

Planning Commission

Public Hearing

&

Regular Session Agenda

Cape Charles Civic Center – 500 Tazewell Avenue

July 18, 2016

6:00 P.M.

1. Call Public Hearing to Order
 - a. Roll call and establish a quorum
 - b. 530 Randolph Avenue Conditional Use Permit application for bed and breakfast with swimming pool - Read advertisement
 - c. Hear public comment
 - d. Close Public Hearing and move to regular meeting
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. 530 Randolph Avenue Conditional Use Permit application for bed and breakfast with swimming pool
 - b. Dog tethering ordinance
 - c. Limited access commercial activity in Open Space District
6. New Business
 - a. Application for Zoning Map amendment – tax map parcel 83A3-11-2 from Harbor District to Industrial M-2 District
7. Announcements
8. Adjourn



DRAFT
PLANNING COMMISSION
Regular Meeting
Cape Charles Town Hall
June 7, 2016
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 Vice Chairman Michael Strub, and Commissioners Andy Buchholz, Dan Burke and Sandra Salopek. Commissioner Joan Natali arrived at 6:02 p.m. Commissioner Bill Stramm was not in attendance. Also in attendance were Town Planner Larry DiRe and Town Clerk Libby Hume. There were four members of the public in attendance.

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

PUBLIC COMMENTS:

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

CONSENT AGENDA

Dennis McCoy requested that an item be added as New Business item 6c to discuss the possibility of changing the date of the July meeting.

Motion made by Michael Strub, seconded by Andy Buchholz, to approve the agenda format as amended. The motion was approved by unanimous vote.

The Commissioners reviewed the minutes for the May 16, 2016 Planning Commission Regular Meeting.

Michael Strub noted a grammatical correction to page one of the minutes under Reports.

Motion made by Sandra Salopek, seconded by Andy Buchholz, to approve the minutes from the May 16, 2016 Planning Commission Regular Meeting as amended. The motion was approved by unanimous vote.

REPORTS

Larry DiRe reported the following: i) No start date had been received for the U.S. Army Corps of Engineers dredge project; ii) The 2016 Planning Commission Annual Report, covering the first six months of the year, would be reviewed at the July meeting; and iii) A Board of Zoning Appeals public hearing and meeting would be held on June 15 at 10:00 a.m. regarding an application for zoning variance for off-street parking requirements for the next phase of Patrick Hand's development on Mason Avenue.

OLD BUSINESS

A. Commercial-3 District Construction-Design Guidelines:

Larry DiRe reviewed draft text amendment language for Article III, Section 3.8.E. of the Cape Charles Zoning Ordinance regarding design and guidelines for new development in the Commercial-3 District. A Town Council public hearing was required prior to adoption of the language.

Motion made by Michael Strub, seconded by Andy Buchholz, to recommend Council approval of the proposed text amendment to Article III, Section 3.8.E of the Cape Charles Zoning Ordinance. The motion was approved by unanimous vote.

B. Dog Pens in Residential-1 District:

Larry DiRe reviewed draft text amendment language regarding dog enclosures/pens in the Residential-1 District as requested by the Commissioners at the May meeting. The Commissioners were in agreement with the language for Section 2.9 and suggested the addition of language regarding enclosures in side yards.

There was much discussion regarding the issue of dogs being tethered. The Town's current ordinance permitted dogs to be tethered for 12 hours in a 24-hour period. Andy Buchholz cited language from the City of Suffolk ordinance which required that the owner be within the animal's proximity while it was tethered.

It was noted that dog enclosures and the tethering law were two different issues. Dog enclosures were in the Zoning Ordinance but the tethering law was in the Town Code. After further discussion, it was agreed to move forward with the recommendation to the Town Council regarding the dog enclosures and the tethering issue would be added to the July meeting agenda for further discussion. A Town Council public hearing was required prior to adoption of the language.

Motion made by Joan Natali, seconded by Michael Strub, to recommend Council approval of the proposed text amendment to Article II, Section 2.9 and Article III, Section 3.2.B.8 of the Cape Charles Zoning Ordinance as presented. The motion was approved by unanimous vote.

NEW BUSINESS

A. Conditional Use Permit Application – 530 Randolph Avenue:

The Commissioners reviewed an application for conditional use permit (CUP) to operate a bed and breakfast (B&B) with swimming pool at 530 Randolph Avenue. Larry DiRe explained the following: i) The property could accommodate both the swimming pool and off-street parking; ii) The property backed up to the Commercial-Residential District which allowed for B&Bs as a permitted use; iii) Staff found the application in order; iv) The Planning Commission and Town Council were required to hold public hearings prior to approval of a CUP and a joint public hearing was recommended.

The Commission expressed their support for another B&B in town.

Motion made by Dan Burke, seconded by Andy Buchholz, to schedule a joint public hearing with the Town Council preceding the July Planning Commission meeting. The motion was approved by unanimous vote.

B. Tea Room in Commercial-Residential District – Zoning Administrator Determination:

Larry DiRe stated that a request was received to operate a commercial tea room at 439 Mason Avenue. The zoning administrator could allow certain uses if that use was found to generally conform to the zoning district's intent and if the Commission provided their consent with the zoning administrator's determination. Larry DiRe added that the property was currently used for residential purposes and added that he was a tenant of the property for 13 months. The proposed tea room would be a small establishment serving tea and light fair to a maximum of 15-20 customers at any given time. The applicants met with Code Official Jeb Brady regarding the maximum occupancy and building requirements. There was much discussion regarding the following: i) The property was surrounded by commercial establishments, the town hall and fire department; ii) The building would have to be modified to meet ADA requirements. Leon Parham was working on the plans; iii) The plans

for exterior modifications would be reviewed by the Historic District Review Board; and iv) The hours of operation would be four days per week from 12:00 p.m. – 5:00 p.m. Several of the Commissioners expressed their support for the proposed tea room.

Motion made by Joan Natali, seconded by Dan Burke, to support the zoning administrator's determination permitting the commercial operation of the tea room at 439 Mason Avenue. The motion was approved by unanimous vote.

C. Date Change for July Planning Commission Meeting:

Dennis McCoy stated that he was unavailable on July 5 and asked that the Commissioners consider rescheduling the July Planning Commission meeting for July 18, which was the alternate date for Commission meetings.

Motion made by Sandra Salopek, seconded by Andy Buchholz, to change the July Planning Commission meeting date to July 18, 2016. The motion was approved by unanimous vote.

ANNOUNCEMENTS

There were no announcements.

Motion made by Joan Natali, seconded by Dan Burke, to adjourn the Planning Commission Regular Meeting. The motion was approved by unanimous vote.

Chairman Dennis McCoy

Town Clerk

Planning Commission Staff Report

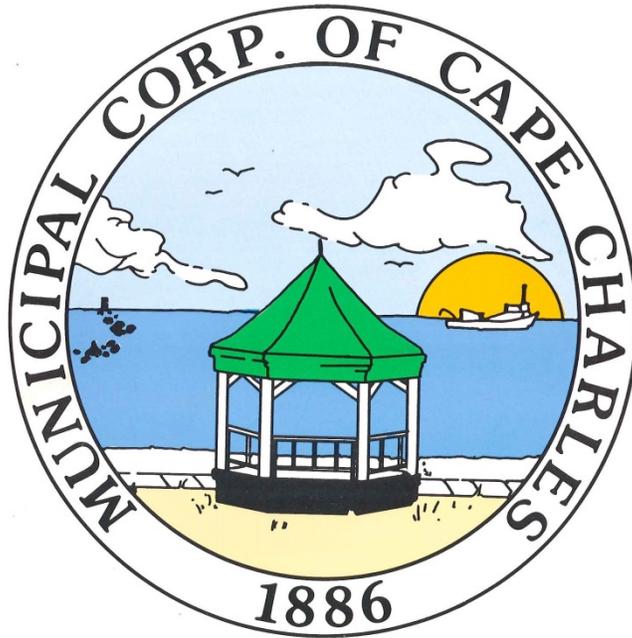
From: Larry DiRe 

Date: July 18, 2016

Item: 4c-Staff Report

Attachments: 2016 Annual Report draft January 1 – June 30

1. No update on the project approved under a conditional use permit for 207 Mason Avenue.
2. The Historic District Review Board received two applications for Certificate of Appropriateness at their July 19th regular monthly meeting. One for a back porch enclosure and stair removal, the other for modification to a previously issued Certificate to remove an approved gable. The Board continued studying exterior paint color palettes for use in the historic district. On Tuesday July 5th staff received notice from the Virginia Department of Historic Resources that \$25,000.00 in grant funding was awarded to the Town's application to update the historic district registry and provide Board training. There is no local matching fund requirement for this award.
3. The next phase of the USACE's federal harbor dredge project is scheduled to begin in mid-July with placement of approximately 115,000 cubic yards of material at the upland site. Placement of dredge material on the Town beach will begin around the second week of August.
4. The Harbor Area Review Board received an application for Harbor Development Certificate to locate a two-story, wood frame building on Lot 19. The Board met on Monday July 11th to consider the application, and make a recommendation to Town Council for action on the application.
5. The Wetlands and Coastal Dunes Board scheduled a work session for Wednesday July 20th (5:00 pm at 325 Mason Avenue) to discuss beach sand and dune management practices. This is a public meeting and the public is invited to attend. Public hearing on two applications (one for installation of riprap at a residential lot; the other for floating finger piers with mooring piles) and meeting on these applications is scheduled for Wednesday July 27th (6:00 pm at the Civic Center).
6. The Board of Zoning Appeals received an application for variance for commercial off-street parking requirements at lot 83A3-5-1 (439 Mason Avenue), and scheduled a public hearing and meeting for Monday July 25th at 10:00 am.



Town of Cape Charles
Planning Commission

2016 Annual Report
(Update January 2016-June 2016)

DRAFT

Dennis McCoy
Chairman

Lawrence DiRe, MA MPA
Town Planner

2016 Planning Commission Members

Dennis McCoy, Chairman

Michael Strub, Vice Chair

Andy Buchholz

Dan Burke

Joan Natali

Sandra Salopek

Bill Stramm

2016 Planning and Zoning Staff

Lawrence DiRe, Town Planner

DRAFT

Introduction

Section 15.2-221, of the Code of Virginia, as amended, prescribes the duties of the local planning commission. The duties include a requirement to provide an annual report to the local governing body concerning the operation of the commission and the status of planning in its jurisdiction.

Development in Cape Charles

2016 saw both new development and redevelopment in Cape Charles. Notable projects included the renovations to several commercial properties on Mason Avenue; progress continues on the Strawberry Street Station mixed –use development and the former Northampton Hotel building; and three new single family homes were permitted.

