



**APPLICATION
ZONING BOARD OF APPEALS
TOWN OF CHESAPEAKE BEACH**

- ☒ Decision on Interpretation or Alleged Error
☐ Special Exception
☐ Variance from Strict Application of Ordinance

PROPERTY INFORMATION TM ___ BLK ___ Parcel ___ Lot ___
TAX ID# _____ DEED REFERENCE: LIBER _____ FOLIO _____
STREET ADDRESS See Attachment A _____
PRIOR DECISION BY BOARD OF APPEALS YES ___ NO X
IF YES, DECISION NO. _____ DATE _____

PROPERTY OWNER

NAME Rod & Reel, Inc./Donovan Estates, LLC PHONE 410-257-5596
ADDRESS 4160 Mears Avenue
CITY Chesapeake Beach STATE MD ZIP 20732

AUTHORIZED AGENT

NAME Eric J. Blitz, Esquire PHONE 410-812-7265
ADDRESS 9 Lantern Circle
CITY Parkton STATE MD ZIP 21120

VARIANCE

APPLICABLE SECTION OF ZONING ORDINANCE _____
DESCRIBE VARIANCE BEING REQUESTED _____

SPECIAL EXCEPTION

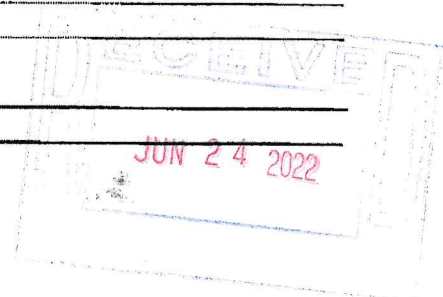
APPLICABLE SECTION OF ZONING ORDINANCE _____
DESCRIBE SPECIAL EXCEPTION REQUEST _____

DECISION ON INTERPRETATION OR ALLEGED ERROR

APPLICABLE SECTION OF ZONING ORDINANCE See Attachment B _____
DESCRIBE DECISION OR ERROR See Attachment B _____

DESCRIBE CHANGE REQUESTED

See Attachment B



PLEASE NOTE

In order for the Board of Appeals to consider this application, the following information must be provided to the Board either with this application or at the time the Board meets to hear this case.

VARIANCE – Reference Article VIII 290-32

Testimony or evidence that shows the requested variance:

- (1) Is in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- (2) Will not permit the existence within a District of any use which is not permitted in that District
- (3) Is needed because there are special circumstances or conditions fully described in the findings, applying to the land or buildings for which the variance is sought, which circumstances or conditions are peculiar to such land or buildings and do not apply generally to land or buildings in the neighborhood and that said circumstances or conditions are such that strict interpretation of the provisions of this Ordinance would deprive the applicant of the reasonable use of such land or building.
- (4) Is needed because there exists unnecessary hardship. If the hardship is general that is shared generally by land or buildings in the neighborhood, relief shall be properly obtained only by legislative action or by court review of an attack on the validity of the Ordinance.
- (5) Is the minimum necessary for the reasonable use of the land or building and that the variance as granted by the Board is the minimum variance that will accomplish this purpose. It is not sufficient proof of hardship to show that greater profit would result if the variance were awarded. Furthermore, the hardship complained of cannot be self-created; it cannot be claimed by one who purchases with or without the knowledge of restrictions; it must result from the application of the Ordinance; it must be suffered directly by the property in question; and evidence of greater profitability and of variances granted under similar circumstances shall not be considered.


SPECIAL EXCEPTION

The applicant must provide to the Board information on how the Special Exception request is in accordance with the Town Comprehensive Plan, consistent with the purpose of the Zoning Ordinance, suitable for property including appropriate appearance and in character with neighborhood, suitable in terms of public safety and suitable in terms of traffic, congestion and hazards to the public.

DECISION ON INTERPRETATION OR ALLEGED ERROR – Article VIII 290-32

Provide copies of any applicable correspondence that would help the Board understand the purpose of this application.

Date Submitted: **June 24, 2022**

By: 

Property Owner (Required)

Wesley Danner, Resident

By: 

Authorized Agent

(If representing the property owner)

Eric Blite, Esquire

Attachment A

Properties:

Harbor Vista West Site Plan

3840 Gordon Stinnett Avenue, Chesapeake Beach, MD 20732

Tax ID: 03-153614

Map 103

Grid 20

ABE 4, Plat 293/294

Parcel: J (32)

Harbor Vista South Site Plan

8016 Bayside Rd, Chesapeake Beach, MD 20732

Tax ID: 03-153517

Plat Book AB4; Plat 293

Parcel: Remainder Parcel A

Harbor Vista North Site Plan

18259 S. Harbor Vista North, Chesapeake Beach, MD 20732

Tax ID: 03-252568

Plat Book AB4; Plat 293

Parcel: Land Unit I and residue Parcel J

Home Place Site Plan

3418 Cox Road, Chesapeake Beach, MD 20732

Tax ID: 03-146154

TM: 101

Parcel: 57

Lot: 1 & 2

Stinnett Place Site Plan

8617 Bayside Rd., 8715 Bayside Rd., 8709 Baysid Rd., Chesapeake Beach, MD 20732

Tax ID: 03-042103; 03-042278; 03-042162

TM: 101

Block: 15

Lot: 6, 8, 10, 11, 12A & an unlabeled strip between Lots 9 & 10, Block 13, Baycrest Subdivision

Lots 34-39 of L.E. Walker Subdivision

Attachment B

Applicable Sections of Zoning Ordinance: §§290-23; 290-31A(1) and (6);
C-309, C-310 and C-311 of Town Charter

Description of Error: Continuing failure and refusal of Zoning Administrator and Planning & Zoning Commission to process five site applications submitted to them by the Rod & Reel, Inc. (and a wholly owned limited liability company, Donovan Estates, LLC) through and including the date of this appeal, June 23, 2022. Said site plans were submitted to the Planning & Zoning Commission on or about January 29, 2021 and the requisite fees paid. The purported rationale for the Commission and Zoning Administrator not processing the applications and reviewing them for compliance with the existing zoning ordinance as required by the Chesapeake Beach Zoning Ordinance and Maryland law is that some, but not all, Category 1 Site Plan reviews and acceptance of any new plans requiring a Category 1 Site Plan were halted by a moratorium passed by the Town Council via Resolution R-21-3 on March 18, 2021 and subsequently extended by three months via Resolution R-21-8 on September 16, 2021.

The Rod & Reel, Inc. avers that:

1. The moratorium was, is, and remains illegal, void and without legal effect. The moratorium was a law of general applicability and continuing effect, modifying a right of site plan review and property development as set forth in the zoning ordinance and Maryland law. All laws impacting the zoning of a property must be passed by an ordinance and through a process stipulated by Maryland law. The moratorium made substantive legislative determinations as to which properties would be included within the scope of the moratorium and gave exemptions to certain properties, both of which are legislative acts of a general applicability and continuing effect. As such, the moratorium must have been passed by an Ordinance, or a resolution following the requirements of an Ordinance, as required by the Charter of Chesapeake Beach, MD and Maryland law. The extension of the moratorium was passed with a similar defect. Resolution R-21-3 passing the moratorium and resolution R-21-8 extending the moratorium failed to meet the requirements of C-309 of the Town Charter and thereby deprived the Rod & Reel, Inc. and other property owners and citizens of important procedural protections provided by law, in violation of Maryland law and the Applicants' due process rights under the Maryland Declaration of Rights and of the United States Constitution.
2. That even if the Board finds the moratorium was originally passed according to law, and despite the Town Council passing Resolution R-21-8 to explicitly extend the moratorium for an additional three months, that said moratorium expired by its own terms one-year after its passage, on or about March 18, 2022. Notwithstanding the expiration of the moratorium, the Zoning Administrator and Planning & Zoning Commission continue through the date of this application for appeal to refuse to process the site plan applications in violation of the Chesapeake Beach Zoning Ordinance and Maryland law. Applicant Rod & Reel, Inc. made a demand for processing the site plan applications by a letter from counsel on May 20, 2022 and received no response from the Zoning Administrator or Planning & Zoning Commission, though the Town Attorney opined in a letter dated May 25, 2022 that the moratorium continued until it is terminated by the Planning & Zoning Commission and Town Council.

3. That the zoning ordinance applicable to the site plan applications has not been amended and remains the same law in effect as of date the applications were submitted. Because the zoning ordinances that determine the site plan's compliance have not been so amended, the ordinances in effect at the time of the filing of the applications should be applied and the applications processed in respect to those ordinances.

Relief Sought:

Applicant requests the Board order the Zoning Administrator and Planning & Zoning Commission immediately commence and prioritize the processing and review of the relevant site plans submitted by the Rod & Reel, Inc. (and Donovan Estates, LLC) and that the Zoning Administrator and Planning & Zoning Commission be ordered to apply the zoning ordinances in effect as of January 29, 2021 when the applications were submitted, and for such other and further relief as the nature of their cause requires.

Alternatively, the Board of Appeals being empowered to take all administrative actions that the Zoning Administrator and Planning & Zoning Commission failed to take due to error, that the Board schedule hearings and review and process the site plan applications, applying the law in effect on January 29, 2021 when the applications were submitted, and for such other and further relief as the nature of their cause requires.

Attachment C-Documents Included with Application

(Applicant reserves the right to submit some or all of these documents into the record as exhibits, along with additional documentary evidence, at the hearing.)

1. Agenda of Planning & Zoning Commission proposing moratorium.
2. Letter from Blitz to Planning & Zoning Commission dated February 23, 2021
3. Minutes of Planning & Zoning Commission dated February 24, 2021
4. Letter from Blitz to Mayor and Town Council dated March 16, 2021
5. Resolution R-21-3 (included as part of agenda)
6. Minutes of March 18, 2021 Town Council Meeting
7. Resolution R-21-8 (included as part of agenda)
8. Minutes of September 16, 2021 Town Council Meeting
9. Letter from Blitz to Zoning Administrator and Planning & Zoning Commission dated May 20, 2022.
10. Letter from Pounds to Blitz dated 5-25-22.

Attachment D-List of Adjoining Properties

Harbor Vista West Property:

Town of Chesapeake Beach, 8200 Bayside Road, Chesapeake Beach, MD 20732 (regarding parking lot/ballfields/tot lot)

Board of County Commissioners, 175 Main Street, Prince Frederick, MD 20678 (regarding community center/waterpark)

Kellam's Marina Limited Partnership II, P.O. Box 280, Hughsville, MD 20637 (regarding 3945 Gordon Stinnett Avenue)

Harbor Vista South Property:

Rod & Reel, Inc., P.O. Box 99, Chesapeake Beach, MD 20732 (regarding Rod N Reel Resort property-notice waived)

Howlin Investment Commercial Properties, LLC, 10085 Dunkirk Way, Ste. 203, Dunkirk, MD 20754 (regarding Captains Quarters at 3819 Harbor Road and two properties immediately to the west of that: 7906 Deforest Drive and 3878 Harbor Road)

Steven A. and Patricia A. Reynolds, P.O. Box 504, Chesapeake Beach, MD 20732 (regarding 3826 Harbor Road)

Harbor Vista North Property:

Town of Chesapeake Beach, 8200 Bayside Road, Chesapeake Beach, MD 20732 (regarding parking lot/ballfields/tot lot)

Board of County Commissioners, 175 Main Street, Prince Frederick, MD 20678 (regarding community center/waterpark)

Kellam's Marina Limited Partnership II, P.O. Box 280, Hughsville, MD 20637 (regarding 3945 Gordon Stinnett Avenue)

Home Place Property:

James Avril and Virginia Myril, 3528 Cox Road, Chesapeake Beach, MD 20732

Charles D. and Carole E. Phillips, 3408 Cox Road, Chesapeake Beach, MD 20732

Grady Aaron Valencis and Christy Lynn Burch, 337 Chesapeake Beach Rd. E, Chesapeake Beach, MD 20732

Stallings-William Post No. 206, P.O. Box 428, Chesapeake Beach, MD 20732 (for 8406 Wesley Stinnett Blvd)

Francis E. and Lisa C. Pumphrey, 8407 Wesley Stinnett Blvd, Chesapeake Beach, MD 20732

Steven W. and Doris B. McDonald, 3530 Chesapeake Beach Road, Chesapeake Beach, MD 20732

Tristan Breanne Slater, 3447 Cox Road, Chesapeake Beach, MD 20732.

Bayview Hills Homeowners Assoc. Inc., 8175 Bayview Hills Drive, Chesapeake Beach, MD 20732 (regarding Open Space Plat 2-Parcel 61)

Stinnett Place Property:

Collin T. and Nataly M. Wannop, 8712 Bayside Road, Chesapeake Beach, MD 20732 (also 8710 Bayside Road)

Ronald F. Pigeon and Daniel Robert Ouelette, 3216 Ina Chase, Chesapeake Beach, MD 20732 (regarding 8714 Bayside Road)

Mary Schiappa, 8716 Bayside Road, Chesapeake Beach, MD 20732

La Deanne R. Kowalski, 8714 C Street, Chesapeake Beach, MD 20732

Mary Ellen Gullickson, 8715 C Street, Chesapeake Beach, MD 20732

Larry and Pamela Brown, 8713 C Street, Chesapeake Beach, MD 20732

Paul S. Brycock and Angela E. Lauria, 8711 C Street, Chesapeake Beach, MD 20732

James Aaron and Ana Carolina Warren, 8709 C Street, Chesapeake Beach, MD 20732

Aaron and Jennifer Sanders, 8707 C Street, Chesapeake Beach, MD 20732

John and Laura Kramer, 8705 C Street, Chesapeake Beach, MD 20732

Ella Lichtenberg, 8701 C Street, Chesapeake Beach, MD 20732

Michael K and Regina Davis, 4004 Sea Gate Square, Chesapeake Beach, MD 20732

Harvey Berlin, 4008 Sea Gate Square, Chesapeake Beach, MD 20732

Seagate Investors, LLC, 2131 Industrial Pkwy, Silver Spring, MD 20904 (regarding 4012 Sea Gate Sq)

Charles and Danielle Simacek, 4016 Sea Gate Square, Chesapeake Beach, MD 20732

Duong Hanh and Pham Ngoc Cam, 13192 Ashvale Dr, Fairfax, Virginia 22033 (regarding 4020 Sea Gate Sq.)

Daniel C etal Foster, 706 James Ridge Road, Bowie, MD 20721 (regarding 4024 Sea Gate Sq.)

