

**BOARD OF ZONING APPEALS**  
**Public Hearing & Meeting**

**January 7, 2015**  
**Cape Charles Civic Center**  
**4:00 P.M.**

- 1. Call to Order; Roll Call**
- 2. Invocation and Pledge of Allegiance**
- 3. Public Hearing**
  - A. Hear public comment on the request for exception – Bay Creek Nicklaus Golf Course
  - B. Close Public Hearing
- 4. Consent Agenda**
  - A. Approval of Agenda Format
  - B. Approval of Minutes
- 5. Order of Business**
  - A. Application for Zoning Exception – Bay Creek Nicklaus Golf Course
- 6. Adjourn**



**DRAFT**  
**Board of Zoning Appeals**  
**Public Hearing & Meeting**  
**Town Hall**  
**April 7, 2014**  
**4:00 p.m.**

At 4:00 p.m. in the Town Hall, Vice Chairman Jay Wiegner called to order the Board of Zoning Appeals Public Hearing and Meeting. In attendance were Board members Pete Baumann and Julia Parr. Chairman Gene Kelly was not in attendance. There was currently one vacancy on the Board. Also present were Town Planner Rob Testerman, Assistant Town Clerk Amanda Hurley and applicant Patrick Hand. There were approximately eight members of the public in attendance.

Jay Wiegner led the Board in the recitation of the Pledge of Allegiance.

**PUBLIC COMMENTS**

*Deborah Bender, 300 Fulcher Street, Cape Charles, VA 23310*

Please see attached.

*Frank Wendell, 515 Monroe Avenue, Cape Charles, VA 23310*

Mr. Wendell stated that he was commenting on the proposed plan as a citizen and property owner on the commercial side of the street and went on to commend Mr. Hand for his vision and willingness to invest in the downtown commercial area because it would bring a lot of excitement, new retail and foot traffic. Mr. Wendell expressed his concerns for parking for the variance being requested stating that the historical use of the private parking on both sides of the building had been public for well over a half a century and it was naïve on the Town's part to expect that to remain that way for that long. Mr. Wendell hoped the Town would make arrangements or other parking considerations for the commercial district. Mr. Wendell did not see the hardship associated with the zoning variance requests regarding the commercial requirement of two parking spaces per 400 square feet. Mr. Wendell felt that Mr. Hand had enough space for all the parking he needed after he demolished the building and could give the remaining part of it to the commercial district because it put a hardship on the commercial merchant community as a whole. Mr. Wendell asked if the Board could discuss that issue and explain how they viewed it. Mr. Wendell also expressed his concern about the blank canvas of all the property and could not see the hardship of meeting Open Space and asked that the State Code definition of hardship be applied to the request and to do what was in the best interest of the Town. It was his opinion that Mr. Hand allocate the ample amount of parking that was needed to support his exciting project.

There were no other public comments to be heard nor any additional written comments submitted prior to the meeting.

**CONSENT AGENDA**

**Motion made by Pete Baumann, seconded by Julia Parr to accept the agenda format as presented. The motion was approved by unanimous consent.**

The Board reviewed the minutes from the September 24, 2013 meeting.

**Motion made by Jay Wiegner, seconded by Pete Baumann, to approve the minutes from the September 24, 2013 meeting as presented. The motion was unanimously approved.**

## **NEW BUSINESS**

### *Variance Application – Former Be-Lo Grocery Store Property, Mason Avenue*

Rob Testerman explained that the applicant was proposing 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.

