordance with section 32-191, 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 32-191 of this ordinance.

(Ord. No. 20241219A, 12-19-2024)

Sec. 32-189. 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 ten 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 Handbook.
 - a. Site clearing for construction activities shall be allowed as approved by the zoning administrator through the plan of development review process.
 - b. 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 stormwater 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.
 - (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 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.
 - (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.

- (8) 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 ten 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:
 - 1. In no case may the post-development non-point source pollution runoff load exceed the pre-development load.
 - 2. Runoff pollution loads must have been calculated and the BMPs selected for the expressed purpose of controlling non-point source pollution.
 - 3. 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 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 32-191 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.
- (c) *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 32-183, areas of applicability, and section 32-191, 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.

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 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 32-191, 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) Redevelopment within IDAs may be exempt from establishing vegetation within the buffer area in accordance with section 32-191, 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 (4VAC 5-15 et seq.)" administered by the Virginia Department of Conservation and Recreation.
 - 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 5- 15 et seq.) administered by the Virginia Department of Conservation and Recreation. 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.

(Ord. No. 20241219A, 12-19-2024)

Sec. 32-190. Water quality impact 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 which will address water quality protection.
- (b) *Water quality impact assessment required.* A water quality impact assessment is required for (1) any proposed land disturbance, redevelopment or development within an RPA, including any buffer area modification or encroachment as provided in section 32-190. of this article; (2) any development in an 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:
 - (1) Location of the components of the RPA, including the 100-foot buffer area;
 - (2) Location and nature of the proposed encroachment into the buffer area if needed including type of paving material; areas of clearing or grading; location of any structures, drives, or other impervious cover;
 - (3) Type and location of proposed best management practices to mitigate the proposed encroachment.

- (4) 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;
 - (5) Revegetation plan that supplements the existing buffer vegetation in a manner that provides for pollutant removal, erosion and runoff control.
- (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 50 feet of the 100-foot buffer area; (2) proposes to disturb any portion of any other component of an RPA or proposes to disturbs 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.
- (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 32-190(c);
 - b. A hydro-ecological element that:
 - 1. Describes the existing topography, soils, hydrology, and geology of the site and adjacent lands.
 - 2. Indicates the following:
 - i. Disturbance or destruction of wetlands and justification for such action.
 - ii. Disruptions or reductions in the supply of water to wetlands, streams, or other water bodies.
 - iii. Disruptions to existing hydrology including wetlands and stream circulation patterns.
 - iv. Source location and description of proposed fill material.
 - v. Location of dredge material and location of dumping area for such material.
 - vi. Location of and impacts on shellfish beds or submerged aquatic vegetation.
 - vii. Estimation of pre- and post-development pollutant loads in runoff.
 - viii. Estimation of percent increase in impervious surface on site and type(s) of surfacing materials used.
 - ix. Percent of site to be cleared for project.
 - x. Anticipated duration and phasing schedule of construction project.
 - xi. Listing of all requisite permits from all applicable agencies necessary to develop project.
 - 3. Describes the proposed mitigation measures for the potential hydroecological impacts. Potential mitigation measures include:
 - i. 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.

- ii. Proposed water quality and quantity stormwater management system.
 - iii. Creation of wetlands to replace those lost.
 - iv. Minimizing cut and fill.
 - c. A landscape element that:
 - 1. 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.
 - 2. Describes the impacts the development or use will have on the existing vegetation. Information should include:
 - i. Limits of clearing based on all anticipated improvements including buildings, drives, and utilities.
 - ii. Clear delineation of all trees and other woody vegetation proposed to be removed.
 - iii. Description of plant species to be disturbed or removed.
 - 3. Describes the potential measures for mitigation. Possible mitigation measures should include:
 - i. Replanting schedule for trees and other significant vegetation removed for construction including a list of possible plants and trees to be used.
 - ii. 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.
 - iii. 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 32-191, 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 32-191 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). Upon receipt of a major water quality impact assessment, the zoning administrator will determine if such review is warranted and may request CBLAD to review the assessment and respond with written comments. Any comments by such CBLAD will be incorporated into the final review by the zoning administrator provided that such comments are provided by CBLAD 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 32-191.
 - 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 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).

(Ord. No. 20241219A, 12-19-2024)

Sec. 32-191. Plan of development process.

Any development or redevelopment 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.

- (1) *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.
- a. The following plans or studies shall be submitted unless otherwise provided for:
 1. A site plan in accordance with the provisions of this ordinance; or a subdivision plat in accordance with the provisions of the town's subdivision ordinance;
 2. An environmental site assessment;
 3. A landscaping plan;
 4. A storm water management plan;
 5. An erosion and sediment control plan in accordance with the provisions of the Cape Charles Erosion and Sediment Control Ordinance.
- (2) *Environmental site assessment.* An environmental site assessment shall be submitted in conjunction with preliminary site plan or preliminary subdivision plan approval.
- a. The environmental site assessment shall be drawn to scale and clearly delineate the following environmental features:
 1. Tidal wetlands.
 2. Tidal shores.
 3. Non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow.
 4. A 100-foot buffer area located adjacent to and landward of the components listed in subsections 1 through 3 above, and along both sides of any water body with perennial flow.
 5. other sensitive environmental features as determined by the zoning administrator.
 - b. 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.
 - c. The environmental site assessment shall delineate the site-specific geographic extent of the RPA.
 - d. 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.
- (3) *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.
- a. 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:
 1. The landscaping plan shall be drawn to scale and clearly delineate the location, size, and description of existing and proposed plant material. All existing trees on the site two inches or greater DBH shall be shown on the landscaping plan. Where there are groups of trees,

stands may be outlined instead. The 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.

- 2. 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.
 - 3. Within the buffer area, trees to be removed for sight lines, vistas, access paths, 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.
 - 4. Trees to be removed for shoreline stabilization projects and any replacement vegetation required by this article shall be shown on the landscaping plan.
 - 5. 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 trees to be preserved.
 - 6. The landscaping plan will include specifications for the protection of existing trees during clearing, grading, and all phases of construction.
- b. Plant specifications.
- 1. 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.
 - 2. 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.
- c. Maintenance.
- 1. The applicant shall be responsible for the maintenance and replacement of all vegetation as may be required by the provision of the article.
 - 2. 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.
- (4) *Stormwater management plan.* A stormwater management plan shall be submitted as part of the plan of development process required by this article and in conjunction with site plan or subdivision plan approval.
- a. 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:
- 1. Location and design of all planned storm water control devices;
 - 2. Procedures for implementing non-structural storm water control practices and techniques;
 - 3. Pre- and post-development non-point source pollutant loadings with supporting documentation of all utilized coefficients and calculations;

4. For facilities, verification of structural soundness, including a professional engineer or Class IIIB surveyor certification.
 - b. 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.
 - c. All engineering calculations must be performed in accordance with procedures outlined in the current edition of the Virginia Stormwater Management Handbook.
 - d. 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 Cape Charles, then a maintenance agreement shall be executed between the responsible party and the Town of Cape Charles
- (5) *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 town's erosion and sediment control ordinance in conjunction with site plan or subdivision plan approval.
- (6) *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.
 - a. Final plans for all lands within CBPAs shall include the following additional information:
 1. The delineation of the Resource Protection Area boundary
 2. The delineation of required buffer areas .
 3. All wetlands permits required by law.
 4. 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.
 - b. Installation and bonding requirements.
 1. Where buffer areas, landscaping, storm water management facilities, or other specifications of an approved plan are required, no certificate of occupancy shall be issued until the installation of required plant materials or facilities is completed in accordance with the approved site plan.
 2. 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.
 3. All required landscaping shall be installed and approved by the first planting season following the issuance of a certificate of occupancy or the surety may be forfeited to the Town of Cape Charles.
 4. 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 maybe 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.

5. After all required actions of the approved site plan have been 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 the final inspection. The zoning administrator may require a certificate of substantial completion from a professional engineer or Class IIIB surveyor before making the final inspection.
- (7) *Administrative responsibility.* Administration of the plan of development process shall be in accordance with this ordinance or the town's subdivision ordinance.
- (8) *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 town council. Said appeal shall be made within 15 days of the negative decision. Further appeals by the applicant shall be established by law.

(Ord. No. 20241219A, 12-19-2024)

Sec. 32-192. 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 article II division 4 of this chapter. 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 article II, division 4, 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;
 - 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) A non-conforming use and development waiver shall become null and void 12 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.

(Ord. No. 20241219A, 12-19-2024)

Sec. 32-193. 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 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 Conservation and Recreation, of (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 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 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 town erosion and sediment control requirements.

(Ord. No. 20241219A, 12-19-2024)

Sec. 32-194. Exceptions.

- (a) A request for an exception to the requirements of sections 32-186 and 32-189(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 the RPA through the performance of a water quality impact assessment which complies with the provisions of section 32-190.
- (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) A request for an exception to the requirements of provisions of this article other than those in sections 32-186 and 32-189(c) shall be made in writing to the zoning administrator. The zoning administrator may grant these exceptions provided that:
- (1) Exceptions to the requirements are minimum necessary to afford relief; and 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.
 - (2) Exceptions to § 32-189(b) may be made provided that the findings noted in section 32-194(c) are made.

(Ord. No. 20241219A, 12-19-2024)

Sec. 32-195. 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 penalty not to exceed \$5,000.00 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 \$10,000.00 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.

(Ord. No. 20241219A, 12-19-2024)

Sec. 32-196. 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.

(Ord. No. 20241219A, 12-19-2024)

Sec. 32-197. Effective date.

This ordinance was duly considered following a required public hearing held on November 18, 2024, and was adopted by the Town Council of Cape Charles, Virginia, at its regular meeting held December 19, 2024.

(Ord. No. 20241219A, 12-19-2024)

Secs. 32-198—32-209. Reserved.

Exhibit A – VA DCR RPA Permitted Development Activities



Resource Protection Areas: Permitted Development Activities

Guidance on the Chesapeake Bay Preservation Area Designation and Management Regulations

Revised September 19, 2005, June 15, 2009; June 21, 2010

Purpose:

This document provides guidance on those sections of the Chesapeake Bay Preservation Area Designation and Management Regulations (Regulations) related to development and redevelopment activities permitted within Resource Protection Areas (RPAs) and those activities that are otherwise exempt from the Regulations.

Regulations:

- Section 9 VAC 10-20-130 sets out the performance criteria for Resource Protection Areas (RPAs), and permits the following uses by right: water dependent uses; redevelopment as defined by the Regulations; development or redevelopment within a designated Intensely Developed Area (IDA); a new use established on a nonconforming lot; a street or driveway crossing approved by the locality pursuant to the Regulations; or a flood control or stormwater management facility serving multiple development projects or a significant portion of a watershed, consistent with certain conditions.
- Section 9 VAC 10-20-130 1 a requires a Water Quality Impact Assessment to be submitted for any land disturbing activity within an RPA, including the buffer component.
- Section 9 VAC 10-20-130 1 b sets out the criteria that must be met for new or expanded water dependent facilities to be allowed in the RPA. These criteria include the following: that it does not conflict with the local comprehensive plan; that it complies with all performance criteria; that any non-water dependent component is located outside of the RPA; and; that access is provided with the minimum disturbance necessary.
- Section 9 VAC 10-20-130 1 c requires stormwater management and erosion and sediment control requirements to be applied for redevelopment activities both within and outside of IDAs, and also contains criteria for no net increase of imperviousness and no further encroachment into the RPA.
- Section 9 VAC 10-20-150 B exempts the construction of public utilities, railroads, public roads and appurtenant facilities from the Regulations, consistent with certain conditions.

