



**GLOUCESTER COUNTY PLANNING COMMISSION
AGENDA**

Thursday, December 7, 2023, 7:00 p.m.

Colonial Courthouse

6504 Main Street

Gloucester, VA 23061

	Pages
1. <u>CALL TO ORDER AND ROLL CALL</u>	
2. <u>INVOCATION AND PLEDGE OF ALLEGIANCE</u>	
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9. <u>STAFF COMMENTS</u>	
10. <u>COMMISSIONERS' COMMENTS</u>	
11. <u>ADJOURNMENT</u>	



GLOUCESTER COUNTY PLANNING COMMISSION MINUTES

November 2, 2023, 7:00 p.m.

Colonial Courthouse

6504 Main Street

Gloucester, VA 23061

Members Present: ___ Natalie Q. Johnson
 ___ James R. Gray, Jr.
 ___ Louis E. Serio, Jr.
 ___ Douglas Johnson, Chair
 ___ Kenneth B. Richardson
 ___ John Meyer
 ___ Christopher Hutson- Board Liaison

Members Absent ___ Chris Poulson

Staff Present: ___ Anne Ducey-Ortiz, Planning, Zoning & Environmental
 Programs Director
 ___ Carol Rizzio- Senior Comprehensive Planner
 ___ Kathy Wilmot, Administrative Coordinator III

1. **CALL TO ORDER AND ROLL CALL**

Mr. Doug Johnson called the November 2, 2023, meeting of the Gloucester County Planning Commission to order at 7:00 p.m. Roll call established that a quorum was present.

2. **INVOCATION AND PLEDGE OF ALLEGIANCE**

Mr. Richardson led the invocation and Pledge of Allegiance.

3. **CONSENT AGENDA**

Moved by Mr. Serio
Seconded by Mr. Gray

- a. **Minutes of October 5, 2023 Meeting**
- b. **Application(s) before the BZA in November 2023**
- c. **Development Plan Review- October, 2023**
- d. **Quarterly Report - 2023 3rd Quarter**

4. **PUBLIC COMMENTS**

None.

5. **PUBLIC HEARING**

None.

6. **OLD BUSINESS**

a. **Zoning Ordinance Update**

Ms. Rizzio provided a follow-up presentation regarding Article 12, Signs. This was a follow-up to the October 5, 2023 meeting with the Commission's recommendations incorporated. She discussed changes made to the proposed ordinance based on Commissioner comments regarding allowing internally illuminated, back lit, and channeled letter signs in the B-4 district. The Commission also requested revision to the maximum allowable size of signs in the C-1, C-2, & SC-1 zones. Some businesses in these zones are allowed by Special Exception (SE) or Conditional Use Permit (CUP). The Commission agreed to include these signs as part of the application, which would require a review and approval process to allow the business to have a sign greater than 4 square feet and up to 40 square feet.

Mr. Meyer suggested that 4 square feet is small and suggested 8 square feet would be better suited. The Commissioners discussed and agreed to change all references from 4 square feet to 8 square feet. However, the SF-1 will remain the same 4 square feet, with up to 40 square feet permitted as part of a SE or CUP application.

Next, she reviewed Section 12-7(2) Non-residential signs in residential districts. This section allows one sign up to 6 feet in height and 40 sf in size. Such signs can be internally illuminated or electronic display

only. Some examples are places of religious assembly, schools, libraries. Staff proposes also allowing these for public buildings, such as EMS, Fire, etc. by adding public buildings/facilities and fire/EMS company stations to the list of uses within this section.

However, current restrictions do not allow churches on Main Street to have electronic display signs as they have frontage on Main Street and/or are next to or across from historic properties. Several churches on Main Street have written a letter to the Board of Supervisors (BOS) requesting this restriction be removed. After discussion of various aspects of these signs, such as time limits of operation, how often message changes, brightness, etc, the Commissioners requested staff contact the churches who signed the letter and ask if they would be agreeable to some of the PC's suggestions such as consistent messaging (messages not changing more than daily), time limits (off at 10:00 p.m.), or specific coloring of the signs (PC believes the blue colors are much brighter than the red toned colors. Staff was requested to bring the additional information to the next meeting.

Ms. Rizzio reviewed proposed edits to Article 14-Administrative Procedures. She discussed the proposed organization of the Article and she proposed to have a consistent breakdown of each application process, including Rezonings (including Conditional Zoning from Article 3A), CUP's, Special Exceptions and Variances. Each application's section would include the purpose, initiation, contents of application, review/action and appeal process. This would also update the application process to incorporate some current policies into the ordinance, making the ordinance more transparent.

Next, she reviewed the requirements for when a Transportation Impact Analysis (TIA) is required. Currently, TIA's are only required by state code for non-residential developments that generate 5,000 vehicles per day, such as an 150,000 square foot retail establishment or for residential rezonings that generate more than 400 daily vehicle trips and those trips exceed the current daily traffic volume on the impacted roadway. Historically, these benchmarks are not typically met and, therefore, the TIA is rarely required. Other localities have lower thresholds for when a TIA is required. Staff proposes to require a TIA at a lower threshold and use results from the Hampton Roads Transportation Planning Organization's (HRTPO) study of other

localities in our area. Staff didn't present any recommendations at the meeting but asked if the Commission was interested, and if so, staff stated they would come back to the Commission with suggested thresholds. Mr. Meyer asked if there is a way staff and the Planning Commission could come up with a formula of "we think you will generate this much traffic" since the cost of the TIA is expensive and we would not want to deter new businesses. Ms. Ducey-Ortiz said there is some information we can gather from prior TIA's, conferring with VDOT, and estimates for certain business or developments on average. The Commissioners agreed to have staff gather information and return to the Commission. Mr. Gray would like to know prices for TIA. Ms. Ducey-Ortiz said she will contact traffic engineers for cost estimates.

7. NEW BUSINESS

a. CIP Introduction

Ms. Carol Steele, County Administrator, gave a PowerPoint presentation regarding the CIP scoring process for FYs 2025-2029. She outlined the format, submission deadline, and online access to backup material. The presentation to the Commission is scheduled for December 7, 2023 and if the PC would like department heads to present on that date, it was requested that they let staff know by December 6, 2023. The format will be similar to last year. She estimates there would be 5-10 items to score as "yes or no". However, there was a discrepancy on the due date of the final scoring sheets due date of either December 14 or 18, 2023.

b. PC Nominations

Ms. Ducey-Ortiz reviewed the PC Nominations for 2024. Mr. Johnson is eligible for another year as Chair as well as Mr. Meyer as Vice-Chair. Mr. Gray nominated Mr. Johnson as Chair and Mr. Meyer as Vice-Chair, Ms. Johnson seconded the nomination. Mr. Meyer nominated Mr. Gray for Vice-Chair, Mr. Serio seconded the nomination. Nominations will be finalized and elections will be conducted at the December meeting.

8. APPLICATION(S) BEFORE THE COMMISSION IN DECEMBER 2023

Ms. Ducey-Ortiz informed the Commission that there would be a pre-application at the December meeting for a proposed rezoning (PUD) for a

townhouse development at the Gloucester Point Marina site. She confirmed a CUP was approved previously, but this expired several years ago. This application, by a new owner, proposes 44 townhomes. Mr. Richardson asked if staff could provide an outline of what was previously approved.

9. STAFF COMMENTS

Ms. Ducey-Ortiz told the Commission that Ron Owens has left the County for a job with the Potomac River Fisheries Commission. Kevin Landry, Environmental Programs Manager, will assume his responsibilities until a new person is hired.

10. COMMISSIONERS' COMMENTS

Mr. Johnson thanked Ms. Steele for her presentation and also a thank you for standing by with the technical difficulties.

11. ADJOURNMENT

Mr. Richardson made motion to adjourn.

Mr. Serio seconded.

Meeting adjourned at 8:46 p.m.

Chair

Secretary

November 2023 Development Plan Status

<u>Site/Development Plan</u>	<u>General Description/Use</u>	<u>Location/Tax Map #</u>	<u>Status</u>	<u>Zoning</u>
Achilles Open Broadband	Broadband tower	Behind Achilles Elementary, along Guinea Road (52-519) RPC- 23815	Approved 11-1-2023	SC-1
Brent & Becky's Open Broadband	Broadband tower	Behind Brent & Becky's Bulbs, along Daffodil Lane (26-70A) RPC- 27915	Approved 11-9-2023	B-2
Camilla Solar Amendment	Amendment to 20 MW Solar Energy Facility conditional to CUP-20-05	Along Daffodil Lane, east of the intersection with Ware Neck Road (26-70B, 70C, 70D, 70E, 70F, 70G, 82) RPC- 34587	Approved 6-27-2023 LDP 5-3-2023	C-2
Carvers Creek Solar Phase 1 Amendment	Amendment to Phase 1 of 150 MW Utility Scale Solar Energy Facility	Along Route 17 and Glenss Road (24 Parcels, 04-50) RPC- 12536	UCR Received 11-14-2023	RC-1
Coastal Church Gloucester Amendment	Amendment to church and associated parking	South side of Hickory Fork Road, west of intersection of Hickory Fork Road and Route 17S (39-109B) RPC- 44717	Approved 7-14-2023 LDP 5-16-2022	SC-1
Dutton Fire Station 4 Open Broadband	Broadband tower	Next to Dutton Fire Station 4, along Dutton Road (11-34F) RPC- 27694	Approved 11-1-2023	RC-1
Haywood Development Amendment	Amendment to Haywood Floor Covering development	Intersection of Commerce Drive and Enterprise Court (39-8J) RPC- 33427	Approved 9-14-2023 LDP 9-27-2023	I-1
Langley Federal Credit Union	Bank with drive thru service	Intersection of Route 17N and Zandler Way (39-208A) RPC- 44465	Approved 5-25-2023 LDP 9-29-2023	B-1, conditional
Miller's Services Headquarters	Office location for Miller's Services	Intersection of Industrial Drive and Commerce Drive (39-8B) RPC- 41475	UCR Received 11-17-2023	I-1
Patriot's Walk Phase II- Amendment	Residential- 79 lot phase, 214 lot subdivision	Route 3/14 S., near Ware Neck (26D(1)-3-1, 26D(1)-C, I, J, K, L) RPC- 42798	UCR Received 11-3-2023	SC-1
The Reserve at Gloucester Village (The Villages of Gloucester)- Phase 1	Residential (28 single-family lots and 95 townhouse lots) and commercial	Along Route 17S, south of the intersection with Burleigh Road (32-34D, 36) RPC- 41259	Approved 6-21-2023 LDP 11-22-2022	PUD-1, conditional
The Reserve at Gloucester Village (The Villages of Gloucester)- Phase 2	Residential (141 single-family lots and 71 townhouse lots)	Along Route 17S, south of the intersection with Burleigh Road (31-102) RPC- 16480	AAR CCS 7-10-2023	PUD-1, conditional
River Club at Twin Island Amendment	Amendment to condominium section of the development (54 units)	Along Stokes Drive, southwest of the Abingdon Volunteer Fire & Rescue station (50S(1)-63, 64) RPC- 42211	AAR CCS 10-25-2023	PUD-1, conditional
Riverside Hayes Medical Center Parking Amendment	Amendment to approved site plan to expand parking lot	Along Route 17S, between intersections with Guinea Road and Tidemill Road (51E(4)-A) RPC- 35093	AAR CCS 11-9-2023	B-1
Riverside Walter Reed Cancer Center- Amendment	Amendment to addition to existing medical center building	Within the Riverside Walter Reed Hospital Complex (11 Parcels, 24-127A) RPC-41587	Approved 11-17-2023	B-1
Safe Harbor Self Storage Expansion	Expansion of the existing mini-storage (self-storage units) use onto the adjacent parcel	Along Route 17N, behind the 17 Plaza Shopping Center (45-389A) RPC- 11991	Approved 1-13-2023	B-1 & I-1, conditional
Starbucks	Drive-thru restaurant	Along Route 17N, across from the intersection with Powhatan Road (50-170) RPC- 19013	Approved 6-5-2023 LDP 7-20-2023	B-1

Note: To view each location, visit: <http://gis.gloucesterva.info/>

Note: Approved items will be taken off the list once a Final Certificate of Occupancy (CO) is granted

Note: Plan approval is valid for 5 years

*Based on General Assembly action, approvals valid as of 7/1/2020 are valid until 7/1/2025

Last updated: November 14, 2023

AAR = Awaiting Applicant Resubmittal
CCS = County Comments Sent
LDP = Land Disturbance Permit
UCR = Under County Review
ZP = Zoning Permit

November 2023 Development Plan Status

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Swiss Legacy Development Plan Amendment	Amendment to approved Development Plan to revise site lighting arrangement	Behind Beckwith Farms connected to Beckwith Drive (Rte. 1095) (51-232, 248, 249) RPC- 12613	Approved 10-30-2023 LDP 8-15-2023	SF-1
Under The Stars	Event Venue conditional to CUP-20-01	Along Dutton Road, north of the intersection with Harcum Road (11-16 (In Part)) RPC- 11136	AAR CCS 2-8-2023	RC-1
Valvoline Oil	Oil change and service center	Along Waltons Lane across from Walmart (32-17K) RPC- 44196	Approved 6-21-2023	B-1
Ware Academy Phase 2	Expansion of the existing school building to include additional educational areas	At the intersection of Route 3/14 and Indian Road (25-135) RPC- 10016	Approved 3-2-2023	SC-1
Wawa (Hickory Fork) Amendment	Amendment to gas station and convenience store to add a trash enclosure	Intersection of Route 17S and Hickory Fork Road (39-109A) RPC- 20958	Approved 7-6-2023	B-1, conditional
Wells Fargo ATM at York River Crossing Shopping Center	Amendment to existing shopping center site plan to add a drive through ATM	Along Route 17N and Guinea Road (51-68) RPC- 26396	AAR CCS 8-23-2023	B-1
Art Colony	Artist studios with 4 accessory residential units	East side of Botetourt Avenue, south of Main Street (32A2(2)BK F-81, 82, 83, 86) RPC- 15510	AAR CCS 8-24-2020	B-2
Baylor Medical- Amendment	Medical Office	Route 17S., across from Riverside Walter Reed Hospital (24-120) RPC- 33048	AAR CCS 9-29-2020 LDP 1-11-2013	B-1
Burger King	Addition of second drive-thru lane to existing restaurant	Intersection of Route 17S and First Fox Street (32-20) RPC- 24114	AAR CCS 9-24-2021	B-1
Care-A-Lot Pet Supply	Retail pet supply store	Along Route 17N at the intersection of Route 17 and Providence Road (45-531) RPC- 13630	AAR CCS 6-10-2022	B-1
Carvers Creek Solar Phase 2	Phase 2 of 150 MW Utility Scale Solar Energy Facility	Along Route 17 and Glenns Road (24 Parcels, 04-50) RPC- 12536	Approved 6-13-2021	RC-1
Classic Car Café	Deli - Sandwich and fountain drinks (Renovation of existing building)	Intersection of John Clayton Mem Hwy and Burkes Pond Rd (20-32A, 32B) RPC-23870	Approved 5-4-2009*	B-1
Coleman's Crossing- Amendment	Residential & Business- 82 townhouse units and mixed-use business	Route 17 S., north of Crewe Road (45-120, 45Z(1)-Z) RPC-43966	AAR CCS 10-19-2017* LDP 11-17-2010	MF-1, B-2, conditional
The Crossings at York River	Residential- 109 multi-family units	South of York River Crossing Shopping Center (51-78) RPC- 40099	Approved 9-29-2017* LDP 10-2-2012	RMX, conditional
Dollar General Gloucester (John Clayton)	Dollar General store	Intersection of John Clayton Mem Hwy and Burkes Pond Rd (20-32A, 32B) RPC-23870	AAR CCS 2-9-2018*	B-1
Dove Field Farms	Residential- 17 lot subdivision	Gum Fork Rd (38-43) RPC-26266	Approved 4-22-2009*	SC-1
Dunkin Donuts	Drive-thru restaurant	Intersection of Route 17N and Greate Road (51A(3)Bk B-55-59, 72-75) RPC- 20163	Approved 10-24-2022	B-1

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Fiddler's Green Road Plan	Residential- 88 lot subdivision	Fiddler's Green Road (31-149) RPC- 21400	Approved 7-25-2012*	SF-1, conditional
Fiddler's Green Pump Station	Pump station for subdivision	In the subdivision (31-149) RPC- 21400	Approved 7-25-2012*	SF-1, conditional
Fox Mill Centre – Amended Site Plan	Shopping Center- amendment to existing approved site plan	Route 17 S., south of Wal-Mart Supercenter and Outparcels (32-17, 19, 19A, 19N) RPC- 40693	AAR CCS 9-3-2019* LDP 5-9-2016	B-1, conditional
Fox Mill Centre – Outparcel #5 Amended Site Plan	Outparcel lot for commercial development (amendment to existing site plan)	Route 17 S, east of Wal-Mart Supercenter, outparcel (32-17K, 19H) RPC- 41274	AAR CCS 2-26-2019*	B-1
Fox Mill Centre – 5 Acre Outparcel	Outparcel lot for commercial development - (New Development)	Route 17 S., east of Wal-Mart Supercenter, outparcel (32-17K) RPC- 44196	AAR CCS 2-12-2014*	B-1
Girl Scout Camp- Burkes Mill Pond	Cabin for Girl Scout camp	On Burkes Pond Rd along Burkes Pond (20-19) RPC- 34759	Approved 9-6-2018*	C-2
Gloucester Toyota	Expanded outdoor display area	Route 17 N, north of the Gloucester Business Park (32-51A, 51B, 39-1) RPC- 41026	AAR CCS 3-2-2016*	B-1, conditional
Legacy Springs	Assisted living center	Route 17 N, south of the Lighthouse Worship Center (45-438) RPC- 30154	AAR CCS 6-19-2019*	B-1
Oak Bridge Meadow Event Hall Barn	Event Venue pursuant to SE-17-05	Off Woods Cross Road near the Beaverdam Swamp (16-77) RPC- 22028	AAR CCS 3-20-2018* LDP 4-3-2018	RC-1 SE-17-05
Old Dominion Ice Company	Ice House/Parking	Route 17 N., at N-Out Food Mart (51A(3)BK B-62 thru 68, 68A) RPC- 42734	Approved 8-28-2012*	B-1
The Other Moving Company (TOMCO)	Retail and Storage Facility (After-the-fact Site Plan)	Route 17 N, south of Route 17-Brays Point Road intersection (45-532) RPC-27410	AAR CCS 9-24-2015*	B-1
Patriot's Walk Phase I Amendment	Residential- 79 lot phase, 214 lot subdivision	Route 3/14 S., near Ware Neck (26D(1)-2-2) RPC- 42798	AAR CCS 8-19-2019*	SC-1
Patriot's Walk Phase IIIA	Residential- 79 lot phase, 214 lot subdivision	Route 3/14 S., near Ware Neck (26D(1)-3-1, 26D(1)-J) RPC- 42799	AAR CCS 2-23-2019*	SC-1
The Ponds	Residential- 21 lot subdivision	Figg Shop Rd next to Pinebrook (formerly The Meadows) (18-80, 80A) RPC-41236	AAR CCS 8-14-2007*	SC-1
Riverside Walter Reed Wellness Center Parking Lot Expansion	Parking lot expansion	Within the Riverside Walter Reed Hospital Complex (24-127A, 127D, 127E, 127H) RPC- 43410	AAR CCS 11-17-2017*	B-1
Shephard's Way Apartment	Construct multi-family building	Intersection of Route 17N and Belroi Road (32A1(1)-3) RPC- 35149	AAR CCS 6-3-2022	MF-1
Steider & Associates	Construct two office buildings	Along Steider Drive, west of Business Route 17 (32C(1)-16A, 17A, 35) RPC- 43460	Approved 7-28-2022	B-2

