



TOWN COUNCIL/PLANNING COMMISSION

Joint Public Hearing

September 10, 2013

Town Hall

6:00 PM

1. Call to Order at 6:00 PM

A. Roll Call

B. Establish quorum

2. Public Hearing Comments:

A. Section 3.9 Harbor District of the Cape Charles Zoning Ordinance

3. Adjournment

Town of Cape Charles

ARTICLE III

District Regulations

Section 3.9 Harbor District (revised 01-08-09)

A. Statement of Intent. The intent of this zoning district is to encourage a vibrant working waterfront area that is both a strong economic benefit to the Town with compatible new industry and employment uses, and a strong public and recreational value, with public gathering places and access to the water, a place for people to conduct business and to live, meet, relax, encounter nature, and learn of Cape Charles' working maritime and rail heritage and its strong historic traditions. Any new development shall provide and encourage public access to the water's edge as well as emphasize the pedestrian environment throughout the harbor. The south side of Mason Avenue shall provide a visually inviting connection to the harbor via continuous environments for multi-modal means of transportation and connect to the other existing and future links to Cape Charles and environs. This zoning district is also intended to implement the Cape Charles Harbor Area Conceptual Master Plan and Design Guidelines as an overall guide to the future development and redevelopment of the harbor area.

B. Mainstreet Mixed Use Area; Floor Area Ratio.

1. The area of the Harbor District along the south side of Mason Avenue, beginning at the western edge of Parcel 83A3-A-5, and projecting eastward to Nectarine Street, and southward a distance of 300 feet from the south side of Mason Avenue, is defined as the "Mainstreet Mixed Use Area."

2. The Mainstreet Mixed Use Area shall use the Floor Area Ratio (FAR) to measure the density of permitted and conditional development. For each lot, the FAR is calculated as the ratio of the gross floor area of all structures and improvements on the lot to the lot area in square feet. For purposes of this Article III, "floor area" shall also include parking areas other than uncovered ground level parking areas. The maximum FAR for the Mainstreet Mixed Use Area shall be 1.25. The maximum FAR for the balance of the Harbor District shall be 1.50. Nothing in this paragraph shall modify or waive the open space requirement set forth in subsection F of this Article III.

C. Permitted Uses. The following uses are permitted by right:

1. Accessory uses customarily associated and clearly incidental and subordinate to a principal use.
2. Food service related uses of the following types:
 - a. Bakeries, confectionaries, delicatessens, and catering services
 - b. Cafes and coffee shops
 - c. Delicatessens

- d. Eating and drinking establishments
 - e. Ice cream parlors
 - f. Restaurants
3. Marine related uses of the following types:
- a. Bait and tackle shops
 - b. Boat rentals
 - c. Marinas, docks and wharves if contiguous to harbor
 - d. Sail and canvas making and repair
 - e. Ship stores and chandleries
4. Office and institutional uses of the following types:
- a. Business studios
 - b. Civic and government facilities
 - c. Educational facilities
 - d. Financial institutions
 - e. Medical clinics
 - f. Medical, dental and other laboratories
 - g. Offices
 - h. Office supply stores
 - i. Real estate sales and rentals
5. Recreational, cultural, and entertainment uses of the following types:
- a. Art galleries and art studios
 - b. Athletic clubs
 - c. Conference centers
 - d. Health and fitness facilities
 - e. Libraries and galleries
 - f. Museums and cultural centers
 - g. Outdoor recreational uses
 - h. Parks
6. Retail goods establishments of the following types with 2,500 square feet or less of gross floor area:
- a. Antique shops
 - b. Bookstores, new and used
 - c. Camera shops
 - d. Candy stores
 - e. Clothing stores
 - f. Dry goods stores
 - g. Florists, gift shops, card shops, and stationery shops
 - h. Grocery stores
 - i. Music stores
 - j. Newsstands
 - k. Tobacco stores
 - l. Upholstering shops and fabric stores
 - m. Video stores
 - n. Watch and jewelry stores

