Planning Commission

Public Hearing

&

Regular Session Agenda

May 7, 2013

6:00 P.M.

1. Call Public Hearing to Order; Roll Call
    a. Read advertisement for CUP at 712 Randolph, one apartment over existing commercial space.
    b. Hear Applicant Presentation
    c. Hear Public Comment

2. Close Public Hearing and move to regular meeting

3. Invocation and Pledge of Allegiance

4. Public Comments

5. Consent Agenda
    a. Approval of Agenda Format
    b. Approval of Minutes
    c. Reports

6. Old Business
    a. 712 Randolph CUP
    b. Density in Harbor District – Mason Avenue Mixed Use

7. New Business

8. Announcements

9. Adjourn

DRAFT
PLANNING COMMISSION
Regular Meeting
Town Hall
April 2, 2013

At approximately 6:00 p.m. in the Town Hall, in the absence of Chairman Dennis McCoy and Vice Chairman Mike Strub, Commissioner Joan Natali, having established a quorum, called to order the Regular Meeting of the Planning Commission. In attendance were Commissioners Andy Buchholz, Dan Burke, Joan Natali, Sandra Salopek and Bill Stramm. Also present were Town Planner Tom Bonadeo, Town Clerk Libby Hume and Mr. Leon Parham, representative for the applicant Mr. John Huchler. There were no members of the public in attendance.

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

PUBLIC COMMENTS

There were no comments from the public nor any written comments submitted prior to the meeting.

CONSENT AGENDA

Motion made by Bill Stramm, seconded by Sandra Salopek, to accept the agenda format as presented. The motion was approved by unanimous consent.

The Commissioners reviewed the minutes for the March 5, 2013 Regular Meeting.

There were some questions for clarification of several items discussed at the March meeting as follows: i) Sandra Salopek asked about the permit fees for signage for residential and commercial properties. Tom Bonadeo stated that although a permit was required for signage on a residential property, no fee was charged. There was a $50 fee for signage on a commercial property; and ii) Dan Burke asked if the dark sky compliant requirement pertained to the entire Town and mentioned that a street light by his house did not appear to be dark sky compliant since the light shined into his house. Tom Bonadeo stated that the requirement did pertain to the entire Town and all street lights were in compliance and shined the light downward but since the street light was above the level of his window, the light would shine inside his house. The Town was looking into replacing the globes on the lights along Mason Avenue. Bill Stramm added that there were two lights in the Town that were not compliant but were required to shine on the American flags flown at the memorial on Mason Avenue and at the beach.

There was also much discussion regarding signage and the freedom of speech which was reviewed at the Certified Planning Commissioner class which was attended by Commissioners Andy Buchholz, Dan Burke, Sandra Salopek and Bill Stramm.

Bill Stramm noted that he was not in attendance at the March meeting so was not able to comment on the minutes.

Motion made by Andy Buchholz, seconded by Dan Burke, to approve the minutes from the March 5, 2013 Regular Meeting as presented. The motion was approved by unanimous consent.

REPORTS

Tom Bonadeo reported the following: i) The Historic District Review Board did not meet in March as no applications were submitted. Four of the members of the Board had resigned and multiple applications had been received from individuals interested in serving. A Town Council Executive Session was being scheduled to interview the applicants; ii) The Fun Pier had been reopened; iii) The shelves for the new library were due to be shipped mid-April and the move was expected to take place the week of April 27th; iv) The new Aqua Restaurant and Willow Artisan Gallery opened last week; v) Jeb Brady received the second set of plans for Bayside Village in Bay Creek; vi) The new Flood Insurance Rate Maps were due out in draft form possibly in May and it was expected that the flood areas would change. The new maps were based on Light Detection and Ranging (LIDAR) data which was very accurate. The Town had 90 days after receipt to request changes; and vii) The Shanty reopened last week.

