

PLANNING COMMISSION MEETING

A G E N D A

TOWN OF CHINCOTEAGUE, VIRGINIA

August 11, 2015 - 7:00 P.M. – Council Chambers - Town Hall

CALL TO ORDER

INVOCATION

PLEDGE OF ALLEGIANCE

PUBLIC PARTICIPATION

AGENDA REVIEW/DISCLOSURES

1. Approval of the June 9, 2015 regular meeting minutes.
2. Public Hearing:
Proposed ordinance amendments regarding Wayside Stands and the Sketch Plan/Subdivision Plan Review process.
3. Zoning/Subdivision Ordinance Review – Discussion of draft Site Plan Ordinance
4. Information/Discussion Items
 - a) Report on Development Activity
 - b) PC Work Plan for 2015
 - c) HB 1849
5. Commission Members Announcements or Comments

ADJOURN

Next Regular Meeting: September 8, 2015

PLANNING COMMISSION MEETING
9 June 2015
MINUTES

Members Present:

Mr. Ray Rosenberger, Chairman
Mrs. Mollie Cherrix, Vice Chairperson
Mr. Ben Ellis, Councilman
Mr. Michael Dendler

Mr. Jeff Potts
Mr. Spiro Papadopoulos

William Neville, Planning Director

Members Absent:

Mr. Steve Katsetos

CALL TO ORDER

Chairman Rosenberger called the meeting to order at 7:00 pm in the Council Chambers. The invocation was provided by Commissioner Potts, followed by the Pledge of Allegiance led by Chairman Rosenberger.

PUBLIC PARTICIPATION

Two (2) members of the public were present.

AGENDA REVIEW/DISCLOSURES

Chairman Rosenberger asked for a review of the Agenda. Commissioner Potts moved approval of the agenda, seconded by Vice Chairperson Cherrix. The agenda was unanimously approved.

- 1. Approval of the April 14, 2015 regular meeting minutes, and the May 4, 2015 joint public hearing minutes.**
Corrections on page 10 and page 13 were requested by Councilman Ellis and Commissioner Papadopoulos. Councilman Ellis moved approval of the minutes as corrected, seconded by Commissioner Potts and approved unanimously.
- 2. Zoning/Subdivision Ordinance Review – Site Plans**
Town Planner Neville provided a quick recap of the Staff Report on the Sketch Plan process in Town Code Appendix B and whether the Planning Commission could become more involved in development plan review. Proposed redline changes were discussed and a correction to Section 14.02 (a) was identified to make it clear that submittal of a sketch plan would be for ‘review’ only and not for ‘approval’.

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Section 14.01 was modified to confirm the reasons for Planning Commission review including compliance with the Comprehensive Plan and other applicable regulations.

Section 13.04 was proposed to require review and approval by the Zoning Administrator of any division of land up to and including 3 lots for minimum conformance with zoning regulations. Chairman Rosenberger commented that this provision would prevent non-conforming lots from being recorded which could not be built on.

Staff recommended that these proposed changes could be presented to the public for comment at a public hearing in August or September to see if there is support for a Planning Commission recommendation to amend the Subdivision Ordinance. Commissioner Potts agreed that a public hearing was necessary. Staff advised that these simple changes to the ordinance should also be supported by a checklist for submission requirements, a timeline for review, and direction from Town Council regarding a fee or fee waiver for the different levels of review.

Commissioner Potts commented that most recent subdivision activity had proposed to combine lots rather than subdivide them. He repeated the position that a property owner should be allowed to divide 2 or 3 lots without any review as a basic property right. Discussion continued.

Commissioner Papadopoulos motioned that the proposed amendment of the Subdivision Ordinance as corrected should be advertised for public hearing at the regular meeting of the Planning Commission in August, seconded by Vice Chairperson Cherrix. The motion passed unanimously.

Mr. Neville continued his presentation of the staff report information regarding the possible addition of site plan standards to the Land Subdivision and Development Ordinance. He used the recent development applications for new hotels as an example of how Town Code Appendix B does not have minimum requirements for the submission of a site plan or the necessary contents of an application. In other communities, this section of the Code often includes minimum design standards for public and private site improvements.

A sample ordinance from Cape Charles, VA was provided to illustrate how the basic requirements for site plan review could be adopted. Staff compared these requirements with the Town review comments on a recent site plan application and noted that the ordinance should address the types of concerns mentioned in a typical plan review.

Commissioner Papadopoulos suggested that the Cape Charles site plan ordinance should be adapted to provide a draft version for the Town of

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Chincoteague for consideration over the next several meetings. Staff was requested to evaluate several of the criteria having to do with the minimum area of disturbance (2,500 sf), and the review timeframe (45 to 30 days). Mr. Neville commented on the typical review process which typically has a first and second site plan submission prior to approval or denial of the application, plus the sketch plan review process at the beginning. Timelines should also allow for agency reviews such as the Health Department, VMRC, DEQ, County Erosion Control/Stormwater, etc.

Commissioners discussed how and when development applications would be reviewed for conformance with the Comprehensive Plan. Commissioner Papadopoulos stated that the Commission has the responsibility under State Code to review significant development activity and to provide recommendations to Town Council and Town Staff. He highlighted the Town's water supply as an issue which could be impacted by new development.

The subject of voluntary proffers or development conditions which could offset growth impacts on public infrastructure and utility capacity was identified for further study with the assistance of the Town Attorney.

3. Information/Discussion Items

- **Report on Development Activity**

Staff provided a memo reporting on the current development proposal for the Marina Hotel/Anchor Inn property. Commissioners reviewed the Town comment letter on the first submission site plan and discussed the proposed site improvements. Mr. Neville pointed out the challenge of committing to a 30 day approval period when there are outstanding issues such as the sewer system that are unresolved.

Chairman Rosenberger pointed out the issue of proximity between the proposed hotel and the US Coast Guard Station. USCG review will be required before the Town would consider approval of the site plan.

Commissioner Papadopoulos asked for consideration of lighting and protection of neighboring properties, roadways and the night sky from light pollution. He also asked for consideration of parking lot paving standards that would decrease impervious surfaces. There was discussion of how the recently adopted freeboard requirement and building height regulation would apply to the proposed hotel.

Commissioners considered the implications of fill on the site and how that would affect stormwater and floodwater drainage along Main Street. Chairman Rosenberger responded to several questions about how the Commission would comment on this type of application and noted that there was not a standard format in place yet.

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An advisory memo to Mr. Lewis and report to the Town Council were proposed as ways to communicate any issues identified by the Commission during a development activity review. Discussion continued on the topic of maintaining an adequate Town water supply to serve new development and the cost of infrastructure improvements including possible new wells.

- **PC Work Plan for 2015**

A new format for presenting work plan items and reporting on progress was presented by Staff. Current work items include 3f, 3h, 8e, and 8a. Additional review of Appendix B - LSDO under item 3g was discussed.

Commissioner Papadopoulos requested item 7a – Proffer Study and Guidelines be on the September meeting agenda. Town Planner Neville advised that proffered conditions for a rezoning application or development conditions for by-right site plans or subdivisions may also require an adequate capital facilities study as well.

Staff was requested to consult with the Town Attorney and collect information regarding options for developer contributions toward mitigating the impact of new development to be reviewed during the September regular meeting.

Chairman Rosenberger requested that items 3b – Stormwater Master Plan Phase 3, and 3e – Wastewater Service Districts should be a priority for future meetings. Items 3b, 3d, 4b, 5a, 5b, 6c, 6e, 7b, and 7c were discussed. Mr. Neville suggested that this updated Work Plan would serve as a reference for the Chairman to establish the agenda for future meetings.

3b-An update was requested from Public Works Director Harvey Spurlock regarding plans to continue with the ordinance development phase of the Stormwater Master Plan.

3e-The Planning Commission may work on recommendations for specific service wastewater service district boundaries for both residential and commercial uses.

5b-Staff to provide a copy of the existing DEQ shoreline plan for reference.

6e- Staff to provide a copy of the proposed Private Road policy currently being considered by the Public Works Committee

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- **Flood Information Service**

Planning Director Neville presented a copy of the standard form letter which staff has provided to property owners and insurance agents to confirm the FEMA flood insurance rate map information effective on May 18, 2015.

