

TOWN COUNCIL
Work Session
Cape Charles Civic Center
November 7, 2024
Immediately Following the Regular Meeting

At 6:13 p.m. Vice Mayor Steve Bennett, having established a quorum, called to order the Special Meeting of the Cape Charles Town Council. In addition to Vice Mayor Bennett, in attendance were Councilmen Buchholz, Butta and Grossman, and Councilwoman Holloway. Mayor Charney was out of town and unable to attend. There was one vacant position on the Council. Also, in attendance were Town Manager John Hozey, Project Manager Bob Panek, Treasurer Marion Sofield, Planner/Zoning Administrator Katie Nunez, Zoning Compliance Officer Jack Steinmayer and Town Clerk Libby Hume. There were 7 members of the public physically in attendance.

Vice Mayor Bennett stated that the items for discussion were the 2024 community survey and recent decisions and possible associated zoning code changes.

A. 2024 Draft Community Strategic Plan Citizen Survey:

John Hozey stated that it was time for the 2024 citizen survey. A draft of this year's survey was included in the agenda packet and the 2023 survey was distributed this evening. The plan was to get the survey finalized and distributed with the November trash billing. There would also be an electronic version. Both versions would have a due date in early January. The first 8 questions were the same every year to help track the demographics and trends.

Councilwoman Holloway asked if another question could be added, after question #5, asking the responder their age and provide age ranges. This was not currently asked and would be helpful to know. Councilman Buchholz agreed. John Hozey stated that it would be good to start collecting this data.

Councilwoman Holloway noted that question #7 regarding public services was too generic. She reviewed Ms. McMath's comments that were emailed to Council and made some notes. Maybe we could list the various departments. John Hozey agreed that it would be a good compromise.

Question #9: i) Councilwoman Holloway suggested changing it to have responders rank the items from 1 to 5 in importance, with 1 being the least important and 5 being the most important, adding that she felt that ranking would provide a better result since we needed to know the importance versus agreement to the statements. The other Council members agreed; ii) The fourth statement was changed to "*Continuation of the existing Historic District street pattern into the Harbor area should be considered;*" iii) The fifth item was added to state "*A percentage of affordable housing should be factored in.*"

Question #10: There was much discussion about this question. Councilman Butta suggested listing some items from the Strategic Plan Appendix A – Comprehensive Plan Summary of Objectives and Strategies and have the responders check 5 items that they would prefer the Town focus upon. Councilwoman Holloway agreed, adding that it was best to provide choices for the responders to choose from. Council proceeded to review the list on Appendix A and chose the following to include on the survey: encourage workforce housing; seek healthy balance of residents & tourists; promote and expand business; enhance walkability; increase parking; promote coastal resiliency, and create multi-use recreation field.

Question #11: Councilwoman Holloway suggested having the responders rank the communication options and suggested adding e-Notifications to the list. Councilman Grossman agreed, adding that having them circled just provided numbers.

It was suggested that the statement at the bottom of the survey, related to the electronic version, be moved to the top of the survey since responders needed to know about the electronic version and where to find it before they began completing the hard copy version.

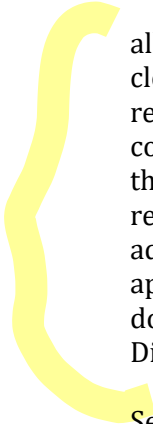
John Hozey stated that he would make the changes discussed this evening and get the survey back out to Council for review.

B. *Discussion of Recent Zoning Decisions & Possible Associated Zoning Code Changes:*

John Hozey stated that there had been two instances where the Board of Zoning Appeals (BZA) created unintended consequences in the form of a precedent. The BZA should have focused on the process, but they weighed in on the work done rather than the process.

First Appeal: The appellant did not come to Town asking about the process to perform work on their house. When the Town found out about the work, a violation was issued because the process was not followed. The BZA shifted the authority to decide whether a review by the zoning administrator was needed.

