

VIRGINIA:

At a recessed meeting of the Board of Supervisors of the County of Northampton, Virginia, held at the Board Room of the County Administration Building, 16404 Courthouse Road, Eastville, Virginia, on the 29th day of June, 2015, at 1:00 p.m.

Present:

Richard L. Hubbard, Chairman

Oliver H. Bennett, Vice Chairman

Larry LeMond

Laurence J. Trala

Absent:

Granville F. Hogg, Jr.

The meeting was called to order by the Chairman.

County Administrator's Report: Continued Zoning Ordinance Discussions

Mr. Charles McSwain, Economic Development Director, Mr. Peter Stith, Long-Range Planner, and Ms. Melissa Kellam, Zoning Administrator, led the Board in a discussion relative to several remaining issues for which the Board directed further review and which are illustrated in the following memorandum. Board consensus decisions are included where available following each specific item.

Board Review of 2015 YTD Public Comments on Proposed Zoning Code

Update for June 29th 2015 Work Session

At the Board of Supervisor's March 30, 2015 work session, the Board reviewed a list of 21 Items. The Board reached consensus on most of those items from that meeting; the few items that were unresolved at the March 30, 2015 were sent to staff to work on further. The topic is in bold below followed by staff report. The numbers correspond to the last review from the March 30, 2015 meeting.

ITEM #5: Town Edge Zoning District is proposed to be removed

The intent of the Town Edge district from current code is: "(H) Town Edge District (TE). The

intent of this primary district is to provide potential development areas adjacent to incorporated towns which may, in the future, be served by extensions of public water and sewer services from the towns. Growth and increased development are intended to occur simultaneously with the provision of public infrastructure, including, but not limited to, public sewer and water, to support such growth and development. Four secondary districts are provided”.

To develop a project in town edge the project must go through rezoning to one of these four districts. Thus, no meaningful change can occur without a rezoning to one of four arbitrary districts. Staff believes that it is preferable that property in that district be zoned in accordance with its current or appropriate use.

It is important to realize that since the adoption of the current code there has been no use of town edge for any new development. In addition, it has been expressed by Towns that their ability to extend water and sewer is limited and in the case of Exmore there was concern of “having” to extend water and sewer. In the case of the current or the proposed code, no provision requires the Towns to extend utilities without their permission and cooperation. In no case can the Northampton County Board supersede the power of the towns over their assets.

The land area is question with regard to town edge is solely within the County’s jurisdiction. Any development that proceeds may do so without the cooperation of the towns, but towns can aide development through extension of utilities if desired. Under current or proposed text the result will depend on the cooperation level of the County and Towns, not the zoning code, in that regard.

The purpose of the change was to simplify the process of using the land area around towns. It does not change the ability of the parties to work collaboratively. The comprehensive plan encourages such cooperation.

Staff Update

At the request of the Board, a meeting was held with the town mayors and other representatives to discuss town edge districts. A report on this meeting follows:

Town Edge District Discussion with Town Mayors

April 22, 2015

Invitees (attendance noted):

Belle Haven – Mayor Larry Baxter designated Thomas Noonan, staff who did not attend

Exmore – Mayor Doug Greer designated Robert Duer, Taylor Dukes

Nassawadox – Ed Gibb, Mayor

Eastville – Jim Sturgis, Mayor; Eleanor Gordon, Mary Miller

Cheriton – Joe Habel, Mayor (did not attend)

Cape Charles – Mayor George Proto; Brent Manuel, Town Manager; Larry DiRe, planner

Report on Findings

The consensus of the group in attendance is that the towns would like to keep the town edge district. Even though the proposed zoning can be amended to address all of the specific concerns (state hereafter) raised, the town edge was views as a framework to promote cooperation between the County and towns and, thus, the interest in retaining the district.

Key issues cited in the proposed zoning ordinance were as follows:

- Intensive Farming should have a 2,000 foot set back from the towns
- ‘Waste Related’ primary use should not include handling or processing any large volume of waste originating from outside the County. Mary Miller offered to write a proposed definition for insertion into the draft zoning code.
- Towns want a seat at the table when development projects are planned adjacent to the towns to consider the project’s impacts on town infrastructure and services. They spoke of the idea that the County could pass through proffers from developers for the benefit of the town. It was also pointed out that the extension of water and sewer would be handled directly between developers and the respective town regardless of town edge district zoning or proposed zoning.

Specific positions with respect to individual towns include:

- Cape Charles would like to see an expansion of the current town edge, which could be done through an overlay district, on both sides of Stone Road between the town limits and the US 13 intersection. Such an overlay district could be achieved without town edge zoning. The overlay district would limit intensive farming and could provide architectural guidelines for new and expanded development along the corridor.
- Cape Charles also asked that joint meetings between the Cape Charles and County Planning Commissions be made more regular and frequent.

Nassawadox Mayor Ed Gibb and Exmore manager Robert Duer specifically said that he would take the information back to the town councils. Ed specifically said that the Town of Nassawadox does not want to be oppositional to the County. In a subsequent meeting Mayor Gibb reported that the Nassawadox Town Council “and came to a unanimous decision to request the County to please retain the Town Edge District designation.”

Since the consensus was to retain the town edge district, the following is available for the Board’s consideration to do that.

§154.1-220 Town Edge

(A) The primary intent of the town edge district to provide potential development areas adjacent to incorporated towns which may, in the future, be served by extensions of public water and sewer services from the towns. Growth and increased development are intended to occur simultaneously with the provision of public infrastructure, including, but not limited to, public sewer and water, to support such growth and development. The town edge district is intended to be a more intense use than agriculture but less intense than existing towns uses. The district promotes cooperation between the respective towns and the County in development. The following uses are permitted subject to the regulations of this Chapter and more specifically: §154.1-101 General Provisions et seq., §154.1-301 Design and Performance Standards for specific Uses, Structures and Buildings et seq., §154.1-401 Supplemental and Modification Regulations et. seq., §154.1-501 Administration and Procedures et seq., and §154.1-601 Design and Performance Standards for Site Plan Improvements et seq.

Accessory dwelling, attached or detached

Home occupations

Accessory uses, structures and buildings

Horticulture operations

Agricultural business office

Meteorological tower

Agriculture crop production operation

Mixed use building, SFD

Agriculture – domestic husbandry

Museum

Agriculture – traditional husbandry

Recreation, playing field

Agriculture support business

Religious institution, place of worship

Artist and artisan studio ≤ 1,000 sq. ft.

Residential facility (1-8 people)

Aquaculture operation

SFD, detached

Basic Utilities

Singlewide mobile home

Bed and breakfast

Temporary emergency housing

Civic groups, clubs and organizations

Silviculture operation

Emergency services

Temporary construction office

Family day home (1-5 people)

Uses similar to permitted uses

Family day home (6-12 people)

Veterinarian business

Farm Stand

Viticulture operation

Fishing commercial

Wind turbine, small scale and wind mill 135 ft. total

Floriculture operations

height

Government offices

Winery, licensed farm

Wireless communication facility

Maximum Density - Dwelling unit(s) per Acre(s)	1 sfd unit / acre
<i>(sfd = single family dwelling)</i>	
Minimum	
Lot Size	1 acre
Lot Frontage	125 feet¹
Lot Width	125 feet
Shoreline Width	Not Applicable
Minimum Principal Structure and Building and Accessory Dwelling Unit Setbacks	
Front	100 feet²
Rear	50 feet
Side	25 feet
Side – only for attached principal structures and buildings adjacent to shared property lines	0 feet
Minimum Accessory Structure and Building Setbacks	
Front	60 feet
Rear	10 feet
Side	10 feet
Minimum Setback from U. S. Route 13. Does Not Include Route 13 Business Routes	100 feet²
Minimum Setback From Railroad Rights-Of-Ways	50 feet³
Maximum Height⁵	
Principal	35 feet
Accessory	25 feet
Accessory – only for structures and buildings located 15 feet or less from any property line	15 feet

¹ Minimum lot frontage may be reduced to 25 feet when the lot fronts on a cul-de-sac or when the lot is designed in conformance with the standards for a pipe stem lot pursuant to §154.1-402 Setbacks and Lot Measurements.

² In the TE zoning district the front or U. S. Rt. 13 setback may be reduced to 50 feet for any principal buildings used for

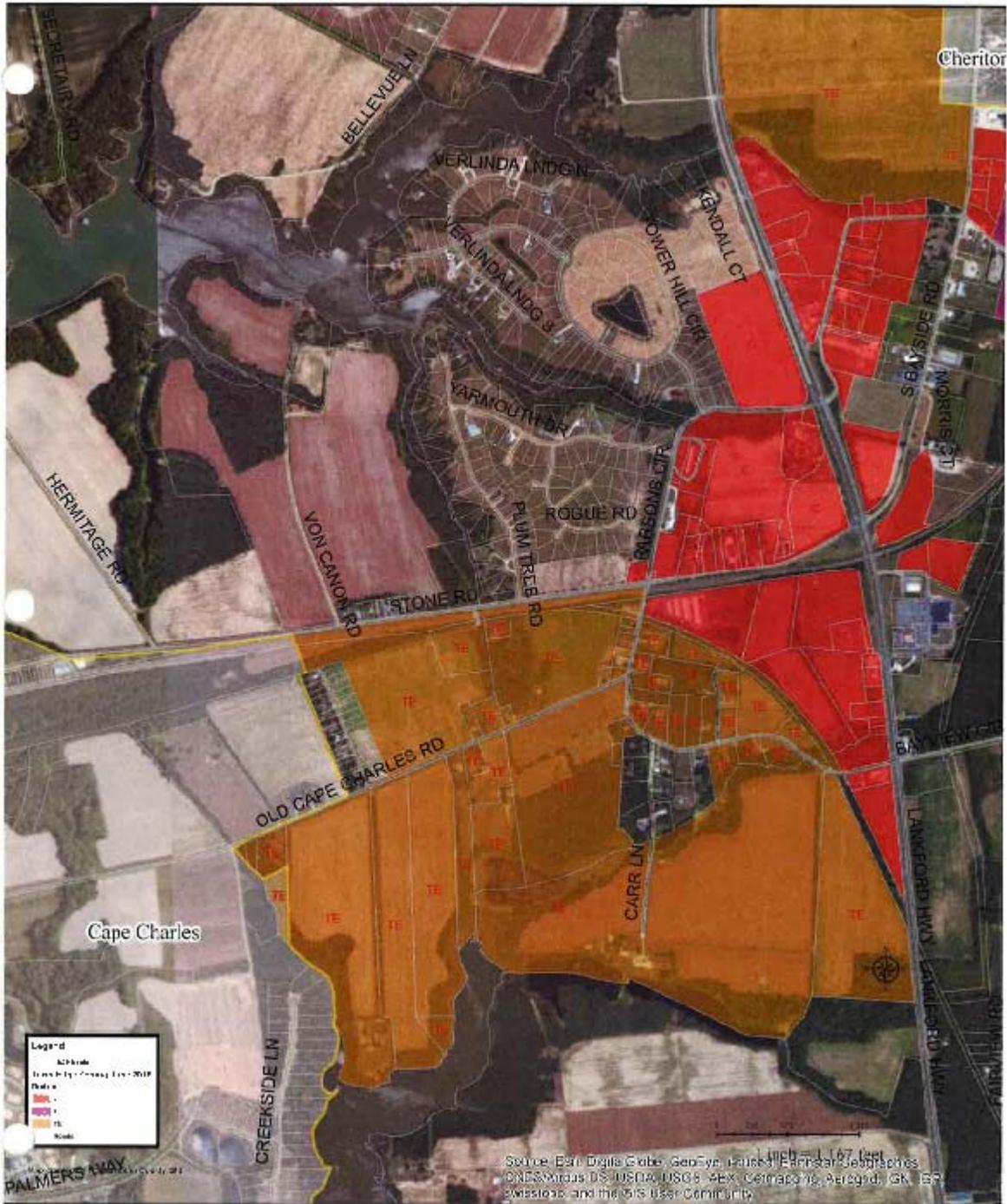
agricultural uses when parking and loading are located in the rear of the lot and not located between a building and the right-of-way pursuant to §154.1-402 Setbacks and Lot Measurements.