Planning Commission and Staff Updates

No updates in the first six months of the year.

2016 Summary of Permits and Projects Reviewed by Planning (to June 30):

Home Occupations	0
Site Plan Reviews	7
Violations	3
Zoning Clearance	17
Historic District Review	15
Harbor Area Review	2
Wetlands Board Review	0
Board of Zoning Appeals Review	1
Rezoning	0
Conditional Use Permits	0

Code Amendments

Approved, at the March 17th Town Council meeting a number of text amendments and one zoning map correction were approved. Please see the staff report and minutes of the meeting.

Denied, none to date.

Pending, the Planning Commission forwarded draft text amendments for accessory dwelling units; Town Edge zoning; and Tourism Zone Ordinance to Town Council in 2015 for further

action. As of June 30, 2016 no action was taken on those items. The Commission has also reviewed text amendments on commercial development in the Commercial – 3 District.

Comprehensive Plan

The Planning Commission reviewed the Capital Improvement Plan section of the Comprehensive Plan revised draft document and forwarded comments to the Town Council as part of the Fiscal Year 2017 budget process. The Commission also held a public input session, the third one associated with this revision process. A final revised draft document was sent to Town Council for action, and is still pending.

DRAFT

Planning Commission Staff Report

From: Larry DiRe 
Date: July 18, 2016
Item: 5a - Conditional use permit application for a bed and breakfast with swimming pool at 530 Randolph Avenue
Attachments: May 2016 application form, photos

Item Specifics

Staff received an application for a conditional use permit to operate a bed and breakfast with swimming pool at 530 Randolph Avenue. The conditional use permit process is described in *Article IV Section 4.3* of the Town Zoning Ordinance. *Article IV Section 4.3.C.3* requires a public hearing before Town Council. The Planning Commission voted at their June 7, 2016 meeting to hold a public hearing on Monday July 18, 2016.

Article III Section 3.2.C.3 allows for bed and breakfast as a conditional use in the Residential - 1 District. *Article IV Section 4.3.B* states the Conditions for Issuance as follows: 1) not adversely affect the health, safety, or welfare of the persons residing or working in the neighborhood of the proposed use or adversely affect other land uses within the particular surrounding neighborhood; 2) not be detrimental to the public welfare or injurious to property or improvements in the neighborhood; 3) not be in conflict with the purpose of the comprehensive plan of the town.

The Cape Charles Comprehensive Plan addresses the importance of seasonal and year-round visitors and the need for accommodations to house these visitors. *Section III – B Economic Vitality* specifically links the hospitality industry and need for living accommodations as goals for the Town's future growth and economic development.

According to zoning ordinance *Article III, Section 3.2.C.3* a bed and breakfast operation is by conditional use permit only in the Residential – 1 District. This property is a residential lot within the Residential – 1 District. The location for the proposed bed and breakfast with swimming pool is large and can accommodate both the pool and the off-street parking. The property backs against lots in the Commercial – Residential District, which allows for bed and breakfast accommodations as a permitted use. Following discussions with staff, the applicant is aware of the fencing and safety requirements for a swimming pool located on a residential lot. The attached photos and drawings show the availability of space at this particular location to accommodate setback and parking.

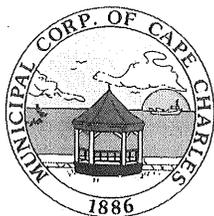
The Planning Commission set a public hearing date of Monday July 18, 2016 at their June 7th meeting, and Town Council did likewise at the regular monthly meeting held on June 16, 2016. Public hearing letters were mailed to area property owners and the public hearing notice was advertised in the newspaper for two consecutive weeks.

Discussion

Staff finds the application in order. The applicant must meet all procedural obligations before approval can be given to being the bed and breakfast operation at this location.

Recommendation

Staff recommends that the Planning Commission discuss the application as needed and make a recommendation to the Town Council for action on this conditional use permit application.



Application for Conditional Use Permit

Town of Cape Charles
2 Plum Street
Cape Charles, VA 23310
757-331-2036 Fax: 757-331-4820
planner@capecharles.org

Date 05/25/2016

Fee: 300.00 (paid)

*(Attach Plans)

Applicant: Kathleen M Glaser
Address: 530 Randolph Ave
Telephone: 757-274-1589
Signature:
City: Cape Charles State: Zip: 23310
Email: kathyglaser@hotmail.com

Owner(s): Kathleen M Glaser
Address: 530 Randolph Ave
Telephone: 757-274-1589
City: Cape Charles State: Zip: 23310
Email: kathyglaser@hotmail.com

Contractor:
Address:
Telephone:
Town License: State License:

Location of Improvement: 530 Randolph Ave
Lot No.: Block No.: Lot Size: Lot Area:
Type of Improvement:
Proposed Use: Bed and Breakfast
Estimated Construction Costs:

Conditional Use Permit Checklist

(Applicant must attach items 1-7)

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

CERTIFICATION OF APPLICANT

I hereby certify that I have the authority to make the foregoing application, that the information given is true and correct, and that the construction or improvements will conform to the regulations in the Virginia Statewide Building Code, all pertinent Town Ordinances, including fire, sewer, and water ordinances, and private building restrictions, if any, which may be imposed on the property by deed. Furthermore, I certify that the changes to the improvement before or during construction will be provided to the Zoning Administrator and Building Official before such changes are constructed.

Signature of Owner/Agent: Kathleen M Glaser

530 RANDOLPH AVE

Location 530 RANDOLPH AVE

Map # 083A3/ 01 00/ 0000573/ /

Par Rec # 2297

Owner GLASER, KATHLEEN M

Assessment \$243,200

PID 2150

Building Count 1

Description LOTS 573 & 576 INC 575B
80X128

Lot Type Building Site (54000 - 79000)

Current Value

Assessment					
Valuation Year	Building	Extra Features	Outbuildings	Land	Total
2016	\$151,100	\$3,700	\$8,000	\$80,400	\$243,200

Owner of Record

Owner GLASER, KATHLEEN M

Care Of

Address

Sale Price \$410,000

Instrument # LR06 2896

Book & Page 0/0

Sale Date 10/17/2006

Sale Type M

Ownership History

Ownership History						
Owner	Sale Price	Instrument #	Book & Page	Sale Type	Sale Date	Plat
GLASER, KATHLEEN M	\$410,000	LR06 2896	0/0	M	10/17/2006	
THOMAS FOX ETALS	\$0		0/0		12/30/2005	

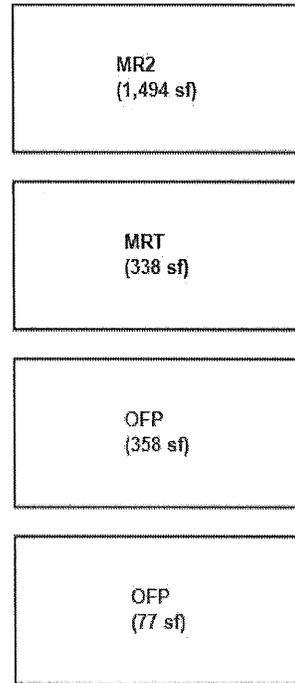
Building Information

Building 1 : Section 1

Year Built: 1920
Living Area: 0

Building Layout

Building Attributes	
Field	Description
STYLE	Mortuary
MODEL	Com/Ind
Grade	C+10
Stories	2
Exterior Wall 2	
Exterior Wall 3	
Foundation 1	Brick
Foundation 2	
Roof Structure 1	Hip
Roof Cover 1	Composition Shingle
Roof Cover 2	
Interior Wall 1	Dry Wall
Interior Wall 2	Panel
Class	CONVENTIONAL
Bldg Use	Comm - Indl
AC Type 1	Central Air
AC Typ 2	Central Heat
Heat Fuel 1	Electric
Heat Fuel 2	
Sand Shower	
Interior Floor 1	Carpet
Exterior Wall 1	Vinyl
Interior Floor 2	Hardwood
Interior Floor 3	
Heat Type 1	Central Heat
Wall Height	
Fireplace Openings	0.00



Building Sub-Areas (sq ft)			Legend
Code	Description	Gross Area	Living Area
MR2	Mortuary - 2.00	1,494	0
MRT	Mortuary - 1.00	338	0
OFP	Open Frame Porch - 1.00	435	0
		2,267	0

Extra Features

Extra Features					Legend
Code	Description	Size	Value	Assessed Value	Bldg #
BSM2	CELLAR	100.00 UNITS	\$500	\$500	1
ATTC	ATTIC	373.00 UNITS	\$3,000	\$3,000	1
CHMY	CHIMNEY	1.00 UNITS	\$200	\$200	1

Land

Land Use

Use Code 400C
Description Comm - Indl
Zone
Alt Land Appr No

Land Line Valuation

Size (Acres) 1
Frontage

Outbuildings

Outbuildings							Legend
Code	Description	Sub Code	Sub Description	Size	Value	Assessed Value	Bldg #
STOR	STORAGE	TY	TYPICAL	1220.00 UNITS	\$8,000	\$8,000	1

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Kathleen Glaser
530 Randolph Ave
Cape Charles, VA 23310
kathyglaser@hotmail.com
757-274-1589

May 25, 2016

To whom it may concern,

This letter is to explain the proposed use for the property at 530 Randolph Avenue in Cape Charles. The property includes a 4000 square foot, 3 story home along with a 1.5 single story garage. The property is on 3 lots (#573, 576, and 577) with the house centered on two of the lots and the third lot empty. The garage is detached and is at the rear of the property.

The planned use is for the home to become a Bed and Breakfast doing business as Alyssa House Bed and Breakfast. It will have 4 bedrooms with 4 baths on the second floor. The ground floor will have a possible 5 bedroom that could accommodate someone unable to use the stairs. There is a full bath off the first floor room. The third floor would be owner's residence and I plan to live on site.

The yard is enclosed with a 3 foot fence in front and 5 foot in the rear. There will be a hot tub in the back yard that is portable and could be moved. The future plan includes the addition of a swimming pool that will conform to all building codes and an additional fence will enclose the pool. There will be access from the house and all doors will be alarmed.

I plan to serve full breakfast only and afternoon snacks and beverages. The kitchen will receive all inspections and permits required by health code.

There will be adequate off street parking for 5 cars on the side lot. Landscaping will be done to camouflage the parking area.

There will be no change to the outside of the structure or surrounding lots other than landscaping. There should be minimal traffic impact.

