BOARD OF ZONING APPEALS
Public Hearing & Meeting Agenda
Cape Charles Civic Center - 500 Tazewell Avenue
December 5, 2016
10:00 A.M.

1. Call to Order; Roll Call

2. Public Hearing

A. Hear public comment on proposed variance
B. Close public hearing

3. Invocation and Pledge of Allegiance

4. Public Comments

5. Consent Agenda

A. Approval of Agenda Format
B. Approval of Minutes of July 25, 2016 public hearing and meeting

6. New Business

A. Variance application – 1011 Bayshore Road (Lot 83A3-A-19) minimum lot size relief request
B. Update downtown parking plan

7. Adjourn

DRAFT

Board of Zoning Appeals

Public Hearing & Meeting

Cape Charles Civic Center
July 25, 2016
10:00 a.m.

At approximately 10:00 a.m. in the Cape Charles Civic Center, Vice Chairman Jay Wiegner called to order the Board of Zoning Appeals Public Hearing and Meeting. In attendance were Board members Diane D'Amico, Bill Murphy and Kevin Hoffman. Pete Bauman arrived after Roll Call. Also present were Town Planner Larry DiRe, Assistant Town Clerk Tracy Outten and applicants Jone and Bruce Gittinger. There was one member of the public in attendance.

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

PUBLIC COMMENTS

A. *Hear public comment on proposed variance*
There were no public comments to be heard.

B. *Close public hearing*
Jay Wiegner closed the public hearing.

CONSENT AGENDA

Motion made by Bill Murphy, seconded by Diane D'Amico, to accept the agenda format as presented. The motion was approved by unanimous consent.

The Board reviewed the minutes from the June 14, 2016 Work Session and the June 15, 2016 Public Hearing and Meeting.

Motion made by Bill Murphy, seconded by Diane D'Amico, to approve the minutes from the June 14, 2016 Work Session and the June 15, 2016 Public Hearing and Meeting as presented. The motion was approved by unanimous consent.

NEW BUSINESS

A. *Variance Application – Lot 83A3-5-1 parking standard relief*
Jay Wiegner reviewed the application. The board members had a brief discussion and no concerns were expressed.

Motion made by Bill Murphy, seconded by Diane D'Amico, to approve the variance application for Lot 83A3-5-1. The motion was approved by unanimous consent.

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

_____
Vice Chairman Jay Wiegner

_____
Assistant Town Clerk

DRAFT

Notice of Public Hearing

The Cape Charles Board of Zoning Appeals will hold a public hearing on Monday, December 5, 2016 at 10:00am at the Town Civic Center at 500 Tazewell Avenue, Cape Charles to receive comment on an application for a variance from minimum lot size requirements prior to applicant's desire to subdivide the existing parcel. The applicant property is located at 1011 Bayshore Road (Tax map # 83A3-A-19), and is in the Harbor Zoning District. The Board of Zoning Appeals will have a meeting to vote on the application immediately following the public hearing.

Information on the variance application can be viewed in the Planner's Office at 2 Plum Street or obtained by phone at 757-331-3259 x15, or email to planner@capecharles.org

For handicap assistance, please call the number above at least 48 hours in advance.

Board of Zoning Appeals Staff Report

From: Larry DiRe

Date: December 5, 2016

Item: 6A - Variance Application – 1011 Bayshore Road (Lot 83A3-A-19)

Attachments: Application with narrative letter, survey plat\site plan, general vicinity lot map, shared use parking agreement.

Background

This lot, 1011 Bayshore Road\tax map # 83A3-A-19 and henceforth referred to as lot 19, is in the Harbor District zoning district. The lot was previously owned by the Town of Cape Charles and leased to the present owner. For several years the lot has been used for boat repair and maintenance, and the lot's entire north and west boundaries front the water. Approximately twenty-two percent of the total lot area is submerged. As required by the Harbor Development Certificate process, first the Harbor Area Review Board recommended and then the Town Council approved certain development on the lot. The current application for variance involves the location of a two-story wood-frame building on that lot. The applicant is interested in a future subdivision of the lot to allow for sale of the aforementioned wood-frame building on a fifty-six hundred (5,600) square foot parcel. To accommodate the required off-street parking regulations, a shared use parking agreement is presented. A railroad easement runs directly on the south and east of the lot as shown on the survey plat\site plan. The proposed subdivided parcel does not meet the required minimum lot requirements nor the required lot road frontage.