³ In any zoning district the setback for any structure or building used for industrial uses or any structure or building located on a lot zoned Industrial, the minimum setback from a railroad right-of-way shall be reduced to 0 feet pursuant §154.1-402 Setbacks and Lot Measurements.

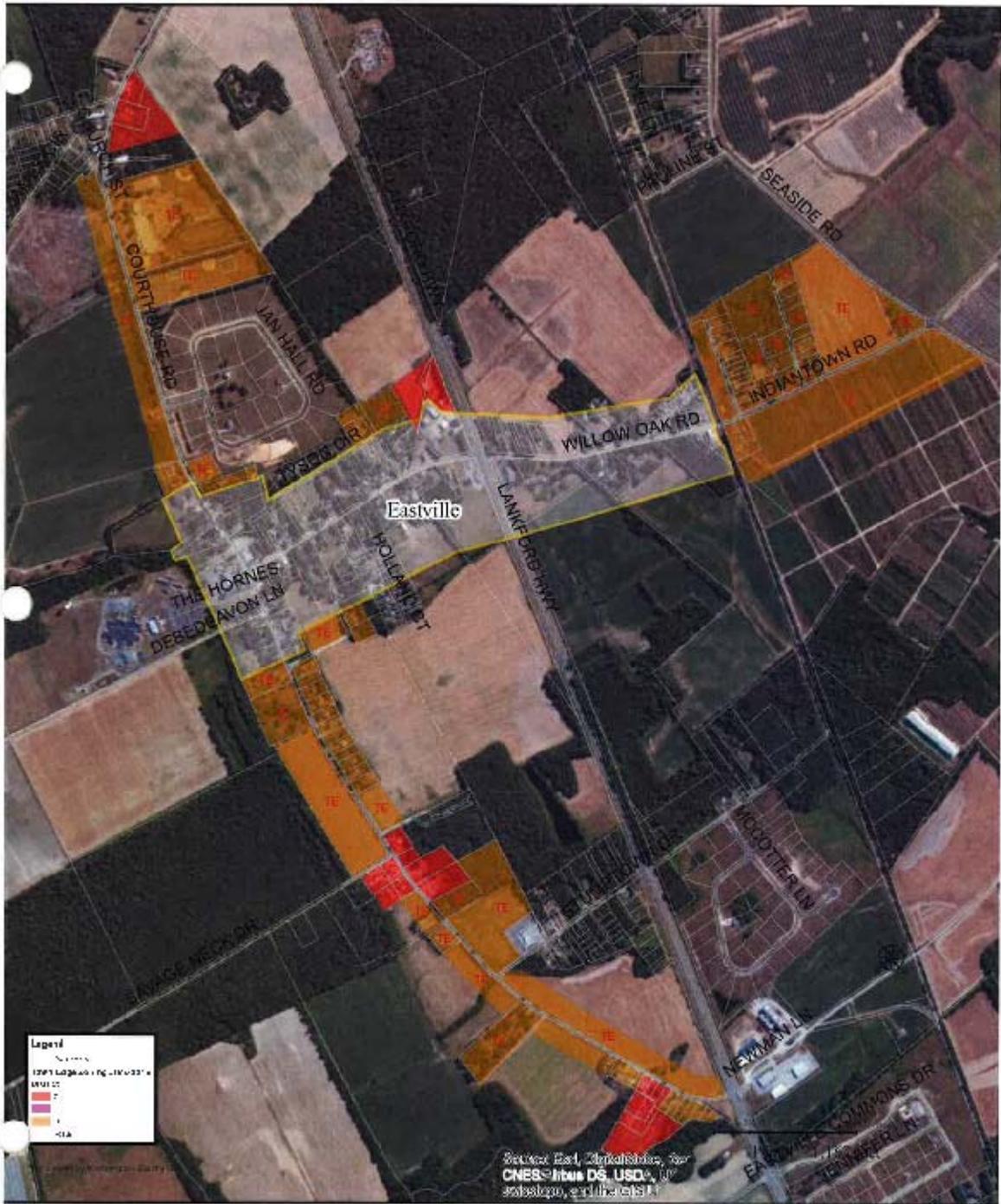
Staff notes that the Town Edge district is based on existing Town Edge 1 district with uses similar to the proposed agriculture district. The current density of TE district zoning is 1/5 acres and the staff proposal is reduced to the minimum lot size in current zoning of 1 acre. In addition, due to the adjacency of the Town Edge district to potential utility services it may be suitable for higher density multifamily uses as well. To approve such, the use would need to be added and density set higher, e.g., 6/acre.

Following below are proposed town edge maps for each of the towns.

