

# Planning Commission

## Regular Session Agenda

April 7, 2015

Immediately following the Joint Session with Town Council

1. Call to Order – Planning Commission Regular Session
  - a. Roll Call – Establish a quorum
2. Invocation and Pledge of Allegiance
3. Public Comments
4. Consent Agenda
  - a. Approval of Agenda Format
  - b. Approval of Minutes
  - c. Reports
5. Old Business
  - a. Tourism zone
6. New Business
  - a. Satellite Dish Ordinance
7. Announcements
8. Adjourn

# Planning Commission Staff Report

From: Larry DiRe   
Date: April 1, 2015  
Item: 4C-Staff Reports  
Attachments: None

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1. The Historic District Review Board received two applications and met on March 17<sup>th</sup> and March 24<sup>th</sup>. The Board approved Certificates of Appropriateness for each of the applications on March 17<sup>th</sup>. At the March 24<sup>th</sup> meeting the Board discussed new construction design standards from other Virginia historic districts and other historic district fee data for the purpose of review and future action. They held the election of officers at the March 17<sup>th</sup> meeting. Joe Ferher and John Caton were re-elected Chair and Vice Chair respectively. One application for front porch removal and replacement construction was received on March 31<sup>st</sup> and will be on the April 21<sup>st</sup> meeting agenda. Staff is working on a grant application from the Department of Historic Resources to provide training workshops open to Historic District Boards of any Certified Local Government and any Virginia resident. The application is due May 15<sup>th</sup> and requires no local funding match.
2. On Friday March 27<sup>th</sup> Interim Town Manager Bob Panek and I met with Bill Parr and several representatives of The Oyster Farm (formerly Aqua) to discuss their upcoming seasonal plans and the need for grand opening, special promotions, and events signage. Earlier Mr. Parr received a copy of the Article IV Section 4.1.H.2.c (page 18) of the Town Zoning Ordinance which addresses such signage. What The Oyster Farm proposes is permitted by right, however a Town Zoning Clearance is still required by Ordinance.
3. VDOT reviewed the plans submitted by developer Patrick Hand for the Mason Avenue project and provided the Town with a comment letter stating that the plan was not compliant with several VDOT standards related to commercial entrance ways. Currently Mr. Hand's plan conforms to the variances he received from the Board of Zoning Appeals.
4. VDOT staff in Suffolk is reviewing the reverse angle parking plan for Mason Avenue. The reverse angle parking area proposed is from Harbor Avenue eastward to Peach Street on the north side of the street. All the parallel parking on the south side of the street from Fig Street westward to Bay Avenue is retained.
5. Staff is looking at the Zoning Ordinance and will be bringing forward several items for the Planning Commission to consider in the next few months. The first item is the Satellite Dish Ordinance, which is on the agenda this month.
6. The Town issued four zoning clearances. A property owner in the R-1 district whose home was a non-conforming duplex requested a "rezoning" as a single-family dwelling. I informed him that his property did not need to be rezoned since single-family dwelling is the by right usage in that district. Staff sent him a letter to that effect. At this time no changes are being made to the footprint or appearance of the structure and any interior changes will be done through the building permitting process.
7. The Board of Zoning Appeals had no business and did not meet.

# Planning Commission Staff Report

From: Larry DiRe   
Date: March 30, 2015  
Item: 5A-Tourism Zone  
Attachments: Town of Cape Charles Draft Tourism Zone Ordinance; Cape Charles Business Association President's comments

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## Item Specifics

The Code of Virginia states the following on the creation and implementation of Tourism Zones in the Commonwealth:

§ 58.1-3851. *Creation of local tourism zones.*

*A. Any city, county, or town may establish, by ordinance, one or more tourism zones. Each locality may grant tax incentives and provide certain regulatory flexibility in a tourism zone.*

*B. The tax incentives may be provided for up to 20 years and may include, but not be limited to (i) reduction of permit fees, (ii) reduction of user fees, and (iii) reduction of any type of gross receipts tax. The extent and duration of such incentive proposals shall conform to the requirements of the Constitutions of Virginia and of the United States.*

*C. The governing body may also provide for regulatory flexibility in such zone that may include, but not be limited to (i) special zoning for the district, (ii) permit process reform, (iii) exemption from ordinances, excluding ordinances or provisions of ordinances adopted pursuant to the requirements of the Chesapeake Bay Preservation Act (§ [62.1-44.15:67](#) et seq.), the Erosion and Sediment Control Law (§ [62.1-44.15:51](#) et seq.), or the Virginia Stormwater Management Act (§ [62.1-44.15:24](#) et seq.), and (iv) any other incentive adopted by ordinance, which shall be binding upon the locality for a period of up to 10 years.*

*D. The establishment of a tourism zone shall not preclude the area from also being designated as an enterprise zone.*

(2006, c. [642](#); 2008, c. [462](#); 2013, cc. [756](#), [793](#).)