The following zoning ordinance sections are to be considered with this application:

Article II, Section 2.9 Definitions
Frontage means the portion of the lot contiguous to the street.

Article III, Section 3.9.F
Lot and Height Requirements. Within the Harbor District, the following standards shall apply:
1. Minimum lot requirements
lot area .....11,200 square feet
lot frontage .....80 feet
lot depth .....140 feet

Application Specifics

The applicant is seeking relief from the strict application of the minimum lot area size required for a conforming lot in the Harbor District. As shown above, *Article III, Section 3.9.F* set lot area standards at not only square footage, but also frontage and depth. The submitted survey plat, sealed by a licensed professional land surveyor, includes both a curve table and a line table. The graphic scale shows one inch equaling fifty feet. The linear area constituting the existing road frontage, again keep in mind the railroad

easement abutting lot 19, is shown between two lot line pins and identified on the plat as "C6" for curve line 6 on that table. According to the curve table, the C6 section has a length of sixty-six point forty-seven (66.47) feet. This shows that lot 19 has a road frontage area eighty-three percent (83%) of that required by the Harbor District zoning for a minimum lot area conformity.

The required minimum lot area described in *Article III, Section 3.9.F* derives from a simple multiplication of the frontage and depth. The resulting sum of eleven-thousand two-hundred (11,200) constitutes a "double lot" size area found throughout the historic old town area, and presumes that lots in the Harbor District conform to the grid street plan found in the old town. The grid street plan does not extend into the Harbor District, and lots were not subdivided accordingly. A larger size conforming area lot would presumably have frontage and depth in excess of that required. At the same time a conforming lot size area may still have either frontage or depth required, but lack the requirement of the other measurement and so may still result in a lot of the required area, but not the required dimensions. The applicant is requesting this variance to be able to subdivide lot 19 into two parcels, including a parcel equal in area to that of one measuring fifty-six hundred square feet in area.

Variance Criteria

Article II, Section 2.9 of the Zoning Ordinance states the following definition of variance:

> *"the permission to depart from the literal requirements of this zoning ordinance. A variance is a relaxation of the terms of this chapter where such variance will not be contrary to the public interest and where owing to conditions peculiar to the property and not the result of the action of the applicant, a literal enforcement of this ordinance would result in unnecessary and undue hardship. As used in this ordinance, a variance is authorized only for height, area, size of structure, or size of yards and open spaces. Establishments or expansions of a use otherwise prohibited shall not be allowed by a variance, nor shall a variance be granted because of the presence (or existence) of non-conformities in the zoning district or adjoining districts*."

Article II, Section 2.6.2 B of the Zoning Ordinance states the following guidance in determining the basis for variance:

> *"When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size, or shape of specific piece of property at the time of the adoption of this ordinance, or where by reason of exceptional topographical conditions or other extraordinary situation or condition of such piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of this ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrated hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant. All variances shall be in harmony with the intended spirit and purpose of the ordinance."*

Article II, Section 2.6.2 B of the Zoning Ordinance provides the following guidance in determining the need to grant variances:

> *"No such variance shall be authorized by the board unless it finds all of the following conditions exist:*
>
> 1. *That the strict application of the ordinance would produce undue hardship.*
> 2. *That such hardship is not shared generally by other properties in the same zoning district and the same vicinity*
> 3. *That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance."*

Recommendation

Staff finds that the conditions of *Article II Section 2.6.2.B* are met to a sufficient degree that the applicant has a land use burden not shared by property owners of similarly situated lots in the Harbor District. The parcel's location, existing non-conformity with the minimum frontage requirement, and proximity to a railroad track easement, does not allow for the minimum eighty-foot frontage of roadway as required in Article III, Section 3.9.F.1 of the Town's zoning ordinance. As shown on the sealed survey plat submitted with this application, the area shown as C6 (Curved section 6) is sixty-six point forty-seven linear feet. This is below the eighty feet of road frontage required in the zoning ordinance and so shows lot 19 to be non-conforming at the time the Harbor District ordinance was adopted. Staff finds that to deny the variance would, in effect, deny the property owner the right to pursue the subdivision of the lot as defined in Appendix A of the zoning ordinance.

