

## **Town of Cape Charles**

### **ARTICLE II**

#### **General Provisions**

##### **Section 2.1 Title**

This ordinance and its contents along with the accompanying map shall be known, designated, and cited as the "**Town of Cape Charles Zoning Ordinance.**"

##### **Section 2.2 Legislative Intent**

This ordinance is enacted to promote the health, safety, and general welfare of the citizens of Cape Charles, Virginia. It is the intention of the Town Council that the provisions of this ordinance will implement the purpose and intent of the Comprehensive Plan of the Town by encouraging the most desirable use of land for residential, recreational, commercial, industrial, and agricultural purposes.

##### **Section 2.3 Districts Generally**

The Town of Cape Charles is hereby divided into the basic following zoning districts:

R-E	Residential Estates
R-1	Single Family Residential
R-2	Mixed Family Residential
R-3	Multi-Family Residential
CR	Commercial Residential
C-1	Commercial - 1
C-2	Commercial - 2
C-3	Commercial - 3
GBI	General Business and Light Industrial
H	Harbor
M-1	Industrial
OS	Open Space
PUD	Planned Unit Development
STIP	Sustainable Technologies Industrial Park
PD-STIP	Sustainable Technologies Industrial Park - Planned Development

##### **Section 2.3.1 Meaning of District Symbols**

The letter "R" represents any residential district designation. The letter "C" represents any commercial district designation. The letter "H" represents any harbor district designation. The letter "M" represents any industrial district designation. The term "GBI" is for commercial and/or light industrial district designation, and OS is for the open space designation. The term "PUD" or "PD" represents Planned Unit Development and "STIP" represents Sustainable Technologies Industrial Park.

The zoning map shall show by an appropriate symbol on the map the existence of conditions and zones and that attach the following regulations and conditions to the zoning on the map. The Zoning Administrator shall keep in the planning office and

make available for public inspection a Conditional Zoning Index showing all property which is operating under a conditional use permit. The Index shall provide ready access to the ordinance creating conditions in addition to the regulations provided for in a particular zoning district or zone. (Section 15.2-2300)

### **Section 2.3.2 Zoning Map and Amendments to the Zoning Map**

- A. The locations and boundaries of the districts established by this chapter shall be as shown on the map entitled "Official Zoning Map, Town of Cape Charles, Virginia, 1997," which is hereby declared to be part of this chapter. A certified copy of this map is on file in the office of the Zoning Administrator, and such map is signed by the Mayor and certified by the Town Clerk. All notations, dimensions, and designations shown thereon shall be as much a part of this chapter as if the same were fully described herein.
- B. The Zoning Administrator shall maintain a copy of the Zoning Map of the Town, making such amendments to such map as they are approved by the Town Council in accordance with the provisions of Section 2.7 of this Chapter.

### **Section 2.3.3 Determination of District Boundaries**

Unless the zoning district boundary lines are fixed by dimensions or otherwise clearly shown or described and where uncertainty exists with respect to the boundaries of any zoning districts as shown on the zoning map, the following rules shall apply:

- A. Where district boundaries are indicated as approximately following or being at right angles to the center lines of streets, highways, alleys, or railroad main tracks, such center line or lines at right angle to such center lines shall be construed to be such boundaries, as the case may be.
- B. Where district boundaries are indicated to follow a river, bay, creek, branch, or other body of water, such boundary shall be construed to follow the center line at low water or at the limit of the jurisdiction; and in the event of change in the shoreline, such boundary shall be construed as moving the actual shoreline.
- C. If no distance, angle, or curvature description or other means is given to determine a boundary line accurately and the foregoing provisions do not apply, the same shall be determined by the Zoning Administrator using the scale shown on the map. In case of subsequent dispute, the matter shall be referred to the Board of Zoning Appeals, which shall determine the boundary.

### **Section 2.3.4 Zoning of Annexed Areas**

Any area annexed by the Town of Cape Charles shall, unless otherwise stated, immediately upon the effective date of such annexation be automatically classified as an R-1 district until a zoning plan for such area has been adopted by the Town Council. The Planning Commission shall prepare and present to the Town Council a zoning plan of the annexed area within six months of the annexation.

### **Section 2.3.5 Statutory References**

References and citations within this ordinance to provisions of the Code of Virginia shall mean the cited Code section as in effect on the date of adoption of this ordinance and as amended from time to time, as well as all replacements, successors, provisions, or recodifications of same made from time to time by the Virginia General Assembly.

### **Section 2.3.6 Validity**

Should any section of this ordinance be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole or any other part thereof other than the section so held to be unconstitutional or invalid.

### **Section 2.3.7 Conflicts Within Ordinance**

Where there is conflict between provisions or requirements of this ordinance, the more restrictive provisions or requirements shall apply.

### **Section 2.3.8 - 50 Reserved**

## **Section 2.4 Administration and Enforcement**

### **Section 2.4.1 Enforcement of Ordinance, Guarantees**

- A. In accordance with Section 15.2-2286 of the Code of Virginia, there is hereby created the office of Zoning Administrator. The Zoning Administrator, who may also hold another office in Town, shall be appointed by the Town Council and shall serve under the direction of the Town Manager, who will coordinate department actions and such assistance as may be required to carry out the responsibilities of this ordinance. In the event that the Town Manager is appointed to serve as Zoning Administrator, same shall serve under the direction of the Mayor.
- B. The Zoning Administrator shall be vested with all necessary authority on behalf of the Town Council to administer and enforce the provisions of this ordinance, including:
  - 1. the ordering in writing of the remedying of any condition found in violation of this ordinance;
  - 2. the bringing of legal action, after approval by the Town Council, to ensure compliance with the provisions of this ordinance, such action to include injunction, abatement, or other appropriate action or proceedings;
  - 3. in specific cases, making findings of fact and, with the concurrence of the Town Attorney, conclusions of law regarding determinations of rights accruing under Section 2.5 of this ordinance and Section 15.2-2307 of the Code of Virginia.
- C. Pursuant to Section 15.2-2299 of the Code of Virginia, the Zoning Administrator shall have all necessary authority on behalf of the Town Council to administer and enforce conditions attached to a rezoning or amendment to a zoning map, including:

1. the ordering in writing of the remedy of any noncompliance with the conditions;
  2. the bringing of legal action, after approval by the Town Council, to ensure compliance with the conditions, including injunction, abatement, or other appropriate action or proceeding; and
  3. requiring a guarantee, satisfactory to the Town Council, in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions, or a contract for the construction of the improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee shall be reduced or released by the Town Council, or agent thereof, upon the submission of satisfactory evidence that construction of the improvements has been completed in whole or in part. Failure to meet all conditions shall constitute cause to deny the issuance of any of the required use, occupancy, or building permits as may be appropriate.
- D. The Zoning Administrator shall respond within 20 days of a request for a decision or determination on zoning matters within the scope of his or her authority unless the requester has agreed to a longer period.

**Section 2.4.2 Permits (revised 2/11/2010 – A.4. added)**

A. Building Permits

1. No building or structure shall be erected, constructed, altered, moved, converted, extended, enclosed, or enlarged without the owner first having applied for and obtained a zoning clearance for a building permit from the Town's Zoning Administrator. Such zoning clearance shall be obtained prior to the application for a building permit from the Cape Charles Building Department. Nothing herein is intended to prevent normal maintenance, which does not require a building permit.
2. The Zoning Administrator shall certify whether the proposed use, structure, alteration, or enlargement is or is not in conflict with the provisions of this Chapter. If such proposal is in conflict with the provisions of this ordinance, the Zoning Administrator shall refuse to issue such zoning clearance for a building permit.
3. The fee for a building permit shall be governed by ordinance.
4. Pursuant to the authority contained in §15.2-2286, 15.B. of the Code of Virginia of 1950, as amended, prior to the initiation of an application for a special exception, conditional use permit, variance, rezoning or other land disturbing permit, including building permits and erosion and sediment control permits, all delinquent real estate taxes owed to the Town against the property shall be paid in full.

