

Planning Commission

Regular Session Agenda

August 4, 2015

Cape Charles Civic Center – 500 Tazewell Avenue

6:00 pm

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. Staff Report
5. Old Business
 - a. Draft text amendment for “bedroom” definition
 - b. Draft Accessory Dwelling Units Ordinance review
 - c. Draft Tourism Zone Ordinance review
 - d. Proposed Bay Avenue reverse-angle parking drawings review
6. New Business
 - a. Map amendment proposed to resolve conflict with Zoning Ordinance Article VIII Section 8.1
 - b. Proposed text amendment to Zoning Ordinance Article II Section 2.9 and permitted use in Zoning Ordinance Article III Section 3.6.B – “brew pub”
7. Announcements
8. Adjourn



DRAFT
PLANNING COMMISSION
Regular Meeting
Cape Charles Civic Center
July 7, 2015
6:00 p.m.

At 6:00 p.m. Chairman Dennis McCoy, having established a quorum, called to order the Regular Meeting of the Planning Commission. In addition to Chairman McCoy, present were Commissioners Andy Buchholz, Joan Natali, Sandra Salopek, Bill Stramm and Michael Strub. Commissioner Dan Burke was not in attendance. Also in attendance were Town Planner Larry DiRe, Town Manager Brent Manuel and Town Clerk Libby Hume. There was one member of the public in attendance.

PUBLIC COMMENTS:

Andrew Follmer, 9 Kings Bay Drive, President of Cape Charles Business Association

Mr. Follmer addressed the Commission regarding the Tourism Zone stating that he felt it was a great initiative but cautioned the Commissioners regarding making the requirements so restrictive that businesses could not qualify. He also suggested the following: i) The Commission should think through the process to determine what would qualify as a success in 2-3 years and revisit the criteria for the program at that time if needed; ii) Look at existing businesses, such as brown dog ice cream, to see if they would have qualified and to get an idea of performance indicators; iii) A capital investment of \$2K - \$10K would be preferable for smaller operations; iv) Very few businesses would be able to sustain 2 full-time employees at 1.5 times the minimum wage. An alternative could be to use a minimum number of paid staff hours vs. the number of full time employees; and v) The difference between a year-round business vs. a seasonal business also needed to be discussed. The draft language showed that a seasonal business was one that was open for less than 12 months per year. Some businesses were open for 3-4 months whereas others were open for 10-11 months and all would qualify as a seasonal business. Perhaps a sliding scale could be used to determine the amount of incentive. Also, some year-round businesses were only open for 2-3 days during the off season and this should also be discussed.

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

CONSENT AGENDA

Motion made by Michael Strub, seconded by Joan Natali, to accept the agenda format as presented. The motion was unanimously approved.

The Commissioners reviewed the minutes for the June 2, 2015 Regular Meeting.

Michael Strub noted a punctuation correction on page 2 under New Business Item A – Accessory Dwelling Units in Residential District.

Motion made by Sandra Salopek, seconded by Andy Buchholz, to approve the minutes from the June 2, 2015 Regular Meeting as amended. The motion was unanimously approved.

REPORTS

Larry DiRe reported the following: i) On June 18, 2015 the Supreme Court issued a ruling on the Reed vs. Town of Gilbert case regarding the town's sign ordinance. It was a 9-0 ruling against the town citing violation of the First Amendment. The Supreme Court issued a checklist of 9 appropriate measures for compliance. Larry DiRe was currently reviewing the town's sign ordinance regarding the 9 items and the town's ordinance was in compliance with the majority of the items; ii) The police chief raised several issues regarding the helicopter lift-offs and landings in town. According to Article 3.11.C (page 33) of the Zoning Ordinance, heliports were only allowed as a conditional use in the M-1 Industrial District; and iii) Larry DiRe noted a typographical error in item 2 of his report regarding the area along Mason Avenue with reverse-angle parking. The correct area was between Peach Street and Harbor Avenue.

OLD BUSINESS

A. *Draft Tourism Zone Ordinance Review*

The Commissioners reviewed the revised language in the draft Tourism Zone Ordinance and there was much discussion regarding the following: i) The requirements in Section XX-5 for seasonal and full-time businesses were the same and needed review. After a number of alternatives were discussed, the Commissioners agreed that it did not matter whether a business was seasonal or year-round. The focus should be on economic growth – the growing of existing businesses and having new businesses come to town; ii) There was a huge difference between the numbers in Section XX-5 and XX-6. The numbers in XX-6 needed to be revised based on the numbers in XX-5. The Commissioners felt that a minimum of \$2K in capital investment was a fair number and would give small businesses an opportunity to participate in the program. Dennis McCoy added that the Commission needed to consider a sliding scale as suggested by Mr. Follmer; iii) Andy Buchholz suggested that the draft ordinance be reviewed by the treasurer and also that the criteria be compared with the numbers reported by the businesses. We needed realistic numbers based on what we had now; iv) A cap needed to be placed on the amount of the rebate; v) The required wage of 1.5 times the minimum wage would be very difficult for tourism-related businesses. The wait staff in a restaurant typically earned about \$2-\$3 per hour plus tips and most others paid close to minimum wage. It was agreed to delete this requirement; vi) In regards to the number of employees, possible criteria could be to use staff hours for businesses with less than 10 employees. For businesses with 10 or more employees, criteria could be 1 full-time and 2 part-time employees. Most employees were part-time with the exception of the owners, especially for seasonal businesses. The Commissioners agreed that the criteria would be changed to require 1 full-time or 2 part-time employees; vii) The definition of part-time was also discussed and it was agreed that for qualification under this program, a part-time employee needed to work a minimum of 14 hours per week; viii) The criteria would be revisited in about 3 years and modified if necessary; ix) The references to “machinery and tools” in sections XX-5 (a)(1)(ii), (a)(2)(ii), (b)(1)(ii) and (b)(2)(ii) were changed to “depreciable assets.” This type of equipment was shown on the businesses’ tax returns and would take the burden off the administrator in determining whether the equipment would qualify or not. A requirement would be to have the business owner provide a copy of the appropriate tax schedule; x) A table could be added showing the incentives for each category with a sliding scale based on revenue. Andy Buchholz stated that some seasonal businesses took in more revenue in 6 months than other full-time businesses did in a year. Dennis McCoy added that the important information was the total sales/revenue, the number of employees (full-time and part-time) and the increase/decrease in revenue from year to year.

Dennis McCoy asked Larry DiRe to make the changes as discussed. Feedback needed to be obtained from the business owners and the treasurer.

B. *Accessory Dwelling Units in Residential District*

Larry DiRe stated that he was able to gather information from other localities on the Eastern Shore and reported the following:

- Permitted: Town of Cheriton by conditional use, and Northampton County.
- Prohibited: Towns of Exmore, Wachapreague, Parksley and Onancock.
- The Town of Onley had definitions of both “Accessory Living Unit” and “Dwelling Unit” but did not clearly state that they were permitted or prohibited in the residential district. “Accessory structure” was a by-right permitted use in the residential district.