Cho Mi Ja and Lee He M, 8631 Addison Bridge Pl, Chesapeake Beach, MD 20732

Roberto E and Patricia S. Bermudez, 8641 Baywalk Sq., Chesapeake Beach, MD 20732

Joshua and Verona Hung, 9180 Windflower Dr., Ellicott City, MD 21042 (regarding 8645 Baywalk Sq.)

Homer L. Twigg, Jr. and Bettyanne Twigg, 8649 Baywalk Sq., Chesapeake Beach, MD 20732

Dominique Soroka and Margaret Hartmen, 8653 Baywalk Sq., Chesapeake Beach, MD 20732

Patricia M. Scott, 8657 Baywalk Sq., Chesapeake Beach, MD 20732

Gretchen Weinbach and Glenn Tamkin, 9813 Rosensteel Ave., Silver Spring, MD 20910 (regarding 8661 Baywalk Sq.)

Jaworski Revocable Trust, 8665 Baywalk Sq., Chesapeake Beach, MD 20732

Ronald J and Bernice Gantt, 8669 Baywalk Sq., Chesapeake Beach, MD 20732

Town of Chesapeake Beach, MD, P.O. Box 400, Chesapeake Beach, MD 20732 (regarding 8550 Bayside Rd).



This meeting will be held virtually. To join the meeting by computer please click the link <https://us02web.zoom.us/j/8697557180>. Once connected you can join by computer audio or dial in via the information that is provided on your screen. To join by phone only please dial **(929) 205 6099** and enter the Meeting ID **869 755 7180**.

**PLANNING & ZONING AGENDA
FEBRUARY 24, 2021**

I. Call to Order

II. Approve the Agenda

III. Approval of the Minutes of the January 27, 2021 Planning & Zoning Meeting.

IV. Old Business

- a. Progress report on the comprehensive plan update (zoning administrator).
- b. Motion to clarify the December 15, 2020 Commission's decision on the revised site plan for Rod & Reel properties, that such approval does not include proposed site plan revisions to the 1936 Bar and Grille sign or flags to be installed on or above the roof line of the various structures on the site, because the proposed revisions are not compliant with the Chesapeake Beach Zoning Code §290-22(h). (Chairman).
- c. Motion directing the Zoning Administrator to prepare and present to the Commission a report including draft zoning and text amendments that clarify the Town prohibition on short term rentals; and includes draft alternative amendments that partially lift such prohibition. (Chairman).
- d. Motion to set a future hearing date on draft zoning text amendments to chapter 290 of the Town Code of Chesapeake Beach, zoning ordinance to limit the height of all new buildings within all zoning districts within the Town to 35 feet. (Commissioner Greengold). draft text amendments attached.
- e. Motion to remove residential development allocations in the Town Center and marina areas and to remove all multi-unit housing types in the residential village areas to preserve the ability to accommodate recreation and potential future commercial amenities in and near the Town Center. (Commissioner Blackwelder)

8200 BAYSIDE ROAD, P.O. BOX 400 CHESAPEAKE BEACH, MARYLAND 20732

(410) 257-2230

(301) 855-8398



PUBLIC HEARING: On a resolution recommending that the Mayor and Town Council adopt a temporary moratorium on the Planning Commission's acceptance and consideration of applications for development projects.

- V. **Discussion:** Whether a moratorium should be placed on the acceptance and consideration by the Planning Commission of applications for development projects. (Zoning Administrator)

VI. **Public Comment:**

VII. **Motion to adopt the following resolution which reads in main as follows:**

The Town of Chesapeake Beach Planning and Zoning Commission recommends that the Mayor and Town Council adopt an ordinance causing a moratorium to be placed on the Planning Commission's acceptance and consideration of any applications for development projects requiring a tentative sketch plan, a site plan or a subdivision plat; except for certain properties and development activities that are of record (Grandfathered) prior to the date of adoption of this moratorium (as defined in Code §245-7 and §245-6, respectively).

The Planning Commission further recommends that the moratorium not apply to reviews, revisions and approvals that do not require Planning Commission consideration but are of such minor and routine nature that, under the Code, can be approved by the Town Zoning Administrator. Neither should the moratorium restrict the Planning Commission from initiating work related to its assigned responsibilities under the Town Code.

The Planning Commission further recommends that the moratorium remain in place until the first of either: (1) the Town Council's adoption of the new Comprehensive Plan and implementing ordinances, most notably amendments to the Zoning Ordinance and Zoning Map, or (2) the expiration of twelve months from the date this moratorium becomes effective. FULL RESOLUTION ATTACHED.

- VII. **Adjournment:** At approximately 9:00PM, depending upon hearing progress, Chairman will request a motion to adjourn. If approved, the meeting/hearing will end.

8200 BAYSIDE ROAD, P.O. BOX 400 CHESAPEAKE BEACH, MARYLAND 20732

(410) 257-2230 (301) 855-8398

Resolution

Town of Chesapeake Beach Planning and Zoning Commission

WHEREAS: The Town of Chesapeake Beach Planning and Zoning Commission (hereinafter the Planning Commission) "shall advise the Town Council on all matters relating to the orderly growth of the Town of Chesapeake Beach." Town of Chesapeake Beach, MD Code (hereinafter Code) § 290-31(A) Purpose; and

WHEREAS: The Planning Commission "shall [p]repare and recommend a Comprehensive Plan for the Town of Chesapeake Beach, and review and update said plan at least once every six years." Code § 290-31(A)(1); and

WHEREAS: The Town's Comprehensive Plan 2010 Update was adopted on January 20, 2011 and must be reviewed every 10 years. Md. LAND USE Code Ann. § 3-303(a) Required review; and

WHEREAS: Adoption of zoning laws, planned development ordinances and regulations, subdivision ordinances and regulations and other land use ordinances and regulations shall be consistent with the Comprehensive Plan. Md. LAND USE Code Ann. § 3-303(b) Implementation. review; and

WHEREAS: The Planning Commission began the process of updating the Comprehensive Plan by holding Town Workshops on September 12 and 18, 2018, during which five themes emerged, one of which is "Preserving and Enhancing our Small-Town Charm."

https://www.chesapeakebeachmd.gov/sites/g/files/vyhlf4261/f/uploads/vision_2040.pdf ; and

WHEREAS: The direction provided by the workshops, and subsequent work on the update to the Comprehensive Plan, require a wholesale rewrite of the previous, Comprehensive Plan 2010 Update; and

WHEREAS: While updating and rewriting the Town Comprehensive Plan, the Planning Commission must also complete its routine workload; but since 2018 has experienced a turnover of all but two Commissioners, has replaced the Chairman and Vice Chairman three times, and meetings were cancelled for four months in 2020 due to the COVID pandemic; and

WHEREAS: The Planning Commission recently recognized a need for near-term interim actions to mitigate against the time necessary to address the challenges of incorporating the express desires of the public into the next Comprehensive Plan update:

(A) At the September 23, 2020 meeting on the Land Use section of the Comprehensive Plan update, there was extensive discussion of actions necessary to preserve small-town charm including limiting building heights, reducing density, and designation of resource conservation areas.

(B) The November 12, 2020 agenda included "discussion on zoning & height limits."

(C) The December 2, 2020 Comprehensive Plan work session included a lengthy discussion of building heights in the Town Center and Maritime Mix Use areas, types of family structures to be allowed in residential zoning districts.

(C) The December 15, 2020 agenda included two motions (below) which were subsequently deferred to a future meeting to accommodate the routine business of a "Review of Revisions to the Final Site Plan for lot 1 & residue tract one, Rod & Reel, Inc., Hotel and Resort Redevelopment Project."

(1) "Motion to recommend that the Town Council amend Chapter 290 of the Town Code of Chesapeake Beach, Zoning Ordinance to limit the height of all new buildings within all zoning districts within the town to 35 feet."

(2) "Motion to include in the draft Comprehensive Plan proposals that would not permit new residential development in the Plan's proposed town center marina area and permit no new housing except single family buildings in existing neighborhoods currently zoned residential village but permitting the currently planned build-out of stream walkway in Richfield Station (54 lots), the townhouses in Richfield Station Crestview (48 lots) and the Heritage (72 lots)."

(D) The January 27, 2021 Planning Commission meeting was devoted to a short-fused controversy (Short Term Rentals) raised by the public and the Town Administration, and no work advancing the Comprehensive Plan was planned or completed, and

WHEREAS: The Planning Commission, after extensive study and deliberation in open meetings and work sessions, anticipates that it will recommend a revised Comprehensive Plan and implementing ordinances that will address the significant foreseeable challenges the community is and will face, including among others:

- (A) Rising groundwater tables, storm damage potential, increases in the projected depth and extent of flooding and storm surge, and the threat to public and private infrastructure and buildings related to rising water levels in the Chesapeake Bay,
- (B) The instability and potential erodibility of steep slopes, shorelines, and lands "made" through the historic reclamation of marshes and the irreparable loss of scenic natural beauty caused by the clearing of forests and poorly planned development,
- (C) Proposals for construction of large and tall buildings that would degrade the Town's scenic vistas and the view of the water which are vital to the aesthetic and cultural values of Chesapeake Beach and antithetical to the public's desire to "Preserv[e] and Enhanc[e] our Small-Town Charm." ,
- (D) The paucity of vacant or undeveloped property to address the existing deficit in neighborhood park space,
- (E) The adoption of new standards to guide the design of future buildings and building sites into ways that preserve the character of the Town;
- (F) The safety and convenience of walking in Town generally and along MD Route 260, within the areas zoned for commercial development where the calming of traffic speeds is insufficient, and the quality of the pedestrian environment is poor; and

WHEREAS: In order to address the aforementioned challenges and others, the Planning Commission's emerging recommendations and policies, are departing in significant ways from the currently adopted plan and Zoning Ordinance, including in the areas of land use, development intensity, the height of buildings, and the protection of environmental resources; and

WHEREAS: The Planning and Zoning Commission endeavors to have a draft of the revised Comprehensive Plan ready for public review in 2021, and a public hearing and approval by the Town Council, Calvert County and the State of Maryland in 2022; and

WHEREAS: The Planning and Zoning Commission also has the authority under the Town Code, Chapter 290 (Zoning Ordinance) and Chapter 245 (Subdivision of Land), to review and take action to approve or deny development site plans and subdivision plats respectively; and

WHEREAS: On January 29, 2021, the Town received, in one delivery, applications for four separate major development site plans and one major subdivision plat, and the Planning Commission has determined upon advice of the Zoning Administrator that such an unprecedented project submittal imposes an administrative burden on the Planning Commission which would either forestall the timely completion of the Comprehensive Plan and any implementing ordinances, or foreclose the opportunity for the public participation and deliberation on the draft plan the Commission believes is in the public interest; and

WHEREAS: The Planning Commission further finds that the unprecedented submittal of the five separate development applications is timed on the part of the applicant to obtain development approvals before the new Comprehensive Plan and implementing ordinances can be considered by the public, deliberated upon by the Planning Commission and adopted by the Mayor and Town Council; and

WHEREAS: In light of the aforementioned challenges and informed by the aforementioned deliberations, the Planning Commission believes (1) such development proposals and other major projects could prove to be poorly planned and harmful to community health, safety and wellbeing, (2) the challenges the Town is seeking to address could be compounded by major development projects that are not in tune with the new Comprehensive Plan or compliant with forthcoming ordinances and guidelines, and (3) intensive development within the Town's coastal areas, or on forested land or hillsides, can worsen risks and foreclose opportunities to reasonably manage private development and program essential public infrastructure; and

WHEREAS: The Planning Commission has determined that it is in the public interest to preserve the status quo until the new Comprehensive Plan and implementing ordinances are completed, transmitted to the Mayor and Council, and then adopted;

THEREFORE, BE IT RESOLVED THAT:

The Town of Chesapeake Beach Planning and Zoning Commission recommends that the Mayor and Town Council adopt an ordinance causing a moratorium to be placed on the Planning Commission's acceptance and consideration of any applications for development projects requiring a tentative sketch plan, a site plan or a subdivision plat; except for certain properties and development activities that are of record (Grandfathered) prior to the date of adoption of this moratorium (as defined in Code §245-7 and §245-6, respectively).

The Planning Commission further recommends that the moratorium not apply to reviews, revisions and approvals that do not require Planning Commission consideration but are of such minor and routine nature that, under the Code, can be approved by the Town Zoning Administrator. Neither should the moratorium restrict the Planning Commission from initiating work related to its assigned responsibilities under the Town Code.

The Planning Commission further recommends that the moratorium remain in place until the first of either: (1) the Town Council's adoption of the new Comprehensive Plan and implementing ordinances, most notably amendments to the Zoning Ordinance and Zoning Map, or (2) the expiration of twelve months from the date this moratorium becomes effective.

Approved on _____, 2021

Members of the Planning and Zoning Commission

Larry Brown, Chairman

Laura Blackwelder

Cynthina Greengold

Jonathan Evans

Jeff Larsen

Kathleen Berault

Law Offices of Eric Blitz

9 Lantern Circle
Parkton, Maryland 21120
410-812-7265

Eric J. Blitz, Esquire
Email: blitz.eric@gmail.com

February 23, 2021

Chesapeake Beach Planning & Zoning Commission
Town Hall
P.O. Box 400
Chesapeake Beach, MD 20732

Re: Site Plan Reviews; Proposed Moratorium

Chairman Brown, Members of the Commission:

I write to you today on behalf of my client, the Rod & Reel, Inc. On Friday, February 5, 2021, the civil engineer for the Rod & Reel received an email from the Zoning Administrator indicating that the review of previously submitted site plan applications for Stinnett Place, Home Place, Harbor View North, Harbor View South and Harbor View West were all being delayed pending consideration of a moratorium on the processing of major development plans. As far as I can tell, while nominally applying town wide to everyone, this action appears to be directed exclusively at my client, unfairly picking on one property owner's remaining long-planned development properties through the improper and imprudent use of the zoning power.

The reason offered by the Zoning Administrator for this delay in processing legally submitted applications is that somehow the administrative review of site plan requests curtails the Commission and staff's ability to work on the revisions to the Comprehensive Plan. That might be true if the Commission and staff sought to review all five projects at once and on the same night, but it is hardly a reasonable justification to delay the review of all projects for nine, much less twelve months, through the use of the radical step of a town-wide moratorium. Please note that I don't blame Mr. Jakubiak for this strained justification, as he is a consummate professional. I am sure he was just doing what he was told to do.