Adjacent property owners:

520 Randolph Ave – Mrs. Jackie Barton

Randolph Ave –

521 Mason Ave – Jay Crystal, 18227 Brighton Green, Dallas, TX 75252

525 Mason Ave – Myrtle and Larry Beckett, 829 Heritage Acres Ct., Apt 4.

529 Mason Ave – Garrison and Elizabeth Brown, PO Box 567, Eastville, VA 23347

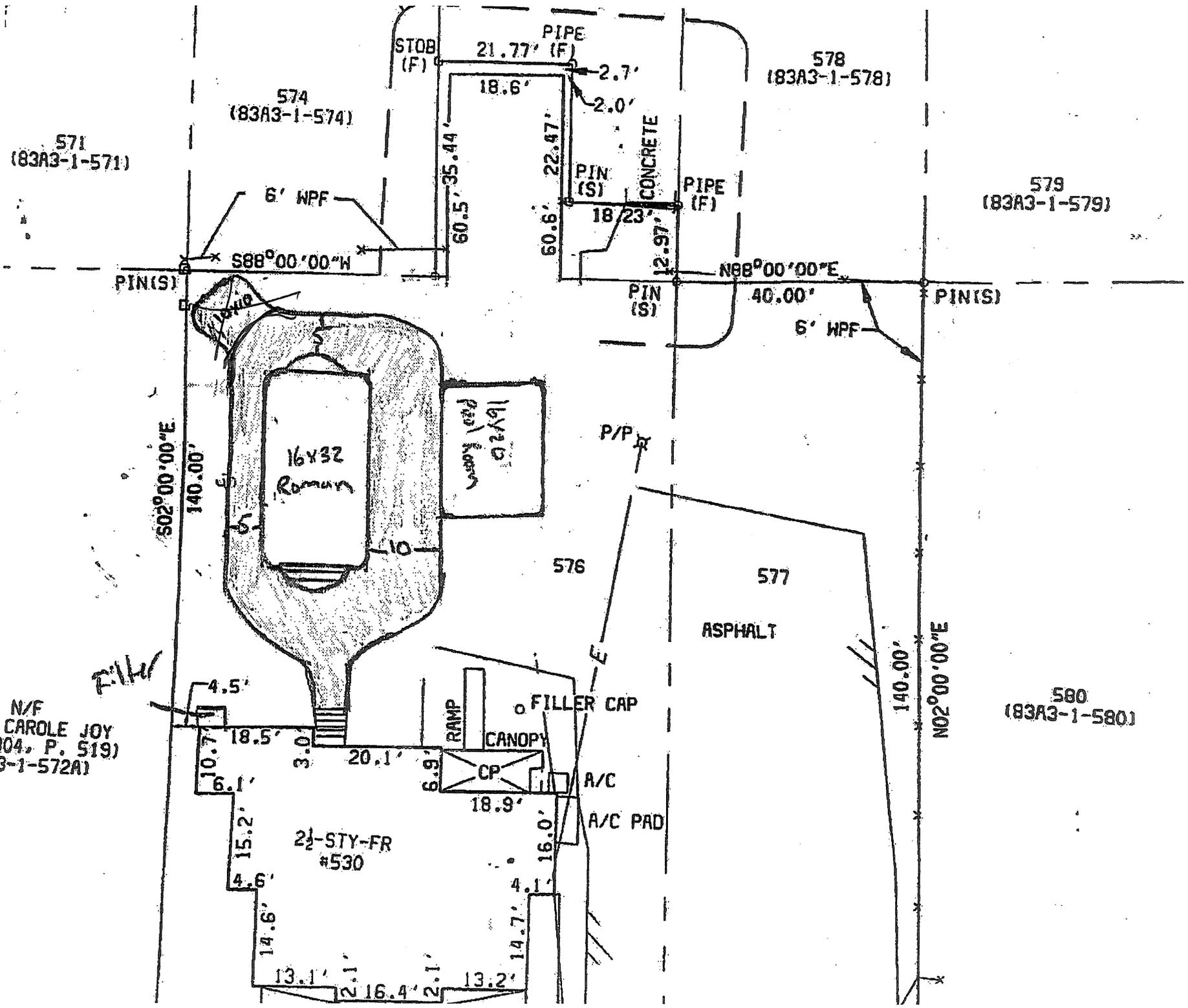
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N/F
CAROLE JOY
304, P. 519)
3-1-572A)

$S02^{\circ}00'00''E$
 $140.00'$

$140.00'$

$10.7'$
 $6.1'$

$2\frac{1}{2}$ -STY-FR
#530

$15.2'$
 $4.6'$
 $14.6'$
 $13.1'$
 $2.1'$

$16.4'$
 $2.1'$
 $13.2'$

16x32
Roman

16x16
Ramp

RAMP

CANOPY

CP

FILLER CAP

R/C

A/C PAD

576

577

ASPHALT

P/P

E

STOB (F)

PIPE (F)
 $21.77'$

$18.6'$

$2.7'$

$2.0'$

PIN (S)

CONCRETE

PIPE (F)

$18/23'$

$60.6'$

$22.47'$

$35.44'$

PIN (S)

$N88^{\circ}00'00''E$

$40.00'$

PIN(S)

6' WPF

$140.00'$
 $N02^{\circ}00'00''E$

PIN(S)

$S88^{\circ}00'00''W$





DAVIS
DISPOSAL
707-443-7378





530

Planning Commission Staff Report

From: Larry DiRe 
Date: July 18, 2016
Item: 5b-Dog tethering ordinance
Attachments: City of Suffolk dog and cat ordinance

Item Specifics

At both the March 1st and May 16th Planning Commission meetings there were public comments regarding the treatment of house pets being kept in outdoor pens, and further discussion about the condition of dog confinement pens in the Residential – 1 District. Discussion moved from the pens to the tethering of domestic dogs outdoors for a prolonged period of time. The Town does have an animal ordinance (Article X Chapter 50) as part of the Town Code and enlists the services of the Northampton County Animal Control Office for enforcement. The specific regulation of tethered animals is found in Section 50 – 190 and reads as follows:

An animal owner in the town shall allow each animal to (i) easily stand, sit, lie, turn about and make all other normal body movements in a comfortable, normal position for the animal and (ii) interact safely with other animals in the enclosure. When an animal is tethered, "adequate space" means a tether that permits the above actions and is appropriate to the age, size, and health of the animal; is attached to the animal by a properly applied collar, halter, or harness configured so as to protect the animal from injury and prevent the animal or tether from becoming entangled with other objects or animals, or from gaining access to public thoroughfares, or from extending over an object or edge that could result in the strangulation or injury of the animal; and is at least ten feet in length or three times the length of the animal whichever is longer, as measured from the tip of its nose to the base of its tail, except when the animal is being walked on a leash or is attached by a tether to a lead line. When freedom of movement would endanger the animal, temporarily and appropriately restricting movement of the animal according to professionally accepted standards for the species is considered provision of adequate space. Provided, however, that no animal shall be tethered for more than 12 hours in a 24-hour period.

This ordinance speaks directly to the physical condition of the tethered dog and sets a time period of "12 hours in a 24-hour period" as a maximum. Previously the Commissioners discussed a different approach to tethering through review of the time period allowed for dogs to be tethered. The City of Suffolk ordinance was reviewed and language from that document reads as follows:

Sec. 10-42. - Unattended tethering of dogs prohibited.

It shall be unlawful to tether any unattended dog whether or not the dog has been provided adequate space. A violation of this section shall be punishable as a class 4 misdemeanor.

Discussion

Following the previous public comments and planning Commission discussion, staff is presenting this item for further discussion within the context of regulating the condition and location of dog confinements.

Recommendation

Following discussion provide direction to staff.

ARTICLE II. - DOGS AND CATS^[2]

Footnotes:

--- (2) ---

State Law reference— Comprehensive animal laws, Code of Virginia, § 3.1-796.66 et seq.

DIVISION 1. - GENERALLY

Sec. 10-36. - Definitions.

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

Animal control warden means any animal control warden or any deputy animal control warden appointed under this division and in accordance with Code of Virginia, §§ 3.1-796.66 through 3.1-796.129.

City health officer means the city health officer or his duly authorized representatives.

Dog means every dog, regardless of age.

Kennel means an enclosure wherein dogs are kept and from which they cannot escape.

Livestock means cattle, sheep, goats, swine and enclosed domesticated rabbits or hares.

Other officer means all other persons employed or elected by the state, or any county or municipality of the state, whose duty it is to preserve the peace, or to make arrests or to enforce the law.

Own and owner means any person having a right of property in any dog and any person who keeps or harbors a dog, or has the dog in his care or who acts as its custodian and any person who permits a dog to remain on or about any premises occupied by him.

Poultry means all domestic fowl and game birds raised in captivity.

Treasurer means the treasurer of the city or other officers designated by law to collect taxes in the city.

Vaccinate, vaccinated or vaccination means the immunization of a dog against rabies, whether by inoculation, vaccination or any other method or treatment approved by the city health officer.

Veterinarian means any licensed veterinarian authorized to practice veterinary medicine in the state.

(Code 1976, § 4-6; Ord. No. 20-99, 2-17-1999)

Cross reference— Definitions generally, § 1-2.

Sec. 10-37. - Dogs and cats deemed personal property; related rights.

- (a) All dogs and cats shall be deemed personal property and may be the subject of larceny and malicious or unlawful trespass. Owners, as defined in Code of Virginia, § 3.1-796.66, may maintain any action for the killing of or injury to any such animals or unlawful detention or use as in the case of other personal property. The owner of any dog or cat that is injured or killed contrary to the provisions of this article by any person shall be entitled to recover the value of or the damage done to the animal in an appropriate action at law from such person.

- (b) The animal control warden or other officer finding a stolen dog or cat, or a dog or cat held or detained contrary to law, shall have authority to seize and hold such animal pending action before a general district court or other court. If no such action is instituted within seven days, the animal control warden or other officer shall deliver the dog or cat to its owner.
- (c) The presence of a dog or cat on the premises of a person other than its legal owner shall raise no presumption of theft against the owner, and the animal control warden may take such animal in charge and notify its legal owner to remove it. The legal owner of the animal shall pay a reasonable charge as determined by the city council and on file in the city clerk's office for the keep of such animal while in the possession of the animal control warden.

(Code 1976, §§ 4-13, 4-15)

State Law reference— Similar provisions, Code of Virginia, § 3.1-796.127.

Sec. 10-38. - Setting dogs at large.

No person, except the dog's owner, shall open any door or gate of any private premises and set at large, entice or enable any dog to escape from the premises.