Rob Testerman reported the following application specifics: i) Section 3.9-F(3)a of the Cape Charles Zoning Ordinance stated: “Mason Avenue Setback Requirement. No building or structure shall be located within 8 feet of the Mason Avenue VDOT right-of-way.” He called Dale Pusey with VDOT and Mr. Pusey was not aware of any VDOT regulations, but he would confirm that. The applicant was requesting that the setback be reduced to 4 feet at ground level. With a 4 foot setback, the building would be set back 16 feet from the curb of Mason Avenue. Portions of the building that fronted Mason Avenue would be setback at least 8 feet from the property line; ii) Section 4.2-F stated “...The following unenclosed uses may extend no more than four feet, but not nearer than five feet to any property line: balconies, eaves, trims...” it went on to state that in the C-1 district (north side of Mason Avenue), balconies located above the first floor may extend to the front lot line. The applicant was requesting that the upper floor balconies be allowed to extend to the property line, as was allowed across the street in the C-1 district; iii) Section 4.5.1 Table of Parking Standards listed the various parking space requirements for different uses. A table was attached for the Board’s reference. The applicant requested that rather than the various requirements depending on the use, that 1 parking space per 400 square feet of commercial be allowed; and iv) Section 3.9-G stated that “open space shall be provided equivalent to 25 percent of lot area.” For purposes of section 3.9, open space consisted 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. The applicant was requesting that the minimum open space requirement be reduced to 15%.

No variance shall be authorized by the board unless it finds the following: i) that the strict application of the ordinance would produce undue hardship relating to the property; ii) that the hardship was not shared generally by other properties in the same zoning district and the same vicinity; and iii) that the authorization of the variance would not be of substantial detriment to adjacent property and that the character of the district would not be changed by the granting of the variance.

Mr. Patrick Hand gave a brief overview of the project and began by stating that he was interested in the property because of the potential Arts Walk uses and focusing on Strawberry Street as a central location for markets, art events and concerts and he feared the wrong kind of development for that property and the landscape. The pedestrian mall would divide the 600’ of property into two parcels and would provide a better connection between the Town Harbor and Mason Avenue. Mr. Hand described his plan as a loose proposal and explained that both phases of the proposal occupied about 220’ of the 600’ and concentrated a lot of residential into a small area. Mr. Hand stated that there were many ways to construct the project with a lot of parking but he did not feel that was the best plan and pointed out the accessible, usable green space, noting that he was very close to the 25% open space requirement for the harbor district. The use of the commercial space was still unknown at this point but, there would be six sections of commercial store fronts on Mason Avenue and the back and upstairs would be residential. The depth of the property was a hardship as it was only 105’ deep so setback variances were needed. Mr. Hand was questioning whether to condense the frontage on Mason Avenue or spread it out and add more parking in the rear

and went on to state that he felt the project was a profitable venture over 18-24 months. Mr. Hand stated that he sent a proposal to the Town for the opportunity to purchase some much needed parking as well as the pedestrian mall.

Rob Testerman responded to Mrs. Bender's comment, stating that the project would have to be reviewed by the Harbor Area Review Board (HARB), but would need to abide by the Zoning Ordinance first. There was much discussion among the board and the public regarding the sequence and process of review.

Gene Kelly submitted his comments in writing prior to the meeting and Rob Testerman read them aloud. (See attached.)

Pete Baumann stated that he agreed with Gene Kelly on the setbacks and also agreed with the balcony extensions, but he was concerned about the parking requirements and asked to tweak the open space.

Jay Wiegner commented that in order to grant a variance, there had to be a demonstrable hardship and he did not see one and went on to state that he had an issue with the parking as well.

Mr. Hand explained his plans in more detail and stated that without knowing what the use would be, it was difficult to determine the parking standards, but he was confident that the commercial space would be used as office and/or retail. Mr. Hand suggested that the board could make stipulations on the parking depending on the use of the commercial space. It was mentioned that adjacent street parking may count towards the parking required for the project, but Rob Testerman would confirm that.

Rob Testerman pointed out that Section 2.6.2 Powers and Duties of the BZA stated "In authorizing a variance, the board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee to ensure that the conditions imposed are being and will continue to be complied with."

There was much discussion regarding rear setbacks as well as the parking.

Rob Testerman stated that there were various requests of this single application so the board could approve or deny each piece individually.

Mr. Hand stated that he could allocate enough parking if the Board would provide flexibility on the open space and went on to state that for a commercial space, if one parking space per 400 square feet was not adequate for the board, he would like to know what would be acceptable so he could design to it.

Jay Wiegner stated that he was reluctant to vote on anything and suggested Mr. Hand come back with a different parking plan.

Pete Baumann commented that he thought there was a hardship based on the shallowness of the lot and confirmed that he was comfortable with items 1 and 2 of the Application Specifics but had reservations regarding items 3 and 4.