There was much discussion regarding the following: i) The lack of affordable housing in the county. Many of the school teachers could not afford to live in the county unless several of them shared a house. An accessory unit over a garage with its own water and septic would be ideal especially since the connection fees for dwelling units with less than 2 bedrooms were reduced to 50% of the regular fees; ii) It had been rumored that there were a number of properties in town renting out accessory units illegally. In these cases, the town did not know whether the units were safe or had running water, etc.; iii) A minimum size needed to be determined. The minimum size for a single family dwelling was currently 960 square feet. Larry DiRe read from the draft language from 2008 which required 250 sq ft for 1 occupant, 500 sq ft for 2 occupants and 650 sq ft for 3 occupants; iv) The draft language required the occupants of an accessory dwelling be a family member of the property owners living in the main dwelling. The Commissioners agreed to delete this requirement; v) The parking standards in the draft text required 1 space per accessory dwelling unit bedroom. Larry DiRe added that accessory dwelling units would require a conditional use permit so the specific parking requirements could be addressed at that time; vi) The draft language permitted an accessory dwelling unit within the main house, but the Commissioners agreed to strike that language.

Larry DiRe would provide an updated draft ordinance for review during the August meeting.

C. *Satellite Dish Ordinance Review*

Dennis McCoy read Dan Burke’s email in which he stated that he had seen about 5 dishes installed on the fronts of houses over the past 2 weeks and expressed his concern regarding jeopardizing the town’s historical status if it was decided to grandfather existing dishes which were placed on the front of properties.

Larry DiRe informed the Commission that the Historic District Review Board had a Skype call with the Governmental Association Liaison for Dish Network, David Lettkeman, who gave a brief overview of Over-the-Air Reception Devices rule of the Federal Communications Commission (FCC)

There was much discussion regarding the following: i) There were a number of properties with non-functioning dishes. The satellite dishes became the property owner’s responsibility once installed and the dish companies would not remove old units. Language needed to be included requiring the removal of non-functioning dishes; ii) The current ordinance could not be enforced. Per the FCC, the town could not require permits nor deny a person access to satellite service, but it was the Board’s right to restrict placement provided a line of sight could be obtained. The town could also require a resident to notify the town of their intent to install a dish; and iii) Whether the town could require a property owner to paint the satellite dish the same color as the house if it was installed on the front of the property.

Larry DiRe would provide an updated draft for review at the August meeting.

NEW BUSINESS

A. *Draft Text Amendment for "Bedroom" Definition*

Due to the time, this item was deferred to the August meeting.

B. *Proposed Bay Avenue Reverse-Angle Parking Drawings Review*

Due to the time, this item was deferred and since it was a recommendation in the Comprehensive Plan, would be reviewed on Monday, July 13th, at the Comprehensive Plan Meeting.

ANNOUNCEMENTS

There were no announcements.

Motion made by Bill Stramm, seconded by Joan Natali, to adjourn the Planning Commission meeting. The motion was unanimously approved.

Chairman Dennis McCoy

Town Clerk



DRAFT
PLANNING COMMISSION
COMPREHENSIVE PLAN WORK SESSION WITH
ACCOMACK-NORTHAMPTON PLANNING DISTRICT COMMISSION
Cape Charles Civic Center
July 13, 2015

At 6:00 p.m. in the Cape Charles Civic Center, Chairman Dennis McCoy, having established a quorum, called to order the Planning Commission Comprehensive Plan Meeting with Ms. Elaine Meil, Executive Director of the Accomack-Northampton Planning District Commission (A-NPDC). In addition to Chairman McCoy, present were Commissioners Joan Natali, Sandra Salopek, Bill Stramm and Michael Strub. Commissioners Andy Buchholz and Dan Burke were not in attendance. Also present were Town Planner Larry DiRe, Town Manager Brent Manuel, and Town Clerk Libby Hume. There were no members of the public in attendance.

Dennis McCoy stated that the purpose of the meeting was to review and discuss the comments submitted by Councilman Bennett and proceeded to turn the meeting over to Ms. Elaine Meil of the A-NPDC.

Michael Strub expressed his concern that only one Council member submitted comments and whether the other members of Council were in agreement or not.

Councilwoman Natali stated that mostly, the Town Council supported the document. Councilmen Bennett and Wendell had the most comments and were asked to submit them in writing. The other Council members were also asked to submit any of their comments but Councilman Bennett was the only one who submitted anything.

Dennis McCoy stated that Michael Strub's comments were well taken but the Planning Commissioners served at the bequest of the Council in an advisory capacity.

The following was discussed:

Cover:

The only way to comply with the comments on the front cover was to do a complete rewrite of the Comprehensive Plan. The current review was a 5-year update and Ms. Meil did not recommend a complete rewrite of the plan until 10 years. Ms. Meil added that she would stress, in her presentation materials to the Council, the fact that this review was an update.

Page 7:

The Commissioners reviewed the 3 comments on this page as follows: i) Although the wastewater plant had been improved, the water plant had not. The language was changed to state that the town's water and wastewater treatment capacities met current requirements but would continue to be monitored regarding the impact of future growth; ii) The statement regarding building or acquiring a new municipal center was kept since this was still included on Council's Capital Improvement Projects as a long-term project; and iii) The language regarding expansion of public parking in the Commercial District was deleted.

Page 8:

Councilman Bennett had commented regarding the age of the foundational documents which were cited and included in the Appendix. Most of the documents were developed in 2006 and 2007. i) The Commissioners agreed to replace the Comprehensive Plan Public Workshop from September 2006 with information from the Public Input Meetings held in November and December 2014; ii) The Harbor Master Plan, which was updated in 2013, would be added; iii) The Active Living

Workshop document would be added; and iv) The other documents would be kept since they were the most recent versions and did not necessarily need to be updated.

Page 9 and 10:

Councilman Bennett commented regarding the negativity of a statement in § II.3 – Housing. After some discussion, the Commissioners agreed to delete the sentence. There was much discussion regarding the need for affordable housing and the high percentage of cost burdened households in the town vs. the county. Ms. Meil stated that she would use census data to help explain this language and would add a statement regarding the town wanting to be economically viable and that affordable or workforce housing was needed. An example would also be included to explain the definition of cost burdened. Joan Natali added that this could become a real concern if not addressed.

Page 11:

The Commissioners reviewed the comments on this page as follows: i) In regards to the former Sustainable Technologies Industrial Park (STIP) area, the language was revised to state that the town should encourage development of the area; ii) Reference to the Town Harbor having been designated a Virginia Clean Marina would be added in § II.5 – Natural Resources. It was noted that the Kings Creek Marina had also recently achieved this designation; and iii) There were a number of comments in § II.6 – Public Utilities. Language would be modified to state that the public utility systems needed to be maintained and monitored for future growth.

Page 12:

There were several comments regarding § II.7 – Community Facilities and Services and § II.8 - Transportation. i) Language regarding the expanded and new facilities was modified to add the Beach Club at Bay Creek and the other facilities (Arnold Palmer and Jack Nicklaus Signature Golf Courses, the Palace Theatre and Kings Creek Marina) were deleted. After much discussion regarding the Library, the language regarding the need to expand the library was kept since the Library, although better in the current location, was still in need of additional space; iii) The language regarding the Town Harbor was modified as recommended by Councilman Bennett; and iv) The language regarding public parking was modified to state that the parking had been improved but would continue to be monitored.