(Code 1976, § 4-14)

Sec. 10-39. - Dogs killing, injuring or chasing livestock or poultry.

- (a) It shall be the duty of any animal control officer or other officer who may find a dog in the act of killing or injuring livestock or poultry to seize or kill such dog forthwith whether such dog bears a tag or not. Any person finding a dog committing any of the depredations mentioned in this section shall have the right to kill such dog on sight as shall any owner of livestock or his agent finding a dog chasing livestock on land utilized by the livestock when the circumstances show that such chasing is harmful to the livestock. Any court shall have the power to order the animal control officer or other officer to kill any dog known to be a confirmed livestock or poultry killer, and any dog killing poultry for the third time shall be considered a confirmed poultry killer. The court, through its contempt powers, may compel the owner, custodian or harbinger of the dog to produce the dog.
- (b) Any animal control officer who has reason to believe that any dog is killing livestock or poultry shall be empowered to seize such dog solely for the purpose of examining such dog in order to determine whether it committed any of the depredations mentioned in this section. Any animal control officer or other person who has reason to believe that any dog is killing livestock, or committing any of the depredations mentioned in this section, shall apply to a magistrate of the county, city or town wherein such dog may be, who shall issue a warrant requiring the owner or custodian, if known, to appear before a general district court at a time and place named in the warrant, at which time evidence shall be heard. If it shall appear that the dog is a livestock killer, or has committed any of the depredations mentioned in this section, the district court shall order that the dog be: (i) killed immediately by the animal control officer or other officer designated by the court; or (ii) removed to another state that does not border on the commonwealth and prohibited from returning to the commonwealth. Any dog ordered removed from the commonwealth that is later found in the commonwealth shall be ordered by a court to be killed immediately.

(Code 1976, § 4-16; Ord. No. [14-O-058](#), 6-18-2014)

State Law reference— Similar provisions, Code of Virginia, § 3.1-796.116.

Sec. 10-40. - Compensation for livestock and poultry killed by dogs.

- (a) Any person who has any livestock or poultry killed or injured by any dog not his own shall be entitled to receive as compensation the fair market value of such livestock or poultry not to exceed \$400.00 per animal or \$10.00 per fowl, provided that the:
 - (1) Claimant has furnished evidence within 60 days of discovery of the quantity and value of the dead or injured livestock and the reasons the claimant believes that death or injury was caused by a dog;
 - (2) Animal control warden or other officer shall have been notified of the incident within 72 hours of its discovery; and
 - (3) Claimant first has exhausted his legal remedies against the owner, if known, of the dog doing the damage for which compensation under this section is sought. Exhaustion shall mean a judgment against the owner of the dog upon which an execution has been returned unsatisfied.
- (b) Nothing in this section shall be construed as limiting the common law liability of an owner of a dog for damages committed by it; and when compensation is paid, the city shall be subrogated to the extent of compensation paid to the right of action of the owner of such livestock or poultry against the owner of the dog and may enforce the same in an appropriate action at law.
- (c) It is unlawful for any person to present a false claim or to receive any money on a false claim, and such offense is punishable as a class 1 misdemeanor as provided in subsection 1-14(1).

(Code 1976, § 4-17)

State Law reference— Similar provisions, Code of Virginia, §§ 3.1-796.118, 3.1-796.128(B).

Sec. 10-41. - Disposition of dogs of unknown ownership found running at large on which the license tax has not been paid.

- (a) It shall be the duty of the animal control warden to capture and confine in the city pound for a period of not less than seven days any dog of unknown ownership found running at large in the city without a license tag or on which the license tax has not been paid. If after the expiration of the required time period the dog has not been claimed, it may be humanely destroyed or disposed of by sale or gift to a federal agency, or state-supported institution, agency of the state, agency of another state, or a licensed federal dealer having its principal place of business located within the state, or by delivery to any local humane society or shelter.
- (b) Any dog in the custody of the animal control warden may, in his discretion, be released and adopted by any person who will pay the required license fee on such dog, with the understanding that, should the legal owner of such dog thereafter claim such dog and prove his ownership, he may recover the dog by paying the person to whom it was delivered by the animal control warden the amount of the license fee paid by him and the expenses incurred for the keep of such dog while in his possession, an amount established by the city council and on file in the city clerk's office, plus actual medical and veterinarian expenses incurred by such person.
- (c) Any person, animal control warden or other officer killing a dog under this article shall cremate, bury or sanitarily dispose of the dog.
- (d) The animal control warden or other officer may humanely dispose of any dog running at large after complying with Code of Virginia, § 3.1-796.96, that the animal control warden or other officer determines, from personal observation or from information provided by the health department of the city, to have a contagious or infectious disease. The animal control warden or other officer may humanely dispose of any dog of unknown ownership found running at large without a license tag or on which the license tax has not been paid after complying with Code of Virginia, § 3.1-796.96.

(Code 1976, § 4-18)

State Law reference— Similar provisions, Code of Virginia, § 3.1-796.119.

Sec. 10-42. - Unattended tethering of dogs prohibited.

It shall be unlawful to tether any unattended dog whether or not the dog has been provided adequate space. A violation of this section shall be punishable as a class 4 misdemeanor.

(Ord. No. 13-O-032, 3-20-2013; Ord. No. 13-O-050, 6-5-2013)

Sec. 10-43. - Running at large prohibited, and leashes required in certain areas of the city.

- (a) Any person owning, having control of, or harboring any dog within the city, shall keep such dog confined to the premises of such person, unless in the custody of a responsible person. Except as otherwise specifically provided in this section, it shall be unlawful for any person owning, having control of, or harboring any dog within the city to permit such dog to run at large within the city, or to permit the dog to go upon any public street, sidewalk or right-of-way, unless it is kept secured by a leash or lead or other means of restraint not harmful or injurious to the dog and under the control of a responsible person capable of physically restraining the dog.
 - (1) This subsection shall not apply where the owner, custodian or trainer has released a dog for the express purpose of hunting game in an area where it is lawful to hunt, or of competing in field trials or training, or when a dog so released to hunt, compete or train becomes temporarily out of control of such owner, custodian or trainer or is returning to the place of release after the hunt or chase.
 - (2) If any dog is observed violating this or any other section of this Code, or committing an unlawful act under state law, it shall become subject to impoundment; and the owner, custodian or trainer shall be liable for all fines as prescribed by law. It shall be the duty of the animal control warden to enforce the provisions of this section.
 - (3) Violation of the ordinance from which this section derives shall constitute a class 4 misdemeanor, as provided by law.
- (b) If any licensed dog is caught and penned as provided in this section, it shall be the duty of the animal control warden to notify the dog's owner.
- (c) The owner or custodian of any dog caught and penned pursuant to the provisions of this section may redeem such dog in the same manner as provided herein. Licensed dogs caught shall be disposed of as provided in Code of Virginia, § 3.1-796.96.
- (d) Any owner or custodian who permits his dog to run at large in violation of this section shall be penalized as indicated herein.
- (e) For those dogs of unknown ownership found running at large on which the license tax has not been paid, section 10-41 applies.

(Code 1976, § 4-18.2; Ord. No. 20-99, 2-17-1999; Ord. No. 10-O-020, 2-17-2010)

Sec. 10-44. - Disposal of dead dogs.

The owner of any dog which has died from disease or other cause shall forthwith cremate, bury or sanitarily dispose of the dog. If after notice any owner fails to do so, the animal control warden or other officer shall bury or cremate the animal and may recover on behalf of the city from the owner the cost for this service.

(Code 1976, § 4-19)

Cross reference— Disposal of dead animals, § 10-2; solid waste, ch. 70.

State Law reference— Similar provisions, Code of Virginia, § 3.1-796.121.

Sec. 10-45. - Permitting diseased dog to stray; female dog in season; removal of license tag; concealing unlicensed or suspected rabid animal.

- (a) It is unlawful for the owner of any dog with a contagious or infectious disease to permit such dog to stray from his premises if such disease is known to the owner.
- (b) It is unlawful for the owner of any female dog to permit such dog to stray from his premises while such dog is known to such owner to be in season.
- (c) It is unlawful for any person, except the owner or custodian, to remove the legally acquired tag from a dog.
- (d) It is unlawful for any person to conceal or harbor any dog on which the license tax has not been paid or to conceal a dog or cat which is infected by rabies to keep the animal from being disposed of as provided in this article.

(Code 1976, § 4-20)

State Law reference— Similar provisions, Code of Virginia, § 3.1-798.128.

Sec. 10-46. - Disposition of fines.

All fines collected for violations of this article shall be paid to the treasurer of the city and credited by him to and deposited in the general fund of the city.

(Code 1976, § 4-21)

State Law reference— Disposition of funds, Code of Virginia, § 3.1-796.101.

Secs. 10-47—10-65. - Reserved.

DIVISION 2. - LICENSES³

Footnotes:

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Cross reference— Taxation, ch. 82.

Sec. 10-66. - Amount of license tax.

- (a) There is imposed a license tax which is established in Code of Virginia, § 3.1-796.87 on all dogs, regardless of sex, six months of age or older in the city, except that no tax shall be levied on any dog that is trained and serves as a hearing dog or service dog for hearing impaired persons or guide dog for a blind person.

(b) There is imposed a license tax which is established in Code of Virginia, § 3.1-796.87 for a kennel.

(Code 1976, § 4-22)

State Law reference— Authority, Code of Virginia, § 3.1-796.85; amount of tax, Code of Virginia, § 3.1-796.87.

Sec. 10-67. - When license tax payable.

- (a) On January 1 and not later than March 1 of each year, the owner of any dog six months old or older shall pay a license tax as prescribed in section 10-66.
- (b) If a dog becomes six months of age or comes into the possession of any person between January 1 and November 1 of any year, the license tax for the current calendar year shall be paid by the owner.
- (c) If a dog becomes six months of age or comes into the possession of any person between October 31 and December 31 of any year, the license tax for the succeeding calendar year shall be paid by the owner, and this license shall be valid from the date the license is purchased.
- (d) The license period shall not exceed the period that the rabies inoculation is effective as certified by a veterinarian.

(Code 1976, § 4-23)

State Law reference— Similar provisions, Code of Virginia, § 3.1-796.88.

Sec. 10-68. - Vaccination certificate to accompany application for license.

Every owner applying for a license for a dog shall exhibit to the treasurer of the city a vaccination certificate issued in the form prescribed by the city health officer and showing that the dog was vaccinated at some time during the 36 months prior to November 1 of the year in which application for the license is made with a modified live virus approved by the city health officer or showing that the dog was otherwise treated for immunization against rabies within 12 months prior to November 1 of the year in which application for license is made by such other method or treatment approved by the city health officer. No license shall be issued for a dog if the owner fails, refuses or neglects to exhibit such certificate to the city treasurer. The license period shall not exceed the period that the rabies inoculation is effective as certified by a licensed veterinarian.