None of the plans submitted are particularly complicated. They don't raise novel issues or concerns and have been a part of the Comprehensive Plan's anticipated development for decades. The Stinnett Place project is 11 town homes on two lots on which the bulk of the preliminary site work has already been completed. There is nothing out of the ordinary or time-consuming about the review of such a project. My client suggests that you take each project one at a time, starting with the simplest, and in so doing there should be no disruption to the Commission or staff's work on the Comprehensive Plan update. Even if the staff and Commission applied its 6-week review schedule to these projects one after the other with no overlap, it would not equal a 12-month delay, yet the proposed moratorium has all 5 projects halted dead in their tracks for the entire moratorium period. We would suggest the following order of consideration: Stinnett Place, Home Place, Harbor Vista North, Harbor Vista South and then Harbor Vista West.

While we respect the limitations on administrative functions imposed by COVID-19, that appears not to be the reason for the proposed delay. Instead, the Zoning Administrator referenced that "...these projects if implemented have real potential to compound the challenges the Planning Commission's work on planning and ordinance drafting is seeking to address." This last phrase appears to reference proposals I have seen suggested that the Town impose a complete ban on multi-family dwellings and a severe reduction in the maximum height limitations impacting the commercial and maritime district.

While I previously thought such suggestions were probably a fringe minority position--that the Town should discard over 50 years of comprehensive planning and replace it with one that includes a complete ban on further multi-family uses and a height limitation impacting the Town Center's commercial and maritime district, the proposed radical step of a moratorium suggests that these changes to the Comprehensive Plan may be under serious consideration by the Commission and the Town Council. That would be imprudent as a matter of planning and unjust as a matter of reversing decades of the Commission's guidance on land use policy upon which property owners justifiably relied upon.

The agenda for February 24, 2021 meeting, which includes a proposed resolution on a moratorium, makes clear the true intent of the proposed moratorium and to whom it is specifically targeted. The suggestion that a moratorium is necessary to prevent the Donovan Family's projects from conflicting with a future comprehensive plan contains the audacious presumption that the Commission has already made up its minds on elements of the future plan that will make these plans impossible. It prejudices the outcome of Commission's further work on the comprehensive plan, it prejudices the content and public input in the public hearings on the final plan recommendation, it prejudices the Commission's ultimate vote on the full comprehensive plan, it prejudices the Town Council's vote to adopt it, the Mayor's assent or veto to that adoption, and the subsequent Zoning Ordinance implementation, all before significant portions of the new comprehensive plan's legally required elements are completed and public hearings on the final plan occur. To presume such outcomes when all of the required elements of a plan have not been formulated certainly establishes that the Commission is not considering all the required elements comprehensively before making specific policy recommendations. To make proposals to change specific regulation in the zoning context before the planning policy recommendations that integrates all the legally required elements of a comprehensive plan is improper.

The resolution itself contains these patently unfair presumptions. In the first whereas clause of page three, the resolution recites that the Commission's "emerging recommendations and policies, are departing in significant ways, from the currently adopted plan and Zoning ordinance, including in the areas of land use, development intensity, the height of buildings, and the protection of environmental resources." That language may have been added to the resolution for the benefit of the moving party, but it surely shouldn't be the practice of the Commission by an affirmative vote on this resolution. A comprehensive plan is just that, comprehensive. It is complete when all elements are completed, which this Commission has not done. The public testimony at future hearings is to be considered, not prejudged. The assumption that you can vote to piecemeal legislate through piecemeal comprehensive planning is unfounded. It isn't as if the Commission passes the plan on its own authority, it merely recommends it to the Town Council. The predicates to any and all recommendations in such a plan are that all the required elements of a comprehensive plan have been considered when making the recommendation. To do otherwise is to confuse and conflate the legal separation between planning and zoning.

On the timing of this process, it should be noted that Maryland law allows comprehensive plans to be adopted every 10 years, but Section 3-305 of the Land Use Article makes it clear that 10 years is the minimum time between comprehensive plans. Municipalities can pass laws to shorten that period, which the Town of Chesapeake Beach has done. Pursuant to Section 290-31A(1) of the Zoning Ordinance, the comprehensive plan of Chesapeake Beach is to be amended every six years. So, the Commission is proposing a moratorium to limit private property rights so it can take another year, to work on a plan that it started over 2 years ago, for a plan that is now over 4 years late according to its own zoning ordinance, all on a presumption that some proposals to completely overhaul 50 years of comprehensive zoning are going to pass. Furthermore, in the past it has taken the town well over a year and a half or two years to implement a new Comprehensive Plan by adopting a new zoning ordinance. So, while the proposal for a moratorium may now be 12 months or the adoption of the new comprehensive plan, whichever is later, it is very likely to require many years of extensions.

The moratorium appears targeted to two ideas that are being cherry-picked from the zoning power and presumed in the planning process: a complete or near complete ban on multi-family dwellings, especially in the Maritime District which they have been planned for decades, and a 35' height limitation to remove the 70' height limitation that has also existed for decades. In this letter, I will address how this proposed moratorium for these proposed purposes are at odds with all of the previous 50 years of comprehensive planning in Chesapeake Beach and why it is unfair to apply to the Donovan family's properties.

A complete ban on multi-family dwellings would constitute a form of exclusionary zoning and would be inconsistent with one of the mandatory visions for comprehensive planning in Maryland, which is found in MD Code Ann. Land Use §1-201(7) which reads: "(7) housing: a range of housing densities, types, and sizes provides residential options for citizens of all ages and incomes;..." *Id.* As I will elaborate below, multi-family housing has been a part of the Town's planned for housing types since the inception of the Town exercising the zoning power and is a necessary ingredient to meet a variety of housing needs and to maintain an orderly and effective infill development, especially in a Town which has limited external growth opportunities.

Imposing a moratorium merely to keep open the option to impose such a drastic realignment of the Town's comprehensive plan is improper and unfair. The Donovan family has the right to be treated the same as everyone else in Town and have its properties subject to the regulations in effect at the time the applications were submitted, yet the timing and scope of the proposed moratorium's appear targeted primarily at treating the Donovan family differently.

It is important to recognize that all five of the Rod & Reel's proposed projects are substantially similar to development plans which the Town staff and the Planning and Zoning Commission have been aware of and reviewed before, often for decades. These development plans have been identified and planned for within the previous Town comprehensive plans. Furthermore, consistent with the State of Maryland's mandated Visions of Smart Growth included within comprehensive plans since 1997, the Town has developed infrastructure and recreational facilities in the areas that were intended to meet the needs of intense residential development. A fundamental aspect of comprehensive planning is to agree on long-term plans that allow both property owners and municipal governments to adjust their activities to suit such plans. With respect to the mandatory inclusion of Maryland's Smart Growth planning principles, the clustering of higher density development in the Town Centers (and the Town planning of coordinated infrastructure

through comprehensive planning) is designed to protect more rural and sensitive areas from development pressures.

Multi-family Dwellings and the 70' height limit in the Commercial and Maritime Districts Have Been A Part of the Comprehensive Plan for Decades.

Most of the current residential property owners in the town are the beneficiaries of development proposals that were opposed at the time by the then-existing homeowners, who worried about traffic, the environment, and the need to preserve an old town, or small town, atmosphere. It is a typical but a deleterious impulse that citizens who move to a location seek to close the gates behind them to prevent others from moving to a community as they did, but it is an impulse that smart planners know must be tempered by the need for growth, replenishing the housing stock with new homes, providing diversity in housing types, a dynamic economy, and an expanded tax base.

People complained about the proposed construction of Chesapeake Station, Windward Key, Richfield Station, Bayview Hills, the ballfields, the community center, and countless other projects large and small when they were proposed, but then those became the basis upon which the community was organized and people continued to enjoy their lives in Chesapeake Beach. When such developments are proposed they are "housing". When they are completed, they are someone's home.

Chesapeake Beach began its modern zoning in 1972, following the adoption of its first comprehensive plan in 1971 (there had been some early zoning code attempts in the late 60's which had been rescinded). At that time, Chesapeake Beach was described as "a small urban community of predominantly single-family homes, resort related commercial activities, a limited number of stores and service businesses, and a great deal of open land." Page 5, 1971 Chesapeake Beach Comprehensive Plan.

From that beginning the Town planned for greater and multi-faceted development. According to the 1971 Chesapeake Beach Comprehensive Plan, the single-family population of Chesapeake Beach in 1970 was 934, though they recognized that there were additional residents not shown in census statistics due to the approximately 134 'seasonal homes'. The residential housing inventory at that time was dominated (91%) by single family homes but only 47% of those were owner-occupied, reflecting the resort heritage of the community. At that time, 87% of the land in Chesapeake Beach was undeveloped. *See* pages 16 and 17, 1971 Chesapeake Beach Comprehensive Plan.

The Community Goals announced in the 1971 plan, a variation of which has been included in every single Town comprehensive plan since, included "[t]he major goal is to create a community with the maximum concern for those qualities which will enhance the town's value, first, as a place to live, and second, as a place with tourist and vacation appeal. The goal is to produce a community with a scenic atmosphere and an attractive setting for homes, yet retain and improve the community's tourist oriented economic viability." It is with that in mind that multi-family dwellings were included, from the beginning, in the context of realizing this vision. It reflected the goal as stated in the plan that there be:

"a choice of housing types for Chesapeake Beach residents and visitors is proposed to meet different and changing needs of families. We want, particularly, to provide a range of housing choices for retired and semi-retired residents and potential residents." *See* page 26, 1971 Chesapeake Beach Comprehensive Plan.

At that time, since most land was undeveloped, the 1971 Comprehensive Plan recommended clustered development for residential development, to increase the density in some areas rather than individual lot development that spread single-family dwellings uniformly. This was the beginning of the idea of the "Town Center" and it gained its direction by focusing density via planned unit developments and the clustering of residential density, including a recommendation for a variety of different housing to include townhouse and apartment developments (then, on a limited scale). The High-Density area was thought to have an appropriate density of 12.4 families per acre (which should be considered as a scalable ratio relative to the existing populations and development context for 1971). *See* page 30, 1971 Chesapeake Beach Comprehensive Plan.

Over time planning changes to meet new conditions, so my recitation of the 1971 plan is not to be considered an argument that it necessarily dictates the results of planning 50 years later, but it provides the starting context that I will describe for future plans. At that time, the density was primarily directed towards the then-existing major arterial roadways of MD Route 260 and 261, which through successive plans adapting to changes in priorities and infrastructure development, has moved more towards maritime and commercial districts. The point is that multi-family dwellings and the clustering higher density residential development has been a part of Chesapeake Beach zoning for over 50 years.

The Critical Area Protection Program was adopted by Chesapeake Beach in 1989. In addition, 100 acres of land were allotted to Chesapeake Beach for growth allocation. The land designations of the critical area, between IDA, LDA, and RCA were intended to become more intense over the future of critical area planning, not less. It was never the intent of a designation to go from more intense to a less intense designation, absent a finding of 'mistake', which obviously does not apply to any of the Donovan properties. But just as importantly the intent of the critical area designations is to locate new intense development near or adjacent to existing development, which is exactly what the planning applicable to the all five of the Rod & Reel's proposals achieves. They were all slated for more intense development, consistent with the goals of the Town's Critical Area Program.

For the 1990 Comprehensive Plan, the full integration of the smart growth initiatives along with the coordination with Calvert County's 1989 drafts of the Northeast Sector Master Plan, continued the density patterns in the center of town, along with planned-for improvements to infrastructure that were coordinated with these plans. This included the proposed upgrade to the Route 260/261 intersection and the community center. In the 1990 Comprehensive Plan, the Commission identified that Chesapeake Beach's present market trend for residential housing was towards multi-family dwelling structures, which included, "...low, medium and high-rise buildings which can accommodate either rental or purchase properties." *See* Page 2.4, 1990 Chesapeake Beach Comprehensive Plan.

In the 2002 Comprehensive plan, the Commission and the Town continued to plan for and encourage multi-family development. Two of the three primary major primary development projects that were noted as "in planning/design" were the mixed use (including residential multi-family) at Fishing Creek Landings Marina and the 90-unit Horizons on the Bay. Both projects included buildings of significant height but not exceeding the 70' height limitation. It identified the Marina property as an existing commercial use pattern of development and recommended that it be recharacterized and planned for as High Density Residential (8-20 units/acre). It showed the existing sewer plan, including the sewer mains serving all of the areas of my client's proposed developments. At that time, nearly 600 residential units were

already programmed for construction. 150 more were planned for as infill and/or development on currently undeveloped parcels, most of which were the Donovan Family's proposed projects. Specifically, for the Marina the plan identified the potential for a 'vibrant and economically sustaining development within the marina areas along Fishing Creek. Space exists for a sizeable increase in the intensity of the marina and related tourism development. With good urban design, additional development may become an attractive asset within the Town's Center." See Page 30, 2002 Comprehensive Plan.

The 2002 Comprehensive Plan also acknowledged an important part of critical area planning and practice in smart growth areas, that natural areas could define the edges of intensely developed areas, so that they could abut each other and still provide the protection of areas through mitigation techniques. See Page 35, 2002 Comprehensive Plan. That occurs at all of the proposed developments except for Home Place. Harbor Vista North, West and South are all in IDA zones that abut RCA zones or Fishing Creek itself. Stinnett Place is in the IDA which is adjacent to the RCA of the marsh across the road. This makes good planning sense in smart growth areas. The 2002 Comprehensive Plan acknowledged that when it stated:

"When a historic settlement pattern prevents certain underlying sensitive areas from fulfilling their natural functions, it is often preferable to continue that development pattern. This is especially the case when it is clear that public health and safety can be ensured, adverse impacts to other resource areas can be minimized, other important public needs or objectives must be met, and importantly, over the long term, improvements can be made to those underlying sensitive areas." See Page 35, 2002 Comprehensive Plan. (emphasis added). That is exactly what the Donovan family's mitigation efforts achieved and why the development of the Marina was always planned for: to develop areas of historic development to better ensure the ability to protect other sensitive areas from development, with mitigation of impacts (stormwater filter, phragmites management, reduction in impervious surfaces) on those areas. This included the concept of clustering of residential (using unit density, rather than rigid minimum lot sizes) development. It is quintessential smart growth area critical area planning. This clustering principle was also acknowledged in the 2010 Comprehensive Plan.

