

**BOARD OF ZONING APPEALS**  
**Agenda**  
**Cape Charles Civic Center - 500 Tazewell Avenue**  
**February 2, 2017**  
**10:00 A.M.**

- 1. Call to Order; Roll Call**
- 2. Public Hearing**
  - A. Hear public comment on proposed variance for relief from maximum size of structure requirement for an accessory building – tax map # 90-3-A2\2449 Old Cape Charles Road
  - 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 January 5, 2017 Meeting
- 6. New Business**
  - A. Variance application – tax map # 90-3-A2\2449 Old Cape Charles Road maximum size of structure for an accessory building relief
  - B. 2016 Board Annual Report
  - C. Election of Chair and Vice Chair
- 7. Adjourn**

## **Notice of Public Hearing**

The Cape Charles Board of Zoning Appeals will hold a public hearing on Thursday, February 2, 2017 at 10:00am at the Town Civic Center at 500 Tazewell Avenue, Cape Charles to receive comment on an application for a variance from maximum size of structure requirement for an accessory building on the subject parcel. The applicant property is located at 2449 Old Cape Charles Road (Tax map # 90-3-A2), and is in the Residential Estate 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](mailto:planner@capecharles.org)

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



**DRAFT**  
**Board of Zoning Appeals**  
**Public Hearing & Meeting**  
**Cape Charles Civic Center**  
**January 5, 2017**  
**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 Pete Bauman. Kevin Hoffman was not in attendance. Also present were Town Planner Larry DiRe and Assistant Town Clerk Tracy Outten. Applicants of 3 Fig Street, Chad and Bev Petras and one member of the public were in attendance.

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

**PUBLIC COMMENTS**

**A. Hear public comment on proposed variance**

*David Kabler, 10352 Church Neck Road, Machipongo, VA 23405*

(Please see attached)

*Greg and Laura Lohse, Owners Kellogg Building*

Assistant Town Clerk Tracy Outten read the comments submitted by Greg and Laura Lohse.

(Please see attached.)

**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 December 5, 2016 Public Hearing and Meeting.

**Motion made by Pete Bauman, seconded by Bill Murphy, to approve the minutes from the December 5, 2016 Public Hearing and Meeting as presented. The motion was approved by unanimous consent.**

**NEW BUSINESS**

**A. Variance Application – Lot 83A3-1-534\1 Fig Street (Kellogg Building) parking standard relief**  
Jay Wiegner reviewed the application. The board members inquired about the plans for the building.

**Motion made by Pete Bauman, seconded by Jay Wiegner, to approve the parking standard relief application for 1 Fig Street Lot (83A3-1-534). The motion was approved by unanimous consent.**

**ANNOUNCEMENT**

Larry DiRe informed the board of a future application.

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

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Vice Chairman Jay Wiegner

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Assistant Town Clerk

DRAFT

# Board of Zoning Appeals Staff Report

**From:** Larry DiRe   
**Date:** February 2, 2017  
**Item:** 6A - Variance Application – for relief from maximum size of structure requirement for an accessory building – tax map # 90-3-A2\2449 Old Cape Charles Road  
**Attachments:** Application, general vicinity lot map and survey plat.

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## Background

Staff received an application for variance from the accessory building maximum square footage requirement for a lot in the Residential Estate zoning district. The applicant approached staff about an accessory building exceeding the maximum size and was informed that such a building could not be allowed by right regardless of the size of the residential lot upon which the building would be located. Intended to provide “low density housing in a rural-type setting,” the Residential Estate zoning district is the closest to an agricultural district allowed by Town zoning, and lots in that district must be one-acre minimum size. The applicant’s lot is contiguous to only other lots zoned Residential Estate. Lots with the Northampton County zoning designation of Town Edge -1 are across the street from the applicant’s lot, which allow for “a mix of farming activities, low density residential, and other low impact uses.”