## Discussion

The Tourism Zone Draft Ordinance addresses the application of the above cited enabling legislation from the Code of Virginia. At the March 3, 2015 meeting certain specifics about capitalization limits were discussed at length. Other issues including the need for fiscal reporting language, and the distinction between a “grant” and tax refund program were discussed. As directed, staff contacted the President of the Cape Charles Business Association to discuss items related to capitalization and the employment requirements. Those comments are attached to this report. The Draft Ordinance attached presents the non-financial sections. That is in recognition that the financial sections will require extensive discussion, and that discussion is best supported by data from actual capital improvement projects completed by Cape Charles businesses that would be eligible under the conditions established under Definitions in Section XX-4. Also,

Chapter IV of the Town Charter establishes the Town Manager and Town Treasurer as municipal officers having the duty to report on the financial condition of the Town to the Town Council. Staff anticipates additional discussion with both the Town Manager and Town Treasurer. The attached draft includes staff comments.

Recommendation

Staff recommends that Planning Commission review the attached document and comments, make changes as needed, and provide direction to staff.

- **Sec. XX-1. - Purpose.**

The town council finds that the creation of a local tourism zone, with incentives for growth, as authorized by Code of Virginia, § 58.1-3851, as amended, will foster the town's development, maintenance and expansion of commercial, tourist and industrial businesses engaged in the tourism industry , all of which would benefit the citizens of the town. (Comment: This is the same language as in the current Technology Zone Ordinance, with the exception of the Code of Virginia section cited. Does the inclusion of "industrial" business meet the proposed "tourism business" definition stated below? Section 2.9 of the Zoning Ordinance defines "Industry" as "those fields of economic activity including forestry; fishing; hunting and trapping; mining; construction; manufacturing; transportation; communication; electric, gas, and sanitary services; and wholesale trade." Staff is presenting this comment in the interest of uniformity of definitions across Town ordinances.)

- **Sec. XX-2. - Administration.**

This chapter shall be administered by the town manager or his or her designee (the "administrator"). The administrator shall be responsible for determining if a business qualifies as a qualified seasonal tourism business or a qualified full time business, and shall determine and publish the procedures for obtaining the benefits created by this chapter. (Comment: This is the same language as in the current Technology Zone Ordinance. Upon fulfilling the requirements of this Ordinance, the qualified tourism business will receive a defined portion of either taxes or permitting fees already paid as a refund. That is to say that money received by the Town treasury will be leaving the Town treasury. Town Council should be informed of that impact on the treasury. The current language makes no provision for reporting the fiscal impact of this Ordinance. Staff is presenting this comment in the interest of ensuring a transparent process of tracking money into and out of the treasury.)

- **Sec. XX-3. - Boundary area.**

The entire area of the Town of Cape Charles is designated a tourism zone pursuant to Code of Virginia § 58.1-3851, as amended. (Comment: This is the same language as in the current Technology Zone Ordinance, with the exception of the Code of Virginia section cited. Is this the appropriate boundary area for the Tourism Zone as well? Staff is presenting this comment in the interest of uniformity across Town ordinances.)

- **Sec. XX-4. - Definitions.**

[The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

*Economic stimulus grants* means the incentive grants payable to a qualified seasonal tourism business or a qualified full time tourism business as provided in [section XX-6](#) of this chapter.

(Comment: As discussed last at last month's meeting, the proposed program is less of a "grant" and more a refund of taxes and/or fees already paid to the Town. Staff is presenting this comment in the interest of clarifying the definition of the program proposed by this Ordinance.)

*Existing business* means a corporation, partnership, limited liability company, or sole proprietorship authorized to conduct business in the Commonwealth of Virginia, located in and actively engaged in the conduct of trade or business in the town prior to the adoption of this chapter.

*Full time job* means a job that is to be performed by a worker for an average of at least 35 hours per week for a minimum of one year, with reasonable allowances for holidays and vacations.

*New business* means a corporation, partnership, limited liability company or sole proprietorship authorized to conduct business in the Commonwealth of Virginia not previously located in the town that begins actively conducting business after the adoption of this chapter.