The 2002 Comprehensive Plan continued the proposition that multi-family dwellings should be part of the housing mix in Chesapeake Beach. The resulting ordinance (not adopted until 2004) included the overlay bonus density districts which, have as their explicit purpose, to promote greater flexibility with respect to permitted residential density, allowing for higher density residential development and greater building heights under certain conditions, than is permitted in the underlying district. Those zones facilitate the greater density of multi-family dwellings and continue to be a part of the current planning and zoning regime. The 2004 Zoning Code followed the 2002 Comprehensive Plan model for residential development intensities and identified the Marina District, which includes the Harbor Vista West, North and South, to have structures with sufficient height (70' maximum) to reach the planned for density. Special conditions for Townhouses to make them more feasible were included in Section 5-113 Design Standards-Townhouses.

The proposed ban on multi-family dwellings across all zones, regardless of the character of the existing housing, is simply irrational. Comprehensive planning has never been viewed as starting with a plan from a completely blank slate, but always used the status quo development pattern as the context for all future plans. The Town already has multi-family dwellings that were a response to past comprehensive plans. To impose a complete ban on them now, is treating one property owner differently than the owners of all previous developments.

In Chapter 3, Goals and Objectives, of the 1990 Comprehensive Plan, the Town reiterated a major goal of zoning since the 1971 comprehensive plan: “making Chesapeake Beach a nice place to live.” The means to achieve that goal were stated within the Objectives of Residential Development, which included improving the quality of the residential units (which my clients proposed developments would certainly accomplish), but also increasing the kind and scale of development. This quote is instructive:

“There is a need for a variety of housing types in a community to meet different residential requirements. Although Chesapeake Beach has been predominantly single family in character, well planned townhouse and apartment developments are required to preserve the natural environment and provide for integrated community and commercial activities. In addition, every effort should be made to balance the value of housing in the Town. There may be the opportunity now, as never before, to attain this objective, considering the intense housing market in Chesapeake Beach.” 1990 Comprehensive Plan, Page 3.3, Chapter 3.

From that concept, followed development of the Town Center infrastructure and ideas that had been in place since 1971, to make the center of the Town the core development area and to build supporting recreational facilities. As far back as 1971 the goal of bringing a community center and ballfields to support residential living had been a part of the long-term goals and the 1990 Comprehensive Plan sought to achieve those goals with recommendations for the ballfields. After the 1990 Comprehensive Plan, the Town built water and sewer infrastructure to serve intense residential development in the center of town, it helped in the planning, acquisition and building of the Community Center, and it developed the ballfields. All of these were designed for the planned and hoped-for continued infill residential development that would be more intense in the center of town.

Similarly, in the 2004 Zoning Ordinance, townhouse and multi-family dwellings were permitted uses in the R-HD, R-V, C (Commercial), M (Marina) and RPC zoning districts. Greater density for multi-family and building heights was encouraged for bonus density overlay districts, and in the Marina District the maximum height was set at 70 feet, which has continued to be that way in the 2010 Comprehensive Plan and Zoning Ordinance, representing two decades of planning for these areas to be the most intensely developed portions of the Town.

The Marina properties that would include the Harbor Vista West, North and South developments were all targeted to be the most intense areas of development, the Marine Commercial High-Density District, and from that designation plans were made by the Sissons (Fishing Creek Landing Corporation) who developed plans for all these properties which were reviewed by the Planning Commission and Town staff.

The 2010 Comprehensive Plan explicitly identified the planned for development of the 32 multi-family units at Stinnetts, the Home Place development of 24 units of multi-family and 1 single-family dwelling, and the Harbor Vista North portion (16 units at the time) and Harbor Vista West (included as a separate line for Harbor Vista North (100 units at the time) of the Marina development in the expected private development upon which the Town’s planning was predicated. Harbor Vista South was mentioned but only as a possibility. *See* Page 7, and Table 22, 2010 Comprehensive Plan.

The 2010 Comprehensive Plan also noted that multi-family developments have been responsible for much of the growth (called for in the 1971 plan and all subsequent plans) in Chesapeake Beach and by the 2000 census data the Town had reversed the problem of so much residential housing stock (47%) not being owner occupied as the rate had grown to 77%. *See* Page 12, 2010 Comprehensive Plan. That should not be lost on this Commission when considering wholesale limitations on multi-family housing, because multi-family housing creates the diversity of housing types necessary to maintain high owner-occupancy.

Finally, with respect to the Marina developments, the 2010 Comprehensive Plan continued the emphasis on clustering density in the center of Town and with respect to the Marina's impact on future growth, concluded that:

"Marina Development

Potential exists for vibrant and economically sustaining development within the marina areas along Fishing Creek. Space exists for a sizeable increase in the intensity of marina and tourism related development. Through the use of good urban design, additional development may become an attractive asset to the Town's Center." *See* Page 81, 2010 Comprehensive Plan.

As a realization of that potential, the Donovan Family has taken steps to develop the marina areas with good urban design. Multi-family units are explicitly allowed at density in marina area in the zoning ordinance passed to implement the 2010 Comprehensive Plan. The Plan called for the property owner to act, the owner acted, and now the Commission is seeking to change the applicable rules at this late date.

I am not sure why Chesapeake Beach didn't adopt Growth Tiers associated with the **Sustainable Growth & Agricultural Preservation Act of 2012** but if it had, **all the areas of the Donovan family's proposed projects would have been** included in the Tier 1 Growth Tiers, as those areas had active public sewer systems and were designated for growth and the municipality was included as a priority funding area that is served by public sewerage systems. MD Code Ann. Land Use §1-508(a)(1). Chesapeake Beach qualified as a priority funding area by definition as a municipal priority funding area, consistent with Smart Growth's emphasis of locating intense development in the municipalities with public sewage services.

In summary, the Town's comprehensive planning process from the inception of zoning in 1971 has included multi-family dwellings and greater height in the center of town. The 'small town charm' that every plan has enunciated has explicitly included multi-family dwellings and for many years, a 70' height limitation, as part of that small town charm. Those elements were found by past Commissions to be consistent with, not in contrast to, a small-town charm.

The Donovan Family and the Town Both Took Substantial Steps in Reliance on Past Comprehensive Planning to Develop These Specific Properties with Multi-family Uses.

As noted above, a part of Maryland law on comprehensive planning is that "The plan shall serve as a guide to public and private actions and decisions to ensure development of public and private property in appropriate relationships." MD Code Ann. Land Use §3-201(a)(3).

In reliance upon the policy direction of the Town's past comprehensive plans, the Donovan family sought to develop the properties which are the subject of the Rod & Reel's current applications and took

substantial steps to realize those developments, including prior site reviews, site plans, and even zoning permits. I will review the history of each of these properties.

Stinnett Place:

Stinnett Place is in the R-HD District, immediately adjacent to other multi-family dwellings in the Seagate townhouse community. Placing more multi-family uses on the Stinnett properties is consistent with the zoning and the context of the neighborhood.

The Stinnett Place development was the site of a commercial use (Stinnett's Restaurant) from 1936 through 2003, when after being irreparably damaged by Hurricane Isabelle, it was torn down in anticipation of the new development plan. In 2006, residential development of the site was proposed in coordination with the Town and Planning & Zoning Commission and was known as the Stinnett Place condominiums, which was two four-story buildings containing 32 units (46 would have been allowed under the then current zoning, but there was a desire to keep the height down to four stories). Those plans went through site plan review and approval and ultimately the issuance of a zoning permit being issued on July 6, 2006. Initial site work was completed in preparation for that development, but economic circumstances changed due to the 2008 financial crisis and the project had to be put on hold. Historically, the property had the bonus overlay district applicable to it so that the density of residential development was even higher than it is now. However, in contrast to the recommendation of the Planning & Zoning Commission coming out of the 2010 Comprehensive Plan, the Town Council, with little fanfare and no prior notice to the owners, amended the plan on its own to remove the Bonus Overlay District from the Stinnett property in 2013. The zoning permit was eventually cancelled in 2016.

To help prepare the site for development at the time, the Donovan Family worked with the Town and the State to coordinate the Town's infrastructure and Maryland State Highway's need to raise MD 261 to cure historic problems with drainage of water that was impacting the entire area. Before the improvements, people often could not gain access to the Seagate Townhouse development without driving through standing water. This was impacting the Town's water and sewer infrastructure, so the Town undertook to tie their new infrastructure and the Donovan's tied their development grade to the new State Highway elevations. This was done in close coordination with all the parties, and resulted in the road being raised 4 to 5 feet, as well as the Stinnett Property in some places. The Donovans rerouted their water and sewer infrastructure to accommodate the approved buildings to the new elevations. The Donovans also facilitated the solution to the Town's infrastructure needs by giving the Town an easement for a pump station and backup generator and drainage system in the north side of 31st Street. This required a substantial amount of money to be spent by the Donovans and it was all done in anticipation of the approved plans and coordination with the Town.

Home Place:

In July of 2006, the Donovans went through the process of Town Council making findings to use critical area growth allocation to accommodate this development, with the 7.42 acres of LDA being converted to IDA. This was in anticipation and coordination for a development of 2 condominium buildings with 12 units each and one single-family home. A subdivision plan was completed. The preliminary site plan was done in 2006 and the final site plan was completed in 2009. Again, the financial crisis of 2008 was what stopped this development from being completed. Other than a recent demolition permit for the house,

no further work was done on this property until the market began to recover and new plans were submitted recently.

The Harbor Vista Developments:

For the Donovan's Harbor Vista North, Harbor Vista South, and Harbor Vista West applications, all located at the marina property, the plans submitted are substantially similar to the plans developed as far back as the early 2000's, when Fishing Creek Landings Corp., owned by long-time residents Dave and Pam Sisson, purchased the marina parcel from the Town. It should be noted that even before then, the Town had taken over ownership of the marina parcel when the prior owners had tried and failed to develop the marina parcel with 136 townhouses, which had also been approved by the Commission as consistent with the Comprehensive Plan.

The Fishing Creek Landings Corp. plan was known as the Harborvista Condominiums at Fishing Creek Landings Marina. It included a four-story building exactly where the current Harbor Vista North proposal is located, which had 16 residential multi-family units over top of ground level commercial. Where the current Harbor Vista South project is located, Fishing Creek Landings plan was to build a six-story building holding 24 condominium units of approximately 66,588 SF.

To support such plans, Fishing Creek Landings Corp. initiated the process to establish the buffer exemption area designation with the Town and Critical Area Commission, which was a slow process but was finally granted by the Critical Area Commission in October 1, 2003. That designation was the genesis of the buffer management plan necessary to proceed with critical area mitigation to support the development plans of the revised site plan, which included a phragmites control plan in the buffer, along with dense plantings in buffer strips within the BEA portions, a sand filtration and storage system for stormwater runoff behind the bulkhead (the plan reduced the impervious surface), install a new bulkhead, removal of the existing boathouses and travel lifts and some adjustments to some piers and mooring piles.

The Sisson's retained McCarthy and Associates to do a detailed identification of tidal wetlands on the western property boundary, as that area had not been previously officially mapped, which is where the Harbor Vista West proposal is to be located. The Sissons also obtained a private wetland permit 03-WP-1550 (R) and a Corps of Army Engineers permit (2004) to facilitate that work. The Sissons then went through and obtained final site plan approval from the Commission on all of these proposals. Zoning permit 5315 was issued on 10/15/04 for the mitigation work, including the installation of a bulkhead, removal of fast land, backfilling behind the bulkhead and construction of the revetment on parcel A.

It was after all these permits were obtained and the development potential of the market stalled that Fishing Creek Landings Corp. sold the marina property to the Rod & Reel, Inc. The permits were all transferred to the Rod & Reel and the Corp of Army Engineers permit was retitled in January of 2006.

After the purchase of the Marina by the Rod & Reel, the Donovan family completed all the mitigation work for the Fishing Creek Landings Corp.'s proposed development, consistent with the permits, and at very substantial expense. It removed the two buildings and the travel lift, made the mitigation plantings, rebuilt the bulkheads and managed the phragmites, and installed the sand filtration device. Though not part of the mitigation per se, as part of the coordination for this development the Sisson's had negotiated an easement agreement with the Town for the railway trail, which included the plan to run the

sewer line extension to serve the proposed building where the current Harbor Vista West proposal is planned. The plan at the time was to continue the development that the Sisson's had initiated but the market began to shift dramatically and those plans had to be put on hold.

As late as 2016, the Town approved the site plan to develop Harbor Vista South with a 5-story building with 58 units. The needs for parking during the Rod & Reel construction required a delay in that plan and while the site plan approval was extended by the Commission for one year in 2017, it lapsed in 2018. At that time the proposed height of the approved building was 60'2" (below the longstanding 70' height limit). The project was approved because it was consistent with the comprehensive plan and the zoning ordinance. It was identified as a harmonious use by the Town staff for the residential and commercial and marina uses. A portion of the critical area mitigation was covered by the off-site mitigation plan that was adopted at the same time as the Rod & Reel, which mitigated stormwater runoff from Town properties and other private properties not currently being treated for a mitigation credit that far exceeded that needed by the Rod & Reel project's mitigation requirements and was to be applied to the Harbor Vista South development, so some of that expense has already been incurred.

In reliance on the long history of comprehensive planning in Town and often in coordination with prior development proposals, the Rod & Reel has purchased, at great expense, and the Town has sold, water and sewer capital connection charges (water and sewer taps) for these properties. The Town included those in their calculations of water and sewer infrastructure planning, including the current 2010 Comprehensive Plan. *See* Page 65, 2010 Comprehensive Plan. The purchase of additional taps to reach the current Marina West calculation was done by an agreement between the Town and Fishing Creek Landings on June 24, 2004 that was specifically tailored to the proposed residential development. The Donovans have purchased 5 water and sewer taps for Home Place, 28 water and sewer taps were assigned to Marina West via the purchase from Fishing Creek Landings Corp., and 32 water and sewer taps were purchased for Stinnett place (though some were later transferred to the Rod & Reel parcel).

The Town also participated in the shared parking plans for the Fishing Creek (now the Rod & Reel marina property), ballfields, Town waterpark, the parking for the boat ramps and the access, and the community center. These were negotiated agreements that were reached by and between the Town, Fishing Creek Landings Corp., the State and Calvert County, including easements, and were predicated upon the future plans of Fishing Creek Landings Corp. to develop all of the Marina properties.

Finally, it should be noted that Harbor Vista North is a part of the 'framing' of Gordon Stinnett Avenue that was called for in the 2010 Comprehensive Plan. *See* Page 86, 2010 Comprehensive Plan. Framing is a planning concept that encourages building up to roadways with sidewalks, to encourage pedestrian travel.

The Height Limitation.