(Code 1976, § 4-24)

State Law reference— Similar provisions, Code of Virginia, § 3.1-796.88.

Sec. 10-69. - Payment of license tax subsequent to summons.

Payment of the license tax provided for in section 10-66 subsequent to the issuance of a warrant or summons to appear before the judge of the general district court or other court for failure to do so within the time required shall not operate to relieve such owner from the penalties provided in this article.

(Code 1976, § 4-25)

Sec. 10-70. - Failure to pay license tax on time.

Any person convicted of failure to pay the license tax required in section 10-66 prior to February 1 of any year, or as otherwise provided in this division, on any dog owned by such person, shall be guilty of a class 4 misdemeanor punishable as provided in subsection 1-14(4). Such person shall be required to obtain the proper license; and unless the fine and license tax are immediately paid, the general district court shall order the dog confiscated and properly disposed of by the animal control warden or some other officer.

(Code 1976, § 4-26)

State Law reference— Similar provisions, Code of Virginia, § 3.1-796.128.

Sec. 10-71. - Procedure for obtaining license; issuance and form of license receipt; delivery of license tag.

- (a) A resident of the city may obtain a dog license by making oral or written application to the treasurer accompanied by the amount of the license tax, and a certificate of rabies vaccination, presented as provided in section 10-68. The treasurer shall have authority to license only dogs of resident owners or custodians who reside within the city and may require information to establish the location of the residence of any applicant.
- (b) Upon receipt of proper application and such certificate of rabies vaccination, the treasurer shall issue a license receipt for the amount on which he shall record the name and address of the owner or custodian, the date of payment, the year for which issued, the serial number of the tag, whether for a male, unsexed female or female dog or a kennel, and deliver the metal license tags or plates provided for in this article, together with the receipt.
- (c) The information thus received shall be retained by the treasurer, open to public inspection, during the period for which such license is valid. The city may establish substations in convenient locations in the city and appoint agents for the collection of the license tax and issuance of such licenses.

(Code 1976, § 4-27)

State Law reference— Similar provisions, Code of Virginia, § 3.1-796.86.

Sec. 10-72. - License to consist of license receipt and metal tag; form of tags.

A dog license shall consist of a license receipt and a metal tag or plate in a size and shape that can be conveniently attached to a dog collar. The tag or plate shall contain a serial number, the calendar year for which issued, the sex of the dog, and the words "City of Suffolk." The license tag or plate for a kennel shall, in addition, show the number of dogs authorized to be kept under such license and have attached a metal identification plate for each of such dogs, numbered to correspond with the serial number of the license tag or plate.

(Code 1976, § 4-28)

State Law reference— Similar provisions, Code of Virginia, § 3.1-796.90.

Sec. 10-73. - Replacement of missing license tag.

If a dog license tag shall become lost, destroyed or stolen, the owner or custodian of the dog with reference to which the tag was issued shall at once apply to the treasurer who issued the original license for a duplicate license tag. The owner or custodian shall present the original license receipt. Upon affidavit of the owner or custodian before the treasurer that the original license tag has been lost, destroyed or stolen, he shall issue a duplicate license tag, which the owner or custodian shall immediately affix to the

collar or the harness of the dog. The treasurer shall endorse the number of the duplicate and the date issued on the face of the original license receipt. The fee for a duplicate shall be established by the city council and on file in the city clerk's office.

(Code 1976, § 4-29)

State Law reference— Similar provisions, Code of Virginia, § 3.1-796.91.

Sec. 10-74. - Presumption consequent upon failure of dog to wear collar bearing license tag.

Any dog not wearing a collar or harness bearing a license tag of the proper calendar year shall prima facie be deemed to be unlicensed; and in any proceedings under this article, the burden of proof of the fact that the dog has been licensed or is otherwise not required to bear a tag at the time shall be on the owner of the dog.

(Code 1976, § 4-30)

State Law reference— Similar provisions, Code of Virginia, § 3.1-796.89.

Sec. 10-75. - Making false statements to secure dog license.

Any person who shall make false statement in order to secure a dog license to which he is not entitled shall, upon conviction, be guilty of a class 4 misdemeanor punishable as provided in section 1-14(4).

(Code 1976, § 4-31)

State Law reference— Similar provisions, Code of Virginia, § 3.1-796.128.

Sec. 10-76. - Duty of treasurer to obtain licenses.

It shall be the duty of the treasurer of the city to obtain the licenses and tags described in this article and have them available as needed.

(Code 1976, § 4-32)

Sec. 10-77. - Lists and accounts, reports and disposition of unused tags.

The city treasurer shall keep a record of all licenses and tags sold, the amounts received and the expenditures made. At the end of each year, he shall destroy all unused tags. All receipts shall be deposited to the credit of the general fund, and all disbursements shall be made from such fund.

(Code 1976, § 4-33)

Sec. 10-78. - Displaying receipts; dogs to wear tags.

Dog license receipts shall be carefully preserved by the licensees and exhibited promptly on request for inspection by the animal control warden or other officer. Dog license tags shall be securely fastened to a substantial collar by the owner or custodian and worn by such dog. It shall be unlawful for the owner to permit any licensed dog four months old or older to run or roam at large at any time without a license tag. The owner of the dog may remove the collar and license tag required by this section when the dog is

engaged in lawful hunting, the dog is competing in a dog show, the dog has a skin condition that would be exacerbated by the wearing of a collar, the dog is confined, or the dog is under the immediate control of its owner.

(Code 1976, §§ 4-34, 4-35)

State Law reference— Similar provisions, Code of Virginia, § 3.1-796.92.

Secs. 10-79—10-100. - Reserved.

DIVISION 3. - KENNELS⁴

Footnotes:

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Cross reference— Businesses, ch. 18.

State Law reference— Authority to regulate, Code of Virginia, § 3.1-796.84.

Sec. 10-101. - Display of license tag; disposition of identification plates.

The owner of a kennel shall securely fasten the license tag to the kennel enclosure in full view and keep one of the identification plates provided with the tag attached to the collar or harness of each dog authorized to be kept enclosed in the kennel. Any identification plates not so in use must be kept by the owner or custodian and promptly shown to any animal control warden or other officer upon request.

(Code 1976, § 4-10)

Sec. 10-102. - Permitting kennel dog to stray beyond limits of enclosure.

A kennel dog shall not be permitted to stray beyond the limits of the enclosure, but this shall not prohibit removing dogs from the kennel temporarily while under the control of the owner or custodian for the purpose of exercising, hunting, breeding, trial or show.

(Code 1976, § 4-11)

Sec. 10-103. - Illegal operation of kennel.

A kennel shall not be operated in such manner as to defraud the city of the license tax applying to dogs that cannot be legally covered under this article or in any manner to violate other provisions of this article. If the owner of the kennel is found to have violated section 10-78 or 10-102 through negligence or carelessness, the court may in addition to the prescribed penalty revoke the kennel license; and the owner shall be required to obtain an individual license for each dog.

(Code 1976, § 4-12)

Secs. 10-104—10-125. - Reserved.

DIVISION 4. - DANGEROUS, VICIOUS AND DESTRUCTIVE DOGS⁵

Footnotes:

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State Law reference— Dangerous or vicious dogs, Code of Virginia, § 3.1-796.93:1.

Subdivision I. - In General

Sec. 10-126. - Definitions.

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

Dangerous dog means a canine or canine crossbreed that has bitten, attacked, or inflicted injury on a person or animal, other than a dog, or killed an animal.

Destructive dog means any dog that damages, destroys or attacks any building, fence, cage, enclosure, livestock, fowl, animal or any other thing of value not the property of the owner or keeper of the dog.

Vicious dog means a canine or canine crossbreed that has:

- (1) Killed a person;
- (2) Inflicted serious injury to a person, including multiple bites, serious disfigurement, serious impairment of health, or serious impairment of a bodily function; or
- (3) Continued to exhibit the behavior that resulted in a previous finding by a court that it is a dangerous dog, provided that its owner has been given notice of that finding.

(Code 1976, § 4-36)

Cross reference— Definitions generally, § 1-2.

State Law reference— Similar provisions, Code of Virginia, § 3.1-796.93:1(B).

Sec. 10-127. - Guilt of owner not to affect disposition of dog.

The finding of the court as to the guilt or innocence of the owner or keeper of a dog under this division shall in no way be construed as affecting the judgment of the court as to the proper disposition to be made of the dog.

(Code 1976, § 4-37)

Sec. 10-128. - Summons for court appearance; findings.

- (a) If the animal control warden has reason to believe that a canine or canine crossbreed within the city is a dangerous dog or vicious dog, he shall apply to a magistrate of the jurisdiction for the issuance of a summons requiring the owner or custodian, if known, to appear before a general district court at a

specified time. The summons shall advise the owner of the nature of the proceeding and the matters at issue. The animal control warden or owner shall confine the animal until such time as evidence shall be heard and a verdict rendered. The court, through its contempt powers, may compel the owner, custodian or harbinger of the animal to produce the animal. If after hearing the evidence the court finds that the animal is a dangerous dog, the court shall order the animal's owner to comply with the provisions of this section. If after hearing the evidence the court finds that the animal is a vicious dog, the court shall order the animal euthanized in accordance with the provisions of Code of Virginia, § 3.1-796.119.

- (b) No canine or canine crossbreed shall be found to be a dangerous dog or vicious dog solely because it is a particular breed, nor shall the city council prohibit the ownership of a particular breed of canine or canine crossbreed. No animal shall be found to be a dangerous dog or vicious dog if the threat, injury or damage was sustained by a person who was:
- (1) Committing, at the time, a crime upon the premises occupied by the animal's owner or custodian;
 - (2) Committing, at the time, a willful trespass or other tort upon the premises occupied by the animal's owner or custodian; or
 - (3) Provoking, tormenting or physically abusing the animal, or can be shown to have repeatedly provoked, tormented, abused or assaulted the animal at other times.

No police dog engaged in the performance of its duties as such at the time of the acts complained of shall be found to be a dangerous dog or a vicious dog. No animal which, at the time of the acts complained of, was responding to pain or injury, or was protecting itself, its kennel, its offspring, or its owner or owner's property, shall be found to be a dangerous dog or a vicious dog.

(Code 1976, §§ 4-38, 4-40, 4-43.1)

State Law reference— Similar provisions, Code of Virginia, § 3.1-796.93:1(C)(1), (2).

