

Planning Commission

Regular Session Agenda

September 1, 2015

Cape Charles Civic Center – 500 Tazewell Avenue

6:00 pm

1. Call to Order – Planning Commission Regular Session
 - a. Roll Call – Establish a quorum
2. Invocation and Pledge of Allegiance
3. Public Comments
4. Consent Agenda
 - a. Approval of Agenda Format
 - b. Approval of Minutes
 - c. Staff Report
5. Old Business
 - a. Review of received comments to latest comprehensive plan draft
 - b. Draft text amendment for “bedroom” definition
 - c. Draft Accessory Dwelling Units Ordinance review
 - d. Draft Tourism Zone Ordinance review
 - e. Proposed text amendment to Zoning Ordinance Article II Section 2.9 and permitted use in Zoning Ordinance Article III Section 3.6.B – “brew pub”
6. New Business
7. Announcements
8. Adjourn



DRAFT
PLANNING COMMISSION
Regular Meeting
Cape Charles Civic Center
August 4, 2015
6:00 p.m.

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

PUBLIC COMMENTS:

Steve Michel, 10 Peach Street

Mr. Michel addressed the Planning Commission regarding the proposed zoning map amendment, the proposed inclusion of "brew pub" in the restaurant definition, and a proposed brew pub in town. (Please see attached.)

Bill Prickett, 210 Tazewell Avenue

Mr. Prickett addressed the Planning Commission expressing his opposition to reverse-angle parking adding that he had also submitted written comments to be read into the record.

Town Clerk Libby Hume read the emails submitted by Mr. Prickett. (Please see attached.)

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

CONSENT AGENDA

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

The Commissioners reviewed the minutes for the July 7, 2015 Regular Meeting and the July 13, 2015 Planning Commission Comprehensive Plan Meeting.

Motion made by Joan Natali, seconded by Bill Stramm, to approve the minutes from the July 7, 2015 Regular Meeting and the July 13, 2015 Comprehensive Plan Meeting as presented. The motion was unanimously approved.

REPORTS

Larry DiRe reported the following: i) An overview of the status of the sign ordinance in light of the June ruling by the Supreme Court but the decision did not rule all sign ordinance unconstitutional. Staff was reviewing the town's ordinance which was mostly in line with the issued guidelines. Staff was awaiting further recommendations from the Virginia Municipal League; and ii) The Board of Zoning Appeals would meet on August 5th to consider an application to conduct a non-conforming commercial operation at 309 Jefferson Avenue, which was the former Samples barber shop.

OLD BUSINESS

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

Larry DiRe stated that the Zoning Ordinance referenced bedrooms in the Table of Parking Standards to determine the number of required off-street parking spaces for certain residential and residential/commercial uses, however the term was not defined. Larry DiRe went on to read the proposed definition to be added to Article II Section 2.9. There was much discussion regarding the proposed language as follows: i) If the language were to be adopted, staff would have to scrutinize the number of bedrooms on a property, especially since the water/sewer connection fees were based on the number of bedrooms. It would be possible for a property owner to pay a connection fee for less than two bedrooms and convert an existing room into a bedroom; ii) Should the language address the size of the bedroom or the number of people residing in the bedroom? The Commissioners asked staff to research any existing guidelines regarding the number of occupants in a bedroom depending on size of the room.

B. *Draft Accessory Dwelling Units Ordinance Review*

Larry DiRe stated that while specifically prohibited in the Zoning Ordinance, accessory dwelling units were promoted in the Comprehensive Plan. Both documents address the need to promote affordable housing.

There was much discussion regarding Section 4.2.K.A regarding the physical characteristics, mainly the recommended occupancy of a unit based on the floor area. Andy Buchholz stated that this issue went back to the definition of bedroom and the discussion of the previous agenda topic and added that the language needed to be consistent in regards to the size and number of occupants permitted. After further discussion, Andy Buchholz suggested removal of the language regarding "appliances" from the definition of bedroom.

