



TOWN COUNCIL
Special Meeting & Executive Session
Cape Charles Civic Center
July 8, 2019
6:30 PM

At approximately 6:30p.m. Mayor William "Smitty" Dize, having established a quorum, called to order the Special Meeting & Executive Session of the Town Council. In addition to Mayor Dize, present were Councilmen Bannon, Buchholz and Grossman, and Councilwomen Burge and Holloway. Vice Mayor Bennett arrived at 6:31 p.m. Also, in attendance were Town Manager Larry DiRe, Town Planner Zach Ponds and Town Clerk Libby Hume. There were 18 members of the public in attendance as well as the majority of the Historic District Review Board members.

PUBLIC COMMENTS RE: AGENDA ITEMS ONLY:

Susan Eidam, 646 Tazewell Avenue, Chairperson of Historic District Review Board

Ms. Eidam thanked the Mayor and Council for the confidence demonstrated in selecting the new Historic District Review Board (HDRB). The members were well-versed in an array of historic issues and many of the members were in attendance tonight. She invited Council to ask questions regarding the determinations made by the board. She had her notes and would try her best to provide the facts. She remained hopeful that a collaborative approach could be found in order to preserve the historic district. The board members all wanted to do their best.

Libby Hume read comments submitted by Jeff and Beth Howard and Renato and Jody Lucatello into the record. (Please see attached.)

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

ORDER OF BUSINESS – HEARINGS ON APPEALS OF HISTORIC DISTRICT REVIEW BOARD’S DECISIONS:

Mayor Dize outlined the process of the hearings, stating that each case would begin with Town Planner Zach Ponds providing an overview of the application. The appellant would then be given the floor to provide Council with information regarding their appeal. The chairperson of the HDRB would also be provided time to explain the reasoning for their decision.

A. 210 Bay Avenue:

Appeal Request: i) Concern that the denial was predetermined prior to the meeting, ii) The massing of the proposed home was irrelevant due to the variety of shapes and sizes of the adjacent homes, iii) That personal bias was imposed in the decision for denial rather than applying the Historic District Guidelines, and iv) That the use of the state guidelines was inappropriate.

Zach Ponds gave the following overview: i) Description of Proposed Project: The subject property was an approximately 7,000 square foot vacant lot with an alley in the rear. The applicant proposed to construct a three-story, approximately 2,800 square foot home – 1,087 heated square feet of floor area on the first story, 1,009 square feet of heated floor area on the second story, and 717 square feet of heated floor area on the third story. An application was denied at the May 21, 2019 meeting due to the design and materials not conforming with existing homes and materials in the Historic District. The applicant had provided a picture of an existing home at 203 Madison Avenue that was similar to the style they were proposing. The proposed materials list was attached; ii) Staff Analysis: Staff discussed with the applicant that the proposed structure did not meet Section 3.2.E of the zoning ordinance, which restricted the height of buildings in the R-1 district to up to 2.5 stories. A variance would be required to have three stories, but due to a lack of hardship a variance approval was unlikely. To meet the requirement of a half story, the upper story would be required to be not greater than half the square footage

of the first story floor area. The zoning ordinance required the front yard setback of new homes to meet the prevailing standard of the adjacent homes (be in line with the adjacent homes front yard setback). It did not look like the proposed structure was meeting this requirement with the site plan submitted and would need to be located further back on the lot to meet this; iii) Roof: The materials seemed to match the guidelines regarding roofs on pages 36-38. The roof pitch did not match the “steep roof pitches” on page 37. Number 3 on page 37 stated “for new construction, respect the roof type, materials, form, and slope of roofs of nearby historic buildings. The proposed roof did not seem to meet this requirement; iv) Foundation: The proposed foundation seemed to match the guidelines regarding foundations on page 35; v) Windows and Doors: The proposed windows and doors seemed to match the guidelines; vi) Synthetic Siding: Number 4 on page 57 of the Historic District Guidelines stated “the use of synthetic siding such as HardiPlank or similar on new buildings within the historic district is allowed.” The materials seemed to be in line with the guidelines; and vii) Staff Recommendation: Review the attached materials and discuss any questions or concerns regarding the application. Decide whether the Council found that a Certificate of Appropriateness was to be approved for the application. If approved, staff recommended approval with the condition that the house be aligned perpendicular to the side yard lot lines instead of the front yard lot line, as the adjacent properties were aligned this way.

Appellant Jim Schneider stated that after the HDRB’s first denial, he looked around in the historic district for other homes of similar style. The house at 203 Madison Avenue was very close. It was a vinyl sided house with a mansard roof next to a brick home. For the second application, the vinyl was changed to HardiPlank and the roof pitch was changed to make it steeper. He was careful to follow the list from the first meeting, but the application was denied again. He had built two homes in the historic district which would not have been approved by this board, one was a vinyl three-story home on Tazewell Avenue. He felt he did everything he was asked to do but the application was still denied.

There was discussion as follows: i) Vice Mayor Bennett asked about the placement of the house not being parallel to the sideline. Mr. Schneider stated that it would not be a problem to change the directional placement of the house. Vice Mayor Bennett stated that the HDRB was appointed to administer the guidelines and work with the applicants to try to make what they wanted fit into the guidelines. This house was new construction and it appeared that a lot of things that Zach Ponds saw as being in compliance, were initially denied by the board. If the building was moved to be parallel to the sideline, he would be okay approving the application; ii) There was some discussion regarding the proposed gambrel roof and pitch. Mr. Schneider stated that the gambrel roof was front facing versus side facing at the first meeting due to the long, narrow lot. The pitch was adjusted to make it more appropriate and other examples of similar roofs were found in town; iii) Councilwoman Burge stated that a comment was made regarding the mass and asked Mr. Schneider to explain. Mr. Schneider stated that he felt that the board was stuck on three stories versus two and a half stories. The HDRB continued to refer to the home as a three-story home although it had been changed. The construction manager measured the height of the house to the right of the property from the porch to the side of the beam and he had his architect place it on the lot to see how the proposed house would be in scale relative to the houses on each side. It was appropriately sized to the two other houses; iv) Mayor Dize stated that there were three different types of applications for the HDRB to review – 1) restoration, 2) rehabilitation, and 3) new construction. The three needed to be looked at differently. He went on to state that, other than the gambrel roof, he had no problem with the proposed house and mass; v) Councilwoman Burge thanked Zach Ponds for the full staff reports. As she read through the materials, she had a couple of concerns with deferral after deferral. The board should not be reviewing an incomplete application necessitating a deferral. There was a 60-day period from application submittal to a decision. The board needed to be extremely careful and conscientious of the 60-day requirement. Councilwoman Burge continued to provide some background regarding the language in the guidelines and its intent on being “reasonable and practical.” The difference between reconstruction, rehabilitation and new construction needed to be taken into consideration. She recognized the inconsistency in administering the guidelines over the years and it was a reflection of the personalities of the different boards over time. She appreciated all

