



Zoning Variance Application

Planning & Zoning Department
 412 Tazewell Avenue
 Cape Charles, VA 23310
 757-331-3259 x30
planner@capecharles.org

Revised 11/2025	
Taxes	✓ up to date
Violations	—
paid to Fee 3087	\$500
BZA Date	4-14-26
Decision	

BUDGET CODE: MISPL 100-3100-1070

PART 1: APPLICATION NOTES

- VARIANCE** means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. **It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.**
- The burden of proof shall be on the applicant for a variance to prove by the greater amount of evidence that the application meets the standard as defined, and the criteria set in number 3.
- The Board of Zoning Appeals shall grant a variance if the evidence shows that the following conditions exist:
 - The strict application of the terms of the ordinance would reasonably 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, or alleviate a hardship granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability, and
 - The property interest for which the variance is being requested was acquired in good faith, and any hardship was not created by the applicant; and
 - The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; and
 - Such condition or situation is not shared or recurring by other properties in the same zoning district and same vicinity; and
 - The granting of the variance does not result in a use that is not permitted on such property or a change in the zoning classification of the property; and
 - The remedy sought is not available through a conditional use process that is authorized in the ordinance.
- If a variance is approved for a property only the minimum required to alleviate hardship will be granted.
- *FEES: \$500 & Payment of advertising costs, actual and adjacent property owner notification mailing, costs.**

All items from this checklist must be submitted prior to the application being evaluated.

- | | | |
|---|---|--|
| <input checked="" type="checkbox"/> Completed application & Justification Letter | <input checked="" type="checkbox"/> Existing site plan/survey | <input checked="" type="checkbox"/> Photos of existing conditions. |
| <input checked="" type="checkbox"/> Photos/elevation drawings of proposed project | <input type="checkbox"/> Proposed site plan/survey | <input checked="" type="checkbox"/> Payment of Fees * |

PART 2: PROPERTY INFORMATION

Property Address: [REDACTED]	Tax Map #: [REDACTED]
Existing Use: Private Residence	Zoning District:
Has a previous application been filed for a variance in connection with this property? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, attach an explanation	
Has a Conditional Use Permit been issued for the existing use? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, provide a copy	
Are there any proffers associated with this property? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, provide a copy	
Is the property located within an Overlay District? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, which one _____	
Is this property located within a Subdivision? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes, which one <u>Bay Creek - The Colony</u>	
Is this property located within a Resource Protection Area? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	

PART 3: PROPERTY OWNER INFORMATION



PART 4: APPLICANT INFORMATION

Check here if applicant is owner. (If applicant is not the property owner, an Owner's Permission Affidavit must be attached.)

Name and/or Company:

Mailing Address:

Phone Number:

Email:

PART 5: ZONING ORDINANCE OR ACCAWMACKE PLANTATION PUD VARIANCE SECTION

Please provide the Zoning Ordinance Section that you are seeking relief from: CCZO 2.6.4

Please provide the Accawmacke Plantation PUD Section you are seeking relief from: _____

PART 6: VARIANCE JUSTIFICATION

Applicant must explain (Please use additional pages where necessary)

A) PROPERTY DESCRIPTION

How do the zoning ordinance's strict regulations for the lot or parcel of land's shape, size, or area unreasonably restrict the utilization of the property?

We purchased a home for the enjoyment of access to the beach and ability to sit outside and enjoy the waterfront view at leisure.

What type of reasonable deviation is being sought?

We request that we are granted the ability to maintain the outdoor impervious patio on our property.

Lot or Parcel Size:

Proposed Size:

Shape: **Rectangle**

Proposed Shape:

How does the zoning ordinance's strict limitations on the size, height, area, or location of the building or structure unreasonably restrict the utilization of the property?

We purchased the land in anticipation of being able to enjoy our yard.

What type of reasonable deviation is being sought?

Please allow us to keep our patio intact.