OLD BUSINESS

A. *Density in Harbor District Zone – Mason Avenue Corridor*

Tom Bonadeo summarized discussions from previous meetings and informed the Commissioners that the Town Council agreed with the Commissioners' recommendation to move forward with the Floor Area Ratio (FAR) concept and requested a joint work session be scheduled for the Council to further review information regarding Floor Area Ratio. Tom Bonadeo went on to state that several modifications to the ordinance were required to implement the FAR concept in the Harbor District as follows: i) The existing Harbor District zoning language did not make any differentiation between any of the areas around the harbor as described on page 18 of the Harbor Area Conceptual Master Plan. The areas around the harbor should be delineated in the ordinance so FAR could be applied to each area differently. The Commissioners reviewed the information and maps regarding the area designated as "Main Street Mixed Use" on page 18 of the Master Plan; ii) These areas should have the elevation requirements applied differently. The areas along Mason Avenue should be lower heights while the areas on the south side of the harbor should be higher allowances. The height averaging formula and required "broken" elevations along Mason Avenue should be eliminated; and iii) Parking at levels other than ground level would count as floor space. Tom Bonadeo explained that in keeping with the current buildings along the north side of Mason Avenue, buildings in the Mason Avenue corridor could be limited to heights of 24' which would accommodate a two-story building. Heights up to 40' would be permitted by conditional use to average heights of 36'. The current limitations of heights of 40' by right and up to 55' by conditional use with an average of 45' could be kept in place for buildings on the south side of the harbor. Tom Bonadeo advised that any proposed changes would have to go through a public process before being adopted by the Town Council.

The Commissioners discussed the Tavi property and the project that was proposed several years ago in regards to the size of the buildings, the Town grid, parking, setbacks, etc. Tom Bonadeo stated that the "road" on the side of the property belonged to Tavi and the railroad had ingress/egress rights to the area for access to the railroad property. The railroad had allowed the Town to install a pathway to the harbor for pedestrians, bicyclists and golf carts.

There was much discussion comparing the north side of Mason Avenue, which was zoned as C-1 Commercial, to the south side of Mason Avenue, which was zoned as Harbor District. Tom Bonadeo explained that in Mixed Use, 50% of the first floor was required to be commercial and 50% could be residential as long as the exterior of the building appeared to be commercial. The north side of Mason Avenue (C-1 zone) did not allow residential on the first floor.

Tom Bonadeo stated that he would make the modifications as discussed and provide additional examples for the next meeting.

NEW BUSINESS

A. *Conditional Use Permit – 712 Randolph Avenue – Residential over Commercial Use*

Tom Bonadeo stated that a conditional use permit (CUP) application was received for the use of a dwelling unit over a commercial space at 712 Randolph Avenue and introduced Leon Parham of Parham Architecture and Historic Restoration who was representing the applicant/property owner Mr. John Huchler.

Mr. Parham stated that the applicant had been experiencing difficulty in renting the commercial space on the second floor since the Eastern Shore Community College left several years ago and distributed larger versions of the plans for the Commissioners to review. The dwelling unit would be a large, three-bedroom, three and a half bathroom apartment using the same floor plan as the existing office space. The location of this space was the second floor of the building housing Mosher Rehabilitation.

Tom Bonadeo added that the applicant also owned the neighboring property which also had a CUP for dwellings over a commercial space. There were already residents in the next building and the apartments had been in these buildings for some years. Tom Bonadeo went on to state that the property met the table of parking standards which required one parking space per 300 square feet of commercial area and two spaces per residential dwelling unit. The comprehensive plan promoted mixed use in all commercial zones as a way of promoting economic development. Empty commercial space provided no economic growth while a full residential apartment created purchasing power and income for the landlord, town and county.

There was some discussion regarding the possibility of this unit becoming a multi-family dwelling and Mr. Parham stated that the proposed apartment would house a single family. Tom Bonadeo added that this could be multi-family over commercial but the table of parking standards would have to be met. There was much discussion regarding the parking available in the front of the building and in the area between the two buildings which was used during the day by the patients and staff of Mosher Physical Therapy. Mr. Parham stated that three designated parking spaces would be located in the back of the building for this unit.

Dan Burke asked about the limits in the number of people that could occupy the dwelling. Tom Bonadeo stated that this would be a building code issue and not in the purview of the Planning Commission.

Andy Buchholz stated that a precedent had been set with the CUP issued for the building next door to allow residential over commercial space.