Commissioner Papadopoulos suggested a wording change in the last paragraph to make it clear that the Town of Chincoteague does not provide flood insurance.

4. Commission Members Announcements or Comments

No meeting will be held in July.

Chairman Rosenberger asked about whether a response was sent to Ms. Payne regarding a proposal for a historic designation on her property. Information regarding HB 2042 regarding mobile food vending on state highways was presented. A proposed wedding venue on North Main Street was discussed, along with the Zoning Administrator's response to a letter from the adjoining neighbor. Consideration of uses allowed by special permit or special exception was identified as a priority for the PC Work Plan. The study prepared by Curt Smith/A-NPDC regarding susceptibility of local roads to recurrent flooding and sea level rise was considered.

A regular Planning Commission meeting will be held on August 11, 2015 at 7pm.

ADJOURN

Councilman Ellis moved to adjourn the meeting, seconded by Commissioner Potts. The motion was unanimously approved.

Raymond R. Rosenberger Sr., Chairman



STAFF REPORT

To: Planning Commissioners

Through: Robert Ritter, Town Manager

From: William Neville, Director of Planning

Date: August 11, 2015

Subject: Public Hearing on Proposed Ordinance Amendments

The Planning Commission has completed its review of two proposed ordinance amendments and has advertised for a public hearing at the regular meeting on August 11, 2015. After considering any public comment received at the hearing, a recommendation may be presented to Town Council in September. Previous staff reports on each item are also attached for review.

1. Wayside Stands

Amend the Zoning Ordinance to establish a minimum standard requiring 4 parking spaces for any commercial use since that is already required as a minimum for home occupation uses.

Section 6.6.11. Any other commercial building not listed above, built, converted, modified or structurally altered shall provide one parking space for each 200 square feet of business floor space in the building and one parking space for each regular, full-time employee or full-time equivalent in the building or on the premises whose primary duties are in the building or on the premises. A minimum of four (4) parking spaces shall be provided. (Including libraries, museums and wayside stands.)

2. Sketch Plan Review

Amend the Land Subdivision and Development Ordinance to require administrative review and approval of any division of land, and to require sketch plan review (advisory only) including the Planning Commission for both major and minor subdivisions.

Section 13. Subdivision defined.

13.01. The division of a parcel of land and the establishment of any condominium regime, into four or more lots or parcels less than three acres each for the purpose of transfer of ownership or building development, or if a new street or road **(public or private)**, is involved in such division any division of a parcel of land. The term includes resubdivision and when appropriate to the context shall relate to the process of subdividing or to the land subdivided; except that the following division of land shall not be deemed a subdivision:

- (a) The sale and exchange of parcels between adjoining landowners where such separation does not create additional building sites.
- (b) The release of a portion of the security of any mortgage or deed of trust, provided that any sale of property presented to any mortgage or deed of trust which would otherwise constitute a subdivision of land shall be subject to the provisions of this ordinance.
- (c) The division of any parcel occasioned by an exercise of eminent domain by any public agency.
- (d) The division of land made solely for bona fide agricultural or natural resource conservation purposes.
- (e) The division of land for sale or gift to a member of the owner's immediate family.

13.02. *Major subdivision defined.* A "major subdivision" is a subdivision as defined in subsection 13.01 above which complies with the following:

- (a) Creates 11 or more lots from a parcel or parcels of land.

13.03. *Minor subdivision defined.* A "minor subdivision" is a subdivision as defined in subsection 13.01 above, which does not meet any of the conditions of a major subdivision as defined in subsection 13.02 above.

13.04. Division of land. Any division of a parcel of land, up to and including 3 lots must be reviewed and approved by the Zoning Administrator for minimum conformance with zoning regulations.

Section 14. Major subdivision.

14.01. *Purpose.* The purpose of the major subdivision review process is to ensure that larger scale developments are fully reviewed by the planning commission for ~~compliance-conformance~~ with the **Comprehensive Plan (authority provided by § 15.2-2232 of the Virginia Code)**, provisions of this ordinance and other applicable county and state regulations.

14.02. *Procedure for review of a subdivision.*

(a) Submittal of sketch plan (optional/mandatory), planning commission review and zoning administrator review.

(b) Submittal of preliminary (mandatory), **planning commission review and** zoning administrator approval.

(c) Submittal of final (mandatory), planning commission approval.

Before the preparation of a subdivision plat or plan, a subdivider shall confer with the zoning administrator for the town council, relative to the regulations contained in this ordinance, the comprehensive plan, the zoning ordinance, and other applicable ordinances. The purpose of such a conference is to assure that the applicant is made fully aware of all the requirements and interpretations of the existing ordinance, plus any amendments which are pending at the time of the plan or plat preparation. A sketch plan for discussion purposes ~~may shall~~ be submitted at the conference, **and presented at the next regular planning commission meeting, and shall be optional at the developer's discretion and shall not be a prerequisite for with the understanding that any information provided by the Town or subdivider shall be advisory and non-binding on** any final approvals.

Section 15. Minor subdivisions

15.01. *Purpose.* The purpose of the minor subdivision is to insure that every new lot created receives at least administrative review to insure that it meets applicable town and state regulations. It is the intent of the minor subdivision review process to keep the town abreast of development activity and to prevent the creation of unusable, hazardous, unsanitary, inconvenient or uneconomical lots.

15.02. *Procedure for review of minor subdivisions.*

(a) The procedure for review shall be the same as that for major subdivision, except that the final approving authority shall be the zoning administrator.

(b) The requirement for the preliminary plat approval is waived; however drafting and surveying requirements of the preliminary plat will be required in addition to the requirements for plat submittal for final approval.



STAFF REPORT

To: Planning Commission
From: William Neville, Director of Planning
Date: March 12, 2013 (**Updated March 10, 2015**)
Subject: Wayside Stands

Wayside Stands

Sec. 2.179. Wayside stand/market, roadside stand.

Any structure open on at least one side or land used for the sale or resale of products used by individual purchasers.



Zoning Administrator Kenny Lewis has identified the need to establish parking criteria for wayside stands and has requested that the Planning Commission include this during the next Ordinance update.

Current criteria for retail uses requires one space per 200 square feet of building plus one per employee. For many of the small seasonal markets where a wayside stand has been permitted, it is possible to share parking and safe access to the street with an adjacent business. In other locations, there will need to be a way to establish a minimum number of spaces for the public and then estimate or adjust the number based on use.

Home Occupation uses are required to have a minimum of 2 spaces per business. It seems reasonable to require the same of small wayside stands. Woody's Barbeque is also an example of a very successful wayside stand that requires a significant number of parking spaces which cannot be easily estimated from building size or number of seats.

Staff proposed the following modification of the home occupation parking standard to create a new ordinance section for use with wayside stands:

~~6.6.10.1. If a dwelling includes a home occupation For any wayside stand which has direct sales, a minimum of two off street parking spaces must be provided for the dwelling unit customers, and an additional ~~one~~two off-street parking spaces must be provided for ~~the home occupation~~each employee. Parking shall be identified by either signs or bumpers. ~~If more than one home occupation is located within a dwelling unit then two additional off-street parking spaces shall be provided for each home occupation. If a lot is utilized for outdoor food service purposes the following regulation shall apply: one space per four persons rated capacity.~~~~

The Planning Commission met on April 4, 2013 to consider the following alternate standard which modifies an existing ordinance section:

- *Wayside Stands*

Chairman Rosenberger presented a list of parking criteria from another community and asked the Commission to consider again whether specific criteria could be proposed for wayside stands. The following revision was briefly discussed as a minimum standard that would require 4 spaces for any commercial use since that is already required as a minimum for home occupation uses.

6.6.11. Any other commercial building not listed above, built, converted, modified or structurally altered shall provide one parking space for each 200 square feet of business floor space in the building and one parking space for each regular, full-time employee or full-time equivalent in the building or on the premises whose primary duties are in the building or on the premises. A minimum of four (4) parking spaces shall be provided. (Including libraries, museums and wayside stands.)

Commissioners agreed to consider this with other proposed revisions at the next regular meeting.