B. Certificate of Occupancy

1. A Certificate of Occupancy shall be required to authorize any of the following:
  - a. occupancy of a building after construction;

- b. any enlargement, extension, or alteration of a building to change from one use to another;
  - c. any change in the use of a non-conforming building or use.
2. Application for Certificate of Occupancy shall be made with the Cape Charles Code Official and a copy shall be sent to the Cape Charles Zoning Administrator by the Cape Charles Code Official. The Zoning Administrator shall certify whether the use, structure, alteration, enlargement, or other physical change is in conflict with the provisions of this ordinance. If a conflict is determined, the Zoning Administrator shall refuse approval for issuance of such certificate of occupancy.
  3. The fee for a Certificate of Occupancy shall be governed by ordinance.

### **Section 2.4.3 Violation and Penalty**

#### **A. Violations**

1. It shall constitute a violation of this ordinance for any person, either owner, agent, or occupant, to commence any actions for which a permit is required by this ordinance without having first obtained an approved permit. Any such permit issued upon a false statement of any fact which is material to the issuance thereof shall be void. Whenever the fact of such false statement shall be established, the Zoning Administrator shall forthwith revoke the same permit by notice in writing to be delivered to the holder of the void permit or, if such holder cannot be found, by posting such notice of revocation in some conspicuous place upon the premises where the violation has occurred. Any such person who shall proceed thereafter with such work or use without having obtained the proper approved permit in accordance with this ordinance shall be deemed guilty of a violation of this ordinance.
2. If the Zoning Administrator finds that any of the provisions of this ordinance are being violated, he/she shall notify in writing the person responsible for the violation, indicating the nature of the violation and ordering action necessary to correct the violation. The Zoning Administrator shall take any other action authorized by law to ensure compliance with or to prevent further violation of this ordinance.
3. Any person, firm, or corporation, whether as principal, agent, employee, or otherwise, violating, causing, or permitting the violation of any of the provisions of this ordinance shall be guilty of a Class IV misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than ten dollars (\$10) for each violation and not more than two hundred and fifty dollars (\$250). Each day such violation shall continue shall constitute a separate violation.
4. Any official or public employee authorized of this jurisdiction who is vested with the duty of authority to issue permits shall conform to the provisions of this ordinance. Any such permit, if issued in conflict with the provisions of this ordinance, shall be canceled in writing.

## **Section 2.5 Non-Conforming Uses**

### **Section 2.5.1 Continuation of Existing Non-Conforming Uses and Permits**

- A. Any legal use, building, or structure existing at the time of adoption of this ordinance or any amendment thereto may be continued even though such use, building, or structure may not conform with the provisions of this ordinance for the district in which it is located. Such use, building, or structure shall be deemed a "Non-Conforming Use." A non-conforming use, building, or structure may be continued provided by the following.
1. No such non-conforming use, building, or structure shall be enlarged or increased or extended to occupy a greater area of land than was occupied at the effective date of the adoption of this ordinance, unless said enlargement does not result in an increase in nonconformity or result in a change to a use permitted in the district.
  2. No such non-conforming use, building, or structure shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use, building, or structure at the effective date of adoption of this ordinance or amendment of this chapter, unless such move results in decreasing the degree of nonconformity with the requirements of this district.
  3. No additional structures which do not conform to the requirements of this ordinance shall be erected in connection with such non-conforming use of land. No additional uses of a nature which would be prohibited generally in the district involved shall be permitted.
  4. Any non-conforming use may be extended throughout any parts of the building which were manifestly arranged or designed for such use at the time of adoption or amendment of this ordinance.
  5. When any non-conforming use is superseded by a permitted use, the use shall thereafter conform to the regulations for the district, and no non-conforming use shall thereafter be resumed with the exception of existing duplexes specifically designed as such.
  6. If any such non-conforming use or structure ceases for any reason for a period of more than two years, except when government action impedes access to the premises, any subsequent use of such land or structure shall conform to the regulations specified by this chapter for the district in which such land or structure is located with the exception of existing duplexes specifically designed as such.
- B. The rights pertaining to a non-conforming use, building, or structure shall be deemed to pertain to the use or building itself, regardless of the ownership of the land or the building on or in which such non-conformity is conducted or of such non-conforming building or the nature of the tenure of the occupancy thereof.

### **Section 2.5.2 Restoration of Non-Conforming Use**

No building or structure which has been damaged by any cause including neglect to the extent of more than fifty percent of the fair market value of the building immediately

prior to damage shall be restored except in conforming with the regulations of this ordinance, and all rights as a non-conforming use are terminated. If a building or structure is damaged by less than fifty percent of the fair market value, it may be repaired or reconstructed and used as before the time of damage provided that such repairs or reconstruction be substantially completed within 12 months of the date of such damage. If delay of reconstruction is caused by reasons beyond the owner's control, extension may be given to substantially complete reconstruction.

### **Section 2.5.3 Changes in District Boundaries**

Whenever the boundaries of a district are changed, any uses of structures or buildings which become non-conforming as a result of change shall be subject to the provisions of this ordinance.

### **Section 2.5.4 Change of Use**

The use of a non-conforming building or structure may be changed to the same use or a use of a more restrictive classification, but where the use of a non-conforming building or structure is hereafter changed to a use of a more restrictive nature, it shall not thereafter be changed to a use of a less restrictive nature with the exception of existing duplexes specifically designed as such.

### **Section 2.5.5 Occupancy of Vacant Non-Conforming Buildings or Structures**

A vacant non-conforming building or structure may be occupied by a use for which the building or structure was designed or intended if so occupied on or before the adoption of this ordinance; and the use of a non-conforming building or structure which becomes vacant after adoption of this ordinance may also be occupied by a use for which the building or structure was designed or intended provided that it is so occupied within a period of two years after becoming vacant. Existing duplexes, specifically designed as such, are exempt from the four-year vacancy stipulation.

### **Section 2.5.6-50 Reserved**

## **Section 2.6 Appeals and Variances**

### **Section 2.6.1 Board of Zoning Appeals**

In accordance with Sections 15.2-2308 through 15.2-2314 of the Code of Virginia, any municipality which has enacted or enacts a zoning ordinance shall therefore create a Board of Zoning Appeals. The Town of Cape Charles Board of Zoning Appeals will consist of five members who shall be appointed by the circuit court of Northampton County. Members of the board shall hold no other public office in the municipality except one may be a member of the Planning Commission. The term of office shall be for five years each without pay.

- A. Vacancies shall be filled for unexpired terms. The secretary of the board shall notify the court at least thirty days in advance of the expiration of any term of office and shall also notify the court promptly if any vacancy occurs. Appointments to fill vacancies shall only be for the unexpired term. Members may be reappointed to succeed themselves. Members of the board shall hold no

other public office in the county or town except one may be a member of the local planning commission. A member whose term expires shall continue to serve until his/her successor is appointed or qualified. The board may make, alter, and rescind rules and forms for its procedures, consistent with ordinances of the town and general laws of the state. Board members may be removed for cause upon written charges and after a public hearing held at least fifteen days after notice. Removal shall be based on malfeasance, misfeasance, or non-feasance in office or other just cause by the court which appointed them. The board shall keep a full public record of its proceedings and shall submit a report of its activities to the governing body at least once a year.

- B. Within the limits of funds appropriated by the governing body, the board may employ or contract for secretaries, clerks, legal counsel, and other technical clerical services.

The board shall be governed by these provisions and any provisions set forth in Sections 15.2-2308 through 15.2-2314 of the Code of Virginia. The board shall annually choose its own chairman and vice-chairman, who shall serve in the absence of the chairman.