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Stillwater Landing- Roadway Plan	Roadway Plan for Stillwater Lane improvements within Stillwater Landing Subdivision	Along Stillwater Lane, southeast of the intersection with Farys Mill Road (17-22) RPC- 40557	Approved 1-28-2022	SC-1, conditional
Tractor Supply Site Plan Amendment	Amendment to the approved Site Plan for a drive through pick up area	Along Route 17 and Beehive Drive (32-181) RPC- 41250	Approved 4-6-2021	B-1
Verizon Wireless- Figg Shop (Co-Location)	Construct monopole cell tower	Along Indian Rd. near Beaverdam Park (18-57) RPC- 22791	AAR CCS 2-12-2019*	RC-1
Village Lane Condominiums	Residential- 12 condominium units	Next to Village Lanes & Hillside Cinema (32-277B) RPC-19636	AAR CCS 4-18-2013*	MF-1, conditional
WaWa, Inc.- Hickory Fork	Amendment to existing site plan to modify diesel pumps facilities	Southern corner, intersection of Hickory Fork (Rte. 614) and Rte. 17 (39-109A) RPC-20958	AAR CCS 4-15-2019*	B-1
Wawa, Inc.- Tidemill	Gas station and convenience store	Northeastern corner, intersection of Tidemill (Rte. 641) and Route 17 N (51-81) RPC- 30084	AAR CCS 2-13-2020*	B-1, conditional
Yorkshire Woods Subdivision	Residential- 9 lot Subdivision	Pinetta Rd (22-126A) RPC-32764	Approved 1-09-2009*	SC-1

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TO: Planning Commission

FROM: Anne Ducey-Ortiz, AICP, Director of Planning, Zoning, and Environmental Programs
 Sean McNash, Planner II

CC: Carol Steele, County Administrator
 George Bains, Deputy County Administrator
 Maria Calloway, Chief Financial Officer
 Ted Wilmot, County Attorney

DATE: October 16 for November 2, 2023 Planning Commission Meeting

RE: Discussion in advance of PC Review of potential Capital Improvement Plan Projects for FY 25-29

The Planning Commission’s November 2, 2023 meeting will include an agenda item regarding the Capital Improvements Plan (CIP). At this meeting, the County Administrator will introduce the CIP to the Planning Commission and staff will remind the Commission of the upcoming meeting schedule on this topic, which is detailed in the following table. All meetings will be held at the Commission’s regular time, 7 PM at the Colonial Courthouse, unless changed by unforeseen circumstances. **Prior to the December 7 meeting, please notify the Planning Commission of any departments you would like to hear from at this meeting so that we can work with and these departments to schedule the presentations.**

Meeting Date	Items Discussed
November 2	Regular meeting: CIP introduced by Director of Financial Services
November 17	Anticipated electronic distribution of potential FY 25-29 CIP with proposed projects to the Planning Commission
November 17 – December 18	PC members rate projects and return ratings to Planning and Zoning
December 7	Regular meeting: Presentations of CIP projects from departments requested by Planning Commission; PC discussion of projects
December 18	Final date for PC members to return project rankings to Planning and Zoning staff
January 4, 2024	Regular meeting: PC vote on Resolution of Comprehensive Plan consistency

Leading up November 17, the Finance Department will be preparing the CIP materials, which must be completed following the November 7 referendum vote and, therefore, cannot be

provided at the November 2 Planning Commission Meeting. These materials will be provided electronically and will contain all relevant materials, including the requested projects, scoring criteria, and other aspects of the CIP Development Manual. In addition, CIP materials, including the CIP Development Manual and CIP Submission Request Package, will be posted on the Finance Department's Budgets and Financial Reports webpage as they become available, which can be found at the following link: <https://gloucesterva.gov/financial-services>. Approved CIP documents from previous years are also available on this webpage.

As provided in previous years, staff has included a list of the applicable sections of the Comprehensive Plan for your reference while rating the projects for consistency with the Comprehensive Plan. Feel free to contact Anne Ducey-Ortiz or Sean McNash in the Department of Planning and Zoning at 804-693-1224 if you have any questions prior to the meeting.

PC Action: Listen to the presentation and ask any necessary questions.

Department	Comprehensive Plan Chapters	
	Community Facilities	Other Chapters
The Community Facilities chapter of the Comprehensive Plan has set out Goals, Objectives, and Implementation Strategies that generally address the following projects, which can be found on pages 87 through 120. (Comprehensive Plan Gloucester County, VA (gloucesterva.info))		
Engineering/Emergency Management	<ul style="list-style-type: none"> • Pgs. 90-91 • Pgs. 114-119 	<ul style="list-style-type: none"> • Transportation <ul style="list-style-type: none"> ○ Pgs. 68-69 ○ Pgs. 77-79 ○ Pgs. 85-86
Information Technology	<ul style="list-style-type: none"> • Pgs. 90-91 	
Library	<ul style="list-style-type: none"> • Pg. 94 	
Parks, Recreation, & Tourism	<ul style="list-style-type: none"> • Pgs. 90-91 • Pgs. 95-102 	<ul style="list-style-type: none"> • Cultural and Historic Resources <ul style="list-style-type: none"> ○ Pgs. 191-194 ○ Pgs. 197-198 • Economic Development <ul style="list-style-type: none"> ○ Pgs. 39-41 • Natural Resources <ul style="list-style-type: none"> ○ Pgs. 159-161 • Transportation <ul style="list-style-type: none"> ○ Pgs. 71-79 ○ Pgs. 85-86
Sherriff	<ul style="list-style-type: none"> • Pgs. 90-91 • Pgs. 114-117 	
Schools	<ul style="list-style-type: none"> • Pgs. 90-94 	<ul style="list-style-type: none"> • Economic Development <ul style="list-style-type: none"> ○ Pg. 43



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M E M O R A N D U M

TO: Planning Commission

CC: Carol Steele, County Administrator
George Baines, Deputy County Administrator
Ted Wilmot, County Attorney

FROM: Anne Ducey-Ortiz, Director Planning, Zoning, & Environmental Programs

DATE: November 17, 2023 for December 7, 2023 Planning Commission Meeting

SUBJECT: Planning Commission Chair and Vice Chair Nominations

At the Planning Commission's November 2023 Meeting, the Chair received nominations for the 2024 Chair and Vice Chair positions. However, in accordance with the Commission's Rules of Procedure (Section 3-3), no vote was to be taken until the December meeting. Furthermore, any additional nominations shall be received during discussion of this this at the December meeting with a vote to follow immediately.

At the Commission's November meeting, Mr. Johnson and Mr. Meyer were nominated for the Chair and Vice Chair positions, respectively. In addition, Mr. Gray was also nominated as Vice Chair. Since members will serve one-year terms and may succeed their initial term for only one additional term, Mr. Johnson and Mr. Meyer can be reelected to these positions for one additional term. In addition, Mr. Gray and any other member(s) can be nominated and elected to these positions as well. Elected officers must receive a majority vote of the entire voting membership (at least 4 votes) and will start their term at the beginning of the January 2024 meeting.

Please notify our department if you are unable to attend this meeting so staff can ensure that a majority will be present to conduct the elections. Thank you for your diligent work on the Planning Commission. Feel free to contact Sean McNash or Anne Ducey-Ortiz at 804-693-1224 if you have any questions prior to the December meeting.

PC Action: Receive any additional nominations and elect a Chair and Vice Chair for 2024.



Department of Planning & Zoning

County Building Two - 6489 Main Street
Gloucester, Virginia 23061

Phone (804) 693-1224

Fax (804) 824-2441

M E M O R A N D U M

TO: Planning Commission

CC: Carol Steele, County Administrator
George Bains, Deputy County Administrator
Ted Wilmot, County Attorney

FROM: Carol Rizzio, Senior Comprehensive Planner
Anne Ducey-Ortiz, Planning, Zoning and Environmental Programs Director

DATE: November 29 for December 7, 2023 meeting

SUBJECT: Zoning Ordinance Amendments Rewrite – Article 12 Sign follow-up and Article 14 Administrative procedures

At the last Planning Commission meeting staff reviewed the changes proposed by the Planning Commission to Article 12 – Signs. We also discussed the request for electronic message boards from several churches on Main Street. The Planning Commission requested additional information related to their needs. Staff has discussed this request with them and anticipates one of more representatives at the December meeting to provide additional information. I've attached the letter from the churches for your convenience. They are requesting the ability to have electronic signs/message boards along all of Main Street. To do so, the following additional changes would be needed to the ordinance (assuming we still want to restrict them from the historic district/parcels).

*Non-residential signs in residential districts. Churches and other similar places of religious assembly, schools, libraries, **public buildings/facilities, fire and/or EMS company stations,** museums, and parks located in any residential, agricultural, or conservation district shall be permitted one (1) sign not to exceed forty (40) square feet in area nor six (6) feet in height. Such sign may be a monument type and may be an internally illuminated sign subject to section 12-2(2) and/or an electronic display sign subject to the requirements of section 12-7(6) **12-6(2)**, regardless of the district in which located. The hours of permissible operation for electronic display signs shall be limited to 6 AM to 10 PM, and such signs shall meet the minimum side yard setback for all districts but shall be no closer than thirty (30) feet from the lot line of any adjacent parcel that is not in common ownership with the use identified on the sign. Electronic display signs shall not be permitted on the following properties:*

- a. *Parcels with frontage along Main Street (Business 17) from the northern intersection with Route 17 the southern intersection with*

~~Route 17 regardless of other frontages within the historic Court House area.~~

~~b. Parcels located adjacent to or across from historic properties listed in Appendix B - Zoning, article 6, section 6-1, the Virginia Landmarks Register, or the National Register of Historic Places.~~

With the changes discussed above these types of signs would be permitted in:

- the HCDD on parcels zoned B-1, B-2, and I-1, and
- areas outside the HCDD on parcels zoned C-1, RC-1, RC-2, C-2, SC-1, SF-1, and MF-1 but only for churches, museums, and other public properties (parks, libraries, schools, government facilities).

They would be excluded from:

- B-4 parcels
- B-1, B-2, and I-1 outside of the HCDD district

Denise Canada, our assistance zoning administrator, is also planning on attending the meeting to review the various sign definitions and answer any questions you may have.

Additionally, staff has continued work on Article 14 Administrative Procedures to align it with the proposed changes to Articles 1-9. Article 14 covers the procedures for rezonings, conditional use permits (CUP), special exceptions (SE), variances, and appeals. We have incorporated the proposed changes discussed at the last meeting and we will review the remaining changes proposed to Article 14 for your input and guidance. Below is a list of the items we will review and discuss.

Article 14 Administrative Procedures –

- Requirements for Traffic Impact Analysis (TIA) – Attached is a summary of other locality requirements related to TIAs and various use trip generation estimates
- Adjacent parcel notifications for uses proposed on private roads
- Application requirements for a Conditional Use Permit (CUP)
- Criteria for approval of a CUP
- Criteria to establish a CUP
- Purpose for special exception (SE)
- Application requirements for a SE
- Application requirements for variances
- Procedures for variances
- Procedures for appeals of zoning administrator decision

The following items are attached:

- the letter received from several churches on Main Street
- draft of the proposed revisions to Article 14
- summary of other locality TIA requirements and various use trip generation estimates

Please feel free to contact staff with any questions. We look forward to your input.

PC Action: Review the materials, listen to staff's presentation, and provide comments / recommendations.

To: Carol Steele, Gloucester County Administrator
CC: The Board of Supervisors: Mr. Christopher Hutson (Chair)
CC: Anne Ducey-Ortiz – Director of Planning, Zoning & Environmental Programs
CC: Denise Canada, CZA, Assistant Zoning Administrator

Gloucester County Planning and Zoning.
6489 Main Street, Suite 202
Gloucester, VA 23061

RE: Gloucester Zoning Ordinance – SIGNS

Dear Carol.

Thanks for allowing us to communicate with you on this subject of road signs for our churches.

We the ministry leaders (Pastors/Priests/Ministers) of the churches on Main Street all are in full agreement that we would like to have the zoning commission review the ordinance for our church's signs and change the section 12-7 eliminating the section 2a which specifically prohibits electronic sign on any parcel of Main Street. By allowing the electric signs many, if not all of our small signs and banners, now being used, would no longer be necessary.

We would like to have the ability to price out and/or install a different sign when the time is right for each church, that may or may not include electric and/or lighted display signs.

Thank you so much for your consideration of this change.

Sincerely,

Pastor Chris Grella

Newington Baptist

PastorChris@NewingtonBC.org

Father Gregory Kandt

Church of Saint Therese

fr.gregory@stthersglo.org

Pastor Jay Serafin

Apostles Lutheran

j80j84@msn.com

Rev. Douglas Nagel

Grace Covenant Presbyterian

pastordoug@gracecovenant.us

Pastor Mike Freeman

Transforming Life Church

Revmikefreeman@gmail.com

ARTICLE 14. - ADMINISTRATIVE PROCEDURES

Sec. 14-21 - General.

- (1) **Purpose.** It is the general policy of the county, in accordance with the laws of the Commonwealth of Virginia, to provide for the orderly development of land for all purposes, through zoning and other land development legislation. (3A-1)
- (2) **Uses not provided for.** In any district, uses not specifically permitted shall not be allowed. Persons desiring inclusion in the zoning ordinance of a use not specifically permitted may apply for an amendment to the ordinance, in accordance with the procedures set forth herein. (14.21)
- (3) **Rezoning, conditional use permits (CUPs), and special exceptions (SEs) may happen concurrently.** Whenever a single applicant submits applications for two or more use permits, review of those applications can occur simultaneously. In such cases where a SE is applied for in association with a rezoning or CUP, the Board of Supervisors may hear and decide upon the SE. (Staff note: County Attorney stated that the BOS can choose to accept this authority.)
- (4) **Incomplete applications.** The Zoning Administrator shall notify applicants within fifteen (15) business days of missing or incomplete items. Such applications will be placed on hold until all required documentation has been submitted. After one-year, incomplete applications will be closed as incomplete; fees will not be reimbursed. (Staff note: Recommendation to ensure applications are complete and/or closed when not complete within a specific timeframe. Ensure this applies to all application types.)
- (5) **Applications for rezonings, conditional use permits, special exceptions, and variances may be placed on hold at the request of the applicant.** An application may be put on hold upon written request of the applicant at any time prior to advertising for public hearing. This hold shall not exceed six (6) months. The applicant shall make a written request to the zoning administrator to reactivate the application. Applications not placed on hold prior to advertisement can be withdrawn at or prior to the public hearing. In the event of and upon such withdrawal, processing of the proposed application shall cease without further action as otherwise would be required by this ordinance. (Staff note: This would only apply to applications (rezonings, SEs, CUPs and variances).)
- (6) **Limitations on zoning amendments.** (14-10) Substantially the same application for zoning amendment or change, **conditional use permit, special exception, or variance** shall not be reconsidered within one (1) year of the scheduling of a public hearing of the planning commission **or board of zoning appeals**. Substantially the same zoning amendment or change **or conditional use permit** shall not be reconsidered within one (1) year of any final action taken thereon by the governing body. (Staff note: Moved here from 14-10 and included SEs and Variances per 15.2-2310. State Code Section 15.2-2286 (7) states that “the ordinance may provide for the consideration of proposed amendments only at specified intervals of time, and may further provide that substantially the same petition will not be reconsidered within a specific period, not exceeding one year.”)
- (7) ~~Petitions~~ **Conflict of Interest Statement.** ~~Petitions~~ **Applications** brought by property owners, contract purchasers or the agents thereof, shall be sworn to under oath before a notary public or other official before whom oaths may be taken, stating whether or not any member of the planning commission, board of zoning appeals, ~~historic landmarks commission,~~ or governing body **board of supervisors** has any interest in such property, either individually, by ownership of stock in a corporation owning such

land, or partnership, or whether a member of immediate household of any member of the planning commission, board of zoning appeals, ~~historic landmarks commission~~, or governing body **board of supervisors** has any such interest.

- (8) Permits required by others. The granting of a rezoning, CUP, SE, or variance does not exempt the applicant from obtaining a Building Permit, a Certificate of Occupancy, or complying with all other requirements of this ordinance or any applicable County, state, or federal law. It is the applicant's responsibility to secure all required permits.** (Staff note: SE Criteria T, similar language is included in our general regulations located in Article 9. This specific language is from the current CUP language for other laws applicable.)