7. Retail service establishments of the following types with 2,500 square feet or less of gross floor area:
 - a. Beauty and barbershops
 - b. Bicycle, moped, and street legal golf cart sales and rentals
 - c. Blueprinting shops
 - d. Dressmaking, tailoring, millinery, dry cleaning
 8. Public Utility Facility
- D. Conditional Uses. The following uses may also be permitted, subject to securing a conditional use permit as provided for in this ordinance:
1. Marine related uses of the following types:
 - a. Boat and marine engine repair shops
 - b. Boatels
 - c. Marine and sports equipment consignment stores
 2. Markets of the following types:
 - a. Crafts markets
 - b. Farmers' markets
 - c. Watermen's markets
 3. Recreational, cultural, and entertainment uses of the following types:
 - a. Assembly halls
 - b. Auditoriums
 - c. Commercial recreational uses
 - d. Entertainment establishments
 - e. Theaters
 4. Retail goods establishments of the following types with more than 2,500 square feet of gross floor area:
 - a. Antique shops
 - b. Bookstores, new and used
 - c. Camera shops
 - d. Candy stores
 - e. Clothing stores
 - f. Dry goods stores
 - g. Florists, gift shops, card shops, and stationery shops
 - h. Grocery stores
 - i. Music stores
 - j. Newsstands
 - k. Tobacco stores
 - l. Upholstering shops and fabric stores
 - m. Video stores
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5. Retail service establishments of the following types with more than 2,500 square feet of gross floor area:
 - a. Beauty and barbershops
 - b. Bicycle moped, and golf cart sales and rentals
 - c. Blueprinting shops
 - d. Dressmaking, tailoring, millinery, dry cleaning

 6. Single-family and multi-family dwellings provided the following requirements are met:
 - a. All dwelling units shall have direct access to the street level. Means of access may be shared with other dwelling units, but not commercial uses. Access through a commercial establishment on the first level is not permitted.
 - b. Dwelling units shall occupy no more than 50 percent of the first floor of any building.
 - c. The first floor of all building facades adjacent to a public street shall have a commercial appearance and shall not have a residential appearance.

 7. Other miscellaneous uses of the following types:
 - a. Bed and breakfasts and tourist homes, provided the following requirements are met:
 - (1.) The owner and family must occupy the residence. The owner and his/her appointed agent is responsible for supervising guests.
 - (2.) The single-family dwelling appearance must be maintained.
 - (3.) Parking should be considered on a case-by-case basis as part of the conditional use application, ensuring adherence to Section 4.8.E.2 (Table of Parking Standards) using both on and off street parking areas.
 - (4.) A sign no larger than four square feet shall be permitted.
 - (5.) The number of room accommodations shall be subject to recommendation by the Planning Commission and approved by the Town Council.
 - (6.) The dwelling must meet all of the requirements of Section 3.9 C. 6.
 - b. Child care and child care education centers
 - c. Hotels and motels
 - d. Laundromats
 - e. Liquor and package stores
 - f. Off-site parking

 8. Any other use which is compatible in nature with the foregoing permitted and conditional uses and which is determined to be compatible with the intent of the District.
- E. Lot and Height Requirements. Within the Harbor District, the following standards shall apply:
1. Minimum lot requirements
lot area 11,200 square feet

lot frontage 80 feet
lot depth 140 feet
block length.....all blocks in the Mainstreet Mixed Use Area shall align with and be equal in frontage length to the blocks on the north side of Mason Avenue so that existing viewsheds to the harbor shall be maintained.

2. Height

- a. Measurement criteria. For the purpose of the Harbor District, height means the vertical distance measured from the crown of the nearest street to the top of the highest roof beams on a flat or shed roof, the deck level on a mansard roof, and the average distance between the eaves and the ridge level for gable, hip, and gambrel roofs. When the crown of the nearest street has an elevation greater than three feet above the adjacent ground elevation of the building, the adjacent ground elevation shall be used in place of the crown of the nearest street when measuring height. Note: Mechanical equipment, chimneys, air conditioning units, elevator penthouses, church spires and steeples, water towers, and similar appurtenances are exempted from height restrictions. However, these exclusive items may not exceed the height limit by more than fifteen feet.
- b. Maximum permitted height. No building or structure shall exceed 40 feet in height in the Mainstreet Mixed Use Area. No building shall have the same continuous elevation for a distance of more than 80 linear feet. ~~Unless a conditional use permit is obtained.~~ Building heights greater than 40 feet and equal to or less than 55 feet may also be permitted in other parts of the Harbor District, subject to securing a conditional use permit as provided for in this ordinance. When reviewing a conditional use permit application for the height of a building in the Harbor District, the following criteria shall be met:
 - (1.) On each block, the average height of all buildings greater than 40 feet and equal to or less than 55 feet in height shall not exceed 45 feet. For the purpose of this section, a block is defined as the property fronting on one side of a right-of-way or waterway, and lying between two intersecting rights-of-way or otherwise limited by a waterway or other physical barrier of such nature as to interrupt the continuity of development.
 - (2.) The application shall adhere to policies established in the Cape Charles Harbor Area Conceptual Master Plan and Design Guidelines, the Comprehensive Plan, and other officially adopted plans of the Town.