## Application Specifics

The applicant is seeking relief from a strict application of the maximum square footage of an accessory building in a residential district requirements found in the section below. Those requirements are based on the placement of the accessory building on a residential lot. Minimum residential lot size varies by zoning district from fifty-six hundred square feet to one acre, but the accessory building maximum square footage size remains static. The property under consideration here exceeds sixty thousand square feet. A request for a nine-hundred and sixty square foot accessory building on a lot of this size is in proportion to an accessory building of eighty-nine point six square feet on a fifty-six hundred square foot residential lot. Allowing for the lot frontage standard of one-hundred and ten square feet of accessory building area increase per additional forty feet of frontage, this lot with two-hundred and six feet of frontage would make for a proportional accessory building of nine-hundred and ninety total square feet. The accessory building proposed by the applicant is nine-hundred and sixty square feet. The applicant is seeking relief from the requirements of Article IV Section 4.2.E. That section states the following:

### **Section 4.2.E Accessory Buildings**

*The following restrictions shall apply to accessory buildings located in residential districts. [adopted 1/2006] 1. The accessory building shall not be located in a front or side yard. 2. The accessory building shall not be closer than five feet (5') to any alley*

line. 3. The accessory building shall not be closer than two feet (2') to any side or rear lot line. 4. The accessory building shall not be closer than fifteen feet (15') from the main building. 5. A two-story building shall not be located any closer than five feet (5') to any lot line. 6. The sum of the footprint square footage (SF) of all buildings on the lot shall be less than 50% of the total lot SF. 7. Where total lot frontage on one (1) or more lots owned by the same party is less than eighty feet (80'), the sum of the footprint of all accessory buildings shall be less than the footprint of the primary residence or 550 SF whichever is lesser. 8. Where total lot frontage of one (1) or more lots owned by the same party is greater than or equal to eighty feet (80'), the sum of the footprint of all accessory buildings shall be less than the footprint of the primary residence or 660 SF, whichever is lesser. 9. Where the main structure possesses no more than one story above grade, no accessory structure shall be higher than the main structure. 10. Where the main structure possesses more than one story above grade, no accessory structure shall be higher than two-thirds the height of the main structure or twenty-four feet (24'), whichever is lesser. 11. Temporary Family Health Care Structures are only allowed per § 15.2-2292.1 of the Code of Virginia. [adopted 12/2010]

## Variance Criteria

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.”*

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.”*

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 recommends granting relief from the accessory building maximum size requirements based on the size of the lot under consideration, one of the largest residentially-zoned lots within the Town boundaries, and the relative proportional increase in the square-foot area of the proposed accessory building. Staff would not make such a recommendation for an accessory building of nine-hundred and sixty square feet on a lot in any residential zoning district other than Residential Estate, which requires lots to be at a minimum eight times larger than a conforming size residential lot in the Residential -1 District. All while the zoning ordinance regulates accessory building size in a static fashion throughout all residential districts.

Staff recommends the Board determine if all three of the conditions outlined in Section 2.6.2 B of the Zoning Ordinance exist, and determine if the Board of Zoning Appeals will issue a 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](mailto:planner@capecharles.org)

Date JAN 01 2017

Permit No. \_\_\_\_\_

Applicant DONALD E LEE / RENEE LEE Signature [Signature] / Renee Lee Fee: \$250.00

Address 107 SAROTOLA PLACE

Phone N 757 695-3890 Email JET 6967 @ HOTMAIL.COM  
L 757 572-8507

Owner DONALD E LEE JR / RENEE LYNN LEE  
Address 2449 OLD CAPE CHARLES ROAD

Contractor BACKYARD ESCAPE WITH CAROLINA CORPORA INC.  
410-713-8606 800-670-4262

Address P.O. BOX 1263, 187 CARDINAL RIDGE TR. DODSON, N.C. 27017  
Town License No. \_\_\_\_\_ State License No. \_\_\_\_\_

Location of Improvement 2449 OLD CAPE CHARLES ROAD

Lot No. \_\_\_\_\_ Block No. \_\_\_\_\_ Lot Size \_\_\_\_\_ Lot Area \_\_\_\_\_

Type of Improvement GARAGE 24 X 40

Proposed Use GARAGE

Estimated Construction Costs \$9,183.00

Dimension of Structure or Improvement Width 24 Length 40 Height 9'  
Total Square Footage 960