the HDRB was doing. All the materials needed to be ready and provided to the board to make a good decision. The board needed to do the best they could and move on. When referencing new construction, the guidelines stated that it be sympathetic, complimentary in architectural features such as porches, rooflines, window placement, not identical or made to look old. More contemporary materials were not prohibited. Councilwoman Burge went on to explain the two basic historic districts within the town – the National Historic District and the Historic District Overlay. The Overlay became the local historic district for purposes of the ordinance; vi) Councilman Buchholz stated that if the property owner was doing a historic restoration using tax credits, they would need to conform to the Secretary of Interiors Standards of Design. Councilwoman Burge added that anyone restoring a property using federal or state tax credits would have no issue with the town’s guidelines, but the board needed to be careful about mandating certain items; vii) There was more discussion regarding the roof and that Bay Avenue was unique in that none of the roofs on the buildings along the street were alike; viii) Per the draft minutes from the HDRB meeting, the application was denied for massing only and the builder changed the plans from a three-story house to a two and a half story house, reducing the structure by 600 square feet; and ix) Pursuant to Section 8.4, Council could reverse, affirm wholly or in part, or revise the HDRB’s decision.

Susan Eidam explained that the application was almost 80% to approval. The first application reviewed in May was not a complete application and there was a discrepancy with the zoning administrator regarding the height and what constituted a story. The application was deferred. The applicant knew that the application was incomplete but asked to appear before the HDRB to obtain guidance. It was in the HDRB’s purview to listen to the neighbors and the neighbors on each side of the property submitted comments expressing their concern regarding the style and mass of the house. Each member of the board drove by the property, read through the application, and made their own notes prior to the meeting. At no time was there any discussion or any predetermination regarding the application before the meeting. The application was denied due to the mass of structure and design being out of place with the structures in the immediate area. The design issue was the gambrel roof. The massing issue was that, although the square footage was reduced, it was now a three and a half story house. The square footage of the third floor was two-thirds of the first two floors and the criteria for a half story was half the square footage.

Councilman Grossman interjected that the square footage of the third floor was 604 and the first-floor square footage was 1,204.

Susan Eidam continued to state that new construction needed to be sympathetic to the period. Front-end gambrel roof lines were a reproduction of mid-century 1600s and Cape Charles was founded in the late 19th century. She heard the appellant state that he had redesigned the structure with a traditional gable roof. If the zoning administrator stated that the applicant met the other requirements, there was no longer any basis for appeal since the design was now in compliance.

Motion made by Councilman Buchholz, seconded by Councilwoman Holloway, to overturn the Historic District Review Board’s decision with the adjustment to the structure’s orientation to conform to the setbacks and placement on the property. The motion was approved by unanimous vote.

B. 217 Jefferson Avenue:

Appeal Request: i) Nine houses in the immediate area had vinyl siding; ii) Replacement of wood or Hardi Board would cause a financial hardship now and in the future; iii) Many adjacent property owners were in support.

Zach Ponds gave the following overview: i) Description of Proposed Project: The subject property was a 40 x 140 lot with an existing single-family dwelling unit located on the property. The applicant had stated that the existing aluminum siding was in disrepair, and they would like to replace it with 5” vinyl siding with a board grain look. They would also like to install insulation

underneath the siding due to no insulation currently in the walls. The project was deferred at the April 16 regular meeting in order for the applicant to choose a different siding material that was allowed per the guidelines. The project was deferred again at the May 21 meeting to allow the applicant and the Town Planner to remove a piece of existing siding to see what was underneath. The Town Planner, the contractor, and the applicant removed a piece of the aluminum siding to see what type of material was underneath. The material underneath was wood siding, and the portion that was removed was in a good state of repair. A photo of the siding underneath was attached as Attachment 3. The applicant had provided photos of properties along the street. There had also been many emails sent in support of approving this project; ii) Staff Analysis: Vinyl siding was permitted in the R-1 district as long as each individual clapboard was no wider than five inches (Section 3.2.I.6). The guidelines did not regulate to a greater or lesser extent the width of each individual clapboard. The applicant was proposing a vinyl siding width that met the R-1 zoning district regulations. There were various siding materials used on the adjacent homes to this property, with a majority of them having vinyl siding. Number 4 on page 57 of the Historic District Guidelines stated “the use of synthetic siding such as HardiPlank or similar on new buildings within the historic district is allowed.” Number 6 on page 57 of the Historic District Guidelines stated “the use of synthetic siding on contributing structures will only be permissible if the structure is currently clad in vinyl, aluminum and stucco-like siding and is the subject of a major addition. The HDRB strongly suggests removal of synthetic sidings and restoration of the original siding material.” The original siding looked to be wood. It was unclear whether the rest of the wood siding underneath the aluminum siding was in a state where it could be repaired. In keeping with the intent of the Historic District, the replacement of 20-year old aluminum siding to vinyl siding would not deter from the existing structure or the character of the street, which primarily had vinyl-sided homes; and iii) Staff Recommendation: Review the attached materials and discuss any questions or concerns regarding the application. Decide whether the Council found that a Certificate of Appropriateness was approved for the application.

Councilwoman Burge asked if the siding replacement was the only renovation being done to the house at this time. Zach Ponds responded in the affirmative adding that a previous renovation had been done using vinyl siding.

Vice Mayor Bennett asked for confirmation that the aluminum siding was being replaced with vinyl with the addition of insulation. Zach Ponds responded in the affirmative.