Page 13:

There were several comments regarding § II.9 – Land Use and Community Character. After much discussion, the language was left alone as the Commissioners felt that i) The railroad was still in operation and an economic resource for the future; ii) There were undeveloped parcels of land in town; iii) It was still desirable for future development to keep with the town's established character and natural setting; iv) The rural character of the development along Routes 184 and 642 should be protected; and v) The county's planning policies, regulations, zoning map amendments would have a significant effect upon the town's character and economic prosperity.

Page 15:

There was much discussion regarding Councilman Bennett's comments relating to the existing historic pattern of development in the Town, excluding the development in Bay Creek. The Commissioners noted that Bay Creek was in a Planned Unit Development (PUD) which had its own plan.

Page 16:

There was much discussion regarding the Accawmacke Plantation PUD and the suggestion to change it to Bay Creek. It was noted that a portion of the northern portion of the PUD had been sold but since it was still part of the Accawmacke Planation PUD, the name of the PUD would not be changed but language would be added stating that the PUD was more commonly known as Bay Creek and Kings Creek Marina. This would be changed in all areas where the PUD was referenced.

Page 17:

In § III.2.1.2 – Harbor Mixed Use (Harbor), the last sentence of the first paragraph was modified to include all modes of transportation. After much discussion regarding the language in the second paragraph, Ms. Meil stated that she would rework the language to show the intent of the use if the railroad land on the north side of the harbor were to become available in the future.

In § III.2.1.4 – Low Density Residential (Residential Estates), Councilman Bennett asked where in town were any parcels between 1 to 5 acres. Since the portion of the Keck property deeded to the town was approximately 16 or 17 acres and was currently zoned as Residential Estates, this language was kept.

Page 18:

The language which was typed in all capital letters would be corrected in all locations.

Page 19:

In § III.3.5 – Main Street Mixed Use District, there was some discussion regarding the duplication of language and Ms. Meil suggested keeping the language in both places.

The Commissioners opted to keep the punctuation as currently shown in § III.4.1 – Parks & Open Space.

Page 20:

In § III.4.4 – Historic Town Entrance Corridor Overlay District (The District), the reference to the Annexation Agreement would be corrected to show 1991 vs. 1998. Language regarding the Northampton County Zoning Ordinance in the second paragraph was modified to state that the county was currently drafting a new zoning ordinance.

Page 21:

The comments regarding the table on this page were discussed earlier in the meeting and the previously decided changes would be made to the text on this page as well.

Page 22:

There were a number of comments regarding the sections on this page. The classification of Near Term was modified to state within the next 3 years to match language in § III.6.1 – Future Land Use Recommendations – Near Term.

§ III.6.1 – Language was added to the end of the opening sentence to state that the recommendations were targeted for implementation within the next 1 to 3 years or as an opportunity presented itself. Ms. Meil would bring back her recommended language regarding the Environmentally Restricted Layer after further discussion with Larry DiRe. Language regarding the Winter Quarter was modified to delete the statement regarding the property not being suitable for housing since the housing units had been demolished by the Coast Guard. The last 2 bullet points were combined.

§ III.6.2 – Future Land Use Recommendations – Intermediate Term or Tactical – examples of improved protection alternatives for the Port of Cape Charles would be added such as the breakwater, wave attenuators, floating docks, etc.

Page 22 & 23:

§ III.6.3 – Future Land Use Recommendations – Long Term or Strategic – i) the misspelling in the opening paragraph would be corrected; ii) The Commissioners agreed that the railroad was still an important economic resource; iii) The third sentence regarding Bayshore Concrete Products would be moved to a more suitable section, possibly under § III.B – Economic Vitality.

Page 25:

§ III-A – Quality and Diverse Neighborhoods: Ms. Neil stated that this entire section could possibly be reworked as it did not flow correctly.

In § III-A.2 – Background, Councilman Bennett commented regarding the lack of anything between the years of 1911 and the 1970s. There was some discussion regarding this issue and the Commissioners felt that since the Sea Cottage addition was developed in 1911, there was no other development within the town until Brown & Root purchased the acreage surrounding the town in the late 1970s which was annexed into the town in 1991.

Page 26:

The Commissioners felt that the language in § III-A.4 – Characteristics, High Standards needed to be kept stating that all property needed to be maintained at a high standard ... keeping the property clean, healthy and litter-free.

Page 27:

§ III-A.5 – Planned Framework – the language in the last bullet regarding the Accawmacke Plantation PUD was kept since the PUD did include flexible residential and commercial uses.

Page 29:

In Table 4, Description, the language under “Enhance Protection of the Port of Cape Charles” was left alone since the desire was to reduce wave action, reduce coastal erosion, and increase safe harborage.

Page 30:

In Table 5, Description, the language regarding the harbor as an existing green focal point was left alone as well as the bullet regarding the pursuit of public acquisition of under-developed waterfront lands.

Page 32:

In Table 9, language was added regarding establishing a future connection between Mason Avenue and the harbor per Councilman Bennett’s recommendation.

Page 33:

In Table 10, the language regarding the designing of the roads to maintain the existing grid was kept and language was added regarding the connection of Mason Avenue with the harbor.

Page 35:

After some discussion the following was agreed upon: i) Language regarding the town’s beach being the finest public beach on the Chesapeake Bay was kept; ii) Tourism Zone and HUB Zone were added under Tax Incentive Opportunities; and iii) Modern wastewater treatment facilities was changed to state of the art wastewater treatment facilities.

Page 36:

In § III-B.5 – Key Goals, Strategies and Policies, changes were made as recommended by Councilman Bennett except that the language regarding designation of land for future growth was kept.

In § III-B.5.1 – Goal: Designate Land for Future Growth, under Strategy, the last bullet was modified to state “Consider the use of infrastructure to encourage future growth.”

Page 37:

In § III-B.5.3 – Goal: Facilitate Business Start-Up, Expansions and Relocations, under Strategy, the second bullet was revised to state that the promotion of the dredging of the Harbor to 35 feet was to support economic development in the Harbor District.

Page 38:

Councilman Bennett noted duplication of language in §§ III-B.5.4 – Goal: Attract Tourists, Vacation and Second Homeowners, and III-B.5.5 – Goal: Attract Retirees. After some discussion the Commissioners agreed to keep the language in both sections but modified the language in § III-B.5.4 for seasonal service sector jobs, and in § III-B.5.5 for year-round service sector jobs.

Page 39:

There was much discussion regarding § III-B.5.6 – Goal: Create a Web Portal to Attract Tourists, Vacationers and Retirees and to Disseminate Information. The section heading was changed to “Create an Economic Development/Tourism Committee to Enhance the Community and to Attract Tourists, Vacationers and Retirees.” Under Goal, the language stating that the tourism web portal would be a subset of the main town web site was deleted.

At this point, Dennis McCoy suggested adjourning the meeting for the night due to the time. The Commission granted Ms. Meil the authority to address the remaining comments for review at the August meeting.