Sec. 14-3-2. Rezoning

- (1) Purpose.** Whenever the public necessity, convenience, general welfare, or good zoning practices require, the governing body may by resolution after receipt of recommendation thereon from the commission, and subject to the procedures provided by law, supplement, change or repeal the regulations, restrictions, and boundaries or classification of property. (14-2)

Frequently where competing and incompatible uses conflict, traditional zoning methods and procedures are inadequate. In these cases, more flexible and adaptable zoning methods are needed to permit land uses and at the same time to recognize the effects of change. Conditional zoning It is the purpose of this article to provides a more flexible and adaptable zoning method to cope with such situations found in such zoning through conditional zoning, whereby a zoning reclassification may be allowed subject to certain conditions proffered by the zoning application for the protection of the community that are not applicable to land similarly zoned. The provisions of this article conditional zoning shall not be used for the purpose of discrimination in housing. (Staff note: Taken from Conditional Zoning Section 3A-1 Purpose of this article.)

This ordinance may be amended by utilizing the procedures specified in **these** sections ~~14-2 through 14-10 inclusive~~ and the additional procedures for rezoning to **Planned Unit Development** PUD-1 district as outlined in article 8 and for rezoning to Residential Manufactured Home Park **R-MH** ~~MH-1~~ district as outlined in article 7 **5-30.5**. (14-1)

- (2) Initiation** - Amendments to this ordinance **or district boundaries** may be initiated in one of the following ways: (14-3)
- a. By **motion or** resolution of the governing body which shall state the public purposes therefor. (Staff note: Confirming with the County Attorney that a motion is OK.)
 - b. On a motion by the commission **which shall state the public purposes therefor.**
 - c. By petition of the owner, contract purchaser with the owner's written consent, or the owner's agent therefor, of the property which is the subject of the proposed zoning map amendment.
- (3) Pre-application conference required. Applications initiated under item c above require a pre-application conference. The pre-application conference shall be scheduled by the zoning administrator or his or her designated agent with the applicant to discuss the proposal.** (Staff note: This practice is currently a mandatory county administrator policy. Staff believes the practice is very beneficial for the applicant and recommended adding it to the code so that it is clear that the pre-application process is required. Currently required by the ordinance for CUPs.)

(4) Contents of applications (14-4)

- a. Rezoning. Applicant shall make application for amendments to the official zoning map adopted as part of this ordinance to the zoning administrator on the form provided for that purpose, giving all information required by such form.** Applications for amendments to the official zoning map adopted as part of this ordinance shall contain at least the following information:
- i.** Name, address, and phone number of applicant;
 - ii. Name, address and phone number of owner;**
 - iii.** Legal description of property, and tax map reference, **real property code (RPC), and** plat of such land showing the new zoning classifications and indicating the boundaries of such classification.
 - iv.** Present use;
 - v.** Present zoning district;
 - vi.** Proposed use;
 - vii.** Proposed zoning district;
 - viii. A narrative describing the proposed use and purpose for the rezoning including potential impacts to community facilities including transportation, schools (potential number of kids, schools impacted and their capacity), public safety, and utilities.**
 - ix.** A statement on how the proposed amendment relates to the comprehensive plan;
 - x.** Site plan at scale approved by **acceptable to** the administrator showing property lines, thoroughfares, existing and proposed zoning, **existing and proposed structures/entrances, existing vegetation,** and any such other items as the administrator may require **in order to provide adequate information to provide a recommendation to decision makers.** The site plan shall bear the seal of a licensed engineer, surveyor, or architect. (Staff note: In some circumstances a site plan sealed by a licensed professional may not be necessary. Staff is proposing an optional pre-application with the PC to waive that requirement. See xviii below.)
 - xi.** A list of all **tax map/parcel numbers,** property owners and their mailing addresses as shown on the county land books who are within, ~~or contiguous to, or directly across the street from~~ the parcel(s) proposed;
 - xii.** A list of all **tax map/parcel numbers,** property owners and their mailing addresses as shown on the county land books who are ~~within, or~~ contiguous to, or directly across the street from the parcel(s) proposed;
 - xiii. A statement on how the proposed amendment relates to the comprehensive plan;**
 - xiv.** A fee as established by the governing body;
 - xv. Conflict of Interest Statement (must be notarized);**

xvi. Proffer Policy (reviewed and signed)

xvii. Traffic Impact Analysis (TIA).

- i. **Submission of a TIA shall be required when one or more of the following apply:** (Staff note: New requirement. In some circumstances a TIA may not be necessary. Staff is proposing an optional pre-application with the PC to waive that requirement. See xviii below.)

(a) Projects that expect to generate 1,000 or more average daily trips.

(b) Projects that expect to generate 100 or more weekday peak hour trips to and from the site during the peak hour of operation based on the ITE manual's trip generation rates.

(c) Projects with an entrance or exit onto a roadway identified as having a moderate (Highway Capacity Manual level of service D) or severe (Highway Capacity Manual level of service E-F) congestion level.

2. **A scoping meeting with VDOT and the planning department is required. At this meeting the planning director will determine the minimum scope of work required for the TIA.**

3. **Chapter 527 Compliance Form (completed and signed). If the proposal meets a threshold as specified in VDOT's Traffic Impact Analysis Regulations, Chapter 527, the applicant shall include a complete copy of the rezoning application package for VDOT review.** (Staff note: Below are the situations when VDOT requires a TIA –

VAC30-155-40 Rezoning: ... if the proposal generates more than 5,000 vehicle trips per day at the site's connection to a state-controlled highway.

The proposal for residential rezoning generates more than 400 daily vehicle trips on a state-controlled highway and, once the site generated trips are distributed to the receiving highway, the proposal's vehicle trips on the highway exceed the daily traffic volume such highway presently carries.

- xviii. Items required under x and xvii above may be waived or modified by the Planning Commission during an optional pre-application meeting at a regularly scheduled Planning Commission meeting.** (Staff note: Staff is confirming with the county attorney that we can offer applicants an optional pre-app to see if they will waive certain requirements such as sealed site plan or traffic impact analysis. Some rezonings are minor and may not need all the information, but staff feels that should be a PC decision and not staff's since the PC ultimately has to make their recommendations to the BOS.)

~~Applications for amendments proposing to amend, supplement, change or repeal portions of this ordinance other than the official zoning map shall include items (1), (9), and (10) listed above.—(Staff note: This language was removed. Staff recommends that text amendments be sponsored by the PC or the BOS. Interested parties can propose the amendment to either body, who can then request that staff work on the text amendments.)~~

- b. Conditional Zoning. Applications for conditional zoning amendments to the official zoning map adopted as part of this ordinance shall contain all the items required for rezonings listed in 14-2(4)(a) and a proffer statement subject to the following. (3A)**

Proffer statement of conditions. The owner or owners of property making application for a change in zoning or amendment to a zoning or amendment to a

~~zoning~~ map, as part of their application, may voluntarily proffer in writing reasonable conditions which shall be in addition to the regulations provided for in the zoning district or zone sought in the rezoning petition. The conditions shall be proffered as a part of the requested rezoning or amendment to the county's zoning map. It is expressly provided, however, that the conditions so proffered are subject to the following limitations:

- i. The rezoning itself must give rise to the need for the conditions;
- ii. Such conditions shall have a reasonable relation to the rezoning;
- iii. Such conditions may include a cash contribution to the county;
- iv. Such conditions ~~may~~ **shall not** include **mandatory** dedication of real or personal property for open space, parks, schools, fire departments or other public facilities **not otherwise provided for in the subdivision ordinance** including, but not limited to, dedication of any street, curb, gutter, sidewalk, bicycle trail, drainage, water or sewer system;
- v. **Such conditions shall not include a requirement that the applicant create a property owners' association under the Property Owners' Association Act (§ 55.1-1800 et seq.) which includes an express further condition that members of a property owners' association pay an assessment for the maintenance of public facilities owned in fee by a public entity, including open space, parks, schools, fire departments and other public facilities not otherwise provided for in the subdivision ordinance; however, such facilities shall not include sidewalks, special street signs or markers, or special street lighting in public rights-of-way not maintained by the Department of Transportation;**
- vi. Such conditions ~~may~~ **shall not** include payment for or construction of off-site improvements **except those provided for in the subdivision ordinance;** ~~and~~
- vii. Such conditions shall be related to the physical development or physical operation of the property; **and**
- viii. All such conditions shall be in conformity with the comprehensive plan of the county.

~~(5) 14-5~~ *Transmittal to planning commission.* (14-5)

Immediately after the adoption of a resolution or a motion by the ~~governing body~~ **board of supervisors** or the filing of a complete application by a property owner, and payment of any established fees, said resolution, motion or application shall be transmitted to the **planning** commission.

~~(6) 14-6~~ *Actions by planning commission.* (14-6)

- a. Within one hundred (100) days ~~after the first meeting of the commission after the proposed amendment or reenactment has been referred to the commission,~~ or such shorter period as may be prescribed by the board of supervisors, ~~and~~ after public notice and hearing as required by section 15.2-~~2285~~**2204** of the Code of Virginia, the planning commission shall recommend to the governing body that the proposed zoning amendment or change be approved as presented, approved with modifications, or disapproved.
- b. **Applications located on private roads. If the parcel does not have frontage on, or exclusive deeded access to, a state maintained road, all property owners whose land abuts the private road, whether or not they have access to the road, shall be notified of the rezoning application and hearing date.**

access to all proffered cash payments and expenditures disclosure reports prepared by the local governing body pursuant to Section §15.2-2303.2 of the Code of Virginia. The zoning administrator shall update the Index annually and no later than November 30 of each year. (Staff note: 3A-4; ask Denise if complus can achieve this.)

(8) Appeal of the decision of the governing body. (14-9)

Every action contesting a decision of the governing body adopting or failing to adopt a proposed zoning ordinance or amendment thereto shall be filed within 30 days of the decision with the Circuit Court of Gloucester County.

(9) Enforcement and guarantees as to conditions *related to conditional zoning*. (Staff note: 3A-3; confirm w/ county attorney this is only related to conditions placed on conditional zoning (proffers).)

The zoning administrator shall be vested with all necessary authority on behalf of the county to administer and enforce conditions attached to a rezoning or amendment to a zoning map, including:

- a. The ordering in writing of the remedy of any noncompliance with such conditions:
- b. The bringing of legal action to ensure compliance with such conditions, including injunction, abatement or other appropriate action or proceeding; and
- c. Requiring a guarantee, in an amount sufficient for or conditioned upon the construction of any physical improvements required by the conditions, or a contract for the construction of such improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee may be reduced or released by the zoning administrator upon the submission of satisfactory evidence that construction of such improvements has been completed in whole or in part. Provided, further, that failure to meet all conditions shall constitute cause to deny the issuance of any required use, occupancy or building permits as may be appropriate.

(10) Petition for review of *zoning administrator's decision related to enforcement and guarantees of conditions*. (Staff note: 3A-5; confirm w/ county attorney this is only related to conditions placed on conditional zoning (proffers).)

- a. Any zoning applicant who is aggrieved by the decision of the zoning administrator, pursuant to ~~the provisions of section 3A-3 (9) above~~, may petition the board of supervisors for the review of such decision. Said appeal shall be taken within thirty (30) days from the date of the action complained of and shall be instituted by filing with the zoning administrator and with the county administrator a notice of appeal, specifying the grounds thereof.
- b. The zoning administrator shall forthwith transmit to the board of supervisors all of the papers constituting the record upon which the action appealed from was taken, and the board of supervisors shall proceed to hear the appeal at its next regular scheduled meeting.
- c. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the zoning administrator certifies to the board of supervisors after the notice of appeal has been filed with him **or her** that, by reason of facts stated in the certificate, a stay would, in his **or her** opinion, cause imminent peril to life or property. In such case, the proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of supervisors or by a court of record on application or notice to the zoning administrator and on due cause shown.

- d. **A decision by the governing body on an appeal taken pursuant to this section shall be binding upon the owner of the property which is the subject of such appeal only if the owner of such property has been provided written notice of the zoning violation, written determination, or other appealable decision.**
 - e. **An aggrieved party may petition the circuit court for review of the decision of Board on an appeal taken pursuant to this section. The petition must be filed within thirty (30) days of the decision.**
- (11) *Amendments and variations of conditions.* (3A-6)
- a. There shall be no amendment or variation of conditions created pursuant to the provisions of this article until after **the matter has been heard before the planning commission, which will make a recommendation to the board of supervisors, and** a public hearing before the board of supervisors which shall be advertised pursuant to section ~~15.1-431~~ **15.2-2204** of the Code of Virginia, 1950, as amended.
 - b. **However, where an amendment to such proffered conditions is requested and where such amendment does not affect conditions of use or density, a local governing body may waive the requirement for a public hearing (i) under this section and (ii) under any other statute, ordinance, or proffer requiring a public hearing prior to amendment of such proffered conditions. In these situations, the Planning Commission shall make a recommendation to the Board of Supervisors related to waiving the public hearing at the time the matter is presented before them to recommend approval or denial. (Staff note: Proffer amendments go before the PC first to make a recommendation to the BOS related to waiving the public hearing.)**
 - c. **Applications located on private roads. If the parcel does not have frontage on, or exclusive deeded access to, a state maintained road, all property owners whose land abuts the private road, whether or not they have access to the road, shall be notified of the rezoning application and hearing date.**
 - i. **This notification shall be in addition to the notification required by section 15.2-2204 of the Code of Virginia and the property owners notified shall be based on the information available in county records at the time of application.**
 - ii. **The applicant is required to provide legal documentation of exclusive deeded access to a state road, if applicable, as part of their application for conditional use permit.**

14.3 ~~14-23~~ Conditional Use Permits (14-23)

- (1) *Purpose.* The purpose of this section is to provide for certain uses which, because of their unique characteristics or potential impacts on adjacent land uses, are not generally permitted in certain zoning districts as a matter of right, but which may, under the right set of circumstances and conditions, be acceptable in certain specific locations. These uses are permitted only through the issuance of a conditional use permit by the Board of Supervisors after ensuring that the use can be appropriately accommodated on the specific property, will be in conformance with the Comprehensive Plan, can be constructed and operated in a manner which is compatible with the

surrounding land uses and overall character of the community, and that the public interest, safety, and general welfare of the citizens of the County will be protected.

No inherent right exists to receive a conditional use permit; such permits are a special privilege granted by the Board of Supervisors under a specific set of circumstances and conditions, and each application and situation is unique. Consequently, mere compliance with the generally applicable requirements may not be sufficient, and additional measures, occasionally substantial, may be necessary to mitigate the impact of the proposed use. In some situations, no set of conditions would be sufficient to approve an application, even though the same request in another location would be approved.

(2) ~~Initiation.~~ Fee

- a. A pre-application conference shall be scheduled by the applicant with the zoning administrator or his **or her** designated agent to discuss the proposal.
- b. The applicant, ~~who~~ shall be an owner of record or contract owner with written approval of the owner of the land involved (if a contract owner, a copy of said contract shall be filed with and made a part of application), ~~shall make application for the use permit to the zoning administrator on the form provided for that purpose, giving all information required by such form, including such other information which the zoning administrator may deem necessary for an intelligent consideration of the project for which a permit is desired.~~ (Staff note: Moved to 3-Contents of application.)
- ~~(3) The application shall be accompanied by a fee of \$1,000.00, which fee shall cover administrative expenses, including public hearing notice advertisement costs.~~ (Staff note: Moved to Article 15 where other fees are located.)

(3) ~~Completeness.~~ Contents of Application

- ~~1. A pre-application conference shall be scheduled by the applicant with the zoning administrator or his designated agent to discuss the proposal.~~ (Staff note: Moved to 2-Initiation.)
 - a. Applicant shall make application for the use permit to the zoning administrator on the form provided for that purpose, giving all information required by such form, including such other information which the zoning administrator may deem necessary for an intelligent consideration of the project for which a permit is desired including items identified below.
 - b. The application shall be accompanied by the required number of copies of the following:
 - i. Site plan at scale approved by the administrator showing property lines, thoroughfares, existing and proposed zoning, and any such other item as the administrator may require **in order to provide adequate information to provide a recommendation to decision makers** . The site plan shall bear the seal of a licensed engineer, surveyor, or architect.
 - ii. The front, side and rear elevations and floor plans of the proposed buildings.
 - c. **A narrative describing the proposed use and purpose for the property including potential impacts to surrounding properties, transportation, utilities, natural resources, and public services.**
 - d. **A statement on how the proposed amendment relates to the comprehensive plan;**

- e. **A list of all tax map/parcel numbers, property owners, and their mailing addresses as shown on the county land books who are within the parcel(s) proposed;**
- f. **A list of all tax map/parcel numbers, property owners, and their mailing addresses as shown on the county land books who are contiguous to or directly across the street from the parcel(s) proposed;**
- g. **Traffic Impact Analysis (TIA).**
 - i. **Submission of a TIA shall be required when one or more of the following apply: (Staff note: New requirement. In some circumstances a TIA may not be necessary. Staff is proposing an optional pre-application with the PC to waive that requirement. See xviii below.)**
 - 1. **Projects that expect to generate 1,000 or more average daily trips.**
 - 2. **Projects that expect to generate 100 or more weekday peak hour trips to and from the site during the peak hour of operation based on the ITE manual’s trip generation rates.**
 - 3. **Projects with an entrance or exit onto a roadway identified as having a moderate (Highway Capacity Manual level of service D) or severe (Highway Capacity Manual level of service E-F) congestion level.**
 - ii. **A scoping meeting with VDOT and the planning department is required. At this meeting the planning director will determine the minimum scope of work required for the TIA.**
- h. **Conflict of Interest Statement (signed and notarized)**
- i. **A fee as established by the governing body.**

(4) ~~Review of Application.~~ Transmittal to Planning Commission

When the zoning administrator has certified that the application is complete, it shall be deemed received and referred to the Planning Commission for its review and recommendation to the Board of Supervisors.

- (5) ~~Approval Criteria.~~** As may be specified within each zoning district, uses permitted subject to conditional use review criteria shall be permitted only after review by the Planning Commission and approval by the Board of Supervisors only if the applicant demonstrates that:
- a. ~~1.~~—The proposed conditional use is in compliance with all regulations of the applicable zoning district, the provisions of this section, and all applicable provisions of the Zoning Ordinance.
 - b. ~~2.~~—The establishment, maintenance, or operation of the proposed use is not detrimental to, and will not endanger, the public health, safety, morals, comfort, or general welfare.
 - c. ~~3.~~ The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially impair the use of other property within the immediate proximity.
 - d. ~~4.~~ The proposed conditional use conforms to the character of the neighborhood within the same zoning district in which it is located. The proposal as submitted or modified shall have no more adverse effects on health, safety or comfort of persons living or working in or driving through the neighborhood, and shall be no more injurious to property or improvements in the neighborhood, than would any

other use generally permitted in the same district. In making such a determination, consideration shall be given to the location, type, size, and height of buildings or structures, type and extent of landscaping and screening on the site, and whether the proposed use is consistent with any theme, action, policy or map of the Comprehensive Plan.

