BOARD OF ZONING APPEALS
Agenda
April 14, 2014
4:00 P.M.
Reconvened from April 7, 2014 meeting

1. Call to Order; Roll Call

2. Invocation and Pledge of Allegiance

3. Order of Business
A. Variance Application – Former Be-Lo Grocery Store Property, Mason Avenue

4. Adjourn

Board of Zoning Appeals Staff Report

From: Rob Testerman

Date: April 11, 2014

Item: 5A - Variance Application – Former Be-Lo Store, Mason Ave.

Attachments: Section 4.5 and 3.9 of the Cape Charles Zoning Ordinance

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Background

The variance application is for the former Be-Lo grocery store property. The applicant, Mr. Hand, proposes to demolish the existing building and create a new mixed use development on the property. The development would also open the Strawberry Street viewshed to the harbor.

After lengthy discussions during the April 7 meeting, the Board decided to table the decision. The main concerns with the application were the parking requirements and the open space.

Application Specifics

1. Section 4.5.1 Table of Parking Standards lists the various parking space requirements for different uses. I have attached the table for your reference.
    a. The applicant requests than rather than the various requirements depending on the use, that 1 parking space per 400 square feet of commercial be allowed.
2. Section 3.9-G states that "open space shall be provided equivalent to 25 percent of lot area." For purposes of section 3.9, open space consists of plazas, esplanades, landscaped areas, walkways, public recreational facilities and the like designed and maintained for use by pedestrians and open to the public. Open spaces shall not be open to vehicular uses except for public safety purposes, and shall be directly accessible from the street level.
    a. The applicant is requesting that the minimum open space requirement be reduced to 15%.

Discussion

Since the last meeting, staff has been further reviewing the parking standards ordinance. Keep in mind that the applicant has to provide sufficient parking for his intended use only.

Section 4.5.E. Adjustments—Shared Parking states:
One parking area may contain required spaces for several different uses, but except as provided below, the required space assignment to one use may not be credited to any other use. **The extent that developments wish to makes joint use of the same parking spaces operated at different times, the same space may be credited to both uses**. In determining the parking requirements where the uses intend to share parking, the permit-issuing authority will establish the peak hourly demand by calculating such a need from appropriate methodology set out in the most recent version of ITE Reference Manual entitled "Parking Generation", or where that methodology is inadequate from studies done in the town or similar towns and communities. Persons intending to take advantage of this provision are required to demonstrate that an enforceable agreement exists between two parties who intend to share parking.

With 5 commercial uses proposed at 800sq ft each, if calculated to 1 space per 200 square feet that would require 20 spaces for the commercial uses.

The current proposal calls for 28 residential units, with a couple possibly being 2 bedroom, so, at 1 space per one bedroom, and 2 spaces per 2 bedroom, if two units are to be 2 bedroom, that would be 30 spaces.

Generally speaking, mixed use developments need fewer spaces than codes require, due to the variations in peak hours of demand for different land uses on the site. Traditional parking regulations add up the peak-hour requirement for each land use, while shared parking takes into account that land uses will peak at different times, and can share some of their spaces amongst one another. Depending on the type of commercial use, one can assume that they will not be open at night, thus would not need 20 spaces dedicated to commercial uses during the overnight hours. Residents who are living in the units will also not likely all be there during the majority of daytime hours, reducing the spaces needed for residential uses during daytime hours.

Recommendation

Discuss the information presented above, continue discussion from last week and decide if the application meets the requirements to grant a variance.

Section 4.5 Parking Requirements

Except as otherwise provided in this ordinance, wherever a zoning or conditional use permit is required under this ordinance, the development shall meet the standards set out in this section which include but are not limited to providing adequate off-street parking and loading spaces.

A. Parking Spaces Required. Except as otherwise provided by this ordinance, every development or change of use shall provide a sufficient number of off-street parking spaces to accommodate the number of vehicles that are likely to be attracted to the development during the peak hour of a typical weekday or weekend, whichever is greater. In calculating the number of parking spaces needed, the number of spaces established for uses as set up in this Article, Table of Parking Standards, is presumed to be sufficient; however, the permit-issuing authority may, where appropriate, establish a different number of spaces by calculating such as need from the appropriate methodology set out in the most recent version of the Institute of Transportation Engineers (ITE) Reference Manual entitled "Parking Generation" or where that methodology is inadequate or inappropriate, from studies in the town and/or similar-sized towns and communities.