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
- RIGHT SIDE CORNER

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

### Certification of Applicant

I hereby certify that I have the authority to make the foregoing application, that the information given is true and correct, and that the construction or improvements will conform to the regulations in the Virginia Statewide Building Code, all pertinent Town Ordinances, including fire, sewer and water ordinances, and 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 [Signature] / Renee Lee

### 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](mailto:codeofficial@capecharles.org).

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

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

THIS IS TO CERTIFY THAT ON APRIL 26, 2002, WE SURVEYED THE PROPERTY SHOWN ON THIS PLAT AND THAT THE TITLE LINES AND PHYSICAL IMPROVEMENTS ARE SHOWN ON THIS PLAT. THE IMPROVEMENTS STAND STRICTLY WITHIN THE TITLE LINES AND THERE ARE NO ENCROACHMENTS OR VISIBLE EASEMENTS EXCEPT AS SHOWN.

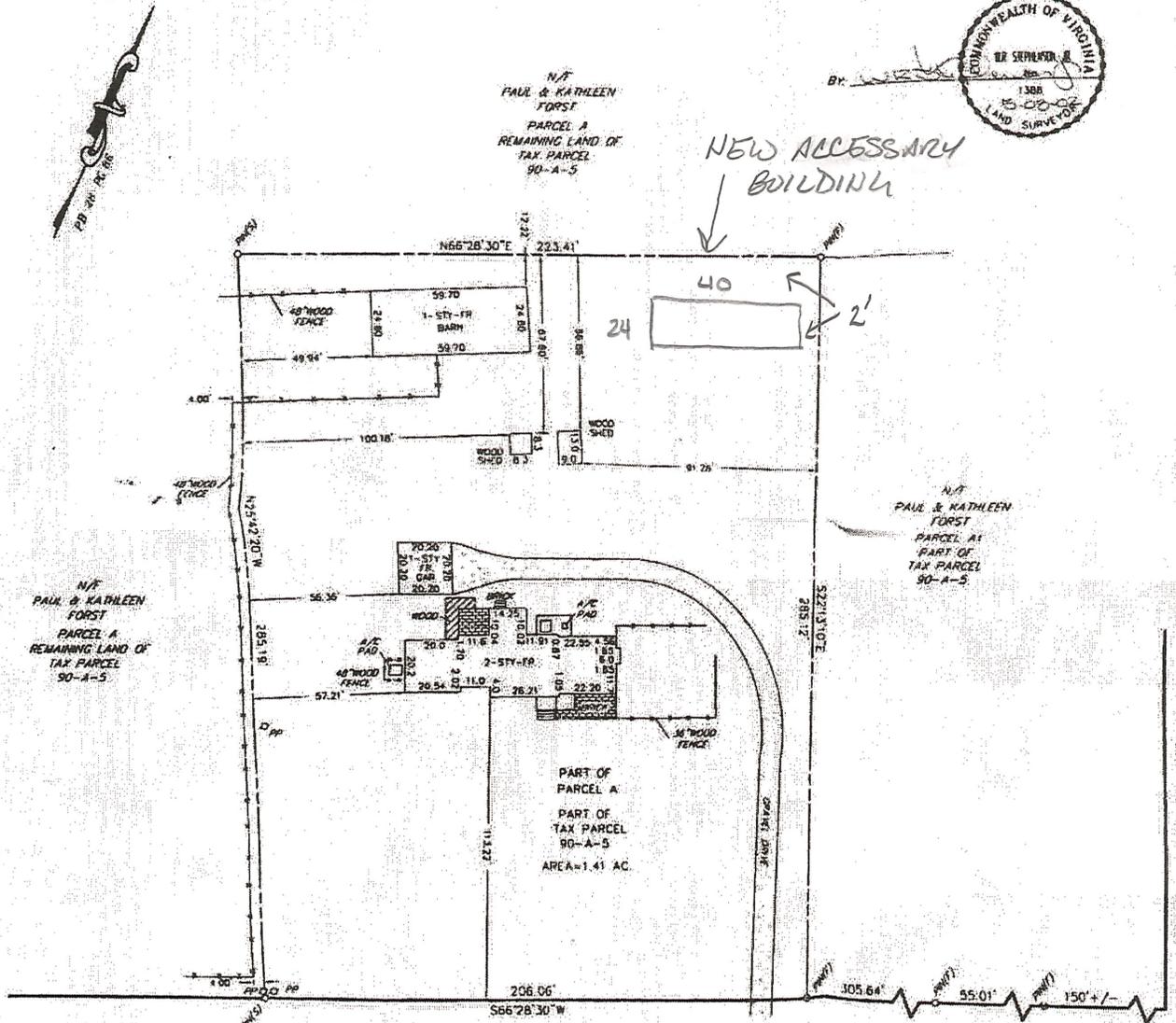
M.S.A., P.C.