- e. ~~5-~~ The exterior architectural appeal and function plan of any proposed structure will not be at substantial variance with either the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood, or the character of the applicable zoning district, and shall enhance the quality of the neighborhood.
- f. ~~6-~~ The public interest and welfare supporting the proposed conditional use is sufficient to outweigh the individual interests which are adversely affected by the establishment of the proposed use.
- g. ~~7-~~ The proposed use will not result in the destruction, loss or damage of any feature determined to be of significant ecological, scenic, archeological, or historic importance. **Project shall not adversely impact properties on or eligible for the National and State Registers of Historic Places, properties containing Natural Heritage species, Chesapeake Bay Resource Protection Areas, or other areas designated as places of national, state or local importance.** (Staff note: Revised for clarity.)

(6) ~~2-~~ Action by Planning Commission

- a. The Planning Commission shall, within one hundred (100) days after the first meeting of the Planning Commission after such referral, report to the Board of Supervisors its recommendation as to the approval or disapproval of such application and any recommendation for establishment of conditions, in addition to those set forth in this chapter, deemed necessary to protect the public interest and welfare. Failure of the Planning Commission to report within one hundred (100) days shall be deemed a recommendation of approval. The Planning Commission shall hold a public hearing, in accordance with section ~~Va. Code § 15.2-2204~~ **of the Code of Virginia**, on the application prior to making a recommendation to the Board.
- b. **Applications located on private roads. If the parcel does not have frontage on, or exclusive deeded access to, a state maintained road, all property owners whose land abuts the private road, whether or not they have access to the road, shall be notified of the conditional use permit application and hearing date.**
 - i. **This notification shall be in addition to the notification required by section 15.2-2204 of the Code of Virginia and the property owners notified shall be based on the information available in county records at the time of application.**
 - ii. **The applicant is required to provide legal documentation of exclusive deeded access to a state road, if applicable, as part of their application for conditional use permit.**

(7) ~~3-~~ Action by governing body

- a. Upon receipt of the recommendation of the Planning Commission, the Board of Supervisors, after public notice in accordance with ~~Section Virginia Code § 15.2-2204~~ **of the Code of Virginia**, shall hold at least one public hearing on such application, and as a result thereof, **shall make such amendments or changes as it deems appropriate, provided that the Board shall act upon and make a**

decision upon each application within one year of the date such application is filed unless the applicant requests or consents to action by the Board beyond such period or withdraws the application prior to action of the Board shall either approve or deny the request. (Staff note: New language taken from rezoning process.)

- b. In approving any conditional use permit, the Board of Supervisors may impose conditions or limitations on any approval as it may deem necessary to protect the public interest, safety, and welfare. Such additional standards may include, but need not be limited to:
 - i. Special setbacks, yard or construction requirements, increased screening or landscaping requirements, area requirements, development phasing, and standards pertaining to traffic, circulation, noise, lighting, hours of operation and similar characteristics; and
 - ii. A performance guarantee, acceptable in form, content and amount to the County, posted by the applicant to ensure continued compliance with all conditions and requirements as may be specified.
- (8) e. ~~Recordation of Conditional Use Permit.~~** A certified copy of all ordinances and resolutions authorizing a conditional use permit pursuant to this section shall be recorded by, and at the expense of, the permitted applicant, in the name of the property owner as grantor in the office of the Clerk of the Circuit Court. No conditional use permit shall become effective until so recorded.
- (9) f. ~~Other laws applicable.~~** ~~The granting of a conditional use permit does not exempt the applicant from obtaining a Building Permit, a Certificate of Occupancy, or complying with all other requirements of this ordinance or any applicable County, state or federal law. (Staff note: Moved to beginning of article under general.)~~
- (9) g. ~~Denial of a Conditional Use Permit.~~** If the Board of Supervisors finds that an application for a conditional use will not conform to the general character of the neighborhood to which the proposed use will apply, or that the public health, safety and general welfare of such neighborhood will not be secure by granting such conditional use, or that the approval criteria outlined in Subsection d of this section have not been met, then the Board of Supervisors may deny such application, anything in this ordinance to the contrary notwithstanding.
- (10) h. ~~Effect of Denial of a Conditional Use Permit.~~**
- a. ~~1.~~ No application for a conditional use permit which has been denied wholly or in part by the Board of Supervisors shall be resubmitted for a period of one (1) year from the date of said denial, except on the grounds of new evidence or proof of change of conditions found to be valid by the Board of Supervisors.
 - b. ~~2.~~ The Board of Supervisors may, at any time, consider a new application affecting the same property as an application previously denied. A new application is one that differs in some substantial way from the one previously considered, as determined by the Zoning administrator.
 - c. ~~3.~~ A newly submitted conditional use permit application must follow the procedures outlined in subsections a and b of this section.
- (11) Appeal of governing body decision. Every action contesting a decision of the governing body adopting or failing to adopt a proposed conditional use permit shall be filed within 30 days of the decision with the Circuit Court of Gloucester County.**
- (12) i. ~~Scope of Approval~~**

- a. ~~1-~~ Unless otherwise specified by the conditions of the permit, the applicant has two (2) years to establish the conditional use. **The use shall be considered established upon approval of a zoning permit application for the use.** Failure to establish the conditional use authorized by the permit within two (2) years from the date of approval by the Board of Supervisors, or such longer time as otherwise specified by the conditions of the permit, shall cause the permit to terminate and to become void, unless an extension is granted in writing by the zoning administrator as outlined in section ~~14-23(k)(1)~~ **14.3(14)**. The approval of a new conditional use permit shall be required once terminated, voided, or allowed to expire. (Staff note: revised to clearly state how a use is established. Once a zoning permit is approved, the applicant has 1 year begin implementation of the use and 2.5 years to complete.)
- b. ~~2-~~ The provisions of this section are cumulative with the power of injunction and other remedies afforded by law to the County, and further shall not be so interpreted as to vest in any applicant any rights inconsistent or in conflict with the power of the County to rezone the subject property or to exercise any other power provided by law.
- c. ~~3-~~ Once a conditional use permit is granted, such use may be enlarged, extended, increased in intensity or relocated only in accordance with the provisions of this section.
- d. ~~4-~~ Where any conditional use is discontinued for any reason for a continuous period of two (2) years or more, the conditional use permit shall terminate and become null and void. A use shall be deemed to have been “discontinued” when the use shall have ceased for any reason, regardless of the intent of the owner or occupier of the property to reinstitute the use at some later date. The approval of a new conditional use permit shall be required prior to any subsequent reinstatement of the use.

(13) ~~j-~~ *Revocation of Conditional Use Permits.*

- a. ~~1-~~ Complaints concerning the operation or function of a conditional use may be reported to the Zoning administrator. Such complaints shall be documented and researched by the Zoning administrator or ~~his~~ **their** designee.
- b. ~~2-~~ Grounds for revocation shall include, but not be limited to, the following:
 - i. A change in conditions affecting the public health, safety and welfare since the adoption of the conditional use permit; or
 - ii. Violations of this chapter, violations of regulations applicable to the underlying zoning district, or violations of any conditions attached to the conditional use permit, by the owner/operator of the use; or
 - iii. Fraudulent, false or misleading information supplied by the applicant (or ~~his~~ **their** agent) for the conditional use permit; or
 - iv. An error or mistake in fact that led to decision made by the Board of Supervisors when approving the conditional use permit.
- c. ~~3-~~ If it is determined by the Zoning administrator or ~~his~~ **their** designee that the conditional use is in violation of one (1) or more of the items listed above, the owner of the property will be notified by certified letter of the violations and may be given a reasonable time to rectify said violation(s).
- d. ~~4-~~ If the violation(s) are not fully rectified within the allotted time, the County may begin the revocation process.
- e. ~~5-~~ The revocation process is generally as follows:

and documentation of the progress made toward establishment of the conditional use.

- b. ~~2.~~ *Major Amendments.* Any proposed amendment other than those provided for in subsection (k)(1) above shall be considered a major amendment of a previously approved and currently valid conditional use and shall be considered according to the provisions outlined in subsections a, b, c, and d of this section.
- c. ~~3.~~ *Non-conforming Uses.* For an existing and currently valid conditional use permit which is no longer allowed as a conditional use in the zoning district in which located, the Board of Supervisors, after recommendation by the Planning Commission, may approve an amendment to said permit, provided such amendment does not allow the use to be enlarged, expanded, increased in intensity, relocated, or continued beyond any limitation specified in the existing use permit or established in Article 10 Nonconformities, Appendix B, Zoning, of this code.

14-4. Special exceptions. (14-16)

- (1) ***Purpose:* The purpose of this section is to provide for certain uses which, because of their unique characteristics or potential impacts on adjacent land uses, are not generally permitted in certain zoning districts as a matter of right, but which may, under the right set of circumstances and conditions, be acceptable in certain specific locations. These uses are permitted only through the issuance of a special exception by the Board of Zoning Appeals after ensuring that the use can be appropriately accommodated on the specific property, will be in conformance with the Comprehensive Plan, can be constructed and operated in a manner which is compatible with the surrounding land uses and overall character of the community, and that the public interest, safety, and general welfare of the citizens of the County will be protected.**

No inherent right exists to receive a special exception; such permits are a special privilege granted by the Board of Zoning Appeals under a specific set of circumstances and conditions, and each application and situation is unique. Consequently, mere compliance with the applicable requirements may not be sufficient, and additional measures, occasionally substantial, may be necessary to mitigate the impact of the proposed use. In some situations, no set of conditions would be sufficient to approve an application, even though the same request in another location would be approved.

(2) ***Initiation***

- a. **A pre-application conference shall be scheduled by the applicant with the zoning administrator or their designated agent to discuss the proposal.**
- b. ~~Applications for special exceptions may be made by any property owner,~~ **The applicant shall be the owner of record,** tenant, government official, department, board or bureau. **The contract purchaser may act as the owner's agent with the written approval of the owner of the land involved.** (Staff note: Staff is asking the County Attorney if a contract purchaser can apply for a special exception, similar to a CUP. State codes section 15.2-2310 – “Applications for special exceptions and variances may be made by any property owner, tenant, government official, department, board or bureau.”)

(3) ***Contents of application for special exception*** (14-17)

- a. **Applicant shall make application for the special exception to the zoning administrator on the form provided for that purpose, giving all information required by such form, including such other information which the zoning administrator may deem necessary for an intelligent consideration of the project for which a permit is desired.** ~~Such applications shall be made to the zoning administrator in accordance with rules adopted by the board of zoning appeals.~~
- b. It shall be the responsibility of the applicant to provide all of the appropriate information to the board of zoning appeals for its consideration. This shall include, but not be limited to, noise levels, transportation impacts, distance from residences or businesses, etc. (Staff note: SE criteria S.)
- c. At a minimum, the application for special exception shall contain the following information:
 - a. ~~(1)~~—Name, address, and telephone number of the applicant;
 - b. ~~(2)~~—Nature and location of the special exception;
 - c. ~~(3)~~—Present zoning district and tax map reference number;
 - d. ~~(4)~~—A narrative statement **describing the proposed use and demonstrating how the standards identified in 14.4(6)(b) will be met** evaluating the effects on adjoining property; the effect of such elements as noise, glare, odor, fumes and vibration on adjoining property; a discussion of the general compatibility with adjacent and other properties in the district; and the relationship of the proposed use to the comprehensive plan; ~~and~~
 - e. ~~(5)~~—Evidence that **all supplemental regulations located in Article 9 for the proposed use, if any,** ~~the specific criteria set forth in the official schedule of district regulations for the special exception requested will be met.~~
 - f. **A plot plan drawn to scale.** (Staff note: SE Criteria S. “Such information shall be accompanied by a complete site sketch drawn to scale.”)
 - g. **Conflict of Interest Form (must be notarized)**

(4) Transmittal to the Board of Zoning Appeals

The **zoning** administrator shall promptly transmit the application and accompanying maps, plans or other information to the secretary of the board of zoning appeals who shall place the matter on the docket. ~~Procedures for the granting of a special exception shall be as set forth in sections 14-17 through 14-20, inclusive.~~

(5) Public hearing by board of zoning appeals. (14-18)

- a. Within sixty (60) days after receipt of an application for special exception, and after notice as required by paragraph ~~15.1-431~~ **15.2-2204** of the Code of Virginia, the board of zoning appeals shall hold a public hearing on the special exception.
- b. **Applications located on private roads.** If the parcel does not have frontage on, or exclusive deeded access to, a state maintained road, all property owners whose land abuts the private road, whether or not they have access to the road, shall be notified of the special exception application and hearing date.

- i. **This notification shall be in addition to the notification required by section 15.2-2204 of the Code of Virginia and the property owners notified shall be based on the information available in county records at the time of application.**
- ii. **The applicant is required to provide legal documentation of exclusive deeded access to a state road, if applicable, as part of their application for conditional use permit.**

(6) Action by the board of zoning appeals. (14-19)

- a. Within thirty (30) days after the public hearing required by section ~~14-18~~**14-4(5)**, the board shall **either approve or disapprove** ~~issue a special exception permit or disapprove~~ the application.
- b. **Standards.** Before **approving** ~~issuing~~ any special exception ~~permit~~, the board of zoning appeals shall review the particular facts and circumstances of each proposed use in terms of the following standards and shall find adequate evidence showing that such use at the proposed location:
 - i. ~~(1)~~—Is in fact a special exception and appears on the official schedule of district regulations;
 - ii. ~~(2)~~—Will be harmonious with and in accordance with the general objectives of the county's comprehensive plan and the zoning ordinance;
 - iii. ~~(3)~~—Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area;
 - iv. ~~(4)~~—Will not be hazardous or disturbing to existing or future neighboring uses;
 - v. ~~(5)~~—Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;
 - vi. ~~(6)~~—Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental; to the economic welfare of the county;
 - vii. ~~(7)~~—Will not involve uses, activities, processes, materials, equipment, and conditions of operation that will be detrimental to any persons, property, or general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, or odors;
 - viii. ~~(8)~~—Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares; and
 - ix. ~~(9)~~— ~~Will not result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance.~~ **Project shall not adversely impact properties on or eligible for the National and State Registers of Historic Places, properties containing Natural Heritage species, Chesapeake Bay Resource Protection Areas, or other areas designated as places of national, state or local importance.**

- c. *Written findings.*** Before any special exception permit shall be issued, the board of zoning appeals shall make written findings certifying compliance with the specific rules governing individual special exceptions and that satisfactory provision and arrangement has been made concerning the following, where applicable:
- i.** (1)—Ingress and egress to property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe;
 - ii.** (2)—Off-street parking and loading areas where required, with particular odor effects of the special exception on adjoining properties and properties generally in the district;
 - iii.** (3)—Refuse and service areas, with particular attention to the items in (1) and (2) above;
 - iv.** (4)—Utilities, with reference to locations, availability and compatibility;
 - v.** (5)—Screening and buffering, with reference to type, dimensions, and character;
 - vi.** (6)—Signs, if any, and proposed exterior lighting, with reference to glare, properties in the district;
 - vii.** (7)—Required yards and other open space; and
 - viii.** (8)—General compatibility with adjacent properties and other property in the district.
- d. *The BZA may consider the recommendations of all reviewing agencies and public comments, and shall include in the special exception permit decision, conditions and limitations on approval necessary for the protection of the public health, safety and welfare. The BZA may impose such conditions relating to the use for which a permit is granted as it may deem necessary 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. (State code section 15.2-2309. Powers and duties of the BZA #6)***
~~The BZA may impose any additional requirements it may deem necessary for the protection, health, safety, and welfare of the residents of the county. (SE Criteria U.)~~

(7) *Appeal of board of zoning appeals decision.* ~~Appeals from any decision of the board of zoning appeals on a special exception may be taken in accordance with the provisions contained in section 14-11. (14-11)~~

- a.** Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or any taxpayer or any officer, department, board, or bureau of the county, may present to the circuit court of the county a petition specifying the grounds on which aggrieved within thirty (30) days after the filing of the decision in the office of the board of zoning appeals.
- b.** Upon presentation of such petition, the court shall allow a writ of certiorari to review the decision of the board of zoning appeals and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney or petitioner if there is no attorney, which shall not be less than ten (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 county may, on application,

on notice to the board of zoning appeals and on due cause shown, grant a restraining order.

- c. 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 such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.
- d. If, upon hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take such evidence as it may direct and report the same to the court with ~~his~~ **their** 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.
- e. Costs shall not be allowed against the board of zoning appeals, unless it shall appear to the court that it acted in bad faith or with malice in making the decision appealed from.

14-5. Variances. (14-12)

- (1) *Initiation.* Applications for variance may be made by any property owner or owner's agent, **tenant, government official, department, board, or bureau.** Such applications shall be made to the administrator in accordance with rules adopted by the board of zoning appeals.
- (2) ***Burden of proof.* The burden of proof shall be on the applicant to prove by a preponderance of the evidence that the application meets the standard for a variance as defined in this ordinance and the criteria set out in this section.**
- (3) Contents of application for variance. At a minimum, the application for variance shall contain the following information: (14-13)
 - a. (1)—Name, address, and phone number of applicants;
 - b. (2)—Legal description of property and tax map reference;
 - c. (3)—Description of nature of variance requested;
 - d. (4)—A narrative statement demonstrating that the requested variance conforms to **all of** the following standards:
 - i. **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.**
 - ii. **The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance.**

- iii. **The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.**
- iv. **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.**
- v. **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.**
- vi. **The relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance.**
 - a. ~~The property was acquired in good faith and where by reason of the exceptional 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 conditions of such 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 such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant.~~
 - b. ~~That special conditions and circumstances do not result from the actions of the applicant.~~ (Staff note: language revised to match application language.)
- e. **Plot plan drawn to scale bearing the seal of a licensed architect, engineer, or surveyor, showing the dimensions and shape of the lot to be built upon; the size and location of existing buildings on the lot, if any; and the location and dimensions of the proposed building(s) or alteration(s).**
- f. **Conflict of interest statement (must be notarized)**
- g. **A list of all tax map/parcel numbers, property owners, and their mailing addresses as shown on the county land books who are within the parcel(s) proposed;**
- h. **A list of all tax map/parcel numbers, property owners, and their mailing addresses as shown on the county land books who are contiguous to or directly across the street from the parcel(s) proposed;**

(4) Administrative Variance Review.

