

# ESSEX COUNTY

## Zoning & Subdivision Ordinance

**Joint Public Hearing Draft**

*April 12, 2022*



## Table of Contents

<b>ARTICLE I. — IN GENERAL</b> .....	<b>1</b>
Section 36.1. — Title.....	1
Section 36.2. — Authority and Jurisdiction; Introduction.....	1
Section 36.3. — Purpose.....	1
Section 36.4. — Applicability.....	2
Section 36.5. — Conformity with Ordinance Required.....	3
Section 36.6. — Figures in Chapter.....	3
Section 36.7. — Conflicting Ordinances or Conditions.....	3
Section 36.8. — Severability.....	3
Section 36.9. — Effective Date.....	3
Reserved 36.10 — 36.15.....	3
<b>ARTICLE II. — ADMINISTRATION</b> .....	<b>4</b>
<b>Division 1. — Zoning Administrator and Subdivision Agent</b> .....	<b>4</b>
Section 36.16. — Powers and Duties.....	4
Reserved 36.17— 36.26.....	5
<b>Division 2. — Planning Commission</b> .....	<b>5</b>
Section 36.27. — Appointment; Membership.....	5
Section 36.28. — Powers and Duties.....	5
Section 36.29. — Rules and Regulations; Meetings.....	5
Reserved 36.30 — 36.39.....	5
<b>Division 3. — Board of Zoning Appeals</b> .....	<b>5</b>
Section 36.40. — Appointment; Membership; Terms; Removal.....	5
Section 36.41. — Powers and Duties.....	6
Section 36.42. — Rules and Regulations; Meetings.....	6
Reserved 36.43 — 36.54.....	7
<b>Division 4. — Fees</b> .....	<b>7</b>
Section 36.55. — Fees; Charges; Expenses.....	7
<b>Division 5. — Enforcement</b> .....	<b>7</b>
Section 36.56. — Authority and Action for Violations.....	7
Section 36.57. — Penalties for Violations.....	8
Reserved 36.58 — 36.64.....	9
<b>Division 6. — Appeals</b> .....	<b>9</b>
Section 36.65. — In General.....	9
Section 36.66. — Appeals to Board of Zoning Appeals.....	10
Section 36.67. — Appeals of Board of Zoning Appeals.....	10
Section 36.68. — Construction in Violation of Ordinance.....	10
Reserved 36.69 — 36.79.....	10

<b>ARTICLE III. — PERMITS AND APPLICATIONS</b> .....	<b>11</b>
<b>Division 1. — In General</b> .....	<b>11</b>
Section 36.80. — Outstanding Fees; Taxes. ....	11
Section 36.81. — Forms. ....	11
Section 36.82. — Oath Required.....	11
Section 36.83. — Minimum Submission Standards for Applications. ....	11
Section 36.84. — Ordinance Conformance. ....	11
Section 36.85. — Vested Rights, Not Impaired. ....	11
Reserved 36.86 – 36.94 .....	11
<b>Division 2. — Zoning Permits</b> .....	<b>12</b>
Section 36.95. — Purpose and Intent. ....	12
Section 36.96. — Applicability.....	12
Section 36.97. — Standards and Procedures.....	12
Section 36.98. — Period of Validity.....	12
Section 36.99. — Appeal.....	12
Reserved 36.100 — 36.109 .....	12
<b>Division 3. — Zoning Text and Map Amendment</b> .....	<b>13</b>
Section 36.110. — In General.....	13
Section 36.111. — Standards and Procedures. ....	13
Section 36.112. — Reconsiderations.....	15
Section 36.113. — Appeal. ....	15
Reserved 36.114 — 36.124 .....	15
<b>Division 4. — Conditional Zoning and Proffers</b> .....	<b>15</b>
Section 36.125. — Purpose and Intent. ....	15
Section 36.126. — Standards and Procedures. ....	15
Section 36.127. — Amendments and Variations. ....	17
Section 36.128. — Effect of Condition; Period of Validity.....	17
Section 36.129. — Record of Conditional Zoning.....	17
Section 36.130. — Appeal. ....	17
Reserved 36.131 — 36.139 .....	17
<b>Division 5. — Conditional Use Permits</b> .....	<b>17</b>
Section 36.140. — Purpose and Intent. ....	17
Section 36.141. — Applicability.....	17
Section 36.142. — Standards and Procedures. ....	17
Section 36.143. — Amendment of Conditions.....	18
Section 36.144. — Effect of Decision; Period of Validity.....	19
Section 36.145. — Revocation. ....	19
Section 36.146. — Appeal. ....	19
Reserved 36.147 — 36.154 .....	19
<b>Division 6. — Variances</b> .....	<b>19</b>
Section 36.155 — Purpose and Intent. ....	19
Section 36.156. — Standards and Procedures. ....	19
Section 36.157. — Effect of Decision; Period of Validity.....	20
Section 36.158. — Amendment. ....	21
Section 36.159. — Appeal. ....	21

Reserved 36.160 — 36.174 .....	21
<b>Division 7. — Site Plans.....</b>	<b>21</b>
Section 36.175. — Purpose and Intent. ....	21
Section 36.176. — Applicability.....	21
Section 36.177. — Waiver of Requirements. ....	22
Section 36.178. — Preapplication. ....	22
Section 36.179. — Preliminary Site Plan Specifications and Contents.....	22
Section 36.180. — Final Site Plan Specifications and Contents. ....	24
Section 36.181. — Reviews. ....	24
Section 36.182. — Amendments.....	25
Section 36.183. — Compliance with Approved Site Plan Required. ....	26
Section 36.184. — Period of Validity.....	26
Reserved 36.185. — 36.199 .....	26
<b>Division 8. — Public Notice .....</b>	<b>26</b>
Section 36.200. — Procedure.....	26
Reserved 36.201 — 36.209 .....	27
<b>ARTICLE IV. — ZONING DISTRICTS .....</b>	<b>28</b>
<b>Division 1. — Establishment, Purpose, and Intent of Districts.....</b>	<b>28</b>
Section 36.210. — General.....	28
Section 36.211. — Purpose and Intent of Zoning Districts. ....	29
Reserved 36.212. — 36.219. ....	31
<b>Division 2. — Residence District Requirements .....</b>	<b>31</b>
Section 36.220. — General Standards and Interpretation.....	31
Section 36.221. — A-1 Agriculture and Forestry, Preservation District Requirements.....	32
Section 36.222. — A-2 Agriculture and Forestry, General District Requirements. ....	33
Section 36.223. — R-1 Very Low Density Residential District Requirements. ....	34
Section 36.224. — R-2 Low Density Residential District Requirements.....	35
Section 36.225. — R-3 Medium Density Residential District Requirements.....	36
Section 36.226. — R-4 Residential, Restricted District Requirements.....	40
Section 36.227. — MH-1 Mobile Home Park District Requirements. ....	41
Reserved 36.228.— 36.239. ....	42
<b>Division 3. — Planned District Requirements .....</b>	<b>42</b>
Section 36.240. — PUD Planned Unit Development District Requirements.....	42
Section 36.241. — Permitted Uses.....	43
Section 36.242. — Density, Minimum Development Standards and Development Standard Exceptions .....	43
Reserved 36.243. — 36.254. ....	46
<b>Division 4. — Business and Industrial District Requirements.....</b>	<b>46</b>
Section 36.255. — B-1 Local Business and B-2 General Business Requirements.....	46
Section 36.256. — I-1 Light Industrial and I-2 Industrial District Requirements. ....	47
Reserved 36.257. — 36.264. ....	47
<b>Division 5. — Chesapeake Bay Preservation Area Overlay District.....</b>	<b>48</b>
Section 36.265. — Findings of Fact. ....	48
Section 36.266. — Establishment.....	48

**Essex County Zoning & Subdivision Ordinance**  
**Public Hearing Draft**  
**April 12, 2022**

Section 36.267. — Areas of Applicability. ....	48
Section 36.268. — Determining RPA Boundaries.....	49
Section 36.269. — Use Regulations. ....	49
Section 36.270. — Lot Size. ....	49
Section 36.271. — Performance Standards. ....	49
Section 36.272. — Water Quality Impact Assessment (WQIA).....	55
Section 36.273. — Plan of Development. ....	58
Section 36.274. — Administrative Waivers.....	62
Section 36.275. — Exemptions. ....	62
Section 36.276. — Exceptions (Variances).....	63
Reserved 36.277 — 36.289 .....	63
<b>Division 6. — Modifications and Encroachments.....</b>	<b>64</b>
Section 36.290. — Height Modifications.....	64
Section 36.291. — Setback Encroachment. ....	64
Reserved 36.292— 36.309 .....	64
<b>ARTICLE V. — USE MATRIX .....</b>	<b>65</b>
Section 36.310. — Purpose and Intent. ....	65
Section 36.311. — Zoning Use Matrix – Districts and Uses.....	66
Reserved 36.312 — 36.314 .....	80
<b>ARTICLE VI. — USE PERFORMANCE STANDARDS .....</b>	<b>81</b>
<b>Division 1. — General Standards for Specific Uses .....</b>	<b>81</b>
Section 36.315. — Purpose and Intent. ....	81
Reserved 36.316 — 36.319 .....	81
<b>Division 2. — Agriculture/Forestral Use Standards .....</b>	<b>81</b>
Section 36.320. — Agriculture, intensive.....	81
Section 36.321. — Sportsman club, commercial.....	81
Section 36.322. — Sportsman club, private.....	81
Section 36.323. — Stable, commercial.....	82
Section 36.324. — Stable, private.....	82
Reserved 36.325 — 36.334 .....	82
<b>Division 3. — Residential Use Standards.....</b>	<b>82</b>
Section 36.335. — Dwelling, manufactured.....	82
Section 36.336. — Manufactured home park.....	83
Reserved 36.337 — 36.344 .....	83
<b>Division 4. — Public/Civic/Recreation Use Standards .....</b>	<b>83</b>
Section 36.345. — Campground. ....	83
Section 36.346. — Cemetery.....	84
Section 36.347. — Public Park and recreation area.....	84
Reserved 36.348 — 36.359 .....	84
<b>Division 5. — Commercial Use Standards .....</b>	<b>84</b>
Section 36.360. — Automobile repair service.....	84
Section 36.361. — Automobile sale, rental/leasing.....	85

**Essex County Zoning & Subdivision Ordinance**  
**Public Hearing Draft**  
**April 12, 2022**

---

Section 36.362. — Car wash.....	85
Section 36.363. — Construction material sales. ....	85
Section 36.364. — Consumer repair service. ....	85
Section 36.365. — Equipment repair service, heavy.....	85
Section 36.366. — Equipment sales and rental, heavy. ....	85
Section 36.367. — Gasoline station. ....	86
Section 36.368. — Kennel, commercial. ....	86
Section 36.369. — Outdoor sales, seasonal. ....	86
Section 36.370. — Restaurant, drive-in. ....	87
Section 36.371. — Restaurant, mobile.....	87
Section 36.372. — Store, adult.....	88
Section 36.373. — Store, neighborhood convenience.....	88
Section 36.374. — Tradesperson service. ....	89
Section 36.375. — Veterinary hospital/clinic.....	89
Reserved 36.376 — 36.384 .....	89
<b>Division 6. — Industrial Use Standards.....</b>	<b>89</b>
Section 36.385. — Bulk fuel storage and distribution.....	89
Section 36.386. — Construction yard.....	89
Section 36.387. — Junkyard.....	90
Reserved 36.388 — 36.399 .....	90
<b>Division 7. — Miscellaneous Use Standards.....</b>	<b>90</b>
Section 36.400. — Broadcasting or communication tower. ....	90
Section 36.401. — Parking lot, commercial. ....	95
Section 36.402. — Sawmill, mobile.....	95
Section 36.403. — Small cell facility.....	95
Section 36.404. — Solar energy, large-scale, power purchase agreement, and utility-scale. ....	96
Section 36.405. — Solar energy, medium-scale and small-scale. ....	104
Reserved 36.406 — 36.414 .....	105
<b>Division 8. — Accessory Use Standards.....</b>	<b>105</b>
Section 36.415. — Accessory building or structure. ....	105
Section 36.416. — Accessory dwelling unit.....	106
Section 36.417. — Bed and breakfast. ....	107
Section 36.418. — Family health care structure, temporary.....	108
Section 36.419. — Home occupation, type A and type B. ....	108
Section 36.420. — Kennel, private. ....	109
Section 36.421. — Outdoor storage.....	109
Section 36.422. — Short-term rental.....	109
Reserved 36.423 — 36.434 .....	111
<b>ARTICLE VII. — COMMUNITY DESIGN STANDARDS.....</b>	<b>112</b>
<b>Division 1. — Signs .....</b>	<b>112</b>
Section 36.435. — Purpose and Intent. ....	112
Section 36.436. — Permit Required; Application.....	112
Section 36.437. — General Requirements for Signs. ....	113
Section 36.438. — Sign Area. ....	114
Section 36.439. — Exempt Signs.....	114
Section 36.440. — Prohibited Signs. ....	115

**Essex County Zoning & Subdivision Ordinance**  
**Public Hearing Draft**  
**April 12, 2022**

---

Section 36.441. — District Sign Standards. ....	115
Section 36.442. — Structural and Maintenance Requirements.....	118
Section 36.443 — Nonconforming Signs.....	118
Section 36.444 — Enforcement. ....	118
Section 36.445. — Appeals.....	118
Reserved 36.446 — 36.454 .....	118
<b>Division 2. — Parking and Loading.....</b>	<b>119</b>
Section 36.455. — Purpose and Intent. ....	119
Section 36.456. — Generally.....	119
Section 36.457. — Location in Relation to Use. ....	119
Section 36.458. — Joint Use of Spaces.....	119
Section 36.459. — Reduction.....	120
Section 36.460. — Design Standards for Off-Street Parking. ....	120
Section 36.461. — Obligations of Owner. ....	121
Section 36.462. — Schedule of Required Spaces. ....	121
Section 36.463. — Interpretation of Specific Requirements for Table 36.12 .....	125
Section 36.464. — Recreational Vehicle and Boat Parking. ....	125
Section 36.465. — Off Street Loading Requirements. ....	125
Section 36.466. — Interpretation of Specific Requirements for Table 36.16. ....	126
Section 36.467. — Design Standards for Off-Street Loading. ....	127
Reserved 36.468 — 36.474. ....	127
<b>Division 3. — Lighting.....</b>	<b>127</b>
Section 36.475. — Purpose and Intent. ....	127
Section 36.476. — Applicability.....	127
Section 36.477. — Standards. ....	128
Section 36.478. — Compliance. ....	129
Reserved 36.479. — 36.484. ....	129
<b>Division 4. — Landscaping, Walls, and Fences .....</b>	<b>129</b>
Section 36.485. — Purpose and Intent. ....	129
Section 36.486. — Application of Landscape, Wall, and Fence Standards. ....	129
Section 36.487. — Landscape Plan Requirements. ....	130
Section 36.488. — General Standards.....	130
Section 36.489. — Buffering. ....	131
Section 36.490. — Parking Lot Landscaping.....	132
Section 36.491. — Screening and Enclosure.....	133
Section 36.492. — Tree and Plant Standards.....	133
Section 36.493. — Walls and Fences.....	134
Section 36.494. — Compliance. ....	136
Reserved 36.495 — 36.504 .....	136
<b>ARTICLE VIII. — NONCONFORMITIES .....</b>	<b>137</b>
Section 36.505. — Intent.....	137
Section 36.506. — Generally.....	137
Section 36.507. — Nonconforming Lots of Record. ....	137
Section 36.508. — Nonconforming Use. ....	137
Section 36.509. — Buildings Nonconforming in Height, Area, or Bulk. ....	138
Section 36.510. — Nonconforming Buildings, Structures, and Improvements.....	138

Section 36.511. — Repairs and Maintenance .....	139
Reserved 36.512. — 36.519 .....	139
<b>ARTICLE IX. — SUBDIVISIONS .....</b>	<b>140</b>
<b>Division 1. — In General .....</b>	<b>140</b>
Section 36.520. — Title. ....	140
Section 36.521. — Recording of ordinance.....	140
Section 36.522. — Amendments.....	140
Section 36.523. — Repeal. ....	140
Section 36.524. — Circumvention.....	140
Section 36.525. — Exemptions. ....	140
Reserved 36.526. — 36.534 .....	141
<b>Division 2. — Types of Subdivisions .....</b>	<b>141</b>
Section 36.535. — Major Subdivisions.....	141
Section 36.536. — Minor Subdivisions.....	141
Section 36.537. — Single Divisions.....	141
Section 36.538. — Family Subdivisions. ....	141
Reserved 36.539 — 36.544 .....	143
<b>Division 3. — Design Requirements .....</b>	<b>143</b>
Section 36.545. — Suitability of Land. ....	143
Section 36.546. — Land Subject to Flooding.....	143
Section 36.547. — Residential Density.....	143
Section 36.548. — Mandatory Dedication of Open Space .....	143
Section 36.549. — Lots.....	144
Section 36.550. — Flag lots. ....	144
Section 36.551. — Remnants. ....	144
Section 36.552. — Access.....	145
Section 36.553. — Blocks. ....	145
Section 36.554. — Streets.....	145
Section 36.555. — Public and Semi-Public Facilities. ....	149
Section 36.556. — Home Owners Association (HOA). ....	152
Section 36.557. — Obligation of Improvements.....	152
Section 36.558. — Monuments.....	153
Reserved 36.559. — 36.669. ....	153
<b>Division 4. — Guarantees.....</b>	<b>153</b>
Section 36.670. — Required to be Guaranteed. ....	153
Section 36.671. — Types of Guarantees. ....	154
Section 36.672. — Amount. ....	154
Section 36.673. — Release.....	154
Section 36.674. — Extensions for Completion.....	155
Section 36.675. — Default. ....	155
Reserved 36.676. — 36.684 .....	155
<b>Division 5. — Platting Requirements, Generally .....</b>	<b>155</b>
Section 36.685. — Approval Required Before Sale. ....	155
Section 36.686. — Subdivision Name. ....	156
Section 36.687. — Changes to Plats.....	156



**Essex County Zoning & Subdivision Ordinance**  
**Public Hearing Draft**  
**April 12, 2022**

---

Section 36.688. — Separate Ownership.....	156
Reserved 36.689. — 36.699. ....	156
<b>Division 6. — Preliminary Plats .....</b>	<b>156</b>
Section 36.700. — Procedure for Single, Family, and Minor Subdivision Plat Approval.....	156
Section 36.701. — Procedure for Major Subdivision Plat Approval.....	156
Reserved 36.702. — 36.709 .....	160
<b>Division 7. — Final Plats.....</b>	<b>160</b>
Section 36.710. — Plat Requirements for Single, Family, and Minor Subdivisions.....	160
Section 36.711. — Final Approval Procedure for Single, Family, and Minor Subdivisions.....	161
Section 36.712. — Final Approval Procedure for Major Subdivisions.....	162
Section 36.713. — Recording.....	163
Section 36.714. — Variations and Exceptions.....	164
Reserved 36.715. — 36.724. ....	164
<b>Division 8. — Vacation of Plats .....</b>	<b>164</b>
Section 36.725. — Vacation. ....	164
Reserved 36.726. — 36.734. ....	165
<b>Division 9. — Enforcement, Violations, and Fees.....</b>	<b>165</b>
Section 36.735. — Enforcement. ....	165
Section 36.736. — Violation and Penalty.....	166
Section 36.737. — Fees.....	166
Reserved 36.738. — 36.744 .....	166
<b>ARTICLE X. — DEFINITIONS.....</b>	<b>167</b>
Section 36.745. — Word Usage.....	167
Section 36.746. — Definitions.....	167

## **Tables**

Table 36.1 A-1 District Requirements.....	32
Table 36.2 A-2 District Requirements.....	33
Table 36.3 R-1 District Requirements.....	34
Table 36.4 R-2 District Requirements.....	35
Table 36.5 R-3 District Requirements — Single Family Residential and Non-Residential Use .....	36
Table 36.6. R-3 District Requirements.....	37
Table 36.7 R-4 District Requirements.....	40
Table 36.8 MH-1 District Requirements — Park Standards .....	41
Table 36.9 MH-1 District Requirements — Individual Manufactured Home Standards .....	42
Table 36.10 B-1 and B-2 District Requirements .....	46
Table 36.11 I-1 and I-2 District Requirements.....	47
Table 36.12 Zoning Use Matrix - Districts & Uses .....	66
Table 36.13. Maximum Sign Dimensions — B-1, B-2, I-1, and I-2 Zoning Districts.....	116
Table 36.14. Maximum Sign Dimensions — A-1, A-2, R-1, R-2, R-3, R-4, PUD, and MH-1 Zoning Districts.....	117
Table 36.15. Minimum Off-Street Parking Requirements .....	121
Table 36.16. Minimum Off-Street Loading Requirements .....	126
Table 36.17. Open Space Subdivision Requirements .....	144

## ARTICLE I. — IN GENERAL

### Section 36.1. — Title.

This chapter, the full title of which is "Zoning and Subdivision Ordinance of Essex County, Virginia," shall be permitted, for convenience, to be referred to as the "Zoning and Subdivision Ordinance" or "Ordinance." The accompanying map, titled "Zoning Map of Essex County, Virginia," shall be permitted to be referred to as the "Zoning Map."