The Planning Commission met again on May 14, 2013 and voted to approve the following revised parking standard:

- *Parking Ordinance – Wayside Stands*

Chairman Rosenberger described a possible ordinance revision to establish a minimum standard requiring 4 spaces for any commercial use since that is already required as a minimum for home occupation uses. He asked Mr. Lewis if this revision would assist with wayside stands.

6.6.11. Any other commercial building not listed above, built, converted, modified or structurally altered shall provide one parking space for each 200 square feet of business floor space in the building and one parking space for

each regular, full-time employee or full-time equivalent in the building or on the premises whose primary duties are in the building or on the premises. A minimum of four (4) parking spaces shall be provided. (Including libraries, museums and wayside stands.)

Mr. Lewis presented the problem with wayside stands that do not have building floor space to measure, and yet still generate the need for safe off street parking for their commercial use. Adding a minimum parking requirement is needed.

Commissioners discussed various issues related to vehicle access, bike lanes, customer parking, employee parking, length of stay, permission to use nearby restrooms, outdoor eating areas, peddler sales, etc.

Commissioner Papadopoulos asked about the rationale for 4 spaces and indicated that 3 spaces would be more reasonable because we are trying to promote walking and biking along Maddox Boulevard not large parking lots. Councilman Muth suggested a 2 space customer parking requirement plus employee parking. Discussion continued on how to implement the requirement, parking restrictions along the road, staying out of bike lanes and other related topics.

Commissioner Potts made a motion to recommend approval of a minimum requirement of 4 parking spaces for other commercial uses such as wayside stands. Commissioner Papadopoulos provided a second to the motion and it was approved unanimously.

Staff recommended at the time that this amendment should be combined with other minor ordinance changes into an annual ordinance update. Amendments to the sign ordinance were also being considered in 2013 and were advertised separately for public hearing. As a result, this amendment was never forwarded to Town Council with a recommendation for approval and request to advertise for public hearing.

The Planning Commission has requested to review and re-consider forwarding this issue to Town Council along with any other possible Ordinance revisions as part of an annual zoning ordinance amendment process in March or April of 2015.



STAFF REPORT

To: Planning Commission
From: Bill Neville, Director of Planning
Date: April 14, 2015, **Revised June 9, 2015**
Subject: Land Subdivision and Development Ordinance Review

- ❖ **Sketch Plan Review**
 - ❖ **Site Plan Standards**
-

Sketch Plan Review - Following the completion of a 5 year update to the Town of Chincoteague Comprehensive Plan, the Planning Commission discussed how and when development activity on the Island will be reviewed for conformance with the goals and policies contained in the Plan. One idea presented at the last regular meeting was to review the current 'sketch plan' provision in the Land Subdivision and Development Ordinance (Town Code Appendix B) to see if a Planning Commission review process could be added.

The following section of a Virginia planning reference manual provides some background information about implementing Comprehensive Plan goals, objectives and strategies:

Tools for Managing the Form and Location of Growth - "2232" Review

As noted in Section II of this report, the comprehensive plan is considered advisory and it serves as a guide for the physical development of the territory within the locality's jurisdiction. However, according to § 15.2-2232 of the Code of Virginia, the comprehensive plan "shall control the general and approximate location, character, and extent of each feature shown." Thus, while the comprehensive plan itself does not directly regulate land use, the plan does have status as a fundamental instrument of land use control once it is adopted by the local governing body.

Section 15.2-2232 provides that unless a feature is already shown on the adopted plan, no street or connection to an existing street, park or other public area, public building or public structure, public utility facility or public service corporation, whether publicly or privately owned, shall be constructed, established or authorized until its location has been approved by the local

planning commission as being substantially in accord with the adopted comprehensive plan. As of 2009 localities are required to show on the transportation plan map of the comprehensive plan transportation corridors of statewide significance upon notification by the Commonwealth Transportation Board that such a corridor has been designated in the Statewide Transportation Plan.

Authority

Provided by § 15.2-2232 of the Virginia Code.

Implementation

A “2232 review” is required whenever a project is proposed to construct, establish or authorize a public facility not shown on the comprehensive plan. The local planning commission, if it holds a public hearing, is required to communicate its findings to the governing body. The governing body is not required to follow the planning commission’s recommendation. However, if the proposed facility does not conform to the comprehensive plan, it may not be constructed. Many localities combine preliminary subdivision plan approval by planning commissions with the “2232” review with respect to street conformity. Similarly, CIP reviews often include “2232” language in the planning commission recommendation with respect to the projects contained within the CIP.

Limitations

A primary limitation associated with the 2232 review centers on what activities prompt or require a review. To date, Virginia case law has clearly identified privately constructed wireless facilities in VDOT rights-of-way, sanitary landfills, school sites, parks and water impoundment facilities as activities requiring a 2232 review. Another 2232 issue involves the lack of specific code procedures that localities are to follow when conducting and administering a review. Note that unless there is clearly contrary language or depiction in the adopted comprehensive plan, the plan does not have to be amended as part of the “2232” review.

Enhancements

Making sure all localities conduct the 2232 review is essential. Many do not consistently do so. In addition, strong consideration should be given to mandating that all local planning commissions, when needed, hold a public hearing when conducting a 2232 review. At present, a planning commission is not required to hold a hearing unless directed to do so by the governing body. Thus, some planning commissions hold hearings and some do not. This lack of consistency has produced some confusion on the part of localities and citizens alike. Finally, by not conducting a 2232 review, a locality is shortchanging the planning process by denying itself the opportunity to use the limited but specific legal status or power the code gives the plan. Sponsorship of a 2232 review means the locality, even if it is the applicant, is following the plan. This sends a strong message that the plan is a critical tool of public policy.

(Managing Growth and Development in Virginia, APA Virginia Chapter, October 2011)

Selected Ordinance Section with possible revision (in red). This item is ready for further revision or recommendation by the Commission.

TOWN CODE – Appendix B Land Subdivision and Development Ordinance

Section 13. Subdivision defined.

13.01. The division of a parcel of land and the establishment of any condominium regime, into four or more lots or parcels less than three acres each for the purpose of transfer of ownership or building development, or if a new street or road is involved in such division (public or private), any division of a parcel of land. The term includes resubdivision and when appropriate to the context shall relate to the process of subdividing or to the land subdivided; except that the following division of land shall not be deemed a subdivision:

- (a) The sale and exchange of parcels between adjoining landowners where such separation does not create additional building sites.
- (b) The release of a portion of the security of any mortgage or deed of trust, provided that any sale of property presented to any mortgage or deed of trust which would otherwise constitute a subdivision of land shall be subject to the provisions of this ordinance.
- (c) The division of any parcel occasioned by an exercise of eminent domain by any public agency.
- (d) The division of land made solely for bona fide agricultural or natural resource conservation purposes.
- (e) The division of land for sale or gift to a member of the owner's immediate family.

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13.04. Division of land. Any division of a parcel of land, up to and including 3 lots must be reviewed and approved by the Zoning Administrator for minimum conformance with zoning regulations.

Section 14. Major subdivision.

14.01. *Purpose.* The purpose of the major subdivision review process is to ensure that larger scale developments are fully reviewed by the planning commission for compliance with the **Comprehensive Plan (authority provided by § 15.2-2232 of the Virginia Code)**, provisions of this ordinance and other applicable county and state regulations.

14.02. *Procedure for review of a subdivision.*

- (a) Submittal of sketch plan (~~optional~~mandatory), planning commission review and zoning administrator approval.**

(b) Submittal of preliminary (mandatory), planning commission review and zoning administrator approval.

(c) Submittal of final (mandatory), planning commission approval.

Before the preparation of a subdivision plat or plan, a subdivider shall confer with the zoning administrator for the town council, relative to the regulations contained in this ordinance, the comprehensive plan, the zoning ordinance, and other applicable ordinances. The purpose of such a conference is to assure that the applicant is made fully aware of all the requirements and interpretations of the existing ordinance, plus any amendments which are pending at the time of the plan or plat preparation. A sketch plan for discussion purposes ~~may~~ shall be submitted at the conference, and presented at the next regular planning commission meeting, and shall be optional at the developer's discretion and shall not be a prerequisite for with the understanding that any information provided by the Town or subdivider shall be advisory and non-binding on any final approvals.