3. Setback Regulations.

- a. Mason Avenue setback requirement. No building or structure shall be located within 8 feet of the Mason Avenue VDOT right-of-way.

- b. Waterfront setback requirement. No building or structure shall be located within 30 feet of the Cape Charles Harbor or within 30 feet of a Resource Protection Area [not part of an Intensely Developed Area \(IDA\)](#). This requirement shall not preclude any other applicable regulations, including but not limited to those associated Chesapeake Bay Preservation Areas. The following shall be exempt from the waterfront setback requirement when permitted by all other applicable regulations:
 - (1.) Water-dependent facilities as defined by Zoning Ordinance Section 7.3.
 - (2.) Walkways, promenades, decks, gazebos, permitted signs, and similar structures intended to accommodate or provide amenities for pedestrians.

- F. Required open space. Open space shall be provided equivalent to 25 percent of lot area. For the purpose of this section, the term open space shall be construed to consist of open space amenities and spacing between buildings. Open space amenities include plazas, esplanades, landscaped areas, walkways, public recreational facilities, and the like designed and maintained for use by pedestrians and open to the public. Such open space amenities shall not be open to vehicular uses except for public safety purposes, and shall be directly accessible from street level. Where feasible, open space shall be designed to serve as part of a coordinated pedestrian circulation system.

- G. Utilities. All utilities shall be installed underground.

- H. Harbor Development Certificate required. No zoning clearance shall be issued for location, construction, or enlargement of any building or structure within the Harbor District until a Harbor Development Certificate has been issued. Submission of a Harbor Development Certificate Application and approval by the Town Council shall be required to obtain a Harbor Development Certificate.

- 1. Content of Harbor Development Certificate Application. The Harbor Development Certificate Application shall consist of the General Application and the Detailed Application.
 - a. General Application. The General Application shall include the following items:
 - (1.) An application on forms provided by the Zoning Administrator.
 - (2.) A fee established by the Town Council.
 - (3.) A letter of application stating in general terms the proposed use of the property, the effect of the changes on the surrounding area, and the reason for the request.
 - (4.) A plot plan in accordance with the Site Plan Ordinance.

 - b. Detailed Application. The contents of the Detailed Application may be delineated on the plot plan required for the General Application, or

provided in separate maps, elevations, or written document as appropriate. The Detailed Application shall indicate the following:

- (1.) Location, amount, character and continuity of open space.
- (2.) A delineation of those general areas that have scenic assets or natural features deserving protection and preservation, including elevations demonstrating protection of views from existing streets, and a statement of how such will be accomplished.
- (3.) Convenience of access through and between buildings or in other locations where appropriate for public purposes and where such access will reduce pedestrian congestion on public streets.
- (4.) Separation of pedestrian and vehicular traffic.
- (5.) Landscape plans delineating dimensions and distances and the location, type, size, and description of all existing and proposed plant materials.
- (6.) Location and dimensions of on-site signage.
- (7.) Conceptual renderings of building exteriors.
- (8.) Such other matters as are appropriate to determinations in the specific case. Other information may be requested by the Zoning Administrator, the Harbor Area Review Board, or Town Council.

2. Review procedure.

- a. Pre-application meeting. Prior to application submission, the applicant shall meet with the Zoning Administrator and the Harbor Area Review Board in a pre-application meeting. The purpose of the meeting shall be to discuss the general goals of the project and application procedures.
- b. General Application. Following the pre-application meeting, the applicant shall submit a General Application. The contents of the General Application are detailed in Section 3.9 G. 1. a.
- c. Post-application meeting. Within 30 days of receipt of the complete General Application, the Zoning Administrator and the Harbor Area Review Board shall meet in a post-application meeting. The purpose of the meeting shall be to discuss the content of the General Application and to formulate recommendations for the applicant.
- d. First review meeting. Within 30 days of the post application meeting, the applicant shall meet with the Zoning Administrator and the Harbor Area Review Board in a first review meeting. The purpose of the meeting shall be to provide the applicant with the Harbor Area Review Board's recommendations and to provide notice to proceed with the Detailed Application.
- e. Town Council summary. Following the first review meeting, the Harbor Area Review Board will present the Town Council with the General Application and a general description of discussion held at the first review meeting. The Town Council summary will be provided at a Town Council

regular session or a Town Council work session for informational purposes.