Tom Bonadeo stated that this evening's review was to provide the Commissioners exposure to the proposed plan and asked that they go to the site to look at the building. A public hearing needed to be scheduled and advertised in the Eastern Shore News and letters needed to be mailed to the adjoining property owners notifying them of the proposed plan and information regarding the public hearing. Tom Bonadeo went on to explain that the CUP process required that several criteria be met as set forth in Article IV, Section 4.3 of the Cape Charles Zoning Ordinance. After hearing any public comments, the Commissioners would review the application and the conditions for issuance, insuring that the use would not: i) Adversely affect the health, safety or welfare of the persons residing or working in the neighborhood of the proposed use or adversely affect the other land uses within the particular surrounding neighborhood; ii) Be detrimental to the public welfare or injurious to the property or improvements in the neighborhood; and iii) Be in conflict with the purpose of the comprehensive plan of the town. After consideration, the Commission would make a recommendation to the Town Council who would also review the application, hold another public hearing, and review any comments along with the Planning Commission recommendation and make their decision regarding the CUP.

Andy Buchholz asked about water and sewer hookups and fees. Tom Bonadeo explained that water and sewer hookups fell under the Building Code and Public Utilities Departments and were not in the purview of the Planning Commission. Andy Buchholz voiced his concern that the entire building could be served by one hookup and meter since the spaces were rented commercially and what would happen when the second floor apartment was rented as residential if it was all done under one meter. Andy Buchholz went on to ask whether the two floors of the building could be sold separately. Tom Bonadeo stated that it could be sold separately if the building were converted into condos and went on to explain that in the CUP process, if the Commissioners were to find an issue that could cause an adverse effect to the health, safety, or welfare of the people living or working in the neighborhood, condition(s) could be imposed.

Motion made by Bill Stramm, seconded by Dan Burke, to move forward with scheduling a public hearing for May 7, 2013 preceding the Planning Commission regular meeting. The motion was approved by unanimous consent.

ANNOUNCEMENTS

There were no announcements.

Motion made by Andy Buchholz, seconded by Sandra Salopek, to adjourn the Planning Commission meeting. The motion was approved by unanimous consent.

Commissioner Joan Natali

Town Clerk

DRAFT

Planning Commission Staff Report

From: Tom Bonadeo

Date: May 7, 2013

Item: 4C – Reports

Attachments:

Item Specifics

1. The Northampton County website is www.co.northampton.va.us and contains the updated information from county meetings. The Northampton Planning Commission also meets on this night.

2. The South Port project, Cape Charles Yacht Center, continues construction of the sheet pile on parcel 12. They are also ready to start the installation of the floating docks.

3. The Historic Review Board has a full complement of members. The new members were appointed by the Council last month and I expect a meeting in May.

4. The Fun Pier and other repairs from hurricane damage have been approved by FEMA. More to come on this as we proceed with repairs and beach nourishment.

5. Working with VDOT on a sidewalk repair project. This will be an ongoing project for some time. The contractor will be finishing Mason Avenue then moving to Randolph and some of the side streets.

6. The Library shelves have been installed and the move will be completed by meeting time on May 7.

7. The new owners of Aqua and the Marina plan to improve the wedding business. The planner is working with them on the setbacks, RPA and other environmental developments that have changed since the original construction years ago.

8. The planner is working on an industrial access road project in conjunction with the County, VDOT and the Virginia Economic Development Partnership. This road is part of the County's Six Year Plan and will help foster economic development in Northampton County (and Cape Charles).

9. The planner has had a preview of the new Flood Insurance Rate Maps (FIRMs). They have changed drastically by reducing the AE flood zone. We will be reviewing these maps prior to the actual May 21 draft release date. The change is so drastic we need to be sure that there is not a mistake. The rest of the process is the same, comment period is 90 days after the draft release date and the maps go into effect August of 2014.

10. The Wetlands Board has finished a permit for Bay Creek South along the Nicklaus Golf course. The 10 day comment period is over for the VMRC and the applicant is waiting for a permit from the Army Corps of Engineers.

11. The Planner is part of the Eastern Shore Technical Transportation Advisory Committee and attended last month's meeting. The access road was discussed as well as future

projects in the county. The committee reviews road issues and advises both the counties and VDOT. The committee is concerned about the safety of some of the Route 13 crossovers. Many of these are listed for closure or enhancement but no money is readily available. Crossovers that have no deceleration lanes and no space in the median are the dangerous ones. The committee reviewed these with the state traffic accident data to determine which ones should be recommended for closure or enhancement. If the crossover is dangerous, lanes may be added to improve the safety. A new planner should be appointed to this committee as this is the only way a Town can provide input to a primarily County function. We have to remember that all of the secondary roads are county roads even if they fall within the Town, such as Old Cape Charles Road and others.