While the Town of Chesapeake Beach has included abstract concepts like protecting views in many of its comprehensive plans, those same comprehensive plans have been operationalized and realized by Zoning Ordinances that allowed 70' high buildings within the core of the intended high-density district, what is now labeled the Maritime District. Seventy-foot buildings were judged by past planners to be consistent with, not 'degrading the scenic vistas' of the town. For a long time, the Town followed the maxim if you want a property with a water view, you need to buy a property on the water. Other people's

private property should not be held hostage to those who want a view of the Bay but haven't purchased property on the Bay. That isn't to say that planning doesn't have a role in limiting heights, but the 70' height limitation for the highest density district has been a consensus position for a very long time in Chesapeake Beach.

None of the proposed developments of the Donovan Family get to the 70' height limitation, but these long-planned for developments would be rendered pointless with a 35' height limitation. Where the proposed developments will be built, they will not impede the view of the Bay by almost any property owner in Town. The tallest building proposed would be Harbor Vista West, and there are no properties to the west of it that would have their view curtailed. If people object to seeing a building no matter what, then even a 35' building will be seen and objected to, giving the objector a veto right over the private property of another. This height limitation appears to be a thinly-veiled attempt at merely targeting the development plans of the Donovans, with a pretense that the general public good is being served. It will not be served by a 35' limitation. The quality and density of the housing stock will decline and people who do not want a single-family home, especially those over 55, will not be able to find the apartments and townhouses that are now in very high demand in Calvert County.

Summary

The proposed moratorium is predicated upon justifications that are not reasonable policies. It seems tailored to only impact one property owner, to stop property developments that have been part of comprehensive planning for decades, in order to enact a ban on multi-family dwellings that is so radically inconsistent with the comprehensive planning for the past 50 years in Chesapeake Beach that it is hard to believe it is real. When you purchase properties based upon the plans set forth in comprehensive plans and zoning ordinances, radical changes like this create the injustice of changing the rules in the middle of the game. The citizens of Chesapeake Beach should reasonably expect that its Town government act with integrity. They have the legitimate expectation that the regular update to the comprehensive plan be updates, not wholesale reimagining of the use of other people's property. I urge the individual Commissioners to vote this resolution down. The Donovan's stand ready to work with the Commission to address all reasonable concerns about the specific developments they have proposed. The Donovan Family has always stood for quality developments that bring value to the local community, and these developments will be no different. As noted in the beginning, if the Commission were to take each development one at a time, there should be no impact to the Commission's long-awaited Comprehensive Plan recommendations.

If the Commission is not persuaded by these arguments and wishes to nonetheless recommend the imposition of a moratorium on major development projects, given the nature of the proposed changes to the comprehensive plan that the moratorium seeks to serve, I would recommend and suggest that in addition to findings on exigency and need, the Commission should also consider the same (or similar) factors used when a Town Council makes findings for a reclassification, because that would be the functional effect. Those standards are enumerated below and are the ones used in MD Code Ann. Land Use §4-204(b)(1), which reads:

“(b) Reclassification. –

(1) If the purpose and effect of a proposed map amendment is to change a zoning classification, the legislative body shall make findings of fact that address:

(i) population change;

- (ii) the availability of public facilities;
- (iii) present and future transportation patterns;
- (iv) compatibility with existing and proposed development for the area;
- (v) the recommendation of the planning commission; and
- (vi) the relationship of the proposed amendment to the local jurisdiction's plan.”

I believe that if these types of factors are considered carefully, giving proper weight to the values of consistency with past planning, consistency with existing development patterns, smart growth, and basic fairness, that the proposed moratorium is an ill-advised policy that is inconsistent with those standards and values. A moratorium will harm the public perception of the Town of Chesapeake Beach. It sends the signal to everyone that the Town is not open to newcomers and is willing to change the long-standing regulation of land use patterns with radically new proposals that severely curtail property rights.

I request that this letter be submitted into the record as an exhibit during your hearing on February 24, 2021. I would also like to make a presentation on behalf of my client on the subject of the proposed moratorium, and would appreciate being added to the agenda. Please have staff let me know whether we can share our screens on zoom or how to provide any visual supplementation to our presentation.

Sincerely,

/s

Eric J. Blitz

Cc: The Honorable Mayor Mahoney and Town Council of Chesapeake Beach
Christopher Jakubiak, Zoning Administrator
Holly Wahl, Town Administrator



OFFICE OF THE PLANNING AND ZONING COMMISSION

**MINUTES OF THE
PLANNING AND ZONING COMMISSION
FEBRUARY 24, 2021**

- I. Commission Chairman Larry Brown called the meeting to order at 7:00 pm. In attendance were Kathleen Berault, Laura Blackwelder, Jonathan Evans, Cynthia Greengold, and Jeff Larsen, Commission Members, Christopher Jakubiak, Planning & Zoning Administrator, and Sharon Humm, Commission Clerk.

II. APPROVAL OF THE PLANNING & ZONING AGENDA

MOTION: Commissioner Berault moved to approve the February 24, 2021 Agenda as presented. Seconded by Commissioner Evans, all in favor.

III. APPROVAL OF THE MINUTES OF THE JANUARY 27, 2021 PLANNING & ZONING COMMISSION MEETING

MOTION: Commissioner Berault moved to approve the minutes of the January 27, 2021 Planning & Zoning meeting. Seconded by Commissioner Blackwelder, all in favor.

IV. OLD BUSINESS

- a. Progress report on the comprehensive plan update – Mr. Jakubiak reported over the next three months he anticipates completing and submitting a final draft to the Commission by May. New sections such as transportation and housing will be presented for discussion. Mr. Jakubiak will forward the projected table of contents to the Commission.
- b. Motion to clarify the December 15, 2020 Commission's decision on the revised site plan for Rod-n-Reel properties, that such approval does not include proposed site plan revisions to the 1936 Bar and Grille sign or flags to be installed on or above the roof line of the various structures on the site, because the proposed revisions are not compliant with the Chesapeake Beach Zoning Code §290-22(h).

MOTION: Chairman Brown moved to reconsider the December 15, 2020 Commission's decision on the revised site plan for the Rod n Reel properties, in which the approval of proposed site plan revisions to the 1936 Bar and Grille sign and flags were included. Upon further review, it was discovered the sign and flags were not in compliance with the Zoning Code. Chairman Brown is proposing an amendment to the original decision to exclude the approval of the sign and flags. Seconded by Commissioner Berault, all in favor.

It was suggested the Applicant seek relief through the Board of Appeals.

- c. Motion directing the Zoning Administrator to prepare and present to the Commission a report including draft zoning and text amendments that clarify the Town prohibition on short term rentals; and includes draft alternative amendments that partially lift such prohibition.

MOTION: Chairman Brown moved to direct the Zoning Administrator to prepare a report that would include draft zoning & text amendments clarifying the Town prohibition on short-term rentals and draft alternative amendments that partially lift such prohibition. Seconded by Commissioner Berault. After Commission discussion, Chairman Brown motioned to table this until its March meeting where the Commission will discuss further.

MOTION: Commissioner Blackwelder moved to amend tabling this item and recommends the Zoning Administrator prepare the report. Seconded by Commissioner Berault. Ayes, Commissioners Blackwelder, Evans and Larsen. Opposed, Commissioners Berault and Greengold. **Motion Passes.**

Chairman Brown directed the Commission to submit any suggestions/recommendations to Mr. Jakubiak within the next two weeks.

- d. Motion to set a future hearing date on draft zoning text amendments to chapter 290 of the Town Code of Chesapeake Beach, zoning ordinance to limit the height of all new buildings within all zoning districts within the Town to 35 feet.

MOTION: Chairman Brown moved to place this as first item on the March agenda for discussion. Seconded by Commissioner Greengold, all in favor.

- e. Motion to remove residential development allocations in the Town Center and marina areas and to remove all multi-unit housing types in the residential village areas to preserve the ability to accommodate recreation and potential future commercial amenities in and near the Town Center. **Chairman Brown stated this item would be deferred to a future meeting.**

PUBLIC HEARING: The public hearing was opened by Chairman Brown at 7:45 pm on a resolution recommending that the Mayor and Town Council adopt a temporary moratorium on the Planning Commission's acceptance and consideration of applications for development projects. Mr. Jakubiak elaborated on the resolution and rationale in putting this resolution forth for Commission consideration. Comments were received from the Commission and Mr. Jakubiak addressed questions.

Commissioner Blackwelder presented to the Commission an amendment to the resolution to add 3 sub-paragraphs to the ninth WHEREAS as follows:

(G) The exponentially increasing popularity of the North Beach Farmers Market and Beach Boardwalk over the past 10 years adding traffic along MD Rt. 260 and MD Rt. 261.

(H) Recent high intensity development at the Rod-n-Reel site with traffic implications that have not yet been assessed and cannot be accurately assessed due to the COVID-19 Pandemic.

(I) Recent completion of and ongoing development of large-scale residential neighborhoods over the past 10 years with traffic implications that have not yet been assessed and cannot be accurately assessed due the COVID-19 Pandemic.

There being no objection from the Commission, Chairman Brown stated the 3 sub-paragraphs would be added to the resolution.

Chairman Brown allowed public comment on the draft resolution beginning at 8:01 pm, beginning with presentations from representatives of the Rod-n-Reel Corporation.

Eric Blitz, attorney for the Rod-n-Reel Corporation, was present and gave a short presentation in defense of his client and the hardship and unfairness this moratorium will create on his right to develop his properties. Mr. Blitz requested his letter previously sent to the Commission be entered into the record. Also speaking on behalf of the Rod-n-Reel were Mary Lanham and Wes Donovan who spoke in opposition of the moratorium.

V. PUBLIC COMMENTS WERE RECEIVED BY:

1. Joshua Johnson 3814 26th Street– spoke in opposition
2. Zach Abner of Abner’s Crab house Harbor Road – spoke in opposition
3. Shad Montague 3802 Chesapeake Beach Rd– spoke in opposition
4. Kevin Norris representing CB Properties LLC 8302 Moffat Run – spoke in opposition
5. Mark Giangiulio 3456 Hill Gail Drive– spoke in opposition
6. Greg Morris 2425 Woodland Court – spoke in favor
7. Debra Giangiulio– 3456 Hill Gail Drive spoke in opposition
8. Bob Carpenter 8051 Windward Key Drive – spoke on opposition
9. Gary Luckett of Traders Seafood Steak & Ale 8132 Bayside Rd – spoke in opposition
10. Glen Spanier – spoke in opposition
11. Lakesha Wilkerson – emailed comment - in opposition
12. Tanesia Wills – emailed comment - in opposition
13. Mr. Jakubiak read into the record, a public comment received from Joseph Devlin, attorney representing developer Mike Roepcke of the Richfield Station project. As this project has been approved, Mr. Devlin is asking the Commission to consider amending the moratorium to add the wording “exempt any project currently in the development approval system which has received Development Plan and/or Plat approval from the Commission”, noting specifically the completion of the last section of Block S at the end of Crest View Lane and one section of single family lots on Stream Walk Way.

The public hearing was closed at 8:57 pm and the regular meeting resumed.

After discussion, the Commission put forth the following motions:

MOTION: Commissioner Greengold moved to approve the Resolution. Seconded by Commissioner Berault.

MOTION: Commissioner Greengold moved to amend the Resolution to include in the resolution the wording “exempt any project currently in the development approval system which has received development plan and/or plat approval from the Commission.” Seconded by Commissioner Blackwelder, all in favor.

MOTION: Commissioner Evans moved to amend the resolution to reflect 9 months of a moratorium versus the proposed 12-month time frame. The motion **failed** for lack of a second.

MOTION: Commissioner Blackwelder moved to amend the resolution in the sixth WHEREAS, to remove the word “wholesale”. Seconded by Commissioner Berault. Ayes, Commissioners Berault, Blackwelder, Evans and Larsen. Opposed, Commissioner Greengold. **Motion Passes.**

MOTION: Commissioner Berault moved to approve the Resolution as amended. Seconded by Commissioner Larsen. Ayes, Commissioners Berault, Blackwelder, Greengold and Larsen. Opposed, Commissioner Evans. **Motion Passes.**

Chairman Brown stated the resolution, as amended, will be forwarded to the Town Council for consideration.

Chairman Brown took the opportunity to thank the business community for coming out and participating in tonight's hearing along with all those that made comments.

Additional comments:

1. Councilman Morris commented on the short-term rentals.
2. Commissioner Greengold suggested a time limit be established on persons giving public comments to assure all a chance to speak.

Chairman Brown stated the next Planning and Zoning meeting is scheduled for March 24, 2021.

VI. ADJOURNMENT

There being no further comments, the meeting adjourned at 9:31 pm on a motion by Commissioner Berault. Seconded by Commissioner Greengold, all in favor.

Submitted by,

Sharon L. Humm
Commission Clerk

Law Offices of Eric Blitz

9 Lantern Circle
Parkton, Maryland 21120
410-812-7265

Eric J. Blitz, Esquire
Email: blitz.eric@gmail.com
(delivered via email)

March 16, 2021

Mayor and Town Council of Chesapeake Beach
Chesapeake Beach, MD
Town Hall
P.O. Box 400
Chesapeake Beach, MD 20732

Re: Proposed moratorium-procedural deficiencies

Dear Mayor and Town Council:

On behalf of the Rod & Reel, Inc., I am raising objection to the legal process that is being planned to implement the proposed zoning moratorium. According to the Town Council's final agenda for your meeting to be held on Thursday, March 18th, 2021, there appears to be two improper procedures outlined in said agenda.

If a moratorium is to be imposed limiting the property development of category 1 site plans as defined in the Town's zoning ordinance, it must be accomplished through an ordinance, not a mere resolution. It must be passed by meeting the same requirements of an ordinance under C-309 of the Town Charter. To do otherwise is to improperly attempt to bypass the procedural protections and requirements of ordinances, including the requirement that no ordinance be passed at the same meeting at which it is introduced, that it be voted upon not less than 6 nor more than 60 days after introduction, and that it become effective 20 days after passage or 7 days after the last legally required publication notice, unless it meets the standards for an emergency ordinance (which requires a separate affirmative vote of 5 councilmembers). As importantly, a simple resolution is not subject to the veto power of the Mayor set forth in C-310 of the Charter or the right of citizens to petition for referendum under C-311. To bypass such Charter safeguards by passing a simple resolution on a matter of such grave and substantial impact to all property owners in Town is inappropriate and inconsistent with the Town's Charter and Maryland law.