Michael Strub stated that he would be out of town for the September Planning Commission which was currently scheduled for September 1st and asked whether the Commissioners would consider changing the date to September 8th. Bill Stramm had a conflict with September 8th. After further discussion, the Commissioners agreed to keep the date of September 1st.

Motion made by Joan Natali, seconded by Michael Strub, to adjourn the Planning Commission Comprehensive Plan Meeting. The motion was unanimously approved.

Chairman Dennis McCoy

Town Clerk

Planning Commission Staff Report

From: Larry DiRe 

Date: August 4, 2015

Item: 4C-Staff Report

Attachments: Legal analysis report on the decision in Reed v Town of Gilbert

1. The Supreme Court delivered a unanimous ruling in the Reed v Town of Gilbert case, which was decided on June 18, 2015. The attached legal analysis report is brief, but very thorough, in explaining what this ruling means for local government's ability to regulate speech and sign ordinances. While not striking down all sign ordinances, the decision does require local governments to reconsider how, and why, signs are regulated. Sign regulations must pass the strict scrutiny test to determine Constitutional compliance. Writing for the majority Mr. Justice Thomas cited the following definition of strict scrutiny as, "requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest." In a concurring opinion, Justices Alito, Kennedy, and Sotomayor provided a series of "rules that would not be content-based" allowing local governments to maintain some measure of sign regulation. These are stated on page three of the attached legal analysis report, and can be found in more detail in the first concurring opinion of the case. The Court's ruling requires local governments to ask important questions about the regulations imposed on signage, and by extension on speech.
2. The Board of Zoning Appeals will meet on Wednesday August 5th at 10:00 am in the Civic Center to consider an application from the property owner at 309 Jefferson Avenue to conduct a non-conforming commercial operation at that location.
3. The Town issued one zoning clearance

Coates' Canons Blog: Sign Litigation: A Brief Analysis of Reed v. Town of Gilbert

By Adam Lovelady

Article: <http://canons.sog.unc.edu/?p=8167>

This entry was posted on July 21, 2015 and is filed under Constitutional & Statutory Limitations, General Local Government (Miscellaneous), Land Use & Code Enforcement, Zoning

Temporary yard signs are springing up all around town. Town council wants to reduce the clutter, but also wants to respect the free speech rights of the community. Council is considering new rules that will allow *campaign signs* during election season, *event signs* within a day of the event, and *ideological signs* anytime. It seems like a reasonable balance—allowing the signs but limiting them to a relevant time-frame. Can the town's regulations distinguish among signs this way?

A recent U.S. Supreme Court decision says no. Such distinctions are unconstitutional content-based regulation of speech.

To be clear, every sign ordinance distinguishes among signs. Ordinances commonly distinguish between locations (commercial property, residential property, public property, etc.), between types of signs (free-standing, wall signs, electronic signs, etc.), and between messages on the signs (commercial, safety, political, etc.). Reasonable distinctions concerning *location* and *types* of signs remain permissible.

The *Reed* decision, though, clearly invalidated some distinctions based on the message content of signs, and it will require adjustments to many local ordinances and some state statutes. The decision, with its four separate concurring opinions, also left open several legal questions.

This blog considers the decision of [Reed v. Town of Gilbert, 576 U.S. ___ \(2015\)](#), and its impact on local sign ordinances.

Context of Free Speech Caselaw

In thinking about the *Reed* decision it is helpful to recall a few key points about Constitutional protections of free speech and local government sign regulation. This area of the law is complex—far beyond the scope and space of this blog—but some context is helpful in understanding the impact of the new decision.

Content-Neutral Sign Regulations. Some sign regulations concern the form and nature of the sign, not the content of the message. These regulations—called *reasonable time, place, or manner restrictions*—include regulation of sign size, number, materials, lighting, moving parts, and portability, among other things. These regulations are allowed, provided they are “[1] justified without reference to the content of the regulated speech, [2] that they are narrowly tailored to serve a significant governmental interest, and [3] that they leave open ample alternative channels for communication of the information” (*Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S. Ct. 2746, 2753, 105 L. Ed. 2d 661 (1989)). Over the years the courts have allowed a variety of content-neutral sign regulations.

Content-Based Sign Regulations. Some sign regulations, however, restrict the content of the message. The Supreme Court requires that content-based regulation of noncommercial signs must meet strict scrutiny. As phrased in the *Reed* majority opinion, a regulation is content-based if the rule “applies to a particular [sign] because of the topics discussed or the idea or message expressed” (slip op., at 6). The strict scrutiny standard demands that the local government must show that the regulation is (i) designed to serve a *compelling* governmental interest and (ii) *narrowly tailored* to achieve that interest. That is a steep hill to climb, and in practice few, if any, regulations survive strict scrutiny review.

It is worth noting that commercial speech is subject to yet another test—a version of intermediate scrutiny outlined in *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1987). That test is described in David Owens' blog on [Offensive Signs](#), and as discussed below, the impact of the *Reed* decision on the *Central Hudson*

test is unclear.

Case Summary

The Town of Gilbert, Arizona, had a sign code requiring permits for signs, but outlining a variety of exemptions. The *Reed* decision focused on the exemptions for three types of signs: Political Signs, Temporary Directional Signs, and Ideological Signs. Under the local code, Political Signs were signs designed to influence the outcome of an election; they could be up to 32 square feet and displayed during political season. Temporary Directional Signs were defined to include signs that direct the public to a church or other qualifying event; they could be up to six square feet and could be displayed 12 hours before and 1 hour after the qualifying event. Ideological signs were defined to be signs that communicate a noncommercial message that didn't fit into some other category; they could be up to 20 square feet.

A local church—after being cited for violation of the rules for Temporary Directional Signs—challenged the sign code as abridging their freedom of speech. The Town argued (and the lower courts found) that its regulations were content-neutral. The distinctions among types of signs, they said, were based on objective factors not the expressive content of the sign. The distinctions did not favor nor censor a particular viewpoint or philosophy. And, the justification for the regulation was unrelated to the content of the sign.

Justice Thomas, writing for the Court, disagreed. He found that the distinctions were plainly content-based and thus subject to strict scrutiny. The distinctions—between Political Signs, Temporary Directional Signs, and Ideological Signs—“depende[ed] entirely on the communicative content of the sign” (slip op., at 7). “Regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints with that subject matter” (12). And, “an innocuous justification cannot transform a facially content-based law into one that is content neutral” (9).

In its failed attempt to meet the strict scrutiny standard, the Town offered two governmental interests to support its distinctions: aesthetic appeal and traffic safety. Even if these were considered compelling governmental interests (which the Court assumed without ruling), the Town's distinctions were not narrowly tailored. Justice Kagan noted in her own opinion (concurring in the judgment only) that the Town's distinctions did “not pass strict scrutiny, or intermediate scrutiny, or even the laugh test” (slip op., at 6, Kagan, J., concurring in judgment).

Impact of Local Ordinances

So what does this decision mean for local ordinances? In the end, some distinctions among signs clearly are allowed and will withstand judicial review. Some code provisions, though, must be revised. And then, there are the open questions.