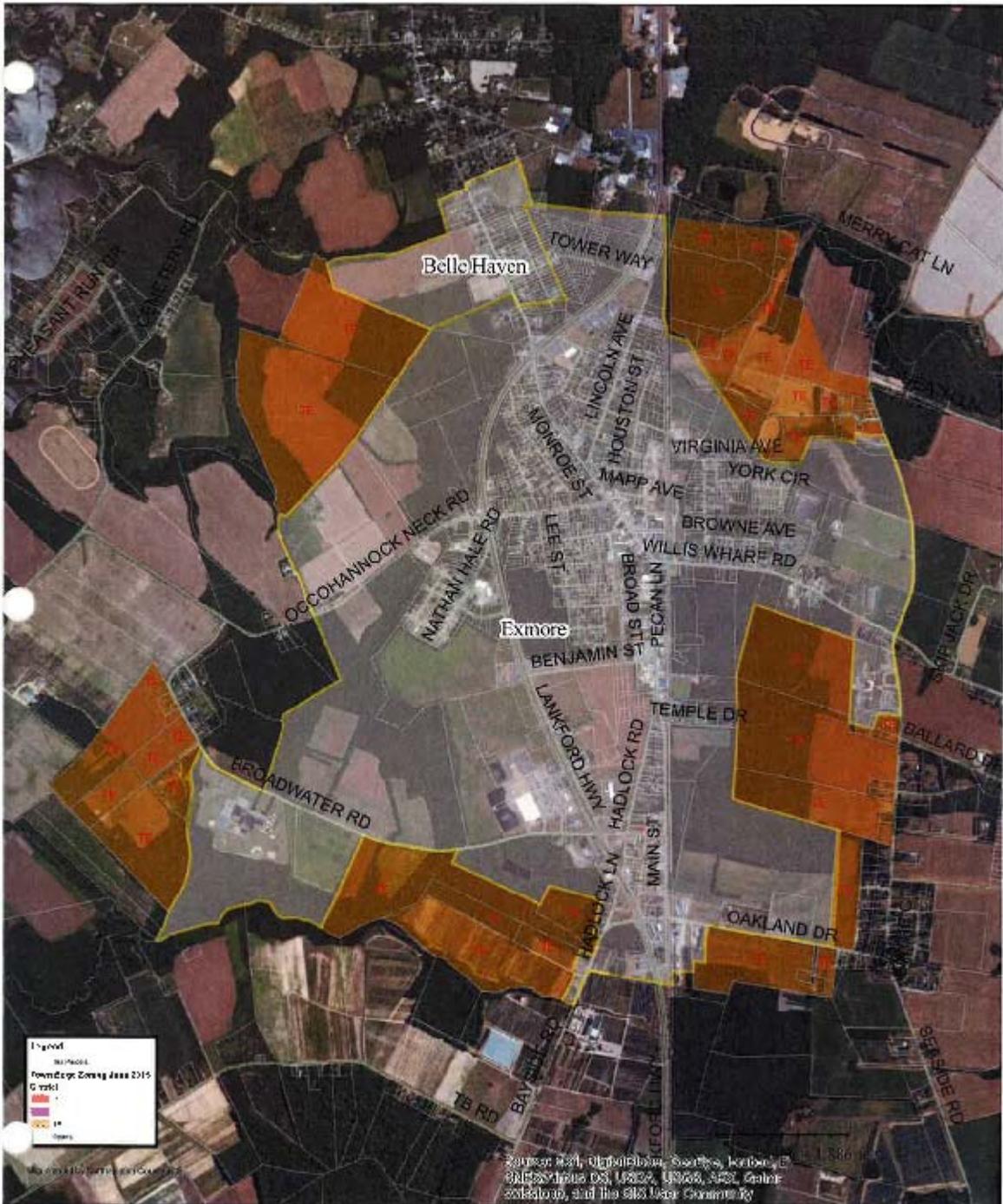
Cape Charles Town Edge map



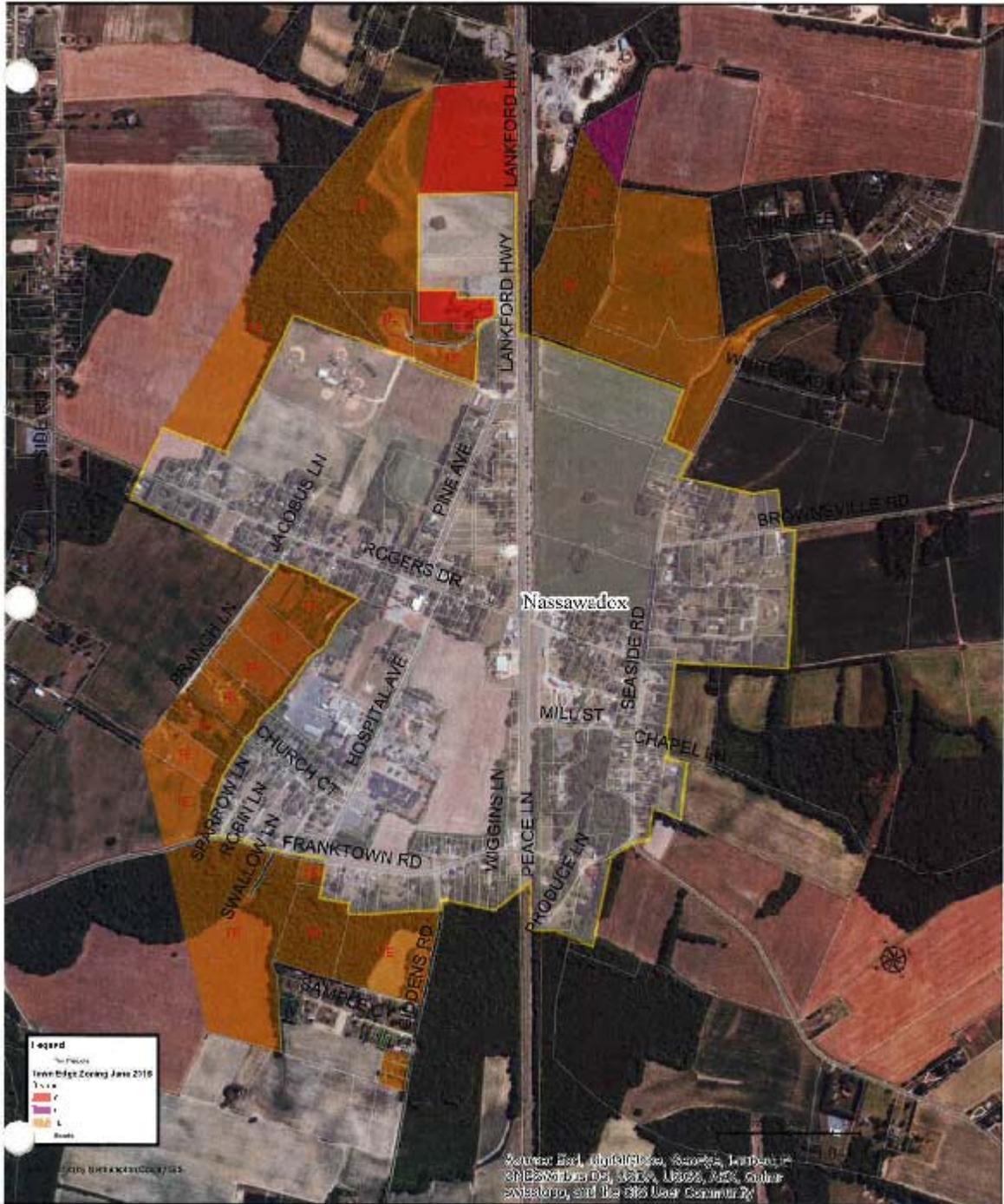
Eastville Town Edge Map



Exmore Town Edge Map



Nassawadox Town Edge Map



Following some discussion, it was the consensus of the Board to approve staff's recommendation for establishment of a Town Edge District, intent statement, list of allowed usages, density and setback requirements and the proposed Town Edge maps for each of the towns as included above.

ITEM #7: Lot Coverage Ration removed from proposed code

The current 2009 Zoning Code provides for maximum lot coverages (impervious area) through use of a ratio. During the initial drafting of the 2014 Public Hearing Draft during 2013, the Virginia Department of Environmental Quality was developing stormwater management regulations that would have required land disturbance activities exceeding 2,500 square feet for individual single-family residences within the Northampton County's Chesapeake / Atlantic Preservation Overlay District to submit and obtain approval of a stormwater management plan prepared by an engineer, thus achieving a similar goal in protecting runoff from polluting creeks and encouraging aquifer recharge. Staff was asked to streamline the current zoning code by removing County regulations which duplicate the effect of regulations of State or Federal agencies. By definition lot coverage in the current code is based on the amount of impervious surfaces located on a site. Based on how the draft VA Stormwater Management Act regulates the amount of impervious surfaces, zoning code lot coverage maximums were redundant and not included in the 2014 draft. However, in June of 2014 the VA Stormwater Management Act was adopted with the following amendment prompted by legislation in 2014:

§ [62.1-44.15:34](#). Regulated activities; submission and approval of a permit application; security for performance; exemptions.

C. Notwithstanding any other provisions of this article, the following activities are **exempt**, unless otherwise required by federal law:

3. Single-family residences separately built and disturbing less than one acre and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures. However, **localities** subject to the provisions of the Chesapeake Bay Preservation Act (§ [62.1-44.15:67](#) et seq.) **may regulate** these single-family residences where land disturbance exceeds 2,500 square feet;

Individual single-family residences are now exempt from the VA Stormwater Management Act. The maximum lot coverage regulations in the 2009 Zoning Code are applied to projects on individual single-family residences and, as Northampton County Zoning office policy, staff asks the owner or agent of the property to sign an agreement in lieu of a stormwater management plan. By signing this agreement the owner agrees to implement specific stormwater practices. If the owner fails to implement these practices, a stormwater management plan would be required and enforced.

As a result the current coverage ratio is being addressed by other means. In addition, this topic is better addressed when the Board considers adoption of Chapter 158 related to the Chesapeake Bay Act implementation rather than inserted into this zoning document since the documents work in tandem.

Staff Update

Staff was directed to insert language into the County's Chesapeake Bay Act (Chapter 158) regulations addressing lot coverage for single-family residences less than one acre which are not addressed in the proposed zoning code and are exempt from the Virginia Stormwater Management Act. There are three options for the Board: Do nothing, leaving the rule of Virginia in place with no local option requirements; Option #1 – provide for single family homes under 1 acre to install stormwater BMP if their coverage ration exceeds 16%; or Option #2 – require such projects to sign a promise to comply with stormwater management rules as if they were not exempt by Virginia Code. Below are two options.

OPTION #1

§158.115 PLAN OF DEVELOPMENT.

(A) Plan of development process. Any development or redevelopment exceeding 2,500 square feet of land disturbance shall be accomplished through the approval of a plan of development prior to any clearing or grading of the site or the issuance of any building permit, to assure compliance with all applicable requirements of this Chapter.

- (1) Required information. In addition to the requirements of this Chapter or the requirements of NCC Chapter 156, the plan of development process shall consist of the plans and studies identified below. These required plans and studies may be coordinated or combined, as deemed appropriate by the Zoning Administrator. The Zoning Administrator may determine that some of the information otherwise required is unnecessary due to the scope and nature of the proposed development. The following plans or studies shall be submitted, unless otherwise provided for:
 - (d) A stormwater management plan in accordance with 9 VAC 25-870-55 of the Virginia Stormwater Management Program Regulations except as provided for in §158.115 (A) (4).
- (4) Stormwater management plan. Stormwater management plan shall be submitted as part of the plan of development process required by this Chapter and in conjunction with site plan or subdivision plat approval consistent with the provisions of the 9 VAC 25-870-55 of the Virginia Stormwater Management Program Regulations except that single-family residences separately built and disturbing less than one acre and not part of a larger plan of development or sale, including additions and modifications to existing single-family detached residential structures shall be exempt as long as when this development or redevelopment exceeds 16% lot coverage, a best management practice (BMP) mitigating for the percentage exceeding 16% shall be installed on the same lot as the development or redevelopment. Completion of such BMP installation shall be required before the issuance of a certification of occupancy, letter of completion or passing final inspection.

OPTION #2

§158.115 PLAN OF DEVELOPMENT.

(A) Plan of development process. Any development or redevelopment exceeding 2,500 square feet of land disturbance shall be accomplished through the approval of a plan of development prior to any clearing or grading of the site or the issuance of any building permit, to assure compliance with all applicable requirements of this Chapter.

- (1) Required information. In addition to the requirements of this Chapter or the requirements of NCC Chapter 156, the plan of development process shall consist of the plans and studies identified below. These required plans and studies may be coordinated or combined, as deemed appropriate by the Zoning Administrator. The Zoning Administrator may determine that some of the information otherwise required is unnecessary due to the scope and nature of the proposed development. The following plans or studies shall be submitted, unless otherwise provided for:
 - (d) A stormwater management plan in accordance with 9 VAC 25-870-55 of the Virginia Stormwater Management Program Regulations except as provided for in §158.115 (A) (4).
- (4) Stormwater management plan. Stormwater management plan shall be submitted as part of the plan of development process required by this Chapter and in conjunction with site plan or subdivision plat approval consistent with the provisions of the 9 VAC 25-870-55 of the Virginia Stormwater Management Program Regulations except that single-family residences separately built and disturbing less than one acre and not part of a larger plan of development or sale, including additions and modifications to existing single-family detached residential structures. This development or redevelopment shall require the completion of an agreement in-lieu of a stormwater management plan.

Option #1 was the standard used by County staff to address stormwater management associated with the Chesapeake Bay Act for single family uses and buildings prior to the State's adoption of the new Stormwater Management Program Regulations on July 1, 2014. Currently, single-family uses and buildings are exempt from any standard, but the Development Department is requiring the completion of an agreement in-lieu of a stormwater management plan to inform developers of stormwater management planning practices and require compliance voluntarily. This is a local option under the current VAC which most closely tracts the intent of the current zoning code.

Option #2 Utilizes an agreement in-lieu of a plan which is a document offered on the DEQ website to address stormwater management for single-family uses and building through self-regulation.

Option #1 because it is proactive and insure the implementation of a best management practice when necessary. The history of working with this Chesapeake Bay Act stormwater management tool for single-family uses and buildings has been successful. Option #2 would require the implementation of a best management practice after a problem occurred. The enforcement of the agreement in-lieu of a stormwater plan would be difficult. Thus staff suggests Option #1 if any change is made to the current consensus draft.

The topic of Intensive Farming, in particular that use provided for within Intensive Farming: **poultry houses**, has been broadly discussed recently and includes issues related to stormwater runoff. Since this is a full topic in itself, it is moved to Item 24 of this report.

Following some discussion, it was the consensus of the Board to approve Option 1 as outlined above.

ITEM #16: New use: Event Venue (Deferred by Board from March 30 meeting)

Staff offers for the Board’s consideration the addition of a use, standards and definition for an event venue use. The current 2009 Zoning Code provides for this use, but it is not provided for in the 2/15 Consensus Draft. Because Northampton County has had applications for this use and it is important to promote tourism, this use is recommended.

Proposed Definition:

Event venue. The commercial use of land, structures and buildings established at a permanent location where people assembly to take part in entertainment, educational, cultural, organizational, ceremonial and / or celebratory events, open to the public or private parties for use, and usually operated in exchange for remuneration. This use is separate from the use “agritourism” which has separate standards establish by the VA Code.

This use would be permit by the granting of a special use permit in the Agricultural, Commercial, Industrial, R-3 and R-5 zoning districts. The following performance standards shall govern this use.

§154.1-316 Event Venue

(A) All event venues shall comply with the minimum standards below:

- (1) This use shall only be permitted by special use permit in specified zoning district on parcels having a minimum lot size of 5 acres;
- (2) The maximum number of guests, hours of operation and Type A, B, C and/or D screening may be required as part of the special use permit approval;
- (3) No overnight accommodations shall be permitted as part of an event venue, but may be approved as a separate use on the property;
- (4) All parking needs generated by this use must be accommodated on-site except as permitted in §154.1-604 Off-street Parking;
- (5) Solid waste generated by the event venue shall be stored in a manner that prevents the propagation, harborage or attraction of insects and rodents or other nuisance conditions and shall be removed at least once every seven days by a licensed solid waste hauler;
- (6) If Portable toilets are provided for temporary use, then they shall be approved by the Virginia Department of Health;
- (7) Setbacks for parking shall be 100-feet from adjacent residential zoning districts and 200-feet from any dwelling except dwellings on the premises;
- (8) Setbacks for any outdoor event activities shall be 300-feet from adjacent residential zoning districts and 400-feet from any dwelling;
- (9) All permanent structures and building associated with the event venue shall be constructed in compliance with the Virginia Uniform Statewide Building Code requirements for such a use and obtain a certificate of

- occupancy for such a use;
- (10) Temporary structures and buildings such as tents and stages are permitted and shall be constructed in compliance with the Virginia Uniform Statewide Building Code requirements for such a use;
 - (11) The number of required parking spaces and other parking performance standards established in §154.1-604 Off-street Parking shall be documented on a site plan;
 - (12) Traffic generated by the event venue shall not exceed conditions placed on the approval of the special use permit by the Northampton County Board of Supervisors and Virginia Department of Transportation;
 - (13) Noise generated by the event venue shall comply with the standards set forth in NCC Chapter 98, Noise Ordinance;
 - (14) Outdoor lighting shall comply with the standards set forth in NCC §154.1-607 Outdoor Lighting;
 - (15) Signs shall be placed in accordance with §§154.1-701 et seq. Signs;
 - (16) The event venue shall be served by a water supply and septic system approved by the Virginia Department of Health for this specific use; and
 - (17) Food service associated with the event venue shall be approved by the Virginia Department of Health.