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15.01. *Purpose.* The purpose of the minor subdivision is to insure that every new lot created receives at least administrative review to insure that it meets applicable town and state regulations. It is the intent of the minor subdivision review process to keep the town abreast of development activity and to prevent the creation of unusable, hazardous, unsanitary, inconvenient or uneconomical lots.

15.02. *Procedure for review of minor subdivisions.*

(a) The procedure for review shall be the same as that for major subdivision, except that the final approving authority shall be the zoning administrator.

(b) The requirement for the preliminary plat approval is waived; however drafting and surveying requirements of the preliminary plat will be required in addition to the requirements for plat submittal for final approval.

Site Plan Standards - On a related note, it would be beneficial to review and recommend improvements to the Zoning and Subdivision Ordinances which provide clear standards for both subdivision and site plan review criteria. These ordinances are the tools that are used to implement the Comprehensive Plan.

The following section of an online planning reference provides some background information about adopting standards for site plans:

Site Plans and Subdivision Plats Distinguished

Site plans are creatures of the zoning act. Local governments are authorized to require site plans (also known as "plans of development") pursuant to §15.2-2286(A)(8) of the Code of Virginia. A local government may adopt a zoning ordinance. §15.2-2280. In order to engage in site plan review, a local government must have adopted a zoning ordinance. Va. Atty. Gen. Ops. No. 05-011 (2005)

The requirements for site plans have become more sophisticated as local governments have come to require greater detail to be disclosed on the site plan.

Where once a crude drawing, which proved compliance with the setback requirements of the zoning ordinance satisfied local government's requirement for site plans; today, site plans are required to incorporate plans and profiles of water lines, sewer lines and storm drains, as well as storm water management ponds, parking lot detail, including the size of spaces and travel aisles, driveway apron detail, parking area profiles, curb detail, sidewalk specifications and landscaping plans, with individual plant species identified.

Frequently, the preparation of a site plan will include the preparation of a dedication or easement plat, which, when recorded, will transfer to the local government utility easements and the fee interest in widened right-of-ways. See §15.2-2270.

The Subdivision Act is set out in Title 15.2, Chapter 22, Article 6, §15.2-2240 through §15.2-2279 of the Virginia Code. Pursuant to §15.2-2251 of the Virginia Code, the planning commission shall prepare and recommend a subdivision ordinance to the governing body for adoption after a public hearing for which notice has been given pursuant to §15.2-2204. The subdivision ordinance and any amendments thereto are to be recorded among the land records of the circuit court in which the local government is located. §15.2-2252.

Only the planning commission and the governing body may initiate amendments to its subdivision ordinance. §15.2-2253. When the governing body refers a proposed amendment, the planning commission is to adopt its recommendation regarding the proposed amendment within 60 days of the governing body's referral of the proposed amendment to the planning commission. §15.2-2253.

The end product of the subdivision process is the recordation of a plat among the land records of the circuit court, dividing a larger tract of land into smaller tracts of land, most typically house lots, and dedicating the streets and utility easements to the local government. Once the local government has adopted a subdivision ordinance, no plat subdividing land may be recorded among the land records without evidence that such plat of subdivision has been approved by the local government. §15.2-2254(2). No person may subdivide land without the approval of the subdivision plat by the local government. §15.2-2254(1).

While subdivisions and site plans are creatures of separate portions of the Virginia Code and separate ordinances, site plans and subdivisions are subject to similar review and appellate procedure. §15.2-2246 and §15.2-2258 both provide that site plans are to be treated as subdivision plats, mutatis mutandis.

***(VIRGINIA SUBDIVISION AND SITE PLAN LAW John W. Farrell,
McCandlish & Lillard, P.C., Fairfax, Virginia)***

Sample Ordinances

Review of other rural community ordinances provides a good idea of the standard format and content of a site plan or site development ordinance. In most cases, the site plan review requirements are included as a section within the Zoning Ordinance, although site design/development standards are also included in the Subdivision Ordinance.

- ❖ Town of Orange, VA (included in April PC packet)
- ❖ Town of Hamilton, VA
- ❖ Town of Onancock, VA
- ❖ Town of Cape Charles, VA (**included in PC packet**)
- ❖ Town of Berryville, VA

The sample site plan ordinance from Cape Charles, VA is included in the June packet for review and discussion at the regular meeting.

The Town of Chincoteague published the following public notice in the Eastern Shore News and the Chincoteague Beacon for two consecutive weeks (7/29, 7/30, 8/5, and 8/6).

Public Notice

The Planning Commission of the Town of Chincoteague will hold a public hearing on August 11, 2015 at 7:00 p.m. in the Council Chambers located at 6150 Community Drive to hear public comment on the following matter:

Zoning Ordinance – Amend Appendix A – Zoning of the Town Code as follows:

Section 6.6.11 Parking for other commercial buildings:

To require a minimum of four (4) parking spaces shall be provided for any other commercial buildings including libraries, museums, and wayside stands.

Land Subdivision and Development Ordinance – Amend Appendix B – LSDO of the Town Code as follows:

Section 13.01 Subdivision defined; Section 13.02 Major subdivision defined; Section 13.04 Division of Land; Section 14.01 Purpose; Section 14.02(a) Submittal sketch plan; Section 14.02 (b) Submittal of preliminary; and Section 14.02(c) Submittal of final

To require Zoning Administrator review of any division of a parcel of land, up to and including 3 lots, for minimum conformance with zoning regulations. To require sketch plan review by both the Planning Commission and Zoning Administrator and to require Planning Commission review of preliminary plats or plans for conformance with the Comprehensive Plan.

For additional information, and to review a copy of the draft documents, please contact William Neville, Planning Director at 336-6519.

DRAFT

Site Plan Ordinance

(This draft document is based on the Town of Cape Charles, VA site plan ordinance which was adopted by the Town Council of Cape Charles, Virginia, on July 14, 1992, amended July 11, 1995, and ratified and confirmed on June 16, 1997. Section 4.A, Item 1.h. was amended and adopted by the Town Council of Cape Charles, Virginia on December 9, 2010)

It is the intent of the Planning Commission to use this ordinance as a study document to explore the potential for a similar ordinance for the Town of Chincoteague. Prior to any formal use or adoption, permission from the Town of Cape Charles will be requested and obtained.

Section 1 Purpose of Article

The purpose of these requirements is to provide for the orderly development of certain activities in the Town and to ensure that such activities are developed in a manner harmonious with surrounding properties and in the interest of the general public welfare. To achieve these ends and to assure compliance with all applicable requirements of this chapter, site plans for certain uses of land shall be submitted to and reviewed by the Zoning Administrator.

Section 2 Developments and Uses Requiring a Site Plan

- A. All development which exceeds ~~2,500~~10,000 square feet in area of land disturbance, including single-family residential development, shall submit either a ~~plot-subdivision~~ plan or site plan prior to the initiation of the development process. Land-disturbing activities shall not include minor activities less than 10,000 square feet in area such as home gardening, individual home landscaping, and home maintenance, nor shall it include access or staging areas provided they do not result in land disturbance.
- B. Any changes to an existing multi-family, commercial, and industrial use that increase the improved square footage by more than ~~100 square feet~~10% or as deemed necessary by the Zoning Administrator or increase the number of units within the previously approved site plan.
- C. Churches, church schools, public and private schools, hospitals, nursing homes, and government offices.

Section 3 Procedures for Preparation

- A. Site plans or any portion thereof involving engineering, architecture, landscape architecture, or land surveying shall be certified by an engineer, architect, or land surveyor authorized by the Commonwealth to practice as such.
- B. Site plans shall be prepared to a scale of not more than one inch equals 100 feet (1" = 100') or other scale acceptable to the administrator.
- C. A site plan may be prepared in one or more sheets to show clearly the information required by the Article and to facilitate the review and approval of the site plan. If prepared in more than one sheet, match lines shall clearly indicate where the several sheets join.
- D. All horizontal dimensions shown on the site plan shall be in feet and decimal fractions to a foot to the closest one-hundredths of a foot (.00), and all bearings in degrees, minutes, and seconds to the nearest ten seconds.