The Court was unanimous in judgment: The particular provisions of the Town of Gilbert's sign code violate Constitutional protections for free speech. The Court was fractured, though, in the opinions, making it harder to discern the full scope of the decision. Justice Thomas offered the majority opinion of the court with five justices joining. Justice Alito offered a concurring opinion to further clarify the impact of Justice Thomas' opinion. He was joined by Justices Kennedy and Sotomayor. Three justices concurred in judgment only, and they offered two separate opinions to outline their legal reasoning and their concerns with the majority's reasoning.

So we have a split court. Three joined the majority only; three joined the majority, but also joined an explanatory concurrence; and three disagreed with the majority's legal reasoning. This three-three-three split, unfortunately, causes even more head-scratching for an already complex topic.

Content-Based Distinctions. In thinking about your sign ordinance, ask this: Does this regulation apply to a particular sign because of the non-commercial content on the sign? If yes, the regulation must meet strict scrutiny under *Reed*. The government must show that the regulation is designed to serve a *compelling* governmental interest and *narrowly tailored* to achieve that interest.

If your ordinance distinguishes among noncommercial sign types—political v. ideological v. religious—those distinctions are unconstitutional and must be changed.

Justice Thomas did offer some content-based regulations that may survive strict scrutiny if they are narrowly tailored to address public safety. These include warning signs for hazards on private property, signs directing traffic, or street

numbers associated with private houses.

Content-Neutral Distinctions. The several opinions of the court outline some valid distinctions for regulation. In his majority opinion, Justice Thomas noted that local governments still have “ample content-neutral options available to resolve problems with safety and aesthetics” (slip op., at 16). These include regulation of, among other things,

- size
- building materials
- lighting
- moving parts
- portability

Moreover, “on public property the Town may go a long way toward entirely forbidding the posting of signs, so long as it does so in an evenhanded, content-neutral manner” (slip op., at 16). A local ordinance or state statute can prohibit all signs in the public right-of-way. But, if signs are allowed, the regulations must not distinguish based on the content of the message. Regulations that allow some, but not all, noncommercial signs run afoul of the *Reed* decision.

For example, NCGS § 136-32 allows for “political signs” (as narrowly defined) in the public right-of-way of state highways during election season. That statute and similar ordinances will need to be revised to either, prohibit all signs in the right-of-way, or allow compliant signs with any noncommercial message in the right-of-way during election season.

Justice Alito, in his concurring opinion, provided further explanation (although not an exhaustive list) of what distinctions may be valid, content-neutral distinctions. He included:

- Size (including different sizes for different types of signs)
- Location, including distinguishing between freestanding signs and attached signs
- Distinguishing between lighted and unlighted
- Distinguishing between fixed message and electronic signs
- Distinguishing between signs on public property and signs on private property
- Distinguishing between signs on commercial property and signs on residential property
- Restricting the total number of signs allowed per mile of roadway
- Distinguishing between on-premises and off-premises signs*
- And time restrictions on signs advertising a one-time event*

* These last examples—distinguishing between on-premises/off-premises and restricting signs for one-time events—seem to conflict with the majority opinion in *Reed*. Here, we get back to the issue of the fractured court and multiple opinions (discussed below).

Open Questions

Content-ish Regulations

Justice Alito’s concurrence (discussed above) listed many regulatory distinctions that are clearly authorized. He listed two distinctions that do not clearly square with the reasoning of the majority opinion. But, if you consider the three justices concurring with Alito plus the three justices concurring in judgment only, there are six justices that took the question of content neutrality with more practical consideration than Justice Thomas’ hard line. Thus, Alito’s opinion may in fact hold the greatest weight of this case. Only time will tell—time and more litigation.

First, Justice Alito listed signs for one-time events. This seems to be precisely what the majority stuck down in this case. It is unclear how a local regulation could structure such regulation without relying on the content of the message itself. But the inclusion on Justice Alito’s list points to some room for defining signs based on function.

And second, Justice Alito listed the distinction between on-premises and off-premises signs. The enforcement officer must read the sign in order to determine if a sign is off-premises or on-premises. As such, these would seem to be facially content-based and subject to strict scrutiny. But, prior Supreme Court caselaw has upheld the on-premise/off-premise distinction and that precedent is not overruled by the majority opinion.

Commercial and Noncommercial Speech. In past decisions the Supreme Court has treated commercial speech to slightly less protection than noncommercial speech. Commercial speech regulation needs to meet a version of intermediate scrutiny, not the strict scrutiny applied to regulation of non-commercial speech (See, generally, *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1987)).

Arguably, the *Reed* decision opened the door to challenge a sign ordinance that distinguishes between commercial and noncommercial speech. Justice Alito's concurring opinion noted that distinguishing based on the *type of property*—commercial or residential—would be valid. Regulating based on the *content of the sign*—commercial or noncommercial—arguably is undermined by the *Reed* decision.

Notably, though, the majority in *Reed* did not overrule its prior decisions. The *Reed* decision was focused on the Town code's distinctions among types of noncommercial speech. Presumably the long-held standards for regulation of commercial speech still apply.

Conclusion

In the wake of *Reed*, some things are clear. Governments still have an array content-neutral regulations to apply to signs. But, content-based distinctions such as the ones in the Town of Gilbert's code must survive strict scrutiny to stand. Because of mix of opinions from the Court, there are several open questions. We will not know the full scope and meaning of *Reed v. Town of Gilbert* until the federal courts begin to apply this decision to other sign litigation.

Links

- www.supremecourt.gov/opinions/14pdf/13-502_9olb.pdf

Planning Commission Staff Report

From: Larry DiRe 
Date: August 4, 2015
Item: 5a- Proposed text amendment for "bedroom" definition
Attachments: None

Item Specifics

Town Zoning Ordinance Article IV Section 4.5.1 Table of Parking Standards reads as follows:

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*

E. Residential/Commercial

- 1. Home occupation see Section 4.8.C Residential Standard**
- 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*

* This section does not exist in the Zoning Ordinance.

Discussion

Last month one of the items brought before the Planning Commission was the absence of a definition of "bedroom." The term "bedroom" appears in Article IV Section 4.5.1 Table of Parking Standards and is used as the unit of measurement for determining the number of off-street parking spaces required by certain residential and residential/commercial uses. By contrast residential and commercial uses setting off-street parking requirements based on "dwelling unit" and "gross floor area" are both defined in Article II Section 2.9 Definitions.

While we all may have an intuitive or experiential definition of "bedroom," a standard definition is needed for the Zoning Ordinance. Staff presents the following text amendment draft language proposed to be included in the Article II Section 2.9:

"Bedroom - a room designated for the purpose of sleeping. A bedroom shall not have any cooking or food preparation appliances. It shall have an egress window, a functioning smoke alarm, a closet, total fenestration area of not less than three (3) percent of the total wall area. A bedroom may have bathing and sanitary facilities within the room's footprint."

Staff recognizes that many contributing homes in the historic district utilize pieces of furniture for closet space.