Larry DiRe stated that this issue would be brought back for further discussion after the review of bedroom sizes was performed in order to make the language in these two sections more consistent.

C. *Draft Tourism Zone Ordinance Review*

Larry DiRe stated that the changes made at the July 7th meeting were incorporated into the proposed language provided for further review this evening. There was much discussion as follows:

Section XX-2 – Administration: The treasurer also needed to be involved in the review and verification process. Joan Natali suggested a team consisting of the town manager, planner and treasurer working together to review the criteria and to ensure compliance.

Section XX-6 – Economic stimulus credits and enforcement:

- Item (a)(4): i) Larry DiRe explained that he used the hours worked by one full-time (35 hours) and two part-time (25 hours each) employees to determine the minimum qualified staff hours; ii) the credit of the facility and connection fees would only apply to new buildings; and iii) receipts and tax returns would be submitted for verification purposes.

Larry DiRe stated that he would review the information with the treasurer to obtain her input.

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

Larry DiRe stated that there were currently no markings along Bay Avenue to designate parking spaces and it was inefficient use of space. There was much discussion regarding reverse-angle parking vs. pull-in angle parking vs. parallel parking along Bay Avenue. Larry DiRe stated that he had spoken to a VDOT representative and pull-in angle parking could be an option for Bay Avenue with VDOT review of the speed limit, its having a firm divider, and crash record. There was some discussion as follows: i) The sand bank on the west side of Bay Avenue between the street and boardwalk was a barrier for either pull-in or reverse-angle parking. It was noted that it was being destroyed by people walking on it as well; ii) Additional beach parking was needed because beach goers were not parking on the residential streets in front of houses so that the property owners could not park in front of their own house; iii) There was concern with the safety of pull-in angled parking where vehicles would back into the traffic lane and the feeling that there would be more accidents with this type of parking; and iv) Larry DiRe was currently taking twice-a-day traffic counts of the number of cars and golf carts parked along Bay Avenue during the work week. To date, he had three weeks' of information. Larry DiRe added that he was also noting the weather on any given day. The Commissioners requested that the parking counts be continued until the end of the season. The information would be revisited at the October meeting.

NEW BUSINESS

A. *Map Amendment Proposed to Resolve Conflict with Zoning Ordinance Article VIII Section 8.1*

Larry DiRe stated that there were four parcels on Peach Street which were currently zoned as Residential (R-1) but located in commercial structures which were contributing structures to the town's historic district. Staff felt that the zoning was a result of a cartographer's error when the maps were redone in 2013 since the properties had always been commercial. Larry DiRe stated that the 2008 Zoning Map showed the properties as commercial.

After some discussion, Dennis McCoy suggested that, unless anyone had any issues, the zoning map should be corrected to show these properties as commercial. The Commissioners were in agreement.

B. *Proposed Text Amendment to Zoning Ordinance Article II Section 2.9 and Permitted Use in Zoning Ordinance Article III Section 3.6.B - "Brew Pub"*

Larry DiRe stated that he had been contacted by a potential business owner interested in opening a brew pub in the Commercial (C-1) district. Brew pub fell under the classification of "eating and drinking establishments" but was not specifically defined. Larry DiRe read the proposed definition of a brew pub which was taken from the Brewers' Association and added that the predominance of the business would be food and brewing was an accessory use. There was much discussion as follows: i) Brew pubs were becoming very popular and were being opened all over; ii) They would have to meet ABC requirements which state that 50% of the sales must be food; iii) The Virginia Department of Health (VDH) would also inspect and regulate the facility. The Commissioners asked Larry DiRe to contact the VDH regarding regulations; iv) Vats were self-contained and would not emit odor as expressed by Mr. Michel. Several of the Commissioners had eaten in brew pubs and stated that they could not smell any odor from brewing; and v) Any potential odor could be from the spent grains when the vats were emptied and thought needed to be given to the proximity of residential housing to the commercial district. It was noted that restaurants emitted odors as well.