- E. Every site plan shall show the name and address of the owner or developer, the north point, the date, the scale of drawing, and the number of sheets. In addition, it shall reserve a blank space at least three inches wide and five inches for the approving authority.
- F. Six copies of the site plan shall be submitted to the Zoning Administrator for administrative review (and review by the Planning Commission).

Section 4 Required Information

- A. Plot Plans. One copy of a plot plan, drawn to scale, for individual single-family dwellings or accessory structures for single-family residences or for commercial development which results in a land disturbance less than ~~5,000~~10,000 square feet ~~and which will result in an area of impervious surface of less than 16 percent~~ of any lot or parcel shall be submitted to the Zoning Administrator for review and approval. ~~Any encroachment into an RPA shall require an applicant to prepare a site plan as outlined in Subsection B below including the submission of a water quality impact assessment in accordance with Subsection 7.11 of the Chesapeake Bay Preservation Ordinance.~~
 - 1. At a minimum, the plot plan shall be drawn to scale and contain the following information:
 - a. a boundary survey of the site drawn to scale or site drawing showing the north arrow and property line boundaries and distances;
 - b. area of the lot/parcel;
 - c. location, dimension, and use of proposed and existing structures including marine and temporary structures. In the case of temporary structures, the date when the structures will be removed must be indicated;
 - d. location of all building restriction lines, setbacks, easements, covenant restrictions, and rights-of-way;
 - e. dimensions and location of all existing driveways, parking areas, or other impervious surfaces;
 - f. limits of clearing and grading;
 - g. specifications for the protection of existing trees and vegetation during clearing, grading, and all phases of construction;
 - ~~h. location of Resource Protection Area (RPA) boundary, as specified in Subsection 7.4.A of the Chesapeake Bay Preservation Ordinance, including any additional required buffer areas and RPA maintenance and use restrictions; [revision adopted by Town Council 12/2010]~~
 - i. location of all erosion and sediment control devices;
 - j. amount of impervious surface proposed for the site.
- B. A site plan shall be required for any single-family, residential, or commercial development which results in ~~5,000~~10,000 square feet or more of land disturbance or for any multi-family or industrial development or for development specified in Subsections 2.B and 2.C or for any other development deemed necessary by the Zoning Administrator. All site plans shall contain the following information:
 - 1. Location of the tract by an insert map at a scale of not less than one inch equals two thousand feet (1" = 2,000'), unless otherwise acceptable to the administrator, indicating the scale, the north arrow, and such information as the names and

- numbers of the adjoining roads, streams and bodies of water, railroads, subdivisions, or other landmarks sufficient to clearly identify the location of the property.
2. A boundary survey of the tract by bearings and distances certified by a licensed land surveyor.
 3. Certificate signed by the surveyor or engineer setting forth the source of title of the owner of the tract and the place of record of the last instrument in the chain of title.
 4. All existing property lines; existing streets and easements, their names, numbers, and width; the location and sizes of existing sanitary and storm sewers, gas lines, water mains, culverts, and other utilities and their easements; existing buildings; existing watercourses, waterways, or lakes and their names; and other existing physical features in or adjoining the project.
 5. Existing zoning and zoning district boundaries on the property in question and on immediately surrounding properties, including all Resource Protection Area and Resource Management Area boundaries, and present use of adjoining tracts.
 6. Existing topography with a maximum of two-foot contour levels. Where existing ground is on a slope of less than two percent, either one-foot contours or spot elevations where necessary but not more than fifty feet apart in both directions.
 7. The location, dimensions, and materials proposed for the construction of proposed streets, alleys, driveways, and the location, type, and size of vehicular entrance(s) to the site.
 8. The location and amount (in square feet) of all existing and proposed impervious surface including but not limited to all off-street parking, loading spaces, and walkways. The type of surfacing, size, angle of stalls, width of aisles and a specific schedule showing the number of parking spaces provided should also be indicated.
 9. All proposed water and sanitary sewer facilities indicating all pipe sizes, types, and grades and where connection is to be made to town or to other utility system; all proposed gas lines and other utilities and their easements.
 10. The proposed location, general use, number of floors, height and floor area for each building, accessory and main, and where applicable, the number, size, and type of dwelling units.
 11. Proposed finished grading by contours supplemented where necessary by spot elevations.
 12. The location, sizes, types, and grades of ditches, catch basins, and pipes and connections to existing drainage system.
 13. Provisions for the adequate control of erosion and sedimentation indicating the proposed temporary and permanent control practices and measures that will be implemented during all phases of clearing, grading, and construction.
 14. Delineation of any floodplain limits.
 15. Location, type, size, and height of fencing, retaining walls, and screen planting where required under the provisions of the chapter.
 16. A landscape plan, drawn to scale, delineating dimensions and distances and the location, type, size, and description of all existing and proposed plant materials. Any required buffer area and all existing trees on site six inches or greater DBH shall be clearly shown on the landscape plan. Where there are groups of trees, stands may be outlined instead. Trees to be removed to create a desired construction footprint shall be clearly delineated on the plan. The landscape plan will include specifications for the protection of existing trees and buffer areas during clearing, grading, and all phases of construction.

17. The location and dimensions of proposed recreation, open space, and required amenities and improvements including details of disposition.
 18. A storm water management plan that meets all requirements of Accomack County to include maps, graphs, tables, narrative descriptions, and citations to support references as appropriate to communicate the information required by the Town Code. At a minimum, the storm water management plan shall contain: (a) location and design of all planned storm water control devices; (b) procedures for implementing non-structural storm water control practices and techniques as applicable; (c) pre- and post-development non-point source pollutant loadings with supporting documentation of all utilized coefficients and calculations; and (d) for facilities, verification of structural soundness including a Professional Engineer or Class IIIB Surveyor Certification. All engineering calculations must be performed in accordance with procedures outlined in the current edition of the Local Assistance Manual, the Virginia Erosion and Sediment Control Handbook, or the Virginia Department of Transportation Drainage Manual.
- B. All features and elements of the site plan required by this Article shall in all respects conform to all applicable provisions and standards of the Code of Virginia and this Code, including, but not limited to: The ~~Cape Charles Comprehensive~~ Town of Chincoteague Zoning Ordinance, Land Development and Subdivision Ordinance, Accomack County Erosion and Sediment Control Ordinance, ~~or any PUD zoning ordinance approved by Town Council.~~

Section 5 Procedure for Processing

- A. All applicants for site plan review shall submit to the Zoning Administrator a site plan for the proposed development. The site plan review fee, as established by the Council, shall be paid at this time.
- B. The Zoning Administrator shall review all site plans which are submitted to him pursuant hereto. The administrator shall check the site plan for general completeness and compliance with all applicable requirements. The administrator shall circulate the site plan to the relevant town departments, agencies, and officials including the Planning Commission for written comments as to the proposed development's conformance to all applicable standards and requirements and whether approval of the site plan is recommended.
- C. Except under ~~abnormal-unusual~~ circumstances, within 45 days from the receipt of the site plan in his office, the Zoning Administrator shall approve, approve subject to conditions, or disapprove the site plan and notify the applicant in writing of the action taken. If the site plan is denied approval, the administrator, in notifying the applicant of the decision, shall set forth in detail the reasons for the denial, which shall be limited to any defect in form or required information, any violation of any provision or standard of this chapter or any other ordinance, or the inadequacy of any utility and shall state any changes which would make the site plan acceptable. The applicant may request a preliminary (1st submission) review and final (2nd submission) review for any development proposal.

Section 6 Time for Obtaining Building Permit After Approval; Extension of Time

Approval of a site plan submitted under the provisions of this Article shall expire five years after the date of such approval unless building permits have been obtained for construction in accordance therewith. A single one-year extension may be given upon written request by the

applicant to the Zoning Administrator and Town Manager made within ninety days before the expiration of the approved site plan. The Zoning Administrator and Town Manager shall acknowledge the request and shall make a decision regarding the requested extension within thirty days after receipt of the request.

Section 7 Revision of Site Plan; Waiver of Requirements of Article

The Zoning Administrator may approve minor revisions to an approved site plan, providing that Town requirements and specifications are not affected. Major revisions shall require that a new site plan be drawn, and the review and approval process begun anew. Any revision to an approved site plan that does not change the proposed use and which exceeds the ordinance requirements of the previously approved plan shall be approved by the Zoning Administrator.