BY: *[Signature]*

N/T  
PAUL & KATHLEEN  
FORST  
PARCEL A  
REMAINING LAND OF  
TAX PARCEL  
90-A-5

NEW ACCESSORY  
BUILDING



N/T  
PAUL & KATHLEEN  
FORST  
PARCEL A  
REMAINING LAND OF  
TAX PARCEL  
90-A-5

N/T  
PAUL & KATHLEEN  
FORST  
PARCEL A  
PART OF  
TAX PARCEL  
90-A-5

OLD CAPE CHARLES ROAD S.R. 642 (VAR. WIDTH R/W)

- NOTES:
1. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT AND MAY NOT SHOW ANY/ALL EASEMENTS OR RESTRICTIONS THAT MAY AFFECT SAID PROPERTY AS SHOWN.
  2. FLOOD ZONE INFORMATION SHOWN HEREON IS NOT GUARANTEED AND WAS APPROXIMATELY SCALED FROM F.E.M.A. FLOOD MAPS MILLER-STEPHENSON & ASSOCIATES, P.C. IS NOT A PARTY IN DETERMINING THE REQUIREMENTS FOR FLOOD INSURANCE ON THE PROPERTY SHOWN HEREON. FOR FURTHER INFORMATION AND TO CONFIRM THE FLOOD ZONE FOR THIS PROPERTY, CONTACT THE LOCAL COMMUNITY FLOOD OFFICIAL.
  3. ELEVATIONS SHOWN HEREON REFER TO N.G.V.D. 1929.

THIS PROPERTY APPEARS TO FALL IN FLOOD ZONE(S) C  
COMMUNITY NO. 510105  
PANEL 10C DATED AUG. 3, 1992  
FLOOD ZONE DETERMINATION IS BASED ON THE FLOOD INSURANCE RATE MAPS AND DOES NOT IMPLY THAT THIS PROPERTY WILL OR WILL NOT BE FREE FROM FLOODING OR DAMAGE.

REFERENCES  
PB 23 PG. 86

THE ABOVE FOREGOING SUBDIVISION OF PART OF PARCEL A AS APPEARS IN THE PLAT IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRE OF THE UNDERSIGNED OWNER(S), PROPRIETOR(S), AND TRUSTEE(S), IF ANY.

*Allyson Kirk* 5-8-02  
DATE  
*Allan R. Keck* 5-8-02  
DATE  
*Paul W. Hoff* 5-8-02  
DATE

*Laureen W. Street*, A NOTARY PUBLIC, DO HEREBY CERTIFY THAT *Allyson Kirk* AND *Allan R. Keck* HAVE SIGNED TO THE FOREGOING WRITING, BEARING DATE ON THE 26th DAY OF May, 2002, ACKNOWLEDGED THE SAME BEFORE ME.  
GIVEN UNDER MY HAND THIS 10th DAY OF May, 2002.  
SIGNED: *Laureen W. Street* MY COMMISSION EXPIRES 6/30/03  
NOTARY PUBLIC.

APPROVED: *Celia Perry* DATE 5/1/02  
MANAGER, TOWN OF CAPE CHARLES

SURVEY  
OF  
PART OF PARCEL A  
AMENDED SURVEY AND SUBDIVISION OF  
PARCEL A1  
BEING A SUBDIVISION OF  
PARCEL A  
TOWN OF CAPE CHARLES  
CAPEVILLE DISTRICT, NORTHAMPTON COUNTY, VIRGINIA  
FOR  
JEFFREY ANDREW KLINGEL  
AND  
LAUREEN BROWN KLINGEL  
APRIL 8, 2002.