### **Section 2.6.2 Powers and Duties of the Board of Zoning Appeals**

The Board of Zoning Appeals shall have the following powers and duties in accordance with Section 15.2-2309 of the Code of Virginia:

- A. To hear and decide appeals from any order, requirement, decision, or determination made by an administrative office in the administration or enforcement of this ordinance;
- B. To authorize upon appeal, or original application in specific cases, such variance as defined in Section 15.2-2201 of the Code of Virginia from the terms of the ordinance as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship provided that the spirit of the ordinance shall be observed and substantial justice done, as follows.

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



No such variance shall be authorized by the board unless it finds all of the following conditions exist:

1. That the strict application of the ordinance would produce undue hardship.
2. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
3. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

No such variance shall be authorized unless the board finds that the conditions or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

In authorizing a variance, the board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee to ensure that the conditions imposed are being and will continue to be complied with.

- C. To hear and decide appeals from the decision of the Zoning Administrator. No such appeal shall be heard until after such notice and hearing as provided in Section 15.2-2204 of the Code of Virginia.
- D. To hear and decide applications for interpretation of the district map where there is an uncertainty as to the location of a district boundary. After notice to the owners of the property affected by such question, and after public hearing with notice as required, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.
- E. No provision of this section shall be construed as granting any board the power to rezone property.
- F. To hear and decide applications for special exceptions as may be authorized in the ordinance. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee to ensure that the conditions imposed are being and will continue to be complied with. No special exception may be granted except after notice and hearing, as required.
- G. To revoke a special exception if the board determines that there has not been compliance with the terms and conditions of the permit. No special exception may be revoked except after notice and hearing as required.

### **Section 2.6.3 Applications for Special Exceptions and Variances**

Applications for special exceptions and variances may be made by any property owner, tenant, with owner's approval, government official, department, board, or bureau. Such application shall be made to the Zoning Administrator in accordance with the rules adopted by the board. The application along with accompanying maps, plans or other information shall be transmitted promptly to the secretary of the board to be placed on the agenda and acted upon by the board. No such special exception or variance shall be authorized except after notice and hearing as required. The Zoning Administrator shall also transmit a copy of the application to the local planning commission which may send a recommendation to the board or appear as a party at the hearing. The Board of Zoning Appeals will not consider the same application which has previously been denied within a period of one year.

### **Section 2.6.4 Appeals and Procedure of Appeals**

An appeal to the Board of Zoning Appeals may be taken by any person aggrieved or by an officer, department, board, or bureau of the county or municipality affected by any decision of the Zoning Administrator or Administrative Officer in the administration or enforcement of this ordinance. The decision may be appealed within thirty days thereof by filing a notice of appeal specifying the grounds of the appeal. Said appeal shall be filed with Zoning Administrator and with the Board of Zoning Appeals. The Zoning Administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

The board shall fix a reasonable time for the hearing of an application for appeal, give the public notice thereof as well as due notice to the parties in interest, and decide the same within sixty days of the filing of the application for appeal. In exercising its powers, the board may reverse or affirm wholly or in part or may modify an order, requirement, decision, or determination of an administrative officer or decide in favor of the applicant on any matter which it is required to effect any variance from the ordinance. The board shall keep minutes of its proceedings and other official actions which shall be filed in the office of the Zoning Administrator and shall be public record. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses.

In accordance with Section 15.2-2313 where a building permit has been issued and the construction of the building for which such permit was issued is subsequently sought to be prevented, restrained, corrected, or abated as a violation of the zoning ordinance, by suit filed within fifteen days after the start of construction by a person who had no actual notice of the issuance of the permit, the court may hear and determine the issues raised in the litigation even though no appeal was taken from the decision of the administrative officer to the Board of Zoning Appeals.

### **Section 2.6.5 Certiorari to Review Decision of the Board of Zoning Appeals**

Any person or persons jointly or severally aggrieved by any decision of the Board of Zoning Appeals or any taxpayer or any officer, department, board, or bureau of the municipality may present to the circuit court of the county a petition specifying the

grounds on which aggrieved within thirty days after the filing of the decision in the office of the board.

Upon presentation of such petition the court shall allow a writ of certiorari to review the decision of the Board of Zoning Appeals and shall prescribe therein the time within which a return thereto must be made and served upon the realtor's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may on application, on notice to the board, and on due cause shown, grant a restraining order.

The board shall not be required to return the original papers acted upon by it but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and the material to show the grounds of the decision appealed from and verification.

If, upon hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take such evidence as it may direct and report the same to the court with findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or in part, or may modify the decision brought up for review.

Costs shall not be allowed against the board, unless it shall appear to the court that it acted in bad faith or with malice in making the decision appealed from. In the event that a decision of the board is affirmed and the court finds that the appeal was frivolous, the court may order the person or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making a return of the record pursuant to the writ.

#### **Section 2.6.6 Fee for Appeals and Applications for Variance**

Every appeal to the Board of Zoning Appeals from a determination of the Zoning Administrator and every application for a variance shall be accompanied by a fee governed by ordinance set forth by the Town Council of the Town of Cape Charles.

#### **Section 2.6.7 Expiration of Variances**

If any variance granted by the Board of Zoning Appeals is not acted on in accordance with the conditions and stipulations required by the Board, then the variance shall be null and void and of no force and effect.

#### **Section 2.6.8 Tax Payments Required**

Pursuant to Section 15.2-2286.B of the Code of Virginia, prior to the initiation of an application for a special exception, special use permit, variance, rezoning, zoning clearance, building permit, or other land use permit, the applicant for same must produce satisfactory evidence that any and all delinquent real estate taxes owed to the Town of Cape Charles which have been properly assessed against the subject property have been paid in full.

**Section 2.6.9 Reserved**

**Section 2.7 Amendments of Chapter and Zoning Map; Conditional Zoning**

**Section 2.7.1 Amendments Permitted; How Initiated**

In accordance with Virginia Code Section 15.2-2286.A.7, whenever public necessity, convenience, general welfare or good zoning practice require, the Town Council may amend, supplement, or change the regulations, district boundaries or classifications of property contained in this Chapter. Any such amendment may be initiated by (a) resolution of the Town Council, (b) motion of the Town's Planning Commission, or (c) the petition of the owner, contract purchaser with the owner's written consent, or the owner's agent therefore, of the property which is the subject of the proposed zoning map amendment, addressed to the Town Council or the Town's Planning Commission, which shall forward such petition to the Town Council.

**Section 2.7.2 Procedures for Amending Chapter or Zoning Map**

- A. All proposed amendments or reenactments of this Chapter, and all proposed amendments to the zoning map, shall be referred by the Town Council to the Town's Planning Commission for its recommendations. Failure of the Planning Commission to report within 100 days after the first meeting of the Planning Commission after the proposed amendment or reenactment has been referred to it shall be deemed approval of the proposal by the Planning Commission, unless the proposal has been withdrawn by the applicant prior to the expiration of said time period. In the event of such withdrawal, processing of the proposal shall cease without further action.
- B. Prior to issuing its recommendations, the Planning Commission shall hold at least one public hearing after notice of same has been published once a week for two successive weeks in some newspaper having general circulation in the Town. Such public hearing shall be held not less than six nor more than 21 days after the second advertisement appears. Such additional and further notice shall be given as required by Virginia Code Section 15.2-2204. The Planning Commission may make appropriate changes in the proposed amendments as a result of the public hearing. Upon the completion of its work, the Planning Commission shall present the proposed amendments, including revised district maps, to the Town Council together with its recommendations and appropriate explanatory materials.
- C. Prior to approving and adopting any amendment to this Chapter or the zoning map, the Town Council shall hold at least one public hearing after giving such public notice as may be required by Virginia Code Section 15.2-2204, after which the Council may make appropriate changes or corrections in the proposed amendment. In the case of a proposed amendment to the zoning map, the public notice shall state the general usage and density range of the proposed amendment and the general usage and density range, if any, set forth in the applicable part of the Town's then effective comprehensive plan. No land may be zoned to a more intensive use classification than was contained in the public notice without an additional public hearing after such notice as is required by Virginia Code Section 15.2-2204. Following the required public hearing(s), the

Town Council shall act on the proposed amendment in the same manner as adopting any other ordinance.