There was discussion as follows: i) Vice Mayor Bennett stated that we did not want citizens deciding to approve their work but he felt the list of fees were onerous and the costs prohibitive, so residents began making their own choices for work needing to be done on their homes; ii) John Hozey agreed that the applicant was trying to avoid paying the fee and read the ordinance themselves. The fees charged by the Town were substantially similar to other jurisdictions. We only had so much staff available for this so there should be a fee, and our fees were not outrageous; iii) Councilwoman Holloway felt that citizens did not do this intentionally and she felt that we stopped giving warnings and jumped immediately into reprimanding or penalizing our citizens. The small town character and charm reflected how we treated each other. When a resident wanted to follow the process correctly and they found the amount of the fees were more than the repair, they no longer wanted to do the necessary maintenance or repairs. She asked whether the Town had a system for notifying residents in violation. John Hozey stated that there was no way to warn an individual if they did not come in to inquire about the process. If they came in, staff would be able to explain the process and the individual would pay a review fee, not a penalty; iv) Councilman Buchholz noted that the 2 resolutions of intent which were adopted earlier this evening should have been done over a year ago. We all slip up so if someone did some work on their house without prior review by staff, we needed to bring them in to go over the process and guide them, then assess a review fee, not a penalty; v) Councilman Grossman stated that this conversation needed to come back to the reason why every change needed to go through the zoning administrator and asked why citizens could not perform simple repairs to their homes. He passed around photos of his shed which was behind the Town Hall. Under one of the window sills, the wood was rotting. The left side was the same about 5 years ago. He cut out the rotten wood, replaced it and painted it. Did this have to go through an approval cycle for him to make the repair? It should not. It was not clear to him why everything needed to go to zoning. Did we expect a pane of glass to have to go through an approval cycle? He did not think so. He added that the procedural steps needed to be written into the ordinance. Councilwoman Holloway agreed, adding that making everything go through zoning, discouraged the residents from doing anything. Councilman Grossman suggested a list of repair items that would be permitted without zoning approval and include the process if the resident was caught changing materials, etc.; vi) Councilman Grossman stated that the zoning ordinance needed to be changed for clarification (#2 on John Hozey's memo – attached). The current language in the zoning ordinance did not state that everything needed to go through the zoning administrator. If we were going to require



all external work to go through the zoning process for approval, we needed to make it crystal clear. John Hozey agreed and stated that staff would develop a list of items that did and did not require zoning approval and bring it back for Council review; v) Katie Nunez stated that the fees could be reexamined and added that her department encouraged everyone to put as much into their application as possible to reduce the amount of fees. She asked for specific examples of repeated fees so she could review it. She asked for direction regarding the fees and/or tiers, adding that the penalty fee was imposed last year due to the increasing number of after-the-fact approvals. Why would anyone want to ask for permission to do anything in advance if they could do the work, then ask for an after-the-fact approved if they got caught. Why have a Historic District Review Board if prior approval was not necessary?

Second Appeal: The appellant had a bus parked on a vacant lot. The Town had tried not to have vehicles parked on vacant lots, but the BZA's decision now allowed it. Perhaps the Town could allow parking on vacant lots as long as the vehicles were registered and with appropriate screening to limit visibility from the street. The Town did not want a junk yard within the town limits.

There was discussion as follows: i) Vice Mayor Bennett expressed his opposition to allow any type of vehicle to be parked on vacant lots; ii) John Hozey stated that the Town had an ordinance that an RV could not be parked on the street; iii) Councilman Grossman stated that he had 2 lots, and he parked his golf cart on the second lot. John Hozey stated that parking was permitted as an accessory use for a developed property. Councilman Grossman noted that his second lot was considered a vacant lot as it had not been developed. Katie Nunez explained that Councilman Grossman's 2 lots had common ownership, adding that the subject lot of the appeal was separated from the appellant's other lot by an alley which was a public road; iv) Councilman Buchholz stated his opinion that as long as the vehicle was registered, with a current state inspection which would determine whether it was operational, the property owner should be able to park their vehicle on the lot. Vehicles owned by other parties should not be allowed. He added that in his opinion, two lots with an alley between them should be considered as adjacent. We were being too restrictive. John Hozey agreed that, since the Town had a parking issue, if the owner of a vacant lot wanted to park their own, currently registered vehicle, on the lot, it would be permissible; v) Katie Nunez noted that we currently restricted parking in front yards. John Hozey stated that we could add a set back for parking on vacant lots for vehicles registered, inspected and owned by the property owner. Councilman Grossman and Councilwoman Holloway expressed their support of this.

John Hozey stated that staff would draft a text amendment clarifying parking and zoning administrator reviews and present it for Council review.

Councilman Butta stated that if the BZA was granting multiple variances for the same issues, then we needed to review and change the ordinance. Katie Nunez added that the BZA was not being inundated with variance requests. She provided an annual report of all BZA actions to the Town Council, If Council saw something repeatedly, then they could direct the Planning Commission to change the ordinance.

Councilman Grossman asked that the resolution be brought forward along with the recommendations so Council could direct the Planning Commission to make the necessary changes.

There was no further discussion.

