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November 27, 2023

VIA HAND DELIVERY

Justin Nelson, Zoning Administrator
Town of Irvington, Virginia
4203 Irvington Road
Irvington, VA 22480

**Re: My Client: New Tides LLC
Application for Conditional Use Permit**

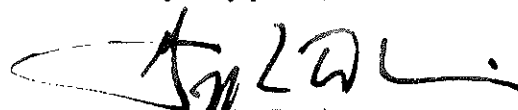
Dear Justin:

Please find enclosed the following for submission on behalf of my client New Tides LLC, the owner-operator of The Tide's Inn:

1. Application with attachments (Owner signed copy to be provided at later date)
2. Background letter re: Amendment of Conditional Use Permit

Please notify me of any application fee due for this application, and payment will be submitted. I encourage you and your staff to contact me with questions or concerns.

Very truly yours,



Gregory R. Davis



Application for Conditional Use Permit

Town of Irvington

P.O. Box 174, Irvington, VA 22480
804-438-6044 (Zoning & Land Use)
Application Fee \$200

Internal Use Only	
RECEIVED	_____
APP FEE PD	_____
APPLICATION #	_____
PC Public Hearing	_____
TC Public Hearing	_____

IMPORTANT NOTE: The application must be filled out completely. The application may not be signed by an agent or attorney but must be signed by the owner, agent of owner or owners before a Notary Public in the space provided on page 4.

Applicant Name (s): New Tides LLC, a Virginia limited liability company

Tax Map Parcel(s): TM 33, Parcel 236

Address/Location: 480 King Carter Drive, Irvington, VA

Deed Restrictions: Yes ___ No X (If yes, attach copy of deed) **Current Zoning** B-1

Proposed Use: amendment to fence conditions of existing CUP

Acreage of Parcel: 23.51 **Overlay District(s):** Chesapeake Bay X Yes ___ No ___

Is this an amendment to an existing conditional use permit? If so, provide CUP number: <u>CUP # 2022 CUPTIDES</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
A scale drawing (see p.3) is required to be attached to any CUP application. Is a scale drawing attached to this application?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is this an application for a private pier or dock? If so, please attach your VMRC and ACOE applications and permits.	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Owner or Agent Contact: Gregory R. Davis, attorney

Address: 4801 Courthouse St., Ste. 300

City: Williamsburg **State:** VA **Zip:** 23188

Phone Number: 757-259-3820 **Email address:** grdavis@kaufcan.com

Official Owner(s) of Record (If different than applicant): New Tides LLC

Address: Attn: Aaron Brown, 480 King Carter Dr.

City: Irvington **State:** VA **Zip:** 22480

Phone Number: 865-414-7024 **Email address:** aaron@mdslp.com

Does the property owner also own or have any ownership interest in any abutting property? If yes, please list those tax map numbers:

33-235

33-229A

33-308A

Section 154.017 of the Town of Irvington Zoning Ordinance provides guidelines for conditional use permit applications. Please address the following standards which will be reviewed by the staff in analysis of your request. If you need assistance filling out these items, staff is available.

Provide a written statement demonstrating that:

1. The establishment, maintenance or operation of the CUP will not adversely affect the public health, safety, morals and general welfare and is in compliance with the Chesapeake Bay Act;
2. The establishment of the CUP will not substantially diminish or impair property values within the neighborhood nor will it be detrimental to the environment and surrounding properties;
3. The purpose of the CUP is to provide for certain uses which may not be compatible with certain surrounding uses or which may be compatible with surrounding uses only if the use in question is established in conformance with certain limiting conditions;
4. That proper landscape designs detailing plantings, screening for sight and sound and proper buffers be provided, that only certain appropriate activities shall occur;
5. Adequate utilities, and off street parking are provided;
6. That soil erosion and sedimentation be avoided;
7. The height, area, yard and sign limitations shall be the same as for other uses in the district;
8. That businesses and other operations be carried out only at appropriate times;
9. The establishment of the CUP is not in conflict with the Comprehensive Plan;
10. The CUP shall, in all other respects, conform to the applicable regulations of the zoning district in which it is located, except as such regulations may, in each instance, be modified by the Governing Body.

(Governing Body may impose reasonable conditions to make use compatible, to protect environment, surrounding properties, persons, neighborhood values.)

Please attach your written statement with this document upon submission.

Describe your request in detail and include any relevant information such as the number of persons involved in the use, operating hours, or any unique features of the proposed use.

Please see attached correspondence

If any improvements are being proposed, briefly state whether new structures are to be constructed, existing structures are to be used or modifications, expansion, reconstruction, or additions are to be made to existing structures. If available, provide dimensions of any structures that will be used for this CUP.

Please see attached correspondence

Attachments Required – provide three copies of each

1. *A scale drawing showing the size and shape of the parcel of land on which the proposed use is located. Scale drawing shall show the size and shape of the parcel of land on which the proposed building is to be constructed, the nature of the proposed use of the building or land and the location of such building or use with respect to the property lines of said parcel of land to the right-of-way of any street or highway adjoining said parcel of land.*
2. *Ownership information* – If ownership of the property is in the name of any type of legal entity or organization including, but not limited to, the name of a corporation, partnership or association, or in the name of a trust, or in a fictitious name, an acceptable document must be submitted certifying that the person signing below has the authority to do so.

Certification

State of Virginia, Town of Irvington, To Wit

I (We) Gregory R. Davis, being duly sworn, depose and say that I am the Owner/Or Agent of Owner of the property involved in the application. If I am not the Owner, I have attached written certification from the owner granting me the right to submit this application. I further declare that I have familiarized myself with the rules and regulations pertaining to preparing and filing this application and that the foregoing statements and answers provided herein are in all respects true and correct.