The Board of Zoning Appeals will determine if all three of the conditions outlined in *Article II Section 2.6.2 B* of the Zoning Ordinance exist, and if so, the Board of Zoning Appeals should issue a lot area variance.

Application for Zoning Variance

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

Date November 9, 2016 Permit No. _____

Fee: $250.00

Applicant South Port Investors, LLC Signature _____

Address P.O. Box 395, Eastville, VA 23347

Phone 757-636-2885/757-647-1833/757-695-0265 Email eyre1@verizon.net, renee@ccyachtcenter.com, danbrown.va@gmail.com

Owner Same

Address _____

Contractor N/A

Address _____

Town License No. _____ State License No. _____

Location of Improvement 1011 Bayshore Road, Cape Charles, VA 23310

Lot No. 83A3-A-19 Block No. _____ Lot Size _____ Lot Area _____

Type of Improvement Subdivision of lot to a parcel size that does not conform to minimal lot size

Proposed Use Office/Professional & Retail Store

Estimated Construction Costs $1,800 design costs

Dimension of Structure or Improvement Width 56 Length 100 Height N/A

Total Square Footage 5600 sq. ft.

Structure or Improvement will be setback

- ☐ From front property line
- ☐ From rear property line
- ☐ From side property line
- ☐ From side property line on corner lot

Town Water Permit _____ Town Sewer Permit _____

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 that the changes to the improvement before or during construction will be provided to the Zoning Administrator and Building Code Official before such changes are constructed.

Signature of Owner/Agent _____

Building Permit

Issuance of the Zoning Variance in itself does not permit the applicant, owner or contractor to proceed with the improvements noted above. Improvements can proceed only after issuance of a building permit from the Cape Charles Building Official who can be reached at 757-331-2176 or codeofficial@capecharles.org.

Date Approved _____ Date Denied _____

Zoning Administrator _____

South Port Investors, LLC
P.O. Box 395
Eastville, VA 23347
757-678-5880

November 8, 2016

Lawrence DiRe, M.A. M.P.A
Town Planner
Town of Cape Charles
2 Plum Street
Cape Charles, VA 23310

SUBJECT: BOARD OF ZONING APPEALS HEARING REQUEST

Dear Mr. DiRe:

Thank you again for meeting with us last week to discuss the potential growth at the Cape Charles Harbor. South Port Investors, LLC is requesting a hearing with the Cape Charles Board of Zoning Appeals regarding Lot 19 of the Harbor District. This is the lot to the south of the Cape Charles harbor that now contains the building known as Harvey. As you know we are trying to get several issues resolved. At your suggestion, we are going to do our best to submit everything for the Harvey Building and the Bath House at once.

Since the inception of the Harbor District zoning the only new growth, other than the Cape Charles Yacht Center, of which I am aware, is the building on Mason Avenue owned by Patrick Hand. I believe this lack of growth is due to the lot size requirement in the Harbor District which is twice the size of a normal lot in Town. In our case, and even though the harbor is designated as an Intensely Developed Area (IDA), the current lot size requirement impedes the use of the harbor as a working waterfront.

To illustrate, we now have an opportunity to have another business located at the Harbor. We have a prospective buyer for Harvey who wants to take advantage of the Yacht Center's transient boater traffic. Due to the current lot size requirement, again twice the normal lot size in town, as well as the shape of Lot 19, future growth along the harbor front will be difficult.

As a full-service boat yard and luxury yacht haven it is evident our business is transient. We have invested heavily in the bulkhead, docks, and aesthetics as these transient customers are the primary source of our income. If the current zoning for the Harvey Building were to remain in place, we would not be able to adequately service our transient boat clientele as a luxury yacht destination.