Discussion:

Water Dependent Facilities

Certain uses are permitted by-right within the RPA. Water dependent facilities, i.e., facilities that by their very nature require that they be located adjacent to the water, are among these facilities. Some examples of water dependent facilities that are permitted to be located within the RPA include the water dependent portion of marinas, aquacultural facilities that require fresh flows of water, beaches, docks and piers as well as stream and wetland restoration projects that have been permitted by state and federal agencies such as DEQ and USCOE.

Development of these facilities requires that a Water Quality Impact Assessment (WQIA) be submitted for review and approval prior to beginning construction activity and that the conditions in 9 VAC 10-20-130 1 b be satisfied.

Redevelopment Within RPAs That Are Not IDAs

Redevelopment activities are also permitted to occur within the RPA. **A Water Quality Impact Assessment must be reviewed and approved before development activities may begin.**

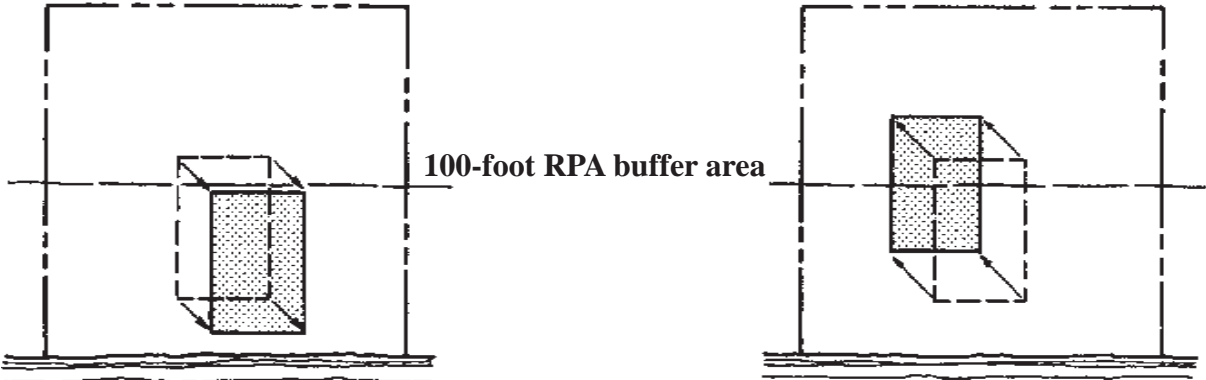
The *Chesapeake Bay Preservation Area Designation and Management Regulations* define **redevelopment** to mean “the process of developing land that has previously been developed.” Under the traditional view of redevelopment, old, dilapidated, or outdated structures and impervious areas are demolished or removed and reconstructed.

The intent of the Regulations is to allow redevelopment within RPAs so that areas where existing development is concentrated may be renovated while improving the quality of stormwater runoff. If redevelopment increases the amount of impervious surface in the RPA, or reduces the width of an existing buffer area, water quality degradation may occur. The definition of redevelopment, then, generally dictates that redevelopment occur in approximately the same physical location as the previous development. This is a particularly important point when considering sites where the previous development occurred only on a portion of a site. Placing structures outside of the RPA, even on redevelopment sites, should be encouraged. For the purposes of the Bay Act program, the following conditions must be present in order for a project to be considered “redevelopment:”

- The lot or parcel has been previously developed;
- The new structures and/or impervious areas are approximately in the same physical location as the previously existing structures and/or impervious areas;
- The proposed amount of impervious surface is no greater than the original development;
- RPA features are not further encroached upon.

For the purposes of the Bay Act program, redevelopment is **not**:

Figure 1 - No Further Expansion into RPA



NOT ACCEPTABLE AS REDEVELOPMENT

The redevelopment encroaches further into the RPA (100-foot buffer component)

(DCR-CBLAB-020) (06/09)

ACCEPTABLE AS REDEVELOPMENT

The redevelopment reduces the encroachment into the RPA (100-foot buffer component)

2

Figure 2 - No Increase of Impervious Surface in RPA

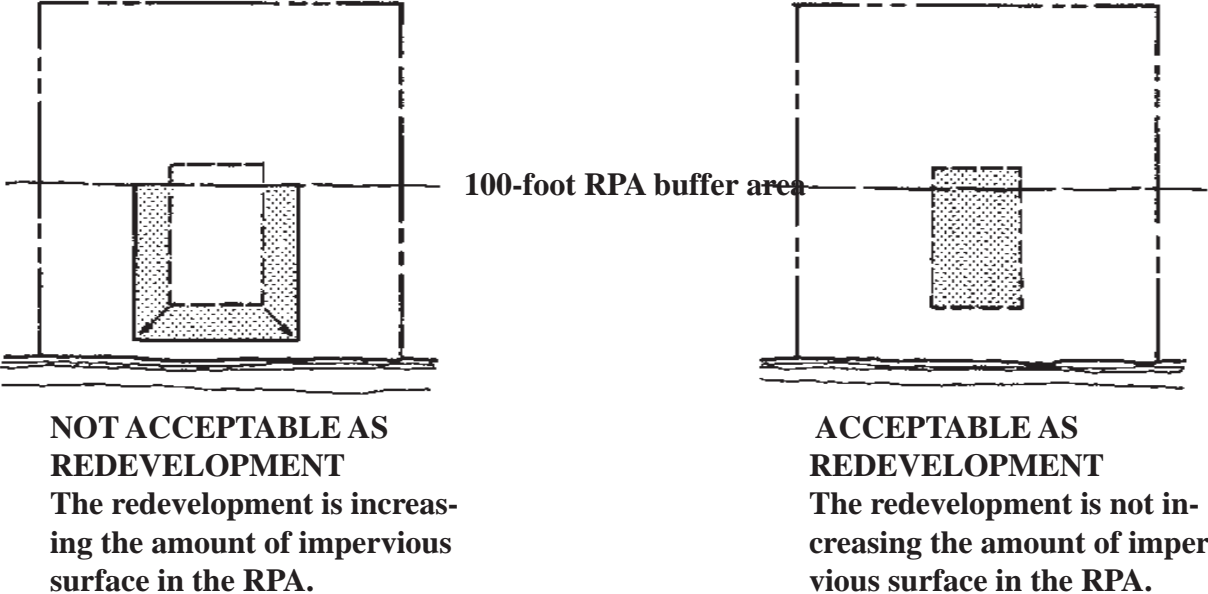
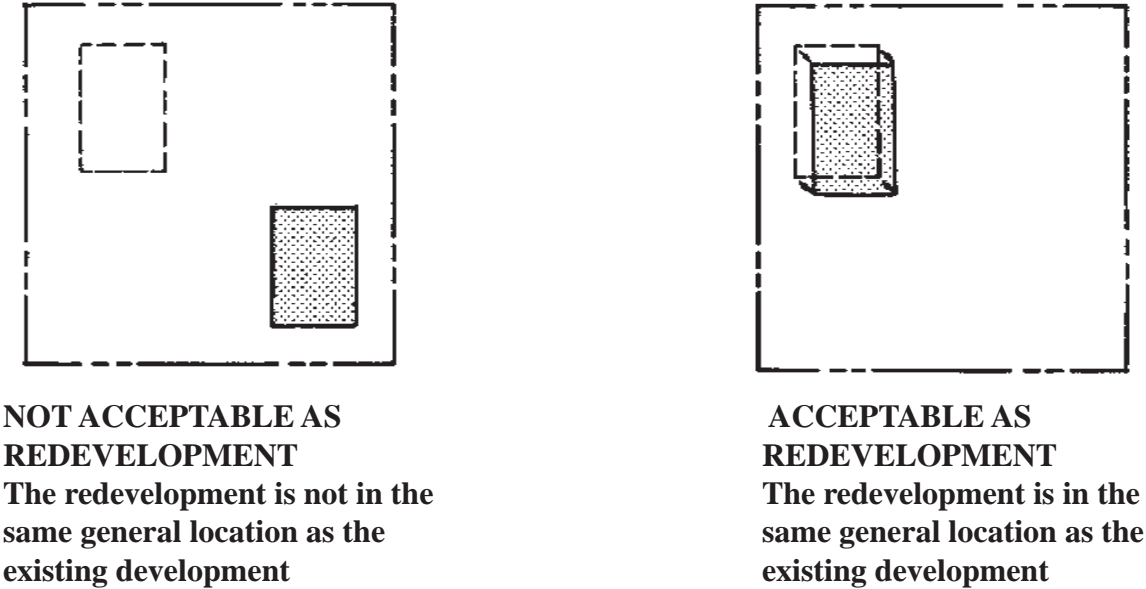


Figure 3 - Redevelopment in Same General Location



- **New construction** on a previously undeveloped parcel;
- **Additions or expansions** to existing structures
- **Replacement** of a structure lost by casualty. (However, it is possible that other local ordinances may allow the replacement of such structures.)
- **Relocation** of an existing structure to a previously undeveloped portion of a site.

Development or Redevelopment within an Intensely Developed Area

Intensely Developed Areas (IDAs) are redevelopment areas, identified by a local government and approved by the Chesapeake Bay Local Assistance Board, that meet the criteria found in 9 VAC 10-20-100.B. Development or redevelopment within IDAs is permitted provided that it conforms to applicable erosion and sediment control and stormwater management requirements. A WQIA must be submitted for land disturbance within the RPA portion of an IDA overlay.

Development on a Nonconforming Lot of Record

Nonconforming lots [i.e., lots that either (1) were approved by the locality and recorded before October 1, 1989 and that do not have sufficient land outside of the RPA on which to construct a principal dwelling, or (2) lots with insufficient land area outside the full 100 foot RPA that were recorded between October 1, 1989 and March 1, 2002 in those localities that had buffer equivalency language written into their local Chesapeake Bay Preservation Ordinances] may be improved with a principal structure and necessary utilities within the landward 50 feet of the RPA buffer provided that certain requirements are met. For guidance on development on nonconforming lots of record, please refer to the guidance entitled *Nonconforming Structures and Uses and Resource Protection Area: Buffer Area Encroachments*, posted on DCBLA's web site.

Stormwater or Flood Control Facilities

Flood control and stormwater management facilities that drain or treat water from multiple development projects may be permitted in the RPA provided that certain criteria are met. Consistent with 9 VAC 10-20-130 1 e (iii) of the Regulations, the local government must first develop a regional stormwater management program that is consistent with the water quality protection provisions of the *Virginia Stormwater Management Regulations* (4 VAC 50-60 *et seq.*) This local program must then be reviewed and approved as a Phase I program modification by the Chesapeake Bay Local Assistance Board. The local government must establish through an analysis of a Water Quality Impact Assessment that the location of the facility within the RPA is the optimum location and that the size of the facility is the minimum necessary to provide flood control, stormwater treatment, or both. All applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies (such as the U.S. Army Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission), and continued maintenance of the facility is required to assure that the facility continues to function as designed. For a more detailed discussion of the stormwater management requirements contained within the Chesapeake Bay Designation and Management Regulations, please refer to the *Stormwater Management Requirements* guidance, posted on DCBLA's web site.

Exemptions

Water wells, passive recreation sites (e.g., trails, paths, and other linear, minimally intrusive uses, but not ball fields and similar facilities), and historic or archeological sites are all permitted within the Resource Protection Area provided that the development of such sites is reviewed and approved by the local government, and any land disturbance in excess of 2,500 square feet complies with the erosion and sediment control requirements. Public utilities (including electric lines, natural gas lines, fiber-optic cables, and telephone transmission lines), public roads, railroads, and structures customarily accessory to these uses are permitted within the RPA provided that minimal criteria are met. These exemptions are based on the premise that the agencies responsible for their construction have water quality protection requirements equal in effectiveness to the Chesapeake Bay Preservation Act Regulations. The installation of these facilities must conform to both the Erosion and Sediment Control Law (§10.1-560 *et seq.* of the Code of Virginia) and the Stormwater (DCR-CBLAB-020) (06/09)

Management Act (§10.1-603.1 *et seq.* of the Code of Virginia) and must be constructed according to an erosion and sediment control plan and a stormwater management plan approved by the Department of Conservation and Recreation. The construction of public roads is further conditioned on the minimization of the encroachment into the RPA and a minimization of water quality impacts.