The following parking standard shall be incorporated into §154.1-604 Off-street parking.

§154.1-604 OFF-STREET PARKING.

Off-street parking standards shall be required for any development, that is required to submit a site plan sketch or an engineered site plan pursuant to NCC §154.1-508 Site Plan.

(D) *Standards to determine the number of required spaces shall be as follows:*

(22) Event venue. . One parking space for each three attendees based on the maximum number of attendees approved for the site.

Following some discussion, it was the consensus of the Board to approve staff's recommendation for creation of a new use: Event Venue, its proposed definition and performance and parking standards as outlined above.

ITEM #17: Accessory dwellings and additional single family

dwellings.

Comments received on technical points with respect to proposed 2/15 Draft Code language. Staff concurs and offers the following recommended changes which are underlined.

Update

Accessory dwellings and additional single family dwellings.

Staff offers the following recommended changes in response to the Board concerns regarding clarification of the description of an accessory dwelling and size standards. Research information regarding accessory dwellings was conducted by Melissa Kellam and a couple of examples of other municipal treatments of accessory dwelling units is included at the end of this section as Attachments 1 and 2.

REVISED AND NEW DEFINITIONS.

Dwelling, accessory. An attached or detached dwelling ~~used as a residence~~ that is subordinate to a single-family dwelling and is constructed in conformity with the performance standards in NCC §154 .1-309 Accessory Dwellings and Additional Single Family Dwelling on One Lot.

Single-family dwelling or SFD. A building or portion of a building containing a dwelling that is intended for occupancy by one family. A single-family dwelling may include an accessory dwelling as provided for in NCC §154.1-309 Accessory Dwellings.

Floor area, gross heated. The total heated area of all floors or portions of floors in a structure which is measured from the outside of exterior walls.

REVISE TEXT.

§154.1-309 ACCESSORY DWELLINGS FOR SINGLE FAMILY DWELLINGS AND ~~ADDITIONAL SINGLE FAMILY DWELLINGS ON ONE LOT.~~

(A) An accessory dwelling may be used as a permanent or seasonal residence or for invited or paying guests. An accessory dwelling shall not be counted as a unit when calculating density, but shall be counted as a part of the single family-dwelling unit to which it is subordinate as 1 total unit, contingent upon it being designed, located, constructed and maintained in compliance

with NCC §154.1-309 ~~the following standards:~~

(B) General standards for all accessory dwellings.

- (1) The accessory dwelling shall be located on the same lot as the single-family dwelling to which it is accessory and construction of the single-family dwelling shall be completed before the issuance of a permit for a detached accessory dwelling. and the setbacks that apply to principal structures and buildings shall apply;
- (2) The accessory dwelling shall be limited to a maximum of two bedrooms;
- (3) Only one accessory dwelling shall be permitted for each single family dwelling and shall not be permitted accessory to multi-family dwellings;
- (4) The accessory dwelling shall be owned by the same owner as the single-family dwelling to which it is accessory and the owner shall reside in the single-family dwelling or the accessory dwelling;
- (5) The accessory dwelling shall be served by a water supply and septic system approved by the Virginia Department of Health; and
- (6) The accessory dwelling shall be constructed in compliance with the Virginia Uniform Statewide Building Codes requirements for dwellings and shall be issued a certificate of occupancy as a dwelling; and
- (7) A minimum of one off-street parking space beyond what is required for a single-family dwelling shall be provided.

(C) An accessory dwelling shall be created through one of the following construction methods and shall meet the following standards specific to each method as defined below. If more than one method is used to create an accessory dwelling unit, the most restrictive standard shall apply.

- (1) An internal conversion within a portion of an existing single-family dwelling or existing accessory structure or the total conversion of an existing accessory structure to create an accessory dwelling.

- (a) The size of the accessory dwelling shall not exceed 50% of the gross heated floor area of the existing single-family dwelling calculated prior to the internal conversion to create an accessory dwelling.
 - (b) When the conversion is within an existing single-family dwelling, setback and height regulations for principle structures shall apply.
 - (c) When the conversion is within an existing accessory structure, setback and height regulations for accessory structures shall apply.
- (2) An external attachment, connection or addition to an existing single-family dwelling or existing accessory structure to create an accessory dwelling.
- (a) The size of the accessory dwelling shall not exceed 50% of the gross heated floor area of the existing single-family dwelling calculated prior to the external attachment, connection or addition to create an accessory dwelling.
 - (b) When the accessory dwelling is attached, connected or added to the existing single-family dwelling, setback and height regulations for principle structures shall apply.
 - (c) When the accessory dwelling is attached, connected or added to the existing accessory structure, setback and height regulations for accessory structures shall apply.
- (3) Construction of an accessory dwelling within, attached, connected or added to a new single-family dwelling included in the initial design and construction or construction of a new detached accessory dwelling.
- (a) The size of the accessory dwelling shall not exceed 50% of the gross heated floor area of the single-family dwelling calculated excluding area which are designated to an accessory dwelling having an external entrance not shared with the area designated to the single-family dwelling.
 - (c) Setback regulations for principle structures shall apply.
 - (d) When the accessory dwelling is within, attached, connected or added to a new single-family dwelling, height regulations for principle structures shall apply.
 - (d) When a new detached accessory dwelling is constructed, height regulations for accessory structures shall apply.

(A)~~(B)~~ If the dwelling cannot be designed, located, constructed and maintained in compliance with NCC §154.1-309, it shall not be considered an accessory dwelling, but may be considered an additional single family dwelling on one lot if it is designed, located, constructed and maintained in compliance with the following standards:

- (1) Additional single family dwellings on one lot shall comply with the density regulations for the zoning district in which it is to be located. Each single family dwelling unit on one lot shall be one unit used in the density calculation;
- (2) Additional single family dwellings on one lot shall be served by separate and independent infrastructure including, but not limited to, a water supply and septic system approved by the Virginia Department of Health; and
- (3) An additional single family dwelling on one lot shall be located and separated from other single family dwellings with their accessory structures a distance equal to the minimum required setbacks as if property lines existed between the additional single family dwelling and other single family dwellings with their accessory structures and shall be laid out in such a manner as to permit subdivision into separate lots as provided for in Chapter: 156 Subdivision.
- (4) If a property containing additional single family dwellings seeks approval for one or more of the single family dwellings to be subdivided from the base parcel, the applicant shall first seek approval of a preliminary subdivision plat and phasing plan for the subdivision of all single family dwellings located on the base parcel. After the approval of a preliminary subdivision plat and phasing plan has been obtained, one or more of the single family dwellings located on the base parcel may be subdivided individually in compliance with the approved preliminary subdivision plan and phasing plan.

Attachment 1



ACCESSORY DWELLING UNITS ACCESSORY STRUCTURES

ACCESSORY DWELLING UNITS (ADU)

Accessory dwelling units (ADU) are permitted in all residential districts subject to the following requirements:

- **Number.** One (1) ADU shall be allowed per residential lot in conjunction with any detached single-family structure. (See Olympia Municipal Code [OMC], Section 18.04.080(A)(3) regarding ADUs in new subdivisions.)
- **Location.** The ADU shall be permitted as a second dwelling unit added to, created within, or detached from the original dwelling. The ADU shall be oriented in a way that maintains, to the extent practical, the privacy of residents in adjoining dwellings. (See OMC, Chapter 18.04A, Residential Design Guidelines.)
- **Size.** The ADU shall have a gross floor area of no more than eight hundred (800) square feet, and no more than the following equivalent ratios:
 - forty percent (40%) of the gross floor area of the primary residence and accessory dwelling unit combined, or
 - sixty-six and two-thirds percent (66 2/3%) of the gross floor area of the primary residence alone; excluding any garage area, except as authorized by Section 18.04.060(A)(7).

[NOTE: Section 18.04.060(O)(1) requires that manufactured homes placed on a lot outside a manufactured housing park must be at least eight hundred sixty-four square feet in floor area. Consequently a manufactured home can be used as a primary residence, but not as an ADU.]

- **Ownership.** The property owner (i.e., title holder and/or contract purchaser) must live on the site as his/her principal residence. Owners shall sign a notarized affidavit attesting to their principal residency upon permit application. Owners shall provide evidence thereof through such means as voter registration, driver's license, or the like. This requirement does not apply to ADUs built prior to the initial sale of the primary unit on the lot. Purchasers of such ADUs shall meet these requirements within sixty (60) days of purchase (See Section 18.04.080(A)(3).)

A covenant or deed restriction, approved by the Olympia City Attorney, shall be signed and recorded with the Thurston County Auditor which specifies the requirement that the property owner must live on the site as his/her principal residence.

- **Occupancy.** No more than one (1) family (as defined in Chapter 18.02, Definitions) shall be allowed to occupy an ADU.
- **Existing ADUs.** Accessory dwellings created prior to the enactment of these regulations, June 19, 1995, may be approved subject to applicable requirements. Existing ADUs located on lots which cannot accommodate an additional off-street parking space required by Chapter 18.38, Parking, may receive a waiver from the parking requirement.

If the owner of an existing unauthorized ADU applies to make the unit legal, but cannot meet all of the standards, he/she will be allowed a "grace period" of six months from date of application to comply with applicable standards. However, where health and safety is an issue, the Building Official will determine when the necessary modifications must be made. If the owner cannot meet the standards, the unauthorized accessory unit must be removed or its use as a dwelling must be suspended.

- **Deviation From Requirements.** The Director or the Director's designee may allow deviation from the requirements of this section (18.04.060(A)) as follows:
 - To allow use of the entirety of a single floor in a dwelling constructed two (2) or more years prior to the date of application in order to efficiently use all floor area; and
 - To enable ADUs to be established in structures constructed prior to June 19, 1995, which are located in rear or side setbacks, provided that Uniform Building Code requirements and the Development Standards contained in Section 18.04.080 are met.