Section 8 Appeals

Any applicant aggrieved of any decision of the Zoning Administrator on a site plan review may, within ten days of such decision, appeal to the Town Council. The Town Council shall act upon such an appeal by the owner at its next regularly scheduled meeting. The applicant may appeal Town Council's decision to the [Northampton-Accomack](#) County Circuit Court as provided by law.

Section 9 Building Permits to Comply with Site Plans

No permit shall be issued for any structure in an area covered by the site plan that is required under the provisions of this Article in conformity to such a plan which has been duly approved or revised as provided in Section 7.

Section 10 Agreement and Bond for Construction of Certain Improvements; Establishment of Fees for Examination and Issuance of Building Permits

- A. Prior to the issuance of any building permits for which an approved site plan is required, there shall be executed by the owner, developer, or their contractor, an agreement to construct the agreed-upon physical improvements that are located within the public right-of-way or public easements in a form approved by the Town. Such agreements shall be in accordance with this ordinance and be accompanied by a letter of credit, escrow, or a bond with surety acceptable to the Town (hereinafter "security") in the amount of the estimated cost of the required physical improvements as determined by the town departments, divisions, or agencies responsible for such improvements.
- B. Such security shall remain in force until the completion of the secured improvements within the public right-of-way or public easements shown on the approved site plan. Such security shall be partially and proportionally released within thirty days of receipt by the Town of written notice from the contractor certifying completion of a distinguishable part of the secured improvements. If the Town notifies the contractor in writing of any defects or deficiencies in the secured improvements within this 30-day period, then corrective measures must be taken by the contractor prior to any partial or complete release of the security.
- C. Such security shall be with a firm or bank acceptable to the Town Manager which approval shall not be unreasonably withheld.

- D. "Best Management Practices" imposed by these regulations that require regular or periodic maintenance in order to continue their function shall be regulated by a maintenance agreement submitted to the Town by the owner, developer, homeowner association, or other entity responsible for said BMPs and, where approved by the Town, shall run with the land and be binding upon the entity that assumes responsibility for said BMPs.

Section 11 Compliance with Approved Site Plan

- A. Unless otherwise specifically provided in this chapter, the construction standards for all offsite improvements and site improvements required by this Article shall comply with approved site plan.
- B. Inspections during the installation of the offsite improvements and required onsite improvements shall be made by the department responsible for such improvements as are required to certify compliance with the approved site plan.
- C. The owner shall notify the Town Manager in writing three days prior to the beginning of all street or storm sewer work shown to be constructed on the site plan.
- D. The owner or owner's contractor shall provide adequate supervision on the site during the installation of all required improvements within the public right-of-way or public easements and have a responsible superintendent or foreman, together with one set of approved plans, profiles, and specifications, available at the site at all times when work is being performed.
- E. Upon satisfactory completion of the installation of the required improvements, the owner shall receive a certificate of approval from the Zoning Administrator. The Town Manager will authorize the release of any bond which may have been furnished for the guarantee of satisfactory installation of such improvements or parts thereof upon notice by the Zoning Administrator that the improvements have been satisfactorily completed.
- F. The installation of improvements as required in this Article shall in no case serve to bind the Town except such improvements for the maintenance, repair, or operation thereof, but such acceptance shall be subject to the existing regulations concerning the acceptance of each type of improvement. Upon acceptance, the Town shall assume all ownership, maintenance, and repair obligations of the dedicated improvements.

Section 12 Occupancy Certificates

A final occupancy permit may be issued for any appropriately completed building or part of building located in a part of the total area of an approved site plan, such part of the total area to be known as a section provided that:

1. The other onsite construction and improvements included in the approved site plan for the section have been completed and have been inspected and accepted by the Zoning Administrator, the Town Manager, and the county health officer or their agents.
2. The offsite improvements related to and necessary to service the section has been completed, inspected, and accepted by the Town Manager or his agents, or the developer has provided surety acceptable to the Town.

Planning Commission Work Plan - 2015/2016

Updated through August 11, 2015

		Comprehensive Plan Reference	Begin Date	End Date	Notes
1	Comprehensive Plan Update				
a	Final recommendations for the 5-year update to the Comprehensive Plan		Feb 11 2014 workshop to begin chapter review	Jan 13th - forward final recommendations to Town Council	5-year Comprehensive Plan update approved by Town Council on February 2, 2015
2	FEMA Flood Risk Maps				
a	Review and discuss options for higher standards to qualify for CRS flood insurance discounts including a possible 'freeboard' requirement	Flood Insurance Pg 5-9/10, Implementation Strategy Pg 5-14	Information Review - Feb 10th	PC recommendation re: freeboard to TC work session Mar 19th	FPO revisions incl. 2 foot freeboard approved by Town Council on April 6, 2015
b	Prepare recommendation to Town Council regarding amendment of the 'building height' definition and revisions to Height Regulations in all districts	Primary Goal Pg 2-1, Land Use Objectives Pg 2-2,	Information Review - Mar 10th	PC recommendation re: building height definition and height regulations to TC Apr 14th	Public hearing and approval by Town Council on May 5, 2015
3	Ordinance Review				
a	Identify minimum parking standards for wayside stands	Primary Goal Pg 2-1, Land Use Objectives Pg 2-2, 3, 4	PC recommendation April 2013	PC recommendation re: minimum parking requirements (ZO Sec. 6.6.11) to TC Mar 10th	TC approval to advertise for joint public hearing
b	Storm water Draft Regulations – coordinate with Clark-Nexsen consultant to prepare a draft 'fill ordinance' and drainage standards/regulations if approved by Town Council				
c	Sidewalk and Lighting Policy/Subdivision Regulations – Implement 'Walkability Workshop' ideas				
d	Wastewater treatment systems – review Zoning, Land Subdivision and Development Ordinance to address current WAC planning for advanced septic systems, private treatment system expansion, service areas, design criteria, bonding, useable yard area, setbacks, screening, etc.				
e	Wastewater Advisory Committee recommendations: Complete a full zoning and subdivision ordinance review for any area proposed within a wastewater utility service district, and prepare recommendations for amended site development criteria if necessary				

f	LSDO Section 13 Subdivision defined, Section 14 Major Subdivision, Section 15 Minor Subdivision – revise procedure for review to require sketch plan submittal, review by zoning administrator for technical conformance (and Planning Commission for conformance with the Comprehensive Plan) for any division of land.		PC public hearing August 11, 2015		Possible recommendation to Town Council in September
g	LSDO Section 14.06(d)(4) Procedures for the review of the final plat, consider possible revision to resolve conflict between Health Department approval and Town approval of a final subdivision plat (who signs first).				
h	LSDO Section 16 Design Standards, consider adding site plan review requirements, checklist and land development standards		PC discussion August 11, 2015		Draft modification of Cape Charles, VA ordinance presented by staff
i	Clarification of Special Exception, Special Use and Conditional Use permits: Article VIII and Article IX generally, and Section 3.8, R-3 District to specifically define which uses are permitted by which process				
4	Economic Development				
a	Review the Baseline Economic Impact Analysis prepared by USFWS and identify additional research, tracking tools or studies necessary to evaluate elements of the Town economy.				
b	Recommend specific actions or projects which the Town could participate in to provide greater year round activity and balance to recreational tourism.				PC to provide support for Chamber of Commerce and Main Street Merchants actions and projects
c	Consider recommendations from Virginia DCR in the Virginia Outdoors Plan				Provide copy of current DEQ shoreline plan information to PC
5	Hazard Mitigation				
a	Improve map information with LIDAR elevations and analysis of areas impacted by storm and high tide events/coastal flooding				
b	Coordinate with Virginia DEQ regarding shoreline management plans.				
6	Priorities of the Comprehensive Plan				
a	Transportation and Parking – VDOT update to Urban Area Plan, complete parking study				
b	Community Facilities and Services – Update the comprehensive plan as necessary to anticipate new community facilities for Capital Improvement Program				