Recommendation

Staff recommends that the Planning Commission review the proposed text amendment to define "bedroom" and provide direction to staff.

Planning Commission Staff Report

From: Larry DiRe 
Date: August 4, 2015
Item: 5b-Accessory Dwelling Unit Ordinance review
Attachments: Draft Accessory Dwelling Unit text amendments to Zoning Ordinance

Item Specifics

The Town's Comprehensive Plan states the following in the Policies and Descriptions Section (page 28):

2. Promote compatible infill development and renovation within established neighborhoods.

- *Promote accessory dwelling units to add diversity of housing types, while maintaining the neighborhood character and providing affordable housing options.*

Article II Section 2.9 (page 18) of the Town's Zoning Ordinance defines accessory buildings as follows: *"a subordinate and separate building located upon the same lot occupied by the main structure or where a main structure was previously located. Accessory buildings shall not be used as dwelling units."*

Discussion

During the past several regular monthly meetings the Planning Commission received the various, past versions of several proposed Zoning Ordinance text amendments needed to allow accessory dwelling units as a conditional use. While specifically prohibited in the Zoning Ordinance, accessory dwelling units are promoted in the Comprehensive Plan. The Comprehensive Plan addresses affordable housing and the Zoning Ordinance Article I states that "reasonable consideration" should be given "to promote affordable housing."

At the July 7th meeting the Planning Commission directed staff to bring draft text amendment language to the Commissioners to review.

Recommendation

Provide direction to staff.

Section 2.9 Definitions (insert accessory dwelling definition, modify accessory building and single family dwelling definitions)

DWELLING, ACCESSORY is a dwelling unit which is an accessory use to a single family dwelling.

BUILDING, ACCESSORY means a subordinate and separate building located upon the same lot occupied by the main structure or where a main structure was previously located. Accessory buildings shall not be used as dwelling units, unless a conditional use permit is issued for an accessory dwelling.

DWELLING, SINGLE FAMILY means a structure arranged or designed to be occupied by one family, the structure having only one dwelling unit, with the exception of those single family dwellings containing an accessory dwelling.

Section 3.1.C, 3.2.C, 3.3.C, and 3.5.C (insert “Accessory dwellings” in Conditional Use sections)

Section 4.2.K Accessory Dwellings (insert in Article IV)

One accessory dwelling may be maintained on a property in the R-E, R-1, and CR zoning districts, contingent upon approval as a conditional use in accordance with Section 4.3, and subject to the following:

A. Physical characteristics.

1. Accessory dwellings shall be located in an accessory building.
2. Accessory dwellings *housing* one occupant shall have a floor area of at least 250 square feet.
3. Accessory dwellings *housing* two occupants shall have a floor area of at least 500 square feet.
4. Accessory dwellings *housing* three occupants shall have a floor area of at least 650 square feet.
5. Accessory dwellings shall not have a floor area exceeding 45 percent of the floor area of the main building.
6. Accessory dwellings shall have one kitchen and one bathroom.
7. Accessory buildings containing an accessory dwelling shall maintain the exterior appearance of an accessory building and shall not have the appearance of a single family dwelling.

B. Occupancy characteristics.

1. *When used as a rental* occupancy of the accessory dwelling shall be a minimum of 60 days.

C. Other requirements.

1. Accessory dwellings located in accessory buildings shall have a separate water meter from the principal dwelling.
2. The lot on which an accessory dwelling is located shall have the required minimum lot area for the district in which it is located.
3. Parking shall be considered on a case-by-case basis as part of the conditional use permit application process, ensuring adherence to Section 4.5.1 C. 6. (Table of Parking Standards) using both on and off street parking areas.
4. Floor plans of the proposed accessory dwelling shall be submitted as a part of the conditional use permit application. Exterior elevations shall also be approved by the Historic District Review Board when required by Article VIII, Historic District Overlay.

Section 4.5.1 Table of Parking Standards (insert)

C. Residential

- | | |
|-----------------------|--|
| 6. Accessory dwelling | 1.0 space per accessory dwelling unit (minimum); otherwise 1.0 spaces per accessory dwelling unit bedroom. |
|-----------------------|--|

Planning Commission Staff Report

From: Larry DiRe 
Date: August 4, 2015
Item: 5c-Draft Tourism Zone Ordinance review
Attachments: Cape Charles Draft Tourism Zone Ordinance

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 attached draft Tourism Zone Ordinance reflects the changes proposed at the July 7th meeting. Also at that meeting Mr. Andrew Fulmer of the Cape Charles Business Association spoke to the Commissioners about a number of issues including the employment requirements, and the differences between full time and seasonal businesses. The Planning Commission had lengthy discussion the employment and wage requirements, and the numbers cited in Sections xx-5 and xx-6 of the previous draft. Revisions were added to the attached draft document.

Recommendation

Staff recommends that the Planning Commission review the revised proposed draft text amendment 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 businesses engaged in the tourism industry, all of which would benefit the citizens of the town.

- **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 tourism business, and shall determine and publish the procedures for obtaining the benefits created by this chapter.

- **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.

- **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 credits means the incentive credits payable to a qualified tourism business as provided in [section XX-6](#) of this chapter.

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 full-time employee as defined according to the federal definition found in 26 US Code Subtitle D Chapter 43 Section 4980H, 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.

Part time job means an employee working a minimum of fourteen hours weekly and fewer than the number of hours required to meet the definition of full time job defined in this section.

Qualified 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, fishing, communications, transportation, or any other similar activity deemed appropriate for a tourism zone as defined in another jurisdiction of the commonwealth and approved by that jurisdiction, and found as such by the administrator.

- **Sec. XX-5. - Qualifications.**

To be eligible for economic stimulus credits a qualified tourism business must:

- (i) Create and maintain a minimum of one (1) new full time or two (2) new part time jobs.
- (ii) Make a new verified capital investment of no less than \$2,000.00 in a building, building improvements, and/or in depreciable assets. A capital investment does not include the cost to acquire real property.
- (iii) Hold a current Town business license and be current in all tax and utility bill obligations to the Town.
- (iv) Be in compliance with all Town ordinances.

- **Sec. XX-6. - Economic stimulus credits and enforcement.**

(a) A qualified tourism business shall be eligible to receive the following economic stimulus credits:

- (1) A credit equal to 25 percent of the new or increased capital improvement tax paid to the town with a verified capital investment of not less than \$2,000.00 that shall increase proportionately up to 100 percent with a capital investment of \$1,000,000.00 or more.
- (2) A credit of up to 100 percent of the amount of the net increase in real estate tax paid to the town.
- (3) A credit of up to 100 percent of the amount of BPOL tax paid to the town.
- (4) For a qualified tourism business that maintains at least eighty-five (85) hours weekly of full time and part time staff employment, a credit of up to 50 percent of the facility and connection fees paid to the town.*
- (5) A credit of up to 100 percent of the building permit fee paid to the town.

(b) The types and amounts of the economic stimulus credits shall be based on the factors that the town deems relevant, including without limitation the type of business conducted by the qualified business, the amount of verified capital investment, and the number of full time or part time jobs created by the qualified business. The types and amounts of economic stimulus credits awarded to a qualified business shall be initially determined by the administrator, subject to approval by the town council.