Appellant David Cobb, owner of the property, stated that he had been working on the house for 25 years. He was now retired and wanted to be part of the Cape Charles community. He could paint the house but he was older and felt that a 30-year warranty was better than having to paint his house every five years. He was trying to keep with the neighborhood, adding that the property across the street from Kool Eatz just installed vinyl siding on the garage. This project was expensive for him and he wanted to get it completed and enjoy his time fishing, mowing grass and taking care of his property like other members in his neighborhood. He would do whatever the Town Council suggested. The application process had taken four months now. There was currently no insulation on his house so his contractor would be using insulated siding. The addition on the back of his house was done about ten years ago and included a big sunroom, bathroom with washer and dryer, and a big deck on the back. His front porch was all vinyl. He preferred to use vinyl on this project to match the remainder of his house. He knew that the guidelines stated to use wood if possible, but the majority of his neighborhood had vinyl siding. There were only two houses on the block with wood lap siding. His next-door neighbor was a 70 something year-old lady who got on a ladder and painted a quarter of her house each year. She submitted a letter to the HDRB supporting his project.

There was discussion as follows: i) Mayor Dize noted that page 57 of the guidelines, number 6, allowed replacement of aluminum siding with vinyl. Councilman Grossman added that this was permitted as part of a major addition, but this project was not a major renovation. Councilwoman Burge stated that this language was only for contributing structures and she did not believe this building was a contributing structure. There was more flexibility in materials on non-contributing structures. She asked if the board took into consideration whether or not a building

was a contributing structure when making their decisions. Kerry Shackelford, vice -chair of the HDRB, responded that the guidelines didn't mention contributing or non-contributing structures. Councilwoman Burge pointed out that Article VIII defined contributing and non-contributing and the Department of Historic Resources reviewed the inventory of houses in the town and specifically designated the contributing structures, which were 50 years old at the time. The listing had not been updated since that time. Susan Eidam added that the HDRB followed items 1-6 when making their determinations; ii) Vice Mayor Bennett stated that Council was told earlier that the HDRB considered letters from neighbors in their decisions. The guidelines needed to be reviewed as materials changed. His house was 13 years old and mostly HardiPlank. All the wood on his house had started to rot. The quality of wood used currently versus 30 years ago was not the same. Wood did not last, and he would not recommend anyone putting wood on the exterior of their house; and iii) Councilwoman Holloway stated that she had attended the last three HDRB meetings and understood what the board was going through with interpretation of the guidelines.

Susan Eidam stated that the board wasn't unsympathetic to the homeowner. They followed the guidelines to the letter for every application. The guidelines talked about synthetic siding and not to use it in the historic district. This application was denied based on item 3 on page 57 which stated that synthetic siding was not permissible, and consideration should be given to retaining the original materials on the primary elevations of the building. Page 18 contained the guiding principles and the Secretary of the Interior's standards for rehabilitating historic buildings state retain, repair, replace. Historic elements were not to be removed unless there was no other option. It stated not to replace if it could be repaired. The application was denied for vinyl however, after removal of the aluminum siding, if the wood underneath was in disrepair, fiber board could be used.

There was further discussion regarding the existing addition on the house which had vinyl siding and the owner wanting to match the existing siding. Mr. Cobb interjected that he intended to remove all the siding on the house and replace it with a different color. It was noted that replacing the aluminum with vinyl would be an improvement.

Motion made by Vice Mayor Bennett, seconded by Councilman Grossman, to overturn the Historic District Review Board's decision to allow vinyl siding. The motion was approved by majority vote with Councilman Bannon opposed.

C. *602 Tazewell Avenue:*

Appeal Request: i) The proposed windows and siding met the guidelines and therefore should be allowed.

Zach Ponds gave the following overview: i) Description of Proposed Project: The subject property is a 40' x 140' lot on the corner of Tazewell Avenue and Nectarine Street with an existing single-family dwelling located on the property. The applicant proposed to construct a 540 square foot one-story accessory structure to be used as a two-car garage with access from Nectarine Street. The project was deferred at the April 16 regular meeting because there was no one present to represent the application. The project was deferred again at the May 21 meeting to allow the applicant to provide more detailed plans, drawings and materials. According to the updated letter of intent and the updated elevations provided in the application, the garage would have the following: 30-year architectural shingles; Hardi-siding; AZEK trim; vinyl atrium windows matching the house; Therma Tru fiberglass entry door matching the existing house; two steel carriage-style garage doors. The applicant provided photos of the door and windows on the existing house and an example of the door and garage doors with their application; ii) Staff Analysis: The proposed changes met the requirements of the zoning ordinance for accessory structures. Roof: The roof form, elements and materials seemed to match the guidelines regarding roofs on pages 36-38. Windows and Doors: Page 41 of the guidelines stated "residential doors typically have wood panels and some styles also have glass panes." The proposed door and windows seemed to be appropriate windows. The carriage door design and material (steel) seemed to be appropriate as well. Synthetic siding: Number 4 on page 57 of the

Historic District Guidelines stated “the use of synthetic siding such as HardiPlank or similar on new buildings within the historic district is allowed.” The materials seemed to be in line with the guidelines; and iii) Staff Recommendation: Review the attached materials and discuss any questions or concerns regarding the application. Decide whether the Council found that a Certificate of Appropriateness was approved for the application.

Appellant Sean Ingram asked Council whether there were any questions regarding the appeal request and overview.

Vice Mayor Bennett wanted to know why the application was denied.

HDRB Vice Chair Kerry Shackelford stated the following as basis for denial: i) Exposure on siding: The guidelines called for exposure to be similar, 5”-6” and the application was requesting 7” exposure. The HDRB asked that it be changed; ii) AZEK trim was a synthetic material which was not acceptable; and iii) Windows: Not because they were vinyl but because the grills were between the glass. The guidelines called for muntins exposed on the exterior.