- a. **Scope of approval.** ~~Upon receipt of such an application, the~~ **The zoning administrator may grant a variance from any building setback requirement or to provide a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability in conformance with section 15.2-2309(2) of the Code of Virginia, if the administrator finds, in writing, that:**
 - i. ~~(1)~~ **Strict application of the ordinance would produce undue hardship; and**

1. (1)—That the strict application of the ordinance would produce undue hardship;
2. (2)—That such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
3. (3)—That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance; and
4. (4)—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.

iii. **A variance shall be granted if the evidence shows that:** (15.2-2309)

1. **The strict application of the terms of the ordinance would unreasonably restrict the utilization of the property; or hat 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, or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability, and all of the following:**

- a. **The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;**
- b. **The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;**
- c. **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;**
- d. **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**
- e. **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 A 4 of § 15.2-2286 at the time of the filing of the variance application.**

iv. In ~~authorizing~~ **granting** a variance, the board of zoning appeals 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.

v. **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.

- c. Appeal of decision of the board of zoning appeals. Decisions of the board of zoning appeals may be appealed to the circuit court as provided in 14-4 (7). (14-15)**

Sec. 14-6. – Appeal of zoning administrator decision. (14-11)

(1) Initiation.

- a.** Appeals to the board of zoning appeals may be taken by any person aggrieved or by any officer, department, board, or bureau of the county affected by any decision of the **zoning administrator or from any order, requirement, decision, or determination made by any other administrative officer in the administration or enforcement of this article, any ordinance adopted pursuant to this article, or any modification of zoning requirements.** (Staff note: additional language taken from 15.2-2311.)
- b.** Such appeal shall be taken ~~within thirty (30) days~~ after the decision appealed from by filing with the **zoning** administrator, and with the board of zoning appeals, a notice of appeal, specifying the grounds thereof.
- c.** The time limitations for raising certain issues and filing certain proceedings with the board of zoning appeals shall be the following: (taken from 14-11 appeals)
- i.** ~~(1)~~—No issue of alleged defect in the process of enactment of any ordinance or map or any amendment thereto shall be raised in any proceeding filed with the board of zoning appeals later than thirty (30) days from the time such ordinance, map, or amendment takes effect, unless the person raising such issue alleges and proves that he failed to receive adequate notice of the enactment or amendment. If such person has succeeded to ~~his~~ **their** interest after the enactment of the ordinances, adequate notice to ~~his~~ **their** predecessor in interest shall be deemed adequate notice to ~~him~~ **them**.
- ii.** ~~(2)~~—No person shall be allowed to file any proceeding with the board of zoning appeals later than thirty (30) days after any application for development, preliminary or final, has been approved by an appropriate county officer, agency or body, if such proceedings are designed to secure reversal or to limit the approval. If such person has succeeded to ~~his~~ **their** interest after such approval, adequate notice to ~~his~~ **their** predecessor in interest shall be deemed adequate notice to ~~him~~ **them**.

(2) Transmittal to the board of zoning appeals.

- a.** The administrator shall immediately transmit to the board of zoning appeals all papers constituting the record upon which the action appealed from was taken.
- b.** An appeal shall stay all proceedings in furtherance of the action appealed from, unless the administrator certifies to the board of zoning appeals that, by reason of facts stated in the certificate, a stay in ~~his~~ **their** opinion would cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the board of zoning appeals or by the circuit court, on application and on notice to the administrator and for good cause shown.

(3) Action of the board of zoning appeals.

Article 14 – Administrative Procedures

- a.** The board of zoning appeals shall fix a reasonable time for the hearing of an applicant's appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within sixty (60) days.
- b.** In exercising its powers, the board may reverse or affirm, wholly or partly, or may modify, and ~~any~~ order, requirement, decision or determination appealed from. The concurring vote of a majority of the membership of the board is necessary to reverse any order, requirement, decision or determination of the administrator or to decide in favor of the applicant.

~~Sec. 3A 7. Relation of article to other laws.~~

~~The provisions contained in this article shall be considered separate from, supplemental to and additional to the provisions contained elsewhere in this Code or other county ordinances. Nothing contained in this section shall be construed as excusing compliance with all other applicable provisions of this Code or other county ordinances.~~ (Staff note: Since 3A was incorporated into Art 14, I don't think this is needed...)

TIA requirements from other localities

Hampton Roads Locality	Situation	Trips	Typical uses
Southampton county	VDOT req.	VDOT req.	
Newport News	All	5000+ average daily trips	93K SF free standing retail
Portsmouth	Rezoning or CUP	1000+ average daily trips or 100+ peak hour trips	11K SF supermarket 106+ home subdivision
York County	All	1000+ average daily trips or 100+ peak hour trips	11K SF supermarket 106+ home subdivision
Norfolk	Sites / subdivisions Rezoning	150+ per peak hour All	Convenience store w gas pumps (3K+ SF)
Virginia Beach	Development	150+ peak period	Convenience store w gas pumps (3K+ SF);
James City County	All	100+ peak hour, or Roadway Level of Service "D" or lower	106+ home subdivision; 12K SF supermarket
Hampton		100+ / peak hour	106+ home subdivision; 12K SF grocery store
Isle of Wight	All	200+ average daily trips	3.5K SF supermarket
Poquoson	All	75+ additional trips	7K SF office building; 11-unit apartment complex; 2K SF auto part store
Chesapeake	Rezonings	50+ average daily trips	5K SF office building; 8-unit apartment complex; 1K SF auto parts store
Franklin	ZA discretion		
Williamsburg	ZA discretion		
Suffolk	All	All	
Other Locality	Situation	Trips	
Louisa	all	5000+ average daily trips	93K SF retail
Fluvanna	all	1000+ average daily trips	11K SF supermarket
Stafford	All	1000+ average daily trips	11K SF supermarket
Hanover	Rezoning	380+ vpd	2.5K SF restaurant
Fauquier	Residential	100 vph on locality maintained, or 200 vph on state controlled	1K SF restaurant; 2K SF restaurant
Loudoun	Rezoning, CUP	All	
King William	Major subdivisions, PUD and rezonings	All	
VDOT			
Non-Residential		5000+ average daily traffic	93K SF retail (Walmart but not Lows or Home Depot)
Residential		400+ average daily trips when they exceed the current daily traffic on impacted roadway	40+ lot subdivision (only if ADT exceeds that on the roadway)

Staff's recommended thresholds.

TIA Calculations for Common Land Uses

Land Use	ITE Code	Trip Generation Rate		Size Required for Average Daily Trips			Size Required for Peak Hour Trips	
		Daily Trips	Peak Hour Trips	200 Trips	1,000 Trips	5,000 Trips	100 Trips	200 Trips
Business Park (Acres)	770	149.79 trips per acre	18.86 trips per acre	1.34 acres	6.68 acres	33.38 acres	5.30 acres	10.60 acres
Business Park (Store Size)	770	12.76 trips per 1,000 sf	1.43 trips per 1,000 sf	15,673.98 sf	78,369.91 sf	391,849.53 sf	69,930.07 sf	139,860.14 sf
Campground	416	N/A	0.41 trips per camp site	N/A	N/A	N/A	243.90 camp sites	487.80 camp sites
Churches and Other Places of Worship (Fixed Seating)	560	1.53 trips per seat	0.63 trips per seat	130.72 seats	653.59 seats	3,267.97 seats	158.73 seats	317.46 seats
Churches and Other Places of Worship (Non-Fixed Seating)	560	36.63 trips per 1,000 sf	11.76 trips per 1,000 sf	5,460.01 sf	27,300.03 sf	136,500.14 sf	8,503.40 sf	17,006.80 sf
Convenience Store (with gas pumps)	853	542.60 trips per pump	19.98 trips per pump	0.37 pumps	1.84 pumps	9.21 pumps	5.01 pumps	10.01 pumps
Convenience Store (with no gas pumps)	851	863.10 trips per 1,000 sf	77.11 trips per 1,000 sf	231.72 sf	1,158.61 sf	5,793.07 sf	1,296.85 sf	2,593.70 sf
Distribution Warehouse	120	1.50 trips per 1,000 sf	0.68 trips per 1,000 sf	133,333.33 sf	666,666.67 sf	3,333,333.33 sf	147,058.82 sf	294,117.65 sf
Event Facility	435	N/A	3.35 trips per 1,000 sf	N/A	N/A	N/A	29,850.75 sf	59,701.49 sf
Hospital (Size)	610	17.57 trips per 1,000 sf	2.26 trips per 1,000 sf	11,383.04 sf	56,915.20 sf	284,575.98 sf	44,247.79 sf	88,495.58 sf
Hospital (Beds)	610	11.81 trips per bed	1.44 trips per bed	16.93 beds	84.67 beds	423.37 beds	69.44 beds	138.89 beds
Hotel	310	8.19 trips per room	0.72 trips per room	24.42 rooms	122.10 rooms	610.50 rooms	138.89 rooms	277.78 rooms
Industrial Park	130	6.96 trips per 1,000 sf	0.86 trips per 1,000 sf	28,735.63 sf	143,678.16 sf	718,390.80 sf	116,279.07 sf	232,558.14 sf
Office Building	710	11.01 trips per 1,000 sf	1.55 trips per 1,000 sf	18,165.30 sf	90,826.52 sf	454,132.61 sf	64,516.13 sf	129,032.26 sf
Residential (PUD Development)	270	7.50 trips per dwelling unit	0.72 trips per dwelling unit	26.67 dwelling units	133.33 dwelling units	666.67 dwelling units	138.89 dwelling units	277.78 dwelling units
Residential (Single Family Major Subdivision)	210	10.10 trips per dwelling unit	1.02 trips per dwelling unit	19.80 dwelling units	99.01 dwelling units	495.05 dwelling units	98.04 dwelling units	196.08 dwelling units
Residential (Apartments)	220	6.72 trips per dwelling unit	0.67 trips per dwelling unit	29.76 dwelling units	148.81 dwelling units	744.05 dwelling units	149.25 dwelling units	298.51 dwelling units

Land Use	ITE Code	Trip Generation Rate		Size Required for Average Daily Trips			Size Required for Peak Hour Trips	
		Daily Trips	Peak Hour Trips	200 Trips	1,000 Trips	5,000 Trips	100 Trips	200 Trips
Residential (Townhouse or Condominium)	230	5.86 trips per dwelling unit	0.52 trips per dwelling unit	34.13 dwelling units	170.65 dwelling units	853.24 dwelling units	192.31 dwelling units	384.62 dwelling units
Restaurant (Drive Through-Seats)	934	23.64 trips per seat	2.46 trips per seat	8.46 seats	42.30 seats	211.51 seats	40.65 seats	81.30 seats
Restaurant (Drive Through-Size)	934	722.03 trips per 1,000 sf	72.74 trips per 1,000 sf	277.00 sf	1,384.98 sf	6,924.92 sf	1,374.76 sf	2,749.52 sf
Restaurant (Site Down- Seats)	932	6.21 trips per seat	0.88 trips per seat	32.21 seats	161.03 seats	805.15 seats	113.64 seats	227.27 seats
Restaurant (Site Down- Size)	932	158.37 trips per 1,000 sf	20.00 trips per 1,000 sf	1,262.87 sf	6,314.33 sf	31,571.64 sf	5,000.00 sf	10,000.00 sf
Retail Store (Apparel Store)	870	N/A	4.20 trips per 1,000 sf	N/A	N/A	N/A	23,809.52 sf	47,619.05 sf
Retail Store (Automobile Parts Store)	843	57.50 trips per 1,000 sf	5.01 trips per 1,000 sf	3,478.26 sf	17,391.30 sf	86,956.52 sf	19,960.08 sf	39,920.16 sf
Retail Store (Toy Store)	864	N/A	5.53 trips per 1,000 sf	N/A	N/A	N/A	18,083.18 sf	36,166.37 sf
Retail (Free Standing Discount Superstore with Grocery)	813	57.50 trips per 1,000 sf	5.01 trips per 1,000 sf	3,478.26 sf	17,391.30 sf	86,956.52 sf	19,960.08 sf	39,920.16 sf
Retail (Free Standing Discount Superstore without Grocery)	815	71.19 trips per 1,000 sf	7.58 trips per 1,000 sf	2,809.38 sf	14,046.92 sf	70,234.58 sf	13,192.61 sf	26,385.22 sf
Retail Store (Supermarket)	850	177.59 trips per 1,000 sf	18.93 trips per 1,000 sf	1,126.19 sf	5,630.95 sf	28,154.74 sf	5,282.62 sf	10,565.24 sf
School (Elementary School-Size)	520	14.49 trips per 1,000 sf	4.69 trips per 1,000 sf	13,802.62 sf	69,013.11 sf	345,065.56 sf	21,321.96 sf	42,643.92 sf
School (Elementary School-Students)	520	1.29 trips per student	0.42 trips per student	155.04 students	775.19 students	3,875.97 students	238.10 students	476.19 students
School (High School- Size)	530	12.89 trips per 1,000 sf	3.06 trips per 1,000 sf	15,515.90 sf	77,579.52 sf	387,897.60 sf	32,679.74 sf	65,359.48 sf
School (High School-Students)	530	1.71 trips per student	0.41 trips per student	116.96 students	584.80 students	2,923.98 students	243.90 students	487.80 students
Shopping Center	820	49.97 trips per 1,000 sf	5.88 trips per 1,000 sf	4,002.40 sf	20,012.01 sf	100,060.04 sf	17,006.80 sf	34,013.61 sf

Note: All details based upon the Institute of Transportation Engineers' Trip Generation Manual (7th Edition). The most recent version of this document is the ITE Trip Generation Manual (11th Edition).



GLOUCESTER COUNTY
Planning, Zoning & Environmental
Programs Department
6489 Main Street
Gloucester, VA 23061
(804) 693-1224
www.gloucesterva.info

M E M O R A N D U M

TO: Planning Commission

CC: Carol Steele, County Administrator
George Baines, Deputy County Administrator
Ted Wilmot, County Attorney

FROM: Anne Ducey-Ortiz, Director Planning, Zoning, & Environmental Programs

DATE: November 17, 2023 for December 7, 2023 Planning Commission Meeting

SUBJECT: Potential Planned Unit Development (PUD) Rezoning of Gloucester Point Marina (TM 51-239, 239A, RPC 24234 & 29048)

Staff has been in discussions with applicants seeking to rezone the Gloucester Point Marina property (TM 51-239, 239A, RPC 24234 & 29048) from its current zoning of SF-1 (Single Family) to PUD-1 (Planned Unit Development). A property zoned to the PUD district must proceed through the rezoning process in accordance with Sections 8-4 and 14-1 of the Zoning Ordinance.

As detailed in Section 8-4 of the Zoning Ordinance, the applicant is required to conduct Pre-Application Meetings with the Planning Commission, and Site Plan Review Committee along with the mandatory Pre-Application Meeting with Planning staff. The applicant has already met with Planning staff as well as the Site Plan Review Committee and now seeks to meet with the Planning Commission. As specified in Section 8-4, the purpose of this meeting is for “discussing early and informally the proposed development, the purpose of the PUD-1 ordinance and how the proposal meets goals and objectives outlined in the comprehensive plan.”

The applicant is seeking to develop 44 townhouse units on 5.23 acres, resulting in a density of roughly 8.4 units per acre. In addition, 61 private boat slips, 12,000 square feet of private outdoor boat storage area, and a private boat access ramp are proposed as accessory uses for the residents of this development.

According to Section 8-1 of the Zoning Ordinance, the PUD district is intended “to allow and encourage more unique, flexible, creative and imaginative arrangements and mixes of land uses in site planning and development than are permitted through conventional land use requirements”. Under a PUD zoning, the applicant writes their own zoning requirements for the subject property and the Zoning Ordinance’s requirements only apply in circumstances

where the approved PUD Ordinance does not address the requirement (such as parking, signage, etc.). Staff has provided the applicant with ordinances approved by the County for other PUD developments. Although they have not supplied a draft PUD Ordinance for this development at this time, there may be specific regulations they intend to implement that will be mentioned during their discussion with the Commission. In addition, other requirements, such as public street construction standards, stormwater regulations, and public water and sewer standards, will apply to this development. Although these standards would not be fully confirmed until the site plan stage, they may also be mentioned during the preliminary discussion of this proposed development.

This property is designated as “Suburban High Density” and within the Development District in the Comprehensive Plan’s Future Land Use chapter. This chapter describes the “Suburban High Density” classification as intended “to support most of the County’s future single-family residential development and is appropriate for moderately-dense intensities (two units per acre or greater) where public water and sewer is available.” Similarly, the Development District is described as coinciding with “areas that are expected to be served by public water and sewer facilities or could be served with these facilities within the next 20 years as funding becomes available.” Furthermore, this area “is currently or planned to be the County’s principal population, service, and employment center” and contains “the most suitable areas for new population growth based upon the infrastructure availability and current development patterns.” Growth in the Development District is intended to accommodate most local population growth through 2030, discourage residential sprawl, and provide utilities near the primary population centers while minimizing impacts on local roads.

The property has historically been used as a marina. As a result, the Comprehensive Plan’s Future Land Use Plan designates this site as a “Working Waterfront” and specifies the following recommendation for these areas:

“The water is an important component of Gloucester’s culture, history, and economy. As shoreline residential development increases, conflicts with water-based industries, including seafood and boat operations, as well as recreation and other activities, can occur. The Land Use Plan designates certain areas as working waterfront and marina areas, such as commercial seafood operations, boatyards, marinas, and accessory uses, to clearly acknowledge that these uses exist and the County desires them to continue into the future. Complimentary residential and mixed-use development, potentially through Planned Unit Developments, may be appropriate surrounding and supporting active working waterfronts. A specific zoning or overlay district is recommended to protect existing working waterfront uses and allow for new development in compatible locations that do not negatively impact existing residential development or local waterway quality.”