M S A  
M S A

M.S.A., P.C.  
Landscape Design • Planning • Surveying  
Engineering • Environmental Sciences  
2706 LAKESHORE DRIVE, NORTHAMPTON COUNTY, VIRGINIA  
PHONE: 804.622.1422 FAX: 804.622.1426

30' 0' 30' 60'  
GRAPHIC SCALE  
1" = 30'

Loan# 3000557101

SURVEY

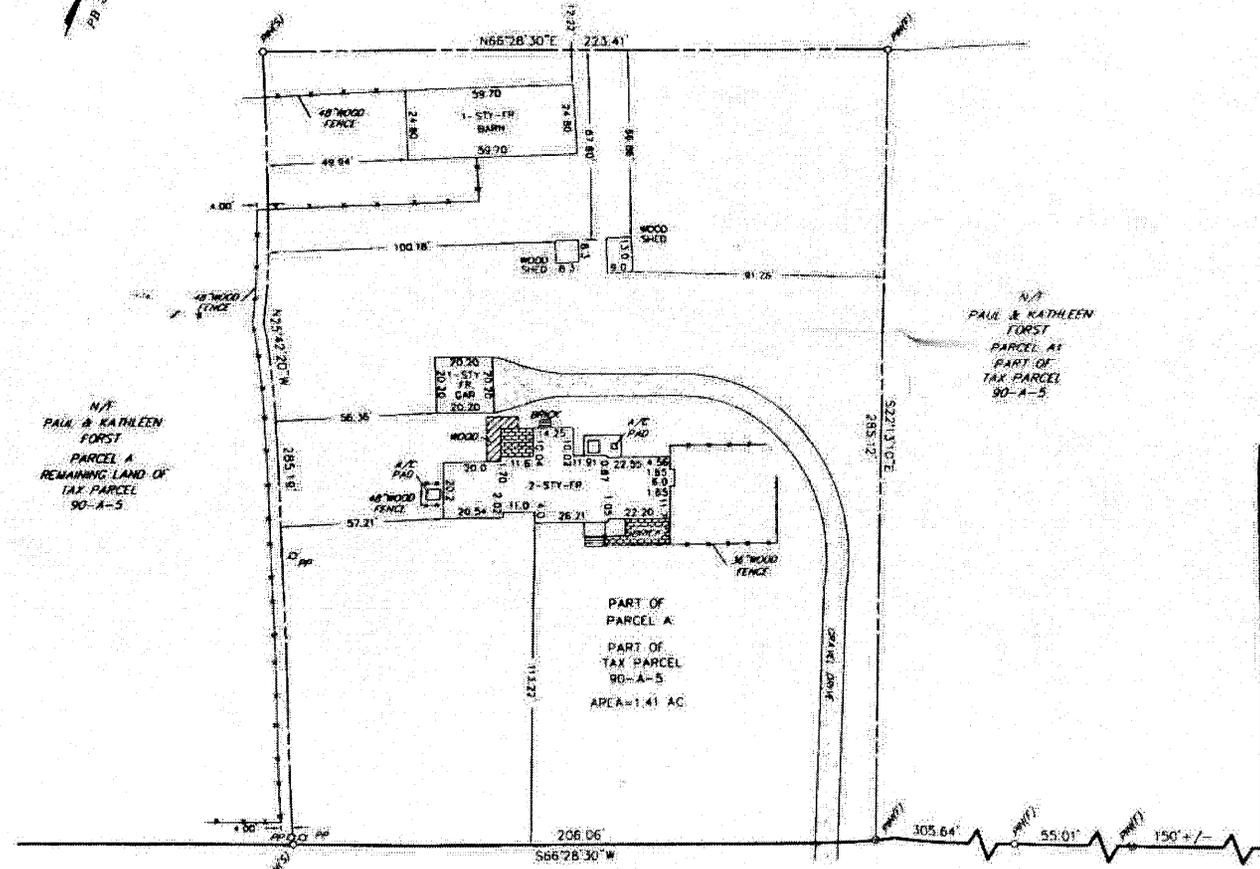
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M.S.A., P.C.