The proposed moratorium is a legislative enactment, amending the effect of the current zoning ordinance of Chesapeake Beach. As such, it is a law of general applicability and continuing effect, impacting the substantial rights of citizens and property owners. Property owners in Town have the legal right under § 290-23 of the Town's zoning code to have their site plans processed by the Town's administration and Town Planning & Zoning Commission. To limit those rights, the proposed moratorium amends that zoning power and limits the power of all property owners to develop their property in accordance with the current zoning ordinances now in effect, by limiting a particular type of site plan review that is defined in the zoning ordinance (category 1 site plans). To do that, the Council must pass a law of

general applicability and effect, so regardless of its labeling as an ordinance or resolution, it must be passed under the same rules and formality as an ordinance under the Town Charter. *See Inlet Associates v. Assateague House Condominium*, 313 Md. 413 (1988). The proposed moratorium exempts out certain developments, in effect grandfathering those exempted out with respect to the retrospective application of the moratorium, which is not an administrative or ministerial act but a policy judgment that is legislative in nature.

Chesapeake Beach is given the authority to pass and amend zoning ordinances, not as an inherent Home Rule Charter power, but as a delegated express power under Md. Code Ann. LG §5-213. That section provides, “A municipality may adopt zoning regulations, subject to any right of referendum of the voters at a regular or special election as may be provided by the municipal charter.” An express power such as the zoning power is found within Subtitle 2 of Title 5 of the Local Government Article, to which § 5-203 applies, which reads:

“§ 5-203. Grant of express powers

(a) In general. -- In addition to, but not in substitution of, the powers that have been or may be granted to it, the legislative body of a municipality may exercise the express powers provided in this subtitle by adopting ordinances.

(b) Conflicts. -- Except as provided in Article XI-E of the Maryland Constitution, an ordinance adopted by the legislative body of a municipality may not conflict with State law.

Although this obligation to use the ordinance power has been a long-established principle under Maryland law, it was cited by the Court of Appeals as the governing authority on this issue as late as this January, in *K. Hovnanian Homes of Maryland, LLC v. Havre de Grace, et. al.*, No. 22, September Term, 2020, Case No.: 12-C-12-003214, in which the Court wrote:

“Consistent with the former provisions of Article 23A, § 2, the Legislature has conferred both a municipality's general authority, as well as its specific grant of express powers, in “the *legislative body of a municipality*.” *See* LG §§ 5-202, 5-203 (emphasis added). *See also* Twigg, 396 Md. at 545 (explaining that the express powers enumerated in Section 2 of Article 23A are conferred upon the municipal legislative body). Not only are the express law-making powers bestowed upon the legislative body of a municipality, the express powers enumerated in Title 5, Subtitle 2 *must be exercised by ordinance*.^[14] *See* LG § 5-203(a). Additionally, where the General Assembly has provided a municipality with the authority to exercise an express power by ordinance, the ordinance “may not conflict with State law.” LG § 5-203(b).” *Id.* at 23.

The proposed moratorium is not merely a cessation of discretionary administrative proceedings, but a limitation on legal rights of citizens and property owners in Chesapeake Beach found within Maryland law and the Chesapeake Beach Zoning Code. Although one of the purported justifications for the proposed moratorium is to facilitate the Planning and Zoning Commission’s attempt to propose planning changes via the comprehensive plan process, that does not save this moratorium from the requirement that it be enacted through ordinance, because the planning power is also an express power of municipalities in Maryland. *See* Md. Code Ann. LG § 5-212(a). Again, such express powers can only be exercised by the use of an ordinance, and with respect to zoning, an ordinance that is subject to the rights of referendum provided by C-311 of the Town Charter.

I will also note that the proposed moratorium is being considered after the recommendation of the Town's Planning & Zoning Commission, consistent with the requirement that all changes to the zoning ordinances of the Town be made only after the receipt of such a recommendation. It is therefore incongruous to recognize one process requirement for changing the effect of the Town's zoning laws and not recognize the procedural requirements of using an ordinance, as described above.

The second infirmity I have observed in the agenda is that speakers during the public comment are to be limited to two minutes. That is in conflict with the Town Charter, which in Section C-307A(IV) directs that all speakers are entitled to speak for 5 minutes. If this was merely a rule of procedure adopted by the Council, I would agree that it could be modified. But if it is in an ordinance, it can only be changed through another ordinance. That it is in your foundational law, your Town Charter, means it is absolutely mandatory and cannot be changed absent a Charter Amendment.

Sincerely,

/s

ERIC J BLITZ, ESQUIRE

cc: Todd Pounds, Esquire (City Attorney)

Resolution R-21-3

A Resolution of the Town Council of Chesapeake Beach in Support in a Temporary Moratorium

WHEREAS: The Town Council of The Town of Chesapeake Beach is responsible for matters relating to the orderly growth of the Town of Chesapeake Beach.” Town of Chesapeake Beach, MD Code (hereinafter Code) § 290-31(A) Purpose; and

WHEREAS: The Planning Commission “shall prepare and recommend a Comprehensive Plan for the Town of Chesapeake Beach, and review and update said plan at least once every six years.” Code § 290-31(A)(1); and

WHEREAS: The Town’s Comprehensive Plan 2010 Update was adopted on January 20, 2011 and must be reviewed every 10 years. Md. LAND USE Code Ann. § 3-303(a) Required review; and

WHEREAS: Adoption of zoning laws, planned development ordinances and regulations, subdivision ordinances and regulations and other land use ordinances and regulations shall be consistent with the Comprehensive Plan. Md. LAND USE Code Ann. § 3-303(b) Implementation. review; and

WHEREAS: The Planning Commission began the process of updating the Comprehensive Plan by holding Town Workshops on September 12 and 18, 2018, during which five themes emerged, one of which is “Preserving and Enhancing our Small-Town Charm.”

https://www.chesapeakebeachmd.gov/sites/g/files/vyhlif4261/f/uploads/vision_2040.pdf ; and

WHEREAS: The direction provided by the workshops, and subsequent work on the update to the Comprehensive Plan, require a rewrite of the previous, Comprehensive Plan 2010 Update; and

WHEREAS: While updating and rewriting the Town Comprehensive Plan, the Planning Commission must also complete its routine workload; and

WHEREAS: The Planning Commission recently recognized a need for near-term interim actions to mitigate against the time necessary to address the challenges of incorporating the express desires of the public into the next Comprehensive Plan update:

(A) At the September 23, 2020 meeting on the Land Use section of the Comprehensive Plan update, there was extensive discussion of actions necessary to preserve small-town charm including limiting building heights, reducing density, and designation of resource conservation areas.

(B) The November 12, 2020 agenda included “discussion on zoning & height limits.”

(C) The December 2, 2020 Comprehensive Plan work session included a lengthy discussion of building heights in the Town Center and Maritime Mix Use areas, and types of family structures to be allowed in residential zoning districts.

WHEREAS: The Planning Commission, after extensive study and deliberation in open meetings and work sessions, anticipates that it will recommend a revised Comprehensive Plan and implementing ordinances that will address the significant foreseeable challenges the community is and will face, including among others:

- (A) Rising groundwater tables, storm damage potential, increases in the projected depth and extent of flooding and storm surge, and the threat to public and private infrastructure and buildings related to rising water levels in the Chesapeake Bay,
- (B) The instability and potential erodibility of steep slopes, shorelines, and lands “made” through the historic reclamation of marshes and the irreparable loss of scenic natural beauty caused by the clearing of forests and poorly planned development,
- (C) Proposals for construction of large and tall buildings that would degrade the Town’s scenic vistas and the view of the water which are vital to the aesthetic and cultural values of Chesapeake Beach and antithetical to the public’s desire to “Preserve and Enhance our Small-Town Charm.”,
- (D) The paucity of vacant or undeveloped property to address the existing deficit in neighborhood park space,
- (E) The adoption of new standards to guide the design of future buildings and building sites into ways that preserve the character of the Town;
- (F) The safety and convenience of walking in Town generally and along MD Route 260, within the areas zoned for commercial development where the calming of traffic speeds is insufficient, and the quality of the pedestrian environment is poor; and
- (G) The exponentially increasing popularity of the North Beach Farmers Market and Beach Boardwalk over the past 10 years adding traffic along MD Rt. 260 and MD Rt. 261.
- (H) Recent high intensity development at the Rod-n-Reel site with traffic implication that have not yet been assessed and cannot be accurately assessed due to the COVID-19 Pandemic.
- (I) Recent completion of and ongoing development of large-scale residential neighborhoods over the past 10 years with traffic implications that have not yet been assessed and cannot be accurately assessed due the COVID-19 Pandemic.

WHEREAS: In order to address the aforementioned challenges and others, the Planning Commission’s emerging recommendations and policies, are departing in significant ways from the currently adopted plan and Zoning Ordinance, including in the areas of land use, development intensity, the height of buildings, and the protection of environmental resources; and

WHEREAS: The Planning and Zoning Commission endeavors to have a draft of the revised Comprehensive Plan ready for public review in 2021, and a public hearing and approval by the Town Council, Calvert County and the State of Maryland in 2022, and public input currently continues regarding the Comprehensive Plan review; and

WHEREAS: The Planning and Zoning Commission also has the authority under the Town Code, Chapter 290 (Zoning Ordinance) and Chapter 245 (Subdivision of Land), to review and take action to approve or deny development site plans and subdivision plats respectively; and

WHEREAS: On January 29, 2021, the Town received, in one delivery, applications for four separate major development site plans and one major subdivision plat, and the Planning Commission has determined upon advice of the Zoning Administrator that such an unprecedented project submittal imposes an administrative burden on the Planning Commission which would either forestall the timely

completion of the Comprehensive Plan and any implementing ordinances, or foreclose the opportunity for the public participation and deliberation on the draft plan the Commission believes is in the public interest as well as additional burden of public resources in the review of applications that will be the subject of development changes that are presently unknown; and

WHEREAS: In light of the aforementioned challenges and informed by the aforementioned deliberations, the Planning Commission believes (1) such development proposals and other major projects could prove to be poorly planned and harmful to community health, safety and wellbeing, (2) the challenges the Town is seeking to address could be compounded by major development projects that are not in tune with the new Comprehensive Plan or compliant with forthcoming ordinances and guidelines, and (3) intensive development within the Town's coastal areas, or on forested land or hillsides, can worsen risks and foreclose opportunities to reasonably manage private development and program essential public infrastructure; and

WHEREAS: The Planning Commission has determined that it is in the public interest to preserve the status quo in further application reviews until the new Comprehensive Plan and implementing ordinances are completed, transmitted to the Mayor and Council, and then adopted;

THEREFORE, BE IT RESOLVED THAT:

The Town Council of the Town of Chesapeake Beach adopts this temporary moratorium on the review of all currently filed development applications as well as the filing of any new applications during the existence of this moratorium. This moratorium is expected to last for twelve (12) months from the date of the adoption. All time periods for any development project are hereby stayed until this moratorium is terminated by the Planning Commission and Town Council for any currently filed or future applications unless otherwise stated herein. This moratorium does not apply to Category 2 applications. This Resolution may be amended in the best interest of the Town and public. This Resolution and moratorium does not apply to certain properties and development activities that are of record (Grandfathered) prior to the date of adoption of this moratorium (as defined in Code §245-7 and §245-6, respectively), and any project currently in the development approval system which has received development plan and/or plat approval from the Commission.

This moratorium does not apply to reviews, revisions and approvals that do not require Planning Commission consideration but are of such minor and routine nature that, under the Code, can be approved by the Town Zoning Administrator. Neither should the moratorium restrict the Planning Commission from initiating work related to its assigned responsibilities under the Town Code.

The above recitals are hereby adopted by reference into this resolution.

Approved on _____

Patrick J. Mahoney, Mayor

Valerie L. Beaudin, Councilwoman

Derek J. Favret, Councilman

Lawrence P. Jaworski, Councilman

Keith L. Pardieck, Councilman

L. Charles Fink, Councilman

Gregory J. Morris, Councilman



OFFICE OF THE MAYOR AND TOWN COUNCIL

**MINUTES OF THE
TOWN COUNCIL MEETING
March 18, 2021**

- I.** Patrick J. Mahoney, Mayor, called the meeting to order at 7:00 p.m. In attendance remotely were Dr. Valerie Beaudin, Derek J. Favret, L. Charles Fink, Lawrence P. Jaworski, Gregory J. Morris, and Keith L. Pardieck, Council Members, Holly K. Wahl, Town Administrator, Sharon L. Humm, Town Clerk, Dale Clark, Town Treasurer, Todd Pounds, Town Attorney, James Berry, Public Works Manager, Wayne Newton, Acting Town Engineer, Connie O'Dell, Code Enforcement Officer, Jon Castro, WRTP Manager, Marilyn VanWagner, Water Park General Manager and Sergeant Shrawder.

- II. Pledge of Allegiance.** The Mayor led the Pledge of Allegiance.

- III. Approve the Agenda.**

MOTION: Councilwoman Beaudin moved to approve the agenda.
Seconded by Councilman Favret, all in favor.

- IV. Public comment on any item on the agenda.** The Town Administrator stated there would be a 5-minute limit on all comments. There were 39 virtual public comments, along with emailed comments, received from both Town residents, and out-of-town residents, voicing their position concerning the proposed Moratorium Resolution that will be considered later in the agenda.

Town registered voters- 24 opposed and 32 in favor of the moratorium,

Non-Town registered voters- 46 opposed and 1 in favor of the moratorium.

- V. Approval of the minutes of the February 18, 2021 Town Council meeting.**

MOTION: Councilman Pardieck moved to approve the minutes of the February 18, 2021 Town Council meeting. Seconded by Councilman Morris, all in favor.

Approval of the minutes of the March 8, 2021 Work Session.

MOTION: Councilman Jaworski moved to approve the minutes of the March 8, 2021 Work Session. Seconded by Councilwoman Beaudin, all in favor.

Approval of the minutes of the March 8, 2021 Closed Session.

MOTION: Councilwoman Beaudin moved to approve the minutes of the March 8, 2021 Closed Session. Seconded by Councilman Favret, all in favor.