### Section 36.2. — Authority and Jurisdiction; Introduction.

- (a) Pursuant to the Code of Virginia, § 15.2-2280 et seq., the County of Essex, Virginia is given the authority to classify and regulate land development under its jurisdiction.
- (b) Pursuant to the Code of Virginia, § 15.2-2240, et seq., the County of Essex, Virginia is authorized to adopt regulations to assure the orderly subdivision of land and its development.
- (c) The Comprehensive Plan of the County of Essex embodies the community's vision and goals. THE primary mechanism for achieving the County's land use goals is the Zoning and Subdivision Ordinance. The Zoning and Subdivision Ordinance sets forth the regulations that legally enforce land use policies and establishes the rules guiding the development and use of land within the County. Similarly, the Subdivision Article of the Zoning and Subdivision Ordinance establishes the rules by which land can be divided, often setting the stage for subsequent development under the zoning regulations. These two land use tools work hand in hand to help achieve the County's vision regarding land use and the overall well-being of the community.

### Section 36.3. — Purpose.

This Ordinance, and any amendments hereto, have been adopted for the general purpose of implementing the Comprehensive Plan of the County of Essex; promoting the health, safety, or general welfare of the public; and further accomplishing the objectives of the Code of Virginia, § 15.2-2283 and § 15.2-2240. To these ends, this ordinance is designed to give reasonable consideration to the following purposes, where applicable:

- (1) To provide for adequate light, air, convenience of access, and safety from fire, flood and other dangers;
- (2) To reduce or prevent congestion in the public streets;
- (3) To facilitate the creation of a convenient, attractive and harmonious community;
- (4) To facilitate the provision of adequate police and fire protection, disaster, evacuation, civil defense, transportation, water, sewerage, schools, parks, forests, playgrounds, recreational facilities, airports, and other public requirements;
- (5) To protect against destruction of or encroachment upon historic areas and working waterfront development areas;
- (6) To protect against one (1) or more of the following: overcrowding of land, undue densities of populations in relation to the community facilities existing or available, obstruction of light and air, danger and congestion in travel and transportation, or loss of life, health, or property from fire, flood, panic or other dangers;
- (7) To encourage economic development activities that provide desirable employment and enlarge the tax base;
- (8) To provide for the preservation of agricultural and forestal lands and other lands of significance for the protection of the natural environment;
- (9) To protect approach slopes and other safety areas of licensed airports, including United States government and military air facilities; and

- (10) To promote the creation and preservation of affordable housing suitable to meet the current and future needs of the county as well as a reasonable proportion of the current and future needs of the planning district within which the county is located;
- (11) To provide reasonable protection against encroachment upon military bases, military installations, and military airports and their adjacent safety areas, excluding armories operated by the Virginia National Guard;
- (12) To provide reasonable modifications in accordance with the Americans with Disabilities Act of 1990 or state and federal fair housing laws, as applicable;
- (13) To protect surface water and ground water as defined in the Code of Virginia, § 62.1-255;
- (14) To establish standards and procedures for the orderly division, subdivision, and resubdivision of lots, tracts, and parcels of land for residential and commercial purposes pursuant to the Code of Virginia, § 15.2-2240-15.2-2279, as amended;
- (15) To ensure proper legal description and proper monumenting of subdivided land;
- (16) To ensure that purchasers of lots, tracts and parcels of land purchase a commodity that is suitable for the intended use; and
- (17) To provide standards for development, ensuring appropriate ingress, egress, public facilities, services, and utilities.

**Section 36.4. — Applicability.**

- (a) Pursuant to the Code of Virginia, § 15.2-2281, the provisions of this Ordinance shall apply to all property within the unincorporated territory of the County of Essex, Virginia, with the exception that any property held in fee simple ownership by the United States of America or the Commonwealth of Virginia shall not be subject to the provisions contained herein.
- (b) Pursuant to the Code of Virginia, § 15.2-2284, the zoning regulations and districts as herein set forth have been drawn with reasonable consideration for the existing use and character of property, the comprehensive plan, the suitability of properties for various uses, the trends of growth or change, the current and future requirements of the community as to land for various purposes as determined by population and economic studies and other studies, the transportation requirements of the community, and the requirements for airports, housing, schools, parks, playgrounds, recreation areas, and other public services; and the conservation of natural resources, the preservation of flood plains, the protection of life and property from impounding structure failures, the preservation of agriculture and forestal land, the conservation of properties and their values, and the encouragement of the most appropriate use of land throughout the County.
- (c) In interpretation and application, the provisions of this Ordinance shall be the minimum requirements, adopted for the promotion of the public health, safety, and general welfare.
- (d) This Ordinance shall not be deemed to interfere with or abrogate or annul or otherwise affect, in any manner whatsoever, any easements, covenants, or other agreements between parties; provided, however, that pursuant to the Code of Virginia, § 15.2-2315, whenever the requirements of this ordinance are at variance with the requirements of any other lawfully adopted statute, regulations, or ordinances, the most restrictive, or that imposing the higher standards shall prevail.
- (e) If any section of this Ordinance incorporates by reference any state statute or regulation, then the ordinance incorporates future amendments of the state statute or regulation.

**Section 36.5. — Conformity with Ordinance Required.**

Except as otherwise provided in this ordinance or as modified through a zoning approval, land, buildings, structures or premises shall only be used, and buildings shall only be erected or altered in conformity with this ordinance's regulations.

**Section 36.6. — Figures in Chapter.**

Where figures are contained in this chapter, they are provided for demonstrative purposes only and are not a substantive part of this ordinance.

**Section 36.7. — Conflicting Ordinances or Conditions.**

- (a) Should any Commonwealth or federal ordinance, provision, or regulation conflict with this Ordinance or portion thereof, the language of whichever is more restrictive shall be controlling to the extent necessary to resolve the conflict.
- (b) Should any provision of this Ordinance conflict with another provision herein or within other chapters of the county code, the language contained in the more restrictive provision shall control.
- (c) As stated in the Code of Virginia § 15.2-2261.1, if the provisions of a recorded plat or final site plan, which was specifically determined by the Board of Supervisors to be in accordance with the zoning conditions previously approved conflict with underlying zoning conditions of the previous rezoning then the provisions of the recorded plat or final site plan shall control and the zoning amendment shall be deemed satisfied.

**Section 36.8. — Severability.**

Should any section or any provision of this Ordinance be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole, or any part thereof other than the part so held to be unconstitutional or invalid.

**Section 36.9. — Effective Date.**

The Ordinance shall become effective from and after the date of its passage, (insert effective date), and legal application, and its provisions shall be in force thereafter until repealed or amended.

Reserved 36.10 — 36.15

## ARTICLE II. — ADMINISTRATION

### Division 1. — Zoning Administrator and Subdivision Agent

#### Section 36.16. — Powers and Duties.

- (a) This Ordinance and Zoning Map shall be administered, interpreted, and enforced by the Zoning Administrator (Administrator), who shall be appointed by the Board of Supervisors. The Administrator shall serve at the pleasure of the Board of Supervisors and shall have such duties as are conferred on them by this Ordinance and the Code of Virginia § 15.2-2286 (4). The Zoning Administrator may also hold another office in the County.
- (1) The Administrator shall interpret this Ordinance based upon the following criteria:
- a. Provisions shall be considered the minimum required to promote the public health, safety, convenience and general welfare;
  - b. Unless otherwise specified, the standards of this Ordinance are the minimum required;
  - c. When regulations of this Ordinance conflict with each other, other chapters of the county code, or state or federal law, the more restrictive regulations or standards shall govern;
  - d. This Ordinance does not abolish easements, covenants or other private agreements, however, where this Ordinance's requirements are more restrictive or impose higher standards, this Ordinance's requirements shall govern;
  - e. A building, structure, or use which was not legally existing on (insert effective date) shall not be made lawful solely by adoption of this Ordinance;
  - f. Where this Ordinance's requirements are vague or unclear, the Zoning Administrator shall be responsible for their interpretation; and
  - g. Conditions imposed or accepted as part of a zoning approval prior to (insert effective date) shall remain in effect. However, if there is a conflict between conditions imposed through those land use decisions and this Ordinance, the conditions shall apply. If there is no condition that addresses a specific use or development standard of this Ordinance, this Ordinance's requirements shall govern.
- (b) The Subdivision Agent (Agent), who shall be appointed by the Board of Supervisors to administer and enforce the subdivision article shall consult with the Planning Commission on matters contained within Article IX; and in the performance of these duties, the Agent may call for opinions or decisions, either verbal or written, from other departments or state agencies in considering details of any submitted plat.
- (c) The Administrator/Agent may designate a Deputy Administrator/Agent or other designee to assist in these duties.
- (d) The Administrator must provide written notice to the owner, when receiving a request that is not from the owner or agent of the owner, for a written order, requirement, decision, or determination. In accordance with the Code of Virginia § 15.2-2204 (H), the owner must receive the notice within 10 days receipt of said request.
- (e) In addition to the regulations contained herein, the Administrator and Agent may, from time to time, establish any reasonable additional administrative procedures deemed necessary for the proper administration of this Ordinance.

- (f) The provisions of this Ordinance shall not impair a vested right of a property owner. The Zoning Administrator shall be authorized to make determinations on whether a property owner's rights are deemed vested in a land use. The Subdivision Agent shall be authorized to make determinations on whether a property owner's rights are deemed vested in a division. Vested rights determinations shall be made in accordance with the Code of Virginia § 15.2-2307.

Reserved 36.17— 36.26

## **Division 2. — Planning Commission**

### **Section 36.27. — Appointment; Membership.**

The Planning Commission shall be created, organized, removed, and compensated pursuant to the Code of Virginia, § 15.2-2210 and § 15.2-2212.

### **Section 36.28. — Powers and Duties.**

The Planning Commission shall perform the duties pursuant to the Code of Virginia, § 15.2-2221 and § 15.2-2230.

### **Section 36.29. — Rules and Regulations; Meetings.**

- (a) The Planning Commission shall conduct meetings pursuant to the Code of Virginia § 15.2-2214-2217.
- (b) Pursuant to the Code of Virginia § 15.2-2287.1, members are required, prior to or at a hearing on a matter, make a full public disclosure of any business or financial relationship that such member has, or has had within the 12-month period prior to such hearing and shall be ineligible to vote or participate in any way upon the matter.

Reserved 36.30 — 36.39

## **Division 3. — Board of Zoning Appeals**

### **Section 36.40. — Appointment; Membership; Terms; Removal.**

Pursuant to the Code of Virginia, § 15.2-2308, a Board of Zoning Appeals (BZA) shall be created and organized as follows:

- (1) A BZA consisting of five members shall be appointed by the circuit court of Essex County. Appointments for vacancies occurring otherwise than by expiration of term shall in all cases be for the unexpired term. A member whose term expires shall continue to serve until the successor is appointed and qualifies.
- (2) The term of office shall be for five years; except, that of the first five members appointed, one shall serve for five years, one for four years, one for three years, one for two years and one for one year.
- (3) Members of the BZA shall hold no other public office in the locality except that one may be a member of the Planning Commission, and any member may be appointed to serve as an officer of election.
- (4) Any BZA member or alternate may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the court which appointed them, after a hearing held after at least 15 days' notice.
- (5) The BZA shall choose annually its own chairperson and vice-chairperson. The vice-chairperson shall act in the absence of the chairperson.

**Section 36.41. — Powers and Duties.**

Pursuant to the Code of Virginia § 15.2-2309, the BZA shall have the following powers and duties:

- (1) Appeals.
  - a. To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this Ordinance as outlined in Article III Division 5.
  - b. No such appeal shall be heard except after notice and hearing as provided by the Code of Virginia § 15.2-2204.
- (2) Variance.
  - a. To authorize upon appeal or original application a variance, as defined in the Code of Virginia § 15.2-2201, from the terms of this Ordinance when the strict application of the Ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and if the applicant proves through a preponderance of evidence that a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship; provided that the spirit of this Ordinance shall be observed and substantial justice done.
  - b. No such variance shall be heard except after notice and hearing as provided by The Code of Virginia § 15.2-2204.
- (3) Boundary Interpretations.
  - a. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by any such question, and after public hearing with notice as required by The Code of Virginia § 15.2-2204, the BZA may interpret the map in such way as to carry out the intent and purpose of this Ordinance for the particular section or district in question.
  - b. The BZA shall not have the power to change substantially the locations of district boundaries as established by Ordinance.
  - c. No provision of this section shall be construed as granting the BZA the power to rezone property.

**Section 36.42. — Rules and Regulations; Meetings.**

- (a) The BZA shall adopt such rules and regulations as it may consider necessary.
- (b) The BZA may adopt policies regarding ex parte communication that are in accordance with the Code of Virginia § 15.2-2308.1.
- (c) Pursuant to the Code of Virginia § 15.2-2287.1, members are required, prior to or at a hearing on a matter, make a full public disclosure of any business or financial relationship that such member has, or has had within the 12-month period prior to such hearing and shall be ineligible to vote or participate in any way upon the matter.
- (d) Meetings of the BZA shall be held at the call of its Chairman or at such time as a quorum of the BZA may determine.
- (e) The Chairman or, in their absence, the Acting Chairman may administer oaths and compel the attendance of witnesses.



- (f) The BZA shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact. It shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be public record.
- (g) All meetings of the BZA shall be open to the public.
- (h) A quorum shall be at least three members.
- (i) A favorable vote of three members of the BZA shall be necessary to reverse any order, requirement, decision or determination of any administrative official or to decide in favor of the applicant on any matter on which the Board is required to pass.

Reserved 36.43 — 36.54

## **Division 4. — Fees**

### **Section 36.55. — Fees; Charges; Expenses.**

- (a) The Board of Supervisors shall establish, by ordinance, a schedule of fees, charges and expenses, and collection procedures for zoning permits, conditional use permits, variances, appeals, amendments, and other matters pertaining to this Ordinance.
- (b) The schedule of fees shall be available for inspection in the office of the Zoning Administrator and may be altered or amended by the Board of Supervisors by ordinance amendment. Until all application fees, charges and expenses have been paid in full to the Treasurer of Essex County, no action shall be taken on any application or appeal.

## **Division 5. — Enforcement**

### **Section 36.56. — Authority and Action for Violations.**

- (a) Authority.

As authorized by the Code of Virginia § 15.2-2286(A)(4), the Zoning Administrator or designee shall be responsible for enforcing the provisions of this Ordinance.

- (b) Inspection Warrants.

The Zoning Administrator may enter upon or inspect any land or structure to ensure compliance with the provisions of this Ordinance, after requesting and receiving approval of the landowner to enter upon land for these purposes. If consent is not given by the landowner, the Zoning Administrator may enter upon land in accordance with the Code of Virginia § 15-2.2286(A)15.

- (c) Notice of Violations.

- (1) Upon becoming aware of any violation of the provisions of this Ordinance, the Zoning Administrator may issue written notice of such violation to the person committing or permitting the violations. Notice shall be mailed by registered or certified mail or hand delivered.
- (2) The notice of violation shall state the nature of the violation, date that it was observed, the remedy or remedies necessary to correct the violation and a reasonable time period for the correction of the violation.
- (3) Every written notice of violation of the Zoning Administrator shall include a statement informing the recipient that he or she may have a right to appeal the notice of zoning violation or written order within 30 days in accordance with the Code of Virginia § 15.2-2311. The zoning violation or written order shall include the applicable appeal fee and a reference to where additional information may be obtained

regarding the filing of an appeal. The decision shall be final and unappealable if not appealed within 30 days.

(4) Appeals shall be heard by the Board of Zoning Appeals in accordance with the procedures set forth in Article II, Division 5.

(d) Remedies for Violations.

Upon becoming aware of any violation and making a determination of validity of any of the provisions of this Ordinance, the Zoning Administrator may institute appropriate action or proceedings, as permitted by law, including injunction, abatement to restrain, correction or abatement.

### **Section 36.57. – Penalties for Violations.**

The remedies provided in the penalties sections below are cumulative and not exclusive except to the extent expressly provided therein.

(1) Criminal Penalties.

- a. With the exception of the subdivision code in Article IX, any violation of the requirements of this chapter resulting in injury to a person or persons or where such civil penalties exceed \$5,000, shall be a misdemeanor, and upon conviction thereof, shall be punishable by a fine of not less than \$10 and not more than \$1,000.
- b. If the violation is uncorrected at the time of conviction, the court shall order the violator to abate or remedy the violation in compliance with this Ordinance, within a time period established by the court. Failure to remove or abate such violation within the time period established by the court shall constitute a separate misdemeanor offense punishable by a fine of not less than \$10 nor more than \$1,000, and any such failure during any succeeding ten-day period shall constitute a separate misdemeanor offense for each ten-day period, punishable by a fine of not less than \$100 nor more than \$1,500.