B. New in-fill structures or change of use projects on the first floor of structures in Commercial District C-1 shall be exempt from complying with the exact requirement of Section 4.5.A (Parking Spaces Required), Section 4.6 (Loading and Unloading), and Section 4.8 (Table of Parking Standards). Owners are encouraged to provide off-street or remote parking for themselves, employees, and loading facilities where possible (i.e., alleys to back yard areas). Owners shall evaluate existing parking and access and submit proposed plan to Town. Projects will be evaluated on a case-by-case basis. New or change of use second and third floor units shall be required to conform to parking requirements as set forth herein.

C. Reading the Table of Parking Standards. When a determination of the number of parking spaces required by this table results in a requirement of a fraction of a space, any fraction shall be counted as one parking space.

D. Adjustments--Satellite Parking

1. General. If the number of off-street parking spaces required by this Article cannot reasonably be provided on the same lot where the principal use associated with these parking spaces is located, then spaces may be provided on adjacent or nearby lots in accordance with the provisions of this section.
2. Location. Off-street parking, other than those intended for employees' use, shall be located within 600 feet of a public entrance of a principal building housing the use associated with such parking.
3. Condition. Property owners who obtain satellite parking in accordance with this section shall not be held accountable for ensuring that the satellite parking areas from which they obtain their spaces satisfy the design requirements of this ordinance. This means that the person owning the lot on which the satellite parking is being provided must secure a zoning or conditional use permit for the use and must meet the requirements of this ordinance. A developer desirous of taking advantage of the provisions for satellite parking must present satisfactory

written evidence that he has the permission of the owner or the person in charge of the lot or parcel to use such space.

E. Adjustments--Shared Parking

One parking area may contain required spaces for several different uses, but except as provided below, the required space assignment to one use may not be credited to any other use. The extent that developments wish to make joint use of the same parking spaces operated at different times, the same space may be credited to both uses. In determining the parking requirements where the uses intend to share parking, the permit-issuing authority will establish the peak hourly demand by calculating such a need from appropriate methodology set out in the most recent version of ITE Reference Manual entitled "Parking Generation," or where that methodology is inadequate from studies done in the town or similar towns and communities. Persons intending to take advantage of this provision are required to demonstrate that an enforceable agreement exists between two parties who intend to share parking.

F. General Design of Parking Areas

1. Vehicular accommodation area
   a. Safety in relation to streets. Every off-street vehicular accommodation area shall be designed so it has access to a public street without impeding vehicular movement in that street. Vehicle accommodation areas, other than for single-family dwellings and duplexes on local or minor streets, shall be designed so that vehicles exit such areas without backing onto a public street.
   b. Pedestrian safety. Vehicular accommodation areas shall be designed so that vehicles can proceed without posing a significant danger to pedestrians or other vehicles. The permit-issuing authority may allow driveways handling two-way traffic to be built to one-way traffic standards where aisles will be less than sixty feet in length and where the number of parking spaces served will be fewer than five spaces.
   c. Drainage. Except where the authority determines that adequate capacity in the storm drainage system to which the site is draining exists and is willing to accept the increase volume in runoff, no vehicle accommodation area shall be constructed in such a manner that a significant volume of surface water from the lot will be drained onto the public street or buildings. No vehicle accommodation area shall be constructed in such manner that will increase the quantity or decrease the quality of the runoff to adjacent lots.
   d. Lighting. Adequate lighting shall be provided for vehicle accommodation areas that are used at night. Parking lights shall not exceed 18 feet in height. Lighting shall not interfere with the use of nearby properties or the safe use of public streets. All lighting is to be compliant with Dark Sky lighting standards.
   e. Landscaping. All vehicle accommodation areas shall be landscaped. Said landscaping shall be in compliance with all other requirements of this ordinance.

i. The primary landscaping material used in parking areas shall be trees which provide shade or are capable of providing shade at maturity.

ii. Landscaping areas shall be reasonably dispersed throughout, located so as to divide and break up the expanse of paving. The area designated as required setbacks shall not be calculated as required landscaping area.

f. Screening. Plantings which meet the standards for screening of this ordinance will be used to screen vehicle accommodation areas other than those serving single-family and duplex dwellings from an adjacent residential district or use. Fencing may be substituted for plantings with the approval of the Zoning Administrator.

g. Reductions for protecting trees. The minimum number of spaces required may be reduced where the permit-issuing authority has determined that the reductions are necessary to preserve a healthy tree or trees with a three-inch or greater diameter from being damaged or removed and where the site plan provides for the retention of said tree or trees.

h. Handicapped spaces. Any use shall be required to provide handicapped spaces in accordance with the provisions of the Americans with Disabilities Act. All handicapped spaces shall be identified by appropriate restrictive signing and markings.

i. Compact spaces. In parking areas containing ten or more spaces, up to 35 percent of the required parking spaces may be set aside for the exclusive use of compact cars (being defined as cars 100 inches or less). Compact car spaces must be clearly marked and designated as such.