Secs. 10-129—10-150. - Reserved.

Subdivision II. - Dangerous Dogs

Sec. 10-151. - Penalty for violation of subdivision.

The owner of any animal found to be a dangerous dog who willfully fails to comply with the requirements of this subdivision shall, upon conviction, be guilty of a class 1 misdemeanor punishable as provided in section 1-14(1).

State Law reference— Similar provisions, Code of Virginia, § 3.1-796.93:1(C)(8).

Sec. 10-152. - Certificate, tag required.

The owner of any animal found to be a dangerous dog shall, within ten days of such finding, obtain a dangerous dog registration certificate from the animal control warden for a fee established by the city council and on file in the city clerk's office in addition to other fees that may be authorized by law. The animal control warden shall also provide the owner with a uniformly designed tag that identifies the animal as a dangerous dog. The owner shall affix the tag to the animal's collar and ensure that the animal wears the collar and tag at all times. All certificates obtained pursuant to this subdivision shall be renewed annually for the same fee and in the same manner as the initial certificate was obtained.

State Law reference— Similar provisions, Code of Virginia, § 3.1-796.93:1(C)(3).

Sec. 10-153. - Issuance, renewal of certificates.

All certificates or renewals required to be obtained under this subdivision shall only be issued to persons 18 years of age or older who present satisfactory evidence of the animal's current rabies vaccination and that the animal is and will be confined in a proper enclosure or is and will be confined inside the owner's residence, or is and will be muzzled and confined in the owner's fenced-in yard until the proper enclosure is constructed. In addition, owners who apply for certificates or renewals under this subdivision shall not be issued a certificate or renewal unless they present satisfactory evidence that their residence is and will continue to be posted with clearly visible signs warning both minors and adults of the presence of a dangerous dog on the property and the animal has been permanently identified by means of a tattoo on the inside thigh or by electronic implantation.

State Law reference— Similar provisions, Code of Virginia, § 3.1-796.93:1(C)(4).

Sec. 10-154. - Confinement.

While on the property of its owner, an animal found to be a dangerous dog shall be confined indoors or in a securely enclosed and locked structure of sufficient height and design to prevent its escape or direct contact with or entry by minors, adults or other animals. The structure shall be designed to provide the animal with shelter from the elements of nature. When off its owner's property, an animal found to be a dangerous dog shall be kept on a leash and muzzled in such a manner as not to cause injury to the animal or interfere with the animal's vision or respiration, but so as to prevent it from biting a person or another animal.

State Law reference— Similar provisions, Code of Virginia, § 3.1-796.93:1(C)(5).

Sec. 10-155. - Change of status of animal.

After an animal has been found to be a dangerous dog, the animal's owner shall immediately, upon learning of such fact, notify the animal control warden if the animal is loose or unconfined; bites a person or attacks another animal; is sold, given away, or dies; or has been moved to a different address.

State Law reference— Similar provisions, Code of Virginia, § 3.1-796.93:1(C)(7).

Sec. 10-156. - Custody by parents of minor.

If the owner of an animal found to be a dangerous dog is a minor, the custodial parent or legal guardian shall be responsible for complying with all requirements of this subdivision.

State Law reference— Similar provisions, Code of Virginia, § 3.1-796.93:1(C)(6).

Sec. 10-157. - Neutering, spaying required; liability insurance.

- (a) All certificates or renewals required to be obtained under this subdivision shall only be issued to persons 18 years of age or older who present satisfactory evidence that the animal has been neutered or spayed.
- (b) All certificates or renewals required to be obtained under this section shall only be issued to persons who present satisfactory evidence that the owner has liability insurance coverage, to the value of at least \$50,000.00, that covers animal bites.

State Law reference— Similar provisions, Code of Virginia, § 3.1-796.93:1(D).

Sec. 10-158. - Procedure as to dogs and other animals considered dangerous.

(a) Definitions. The following words, terms and phrases, when used in this subdivision, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Dangerous dogs and other animals means any dog or other animal:

- (1) With a known propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise endanger the safety of human beings or domestic animals, as determined by the animal control warden;
- (2) That attacks a human being or other animal without provocation; or
- (3) Owned or harbored primarily or in part for the purpose of fighting or any dog or other animal trained for fighting, as determined by the animal control warden.

Dangerous propensity means any propensity or tendency of any dog or other animal to injure persons or domestic animals, whether the dog or other animal acted out of anger or playfulness; and such definition is not confined to a disposition on the part of the dog or other animal to attack every person it might meet but includes as well a natural fierceness or disposition to mischief as might occasionally lead the dog or other animal to attack human beings without provocation. This definition does not mean only the type of malignancy exhibited by a biting dog or other animal.

- (b) Determination of status; appeal. Notwithstanding the provisions of this subdivision, the animal control warden may determine, after investigation, whether a dog is a dangerous dog. If the animal control warden determines that a dog is a dangerous dog, he may order the animal's owner to comply with the provisions of this subdivision. If the animal's owner disagrees with the animal control warden's determination, he may appeal the determination to the general district court for a trial on the merits.
- (c) Confinement required. No person owning or harboring or having the care or custody of a dangerous dog or other animal shall suffer or permit such dog to go unconfined on or off the premises of such person. A dangerous dog or other animal is unconfined if such dog or other animal is not securely confined indoors or confined in a securely enclosed and locked pen or run area upon the premises of such person. Such pen or run area must also have either sides six feet high or a secure top. If the pen or structure has no bottom secured to the sides, the sides must be embedded into the ground no less than one foot.
- (d) Restraint required when off owner's premises. No person owning or harboring or having the care of a dangerous dog or other animal shall suffer or permit such dog or animal to go beyond the premises of such person unless such dog or other animal is securely muzzled and restrained, with a chain having a minimum tensile strength of 300 pounds and not exceeding three feet in length.
- (e) Training for fighting, attacking prohibited. No person shall own or harbor any dog or other animal for the purpose of fighting, or train, torment, badger, bait or use any dog or other animal for the purpose of causing or encouraging such dog or other animal to unprovoked attacks upon human beings or domestic animals.
- (f) Breeding, sale prohibited. No person shall possess with intent to sell, or offer for sale, breed or buy or attempt to buy within the city any dangerous dog or other animal.
- (g) Impoundment authorized. If a law enforcement officer has probable cause to believe that a dangerous dog or other animal is being harbored or cared for in violation of subsections (c), (d) and (e) of this section, the animal control warden may seize and impound the dangerous dog or other animal pending trial.
- (h) Penalty.

- (1) Whoever violates this section shall be guilty of a class 1 misdemeanor, punishable as provided in section 1-14(1).
- (2) Any dangerous dog or other animal that attacks a human being or another domestic animal may be ordered destroyed when, in the court's judgment, such dangerous dog or other animal represents a continuing threat of serious harm to human beings or other domestic animals.

(Code 1976, § 4-43.1)

State Law reference— Dangerous dog determination by animal control warden authorized, Code of Virginia, § 3.1-796.93:1(E).

Secs. 10-159—10-180. - Reserved.

Subdivision III. - Destructive Dogs

Sec. 10-181. - Permitting running at large of destructive dogs.

If any person shall permit any destructive dog owned or kept by him to go or run at large, whether licensed or not, such person shall be guilty of a misdemeanor; and, in the discretion of the court or jury trying the case, the dog may be destroyed.

(Code 1976, § 4-41)

Sec. 10-182. - Duty of owner or keeper to confine; procedure as to dog not confined after notice to owner or keeper.

The owner or keeper of any destructive dog shall keep it securely confined. The owner or keeper of any dog, after receiving notice that his dog is considered destructive from any property owner, the animal control warden or any law enforcement officer of the city, who then fails or refuses to keep the dog securely confined, may be summoned before the general district court for a hearing on the charge and found guilty of violating this subdivision. If the dog is adjudged destructive, in its discretion the court may order it destroyed or removed from the city. The provisions of this section as to notice to the owner or keeper shall in no way be construed as relieving either of them of any liability for any damages arising from the acts of the dog.

(Code 1976, § 4-42)

Sec. 10-183. - Procedure when found running at large.

Any destructive dog, whether licensed or not, found running at large may be taken into custody by the animal control warden or any law enforcement officer of the city and delivered to the animal control warden. The animal control warden shall notify the owner or keeper of such dog, if such owner or keeper can readily be located, that the dog is in his custody and that it may be released to such owner or keeper upon his assurance that he will abide by the provisions of this subdivision. If the owner or keeper cannot readily be located within seven days of capture, the animal control warden may dispose of the dog as provided in section 10-41 if the dog is licensed and its owner or keeper fails to obtain release of it within seven days, or fails or refuses to pay the amount established by the city council and on file in the city clerk's office for each day such dog is in possession of the animal control warden, the animal control warden shall treat the dog in all respects as if it were unlicensed and may destroy the dog.

(Code 1976, § 4-43)

Secs. 10-184—10-210. - Reserved.

Planning Commission Staff Report

From: Larry DiRe 
Date: July 18, 2016
Item: 5c- Limited access commercial activity in the Open Space District
Attachments: None

Item Specifics

At present the only areas in Town zoned as Open Space District are the beach running parallel to and to the immediate west of Bay Avenue, and Central Park (including the playground and tennis courts). These areas provide a variety of active and passive recreational options. In Article III Section 3.15.B some accommodation is made for public amenities and facilities as permitted uses. Through both regulation and event planning, the Open Space District areas are expected to be locations for large public gatherings. Commercial activity is prohibited in this district. The text of the Open Space District reads as follows:

Section 3.15 Open Space District (revised 01-08-09)

A. Statement of Intent. *The intent of the Open Space District (OSD) zoning district is to provide opportunities for recreational activities, a network of recreational paths, preserve natural resources and create buffer zones within the town.*

B. Permitted Uses

- a. *Non-commercial recreational uses which are primarily open air.*
- b. *Swimming Pools.*
- c. *Court sports such as but not limited to tennis, volleyball, croquet and basketball.*
- d. *Structures such as picnic shelters, piers and docks, equipment storage buildings associated with permitted recreational uses.*
- e. *Parking areas associated with permitted recreational uses.*
- f. *Retention areas and streets*
- g. *Public Utility Facilities*
- h. *Public Amenities such as restrooms, bath houses, fountains, etc.*

C. Conditional Uses a. *None*

D. Accessory Uses a. *Those uses customarily accessory and clearly incidental and subordinate to the permitted uses.*

E. Setback Regulations

- a. *Buildings i. All sides.....20 feet*
- b. *Courts i. From Buildings20 feet*
 - ii. *Property Lines20 feet*
 - iii. *StreetsNone*
- c. *In built up neighborhoods, the prevailing setbacks of the neighborhood as defined in Section 3.2 of the Zoning Ordinance.*

F. Development Standards

To help preserve the architectural cohesiveness of the Town, all buildings, structures, public amenities and storage units in the OSD shall be compatible, sympathetic and complimentary with buildings in the neighborhood as defined in Section 3.2 of the Zoning Ordinance.