The Commissioners suggested Larry DiRe contact the City of Virginia Beach regarding their zoning and safety issues with brew pubs. It was also noted that there were condominium units in the Virginia Beach Town Centre area located by Gordon Biersch which was a brew pub.

Larry DiRe stated that the language in Article III Section 3.6.B.36 needed to be revised. Dennis McCoy suggested that the item be placed on the agenda for the September meeting for discussion.

ANNOUNCEMENTS

There were no announcements.

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

Chairman Dennis McCoy

Town Clerk

DRAFT

**Planning Commission Meeting
Public Comments Submitted in Writing
August 4, 2015**

Steve Michel, 10 Peach Street

1. My first comment concerns Page 27 of the Planning Commission Staff Report, which deals with the map amendment. When I started restoration of my building in 2005, I was told by the Town Government that the entire building was zoned C-1, but that I could get "conditional use" status for the upstairs residential area. This "common knowledge" was held by many within the town. Together they support the contention that the tax map needs revision to designate these areas as C-1.

2. The second comment is about Page 32, and the inclusion of a "brew pub" in the restaurant definition. The ordinance allows other types of businesses in a C-1 zone, assuming these businesses are compatible in nature with the "foregoing uses" that are itemized in the ordinance. I do not feel it is compatible in nature.

The brewing process produces off-gasses, including hydrogen sulfide. The smell is similar to rotten eggs. If it were emitted to the atmosphere, say through a brewery stack, it could affect a number of surrounding properties, depending on the wind, and possibly violate a town ordinance covering odors.

In addition, in sufficient concentrations, hydrogen sulfide is toxic, to the point whereby the Virginia Department of Environmental Quality has issued emission limits (see 9 VAC 5-40-1380). This is especially disconcerting to me as my second story residence windows at 10 Peach St. overlook the one story building roof at 8 Peach St. If the definition of restaurant were to be revised, to include brew pub, it is conceivable that the stack of a brew pub at that location could discharge gases right outside my open window.

I therefore request that this issue be investigated further to determine the impact on all residents of the town.

Bill Prickett, 210 Tazewell Avenue (provided via email July 13, 2015)

I am writing again to express my opposition to the implementation of reverse angle (or any angle parking) in Cape Charles.

The parking configuration that has been imposed on Mason Avenue is awkward, dangerous and unnecessary. It is practically universally opposed by the town's residents or at best, grudgingly accepted with a "can't fight City Hall" resignation. Personally, I also find it aesthetically displeasing as it has destroyed the wide view looking westward down the street.

Casual observation shows that even now, in the height of the "tourist" season, there are many available parking spaces along Mason Avenue all day long. The "overflow" parking lot that has been recently created along the railroad tracks sits unused. This was also the case for the most part on July 4th, the busiest day of the year in Cape Charles.

Pull in angle parking poses its own issues among them poor visibility of oncoming traffic when backing out of a parking space adjacent to large SUVs, pickups and vans and backing into oncoming traffic.

Implementing angle parking on Bay Avenue will bring the same problems that have been created on Mason Avenue but with additional issues. In the case of reverse angle, it will result in the destruction of the bank of sand between the roadway and the "boardwalk" since beach goers will be standing on the bank loading and unloading their vehicles or, in the case of large vehicles, backing right into it. On the other hand, pull in angle parking will create the hazard of pedestrians in the travel lane when loading and unloading. Angle parking will also impede the flow of traffic since the travel lane is constricted with angle parking.

There is ample parking available on the east side of Bay Avenue, which on most summer days is barely used. On July 4th, even with the south end of the road closed, there was sufficient parking on both sides of

Bay Avenue and on side streets to accommodate the crowds. Admittedly, there were few parking spaces available on the holiday, but this is a one day a year occurrence.