VI. Petitions and Communications –

- A. Town Administrator's Report** – Mrs. Wahl submitted the attached written report and addressed Council's questions. Mrs. Wahl reported on the two RFP items, stating they have been posted on eMaryland Marketplace and mandatory pre-bids for both projects will be held April 6th.
- B. Public Works Report** – Mr. Berry submitted the attached written report and was present to address the Council. Mr. Berry elaborated on the process the Town put in place of the Town signing off on development before the County issued any Use & Occupancy permits. The process is working well and has saved the Town, time, and money.
- C. Water Reclamation Treatment Plant Report** – Mr. Castro submitted the attached written report and was present to address the Council. Councilman Jaworski gave a hats off to the WRTP for signing up with ChemScan to take part in a COVID-19 study and congrats on no spills this month.
- D. Code Enforcement Report** – Mrs. O'Dell submitted the attached written report and was present to address the Council.
- E. Town Treasurer's Report** – No report submitted.
- F. Town Engineer Report** – Mr. Newton submitted the attached written report and was present to address the Council's questions on report items.
- G. Deputy's Report** – Sergeant Shrawder submitted the attached written report and was present to address the Council. The Mayor commented, with warm weather approaching, the Town sometimes has issues down at 17th Street & the boardwalk with fishing, partying, loud music, and such, and requested a little extra patrolling in that area for the next six months.
- H. North Beach Volunteer Fire Department** – The attached written report was submitted.
- I. Mayor' Report** – The Mayor took the opportunity to encourage all those on the call, if you have not registered for the vaccine yet, to please take the time and do so. The Mayor thanked the volunteer members of the Planning and Zoning Commission for their dedicated public service to protect the environment and small-town charm of Chesapeake Beach. He applauded them for recommending to Council to pass a temporary moratorium on category 1 development, giving them time to work on a comprehensive plan that will ensure preserving the small-town charm while protecting the infrastructure.

Mr. Berry addressed the sea level rise in Chesapeake Beach and the issues that have occurred over time in certain areas. The Town Engineer spoke on a 2006 survey that was taken of the Kellam's fields, playground, and parking lots. Another survey was performed in 2020 to determine elevational differences. It showed the area is sinking, and taking a pause and looking at this issue, would be a wise decision.

Town Planner, Chris Jakubiak, presented a slide presentation of the five projects the Commission received in late January and shared projected sea level rise in those areas.

VII. Resolutions & Ordinances:

- A. Introduce and Vote on Resolution R-21-3, a resolution establishing a moratorium on Category 1 Development.

MOTION: Councilwoman Beaudin moved to approve R-21-3.
Seconded by Councilman Fink.

MOTION: Councilman Fink moved to amend Resolution R-21-3, to amend the 12-month moratorium period to 6 months. Seconded by Councilman Favret. Ayes, Councilmen Favret, Fink, and Jaworski. Opposed, Councilwoman Beaudin, Councilmen Morris and Pardieck.

With the motion resulting in a tie, the Mayor utilized his right to break the tie, casting in opposition. **The Motion Fails.**

MOTION: Councilman Morris moved to amend Resolution R-21-3, to amend the 12-month moratorium period to 9 months. Seconded by Councilman Favret. Ayes, Councilmen Favret, Fink, Jaworski, and Morris. Opposed, Councilwoman Beaudin and Councilman Pardieck.

Motion Passes.

The Council voted on the Resolution as amended. Ayes, Councilwoman Beaudin, Councilmen Favret, Morris and Pardieck. Opposed, Councilmen Fink and Jaworski. **Motion Passes.**

- B. Introduce and Vote on Resolution R-21-2, a resolution adopting the Master Walkability Plan.

MOTION: Councilman Fink moved to approve R-21-2. Seconded by Councilman Favret, all in favor.

- C. Introduce Ordinance O-21-1, an ordinance of the Town Council of Chesapeake Beach, Maryland, prohibiting full casino licenses or sports betting licenses. **A public hearing will be held on April 15, 2021 beginning at 6:50 pm.**
- D. Introduce Ordinance O-21-2, an ordinance of the Town Council of Chesapeake Beach, Maryland, adopting the annual budget for the General Fund of the Town of Chesapeake Beach for the fiscal year July 1, 2021 to June 30, 2022 and setting municipal tax rates. **A public hearing will be held on April 15, 2021 beginning at 6:52 pm.**
- E. Introduce Ordinance O-21-3, an ordinance of the Town Council of Chesapeake Beach, Maryland, adopting the annual budget for the Mitigation Fund of the Town of Chesapeake

Beach for the fiscal year July 1, 2021 to June 30, 2022. **A public hearing will be held on April 15, 2021 beginning at 6:54 pm.**

- F. Introduce Ordinance O-21-4, an ordinance of the Town Council of Chesapeake Beach, Maryland, adopting the annual budget for the Water Reclamation Treatment Plant Fund of the Town of Chesapeake Beach for the fiscal year July 1, 2021 to June 30, 2022. **A public hearing will be held on April 15, 2021 beginning at 6:56 pm.**

VIII. Report of Officers, Boards and Committees:

- A. **Planning & Zoning Commission** – Mr. Brown submitted the attached written report.
- B. **Board of Appeals** – No hearing was held.
- C. **Chesapeake Beach Oyster Cultivation Society** – Mr. Bacon submitted the attached written report.
- D. **Climate Advisory Committee** – Councilman Jaworski gave an update on current happenings in Annapolis, reporting on a couple of bills, 1) establishing an office on climate change in the Office of the Governor, which has been sent to the respective committees in the House and Senate and 2) House and Senate bills, similarly in language, on Climate Solutions Act, in terms of reducing statewide greenhouse gas emissions. The Senate passed last week and now goes back to the House.
- E. **Economic Development Committee** – Councilman Jaworski reported he participated in a zoom meeting sponsored by the County Economic Development Advisory committee, hosted by the International Economic Development Council, with discussion primarily focusing on the county. A Town Economic Development committee meeting will be scheduled soon, and Councilman Morris invited the new Chesapeake Beach Business Alliance to attend.
- F. **Green Team Committee** – Councilwoman Beaudin stated she would be meeting with the Recreation Assistant Coordinator for the northern district next week and plans to schedule a green team meeting very soon.
- G. **Kellam's Revitalization Committee** – No report.
- H. **Twin Beaches Opioid Abuse Awareness Coalition** – Councilman Pardieck reported a meeting was held March 11th. Mr. Pardieck stated the Calvert Alliance Against Substance Abuse will be mailing out 18,000 overdose awareness information cards to county residents in April, and also planning a countywide purple event on August 31st. On April 24th, a drug take-back day will be held at the Northeast Community Center, and a 5k hybrid run is being sponsored by the Calvert County Behavioral Health unit. Positive Vibes will hold a Color Run September 19th at the Running Hare Vineyard and public works will be putting up the road signs soon. The Group welcomed two new members, Anita Ray, and Detective Nick Butler. The next meeting is scheduled for April 22nd.

On another note, Sandy Mattingly, with Positive Vibes, initiated a bill under Senator Jackson, SB 936, to fly flags at half-staff statewide on August 31st to raise awareness about substance abuse. Mayor Mahoney supported this bill with testimony at that hearing and was honored to do so.

- I. **Walkable Community Advisory Group** – Councilman Fink reported the group held no meeting this month but is working to schedule a meeting with some folks from Calvert County Parks & Recreation. Grant information is being received and reviewed, and lastly, June 3rd is World Bike Day!

XI. Unfinished Business: None

X. New Business:

1. Town Council to consider the purchase of a Public Works Utility Vehicle from Bobcat in the amount of \$17,000.

MOTION: Councilman Jaworski moved to approve the purchase of a public works utility vehicle. Seconded by Councilman Pardieck, all in favor.

2. Town Council to consider awarding a contract to Cellular Site Services in the amount of \$115,375.00 from the FY21 "Capital Improvements" budget line item for the replacement of Town Hall HVAC units 1,2, & 3 eliminating outdated R22 equipment, providing ease of maintenance of systems and germ control in Town Hall.

MOTION: Councilwoman Beaudin moved to approve awarding a contract to Cellular Site Services in the amount of \$115,375.00 for the replacement of Town Hall HVAC units 1,2, & 3. Seconded by Councilman Favret, all in favor.

3. Council to consider the purchase of a WRTP backwash pump from Sherwood Logan in the amount of \$15,600 from the FY21 WRTP budget "Capital Improvement" line item.

MOTION: Councilman Morris moved to approve the purchase of a backwash pump for the WRTP. Seconded by Councilman Jaworski, all in favor.

XI. Public comment was received by:

1. Sarah Carney of 3260 Fortier Lookout inquired the status of the Green Team.

XII. Council Lightning Round:

1. Dr. Beaudin stated meetings will resume soon for the Green Team. Also, regarding the Dragon Boat Race, it is being projected to be held on June 12th and she will be looking to build a team of 19 people.

2. Mr. Fink wanted to give a shout out to the Opioid Abuse Awareness Group, commenting the group is doing things that are impacting people's lives and he respects and appreciates each month, Keith's list of action items he reports on.
3. Mr. Jaworski thanked everyone for hanging in for the whole meeting and appreciates the public input and wished everyone a happy first day of Spring on Saturday.
4. Mr. Morris took the opportunity to speak on the ordinance introduced tonight regarding banning casino & sports betting licenses here in Town. Mr. Morris stated he is in favor of dropping the sports betting aspect of that ordinance. Mr. Morris pointed out, he knows things have been a bit tense for everyone, reflecting on the moratorium and the issue of growth in the Town, but wanted to leave with these words of reflection, "We judge ourselves sometimes under older versions of ourselves, too much sometimes, when the light of tomorrow is real, and in all of our hands".
5. Mr. Pardieck thanked Councilman Fink for his kind words for the Opioid Awareness committee reiterating the great work they do and the privilege it is to work with such a committed group. As mentioned earlier in the meeting, Mr. Pardieck too, wanted to express his appreciation to the Planning Commission, the Administrator, and Town Staff for the hard work they have done on the moratorium issue and the continued work on the comprehensive plan. He also thanked the public for expressing their viewpoints about the moratorium.
6. Mr. Favret thanked everyone for being in the meeting tonight and participating in their local government. It was great having all the comments tonight and hopes that will continue. We need to all work together regardless of the topic and build a better tomorrow, find common ground, and move forward in a positive way.

XIII. Adjournment

The meeting adjourned at 10:10 pm on a motion by Councilman Morris. Seconded by Councilman Favret, all in favor.

Submitted by,



Sharon L. Humm,
Town Clerk

Resolution R-21-8

A Resolution of the Town Council of Chesapeake Beach in Support of Extending the Temporary Moratorium

WHEREAS: The Town Council established a Temporary Moratorium for development applications under Resolution R-21-3.

WHEREAS: The Town Council has determined there is a need to extend that moratorium for the continuing reason as stated in the previous Resolution for an additional THREE (3) months.

WHEREAS: The Town Council has determined that it is in the public interest to grant this extension.

THEREFORE, BE IT RESOLVED THAT:

The Town Council adopts herein by reference and incorporates herein Resolution R-21-3 as if restated and reaffirms that Resolution, to be amended only as indicated below.

The Town Council has determined an additional THREE (3) months is needed for the moratorium and hereby extends the moratorium for an additional THREE (3) months after the time period as reformed in the Resolution R-21-3.

The above recitals are hereby adopted by reference into this resolution.

Approved on: _____

Patrick J. Mahoney, Mayor

Valerie L. Beaudin, Councilwoman

Derek J. Favret, Councilman

L. Charles Fink, Councilman

Lawrence P. Jaworski, Councilman

Gregory J. Morris, Councilman

Keith L. Pardieck, Councilman



**MINUTES OF THE
TOWN COUNCIL MEETING
SEPTEMBER 16, 2021**

- I. Patrick J. Mahoney, Mayor, called the meeting to order at 7:00 p.m. In attendance were Dr. Valerie Beaudin, L. Charles Fink, Lawrence P. Jaworski, Gregory J. Morris, and Keith L. Pardieck, Council Members, Holly K. Wahl, Town Administrator, Sharon L. Humm, Town Clerk, Dale Clark, Town Treasurer, Todd Pounds, Town Attorney, James Berry, Public Works Manager, Wayne Newton, Acting Town Engineer, Jon Castro, WRTP Manager, Connie O'Dell, Code Enforcement Officer, and Sergeant Shrawder.

- II. **Pledge of Allegiance.** The Mayor led the Pledge of Allegiance.

The Mayor asked a moment of silence in remembrance of former long-time Mayor Gerald Donovan.

- III. **Approve the Agenda.**

MOTION: Councilman Jaworski moved to approve the agenda.
Seconded by Councilman Morris, all in favor.

- IV. **Public comment on any item on the agenda.** None received.

- V. **Approval of the minutes of the July 15, 2021 Town Council meeting.**

MOTION: Councilman Pardieck moved to approve the minutes of the July 15, 2021 Town Council meeting. Seconded by Councilman Jaworski, all in favor.

Approval of the minutes of the September 8, 2021 Special Town Meeting.

MOTION: Councilwoman Beaudin moved to approve the minutes of the September 8, 2021 Special Town Meeting. Seconded by Councilman Pardieck, all in favor.

Approval of the minutes of the September 8, 2021 Informational Work Session.

MOTION: Councilman Morris moved to approve the minutes of the September 8, 2021 Informational Work Session. Seconded by Councilwoman Beaudin, all in favor.

- VI. **Petitions and Communications –**

- A. **One Maryland One Book Presentation-** Carrie Wilson and Melissa Gray were present to present the One Maryland One Book. This is the 14th year of One Maryland One Book and this year's theme is "hope." "The Book of Delights" by author Ross Gay, is a collection of

genre-defying lyric essays that records delights experienced and acknowledged by the author. So come into your local library and pick up a book.

- B. Town Administrator's Report** – Mrs. Wahl submitted the attached written report and addressed Council's questions. Mrs. Wahl spoke briefly on the upcoming public hearing for the Comprehensive Plan. Mrs. Wahl stated the Town would be receiving public comments and several dates will be set where the public can come to town hall and speak directly with Mr. Jakubiak with any questions or concerns. Mr. Berry gave an update on the R/F Station water tower schedule. Also, there will be an opportunity for public vote on a Chesapeake Beach graphic for the tower.
- C. Public Works Report** – Mr. Berry submitted the attached written report and was present to address questions from the Council. Mr. Berry briefed the Council on the storm drain surveys, issues resulting from the power outage in Town, and current status on the water meter/MXU change out.
- D. Water Reclamation Treatment Plant Report** – Mr. Castro submitted the attached written report and was present to address Council. Mr. Castro briefed the Council on the installation of a new HDD for the close caption TV system, for increased storage capacity, stated there were no major issues that occurred with the power outage, and touched on the new SCADA system, Autonomy, for Plant monitoring.
- E. Code Enforcement Report** – Mrs. O'Dell submitted the attached written report and was present to address the Council. Mrs. O'Dell added to Mr. Berry's comments regarding the water meter/MXU change out.
- F. Town Treasurer's Report** – No report.
- G. Town Engineer Report** – Mr. Newton submitted the attached written report and briefed the Council on report items. Mr. Newton updated the Council on the 261 sidewalks.
- H. Deputy's Report** – Sergeant Shrawder submitted the attached written report and was present to address the Council. It was noted that Maximus is retiring after six years of service and will remain in the care of Sergeant Shrawder.
- I. North Beach Volunteer Fire Department** – No report submitted.
- J. Mayor' Report** – The Mayor commented that the Town had a really good and safe summer, considering the pandemic, and wanted to thank the Staff, Council, and the citizens for all working together, keeping patient, and vigilant. Secondly, while the majority of the Town and County have been vaccinated, he encourages those who still have not, to get vaccinated.