Other requirements to consider when constructing an ADU:

- Connections to city sewer and water services can share the same connections as the primary home.
- One (1) on-site parking stall is required for an Accessory Dwelling Unit in addition to the two (2) on-site parking stalls required for the single family residence.
- Setbacks-
 - Structure must be five (5) feet from any interior side property line and 10 feet from a flanking street side yard.
 - Detached ADU's may encroach into the rear yard. However, if the rear yard does not abut an alley, the accessory unit must be set back ten (10) feet from the rear property line.
- Maximum building height on detached ADU's is 16 feet, measured at mid gable.
- Design Review of the ADU is required. The review is conducted through the building permit application process. A design review fee and a Residential Design Review Supplemental Application will be needed. (Design criteria below)
- Impact fees are applicable and are paid at building permit issuance. (see current rate schedule for fee amounts)

DESIGN REVIEW

ACCESSORY DWELLING UNIT (ADU); BUILDING DESIGN

REQUIREMENT: Reflect the architectural character of the primary residence in an ADU through use of related building features.

GUIDELINES:

1. Replicate or approximate roof forms and pitch found on the existing residence.
2. Use window patterns and proportions similar to those on existing residence.
3. Use building facade material and colors that match or are compatible with those used on the existing residence.



ACCESSORY DWELLING UNIT (ADU); ENTRY FEATURES

REQUIREMENT: Provide a clearly defined building entry for an ADU that is easily accessible from the street or the existing residence.

Provide a well-lighted, paved sidewalk to the building entry.

GUIDELINE:

1. The entry to an ADU may be shared with the primary residence.
2. When there is a separate entry, construct an identifying feature, such as a porch, stoop and/or an eave overhang that is integral to the ADU structure.
3. When an exterior stairway to the main entrance to the ADU is needed, avoid the use of open metal, prefabricated stairs



ACCESSORY STRUCTURES.

Accessory structures are permitted in all residential districts subject to the following requirements:

- **Time of Establishment.** Accessory structures shall not be built prior to commencing construction of the main building on the lot. However, lots may be created which contain an accessory structure (without an associated primary use) constructed prior to submission of the subdivision application.
- **Subordination to Primary Use.** Accessory structures shall be clearly incidental and subordinate to the use of the lot (e.g., structures used for storage of personal property or the pursuit of hobbies) or used for agricultural purposes. In single-family and two-family residential districts each accessory structure shall not exceed eight hundred (800) square feet in size, except for structures accessory to an agricultural use which are located on a parcel one (1) acre or larger in size.
- **Garages.** Private garages shall meet the following standards:
 - Garages shall not exceed a total of eight hundred (800) square feet of floor space per dwelling unit.
 - Garages exceeding eight hundred (800) square feet per dwelling unit may be permitted as conditional uses in the districts specified in Table 4.01 provided that they will not be adverse to the public interest and are compatible with the surrounding neighborhood. The Hearing Examiner shall establish a maximum size for garages receiving conditional use approval. See Section 18.04.080.

Maximum building height on detached accessory structures is **16 feet**, measure at mid-gable.

SETBACKS:

A detached garage may be set on the property line if the garage door is at a right angle to the alley entrance. Garage walls on or within 3 feet of the side property line, however, must be fire walls and have no windows or other openings. A detached garage may be set on the rear property line, but if the garage door faces a side yard (flanking street), it must be set back 20 feet from that side yard. In this case, the wall on the rear property line needs be a fire wall. A detached garage may be set on both the rear and side property lines if it has access from the front yard. In this case, both walls must be fire walls. If the garage doors face the alley, it must be setback 10 feet.

A detached accessory structure may be located anywhere within the rear forty feet of the lot, with the exception of a flanking street side yard. The structure must have at least 6 feet of separation from other structures.

Attachment 2

**APPROVED BY
CITY COUNCIL**

Petition No. 2012-067A
Petitioner: Charlotte-Mecklenburg Planning Department

JUL 16 2012

**AN ORDINANCE AMENDING APPENDIX A
OF THE CITY CODE –ZONING ORDINANCE**

ORDINANCE NO.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHARLOTTE:

Section 1. Appendix A, "Zoning" of the Code of the City of Charlotte is hereby amended as follows:

A. CHAPTER 2: DEFINITIONS AND RULES OF CONSTRUCTION

1. PART 2: DEFINITIONS

- a. Add following definition for “dwelling, accessory unit” in Section 2.201, “Definitions”, in alphabetical order. The new definition shall read as follows:

Dwelling, Accessory Unit.

A second dwelling unit created on a lot with a single family detached dwelling unit and may either be located within the principal detached dwelling or within a separate accessory structure.

- b. Delete the below definition of “Elderly and disabled housing” in Section 2.201, “Definitions”. The definition currently reads as follows:

B. CHAPTER 9: GENERAL DISTRICTS

1. PART 1: TABLE OF USES AND HIERARCHY OF DISTRICTS

- a. Amend Table 9.101, by adding “dwelling, accessory unit” as a permitted accessory use with prescribed conditions in the following designated zoning districts, under the “Accessory Uses & Structures” category within the “Single Family & Multi-Family”, “Urban Residential & Mixed Use”, and Office and Business Uses” tables. The use shall be added in alphabetical order.

Single Family & Multi-Family - Accessory Uses & Structures:										
	R-3	R-4	R-5	R-6	R-8	R8-MF	R-12MF	R-17MF	R-22MF	R43-MF
Dwelling, Accessory Unit	PC	PC	PC	PC	PC	PC	PC	PC	PC	PC

Urban Residential & Mixed Use - Accessory Uses & Structures:							
	UR-1	UR-2	UR-3	UR-C	MX-1	MX-2	MX-3
Dwelling, Accessory Unit	PC						

Office & Business - Accessory Uses & Structures:							
	O-1	O-2	O-3	B-1	B-2	B-D	BP
Dwelling, Accessory Unit	PC	PC	PC	PC	PC		

- b. Amend Table 9.101, by deleting “elderly and disabled housing as an accessory to a single family dwelling” and “guest houses and servant quarters as an accessory to a single family dwelling” as a permitted accessory uses with prescribed conditions in the following designated zoning districts, under the “Accessory Uses & Structures” category within the “Single Family & Multi-Family”, “Urban Residential & Mixed Use”, and Office and Business Uses” tables.

Single Family & Multi-Family - Accessory Uses & Structures:										
	R-3	R-4	R-5	R-6	R-8	R8-MF	R-12MF	R-17MF	R-22MF	R43-MF

Urban Residential & Mixed Use - Accessory Uses & Structures:							
	UR-1	UR-2	UR-3	UR-C	MX-1	MX-2	MX-3

Office & Business - Accessory Uses & Structures:							
	O-1	O-2	O-3	B-1	B-2	B-D	BP

2. PART 2: SINGLE FAMILY DISTRICTS

- a. Amend Section 9.204, "Permitted accessory uses and structures", by modifying item (6) to indicate "dwellings, accessory units" as a permitted accessory use and (8) to indicate "Reserved". The revised text shall read as follows:

Section 9.204. Permitted accessory uses and structures.

- (6) Dwelling, accessory units as an accessory to a single family detached dwelling, subject to the regulations of Section 12.407.
- (8) Reserved.

3. PART 3: MULTI-FAMILY DISTRICTS

- a. Amend Section 9.304, "Permitted accessory uses and structures", by modifying item (5) to indicate "dwellings, accessory units" as a permitted accessory use and (7) to indicate "Reserved". The revised text shall read as follows:

Section 9.304. Permitted accessory uses and structures.

- (5) Dwelling, accessory units as an accessory to a single family detached dwelling, subject to the regulations of Section 12.407.
- (7) Reserved.

4. PART 7: OFFICE DISTRICTS

- a. Amend Section 9.704, "Permitted accessory uses and structures", by modifying item (5) to indicate "dwellings, accessory units" as a permitted accessory use, and item (7) to indicate "Reserved". The revised text shall read as follows:

Section 9.704. Permitted accessory uses and structures.

- (5) Dwelling, accessory units as an accessory to a single family dwelling unit, subject to the regulations of Section 12.407.
- (7) Reserved.

5. PART 8: BUSINESS DISTRICTS

- a. Amend Section 9.804, "Permitted accessory uses and structures", by modifying item (5) to indicate "dwellings, accessory units" as a permitted accessory use, and item (7) to indicate "Reserved". The revised text shall read as follows:

Section 9.804. Permitted accessory uses and structures.

- (5) Dwelling, accessory units as an accessory to a single family dwelling unit, subject to the regulations of Section 12.407. (B-1 and B-2 only)
- (7) Reserved.

C. CHAPTER 11: CONDITIONAL ZONING DISTRICTS

1. PART 2: MIXED-USE DISTRICTS (MX-1, MX-2, AND MX-3)

- a. Amend Section 11.204, "Permitted accessory uses and structures", by modifying item (6) to indicate "dwellings, accessory units" as a permitted accessory use and item (8) to indicate "Reserved". The revised text shall read as follows:

Section 11.204. Permitted accessory uses and structures.

- (6) Dwelling, accessory units as an accessory to a single family detached dwelling, subject to the regulations of Section 12.407.
- (8) Reserved.

D. CHAPTER 12: DEVELOPMENT STANDARDS OF GENERAL APPLICABILITY

1. PART 1: SUPPLEMENTAL DEVELOPMENT STANDARDS

- a. Amend Section 12.106, "Uses and structures prohibited and allowed in required setbacks and yards", item (2)(a), by modifying language regarding accessory structures and eliminating references to elderly or disabled housing, guest homes and employee quarters. The revised text shall read as follows:

Section 12.106. Uses and structures prohibited and allowed in required setbacks and yards.

- (2)(a) No accessory structures, including architectural features, as cited in five (5) below, shall be located within any setback or side yard required of

these regulations, or located within three (3) feet of a lot line in the established rear yard. No accessory structure shall be located within any established setback in any residential district, except as otherwise provided. If an accessory structure exceeds a height of 24 feet in the single-family, multi-family, urban residential and mixed use districts, it must be located at least 15 feet from the rear and side property lines. In all zoning districts, except as provided for in Section 12.108, if the accessory structure exceeds the height of the principal structure, it must meet the minimum side yard of the principal structure and be located at least 15 feet from the rear property line. In addition, no accessory structure, excluding the square footage of an accessory dwelling unit, shall exceed the total square footage of the heated area located on the first floor of the principal structure.

Accessory dwelling units shall comply with the yard requirements and size limits prescribed in Section 12.407. In the RE-1, RE-2, and BP districts, a security gate or guard station may be located within the required setback. Piers, docks, and other water-dependent accessory structures may be located in any required setback or yard on lots, which abut a body of water. A fence, wall, mailbox, utility pole, light-pole, or patio at grade, paths, walkways, or berm may be located in any required setback or yard. Signs may be located in a required setback or yard provided that they are in accordance with Chapter 13 of these regulations. Bus stops shelters may be located in any setback or yard, which abuts a street in accordance with Section 12.513.

2. PART 2: OFF-STREET PARKING AND LOADING

- a. Amend Table 12.202, “Minimum Required Off-Street Parking Spaces by Use” by replacing “Dwelling, accessory elderly or disabled” with “Dwelling, accessory unit” under the “Residential Uses” heading. The revised text shall read as follows:

<u>Permitted Uses</u>	<u>Number of Auto Parking Spaces Required</u>	<u>Long-term Bicycle Parking Spaces Required</u>	<u>Short-term Bicycle Parking Spaces Required</u>
RESIDENTIAL USES:			
Dwellings, accessory unit	1 space per unit	n/a	n/a

3. PART 4: ACCESSORY USES AND STRUCTURES

- a. Amend Section 12.407, “Elderly and disabled housing”, by deleting the existing section and replacing the wording with the prescribed conditions for “Dwellings, accessory unit”. The revised text shall read as follows:

Section 12.407. Dwellings, accessory unit.