Discussion

Staff is bringing the Open Space District prohibition on all commercial activity to the Planning Commission for review. Staff's specific purpose for this is in response to several recent requests by small-scale commercial vendors to access Town property off of Bay Avenue as location to sell food items and beach-related goods and services. The Open Space District language expressly states that "non-commercial" uses are permitted, and the District allows for no conditional uses. Staff is bringing this commercial prohibition to the Planning Commission to review to determine if limited access, both spatially and in duration, to commercial activity is conducive to the intent of the District.

Recommendation

Provide direction to staff.

Planning Commission Staff Report

From: Larry DiRe 
Date: July 18, 2016
Item: 6a-Set public hearing date for proposed zoning map amendment (tax map parcel 83A3 – 11 – 2, from Harbor District to Industrial M – 2 District)
Attachments: Application, owner and contract purchaser letters, area map

Item Specifics

Application was received from the current owner and the contract purchaser to amend the zoning map for parcel 83A3 – 11 – 2 from the current Harbor District designation to the proposed Industrial M - 2 District. At the June 16, 2016 Town Council meeting, the Council forwarded the application to the Planning Commission as required in Article II Section 2.7.2.A of the Zoning Ordinance. Before any map amendment can be made the Planning Commission is required to hold a public hearing on the application.

Discussion

The application for zoning map amendment for the above cited parcel comes from the expressed desire of the owner and contract purchaser to have the lot used for industrial purposes. Currently the lot stands vacant and is designated as Harbor District. According to Article II Section 2.7.1 zoning map amendments are allowed for “public necessity, convenience, general welfare, or good planning practice” purposes. This parcel is contiguous to an Industrial M – 2 District lot to the immediate west, and a General Business\Light Industrial District lot to the immediate south. Currently the Virginia Department of Transportation is improving an adjacent state roadway (Route 642).

Recommendation

Pursuant to Article II Section 2.7.2.B of the Zoning Ordinance set the date of the required public hearing, and provide further direction to staff.

MUNICIPAL CORPORATION OF CAPE CHARLES, VIRGINIA
Application for Zoning Map Amendment

Zoning Map Amendment Number: _____ Date: JULY 8, 2016

Map Reference: _____ Tax Map Sheet: O83A3-22 SEC 083A3 OA-00-2
Parcel: LOT 2
Deed Book: 298 PAGE 595; PLAT BOOK 26 PAGE 9

To the Governing Body of the Town of Cape Charles, Virginia

1. I/We CHERRYSTONE I LLC owner(s) contract owner(s)
2. of PO BOX 395, EASTVILLE, VA 23347 (Mailing Address)
(757) 331-3100 (Telephone) _____ (Fax)

3. do hereby petition you to amend the Zoning Map of the Town of Cape Charles, Virginia, by reclassifying and rezoning from the HARBOR District to the INDUSTRIAL (M2) District the property described as follows and shown on the attached plat and outlined in red attached hereto, which is made a part of the application.

4. 1267 BAYSHORE ROAD (Address of Property, if any)
CAPE CHARLES CAPEVILLE DISTRICT (Magisterial District)
18.4 AC (Total Area - acres or sq. ft.)

5. Property Location SOUTH SIDE OF CAPE CHARLES HARBOR

6. Description of Property (attach if described by metes and bounds) APPOX. 18 ACRE FORMER INDUSTRIAL SITE ADJACENT TO SKANSKA YARD.

7. Proposed Use MARINE PORT FACILITY, BOATYARD, BULK STORAGE, TRANSFER FACILITY. SEE TRANSMITTAL LETTER FOR MORE SPECIFIC DESCRIPTION

8. HARBOUR DEVELOPMENT GROUP, LLC - PATRICK CUNNINGHAM (Name of Owner of Record)
2728 NESTLEBROOK TRAIL, VIRGINIA BEACH, VA 23456 (Address)

9. Signature of Owner(s) _____
SEE ATTACHED LETTER

Signature of Contract Owner(s) S.E. Baldwin X _____ (Agent)

By: PO Box 395 Eastville VA 23347 (Address and phone)

(Office Use Only)

	Date	Time	Action
Planning Commission Public Hearing:	(1) _____		
	(2) _____		
Town Council Public Hearing:	(1) _____		
	(2) _____		

Supplemental Information Required (check appropriate items)

- Legal Plat
- Plan of Development
- Other _____
- Fee: Single Family \$300 + \$50 ac. Multi-Family \$600 + \$70 ac. Commercial \$600 + \$70 ac.



July 8, 2016

Ref: 34205.00

Larry DiRe
Municipal Building
2 Plum Street
Cape Charles, Virginia 23310

Re: Rezoning Request for Lot 83A3-11-2-South Cape Charles Harbor:

Dear Mr. DiRe:

As we have discussed, Cherrystone I LLC is currently under contract to purchase Lot 83A3-11-2, an approximate 20 acre parcel located along the southern shoreline of Cape Charles Harbor. Cherrystone's purchase of this property is contingent upon its ability to implement a development plan that incorporates facilities for a marine terminal and a boat yard that performs major repairs and maintenance on commercial fishing vessels and mega-yachts. The boatyard will be operated in cooperation with Cape Charles Yacht Center, the adjacent waterfront property owner to the east (Lot 83A3-11-1). Both properties are currently in the Harbor District zoning designation.

While the Harbor District allows for a marina, associated facilities and operations, it does not specify port or terminal facilities as a by-right or conditional use. Therefore, we respectfully request that the Town change the zoning designation of Lot 83A3-11-2 from Harbor District to Industrial District M-2. Accordingly, please find attached the 1) Application for Zoning Map Amendment; 2) Owner's Authorization Letter; 3) Legal Plat and, 4) Proposed Plan of Development for your review and distribution to the Planning Commission.

We understand that following rezoning approval, a Conditional Use Permit will be needed to operate the intended facilities. Cherrystone wishes to make the Planning Commission aware of its intent to apply for a Conditional Use Permit for the following designated Conditional uses:

- No. 7 Concrete plant; manufacturing, sales and distribution of concrete and related products
- No. 8 Railroad tracks, sidings, yards or roundhouses
- No. 9 Marinas, docks and wharfs, if contiguous to Cape Charles Harbor
- No. 10 Port facilities, marine, rail, trucking, and/or intermodal terminals, including transfer, storage, handling, inspection, processing, and /or transport of containerized, bulk, and or other cargo
- No. 13 Outdoor storage (with required screening)
- No. 23 Structures, other than buildings, exceeding 50 feet

Cherrystone's intention is to accommodate both currently planned and potential future uses of the property consistent with its stated purpose.

The attached development plan depicts the anticipated improvements to the property. Cherrystone and its partners intend to demolish the existing dilapidated docks and remove the concrete debris from the shoreline. A new dock/wharf facility will be installed and the shoreline will be stabilized using a living shoreline approach

Engineers | Scientists | Planners | Designers

351 McLaws Circle
Suite 3
Williamsburg, Virginia 23185
P 757.220.0500
F 757.903.2794



which includes a stone sill for wave protection backed with sand fill and marsh and buffer plantings. Existing vegetation will be left as screening at select locations around the site and new buffer plantings will be installed to provide a screen in areas where vegetation is lacking. Stormwater management will be handling in accordance with current regulations and will be incorporated into the natural landscape features to the degree possible. It is understood that a more complete site plan must be prepared for the Conditional Use Permit and for the Town's site plan review process. At that time, all engineering, stormwater management and rights-of-way requirements will be addressed in detail.

We suggest that this request represents an exceptional opportunity for the Town as it is a reasonable zoning action that is consistent with each of the specific objectives of the M-2 District:

1. Encourage the revitalization of the local industrial economy and historic port of Cape Charles and Northampton County.
2. Create family-wage employment and training opportunities for local residents.
3. Serve as a model and national prototype of an integrated approach to land development and industrial operations, embodying sustainable approaches to the local economy, environment and culture.
4. Serve as a model for advancing the traditional settlement patterns of the Eastern Shore's towns and employment centers.
5. Encourage cost effective approaches to resource conservation, wise use of renewable resources, and ecologically based industrial development.

A change to the Industrial District M-2 compliments the surrounding properties, which are either already in the M-2 District or have related designations that are not in conflict with the intended uses. The recently initiated improvements to State Route 642 for the purpose of "enhancing access to the Cape Charles Harbor" provides further support for the appropriateness of the requested re-zoning.

We note that there is a degree of urgency with this request as Cherrystone has immediate opportunities with two potential operating partners; one, a major east coast commercial fishing consortium and the second an internationally prominent shipyard with existing operations in the northeast. Both entities have expressed a desire to be operational on the site in early to mid-2017.

Should you have any questions regarding this application or require additional information, don't hesitate to contact me at 757.220.0500 or 804.695.4344. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "R. Neville Reynolds".

R. Neville Reynolds, PWS

Managing Director – Williamsburg

CC: Eyre Baldwin
Jim Gunn
Dan Brown
Bert Turner, Esq.