Once the applicant completes the Pre-Application Meeting with the Planning Commission, they will have fulfilled all pre-application requirements specified in Section 8-4 of the Zoning Ordinance. Therefore, following the December 2023 Planning Commission Meeting discussion, they will be permitted to submit a rezoning application in accordance with the application requirements of Section 8-4(3) of the Zoning Ordinance. However, the applicant is seeking approval for bulkhead expansion and development in a reduced Resource Protection Area (RPA) buffer through the Virginia Marine Resources Commission (VMRC) and Gloucester Chesapeake Bay Preservation & Erosion Commission. Furthermore, the applicant is seeking to discuss the traffic impacts with the County and VDOT through a Transportation Impact Analysis (TIA) Pre-Scoping Meeting. As a result, submittal of a rezoning application may occur following completion of these processes.

Attached for your review in preparation for discussion with the applicant about their proposal are the following:

1. Planning Commission Pre-Application Meeting Request Letter dated October 26, 2023
2. Draft Preliminary/Master Plan dated October 11, 2023
3. Completed Pre-Application Meeting Form from Meeting with Planning Staff on October 12, 2023
4. Previously Approved Preliminary Plan for Gloucester Point Marina (CUP-14-01)

Please feel free to contact Sean McNash or Anne Ducey-Ortiz at 804-693-1224 if you have any questions about the proposed development prior to the December meeting.

PC Action: Listen to the applicant's presentation, ask any questions, and provide any necessary feedback.

October 26, 2023

Mr. Sean McNash, AICP
Planner II, Planning & Zoning Dept.
Gloucester County
6489 Main Street
Gloucester, VA 23061

Re: **Gloucester Point Marina Redevelopment – Planning Commission Briefing Request**

Dear Mr. McNash,

This letter is to request that the above referenced project be placed on the Planning Commission agenda for the meeting on December 7, 2023. The request is being made pursuant to Section 8-4 (1) of the Gloucester County Zoning Ordinance. We would appreciate the Planning Commissions time to discuss the project prior to us submitting the rezoning application to rezone the property from SF-1 to PUD-1. Attached is a copy of the current Preliminary Plan/Master Plan,

If you have any questions or require any additional information, please contact me at (804) 616-3113 or mlatham@bowman.com.

Sincerely,

Michael J. Latham

Michael J. Latham, PE
Director of Civil Engineering

cc: Daniel Lang



County of Gloucester
 Department of Planning and Zoning
 6489 Main Street, County Building Two
 Gloucester, Virginia 23061
 804-693-1224
www.gloucesterva.info/PlanningandZoning

FOR OFFICE USE ONLY	
Date Received	_____
Tax Map No.	_____
RPC No	_____
Date Complete	_____
Meeting Date	_____

MANDATORY PREAPPLICATION MEETING REQUEST FOR REZONING, CONDITIONAL USE OR SPECIAL EXCEPTION APPLICATIONS

Project Name: Gloucester Point Marina
Tax Map Number: 51-293, 51-293A
Current Zoning: SF-1

I WOULD LIKE TO DISCUSS THE FOLLOWING (Check the appropriate box or boxes):

- Rezoning
 - Proposed Use: Single Family Townhouse: 44 units
 - Proposed Zoning District (if known): PUD-1
 - Amendment to prior Rezoning – Zoning File Number _____
- Conditional Use Permit
 - Proposed Use _____
- Special Exception
 - Proposed Use _____

Has a preapplication meeting happened previously for this project? YES _____ NO ^X _____

If YES, provide the date of meeting and name of applicant: _____

Agent/Contact Person for the Project: Daniel Lang

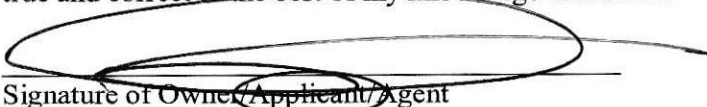
Daytime Phone # (412) 225-3848 Cell # (412) 225-3848 *E-mail daniel@landfalltrust.com

Property Owner of Record: Gloucester Point Holdings, LLC and Nexus Land Management, LLC

Daytime Phone # () _____ Cell # () _____ *E-mail _____

Preferred Meeting Dates and Times: _____

* Email will be the primary method of contact unless otherwise specified.

Owner/Applicant Must Read and Sign	
I hereby certify that the information provided on this request form and accompanying information is accurate, true and correct to the best of my knowledge and belief.	
 _____ Signature of Owner/Applicant/Agent	<u>09/06/2023</u> _____ Date
<u>Daniel Lang</u> _____ Print Name	

**PREAPPLICATION INFORMATION
TO BE COMPLETED WITH MEETING REQUEST FORM**

Please complete this form as fully as possible. The better the project is described, the better staff can assist you.

Staff Check Off	CURRENT CONDITIONS:	
	Current Use of the Property: (e.g., vacant, residential, business, type of business, etc.)	Commercial Marina.
	Does the property have any related existing zoning permits; business licenses; site plan approvals; or other applicable related land use permits? If so, please list them.	Gloucester County: CUP-14-01 VMRC: NAO 2014-01463/VMRC 14V-1148
Staff Check Off	PROPOSED PROJECT:	<u>Link to the County's GIS</u>
	Describe the Proposed Project: Please feel free to use a separate page for the project description.	Proposed residential marina with 44 townhouses.
	An illustration of the proposal ("sketch"/concept plan) would be useful in discussing your project. You are encouraged to at least submit a boundary survey or plat of the property or any known prior approved plan or plat on the property, if one exists. It would be helpful to know the general layout of the proposed project including entrances to public streets and location of buildings, parking areas, and major environmental features.	

**PREAPPLICATION AGENDA –
TO BE COMPLETED DURING PREAPPLICATION MEETING**

Staff will do our best to assist you at the preapplication meeting to complete this checklist or to provide resources for you to understand the requirements for a complete application for Rezoning, Special Exception or Conditional Use Permit. Hyperlinks to available resources have been provided – most of the information is available on our website: <http://gloucesterva.info/planning>. If the question is not applicable to the proposed project, we will indicate with a “NA.” If the answer is not available at this time, we will note such (“unknown” or “not enough information”).

Staff Check Off	ZONING:	<u>Link to Zoning Ordinance</u>
	How would the project and use of the site be classified in the Zoning Ordinance (See <u>Section 2-2 , Definitions</u> and <u>Section 5.2 containing the Table of Permitted Uses</u>)	51-239, 239A (5.23 acres, roughly 8.4 units per acre) Residential Marina: Accessory to town house use Townhouses: Town houses (primary use)
	In what Zoning District(s) is this use permitted?	PUD
	Is the proposed use permitted by-right; by Special Exception; or by Conditional Use Permit?	By right if written into PUD (for both primary and accessory uses)
	What are the Surrounding Zoning Districts?	SF-1 (Single Family)
Staff Check Off	COMPREHENSIVE PLAN (CP):	<u>Link to the Adopted Comprehensive Plan</u>
	What is the recommended <u>Future Land Use</u> for the property in the <u>2016 Adopted Comprehensive Plan</u> ?	Suburban High Density & Working Waterfront within the Development District
	Is the project within the <u>Gloucester Point/Hayes Village Development Plan</u> or <u>Court House Village Sub Area Plan</u> ? If so, what is the Future Land Use Designation within the applicable Sub-area plan?	No
	Is the proposed zoning, project, and use consistent with the recommended Future Land Use in the Comprehensive Plan and applicable Village Plan(s)?	SHD: Appropriate for 2 units/acre or more with public water & sewer WW: County desires uses to continue into the future with complementary mixed-use development through PUDs where appropriate
	If not permitted by right in the proposed district, will the proposed use meet the criteria for a <u>Special Exception</u> or <u>Conditional Use Permit</u> ?	Requires PUD; TBD based upon case-by-case review of PUD application

Staff Check Off	SPOT ZONING	
	<p>Would the proposed change to Zoning be considered invalid spot zoning based on the following Criteria? An invalid “spot” zoning¹ exists when:</p> <ol style="list-style-type: none"> 1. A small parcel of land is singled out for special and privileged treatment; 2. The singling out is not in the public interest, but only for the benefit of the land owner; and 3. The action is not in accord with a comprehensive plan. 	<p>Possibly, based upon Criteria 1 and 2. Parcel zoned as PUD and for town house use would be inconsistent with zoning and uses of surrounding area. However, continuance of existing waterfront use, even if not for a commercial marina, is supported by Comprehensive Plan, especially the "Working Waterfront" designation and higher density housing could be supported by Comprehensive Plan if on public water and sewer.</p>
Staff Check Off	<p>TRAFFIC IMPACTS*: * Consultation with a Traffic Engineer may be necessary to complete some of these questions.</p>	<p>Link to Transportation Chapter of the Comp Pla Link to VDOT’s website</p>
	Describe the current access to the site including the state Route Number and/or name of private road.	Starkey Drive (SR 1278) from West Lane (SR 1228) and Tidemill Road (SR 641)
	What is the <u>Functional Classification of the State Road</u> ?	Tidemill: Major Collector Starkey and West: None
	If accessed from a non-local road, what is the <u>Level of Service</u> on the state road(s) serving the property?	Not available; to be provided by the applicant with application submittal.
	What are the current Average Daily Trips to and from the site?	Tidemill: 4,500, West: 400, Starkey: 90
	What are the proposed number of Average Daily Trips to and from the site?	TBD by applicant based upon application submitted.
	What is the site peak hour trip generation from the proposed use?	TBD by applicant based upon application submitted.
	What is the estimated percent change in the amount of traffic on the road(s) serving the site?	TBD by applicant based upon application submitted.
	Does the project Require a <u>527 Traffic Impact Analysis</u> and <u>Scoping Meeting</u> ?	TBD by applicant based upon application submitted.
Staff Check Off	COMMUNITY FACILITIES	Link to Community Facilities Chapter of the Plan

¹ Hagman, D.G. *Urban Planning and Land Development Control Law*. (1975) West Publishing; St. Paul, MN.

	<p>Will the proposed project create the need for new or expanded public facilities?</p> <ul style="list-style-type: none"> • Schools • Public Water • Public Sewer • Public Safety • Fire & Rescue • Parks • Transportation Facilities 	<p>Will require expansion of public sewer and a possible pump station based upon Public Utilities' review. Also, based upon Public Utilities review, will need to determine if public water is necessary. Will need to provide details on impact to schools from townhouses and fire and rescue facilities (hydrants and locations) on the site.</p>
	<p>Will the proposed project impact the current capacity of any existing or <u>planned public facilities or projects in the Current Capital Improvement Plan</u>?</p>	<p>Possibly to public water and sewer facilities.</p>
	<p>Are the County's current facilities adequate to support the proposed project and if not, what additional facilities would be needed?</p>	<p>TBD by applicant based upon application submitted.</p>
Staff Check Off	HOUSING	Link to the Housing Chapter of the Comp Plan
	<p>Will the proposed project achieve any of the goals and objectives for Housing (see pages H-11 through H-14)? Is yes, please elaborate.</p>	<p>Possibly; H-1: "To encourage housing of various types and price levels so as to accommodate current and future County residents."</p>
Staff Check Off	ECONOMIC DEVELOPMENT	Link to the Economic Development Chapter of the Comp Plan
	<p>Will the proposed project create new jobs in the County? If so, how many temporary jobs, permanent jobs, and part-time jobs?</p>	<p>Likely temporary during construction of townhouses.</p>
	<p>Will the proposed project have a positive or negative fiscal and economic impact for the County? Fiscal and economic impact documentation will be necessary to support your application.</p>	<p>TBD by applicant based upon application submitted.</p>
	<p>Will the proposed project achieve any of the other goals outlined on Pages ED-15 through ED-17 of the Comprehensive Plan?</p>	<p>Yes; ED-3: "Promote industries that preserve Gloucester's cultural, historical, and natural resources."</p>
Staff Check Off	HISTORIC RESOURCES	Link to the Cultural and Historic Resources Chapter of the Comp Plan
	<p>Is the site locally designated pursuant to <u>Article 6 of the Zoning Ordinance</u>?</p>	<p>No</p>
	<p>Is the site on the National Register of Historic Places (see list in Historic Chapter)?</p>	<p>No</p>

	Does the site contain cultural or historic resources not previously identified?	None known.
	If the answer to the above question is unknown, will the application submittal include a cultural resources assessment to determine if there are any on-site cultural or historical resources?	TBD by applicant based upon application submitted.
	Will existing historic or cultural resources be preserved or protected by the proposed project?	TBD by applicant based upon application submitted.
Staff Check Off	NATURAL RESOURCES	Link to the Natural Resources Chapter of the Plan
	Does the site contain regulated natural resources, such as nontidal wetlands or Resource Protection Areas, which may impact future development? The Department of Environmental Programs (804-693-1217) will be able to assist with questions after the preapplication meeting. .	Yes, adjacent to waterway, so RPA exists. Granted VMRC permit in 2014, now inactive. RPA Exception granted in 2014 and required to be completed by the end of 2015. Future development within the RPA would likely require another exception to be granted.
	Are the soils on the property compatible with the type of development proposed? (See Pages NR-4 through NR-6)	TBD by applicant based upon application submitted.
	Will the project adversely impact existing ground water resources?	TBD by applicant based upon application submitted.
	Will the project adversely impact surface water quality?	TBD by applicant based upon application submitted.
	Are there, or is there a potential for, Natural Heritage Resources to be located on the site? (See Pages NR 12-13 and Table NR-3) If so, will they be impacted by the proposed project?	None know, but TBD by applicant based upon application submitted.

OTHER CONSIDERATIONS

Each of these processes require a public hearing and notification to adjacent property owners. The purpose of the public hearing is to determine whether the proposed action – Rezoning, Special Exception, or Conditional Use Permit – is acceptable to the community using the processes and criteria established in the ordinance. Approval is not guaranteed. During the public hearing process, the neighbors and the community at large have an opportunity to share their concerns and support with the decision-making body and to try to influence the decision to address those concerns or encourage approval or denial.

Staff Check Off	COMMUNITY CHARACTER AND QUALITY OF LIFE	
	Have you reached out to the adjoining property owners and neighbors to determine any concerns or potential opposition to the project?	Unknown
	Does the proposal address identified concerns?	TBD by applicant based upon application submitted.
	If yes, how?	Unknown
	If no, why not?	Unknown
Staff Check Off	PROFFERS/CONDITIONAL ZONING	Applies only to rezoning applications
	Have you read the County’s explanation of Voluntary Proffers and Rezoning Considerations?	To be submitted with rezoning application.
	You will have to read and sign the <u>proffer policy</u> prior to application.	To be submitted with rezoning application.
	Do you understand that staff cannot discuss proffers for residential rezoning?	To be submitted with rezoning application.
	Do you understand that if you do provide a proffer, it is up to you to provide the documentation for why the proffer is needed and why it is reasonable based on the impacts of the proposed rezoning?	To be submitted with rezoning application.

PREAPPLICATION MEETING SUMMARY TABLE

Decision-Making Criteria	Perceived Challenges
Consistency with the Comprehensive Plan	
• Future Land Use Plan	Potential Challenge
• Adequate Public Facilities	Potential Challenge
• Housing Needs	No challenge perceived
• Economic Development Goals	No challenge perceived
• Historic Resources	No challenge perceived
• Natural Resources	Potential Challenge
Existing versus Proposed Impacts	
• Consistent Zoning/Spot Zoning?	Potential Challenge
• Traffic Impacts?	Potential Challenge
• Availability of Public Water & Sewer?	Potential Challenge
• Fiscal Impacts	No challenge perceived
• Economic Impacts	No challenge perceived
Special Exception Criteria and Findings – <u>Section 14-19</u>	N/A
• Harmonious with character of community	N/A
• Excessive Production of traffic, noise, smoke, fumes, glare odors	N/A
• Ingress and Egress – safety and flow	N/A
• Parking and Loading	N/A
• Refuse and Service Areas	N/A
• Available Utilities	N/A
• Screening and Buffering	N/A
• Signs	N/A
• Required Yards	N/A
• Compatibility with adjacent properties	N/A
Conditional Use Permit Criteria – <u>Section 14-23</u>	N/A
• Compliance with Zoning	N/A
• Public Health, Safety and Welfare	N/A
• Not injurious to use and enjoyment of adjacent properties	N/A
• Conforms to Character	N/A
• Architecture appeal and function	N/A
• Public Interest and welfare	N/A
• No destruction, loss or damage of significant features	N/A

LANDSCAPING - Little Gem Magnolia (or equivalent) alternating with Ciptomerial (or equivalent evergreen) along norther border of the property site.

FENCING - 6'-0" Board on Board Privacy Fence to match fencing along the southern property line.