j. Bicycle racks and motorcycle pads. The number of spaces required by this section may be reduced by one space for each bicycle rack for five or more bicycles and each motorcycle pad for two or more motorcycles which are provided up to a total of 5 percent of the number of spaces.

k. Marking and maintenance. Parking stalls in paved areas shall be marked as such. Vehicular accommodation areas shall be properly maintained in all respects. Without limiting the foregoing, landscaping shall be kept healthy and well maintained, surfaces shall be free of potholes, and lines marking spaces shall be distinct and clear.

l. Vehicles in working condition. All off-street parking facilities shall be used solely for the parking of vehicles in operating condition. No motor vehicle repair work, except for emergencies, no storage of merchandise, and no motor vehicle parked for the sole purpose of sale shall be permitted in any required vehicle accommodation area.

2. Parking stalls and aisle dimensions

a. Normal. A required off-street parking space shall include a rectangular area with a length of at least 18 feet and a width of at least 9 feet, exclusive of access drives or aisles, ramps, columns, or office or work parking area. Such space shall have a vertical clearance of at least 6½ feet. Aisles shall not be less than 18 feet for 90□ parking nor less than 13 feet for 45□ parking. Angles shall be measured between centerline of the parking space and centerline of the aisle. For parallel parking, the length of the space shall be increased an additional two feet and the width increased by one foot.

b. Compact. A compact car parking space shall have a minimum length of 16 feet and a minimum width of 8½ feet.

3. Surfacing

a. Paved parking areas. All paved parking areas shall meet the following requirements:

i. a minimum depth of six inches of number 21A aggregate base and a minimum of one and one half inches of asphalt; or

ii. six inches of concrete on appropriate base; or

iii. four inches of brick or porous paving block on four inches of number 21A aggregate base.

iv. Land development shall minimize impervious cover to promote infiltration of storm water into the ground consistent with the use or the development permitted.

(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. Standards for non-paved areas. Whenever a vehicle accommodation area is exempt from the paved parking requirements, the permit-issuing authority:

a. may require that landscaped aisles or special separations be provided every three or more spaces where it finds it is desirable to ensure that the parking stalls will be readily identifiable to the users, and

b. may require that the perimeter of the accommodation area, encompassing but not limited to the unpaved parking stalls and the side of any unpaved drive or aisle leading to said stalls, be rimmed or edged with landscape timbers, railroad ties, brick, or curbing of adequate size where it finds that it is desirable to prevent erosion or the washing away of the parking area.

5. Porous paving materials may be used. The permit-issuing authority may require that porous paving materials be substituted for other surfaces in any portion of an accommodation area where it finds it is necessary to protect the root system of a tree or trees from damage.

Section 4.5.1 Table of Parking Standards

	Nature of Use	Parking Standards
A.	Park and Open Space:	
1.	Park and playground	as determined by authority
2.	Golf course	36.0 spaces per 18-hole course plus 1 space per employee
3.	Accessory building	as determined by authority
B.	Agricultural	
1.	Agricultural, as defined	1.0 space per employee
C.	Residential	
1.	Single-family dwelling	2.0 spaces per dwelling unit
2.	Two-family dwelling	2.0 spaces per dwelling unit

3.	Townhouse	2.0 spaces per dwelling unit
4.	Multi-family dwelling	1.0 space per one bedroom dwelling unit; otherwise 2.0 spaces per dwelling unit
5.	Mobile home	2.0 spaces per dwelling unit

D. Care Facility/Institutional

1.	Library	1.0 space per 300 sf GFA (Gross Floor Area)
2.	Museum	1.0 space per 300 sf GFA
3.	School	
	a. Nursery	1.0 space per employee
	b. Elementary	1.0 space per employee
	c. Middle	1.0 space per employee
	d. Junior	1.0 space per employee
	e. Other	.25 space per student plus 1.0 space per employee
4.	Instructional school	.5 space per student plus 1.0 space per employee
5.	Church	
	a. Parish house; Educational/ Social annex	.25 space per seat
	b. Place of Worship	.25 space per seat
6.	Hospital	2.0 spaces per bed
7.	Cemetery	20 spaces per chapel or .25 space per seat
8.	Funeral home	20 spaces per chapel or .25 space per seat, whichever is greater

E. Residential/Commercial

1.	Home occupation	see Section 4.8.C Residential Standards
2.	Bed and breakfast	1.0 space per bedroom plus 1.0 space per owner/resident (see Section 3.2.C 4 c)
3.	Rooming house	1.0 space per bedroom plus 1.0 space per employee
4.	Boarding house	1.0 space per bedroom plus 1.0 space per employee
5.	Hotel and motel	1.0 space per bedroom plus 1.0 space per employee