(2) Civil Penalties.

Any violation other than as provided in Section 1 above for criminal penalties shall be subject to the following civil penalties, as provided in Virginia Code § 15.2-2209 and subject to the following:

- a. Procedure. Proceedings seeking civil penalties for violations of this Ordinance shall commence either by filing a civil summons in the general district court or by the Zoning Administrator or Agent issuing a ticket.
- b. Civil summons or ticket. A civil summons or ticket shall contain, at a minimum, the following information:
  1. Name and address of the person charged;
  2. Nature of the violation and the Ordinance provisions being allegedly violated;
  3. Location, date and time violation occurred or was observed;
  4. Amount of the civil penalty for the violation; and
  5. Right of the recipient to elect to either pay the penalty or stand trial for the violation and the date of such trial. The summons shall state that if the person elects to pay the penalty, the person must do so by making an appearance in person or in writing by mail to the county treasurer at least 72 hours prior to the time and date fixed for trial and, by such appearance, enters a waiver of trial and admits liability for the offence charged. The summons shall provide that a signature is an admission of liability that shall have the same force and effect

as a judgement of the court. However, such admission shall not be deemed a criminal conviction for any purpose.

- c. Failure to Enter Waiver. If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided by law or equity and it shall be the county's burden to provide the violator's liability by a preponderance of the evidence. A finding of liability shall not be deemed a criminal conviction for any purpose.
- d. Fines.
  1. Amount of Civil Penalty. A civil violation shall be subject to a civil penalty of \$200 for the initial summons, and a civil penalty of \$500 for each additional summons arising from the same set of operative facts.
  2. Daily Offense. Each day during which a violation exists shall constitute a separate violation. However, in no event shall a violation arising from the same set of operative facts be charged more frequently than once in any 10-day period.
  3. Maximum Aggregate Penalty. The total civil penalties from a series of violations arising from the same set of operative facts shall not exceed \$5,000. If the violations exceed the \$5,000 limit, the violation may be prosecuted as a criminal misdemeanor pursuant to Section 36.57.

Reserved 36.58 — 36.64

## **Division 6. — Appeals**

### **Section 36.65. — In General.**

- (a) Pursuant to the Code of Virginia § 15.2-2311, an appeal to the Board of Zoning Appeals may be taken by any person aggrieved or by any officer, department, board, or bureau of the County affected by any decision of the Zoning Administrator or from any order, requirement, decision, or determination made by any other administrative officer in the administration or enforcement of this Ordinance.
- (b) Such appeal shall be taken within 30 days after the decision appealed from by filing with the Zoning Administrator, and with the board, a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.
- (c) A decision or interpretation of the Zoning Administrator shall be presumed correct and may not be reversed or modified unless there is evidence in the record that the decision is not correct, based on the relevant procedures and review standards of this Ordinance. The Board of Zoning Appeals shall consider the purpose and intent of any applicable provisions of this Ordinance and other relevant Ordinances, laws, and regulations in making its decision.
- (d) An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the board that by reason of facts stated in the certificate a stay would in their opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the board or by a court of record, on application and on notice to the Zoning Administrator and for good cause shown.

**Section 36.66. — Appeals to Board of Zoning Appeals.**

Pursuant to the Code of Virginia § 15.2-2312, procedures for submitting an appeal shall be as follows:

(1) Mailing Procedure.

Appeals shall be mailed from the applicant seeking appeal to the Board of Zoning Appeals in care of the Zoning Administrator, and a copy of the appeal shall be mailed to the secretary of the Planning Commission. A third copy should be mailed to the individual, official, department, or agency concerned, if any.

(2) Hearing.

The Board of Zoning Appeals shall fix a reasonable time for the hearing of an appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within 90 days of the filing of the appeal.

(3) Decisions.

- a. In exercising its powers, the BZA may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from. In any appeal, if a BZA's attempt to reach a decision results in a tie vote, the matter may be carried over until the next scheduled meeting at the request of the person filing the appeal.
- b. The BZA shall keep minutes of its proceedings and other official actions which shall be filed in the office of the BZA and shall be public records.
- c. The chairperson of the BZA, or in their absence the acting chairperson, may administer oaths and compel the attendance of witnesses.

**Section 36.67. — Appeals of Board of Zoning Appeals.**

- (a) Pursuant to the Code of Virginia § 15.2-2314, any person jointly or severally aggrieved by any decision of the BZA, or any taxpayer or any officer, department, board or bureau of the county may appeal the decision to the circuit court of Essex County.
- (b) A petition specifying the grounds on which the applicant is aggrieved must be submitted 30 days after the filing of the decision in the office of the BZA.

**Section 36.68. — Construction in Violation of Ordinance.**

- (a) Pursuant to the Code of Virginia § 15.2-2313, construction of a building with a valid building permit deemed in violation of this Ordinance may be prevented, restrained, corrected, or abated by suit filed within fifteen days after the start of construction by a person who had no actual notice of the issuance of the permit.
- (b) The court may hear and determine the issues raised in the litigation even though no appeal was taken from the decision of the administrative officer to the Board of Zoning Appeals.

Reserved 36.69 — 36.79

## **ARTICLE III. — PERMITS AND APPLICATIONS**

### **Division 1. — In General**

#### **Section 36.80. — Outstanding Fees; Taxes.**

Pursuant to the Code of Virginia § 15.2-2286 (B), prior to the initiation of an application, the applicant shall produce satisfactory evidence that any delinquent real estate taxes, nuisance charges, stormwater management utility fees, and any other charges that constitute a lien on the subject property, that are owed to the County have been paid, unless otherwise authorized by the treasurer.

#### **Section 36.81. — Forms.**

Petitions or applications for amendments (to the Ordinance or Official Zoning Map), variances, conditional uses, or zoning permits, and any other request requiring action shall be made on forms provided by the County.

#### **Section 36.82. — Oath Required.**

Petitions or applications for amendments (to the Zoning and Subdivision Ordinance or Official Zoning Map), variances, and conditional use shall be sworn to under oath before a notary public, or other official before whom oaths may be taken.

#### **Section 36.83. — Minimum Submission Standards for Applications.**

- (a) The Zoning Administrator shall establish minimum standards for submission requirements of all applications associated with the Zoning and Subdivision Ordinance. Applications shall contain all information required to meet the minimum standards.
- (b) Upon written request by an applicant, the Zoning Administrator or his or her agent may waive or modify a submission requirement or requirements upon a determination that the information is not necessary to evaluate the merits of the application.

#### **Section 36.84. — Ordinance Conformance.**

- (a) Except as otherwise provided in this Ordinance, where modifications to this Ordinance may be approved, all permits or licenses and the uses and buildings for which they apply shall conform to the provisions of this Ordinance.
- (b) Any permit or license issued which is in conflict with the provisions of this Ordinance shall be null and void.

#### **Section 36.85. — Vested Rights, Not Impaired.**

The provisions of this Ordinance shall not impair a vested right of a property owner. The Zoning Administrator shall be authorized to make determinations on whether a property owner's rights are deemed vested in a land use. Vested rights determinations shall be made in accordance with the Code of Virginia § 15.2-2307.

Reserved 36.86 – 36.94

## **Division 2. — Zoning Permits**

### **Section 36.95. — Purpose and Intent.**

The purpose of this division is to establish a procedure for the review of proposed development to ensure its compliance with the requirements of this Ordinance.

### **Section 36.96. — Applicability.**

Pursuant to the permitted provisions of the Code of Virginia § 15.2-2286, no building or other structure shall be erected, moved, added to, structurally altered, nor shall any building, structure, or land be established or changed in use without the owner or owners first obtaining a permit therefor, issued by the Administrator. No such permit shall be issued by the administrator that does not conform with the provisions of this Ordinance unless he receives a written order from the BZA deciding an appeal, variance, or the administrator grants a modification as provided by this Ordinance.

### **Section 36.97. — Standards and Procedures.**

- (a) Zoning permit applications shall be reviewed using the procedures and minimum submission requirements established by the Zoning Administrator.
  - (1) Each application for a zoning permit shall be accompanied by two (2) copies of a drawing or plan as required by the Administrator showing, with dimensions, the lot lines, the building or buildings, the location of buildings on the lot and such other information as may be necessary to provide for the enforcement of these regulations, including, if necessary and required in a specific case, a boundary survey and a staking of the lot by a competent surveyor and complete construction plans. The drawing plans shall contain suitable notations indicating the proposed use of all land and buildings, including the number of families or dwelling units or rental units proposed.
- (b) If the proposed building or use is in conformity with the provisions of this Ordinance, a permit shall be issued to the applicant by the administrator. One (1) copy of the drawing shall be returned to the applicant with the permit. One (1) copy shall be kept in the offices of the Administrator as record of the decision.
- (c) A zoning permit, in itself, shall not ensure that the development approved through said permit shall receive subsequent approval for any other necessary applications for permit or development approval.

### **Section 36.98. — Period of Validity.**

If the work described in any zoning permit has not begun within one (1) year from the date of issuance thereof, said permit shall expire. If the work described in any zoning permit has not been substantially completed within two and one half (2½) years of the date of issuance thereof, said permit shall expire. Further work as described in the expired permit shall not proceed unless and until a new zoning permit has been obtained or extension granted.

### **Section 36.99. — Appeal.**

Any applicant or person aggrieved by the application decision shall have the right to appeal the decision pursuant to the procedures set forth in Article II, Division 5.

Reserved 36.100 – 36.109

### **Division 3. — Zoning Text and Map Amendment**

#### **Section 36.110. — In General.**

Pursuant to the Code of Virginia § 15.2-2286 (7), whenever public necessity, convenience, general welfare, or good zoning practice requires, the Board of Supervisors may, from time to time, amend, supplement or change, by Ordinance, the boundaries of the districts or the regulations established in this Ordinance. Such change shall require a majority vote of the Board of Supervisors.

#### **Section 36.111. — Standards and Procedures.**

(a) Initiation of Change.

- (1) Pursuant to § 15.2-2286 (7), any amendment to this Ordinance or the Zoning Map may be initiated by:
  - a. Resolution of the Board of Supervisors.
  - b. Resolution of the Planning Commission; or
  - c. Petition of the owner, contract purchaser with the owner's written consent, or the owner's agent therefor, of the property which is the subject of the proposed Zoning Map amendment (rezoning), addressed to the Board of Supervisors or the local Planning Commission, who shall forward such petition to the Board of Supervisors.
- (2) Any applicant must disclose all equitable ownership of the real estate to be affected including, in the case of corporate ownership, the name of stockholders, officers and directors and in any case the names and addresses of all of the real parties of interest in accordance with the Code of Virginia § 15.2-2289.

(b) Application; Review

- (1) Applications for amending this Ordinance or the Zoning Map shall be reviewed using the procedures set forth in this Ordinance and minimum submission requirements established by the Zoning Administrator. Upon receipt of an application for a zoning text amendment or rezoning, the Zoning Administrator will review the application for completion.
  - a. The application shall be accompanied by a preliminary site plan, as required in Division 7 below, and such written and graphic material as may be necessary to enable the Planning Commission and the Board of Supervisors to make the recommendation and determinations set forth below. Applicants may, in advance of filing an official application, submit 15 copies of a general development plan to the Zoning Administrator and request review by the Planning Commission for the purpose of guidance and comment. No official action shall be taken by the Planning Commission at said meeting; no unreasonable proffers shall be requested pursuant to Code of Virginia § 15.2-2303.4; and no commitments shall be made by the County or any agency thereof at said meeting. The submitted general development plan may be general and schematic but shall show the following:
    1. A certified plat of the subject property showing metes and bounds of all property lines.
    2. Proposed land uses to be developed.
    3. The approximate total number, density, type, and price range of dwelling units and the range of lot sizes for the various dwelling types.
    4. If any, the general location of proposed open space and recreational areas.
    5. If any, the general location and type of commercial uses to be developed.

6. The general location and character of the proposed major roads, trails, public utility and storm drainage systems.
  7. A statement on the proposed development schedule.
  8. A written analysis of the public facilities, roadway improvements, and public utilities that will be required to serve the planned development.
  9. Any additional information as deemed reasonably necessary by the Zoning Administrator.
- b. Once the application has been determined to be complete, the County shall evaluate the application and may request that the applicant make revisions as necessary.
  - c. The application for a rezoning shall be referred to the Planning Commission for public hearing and recommendation.
  - d. The Planning Commission shall not recommend any request for a zoning text amendment or rezoning unless the application has been advertised and public hearings have been held in accordance with the requirements as required in Division 8 of this Article and § 15.2-2204 of the Code of Virginia.
  - e. The Planning Commission shall advise the Board of Supervisors within 100 days. If after 100 days no recommendation has been made, the governing body shall assume that the Planning Commission concurs with the applicant and supports amending this Ordinance, and the Board of Supervisors shall thereafter take any action it deems appropriate, unless the applicant requests an extension and the Planning Commission votes to grant such an extension for a defined period not to exceed a total of 180 calendar days from the date of the public hearing.
  - f. The Board of Supervisors shall hold at least one public hearing as required in Division 8 of this Article and shall take final action to approve or deny the request.
  - g. All motions, resolutions, or petitions for amendment to the Zoning and Subdivision Ordinance and/or Zoning Map shall be acted upon and a decision made within such reasonable time as may be necessary which shall not exceed 12 months unless the applicant requests or consents to action beyond such period or unless the applicant withdraws his motion, resolution, or petition for amendment to the Zoning and Subdivision Ordinance or map, or both; otherwise, the amendment shall be deemed approved.
- (2) The Zoning Administrator shall cause the Zoning Map to be updated as frequently as necessary to ensure that zoning data shown thereon are both accurate and current. Accordingly, all changes affecting the Zoning Map that are approved by the Board of Supervisors shall be entered onto the original official Zoning Map 60 days following the approval of such changes. After updating sections of the Zoning Map, working prints of any updated section thereof upon which modifications have been made shall be inserted into all sets of the Zoning Maps that are used for public viewing and administration.
- (c) Standards for Review.
- (1) In determining what, if any, amendments to this Ordinance or the zoning district map are to be adopted, the governing body shall:
    - a. Consider the proper relationship of such amendment to the entire zoning plan.
    - b. Consider the integrity and validity of the zoning districts described in this Ordinance.
    - c. Avoid isolated unplanned spot-zoning changes in the zoning district map.
    - d. Recognize that a certain element of stability is desirable in land use controls, but conditions and standards will change.
    - e. Consider the right of all citizens to be treated reasonably.



- f. Evaluate all changes based on the Comprehensive Plan and a comprehensive analysis of community conditions.
- (2) Any amendments adopted by the Board of Supervisors may be modified from the form in which they were advertised within the limits necessary to relate properly such amendments to the zoning plan and Ordinance; provided, however, that no land may be zoned to a more intensive use classification than was contained in the public notice without an additional public hearing after notice as required in this Article.

**Section 36.112. — Reconsiderations.**

- (a) Whenever a petition requesting an amendment, supplement, or change has been denied by the Board of Supervisors, such petition, or one substantially similar, shall not be reconsidered sooner than 12 months after the previous denial.
- (b) Whenever a petition requesting an amendment has been withdrawn, such petition, or one substantially the same, shall not be reconsidered within 12 months of the first publication notice of a public hearing with the Planning Commission. This shall not impair the right of either the Planning Commission or the Board of Supervisors to propose any amendment to this Ordinance on their motion at any time.

**Section 36.113. — Appeal.**

Any applicant or person aggrieved by the application decision shall have the right to appeal the decision pursuant to the procedures set forth in Article II, Division 6.

Reserved 36.114 – 36.124

**Division 4. — Conditional Zoning and Proffers**

**Section 36.125. — Purpose and Intent.**

The purpose of conditional zoning is to provide a method for permitting the reasonable and orderly development of land with reasonable conditions governing the use of such property. As authorized under the Code of Virginia §§ 15.2-2296 through 15.2-2303, reasonable conditions may voluntarily be proffered by the owner of the property to which the proffered conditions will be applicable for the protection of the community when combined with existing Zoning and Subdivision Ordinance district regulations. The exercise of authority shall not be construed to limit or restrict powers otherwise granted nor to affect the validity of any Ordinance adopted by the locality which would be valid without regard to this division. In addition, the provisions of this article shall not be used for the purpose of discrimination in housing.

**Section 36.126. — Standards and Procedures.**

- (a) Proffer of Conditions; Standards for Consideration.
  - (1) Any owner of property or their agent making application for a change in zoning or an amendment to the Zoning Map may, as part of the application, voluntarily proffer in writing reasonable conditions which shall apply to the subject property in addition to the regulations provided for in the zoning district sought in the rezoning application. Any such proffered conditions must be made prior to any public hearing before the Board of Supervisors (including joint public hearings with the Planning Commission), may be amended once the public hearing has begun, and must be in accord with the procedures and standards contained in the Code of Virginia § 15.2-2297.
  - (2) Proffered conditions shall be subject to the following limitations:
    - a. The rezoning itself must give rise to the need for the conditions;
    - b. The conditions shall have a reasonable relation to the rezoning;
    - c. The conditions shall not include a cash contribution to the County;

- d. The conditions shall not include mandatory dedication of real or personal property for open space, parks, schools, fire departments or other public facilities not otherwise provided for in Code of Virginia, § 15.2-2241;
  - e. The conditions shall not include a requirement that the applicant create a property owners' association under the Property Owners' Association Act (§ 55.1-1800 et seq.) that includes an express further condition that members of a property owners' association pay an assessment for the maintenance of public facilities owned in fee by a public entity, including open space, parks, schools, fire departments and other public facilities not otherwise provided for in the Code of Virginia § 15.2-2241; however, such facilities shall not include sidewalks, special street signs or markers, or special street lighting in public rights-of-way not maintained by the Department of Transportation;
  - f. The conditions must not include payment for, or construction of, off-site improvements except those provided for in the Code of Virginia § 15.2-2241 and § 15.2-2303.4;
  - g. No condition shall be proffered that is not related to the physical development or physical operation of the property; and,
  - h. All such conditions shall be in accordance with the Comprehensive Plan.
- (3) At the time each proffer is submitted to the County, it shall be accompanied by a statement signed by the applicant and the owner or their agents which states:
- "Each proffer made in connection with this application for rezoning was made voluntarily and complies with applicable law. No agent of the County has suggested or demanded a proffer that is unreasonable under applicable law."
- (4) Application. Each application for rezoning which proposes proffered conditions to be applied to the property shall be accompanied by the following items beyond those required by conventional rezoning requests:
- a. An impact analysis demonstrating justification of proposed proffers.
  - b. A statement by the applicant certifying there has not been a request to supply unreasonable proffers.
  - c. A statement describing the nature of the proposed development and explaining the relationship of the development to the Comprehensive Plan.
  - d. A statement setting forth a maximum number of dwelling units or lots proposed, including density and open space calculations where applicable to any residential development, or a statement describing the types of uses proposed and the approximate square footage for each nonresidential development.
  - e. A statement detailing any special amenities that are proposed.
  - f. A statement of the public improvements both on and off site that are proposed for dedication and/or construction and an estimate of the date for providing such improvements.
  - g. A generalized development plan (or concept plan) listing and detailing the nature and location of any proffered conditions and those proposed circumstances which prompted the proffering of such conditions.
  - h. A statement setting forth the proposed approximate development schedule.
  - i. A signed statement by both the applicant and owner in the following form: "I hereby proffer that the development of the subject property of this application shall be in strict accordance with the conditions set forth in this submission."