The town has planned, correctly in my opinion to create a parking lot behind the library. If there is a critical parking shortage in the business district, which is highly debatable, then the town should prioritize this project.

I remain skeptical of the rationale for any decision to move ahead with the new parking schemes. They appear to me to be solutions in search of a problem. Perhaps in the future, we will have a dire parking situation in town, but that time is not now. I urge the town to reinstate parallel parking on Mason Avenue and to abandon the idea of angle parking in Bay Avenue. I also recommend signage to direct motorists to the newly created overflow lot and that the town prioritize the creation of a parking lot behind the library.

Yours truly,

Bill Prickett
210 Tazewell Avenue

Bill Prickett, 210 Tazewell Avenue (provided via email August 1, 2015)

As I continue to observe on a daily basis the plentiful availability of parking in the town business district and Bay Avenue, the awkward parking on Mason Avenue and the dangerous intersections of Pine and Mason and Strawberry and Mason, I remain convinced that the Town should abandon the idea of angle parking on Bay Avenue and remove the angle parking on Mason Avenue. I have just returned from both Mason Avenue and Bay Avenue on a beautiful summer Saturday afternoon, with the town full of visitors and the Clam Slam in full swing. I can state unequivocally there are numerous empty parking spaces available in both areas. Perhaps those responsible for making decisions in this matter should take a look themselves.

Yours truly,
Bill Prickett
210 Tazewell Avenue

Planning Commission Staff Report

From: Larry DiRe 
Date: September 1, 2015
Item: 4C-Staff Report
Attachments: None

1. At the August 13th Town Council work session the council directed staff to bring a number of signage matters to the Planning Commission. These include the Town wayfinding system for both pedestrians and motorists; outdoor advertising and directional signs; and off-site commercial signs. Staff will bring a full report to the Commissioners in October.
2. There was some recent activity from both VDOT and Northampton County about the Harbor Access Road (Route 642) project. The County Administrator circulated preliminary plan and profile sheets of the proposed project last week. Town staff provided comments back to her relative to the Town's right of way square footage area. Fifty percent design phase plans were provided to Town public works last week. All received documentation is available for review in the planning office.
3. USACE staff was in Cape Charles on Tuesday August 25th and met with staff to provide a Town Harbor dredging project update. The project is scheduled to begin mid-September and conclude within a ninety-day period. Pedestrian, vehicular, and bicycle access between the harbor and Mason Avenue may be temporarily suspended due to the location of the dredge pipe, although other options to prevent that suspension are still under consideration.
4. The Board of Zoning Appeals met on Wednesday August 5th at 10:00 am in the Civic Center to consider an application from the property owner at 309 Jefferson Avenue to conduct a non-conforming commercial operation at that location. They requested an interpretation of Article II Section 2.5.4 from the Town's attorney before issuing a decision.
5. The Historic District Review Board received no applications in August and so did not meet.
6. The Town issued one zoning clearance

Planning Commission Staff Report

From: Larry DiRe 
Date: September 1, 2015
Item: 5b- Proposed text amendment for "bedroom" definition
Attachments: None

Item Specifics

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

C. Residential

- 1. Single-family dwelling 2.0 spaces per dwelling unit*
- 2. Two-family dwelling 2.0 spaces per dwelling unit*
- 3. Townhouse 2.0 spaces per dwelling unit*
- 4. Multi-family dwelling 1.0 space per one bedroom dwelling unit; otherwise 2.0 spaces per dwelling unit*
- 5. Mobile home 2.0 spaces per dwelling unit*

E. Residential/Commercial

- 1. Home occupation see Section 4.8.C Residential Standard**
- 2. Bed and breakfast 1.0 space per bedroom plus 1.0 space per owner/resident (see Section 3.2.C 4 c)*
- 3. Rooming house 1.0 space per bedroom plus 1.0 space per employee*
- 4. Boarding house 1.0 space per bedroom plus 1.0 space per employee*
- 5. Hotel and motel 1.0 space per bedroom plus 1.0 space per employee*

* This section does not exist in the Zoning Ordinance.