Mr. Hand stated that there would be 28 residential units, some two bedroom units, so 33-34 parking spaces were needed for residential alone and there would also be five commercial

spaces occupying 800 square feet each. Rob Testerman stated that the parking standards of one space per 200 square feet required 54-55 spaces total including residential parking. If one space per 300 square feet was utilized, 45-46 spaces were needed.

Mr. Hand suggested the Board could approve items they were comfortable with and give a stipulation or condition for the parking and he would try to make it work on the whole parcel or just the individual parcel.

Jay Wiegner stated that he would like to see two scenarios such as one parking space per 200 square feet and one parking space per 300 square feet.

**Motion made by Pete Baumann, seconded by Jay Wiegner, to table the application until April 14, 2014. The motion was approved by unanimous consent.**

**Motion made by Pete Baumann, seconded by Jay Wiegner, to adjourn the Board of Zoning Appeals Meeting. The motion was approved by unanimous consent.**

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Vice Chairman Jay Wiegner

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Assistant Town Clerk



*DRAFT*  
**Board of Zoning Appeals**  
**Reconvened Meeting**  
**Town Hall**  
**April 14, 2014**  
**4:00 p.m.**

At 4:00 p.m. in the Town Hall, Vice Chairman Jay Wiegner called to order the Board of Zoning Appeals Public Hearing and Meeting. In attendance were Board members Pete Baumann and Julia Parr. Chairman Gene Kelly was not in attendance. There was currently one vacancy on the Board. Also present were Town Planner Rob Testerman, Assistant Town Clerk Amanda Hurley and applicant Patrick Hand. There were approximately four members of the public in attendance.

Jay Wiegner led the Board in the recitation of the Pledge of Allegiance.

**NEW BUSINESS**

*Variance Application – Former Be-Lo Grocery Store Property, Mason Avenue*

Rob Testerman explained that the meeting tonight was reconvened from the April 7, 2014 meeting and stated that the applicant was requesting a number of variances from the BZA including a variance of the required setbacks from Mason Ave, balconies to extend to the property line as they were across the street, and parking and open space requirements. Rob Testerman included Zoning Ordinance Section 4.5 Parking Requirements which included the parking standards and Section 3.9 Harbor District. Rob Testerman read Section 4.5.E Adjustments-Shared Parking and went on to state that he did not have much luck finding other localities that had done a similar study.

Mr. Patrick Hand stated that he did not have any new drawings but the project would most likely be completed in two phases. There would be a subdivision which would eliminate the open space issues, but there was still a parking issue. Mr. Hand stated that shared parking was too complicated and too difficult to enforce so he was asking for one parking space per 300 square feet for commercial and 20% open space and suggested that the Town could enforce and control parking with business licenses.

Pete Baumann expressed his concerns regarding parking and stated that the shallow lot was the hardship.

Jay Wiegner suggested adding another row of parking to the open space area which would allow for one space per 250 square feet or 40 total spaces.

Rob Testerman stated that this would meet the needs of the building and satellite parking was still an option if needed.

**Motion made by Pete Baumann, seconded by Julia Parr, to approve the following variances for the former Be-Lo grocery store property on Mason Avenue: setback reduced to 4', upper floor balconies extended to the property line, 40 total parking spaces and open space reduced to 20%. The motion was approved by unanimous consent.**

**Motion made by Jay Wiegner, seconded by Pete Baumann, to adjourn the Board of Zoning Appeals Meeting. The motion was approved by unanimous consent.**

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Vice Chairman Jay Wiegner

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Assistant Town Clerk

# Board of Zoning Appeals Staff Report

From: Bob Panek, Interim Town Manager/Zoning Administrator  
Date: December 30, 2014  
Item: 5A – Application for Zoning Exception – Bay Creek Nicklaus Golf Course  
Attachments: Application and supporting documents

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## Background

Holes 4 and 5 of the Bay Creek Nicklaus Golf Course has sustained substantial erosion from various storms and must be reinforced to prevent further loss. This section of the golf course is now within the Resource Protection Area (RPA) governed by Article VII – Chesapeake Bay Preservation Area Overlay District of the Cape Charles Zoning Ordinance.