There was discussion as follows: i) Mayor Dize asked, to the best of Mr. Shackelford’s knowledge, whether all the materials matched the existing home. Kerry Shackelford responded that the guidelines didn’t include anything regarding matching the home. Mayor Dize added that if it was his house, he would want the materials on the garage to match his home; ii) Councilman Buchholz asked if the guidelines stated that synthetic trim couldn’t be used. Kerry Shackelford responded that the guidelines did not permit the use of synthetic materials. Councilman Buchholz added that HardiPlank was a synthetic material; iii) Councilwoman Burge stated that it was difficult to hear all the discussion on the video and expressed her concern regarding the board’s viewpoint regarding page 19, item 10, which talked about accessory structures. Vice Mayor Bennett added that page 21 recommended looking at surrounding buildings and looking at style. Susan Eidam responded that she recognized a lot of ambiguity in the guidelines. Vice Mayor Bennett added that the board couldn’t just look at the guidelines but also needed to look at other structures. Kerry Shackelford responded that the guidelines referred to adjacent structures, not others. If you looked at the surrounding structures, many of them had vinyl siding. What was the point of having the guidelines if they didn’t mean anything. Vice Mayor Bennett stated that the guidelines meant a lot but were not to be taken so strictly. The HDRB had a duty to interpret the guidelines using some sense, not as an edict. If the board was thinking of the guidelines as an edict, they were doing the wrong thing. Susan Eidam defended the board stating that they had only been in place for seven weeks. Vice Mayor Bennett stated that he realized that the members were new on the board and apologized and went on to state that since he had been on Council, there were two previous appeals and now, there were four at one time which was an indication that something wasn’t quite right; iv) Kerry Shackelford asked how the board was to decide when vinyl siding was acceptable and when it wasn’t. Mayor Dize responded that in the first case this evening, the buildings on either side of the house were looked at and the board’s initial decision was to use brick because of the other buildings around it. In this instance, the homes down the street were vinyl. Councilwoman Burge stated that the question regarding use of vinyl was good and recommended the discussion be set aside for the upcoming work session; v) Councilwoman Burge went on to express her concern regarding the interpretation of new construction. The issue should be architectural form, not materials. We were not trying to recreate the historic structures but rather to recognize the architecture, placement of windows, etc. so that the construction would be compatible to, but not attempting to create a false historic appearance. Councilman Buchholz added that the mullions on the Fairways condos were on the outside and were all falling off. He preferred having them between the glass. It looked the same but was better protected and would last. AZEK versus painted wood – you wouldn’t be able to tell the difference by looking at it but wood would rot and have to be replaced. Councilwoman Burge added that she knew the board was doing their best to interpret the guidelines on a case by case basis but page 23 addressed new construction to be compatible with and complement neighboring buildings; vi) Councilman Grossman asked whether the siding on the house had a 7” exposure. Sean Ingram responded that it did and he was only trying to replicate what was used on the house as much as possible. The existing house had been renovated in the past with

materials that would all now be prohibited. Councilman Grossman added that he felt that the garage should match the house; vii) Susan Eidam stated that she recognized there were issues with the guidelines and the board was working on updates. They were following what Council approved. The members of the HDRB were selected by and appointed by Council who gave them a job to do following these guidelines and Article 8 of the zoning ordinance. There were five qualified members of the board and all voted on the various applications and all but two of the decisions were unanimous. The board was taking the information provided in the applications and researching the information and holding the applicants to the guidelines so they would be appeal-proof. They were trying to set a standard and addressing inconsistencies.

Motion made by Councilman Grossman, seconded by Vice Mayor Bennett, to overturn the Historic District Review Board's decision based on the fact that the applicant was attempting to match the garage to the existing house. The motion was approved by majority vote with Councilman Bannon opposed.

D. *Lot 96 Washington Avenue:*

Appeal Request: i) The proposed windows and siding met the guidelines and therefore should be allowed.

Zach Ponds gave the following overview: i) Description of Proposed Project: The subject property is a 40' x 140' vacant lot. The applicant proposed to construct a new two-story single-family dwelling with a driveway. The project was deferred at the April 16 regular meeting because there was no one present to represent the application. The project was deferred again at the May 21 meeting to allow the applicant to provide more detailed plans and notes. According to the updated letter of intent and the updated elevations provided in the application, the house would have the following: 4-block high stucco finish foundation; 30-year architectural shingle roof; Hardi Color Plus siding; AZEK trim and vented Hardi soffit; Marvin Integrity with GBG, 4-over-4 windows; Therma Tru exterior doors with composite jambs; AZEK rail and AZEK trim on porch and deck; Eeze System screen and 5/4x6 flooring on rear porch; AZEK T&G flooring and fiber-cast columns on front porch; vinyl beaded ceilings on porch and deck. There would be no transom over the first-floor windows on the front elevation, as previously proposed. The applicant provided photos showing columns on existing houses within the Historic District that would be similar to what they were proposing in this application. They provided specs for the doors, columns, railings, siding and window trim with their application; ii) Staff Analysis: The proposed project met the requirements of the zoning ordinance for the R-1 zoning district. Foundation: The proposed 4-block high stucco foundation seemed to meet the guidelines regarding foundations on page 35. Page 52 stated to use brick or parged block for foundations of frame residences. Roof: The roof form, elements and materials seemed to match the guidelines regarding roofs on pages 36-38. Windows and Doors: Page 41 of the guidelines stated "residential doors typically have wood panels and some styles also have glass panes." The proposed door looked to be fiberglass with glass panes. The proportions of windows and doors were similar to those on surrounding historic facades, as mentioned in number 11, page 42. The windows would be 4-over-4 GBG widows with AZEK trim. Porches: Page 44 of the guidelines stated "do not strip entrances and porches of historic materials and details, such as columns, balusters, or trim." The proposed porch had 8" fiberglass posts and railings and was similar to buildings on the street. Synthetic Siding: Number 4 on page 57 of the guidelines stated "the use of synthetic siding such as HardiPlank or similar on new buildings within the historic district is allowed." The proposed siding material matched the existing buildings on the street; and iii) Staff Recommendation: Review the attached materials and discuss any questions or concerns regarding the application. Decide whether the Council found that a Certificate of Appropriateness was approved for the application.

Appellant Sean Ingram asked Council whether there were any questions regarding the appeal request and overview.

There was discussion as follows: i) Councilwoman Burge asked if there was a complete application for consideration at the May meeting and whether staff made a recommendation.