**Section 36.127. — Amendments and Variations.**

- (a) The Board of Supervisors may accept amended proffers once the public hearing has begun provided the amended proffers do not materially affect the overall proposal. If the Board of Supervisors determines that the amendment materially affects the overall proposal, the application with the amended proffers shall be remanded back to the Planning Commission for a public hearing and recommendation.
- (b) Any landowner subject to proffered conditions may apply to the Board of Supervisors for amendments to or variations of such proffered conditions. Written notice, public hearing, and enforcement shall comply with the Code of Virginia § 15.2-2302.

**Section 36.128. — Effect of Condition; Period of Validity.**

Upon the approval of any such rezoning, all conditions proffered and accepted by the governing body shall be deemed a part thereof and non-severable therefrom and shall remain in force and effect until amended or varied by the Board of Supervisors. All such conditions shall be in addition to the regulations provided for in the zoning district to which the land is rezoned.

**Section 36.129. — Record of Conditional Zoning.**

Each conditional rezoning shall be designated on the Zoning Map by an appropriate symbol designed by the Zoning Administrator. In addition, the Zoning Administrator shall keep and maintain a conditional zoning index which shall provide ready access to the ordinance creating such conditions in addition to the regulations provided for in the particular zoning district and which shall be available for public inspection. The Zoning Administrator shall update the Index annually and no later than November 30 of each year.

**Section 36.130. — Appeal.**

Any applicant or person aggrieved by the application decision shall have the right to appeal the decision pursuant to the procedures set forth in Article II, Division 6.

Reserved 36.131 – 36.139

**Division 5. — Conditional Use Permits**

**Section 36.140. — Purpose and Intent.**

A use requiring a Conditional Use Permit is a use that may be appropriate in a zoning district, but because of its nature, extent, and external effects, requires special consideration of its location, design, and methods of operation before it can be deemed appropriate in the district and compatible with its surroundings. The purpose of this division is to establish procedures and standards for review and approval of Conditional Use Permits that provide for such special consideration.

**Section 36.141. — Applicability.**

A use permit is required for development of any use designated in Article V Table 12: Zoning Use Matrix, as a use requiring a Conditional Use Permit in accordance with this section, and pursuant to the Code of Virginia § 15.2-2286.

**Section 36.142. — Standards and Procedures.**

- (a) Application.
  - (1) Conditional Use Permit applications shall be reviewed using the procedures and minimum submission requirements established by the Zoning Administrator. Upon receipt of an application for a Conditional Use Permit, the Zoning Administrator will review the application for completion.

- (2) The application for such Conditional Use Permit shall be accompanied by a preliminary site plan and such written and graphic material as may be necessary to enable the Planning Commission and the Board of Supervisors to make the recommendation and findings set forth below.
  - (3) Once the application has been determined to be complete, the County shall evaluate the application and may request that the applicant make revisions as necessary.
  - (4) Pursuant to the Code of Virginia § 15.2-2289, all applicants must disclose all equitable ownership of the real estate to be affected including, in the case of corporate ownership, the name of stockholders, officers and directors and in any case the names and addresses of all of the real parties of interest.
  - (5) The application shall be referred to the Planning Commission for public hearing and recommendation. The Planning Commission shall not recommend any request unless the application has been advertised and public hearings have been held in accordance with the requirements as required in Division 8 of this Article and § 15.2-2204 of the Code of Virginia.
  - (6) The Planning Commission shall advise the Board of Supervisors within 100 days. If after 100 days no recommendation has been made, the governing body shall assume that the Planning Commission concurs with the applicant and supports amending this Ordinance, and the Board of Supervisors shall thereafter take any action it deems appropriate, unless the applicant requests an extension and the Planning Commission votes to grant such an extension for a defined period not to exceed a total of 180 calendar days from the date of the public hearing.
- (b) Standards for Review
- (1) Conditional Use Permits may be issued for any of the uses for which a Conditional Use Permit is required by the provisions of this Ordinance, provided that the Board of Supervisors, upon a recommendation by the Planning Commission, shall find that:
    - a. The proposed use will not affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use.
    - b. The proposed use will not be detrimental to the public welfare or unduly injurious to property values or improvements in the neighborhood.
    - c. The proposed use will not be in conflict with the policies and principles of the County's adopted Comprehensive Plan.
    - d. Adequate public services, including streets and other trafficways, utilities, police and fire protection, are or reasonably will be available to support the proposed use.
  - (2) In granting any Conditional Use Permit, the governing body shall give due consideration to these relevant factors, as well as to any other reasonable land use and zoning considerations as may be required by the nature of the proposed use or as may be otherwise appropriate to effectuate the intent of this Ordinance. The Planning Commission may recommend and the Board of Supervisors may impose reasonable conditions to mitigate the impacts of the proposed use, as permitted by applicable law. All such conditions shall be reasonably related both in nature and extent to the impact of the proposed

**Section 36.143. — Amendment of Conditions.**

Any landowner subject to conditions of a Conditional Use Permit may apply to the Board of Supervisors for amendments to or variations of such conditions. Written notice, public hearing, and enforcement shall comply with the Code of Virginia § 15.2-2302.

**Section 36.144. — Effect of Decision; Period of Validity.**

- (a) A Conditional Use Permit authorizes only the particular use(s) and associated development that is approved and shall not ensure that the development approved through said permit shall receive subsequent approval for any other necessary applications for permit or development approval. A Conditional Use Permit, including any approved plans and conditions, shall run with the land and shall not be affected by a change in ownership.
- (b) Unless otherwise specified in this Ordinance or specified as a condition of approval, the height limits, yard spaces, lot area, sign requirements, and other specified standards shall be the same as for other uses in the district in which the conditional use is located.
- (c) No reapplication for a Conditional Use Permit for the same or substantially the same application shall be considered by the governing body within a period of one year from its last consideration. This provision, however, shall not impair the right of the governing body to propose a Conditional Use Permit on its own motion.
- (d) Should the use approved by the Conditional Use Permit cease for any twenty-four-month period during the life of the permit, the Conditional Use Permit shall become void.

**Section 36.145. — Revocation.**

A previously granted Conditional Use Permit may be revoked if the Board of Supervisors determines there has not been compliance with the conditions of the permit. No permit shall be revoked except after notice and hearing as provided in this Article.

**Section 36.146. — Appeal.**

Any applicant or person aggrieved by the application decision shall have the right to appeal the decision pursuant to the procedures set forth in Article II, Division 6.

Reserved 36.147 – 36.154

**Division 6. — Variances**

**Section 36.155 — Purpose and Intent.**

Pursuant to the Code of Virginia § 15.2-2309, the purpose of a variance is to allow for a reasonable deviation from the provisions of this Ordinance regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the Ordinance would unreasonably restrict the utilization of the property, other relief or remedy is not available, such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the Ordinance.

**Section 36.156. — Standards and Procedures.**

- (a) Authority.
  - (1) Pursuant to the Code of Virginia § 15.2-2309 (2) and (6), the Board of Zoning Appeals is authorized to review petitions for a variance, provided that the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that the application meets the standard for a variance and the criteria set out in this section.
  - (2) The Board of Zoning Appeals may approve, approve with conditions deemed necessary in the public interest, including limiting the duration of a permit, requiring a guarantee or bond to ensure the conditions will be complied with, or deny an application for a variance permit in accordance with the procedures and standards of this section.

(b) Application.

- (1) Pursuant to the Code of Virginia § 15.2-2310, application for a variance may be made by any property owner, tenant, government official, department, board, or bureau. Applications shall be made to the Zoning Administrator in accordance with rules adopted by the Board of Zoning Appeals. The application and accompanying maps, plans or other information shall be transmitted promptly to the secretary of the Board of Zoning Appeals who shall place the matter on the docket to be acted upon by the Board of Zoning Appeals. The Zoning Administrator shall also transmit a copy of the application to the local Planning Commission, which may send a recommendation to the Board of Zoning Appeals or appear as a party at the hearing.
- (2) Pursuant to the Code of Virginia § 15.2-2289, all applicants must disclose all equitable ownership of the real estate to be affected including, in the case of corporate ownership, the name of stockholders, officers and directors and in any case the names and addresses of all of the real parties of interest.

(c) Public Notice.

Shall be provided as outlined in Division 8 of this Article.

(d) Standards for Review.

- (1) Pursuant to the Code of Virginia §15.2-2309 (2), a variance shall be granted if the evidence shows that the strict application of the terms of the Ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the Ordinance, and:
  - a. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;
  - b. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
  - c. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practical the formulation of a general regulation to be adopted as an amendment to the Ordinance;
  - d. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property;
  - e. The relief or remedy sought by the variance application is not available through the process for modification of a Zoning and Subdivision Ordinance pursuant to subdivision A 4 of the Code of Virginia §15.2-2286 at the time of the filing of the variance application.

**Section 36.157. — Effect of Decision; Period of Validity.**

- (a) Issuance of a variance or special exception shall authorize only the particular variance that is approved. A variance, including any conditions, shall run with the land and not be affected by a change in ownership.
- (b) Use or development authorized by the variance shall not be carried out until the applicant has secured all other permits required by this Ordinance or any other applicable Ordinances and regulations of the County. A variance, in itself, shall not ensure that the development approved through said permit shall receive subsequent approval for any other necessary applications for permit or development approval.
- (c) After the Board of Zoning Appeals has granted a variance, the variance so granted shall lapse after the expiration of one year if no substantial construction or change of use has taken place in accordance with the plans for which such variance was granted, or if the Board of Zoning Appeals does not specify some longer period than one year for good cause shown.

**Section 36.158. — Amendment.**

The procedure for amendment of a variance already approved, or a request for a change of conditions attached to an approval, shall be the same as for a new application except that where the Zoning Administrator determines the change to be minor relative to the original approval, he may transmit the same to the Board of Zoning Appeals with the original record without requiring that a new application be filed.

**Section 36.159. — Appeal.**

Any person jointly or severally aggrieved by any decision of the Board of Zoning Appeals, or any aggrieved taxpayer or any officer, department, commission, or the County, within 30 days of the date of the decision, may appeal the decision of the Board of Zoning Appeals on a variance to the circuit court of Essex County in accordance with the Code of Virginia § 15.2-2314.

Reserved 36.160 – 36.174

**Division 7. — Site Plans**

**Section 36.175. — Purpose and Intent.**

The purpose of this section is to promote the orderly development of certain activities in the County and to ensure that such activities are developed in compliance with this Ordinance and other applicable regulations and in a manner harmonious with surrounding properties and in the interest of the general public welfare. More specifically, the site plan shall be used to review the project's compatibility with its environment; to review the ability of the project's traffic circulation system to provide for the convenient and safe internal and external movement of vehicles and pedestrians; to review the quantity, quality, utility and type of the project's required community facilities; and to review the location and adequacy of the project's provision for drainage and utilities.

**Section 36.176. — Applicability.**

- (a) Pursuant to Code of Virginia, § 15.2-2286. A.8, no building permit or zoning permit shall be issued involving construction or exterior modifications to a structure until a site plan has been issued in accordance with the procedures established herein. Site plans are required and shall be submitted for all new structures, all renovated structures, and all additions to existing structures, with the following exceptions:
  - (1) Individual Single-Family Dwellings.
  - (2) Individual Two-Family Dwellings.
  - (3) Accessory Uses where the area of land disturbance is less than 2,500 square feet.
  - (4) Bona fide agricultural operations and the customary accessory uses and structures associated with bona fide agricultural operations.
  - (5) Filling and grading operations where the area of land disturbance is less than 2,500 square feet where no impervious structures, surfaces or improvements will be installed and no clearing undertaken.
  - (6) Repairs of a general nature to existing buildings.
- (b) Where a change of use of an existing structure requires additional parking or other requirements applicable to a new use, a site plan shall be submitted for review to ensure that the change of use can be accomplished within the purpose and intent of this Ordinance.

**Section 36.177. — Waiver of Requirements.**

Any requirement of this Division may be waived by the administrator where the waiver is not averse to the purpose of this Division, and the applicant establishes that in this specific case an undue hardship would result from a strict enforcement of this Division. A report of waivers shall be provided in an annual report to the Planning Commission.

**Section 36.178. — Preapplication.**

Prior to the submittal of a preliminary site plan, a preapplication meeting must be held between the applicant and the Zoning Administrator, unless otherwise waived by the Zoning Administrator.

**Section 36.179. — Preliminary Site Plan Specifications and Contents.**

The preliminary site plan, or any portion thereof, involving engineering, urban planning, landscape architecture, architecture, or land surveying shall be prepared by qualified persons. Site plans shall be certified by an architect, engineer, or land surveyor licensed to practice by the state within the limits of their respective licenses. The preliminary site plans shall be clearly drawn to scale as specified in this subsection and shall show the following:

- (1) Name and address of the applicant, owner of the property, and the preparer of the plan.
- (2) A certificate, signed by the surveyor or engineer, setting forth the source of title of the owner of the tract and the place of record of the last instrument in the chain of title;
- (3) The Northpoint, scale, date, and number of sheets;
- (4) Location of the project by an insert map at a scale of not less than one-inch equals 2,000 feet, indicating such information as the names and numbers of adjoining roads, streams and bodies of water, railroads, subdivisions, towns and magisterial districts or other landmarks sufficient to clearly identify the location of the property;
- (5) A boundary survey of the parcel(s) by courses and distances and including two points connected to the VA Coordinate System of 1983 (NAD83), tax map parcel number, County or municipal boundaries within one-half mile, existing streets, buildings or waterways, major tree masses and other existing physical features in or adjoining the project;
- (6) Adjoining property owners, zoning, and present use of adjoining property;
- (7) A topographic map with existing and proposed finished grade at a maximum contour interval of two (2) feet supplemented where necessary by spot elevations or other appropriate interval approved by the Zoning Administrator;
- (8) The location and arrangement of all proposed uses;
- (9) The general location of proposed lots, setback lines, easements, rights-of-way, and proposed parks, playgrounds, school sites, all proposed community and public facilities and, open spaces;
- (10) The location and extent of all wooded areas before development; the proposed area of clearing, with indication of post-development cover;
- (11) A tabulation of the total number of acres in the project and the percentage thereof proposed to be devoted to dwelling types, commercial uses, other non-residential uses, off-street parking, streets, parks, schools, amount and percentage to be covered by impervious surface after development, and other reservations;
- (12) A statement setting forth the maximum number of dwelling units that are proposed, the overall project density in dwelling units per acre, a breakdown of the approximate number of units by type, and the range of approximate lot sizes for single-family detached and attached dwellings;



- (13) Number of floors, floor area, height, and location of each building and proposed general use for each building. If a multi-family residential building, the number, size, and type of dwelling units;
- (14) The locations of all existing and proposed septic tanks and drainfield sites including reserve sites;
- (15) The location of all existing and proposed wells;
- (16) The location of existing and proposed public water and sanitary sewer facilities, indicating all pipe sizes, types, and grades and where connection is to be made;
- (17) Provisions for the adequate disposition of natural and storm water, indicating locations, sizes, types and grades of ditches, catch basins and pipes and connections to existing drainage system;
- (18) The proposed traffic circulation plan, including major streets and major pedestrian, bicycle and/or bridle paths, and the location, type and size of vehicular entrances;
- (19) All off-street parking, loading spaces, and walkways, indicating type of surfacing, size, angle of stalls, width of aisles, and a specific schedule showing the number of parking spaces provided and the number required per this Ordinance.
- (20) A landscape plan demonstrating at a minimum the type, size, height and location of plantings, fencing, retaining walls, and screen planting as required in Article VII;
- (21) General location, character, size, height and orientation of proposed signs and outdoor lighting systems;
- (22) The approximate limit of all resource protection area features and any additional required buffer areas if an environmental assessment is not submitted;
- (23) The approximate limit of the 100-year floodplain, any drainage district, mapped dam break inundation zone;
- (24) The location of any grave, object or structure marking a place of burial;
- (25) The location of all existing and proposed structures, including marine and temporary structures. In the case of temporary structures, the date when the structure will be removed must be indicated;
- (26) A delineation of those general areas that have scenic assets or natural features deserving of protection and preservation, as outlined in the Essex Comprehensive Plan or identified by the Zoning Administrator and statement of how such will be accomplished;
- (27) A statement or visual presentation of how adjacent and neighboring properties shall be protected from any adverse effects prompted by the proposed development, to include vehicular access plans, proposed measures and types of screening, and dimensions of all buffers that will be provided;
- (28) A report setting forth the proposed development schedule indicating the sequence of development of the various sections thereof and the approximate starting and completion date for the construction of each stage;
- (29) A plan or report indicating the extent, timing and estimated cost of all off-site improvements, such as roads, sewer, and drainage facilities deemed necessary to construct the proposed development, and the extent, timing and estimated cost of all facilities deemed necessary to serve the development such as schools, libraries and police substations. This plan or report shall relate to the sequence of the development schedule if the development is to be constructed in stages or units;
- (30) A traffic impact analysis as required by the Virginia Department of Transportation;
- (31) An impact statement on the effect of the development to the County's school system, refuse system, ground-water supply, environment and any other community service; and
- (32) Any additional information as required by the Zoning Administrator necessary to evaluate the character and impact of the proposed project.