N/A  
PAUL & KATHLEEN FORST  
PARCEL A  
REMAINING LAND OF  
TAX PARCEL  
90-A-5

BY: \_\_\_\_\_



N/A  
PAUL & KATHLEEN FORST  
PARCEL A  
REMAINING LAND OF  
TAX PARCEL  
90-A-5

N/A  
PAUL & KATHLEEN FORST  
PARCEL A1  
PART OF  
TAX PARCEL  
90-A-5

PART OF  
PARCEL A  
PART OF  
TAX PARCEL  
90-A-5  
AREA=1.41 AC.

OLD CAPE CHARLES ROAD S.R. 642 (VAR. WIDTH R/W)

BENDERS LANE S.R. 667

NOTES:

1. THIS SURVEY WAS PERFORMED WITHOUT THE TITLE REPORT AND MAY NOT SHOW ANY FULL OR RESTRICTIONS THAT MAY AFFECT SAID PROPERTY.
2. FLOOD ZONE INFORMATION SHOWN HEREON IS AND WAS APPROXIMATELY SCALED FROM F.E. MILLER-STEPHENSON & ASSOCIATES, P.C. IS DETERMINING THE REQUIREMENTS FOR FLOOD PROPERTY SHOWN HEREON FOR FURTHER INFORMATION CONFIRM THE FLOOD ZONE FOR THIS PROPERTY LOCAL COMMUNITY FLOOD OFFICIAL.
3. ELEVATIONS SHOWN HEREON REFER TO N.G.M.

THIS PROPERTY APPEARS TO FALL IN FLOOD ZONE(S) C  
COMMUNITY NO 510105  
PANEL 30C DATED: AUG 3, 1992  
FLOOD ZONE DETERMINATION IS BASED ON INSURANCE RATE MAPS AND DOES NOT IMPLY PROPERTY WILL OR WILL NOT BE FREE FROM OR DAMAGE.

REFERENCES:  
PB-23 PG. 86

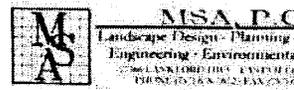
THE ABOVE FOREGOING SUBDIVISION OF PARCEL A AS APPEARS IN THE PLAT IS WITH THE FREEDOM IN ACCORDANCE WITH THE DESIRE OF THE OWNER(S), PROPRIETOR(S), AND TRUSTEE(S).

_____	5-8
ALLAN R. KECK	DATE
_____	5-8
GAIL WINOFF-MARK	DATE

I, Debra W. Stuart, A NOTARY PUBLIC DO CERTIFY THAT Debra W. Stuart HAS PERSONALLY SIGNED TO THE FOREGOING WRITING BEARING DATE THE 26 DAY OF SEPT, 2002, ACKNOWLEDGING THE SAME BEFORE ME.  
GIVEN UNDER MY HAND THIS 26 DAY OF SEPT 2002.  
SIGNED: Debra W. Stuart MY COMMISSION  
NOTARY PUBLIC

APPROVED: Celia Pomy DATE \_\_\_\_\_  
MANAGER, TOWN OF CAPE CHARLES

SURVEY OF  
PART OF PARCEL A  
AMENDED SURVEY AND SUBDIVISION  
PARCEL A1  
BEING A SUBDIVISION OF  
PARCEL A  
TOWN OF CAPE CHARLES  
CAPEVILLE DISTRICT, NORTHAMPTON  
FOR  
JEFFREY ANDREW KLING  
AND  
LAUREEN BROWN KLING  
APRIL 8, 2002