Planning Commission Staff Report

From: Tom Bonadeo

Date: May 7, 2013

Item: 6. A. – Conditional Use Permit 712 Randolph – Residential over Commercial

Attachments: Application, Plot Plan and proposed Floor Plan

Background

Conditional use permit application has been received and reviewed for the use of a dwelling unit over a commercial space at 712 Randolph Avenue. The space is currently designed as offices. The applicant has not been successful in the renting of commercial space and wishes to modify the offices into a dwelling unit. This is allowed in the C-1 zone by Conditional Use Permit. The public hearing was held just prior to this Planning Commission meeting.

Item Specifics

The location of the building is the upper floor of 712 Randolph Avenue, the upper floor of the Mosher Rehabilitation building. The conditional use process requires that several criteria be met. The requirements for conditional use are set forth in Article IV, Section 4.3 of the Zoning Ordinance. The Planning Commission will review the application and set a public hearing. After hearing public comments the Planning Commission will review the application, comments and the three Conditions for Issuance. After this consideration the Commission will make a recommendation to Town Council. The Town Council will also review the application and hold a public hearing, review the comments and the Planning Commission recommendation and then allow or deny the application with or without such conditions as it determines necessary to carry out the intent of the ordinance.

The use will not:

1. Adversely affect the health, safety, or welfare of the persons residing or working in the neighborhood of the proposed use or adversely affect the other land uses within the particular surrounding neighborhood.
2. Be detrimental to the public welfare or injurious to the property or improvements in the neighborhood.
3. Be in conflict with the purpose of the comprehensive plan of the town.

The applicant currently owns the neighboring property with a conditional use permit for dwellings over a commercial space. While this is a commercial area there are already residents in the next building and apartments have been in these buildings for some years.

The ordinance requires that the use meet the table of parking standards. Since the current use of professional office space requires 1 parking space per 300 square feet of area and the use of residential requires 2 spaces per dwelling unit, the use meets the table of parking standards.

The comprehensive plan also promotes mixed use in all the commercial zones as a way of promoting economic development. Empty commercial space provides no economic growth while a full residential apartment creates purchasing power and income for the landlord, town and county.

The ordinance allows for the Commission (and Town Council) to add conditions to the approval of the application that may be required to carry out the intent of the ordinance.

Recommendations

The Planning Commission should hear public comment, the applicant's proposal, discuss the application and any potential conditions that may be required. Vote to act upon the application with or without conditions.

Municipal Corporation of Cape Charles, Virginia
Application for Conditional Use Permit

Date 3-4-12 Permit Number _____
*(Attach Plans) Fee: 309.64

Applicant: John Huchler Signature: John F. Huchler
Address: 35 Viburnum Court, Cville NJ 08648 Cape Charles, VA. 23310
Telephone: 609 896 4457 Cell Phone: 609 937 4360

Owner(s): ~~John~~ IES Holdings, LLC
Address: c/o John Huchler City: Lawrenceville State: NJ Zip: 08648

Contractor: Quality Structures (Sean Ingram)
Address: POBOX 2020 City: Chariton State: NJ Zip: 23316
Telephone: — Cell Phone: 757-615-0335
Town License: 12-003B State License: VA 2705-142263A

Location of Improvement: 2nd floor of 712 Randolph Ave, Cape Charles, VA 23310
Lot No.: 2-4-3A,3B Block No.: 083A4 Lot Size: 120x140 Lot Area: .38 A
Type of Improvement: Conversion from office to an apartment
Proposed Use: Apartment
Estimated Construction Costs: $40,000

NOTE: Three additional off-street parking spaces to be added behind building.

Adjacent property owners: we own 718 Randolph on East side; Town of Cape Charles owns ~~pro~~ adjacent property on west and south sides

Conditional Use Permit Checklist
(Applicant must attach items 1-7)

1. ✓ completed application
2. ✓ payment of fees ($300.00 + $25.00 per acre)
3. ✓ letter of application stating in general terms: (a) the proposed use of the property, (b) the effect of the changes on the surrounding area, and (c) the reason for the request
4. ✓ concept plan (see attached information for recommended contents)
5. ✓ plot plan of property
6. ✓ disclosure statement signed and notarized verifying ownership TAX owners
7. ____ names and addresses of adjacent property owners
8. ✓ Zoning Administrator's review of documentation

****

CERTIFICATION OF APPLICANT

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. Furthermore, I certify that the changes to the improvement before or during construction will be provided to the Zoning Administrator and Building Official before such changes are constructed.