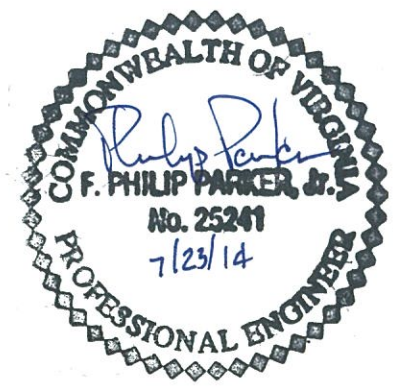
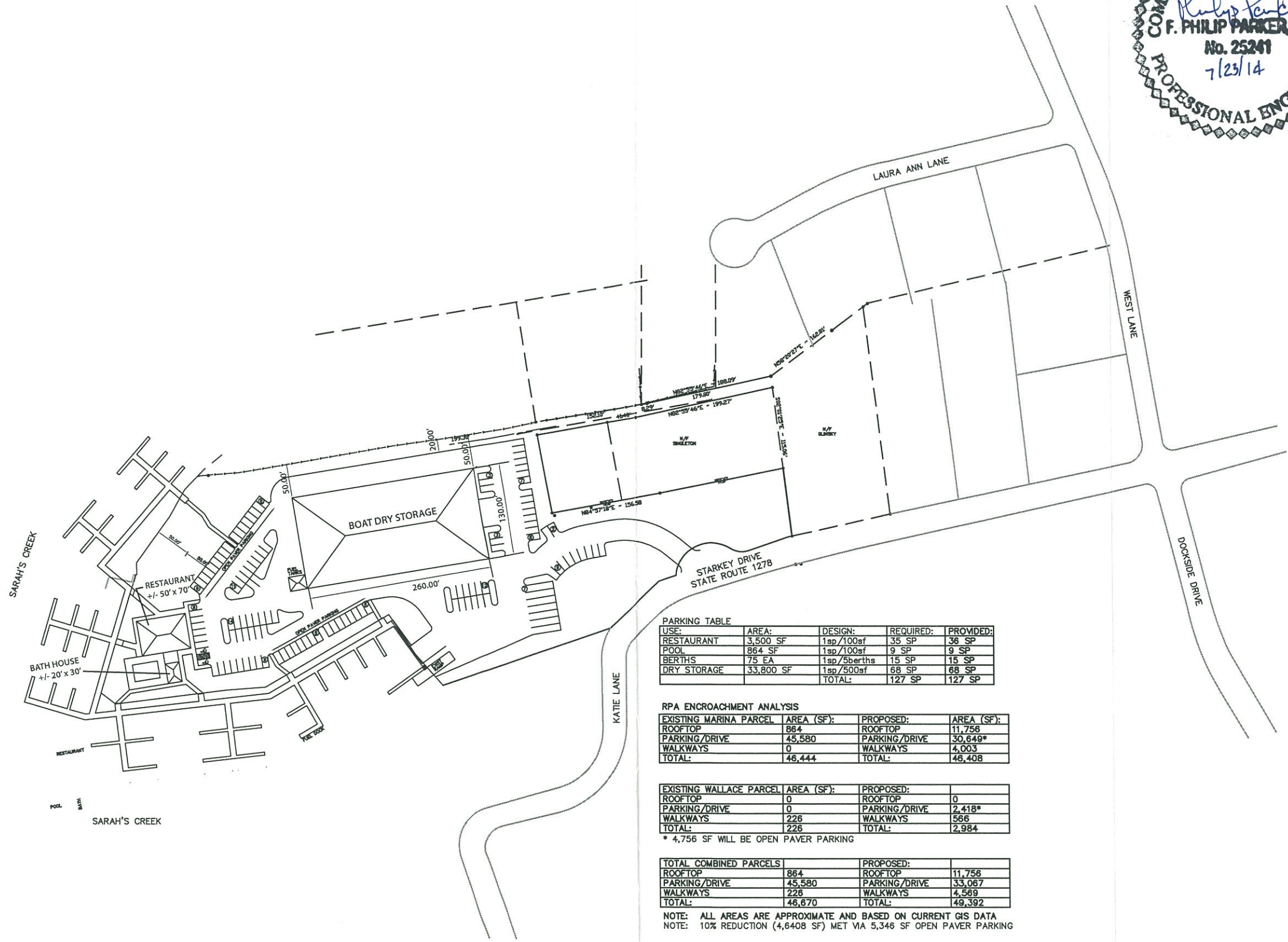
EXISTING DRIVE EASEMENT
EXISTING FENCING ALONG SOUTHERN PROPERTY LINE.



Parker Consulting, LLC
12511 Hidden Oaks Court
Richmond, Virginia 23233
(804) 308-0488 (804) 308-2495 fax
parker@parkerconsulting.net

REDEVELOPMENT PLAN
GLoucester Point Marina
GLOUCESTER COUNTY, VIRGINIA

DATE: 12/31/13
SCALE: 1" = 20'
DESIGN BY: FPP
DRAWN BY: FPP
CHECK BY: FPP
GPM
SHEET 1 OF 1



PARKING TABLE

USE:	AREA:	DESIGN:	REQUIRED:	PROVIDED:
RESTAURANT	3,500 SF	1sp/100sf	35 SP	36 SP
POOL	864 SF	1sp/100sf	9 SP	9 SP
BERTHS	75 EA	1sp/5berths	15 SP	15 SP
DRY STORAGE	33,800 SF	1sp/500sf	68 SP	68 SP
		TOTAL:	127 SP	127 SP

RPA ENCRoACHMENT ANALYSIS

EXISTING MARINA PARCEL	AREA (SF):	PROPOSED:	AREA (SF):
ROOFTOP	864	ROOFTOP	11,756
PARKING/DRIVE	45,580	PARKING/DRIVE	30,649*
WALKWAYS	0	WALKWAYS	4,003
TOTAL:	46,444	TOTAL:	46,408

EXISTING WALLACE PARCEL	AREA (SF):	PROPOSED:	AREA (SF):
ROOFTOP	0	ROOFTOP	0
PARKING/DRIVE	0	PARKING/DRIVE	2,418*
WALKWAYS	226	WALKWAYS	566
TOTAL:	226	TOTAL:	2,984

* 4,756 SF WILL BE OPEN PAVER PARKING

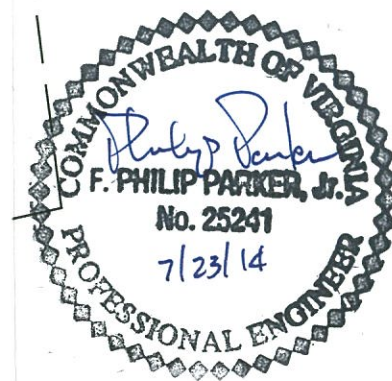
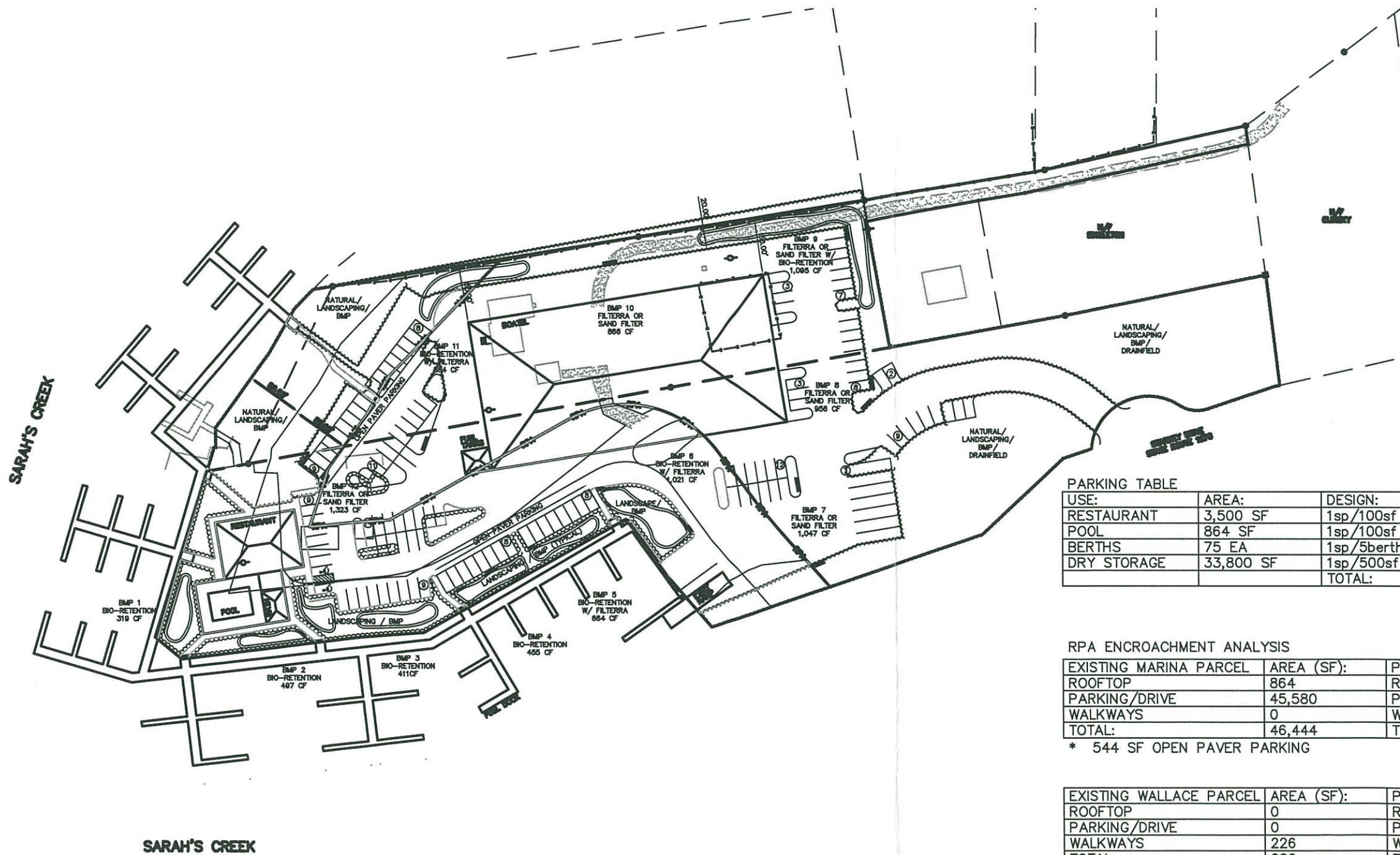
TOTAL COMBINED PARCELS	AREA (SF):	PROPOSED:	AREA (SF):
ROOFTOP	864	ROOFTOP	11,756
PARKING/DRIVE	45,580	PARKING/DRIVE	33,067
WALKWAYS	226	WALKWAYS	4,569
TOTAL:	46,670	TOTAL:	49,392

NOTE: ALL AREAS ARE APPROXIMATE AND BASED ON CURRENT GIS DATA
 NOTE: 10% REDUCTION (4,6408 SF) MET VIA 5,346 SF OPEN PAVER PARKING

Parker Consulting, LLC
 12511 Hidden Oaks Court
 Richmond, Virginia 23233
 (804) 308-0483 (804) 308-2476 fax
 parkerllc@comcast.net

SCHEMATIC LAYOUT
GLoucester Point Marina
 REDEVELOPMENT PLAN
 YORK DISTRICT
 GLOUCESTER COUNTY, VIRGINIA

DATE: 05/14/14
 SCALE: 1" = 150'
 DESIGN BY: FPP
 DRAWN BY: FPP
 CHECK BY: FPP
 GPM
 SHEET 1 OF 1



PARKING TABLE

USE:	AREA:	DESIGN:	REQUIRED:	PROVIDED:
RESTAURANT	3,500 SF	1sp/100sf	35 SP	36 SP
POOL	864 SF	1sp/100sf	9 SP	9 SP
BERTHS	75 EA	1sp/5berths	15 SP	15 SP
DRY STORAGE	33,800 SF	1sp/500sf	68 SP	68 SP
		TOTAL:	127 SP	127 SP

RPA ENCROACHMENT ANALYSIS

EXISTING MARINA PARCEL	AREA (SF):	PROPOSED:	AREA (SF):
ROOFTOP	864	ROOFTOP	11,756
PARKING/DRIVE	45,580	PARKING/DRIVE	30,649*
WALKWAYS	0	WALKWAYS	4,003
TOTAL:	46,444	TOTAL:	46,408

* 544 SF OPEN PAVER PARKING

EXISTING WALLACE PARCEL	AREA (SF):	PROPOSED:	AREA (SF):
ROOFTOP	0	ROOFTOP	0
PARKING/DRIVE	0	PARKING/DRIVE	2,418*
WALKWAYS	226	WALKWAYS	566
TOTAL:	226	TOTAL:	2,984

* 4,756 SF WILL BE OPEN PAVER PARKING

TOTAL COMBINED PARCELS	AREA (SF):	PROPOSED:	AREA (SF):
ROOFTOP	864	ROOFTOP	11,756
PARKING/DRIVE	45,580	PARKING/DRIVE	33,067
WALKWAYS	226	WALKWAYS	4,569
TOTAL:	46,670	TOTAL:	49,392

NOTE: ALL AREAS ARE APPROXIMATE AND BASED ON CURRENT GIS DATA
 NOTE: 10% REDUCTION (4,6408 SF) MET VIA 5,346 SF OPEN PAVER PARKING

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 12511 Hidden Oaks Court
 Richmond, Virginia 23233
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 parkerllc@comcast.net

SCHEMATIC LAYOUT
GLoucester Point Marina
REDEVELOPMENT PLAN
YORK DISTRICT
GLoucester County, Virginia

DATE: 03/07/14
 SCALE: 1" = 100'
 DESIGN BY: FPP
 DRAWN BY: FPP
 CHECK BY: FPP
 GPM
 SHEET 1 OF 1



GLOUCESTER COUNTY
Planning, Zoning & Environmental
Programs Department
6489 Main Street
Gloucester, VA 23061
(804) 693-1224
www.gloucesterva.info

M E M O R A N D U M

TO: Planning Commission

CC: Carol Steele, County Administrator
George Baines, Deputy County Administrator
Ted Wilmot, County Attorney

FROM: Anne Ducey-Ortiz, Director Planning, Zoning, & Environmental Programs

DATE: November 17, 2023 for December 7, 2023 Planning Commission Meeting

SUBJECT: Planning Commission 2024 Calendar

The Planning Commission's calendar for the upcoming year will be included in the packets for the December meeting similar to previous years. However, for the 2024 calendar, the Commission will need to discuss the date for the July 2024 meeting. The first Thursday of July is July 4, 2024, which is a federal holiday. In accordance with the Rules of Procedure (Section 1-1), "when a meeting falls on a legal holiday, the meeting shall be held on the Thursday of the week following unless otherwise designated by the Commission." Therefore, this meeting is planned to be held on July 11, 2024. However, staff wants to include this as an item of business on the December agenda to formally confirm that scheduling the July 2024 meeting for July 11, 2024 would be acceptable to the Commission.

Feel free to contact Sean McNash or Anne Ducey-Ortiz at 804-693-1224 if you have any questions or comments prior to the December meeting.

PC Action: Listen to the Commission's discussion, provide any necessary feedback, and confirm a date for the July 2024 Planning Commission Meeting.

Planning Commission Meeting Schedule for 2024

January 4, 2024

February 1, 2024

March 7, 2024

April 4, 2024

May 2, 2024

June 6, 2024

July 11(?), 2024

August 1, 2024

September 5, 2024

October 3, 20223

November 7, 2024

December 5, 2024



Department of Planning, Zoning, & Environmental Programs

County Building Two - 6489 Main Street
P. O. Box 329 Gloucester, Virginia 23061

Phone (804) 693-1224

Fax (804) 824-2441

M E M O R A N D U M

TO: Planning Commission

CC: Carol Steele, County Administrator
George Bains, Deputy County Administrator
Ted Wilmot, County Attorney

FROM: Tripp Little, Planner III
Anne Ducey-Ortiz, Director of Planning, Zoning, & Environ. Programs

DATE: November 27, 2023 for December 7, 2023 meeting

SUBJECT: Discussion of the Bay Act (CBPA) and its relevance for vacations and adjustments to property boundary lines

During the Planning Commission's meetings for the Boundary Line Adjustment (BLA) code amendment in 2019, staff provided an overview of the Subdivision Ordinance and the key policy decisions related to the rewrite of that ordinance. Staff also discussed the desire of member(s) of the BOS and PC to prioritize Boundary Line Adjustment (BLA) policies/procedures to streamline those items now, rather than wait for the entire Subdivision Ordinance rewrite. In the process, BLAs were defined as not being subdivisions; however, their approval and recordation is still regulated by the Subdivision Ordinance. The amended ordinance includes language to the effect that BLAs are not, in the eyes of the Subdivision Ordinance, to be considered "new lots of record" when recorded.

However, the Virginia Administrative Code (VAC) and Department of Environmental Quality (DEQ) has different requirements. Based on 9 VAC 25-830-140 (enclosed), it is their (DEQ's) position that any lot recorded after October 1, 1989 has lost its pre-Bay Act status – regardless of the type of plat or under what definitions it was approved by the County. The County's CBPA program has been following DEQ's guidance, and Chapter 5.5 of County Code closely matches language contained in the Code of VA. Chapter 5.5 is a standalone ordinance not governed by either our zoning or subdivision ordinances. As the enclosed emails indicate, staff has reached out multiple times to DEQ to confirm this position and has received the same response each and every time.

In preparation for the December meeting, staff has also reached out to the County Attorney to see if he has any suggestions/recommendations for how or if the CBPA and DEQ guidance should be interpreted and implemented differently as well as staff to other localities to see how they implement these regulations.

PC Action: Review the attached materials and listen to staff's presentation on December 7.

9VAC25-830-140. Development criteria for Resource Protection Areas.

In addition to the general performance criteria set forth in 9VAC25-830-130, the criteria in this section are applicable in Resource Protection Areas.

1. Land development may be allowed in the Resource Protection Area, subject to approval by the local government, only if it (i) is water dependent; (ii) constitutes redevelopment; (iii) constitutes development or redevelopment within a designated Intensely Developed Area; (iv) is a new use established pursuant to subdivision 4 a of this section; (v) is a road or driveway crossing satisfying the conditions set forth in subdivision 1 d of this section; or (vi) is a flood control or stormwater management facility satisfying the conditions set forth in subdivision 1 e of this section.
 - a. A water quality impact assessment in accordance with subdivision 6 of this section shall be required for any proposed land disturbance.
 - b. A new or expanded water-dependent facility may be allowed provided that the following criteria are met:
 - (1) It does not conflict with the comprehensive plan;
 - (2) It complies with the performance criteria set forth in 9VAC25-830-130;
 - (3) Any nonwater-dependent component is located outside of Resource Protection Areas; and
 - (4) Access to the water-dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided.
 - c. Redevelopment outside locally designated Intensely Developed Areas shall be permitted in the Resource Protection Area only if there is no increase in the amount of impervious cover and no further encroachment within the Resource Protection Area, and it shall conform to applicable erosion and sediment control and stormwater management criteria set forth in the Erosion and Sediment Control Law and the Virginia Stormwater Management Act and their attendant regulations, as well as all applicable stormwater management requirements of other state and federal agencies.
 - d. Roads and driveways not exempt under subdivision B 1 of 9VAC25-830-150 and which, therefore, must comply with the provisions of this chapter, may be constructed in or across Resource Protection Areas if each of the following conditions is met:
 - (1) The local government makes a finding that there are no reasonable alternatives to aligning the road or driveway in or across the Resource Protection Area;
 - (2) The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize (i) encroachment in the Resource Protection Area and (ii) adverse effects on water quality;
 - (3) The design and construction of the road or driveway satisfy all applicable criteria of this chapter, including submission of a water quality impact assessment; and
 - (4) The local government reviews the plan for the road or driveway proposed in or across the Resource Protection Area in coordination with local government site plan, subdivision and plan of development approvals.
 - e. Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in Resource Protection Areas provided such facilities are allowed and constructed in accordance with the Virginia Stormwater Management Act and its attendant regulations, and provided that (i) the local government has conclusively established that location of the facility within the Resource Protection Area is the

optimum location; (ii) the size of the facility is the minimum necessary to provide necessary flood control or stormwater treatment, or both; (iii) the facility must be consistent with a comprehensive stormwater management plan developed and approved in accordance with 9VAC25-870-92 of the Virginia Stormwater Management Program (VSMP) regulations; (iv) all applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies, such as the U.S. Army Corps of Engineers, the department, and the Virginia Marine Resources Commission; (v) approval must be received from the local government prior to construction; and (vi) routine maintenance is allowed to be performed on such facilities to assure that they continue to function as designed. It is not the intent of this subdivision to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within a Resource Protection Area.