The construction, installation, and maintenance of water, sewer, natural gas, underground telecommunication and cable television lines owned or permitted by a local government or regional service authority is permitted within the RPA provided that the encroachment is the minimum necessary, no more land is disturbed than is necessary to accommodate the installation, all applicable state and federal permits for the installation are obtained, the installation takes place in a manner that protects water quality, and any land disturbance exceeding an area of 2,500 square feet complies with the erosion and sediment control requirements contained in the Regulations.

Conclusions:

- Water dependent facilities are permitted by right within the RPA. They must conform to erosion and sediment control requirements, must (1) be constructed according to an approved Plan of development, (2) be justified through a Water Quality Impact Assessment, and (3) meet other conditions of 9 VAC 10-20-130 1 b.
- Redevelopment activities are permitted within the RPA, provided that a Water Quality Impact Assessment (WQIA) is reviewed and approved, a Plan of Development is followed and the project complies with applicable erosion and sediment control and stormwater management requirements.
- Encroachments into the landward 50 foot portion of the RPA buffer are permitted by-right on lots recorded prior to October 1, 1989 **only when there is not sufficient land area outside the buffer for the principal structure and the required utilities.** A Water Quality Impact Assessment must show that the encroachment is the minimum necessary to afford relief, and, where practicable, a vegetated area equal in size to the encroachment and equal in ability to provide water quality benefits must be established elsewhere on the site.
- Encroachments into the landward 50 foot portion of the RPA buffer are permitted by-right on lots recorded between October 1, 1989 and March 1, 2002 **in those localities whose Chesapeake Bay Preservation Ordinances contained buffer equivalency language,** provided that the lot was legally created, that any conditions or mitigation required by a previous exception are met, and that any previously required Best Management Practices (BMPs) are functioning effectively (and will be reestablished or repaired if required). These criteria are in addition to the two criteria required for pre-1989 lots described above.
- Flood control and stormwater management facilities that drain or treat water from multiple development projects may be permitted in the RPA provided that they are part of a local regional stormwater management program that has been reviewed and approved as a Phase 1 program modification by the Chesapeake Bay Local Assistance Board and is consistent with the water quality protection provisions of the *Virginia Stormwater Management Regulations* (4 VAC 50-60 *et seq.*).

- Public utilities, public roads, railroads, and structures accessory to these uses are permitted within the RPA provided that the installation conforms to both the Erosion and Sediment Control Law (§10.1-560 *et seq.* of the Code of Virginia) and the Stormwater Management Act (§10.1-603.1 *et seq.* of the Code of Virginia) and the facilities are constructed according to an erosion and sediment control plan and a stormwater management plan approved by the Department of Conservation and Recreation. The construction of public roads is further conditioned on the minimization of the encroachment into the RPA and a minimization of water quality impacts.
- Certain public utilities may be located within the RPA provided that specific conditions are met.
- The General Performance Criteria apply to **any** development occurring within a Chesapeake Bay Preservation Area, including exempted activities and uses that are permitted by right. Localities are to insure compliance with the criteria through a review of a Water Quality Impact Assessment, which ~~are~~ is required for **all** development activities (excluding exempted uses) within a RPA.

Exhibit B – VA DCR Exceptions Guidance Sheet



Exceptions

Guidance on the Chesapeake Bay Preservation Area
Designation and Management Regulations
September 16, 2002, Revised June 15, 2009

Purpose:

This document provides local planners and officials with guidance when considering exceptions to requirements of the Chesapeake Bay Preservation Area Designation and Management Regulations as implemented at the local level.

The Regulations provide authority for local relief mechanisms in cases where a development proposal cannot meet the regulatory requirements due to a unique set of circumstances and conditions. The Regulations also outline a process by which adjacent property owners and other concerned citizens are to be included in the exception review and decision-making process.

Regulations:

- Section 9 VAC 10-20-130 1 a requires a Water Quality Impact Assessment (WQIA) for any proposed land disturbance in a Resource Protection Area.
- Section 9 VAC 10-20-150 C 1 permits exceptions to the General Performance Criteria (9 VAC 10-20-120) and the Development Criteria for Resource Protection Areas (9 VAC 10-20-130) and sets forth the findings that must be made in granting the exception request.
- Section 9 VAC 10-20-150 C 2 requires that local governments design and implement a process for considering exception requests and sets forth the public notice and public hearing requirements for considering certain exception requests.
- Section 9 VAC 10-20-150 C 3 permits exceptions to the other provisions of the Regulations and sets forth the requirements for granting such exception requests.
- Section 9 VAC 10-20-150 C 4 addresses the alteration or expansion of nonconforming principal structures. Such activity does not require a formal exception; however, it does require that the findings set forth in 9 VAC 10-20-150 C 1 are made through a local administrative review process.

Discussion:

Webster's Ninth New Collegiate Dictionary defines the term "exception" to mean "a case to which a rule does not apply," and it is in this manner that the term is used for purposes of this guidance. An analogous term familiar to many in the planning and land use profession is "variance." The Department recognizes that there are instances where the full measure of the Regulations can not be imposed, and where exceptions to the Regulations could be made.

The Regulations distinguish between exceptions for proposed development activities within Resource Protection Areas, those relating to the general performance criteria, and other requests (DCR-CBLAB-017) (06/09)

for exceptions not included in the first two situations. The Regulations differentiated between these types of exception requests in order to ensure that each was reviewed in the most appropriate forum. For instance, the requirement that any exception request relating to RPA issues be considered in a public forum was included because of complaints by citizens that they were afforded no notice or input on such requests. Other exception requests may be considered in a more administrative manner, in part because such requests do not have the same potential impact on adjacent properties.

Exceptions Generally

The exception process is intended to identify the minimum relief necessary to permit the proposed use. To assist in this determination, a Water Quality Impact Assessment (WQIA) is to be used in evaluating the site of the proposed exception, the potential effects of the exception, and for identifying mitigation measures that are appropriate to counteract those effects. The WQIA is to be reviewed **prior** to action on the exception request. Also, all land disturbances or development in the RPA require the preparation and consideration of a WQIA.

The approval of any exception must be based upon the making of certain findings. For exceptions dealing with the General Performance Criteria or for activity in the RPA, findings outlined in Section 9 VAC 10-20-150 C 1 must be addressed. For all other exception requests the findings must determine that it is the minimum necessary to afford relief and that reasonable and appropriate conditions are imposed, as necessary, so that the purpose and intent of the Act are preserved. These requirements are intended to relate not only to the potential water quality impact of the exception request, but are also intended to evaluate the request from an equity perspective and to ensure that exceptions are not arbitrary and capricious, but are decided on the specific facts related to the application. The following is a brief description and discussion of each of the required findings.

The requested exception to the criteria is the minimum necessary to afford relief.

Localities should use the requested exception as a starting point and work with the applicant to refine their proposal to meet the review standards. The terms “minimum necessary to afford relief” is inherently a subjective standard that must be considered on a case-by-case basis, taking into account the specifics of a particular request. When considering the minimum necessary to afford relief, things such as the size of the structure, the types of proposed structures, and the placement of the structures in relation to the size, layout and location of the lot or parcel are important considerations. Some examples of requests that would not be the minimum necessary to afford relief could include an application for an extremely large structure on a given lot or parcel, especially when compared to the size of the structures in the adjacent lots. Another example would be a request for a house that would be located outside of the RPA, but with a large attached deck with a pool that would be located within the RPA. In this instance, the sole reason for the exception request relates, not to a use of the property, but to the extent that the applicant wishes to use the property. In this example, consideration of relocation of the house on the lot or resizing the deck and pool are all potential solutions that may result in the property owner achieving their desired use without the need for an exception. Should alternative location, sizing, or orientation options to avoid the need for an exception be available, and the applicant chooses to continue with the exception request, then the finding of “minimum necessary to afford relief” would not be present.

Granting the exception will not confer upon the applicant any special privileges that are denied by this Part IV to other property owners who are subject to its provisions and who are similarly situated.

This finding is intended to make sure that an exception request would not give the applicant something that has been denied to others in similar situations, and gets to the equity, fairness, and arbitrary and capricious aspects of any exception request and decision. For instance, a property owner requests an exception to build a pool in the RPA and neighbors have applied for and been denied a similar request. In this instance, if the exception is approved, a special privilege has been permitted for one neighbor but not the others.

The exception request is in harmony with the purpose and intent of this Part IV and is not of substantial detriment to water quality.

As the purpose of the Regulations is to protect water quality, this is the finding that should focus on the protection of water quality. The appropriate vehicle for determining whether water quality will be adequately protected should a given request be approved, is the Water Quality Impact Assessment (WQIA).

The exception request is not based upon conditions or circumstances that are self-created or self-imposed.

This finding is somewhat related to the first finding, that the request is the minimum to afford relief, however it is different in that this finding focuses more on the actions of the property owner. For instance, if a lot area is 10,000 square feet, and encumbered by the RPA, then a property owner’s desire to place a 7,000 square foot house on the lot would essentially be a self-imposed condition, in that a smaller house would be more suitable for the lot size. In general this finding relates, in most cases, to a property owner’s failure to realize that their property is not suited for their intended use. When the circumstance for the request is “self-created”, the request should be denied by the local body, board or commission.

Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality.

Conditions should be imposed to ensure, among other things, that water quality is protected, and that the function of the undisturbed RPA remains. Conditions should be based, in part, upon the findings of the WQIA, as well as the specific situation of the lot or parcel on which the exception request was permitted. In addition to possible stormwater management BMP requirements to help compensate for the loss of the pollutant removal aspect of the RPA, a locality should investigate opportunities to require additional vegetative plantings elsewhere on the lot or parcel, to boost the functions of the undisturbed RPA. Also, a locality could require additional vegetation to be installed in the remaining portion of the RPA (including the buffer component).

Process for Reviewing Exceptions

Exceptions to the Regulations, particularly those related to requests for uses and development within RPAs, should be considered in those situations where the property owner can show that the property was acquired in good faith and where, by reasons of the exceptional narrowness, shallowness, size or shape of the property, or where by reasons of exceptional topographic conditions or other extraordinary conditions associated with the owner's property or of immediately adjacent properties, the strict application of the requirements would prohibit or unreasonably restrict the use of the property.

The need for exceptions should be identified as early in the development review process as is possible. This will allow a project to proceed through the review, approval, and construction phases with a minimum of delays, saving both the locality and the applicant time and money. For example, while seeking a building permit to construct a home with a deck that encroaches into the RPA, the applicant states that he intends, in the future, to add a detached garage. Even though the building permit submission only addresses the construction of the primary structure and its deck, the applicant should be encouraged to incorporate the detached garage into the exception request in order to save the time, money, and debate associated with filing a separate exception request when the garage is desired. In this case, the discussion and analysis used in considering the exception for the potential garage may have a direct bearing on the location of the proposed deck, especially if the garage would not be accommodated as an accessory structure, but would be allowed if it were attached to the principal structure.

The exception-granting body is permitted to require reasonable and appropriate conditions in granting the exception request. Examples of reasonable and appropriate conditions that could be considered include re-vegetation to compensate for buffer encroachment or establishment of a buffer where one did not previously exist, requiring the use of porous pavement or other water permeable materials, and requiring the use of level spreaders and dry wells to increase stormwater infiltration. Other measures should also be considered, depending upon the circumstances of each case.

