

 TOWN OF CAPE CHARLES	AGENDA TITLE: Notice of an Appeal of the Certificate of Appropriateness		AGENDA DATE: October 17, 2013
	SUBJECT/PROPOSAL/REQUEST: Reject the notice of Appeal submitted by Old School Cape Charles (OSCC)		ITEM NUMBER: 8A
	ATTACHMENTS: Letter dated September 19, 2013, and Sections 8.15 and 8.34 of zoning ordinance		FOR COUNCIL: Action () Information (X)
	STAFF CONTACT (s): Heather Arcos/Rob Testerman	REVIEWED BY: Heather Arcos, Town Manager	

BACKGROUND:

Old School Cape Charles (OSCC) filed a "Notice of Appeal of the Certificate of Appropriateness for School Project" dated September 18, 2013 to the Town Council on September 19, 2013.

Per Section 8.34 of the zoning ordinance – "An appeal from a decision of the Historic District Review Board may be taken to the Town Council by the owner of the property in question or by any party aggrieved by said decision, which shall be taken within thirty (30) days after the decision appealed by filing with the Administrator a notice of appeal specifying the grounds thereof.

If a proper appeal was filed, a decision would have to be made within sixty (60) days.

DISCUSSION:

The Zoning Administrator as well as Town Manager reviewed the notice of an appeal and will reject the appeal unless otherwise directed by Council based on the following facts:

- OSCC reasons for appeal are not grounds for an appeal. Per the OSCC letter. 1) The approval of the 5 items reviewed by the board did fulfill the requirements. 2) The Department of Historic Resources approval process is not in the purview of the Historic Review Board. 3) The board reviewed similar work, discussed and approved.
- The appeal is procedurally deficient as its Notice of Appeal, directed to the Town Council, OSCC cites Section 8.15 of the Zoning Ordinance as grounds for its Notice. Specifically, OSCC cites the language "the decision of the Historic Review Board may be appealed to the Town Council." However, Section 8.34 of the Zoning Ordinance further explains the steps to give notice of an appeal. An appeal must be filed with the Zoning Administrator, but OSCC filed the appeal to the Town Clerk. The appeal is addressed to the Town Council.
- OSCC is a Virginia limited Liability Company, not a landowner.
- OSCC does not own the school. The Virginia State Code section 15.2-2306 (A)(3) defines an "aggrieved party" and OSCC must own property within or in close proximity to the subject property, serving to establish a "direct, immediate, pecuniary, and substantial interest in the decision."

- OSCC must demonstrate a “particularized harm to some person or property, right, legal or equitable, or imposition of a burden or obligation upon the petitioner different from the suffered by the public generally.”

OSCC does not meet the requirement to challenge a decision by the Historic Review Board. OSCC does not own land at all. Further, OSCC does not have contractual rights or financial obligations with regards to the school building. Therefore, OSCC fails to attain the “aggrieved party” status.

In the appeal OSCC states three points, none of which are related to a property right, burden or obligation. OSCC is not accurate in its allegations, did not follow the proper procedure to initiate an appeal and does not have standing as an aggrieved party to bring an appeal before the Town Council.

RECOMMENDATION:

The Staff recommendation is to reject the appeal for the reasons set for above. Unless the Council overrides the Staff recommendation the next step would be to respond to OSCC in writing explaining the rejection of the appeal.

Old School Cape Charles, LLC
548 Monroe Avenue
Cape Charles, VA 23310

September 18, 2013

Dear Town Council:

Notice of Appeal of Certificate of Appropriateness for School Project

Old School Cape Charles is aggrieved by the provision of a Certificate of Appropriateness to Charon Ventures for the school project by Town Planner Robert Testerman. Our group provided the attached letter that enumerated our concerns to the Historic District Review Board prior to the meeting. Those concerns were not considered by the Board.

Old School Cape Charles maintains that a Certificate of Appropriateness should not have been provided for the following reasons:

- 1) The Historic District Review Board did not give a blanket approval of the project. The Board only approved the five items listed in the developer's application. The developer does not have authority to determine criteria for a Certificate of Appropriateness, but it effectively was given that authority, as it chose which items to request to be approved. The approval of those requested items does not fulfill the requirements for a Certificate of Appropriateness.
- 2) Town Manager Heather Arcos incorrectly informed Town Council that the Virginia Department of Historic Resources had approved the developer's application for tax credits. That was not true then and remains untrue today.
- 3) There are many deficiencies in the developer's application that have not been addressed. For example, the Historic District Review Board requested to see the full-scale mockup of the roofline, which the developer is required to provide to the Virginia DHR. The mockup has not been provided, and other requirements also have not been met by the developer.

The Town Zoning Ordinance states:

Section 8.15: . . . the decisions of the Zoning Administrator may be appealed to the Historic District Review Board, the decisions of the Historic District Review Board may be appealed to the Town Council, and the final decisions of the Town Council may be appealed to the Circuit Court of Northampton County.