Signature of Owner/Agent: John F. Huchler, Owner/Manager

IES HOLDINGS LLC

Northampton County 2004 REASSESSMENT

2173 . 1

7257 CHESAPEAKE DR
EXMORE VA 23350

AcctNum 31909

TCC 083A4-((0A))-00-002
RANDOLPH AVE 712
3 LOTS

Topo: LEVEL
Utils: ALL PUB
Strt: PAVED
Deed: 331-300
Will:
Plat:

TracSz:
LMAT:
MHS: TRAC:

INCLUDES PARCELS 3A & 3B
BLDG CONDEMNED 1/7/2005
FEE SIMPLE RE03 TOWN OWNS OB

List: SP 8/22/2003 Info By: E
Review: FP 8/22/2003
Appeal: / / Run: 1/11/2005 14:38

RD: Zoning:
CLSC: 4

Values

	Assessed Value
Land:	80,000
Bldg:	265,400
Othr:	0
Total:	345,400

Cost/Acre: 0
Hst: 9,750.00

UseVal 0

Sale: Q 4/17/2001 70,000 Tracts: 0

NBHR: 2 1.00 / 1.15 / 1.15

Land

Seq	Description	Mth	Cls	Grd	Size	Depth	BaseRt	AdjRate	Use Value	Mkt Value
1	COMM/INDSTRY	F	40	P	120.00	140.00	600	659		79027
2	PUB WATER	A	70	A	1.00		500	500		500
3	PUB SEW	A	71	A	1.00		500	500		500

Building

Attic/Basement	Area	Value	Built Ins	Num	Value	Chm	Num	Value	Plmbg	Num	Value
									3FXBTH	1	1350
									2FXBTH	3	2700

Openings: TotAmnt Before Dep: 4050 AfterDep: 3624

PC	Section	Description	Class	Grd	ExtFin	Heat/AC	Area	StyHgt	WHT	RepCstNew	EffYr	PE	Value
100	1	RETAIL	34	D	SOLID BRK	AC C/HT/	2340	1.00	14.00	78339	1990		70113
100	2	SERVICE GARAGE	48	D	BR VENEER	STOVE	7257	1.00	1.00	132273	1990		118385
100	3	TYPICAL OFFICE	64	D	BR VENEER	ELE/BB	153	1.00	1.00	4941	1990		4423
100	4	PATIO	111	D			468	1.00	1.00	1872	2002		1844
100	4	1 WOOD DECK	112	D			468	1.00	1.00	3738	2002		3683
100	5	PATIO	111	D			312	1.00	1.00	1248	1990		1117
100	6	STORAGE ROOM	113	D	BR VENEER		1750	1.00	1.00	30961	1990		27521

Other Features

Section	Description	Class	Grd	Comments	StyHt	Area	BaseRt	Cond	YrBlt	Value
1	COMM BLDG	90	S	REDS OWNED BY TOWN	1.00		1.00	2		

Building Info

Cnst: COMMERCIAL
DBA:
Fuel: OIL
Fndt: CONC BLOCK
Roof: FLAT
Wall: UNFINISHED
Flor: CONCRETE
Rfmt: TAR & GRVL

YrBlt: 1921
YrRmd:
YrEff: 1990
PhysC: 2
FEDP:
DEPO: 0
SndVal:
Rms: BR:

01/11/2005 14:42 757-5780483 NORTHAMPTON COUNTY PAGE 01/01

MUNICIPAL CORPORATION
OF CAPE CHARLES
2 PLUM STREET
CAPE CHARLES, VA 23310

REAL PROPERTY TAX BILL

MAP/PARCEL/UNIT: 083A4-0A-00-002

LOCATION: 712 RANDOLPH AVE

BILL DATE: 10/26/12

DUE DATE: 12/05/12

LEGAL DESCRIPTION:

3 LOTS

IES HOLDINGS LLC
35 VIBURNUM COURT
LAWRENCEVILLE, NJ 08648

Office Hours
Monday through Friday
8:00 a.m. - 5:00 p.m.

10% PENALTY AND 10% INTEREST WILL BE IMPOSED AFTER DUE DATE.
IF NOT PAID, A CIVIL WARRANT OR LIEN MAY BE ISSUED.
THIS IS THE ONLY BILL THAT WILL BE ISSUED.