Other forms of regulatory relief should be considered before an exception is pursued. Variances from the side and/or front yard setbacks may be able to accommodate the proposed development and negate the need for the exception. For example, a front yard setback variance may be more appropriate than granting an encroachment into an RPA, depending upon the individual circumstances of the case.

Local Exception Review Body Options

There are several options for fulfilling the requirement of 9 VAC 10-20-150 C 2 a, which states that an exception may be considered and acted upon only by the local legislative body; the local planning commission; or a special committee, board or commission. For those localities that incorporate the Regulations into their local Zoning Ordinances, Chesapeake Bay Preservation Act program exceptions may be considered by the Board of Zoning Appeals in the same manner as a variance request; or, as allowed for under 9 VAC 10-20-150 C 2 b, they may be referred to a special board or commission which has been delegated the authority to act on exceptions. For those localities that enact their local Bay Program provisions through a separate, stand-alone ordinance or through multiple provisions throughout their code, exceptions may be acted upon by the governing body, the planning commission, or a special committee, board, or commission that is given that specific authority. A few localities use a special board. Localities may also use a special board or planning commission to consider the exception request as part of the plan of development review process.

Appeals of decisions related to exceptions granted by the Board of Zoning Appeals should be administered similarly to other appeals related to variance decisions. Where the exception authority is delegated to some other body (i.e., a special Chesapeake Bay Board or the local Planning Commission, for example), the appeal process may involve the local governing body, the Board of Zoning Appeals (if the local Chesapeake Bay Preservation Ordinance is contained within the Zoning Ordinance), or some other body appointed by the Board of Supervisors or Council. The decision as to how to best accommodate the review, action, and appeal of exceptions is truly dependent upon the unique circumstances of each locality, however, a 2008 revision to the Act requires a minimum 30 day period for an appeal when the appeal process is codified in a local ordinance.

Local governments should recognize that the body designated to consider exception requests might need to be trained in the particular requirements of the local Chesapeake Bay preservation ordinance. The DCBLA staff is available to assist in this effort. Additionally, careful consideration should be given to the makeup of any special board or commission created to consider exception requests. A balanced membership could include individuals with land use planning experience, engineers, real estate professionals, attorneys, and related professions along with citizen representation.

Exception Tracking

Localities should design and implement a tracking system for exceptions. The applicant's name, the property address, the tax parcel number, the case number, and a general statement of the type of request should be catalogued so that the locality and the Department can quickly analyze the location of requested encroachments, their disposition, and the types of development activities that are being reviewed. This tracking system can also be used to monitor "serial exceptions." These are properties that have a series of exception requests (i.e., a request for an encroachment for a deck or patio, then a separate request for an accessory building, etc.). The Department discourages "serial exceptions" because the criteria for granting an exception are based on the minimum necessary to provide for use of the property, not convenience or desire for a particular level of development.

Resource Protection Area (RPA) Exception Requests

The requirements for consideration of an exception to the Development Criteria for Resource Protection Areas (9 VAC 10-20-130) require public notice, public hearing by a committee, board, commission or special body, and the review of the request according to very specific criteria resulting in findings.

The public must be notified of the hearing at which the exception will be considered as required by §15.2-2204 of the Code of Virginia, except that only one hearing is required and first-class mail may be used in notifying qualifying adjacent property owners. The exception may only be granted by the local legislative body, the local Planning Commission or such other board or commission established specifically for the purpose of reviewing and approving exceptions to the locally-adopted Chesapeake Bay Preservation Ordinance. For example, an exception application requesting permission to construct a detached garage within the landward 50' of the RPA buffer on a lot recorded after the date of the local program adoption could not be handled administratively, but rather must be heard by the body charged with granting exceptions. The case could only be heard after the required public notice and during the required public hearing.

Granting the exception must be based on the findings outlined in subdivision a-f of 9 VAC 10-20-150 C (these are listed previously). The findings must be made in writing and a record of (DCR-CBLAB-017) (06/09)

the hearing maintained. In deciding the matter, the board must consider a Water Quality Impact Assessment and may impose reasonable conditions upon the applicant. These conditions could include buffer restoration requirements, types of materials that may be used in the construction, maximum size of the structure, and the exact location of the structure. Other conditions may be warranted and will vary from case to case.

Exceptions for General Performance Criteria

Exceptions to the General Performance Criteria (9 VAC 10-20-120) may be granted through an administrative review process provided that the same findings required for use or development exceptions in RPAs are made in writing. As these exception requests are not likely to have the same potential impact on similarly situated or adjacent property owners, the Regulations do not require that such requests be considered through the public notice and special body hearing process as those requests relating to RPA issues. Exception requests from the full application of the general performance criteria can be diverse in nature. For example, the 100% reserve drainfield requirement may be set aside through an administrative exception process provided that the request is related to the unusual size, shape, or topography of the parcel and the locality requires conditions such as monitoring of the primary septic system to ensure function, or for a pressurized septic system to ensure more efficient use of the drainfield.

Other Exceptions

All other exception requests may be processed administratively but still require the minimal findings that it is the minimum necessary to afford relief and that reasonable and appropriate conditions are imposed, as necessary, so that the purpose and intent of the Act is preserved.

Conclusions:

Based on these factors, the Department provides the following guidance:

- The requirements for consideration of an exception to the Development Criteria for Resource Protection Areas (9 VAC 10-20-130) require public notice, public hearing by a committee, board, commission or special body, and the review of the request according to very specific criteria resulting in findings.
- Exceptions to the General Performance Criteria (9 VAC 10-20-120) may be granted through an administrative review process provided that the same findings required for use or development exceptions in the Resource Protection Area are made in writing.
- Exceptions to the Regulations should be granted in those situations only where the property owner can show that the property was acquired in good faith and where, by reasons of the exceptional narrowness, shallowness, size or shape of the property, or where by reasons of exceptional topographic conditions or other extraordinary conditions associated with the owner's property or of immediately adjacent properties, the strict application of the requirements would prohibit or unreasonably restrict the use of the property in question.

- The Department recognizes that localities may have incorporated the Regulations into their local Zoning Ordinances. In those instances, Chesapeake Bay preservation provision exceptions may be considered by the Board of Zoning Appeals in the same manner as a variance request or they may be referred to a special board or commission to which the authority to review such requests has been delegated.
- Localities must review a Water Quality Impact Assessment (WQIA) prior to acting on an exception involving modification of or encroachment into an RPA.
- The need for exceptions should be identified as early in the development review process as is possible.
- Exceptions are to be the minimum necessary to afford relief.
- Other forms of regulatory relief should be considered before an exception is pursued.
- The exception-granting body is permitted to require reasonable and appropriate conditions in granting the exception request.
- Localities should design and implement a tracking system for exceptions.

Exception Review Process

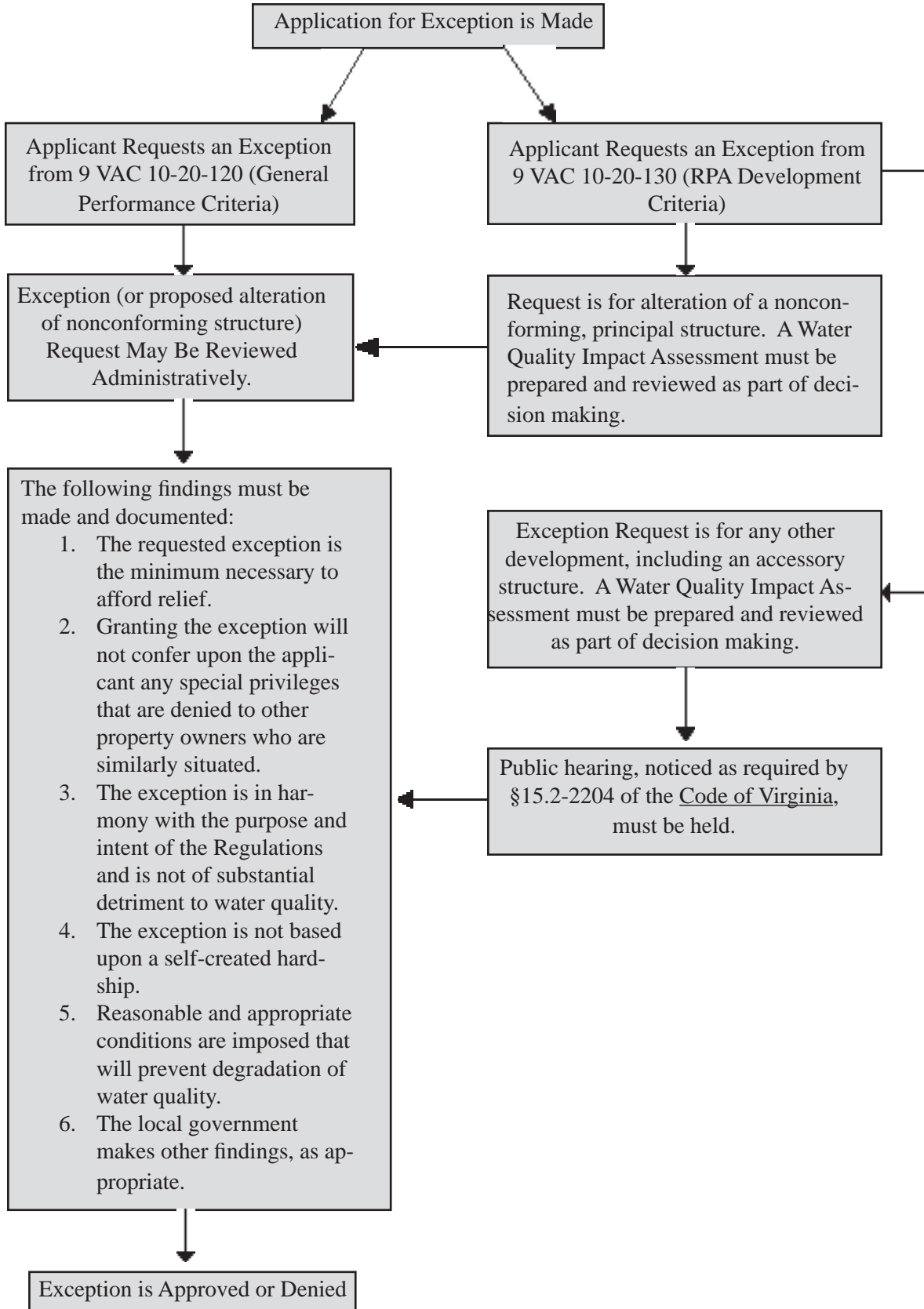


Exhibit C – VA DCR Nonconforming Structures and Uses Guidance Sheet



Nonconforming Structures and Uses

Guidance on the Chesapeake Bay Preservation Area

Designation and Management Regulations

September 16, 2002

Purpose:

This document provides local planners and officials with guidance on administering those sections of the Chesapeake Bay Preservation Area Designation and Management Regulations related to nonconforming structures and uses.

Nonconforming structures and uses (i.e., structures and uses that were legally constructed or established but that no longer meet current legal requirements) are protected under the Chesapeake Bay Act and Regulations. These structures and uses may, in some cases, be expanded provided that the local government reviews the requested expansion or alteration through a standardized process and makes certain findings.