Discussion

The Planning Commission directed staff to bring back square footage information. This standard is found in the International Residential Code Section R304. That section reads as follows:

SECTION R304 MINIMUM ROOM AREAS

R304.1 Minimum area.

Every dwelling unit shall have at least one habitable room that shall have not less than 120 square feet (11 m²) of gross floor area.

R304.2 Other rooms.

Other habitable rooms shall have a floor area of not less than 70 square feet (6.5 m²).

Exception: Kitchens.

R304.3 Minimum dimensions.

Habitable rooms shall not be less than 7 feet (2134 mm) in any horizontal dimension.

Exception: Kitchens.

R304.4 Height effect on room area.

Portions of a room with a sloping ceiling measuring less than 5 feet (1524 mm) or a furred ceiling measuring less than 7 feet (2134 mm) from the finished floor to the finished ceiling shall not be considered as contributing to the minimum required habitable area for that room.

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

“Bedroom - a room designated for the purpose of sleeping. A bedroom shall not have any cooking or food preparation appliances. It shall meet the gross floor area square footage requirement as described in the International Residential Code Section R304. It shall have an egress window, a functioning smoke alarm, a closet, total fenestration area of not less than three (3) percent of the total wall area. A bedroom may have bathing and sanitary facilities within the room’s footprint.”

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

Recommendation

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

Planning Commission Staff Report

From: Larry DiRe 
Date: September 1, 2015
Item: 5c-Accessory Dwelling Unit Ordinance review
Attachments: Draft Accessory Dwelling Unit text amendments to Zoning Ordinance

Item Specifics

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

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

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

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

Discussion

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

At the August 4th meeting the Planning Commission directed staff to bring draft text amendment language to the Commissioners incorporating the bedroom minimum square footage requirement into the draft text amendment to Article IV Section 4.2.K.A.2 "Accessory dwelling housing one occupant shall have a floor area of at least 250 square feet." Staff recommends that the minimum floor area for one occupant unit be increased to 350 square feet recognizing the International Residential Code requirement of one habitable room having not less than 120 square feet of gross floor area.

Recommendation

Provide direction to staff.

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

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

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

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

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

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

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

A. Physical characteristics.

1. Accessory dwellings shall be located in an accessory building.
2. Accessory dwellings *housing* one occupant shall have a floor area of at least 350 square feet.
3. Accessory dwellings *housing* two occupants shall have a floor area of at least 500 square feet.
4. Accessory dwellings *housing* three occupants shall have a floor area of at least 650 square feet.
5. Accessory dwellings shall not have a floor area exceeding 45 percent of the floor area of the main building.
6. Accessory dwellings shall have one kitchen and one bathroom.
7. Accessory buildings containing an accessory dwelling shall maintain the exterior appearance of an accessory building and shall not have the appearance of a single family dwelling.

B. Occupancy characteristics.

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

C. Other requirements.

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

Section 4.5.1 Table of Parking Standards (insert)

C. Residential

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

From: Larry DiRe 
Date: September 1, 2015
Item: 5d-Draft Tourism Zone Ordinance review
Attachments: Cape Charles Draft Tourism Zone Ordinance

Item Specifics

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

§ 58.1-3851. Creation of local tourism zones.

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

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

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

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

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

Discussion

The attached draft Tourism Zone Ordinance reflects the changes proposed at the August 4th meeting. The Finance Director's comments on Section xx-2 are added to end of this draft document.

Recommendation

Staff recommends that the Planning Commission review the revised proposed draft text amendment and provide direction to staff.

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

The town council finds that the creation of a local tourism zone, with incentives for growth, as authorized by Code of Virginia, § 58.1-3851, as amended, will foster the town's development, maintenance and expansion of businesses engaged in the tourism industry, all of which would benefit the citizens of the town.