**Section 36.180. — Final Site Plan Specifications and Contents.**

- (a) General Specifications.
- (1) Separate final site plans shall be submitted for each development stage or unit as set forth in the approved preliminary site plan.
  - (2) A final site plan for a particular development stage or unit other than the first, shall not be approved until the final site plan has been approved for the immediately preceding stage or unit.
- (b) Contents. The final site plan shall comply with the preliminary site plan specifications in section 36.179 above; approved preliminary site plan where such approval is required in section 36.186 (b); and shall in addition show the following, unless the Zoning Administrator may determine that some of the following information is unnecessary due to the scope and nature of the development proposed:
- (1) The location of all existing and proposed easements for roads, overhead and underground utilities, drainage, or other easements which may exist or are proposed on the property.
  - (2) The location of proposed access and location of all curb cuts as approved by the Virginia Department of Transportation demonstrating efforts made to control access and minimize impacts to through traffic on adjacent routes.
  - (3) Included with the site plan shall be documentation of all existing permits and applications relevant to the parcel, including, but not limited to: Health Department permits for all wells and septic drain fields; all existing zoning permits and zoning applications; applications for rezoning, special use and Conditional Use Permits, and zoning variances and evidence of all wetlands permits required by Federal, State, and local laws and regulations applicable to the site, lot or parcel.
  - (4) All of the features required on the preliminary plan with sufficiently accurate dimensions, construction specifications and computations to support the issuance of zoning and construction permits.
  - (5) Provisions for the adequate disposition of natural and storm water in accordance with duly adopted design criteria and standards of the Virginia Department of Highways indicating the location sizes, types and grades of ditches, catch basins and pipes and connections to existing drainage system. Provisions for the adequate control of erosion and sedimentation, indicating the proposed temporary and permanent control practices and measures which will be implemented during all phases of clearing, grading, and construction.
  - (6) Distances and bearings must balance and close with an accuracy of not less than one in 10,000.
  - (7) The layout of all major and secondary roads shall be shown by metes and bounds, public or private.
  - (8) When the development is to be constructed in stages or units, a final sequence of development schedule showing the order of construction of such stages or units, an approximate completion date for the construction of each stage or unit, and a final cost estimate of all improvements within each stage or unit.
  - (9) A copy of all covenants, restrictions, and conditions pertaining to the use, maintenance and operation of all open space areas.
  - (10) Any additional requirements as determined by the Board of Supervisors, Board of Zoning Appeals, or Zoning Administrator.

**Section 36.181. — Reviews.**

- (a) Site plan submission. Unless otherwise provided in another Article of this Ordinance, every site plan required by this Article shall be submitted to the Zoning Administrator who shall take the following actions:
- (1) Review the plans for conformity with the Comprehensive Plan and applicable development regulations.

- (2) Determine whether the preliminary site plan requires review by the Planning Commission and Board of Supervisors, as outlined in (b) below.
  - (3) If a review is required by the Planning Commission and Board of Supervisors, then place the site plan on the agenda of the Planning Commission and the Board of Supervisors and arrange for public notices as outlined in Division 8 of this Article.
- (b) Preliminary Site Plans requiring actions of the Planning Commission and Board of Supervisors are as follows:
- (1) Applications that require a change of zoning classification.
  - (2) Applications for Conditional Use Permits.
- (c) All other plans required under Section 36.181, whether preliminary or final, are approved by the Zoning Administrator.
- (d) For projects which are required to be referred to the Planning Commission and the Board of Supervisors, the Zoning Administrator shall prepare an analysis of the plan and a brief report stating whether the site plan is in conformity with applicable plans, regulations and policies of the County. This report shall be submitted to the Planning Commission, through the Zoning Administrator who may make additional analysis and recommendations concerning whether the proposed site plan is consistent with the County's Comprehensive Plan and general development policies. The Zoning Administrator's report may recommend actions that would enable the plan to meet County requirements, should it not meet such requirements as submitted.
- (e) Pursuant to Code of Virginia, § 15.2-2259, the site plan shall be approved or disapproved within 60 days after it has been officially submitted for approval. If disapproved the reasons for disapproval shall be identified by reference to specific duly adopted Ordinances, regulations, or policies and shall identify, to the greatest extent practicable, modifications or corrections that will permit approval of the plan.
- (f) Pursuant to Code of Virginia, § 15.2-2259, the site plan that is previously disapproved but has been modified, corrected, and resubmitted shall be acted on within 45 days of resubmission.

**Section 36.182. — Amendments.**

- (a) If it becomes necessary for an approved site plan to be changed, the administrator may, at the applicant's request, administratively approve an amendment to the site plan if the change or amendment does not:
  - (1) Alter a recorded plat;
  - (2) Conflict with specific requirements of this Ordinance;
  - (3) Change the general character or content of an approved development plan or use;
  - (4) Have an appreciable effect on adjoining or surrounding property;
  - (5) Result in any substantial change of external access points;
  - (6) Decrease the minimum specified yard and open spaces.
- (b) Amendments such as but not limited to, the elimination of any use shown or the addition of any use not shown on the preliminary site plan or any increase or decrease in the density of the development, shall require resubmission of the preliminary site plan.
- (c) If amendments to a site plan do not comply with administrative approval, then the amendment request and a new site plan must be drawn and submitted for review and action in accordance with this division.

**Section 36.183. — Compliance with Approved Site Plan Required.**

It shall be unlawful for any person to construct, erect or substantially alter any building or structure, or develop, change, or improve land for which a site plan is required, except in accordance with an approved site plan. Deviation from an approved site plan without the written approval of the Zoning Administrator shall void the site plan and require submission of a new site plan for approval.

**Section 36.184. — Period of Validity.**

- (a) If no final plan is submitted within 12 months of the approved preliminary site plan and construction has not begun within the time period approved by the Board of Supervisors, the preliminary site plan approved shall lapse and be of no further effect. In its discretion and for good cause, the Board of Supervisors may, upon receipt of written request, extend the period required to submit a final plan.
- (b) In accordance with Code of Virginia, § 15.2-2261, approval of a final site plan submitted under the provisions of this Article shall expire five years after the date of such approval unless building permits have been obtained for construction in accordance therewith.
- (c) The application for and approval of minor modifications to an approved site plan shall not extend the period of validity of such plan and the original approval date shall remain the controlling date for purposes of determining validity.
- (d) No permit shall be issued for any structure in any area covered by the site plan that is required under the provisions of this Article except in conformity with such site plan which has been duly approved.

Reserved 36.185. – 36.199

**Division 8. – Public Notice**

**Section 36.200. – Procedure.**

- (a) In accordance with the Code of Virginia § 15.2-2204, the Planning Commission shall not recommend, nor shall the Board of Supervisors adopt or approve any plan, ordinance, amendment, or Conditional Use Permit, nor shall the BZA approve any variance, until it has held a duly-advertised public hearing. Advertising and notice procedures shall be conducted according to the procedures under § 15.2-2204, as outlined in this section for the convenience of the public.
- (b) Notice of public hearings shall be published once a week for two successive weeks in some newspaper published or having general circulation in the County. The term "two successive weeks," as used in this subsection, shall mean that such notice shall be published at least twice in such newspaper, with not less than six days elapsing between the first and second publications. Notices shall specify the time and place of a hearing at which persons affected may appear and present their views, not less than five days nor more than 21 days after the second advertisement shall appear in such newspaper. The subject matter of the public hearing need not be advertised in full but may be advertised by reference. Each such advertisement shall contain a reference to the places within the County where copies of the proposed plans, ordinances, amendments, or applications may be examined.
- (c) The Planning Commission and Board of Supervisors may hold a joint public hearing after public notice as set forth herein, and if such joint hearing is held, public notice as set forth above need be given only by the Board of Supervisors.
- (d) In the case of a proposed amendment to the Zoning Map (rezoning), the public notice shall state the general usage and density range of the proposed amendment and the general usage and density range, if any, set forth in the applicable part of the Comprehensive Plan. No land may be zoned to a more intensive use classification than was contained in the public notice without an additional public hearing after notice pursuant to § 15.2-2204.

- (e) When a proposed amendment of this Ordinance involves a change in the zoning classification of 25 or fewer parcels of land, then, in addition to the advertising as above required, written notice shall be given at least five days before the hearing to the owner or owners, their agent or the occupant of each parcel involved, to the owners, their agent or the occupant of all abutting property and property immediately across the street or road from the property affected, and, if any portion of the affected property is within a planned unit development, then to such incorporated property owners' association within the planned unit development that has members owning property located within 2,000 feet of the affected property. Notice shall also be given to the owner, the owner's agent or the occupant of all abutting property and property immediately across the street from the property affected.
- (f) When a proposed amendment of this Ordinance involves a change in the Zoning Map classification of more than 25 parcels of land, or a change to the applicable Zoning and Subdivision Ordinance text regulations that decreases the allowed dwelling unit density of any parcel of land, then, in addition to the advertising as required by subsection A, written notice shall be given by the local planning commission, or its representative, at least five days before the hearing to the owner, owners, or their agent of each parcel of land involved, provided, however, that written notice of such changes to Zoning and Subdivision Ordinance text regulations shall not have to be mailed to the owner, owners, or their agent of lots shown on a subdivision plat approved and recorded pursuant to the provisions of the Code of Virginia, § 15.2-2240 et seq. where such lots are less than 11,500 square feet.
- (g) When a proposed change in Zoning Map classification; or an application to increase by greater than 50 percent of the bulk or height of an existing or proposed building, but not including renewals of previously approved special exceptions, involves any parcel of land located within one-half mile of a boundary of an adjoining locality of the Commonwealth, then, in addition to the advertising and written notification as required by this section, written notice shall also be given by the local commission, or its representative, at least 10 days before the hearing to the chief administrative officer, or his designee, of such adjoining locality.
- (h) Notice, as required above, sent by registered or certified mail to the last known address of such property owner(s) as shown on the current real estate tax assessment records shall be deemed adequate notification. Notice may be sent by first class mail; however, a representative of the county shall sign an affidavit that such mailings have been made and file such affidavit with the papers in the case.
- (i) Notifications shall also be provided to military bases, military installations, military airports, and public-use airports in accordance with the Code of Virginia § 15.2-2204.
- (j) The cost of all notice requirements shall be paid by the applicant in addition to any other fees involved in the application. The County shall bill the applicant for such costs.
- (k) Pursuant to the Code of Virginia § 15.2-2206, the County may require the applicant to give written notice to those persons who own property, any portion of which abuts the subject property, and all property which is directly across the street from any portion of the subject property, as determined by the County's real property tax records. This notice shall give the date, provide the time and place of the hearing, identify the property which is the subject of the application, and give a brief description of the proposed action. This notice shall be mailed a minimum of 10 days prior to the date of the public hearing. The list of property owners and the content of the notice shall be approved by the Zoning Administrator prior to mailing.
- (l) The applicant shall also be required to place a sign provided by the County on the subject property which indicates that this action is pending. This sign shall be located to be clearly visible from the street.
- (m) Actual notice of, or active participation in, the proceedings for which the written notice is provide shall waive the right of that party to challenge the validity of the proceedings due to failure of notice as required by this section.

## ARTICLE IV. — ZONING DISTRICTS

### Division 1. — Establishment, Purpose, and Intent of Districts

#### Section 36.210. — General.

- (a) Zoning districts established. In order to regulate and restrict the location and use of buildings and land for trade, industry, residence and other purposes in accordance with the objectives of the comprehensive plan; to regulate and restrict the location, height and size of buildings hereafter erected or structurally altered, the size of yards and other open spaces and the density of population, the following zoning districts are hereby established:
- (1) *Primary zoning districts.* The entire territory under the jurisdiction of the county is hereby classified into one of the following primary zoning districts to be known and cited as indicated:
- a. A-1 Agriculture and Forestry, Preservation
  - b. A-2 Agriculture and Forestry, General
  - c. R-1 Very Low Density Residential
  - d. R-2 Low Density Residential
  - e. R-3 Medium Density Residential
  - f. R-4 Residential, Restricted
  - g. MH-1 Mobile Home Park
  - h. PUD Planned Unit Development
  - i. B-1 Local Business
  - j. B-2 General Business
  - k. I-1 Light Industrial
  - l. I-2 Industrial
- (2) *Special purpose zoning districts.* Special purpose district regulations supplement, rather than replace, the regulations of the primary zoning districts that otherwise apply to the same land. Special purpose zoning districts are established to be known and cited according to the following:
- a. CBPA-OD Chesapeake Bay Preservation Area Overlay
- (b) Reference to district names. For the purpose of reference hereafter in this Ordinance, unless specifically provided to the contrary, the term "residence district" shall include the agricultural districts and the residential districts. The term "business district" shall include all business districts; and the term "industrial district" shall include all industrial districts.

**Section 36.211. — Purpose and Intent of Zoning Districts.**

(a) Primary Zoning Districts.

- (1) *A-1 Agricultural and Forestry, Preservation District.* The purpose of the A-1 district is to encourage continued agricultural and forest uses and preserve the natural beauty and ecology or environmental health of rural areas through large lots with wide expansive areas of farming and forestry. This district generally corresponds to areas of the County represented as the Agricultural Preservation District in the County Comprehensive Plan. At the same time, the district is intended to provide for very sparse residential development for those who own or manage on site farm and forestry lands or choose to live in a rural environment. In order to protect against premature subdivision of land and the formation of urban clusters where none are planned, subdivisions are restricted to maintain and protect the land base necessary to support the County's agricultural economy. This district shall not be confused with, but may include, properties designated as Agriculture and Forestal Districts through the Agricultural and Forestal Act, as described in the Code of Virginia, § 15.2-4300 et. seq.
- (2) *A-2 Agricultural and Forestry, General District.* The purpose of this district is to protect existing and future farming operations, allow accessory uses that boost the agriculture economy, and at the same time allow for low density residential uses. This district generally corresponds to areas represented as the Countryside District and Rural Residential Development in the County Comprehensive Plan. Generally, this district covers certain portions of the County now devoted entirely or predominantly to various open uses, such as farms, forest, parks or lakes, into which residential or other types of development could reasonably be expected to expand in the foreseeable future. In order to protect against premature subdivision of land and the formation of urban clusters where none are planned, subdivisions are restricted to maintain the rural character of the district. This district shall not be confused with, but may include, properties designated as Agriculture and Forestal Districts through the Agricultural and Forestal Act, as described in the Code of Virginia, § 15.2-4300 et. seq.
- (3) *R-1 Very Low Density Residential District.* The purpose of this district is to provide for very low-density residential development of no more than one unit per acre together with such public, civic, recreation and accessory uses as may be necessary or are normally compatible with residential surroundings. Since substantial tracts of vacant land are or may be included in the R-1 district, agricultural and open uses are permitted, but in general, urbanization is planned, and adequate utilities and public services exist or should be planned for the types of development contemplated. The regulations for this district are designed to provide for individuals and families who desire spacious homesites without fear of encroachment of dissimilar uses. The R-1 districts will be generally located in the Rural Residential District as shown in the Essex County Comprehensive Plan.
- (4) *R-2 Low Density Residential District.* The purpose of this district is to provide for low-density residential development of no more than two units per acre together with such public, civic, recreation and accessory uses as may be necessary or are normally compatible with residential surroundings. The regulations for this district are designed to prohibit commercial activities but promote and encourage a suitable environment for family life by providing a mix of housing types located in closer proximity to shopping and employment. The R-2 district will generally be located in the Rural Residential Districts as shown on the Essex County Comprehensive Plan.
- (5) *R-3 Medium Density Residential District.* The purpose of this district is to provide for medium-density residential developments of no more than four units per acre and to encourage a mixture of residential uses with certain public and semipublic land uses. The regulations for this district are designed to provide a suitable environment for those desiring dense community living and close proximity to shopping, employment, and other community facilities. The R-3 district will generally be located in the Development Service and Deferred Development Service District as shown on the Essex County Comprehensive Plan.

- (6) *R-4 Residential, Restricted District.* The purpose of this district is to allow for medium density residential development, on nonconforming lots of record, provided said lots were recorded prior to October 16, 1976, and provided their development is consistent with the requirements of The Chesapeake Bay Preservation District, Section XV-1 of this Ordinance. After \_\_\_\_\_ (date of adoption of revised Ordinance), R-4 zoning shall no longer be granted. Properties zoned R-4 on or before \_\_\_\_\_ (date of adoption of revised Ordinance), shall continue to be subject to the provisions of the R-4 district standards.
  - (7) *MH-1 Mobile Home Park district.* The purpose of this district is to provide for the establishment of attractive, safe, and well-designed mobile home parks and to ensure that space is provided for moderately priced housing. The MH-1 district will generally be located in the Development Service Districts as shown on the Essex County Comprehensive Plan.
  - (8) *PUD Planned Unit Development District.* This district is intended to permit development in accordance with a master plan of cluster type communities. Within such communities, the location of all improvements shall be controlled in such a manner as to permit a variety of housing accommodations in an orderly relationship to one another, with the greatest amount of open area and the least disturbance to natural features. A planned unit development may include light commercial facilities to the extent necessary to serve the needs of the particular planned unit development. Lands currently designated as the Agricultural Preservation (A-1) district shall not be considered appropriate for Planned Unit Development (PUD) district designation. The PUD district will generally be located in the Rural Residential and Development Service Districts as shown on the Essex County Comprehensive Plan.
  - (9) *B-1 Local Business District.* The purpose of this district is to provide primarily for retail shopping and personal service uses, to be developed either as a unit or in individual parcels to serve the needs of a relatively small section of the County or the needs of the traveling public on the highways. To enhance the general character of the district, its function of local services, and its compatibility with its surroundings, the size and design of certain uses is limited. The B-1 district will generally be located in the Development Service District, and Rural Service Centers as shown on the Essex County Comprehensive Plan.
  - (10) *B-2 General Business District.* The purpose of this district is to provide sufficient space in appropriate locations for a wide variety of commercial, automotive, and miscellaneous recreational and service activities, generally serving a wide area of the County and generally located near the Town of Tappahannock where a general mixture of commercial and service activity now exists or is planned. The district is not characterized by extensive warehousing, frequent heavy trucking activity, or the nuisance factors of dust, odor, and noise associated with industrial activities. The B-2 district will generally be located in the Development Service District as shown on the Essex County Comprehensive Plan.
  - (11) *I-1 Light Industrial district.* The purpose of this district is to provide areas in which the principal use of land and buildings is for light manufacturing and assembly plants including processing, storage, warehousing, wholesaling and distribution. It is the intent that permitted uses be conducted so that noise, odor, dust, smoke, and glare of each operation is confined within an enclosed building. The I-1 district will generally be located in the Business and Employment Districts and select locations within the Development Service District as shown on the Essex County Comprehensive Plan.
  - (12) *I-2 Industrial district.* The intent of this district is to permit certain larger scale manufacturing with large outside storage, warehousing, and product display. The creation of any offensive noise, smoke or odor shall be mitigated with industry best practices for the compatibility of the surrounding uses and the preservation of the environment. The I-2 district will generally be located in the Business and Employment District or the Development Service Districts as shown on the Essex County Comprehensive Plan.
- (b) Special Purpose Zoning Districts.
- (1) *CBPA-OD Chesapeake Bay Preservation Area Overlay District.* This district is enacted to implement the requirements of Code of Virginia § 62.1-44.15:67 et seq., as amended, (The Chesapeake Bay Preservation Act) and Regulation 9VAC25-830 et seq. The Chesapeake Bay Preservation Act, Article 2.5 of Chapter 3.1 of



Title 62.1 of the Code of Virginia (1950), as amended, recognizes that healthy State and local economics are integrally related to each other and the environmental health of the Chesapeake Bay.

- (2) The purpose of the District is to assist in protection of the Chesapeake Bay and its tributaries from non-point source pollution from land uses or appurtenances within the Chesapeake Bay drainage area and minimize pollution and deposition of sediment in wetlands, streams, and lakes in Essex County which are tributaries of the Chesapeake Bay. The district encourages and promotes:
  - a. Protection of existing high quality state waters;
  - b. Restoration of all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them;
  - c. Safeguarding of the clean waters of the Commonwealth from pollution;
  - d. Preventing any increase in pollution;
  - e. Reducing existing pollution; and
  - f. Promoting water resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of the Commonwealth.
- (3) This district is enacted under the Authority of Code of Virginia, § 62.1-44.15:74(the Chesapeake Bay Preservation Act) and Code of Virginia, § 15.2-2283. Code of Virginia, §§ 62.1-44.15:74 states that zoning ordinances shall "comply with all criteria set forth in or established pursuant to § 62.1-44.15:72."