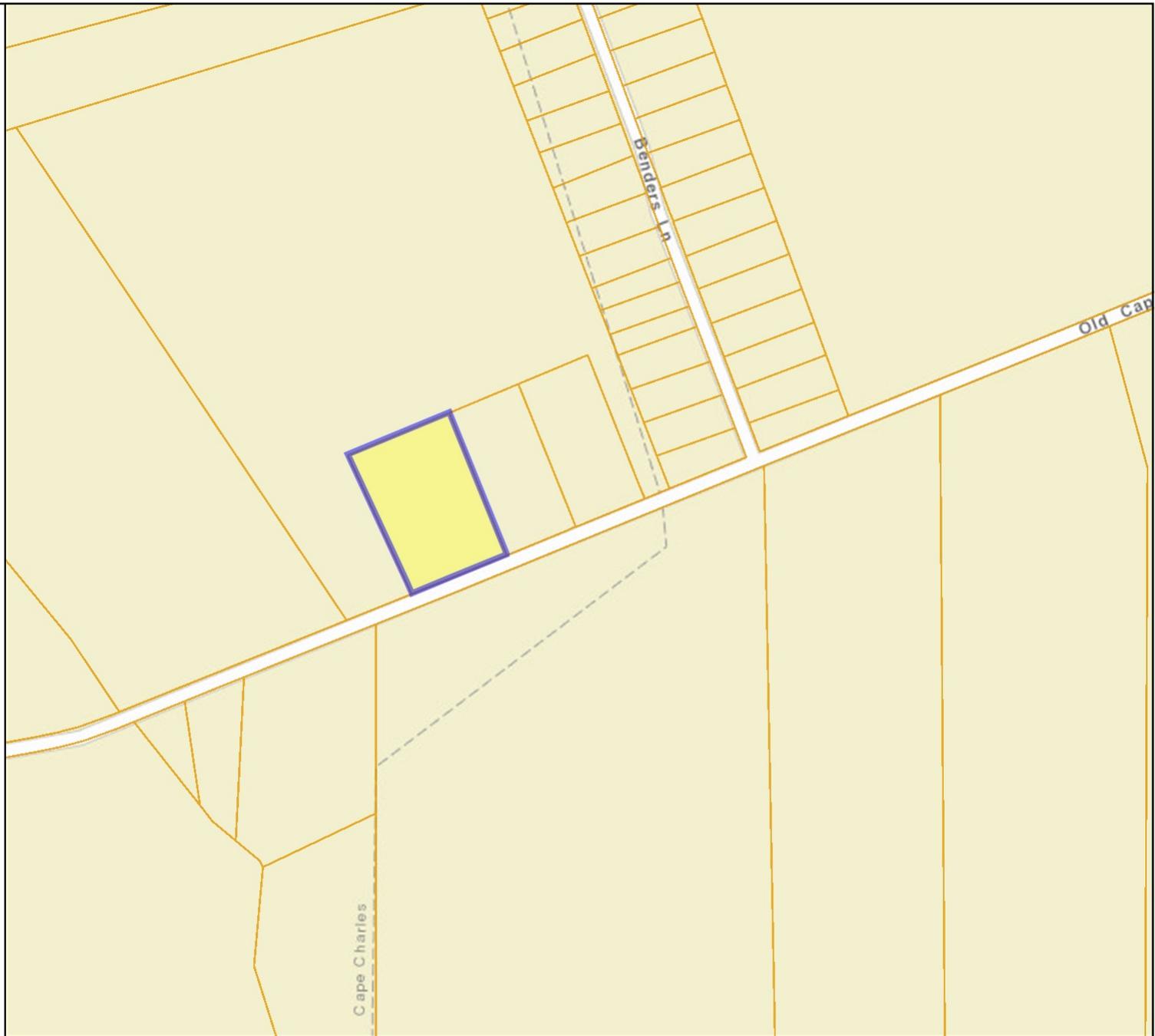
GRAPHIC SCALE  
1"=30'

FB, CS 302  
DRAWN BY: DAC  
CHECKED BY: MRS DATE 5-8-02

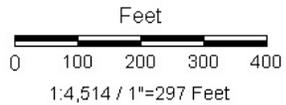
# Northampton County, Virginia

## Legend

- Road Labels
- Parcels



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



**Title:**

**Date: 1/19/2017**

*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.*

# Board of Zoning Appeals Staff Report

**From:** Larry DiRe   
**Date:** February 2, 2017  
**Item:** 6B and 6C – Annual Report and Election of Officers  
**Attachments:** 2016 draft Annual Report