To enumerate, we have three main concerns. The lot size requirement:

1. compromises the ability to adequately service our transient customer base as a luxury yacht destination.
2. compromises the actual operation of the boat yard by impeding access to the harbor.
3. compromises the ability for expansion of the marina and future complimentary businesses to locate at the Harbor.

The BZA is probably aware that South Port also owns 150 acres along the harbor and beyond that is almost continuous. Some is green space, some is commercial, but with this acreage it would be easy to reapportion parking and green space. (Yet some of our space on the bulkhead is bio retention already!)

We are asking the BZA to consider the subdivision of the portion of Lot 19 that contains the Harvey Building as shown in the attached drawing. We would appreciate a chance to go before the Board of Zoning Appeals to ask for an exemption. Our proposal will stimulate more opportunity, as well as bring further revenues to the Town.

Sincerely,

S. Eyre Baldwin
Managing Member

SHARED USE AGREEMENT FOR PARKING FACILITIES

This Shared Use Agreement for Parking Facilities, entered into this 9th day of November, 2016, between South Port Investors, LLC, hereinafter called LESSOR and Gordon Campbell, hereinafter called LESSEE. In consideration of the covenants herein, LESSOR agrees to share with LESSEE certain parking facilities, as are situated at the Cape Charles Yacht Center at the Cape Charles Harbor located at 1011 Bayshore Road, Cape Charles, Virginia, hereinafter called the facilities, described as: Tax Map Parcel Numbers 83A3-A-19, 20, and 12.

The facilities shall be shared commencing on November 9, 2016, and will be in effect in perpetuity or until written notification of termination of agreement is received thirty days in advance from LESSEE. The LESSEE agrees to pay LESSOR by the 1st day of each year in the amount of $1 made payable to LESSOR at P.O. 395, Eastville, VA 23347. LESSOR hereby represents that it holds legal title to the facilities.

The parties agree as follows:

USE OF FACILITIES: The LESSEE shall have shared use at all times with LESSOR of the parking facilities located within 600 feet of the front door of the property owned by the LESSEE. Scope of parking facilities will be limited to the number of spaces required by Town of Cape Charles zoning ordinance

MAINTENANCE: LESSOR shall maintain lot and landscaping at or above the current condition, at no additional cost to the LESSEE.

UTILITIES and TAXES: LESSOR shall pay all taxes and utilities associated with the facilities, including maintenance of existing facility lighting as directed by standard safety practices.

SIGNAGE: LESSEE may provide signage, meeting with the written approval of LESSOR, designating usage allowances.

ENFORCEMENT: LESSEE and LESSOR reserve the right to tow, at owner's expense, vehicles improperly parked or abandoned. All towing shall be with the approval of the LESSOR.

COOPERATION: LESSOR and LESSEE agree to cooperate to the best of their abilities to mutually use the facilities without disrupting the other party. The parties agree to meet on occasion to work out any problems that may arise to the shared use.

INSURANCE: At their own expense, lessor and lessee agree to maintain liability insurance for the facilities as is standard for their own business usage.

TERMINATION: If LESSOR transfers ownership, or if part, or all, of the facilities are condemned, or access to the facilities is changed or limited, LESSEE may, in its sole discretion, terminate this agreement without further liability by giving LESSOR not less than 30 day's prior written notice. Upon termination of this agreement, LESSEE agrees to remove all signage and repair damage due to excessive use or abuse.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date Set forth at the outset hereof.