(c) No taxes, fees, or other charges shall be deemed waived by this chapter. All such taxes, fees, and charges shall be paid by the qualified business in full as and when due. Economic stimulus credits described in subparts (1), (2), and (3) of subsections (a) and (b) above that are awarded to a qualified business shall be paid annually, in arrears, for each year that the qualified business meets all eligibility criteria up to a maximum of five years. If a qualified business fails to meet all eligibility criteria in any given year, the economic stimulus credits for that year and all future years shall be forfeited. Economic stimulus credits described in subparts (4) and (5) of subsections (a) and (b) above that are awarded to a qualified business shall be paid upon verification by the administrator of the completion of construction of the improvements to which the applicable facility and connection fees and/or building permit fees relate.

(d) As a condition to receiving an economic stimulus credit, a qualified business agrees to provide such information and allow such inspections as the town deems reasonably necessary to verify the eligibility criteria and to ensure the qualified business's ongoing compliance therewith.

(e) Notwithstanding anything to the contrary in this chapter:

(1) An otherwise qualified business shall lose its eligibility for economic stimulus credits, and shall repay any previously awarded economic stimulus credits, upon any of the following:

a. A violation by such business or, to the extent related to the operation of the business, by any of its principals or officers, of any statute, regulation, or order of the United States or the Commonwealth of Virginia or any department or agency thereof; or

b. A violation of any town ordinance that continues beyond the applicable cure period or, if none, a period of ten days.

(2) All economic stimulus credits are subject to the appropriation requirements of the Commonwealth of Virginia and the town.

(f) The town will issue a qualified approval letter which will specify the amount of the verified capital investment, the number of full time or part time jobs created, the amount of the economic stimulus credit(s), the eligibility criteria for receiving the economic stimulus credit(s), the procedures for verifying compliance therewith, and such other terms as may be appropriate.

(g) If a Qualified Tourism Business leaves the Town to conduct business in another location within three (3) years of completing any incentive period, it will be required to repay the Town the total amount of Tourism Zone incentives received.

- **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.

* Weekly staff employment hours are based on an average of one full time employee and two part time employees each working 25 hours. A credit of up to 50% reduction in facility and connection fees would be in the thousands of dollars.

Planning Commission Staff Report

From: Larry DiRe 
Date: August 4, 2015
Item: 5d- Proposed Bay Avenue reverse-angle parking drawings review
Attachments: Bay Avenue parking drawings

Item Specifics

The following reverse-angle parking-related passages were taken from the Town Comprehensive Plan.

Section II.8. Transportation (page 12) reads as follows: "Mason Avenue and Bay Avenue street improvements should be evaluated and include addition of bicycle lanes, reverse-angle parking and aesthetic improvements to promote safety and increase parking spaces."

Policies and Descriptions 10. Extend the concept of the historic grid network to new development (page 25) "The historic grid system works well in the core of the Town and should be extended into new development including street width, turning radii and diagonal parking"

Section III- C.4 (page 42) "Identified Mason Avenue Complete Street improvements include conversion of parallel parking to reverse-angle parking on one side of the street, addition of bicycle lane(s), reduction in lane width to calm traffic, provision of accessible parking, and aesthetic improvements that promote pedestrian safety. Bay Avenue is a priority for Complete Street improvements after Mason Avenue planning has been completed."

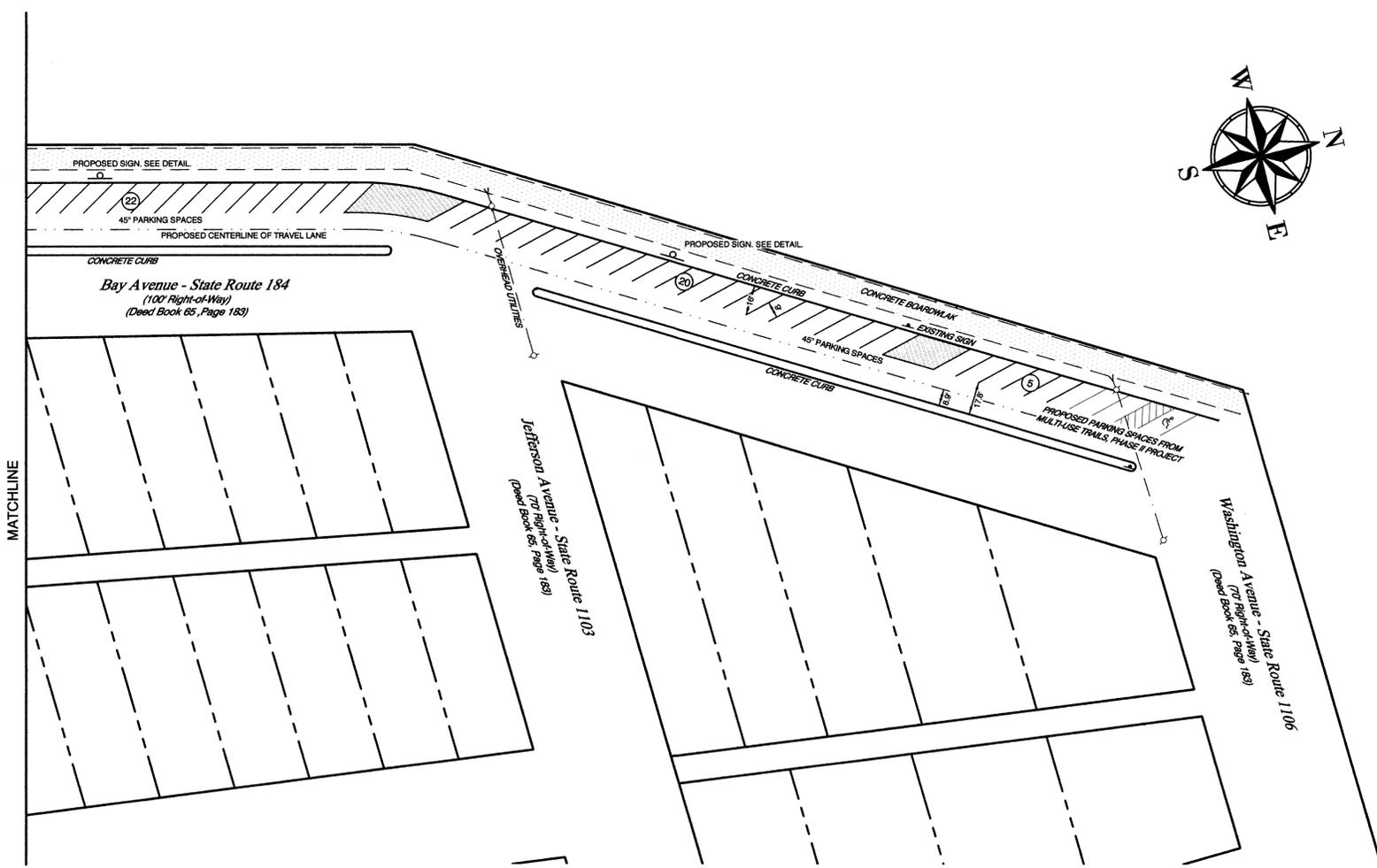
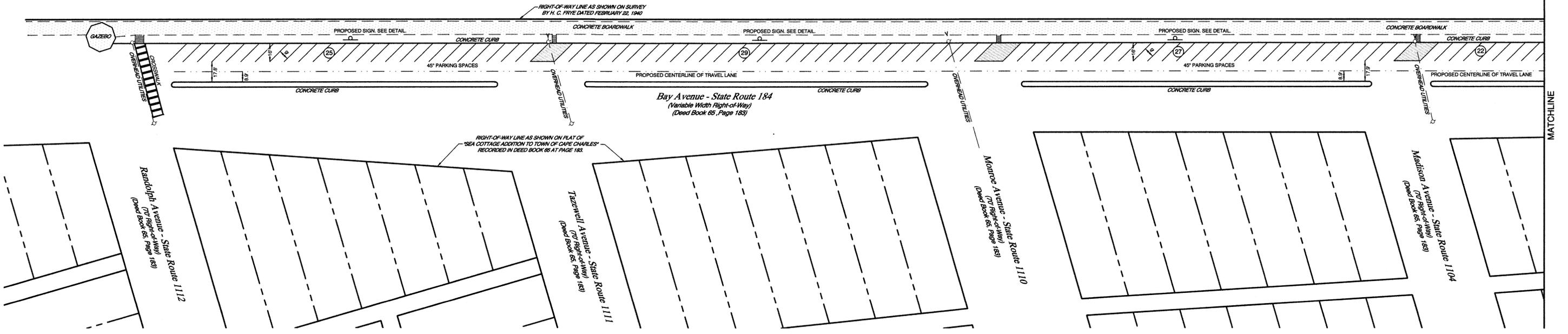
Section IV Implementation IV.1 Town Council Priorities (page 58) "Develop Town Parking Solutions"