June 15, 2016

Patrick Cunningham
Harbour Development Group, LLC
2728 Nestlebrook Trail
Virginia Beach, VA 23456

Brent Manuel
Cape Charles Town Manager
2 Plum Street
Cape Charles, VA 23310

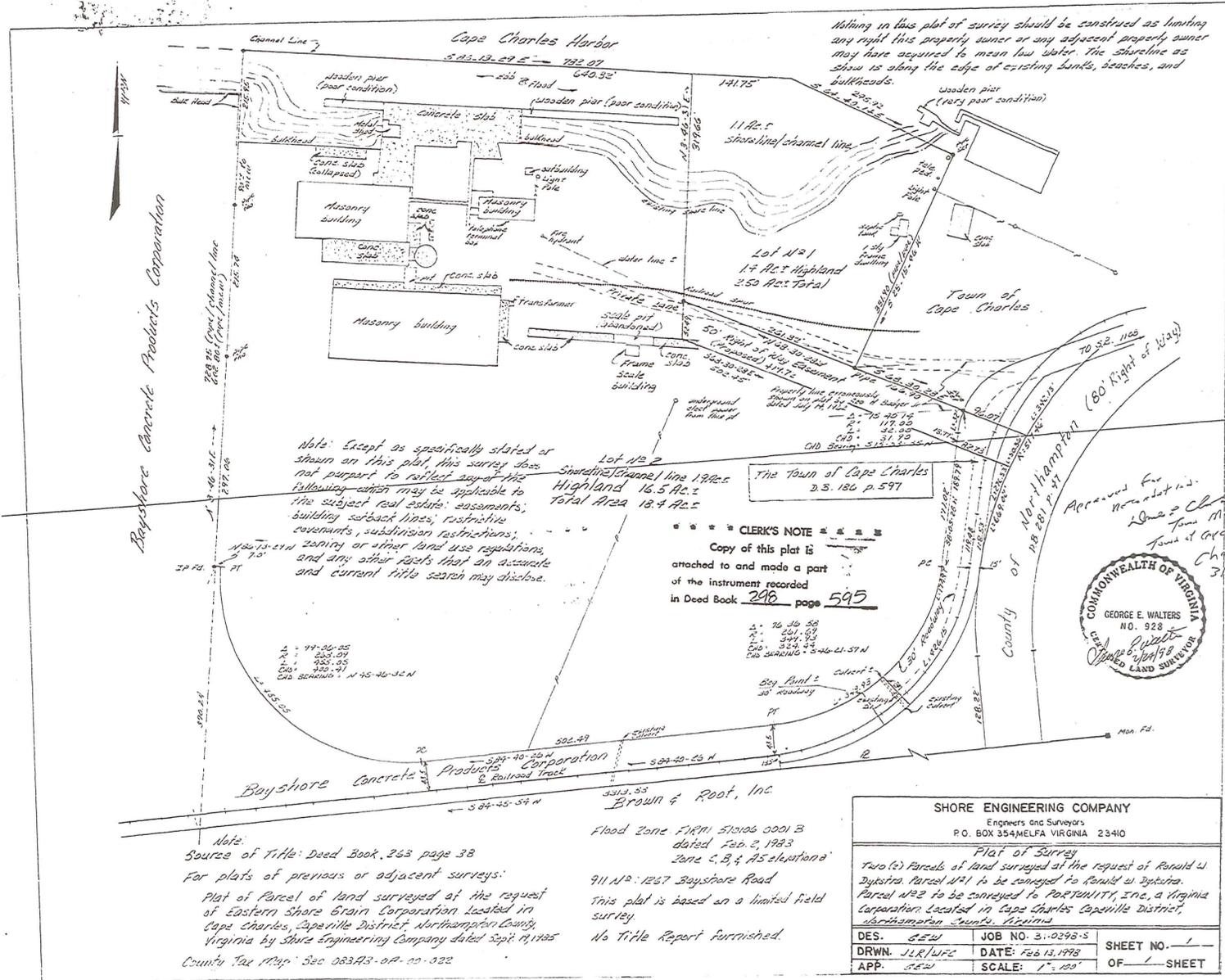
Dear Mr. Manuel,

Please allow Cherrystone I, LLC, Eyre Baldwin, and/or James Gunn to submit a request to Town of Cape Charles to change the zoning of lot #83A3-11-2 to Industrial. The parties mentioned above have contracted to purchase this land. Please let this correspondence serve as current land-owner consent allowing Cherrystone I, LLC/Baldwin/Gunn to move forward with the zoning request. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patrick L. Cunningham', with a long horizontal flourish extending to the right.

Patrick L. Cunningham
Managing Member - Harbour Development Group, LLC



Nothing in this plat of survey should be construed as limiting any right this property owner or any adjacent property owner may have acquired to mean low water. The shoreline as shown is along the edge of existing banks, beaches, and bulkheads.

Note: Except as specifically stated or shown on this plat, this survey does not purport to reflect any of the following which may be applicable to the subject real estate: easements; building setback lines; restrictive covenants, subdivision restrictions; zoning or other land use regulations; and any other facts that an accurate and current title search may disclose.

Note:
Source of Title: Deed Book, 263 page 38
For plats of previous or adjacent surveys:
Plat of Parcel of land surveyed at the request of Eastern Shore Grain Corporation located in Cape Charles, Capeville District, Northampton County, Virginia by Shore Engineering Company dated Sept. 11, 1985
County Tax Map: Sec 083A3-07-00-022

Flood Zone FIRMI 510105 0001 B dated Feb. 2, 1983
Zone C, B, & A5 exceptions
911 N.P.: 1267 Bayshore Road
This plat is based on a limited field survey.
No Title Report furnished.

SHORE ENGINEERING COMPANY		
Engineers and Surveyors P.O. BOX 354 MELFA VIRGINIA 23410		
Plat of Survey		
Two (2) Parcels of land surveyed at the request of Ronald W. Dykstra. Parcel #1 is to be conveyed to Ronald W. Dykstra. Parcel #2 is to be conveyed to PORTWORTH, Inc., a Virginia Corporation located in Cape Charles Capeville District, Northampton County, Virginia.		
DES. G.E.W.	JOB NO. 31-0298-5	SHEET NO. 1 OF 1 SHEET
DRWN. J.L.R./L.F.Z.	DATE: Feb 13, 1998	
APP. G.E.W.	SCALE: 1" = 100'	

June 15, 2016

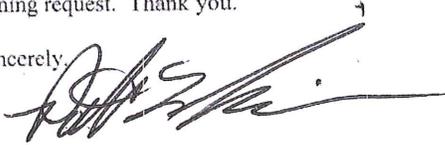
Patrick Cunningham
Harbour Development Group, LLC
2728 Nestlebrook Trail
Virginia Beach, VA 23456

Brent Manuel
Cape Charles Town Manager
2 Plum Street
Cape Charles, VA 23310

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Sincerely,

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Patrick L. Cunningham
Managing Member - Harbour Development Group, LLC



June 8, 2016

Brent Manuel
Cape Charles Town Manager
2 Plum Street
Cape Charles, VA 23310

Dear Brent,

Thank you for meeting me on Monday at our site on the harbor. In order for our business to reach expectations we must expand our physical presence on Cape Charles Harbor. We have contracted to purchase the 20 acre tract of land in between Bayshore Concrete and our site. We are hopeful this transaction will be complete by October 1, 2016.

One of the contract contingencies is a change in the zoning classification from Harbor District to Industrial. We will provide justification for the request at a later date. Please let this correspondence serve a formal request to change the current zoning on lot #83A3-11-2. Thank you.

Sincerely,

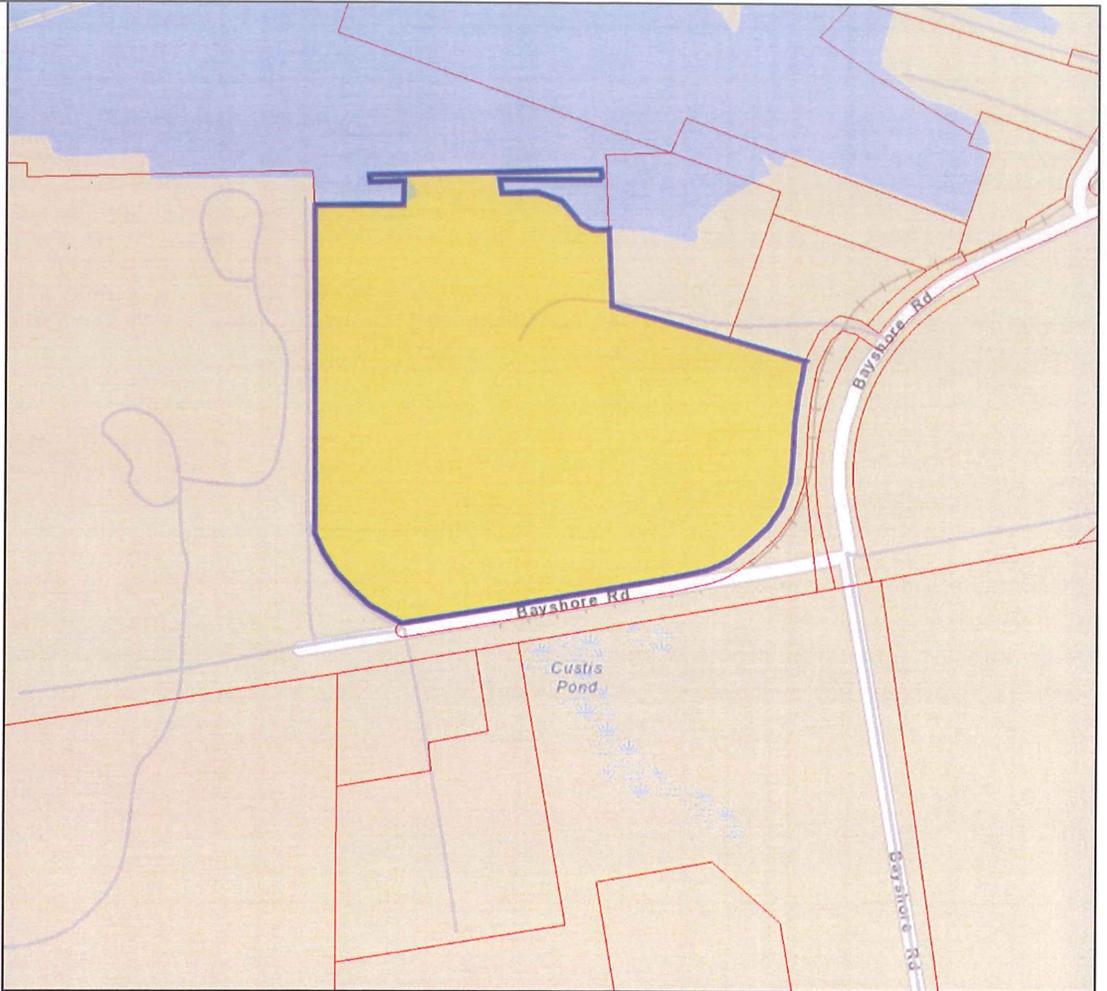


S. Eyre Baldwin
Managing Member - Southport Investors, LLC

Northampton County, Virginia

Legend

- Town Names
- Route Numbers
- Road Labels
- Parcels
- Driveways



Map Printed from Northampton
<http://northampton.mapsdirect.net/>

Feet

0 100 200 300 400
1:4,514 / 1"=376 Feet

Title: Parcels

Date: 7/8/2016

DISCLAIMER: This drawing is neither a legally recorded map nor a survey and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources, and Northampton County is not responsible for its accuracy or how current it may be.