Zach Ponds responded that the application was complete but didn't recall if he had provided a recommendation; ii) Councilwoman Holloway stated that she found Zach Ponds' staff analysis very helpful adding that it wasn't done this way at the HDRB meeting but that it would be helpful for them as well. Zach Ponds responded that initially, he had been making recommendations but since there was a lot of discussion at the meetings during the application process and the board discussed things amongst themselves, he stopped making recommendations. HDRB member Edward Wells interjected that if staff was going to make recommendations, why have a board. Councilwoman Burge responded that it was common practice for planning staff to make recommendations. Vice Mayor Bennett added that it was also staff's responsibility to determine whether an application was complete before providing it to the board for consideration. It was difficult to make a decision using hand drawn plans; iii) There was some discussion regarding the information in the staff report not agreeing with the denial motion. Sean Ingram stated that he was only prepared to address the denial motion which related to construction materials. Kerry Shackelford stated that it was difficult to put every detail into the motion and the denial was specifically based on the guidelines. He pointed out a number of sections: Page 39- building elements for windows and doors; Page 40-windows should be metal or wood-clad and inappropriate styles with snap-in grills. The intent was for visible muntins with a profile on the outside; Page 42-windows should match the style of the buildings; Page 54-Trim should always be wood; Page 57-HardiPlank was allowed. Grills between glass did not comply; iv) Councilman Buchholz noted that page 39 referred to retaining original windows and doors, but this was a brand-new house. The guidelines were from 2001 and vinyl had come a long way since 2001. You wouldn't ever see wood windows on new construction anymore, especially in a coastal environment. Most windows were vinyl clad with wood interior or aluminum clad. It would be difficult to find a wooden window for new construction. Sean Ingram agreed that wooden windows were unrealistic; v) Councilwoman Burge referred to the minutes from the HDRB meeting and pointed out a comment made by Diane D'Amico regarding the language stating "consider using wood" implied that they didn't have to. This went back to the spirit of the 2001 version of the guidelines. There was more opportunity for wood back then. Of more concern was using the proper size and orientation, design, etc. Councilman Buchholz stated that all this needed to be discussed at the work session in August. Mayor Dize added that there could be two meetings if it would help iron out the issues; vi) Kerry Shackelford stated that he had worked with historic review boards in four different towns over the past 10-15 years. He did this every day for a living. The intent was not to replicate the historical building. The guidelines state that the spirit and architectural details should be the same. When windows with muntins between the glass were installed, it was not in the spirit of the guidelines. There was not a historic district anywhere that allowed window grills between glass. The reason Council appointed the members to the HDRB was because they had the expertise to interpret the guidelines. If Council continued to overturn the decisions, they would have a litany of applications submitting appeals. Everyone who got denied would come to Council with an appeal; vii) Sean Ingram stated that he was trying to do the best for his client. The HDRB was trying to enforce the guidelines. He would like nothing better than to see a more comprehensive set of guidelines; and viii) Kerry Shackelford stated that there were no guidelines for new construction in the district. Councilman Grossman responded that they were included and were to use styles like the surrounding buildings.

Motion made by Councilman Bannon, seconded by Councilman Buchholz, to overturn the Historic District Review Board's to construct a new single-family dwelling on the lot at 96 Washington Avenue. The motion was approved by majority vote with Councilman Grossman opposed.

Councilman Bannon thanked the members of the HDRB for their service. They had one of the most difficult jobs of the town's boards and it was impossible to keep everyone happy. Everything they had done was appreciated and told them to not get their feelings hurt.

Mayor Dize stated that the August 1 meeting would be a good time to get together to review the process and guidelines. He hoped they would work with each other and asked the HDRB members to notify Council of what they needed.

There were further comments as follows: i) Kerry Shackelford stated that the Council needed to decide how they wanted the HDRB to move forward or every month Council would be hearing appeals of the board's decisions; ii) Susan Eidam stated that if the HDRB's decisions were being appealed, the board needed the opportunity to provide more information than just the motion. The board members took a lot of notes which should be able to be presented. Mayor Dize recommended more detailed motions adding that Mr. Ingram appealed what was in the denial motion. Susan Eidam added that Mr. Ingram was given the opportunity to speak and provide his information. The town wouldn't get anywhere with a bunch of vinyl boxes. Councilwoman Burge stated that she would like a copy of the record from the HDRB to be submitted with the agenda information; iii) Edward Wells stated that the HDRB was appointed to deal with these issues and turn things around. Vice Mayor Bennett countered that turning things around wasn't in the HDRB charter. Edward Wells responded that it was discussed with the interview panel who recommended the appointments to Council for approval; and iv) Susan Eidam stated that in reviewing other applications to HDRB, there were far more successes than appeals.

Motion made by Councilman Buchholz, seconded by Councilman Bannon, calling for a short recess before going into executive session. The motion was approved by unanimous vote.

The meeting recessed at 8:37 p.m. The members of the public and staff, with the exception of Larry DiRe and Capital Projects Manager Bob Panek, left the meeting.

At 8:45 p.m. Mayor Dize called the meeting back to order.

Motion made by Vice Mayor Bennett, seconded by Councilman Bannon, and unanimously approved to go into Closed Session in accordance with Section 2.2-3711-A of the Code of Virginia of 1950, as amended for the purpose of:

Paragraph 7: Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body.

Specifically: Update on pending litigation case

Motion made by Councilman Grossman, seconded by Councilman Bannon, to return to open session. The motion was approved by unanimous vote.

Certification, to the best of each member's knowledge, that (i) only public business matters lawfully exempted from open meeting requirements under this chapter and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the meeting by the public body. Roll call vote: Bannon, yes; Bennett, Buchholz, yes; Burge, yes; Grossman, yes; Holloway, yes.

Motion made by Councilman Buchholz, seconded by Councilwoman Holloway, to adjourn the Town Council Special Meeting and Executive Session. The motion was approved by unanimous vote.

The meeting adjourned at 8:58 p.m.

Mayor Dize

Town Clerk

**Comments and information submitted in writing
July 8, 2019 Special Meeting**

Jeff and Beth Howard, 707 Edie Road, Argyle, NY – owners of Lot 96 Washington Avenue

Good morning Mr. Ponds,

We are writing to appeal to the Cape Charles Town Council to approve the construction of our new home on Lot 96 Washington Avenue Cape Charles. Our plan was unfortunately denied by the Historic Review Board in their recent meeting. (due to material such as our window detail and composite porch, azek).