PROPERTY VALUE ASSESSMENTS

LAND VALUE:	120,000
IMPROVEMENT VALUE:	449,300
EXEMPT VALUE:	0
NET VALUE:	569,300

Property taxes are billed in arrears on a tax year from January 1st to December 31st for payment by December 5, 2012.
For questions regarding the payment of your tax, call Town of Cape Charles Treasurer's Office at (757)331-3259 x21, x11 or x23.

For questions regarding the assessment value of your property or if you do not receive a Northampton County bill, please call the Northampton County Commissioner of Revenue office at (757)678-0446.

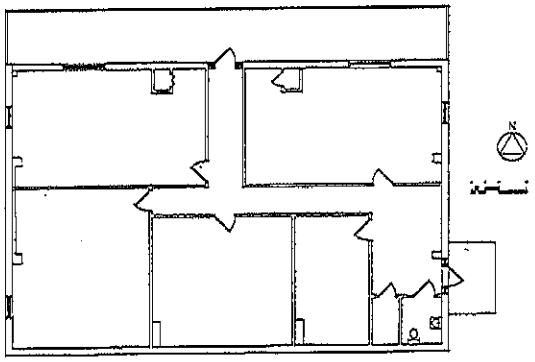
DATE	DESCRIPTION	RATE	AMOUNT
	Previous Balance		0.00
10/26/12	TAX Property Tax - Real	0.182800	1,040.68

Pd. 12/12/12
ck # 1053

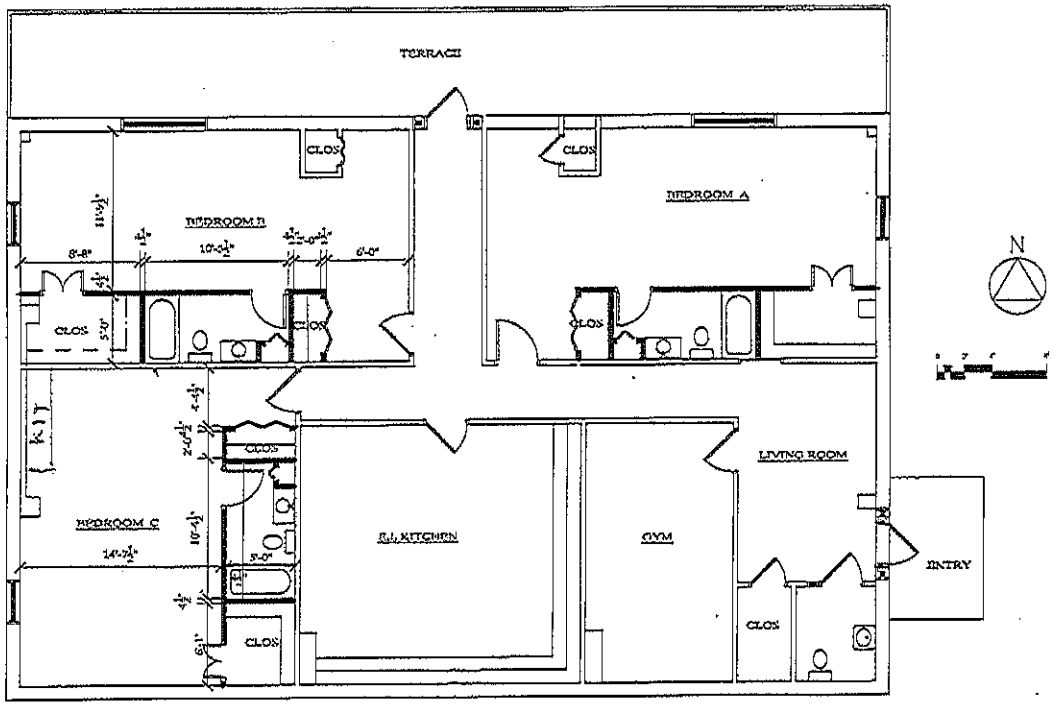
PENALTY: 0.00

TOTAL DUE: 1,040.68

PLEASE DETACH AND RETURN PORTION BELOW WITH PAYMENT



EXISTING CONDITIONS SECOND FLOOR 1/16"=1'