*Qualified business* means either a qualified seasonal tourism business or a qualified full time tourism business.

*Qualified full time tourism business* means a new or existing business that has met the applicable qualifications set forth in [section XX-5](#) of this chapter and that is engaged in provisioning services, concierge and accommodation services, conference center/services, galleries, recreational facilities/services, entertainment, food services, day spas, specialty food stores, food services, gift stores, special events/services, or any other similar activity deemed appropriate for a tourism zone as defined in another jurisdiction of the commonwealth, and found as such by the administrator, twelve months per year.

*Qualified seasonal tourism business* means a new or existing business that has met the applicable qualifications set forth in [section XX-5](#) of this chapter and that is engaged in provisioning services, concierge and accommodation services, conference center/services, galleries, recreational facilities/services, entertainment, food services, day spas, specialty food stores, food services, gift stores, special events/services, or any other similar activity deemed appropriate for a tourism zone as defined in another jurisdiction of the commonwealth, and found as such by the administrator, for less than twelve months per year. (Comment: The language is the same as in the current Technology Zone Ordinance for the definitions of "Economic stimulus grant," "Existing business," "Full time job," and "New Business." There is then similar language to the current Technology Zone Ordinance, with the following exceptions: "tourism" replaces; "technology" and "technology manufacturing" with relation to defining qualified businesses; all language following "that is engaged in" under the "Qualified full time tourism business" and "Qualified seasonal tourism business" definitions. Staff is requesting guidance on the language reading, "or any similar activity deemed appropriate for a tourism zone as defined in another jurisdiction of the commonwealth, and found as such by the administrator." A number of interpretive possibilities arise from that language which may be better articulated in specifics. For example, does the administrator have the obligation of researching other tourism zone jurisdictions and reporting such to any prospective applicant who is found to not be a qualified tourism business, or is the administrator's ruling sufficient? Likewise, does a non-qualifying business have sufficient standing to request a text amendment to this section

DRAFT Tourism Zone Ordinance April 7, 2015

so as to be qualified, based on the language of another jurisdiction of the commonwealth's tourism zone ordinance? Staff is presenting this comment in the interest of clarifying through definition the grounds to determine the qualified nature of a tourism business.)

- **Sec. XX-7. - Non-waiver.**

Unless expressly stated herein, this chapter shall not be construed to waive the requirement of any ordinances, regulations, and policies that require permits and approvals for land use, construction, and business operation. Additionally, unless stated otherwise herein, nothing in this chapter shall be construed as waiving the right of the town to enforce its ordinances, regulations, or policies or to collect taxes, fees, fines, penalties, or interest imposed by law or by ordinance. (Comment: This is the same language as in the current Technology Zone Ordinance. Is this language appropriate? Staff is presenting this comment in the interest of uniformity across Town ordinances.)

# Planning Commission Staff Report

From: Larry DiRe   
Date: March 31, 2015  
Item: 6A-Satellite Dishes  
Attachments: Satellite dish photos from various zoning districts

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## Item Specifics

Article IV of the Town's Zoning Ordinance states the following on the size, placement, and visibility of satellite dishes:

### **Section 4.9 Satellite Dish.**

A. Dish type satellite or other ground or building mounted television, radio, or other communications receiving or sending devices.

1. Large satellite dishes are not permitted within the Town of Cape Charles.
2. Mini dishes shall be allowed with building permit and zoning clearance.
  - a. Building-mounted dishes shall not be on the front of any façade or structure. The dish must be mounted in such a way that it cannot be seen from the sidewalk or street.
  - b. Ground-mounted dishes shall not be in the front yard of any structure. Every effort shall be made to mount the dish in an unobtrusive location. Visible dishes shall be screened with plantings.