Discussion

There is sufficient language in the Comprehensive Plan as reason to propose reverse-angle parking on Bay Avenue as a policy in line with stated town goals.

Recommendation

Staff recommends that the Planning Commission review the proposed reverse-angle drawings and provide direction to staff.



SIGN DETAIL
 REFLECTIVE SIGN TO BE INSTALLED
 ON BREAKAWAY POSTS,
 MINIMUM 3' BEHIND FACE OF CURB
 SIGN SHALL COMPLY WITH MUTCD GUIDANCE

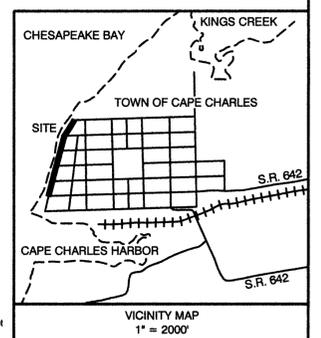
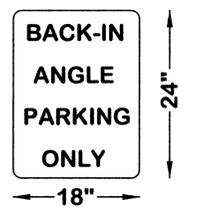


EXHIBIT SHOWING
 PROPOSED REVERSE ANGLE PARKING
 ON
Bay Avenue
 TOWN OF CAPE CHARLES
 NORTHAMPTON COUNTY, VIRGINIA
 FOR
The Town of Cape Charles
 JUNE 10, 2015

Shoreline Surveyors
 23314 Courthouse Avenue - P. O. Box 735
 Accomac, Virginia 23418
 PHONE (757) 789-3980 FAX (757) 789-3982
 SCALE: 1" = 40'
 DRAWN: MAS
 FIELD BOOK: 33, PAGE 2
 JOB #15063
 SHEET 1 OF 1

Planning Commission Staff Report

From: Larry DiRe 
Date: August 4, 2015
Item: 6a- Map amendment proposed to resolve conflict with Zoning Ordinance Article VIII Section 8.1
Attachments: Maps showing parcels and present zoning, photos

Item Specifics

Town Zoning Ordinance Article VIII Section 8.1 Purpose of the District reads as follows:

Section 8.1 Purpose of the District

The purpose of this district is to provide for protection against destruction or encroachment upon historic areas, buildings, monuments, or other features, or buildings and structures of recognized architectural significance which contribute or will contribute to the cultural, social, economic, political, artistic, or architectural heritage of the Town of Cape Charles and the Commonwealth of Virginia. It is the purpose of the district to preserve the designated historic areas and historic landmarks and other historic or architectural features, and their surroundings within a reasonable distance, from destruction, damage, defacement, and obvious incongruous development or uses of land and to insure that buildings, structures, streets, walkways, or signs shall be erected, reconstructed, altered, or restored so as to be kept architecturally compatible with the character of the general area in which they are located and with the historic buildings or structures within the district.

Discussion

The four parcels in question are currently zoned as Residential -1. All four parcels are the site of commercial structures which are contributing structures to the Town's historic district. The contributing structures are listed as 1920s-era commercial buildings demonstrating that these parcels have not been used as single-family residential parcels for a period approaching one hundred years. Should these parcels be developed for single-family residential usage the contributing structures would have to be relocated or demolished, which is not a desirable outcome and not in keeping with the intent of the historic district overlay. Should these parcels be considered for single-family development it needs to be noted that the lot size does not meet the minimum requirements for a conforming lot in the Residential – 1 district, which also may be a hindrance to development meeting the district requirements.

Recommendation

Staff recommends that the Planning Commission review the proposed map amendment and provide direction to staff.





The Laundry Basket

LAUNDROMAT

LAUNDROMAT

LAUNDRY FITNESS





THIS PROPERTY
HAS BEEN PLACED ON THE
NATIONAL REGISTER
OF HISTORIC PLACES
BY THE UNITED STATES
DEPARTMENT OF THE INTERIOR

Planning Commission Staff Report

From: Larry DiRe 
Date: August 4, 2015
Item: 6b- Proposed text amendment for “brew pub” definition and permitted use in the Commercial – 1 zoning district
Attachments: None

Item Specifics

Staff is proposing the following definition for inclusion in Article II Section 2.9 of the Town Zoning Ordinance:

Brew pub – a restaurant-brewery that sells 25% or more of its beer on site. The beer is brewed primarily for sale in the restaurant and bar on site. No more than 40% of the gross floor area shall be used for materials and equipment used in the brewing process.

Discussion

Staff was contacted by a potential business owner interested in opening a brew pub in the Commercial – 1 district. Brew pub is not among the enumerated uses, but does fall into the classification of “eating and drinking establishments” (Article III Section 3.6.B.16), “restaurants” (Article III Section 3.6.B.30), and “Any other commercial or professional use which is compatible in nature with the foregoing uses and which the Zoning Administrator determines to be compatible with the intent of the district.” (Article III Section 3.6.B.36)

All of this conforms to the intent and language of the Zoning Ordinance, but is nonetheless an unwieldy process best remedied by a single definition and inclusion with the similar permitted uses.

Recommendation

Staff recommends that the Planning Commission review the proposed text amendment to define “brew pub” and locate the use in the Commercial – 1 district. Provide direction to staff.