This letter formally introduces our appeal of the Certificate of Appropriateness for this project.

Sincerely,



Wayne Creed
President, Old School Cape Charles, LLC

Attachment:
August 20, 2013 letter to Historic District Review Board

RECEIVED SEP 19 2013
Hand delivered by
Frank Wendell
12:08pm
R.H.

August 20, 2013

Prior to the Cape Charles Historic District Review Board meeting on Tuesday, August 20, 2013 Old School Cape Charles presented its concerns to the Board. Those concerns were not raised at the meeting at which the Board approved the five items listed in the developer's application.

We are providing these comments to Town Council with our appeal. As citizens and residents of Cape Charles we are aggrieved by the provision of the Certificate of Appropriateness for this project without consideration of these concerns.

TO THE HISTORIC DISTRICT REVIEW BOARD:

Old School Cape Charles is committed to the common good of our town. One of our town's most valuable assets is Central Park, which until recently included the Old School, the basketball court, and the playground parking lot.

In order for an historic property to receive tax credits it must adhere to the **Secretary of the Interior's Standards for Rehabilitation**, ([Click to read](#)) including the following:

A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.

Converting our historic Old School, playground parking, and basketball court into an apartment house and private parking lot is a far cry from creating minimal change to the building and its use.

The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.

The developer wants to call the side of the building the front, even though there will be no front door. Not only will the historic character of the building be lost, but the developer hopes to attract vacationers to rent the apartments. Town Council's giveaway of a park resource thereby becomes competition to vacation and other rental property owners.

Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.

Turning our historic Old School into an apartment house in no way recognizes its record in time, place, or use.

Changes to a property that have acquired historic significance in their own right will be retained and preserved.

Changes to our town's Old School site will be gone -- the basketball courts, the auditorium, the school library, the offices in the building -- all created at taxpayer expense.

New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

The reason Mr. McCormack was adamant that his site plans for the Old School not be considered by the Historic Review Board is because he knows the plans do not meet the Secretary of the Interior's Standards.

Town Planner Testerman has recommended that you grant a Certificate of Appropriateness to this developer who worked secretly with our town staff to take our school without the knowledge or consent of the majority of town residents. But you have the right and the ability to think for yourselves. There is no reason to approve this project at this time. Richmond has not approved it, and the sale and rezoning have been appealed to the Virginia Supreme Court. There should be no haste, since the project will not begin any time soon. The developer has stated that he does not have funding for the project and will not have it until the litigation is settled.

We hope that you will agree that this project is not in accord with the Secretary of the Interior's Standards. We ask you to delay any decision until the courts and the Virginia Department of Historic Resources have spoken.

For the Historic District Review Board to make a decision while the state Department of Historic Resources is still deliberating is possibly unprecedented. Of course, Town Manager Heather Arcos reported to Town Council months ago that the Department of Historic Resources had approved the developer's application. That statement was not true then and it remains untrue today.

Old School Cape Charles implores you to wait until the developer supplies the drawings and mockup required by the state. Then you will be in a better position to make an informed decision.

Sincerely,

Old School Cape Charles, LLC

Failure of negotiations within this period shall be the equivalent of a denial of the application by the Historic District Review Board or, on appeal, by the Town Council.

Section 8.33 Conditions Imposed by the Historic District Review Board

In approval of any proposal under this section, the Historic District Review Board or, on appeal, the Town Council may limit such approval by such reasonable conditions as the case may require, including but not limited to, the specifications enumerated for conditional uses and for the Town Council.

Section 8.34 Appeals; Decisions of the Historic District Review Board

An appeal from a decision of the Historic District Review Board may be taken to the Town Council by the owner of the property in question or by any party aggrieved by said decision, which shall be taken within thirty (30) days after the decision appealed from by filing with the Administrator a notice of appeal specifying the grounds thereof. The Administrator shall forthwith transmit to the Town Council all the papers constituting the record upon which the action appealed from was taken. The Town Council shall fix a reasonable time for the hearing, give public notice thereof and decide the same within 60 days. At the hearing the appealing party may appear in person or by agent. In exercising its powers, the Town Council may, in conformity with the provisions of this Ordinance, reverse or affirm, wholly or partly, or may modify any order, requirement, decision, or determination appealed from and make such order, requirement, decision or determination as ought to be made and to that end shall have all the powers of the Historic District Review Board.

Section 8.35 Appeals; Decisions of the Zoning Administrator

An appeal from a decision of the Zoning Administrator may be taken to the Historic District Review Board by the owner of the property in question or by any party aggrieved by said decision, which shall be taken within thirty (30) days after the decision appealed from by filing with the Administrator a notice of appeal specifying the grounds thereof. The Administrator shall forthwith transmit to the Historic District Review Board all the papers constituting the record upon which the action appealed from was taken. The Historic District Review Board shall fix a reasonable time for the meeting, give public notice thereof as required pursuant to §15.2-2204; Code of Virginia, and decide the same within 60 days. At the meeting the party may appear in person or by agent. In exercising its powers, the Historic District Review Board may reverse or affirm, wholly or partly, or may modify, any order, requirement, decision, or determination appealed from and make such order, requirement, decision or determination as ought to be made.