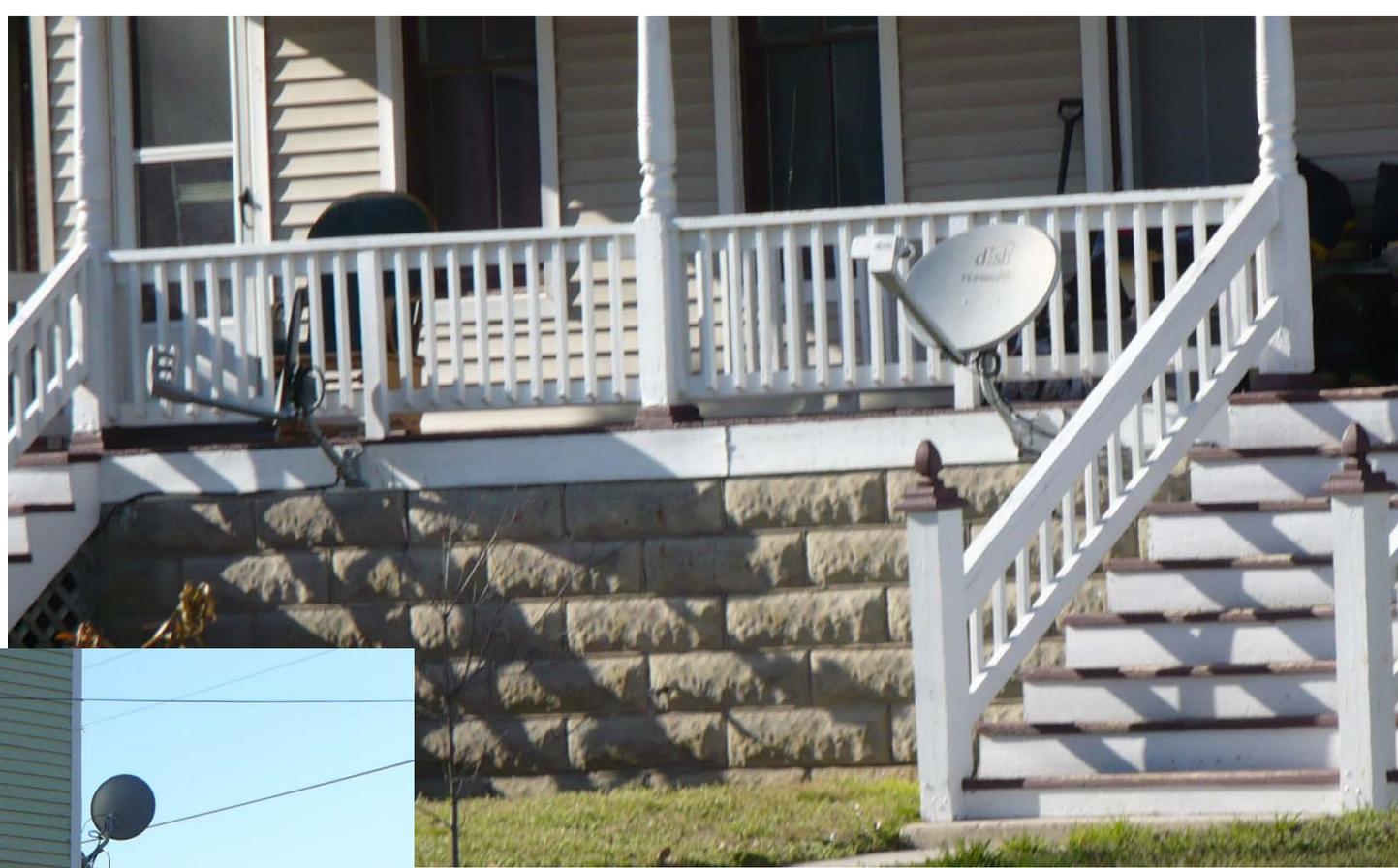
## Discussion

The issue of the size, placement, and visibility of satellite dishes was brought to staff's attention in early March by a Town Council member. The Historic District Review Board will be considering this issue at their April 21<sup>st</sup> meeting, especially as it pertains to the placement of these devices on the facades of homes in the Historic District. While the Historic District Guidelines are silent on satellite dishes specifically, the Zoning Ordinance is not. The text from Article IV Section 4.9 is cited above. Staff has conducted a walking and driving survey of various zoning districts to determine the degree to which properties are in conformity to Section 4.9. Also, staff conducted a search of specific zoning clearances granted for the installation of satellite dishes. The attached photographs present a sampling of the findings of such research. Needless to say, non-conforming dishes are in abundance. Staff is bringing this issue before both the Planning Commission and Historic District Review Board this month to determine the opinion of each on the wording, application, enforcement, and possible proposed revision of Section 4.9.

## Recommendation

Staff recommends that the Planning Commission review the Ordinance section cited above and the attached photos and provide direction to staff.





Residential 1 District dishes façade-mounted and visible from the street.

Historic District  
contributing structure  
dishes façade-mounted  
and visible from the  
street.





Commercial-Residential District dishes visible from the street and façade-mounted (right).





Marina Villages dish front-yard mounted and visible from the street.