LESSEE

11/9/2016

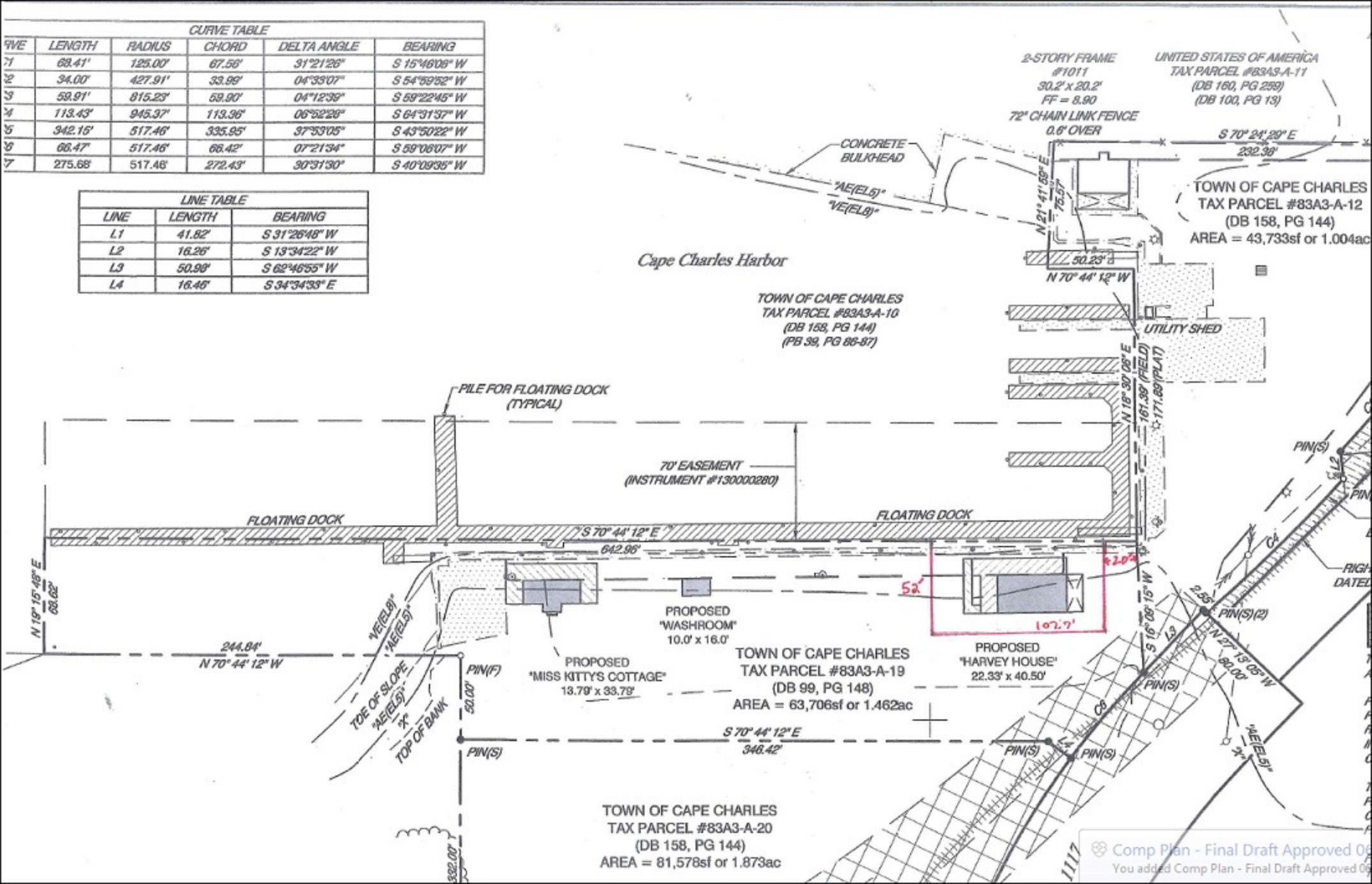
Gordon Campbell

LESSOR

S. Eyre Baldwin, Managing Member
South Port Investors, LLC

CURVE TABLE					
RVE	LENGTH	RADIUS	CHORD	DELTA ANGLE	BEARING
1	68.41'	125.00'	67.56'	31°21'26"	S 15°46'08" W
2	34.00'	427.91'	33.99'	04°33'07"	S 54°59'52" W
3	59.91'	815.23'	59.90'	04°12'39"	S 59°22'45" W
4	113.43'	945.37'	113.36'	06°52'28"	S 64°31'37" W
5	342.16'	517.46'	335.95'	37°53'05"	S 43°50'22" W
6	66.47'	517.46'	66.42'	07°21'34"	S 59°06'07" W
7	275.68'	517.46'	272.43'	30°31'30"	S 40°09'35" W

LINE TABLE		
LINE	LENGTH	BEARING
L1	41.82'	S 31°26'48" W
L2	16.26'	S 13°34'22" W
L3	50.98'	S 62°46'55" W
L4	16.46'	S 34°34'33" E