John Hozey stated that as a Dillon rule state, we only had the authority granted to us by the state. In zoning, if a use was not expressly authorized, it was prohibited. The BZA may have

misunderstood this, and we could not have that type of confusion. He would have this clarified in the ordinance as well.

Motion made by Councilman Grossman, seconded by Councilman Buchholz, to adjourn the Town Council Work Session. The motion was approved by unanimous vote.

The Town Hall Meeting was adjourned at 7:29 p.m.

Vice Mayor Bennett

Town Clerk

11/7/2024 Town Council Work Session Handouts



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Community Strategic Plan Citizen Survey - 2024

1. Please choose the closest one that applies to you:

- ☐ Full-time resident living within the corporate limits of Cape Charles
- ☐ Full-time resident within the town limits, who also owns additional property within the town limits
- ☐ Resides in Northampton County but outside the corporate limits of Cape Charles
- ☐ Owns property within the corporate limits of Cape Charles but maintains a primary residence outside of the town
- ☐ Resides outside Northampton County but a frequent visitor to Cape Charles

2. How long have you lived or owned property in Cape Charles? _____ N/A

3. Do you own a business in Cape Charles? Yes ☐ No ☐

4. Are you employed? Circle the closest one that applies:

Full time part time retired between jobs prefer not to answer

5. Is your employment based primarily from your home? Yes ☐ No ☐ N/A

6. Do you think Town public services are appropriate for a community of our size?

Yes ☐ No ☐ (Please feel free to attach comments)

7. Are you satisfied with the quality of Town public services?

Yes ☐ No ☐ (Please feel free to attach comments)

8. Do you feel the Town has maintained or improved its small-town character in recent years?

Yes ☐ No ☐ (Please feel free to attach comments)

9. The currently vacant railroad property north and east of the harbor has captured the imagination of residents for many years. The issues surrounding clear title to this property that have hampered development are now close to being resolved. As a result, formal planning to guide potential development in this area is ripe for discussion. Please indicate your opinion on the following statements from 1 to 5 (with 1 meaning the least agreement and 5 being the strongest agreement).

- ☐ Development of this area should strive to diversify our economy beyond tourism as much as possible (though it should not detract from existing tourism)

- _____ The character of the current historic district and Mason Avenue should be replicated into this area where appropriate
- _____ Open space, parks, or recreational areas should be included
- _____ Continuation of the existing street pattern to the south should be considered
- _____ ?? _____ ??

What other ideas or concepts should be considered in the development of this area:

10. Other than the topic above, what will be the most pressing issue or need for the Town in 2025?

11. What tools do you use to stay in touch with town happenings? Circle all that apply:

- Facebook posts Gazette Nixle Town website Weekly staff reports Word of mouth
- Watch meetings on Facebook Newspapers CC Happenings Mirror
- Other _____

12. Your Name:

Street Address:

Email Address:

Note: anonymous surveys cannot be counted

May we contact you regarding this survey?

Yes _____ No _____

Responses are due back to Town Hall no later than 2:00 pm, January 10, 2025

Surveys may be dropped off, mailed (2 Plum St), or scanned and emailed to Clerk@capecharles.org

An [electronic version](#) of this survey is also available on the Town's website

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Community Strategic Plan

Appendix A **Cape Charles Comprehensive Plan Summary of** **Objectives and Strategies**

A) Housing

- 1 Pursue additional supply and diversity of housing
- 2 Encourage workforce housing
- 3 Participate in Housing Finance Programs
- 4 Promote manufactured housing
- 5 Address STR impacts on housing

B) Economy

- 1 Seek healthy balance - residents & tourists
- 2 Attract families with children
- 3 Strengthen household economic wellbeing
- 4 Promote and expand business
- 5 Promote diverse economic benefits for the harbor
- 6 Expand local manufacturing base
- 7 Promote traditional water based economic activities
- 8 Study chains of activities
- 9 Identify placemaking opportunities
- 10 Update Bay Creek Planned Unit Development (PUD)

C) Transportation

- 1 Reduce traffic congestion
- 2 Enhance walkability
- 3 Maintain safe golf cart operations
- 4 Increase parking
- 5 Identify and maintain alleys and easements
- 6 Promote affordable public transportation
- 7 Complete multi-use path between historic district, harbor, and Bay Creek
- 8 Intergrade harbor area with other trail/path networks
- 9 Support Rails to Trails

Community Strategic Plan

D) Environment

- 1 Enhance Chesapeake Bay water quality
- 2 Promote strong aesthetics and limit litter
- 3 Ensure high quality drinking water
- 4 Maintain long-term viability of beach and harbor
- 5 Promote coastal resiliency
- 6 Protect wetlands
- 7 Implement Coastal Resources Management guidance
- 8 Develop recommendations to improve resiliency to storm events
- 9 Assess feasibility of recycling
- 10 Protect and promote tree canopy
- 11 Evaluate I&I to sewer

E) Facilities & Services

- 1 Pursue amenities for town facilities
- 2 Create modernized municipal facilities
- 3 Create multi-use recreation field
- 4 Ensure effective water & sewer utilities
- 5 Develop policy for paying for facility expansions
- 6 Develop proffer policy to pay for impacts of future developments
- 7 Pursue arts, public events, etc.