F. Offices

1.	Office	
	a. Professional	1.0 space per 300 sf GFA
	b. Other	1.0 space per 300 sf GFA

	2.	Principal Office/Medical	
		a. Physician	1.0 space per 200 sf GFA
		b. Surgeon	1.0 space per 200 sf GFA
		c. Dentist	1.0 space per 200 sf GFA
	3.	Bank	
		a. Standard	1.0 space per 200 sf GFA
		b. Drive-in	1.0 space per 200 sf GFA (stacking as per Section 4.5.B)
	4.	Real estate	1.0 space per 250 sf GFA
G.	Retail		1.0 space per 200 sf GFA
H.	Restaurant		
	1.	Standard (no drive in)	1.0 space per 100 sf GFA
	2.	Carry out	1.0 space per 100 sf GFA
	3.	Fast food (no drive in)	1.0 space per 100 sf GFA
	4.	Drive in	1.0 space per 65 sf GFA
	5.	Delivery only/catering	1.0 space per employee and 1.0 space per each delivery vehicle
I.	Service/General		1.0 space per 275 sf GFA
J.	Entertainment		
	1.	Private club	1.0 space per 3 seats
	2.	Club and lodge	1.0 space per 3 seats
	3.	Auditorium/assembly hall	1.0 space per 3 seats
	4.	Theater	1.0 space per 3 seats
	5.	Commercial recreation/entertainment	1.0 space per 3 seats
	6.	Recreation facility	1.0 space per 3 seats
K.	Service/Manufacturing		
	1.	Sign printing shop	1.0 space per 400 sf GFA
	2.	Upholstery shop	1.0 space per 400 sf GFA
	3.	Cabinet and furniture	1.0 space per 400 sf GFA
	4.	Printing/publishing	1.0 space per 400 sf GFA
	5.	Blacksmith shop	1.0 space per 400 sf GFA
L.	Motor Vehicles		
	1.	Convenience store	1.0 space per 200 sf GFA
	2.	Auto service station	2.0 spaces per service island plus 1.0 space per employee
	3.	Car wash	3.0 spaces per washing bay
	4.	Auto/trailer sales	3.0 spaces per employee
	5.	Automobile service	1.0 spaces per employee plus

	4.0 spaces per bay

M. Wholesale

1. Nursery	1.0 space per 400 sf GFA
2. Machinery	
a. Sales	1.0 space per 500 sf GFA
b. Service	3.0 spaces per service bay plus 2

N. Utilities

1. Transportation	1.0 space per 200 sf GFA
2. Public utilities and service	2.0 spaces per employee
3. Public utility generating, booster, or relay stations, transmission lines and tower, for maintenance of public utilities, including railroads and facilities and water and sewerage facilities	1.0 space per 1,500 sf GFA plus 1.0 space per employee

O. Storage:

1. Monumental stone works	1.0 space per 1,500 sf GFA
2. Coal, wood yards, lumber yards, feed and seed	1.0 space per 1,500 sf GFA
3. Frozen food locker	1.0 space per 1,500 sf GFA

P. Manufacturing

1. Manufacturing	1.0 space per 500 sf GFA

Q. Storage and Stacking Spaces Required. Whenever a use involves the storage or stacking of vehicles awaiting service, the development shall also provide a sufficient number of storage spaces or adequately sized stacking lanes to accommodate the peak hourly demand for the peak day in a typical week for said storage. The following uses are presumed to require the following number of storage spaces or stacking area:

Typical Use--uses with a drive-in window including but not limited to banks and drive-in restaurants.

Space Required--lanes sufficient to stack six automobiles per window including, in the event of a staged drive-in, three automobiles beyond the stage farthest from the window without interfering with the use of the adjacent road or street.

Type Use--Vehicle repair uses including but not limited to enclosed auto repair and boat and trailer repair.

Space Required--four spaces per service bay or repair area.

Any stacking lane or storage space shall be required to be surfaced to the same standards as the paved parking area with which it is associated.

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. *[Adopted by Town Council 10/17/13]*

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 1.5 by right and up to 2.0 with a Conditional Use Permit.

C. The maximum FAR for the balance of the Harbor District shall be 1.75 by right and up to 2.0 with a Conditional Use Permit. Nothing in this paragraph shall modify or waive the open space requirement set forth in subsection F of this Article III. *[Adopted by Town Council 10/17/13]*

D. 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

E. 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.D.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.

F. 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. *[Addition of "block length" adopted by Town Council 10/17/13]*

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. 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:

Modification adopted 10/17/13

      (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

Modification adopted 10/17/13

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.

G. 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.

H. Utilities. All utilities shall be installed underground.

I. 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.I.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.H.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.H.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.

J. 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.