Section 8.36 Appeal to the Circuit Court from a Decision of the Town Council

An appeal from a final decision of the Town Council may be filed with the Circuit Court within 30 days after said decision in the manner prescribed by law by the owner of the property in question or by the Historic District Review Board or by any party aggrieved by said decision or by any party who recorded an appearance at the hearing before the Town Council. The filing of an appeal shall stay the decision of the Town Council pending the outcome of the appeal to the court, except that the filing of such petition shall not stay the decision of the Town Council if such decision denies the right to raze or demolish a designated landmark, building, or structure. The court may reverse or modify the decision

Section 8.14 Historic District Review Board; Powers and Duties

The Historic District Review Board shall have the power and authority for issuing or denying Certificates of Appropriateness for construction, reconstruction, substantial exterior alteration, razing, or relocation within the historic district. In addition, the Board shall have the following duties:

- A. To assist and advise the Town Council, the Planning Commission, and other Town departments, agencies, and property owners in matters involving historically significant sites at buildings or other properties in historic districts such as, but not limited to, appropriate land usage, parking facilities, and signs.
- B. To continuously evaluate conditions and advise owners of historic landmarks or contributing structures or other properties in historic districts on problems of preservation.
- C. To conduct studies deemed necessary by the Town Council or Planning Commission concerning location of historic districts and means of preservation, utilization, improvement, and maintenance of historic assets in the Town.
- D. To propose additional historic districts or additions or deletions to districts.
- E. To adopt standards for review to supplement the standards set forth in this Ordinance.
- F. To formulate recommendations to the Town Council concerning the establishment of an appropriate system of markers for selected historic sites and buildings, including proposals for the installation and care of such historic markers.
- G. To cooperate with and enlist assistance from the Virginia Department of Historic Resources, the National Trust for Historic Preservation, and other interested parties both public and private in its efforts to preserve, restore, and conserve historic landmarks, buildings, sites, or areas within the Town.

Section 8.15 Summary of Administration Review Procedures

In general it is the purpose of this ordinance to establish review procedures for actions affecting properties in the Historic District which will be relatively simple with minimum delay for those actions which will have little if any permanent effect on the character of the historic district or on a significant structure but to require a more thorough review for actions which may have a substantial effect on the character of the district or on a significant structure. To this end, some actions are exempted from special historic and architectural review altogether, except as normal review may be necessary for issuance of a building permit. Other actions, depending on the possible consequences thereof, may be reviewed by the Zoning Administrator or by the Historic District Review Board acting with original jurisdiction, or, in the most serious cases, action by the Town Council following action by the Historic District Review Board. In all cases the decisions of the Zoning Administrator may be appealed to the Historic District Review Board, the decisions of the Historic District Review Board may be appealed to the Town Council, and the final

decisions of the Town Council may be appealed to the Circuit Court of Northampton County.

Section 8.16 Certain Minor Actions Exempted from Review by the Historic District Review Board

Within the Historic District certain minor actions which are deemed not to have permanent effects upon the character of the historic district are exempted from review for architectural compatibility by the Historic District Review Board. Such actions shall include the following and any similar actions which in the opinion of the Zoning Administrator will have no more effect on the character of the district than those listed:

- A. Repainting the structure in the same color or a very similar color or painting the structure with those colors specified in the design guidelines. (Original painting of masonry surfaces is not exempted from review.)
- B. Replacement of missing or broken window panes, roofing slates, tiles, porch floor, posts, rails, shingles, window frames, or shutters where no substantial change in design or material is proposed.
- C. Addition or deletion of storm doors or storm windows, window gardens, or similar appurtenances and portable air conditioners located in existing windows, doors, or other existing wall openings (if no building permit is required for such addition or deletion).
- D. Addition or deletion of television and radio antennas or skylights and solar collectors in locations not visible from a public street or a waterway.
- E. Landscaping involving minor grading, walks, low retaining walls, temporary fencing, small fountains, ponds and the like, which will not substantially affect the character of the property and its surroundings.
- F. If consistent with the design guidelines, erection of any sign permitted in a residential district and any permitted non-illuminated flat or wall sign not exceeding three inches from a wall and not exceeding four square feet in area in a commercial or industrial district.
- G. Construction of off-street loading areas and off-street parking areas containing five spaces or less in a commercial or industrial district.
- H. Creation of outside storage having a structure footprint of less than forty-one (41) square feet in a commercial or industrial district which does not require structural changes or major grading and is not visible from a public street or waterway.

Section 8.17 Certain Actions Recommended in Design Guidelines Exempted from Review by the Historic District Review Board; Delegation of Authority

- A. The Historic District Review Board, or the Zoning Administrator upon receiving a grant of any authority pursuant to this section from the Historic District Review