Accessory dwelling units (ADU) shall be permitted as an accessory to any single family detached dwelling unit in accordance with the following requirements:

- (1) The ADU shall be clearly subordinate to the principal single family detached structure.
- (2) No more than one ADU shall be located on a lot.
- (3) The ADU and the principal dwelling shall be owned by the same person.
- (4) The ADU shall not be served by a driveway separate from that serving the principal dwelling. However, if the ADU is within an accessory structure and located on a corner lot or a lot that abuts an alley, a separate driveway may be provided from the side street or the alley, whichever applies.
- (5) An ADU located within the principal single family detached structure shall comply with the following additional requirements:
 - (a) The ADU shall be limited to 35% of the total floor area of the principal structure. However in no case shall the ADU exceed 800 heated square feet.
 - (b) The ADU shall not be internally accessible from the principal dwelling.
 - (c) The pedestrian entrance to the ADU shall be located to the side or rear of the structure.
- (6) An ADU located within an accessory structure shall comply with the following additional requirements:
 - (a) The ADU shall have a floor area no greater than 50% of the principal structure and under no circumstances cover more than 30% of the established rear yard. However, in no case shall the ADU exceed 800 heated square feet.
 - (b) The structure shall be no taller than the principal dwelling.
 - (c) The ADU shall be located in the rear yard and not be any closer than 15 feet to a rear property line or along any side property line within the required side yard dimension. If the ADU is located within a garage structure and the parcel abuts an alley, the structure may be located up to 5 feet from the rear property line if the garage is accessed from the alley.

(d) Roof and exterior wall materials and finishes of the ADU shall be similar in composition and appearance to that of the principal dwelling on the lot. However, this requirement does not apply to additions or exterior modifications to an existing accessory structure for the purpose of creating an ADU.

b. Delete Section 12.412, "Guest houses and employee quarters", and replace with the term "Reserved". The revised text shall read as follows:

Section 12.412. Reserved.

Section 2. That this ordinance shall become effective upon its adoption.

Approved as to form:

S. Op. 
City Attorney

I, _____, City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the 16th day of July, 2012, the reference having been made in Minute Book _____, and recorded in full in Ordinance Book _____, Page(s) _____.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this _____ day of _____, 2012.

Following some discussion, it was the consensus of the Board that the zoning ordinance should allow building of the larger, principal structure at a later date than the accessory dwelling. The County Attorney suggested language such as, "construction of the single-family dwelling may be constructed either before or after the accessory dwelling."

ITEM #20: Comments on Specific Parcel Issues - Kiptopeke area petition for map change from Hamlet to R-1 or R-3

The current zoning for this area is Hamlet. The Hamlet designation was maintained for this area for consistency with the Hamlets designated on the Future Land Use Map. One option for the Board to consider would be to leave this area as a Hamlet. However, if the Board considers changing it to residential, R-3 would be consistent with proposed adjacent residential areas along Butler's Bluff Dr. and Lucille's Lane. R-3 districts are more representative of rural residential areas that are typically found further from towns. If the Board decides to change the designation of this area to residential, it should also consider designating the triangular piece as Commercial since a commercial use was just approved for that site instead of giving it a residential designation.

Background from March 30th work session:

Petitions were submitted by Kiptopeke area residents requesting the proposed zoning be changed from Hamlet to a residential zone, either R-1 or R-3. Prior to 2009, this area was zoned Rural Village Residential and in 2009 was changed to Hamlet. The highlighted parcels below represent those property owners that submitted petitions. The second image shows the surrounding area including Butler's Bluff to the north which is proposed to be zoned R-3 and Lucille's Lane to the south which is proposed to be zoned R-3. There are 85 parcels in this area zoned Hamlet ranging in size from 0.03 acres to 2.32 acres, with the average lot size of 0.67 acres.



Figure 1 Highlighted parcels owners submitted petition

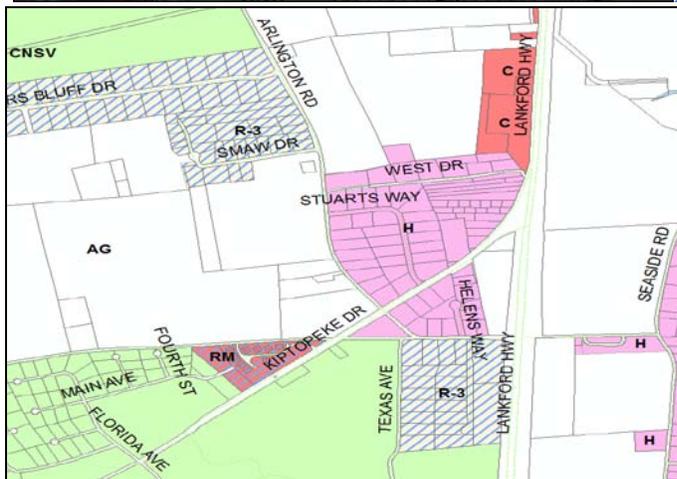
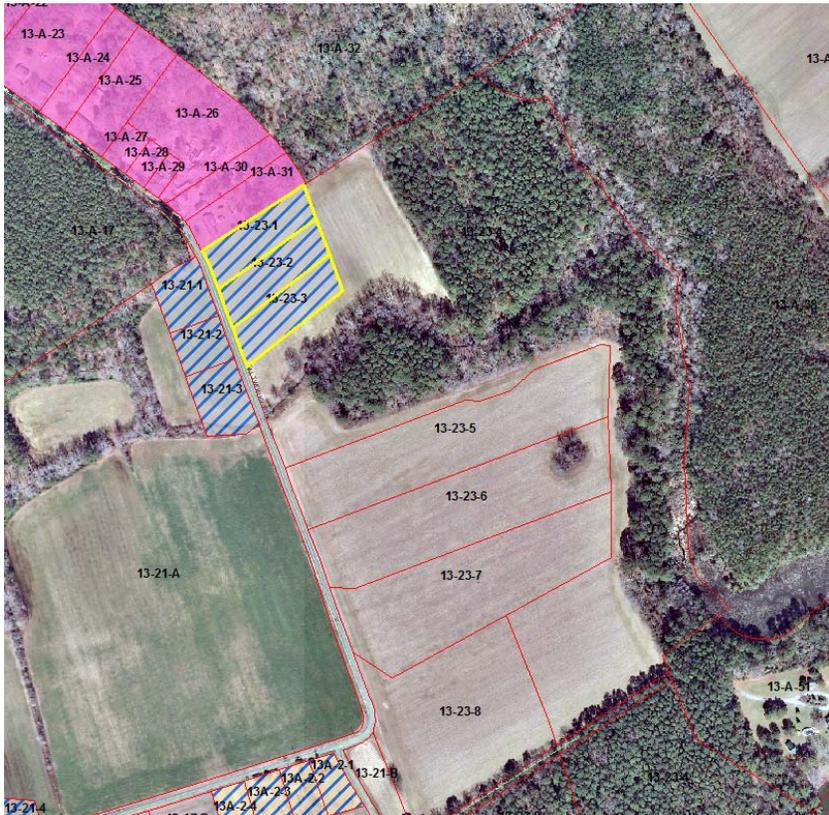


Figure 2 Proposed zoning around Kiptopeke Hamlet

Following discussion by the Board, it was the consensus of the majority of the Board members that the zoning for the proposed Kiptopeke Hamlet area be changed to R-1. Mr. Bennett maintained his belief that the triangular-shaped parcel, which was the subject of recent special use permit for a restaurant, should retain its proposed commercial zoning. Ms. Kellam and Mr. Bruce D. Jones, Jr., both noted their belief that R-1 and Commercial zonings in this area could be considered spot zoning. Ms. Kellam maintained that the proposed Hamlet zoning allows for mixed uses; i.e., residential and low impact commercial development.

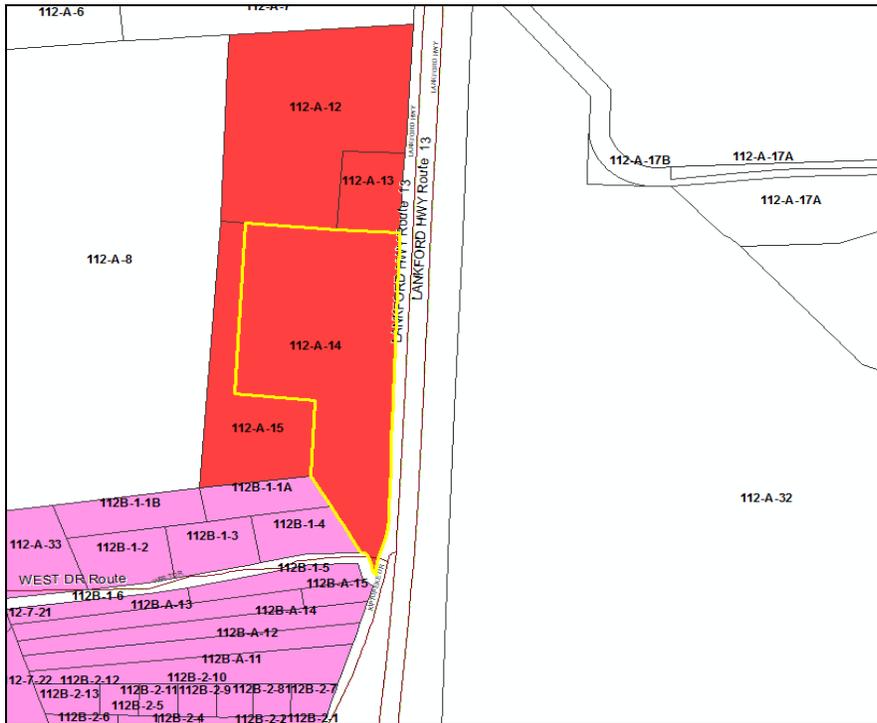
Other Mapping comments:

ITEM #21: Request from Mary Jane Dodson (comment #118) to zone parcels 13-23-1, 2 and 3 Agriculture and not R-5. This request was reviewed by the Board in the fall of 2014 and it was the consensus of the Board to leave these three parcels as R-5.



Supervisors LeMond and Hubbard indicated that they thought the subject lots should remain R-5 as proposed. Supervisors Bennett and Trala indicated that they thought the subject lots should be changed to Agriculture. No action was taken on this matter due to the tie in consensus views. This item will be brought back at a later date.

ITEM #22: Comment letter 124 from Mr. Amarjit Singh related to the proposed zoning of parcel 112-A-14. The Board reviewed this in the fall of 2014 and the consensus was to leave it as proposed.



It was the consensus of the Board that the subject parcel remain commercial.

Item 24: Intensive Farming including poultry houses use

The Board has also received concerns regarding setbacks, lot coverage maximums and chicken litter associated with intensive farming (chicken farms). To address the complexity of these concerns it is important to understand existing regulations and terms associated with intensive farming. Staff offers the following background information associated with intensive farming.