Reserved 36.212. — 36.219.

## **Division 2. — Residence District Requirements**

### **Section 36.220. — General Standards and Interpretation.**

- (a) In addition to the other requirements of this Ordinance, the requirements specified in this Article shall be considered the minimum required to promote the public health, safety, convenience, and general welfare. Unless otherwise specified, the standards of the Article are the minimum required.
- (b) Family subdivisions are not subject to the density restrictions.
- (c) The permitted density and division of land is allowed provided minimum lot sizes, dimensions, and setbacks can be met and provisions of Community Development Standards Article VII of this Ordinance, including but not limited to, parking, landscaping, buffers, screening, and the Essex County Subdivision Article are satisfied.
- (d) Minimum requirements are also subject to the standards for specific uses in Use Performance Standards, Article VI, and any conditions of Conditional Use approval, if applicable.
- (e) State Health Official may require larger minimum lot area for permitted uses as needed to meet Department of Health requirements for individual wells and/or sewage disposal systems.
- (f) Lot frontage on the terminus of a stub street does not meet the requirements for road frontage unless a determination is made that extension of the stub street is not needed to serve future development.
- (g) Setbacks:
  - (1) Increased setbacks may be required for compliance with Floodplain or Chesapeake Bay regulations.
  - (2) Minimum setbacks shall be increased where necessary to obtain the required lot width at the front building line.
  - (3) Non-residential structures shall meet minimum setbacks provided in this Ordinance.

**Section 36.221. — A-1 Agriculture and Forestry, Preservation District Requirements.**

<b>Table 36.1 A-1 District Requirements</b>	
<b>A. Permitted Residential Density for Parcels Recorded On or Before 9/16/2003</b>	
1. Size of Parent Parcel	Permitted Density
a. Parcels less than 5 acres	May be subdivided into 2 lots
b. 5 - 20 acres	1 dwelling unit per 5 acres (0.2 unit per acre)
c. Parcels greater than 20 acres	1 dwelling unit per 5 acres (0.2 unit per acre) for the first 20 acres and 1 dwelling unit per 20 acres for the remaining acreage of the parcel (0.05 unit per acre after first 20 acres)
<b>B. Permitted Residential Density for Parcels Recorded After 9/16/2003</b>	
1. Size of Parent Parcel	Permitted Density
a. Parcels less than 5 acres	May be subdivided into 2 lots
b. All other parcels	1 dwelling unit per 20 acres (0.05 unit per acre)
<b>C. Lot Standards</b>	
1. Lot area and width	
a. Area (acres)	1
b. Width (feet)	150
2. Lot coverage (maximum %)	20
<b>D. Road Frontage for lots (feet)</b>	
1. Family subdivision lots, fronting a public or private road	20
2. All other lots	
a. Fronting a public road	150
b. Fronting a private road	50
<b>E. Principal Structure Setbacks for lots fronting a public road (feet)</b>	
1. Front setback	100
2. Interior side setback	30
3. Corner side setback	
a. Through lot, lot back-to-back with another lot	40
b. Other corner lot	7
4. Rear yard	
a. Non through lot	30
b. Through lot	100
<b>F. Principal Structure Setbacks for lots fronting a private road (feet)</b>	
1. Front setback	50
2. Interior side setback	30
3. Corner side setback	40
4. Rear yard	
a. Non through lot	30
b. Through lot	50
<b>G. Principal Structure Heights (maximum)</b>	
1. Residential Structure	Lesser of 2.5 stories or 35 feet
2. Other Structures	Lesser of 3 stories or 40 feet
<b>H. Accessory Structure Requirements</b>	Subject to Article VI - Use Performance Standards

**Section 36.222. — A-2 Agriculture and Forestry, General District Requirements.**

Table 36.2 A-2 District Requirements	
<b>A. Permitted Residential Density for Parcels Located Within the Countryside District Area of the Comprehensive Plan</b>	
1. Size of Parcel	Permitted Density
a. Parcels less than 5 acres	May be subdivided into 2 lots
b. All other parcels	1 dwelling unit per 5 acres (0.2 unit per acre)
<b>B. Permitted Residential Density for Parcels Located Within the Rural Residential Development Area of the Comprehensive Plan</b>	
1. Size of Parcel	Permitted Density
a. Parcels less than 5 acres	May be subdivided into 2 lots
b. All other parcels	1 dwelling unit per acre (1.0 unit per acre)
<b>C. Lot Standards</b>	
1. Lot area and width	
a. Area (acres)	1
b. Width (feet)	150
2. Lot coverage (maximum %)	20
<b>D. Road Frontage for lots (feet)</b>	
1. Family subdivision lots, fronting a public or private road	20
2. All other lots	
a. Fronting a public road	100
b. Fronting a private road	50
<b>E. Principal Structure Setbacks for lots fronting a public road (feet)</b>	
1. Front setback	100
2. Interior side setback	30
3. Corner side setback	
a. Through lot, lot back to back with another lot	40
b. Other corner lot	75
4. Rear yard	
a. Non through lot	30
b. Through lot	100
<b>F. Principal Structure Setbacks for lots fronting a private road (feet)</b>	
1. Front setback	50
2. Interior side setback	30
3. Corner side setback	40
4. Rear setback	
a. Non through lot	30
b. Through lot	50
<b>G. Principal Structure Heights (maximum)</b>	
1. Residential Structure	Lesser of 2.5 stories or 35 feet
2. Other Structures	Lesser of 3 stories or 40 feet
<b>H. Accessory Structure Requirements</b>	
	Subject to Article VI - Use Performance Standards

**Section 36.223. — R-1 Very Low Density Residential District Requirements.**

Table 36.3 R-1 District Requirements	
<b>A. Lot Standards</b>	
1. Lot area and width	
a. Area (square feet)	43,560
b. Width (feet)	100
2. Lot coverage (maximum %)	25
<b>B. Road Frontage for lots intended for dwelling purposes (feet)</b>	
1. Family subdivision lot	20
2. Other lots	
a. Permanent cul-de-sac or radius of loop road	25
b. Other roads	80
<b>C. Principal Building Setbacks (feet)</b>	
1. Front setback	
a. Fronting US Primary Highway	100
b. All other fronts	50
2. Interior side setback	25
3. Corner side setback	
a. Side to back with another lot	45
b. Back to back with another lot	30
4. Rear setback	
a. Through lot	50
b. All other lots	30
<b>D. Principal Building Heights (maximum)</b>	
1. Single family dwellings	Lesser of 2.5 stories or 35 feet
2. Other permitted structures	Lesser of 2.5 stories or 35 feet
<b>E. Accessory Building Requirements</b>	Subject to Article VI – Use Performance Standards

**Section 36.224. — R-2 Low Density Residential District Requirements.**

Table 36.4 R-2 District Requirements	
<b>A. Lot Standards</b>	
1. Lot area and width	
a. Area (square feet)	21,500
b. Width (feet)	100
2. Lot coverage (maximum %)	30
<b>B. Road Frontage for lots intended for dwelling purposes (feet)</b>	
1. Family subdivision lot	20
2. Other lots	
a. Permanent cul-de-sac or radius of loop road	25
b. Other roads	50
<b>C. Principal Building Setbacks (feet)</b>	
1. Front setback	
a. Fronting US Primary Highway	100
b. All other fronts	35
2. Interior side setback	15
3. Corner side setback	
a. Side to Back with another lot	30
b. Back to back with another lot	30
3. Rear setback	
a. Through lot	35
b. All other lots	30
<b>D. Principal Building Heights (maximum)</b>	
1. Single family dwellings	Lesser of 2.5 stories or 35 feet
2. Other permitted principal structures	Lesser of 2.5 stories or 35 feet
<b>E. Accessory Building Requirements</b>	Subject to Article VI - Use Performance Standards

**Section 36.225. — R-3 Medium Density Residential District Requirements.**

Table 36.5 R-3 District Requirements - Single Family Residential and Non-Residential Use	
<b>A. Lot Standards</b>	
1. Lot area and width	
a. Area (square feet)	10,500
b. Width (feet)	80
2. Lot coverage (maximum %)	30
<b>B. Road Frontage for lots intended for dwelling purposes (feet)</b>	
1. Family subdivision lot	20
2. Other lots	
a. Permanent cul-de-sac or radius of loop road	25
b. Other roads	50
<b>C. Principal Building Setbacks (feet)</b>	
1. Front setback	
a. Fronting US Primary Highway	50
b. All other fronts	35
2. Interior side setback	15
3. Corner side setback	
a. Back to side with another corner lot	30
b. Back to back with another corner lot	25
4. Rear setback	
a. Through lot	35
b. All other lots	25
<b>D. Principal Building Heights (maximum)</b>	
1. Single family dwellings	Lesser of 2.5 stories or 35 feet
2. Other permitted principal structures	Lesser of 2.5 stories or 35 feet
<b>E. Accessory Building Requirements</b>	Subject to Article VI - Use Performance Standards

Essex County Zoning & Subdivision Ordinance  
Public Hearing Draft  
April 12, 2022

Table 36.6. R-3 District Requirements	Residential Townhouse Use – Subdivision, Lot, and Building Standards	Residential Multi-Family Use – Project and Building Standards
<b>A. Project Size (minimum)</b>	8 acres	15 acres
<b>B. Common Area (passive and active recreational space of total development)</b>	30%	10%
<b>C. Density</b>	8 units per acre	10 units per acre
<b>D. Maximum Number of Attached Lots in Each Row</b>	8	N/A
<b>E. Maximum Number of Multi-Family Dwelling Units Per Floor</b>	N/A	10
<b>F. Minimum Access Points into Project from Public Road</b>		
1. For 50 or fewer units	1	1
2. For 51 – 200 units	2	2
3. For more than 200 units	Determined in conjunction with zoning	Determined in conjunction with zoning
<b>G. Lot Standards</b>		
1. Lot area (square feet)	2,000	N/A
2. Lot width (feet)	30	N/A
3. Lot coverage (maximum %)	50%	40%
<b>H. Private Pavement Setbacks from Roads (feet)</b>		
1. Fronting US. Primary Highway	50	50
2. Fronting Other Roads	15	15
<b>I. Road Frontage for Townhouse Units</b>		
<b>J. Townhouse Principal Building Setbacks (feet)</b>		
1. Front yard	20	N/A
2. Side yard		
a. Interior units and Corner sides	20	
b. End unit in a row of less than 5 attached lots	10	N/A
c. End unit in a row of 5 or more attached lots	15	N/A
3. Rear yard	20	N/A
<b>K. Multi-Family Principal Building Setbacks (feet)</b>		
1. Project Property Lines	N/A	50
2. Public Roads	N/A	50
3. Parking spaces	N/A	15
4. Distances Between Buildings	N/A	30
<b>L. Pavement Width of Other Drives (feet)</b>	24	24

Table 36.6. R-3 District Requirements	Residential Townhouse Use – Subdivision, Lot, and Building Standards	Residential Multi-Family Use – Project and Building Standards
<b>M. Principal Building Height (maximum feet)</b>	35	35
<b>N. Accessory Building Requirements</b>	Subject to Article VI - Use Performance Standards	Subject to Article VI - Use Performance Standards

(a) Other Required Townhouse Subdivision Standards.

- (1) *All lots shall have frontage on a road.* If approved by the County as part of a rezoning application, lots may front on private pavement which has direct access to a public road when the private pavement is designed and constructed in accordance with the provisions of the Essex County Subdivision Article.
- (2) *Common Areas Design.* Within required common area, except where lots abut a public street, a 5-foot-wide common area shall be provided around the perimeter of each group of attached lots.
- (3) *Common Areas Ownership.* Open space shall be owned and maintained by the developer and/or owner of the townhouse development, until such time as it is turned over to the ownership and maintenance of an approved homeowners’ association, whose members shall include all of the individual owners of townhouses in the development, or to a nonprofit council of co-owners as provided under the Code of Virginia. This land shall be used solely for the recreational and parking purposes of the individual townhouse lot owners. Such land conveyance shall include deed restrictions and covenants, in a form acceptable to the county attorney, that shall provide, among other things, that assessments, charges and costs of the maintenance of such areas shall constitute a pro rata lien against the individual townhouse lots, inferior in dignity only to taxes and bona fide duly recorded deeds of trust of each townhouse lot. An applicant seeking to subject property to townhouse development under this section whose ownership or interest in the property is held by a valid lease, shall provide for an initial term of not less than 99 years in such lease.
- (4) *Attached lots.* The number of lots in each group of attached lots shall be varied throughout the subdivision.

(b) Additional Townhouse Subdivision and Multi-family Project Standards.

- (1) *General Design and Building Layout.* The development shall be designed with special attention to compatibility of adjacent land uses, topography, existing vegetation, and orientation. The development shall incorporate an attractive building layout which relates to and enhances natural vegetation and terrain or incorporates natural design features such as preservation of scenic vistas or other unique elements of the site.
- (2) *Architecture.* Buildings shall be designed to impart harmonious proportions and avoid monotonous facades and large bulky masses. Buildings shall maintain possess architectural variety while at the same time maintain an overall cohesive residential character. Residential character may be achieved through the creative use of design elements such as, but not limited to, balconies, terraces, articulation of doors and windows, sculptural or textural relief of facades, architectural ornamentation, varied roof lines, or other appurtenances such as lighting fixtures and plantings. The facades of individual units within any contiguous row of townhouses shall be sufficiently varied in their materials, design, or appearance as to visually distinguish them as individual dwelling units.
- (3) *Public Water and Public Sewer.* All developments shall be provided with public water and public sewer.
- (4) *Pedestrian Access.* Pedestrian access shall be provided to all common area elements, including mail kiosks, parking lots, refuse collection areas, recreational amenities and to adjoining properties and along public roadways as required through plans review.
- (5) *Roads and Private Pavement.* All roads and private pavement shall have concrete curb and gutter.



- (6) *Landscaping and Architectural Plans.* In conjunction with site plan submission, landscape and architectural renderings or elevations, as well as any development phasing plans shall be submitted for approval.
- (7) *Landscaping and Buffer.* Landscaping as required in Article VII shall be installed within the private pavement setback and the building setbacks.
- (8) *Screening of Mechanical Equipment and Refuse Collection.* Whether ground-level or rooftop, any refuse collection or mechanical equipment visible from adjacent property or roads shall either be integrated into the architectural treatment of the building or screened from view.
- (9) *Phasing.* Unless a phasing plan is approved through preliminary plat review, construction shall be completed prior to issuance of building permits. An approved phasing plan may include limitations on the issuance of building permits for individual multi-family units.
- (10) *Multifamily Building Placement.*
  - a. A multifamily building constructed along a public road shall front the road.
  - b. The front yard setback of each unit shall be varied at least 2 feet from the adjacent unit and every third unit shall be varied at least 4 feet from the adjacent unit.

**Section 36.226. — R-4 Residential, Restricted District Requirements.**

In addition to the other requirements of this Ordinance, uses within the R-4 district shall only be permitted on lots recorded prior to October 16, 1976, in compliance with Chesapeake Bay Preservation Area Overlay District standards, Chapter 18 – Floodplain Management of the County Code, and as specified in this section.

Table 36.7 R-4 District Requirements	
<b>A. Lot Standards</b>	
1. Lot area and width	
a. Area (square feet)	Must obtain health permit
b. Width (feet)	Must obtain health permit
2. Lot coverage (maximum %)	40
<b>B. Road Frontage (feet)</b>	
1. Permanent cul-de-sac or radius of loop road	15
2. Other roads	20
<b>C. Principal Building Setbacks (feet)</b>	
1. Front setback	15
2. Interior side setback	5
3. Corner side setback	
a. Back to side with another corner lot	15
b. Back to back with another corner lot	15
4. Rear setback	
a. Through lot	15
b. All other lots	15
<b>D. Principal Building Heights (maximum)</b>	
1. Single family dwellings	Lesser of 2.5 stories or 35 feet
2. Other permitted principal structures	Lesser of 2.5 stories or 35 feet
<b>E. Accessory Building Requirements</b>	Subject to Article VI - Use Performance Standards

**Section 36.227. — MH-1 Mobile Home Park District Requirements.**

Table 36.8 MH-1 District Requirements - Park Standards	
<b>A. Park Size</b>	8 acres
<b>B. Density (maximum)</b>	4 units per acre
<b>C. Number of Accesses to Public Road</b>	
1. 50 or fewer units	1
2. 51 or more units	2
<b>D. Setbacks (feet)</b>	
1. Public road	100
2. Other property lines	35
<b>E. Interior Park Street Width (feet)</b>	24
<b>F. Recreation Area</b>	10 % of park acreage
<b>Notes for Table 36.8 MH-1 District Requirements - Park Standards</b>	
[1] Setbacks shall be measured between property lines and nearest manufactured homes or other structures. [2] Setbacks shall contain a screen, fence or landscaping not less than six (6) feet in height with no openings to adjoining property other than the required accesses to public roads or public spaces. [3] Interior Park Streets shall have a dedicated right-of-way of 40 feet in width.	

(a) Other Required Park Standards.

- (1) *Recreational Area.* Fifty (50) percent of the required area shall be outside of floodplains and have a slope of not more than 5%. Sufficient recreation facilities such as playground equipment, playfields and courts, picnic tables, and benches, as deemed appropriate at time of plan review, shall be installed within required recreation area. Recreational facilities shall be designed, constructed and maintained to be safe for users. All required safety fall zones and surfacing standards shall be met.
- (2) *Interior Park Streets.* Park streets shall have unobstructed access to a public road. The design and construction of the interior park street system shall be sufficient to adequately serve the size and density of the development. Parking shall be prohibited in park streets. Park streets shall be constructed of bituminous concrete, concrete or similar material, designed to ensure adequate access by emergency services, and shall comply with private road standards of the Subdivision Article.
- (3) *Underground Utilities and Water and Sewer Systems.* All telephone, electrical distribution, water, fuel and other utility lines shall be placed underground. All manufactured home parks shall be served by public water and wastewater or be served by a private central water and sewer system approved by the Virginia Department of Health. All manufactured homes shall be required to utilize the approved water and sewer systems. All sanitary wastewater connections shall be located beneath the manufactured home which it serves.
- (4) *Solid Waste Disposal Areas.* Solid waste disposal areas shall not create a health or fire hazard. All solid waste shall be stored in fly proof, watertight, rodent proof containers. A sufficient number of containers shall be provided. Park management shall be responsible for the collection and disposal of waste.
- (5) *Streetlights.* Streetlights shall be installed at the intersection of park driveways and in locations where it is determined that such lighting is necessary to ensure safety and security for persons, property and traffic. The exact number and location of streetlights shall be approved at the time of plan review.
- (6) *Expansion of Existing Parks.* Any expansion of existing mobile home parks must result in full compliance with all regulations contained in this section.