SECOND FLOOR

PARHAM
403 TAZEWELL . CAPE CHARLES VIRGINIA 23310-3217
757.331.8133 ... rlack@verizon.net
LEON FULLER PARHAM . ARCHITECT, R A, NCARB

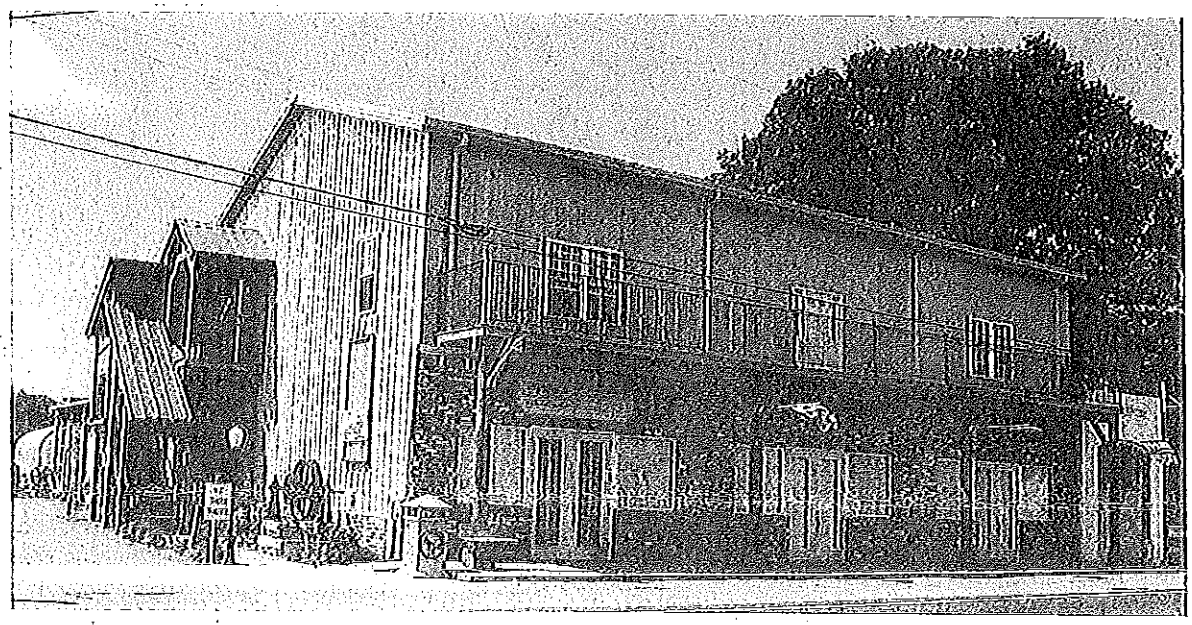
712 RANDOLPH AVE. CAPE CHARLES, VA
IES HOLDINGS, LLC-JOHN HUCHLER

1- 3 BEDROOM APARTMENT 2ND FLOOR

201303

LP	2/13/13		SK-4
	1/4"=1'		

Prime Location: Office Space

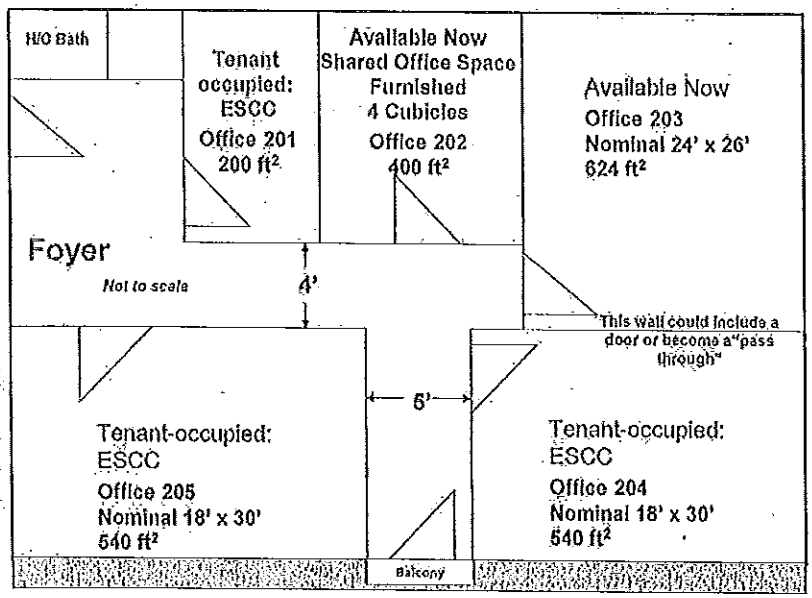


TOWNE CENTRE - 712 Randolph Avenue

Located on Route 184, the main access to the historic Town of Cape Charles, the public harbor, the new Kings Creek Marina and Bay Creek Development.