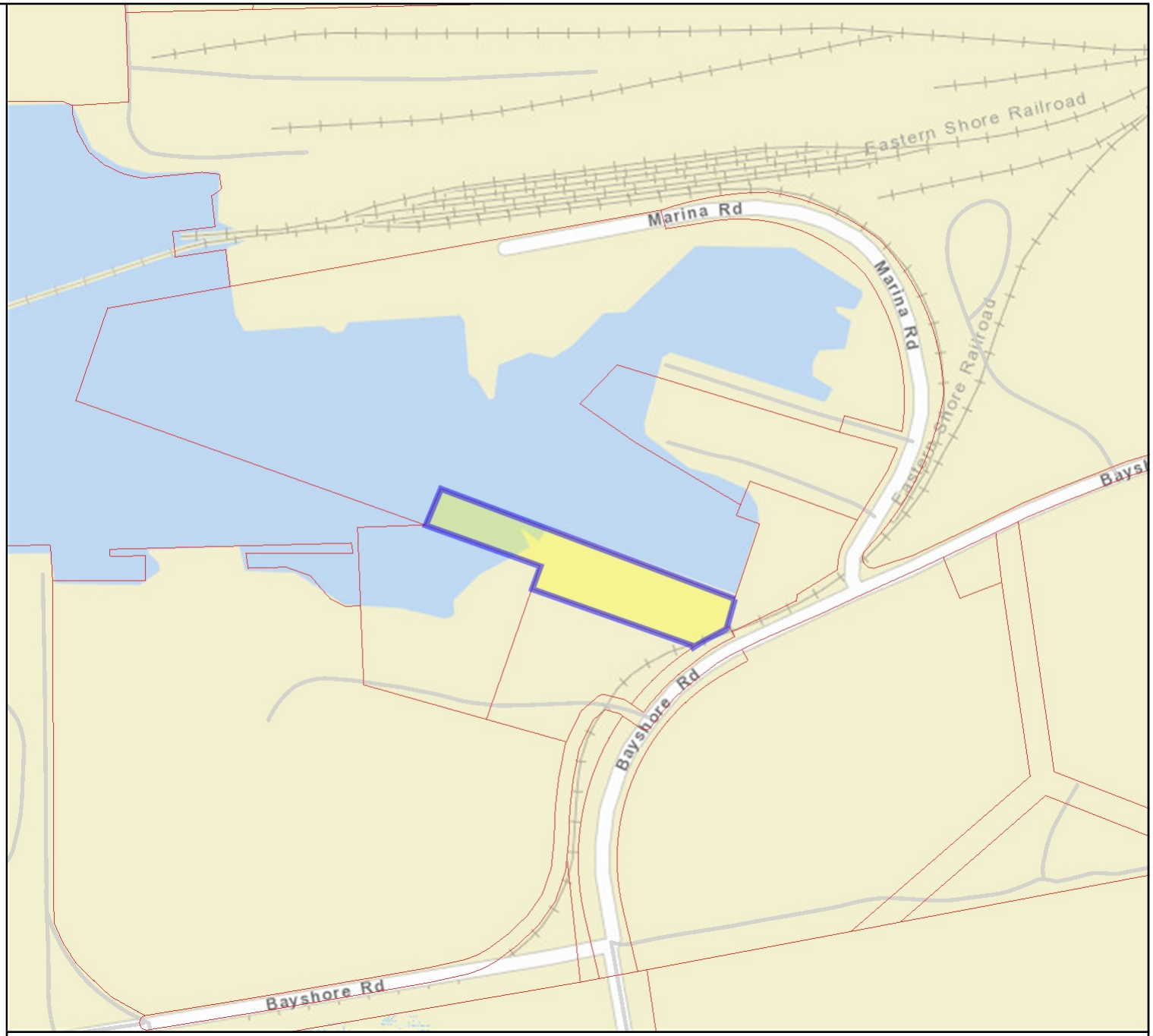


Comp Plan - Final Draft Approved 0
You added Comp Plan - Final Draft Approved 0

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: 11/22/2016

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.