Table 36.9 MH-1 District Requirements – Individual Manufactured Home Standards	
<b>A. Pad Standards</b>	
1. Lot area and width	
a. Area (square feet)	6000
b. Width (feet)	55
<b>B. Street or Parking Area Frontage (feet)</b>	55
<b>C. Individual Manufactured Home Spacing (feet)</b>	
1. Between manufactured homes	40
2. Internal roads, drives and parking areas	25
<b>D. Principal Building Setbacks for each pad site (feet)</b>	
1. Front yard	20
2. Interior side yard	15
3. Corner side yard	20
4. Rear yard	15
<b>E. Principal Building Heights</b>	
1. Manufactured home (feet)	20
2. Other	Lesser of 1 ½ stories or 25 feet
<b>F. Accessory Building Requirements</b>	Subject to Article VI – Use Performance Standards
<b>Notes for Table 36.9 MH-1 District Requirements – Individual Manufactured Home Standards</b>	
[1] Manufactured homes shall be placed in designated pad sites and shall not obstruct any road, private pavement, sidewalk or public utility easement.	
[2] Manufactured homes shall abut a park driveway or parking area which is adjacent to the driveway.	

(b) Other Required Individual Manufactured Home Standards.

(1) *Skirting*. Manufactured homes shall be skirted in accordance with the Building Code.

Reserved 36.228.— 36.239.

### Division 3. — Planned District Requirements

#### Section 36.240. — PUD Planned Unit Development District Requirements

Overall Guidelines and Design.

- (1) The purpose of the PUD, Planned Unit Development District, is to offer areas where higher density and more intense development can be accommodated. A variety of uses are permitted within this District that create a unified livable community. Generally, an integrated mix of higher-density residential development with some smaller scale neighborhood-serving commercial uses is permitted in a village-like setting.
- (2) PUDs are intended to develop contiguous to existing development or as an infill development that has a compact design with a mix of housing types, commercial uses and open space and recreational areas that are all interconnected with access that facilitates walking, cycling, transit and driving.

- (3) PUDs shall be located on tracts having sufficient size to accommodate the development and provide appropriate transitions. Primary access for the development would be provided directly to a major roadway and not through an existing residential development having an average lot size larger than that of the proposed development.
- (4) The PUDs development design and quality should enhance the surrounding area, preserve scenic assets and natural features and be designed with the influence of the historic and architectural character of the community.
- (5) Edges of the development adjacent or near to established neighborhoods would be required to buffer the edges to minimize impact to established neighborhoods. This approach acknowledges existing development patterns and recognizes historic development conditions.
- (6) Quality design standards are required to include provision of sidewalks, street trees, site and individual lot landscaping, recreational amenities, a comprehensive system of pedestrian, bike and bridle paths, where appropriate, and quality and variety of the architectural design and materials. Further, it is the intent of the district to be designed to the human scale with neighborhood connectivity. Consideration should be given to height of buildings, mixture of homes to accommodate various incomes, neighborhood parks, recreational areas, greens, walking distances, interconnected streets, and traffic calming techniques.
- (7) These higher density, mixed use developments will only be permitted in areas where infrastructure in the form of public water and sewer, transportation systems and other public facilities such as parks and community facilities would not be adversely impacted or provisions are made for such facilities to accommodate demands resulting from the development.

#### **Section 36.241. — Permitted Uses.**

An integrated mix of higher density residential development with smaller scale neighborhood-serving commercial uses, public spaces and community and recreational uses are permitted:

- (1) Residential Use. The majority of the development should be residential units of varying types. Permitted residential uses include: Attached and detached single family dwellings, duplexes, townhouses and attached and detached multi-family (condominiums and/or apartments) units. Multi-family residential uses would be permitted to be vertically integrated with non-residential uses within buildings, with residential uses on the upper floor(s) of a building and non-residential uses on the ground floor.
- (2) Non-Residential Use. Permitted non-residential uses should primarily be smaller-scale and serve a neighborhood wide trade area as permitted in the Business Limited (B-1) District. Limited commercial uses that serve broader trade areas as permitted in the Business (B-2) District may be permitted under circumstances that minimize impacts of vehicular traffic on the desired development pattern and surrounding area. These uses would not include automobile-oriented uses such as automobile repair, service and sales; automobile parts sales; and car-washes.
- (3) Guaranteed Mixed Use. Non-residential uses are required to be developed in conjunction with the development's residential uses such that:
  - a. Minimum of 30 % of the total land area of the PUD must include non-residential uses (Overall not less than 20% commercial uses and not less than 10% public/recreational and open space uses)
  - b. Maximum of 50% of the total residential uses for the project are permitted to receive certificates of occupancy until such time as construction is complete on 40% of the non-residential uses for the project.

#### **Section 36.242. — Density, Minimum Development Standards and Development Standard Exceptions**

While the standards below offer the minimum development standards, PUDs often are substantially different in character than traditional single use developments such that additional standards and exceptions to existing

standards are needed through the approval process. Considerations for granting exceptions are provided in Section 5 below.

(1) Residential Uses.

- a. For the residential uses, development shall comply with the standards for permitted uses in the R-3 (Higher Density Residential) Zoning District and Use and Development Standards sections for these uses. These standards address requirements including, but not limited to, densities, lot areas, frontage, width, setbacks, buffers, landscaping, parking, building heights, open space ownership and maintenance and architectural standards.

(2) Non-Residential Uses.

- a. For non-residential uses, development shall comply with the standards for permitted uses in the B-1 (Business Limited) Zoning District and Use and Development Standards sections for these uses. These standards address requirements including, but not limited to, lot areas, frontage, width, setbacks, buffers, screening, landscaping, parking, building heights, open space ownership and maintenance and architectural standards.

(3) Streets, alleys and pedestrian circulation:

- a. Streets and alleys shall be provided pursuant to the Ordinance and shall be constructed in compliance with current standards and accepted for maintenance by VDOT.
- b. Safe and appropriate vehicular circulation on-site and between adjacent properties shall be provided.
- c. Pedestrian ways shall be incorporated into each development and extended to adjacent properties. Pedestrian ways shall be designed to minimize conflicts with vehicular traffic.
- d. The orientation of streets shall enhance the visual impact of common open space and prominent scenic assets and natural features.
- e. Alley easements shall be owned, controlled, and maintained by a property owners' association (POA) or similar association or owned by individual property owners with control and maintenance by a POA or other association. The County shall be granted emergency ingress and egress to alleys but shall have no maintenance or ownership responsibilities.

(4) Architecture:

- a. In addition to standards provided in R-3 and B-1 District and in Use Performance Standards, the following shall be met with the planned development:
  1. A consistent architectural treatment shall be developed for the project to ensure quality design and architecture are provided throughout. Architectural treatment of buildings, including materials, color and style, shall be compatible.
  2. Architectural compatibility may be achieved through the use of similar building massing, materials, scale, colors and other architectural features.

(5) Standards Exceptions:

- a. An applicant may request to develop portions of the development at higher densities than stated for that particular use or may request flexibility in Ordinance standards to accommodate the planned design and to encourage innovative and creative design and high-quality development. In granting development standard exceptions, consideration shall be given as to:
  1. Whether the exceptions are solely for the purpose of promoting an integrated development plan which would be equally beneficial to the development's design, its future occupants, and the surrounding area as would be obtained under this Ordinance's development standards;
  2. Whether the exceptions are necessary, desirable and appropriate with respect to the primary purpose of the development; and

3. Whether the exceptions are not of such a nature or located so as to have a detrimental influence on the area.
  4. *Lot Area Reductions.* The minimum lot area requirements may be decreased without limitation, provided that land in an amount equivalent to that by which each residential lot or building site is diminished is provided in common area within the development.
  5. *Amendment of Conditions of Approval.* Except as outlined below, amendment of conditions of approval for a PUD shall occur through the same process as the original approval:
    - i. Conditions allowing amendment by the planning commission, staff or others may be amended per the language of the condition; and
    - ii. Conditions establishing setbacks may be amended through the granting of a variance by the Board of Zoning Appeals provided relief applies solely to a single lot and not the overall area encompassed by the PUD.
- (6) Conditions and Guarantees:
- a. Conditions and restrictions may be imposed on the use, operation, establishment, location and construction of the development or any portion thereof as necessary to protect the public interest and ensure compliance with the guidelines of this Ordinance and the Comprehensive Plan. In addition, a guarantee or bond may be required to ensure that conditions and Ordinance standards are satisfied. Reasonable guarantees shall be provided that required common area and other commonly owned portions of the development will always remain available and be reasonably maintained.
- (7) Application and Review
- a. Establishment of a PUD District shall be pursuant to the rezoning procedure set forth in Article III.
  - b. In addition to the rezoning application requirements listed in Article III, the following application requirements shall apply:
    1. A master plan showing:
      - i. general location of streets and alleys;
      - ii. land uses by type, function, density and intensity;
      - iii. transitional areas between uses and adjacent properties;
      - iv. proposed open space, specifically designating areas for passive and active use, and an inventory of scenic assets and natural resources to be considered for preservation; and,
      - v. preliminary plans for drainage and erosion control, transportation improvements, water and sewer service, and other public utilities and facilities as may be required.
    2. A textual statement explaining in specific detail any and all exceptions to this Ordinance that are being requested for the development and written justification for such exception request(s).
    3. A tabulation of the proposed program of development by general area and in total providing:
      - i. proposed dwelling units by residential type;
      - ii. proposed non-residential square footages by use type; and (iii) calculations of percentages of land area covered by the various land uses.
      - iii. illustrative building, parking, and alley layouts;
      - iv. descriptions and illustrations of screening, buffering and transitions to be provided between residential and non-residential uses and along development's edge;
      - v. standards for the landscaping and lighting;

- vi. standards for the landscaping and lighting; (vi) street, loading areas and parking design;
- vii. screening;
- viii. architectural guidelines for all building types; such guidelines need not set specific floor plans or elevations, but shall describe the style and materials of buildings;
- ix. a written description of how the proposed plan and design guidelines for the proposed PUD meet the objectives outlined in this section;
- x. a statement regarding the timing of construction of common and/or public facilities;
- xi. A general statement as to how parks, squares, common open spaces and common facilities are to be owned and maintained; and
- xii. detailed conceptual plan of each residential type, commercial areas, recreational amenities, and open space areas.

Reserved 36.243. — 36.254.

**Division 4. — Business and Industrial District Requirements**

**Section 36.255. — B-1 Local Business and B-2 General Business Requirements.**

Table 36.10 B-1 and B-2 District Requirements		
<b>A. Setbacks (feet)</b>		
1. Road type	a. U.S. Primary Highway	75
	b. Other roads	50
2. Interior side	a. Adjacent to A, R or MH-1 Districts	50
	b. Adjacent to B or I Districts	10
3. Rear	a. Adjacent to A, R or MH-1 Districts	50
	b. Adjacent to B or I	20
<b>B. Building Heights (maximum)</b>		Lesser of 3 stories or 45 feet <sup>[1]</sup>
<b>Notes for Table 36.10 B-1 and B-2 District Requirements</b>		
[1] Within 100 feet of a R District, the height shall not exceed the lesser of 2.5 stories or 35 feet.		



(a) Other Required Conditions

(1) Architecture. Buildings shall meet the following architectural requirements:

- a. Building facades visible to a road or A, R or MH District shall not be constructed of unadorned concrete block, unfinished corrugated metal or unfinished sheet metal. A façade shall not consist of architectural materials inferior in quality, appearance or detail to any other façade, except that use of different materials on different facades shall be permitted.
- b. Views of junction and accessory boxes visible from roads or adjacent property shall either be integrated into the architectural treatment of the building or their view minimized by landscaping.
- c. For developments within Rural Service Centers, as identified in the Comprehensive Plan, buildings shall possess architectural variety while still maintaining compatibility with existing structures, especially those of high historic interest and shall employ an overall cohesive character as reflected in existing structures through the use of design elements including, but not limited to, materials, balconies, terraces, articulation of doors and windows, sculptural or textual relief of facades, architectural ornamentation, varied roof lines, or other appurtenances such as lighting fixtures and landscaping. Compatibility may be achieved through the use of similar building massing, materials, scale, colors and other architectural features.

**Section 36.256. — I-1 Light Industrial and I-2 Industrial District Requirements.**

Table 36.11 I-1 and I-2 District Requirements		
<b>A. Setbacks (feet)</b>		
1. Road type	a. U.S. Primary Highway	75
	b. Other roads	50
2. Interior side	a. Adjacent to A, R or MH-1 Districts	50
	b. Adjacent to B or I Districts	20
3. Rear	a. Adjacent to A, R or MH-1 Districts	50
	b. Adjacent to B or I	30
<b>B. Building Heights (maximum)</b>		Lesser of 3 stories or 45 feet <sup>[1]</sup>
<b>Notes for Table 36.11 I-1 and I-2 District Requirements</b>		
[1] Within 100 feet of a R District, the height shall not exceed the lesser of 2.5 stories or 35 feet.		

(a) Other Required Conditions

(1) Architecture. Buildings shall meet the following architectural requirements:

- a. Building facades shall not be constructed of unadorned concrete block, unfinished corrugated metal or unfinished sheet metal. A façade shall not consist of architectural materials inferior in quality, appearance or detail to any other façade, except that use of different materials on different facades shall be permitted.
- b. Views of junction and accessory boxes visible from roads or adjacent property shall either be integrated into the architectural treatment of the building, or their view minimized by landscaping.

Reserved 36.257. — 36.264.

## **Division 5. — Chesapeake Bay Preservation Area Overlay District**

### **Section 36.265. — Findings of Fact.**

- (a) The Chesapeake Bay and its tributaries are one of the most important and productive estuarine systems in the world, providing economic and social benefits to the citizens of Essex County and the Commonwealth of Virginia. The health of the Bay is vital to maintaining Essex County's economy and the welfare of its citizens.
- (b) The Chesapeake Bay waters have been degraded significantly by many sources of pollution, including non-point source pollution from land uses and development. Existing high-quality waters are worthy of protection from degradation to guard against further pollution. Certain lands that are proximate to shorelines have intrinsic water quality value due to the ecological and biological processes they perform. Other lands have severe development constraints from flooding, erosion, and soil limitations. With proper management, they offer significant ecological benefits by providing water quality maintenance and pollution control, as well as flood and shoreline erosion control. These lands together designated by the Essex County Board of Supervisors as Chesapeake Bay Preservation Areas ("CBPAs"), need to be protected from destruction and damage in order to protect the quality of water in the Bay and consequently the quality of life in Essex County and the Commonwealth of Virginia.

### **Section 36.266. — Establishment.**

- (a) This district shall be in addition to and shall overlay all other zoning districts where they are applied so that any parcel of land lying in the Chesapeake Bay Preservation Area Overlay District shall also lie in one or more of the other zoning districts provided for by the Zoning and Subdivision Ordinance.
- (b) Unless otherwise stated in the Overlay District, the Essex County Zoning and Subdivision Ordinance, the Erosion and Sediment Control Ordinance of Essex County, the Building Regulations Ordinance of Essex County, and any other applicable local ordinance shall be followed in reviewing and approving development, redevelopment, and uses governed by this Overlay District.

### **Section 36.267. — Areas of Applicability.**

- (a) The Chesapeake Bay Preservation Area Overlay District shall apply to all lands identified as CBPAs as designated by the Essex County Board of Supervisors and as shown on the Overlay CBPA Map adopted by the Essex County Board of Supervisors on October 22, 1991. The Overlay CBPA Map, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Article.
  - (1) The Resource Protection Area (RPA) includes:
    - a. Tidal wetlands;
    - b. Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;
    - c. Tidal shores;
    - d. A vegetated buffer area not less than 100 feet in width located adjacent to and landward of the components listed above, and along both sides of any water body with perennial flow. The full buffer area shall be designated as the landward component of the RPA notwithstanding the presence of permitted uses, encroachments, and permitted vegetation clearing in compliance with this article.
  - (b) The Resource Management Area (RMA) is composed of concentrations of the following land categories; floodplains; highly erodible soils, including steep slopes; highly permeable soils; nontidal wetlands not included in the RPA or other sensitive lands necessary to protect the quality of State waters.

The Overlay CBPA Map shows the general location of CBPAs and should be consulted by persons contemplating activities within Essex County prior to engaging in a regulated activity. The specific location of RPAs on a lot or parcel shall be delineated on each site or parcel as required under Section 36.247 (a) of this Article.

**Section 36.268. — Determining RPA Boundaries.**

- (a) *Delineation by the Applicant.* The site-specific boundaries of the RPA shall be determined by the applicant through the performance of an environmental site assessment, subject to approval by the Zoning Administrator and in accordance with Section 36.252, (Plan of Development), of this Article or a Water Quality Impact Assessment (WQIA) as required under 36.250 (b) of this Article. The CBPA Overlay Map may be used as a guide to the general location of RPAs; however, this does not relieve the applicant of the requirement that they perform site-specific determination of the RPA.
- (b) *Delineation by the Zoning Administrator in RPAs.* The Zoning Administrator, when requested by an applicant wishing to construct a single-family dwelling or additions to existing homes, or utility buildings, garages, and other structures accessory to single-family dwellings, may waive the requirement for an environmental site assessment and perform the delineation. The Zoning Administrator may use hydrology, soils, plant species, and other data, and consult other appropriate resources as needed to perform the delineation.
- (c) *Where Conflict Arises Over Delineation.* Where the applicant has provided a site-specific delineation of the RPA, the Zoning Administrator will verify the accuracy of the boundary delineation. In determining the site-specific RPA boundary, the Zoning Administrator may render adjustments to the applicant's boundary delineation in accordance with Section 36.252 (Plan of Development) of this Article. In the event the adjusted boundary delineation is contested by the applicant, the applicant may seek relief, in accordance with the provisions of Section 36.252(i) (Denial/Appeal of the Plan).

**Section 36.269. — Use Regulations.**

Permitted uses, special permit uses, accessory uses, any other uses and special requirements shall be as established by the underlying zoning district, unless specifically modified by the requirements set forth herein.

**Section 36.270. — Lot Size.**

Lot size shall be subject to the requirements of the underlying zoning district(s), provided that any lot shall have sufficient area outside the RPA to accommodate an intended development, in accordance with the performance standards in Section 36.250, when such development is not otherwise allowed in the RPA.