### **Section 2.7.3 Appeals**

Every action contesting a decision of the Town Council adopting or failing to adopt a proposed amendment to this Chapter or the zoning map shall be filed within thirty days of the Town Council's decision with the Circuit Court of Northampton County.

### **Section 2.7.4 Conditional Zoning - Statement of Intent**

In accordance with Virginia Code Sections 15.2-2296 et seq., it is the general policy of the Town of Cape Charles to provide for the orderly development of land, for all purposes, through zoning and other land development legislation. Frequently, where competing and incompatible uses conflict, traditional zoning methods and procedures are inadequate. In these cases, more flexible and adaptable zoning methods are needed to permit differing land uses and at the same time recognize effects of change. It is the purpose of Sections 2.7.4 through 2.7.10 to provide a more flexible and adaptable zoning method to cope with situations found in such zones through conditional zoning. Conditional zoning allows a zoning reclassification subject to certain conditions proffered by the zoning applicant for the protection of the community that are not generally applicable to land similarly zoned. The provisions of Sections 2.7.4 through 2.7.10 shall not be used for the purpose of discrimination in housing.

### **Section 2.7.5 Conditional Zoning - Conditions as Part of a Rezoning or Amendment to the Zoning Map**

As part of a rezoning or amendment to the zoning map, the owner of the parcel for which the rezoning or amendment is sought may voluntarily proffer, in writing made prior to the Town Council's public hearing on same, reasonable conditions in connection with the proposed rezoning or amendment. Applications for conditional zoning shall be handled in the same manner and following the same procedures as provided in Section 2.7.2 with respect to amendments generally. Once proffered and accepted as part of an amendment to this Chapter or the zoning map, such conditions shall continue in effect until a subsequent amendment changes the zoning of the property covered by such conditions. However, such conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

### **Section 2.7.6 Conditional Zoning - Enforcement and Guarantees**

The Zoning Administrator is hereby vested with all necessary authority on behalf of the Town Council to administer and enforce conditions attached to a rezoning or amendment to the zoning map, including (a) the ordering in writing of the remedy of any noncompliance with the proffered and accepted conditions; (b) the bringing of legal action to ensure compliance with the conditions, including injunction, abatement, or other appropriate action or proceeding; and (c) requiring a guarantee satisfactory to the Town Council, in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions, or a contract for the construction of the improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee shall be reduced or released by the Town upon the submission of

satisfactory evidence that construction of the improvements has been completed in whole or in part. Failure to meet all conditions shall constitute cause to deny the issuance of any of the required use, occupancy, or building permits, as may be appropriate.

#### **Section 2.7.7 Conditional Zoning - Records**

The zoning map shall show by an appropriate symbol on the map the existence of conditions attaching to the zoning on the map. The Zoning Administrator shall keep in his or her office and shall make available for public inspection a Conditional Zoning Index. The Index shall provide ready access to the ordinance creating the conditions in addition to the regulations provided for in a particular zoning district or zone.

#### **Section 2.7.8 Conditional Zoning - Petition for Review of Decision**

Any zoning applicant or other person who is aggrieved by a decision of the Zoning Administrator made pursuant to the provisions of Section 2.7.6 may petition the Town Council for review of the decision of the Zoning Administrator. All petitions for such review shall be filed with the Zoning Administrator and the Town Clerk within thirty days from the date of the decision for which review is sought and shall specify the ground upon which the petitioner is aggrieved.

#### **Section 2.7.9 Conditional Zoning - Amendments and Variations of Conditions**

There shall be no amendment or variation of conditions created pursuant to the provisions of Section 2.7.5 until after the Town Council holds a public hearing which hearing is advertised as required by Virginia Code Section 15.2-2204.

#### **Section 2.7.10 Limitation on Reconsideration of Request for Amendment**

No application for an amendment to this Chapter or the zoning map, including an application for conditional zoning, shall be considered by the Town Council within one year from the Council's last consideration of same. This limitation shall not apply to amendments proposed by either the Planning Commission or the Town Council on its own motion where that body finds it to be in the public interest to reconsider same.

#### **Section 2.8 Condominiums and Cooperatives**

Condominiums and cooperative real estate develop must meet all requirements and regulations of the Virginia Condominium Act or Virginia Real Estate Cooperative Act, as appropriate (Code of Virginia Section 55-79.39 et seq.; Section 55-424 et seq.). Condominiums and cooperatives of new construction are permitted only with a special use permit from the Board of Zoning Appeals of the Town of Cape Charles in Districts C-1, CR, R-1, R-2, R-3 and H. Conversion condominiums and cooperatives (governed by the Code of Virginia, Sec 55-79.43 and Sec. 55-429, respectively) are permitted by right in all districts in which residential uses are permitted by right or conditional use.

#### **Section 2.9 Definitions *[revised 11-21-19]***

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

**ABANDONMENT** means the relinquishment of property, or a cessation of the use of the property, by the owner or lessee without any intention of transferring rights to the property to another owner or of resuming the use of the property.

**ABATTOIR** means slaughterhouse, a place where livestock is killed and prepared for distribution to butcher shops and food markets.

**ACCESS** means a way or means of approach to provide vehicular or pedestrian physical entrance to a property.

**ACCESSORY USE**, except as otherwise provided in the zoning district regulations, an accessory use is:

1. a use which is conducted on the same zoning lot as the principal use to which it is related, whether located within the same building or as an accessory structure, or as an accessory use of land, or which is conducted on a contiguous lot in the same ownership, and
2. clearly incidental to, and customarily found in connection with, such principal use, and
3. operated and maintained substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the zoning lot with the principal use.

**ACRE** is a measure of land area containing 43,560 square feet.

**ACREAGE** means a parcel of land, regardless of area, described by metes and bounds which respectively are ascribed to them by this section.

**ADAPTIVE REUSE** means the development of a new use for an older building or for a building originally designed for a special or specific purpose.

**ADDITION** means a structure added to the original structure at some time after the completion of the original structure or an extension or increase in floor area or height of a building or structure.

**ADJACENT** includes the term contiguous.

**ADJACENT GROUND ELEVATION** means the elevation of the surface of the ground between a point touching the exterior wall of a building and a point three feet in distance from such wall measured perpendicularly therefrom.

**ADMINISTRATOR** means the official charged with the enforcement of the zoning ordinance. The Administrator may be any appointed or elected official who is by formal resolution designated to the position by the Town Council. The Administrator may serve with or without compensation as determined by the Council.

**ADULT BOOK STORE** means any establishment having as a substantial portion of its stock in trade, books, pictures, magazines, and other periodicals which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specific sexual activities or specified anatomical areas, or an

establishment trading in such books, pictures, magazines, and other periodicals which limits its customers to persons over eighteen years of age.

**ADULT CARE** means the provision of health care including retirement homes, congregate living, and acute care facilities, or a mixture thereof.

**ADULT MOVIE THEATER** means any establishment used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas for observation by patrons therein, or an establishment used for presenting such material which limits its customers to persons over eighteen years of age.

**AGRICULTURE** means the tilling of soil, the raising of crops, forestry, the keeping and raising of livestock and fowl, and including the process of any products produced on the premises, such as milk, eggs, and the like.

**ALLEY** means the minor way used primarily for vehicular access to the rear or side of properties otherwise abutting a street. For an alley way to be recognized as such by the Town, it must have previously been officially adopted by the Town.

**ALTERATION** means any change or rearrangement in the supporting members of an existing building, such as bearing walls, columns, beams, girders, or interior partitions, as well as any change in doors, windows, means of ingress or egress, or any enlargement to or diminution of a building or structure, whether horizontally or vertically, or the moving of a building or structure from one location to another.