## Application Specifics

1. The applicant is proposing to build a bulkhead to protect the area from further damage.
2. The estimated cost of the project is \$1.2M
3. As this is not a water dependent facility, it is not allowed in the RPA.
4. The project can be considered via the exception process, § 7.15 of the Zoning Ordinance.

## Discussion

Per § 7.15.A. of the Zoning Ordinance, the application, site plan and water quality impact assessment are attached.

Per § 7.15.B. of the Zoning Ordinance, adjacent property owners have been notified of the exception request and a public has been held.

§ 7.15.C. of the Zoning Ordinance states that the Board of Zoning Appeals (BZA) shall review the request for an exception and the water quality impact assessment and may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this Article if the BZA finds:

1. Granting the exception will not confer upon the applicant any special privileges that are denied by this Article to other property owners in the Overlay District;
2. The exception request is not based upon conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels;
3. The exception request is the minimum necessary to afford relief;
4. The exception request will be consistent with the purpose and intent of the Overlay District and not injurious to the neighborhood or otherwise detrimental to the public welfare, and is not of substantial detriment to water quality; and
5. Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a degradation of water quality.

## Recommendation

Discuss the information presented above and decide if the application meets the requirements to grant an exception.

MUNICIPAL CORPORATION OF CAPE CHARLES, VIRGINIA

Application for Zoning Variance

Date NOV. 14, 2014

Permit No. \_\_\_\_\_  
Fee: \$250.00

Applicant DON MACLENNAN Signature D. W. MacLennan  
Address Cape Charles, VA 23310 Telephone 757-410-7436  
1317 EXECUTIVE BLVD. STE 150, CHESAPEAKE, VA 23320  
Owner BAY CREEK SOUTH LLC  
Address 3335 STONE RD. City CAPE CHARLES State VA ZIP Code 23310

Contractor N/A  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_  
Town License No. \_\_\_\_\_ State License No. \_\_\_\_\_

Location of Improvement BAY CREEK NICKLAUS GOLF COURSE  
Lot No. \_\_\_\_\_ Block No. \_\_\_\_\_ Lot Size \_\_\_\_\_ Lot Area \_\_\_\_\_  
Type of Improvement BULKHEAD  
Proposed Use SHORELINE PROTECTION EROSION & SEDIMENT CONTROL MEASURE  
Estimated Construction Costs \$1,200,000.00

Dimension of Structure or Improvement Width 25 Length 1000' Height \_\_\_\_\_  
Total Square Footage 25,265 SF DISTURBED

Structure or Improvement will be set back  
\_\_\_\_\_ from front property line  
\_\_\_\_\_ from side property line  
\_\_\_\_\_ from side property line on corner lot  
\_\_\_\_\_ from rear property line  
MIN. 55' FROM 0.37 CONTOUR

Town Water Permit N/A Town Sewer Permit N/A

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 D. W. MacLennan

BUILDING PERMIT

Issuance of the Zoning Variance in itself does not permit the applicant, owner, or contractor to proceed with the improvements noted above. Improvements can proceed only after issuance of a building permit from the Cape Charles Building Official, whose office is in the Municipal Building at 2 Plum Street in Cape Charles and who can be reached at 757-331-2176.