VII. Resolutions & Ordinances:

- A.** Introduce and vote on Amended Resolution R-21-6 of the Town Council of Chesapeake Beach in support of Dredge Funding.

MOTION: Councilwoman Beaudin moved to approve Amended Resolution R-21-6. Seconded by Councilman Morris, all in favor.

- B. Introduce and vote on Resolution R-21-8, a resolution of the Town Council of Chesapeake Beach to extend the temporary moratorium for an additional three (3) months.

MOTION: Councilwoman Beaudin moved to approve Resolution R-21-8. Seconded by Councilman Pardieck. Ayes, Councilwoman Beaudin, Councilmen Fink, Morris, and Pardieck. Opposed, Councilman Jaworski. **Motion Passes.**

VIII. Report of Officers, Boards and Committees:

- A. **Planning & Zoning Commission** – Mr. Brown submitted the attached written report but was not present.
- B. **Board of Appeals** – No hearing was held.
- C. **Chesapeake Beach Oyster Cultivation Society** – Mr. Bacon submitted, and was present, to give the attached written report.
- D. **Climate Change Advisory Committee** – Councilman Jaworski reported the Town will be moving forward with the flooding and sea level rise study, noting the Town will receive funding from the DNR. On another note, Councilman Pardieck reported that the Maryland Association of Counties 2020 County Innovation Award was presented to Charles County for their climate change preparedness program. The Committee plans to reach out to Charles County to arrange a meeting to learn more about their program, and lessons learned, to perhaps incorporate in the Town's planning efforts and possibly engage the County Commissioners in the discussion as well.
- E. **Economic Development Committee** – Councilman Jaworski reported he was elected as Chair to the Calvert County Economic Development Advisory Commission and will be involved in a lot of the economic development activities across the county. The Town's EDC continues working with multiple agencies and groups to promote appropriate economic development in town, and reported he participated in the SMMA zoom meeting. Councilman Morris added, though disappointed that the Taste the Beaches was canceled, stated it was a prudent decision.
- F. **Green Team Committee** – Councilwoman Beaudin reported 1) the new replacement informational signage has been installed on the Railway Trail and looks great, thank you Sue and Larry, 2) September 19th the Green team will be doing the planting at the 17th Street Retaining Wall Garden, thank you Windmill Farms for the donation of plants, and 3) the Paddle and Pathway Pickup event, in conjunction with Calvert Parks and Rec for the cleanup of Fishing Creek, will take place on September 25th. The Team's next meeting will be September 23rd at the Kellam's pavilion.

- G. Kellam's Revitalization Committee** – Mr. Morris reported the next meeting has not been scheduled yet. The committee is in an information gathering mode presently with some great suggestions so far.
- H. Twin Beaches Opioid Abuse Awareness Coalition** – Councilman Pardieck reported on August 31st they held their International Overdose Awareness Glow vigil event in conjunction with the County's light up the county event. Mr. Pardieck thanked Mayor Mahoney for speaking at the event, along with Mayor Benton and Captain Dave Payne from the Sheriff's Office. Thank you to the resource providers that were there and to the committee members who worked so hard to pull it all together. Special thank you to Sandy Mattingly who put heart and soul into this and led the effort. The next meeting will be scheduled for some time in October.
- I. Walkable Community Advisory Group** – Councilman Fink reported the Group is working on funding to support some of their projects. The group has engaged in discussion with the County Parks and Rec to promote a few walking events and will rekindle those talks to try and get something on the calendar. The Group's next meeting will be on September 20th for a work session at the Kellam's pavilion.

XI. Unfinished Business: None.

X. New Business:

1. Town Council has reviewed the Richfield Station Public Works Agreements in the September Work Session. It is recommended that if there are no other comments, that the Mayor execute the Public Works Agreements. **There were no additional comments. The Mayor will execute the Public Works Agreements.**
2. Town Council has reviewed the Rod N Reel Public Works Agreement in the September Work Session. It is recommended that if there are no other comments, that the Mayor execute the Public Works Agreement. **There were no additional comments. The Mayor will execute the Public Works Agreement.**
3. Town Council to consider awarding a contract to McCrone in the amount of \$45,860.00 for Water Reclamation Treatment Plant Filter Cover Design.

MOTION: Councilman Morris moved to approve awarding a contract to McCrone in the amount of \$45,860. Seconded by Councilman Jaworski, all in favor.

4. Town Council to consider authorizing the Town Administrator to purchase a public works vehicle not to exceed the FY22 budgeted amount of \$45,000.

MOTION: Councilman Jaworski moved to authorize the Town Administrator to purchase a public works vehicle not to exceed the FY22 budgeted amount

of \$45,000. Seconded by Councilman Fink, all in favor.

5. Town Council to consider authorizing the Mayor to execute the MOU with the Calvert County Government to establish sewer connection at the Highlands.

MOTION: Councilwoman Beaudin moved to approve authorizing the Mayor to execute the MOU with the Calvert County Government to establish sewer connection to the Highlands. Seconded by Councilman Jaworski, all in favor.

XI. Public comment was received by: None Received.

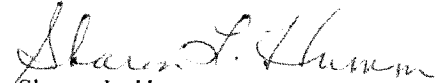
XII. Council Lightning Round:

1. Dr. Beaudin looks forward to the planting on Sunday, at the 17th Street Retaining Wall Garden and stated the Green Team's next meeting will be Thursday, September 23rd at the Kellam's Field pavilion. On another note, she encourages everyone to read the Comprehensive Plan and submit any comments or concerns, either in writing, or present at the public hearing on November 9, 2021.
2. Mr. Fink wanted to acknowledge Saturday's ringing of the bells in remembrance of 9/11, stating it was quite striking, actually, heart-wrenching. On another note, he wanted to thank Mr. Berry for taking Councilman Morris and himself around on Wednesday to help better explain some of the issues and challenges concerning water flow around the Kellam's Field. He also wanted to note that September 22nd is world car-free day, so take the opportunity to go places on foot or by bike! Also, visit your local library!
3. Mr. Jaworski re-enforced Dr. Beaudin's comments on the Comprehensive Plan. Take this opportunity to read it, and submit any comments, concerns, or questions you might have because this Plan will shape the future of our Town for decades to come. So, your feedback is necessary. Mr. Jaworski commented, regarding the cancellation of the Taste the Beaches event, that it was a wise decision. He looks forward to hopefully having it next year.
4. Mr. Morris wanted to accentuate the Buccaneers organization here in Town. This is their 40th Year Anniversary. This is good economic development for the Town with people coming and going. And if you are a sports fan, he encourages you to get out and go to a Buc's night game. Mr. Morris took the opportunity to express his condolences to the Donovan Family. Mr. Morris stated he had the benefit of being acquaintances with Gerald and enjoyed his conversations with him. And one thing that could be said of Gerald was that he loved this Town, and his family does as well. He was a very interesting and compelling person to be around, and he will be missed. RIP Mr. Donovan.
5. Mr. Pardieck wanted to take the opportunity to thank Mrs. Wahl and the town staff for all their support for the Opioid Abuse Awareness Group. They have been a great help in getting the word out and purchasing items when needed, so we really appreciate all their efforts. Mr. Pardieck wished everyone well, to stay safe, and wear your masks when out.

XIII. Adjournment

There being no further comments, the meeting adjourned at 8:32 pm on a motion by Councilman Morris. Seconded by Councilwoman Beaudin, all in favor.

Submitted by.


Sharon L. Humm,
Town Clerk

Law Offices of Eric Blitz

9 Lantern Circle
Parkton, Maryland 21120
410-812-7265

Eric J. Blitz, Esquire
Email: blitz.eric@gmail.com

May 20, 2022

Christopher Jakubiak, Zoning Administrator
Chesapeake Beach Planning & Zoning Commission
Town Hall
P.O. Box 400
Chesapeake Beach, MD 20732
(Delivered via email)

Re: Processing Pending Site Plan Review Applications

Dear Mr. Jakubiak, Chair and Members of the Planning & Zoning Commission:

On behalf of the Rod & Reel, Inc., I am formally requesting that all five site plan applications submitted on January 29, 2021 by the Rod & Reel, Inc. be processed in the ordinary course. By Mr. Jakubiak's communication dated February 5, 2021, my client was informed that those applications had been put on hold pending the passage of a moratorium resolution of the Mayor and Town Council of Chesapeake Beach. Subsequently a recommendation of the Commission was made to the Town Council to pass a moratorium. The avowed purpose of the moratorium was to allow the Commission time to recommend and for the Town Council to pass both a Comprehensive Plan and the implementing zoning ordinance amendments. While a revised comprehensive plan has been passed, the implementing zoning ordinances have not, yet the purported moratorium has expired.

Resolution R-21-3 of the Town Council of Chesapeake Beach was passed on March 18, 2021. It was explicitly premised upon giving the Commission and Town Council time to pass both a new comprehensive plan and the implementing zoning ordinances. It is the zoning ordinance which guides the specific application of law to the site plans. Said resolution copied the language submitted to the Town Council by the Commission, with the exception that the Commission had requested a moratorium of 12 months and the Town Council, by an amendment prior to passage, reduced the length of the moratorium to 9 months. The Commission had approved its recommended resolution at its meeting on February 24, 2021. At the February 24, 2021 public hearing I provided verbal and written testimony that a 1-year moratorium was going to be insufficient time to pass both a comprehensive plan and a revised zoning ordinance and it turns out I was correct. Nonetheless, the Commission recommended a resolution to the Town Council requesting a 12-month moratorium.

The final recital clause of Resolution R-21-3 makes it clear that both the comprehensive plan and the implementing zoning ordinances were the object of the moratorium. It reads: "WHEREAS, The

Planning & Zoning Commission has determined that it is in the public interest to preserve the status quo in further application reviews until the new Comprehensive Plan and implementing ordinances are completed, transmitted to the Mayor and Council, and then adopted;" The body of the resolution adopted this recital clause (and all others) by incorporation so that it is a part of the resolution itself *See* ("The above recitals are hereby adopted by reference into this resolution.").

While my client still maintains that the nine-month moratorium sought to be imposed by resolution R-21-3 and its subsequent three-month extension by resolution R-21-8 were legally ineffective because they were not passed in accordance with Maryland law and the Chesapeake Beach Charter, even by their own terms the effect of such resolutions expired without passage of a replacement zoning ordinance that would prohibit approval of the developments proposed in my client's applications.

As resolution R-21-3 made clear, "All time periods for any development project are hereby stayed until this moratorium is terminated by the Planning Commission and Town Council for any currently filed future applications unless otherwise stated herein." Granted, that language was rather sloppy as under no circumstance can a Planning Commission itself impose or terminate a moratorium and it wasn't just the authority of the Town Council, but also the Mayor that could terminate such a moratorium, but assuming as we must it was the authority of the Mayor and Town Council in passing resolution R-21-3 that was being referenced, the moratorium referenced in the resolution has expired. Although resolution R-21-8 extended the purported moratorium for an additional 3 months, it has now been more than 1 year since the passage of resolution R-21-3.

The purported moratorium expired by its own terms on March 18, 2022. Since that date the Mayor and Town Council have held two regular meetings, on April 21, 2022 and May 19, 2022, and did not seek to extend the moratorium or otherwise address Resolutions R-21-3 or R-21-8 during either of those legislative sessions. The time period of the moratorium was clearly of substantive legislative concern, as it was amended in the initial resolution from 12 months to 9 months and then subsequently extended for 3 additional months. It was also an issue before the Planning and Zoning Commission during its February 24, 2021 hearing as there were motions to alter that time period. In addition, the Town Council knew or should have known that the Commission was also working on the zoning ordinance, as for example Chairman Brown's report to the Town Council dated November 10, 2021 and included within the November 18, 2021 Town Council meeting minutes make clear. I think it is safe to assume that the Mayor and Town Council know how serious an issue it is to suspend the legal rights of property owners to use and develop their property, so it couldn't be that they let the moratorium expire by mistake. Therefore, it is clear that the Mayor and Town Council have expressed a clear legislative intent to let the moratorium expire without having met the requirement of amending the zoning ordinance.

The Commission is obligated to review Category 1 site plans pursuant to §290-31A (6). Therefore, you should begin processing the applications under the existing zoning ordinance, which was the ordinance in effect at the time the applications were submitted and accepted by the Town, and which remains in lawful effect notwithstanding the passage of the new comprehensive plan. The current zoning ordinance is the law that must govern said applications. Any retroactive application of future amendments to the zoning ordinance will be challenged.

Sincerely,

/s

ERIC J BLITZ, ESQUIRE

cc: Wesley Donovan
Mary E. Lanham
Mayor and Town Council, Chesapeake Beach

ALEXANDER & CLEAVER

ATTORNEYS AT LAW

Professional Association

James A. Cleaver *MD DC*

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Oxon Hill, Maryland 20745

May 25, 2022

Eric Blitz
Law Offices of Eric Blitz
9 Lantern Circle
Parkton, Maryland 21120
Blitz.eric@gmail.com

RE:

Dear Mr. Blitz,

I am in receipt of your letter of May 20, 2022, with regard to pending site plan review applications.

Please be advised that the resolutions adopting the moratorium specifically provide "all time periods for any development projects are hereby stayed until this moratorium is terminated by the planning commission and Town Council for any currently filed or future applications unless otherwise stated herein". The Resolution goes on to indicate that the moratorium also applies to the filing of new applications.

If you have any questions with regard to this matter, please feel free to contact the undersigned.

Very truly yours,


Todd K. Pounds, Esq.

Enclosures
TKP/jls

cc: Holly Wahl, Town Administrator