**AMERICANS WITH DISABILITIES ACT (ADA)** is a 1990 federal law designed to bring disabled Americans into the economic mainstream by providing them equal access to jobs, transportation, public facilities, and services.

**APARTMENT HOUSE** means a building used or intended to be used as the residence of three or more families living independently of each other.

**APARTMENT UNIT** is considered one or more rooms with private bath and kitchen facilities comprising an independent, self-contained dwelling unit in a building containing three or more dwelling units.

**APPLICANT** is the person submitting an application.

**ATTIC** shall be considered a part of a building that is immediately below and wholly or partly within the roof framing.

**AUTOMOBILE GRAVEYARD** means any lot or place which is exposed to weather upon which three or more motor vehicles of any kind, incapable of being operated, are placed.

**AVERAGE SETBACK** shall be the mean setback from a street right-of-way of buildings on both sides of a lot.



**BASE FLOOD ELEVATION** means the highest height, expressed in feet above sea level, of the level of flood waters occurring in the regulatory base flood.

**BASEMENT** means that portion of a building that is partly or completely below grade. A basement is a level within a building that has its floor surface below the adjoining ground level. Often due to grading conditions, a basement will also be considered as a story above grade, thereby contributing to the building height.

**BED AND BREAKFAST** or **TOURIST HOME** means a single-family dwelling containing sleeping and/or breakfast accommodations as an accessory use to the principal use. Such lodging shall have room accommodations for transient persons and wherein a charge is normally paid for such accommodations.

**BIKEWAY** means a pathway often paved and separated from streets and sidewalks designed to be used by bicycles.

**BILLBOARD** means a sign as defined in this ordinance including the supporting sign structure which advertises or directs attention of the general public to an establishment, business, or service and which is located on a separate site from the establishment, business, or service which the billboard advertises.

**BLIGHTED AREA** is an area characterized by deteriorating and/or abandoned buildings, inadequate or missing public or community services, and vacant land with debris, litter, lack of sanitation facilities, trash and junk accumulation and impacted by adverse environmental nuisances, such as noise, heavy traffic, and odors.

**BOARDING HOUSE** or **ROOMING HOUSE** means a dwelling unit or part thereof in which, for compensation, lodging and meals are provided; personal and financial services may be offered as well.

**BUFFER YARD** means an area or areas located within districts or land use classifications which extend along adjacent property lines abutting other districts.

**BUILDING** means any structure having a roof supported by walls which is solidly enclosed, including any area which is solidly enclosed with glass or any other rigid material which will not allow for the passage of air.

**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.

**BUILDING FOOTPRINT** is the land area on which a proposed building is located.

**BUILDING, HEIGHT OF** means the vertical distance measured from the finished grade to the top of the highest roof beams on a flat or shed roof, the deck level on a mansard roof, and the average distance between eaves and the ridge level for gable, hip, and gambrel roofs. Note: Mechanical equipment,

chimneys, air conditioning units, elevator penthouses, church spires and steeples, water towers, and similar appurtenances are exempted from height restrictions. However, these exclusive items may not exceed the height limit by more than fifteen feet. Height regulations shall be measured from the front elevation of the said building.

**BUILDING INSPECTOR/OFFICIAL** is the individual designated by the appointing authority to enforce the provisions of the building code.

**BUILDING, MAIN** means the principal structure or the principal building on a lot or the building or the principal building housing the principal use on a lot.

**BUILDING, PARCEL** means a fraction of a tract of land containing one or more building lots.

**BUILDING PERMIT** means written permission issued by proper authority for the construction, repair, alteration, or addition to a structure.

**CAREGIVER** is an adult who provides care for a mentally or physically impaired person within the Commonwealth. A caregiver shall be either related by blood, marriage or adoption to or the legally appointed guardian of the mentally or physically impaired person for whom he is caring.

**CARRY-OUT RESTAURANT** means an establishment that by design of the physical facilities, service, or packaging sells prepared ready-to-eat foods intended primarily to be consumed off the premises.

**CEMETERY** means property used for interring of the dead.

**CHESAPEAKE BAY PRESERVATION AREAS (CBPA)** means any land designated as such on the Chesapeake Bay Preservation Area Map. A CBPA shall consist of both a Resource Protection Area (RPA) and a Resource Management Area (RMA) and shall also include any area designated as an Intensely Developed Area (IDA).

**CHILD CARE CENTER** means any facility, other than a family home, established for providing childcare, supervision, and protection of children.

**CHURCH** means a building or structure, or groups of buildings or structures, that by design and construction are primarily intended for conducting organized religious services and associated accessory uses.

**CLUB** means a group of people organized for a common purpose to pursue common goals, interests, or activities and usually characterized by certain membership qualifications, payment of fees and dues, regular meetings, and a constitution and by-laws.

**COMMERCIAL USE** is an activity involving the sale of goods or services carried out for profit.

**COMMISSION** shall mean the Cape Charles Planning Commission.

**COMPREHENSIVE PLAN** is a master plan, long-range plan, intended to guide the growth and development of a community or region that typically includes inventory and analytic sections leading to recommendations for the community's future economic development, housing, recreation and open space, transportation, community facilities, and land use, all related to the community's goals and objectives for these elements.

**CONDITIONAL USE** means a use permitted in a particular zoning district upon showing that such use in a specified location will comply with all the conditions and standards for the location or operation of the use as specified in the zoning ordinance and authorized by the approving agency.

**CONDITIONAL USE PERMIT** is a permit recommended by the Planning Commission and issued by the Town Council stating that the conditional use meets all conditions set forth in local ordinances.

**CONDOMINIUM** means:

1. A system of separate ownership of individual units in a multiple unit building or development. All the owners have a right in common to use the common elements of the building or development with separate ownership confined to the individual units. See Code of Virginia Section 55-79.39 et. seq.
2. Individual ownership of a single unit in a multi-unit structure in which common ownership may exist of the land and other amenities as so specified in the source of title.

**CONTINUING CARE RETIREMENT COMMUNITY** is an age-restricted development that provides a continuum of accommodations and care, from independent living to long-term bed care, and enters into contracts to provide lifelong care in exchange for the payment of monthly fees and an entrance fee in excess of one year of monthly fees.

**COOPERATIVE** means real estate owned by an association, each of the members of which is entitled, by virtue of his ownership interest in the association, to exclusive possession of a unit. (See Code of Virginia Section 55-424 et. seq.)

**CONTRIBUTING STRUCTURE OR PROPERTY** means a structure, building, or place constructed before 1940 OR which has special significance because of notable architectural or historic features relating to the cultural or artistic heritage of the community which are of such importance as to warrant conservation and preservation. (from 8.38)

**COUNTRY CLUB** is land area and buildings containing golf courses, recreational facilities, a clubhouse, and customary accessory uses open to members and their guests.

**CRAWL SPACE** is a space between the ceiling of one story and floor of the next story, which usually contains pipes, ducts, wiring and lighting fixtures, and permits access but is too low for standing.

**CROP** is a harvestable product planted, grown, and cultivated in the soil.

**DECK** is an uncovered platform, constructed of wood or wood substitute.

**DEMOLITION PERMIT** means the official authorization in writing to remove part or all of a building or structure.

**DENSITY** means the total number of families, individuals, dwelling units, households, or housing structures per unit of land.

**DEVELOPER** means the owner or any person with written authorization for the owner who intends to improve or to construct improvements upon any given property.

**DEVELOPMENT** means the division of a parcel of land into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any mining, excavation, landfill, or land disturbance; any use or extension of the use of land.

**DISTRICT** is a part, zone, or geographical area within the municipality within which certain zoning or development regulations apply.

**DOG PEN** means any structure used to enclose and confine domestic canines outside of the principal building or structure on a lot. Pens shall be located only in the rear yard and in accordance with the Town's zoning regulations. Pens shall be designed to provide the canines with shelter from the elements of nature and constructed in such a manner as not to cause injury to the animal or interfere with movement, vision or respiration. Pens shall be in a clean, dry, and sanitary condition at all times. Animal waste shall not be allowed to accumulate.