Date Approved \_\_\_\_\_ Date Denied \_\_\_\_\_

Zoning Administrator \_\_\_\_\_

1755

WELLS FARGO BANK, N.A.  
www.wellsfargo.com  
65-320/550

**BAY CREEK SOUTH, LLC**  
10706 BEAVER DAM RD, SUITE 201  
HUNT VALLEY, MD 21030  
410-568-1500

10/07/2014

\$\*\*250.00

Town of Cape Charles

PAY TO THE  
ORDER OF

Two hundred fifty and 00/100\*\*\*\*\* DOLLARS

Town of Cape Charles  
2 Plum Street  
Cape Charles, VA 23310

MEMO

*W Gary Dorval*  
AUTHORIZED SIGNATURE

⑈0000001755⑈

Details on Back

Security Features Included



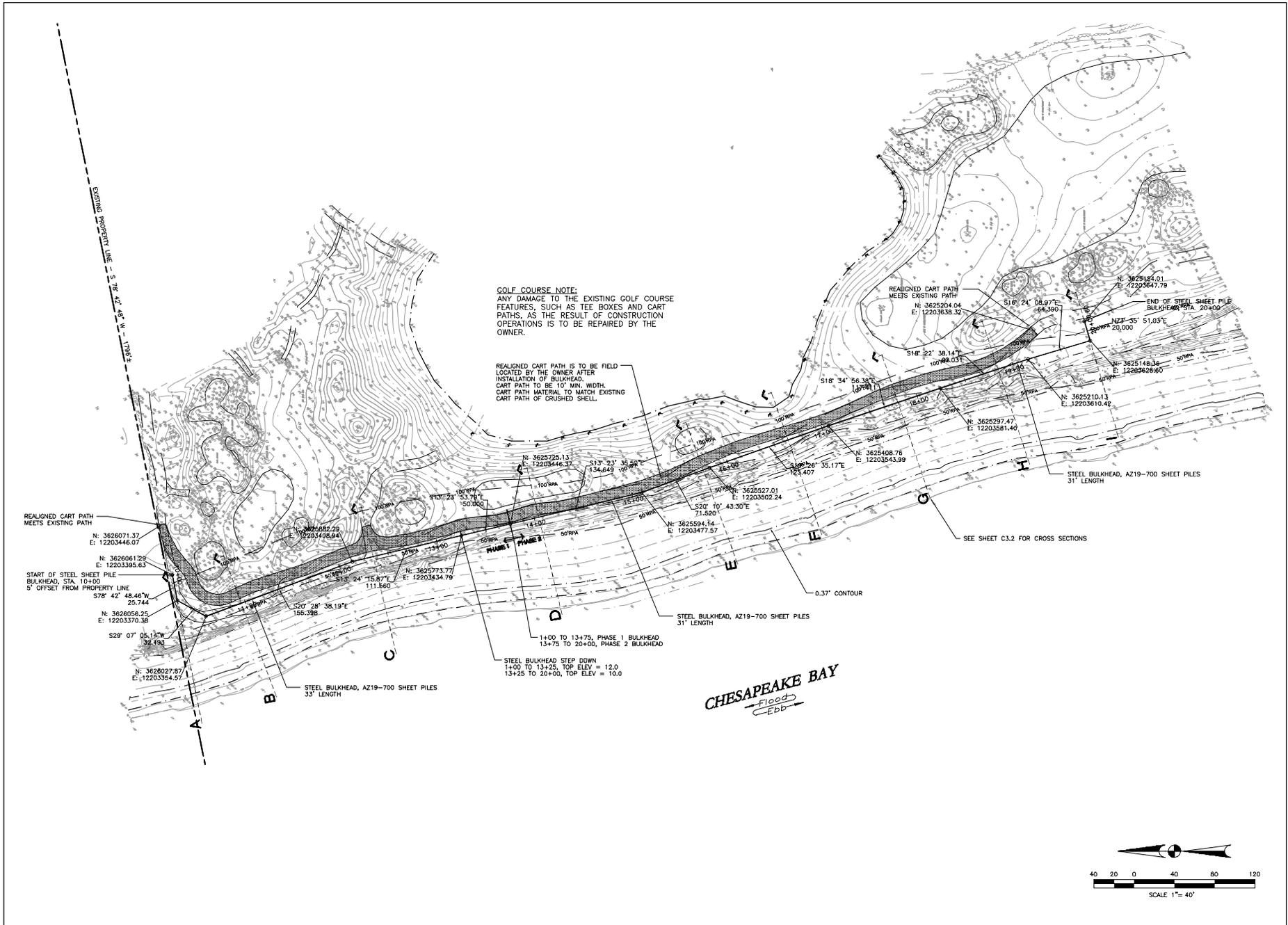
Donald MacLennan, P.E.  
Vice President / Principal

Office: 757-410-7436

1317 Executive Blvd., Suite 150  
Chesapeake, Virginia 23320

[don.maclennan@aesva.com](mailto:don.maclennan@aesva.com)

[aesva.com](http://aesva.com)



**GOLF COURSE NOTE:**  
 ANY DAMAGE TO THE EXISTING GOLF COURSE FEATURES, SUCH AS TEE BOXES AND CART PATHS, AS THE RESULT OF CONSTRUCTION OPERATIONS IS TO BE REPAIRED BY THE OWNER.