Regulations:

- Section 9 VAC 10-20-150 A 1 permits, but does not require, local governments to allow for the continued use of, but not necessarily the expansion of, any structure or use in existence at the time of the local program adoption. This section also allows local governments to administratively review and approve requests to modify structures on nonconforming lots.
- Sections 9 VAC 10-20-150 A 1 a and b outline the criteria that must be considered when approving such expansions, including (1) that there be no net increase in the nonpoint source pollution load, and (2) that any land disturbance exceeding 2,500 square feet in size complies with erosion and sediment control requirements.
- Section 9 VAC 10-20-150 A 2 permits the reconstruction of a nonconforming structure that is lost to casualty, provided the structure complies with all other local requirements.
- Section 9 VAC 10-20-150 C 4 permits local governments to administratively review and approve exception requests to modify nonconforming **principal** structures, provided that the two criteria identified above are met and the findings required by Sections 9 VAC 10-20-150 C 1a-1f are made. This provision does **not** apply to nonconforming **accessory** structures located within the Resource Protection Area, the expansion of which may only be approved through the complete exception process.

Discussion:

Nonconforming structures and uses enjoy certain rights under general land use practices. Generally, nonconforming structures and uses may continue to be used provided they are not expanded in area or intensity. For purposes of this guidance, the Department relies on the definition of “structure” contained in the Virginia Uniform Statewide Building Code (effective date September 15, 2000), which defines “structures” to be “an assembly of materials forming a construction for occupancy or use.”

In the context of the Act and Regulations, nonconforming structures and uses are most directly related to restrictions placed on land use and development in Resource Protection Areas. The Chesapeake Bay Preservation Area Designation and Management Regulations specifically permit the local government to approve the modification or expansion of these structures and uses, provided that the local government makes certain findings regarding the potential effect of the modification or expansion on water quality. A Water Quality Impact Assessment (WQIA), reviewed before final approval for the development is given, must be an integral part of the approval process.

Nonconforming Structures

An example of a nonconforming structure is a small cottage or vacation-home that was constructed within the area now designated as an RPA, but prior to the adoption of the Act and Regulations and that the owner now wants to expand to accommodate year-round occupancy. The use (a single family dwelling) is not a permitted use within the RPA and is considered nonconforming. Under the Regulations, local governments may administratively review a request to modify such a structure, and may grant the request provided that certain findings are made.

These findings are contained in two separate sections of the Regulations: 9 VAC 10-20-150 A and 9 VAC 10-20-150 C. Section 9 VAC 10-20-150 A requires that there be no net increase in the nonpoint source pollutant load and that any land disturbance or development exceeding 2,500 square feet in area must comply with all erosion and sediment control requirements. Additionally, the findings in Sections 9 VAC 10-20-150 C 1 a-f must be made. These findings are the same findings that must be made for the granting of an exception and include (1) The requested modification is the minimum necessary to afford relief from the Regulations; (2) granting the approval will not confer any special privilege upon the applicant, but instead is based upon unique conditions associated with the parcel; (3) the modification is in harmony with the purpose and intent of the Regulations and is not of substantial detriment to water quality; (4) the modification is not required as a result of a self-created or self-imposed hardship; (5) reasonable and appropriate conditions are imposed as warranted; and, (6) the local government has made other findings, as appropriate.

Modifications to nonconforming accessory structures may also be permitted, but these modifications must be reviewed and approved using the process for considering exceptions to the Regulations. For purposes of this guidance, the DCBLA considers decks, garages, and other customary and incidental structures that are attached to the principle structure to be part of the principal structure. As such, the review and approval of these structures may be done administratively. Detached structures, such as detached garages, gazebos, tool sheds, and similar structures are clearly accessory to the principle use, and modifications or expansions of these structures must be reviewed and approved using the formal exception process. Inground pools, patios, terraces, and other impermeable landings are considered accessory uses of land, not structures, and any modification or expansion to such a use must be reviewed and approved using a formal exception process.

In both cases, every effort should be made to site the modification or expansion so that no further encroachment into the RPA occurs. Where possible, existing areas of impervious cover should be used to site modifications or expansions of nonconforming uses, thereby allowing for increased usable area while not increasing impervious area.

Nonconforming Uses

Uses, too, can be nonconforming with respect to the Act and Regulations. A parking lot serving a long-established marina or waterside restaurant is an example of a use that pre-dates the Act and Regulations and which may need to be modified or expanded under the nonconforming use provisions of the local ordinance. Because the modification or expansion of such uses typically results in significant land disturbance, all modifications or expansions to nonconforming uses of land must be reviewed and approved using the formal exception process. Changes in use from one nonconforming use to another nonconforming use may require a formal exception, depending upon whether land disturbing or other development activities will take place.

Conclusions:

- All development activity, including additions to nonconforming structures, within a Resource Protection Area (RPA) must be reviewed and approved by the local government.
- Development activity, not specifically permitted elsewhere in the Regulations, may be permitted within the RPA either through the approval of an administrative waiver or when approved through a formal exception process.
- Local governments may administratively approve the modification or expansion of a nonconforming **principal** structure. The findings outlined in 9 VAC 10-20-150 1 a-f must be made.
- Local governments must use the exception process contained within the local ordinance to approve all other modifications to nonconforming structures and uses.
- The Division of Chesapeake Bay Local Assistance recognizes a difference between nonconforming **uses** and nonconforming **structures**. Nonconforming uses could possibly exist within the Resource Protection Area buffer that do not require any structures (e.g., active recreation fields, boat storage, etc.). Consideration of requests to expand such uses must be through the full exception process – including a public hearing. Such uses will, most likely, require significant land disturbance or buffer destruction and these potential effects warrant a public hearing and public participation in the decision-making process.
- Decks and garages that are attached to the principal structure may be considered a part of the principle structure. Pools, patios, tennis courts and other impermeable surfaces do not permit infiltration to groundwater and are to be considered accessory uses of land. They are not to be considered structures and their expansion may not be processed administratively.
- Expansions to nonconforming **accessory** structures may not be processed through an administrative waiver process and must be reviewed through an exception process involving public notice and a public hearing. Accessory structures include, but are not limited to, detached garages, gazebos, storage buildings, guest houses, and similar forms of development that are customarily incidental and subordinate to the principle structure.
- The Division of Chesapeake Bay Local Assistance recommends that additions to nonconforming structures, either principle or accessory, not be allowed to encroach further into the RPA than does the existing structure and that, to the extent possible, additions should be within an area of existing impervious cover. In keeping with the General Performance

Criteria, any encroachment permitted must be the minimize impervious area, minimize land disturbance, and maintain indigenous vegetation to the extent practicable. Encroachments into the seaward 50' of the RPA buffer are discouraged.

- A Water Quality Impact Assessment (WQIA) must accompany any request to expand a nonconforming structure or use, and the WQIA must be reviewed and approved **prior** to the issuance of any permits for development activity within the RPA. Accessory structures may require only a minor WQIA, and allowances should be made in the local ordinance for such instances.
- Additions to structures that have previously received exceptions are discouraged. All required encroachments should be identified and addressed in one action, if at all possible.

BZA Rules and Procedures – Proposed Amendment

REVIEWED: July 13 & August 10, 2021
ADOPTED: December 14, 2021
AMENDED: ~~January 9, 2024~~

TOWN OF CAPE CHARLES BOARD OF ZONING APPEALS RULES OF PROCEDURE

ARTICLE I OBJECTIVES

1-1 The Cape Charles Board of Zoning Appeals, hereinafter called “Board” or “BZA”, established pursuant to Cape Charles **Town Code, Chapter 32, Section 32-40** and Code of Virginia §15.2-2308, as amended, has adopted these rules of procedure in order to properly exercise its powers and fulfill its duties in accordance with the Cape Charles Zoning Ordinance and the Code of Virginia §15.2-2309, as amended.

ARTICLE II MEETINGS

2-1 *Annual meeting.* The meeting in January of each year shall be known as the annual meeting. At the annual meeting, the BZA shall establish the day, time, and place for regular meetings of the BZA for that year, and shall elect the Chair, Vice-Chair, and Secretary.

2-2 *Regular meetings.* A regular meeting of the Board of Zoning Appeals for the hearing of cases shall be held on the 2nd Tuesday of each month, starting at **9:00 a.m.**, at the Cape Charles Civic Center located at 500 Tazewell Avenue, unless no cases or other matters are pending – in which instance, no meeting shall be held. If the Chair, or Vice-Chair in his or her absence, finds and declares that the weather or other conditions are such that it is hazardous for members to attend the meeting, the meeting shall be continued until the 3rd Tuesday of that month. All matters properly advertised to be heard at such meeting shall be conducted at the next available meeting after fulfilling the advertising requirements for each public hearing. Notice of all meetings must be in accordance with Code of Virginia §2.2-3707 (C), posted at least three (3) working days prior to the meeting and be posted in the Cape Charles Town Offices and the town website.

2-3 *Special Meetings.* Special meetings may be called by the Chairman, provided that at least three days’ notice under the circumstances of such meeting is given to each member and notice is contemporaneously provided to the public when the members of the public body are notified. Notice of all meetings must be in accordance with Code of Virginia §2.2-3707 (C) and be posted in the Cape Charles Town Offices and the town website.

2-4 *Quorum.* The Board of Zoning Appeals has five members who are appointed by the Northampton County Circuit Court judge each for a term of five years, pursuant to Cape Charles **Town Code Chapter 32, Section 32-40**. A quorum shall consist of a majority of the members of the Board, which is deemed to be three members. If less than a majority of the members are present, no action can be taken, and the meeting shall be adjourned.

2-5 *Conduct.* The conduct of business at all regular meetings of the Board shall follow these Rules of Procedure and hereby embrace Robert’s Rules of Order for Small Organizations to specify rules of order as the procedural determinant in cases where both the Code of

Virginia, as amended, and these Rules of Procedure are silent. Robert’s Rules of Order for Small Organizations are less formal.

- 2-6 *Adjournment.* The Board may adjourn a regular meeting once all applications or appeals are duly disposed of and the Chair has called for a motion to adjourn.
- 2-7 *Postpone/Continuance.* If all applications or appeals cannot be properly disposed of on the date set, the meeting shall be postponed/continued to a date set and announced by the BZA. No further public notice shall be necessary for a postponement/continuation of such meeting.

ARTICLE III
OFFICERS

- 3-1 *Chair.* At its annual meeting, the BZA shall elect a Chair who if present, shall preside at all meetings and hearings of the Board; he or she shall decide all points of order or procedure and shall appoint any committees that are found to be necessary. On any application or appeal, the Chair may administer oaths and compel the attendance of witnesses.
- 3-2 *Vice-Chair.* At its annual meeting, the BZA shall elect a Vice-Chair who, if present, shall assume the duties of the Chair in his or her absence or disability.
- 3-3 *Secretary.* At its annual meeting, the BZA shall elect a Secretary. The Secretary, who need not be a member of the Board pursuant to Code of Virginia §15.2-2308 (C), shall handle all official correspondence necessary for the execution of the duties and functions of the BZA. The Secretary shall keep the minutes of the Board’s proceedings, shall keep a file on each case which comes before the Board, and perform other such duties as these rules may provide and the BZA may, from time to time, assign.

The Secretary of the Board shall notify the court at least thirty (30) days in advance of the expiration of any term of office and shall also notify the court promptly if any vacancy occurs, pursuant to Code of Virginia §15.2-2308 (A) and Cape Charles **Town Code Chapter 32, Section 32-40.**

- 3-4 *Term of Office.* The Chair and Vice-Chair shall be elected for one-year terms and shall serve until their respective successors take office. Either or both officers may be elected to one or more successive terms.
- 3-5 *Vacancies in Office.* Vacancies in office shall be filled as soon as practicable using the election procedures as set forth in this Article.
- 3-6 *Absence of Chair and Vice-Chair.* In the event that the Chair and Vice-Chair are both absent from any meeting, a member present shall be chosen to act as Chair.
- 3-7 Technical assistance may be provided by Town staff as needed.