**DWELLING** means a structure or portion thereof that is used exclusively for human habitation.

**DWELLING, ACCESSORY** is a dwelling unit which is an accessory use to a single-family dwelling or commercial use in the Commercial – Residential District.

**DWELLING, MOBILE HOME** or **MANUFACTURED HOME** means a special form of one-family dwellings with the following characteristics:

1. designed for long-term occupancy and containing sleeping accommodations, a flush toilet, a tub or shower, and kitchen facilities, with plumbing and electrical connections provided for attachments to outside systems
2. designed to be transported after fabrication on its own wheels
3. arriving complete at the site where it is to be occupied, usually including major appliances and furniture and ready for occupancy except for minor and incidental unpacking and assembly operations, location and provision of support on site, connection with utilities and the like
4. intended to be used other than as a component in a structure two or more stories in height.

**DWELLING, MULTI-FAMILY** is a building containing three or more dwelling units, including units that are located one over the other.

**DWELLING, SEASONAL** is a dwelling unit not used as a principal residence that may be occupied weekends and for brief periods during the year.

**DWELLING, SINGLE FAMILY** means a structure arranged or designed to be occupied by one family, the structure having only one dwelling unit.

**DWELLING, TOWNHOUSE** is a one-family dwelling in a row of at least three such units in which each unit has its own front and rear access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more vertical common fire-resistant walls.

**DWELLING UNIT** means one or more rooms, designed, occupied, or intended for occupancy as a separate living quarter with cooking, sleeping, and sanitary facilities provided within the dwelling unit for the exclusive use of a single family maintaining a household.

**EASEMENT** is a grant of one or more of the property rights by the property owner to and/or for use by the public, a corporation, or another person or entity.

**ENGINEER** means a professional engineer licensed by the Commonwealth of Virginia.

**ENLARGEMENT** means an increase in the size of an existing structure or use, including the physical size of the property, building, parking, and other improvements.

**EXISTING USE** is the use of a lot or structure at the time of the enactment of the zoning ordinance.

**FAMILY** means a group of individuals not necessarily related by blood, marriage, adoption, or guardianship living together in a dwelling unit as a single housekeeping unit under a common housekeeping management plan based on an intentionally structured relationship providing organization and stability.

**FARM** or **FARMLAND** is a parcel of land used for agricultural activities.

**FENCE** means an artificially constructed barrier of any material or combination of materials erected to enclose, screen, or separate areas.

**FLOOD PLAIN** means the channel and the relatively flat area adjoining the channel of a natural stream, river, or body of water that has been or may be covered by floodwater.

**FLOOR AREA** is the sum of the gross horizontal area of the several floors of a building or structure from the exterior face of the interior walls, or from the centerline of a wall separating two buildings, but excluding any space where the floor-to-ceiling height is less than six feet.

**FORESTRY** means an establishment primarily engaged in the operation of timber tracts, tree farms, forest nurseries, the gathering of forest products, or in performing forest services.

**FRONTAGE** is the width in linear feet of each lot where it abuts the right-of-way of any public or private street.

**FUNERAL HOME** is a building used for the preparation of the deceased for burial and the display of the deceased and rituals connected therewith before burial or cremation.

**GFA** means Gross Floor Area.

**GARAGE** means a deck, building, or parking structure, or part thereof, used or intended to be used for the parking and storage of vehicles.

**GARAGE, PRIVATE RESIDENTIAL** is a structure that is an accessory to a residential building and that is used for the parking and storage of vehicles owned and operated by the residents thereof and that is not a separate commercial enterprise available to the general public.

**GOLF COURSE** means a tract of land laid out for at least nine holes for playing the game of golf and improved with tees, greens, fairways, and hazards, and that may include a clubhouse and shelter.

**GOVERNING BODY** shall mean the Cape Charles Town Council.

**GRADING** is the act of excavation or filling or combination thereof or any leveling to a smooth horizontal or sloping surface on a property, but not including normal cultivation associated with an agricultural operation.

**GROUND COVER** means grasses or other plants and landscaping grown to keep soil from being blown or washed away.

**GROUP HOME** is a residential facility, licensed by the Department of Behavioral Health and Developmental Services, in which no more than eight individuals with mental illness, mental retardation, or developmental disabilities reside, with one or more residential counselors or other staff persons. For the purposes of this ordinance, mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined in § 54.1-3401 of the Code of Virginia.

**GUEST HOUSE** means living quarters on the same premises with the main building for use by temporary guest(s) of the occupant of the premises, such quarters having no separate utility meters and not rented or otherwise as a separate building.

**HARBOR DISTRICT** a zoning district emphasizing the maritime experience of Cape Charles.

**HEALTH CARE FACILITY** means a facility or institution, whether public or private, principally engaged in providing services for health maintenance and the treatment of mental or physical conditions.

**HISTORIC AREA** is an area designated by the state government within which buildings, structures, appurtenances, and places are of basic and vital importance because of their association with history; or because of their unique architectural style and scale and detail; or because of their being a part of or related to a square, park, or area or general arrangement of which should be preserved and/or developed according to cultural, historical, or architectural motives or purposes.

**HOME OCCUPATION** means any activity carried out for gain by a resident and conducted as a customary, incidental, and accessory use in the resident's dwelling. Home occupations must be constructed wholly within the building or structure and shall not exceed 50 percent of the total floor area and the residential appearances of the building or structure must be maintained.

**HOSPITAL** means an institution providing primary health services and medical or surgical care to persons, primarily inpatients, suffering from illness, disease, injury, deformity, and other abnormal physical or mental conditions and including, as an integral part of the institution, related facilities, such as laboratories, outpatient facilities, training facilities, medical offices, and staff residents.

**HOTEL** is a building in which lodging or boarding and lodging facilities are provided for transient guests, and offered to the public for compensation and in which ingress and egress to and from all rooms are through an inside lobby or office supervised by a person in charge at all hours.

**HOUSEHOLD** means a family living together in a single-family dwelling unit with common use of all living and eating areas and facilities for the preparation and serving of food within the dwelling unit.

**IMPERVIOUS** is any paved, hardened or structural surfaces which prevent or impede the infiltration of stormwater into the soil.

**IMPROVEMENT** means any permanent structure that becomes part of, placed upon, or is affixed to real estate.

**INDUSTRIAL, LIGHT** means industrial uses that meet the performance standards, bulk controls, and other requirements established in an ordinance.

**INDUSTRIAL PARK** means any tract of land that is planned, developed, and operated as an integrated facility for a number of individual industrial uses, with consideration of transportation facilities, circulations, parking, utility needs, aesthetics, and compatibility.

**INDUSTRY** means those fields of economic activity including forestry, fishing, hunting, and trapping; mining; construction; manufacturing; transportation; communications; electric, gas, and sanitary services; and wholesale trade.

**INN** means a commercial facility for the housing and feeding of transients.

**JUNKYARD** means any area, lot, parcel, building, or structure or part thereof used for the storage, collection, processing, purchase, sale, salvage, or disposal of junk.

**KENNEL** means a commercial establishment in which dogs or domesticated animals are housed, groomed, bred, boarded, trained, or sold, all for a fee. This includes any building or premises used, designed, or arranged for the boarding or breeding or care of four or more dogs, cats, or other domesticated pets of at least six months of age.

**LAND USE** means a description of how land is occupied or utilized.

**LANDSCAPE** means an expanse of natural scenery; lawns, trees, plants, and other natural materials, such as rock and wood chips and decorative features, including sculptures, patterned walks, fountains, and pools.

**LANDSCAPE PLAN** is a plan indicating the location, size, quantity and species of replacement trees and shrubbery.

**LANDSCAPE ZONE** is an area reserved for the growing and maintenance of landscape materials, including approved street trees and ground cover.