1. The Right to Farm Act, attachment 3, prohibits a locality from requiring special use permits for agricultural uses within an agricultural district, but allows the locality to develop reasonable performance standards to reduce and mitigate impacts such as noise, odor and water pollutants, but these performance standards cannot eliminate the ability for agricultural uses to be conducted in an agricultural district.
2. The Right to Farm Act, attachment 3, prohibits an agricultural use to be seen as a nuisance if that use is in compliance with the law.
3. The County defines intensive farming to include all Animal Feeding Operation (APO), an EPA term, and all Concentrated Animal Feeding Operation (CAPO), a DEQ term. As shown on attachment 4, the APO decision tree, attachment 4, all APO's are CAPO's. When the term chicken farm is used, the terms intensive farming, APO and CAPO can be used interchangeably.
4. Depending on the size of an APO or CAPO and type of discharges, to operate a chicken farm you are required to obtain a VPDES or VPA permit from DEQ, see attachment 4. These DEQ permits intensely regulate chicken litter (chicken waste). Attachment 5, the poultry litter fact sheet defines these regulations.
5. The VA Stormwater Management Act regulations promote the reduction of lot coverage as a principle way to achieve compliance with water quality and quantity standards by means of increased infiltration. Stormwater Management Plans are required for land disturbance activities over 2,500 square feet in the Chesapeake / Atlantic Preservation areas and over 1 acre outside of the Chesapeake / Atlantic Preservation area. The construction of chicken farms including all buildings, roads and other infrastructure would be land disturbance. If this construction exceeded the established thresholds of 2,500 square feet and 1 acre, an approved stormwater management plan would be required. At the March 30, 2015 Board work session there was some uncertainty to whether or not chicken farms (intensive farming, APO, CAPO) were indirectly exempt from the VA Stormwater Management Act because animal feedlots pursuant to Va. Code are not considered to be land disturbance. As defined on the DEQ's website glossary, a "*feedlot is a confined area for the controlled feeding of animals. Tends to concentrate large amounts of animal waste that cannot be absorbed by the soil and, hence, may be carried to nearby streams and lakes by rainfall runoff*". After a phone discussion with DEQ staff, feedlots are outside areas not under roof where animals are confined (fenced in) and fed, it does not include buildings, roads and other infrastructure associated with the construction of chicken farms. The construction of chicken farms would not be exempt from the VA Stormwater Management Act regulations and would require an approved stormwater management plan.

The above attachments are located immediately below or in the book jacket pocket.

Attachment 3

Code of Virginia

Title 3.2 - AGRICULTURE, ANIMAL CARE, AND FOOD.

Chapter 3 - Right to Farm

§ 3.2-300. Definitions.

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

"Agricultural operation" means any operation devoted to the bona fide production of crops, or animals, or fowl including the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery, and floral products; and the production and harvest of products from silviculture activity.

"Production agriculture and silviculture" means the bona fide production or harvesting of agricultural or silvicultural products but shall not include the processing of agricultural or silvicultural products or the above ground application or storage of sewage sludge.

(1981, c. 384, §§ 3.1-22.28, 3.1-22.29; 1991, c. 293; 1994, c. [779](#); 2007, c. [444](#); 2008, c. [860](#).)

§ 3.2-301. Right to farm; restrictive ordinances.

In order to limit the circumstances under which agricultural operations may be deemed to be a nuisance, especially when nonagricultural land uses are initiated near existing agricultural operations, no locality shall adopt any ordinance that requires that a special exception or special use permit be obtained for any production agriculture or silviculture activity in an area that is zoned as an agricultural district or classification. Localities may adopt setback requirements, minimum area requirements, and other requirements that apply to land on which agriculture and silviculture activity is occurring within the locality that is zoned as an agricultural district or classification. No locality shall enact zoning ordinances that would unreasonably restrict or regulate farm structures or farming and forestry practices in an agricultural district or classification unless such restrictions bear a relationship to the health, safety, and general welfare of its citizens. This section shall become effective on April 1, 1995,

and from and after that date all land zoned to an agricultural district or classification shall be in conformity with this section.

(1981, c. 384, § 3.1-22.28; 1991, c. 293; 1994, c. [779](#); 2007, c. [444](#); 2008, c. [860](#); 2014, c. [246](#).)

§ 3.2-302. When agricultural operations do not constitute nuisance.

A. No agricultural operation or any of its appurtenances shall be or become a nuisance, private or public, if such operations are conducted in accordance with existing best management practices and comply with existing laws and regulations of the Commonwealth. The provisions of this section shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or its appurtenances.

B. The provisions of subsection A shall not affect or defeat the right of any person to recover damages for any injuries or damages sustained by them on account of any pollution of, or change in condition of, the waters of any stream or on the account of any overflow of lands of any such person.

C. Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make the operation of any such agricultural operation or its appurtenances a nuisance or providing for abatement thereof as a nuisance in the circumstance set forth in this section are and shall be null and void. The provisions of this section shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or any of its appurtenances.

(1981, c. 384, § 3.1-22.29; 1994, c. [779](#); 2008, c. [860](#).)

Attachment 4

AFO/CAFO Permit Program (See 11 by 17 sheet in notebook cover)

Attachment 5 (see next page)

Attachment 5



FACT SHEET Requirements for Poultry Litter Use and Storage

You have received this fact sheet because you are the end user of poultry litter (dry poultry litter containing poultry manure and/or composted dead poultry). As required by the Virginia Pollution Abatement Regulation and General Permit for Poultry Waste Management (9VAC25-630), poultry litter must be used in a manner consistent with this fact sheet or as specified in a nutrient management plan prepared by a Virginia certified Nutrient Management Planner.

This fact sheet is intended to summarize the requirements and best management practices for land application of poultry litter as a source of crop nutrients. If poultry litter is to be used for purposes other than land application to crops (for example: animal feed or fuel), these uses may be subject to other laws or regulations. If poultry litter is to be used outside of Virginia, contact that state regarding their requirements.

Storage Requirements

Poultry litter that is not immediately land applied must be stored properly. If poultry litter must be stored prior to use, the following criteria shall be followed:

- If litter is not stored under roof, the storage site must be at least 100 feet from surface water, intermittent drainage, wells, sinkholes, and rock outcrops.
- If stored outside longer than 14 days, the litter must be covered with an impermeable barrier that will resist wind.
- Do not store litter where the water table is less than 1 foot deep.
- If litter is stored in areas where the ground water table is less than 2 feet deep year round, install an impermeable barrier under the litter. Construct impermeable barriers using at least 12 inches of compacted clay, at least 4 inches of reinforced concrete, or another material of similar structural integrity which has a minimum permeability rating of 0.0014 inches per hour (1×10^{-6} centimeters per second).
- Poultry litter must be protected from storm water runoff accumulating onto or under it.

Application Timing

CROP	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Corn												
Small Grain												
Hay or Pasture *												
Hay or Pasture **												
* Includes all cool-season grasses: fescue, orchardgrass (growth occurs in the cooler months of the spring & fall)												
** Includes all warm-season grasses: bermudagrass (growth occurs in the heat of the summer)												
	Poultry litter may be spread during these periods											
	Do not spread poultry litter during these shaded periods											

Do not spread poultry litter more than 30 days prior to planting.

Also see Land Application Conditions & Setbacks section on Page 4.

Soil Samples

Where soil samples are necessary to utilize any of the methods described in this document the sample must be less than three (3) years old. A representative soil sample of each field is comprised of at least 20 cores randomly sampled throughout the field. Samples should be taken from the top 4 inches of soil where land is not tilled, or the top 6 inches of soil where land is tilled.

Application Rate

The poultry litter application rate can be determined using one of four options:

Option 1: Nutrient Management Plan

Poultry litter application rates based on a nutrient management plan can be used when the plan has been developed by a certified nutrient management planner in accordance with §10.1-104.2 of the Code of Virginia. For assistance in locating a nutrient management plan writer: contact DCR at 804-225-4533 or consult the Virginia Nutrient Management Certified Planner Directory, available at: http://www.dcr.virginia.gov/soil_and_water/documents/nmdir.pdf

Option 2: Standard Rate

Poultry litter may be applied to any crop at a rate of 1.5 tons per acre once every three years under the following conditions:

- 1) Nutrients have not been supplied by manure, biosolids, or other organic sources, other than pastured animals, to the proposed land application sites within the previous three years of the proposed land application date of poultry litter, and
 - 2) In the absence of current soil sample analyses and recommendations.
-

Option 3: Soil Test Recommendations

Litter application rates based on soil test recommendations can be used under the following conditions:

- 1) The soil sample has been taken in the last three years from the proposed field where litter will be applied.
- 2) Soil test recommendations have been provided by a laboratory whose procedures are in accordance with 4VAC5-15-150 A 2 f of the Department of Conservation and Recreation Nutrient Management Regulation. Recommendations from the following laboratories are approved by DCR:
 - ⇒ A&L Agricultural Lab (804) 743-9401
 - ⇒ Spectrum Analytical Lab 1-800-321-1562
 - ⇒ Virginia Tech Soil Testing Lab (540) 231-6305
- 3) Nutrients from the litter application do not exceed the nitrogen or phosphorus recommendations for the proposed crop or double crops. The recommendations are in accordance with 4VAC5-15-150 A 2 a of the DCR Nutrient Management Regulation. If the litter application rate is made to supply all of the future crop phosphorus needs, no additional phosphorus is to be applied during the rotation.

Example for Calculating Poultry Litter Rate based on Soil Test Recommendation:

Litter Application Rate (Tons per acre)	=	Soil Test P Recommendation Litter P Analysis
--	---	---

Corn crop needs: **120 lbs/acre Nitrogen** and soil test recommendation for **60 lbs/ac Phosphorus**

Poultry litter analysis: Available Nitrogen = **40 lbs/ton of litter**, P₂O₅ = **50 lbs/ton of litter**

	1 st Crop	+	2 nd Crop	+	3 rd Crop	Options
Three (3) Crop Rotation:	Corn grain 60 lbs/ac P recommended 1.2 tons litter	+	Wheat grain 60 lbs/ac P recommended 1.2 tons litter	+	Soybeans 60 lbs/ac P recommended 1.2 tons litter	Apply 1.2 tons to each crop OR Apply only 3.0 tons litter to Corn (0.6 tons litter to Wheat or Soybeans)

In this example, 1.2 tons of litter (60 ÷ 50) will provide the 60 lbs of phosphorus needed for each crop with the nitrogen needs supplemented by commercial fertilizer. Alternatively, applying 3.0 tons of litter to the corn crop provides 150 lbs (50x3) of phosphorus for the rotation without exceeding the 120 lbs of nitrogen (40x3) needed by the corn crop. Litter used on the wheat or beans cannot exceed the total phosphorus needs of the rotation.

Option 4: Phosphorous Crop Removal

Litter application rates based on phosphorus crop removal can be used when the soil test phosphorus levels do not exceed the values listed in Table 1. Table 2. is used to determine the pounds of P₂O₅ removed per unit of harvested yield. As an example calculation using typical values, Table 3 represents litter rates calculated using a poultry litter analysis of: **40 lbs/ton N, 52 lbs/ton P₂O₅, and 53 lbs/ton K₂O** along with average crop yields.