ARTICLE IV
ORDER OF BUSINESS

- 4-1 *Agenda.* The agenda for each regular meeting will be established by the Secretary; the Secretary shall consult with the Chair when determining the order of cases to be heard.

- 4-2 *Organization of the Agenda.* The agenda for each regular meeting shall substantially follow the order listed below unless a change is requested by the Chair and approved by consent of the Board.
 - A) Call to order
 - 1. Members Present and Absent
 - 2. Determination of a Quorum
 - B) Invocation and Pledge of Allegiance
 - C) Adoption of Agenda
 - D) Minutes - review and approve minutes of previous meeting(s)
 - E) Old Business/Matters Deferred from Previous Meetings
 - F) New Business – Scheduled Hearings
 - 1. Special Exceptions to the Chesapeake Bay Preservation Action aka Special Use Permits
 - 2. Variances
 - 3. Appeals of Zoning Determinations
 - 4. Interpretations of the District Zoning Map
 - G) Other Matters
 - H) Adjournment

ARTICLE V
QUORUM

5-1 A majority of the five (5) members of the BZA shall constitute a quorum for any regular meeting of the Board, which shall be three (3) members. A majority of the members present at the time and place established for any regular or special meeting shall constitute a quorum for the purpose of adjourning the meeting.

If, during the course of a meeting, less than a majority of the membership of the BZA remains present, no action may be taken except to adjourn the meeting. If, prior to adjournment, a quorum is again established, the meeting shall continue.

ARTICLE VI
APPLICATIONS TO THE BZA

6-1 The BZA shall establish, and make publicly available, a deadline for receipt of completed applications.

6-2 *Appeals.* Appeals to the BZA may be taken by any person aggrieved or by any office, department, board or bureau of the Town or municipality affected, by any decision of the Zoning Administrator pursuant to Cape Charles Zoning Ordinance Section 2.6.2 (A) and the VA Code §15.2-2311. Such an appeal shall be taken within 30 days after the decision appealed from by filing with the zoning administrator and with the board, a notice of appeal specifying the grounds thereof.

An application for appeal, filed according to this procedure utilizing any forms promulgated by the Town for applications for appeals, shall be given a case number within five (5) working days. Applications for appeals will be assigned for hearing in the order in which they are received. The appeal shall be heard based upon the

established calendar for receipt of completed applications and the proposed BZA meeting hearing date and in compliance with all advertising and public notifications as prescribed in VA Code §15.2-2204.

The hearing will be conducted in accordance with the prescribed Procedure for Hearing Cases in Article VII below.

The BZA’s decision on any appeal shall be based on the Board’s judgment of whether the administrative officer was correct (VA Code §15.2-2309). Said decision will be issued within sixty (60) days of the hearing. In exercising its powers, the Board may reverse or affirm, wholly or partly, or may modify any order, requirement, decision, or determination appealed from.

- 6-3 ~~Special Exceptions~~/**Special Use Permits**. Applications for special exceptions/~~special use permits~~ may be made by any person, property owner, tenant, governmental official, department, board, or bureau. Such applications shall be made to the zoning administrator in accordance with department policy and on forms prescribed by the department. Completed Applications for Special Exceptions/**Special Use Permits** will be assigned for hearing in the order in which they are received.

The special exceptions/**special use permits** application shall be heard based upon the established calendar for receipt of completed applications and the proposed BZA meeting hearing date and in compliance with all advertising and public notifications as prescribed in VA Code §15.2-2204.

The BZA shall issue a decision within a reasonable timeframe of the closing of the **hearing, pursuant to Cape Charles Zoning Ordinance Section 2.6.3**

- 6-4 *Variances*. Applications for variances may be made by any person, property owner, tenant, governmental official, department, board, or bureau. Such applications shall be made to the zoning administrator in accordance with department policy and on forms prescribed by the department. Completed Applications for Variances will be assigned for hearing in the order in which they are received.

The variance application shall be heard based upon the established calendar for receipt of completed applications and the proposed BZA meeting hearing date and in compliance with all advertising and public notifications as prescribed in VA Code §15.2-2204.

The BZA shall issue a decision within a reasonable timeframe of the closing of the hearing, pursuant to ~~Cape Charles Zoning Ordinance Section 2.6.3~~ and VA Code §15.2-2309 (2), as amended.

ARTICLE VII PROCEDURE FOR HEARING CASES

- 7-1 Cases shall be heard in the order in which they appear on the agenda, except a case may be advanced for hearing by order of the Board upon good cause shown.
- 7-2 At the hearing, the order shall be as follows:
 - a. Presentation of case and explanation and/or report by Zoning Administrator or his/her designee.
 - b. Open public hearing, announce that each person speaking during the public hearing will need to state their name & address and will be sworn in by the Chairman to provide testimony during the public hearing.

- i. Statement of Applicant or his representative; the applicant may make a presentation which is limited to ten (10) minutes unless additional time is granted by the Chair. If the applicant wishes to present a PowerPoint presentation, it must be provided to staff at least twenty-four (24) hours in advance for review for appropriateness.
- ii. Statements of other persons in favor. All comments are limited to three (3) minutes. The Secretary will state if any correspondence has been received in support of the application and will enter it into the record.
- iii. Statements by persons in opposition of the application. All comments are limited to three (3) minutes. The Secretary will state if any correspondence has been received in opposition of the application and will enter it into the record.
- iv. Applicant's rebuttal, limited to five (5) minutes, unless additional time is granted by the Chair.
- v. The Chair opens the floor to the members of the BZA to ask any questions of the applicant and/or their representative and to Town staff to clarify items raised during the hearing.
- vi. The Chair will close the public hearing.
- vii. The Chair will call for the Board to consider the case and to call for motions. If the Board decides that it is not sufficiently informed, it may continue the case and may request further information.
- viii. The final disposition of any appeal shall be in the form of a motion sustaining, reversing, varying, or modifying the order, requirement or determination appealed from.

The final disposition of an application for a variance or special exception/special use permit shall be in the form of a motion approving, approving with conditions, modifying, or denying the application. Said motion shall refer specifically to the applicable provision in the Town Zoning Ordinance and shall set forth facts and finding in the case on which the decision is based, which shall be consistent with the requirements of the law.

If a motion fails to receive a second, the motion has died, and the application or appeal will be carried over for another motion until a final disposition is reached. The vote of each member present on each motion shall be recorded with the motion.

- c. *General Conduct by all participants at the public hearing.* All persons addressing the Board of Zoning Appeals will stand behind the lectern, state their name and address and affirm by oath that they are providing truthful testimony for the matter at hand. No person shall use inappropriate language or verbally attack any BZA member or any member of the public or the Town staff. Signs and placards are not allowed inside the meeting room. Any person whose behavior is disruptive shall be asked by the Chair to leave the meeting room. Persons may not question individual BZA members or staff members without the consent of the Chair. Comments must be limited to the public hearing matter at hand. Public Comments will adhere to the "Guidelines for Citizen Participation" adopted by Town Council on 7/19/2021 and attached as Appendix A.
- d. No member present shall abstain from voting unless such member has a conflict of interest in the matter being voted upon. A "conflict of interest" shall exist when there is an actual conflict: 1) pursuant to the Virginia State and Local Government Conflict of Interests Act (§ 2.2-3100 et. seq. of the Code of Virginia, or 2) pursuant to Town of Cape Charles Code of Ethics & Meeting Rules of Order, adopted by Town Council on July 22, 2021, and which is affixed as Appendix B to these Rules of Procedure or 3) as stated by the Board member unless objected

to by a majority vote of the members of the Board with such member asserting such conflict of interest not permitted to vote on such matter.

ARTICLE VIII
REHEARING/RECONSIDERATION OF A VOTE

- 8-1 No rehearing/reconsideration of any decision by the Board shall be had except on motion by a member of the Board who previously voted on the prevailing side of the decision, which shall be made not later than the first regular meeting succeeding the meeting at which the motion was acted on; such motion shall be to reconsider the vote and shall be carried by not less than three affirmative votes.
- 8-2 No motion for a rehearing/reconsideration shall be entertained unless new evidence is submitted, which could not reasonably have been presented at the original hearing. In all cases, the request for rehearing shall be in writing, reciting the reasons for the request, and shall be accompanied by the necessary information, including a recitation of all evidence, which could not reasonably have been presented at the original hearing.
- 8-3 If a rehearing/reconsideration is granted, the case shall be put on the agenda for a rehearing/reconsideration after complying with all notice requirements.

ARTICLE IX
VOTING PROCEDURES

- 9-1 Each decision by the BZA shall be made by approval of a majority of the members present and voting on a motion properly made by a member and properly seconded by any other member. Any motion not properly seconded shall not be further considered.

ARTICLE X
ANNUAL REPORT

- 10-1 The board shall keep a full public record of its proceedings and shall submit a report of its activities to the governing body or bodies at least once each year, pursuant to the Code of Virginia §15.2-2308 (C).

ARTICLE XI
SUSPENSION OF RULES

- 11-1 These rules may be suspended in whole or in part, only upon the unanimous vote of the entire Board.

ARTICLE XII
AMENDMENTS

- 12-1 These rules may be amended or modified by an affirmative vote of four members of the Board.

ATTACHMENT A

STANDARDS/CRITERIA FOR REVIEW OF EACH TYPE OF APPLICATION

VARIANCES

Pursuant to the Code of Virginia §15.2-2309 (2), variance applications shall be evaluated and reviewed based upon the following criteria:

- (a) Does the evidence show that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance?;
- (b) Was the property interest for which the variance is being requested acquired in good faith and any hardship was not created by the applicant for the variance?;
- (c) Will the granting of the variance not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area?;
- (d) Is the condition or situation of the property concerned not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance?;
- (e) Does the granting of the variance result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property?;
- (f) Is the relief or remedy sought by the variance application not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A 4 of § 15.2-2286 at the time of the filing of the variance application?

~~SPECIAL USE PERMITS/SPECIAL EXCEPTIONS – Town Zoning Ordinance § 2.6.2 (F)~~

- ~~(a) Hear and decide applications for special exceptions as may be authorized in the ordinance & may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee to ensure that the conditions imposed are being will continue to be complied with.~~

EXCEPTIONS TO THE CHESAPEAKE BAY PRESERVATION ACT OVERLAY – Town Code Section 32-194 (Exceptions)

- A) A request for an exception to the requirements of 32-186 and 32-189 (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 the RPA through the performance of a water quality impact assessment that complies with the provisions of Section 32-190 (Water Quality Impact Assessment).
- 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 this 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 conditionals are imposed, which will prevent the exception request from causing a degradation of water quality.

APPEAL OF ADMINISTRATIVE OFFICER DETERMINATION

Pursuant to the Code of Virginia §15.2-2309 (1), appeals of administrative officer determinations shall be based on the board's judgment of whether the administrative officer was correct. The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The board shall consider any applicable ordinances, laws, and regulations in making its decision. For the purposes of this section, determination means any order, requirement, decision, or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special.

BZA Bylaws – Appendix A

APPENDIX A

Town of Cape Charles Guidelines for Citizen Participation

Town Council meetings are open to the public, except when the Council invokes the provisions of the Virginia Freedom of Information Act to discuss an authorized topic under a closed (Executive) session. A period of Public Comment shall be provided as part of the Agenda for the Council's regular monthly meetings. The Public Comment period is an obligation of the Council to provide members of the public an opportunity to address the Council on legitimate matters of town business. This period shall be governed by the following provisions:

Eligibility

Only those citizens with standing in the Town of Cape Charles will be provided the opportunity to provide input during the Public Comment period. Citizens with standing include full-time residents, property owners, and business owners within the corporate boundaries of the Town of Cape Charles. State, federal, and county officials representing/serving the Town of Cape Charles are also eligible. When eligibility is called into question, input may be provided upon affirmative vote of the Council.