**LODGING HOUSE** means a facility in which rental sleeping accommodations are provided and in which meals may also be provided as part of the fee.

**LOT** means a parcel of land occupied by a main structure or to be occupied by a main structure or group of main structures and accessory structures, together with such yards, open space, and lot areas as are required by this ordinance, and having frontage upon a street, either shown on a plat of record or considered as a unit of property and described by metes and bounds.

**LOT AREA** means the total area within the lot lines of a lot, excluding any street right-of-ways.

**LOT, CORNER** means a lot or parcel of land abutting upon two or more streets at their intersection or upon two parts of the same street forming an interior angle of less than 135 degrees.

**LOT COVERAGE** is that portion of the lot that is covered by buildings.

**LOT DEPTH** means the average distance measured from the front of the lot line to the rear of the lot line.

**LOT, FLAG** means a lot not meeting minimum frontage requirements and where access to the public road is by narrow private right-of-way or driveway.

**LOT FRONTAGE** means the length of the front lot line measured at the street right-of-way line.



**LOT LINE** means a line of record bounding a lot that divides one lot from another lot or from a public or private street or any other public space.

**LOT LINE, FRONT** is the lot line separating a lot from the street right-of-way.

**LOT LINE, REAR** is the lot line opposite and most distant from the front lot line. In the case of a triangular or otherwise irregularly shaped lot, a line ten feet in length entirely within the lot, parallel to and at a maximum distance from the front lot line.

**LOT OF RECORD** means a lot that exists as shown or described on a plat or deed in the records of the local registry of deeds.

**LOT WIDTH** is the horizontal distance between the side lot lines measured at right angles to its depth along a straight line parallel to the front lot line at the minimum required building setback line.

**LOW INCOME HOUSING** is housing that is economically feasible for families whose income level is categorized as low within the standards promulgated by the U.S. Department of Housing and Urban Development or the appropriate housing agency.

**MANUFACTURED HOUSING** means factory built, single-family structures that meet national standards.

**MANUFACTURING** is an establishment engaged in the mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the creation of products, and the blending of materials, such as lubricating oils, plastics, resins, or lacquers.

**MARINA** is a facility for the storing, servicing, fueling, berthing, and securing of boats and that may include eating, sleeping, and retail facilities for owners, crews, and guests.

**MENTALLY or PHYSICALLY IMPAIRED PERSON** is a person who is a resident of Virginia and who requires assistance with two or more activities of daily living, as defined in § 63.2-2200 of the Code of Virginia, as certified in writing by a physician licensed in the Commonwealth of Virginia.

**MIXED USE DEVELOPMENT** is the development of a tract of land, building, or structure with a variety of complementary and integrated uses, such as but not limited to, residential, office, manufacturing, retail, public, or entertainment in a compact urban form.

**MOBILE HOME PARK** is a site containing space with the required improvements and utilities that are leased for the long-term placement of manufactured houses and that may include services and facilities for the residents.

**MOTEL** is one or more buildings in which lodging or board and lodging are provided for transient guests for compensation. Ingress and egress to and from

all rooms are made primarily directly from an exterior walkaway rather than from an inside lobby.

**MUNICIPAL COMMUNITY CENTER.** See 'Neighborhood Community Center.'

**NEIGHBORHOOD** is an area of the community with characteristics that distinguish it from other areas and that may include distinct ethnic or economic characteristics, housing types, schools, or boundaries defined by physical barriers, such as roads, railroads, or other natural features.

**NEIGHBORHOOD COMMUNITY CENTER** is a facility within Residential Districts intended for the use of Town citizens for recreational and educational use.

**NON-CONFORMING LOT** is a lot, the area, dimensions, or location of which was lawful prior to the adoption, revision, or amendment of the zoning ordinance but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.

**NON-CONFORMING STRUCTURE** or **BUILDING** is a structure or building, the size, dimensions, or location of which was lawful prior to adoption, revision, or amendment of the zoning ordinance but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.

**NON-CONFORMING USE** is a use or activity that was lawful prior to the adoption, revision, or amendment of the zoning ordinance but fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.

**NON-CONTRIBUTING STRUCTURE** means a structure built after 1940 OR which has been altered to such a degree that is no longer representative of the period in which it was built or is in such poor physical condition that its retention is difficult. (from the Historic District guidelines)

**OCCUPANCY PERMIT** is a required permit allowing the use of a building or structure after it has been determined that all the requirements of applicable ordinances have been met.

**OFFICE** means a room or group of rooms for conducting affairs of a business, profession, service, industry, or government and generally furnished with desks, tables, files, and communication equipment.

**OFF-SITE PARKING** means parking provided for a specific use but located on a site other than the one on which the specific use is located.

**OPEN SPACE** is a lot or portion of a lot set aside, designated or reserved for the outdoor enjoyment of the public or for all persons occupying a building on the lot, and is preserved as natural areas or is designed as a park or recreational area.

**OUTDOOR STORAGE** means the keeping in an enclosed area of any goods, junk, material, merchandise, or vehicles in the same place for more than twenty-four hours.

**OVERLAY ZONE** is an area where additional requirements are superimposed upon a base zoning district or underlying district.

**PARK** means a tract of land designated and used by the public for active and passive recreation.

**PATIO** is an uncovered courtyard composed of a paved surface such as concrete, tile, or brick which lies directly on the ground.

**PAVERS** means preformed paving blocks that are installed on the ground to form patterns while at the same time facilitate pedestrian and vehicular travel.

**PEN** means a small enclosure used for the concentrated confinement and housing of animals, a place for feeding and fattening animals, or a coop. Enclosed pastures or range with an area in excess of one hundred square feet for each animal shall not be regarded as a pen.

**PERMEABILITY** is the ease with which air, water, or other fluids can move through soil or rock.

**PERMIT** is any written governmental permission issued by an authorized official, empowering the holder thereof to do some act not forbidden by law but not allowed without such authorization.

**PERMITTED USE** means any allowable use in a zoning district and subject to the restrictions applicable to the zoning district.

**PERVIOUS** is any surface or element through which water can infiltrate directly into the ground.

**PERVIOUS PAVING** is any paving surface that presents an opportunity for precipitation to infiltrate or percolate directly into the ground.

**PHASE** or **PHASED** is subparts or segments of construction projects where the subpart or segment is constructed and stabilized prior to completing construction activities on the entire construction site.

**PICNIC AREA** means a place equipped with tables, benches, grills, and trash receptacles for people to assemble, cook, eat, and relax.

**PLACE OF WORSHIP** means (1) a church, synagogue, temple, mosque or other facility that is used for prayer, worship, and related activities by persons of similar beliefs; (2) a special purpose building that is architecturally designed and particularly adapted for the primary use of conducting on a regular basis formal religious services by a religious congregation.

**PLANNED UNIT DEVELOPMENT** means an area of minimum contiguous size as specified by this ordinance to be planned, developed, operated, and

maintained as a single entity and containing one or more residential clusters or planned unit residential developments and one or more public, quasi-public, commercial, or industrial areas in such ranges or ratios of nonresidential uses to residential uses as specified by this ordinance.

**PLAT** means a map representing a tract of land showing the boundaries and location of individual properties and streets; or a map of a subdivision or site plan.

**PLAYGROUND** means an active recreational area with a variety of facilities, including equipment for younger children as well as court and field games.

**PLOT** means a single-family parcel of land or a parcel of land that can be identified and referenced to a recorded plat or map.

**PORCH** means a roofed area, which may be screened, usually attached to or part of and with direct access to or from a building. A porch becomes a room when the enclosed space is heated or air conditioned, or has water and sewer service, and when the percentage of window area to wall area is less than fifty percent.

**PROFFER** is an offer of restrictions on use of property presented by an applicant for conditional rezoning or a special exception.

**PROPERTY** means a lot, parcel, or tract of land together with the building and structures located thereon.

**PUBLIC AREA** means any park, playground, trail, path, or other recreational area and open space; scenic and historical sites; schools and other public buildings and structures; and other places where the public is directly or indirectly invited to congregate.