LITTER RATE CALCULATION		
Poultry Litter Rate (Tons per acre)	=	Yield per acre (tons or bushels) X P ₂ O ₅ removal per yield unit (lbs)
		Poultry Litter P ₂ O ₅ content (lbs per ton)

Table 1. Maximum Soil P	VPI & SU (Mehlich I)		A&L (Mehlich III)	
	P (lbs/acre)	P (ppm)	P (lbs/acre)	P (ppm)
REGION				
Eastern Shore and Lower Coastal Plain	270	135	506	253
Middle and Upper Coastal Plain and Piedmont	272	136	508	254
Ridge and Valley	324	162	562	281

Table 2. Phosphorus Removed		
Crops	LBS. P ₂ O ₅ Per Yield Unit (lbs)	
Row Crops	Grain - Bushels	Silage - Tons
Corn	0.38	4.2
Wheat	0.51	4.2
Barley	0.40	5.1
Rye	0.45	5.6
Soybeans	0.89	10.0
Forages	Hay - Tons	Pasture
Fescue or Orchardgrass	16.0	****
Bermudagrass	10.4	****

Table 3. Typical P ₂ O ₅ Removal Litter Rate			Poultry Litter Rate (tons/acre)	Nutrients supplied by Poultry Litter		
Crop	Yield (per Acre)	Nitrogen Needs of Crop (lbs/acre)		N (lbs)	P ₂ O ₅ (lbs)	K ₂ O (lbs)
Corn grain	120 bushels	120	0.9	35	45	50
Corn silage	17 tons	130	1.3	50	70	70
Wheat grain	80 bushels	100	0.8	30	40	45
Barley grain	80 bushels	80	0.6	25	30	30
Barley silage	8.0 tons	80	0.8	30	40	45
Rye silage	6.0 tons	100	0.8	30	40	45
Soybeans (dc)	25 bushels	0	0.4	15	20	20
Hay	3 tons	80	1.0	40	50	55
Pasture	n/a	60	0.6	25	30	30

Notes for Table 2:

- **** divide 25 by the poultry litter P₂O₅ content to calculate the litter application rate.
- For double crops, add removal for each crop.
- Additional crops - see Table 4-7 of the DCR Standards and Criteria at: <http://www.dcr.virginia.gov/documents/StandardsandCriteria.pdf>

Example for Calculating Poultry Litter Rate based on P₂O₅ removal:

Poultry litter analysis: Nitrogen = **40 lbs/ton**, P₂O₅ = **52 lbs/ton**, K₂O = **53 lbs/ton**
 Crop yields: Corn grain = **120 bushels**, Wheat grain = **80 bushels**, Soybeans = **25 bushels**

	1 st Crop	+	2 nd Crop	+	3 rd Crop	=	Litter Application Rate on 1 st Crop
Three (3) Crop Rotation:	Corn grain 0.9 tons	+	Wheat grain 0.8 tons	+	Soybeans 0.4 tons	=	2.1 tons litter applied to Corn (NO litter applied to Wheat or Soybeans)

In this example, 2.1 tons of litter will provide 84 lbs of available Nitrogen to the Corn crop. The corn needs an additional 36 lbs (120-84) of Nitrogen that must be supplied by commercial fertilizer. The wheat must also be provided with commercial Nitrogen fertilizer when that crop is actively growing. Litter cannot be used on the wheat or beans because the phosphorus has been supplied in the litter applied to the corn.

Land Application Conditions & Setbacks

- Do not spread litter within the following setback areas:
 - 100 feet from wells or springs
 - 100 feet from surface water without a permanent vegetated buffer*
 - 35 feet from surface water with a permanent vegetated buffer*
 - 50 feet from limestone outcroppings
 - 25 feet from other rock outcroppings
 - 200 feet from occupied dwellings
(unless the occupant signs a waiver of the buffer zone)
 - Litter shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.
 - * A vegetated buffer is a permanent strip of dense vegetation established parallel to the contours of and perpendicular to the dominant slope of the field.
- Poultry litter may be applied to frozen ground if all of the following conditions are met:
 - Slopes are not greater than 6%;
 - A minimum of a 200-foot vegetative or adequate crop residue buffer is maintained between the application area and all surface water courses;
 - Only those soils characterized by USDA as "well drained" with good infiltration are used; and
 - At least 60% uniform cover by vegetation or crop residue is present in order to reduce surface runoff and the potential for leaching of nutrients to ground water.

Recordkeeping

Land application of poultry litter must comply with the criteria outlined in this fact sheet. All records must be maintained for at least three (3) years from the date of the transaction and land application date. The attached forms are provided to meet the recordkeeping requirements of the end-user. (See "End-User Poultry Litter Transfer Record" & "Poultry Litter Land Application Recordkeeping Form")

The following items related to poultry litter transactions must be provided to the source of the litter by the end-user:

⇒ Recipient Name & Signature	⇒ Locality where litter will be utilized (nearest town/city and zip code)	⇒ Name of stream or waterbody nearest to utilization or storage site
⇒ Recipient Address		

The following items related to poultry litter transactions must be documented by the end-user:

⇒ Source name	⇒ Date litter was received	⇒ Locality where litter will be utilized (nearest town/city and zip code)
⇒ Source address	⇒ Amount of litter received	
⇒ Source permit number (if applicable)	⇒ Final use of poultry litter	⇒ Name of stream or waterbody nearest to utilization or storage site

The following items related to land application of poultry litter must be documented by the end-user:

⇒ Nutrient analysis of litter	⇒ Land application rate(s)	⇒ Method used to determine the litter application rate(s): (NMP, standard rate, soil test recommendations or phosphorus crop removal)
⇒ Maps identifying the application fields and storage sites	⇒ Land application date(s)	
	⇒ Crops planted	
	⇒ Soil test results (if obtained)	⇒ Nutrient management plan (if applicable)

Additional Information

This fact sheet provides basic information. For additional information regarding requirements for poultry litter management, please visit the DEQ website at <http://www.deq.virginia.gov/vpa/cafo.html>

You may also contact the Virginia DEQ toll free (in Virginia) at **1-800-592-5482**.

Staff report continued:

While local government cannot ban or require special use permits for such farming, it can regulate some of the impacts of intensive farming. To show how intensive farming relates to land use regulation two charts are provided below. This information can be used to develop reasonable intensive farming performance standards which permit this use within the agricultural district and address impacts.

Chart A: Number of Northampton County Parcels which could have usable intensive farming operation sites after applying setbacks

Column 1 (from left) shows the net usable poultry site size after setbacks. The next 4 columns show the number of sites by acreage range for a variety of proposed setbacks. The first list is for a single setback of 500 feet for all setback characteristics. Proposed setbacks are generally from all shorelines, perennial streams, nontidal wetlands and property lines and not located within AR, VE or 0.2 percent change special flood hazard areas. The 2nd and 3rd results columns add additional setbacks from Hamlet, Village, Town Edge, R, R-1, R-3 and WW, VNB, VC, RM districts. The 4th results column varies the setbacks for property lines, districts and all other (largely water bodies/wetlands). The right column shows the current zoning regulation.

Net Usable Area for Intensive Farming (acres)	500 ft. proposed setbacks no district setbacks (# of parcels)	500 ft. proposed setbacks with additional 1000 ft. district setback (# of parcels)	500 ft. proposed setback with additional 1500 ft. district setback (# of parcels)	1000 ft. setback from features 500 ft. setback from property lines 1500 ft. setback from districts	Current setbacks* (2009 Zoning) (# of parcels)
2 – 4	68	56	38	19	0
5- 9	69	57	44	12	2
10 – 19	56	45	38	11	4
20 – 49	53	41	33	4	3
50 – 90	8	5	4	3	0
91 – 139	4	3	2	0	0

*Current setbacks §154.111 include 2,000 ft. from towns & tidal waters; 1500 ft. from V, WV, WH, ECC, TE districts, 1000 ft. from Hamlets; 400 ft. from property lines; and 300 ft. from public right-of-ways.

Chart B: Poultry Sites by Land Size and Impervious Cover Ratio

Examining the typical poultry houses found in Accomack County, the following chart was constructed to give scale to the land use of the industry and how it could be affected in terms of impervious cover of a site by setback sizes. The typical, newer poultry house was found to be 65 feet by 560 feet at the eaves with 40 by 40 concrete pads at the ends. A single house also includes a support building and vehicle access. The impervious area was calculated at just over 1 acre. A large scale operation could contain 11 houses plus support structures with an impervious area of 11 acres. The overall site of a poultry facility also includes green space between buildings that exceed the size of impervious areas. Note that a gross site area nearly 24 acres for an 11 house facility must fit within the setbacks designated. This calculation is based on each site being perfectly rectangular and the parcel reflecting that same rectangle shape for maximum utilization. Very few parcels in Northampton County have such rectangular shapes thus reducing the effective use of a parcel after setbacks are measured.

Poultry House Site Profile and Lot Coverage

Setback Required	Setback area	1 House		11 Houses	
		Facility Site Area	Coverage Ratio ¹	Facility Site Area	Coverage Area ¹
500'	23	2.84	4%	23.82	24%
1000'	92	2.84	1%	23.82	10%

Note: assumes perfectly rectangular parcel

¹ coverage ratio is impervious area divided by total area

Staff offers the following findings and recommendations.

1. Staff recommends retaining the current setbacks of existing code for intensive farming.
2. Insert language into the intensive farming performance standards that clarifies the requirement for an approved stormwater management plan. Not only is lot coverage addressed by stormwater management plans, but it is re-enforced by recommendation #1 above because the setbacks of 1000 feet from the other designated district, as shown in the chart directly reduces the lot coverage.
3. Revise the intensive farming performance standards to require ammonia scrubber to reduce

odor and ammonia vapors.

* * * * *

It was the consensus of the Board to approve staff's recommendations as outlined above as items #1, #2 and #3.

The Board then reviewed and discussed a table as developed by staff which compares the existing and proposed Waterfront districts. This document is on file in the office of the County Administrator. It was the consensus of the Board that this document be placed on the County's website for citizen review.

At this time, the Board reviewed several individual zoning requests as follows:

- (1) Denwood Road, comment #154. A letter and petition from 13 residents requesting that Tax Map 20A-2-G be zoned R3 instead of the proposed R-5. It was the consensus of the Board to approve the residents' request for R-3 zoning
- (2) Prettyman Circle, comment #150. A letter from Mr. Timothy Prettyman (and others) requesting that the Horseshoe area at Silver Beach be zoned R-3 instead of the proposed Agriculture. It was the consensus of the Board that the property be zoned R-3.

The County Administrator reminded the Board that once its review of the draft document has been completed, a public hearing with the required mass mailings will still have to be held.

Recess

Motion was made by Mr. Bennett, seconded by Mr. LeMond, that the meeting be recessed until 2:00 p.m., Tuesday, June 30, 2015 in the Board Room of the County

Administration Building, 16404 Courthouse Road, Eastville, Virginia. All members were present and voted “yes.” The motion was unanimously passed.

The meeting was recessed.

_____CHAIRMAN

_____ COUNTY ADMINISTRATOR