c	Water Quality – Stormwater and Drainage Master Plan				
d	Architectural Design Guidelines				
e	Private Roads – Prepare an inventory and standards for maintenance and improvement of private roads to public streets.				Coordinate with P/W Committee to develop new policy regarding private roads
f	Maddox Boulevard – C-3 District zoning and subdivision site design standards: Consider overlay district along the ‘gateway corridor’ and new commercial business district				
7	Commissioner Priorities				
a	Proffer study and guidelines - research and prepare report with assistance from Town Attorney				Review need for adequate capital facilities studies to support capacity of Town infrastructure and mitigate new development impacts
b	Downtown Revitalization – consider next phase areas for detailed planning and design				Opportunity to implement improvements between Church Street and Maddox Boulevard with redevelopment of Landmark Plaza
c	Capital Improvement Program, review and plan for the Council’s 5 year budget priorities				
d	Parking Study – adequate parking for certain uses, percentage of permeable surface for large areas (research status of new energy code/building code for requirement), Church Street restrictions				
e	Route 175 zoning map revision showing revised Town/County boundary: Coordinate meeting between Accomack County and Town of Chincoteague officials to amend the Town/County boundary based on the new alignment of Route 175 and amend the official maps accordingly				
f	Review and propose implementation strategies for accessory rental homes on larger lots for affordable housing				
8	Other Priorities				
a	USFWS Comprehensive Conservation Plan/EIS				Final CCP/EIS scheduled to be published for 30 day review in September 2015
b	NPS General Management Plan				
c	Accomack County/NASA Joint Land Use Study				Section 6.9 of the zoning ordinance may need to be modified to reference a 4 mile ‘stand-off zone’ for wind energy systems from the north end of Wallops Island proposed in the draft JLUS document
d	NASA Wallops Flight Facility PEIS/SCSC Rail Gun				

e	Development Review Process - develop informational brochure/checklist for plan and permit review of development activity				Develop support documents concurrently with Item 3h
f	Revise fence regulations to allow secure temporary construction fence in a front yard				Modify the permitted use of 'site trailers' to include temporary fencing (6 or 8 feet high) in certain zoning districts.
g	Update ordinance sections to incorporate reference to current Virginia stormwater management requirements administered by Accomack County				Review Parking Section 6.6.22
9					
10					
11					
12					

Variations Granted by the Board of Zoning Appeals HB 1849 (Marshall, D.W.)

Year: 2015

Bill Summary:

Changes the standard by which a board of zoning appeals shall grant an application for a variance by eliminating or altering several of the requirements.

Patron: Delegate Daniel W. Marshall III -- House District 14

Piedmont Environmental Council

Changes the standards by which a board of zoning appeals grant an application for a variance. It was amended to place the burden of proof back on the applicant. But it still ties the variance to the use of the property, not the hardship to the property owner, ignoring significant case law and likely making variances easier to obtain.

Northern Virginia Association of REALTORS® (NVAR)

This law is a reform of the Board of Zoning Appeals (BZA) process which changes the burden of proof requirements to obtain a variance from a local zoning ordinance. The law eliminates the requirement that a variance is needed due to “unnecessary or unreasonable hardship to the property owner” and instead allows a variance to be issued because the ordinance “unreasonably restricts the utilization of the property.” It also requires that the property owner be given equal time to present their case at the BZA hearing with whatever time is given to the local government. The new law changes the burden of proof from existing law and would specify, in a BZA hearing, the property owner has the burden of proof by a preponderance of the evidence in a request for a variance. Finally, it establishes a statewide standard for hearing of a variance request from a private property owner, allows for and regulates communications between all parties involved in the case, and amends appeal processes.

VIRGINIA ACTS OF ASSEMBLY -- 2015 SESSION

CHAPTER 597

An Act to amend and reenact §§ 15.2-2201, 15.2-2308, 15.2-2309, and 15.2-2314 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 15.2-2308.1, relating to variances.

[H 1849]

Approved March 26, 2015

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2201, 15.2-2308, 15.2-2309, and 15.2-2314 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 15.2-2308.1 as follows:

§ 15.2-2201. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Affordable housing" means, as a guideline, housing that is affordable to households with incomes at or below the area median income, provided that the occupant pays no more than thirty percent of his gross income for gross housing costs, including utilities. For the purpose of administering affordable dwelling unit ordinances authorized by this chapter, local governments may establish individual definitions of affordable housing and affordable dwelling units including determination of the appropriate percent of area median income and percent of gross income.

"Conditional zoning" means, as part of classifying land within a locality into areas and districts by legislative action, the allowing of reasonable conditions governing the use of such property, such conditions being in addition to, or modification of the regulations provided for a particular zoning district or zone by the overall zoning ordinance.

"Development" means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units. The term "development" shall not be construed to include any tract of land which will be principally devoted to agricultural production.

"Historic area" means an area containing one or more buildings or places in which historic events occurred or having special public value because of notable architectural, archaeological or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation.

"Incentive zoning" means the use of bonuses in the form of increased project density or other benefits to a developer in return for the developer providing certain features, design elements, uses, services, or amenities desired by the locality, including but not limited to, site design incorporating principles of new urbanism and traditional neighborhood development, environmentally sustainable and energy-efficient building design, affordable housing creation and preservation, and historical preservation, as part of the development.

"Local planning commission" means a municipal planning commission or a county planning commission.

"Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under jurisdiction of the U.S. Department of Defense, including any leased facility, or any land or interest in land owned by the Commonwealth and administered by the Adjutant General of Virginia or the Virginia Department of Military Affairs. "Military installation" does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

"Mixed use development" means property that incorporates two or more different uses, and may include a variety of housing types, within a single development.

"Official map" means a map of legally established and proposed public streets, waterways, and public areas adopted by a locality in accordance with the provisions of Article 4 (§ 15.2-2233 et seq.) hereof.

"Planned unit development" means a form of development characterized by unified site design for a variety of housing types and densities, clustering of buildings, common open space, and a mix of building types and land uses in which project planning and density calculation are performed for the entire development rather than on an individual lot basis.

"Planning district commission" means a regional planning agency chartered under the provisions of Chapter 42 (§ 15.2-4200 et seq.) of this title.

"Plat" or "plat of subdivision" means the schematic representation of land divided or to be divided and information in accordance with the provisions of §§ 15.2-2241, 15.2-2242, 15.2-2258, 15.2-2262, and 15.2-2264, and other applicable statutes.

"Preliminary subdivision plat" means the proposed schematic representation of development or subdivision that establishes how the provisions of §§ 15.2-2241 and 15.2-2242, and other applicable

statutes will be achieved.

"Resident curator" means a person, firm, or corporation that leases or otherwise contracts to manage, preserve, maintain, operate, or reside in a historic property in accordance with the provisions of § 15.2-2306 and other applicable statutes.

"Site plan" means the proposal for a development or a subdivision including all covenants, grants or easements and other conditions relating to use, location and bulk of buildings, density of development, common open space, public facilities and such other information as required by the subdivision ordinance to which the proposed development or subdivision is subject.

"Special exception" means a special use, that is a use not permitted in a particular district except by a special use permit granted under the provisions of this chapter and any zoning ordinances adopted herewith.

"Street" means highway, street, avenue, boulevard, road, lane, alley, or any public way.

"Subdivision," unless otherwise defined in an ordinance adopted pursuant to § 15.2-2240, means the division of a parcel of land into three or more lots or parcels of less than five acres each for the purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided and solely for the purpose of recordation of any single division of land into two lots or parcels, a plat of such division shall be submitted for approval in accordance with § 15.2-2258.

"Variance" means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the *shape*, size, or area of a lot or parcel of land; or the size, *height*, area, bulk, or location of a building or structure when the strict application of the ordinance would result in unnecessary or unreasonable hardship to the property owner *unreasonably restrict the utilization of the property*, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the ~~intended spirit and purpose of the ordinance, and would result in substantial justice being done.~~ It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

"Zoning" or "to zone" means the process of classifying land within a locality into areas and districts, such areas and districts being generally referred to as "zones," by legislative action and the prescribing and application in each area and district of regulations concerning building and structure designs, building and structure placement and uses to which land, buildings and structures within such designated areas and districts may be put.

§ 15.2-2308. Boards of zoning appeals to be created; membership, organization, etc.