We have reviewed the Historic Review guidelines for Cape Charles numerous times. We have been reading the historic review minutes and watching the videos when available since we purchased our lot on Washington Avenue in 2017. So, we were quite surprised when our home plans were denied.

The home we are proposing is very similar to the home just constructed next door, and very similar in materials and design to most of the newly built homes on our street as well as in the Historic District of Cape Charles. Our home will be visually compatible with the structures in the area. On page 54 #3 for the Historic Review guidelines, states “consider using wood for new construction” however, it does not state that use of wood is required. Many of the homes in the historic district have used composite materials. According to information reviewed about historic district guidelines, the use of composite porch floors is generally acceptable in many historic districts and is gaining favor in as an appropriate alternative to wood, due to its recycled composition, potential longevity and compatibility to recede into the background on a historic porch. Many of the homes in the district have composite porch floors etc., including the home just built next door and the ones near us.

Some of the board members are suggesting grills on the outside of our windows be used rather than grills in between the glass. The guidelines state new construction windows should be visually similar to the homes in the neighboring buildings and district. It seems that most of the homes in Cape Charles have grills within the glass. Many fewer homes have grills on the outside of the glass. So again, the materials selected for our home are compatible with size, scale, color, material and character of the neighboring buildings and of the Historic District. We are not trying to do anything different or out of the ordinary for the district.

Our family has been traveling to Cape Charles and the Eastern Shore of VA every year for the last 15 years and have been so excited to have finally purchased the lot on Washington Avenue in 2017 with plans to build. Our intention is to relocate to VA within the next few years once our youngest child completes high school. We have another son who just graduated high school and will be attending college in Maryland in the fall. We recently closed on a loan to build our new home and are paying a mortgage for it, but now we have not even been able to get approval to build. We had no reason to believe our home would not get approved based upon the historic review board guidelines and the agenda/minutes since 2017 (excluding the most recent 2 board meetings). Our home is just like most of the new homes recently built and many of the existing homes in the district.

Should you have any questions please contact us at [REDACTED].

We eagerly await your response.

Thank you for your time,

Beth and Jeff Howard

Renato and Jody Lucatello, 602 Tazewell Avenue

Re: Garage proposal.

Dear Zach Ponds,

We first came to Cape Charles nine years ago and like so many immediately fell in love with the town, people and community. We were looking for a dream home project and back then there were an abundance of homes to choose from. Arguably we purchased one of the worst buildings not only on Tazewell but indeed the town! It was a complete eyesore in dire condition, which also boasted a colorful history to match!

We purchased 602 because we thought it had huge potential in becoming our dream family home and having a corner lot with direct street access into our back yard, a garage would always be part of our plans. We have

respectfully followed the town's guidelines and the HDRB's decisions in protecting the town. We are very proud at the way we have sensitively transformed this derelict property into a beautiful home.

Having our garage proposal denied is a major disappointment to us as it has always been pivotal in our home plans. Over the years we have had to endure people parking their boats, driving across our yard and generally abusing it just because we were not there. We thought that finally getting our garage built would put a stop to that, as it becomes an integral part of our property.

We respect the HDRB's comments and decisions on these matters but in our particular case there does not seem to be clarity on the grounds of denial.

It seems it was denied on vinyl windows, azek trim and siding all of which did not fall within the guidelines. We chose these materials purely on the basis of matching the existing building on the lot. It seems the preferred material should be solid wood for the windows and trim. This is the first time during the process we have heard this material being mentioned and we were totally unaware it was the only option within the guidelines.

Being a craftsman of timber I totally understand the beauty of the material and the need to re-use it where possible however I'm also aware of its disadvantages on so many levels. We chose not to include wood in our proposal, as aesthetically it would not link it to the main structure, which we felt was paramount.

The practical disadvantage of using wood in this capacity can be seen all around town and we felt it absurd to spend 3 times more on a material to house our car than our family.

We are well aware that this decision may or may not be overturned and we will happily respect either however the ambiguity and lack of clarity in the wording of the denial has left us with little confidence that a re-submitted proposal with necessary amendments in place would still get the proposal through.

The mention of siding in the denial is a complete surprise and we have absolutely no idea what this means and what measures/changes we need to make.

We feel at the very least a clearer direction on the process (as we genuinely thought we acted within the guidelines) will be a fair and courteous response.

All the very best,
Renato and Jody.

Susan Eidam, Historic District Review Board Chairwoman

HDRB Town of Cape Charles Historic Guidelines Documentation of Criteria for Application Denial for 210 Bay Avenue.

Appeal recommendation from HDRB: Denial is properly supported and received the correct evaluative basis for decision making of the HDRB. HDRB has made recommendations to the applicant to consult the guidelines and some progress has been made in bringing this application within the published guidelines. We remain hopeful the applicant will continue with design modifications to contribute a new property that is congruous to the contiguous historic homes and make for good neighborly relations to the abutting homeowners who have written to the Planner with concerns for an appropriate build.

Denied based on mass of structure and design being out of place with similar structures in the immediate area.

Pg 21 of the guidelines states that "new structures should complement and respect the existing character of the historic structures."

Pg 21, no 2, "look at surrounding buildings to determine style, age, and elements that define the neighborhoods special character."

No 4 "New construction should follow the last two guidelines for the Department of The Interior standards for rehabilitation when planning for new construction."

"New construction is defined as new structures and/or newly built elements added to an existing structure: These updated guidelines are intended to ensure that patterns of new development, or in-fill development, do not destroy the character of the Cape Charles Historic District. The major intent of in-fill development should be that of a good neighbor, respect for the site, sensitivity to the historic homes in the neighborhood and taking into account the overall character of the neighborhood.

The success of new construction within a historic district does not depend on direct duplication of existing building forms, features, materials, and details. Rather, it relies on understanding what the distinctive architectural character of the district is. In-fill buildings must be compatible with that character.

In considering the overall compatibility of a proposed structure, its height, form, massing, proportion, size, scale, and roof shape should first be reviewed. A careful analysis of buildings surrounding the site can be valuable in determining how consistent and, consequently, how significant each of these criteria is. A similar study of materials, building features, and details typical of existing buildings along the streetscape, block, or square will provide a vocabulary to draw on in designing a compatible building.”