**PUBLIC ART** is a fountain, sculpture, painting, mural, or similar object that is sited within a planned development as a focal point and is intended for the enjoyment of the general public.

**PUBLIC UTILITY** means a closely regulated enterprise with a franchise for providing to the public a utility service deemed necessary for the public health, safety, and welfare.

**PUBLIC UTILITY FACILITY** means any building, structure, and facility including generating and switching stations, poles, lines, pumping stations, repeaters, antennas, transmitters, and receivers, valves, and all buildings and structures relating to the furnishing of utility services, such as electric, gas, telephone, water, sewer, and public transit, to the public.

**RECREATION, ACTIVE** means leisure-time activities, usually of a formal nature and often performed with others, requiring equipment and taking place at prescribed places, sites, or fields.

**RECREATION, PASSIVE** means activities that involve relatively inactive or less energetic activities, such as walking, sitting, picnicking, card games, checkers, and similar games.

**RESIDENCE** means a home or abode or place where an individual is actually living at a specific point or time.

**RESTAURANT** means an establishment where food and drink are prepared and served and consumed primarily within the principal building.

**RESTORATION** means the replication or reconstruction of a building's original architectural features.

**RETAIL** is the selling of goods, wares, or merchandise directly to the ultimate consumer or persons without a resale license.

**RETAIL SALES** mean an establishment engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods.

**RETAINING WALL** is a structure constructed and erected between lands of different elevations to protect structures and/or to prevent erosion.

**RIGHT-OF-WAY** means (1) a strip of land acquired by reservation, dedication, forced dedication, prescription or condemnation and intended to be occupied by a road, crosswalk, railroad, electric transmission lines, oil or gas pipelines, water line, sanitary storm sewer, and other similar uses; (2) generally the right of one to pass over the property of another.

**SATELLITE EARTH STATION ANTENNA** means a parabolic or dish-shaped antenna over 24 inches in diameter or any other apparatus or device that is designed for the purpose of receiving radio waves.

**SETBACK** is the minimum distance allowable between a building or structure and any lot line.

**SIGN** means any letters, words, numbers, figures, devices, designs, emblems, trademarks, or any parts or combinations thereof, by which anything is made known. The structure, supports, or uprights on which any sign is supported shall be considered a part of the sign.

**SIGN AREA** means the entire face of a sign, including the advertising surface and any framing, trim, or molding but not including the support structures.

**SIGN, BUSINESS** is a sign that directs attention to a business or profession conducted, or to a commodity or service sold, offered, or manufactured, or to an entertainment offered on the premises where the sign is located.

**SIGN, DIRECTIONAL** means signs limited to directional messages, principally for pedestrian or vehicular traffic, such as "one way," "entrance," and "exit."

**SIGN, FREESTANDING** means any non-movable sign not affixed to a building or solid structure.

**SIGN, HOME OCCUPATION** means a sign containing only the name of the occupation of a permitted home occupation.

**SIGN, POLITICAL** means a temporary sign announcing or supporting political candidates or issues in connection with any national, state, or local election.

**SIGN, REAL ESTATE** means a sign pertaining to the sale or lease of the premises or a portion of the premises on which the sign is located.

**SIGN, TEMPORARY** means a sign or advertising display constructed of cloth, canvas, fabric, plywood, or other light material and designed or intended to be displayed for a short period of time.

**SITE PLAN** means the development plan for one or more lots on which is shown the existing and proposed conditions of the lot, including topography, vegetation, drainage, flood plains, wetlands, and waterways; landscaping and open spaces; walkways; means of egress and ingress; circulation; utilities; structures and buildings; signs and lighting; berm; buffers and screening devices; surrounding development; and any other information that reasonably may be required in order that an informed decision can be made by the approving authority.

**SPOT ZONING** means the rezoning of a lot or parcel of land to benefit an owner for a use incompatible with the surrounding land uses and that does not further the comprehensive plan.

**STOOP** is a small porch (covered or uncovered) and the step(s) to it.

**STORY** is that portion of a building included between the surface of any floor and the surface of the floor above it, then the space between the floor and the ceiling above it, and including those basements used for principal use.

**STORY ABOVE GRADE** is any story having its finished floor surface entirely above grade plane, except that a basement shall be considered as a story above grade plan where the finished surface of the floor above the basement is:

1. More than 6 feet above grade plane; or
2. More than 6 feet above the finished ground level for more than 50% of the total building perimeter; or
3. More than 12 feet above the finished ground level at any point.

**STREET** means any vehicular way that (1) is an existing state, county, or municipal road; (2) is shown upon a plat approved pursuant to law; (3) is approved by other official action; or (4) is shown on a plat duly filed and recorded in the office of the county recording officer prior to the appointment of the planning commission and the grant to such commission of the power to review plats; includes the land between the street lines, whether improved or unimproved.

**STREET, ARTERIAL** means a street which moves or is designed to move large volumes of traffic from one part of town to another, connecting residential areas with employment centers and centers of commercial activity. Traffic volumes are usually 500 vehicles per day or greater.

**STREET, COLLECTOR** means a street that collects traffic from local streets and connects with minor and major arterial.

**STREET, LOCAL** means a street designed to provide vehicular access to abutting property and to discourage through traffic.

**STREET SCAPE** means a design term referring to all the elements that constitute the physical makeup of a street and that, as a group, define its character, including building frontage, landscaping, street paving, street furniture, trees and other plantings, awnings, and marquee signs and lighting.

**STRUCTURAL ALTERATION** means any change in either the supporting members of a building, such as bearing walls, columns, beams and girders, or in the dimension or configuration of the roof or exterior walls.

**STRUCTURE** means a combination of materials to form a construction for use, occupancy, or ornamentation whether installed on, above, or below the surface of land or water.

**SUBDIVISION** means the division of a lot, tract, or parcel of land into two or more lots, tracts, parcels, or other divisions of land for sale, development, or lease.

**TAKING** means to take, expropriate, acquire, or seize property without compensation.

**TRACT** is an area, parcel, site, piece of land, or property that is the subject of development applications.

**TRAILER** means a structure standing on wheels, towed or hauled by another vehicle, and used for short-term human occupancy, carrying materials, goods, or objects or as a temporary office.

**TRANSPORTATION FACILITY** is any structure or facility that is primarily used, as part of a transit system, for the purpose of loading, unloading, or transferring passengers or accommodating the movement of passengers from one mode of transportation to another.

**USE** means the purpose or activity for which land or buildings are designed, arranged, or intended or for which land or buildings are occupied or maintained.

**UTILITY INSTALLATION.** See Public Utility Facility.

**VACANCY** means any unoccupied land, structure, or part thereof that is available and suitable for occupancy.

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

**VIEWSHEDS** are the areas of land extending south from Washington Avenue to Bayshore Lane, that align in width and angle with the existing streets to the north (including Harbor Street and Peach Street), that shall be restricted to only ground-level development and their amenities, including but not limited to streets, pedestrian or multi-modal trails, or linear parks, so as to maintain the view from the north to the south and vice-versa.

**YARD** is an open space that lies between the principal building or buildings and the nearest lot.

**YARD, FRONT** means a space extending the full width of the lot between any building and the front lot line and measured perpendicularly to the building at the closest point to the front lot line.

**YARD, REAR** means a space extending across the full width of the lot between the principal building and the rear of the lot and measured perpendicularly to the building to the closest point of the rear lot line.

**YARD, SIDE** means a space extending from the front yard to the rear yard between the principal building and the side lot line and measured perpendicularly from the side lot line to the closest point of the principal building.

**ZONING** or **TO ZONE** means the process of classifying land within a locality into areas and districts, being generally referred to as “zones,” and the prescribing and application in each of these areas and district regulations concerning buildings and structural designs, building and structure placement, and uses to which the land, buildings, and structures within such designated areas may be put.