A. Every locality that has enacted or enacts a zoning ordinance pursuant to this chapter or prior enabling laws, shall establish a board of zoning appeals that shall consist of either five or seven residents of the locality, appointed by the circuit court for the locality. Boards of zoning appeals for a locality within the fifteenth or nineteenth judicial circuit may be appointed by the chief judge or his designated judge or judges in their respective circuit, upon concurrence of such locality. Their terms of office shall be for five years each except that original appointments shall be made for such terms that the term of one member shall expire each year. 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 be only for the unexpired portion of the term. Members may be reappointed to succeed themselves. Members of the board shall hold no other public office in the locality except that one may be a member of the local planning commission. A member whose term expires shall continue to serve until his successor is appointed and qualifies. The circuit court for the City of Chesapeake and the Circuit Court for the City of Hampton shall appoint at least one but not more than three alternates to the board of zoning appeals. At the request of the local governing body, the circuit court for any other locality may appoint not more than three alternates to the board of zoning appeals. The qualifications, terms and compensation of alternate members shall be the same as those of regular members. A regular member when he knows he will be absent from or will have to abstain from any application at a meeting shall notify the chairman twenty-four hours prior to the meeting of such fact. The chairman shall select an alternate to serve in the absent or abstaining member's place and the records of the board shall so note. Such alternate member may vote on any application in which a regular member abstains.

B. Localities may, by ordinances enacted in each jurisdiction, create a joint board of zoning appeals that shall consist of two members appointed from among the residents of each participating jurisdiction by the circuit court for each county or city, plus one member from the area at large to be appointed by the circuit court or jointly by such courts if more than one, having jurisdiction in the area. The term of office of each member shall be five years except that of the two members first appointed from each jurisdiction, the term of one shall be for two years and of the other, four years. Vacancies shall be filled for the unexpired terms. In other respects, joint boards of zoning appeals shall be governed by all other provisions of this article.

C. With the exception of its secretary and the alternates, the board shall elect from its own membership its officers who shall serve annual terms as such and may succeed themselves. The board

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

D. Within the limits of funds appropriated by the governing body, the board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services. Members of the board may receive such compensation as may be authorized by the respective governing bodies. Any board member or alternate may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the court that appointed him, after a hearing held after at least fifteen days' notice.

E. Notwithstanding any contrary provisions of this section, in the City of Virginia Beach, members of the board shall be appointed by the governing body. The governing body of such city shall also appoint at least one but not more than three alternates to the board.

§ 15.2-2308.1. Boards of zoning appeals, ex parte communications, proceedings.

A. *The non-legal staff of the governing body may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. The applicant, landowner or his agent or attorney may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. If any ex parte discussion of facts or law in fact occurs, the party engaging in such communication shall inform the other party as soon as practicable and advise the other party of the substance of such communication. For purposes of this section, regardless of whether all parties participate, ex parte communications shall not include (i) discussions as part of a public meeting or (ii) discussions prior to a public meeting to which staff of the governing body, the applicant, landowner or his agent or attorney are all invited.*

B. *Any materials relating to a particular case, including a staff recommendation or report furnished to a member of the board, shall be made available without cost to such applicant, appellant or other person aggrieved under § 15.2-2314, as soon as practicable thereafter, but in no event more than three business days of providing such materials to a member of the board. If the applicant, appellant or other person aggrieved under § 15.2-2314 requests additional documents or materials be provided by the locality other than those materials provided to the board, such request shall be made pursuant to § 2.2-3704. Any such materials furnished to a member of the board shall also be made available for public inspection pursuant to subsection F of § 2.2-3707.*

C. *For the purposes of this section, "non-legal staff of the governing body" means any staff who is not in the office of the attorney for the locality, or for the board, or who is appointed by special law or pursuant to § 15.2-1542. Nothing in this section shall preclude the board from having ex parte communications with any attorney or staff of any attorney where such communication is protected by the attorney-client privilege or other similar privilege or protection of confidentiality.*

D. *This section shall not apply to cases where an application for a special exception has been filed pursuant to subdivision 6 of § 15.2-2309.*

§ 15.2-2309. Powers and duties of boards of zoning appeals.

Boards of zoning appeals shall have the following powers and duties:

1. To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. *The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence.* The board shall consider ~~the purpose and intent~~ of any applicable ordinances, laws, and regulations in making its decision. *For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special.*

2. ~~To authorize~~ *Notwithstanding any other provision of law, general or special, to grant upon appeal or original application in specific cases such a variance as defined in § 15.2-2201 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: the burden of proof shall be on the~~

applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in this section.

~~When a property owner can show that his~~ Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and (i) the property interest for which the variance is being requested was acquired in good faith and ~~where by reason of the exceptional and any hardship was not created by the applicant for the variance; narrowness, shallowness, size, or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the 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 the variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance.~~ (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition 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; (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.

No such variance shall be authorized by the board unless it finds:

- a. That the strict application of the ordinance would produce undue hardship relating to the property;
- b. That the hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
- c. That the authorization of the 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 variance shall be ~~authorized~~ considered except after notice and hearing as required by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

No variance shall be authorized unless the board finds that the condition 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~~ granting 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 or bond to ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, general or special, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

3. To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

4. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by § 15.2-2204, 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. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

5. No provision of this section shall be construed as granting any board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.

6. 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 or bond 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 provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

7. To revoke a special exception previously granted by the board of zoning appeals if the board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. If a governing body reserves unto itself the right to issue special exceptions pursuant to § 15.2-2286, and, if the governing body determines that there has not been compliance with the terms and conditions of the permit, then it may also revoke special exceptions in the manner provided by this subdivision.

8. The board by resolution may fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with § 15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.

§ 15.2-2314. Certiorari to review decision of board.

Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or any aggrieved taxpayer or any officer, department, board or bureau of the locality, may file with the clerk of the circuit court for the county or city a petition that shall be styled "In Re: date Decision of the Board of Zoning Appeals of [locality name]" specifying the grounds on which aggrieved within 30 days after the final decision of the board.

Upon the 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 secretary of the board of zoning appeals or, if no secretary exists, the chair of the board of zoning appeals, which shall not be less than 10 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.

Any review of a decision of the board shall not be considered an action against the board and the board shall not be a party to the proceedings; however, the board shall participate in the proceedings to the extent required by this section. The governing body, the landowner, and the applicant before the board of zoning appeals shall be necessary parties to the proceedings *in the circuit court*. The court may permit intervention by any other person or persons jointly or severally aggrieved by any decision of the board of zoning appeals.

The board of zoning appeals 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 the portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

~~If, upon the 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 evidence as it may direct and report the evidence to the court with his 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 partly, or may modify the decision brought up for review.

In the case of an appeal from the board of zoning appeals to the circuit court of an order, requirement, decision or determination of a zoning administrator or other administrative officer in the administration or enforcement of any ordinance or provision of state law, or any modification of zoning requirements pursuant to § 15.2-2286, the findings and conclusions of the board of zoning appeals on questions of fact shall be presumed to be correct. The appealing party may rebut that presumption by proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision. Any party may introduce evidence in the proceedings in the court. The court shall hear any arguments on questions of law de novo.

~~In the case of an appeal by a person of any decision of the board of zoning appeals that denied or granted an application for a variance, or application for a special exception, the decision of the board of zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by showing to the satisfaction of the court that the board of zoning appeals applied erroneous principles of law, or where the discretion of the board of zoning appeals is involved, the decision of the board of zoning~~

appeals was plainly wrong and in violation of the purpose and intent of the zoning ordinance proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision.

In the case of an appeal by a person of any decision of the board of zoning appeals that denied or granted application for a special exception, the decision of the board of zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by showing to the satisfaction of the court that the board of zoning appeals applied erroneous principles of law, or where the discretion of the board of zoning appeals is involved, the decision of the board of zoning appeals was plainly wrong, was in violation of the purpose and intent of the zoning ordinance, and is not fairly debatable.

In the case of an appeal from the board of zoning appeals to the circuit court of a decision of the board, any party may introduce evidence in the proceedings in the court in accordance with the Rules of Evidence of the Supreme Court of Virginia.

Costs shall not be allowed against the locality, unless it shall appear to the court that it acted in bad faith or with malice. In the event the 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 the return of the record pursuant to the writ of certiorari. If the petition is withdrawn subsequent to the filing of the return, the locality may request that the court hear the matter on the question of whether the appeal was frivolous.