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## Background

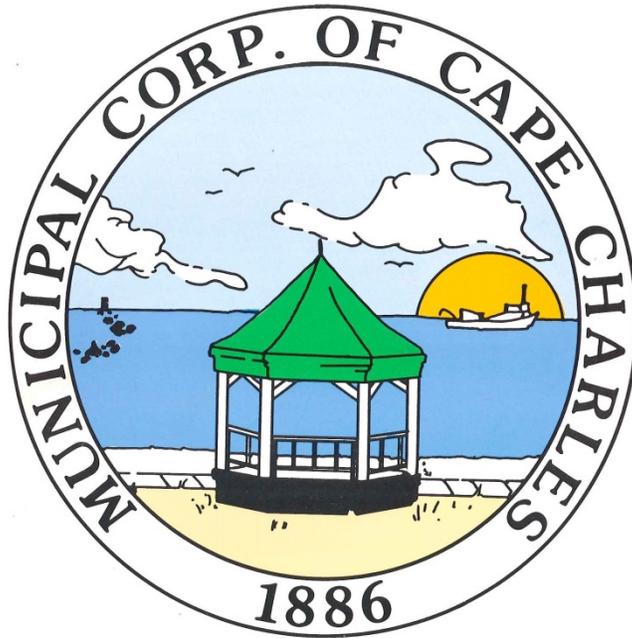
Staff brings forward two administrative items as found in the Code of Virginia *Section 15-2-2308 C*. The language of that section reads as flows:

*C. With the exception of its secretary and the alternates, the board shall elect from its own membership its officers who shall serve annual terms as such and may succeed themselves. The board may elect as its secretary either one of its members or a qualified individual who is not a member of the board, excluding the alternate members. A secretary who is not a member of the board shall not be entitled to vote on matters before the board. Notwithstanding any other provision of law, general or special, for the conduct of any hearing, a quorum shall be not less than a majority of all the members of the board and the board shall offer an equal amount of time in a hearing on the case to the applicant, appellant or other person aggrieved under § 15.2-2314, and the staff of the local governing body. Except for matters governed by § 15.2-2312, no action of the board shall be valid unless authorized by a majority vote of those present and voting. The board may make, alter and rescind rules and forms for its procedures, consistent with ordinances of the locality and general laws of the Commonwealth. The board shall keep a full public record of its proceedings and shall submit a report of its activities to the governing body or bodies at least once each year.*

## Recommendation

6B - Staff recommends the Board of Zoning Appeals review the attached draft 2016 Annual Report and revise as needed. Upon review either direct staff to amend and bring back to the Board, or forward to the Town Council as required by the Code of Virginia.

6C – Staff recommends the Board of Zoning Appeals elect a Chair and Vice Chair from its members as directed by the Code of Virginia.



Town of Cape Charles  
Board of Zoning Appeals

2016 Annual Report  
(January 1, 2016-December 31, 2016)

Chairman

Jay Wiegner  
Vice Chairman\Interim Chairman

**2016 Board of Zoning Appeals Members**

Jay Wiegner, Vice Chairman\Interim Chairman

Pete Baumann

Diane D'Amico

Bill Murphy

Kevin Hoffman

**2016 Staff**

Lawrence DiRe, Town Planner

DRAFT

## **Introduction**

Section 15.2-2308.C of the Code of Virginia states the following, “The board shall keep a full public record of its proceedings and shall submit a report of its activities to the governing body or bodies at least once each year.”

## **Board and Staff Updates**

Kevin Hoffman was appointed to the Board for a term expiring October 31, 2020 (January 14, 2016 Town Council action).

## **Variance and Exceptions**

**Approved**, an application for variance for off-street parking requirements at lot 83A3-A-7 parcel A (south-side 200 block of Mason Avenue\old Be-Lo supermarket). A public hearing and meeting were held on Wednesday June 15<sup>th</sup> at 10:00 am.

**Approved**, an application for variance for commercial off-street parking requirements at lot 83A3-5-1 (439 Mason Avenue). A public hearing and meeting were held on Monday July 25<sup>th</sup> at 10:00 am.

**Approved**, an application for variance from the minimum lot area requirements prior to subdivision for lot 83A3-00-019 in the Harbor District. A public hearing and meeting were held on Monday December 5<sup>th</sup> at 10:00 am.

**Denied**, none.