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

This chapter shall be administered by the town manager or his or her designee (the "administrator"). The administrator shall be responsible for determining if a business qualifies as a qualified tourism business, and shall determine and publish the procedures for obtaining the benefits created by this chapter. **Please see Finance Director's comments on this section below.**

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

The entire area of the Town of Cape Charles is designated a tourism zone pursuant to Code of Virginia § 58.1-3851, as amended.

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

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

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

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

Full time job means a full-time employee as defined according to the federal definition found in 26 US Code Subtitle D Chapter 43 Section 4980H, with reasonable allowances for holidays and vacations.

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

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

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

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

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

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

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

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

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

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

to a qualified business shall be initially determined by the administrator, subject to approval by the town council.

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

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

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

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

- a. A violation by such business or, to the extent related to the operation of the business, by any of its principals or officers, of any statute, regulation, or order of the United States or the Commonwealth of Virginia or any department or agency thereof; or
- b. A violation of any town ordinance that continues beyond the applicable cure period or, if none, a period of ten days.

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

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

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

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

Unless expressly stated herein, this chapter shall not be construed to waive the requirement of any ordinances, regulations, and policies that require permits and approvals for land use, construction, and business operation. Additionally, unless stated otherwise herein, nothing in this

chapter shall be construed as waiving the right of the town to enforce its ordinances, regulations, or policies or to collect taxes, fees, fines, penalties, or interest imposed by law or by ordinance.

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

Sec. XX-2. – Administration.

To determine if a business qualifies as a qualified tourism business:

- 1) Business will submit a completed application with all required documentation. The application will list Applicant/Contact information and list the required Project information and a statement that the business is in compliance with all Town ordinances and has no outstanding debts to the Town. Application must be signed by all business stakeholders.
- 2) Project Information requires a business plan or narrative which includes the following:
 - a) Description of the business' history, including activities, products, services, etc.
 - b) Description of the operation and/or financial relationships with any parent or subsidiary, and describe any changes in ownership that may occur as a result of this project.
 - c) Detailed description of the actions the business will take that will qualify it for the credit.
 - d) Revenue projections for the 5 year term of the credit/incentives.
 - e) Estimate of the amount of building and other town fees required to complete the capital investment plan.
 - f) Estimate of the increased assessed value of real property.
 - g) Estimate of the increased assessed value of business personal property or machinery and tools.
 - h) If facility and connection fees will be assessed as a result of the project, list the cost of those fees.
- 3) Treasurer or designee will use a checklist of code requirements to determine if the applicant is eligible.
- 4) Treasurer or designee will quantify the potential amount of the credit based on the information supplied by the applicant.
- 5) Treasurer or designee will send a letter to the applicant business stating the following:
 - a) Their status as a qualified or non-qualified applicant.
 - b) The potential amount of the credit, if qualified, and over what tax years the credit will be awarded.
 - c) The required actions for the business to remain qualified.

Planning Commission Staff Report

From: Larry DiRe 
Date: September 1, 2015
Item: 5e- Proposed text amendment for "brew pub" definition and permitted use in the Commercial – 1 zoning district
Attachments: None

Item Specifics

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

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

Brew pub is not among the enumerated uses, but does fall into the classification of "eating and drinking establishments" (Article III Section 3.6.B.16), "restaurants" (Article III Section 3.6.B.30), and "Any other commercial or professional use which is compatible in nature with the foregoing uses and which the Zoning Administrator determines to be compatible with the intent of the district." (Article III Section 3.6.B.36)

Discussion

At the August 4th meeting the Planning Commission asked staff to gather information from other communities to determine how potential nuisance issues are dealt with. The City of Virginia Beach Zoning Department and Strategic Growth Office were both contacted and reported that the local brew pubs had no issues with odor or solid waste management complaints. Parking was mentioned as a problem.

Recommendation

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