Now Leasing - Second Floor Office Space

- All new construction
- Cat 5e wiring for telephone and internet network
- Central heat and air conditioning
- Off-street parking
- Rent includes electricity, heat, water, sewer and garbage
- Shared office space available - short or long term lease
- On-site manager



Randolph Avenue

IES Holdings, LLC ♦ 712 Randolph Avenue ♦ Cape Charles, VA 23310
John Huchler ♦ Cell: 609-937-4360 ♦ huchler@verizon.net

Planning Commission Staff Report

From: Tom Bonadeo

Date: May 7, 2013

Item: 6B – Density in Harbor District Zone – Mason Avenue Corridor

Attachments: None

Item Specifics

The density issue was last reviewed at the April Meeting and has been reviewed by the Town Council and Council wants to move forward. A joint work session be planned is planned for May 20, 2013 at 6:00 pm.

Discussion

The Commission reviewed ways to measure density, by Units per Acre and Floor Area Ratio (FAR). FAR is the generally preferred method for measuring density, especially in commercial districts. FAR also takes into account open space and height. Some facts about Harbor District are:

1. 25% open space is required.
2. Parking is not part of open space.
3. Current height regulation is 40' with a CUP for some higher to 55'.
4. The Mason Avenue corridor is between the National Historic District and the Harbor. The Master Plan recommends that this area be treated more like Mason Avenue than like the Harbor.
5. The Harbor District Zone allows residential units over commercial space. It also allows partial use (50%) of the first floor as residential space. All residential space must have its own entrance at street level.
6. There is currently no limitation of the number of units (residential) on a property.

The Commissioners have reviewed the math ratios relative to the floor area ratio and have reached consensus that a FAR of about 1.25 provides the density, open space and height that most resembles the north side of Mason Avenue.

Several modifications to the ordinance have been drafted to show how this may integrate the FAR concept in Harbor District.

1. The Mainstreet Mixed-Use area was added to the Statement of Intent.
2. The maximum elevation of 40 feet for Mainstreet Mixed-Use is separate from the rest of the zone.
3. Parking at levels other than ground level count as floor space.
4. The Mainstreet Mixed-Use area will have the FAR of 1.25 with other areas at higher levels.
5. Added maximum height for a distance of 80 feet. This is the equivalent distance of 2 lots on the north side of Mason Avenue. The blocks on the south side of Mason Avenue shall also be equal to those on the north side and the viewsheds shall be maintained. These two items are not in the current ordinance.

Recommendation

Discuss the draft modifications and recommend alternatives. Discuss the best approach for the joint work session.

Town of Cape Charles

ARTICLE III

District Regulations

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

A. ~~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. The area of the Harbor District along Mason Avenue is defined as the "Mainstreet Mixed-Use". The Mainstreet Mixed-Use area shall use the Floor Area Ratio (FAR) to measure the density of permitted and conditional development. Parking space other than ground level is counted as developed space in the FAR calculation. The FAR for Mainstreet Mixed Use shal be calculated at 1.25. The balance of the zone shall be calculated at 1.50-1.75.

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B. 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

C. 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
   n. Watch and jewelry stores

5. Retail service establishments of the following types with more than 2,500 square feet of gross floor area:
   a. Beauty and barbershops
   b. Bicycle moped, and golf cart sales and rentals
   c. Blueprinting shops
   d. Dressmaking, tailoring, millinery, dry cleaning

6. Single-family and multi-family dwellings provided the following requirements are met:
   a. All dwelling units shall have direct access to the street level. Means of access may be shared with other dwelling units, but not commercial uses.

Access through a commercial establishment on the first level is not permitted.

b. Dwelling units shall occupy no more than 50 percent of the first floor of any building.
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.

D. 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 be equal to the blocks on the north side of Mason Avenue. 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 of the zone. 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 zone, 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 Intensly 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.

E. 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. .

F. Utilities. All utilities shall be installed underground.

G. 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.

H. 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.