- f. Detailed Application. Following the first review meeting, the applicant shall submit a Detailed Application. The contents of the Detailed Application are provided in Section 3.9 G. 1. b.
 - g. Zoning Administrator action. Following the Zoning Administrator's receipt of the Detailed Application and his determination that it is complete pursuant to Section 3.9 G. 1. b, the Zoning Administrator shall prepare a thorough review and analysis of the Harbor Development Certificate Application and a written staff report. The Zoning Administrator's written report shall be forwarded to the Harbor Area Review Board within 45 days of receipt of the Detailed Application.
 - h. Second review meeting. After receipt of the Detailed Application, the applicant shall meet with the Zoning Administrator and the Harbor Area Review Board in a second review meeting. The purpose of the meeting shall be to review the Harbor Development Certificate Application, consisting of the General Application and the Detailed Application, and provide the applicant with any necessary recommendations. Follow up meetings may be scheduled to further review the application or to review modifications to the application.
 - i. Harbor Area Review Board action. After the second review meeting, the Harbor Area Review Board shall forward its recommendation to approve, deny, or approve subject to modification, to the Town Council along with written findings of fact supporting its recommendation.
 - j. Town Council action. After receipt of the Harbor Area Review Board's recommendations and findings, the Town Council shall decide to approve, deny, or approve subject to modification.
 - k. Concurrent review permitted. Other development applications, including application for any necessary Certificate of Appropriateness, may be submitted concurrently with an application for a Harbor Development Certificate.
3. Criteria for review. In reviewing the Harbor Development Certificate Application, the Zoning Administrator, the Harbor Area Review Board, and the Town Council shall consider the following criteria:
- a. Use characteristics of the proposed development.
 - b. Preservation of historic structures; preservation of significant features of existing buildings when such buildings are to be renovated; relation to nearby historic structures or districts including a need for height limits.
 - c. Location and adequacy of off-street parking and loading provisions, including the desirability of bicycle parking.

- d. Vehicular circulation within the development and its relation to other existing and proposed transportation facilities.
 - e. Inclusion of alleys to enhance vehicular transportation within the development.
 - f. Provision of concealed commercial loading and unloading areas adjacent to alleys to prevent loading, unloading, and trash collection along public rights of way.
 - g. Traffic generation characteristics of the proposed development in relation to street capacity.
 - h. Provision of open space to meet the requirements of the district; the location, design, landscaping and other significant characteristics of this public open space, and its relation to existing and planned public and private open space.
 - i. Multi-modal transportation facilities within the proposed development and their relation to public open space and pedestrian circulation patterns.
 - j. Architectural relationships, both formal and functional, of the proposed development to surrounding buildings, including building siting, massing, proportion, and scale.
 - k. Use of architectural details, storefront design, window openings, roof shapes, porches, and columns to balance the proportions of facades into pleasant and cohesive compositions.
 - l. Microclimate effects of proposed development, including effects on wind velocities, sun reflectance, and sun access to streets and/or existing buildings and/or public open space.
 - m. Protection of significant views and view corridors, particularly views of the Cape Charles Harbor from existing road intersections.
 - n. Relationship of on-site lighting and landscaping to other surrounding lighting and landscaping designs both public and private.
 - o. Relationship of on-site signage to architectural elements of the proposed development and relationships to nearby development.
 - p. Adherence to policies included in the Cape Charles Harbor Area Conceptual Master Plan and Design Guidelines, the Comprehensive Plan, and other officially adopted plans of the Town.
 - q. Adherence to the intent and requirements of the Harbor District.
4. Other requirements. Issuance of a Harbor Development Certificate shall not exempt a property owner from obtaining other necessary zoning clearances and building permits as required.
- I. Exemption.

Railroad activities in this district are subject to federal preemption to the extent that the activities are an integral part of the railroad's interstate operations. 49 U.S.C. 10501 (b). Therefore, "state and local permitting or pre-clearance requirements [such as building permits, zoning clearances, and site plan requirements] which, by their nature, interfere with interstate commerce by giving the [Town of Cape Charles] the ability to delay or deny the [railroad's] right to construct facilities or conduct operations are preempted." Borough of

Riverdale v. New York Susquehanna & Western Railway Corporation, Surface Transportation Board, Docket No. FD 33466 0, September 9, 1999.

However, environmental and other public health and safety issues and “activities and facilities not integrally related to the provision of rail service are not subject to [Surface Transportation Board] jurisdiction or subject to federal preemption.” Id. Also, “interstate railroads ... are not exempt from certain local fire, health, safety and construction regulations and inspections.” Id.

4810-4397-4933, v. 1