REALIGNED CART PATH IS TO BE FIELD LOCATED BY THE OWNER AFTER INSTALLATION OF BULKHEAD. CART PATH TO BE 10' MIN. WIDTH. CART PATH MATERIAL TO MATCH EXISTING CART PATH OF CRUSHED SHELL.

REALIGNED CART PATH MEETS EXISTING PATH  
 N: 3625204.04  
 E: 12203638.32

END OF STEEL SHEET PILE BULKHEAD, STA. 20+00  
 N: 3625184.01  
 E: 12203641.73

STEEL BULKHEAD, AZ19-700 SHEET PILES 31' LENGTH  
 N: 3625210.13  
 E: 12203610.42

REALIGNED CART PATH MEETS EXISTING PATH  
 N: 3626071.37  
 E: 12203446.07

START OF STEEL SHEET PILE BULKHEAD, STA. 10+00 5' OFFSET FROM PROPERTY LINE  
 N: 3626061.29  
 E: 12203395.63

N: 3626056.25  
 E: 12203370.38

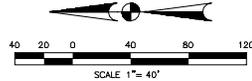
N: 3626027.87  
 E: 12203354.57

STEEL BULKHEAD, AZ19-700 SHEET PILES 35' LENGTH

STEEL BULKHEAD STEP DOWN 1+00 TO 13+25, TOP ELEV = 12.0 13+25 TO 20+00, TOP ELEV = 10.0

STEEL BULKHEAD, AZ19-700 SHEET PILES 31' LENGTH

SEE SHEET C3.2 FOR CROSS SECTIONS






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 Phone: (757) 243-2222  
 www.abs-engineers.com

BAY CREEK RESORT  
**NICKLAUS HOLES 4 AND 5**  
 BULKHEAD PLAN  
 BULKHEAD LAYOUT PLAN  
 CARY CHAMBERS

Project Contacts: JCS  
 Project Number: 19-002A-05  
 Scale: 1"=40'  
 Date: 10/1/14  
 Sheet Title: Bulkhead Layout Plan

Sheet Number: **C3.0**

## **Water Quality Impact Assessment (WQIA)** Nicklaus Holes 4 and 5 Bulkhead Plan

### **Project Description**

Nicklaus holes 4 and 5 are two holes that make up the 36 holes of the Bay Creek Resort Golf Course. They are located adjacent to the beach bordering the Chesapeake Bay which has suffered from both beach and upland erosion from wave and wind action caused by multiple storms in the past few years. This erosion and damage is threatening portions of these two holes with further damage, failure, and possible collapse onto the beach and into the bay.

The purpose of this plan is to install an upland bulkhead located behind of the beach and current area of erosion, but seaward of the existing golf course features of holes 4 and 5. This bulkhead will provide a hard feature that will prevent future erosion and damage to the golf course as the erosion continues along the beach and upland dune areas.

### **Location Relative to RPA**

The construction site is located in a developed portion of the existing golf course of the Bay Creek Resort, specifically holes 4 and 5 of the Nicklaus Course, which is partially located in the RPA buffer along the Chesapeake Bay.

### **Proposed RPA Encroachment**

The proposed bulkhead is to be installed behind (landward) of the existing line of erosion or the existing dune line adjacent to the Chesapeake Bay, and located outside of the 50' seaward RPA line, but within an existing developed portion of the golf course that is located within the 50' landward RPA buffer.

### **Proposed Site BMP and Mitigation Practices**

As no new impervious area is being proposed with this project, no BMP structures or mitigation practices are required. Proper erosion and sediment control measures will be installed and maintained during construction of the bulkhead.

### **Existing Vegetation**

The vegetation in the area of construction consists of beach and dune grass, maintained rough grasses, or manicured greens, tee boxes and fairways of the golf course. Any areas of vegetation disturbed during construction will be restored at a minimum to pre-existing vegetative conditions after bulkhead installation.