2. Exemptions in Resource Protection Areas. The following land disturbances in Resource Protection Areas may be exempt from the criteria of this part provided that they comply with subdivisions a and b of this subdivision 2: (i) water wells; (ii) passive recreation facilities such as boardwalks, trails, and pathways; and (iii) historic preservation and archaeological activities:

a. Local governments shall establish administrative procedures to review such exemptions.

b. Any land disturbance exceeding an area of 2,500 square feet shall comply with the erosion and sediment control criteria in subdivision 5 of 9VAC25-830-130.

3. Buffer area requirements. The 100-foot wide buffer area shall be the landward component of the Resource Protection Area as set forth in subdivision B 5 of 9VAC25-830-80. Notwithstanding permitted uses, encroachments, and vegetation clearing, as set forth in this section, the 100-foot wide buffer area is not reduced in width. To minimize the adverse effects of human activities on the other components of the Resource Protection Area, state waters, and aquatic life, a 100-foot wide buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist. Where such buffer must be established, the planting of trees shall be incorporated as appropriate to site conditions and in such a manner to maximize the buffer function. Inclusion of native species in tree planting is preferred.

a. The 100-foot wide buffer area shall be deemed to achieve a 75% reduction of sediments and a 40% reduction of nutrients.

b. Where land uses such as agriculture or silviculture within the area of the buffer cease and the lands are proposed to be converted to other uses, the full 100-foot wide buffer shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions set forth in this chapter. Where such buffer must be reestablished, the planting of trees shall be incorporated as appropriate to site conditions and in such a manner to maximize the buffer function. Inclusion of native species in tree planting is preferred.

4. Permitted encroachments into the buffer area.

a. When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, encroachments into the buffer area may be allowed through an administrative process in accordance with the following criteria:

(1) Encroachments into the buffer area shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities.

(2) Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel. Such vegetated area where established shall include the planting of trees as appropriate to site conditions. Inclusion of native species in tree planting is preferred.

(3) The encroachment may not extend into the seaward 50 feet of the buffer area.

b. When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded between October 1, 1989, and March 1, 2002, encroachments into the buffer area may be allowed through an administrative process in accordance with the following criteria:

(1) The lot or parcel was created as a result of a legal process conducted in conformity with the local government's subdivision regulations;

(2) Conditions or mitigation measures imposed through a previously approved exception shall be met;

(3) If the use of a best management practice (BMP) was previously required, the BMP shall be evaluated to determine if it continues to function effectively and, if necessary, the BMP shall be reestablished or repaired and maintained as required; and

(4) The criteria in subdivision 4 a of this section shall be met.

5. Permitted modifications of the buffer area.

a. In order to maintain the functional value of the buffer area, existing vegetation may be removed, subject to approval by the local government, only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices, including those that prevent upland erosion and concentrated flows of stormwater, as follows:

(1) Trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff. Mature trees shall be preserved and trimmed or pruned in lieu of removal as site conditions permit and any removal should be limited to the fewest number of trees feasible. When trees are removed to provide for sight lines and vista, they shall be replaced with trees as appropriate to site conditions and in such a manner as to maximize the buffer function and to protect the quality of state waters. Inclusion of native species in tree replanting is preferred.

(2) Any path shall be constructed and surfaced so as to effectively control erosion.

(3) Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu, and multiflora rose) may be removed and thinning of trees may be allowed pursuant to sound horticultural practice incorporated into locally-adopted standards.

(4) For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements. Mature trees shall be removed only as necessary for the installation and maintenance of the projects consistent with the best available technical advice project plans, and applicable permit conditions or requirements. Trees shall be utilized in the project when vegetation is being established as appropriate to the site conditions and the project specifications. Inclusion of native species in tree planting is preferred.

b. On agricultural lands the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and appropriate measures may be taken to prevent noxious weeds (such as Johnson grass, kudzu, and multiflora rose) from invading the buffer area. Agricultural activities may encroach into the buffer area as follows:

(1) Agricultural activities may encroach into the landward 50 feet of the 100-foot wide buffer area when at least one agricultural best management practice which, in the opinion of the local soil and water conservation district board, addresses the more predominant water quality issue on the adjacent land—erosion control or nutrient management—is being implemented on the adjacent land, provided that the combination of the undisturbed buffer area and the best management practice achieves water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot wide buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil tests, must be developed consistent with the Nutrient Management Training and Certification Regulations (4VAC50-85) administered by the Virginia Soil and Water Conservation Board.

(2) Agricultural activities may encroach within the landward 75 feet of the 100-foot wide buffer area when agricultural best management practices which address erosion control, nutrient management, and pest chemical control, are being implemented on the adjacent land. The erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as "T," as defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service. A nutrient management plan, including soil tests, must be developed, consistent with the Nutrient Management Training and Certification Regulations (4VAC50-85) administered by the Virginia Soil and Water Conservation Board. In conjunction with the remaining buffer area, this collection of best management practices shall be presumed to achieve water quality protection at least the equivalent of that provided by the 100-foot wide buffer area.

(3) The buffer area is not required to be designated adjacent to agricultural drainage ditches if at least one best management practice which, in the opinion of the local soil and water conservation district board, addresses the more predominant water quality issue on the adjacent land—either erosion control or nutrient management—is being implemented on the adjacent land.

(4) If specific problems are identified pertaining to agricultural activities that are causing pollution of the nearby water body with perennial flow or violate performance standards pertaining to the vegetated buffer area, the local government, in cooperation with soil and water conservation district, shall recommend a compliance schedule to the landowner and require the problems to be corrected consistent with that schedule. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.

(5) In cases where the landowner or the landowner's agent or operator has refused assistance from the local soil and water conservation district in complying with or documenting compliance with the agricultural requirements of this chapter, the district shall report the noncompliance to the local government. The local government shall require the landowner to correct the problems within a specified period of time not to exceed 18 months from their initial notification of the deficiencies to the landowner. The local government, in cooperation with the district, shall recommend a compliance schedule to the landowner. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.

6. Water quality impact assessment. A water quality impact assessment shall be required for any proposed development within the Resource Protection Area consistent with this part and for any other development in Chesapeake Bay Preservation Areas that may warrant such assessment because of the unique characteristics of the site or intensity of the proposed use or development.

a. The purpose of the water quality impact assessment is to identify the impacts of proposed development on water quality and lands in the Resource Protection Areas consistent with the goals and objectives of the Act, this chapter, and local programs, and to determine specific measures for mitigation of those impacts. The specific content and procedures for the water quality impact assessment shall be established by each local government. Local governments should notify the department of all development requiring such an assessment.

b. The water quality impact assessment shall be of sufficient specificity to demonstrate compliance with the criteria of the local program.

7. Buffer area requirements for Intensely Developed Areas. In Intensely Developed Areas the local government may exercise discretion regarding whether to require establishment of vegetation in the 100-foot wide buffer area. However, while the immediate establishment of vegetation in the buffer area may be impractical, local governments shall give consideration to implementing measures that would establish vegetation in the buffer in these areas over time in order to maximize water quality protection, pollutant removal, and water resource conservation. In considering such measures, local governments shall consider the planting of trees as a component of any such measure. Inclusion of native species in tree planting is preferred.

Statutory Authority

§§ 62.1-44.15:69 and 62.1-44.15:72 of the Code of Virginia.

Historical Notes

Former 4VAC50-90-140 and 9VAC10-20-130 derived from VR173-02-01 § 4.3, eff. September 1, 1989; amended, Virginia Register Volume 6, Issue 1, eff. October 1, 1989; Volume 7, Issue 5, eff. December 9, 1991; Volume 7, Issue 24, eff. October 1, 1991; [Volume 18, Issue 9](#), eff. March 1, 2002; Errata, 18:13 VA.R. 1763 March 11, 2002; amended and renumbered, Virginia Register [Volume 29, Issue 4](#), eff. November 21, 2012; amended and renumbered, Virginia Register [Volume 30, Issue 2](#), eff. October 23, 2013; [Volume 38, Issue 1](#), eff. September 29, 2021; [Volume 38, Issue 25](#), eff. August 31, 2022.

Website addresses provided in the Virginia Administrative Code to documents incorporated by reference are for the reader's convenience only, may not necessarily be active or current, and should not be relied upon. To ensure the information incorporated by reference is accurate, the reader is encouraged to use the source document described in the regulation.

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Ducey-Ortiz, Anne

From: Owens, Ronald W.
Sent: Monday, June 24, 2019 3:06 PM
To: Ducey-Ortiz, Anne
Subject: FW: Subdivision or boundary adjustment of pre-Bay Act lot

Anne,

Below is the response I received from Daniel Moore with DEQ, as I indicated any lot with a new recordation date after October 1, 1989 will no longer have pre-bay lot status.

Ron

Ronald W. Owens
Chesapeake Bay Preservation Administrator
Environmental/Engineering Inspector
Gloucester County Community Development
6489 Main Street
Gloucester, VA 23061
804-693-1217
[Environmental Webpage](#)

From: Moore, Daniel <daniel.moore@deq.virginia.gov>
Sent: Monday, June 24, 2019 2:11 PM
To: Owens, Ronald W. <rowens@gloucesterva.info>
Subject: Subdivision or boundary adjustment of pre-Bay Act lot

Ron -

Per our phone conversation of this morning:
any subdivision or boundary adjustment (leading to a new lot recordation) of a parcel of land with on-site RPA that was recorded prior to October 1, 1989
would result in that lot no longer being considered a "pre-Bay Act" lot. Sec. 5.5-9 9 9 (c) (2) of the County's Bay Act Ordinance would no longer apply to any parcel of land so subdivided (or one subject to a boundary adjustment) that results in a new recordation.

Please let me know if you need anything else regarding this issue and thanks for the call!

Daniel Moore
Principal Environmental Planner
Department of Environmental Quality
Office of Local Government Programs
1111 E. Main Street
Richmond, VA 23219
(804) 698-4520

daniel.moore@deq.virginia.gov

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Ducey-Ortiz, Anne

From: Owens, Ronald W.
Sent: Wednesday, May 10, 2023 10:23 AM
To: Ducey-Ortiz, Anne
Subject: FW: Gloucester County CBP question

RPA boundary line question response.

Ron



Ronald Owens

Chesapeake Bay Program Administrator
Gloucester County Community Development
6489 Main Street
Gloucester, VA 23061
804-693-1217
www.gloucesterva.info

From: Lassiter, V'lent <vlent.lassiter@deq.virginia.gov>
Sent: Monday, January 31, 2022 8:11 AM
To: Owens, Ronald W. <rowens@gloucesterva.info>
Subject: Re: Gloucester County CBP question

CAUTION: This email originated from a source outside of Gloucester County. Avoid clicking on links or attachments unless you are sure of the sender and know that the content is safe.

Hi Ron,

You are correct, once the lot lines were vacated, the property lost its pre-Bay Act status, so an addition to the principal structure can no longer be approved administratively. A formal exception would be necessary, and the findings in Section [9 VAC 25-830-150 C \(1\)](#) of the CBPA Regulations need to be met. Also, if the expansion to the principal structure can be accommodated outside of the RPA, that's where it should be placed, and we never recommend the approval of accessory structures such as decks and porches in the RPA. Please let me know if you have any other questions, or if I can be of further assistance in the review of this project!

V'lent

R. V'lent Lassiter
Principal Environmental Planner
VA Department of Environmental Quality
Water Division
(804) 560-0160
Vlent.Lassiter@deq.virginia.gov

On Thu, Jan 27, 2022 at 8:36 AM Owens, Ronald W. <rowens@gloucesterva.info> wrote:

V'lent,

Hope all is well with you, I have a resident who recently vacated a property line to make 2 pre bay lots into 1 post bay lot. There is a home present, he now wants to build an addition, it will be located within the 100' buffer. This is my first case of building an addition onto a home that is not on a pre-bay lot. Can you offer some guidance on this please, in summary can a person build an addition on a home with in the 100' buffer that is on a post bay lot?

Thanks for your help,

Ron

Ronald W. Owens

Chesapeake Bay Program Administrator

Gloucester County Community Development

6489 Main Street

Gloucester, VA 23061

804-693-1217

[Environmental Webpage](#)

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Ducey-Ortiz, Anne

From: Lassiter, V'lent (DEQ) <Vlent.Lassiter@deq.virginia.gov>
Sent: Tuesday, November 28, 2023 4:33 PM
To: Landry, Kevin
Cc: Hudgins, Mike; Mitchell, Sarah; Rizzio, Carol A.; Jacobs, Mary (DEQ); Moore, Daniel (DEQ)
Subject: RE: Patton Waiver application

CAUTION: This email originated from a source outside of Gloucester County. Avoid clicking on links or attachments unless you are sure of the sender and know that the content is safe.

Hi Kevin,

In addition to Mary's comments below, I wanted to provide written follow-up, with regulatory citations, concerning our conversation about pre- and post-Bay Act grandfathering. Section [9 VAC 25-830-140.4](#) of the CBPA Regulations discusses permitted encroachments into the buffer area and what are considered pre-Bay Act (grandfathered) lots. Item (a) of that section states: "when the application of the buffer area would result in the loss of a buildable area on a lot or parcel **recorded prior to October 1, 1989**, encroachments into the buffer area may be allowed through an administrative process. . ." The Regulations also contain what we call a "tweener provision" (item b in 9 VAC 25-830-140.4) which localities had the option to adopt: "when the application of the buffer area would result in the loss of a buildable area on a lot or parcel **recorded between October 1, 1989 and March 1, 2002**, encroachments into the buffer area may be allowed through an administrative process. . ." So, within the CBPA Regs, the recordation date is clearly established as the threshold that allows administrative approval of buffer encroachments, and Section 5.5-9 (c)(2) of Gloucester County's Chesapeake Bay Preservation ordinance mirrors this language. (Gloucester County chose not to adopt the tweener provision.)

In short, our guidance to localities is, and always has been, that when a boundary line adjustment is made, or a parcel is subdivided or combined, a new lot is formed with a new recordation date, and the original parcel does not retain its pre-Bay Act status. Newly created lots must comply with current regulations and nonconformity should not be increased. I hope this explanation helps clarify this somewhat confusing issue!

V'lent



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From: Jacobs, Mary (DEQ) <Mary.Jacobs@deq.virginia.gov>
Sent: Monday, November 20, 2023 12:56 PM
To: Landry, Kevin <klandry@gloucesterva.info>; Lassiter, V'lent (DEQ) <Vlent.Lassiter@deq.virginia.gov>; Moore, Daniel (DEQ) <Daniel.Moore@deq.virginia.gov>
Cc: Hudgins, Mike <jhudgins@gloucesterva.info>; Mitchell, Sarah <smitchell@gloucesterva.info>
Subject: Re: Patton Waiver application

Kevin,

As we discussed, as per the County ordinance, and as others in this office have explained, land disturbance/development proposed in the RPA cannot be reviewed and approved administratively.

I did not receive the Water Quality Impact Assessment, WQIA, for the proposed projects of enclosing an existing deck and adding a car port in the RPA. The WQIA information is to be reviewed by the locality and its Board prior to action on the exception. The WQIA is to be used to evaluate the site of the proposed exception, the potential effects, and mitigation measures that are appropriate to counteract those effects.

I have attached the 'Exceptions' guidance document, and on pages 2 and 3 you will see the process of determining if findings are present, i.e. determining that the exception request is the minimum necessary to afford relief, which is included in the Gloucester County ordinance, 5.5-14, along with five other findings. For instance, the 'Exceptions' guidance describes that an applicant considers relocating a structure that may result in achieving the desired use without the need for an exception, but "...should alternative location, sizing, or orientation options to avoid the need for an exception be available, and the applicant chooses to continue with the exception request, then the finding of "minimum necessary to afford relief" would not be present."

Please let our office know if you need additional assistance to review the WQIA information when submitted, or have questions about Exception requests, i.e. for other findings.

Best regards,
Mary



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From: Landry, Kevin <klandry@gloucesterva.info>
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To: Jacobs, Mary (DEQ) <mary.jacobs@deq.virginia.gov>
Cc: Hudgins, Mike <jhudgins@gloucesterva.info>; Mitchell, Sarah <smitchell@gloucesterva.info>
Subject: Patton Waiver application

Mary,

As we discussed earlier today, the waiver applicant did a boundary line adjustment and recorded it Sept. 7, 2023. The attached plat shows the line adjustment from the survey dated 8/20/23. The BLA was for an addition on the north side of the house as seen in the attached POD dated 10/20/23. It appears they own both lots where the BLA was done. As seen in the POD, there is also a proposed enclosure of an existing deck and a proposed carport on the southeast side of the house. They have submitted a waiver application and WQIA (attached). I mentioned to them that they cannot use the Waiver process and must use the Exception process, because the BLA created a new lot of record (post Bay Act) for

the lot where the proposed activity will be. The surveyor did not agree (see attached email) and they and the builder have asked for guidance stating why they cannot use the Waiver. I spoke to V'lent earlier this week and she mentioned she was going to provide some guidance regulatory material. I hope this information is helpful. Thanks in advance for any information you can provide.

Kevin



Kevin Landry

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