I have read this application, understand its intent, and freely consent to its filing. Furthermore, I have the power to authorize and hereby grant permission to Town of Irvington officials and other authorized government agents on official business to enter the property as necessary to process this application and to monitor compliance with any permit issued hereunder. I hereby have posted a notice on my property, near the boundary, in a place visible to the public notifying the public of my application.

[Handwritten Signature]

11/27/2023

Signature of Owner or Agent

Date

See attached

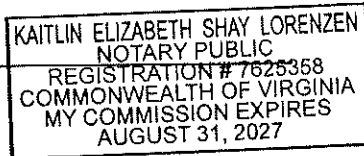
Mailing Address

Phone No.

Subscribed and sworn to before me this 27th day of November, 2023.

August 31, 2027

My Commission Expires



[Handwritten Signature]

Notary Public

Signature of Property Owner

Date

Mailing Address

Phone No.

Subscribed and sworn to before me this _____ day of _____, 20_____.

My Commission Expires

Notary Public

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November 27, 2023

Justin Nelson, Zoning Administrator
Town of Irvington, Virginia
P. O. Box 174
Irvington, VA 22480

**Re: Our Client: New Tides LLC
Tide's Inn
Amendment of Conditional Use Permit #2022 CUPTIDES**

Dear Mr. Nelson:

Attached please find a completed Application for Conditional Use Permit which is filed as part of a request to modify Town of Irvington CUP #2022 CUPTIDES (the "CUP") issued for the site of the Tide's Inn on Tax Map No. 33, Parcel 236 in the Town of Irvington, Lancaster County, Virginia. This letter is submitted as a narrative providing background for the requested CUP amendment.

In October of 2022 my client New Tides LLC, a Virginia limited liability company, applied for a conditional use permit in connection with construction with a new maintenance building with an access roadway and parking located south of the Tide's Inn entrance road from King Carter Drive. During Town Council consideration of the CUP application in 2022, Carolyn Elliott, representing the neighboring property owner the Ester G. Hall Family Trust, voiced concerns over impacts of the new maintenance building upon her property. In response, Council imposed a CUP condition requiring a fence 8 feet tall located 5 feet onto the property of New Tide's LLC, with trees, shrubs and/or bushes planted on both sides.

Development work on the maintenance building has proceeded since the CUP was granted. The Town of Irvington approved a site plan for the project earlier this year. A copy of the relevant page C4 of the approved site plan is attached to the application and this narrative.

As site work and construction have been undertaken, an issue has arisen with regard to placement of the fence 5 feet onto the New Tide's LLC property as required by the CUP. My client is unable to install and maintain plantings with only a 5 foot work area between the neighboring property line and the required fence. Activity on the Hall Family Trust property is inevitable. Discussions with Ms. Elliott regarding easements for access to install and maintain the required landscaping materials have been unsuccessful, as she does not consent to use of her property for these purposes. You and your office have assisted in discussions with the neighbor, without achieving agreement on the necessary access and maintenance easements. Thus the enclosed application requests changes to the CUP to allow the Tide's Inn to be compliant.

Relocating the required fence further into the New Tides LLC property is impossible based on a number of factors:

- Part of the maintenance building project involves undergrounding the Dominion Energy power lines extending from King Carter Drive parallel to the Hall Family Trust property line north of the required fence. Dominion will not permit erection of the fence above its underground power lines. Thus, this expensive power line burial (which will benefit all neighbors) affects the ability of my client to relocate the fence northerly toward the Tide's Inn maintenance building.
- A stormwater management BMP swale parallels the Hall property line. Placement of the fence in this swale would be prohibited by Virginia DEQ regulations for such BMPs.
- Site work for the proposed access road from King Carter Drive to the maintenance building has begun, and moving the fence 10 or more feet further into the Tide's Inn property would require

reengineering of the entire site plan, with associated County approvals, utilities relocation, and delays for a project which must be substantially completed during the offseason when guests are less numerous at the Tide's Inn

Acceptable amendments to the CUP include the following:

1. Relocation of the fence to a point approximately one-half to one foot onto the New Tides LLC property, with no required plantings on the Hall Family Trust property side of the fence. Please be assured that it is access, not the cost of the fence, which brings this matter back before the Council.
2. Substitution of planted materials on the New Tides LLC property in lieu of fencing. Guest access to the Hall property is not an issue, because the location of the shared property line is behind the maintenance building in a place where guests need not visit or walk. The approved planting plan (copy enclosed for your reference) already calls for plantings along the new access road from King Carter Drive. Replacement of the required fence within a substantial landscape buffer would seem more visually appealing to Ms. Elliott than a fence. The Hall Family Trust property would benefit from a row of screening plantings near the property line plus a second intermittent row of shrubs and landscaping across the new access road. This "double buffer" would protect the Hall Family Trust property from visual impacts.


Included with the enclosed application are graphics prepared by Bay Design Group which show the proposed relocation of the subject fence to a location just off of the Tide's Inn Property line, and the swale which restricts relocation farther onto the Tide's Inn property. Conceptual views of the fence from the Hall Family Trust property are also included.

Conclusion

My client is, as most members of the Planning Commission and Town Council will have observed, engaged in an impressive renovation and revitalization of the Tide's Inn, which benefits the Town and neighbors of the Tide's Inn. The CUP as approved imposes a condition which makes it impossible for my client to comply with the existing CUP conditions, however. Thus this application for amendment of the CUP seeks relief from the Town Council, while offering very similar and workable protections for the Hall Family property to the south.

Thank you for your kind consideration of this application.

Very truly yours,



Gregory R. Davis

GRD/jwb

Enclosures

cc: New Tides LLC, Attn: Aaron Brown
Bay Design Group, Attn: Wayne Savage