Registering

Persons having an interest in making in-person comments to the Town Council during the Public Comment period must register on a sign-up sheet, including their name and basis for standing, indicating the item or topic on which they wish to speak. The sign-in sheet is available at the main entrance to the Council meeting and must be completed prior to the start of the meeting. The Mayor will recognize speakers at the appropriate time.

Persons having an interest in providing written comments to the Town Council during the Public Comment period must provide such comments to the Town Clerk no later than 60 minutes prior to the start of the meeting. Written comments must include a full name, basis for standing, and the agenda item or topic on which they wish to comment. The Clerk will read authorized comments into the record following all in-person speakers during the Public Comment period.

Members of Council are not permitted to sign-up and make comment during the Public Comment period unless an agenda item being considered has a direct impact upon the Council member or his/her interests, they have declared a potential conflict of interest, and the remaining Council members have voted to excuse that Council member from official action on the related item.

Regulations:

Cell Phone and Recordings

- Ringers on cell phones or pagers shall be turned off during the time that persons are at a Town Council meeting.
- The taking of photographs and video or audio recordings of a speaker or the activities during a meeting of Town Council shall be no closer than the front row of seating or other location designated by the Mayor or presiding officer to avoid disruption to the meeting and to promote public safety. The photographer or recorder shall take steps to avoid obstructing the aisles or other areas for any length of time in such a manner as to prevent other citizens from taking photographs, or to block the view of other citizens attending the meeting. No flashes or lighting devices may be used by photographers or operators of video recording equipment.

Speaking

When a speaker is called by the Mayor or presiding officer, the following is required:

- Speakers shall speak into the microphone to ensure that their name and remarks are heard and recorded as a part of the record of the meeting.
- Speakers shall state their full name and basis for standing and topic to which they are speaking.
- If a speaker represents a group or organization, the speaker shall indicate the name of the organization and the speaker's relationship to the group or organization. Speakers may ask others from their group or organization to stand at their seats to be recognized while the group's or organization's name is announced, but non-speakers or individual members are not permitted to stand with the speaker at the podium and for safety reasons, no members of the group or organization are permitted to stand in the aisles or doorways at Town Council meetings. Those members of a group or organization who do stand when the name of the group or organization is announced shall then be seated.
- Speakers shall address remarks to the Mayor and members of Council and not to the audience.
- Speakers shall state their position, give the facts to substantiate their position, and relate the concerns they believe the Town Council should consider.
- Speaker's comments will be made part of the record and a written copy should be delivered to the Town Clerk for inclusion. If other supportive material is available, it should also be delivered to the Town Clerk for the record.
- Speakers shall refrain from campaigning for public office, personal attacks upon members of the Town Council, Town employees or officials, or any other person.
- Speakers shall refrain from words or statements which, from their usual construction and common acceptance, are construed as insults or which have a tendency to cause an act of violence or a breach of the peace.
- Speakers shall refrain from abusive language, obscenity, vulgarity, and profanely cursing or swearing.
- Speakers shall refrain from actions that would interrupt the public meeting.
- All comments must come directly from the speaker.

Time limitations for remarks

- In-person speakers shall confine their remarks to no more than three (3) minutes. Speakers will be advised when their three (3) minutes have concluded.
- Persons providing written input must limit their comments to no more than can be read by the Town Clerk within three (3) minutes. Written comments provided beyond what can be read during the allotted time will not be entered into the record.
- Speakers cannot "yield," "transfer" or "designate" their time to another speaker in an effort to provide another speaker more than the allotted three (3) minutes.
- The Mayor or other presiding officer shall have the right to limit redundant remarks, as well as the overall time provided for remarks based on consideration of the time available and the need to complete the meeting efficiently.
- After a speaker has concluded his or her remarks, the speaker shall be seated.

Decorum and order

- For safety reasons, petitioning, picketing, displaying signs or posters, solicitation, demonstrating, pamphlet distribution, conducting polls, and blocking of the entryway shall not be permitted at a Town Council meeting or within one hundred (100) feet of any doorway to the meeting location.
- These guidelines do not preclude speakers, when addressing the Town Council, from delivering to the Council members by way of the Town Clerk written materials including reports, statements, exhibits, letters, or signed petitions. Nor do these guidelines preclude those addressing the Town Council from using a chart or graph during their remarks.
- Speakers and members of the audience shall be respectful of others, even if they do not agree with others' comments.
- The Mayor or other presiding officer shall preserve decorum and shall decide all questions of public order.
- At the request of the Mayor or Town Manager, one or more persons, including Town police officers shall act as sergeant-at-arms or sergeants-at-arms at all Town Council meetings. The sergeant-at-arms or sergeants-at-arms shall, under the direction of the Mayor or other presiding officer, have charge of the Council meeting location, and shall prevent disorder or interruption of the business of Town Council.
- Applause shall be permitted only during awards and presentations. Flash photography will be permitted at this time.
- Violation of these rules by speakers or members of the audience shall enable the Mayor or other presiding officer to rule the speaker or member of the audience out of order and by directive to have the speaker or member of the audience removed from the meeting, if necessary, and to take such other steps the Mayor or other presiding officer deems appropriate. The Mayor's or other presiding officer's decision to remove or rule a speaker or member of the audience out of order shall be final. One (1) warning will be given and if not heeded, the speaker or member(s) of the audience shall be escorted from the meeting.
- Any citizen is welcome to address their concerns informally with the Mayor, Town Council or Town Manager at any time outside of a Town Council meeting.

Town Council Response

Council members or Town employees shall not respond to questions posed nor address or rebut speaker's statements made during the Public Comment period. The Council, at its discretion, may direct matters raised during the Public Comment period be placed on the Agenda of a future meeting.

The Town Council hopes these Guidelines will encourage the greatest possible participation by citizens in the Town Government.

Applicability

While these guidelines reference the Town Council specifically, they shall also apply to all Town boards, commissions, and committees as appropriate.

Thank you for your interest and participation in your Town Council meeting. The Mayor and Town Council invite and encourage you to attend whenever possible because good, responsive government depends on the interest and involvement of all citizens.

BZA Bylaws – Appendix B



APPENDIX B Town of Cape Charles Code of Ethics & Meeting Rules of Order

Adopted July 22, 2021

Preamble

The citizens and businesses of the Town of Cape Charles, Virginia, are entitled to have fair, ethical and accountable local government, which has earned the public's full confidence for integrity. The effective functioning of representative government requires that public officials, both elected and appointed, comply with both the letter and spirit of the laws and policies affecting the operations of government; that public officials be independent, impartial, and fair in their judgment and actions; that public office be used for the public good, not for personal gain; and that public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, the Town of Cape Charles Town Council has adopted this Code of Ethics and Rules of Order for members of the Town Council and of the Town's boards, commissions, and committees to assure public confidence in the integrity of local government and its effective and fair operations.

Code of Ethics

1. Act in the Public Interest

Recognizing that stewardship of the public interest must be their primary concern, members will work for the common good of the people of the Town of Cape Charles and not for any private or personal interest, and they will assure fair and equitable treatment of all persons, claims, and transactions coming before the Town of Cape Charles Town Council, boards, commissions, and committees.

2. Comply with the Law

Members shall comply with the laws of the nation, the Commonwealth of Virginia, and the Town of Cape Charles in the performance of their public duties. These laws include but are not limited to the United States and Virginia Constitutions; the Charter of the Town of Cape Charles; laws pertaining to conflicts of interest, election campaigns, employer responsibilities, open processes of government; and Town ordinances and policies.

3. Conduct of Members

The professional and personal conduct of members must be above reproach and avoid even the appearance of impropriety. Members shall refrain from abusive conduct or language, personal charges or verbal attacks upon the character or motives of other members of the Town Council, boards, commissions, committees, the staff, or the public.

4. Respect for Process

Members shall perform their duties in accordance with the processes and Rules of Order established by the Town Council; they shall respect the deliberation of public policy issues of other bodies, the meaningful involvement of the public, and the Town staff's implementation of policy decisions of the Town Council.

5. Conduct of Public Meetings

Members shall prepare themselves for public business; listen courteously and attentively to all public discussions before the body; and focus on the issues at hand. They shall refrain from interrupting other speakers; making personal comments not germane to the business of the body; or otherwise interfering with the orderly conduct of meetings.

6. Decisions Based on Merit

Members shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations.

7. Communication

Members shall publicly share substantive information that is relevant to a matter under consideration by the Town Council or boards, committees, and commissions, which they may have received from sources outside of the public decision-making process.

8. Gifts and Favors

A member should never accept for himself or herself or for family members, gifts, favors, or benefits under circumstances which might be construed by reasonable persons as influencing the performance of governmental duties.

9. Confidential Information

Members shall respect the confidentiality of information concerning the property, personnel, or affairs of the Town. They shall neither disclose confidential information without proper legal authorization, nor use such information to advance their personal, financial, or other private interests.

10. Use of Public Resources

Members shall not use public resources that are not available to the public in general, such as Town staff time, equipment, supplies, or facilities, for private gain or personal purposes.

11. Advocacy

Members shall represent the official policies or positions of the Town Council, boards, commissions, or committees to the best of their ability when designated as delegates for this purpose. When representing their individual opinions and positions in any venue, members shall explicitly state they do not represent their body of Town of Cape Charles, nor will they allow the inference that they do.

12. Policy Role of Members

The Town Council determines the policies of the Town with the advice, information, and analysis provided by the public boards, commissions, committees, and Town staff. The Town Council delegates authority for the administration of the Town to the Town Manager.

Members, therefore, shall not interfere with the administrative functions of the Town or the professional duties of Town staff, nor shall they impair the ability of staff to implement Town Council policy decisions. Inquiries to staff shall be made through the Town Manager or the appropriate department manager or director as authorized by the Town Manager.

13. Independence of Town Council and Commissions

Because of the value of the independent advice of boards, committees, and commissions to the public decision-making process, members of the Town Council shall refrain from using their positions to unduly influence the deliberations or outcomes of board, committee, or commission proceedings.

14. Positive Workplace Environment

Members shall support the maintenance of a positive and constructive workplace environment for Town employees, citizens, and businesses dealing with the Town. Members shall recognize their special role in dealings with Town employees and in no way create the perception of inappropriate direction to staff. All requests for staff resources must be approved by the Town Manager.

15. Implementation

Ethical standards shall be included in the regular orientations for candidates for the Town Council, applicants to boards, committees, commissions, and newly elected and appointed officials. Members entering office shall sign a statement affirming they have read and understood the Town of Cape Charles Code of Ethics and Rules of Order. In addition, the Town Council, boards, committees, and commissions, shall annually review the Code of Ethics and Rules of Order, and the Town Council shall consider recommendations from boards, committees, and commissions to update it as necessary.

16. Compliance and Enforcement

The Town of Cape Charles Code of Ethics expresses standards of ethical conduct expected of Members of the Town of Cape Charles Town Council, boards, committees, and commissions. Members themselves have the primary responsibility to assure that ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of government.

The chairs of boards, committees, and commissions and the Mayor of the Town of Cape Charles have the additional responsibility to intervene when actions of Members that appear to be in violation of the Code of Ethics are brought to their attention.

A violation of this Code of Ethics shall not be considered a basis for challenging the validity of a Town Council, board, committee, or commission decision. However, it may be considered when the Town Council is determining the suitability of any person to serve in any appointed position.

Conflict of Interest

In order to assure their independence and impartiality on behalf of the common good, members shall not use their official positions to influence government decisions in which they have a material financial interest and shall disclose any substantial organizational responsibility or personal business relationship to the parties in any matter coming before them. In accordance with the law, members shall disclose investments, interests in real property, sources of income, and gifts; and they shall abstain from participating in deliberations and decision-making where conflicts are determined to exist. This paragraph is not intended to unduly restrict members who have minor business or professional dealings with clients whose matter comes before them.