Further to 210 Bay - The Applicant indicates the roof form will change from Gambrel to Gable so another submission to HDRB would be required. The reference to Siding on 10 of the 18 existing homes could be a valid basis for compliance with Guidelines pages 21 and 22, and proposed HardiPlank complies with Page 57 - Item 4. Also, the following were not previously discussed as the applicant intends to consult the guidelines and resubmit whereby the guidelines will inform on the following elements : (1) Grille-Between-Glass (GBG) instead of Simulated-Divided-Lite (SDL) windows and glazed doors are specified, which does not comply with the "Muntin Component" on page 39. The SDL option is more costly, but some manufacturers offer an "exterior grille" option (example: Andersen GBG + exterior grille). (2) Typical windows in the District are either Square (same width and height) or Vertical (lesser width and greater height). The design includes groups of Horizontal windows (greater width and lesser height), which does not seem to comply with the Second Sentence of Item 1 on Page 39.

PLANNING NEW CONSTRUCTION OR ADDITIONS

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- Select windows and doors for proposed new buildings that are compatible in material, subdivision, proportion, pattern, and detail with the windows and doors surrounding buildings that contribute to the special character of the district. Bay windows should not disrupt the feeling of continuity of the wall surface.
- Design new buildings so that they are compatible with but discernible from historic buildings in the District.
 - The selection of materials and textures for a new building should be compatible with and complement neighboring buildings.
 - Synthetic sidings such as vinyl, aluminum and synthetic stucco-like finishes are not historic cladding material in the District and their use will not be allowed.
 - New construction should not attempt to create features that would create a false historical appearance.
- Identify significant landmark buildings in the District whose importance justifies the creation of a “zone of respect” around those buildings.
- New buildings should be compatible with the size, scale, color, material and character of the District, sub-area or block.
 - New buildings should incorporate architectural elements that divide the façade into intervals that maintain pedestrian friendly scale. Windows and doors should be placed in a manner that is harmonious with the District, sub-area or block.
 - Materials should be used in a manner that creates details, incorporates textures or small-scale elements that give the building a three-dimensional character and” human scale” at the ground level.
- It is essential that new construction in the Historic District reflect the integrity of design details and materials which help form the District’s character.
 - New construction should incorporate materials similar to those used traditionally in the historic structures in the area.
 - Materials used in new construction should be in units similar in scale to those used historically.
 - The placement of a porch to define the front entryway is encouraged and porches in new construction should be similar to those found on historic residential buildings in size and height.

HDRB Town of Cape Charles Historic Guidelines Documentation of Criteria of Denial for 217 Jefferson Avenue.

Appeal recommendation: Denial is properly substantiated with citing of the relevant sections of the Guidelines as documents below; and the application received the correct evaluative basis for decision making of the HDRB.

HDRB has made recommendations to the applicant to consult the guidelines and he has removed aluminum siding to clarify the original wood cladding which is in appropriate condition to comply with the cited guidelines below. The Board recognizes that each type of cladding brings with it its own pros and cons for quality, maintenance and compliance. We remain committed to researching materials and coatings used in

similar historic overlays to Cape Charles that will assist in preserving the original elements that have been protected beneath antiquated cladding.

Pg 57, No 1, “synthetic siding such as vinyl, aluminum, and stucco like material are not historic Cladding and do not contribute to the historic character of structures.”

No. 3. “Synthetic siding is not permissible.”

Pg 18 in the general description states that the guiding principles for the guidelines established for the Cape Charles Historic District are:

“The guidelines in this publication are based on The Secretary of the Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (see the bibliography for citation). They express a basic rehabilitation credo of “retain, repair, and replace.” In other words, do not remove a historic element unless there is no other option, do not replace an element if it can be repaired, and soon.

Town of Cape Charles Zoning Ordinance Article VIII – Historic District Overlay

Section 8.4. Application of the District; Relation to Other Zoning Districts

To enable the district to operate in harmony with the plan for land use and population density embodied in these regulations, the Historic District is created as a special district **to be superimposed on other districts** contained in these regulations and is to be so designated by a special symbol for its boundaries on the Zoning District Map. The uses, housing types, minimum lot requirements, minimum yard requirements, maximum height, and accessory uses and accessory signs shall be determined by the regulations applicable to the other districts **over which the Historic District is superimposed** except as these other district regulations may be modified by application of the regulations in the Historic District .

Further to 217 Jefferson: While the use of vinyl is permitted in the R1 Zoning district, the Historic Overlay takes precedence for properties located within the overlay. There was some question by a few staff members about this and Staff has received confirmation from the Virginia Department of Historic Resources (see attached)

Zach Ponds

Town of Cape Charles | Town Planner
2 Plum Street | Cape Charles, VA 23310
Direct: 757-331-2036
zach.ponds@capecharles.org | www.capecharles.org

From: Von Lindern, Aubrey <aubrey.vonlindern@dhr.virginia.gov>

Sent: Monday, June 03, 2019 1:28 PM

To: zach.ponds@capecharles.org

Cc: Susan Eidam <susan.eidam@outlook.com>; Tracy Outten <tracy.outten@capecharles.org>

Subject: Re: Historic District Overlay

Hi Zach,

You are correct, HODs are specialized zoning tools to preserve the historic integrity of a neighborhood, downtown district etc. They are applied in addition to your standard zoning regulations and will usually take precedence. The Design Review guidelines are drafted to be used as guidance to the ARB in order for them to make defensible decisions regarding submitted COAs. The Design Reviews guidelines are meant to be a living or fluid document that can be changed and updated when needed. They should be referenced in your ordinance but not necessarily part of your ordinance. Localities throughout Virginia spell out what constitutes the need for a COA differently, but overall they are similar in content. If you get a chance take a look at Staunton's ordinance as a good reference.

I'm not sure if answered your questions or not. Are you having issues with how your ordinance is being interpreted?

Aubrey

*Aubrey Von Lindern, Architectural Historian
Certified Local Government Coordinator
Northern Region Preservation Office
Virginia Department of Historic Resources
P.O. Box 519
Stephens City, VA 22655*

Phone: (540) 868-7029
FAX: (540) 868-7029

On Fri, May 24, 2019 at 8:33 AM <zach.ponds@capecharles.org> wrote:

Aubrey,

As you know, the Town of Cape Charles has a Historic District Review Board to regulate construction, renovations, etc. within the Historic District Overlay. We have two primary documents that the Board uses: [Article VIII – Historic District Overlay](#) of the Zoning Ordinance, and the [Historic District Guidelines](#).