Memorandum



From: John Hozey, Town Manager
Date: November 7, 2024
To: Town Council
RE: Recent BZA Precedents

On October 8, 2024, the Board of Zoning Appeals (BZA) met to hear appeals of two recent Zoning Administrator (ZA) decisions. One was regarding work done to a home at 204 Bay Avenue without receiving a prior zoning clearance. The other was a challenge to the determination that vehicles cannot be stored on vacant lots, specifically in the 500 block of Madison Avenue. The BZA approved both appeals, and in doing so potentially created undesired precedents.

The Town has three options when BZA appeal decisions create unwanted precedents:

1. Appeal the BZA decisions to the Circuit Court
2. Change the Zoning Ordinances to clarify the Council's intent regarding these matters
3. Do nothing and allow the precedents to stand

After consultation with the Town's attorney, I recommend option #2 regarding both decisions.

In the matter of the first appeal regarding the prosecution of work without appropriate advance review; the BZA did not focus on the correct issue, a procedural question. They instead focused on the merits of whether that specific work required HDRB review or not (typically the Zoning Administrator's decision). But in this case, the ZA never got the chance to rule on whether this work required HDRB review, because the applicant never came to the Town to ask for the ZA's interpretation.

Had the applicant followed our procedure and requested a zoning clearance in advance of the work, the ZA, after having the opportunity to review all the information, would have likely agreed that HDRB action was not required, and that the work could have been approved administratively.

But in this case, the applicant reviewed the ordinances on his own and decided unilaterally that the Town did not need to be contacted about this work. When the ZA was notified after the fact that the work had been done, and not knowing exactly what that work entailed, she issued a violation for not getting a zoning clearance before starting the work. It was that violation of procedure (not the question of minor work) that the applicant appealed to the BZA.

The Town Council has vested the authority to determine what is, or what is not, minor work in the ZA, not in the applicant. But by focusing on the work being done rather than the process not being followed, the BZA approval inadvertently vested that authority in the applicant; essentially upholding his right to work on his home based solely on his own interpretation of the ordinances.

The BZA simply got this one wrong; and as a result, any enforcement regarding work done in the historic district without first obtaining a zoning clearance has been suspended pending clarification of this issue with the Town Council.

If it is the Council's intent to allow each individual applicant to decide whether a zoning review is required or not, then no action is required. But if the Council still wants the ZA to make this determination, clarifying language needs to be inserted into the ordinances to remove any ambiguity. Once this clarification is made to these ordinances, it will nullify any unfortunate precedent the BZA may have inadvertently created in this case.

In the matter of the second appeal regarding the ability to store parked cars on vacant lots, the BZA reviewed the ordinances associated with this issue, and based primarily on their interpretation of the definition of parking lots in the ordinance, overruled the Zoning Administrator and approved the appeal.

Unlike the first appeal described above, the BZA focused on the correct issues and made the call as they saw fit. But this ruling creates a problem for the Town in that it is in contradiction to many other similar enforcement actions the Town has historically taken that were never appealed. Since the Zoning Administrator assumed her role, there have been 6 other similar cases of parking on vacant lots which were eventually cured as a result of a violation, resulting in the removal of the offending vehicles. This BZA ruling however, will stop all future similar enforcement actions.

Since parking has become an important topic of conversation recently, Town Council direction on this matter is requested. If the Council has no concern regarding the appearance of vehicles being stored on vacant lots in the historic district, then no action is required. But if the Council has any concerns with how this might impact the charm of the historic district, and perhaps would like to discuss some side rails or parameters regarding this issue, guidance is needed and clarifying language must be inserted into the ordinance describing the Council's intent.

One additional item also needs clarification, as it pertains to the assertion that in a Dillon Rule state, actions or uses not specifically authorized by zoning are prohibited. During deliberations of this appeal, some BZA members may have been under the mistaken impression that the opposite was true; that unless prohibited, uses are authorized. This is something that all BZA members must get right, and so if we are making text amendments to clarify other intentions, we should also clarify this important pretext of zoning.