Main Structure Size:

Proposed Structure Size:

Existing Height:

Proposed Height:

Existing / Required Setback Front:

Proposed Setback Front:

Existing / Required Setback West Side:

Proposed Setback West Side:

Existing / Required Setback East Side:

Proposed Setback East Side:

Existing / Required Setback Rear:

Proposed Setback Rear:

B) CRITERIA

1. Does strict application of the zoning ordinance to the subject property result in a hardship to the owner? (Answer A or B)

A. Explain how the variance would alleviate a hardship caused by the physical characteristics of the property?

When this house was first being designed and constructed, it was built to reach within the RPA to maximize indoor space; with no consideration for outdoor use.

B. Explain how the zoning ordinance unreasonably restricts the use of the property?

The limitation of the RPA unseemingly restricting us from even putting a nominal, least intrusive, area pavers out to enjoy the property; and we installed not knowing that prior approval was needed. It

2. Is the hardship unique to the property?

A. Explain if the hardship is shared by other properties in the neighborhood.

Yes, especially as some of the vacant lots are getting developed; and there are other vacant lots that need to contend with waterfront lifestyle erosion.

B. Explain how this situation or condition of the property applies generally to the other properties in the same zone.

Many waterfront properties on Sunset Blvd have the use of their beach front yards; however here are other vacant lots that need to contend with waterfront lifestyle erosion post construction.

3. Was the hardship created or caused by the applicant? We did so without knowledge; we thought pavers were more reasonable than a deck.

A. Did the condition exist when the property was purchased?

We added the patio after our home was completed so we could sit outside.

B. Did the applicant purchase the property without knowing of this hardship?

We did not think it was an issue when we installed the patio. We removed trees that were planted to ensure that we did not obstruct the view of our neighbors.

C. How and when did the condition which created the hardship first occur?

After purchase was made, we discovered the property line was built tight to the RPA line; Also, builder misrepresented property line.

D. Did the applicant create the hardship and, if so, how was it created?

We put the patio in as an enhancement to the property to allow us to sit outside; not knowing the property hinderance.

E. What could have been done to avoid hardship?

We should have better understood the process and sought prior approval. It would have also helped to receive accurate plans from builder.

4. Will the variance if granted be harmful to others? We do not believe so.

A. Explain if the proposed variance will be detrimental to the adjacent properties or the neighborhood?

The patio is stone pavers, we also have been replacing in kind with indigenous planting. We are willing to add more planting in kind.

B. Explain how the proposed variance will affect the values of the adjacent and nearby properties.

We believe nice well cared for homes increase the value of everyone's property.

C. Have you shown the proposed plans to the adjacent neighbors and other affected property owners? Have any of them objected, or have any of them written a letter of support for the proposed variance? If so, please attach the letter or submit it before the hearing.

Not as of yet.

D. Explain how the proposed variance will change the character of the neighborhood?

The patio matches the driveway, and we don't believe changes the character of the neighborhood.

5. Is there any other administrative or procedural remedy to relieve the hardship?

Not that we know of.

Part 7: ALTERNATIVE SOLUTIONS

Have alternative plans or solutions been considered so a variance would not be needed? Please explain solutions that have been considered, and why it is unsatisfactory.

A variance is needed to retain the pavers however we have extended the planting to offset the impervious surface created.

Part 8: STATEMENT OF INTENT

Describe the planned use and explain why a variance from the district ordinance is needed. State the sections of the Town Zoning Ordinance or the Accawmacke Plantation PUD for which you are requesting a variance. Include the standards listed in the Zoning Ordinance/PUD and the amount of a variance you are requesting.

To enjoy outdoor living, variance is requested because we unknowingly installed in violation of the RPA act.

CERTIFICATION

I hereby certify that I have the authority to make the foregoing application, that the information given is true and correct, and that the construction or improvements will conform to the regulations in the Virginia Statewide Building Code, all pertinent Town Ordinances, including fire, sewer and water ordinances, and private building restrictions, if any, which may be imposed on the property by deed. Before any work begins, a zoning clearance request must be approved. I understand that for any changes made in the historic district, a Certificate of Appropriateness must be received, and any changes made in the Accawmacke Plantation PUD, an Architectural Review Committee approval letter must be received.