In every jurisdiction that I have worked as a planner, and in likely all documents you will find on the internet, an “overlay” is a special zone placed over an existing zoning district or combination of zoning districts, which includes a set of regulations that is applied to property within the overlay zone in addition to the requirements of the underlying or base zoning district. Is it not correct that our Historic District Guidelines would be those regulations that are applied to property within the Historic District Overlay? Article VIII does not have any specific regulations to apply, it really just talks about the creation and duties of the Board and what constitutes having to go to the Board for a Certificate of Appropriateness (i.e. construction of a new building, additions or alterations which increase the square footage of a building, etc.). The reason I am asking you this is because there are staff and elected officials that think otherwise, and I wanted to get your input to confirm whether or not this is correct.

Thank you for your time. Please let me know if you need any more information or have any further questions on this to clarify.

Thanks,
Zach

[HDRB Town of Cape Charles Historic Guidelines Documentation of Criteria to support Denial for 602 Tazewell Avenue.](#)

NOTE: this application has been reviewed two times by the Board having been deferred at the May meeting to the June meeting. The applicant/appellant also has 96 Washington which too, has had two hearings.

Appeal Recommendation: Denial is properly substantiated with citing of the relevant sections of the Guidelines as documents below; and the application received the correct evaluative basis for decision making of the HDRB.

At the May 21st HDRB hearing, the application was incomplete and provided insufficient details and plans. After much discussion to clarify design and materials use, HDRB has made recommendations to the applicant to consult the guidelines and return.

The Board recognizes that the applicant is a local contractor who has previously had liberty to use non-compliant building materials and methods that were not supported by the Historic Overlay Guidelines and that previous Boards have been inconsistent in evaluating this applicant's submissions. The Board recognizes the dynamic that adherence to the guidelines and the intent of the overlay may pose some challenges in some previous building practices and materials may not meet the actual criteria adopted by Town Council.

This application was presented at the May 21st HDRB meeting at which time the requirement for more detailed plans and specifications was discussed at length. Reference the video at 26:58 to 42:45 where the applicant was given substantial information on where to reference the guidelines and proper format for submission of plans for new construction. The applicant had a similar submission for 96 Washington St. Both were deferred until detailed plans and specifications were available. The applicant returned to the June 18th Meeting – reference the video from 17:22 to 43:07 of 25 minutes in duration. The applicant did return with more detailed plans, and was thanked for doing so. Some of the windows were changed to SDL – Simulated Divided Light, but most remained GBG – Grills between Glass, as on the original application. There was substantive discussion about the front porch, railings and window trim of materials that are manufactured by AZEK, these are constructed of PVC – Poly Vinyl Composite using plastic and bonding polymers. The Board members took great time and care to consult with the applicant considering options including painting the shiny white plastic to resemble wood which might bring it in line with Article 8 of the Town of Cape Charles Historic District Overlay Purpose and Intent Section 8.1 :

“It is the purpose of the district to preserve the designated historic areas and historic landmarks and other historic or architectural features, and their surroundings within a reasonable distance, from destruction, damage, defacement, and obvious incongruous development or uses of land and to insure that buildings, structures, streets, walkways, or signs shall be erected, reconstructed, altered, or restored so as to be kept

architecturally compatible with the character of the general area in which they are located and with the historic buildings or structures within the district.”

A motion to approve the application was raised by Board Member D’Amico but failed to be supported by a second nomination from the remaining 4 Board members. A motion to defer was made by Board Member Eichmann but failed to receive a second as the applicant was not amenable to making changes. A motion to Deny was upheld by a vote of 4 to 1.

The HDRB is working with the Town Council and appropriate consultants to historic communities to clarify and update the current guidelines. Text changes are being recommended to eliminate the use of trade names such as Hardi or AZEK and replace with the description of the material, for example, cement fiberboard and PVC. Training and research is being conducted by members of this mindful and committed Board. Potential substrates such as wood composites, cement fiberboard, ash based, acetylated wood, and other materials that are proven reliable and have been incorporated in similar historic locales with similar climate and environmental conditions as Cape Charles. The Board invites stakeholders in the building trades to research and introduce materials that will support living in a historic overlay. The Board strongly encourages samples of materials and their related manufacturers specifications with all applications to the zoning administrator and the HDRB. Participation and collaboration in the update process is encouraged.

That said, the decisions for applications brought at this time are subject to evaluation by this board utilizing the current ordinances and overlay guidelines for Cape Charles adopted by Town Council.

Denied based on the synthetic trim materials and windows not within the specified guidelines:

Proposed materials were described as AZEK in the application. This is a cellular polyvinyl composite – PVC. It is a polymer and plastic

Pg. 39 #1 “For new construction, use window and door styles that relate to those found in the district.”

Pg 40 on windows states that the windows should be metal or wood and inappropriate styles include those with snap in grills. The intent here is to provide for a mutton that is visible and has a profile outside the glass.

Pg.42 #6 states; “Construct new windows and doors of wood or metal and match the style of the building”.

Pg 57 siding, Hardie plank type siding is allowed but exposure should be in keeping with the surrounding historic structures.

Pg 54 trim materials cladding and decorative items should always be wood, wood should be the dominate exterior material.

Further to 602 Tazewell: Grille-Between-Glass (GBG) instead of Simulated-Divided-Lite (SDL) windows and glazed doors are specified, which does not comply with the "Muntin Component" on page 39.

HDRB Town of Cape Charles Historic Guidelines Documentation of Criteria to support Denial for 96 Washington Avenue.

NOTE: this application has been reviewed two times by the Board having been deferred at the May meeting to the June meeting. The applicant/appellant also has 602 Tazewell which too, has had two hearings. Appeal recommendation: Denial is properly substantiated with citing of the relevant sections of the Guidelines as documents below; and the application received the correct evaluative basis for decision making of the HDRB. Furthermore, an appeal to the original application would be unwarranted as the application is moot due to siting of the structure has now changed; whereby a healthy old growth tree in the front yard prominent to the streetscape has been removed after assurance that it would remain.

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