1. Abstention

As elected or appointed officials, members have a duty/obligation to represent their constituents in all public matters coming before their body. It is not appropriate for individual members to decide in which matters they should abstain. If a member believes they have a conflict of interest on any matter before their body, they are REQUIRED to disclose it before deliberations on that business begins. However, it shall be up to the remaining members of that body to determine if an actual conflict exists and if the member disclosing the potential conflict can be excused from participating in the business. If the body votes to allow the member to recuse him/herself, that member will not participate in any of the discussions or vote related to that business. Failing a vote to allow recusal, the member shall participate as normal.

2. Representation of Third-Party Interests

In keeping with their role as stewards of the public interest, members of the Town Council shall not appear on behalf of the private interests of third parties before the Town Council or any board, committee, commission, or proceeding of the Town; nor shall members of boards, committees, or commissions appear before their own bodies or before the Town Council on behalf of the private interests of third parties on matters related to the areas of service of their bodies. This provision should not unduly restrict a member's participation who is associated with, but not representing, community or non-profit organizations serving the Town, whose matter comes before them.

Meeting Rules of Order

The following rules of order are to serve as a non-binding guide to the conduct of business. It is the duty of the Mayor or other presiding officer to conduct meetings in accordance with the Code of Virginia, the Town Charter, applicable Bylaws, and in a manner intended to promote open, civil, and fair discussion of all issues.

1. Meeting Types

All meetings of the Town of Cape Charles fall under the provisions of the Virginia Freedom of Information Act (FOIA). All members will receive training on VA FOIA requirements upon initial appointment, as well as periodic refreshers. The Town Clerk will ensure FOIA training is completed, and that all records of the training are maintained. This document is not to be considered a substitute for FOIA training and offered only as a summary overview.

The public must be provided notice and access to all Town meetings.

- **Regular Meeting:** Meetings required by Charter or Bylaws to occur on a regular interval to conduct the primary business of the body. These meetings are conducted more formally, with established procedure. The Mayor or presiding officer will enforce these procedures to ensure proper decorum and efficient flow of business. Agendas will include a public comment period on any topic in accordance with public comment procedures established by the Town Council.
- **Special Meeting:** Meetings to conduct official business of the body that are deemed necessary in addition to Regular Meetings. Special Meetings are also conducted formally but may not include all Regular Meeting agenda items. Public comments will be permitted but limited to only business items on the agenda. Special meetings may be called by the Mayor, Chairperson, Town Manager, or any three members of a body.
- **Work Session:** Informal meetings of the body that allow for relaxed procedure enabling freer flowing discussion. No official action may be taken during a work session, however determining consensus on items to be brought forward to a Regular or Special meeting is appropriate. Work Sessions are generally used for (but not limited to) brainstorming, information gathering, planning efforts, budget review, or when more time is needed on a particular item than is typically afforded during formal meetings. The public must be permitted the opportunity to observe work sessions but are not typically permitted an opportunity to provide comments. The Mayor or presiding officer may on special circumstance, allow public comment. Work sessions may be called by the Mayor, Chairperson, Town Manager, or any three members of a body.
- **Closed Session:** Closed Sessions (Executive Sessions) are authorized by FOIA to discuss certain confidential matters limited to specific purposes, while using very specific procedures. Though a portion of this meeting is closed to the public, other portions are open. The public must be permitted to be observe the motion to go into Closed Session as well as the certification upon leaving the Closed Session.
- **Public Hearing:** Public Hearings are intended to solicit public feedback on specific topics. These topics will be advertised in advance. Input may be made in person or in writing. All comments will adhere to the Town Council approved guidelines. Comments will be directed to the body and not to any individual. Members shall not respond to questions posed nor address or rebut speaker's statements made during the Public Hearing.
- **Town Hall Meeting:** An informal meeting where no official action is taken. A Town Hall Meeting is essentially a Work Session that involves the public. These meetings are typically focused on one or two topics and encourages dialog between members and the public. A primary goal of a Town Hall meeting is to provide decision makers with in-depth public perspectives prior to taking an official action.

- Social or Community Events: These are gatherings where no official business is conducted, but where Town issues may be informally discussed. If more than two members will be present in their capacity as a Town official, the gathering should be posted. There are no agendas or minutes associated with these functions.

2. Motions

- Unanimous Consent: Routine business is typically conducted by unanimous consent. This is an informal process that allows business to be conducted expeditiously. The procedure is for the presiding officer to ask whether anyone objects to a particular action and then to state, "Hearing no objection the action will be taken by unanimous consent." Note that even when a member is not in favor of a particular action the member may chose not to object in the interest of moving the agenda forward. In other words, unanimous consent does not mean that everyone was actually in favor of the action. If anyone objects, then the action must be addressed with a formal motion and vote.
- Main Motion: This is the motion that brings business before the council or other body. Such motions should be stated in a concise form and should generally be in writing to avoid misunderstandings. It must be seconded and when voted upon will ordinarily require a simple majority vote. There are circumstances where a super majority may be required. such as in the disposition of real estate. Before voting on the motion the presiding officer should call for discussion. The presiding officer should allow for discussion until it terminates by *unanimous consent* or is formally terminated by a subsidiary motion (discussed below).

When the motion is ripe for a vote the presiding officer should call for "all in favor" and then "all opposed." The presiding officer should then clearly state either the "motion passes" or the "motion fails." Generally, in the event of a tie the presiding officer may cast the deciding vote. The Town Charter expressly allows the Mayor to vote in the event of a tie. Any member may request a roll call vote.

- Subsidiary Motions:
 - Motion to Postpone Indefinitely (sometimes incorrectly called a motion to table): Normally used to putaside business that is not ripe for consideration. such as when further study is required. It requires a second. is debatable and is not amendable.
 - Motion to Amend: This is a motion to amend the wording and sometimes the meaning of the main motion. It requires a second and is debatable. It is also amendable *one time*. Note that a vole to adopt the amendment is not a vote on the main motion. Once the motion to amend is adopted the amended main motion must then be voted on as well. Often. simple motions to amend are adopted by unanimous consent. Also. note that whether the member that offered the original motion is willing to accept the proposed amendment or not is irrelevant. It must still be seconded and voted upon or adopted by unanimous consent.

- Motion to Refer: This is a motion to refer a matter to a committee or other body for action. In effect, when the motion is to refer the matter to a "workshop, it is a motion to refer the matter to a committee comprised of the entire council or other body (a committee of the whole). It requires a second and is debatable.
- Postpone to a Certain Time: Used when a matter is best considered at a different time to allow for the orderly conduct of business. It requires a second and is debatable.
- Motion to Limit Debate: Used to put a limit on the time permitted for debate of a motion. It requires a second, is not debatable and traditionally requires a two-thirds vote. Since the Town Charter allows for business to be conducted based on a majority vote, if a motion to limit debate does not pass by a two-thirds vote, then after further debate for a reasonable time the motion shall require only a majority vote.
- Motion of the Previous Question (often referred to as "a motion to call the question" or "motion to bring the matter to a vote"): Used to end debate and bring the pending motion to a vote. It requires a second, is not debatable, and traditionally requires a two-thirds vote. Since the Town Charter allows for business to be conducted based on a majority vote, if a motion of the previous question does not pass by a two-thirds vote, then after further debate for a reasonable time the motion shall require only a majority vote.
- Motion to Lay on the Table (often confused with a motion to postpone indefinitely): Used to temporarily interrupt pending business so that another matter can be considered first. It requires a second and is not debatable. This is often done by unanimous consent to move business forward.
- Motion to Recess: This is a motion to take a short break in the proceeding. It requires a second and is not debatable.
- Motion to Adjourn: This motion closes the meeting. It requires a second and is not debatable.

3. Agenda

The presiding officer should make a reasonable effort to conduct business in accordance with a consent agenda. The agenda should be organized to promote the orderly conduct of business. If the members cannot agree on the agenda, it should be presented by motion and subject to a vote. Keep in mind that even after an agenda is approved it can be amended. Often that is done by unanimous consent at the suggestion of the presiding officer to expedite the meeting. The procedure is for the presiding officer to state, "Is there any objection to amending the agenda [explain]. Hearing no objection, the agenda is so amended by unanimous consent."

4. Other Issues

- Mayor’s Veto: The Town Charter provides the Mayor with "the power of veto over the ordinances and resolutions of the council, but such ordinances and resolutions may be passed over such veto by a two-thirds vote of the members of the town council present and meeting." With a six-member council the override requires a vote of four members if all are present and voting.
- Quorum: The Town Charter provides that "four members of the town council shall constitute a quorum for the transaction of business at any meeting." The bylaws of other bodies establish the number of members required for a quorum. The Code of Virginia provides that if a member is disqualified due to a conflict of interest "the remaining member or members shall constitute a quorum for the conduct of business and have authority to act for the agency by majority vote, unless a unanimous vote of all members is required by law, in which case authority to act shall require a unanimous vote of remaining members." 2.2-3112.C.

Acknowledgement

I _____ (printed name), a sitting member of
 _____ (body), hereby certify that I have
 been given a copy, read, understand, and will abide by the above Town of Cape Charles Code of
 Ethics & Meeting Rules of Order, adopted on July 22, 2021.

_____ (signature)

_____ (date)

BZA Bylaws – Appendix C

APPENDIX C

**TOWN OF CAPE CHARLES
POLICY FOR ELECTRONIC PARTICIPATION IN
BOARD OF ZONING APPEALS MEETINGS
Adopted January 9, 2024**

Pursuant to the Code of Virginia Section 2.2-3708.2 and 2.2-3708.3, the Cape Charles Board of Zoning Appeals adopts the following to allow for remote participation or electronic participation in meetings of the Board of Zoning Appeals:

The following provisions qualify for an individual member of a public body to use remote participation in meetings:

- i) a temporary or permanent disability or other medical condition that prevents the member's physical attendance;
 - ii) a family member's medical condition that requires the member to provide care for such family member that prevents the member's physical attendance;
 - iii) the member's principal residence is more than 60 miles from the meeting location identified in the required notice for such meeting; or
 - iv) a personal matter.
1. On or before the day of a meeting, the Board of Zoning Appeals Member shall notify the Chairman that he/she is unable to attend the meeting due to:
 - a. A temporary or permanent disability or other medical condition. The minutes of the meeting shall include the fact that the member participated through electronic communication means due to a temporary or permanent disability or other medical condition that prevented the member's physical attendance, along with the remote location from which the absent member participated.
 - b. A family member's medical condition. The minutes of the meeting shall include the fact that the member participated through electronic communication means due to a family member's medical condition that required the member to provide care for such family member, preventing the member's physical attendance, along with the remote location from which the absent member participated.
 - c. Principal residence is more than 60 miles from the meeting location. The minutes of the meeting shall include the fact that the member participated through electronic communication means due to the distance between the member's principal residence and the meeting location.
 - d. A personal matter. The member must specifically identify the nature of the personal matter which shall be recorded in the minutes of the meeting, along with the remote location from which the absent member participated.

Participation by a member pursuant to this subdivision is limited to two meetings per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater.

2. A quorum of the Board of Zoning Appeals must be physically assembled at the primary meeting location.
3. The Board of Zoning Appeals members present at the physical location must approve the electronic participation by a majority vote.
 - a. If the absent member's remote participation is disapproved because such participation would violate this policy, such disapproval shall be recorded in the minutes of the meeting.
4. Arrangements must be made for the voice of the remote participant to be heard by all persons at the primary meeting location.