[Redacted signature area]

Date: 3/13/21

Zoning Administrator's signature: _____

Date: _____

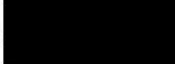


Municipal Corporation of Cape Charles

Notice of Violation and Corrective Action

January 28th, 2026




RE: Notice of Violation for Construction of a Patio within the RPA at 



This is to inform you that you are in violation of the Cape Charles Zoning Ordinance (CCZO) as follows:

1. Cape Charles Zoning Ordinance Section 7.6: Development Criteria for the Resource Protection Area;
2. Cape Charles Zoning Ordinance Section 7.9: Performance Standards, and;
3. Cape Charles Zoning Ordinance Section 7.11: Plan of Development Process

For the unauthorized construction of a rear patio within the Chesapeake Bay Resource Protection Area (RPA) at 

Zoning Violation

A complaint was filed with our office regarding the construction of a patio within the 50-foot landward portion of the Resource Protection Area (RPA). After further investigation from the Zoning Compliance Officer, it was confirmed that your constructed patio encroaches on the landward portion of the RPA. This violation is serious in nature and needs to be remedied quickly.

Photos



Under Cape Charles Zoning Ordinance Section 7.6: Development Criteria for Resource Protection Area, the only developments allowed in the RPAs are if they are (1) water dependent; (2) constitutes redevelopment or development within an Intensely Developed Area (IDA); or (3) constitutes redevelopment. The construction of the patio at the rear of [REDACTED] is none of these and, therefore, in violation of the ordinance.

Furthermore, I have attached the original site plan that was approved in 2022, which shows that a patio was not included in the original development plans.

Corrective Order and Penalties

Remove the entire patio that encroaches into the RPA within 30 days of the date of this letter (February 27) and pay the associated \$1000 fine.

Right to Appeal

You have the right to appeal this Notice of Violation and Corrective Action order by applying to the Cape Charles Board of Zoning Appeals within 30 days of the date of this letter, according to Cape Charles Zoning Ordinance Section 2.6.4; the forms are attached to this letter, and you must include the filing fee of \$500. You will also be responsible for the actual advertising costs and mailing costs for any adjacent property owner's notification letters, which the town is responsible for handling.

ALL PAYMENTS are to be made out to the Town of Cape Charles.

Please note that until this violation is corrected, no permit can be applied for and obtained from the Offices of Planning & Zoning and Building. We appreciate your cooperation in advance.

If you have any questions, please call (757)-331-3259 x32 or visit the Municipal Building at [REDACTED]

Sincerely,



Katie Nunez
Director of Planning/Zoning Administrator & Subdivision Agent

Attachments

Attachment 1: Board of Zoning Appeals Application

Attachment 2: Cape Charles Zoning Ordinance Sections 7.6, 7.10, and 7.11
[REDACTED]



Municipal Corp. of Cape Charles

CAPE CHARLES ZONING ORDINANCE ADOPTED DECEMBER 19, 2024

Section 2.6.4: Appeals and Procedure of Appeals

CCZO Section 2.6.4: Appeals and Procedure of Appeals

- A. An appeal to the Board of Zoning Appeals may be taken by any person aggrieved or by an officer, department, board, or bureau of the county or municipality affected by any decision of the Zoning Administrator or Administrative Officer in the administration or enforcement of this ordinance. The decision may be appealed within thirty (30) days thereof by filing a notice of appeal specifying the grounds of appeal. Said appeal shall be filed with the Zoning Administrator and with the Board of Zoning Appeals. The Zoning Administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.
- B. The board shall fix a reasonable time for the hearing of an application for appeal, give the public notice thereof as well as due notice to the parties of interest, and decide the same within sixty (60) days of the filing application for appeal. In exercising its powers, the board may reverse or affirm wholly in part or may modify an order, requirement, decision, or determination of an administrative officer or decide in favor of the applicant on any matter which it is required to effect any variance from the ordinance. The board shall keep minutes of its proceedings and other official actions, which shall be filed in the office of the Zoning Administrator and shall be public record. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses.
- C. In accordance with 15.2-2313 of the Code of Virginia, where a building permit has been issued and the construction of the building for which such permit was issued is subsequently sought to be prevented, restrained, corrected, or abated as a violation of the zoning ordinance, by suit filed within fifteen (15) days after the start of construction by a person who had no actual notice of the issuance of the permit, the court may hear and determine the issues raised in the litigation even though no appeal was taken from the decision of the administrative officer to the Board of Zoning Appeals