**Section 36.271. — Performance Standards.**

- (a) Purpose and Intent.
  - (1) The performance standards establish the means to minimize erosion and sedimentation potential, reduce land application of nutrients and toxics, and maximize rainwater infiltration. Natural ground cover, especially woody vegetation, is most effective in holding soil in place and preventing site erosion. Indigenous vegetation, with its adaptability to local conditions without the use of harmful fertilizers or pesticides, filters stormwater runoff. Minimizing impervious cover enhances rainwater infiltration and effectively reduces stormwater runoff potential.
  - (2) The purpose and intent of these requirements are also to implement the following objectives:
    - a. Prevent a net increase in non-point source pollution from new development;
    - b. Achieve a ten percent (10%) reduction in non-point source pollution from redevelopment; and
    - c. Achieve a forty percent (40%) reduction in non-point source pollution from agricultural and silviculture uses.
- (b) Required Conditions
  - (1) All development and redevelopment exceeding two thousand five hundred (2,500) square feet of land disturbance shall be subject to a plan of development process, including the approval of a site plan in accordance with the provisions of the Zoning and Subdivision Ordinance or a subdivision plat in accordance with the Subdivision Article unless otherwise provided for.

- (2) Development in RPAs may be allowed only if it: (i) is water dependent; (ii) constitutes redevelopment; (iii) constitutes development or redevelopment within a designated Intensely Developed Area; (iv) is a new use established pursuant to subdivision 4a of this section; (v) is a road or driveway crossing satisfying the conditions set forth in subdivision 1d of this section; or (vi) is a flood control or stormwater management facility satisfying the conditions set forth in subdivision 1e of this section.
- a. A WQIA in accordance with subdivision F of this section shall be required for a proposed land disturbance.
  - b. A new or expanded water-dependent facility may be permitted provided that:
    1. It does not conflict with the Comprehensive Plan.
    2. It complies with the performance criteria set forth in Section 36.250 of this Ordinance.
    3. Any non-water dependent component is located outside of the RPA.
    4. Access will be provided with the minimum disturbance necessary. Where practical, a single point of access will be provided.
  - c. Redevelopment outside locally designated Intensely Developed Areas shall be permitted in the RPA only if there is no increase in the amount of imperious cover and no further encroachment within the Resource Protection Area, and it shall conform to applicable erosion and sediment control and stormwater management criteria set forth in the Erosion and Sediment Control Law and the Virginia Stormwater Management Act and their attendant regulations, as well as all applicable stormwater management requirements of other state and federal agencies.
  - d. Roads and driveways not exempt under subdivision B 1 of [9VAC25-830-150](#) and which, therefore, must comply with the provisions of this chapter, may be constructed in or across RPAs if each of the following conditions is met:
    1. The director finds that there are no reasonable alternatives to aligning the road or driveway in or across the RPA;
    2. The proposed alignment, design and construction of the road or driveway is optimized to minimize encroachment in the RPA and adverse effects on water quality;
    3. The design and construction of the road or driveway conform to all applicable criteria of this article, including submission of a water quality impact assessment; and
    4. The director reviews the plan for the proposed road or driveway in coordination with construction plan, land disturbance, site plan, subdivision or building permit approvals, and finds that the plan is consistent with this article.
  - e. For flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed;
    1. The director establishes that location of the facility within the RPA is the optimum location;
    2. The size of the facility is the minimum necessary to provide necessary flood control or stormwater treatment, or both;
    3. The facility is consistent with a stormwater management program that has been approved by the State Water Control Board as a phase I modification to the county's program;
    4. All applicable permits for construction in state or federal waters have been obtained from the appropriate state and federal agencies;
    5. Approval has been received from the director prior to construction; and

6. Maintenance agreements in a form and with content acceptable to the director have been executed, to allow the county to perform routine maintenance on such facilities to assure that they continue to function as designed. This subsection shall not be construed to allow a best management practice to be located within the RPA that collects and treats runoff from only an individual lot or portion thereof.
  - f. A WQIA shall be required for any proposed development or redevelopment or land disturbance within RPAs and any development within the RMA that involves more than fifty (50) acres or that results in sixty (60) percent or more impervious cover on the lot or parcel being developed.
- (c) General Performance Standards for Development and Redevelopment.
- (1) Land disturbance shall be limited to the area necessary to provide for the proposed use or development.
    - a. In accordance with an approved Plan of Development, the limits of land disturbance, including clearing or grading shall be strictly defined. These limits shall be clearly shown on submitted plans and physically marked on the development site.
  - (2) Indigenous vegetation shall be preserved to the maximum extent practical consistent with the proposed use or development proposed by an approved Plan of Development.
    - a. Existing trees shall be preserved outside the construction footprint. Diseased trees or trees weakened by age, storm, fire, or other injury may be removed.
    - b. Prior to clearing or grading, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline of any tree or stand of trees to be preserved, unless otherwise approved on the Plan of Development. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
  - (3) Land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the proposed use or development permitted.
    - a. Grid and modular pavements which promote infiltration should be used for any required parking area, alley, or other low traffic driveway.
    - b. Parking areas and driveways shall be designed so as to minimize impervious surfaces.
  - (4) Notwithstanding any other provisions of this Article or exceptions or exemptions thereto, any land disturbing activity exceeding two thousand five hundred (2,500) square feet including construction of all single-family houses, septic tanks and drain fields, shall comply with the requirements of Essex County Erosion and Sediment Control Ordinance.
  - (5) All sewage disposal systems, except those requiring a Virginia Pollutant Discharge Elimination System permit, shall comply with the following:
    - a. Systems shall be pumped out at least once every five years, unless the owner submits documentation, certified by a sewage handler permitted by the Virginia Department of Health, that the septic system has been inspected, is functioning properly, and the tank does not need to have the effluent pumped out of it. As an alternative to the mandatory pump-out or documentation, a plastic filter approved by the health department may be installed and maintained in the outflow pipe from the septic tank to filter solid material from the effluent. Such a filter shall satisfy standards established in the sewage handling and disposal regulations administered by the Virginia Department of Health.
    - b. A reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site shall be provided on each lot or parcel proposed for new construction. This reserve sewage disposal site requirement shall not apply to any lot or parcel recorded prior to October 1, 1989, if the lot or parcel,

as determined by the local health department, is not sufficient in capacity to accommodate a reserve sewage disposal site.

- c. Building or construction of any impervious surface shall be prohibited on the area of all sewage disposal sites until the development is served by public sewer or an on-site sewage treatment system that operates under a permit issued by the state water control board.
- (6) Prior to initiating grading or other on-site activities on any portion of a lot or parcel, all wetlands permits or other permits required by Federal, State, and local laws and regulations shall be obtained and evidence of such submitted to the Zoning Administrator, in accordance with Section 36.273, of this Article.
  - (7) Land upon which agricultural activities are being conducted, including but not limited to crop production, pasture, and dairy and feedlot operations, or lands otherwise defined as agricultural land by the local government, shall have a soil and water quality conservation assessment conducted that evaluates the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management, and management of pesticides, and, where necessary, results in a plan that outlines additional practices needed to ensure that water quality protection is being accomplished consistent with the Act and this chapter.
    - a. Recommendations for additional conservation practices need address only those conservation issues applicable to the tract or field being assessed. Any soil and water quality conservation practices that are recommended as a result of such an assessment and are subsequently implemented with financial assistance from federal or state cost-share programs must be designed, consistent with cost-share practice standards effective in January 1999 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service or the June 2000 edition of the "Virginia Agricultural BMP Manual" of the Virginia Department of Conservation and Recreation, respectively. Unless otherwise specified in this section, general standards pertaining to the various agricultural conservation practices being assessed shall be as follows:
      1. For erosion and sediment control recommendations, the goal shall be, where feasible, to prevent erosion from exceeding the soil loss tolerance level, referred to as "T," as defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service. However, in no case shall erosion exceed the soil loss consistent with an Alternative Conservation System, referred to as an "ACS", as defined in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service.
      2. For nutrient management, whenever nutrient management plans are developed, the operator or landowner must provide soil test information, consistent with the Virginia Nutrient Management Training and Certification Regulations ([4VAC50-85](#)).
      3. For pest chemical control, referrals shall be made to the local cooperative extension agent or an Integrated Pest Management Specialist of the Virginia Cooperative Extension Service. Recommendations shall include copies of applicable information from the "Virginia Pest Management Guide" or other Extension materials related to pest control.
    - b. A higher priority shall be placed on conducting assessments of agricultural fields and tracts adjacent to Resource Protection Areas. However, if the landowner or operator of such a tract also has Resource Management Area fields or tracts in his operation, the assessment for that landowner or operator may be conducted for all fields or tracts in the operation. When such an expanded assessment is completed, priority must return to Resource Protection Area fields and tracts.

- c. The findings and recommendations of such assessments and any resulting soil and water quality conservation plans will be submitted to the local Soil and Water Conservation District Board, which will be the plan-approving authority.
- (d) Buffer Area Requirements.
  - (1) To minimize the adverse effects of human activities on the other components of RPAs, State waters, and aquatic life, a 100-foot buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering non-point source pollution from runoff shall be retained if present and established during development where it does not exist.
  - (2) When replanting is required to establish a buffer, a combination of trees, groundcover, and shrubs with a demonstrated ability to improve water quality shall meet the intent of the buffer area.
  - (3) The buffer area shall be located adjacent to and landward of other RPA components and along both sides of any water body with perennial flow. The full buffer area shall be designated as the landward component of the RPA, in accordance with Sections 36.267 (Areas of Applicability) and 36.273 (Plan of Development) of this Article.
  - (4) The 100-foot buffer area shall be deemed to achieve a seventy-five (75) percent reduction of sediments and a forty (40) percent reduction of nutrients.
  - (5) Where land uses such as agriculture or silviculture within the area of the buffer cease and the lands are proposed to be converted to other uses, the full 100-foot buffer shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer function set forth in this chapter, subject to approval by the Zoning Administrator.
  - (6) The buffer area shall be maintained to meet the following additional performance standards:
    - a. In order to maintain the functional value of the buffer area, indigenous vegetation may be removed only subject to approval by the Zoning Administrator, to provide for reasonable sight lines, access paths, general wood lot management, and best management practices, as follows:
      1. Trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering non-point source pollution from runoff.
      2. Any path shall be constructed and surfaced so as to effectively control erosion.
      3. Dead, diseased, or dying trees or shrubbery may be removed and thinning of trees allowed pursuant to sound horticultural practice incorporated into locally adopted standards.
      4. For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements.
    - b. When the application of the buffer areas would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, the Zoning Administrator may through an administrative process permit encroachment into the buffer area in accordance with Section 36.273 (Plan of Development) and the following criteria:
      1. Encroachments into the buffer areas shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;
      2. Where practical, vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment and is equal to the area encroaching the buffer area shall be established elsewhere on the lot or parcel; and
      3. In no case shall the reduced portion of the buffer area be less than fifty (50) feet in width and the encroachment may not extend into the seaward fifty (50) feet of the buffer area.

- c. When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded between October 1, 1989, and March 1, 2002, encroachments into the buffer area may be allowed through an administrative process in accordance with the following criteria:
  - 1. The lot or parcel was created as a result of a legal process conducted in conformity with the local government's subdivision regulations;
  - 2. Conditions or mitigation measures imposed through a previously approved exception shall be met;
  - 3. If the use of a best management practice (BMP) was previously required, the BMP shall be evaluated to determine if it continues to function effectively and, if necessary, the BMP shall be reestablished or repaired and maintained as required; and
  - 4. The criteria in subdivision 4a of this section shall be met.
- d. On agricultural lands the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and appropriate measures taken to prevent noxious weeds (such as Johnson grass, kudzu, and multiflora rose) from invading the buffer area. Agricultural activities may encroach into the buffer as follows:
  - 1. Agricultural activities may encroach into the landward fifty (50) feet of the 100-foot wide buffer area when at least one (1) agricultural best management practice which, in the opinion of the local soil and water conservation district board, addresses the more predominant water quality issue on the adjacent land — erosion control or nutrient management — is being implemented on the adjacent land, provided that the combination of the undisturbed buffer and the best management practice achieves water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot wide buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil tests, must be developed consistent with the Virginia Nutrient Training and Certification Regulations (4 VAC 5-15) administered by the Virginia Department of Conservation and Recreation.
  - 2. Agriculture activities may encroach within the landward seventy-five (75) feet of the 100-foot wide buffer area when agricultural best management practices which address erosion control, nutrient management, and pest chemical control, are being implemented on the adjacent land. The erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as "T," as defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service. A nutrient Management Training and Certification Regulations (4 VAC 5-15) administered by the Virginia Department of Conservation and Recreation. In conjunction with the remaining buffer area, this collection of best management practices shall be presumed to achieve water quality protection at least the equivalent of that provided by the 100-foot wide buffer area.
  - 3. The buffer area is not required to be designated adjacent to agricultural drainage ditches if at least one (1) best management practice which, in the opinion of the local soil and Water Conservation District board, addresses the more predominant water quality issue on the adjacent land — either erosion control or nutrient management — is being implemented on the adjacent land.
  - 4. If specific problems are identified pertaining to agricultural activities that are causing pollution of the nearby water body with perennial flow or violate performance standards pertaining to the vegetated buffer area, the local government, in cooperation with soil and water conservation district, shall recommend a compliance schedule to the landowner and require the problems to be corrected consistent with that schedule. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.
  - 5. In cases where the landowner or his agent or operator has refused assistance from the local Soil and Water Conservation District in complying with or documenting compliance with the agricultural requirements of this chapter, the District shall report the noncompliance to the local government.



The local government shall require the landowner to correct the problems within a specified period of time not to exceed 18 months from their initial notification of the deficiencies to the landowner. The local government, in cooperation with the district, shall recommend a compliance schedule to the landowner. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.

**Section 36.272. — Water Quality Impact Assessment (WQIA).**

(a) Purpose and Intent.

- (1) The purpose of the WQIA is to: (i) identify the impacts of proposed development on water quality and lands with RPAs and other environmentally-sensitive lands; (ii) ensure that, where development does take place within RPAs and other sensitive lands, it will be located on those portions of a site and in a manner that will be least disruptive to the natural functions of RPAs and other sensitive lands; (iii) to protect individuals from investing funds for improvements proposed for location on lands unsuited for such development because of high ground water, erosion, or vulnerability to flood and storm damage; and (iv) specify mitigation which will address water quality protection.

(b) WQIA Required.

- (1) A WQIA is required for any proposed development or redevelopment within an RPA, including any buffer area encroachment as provided for in Section 36.271 of this Article, and in any development in the RMA if:
  - a. The proposed development exceeds fifty (50) acres; or
  - b. The proposed development results in more than sixty (60) percent impervious cover on the lot or parcel being developed.
- (2) There shall be two (2) levels of WQIAs: a minor assessment and a major assessment.
  - a. Minor WQIA. A minor WQIA pertains only to development with CBPAs which causes no more than five thousand (5,000) square feet of land disturbance and/or proposes encroachment into of the landward fifty (50) feet of the 100-foot buffer area as permitted under this section. A minor assessment must demonstrate that the undisturbed buffer area and necessary best management practices will result in removal of no less than seventy-five (75) percent of sediments and forty (40) percent of nutrients from post-development stormwater runoff. A minor assessment shall include a site drawing to scale which shows the following:
    1. Location of the components of the RPA, including the 100-foot buffer area;
    2. Location and nature of the proposed encroachment into the buffer area, including: type of paving material; areas of clearing or grading; location of any structures, drives, or other impervious cover; and sewage disposal systems or reserve drain field sites;
    3. Type and location of proposed best management practices to mitigate the proposed encroachment.
    4. Location of existing vegetation on site, including the number and type of trees and other vegetation to be removed in the buffer to accommodate the encroachment or modification.
    5. Re-vegetation plan that supplements the existing buffer vegetation in a manner that provides for pollutant removal, and erosion and runoff control.
  - b. Major WQIA Assessment. A major WQIA shall be required for any development that:
    1. Exceeds five thousand (5,000) square feet of land disturbance within CPBAs and proposes any modification or encroachment into the landward fifty (50) feet of the 100-foot buffer area;
    2. Disturbs any portion of any other component of an RPA or disturbs any portion of the buffer area within fifty (50) feet of any other component of an RPA; or

3. Is located in an RMA and is deemed necessary by the Zoning Administrator.
- (3) The information required in this section shall be considered a minimum, unless the Zoning Administrator determines that some of the elements are unnecessary due to the scope and nature of the proposed use and development of land.
- (4) The following elements shall be included in the preparation and submission of a major water quality assessment:
  - a. All of the information required in a minor WQIA, as specified in Section 36.272 (2);
  - b. A hydrogeological element that:
    1. Describes the existing topography, soils, hydrology, and geology of the site and adjacent lands.
    2. Describes the impacts of the proposed development on topography, soils, hydrology, and geology on the site and adjacent lands.
    3. Indicates the following:
      - i. Disturbance or destruction of wetlands and justification for such action;
      - ii. Disruptions or reductions in the supply of water to wetlands, streams, lakes, rivers, or other water bodies;
      - iii. Disruption to existing hydrology including wetland and stream circulation patterns;
      - iv. Source location and description of proposed fill material;
      - v. Location of dredge material and location of dumping area for such material;
      - vi. Estimation of pre- and post-development pollutant loads in runoff;
      - vii. Estimation of percent increase in impervious surface on site and type(s) of surfacing materials used;
      - viii. Percent of site to be cleared for project;
      - ix. Anticipated duration and phasing schedule of construction project;
      - x. Listing of all requisite permits from all applicable agencies necessary to develop project.
    4. Describes the proposed mitigation measures for the potential hydrogeological impacts. Potential mitigation measures include:
      - i. Proposed erosion and sediment control concepts; concepts may include minimizing the extent of the cleared area, perimeter controls, reduction of runoff velocities, measures to stabilize disturbed areas, schedule and personnel for site inspection;
      - ii. Proposed stormwater management system;
      - iii. Creation of wetlands to replace those lost;
      - iv. Minimizing cut and fill.
  - c. Landscape and clearing elements that:
    1. Identify and delineate the location of all significant plant material, including all trees on site six (6) inches or greater diameter at breast height. Where there are groups of trees, stands may be outlined.
    2. Describe the impact the development or use will have on the existing vegetation. Information should include:
      - i. General limits of clearing, based on all anticipated improvements, including buildings, drives, and utilities;

- ii. Clear delineation of all trees which will be removed;
  - iii. Description of plant species to be disturbed or removed.
3. Describes the potential measures for mitigation. Possible mitigation measures include:
- i. Replanting schedule for trees and other significant vegetation removed for construction, including a list of possible plants and trees to be used;
  - ii. Demonstration that the design of the plan will preserve to the greatest extent possible any significant trees and vegetation on the site and will provide maximum erosion control and overland flow benefits from such vegetation.
  - iii. Demonstration that indigenous plants are to be used to the greatest extent possible.
- (5) Submission and Review Requirements.
- a. Five (5) copies of all site drawings and other applicable information as required by Subsection (2) above shall be submitted to the Zoning Administrator for review.
  - b. All information required in this section shall be certified as complete and accurate by a professional engineer or a certified land surveyor.
  - c. A minor WQIA shall be prepared and submitted to and reviewed by the Zoning Administrator in conjunction with Section 36.273, (Plan of Development) of this Article.
  - d. A major WQIA shall be prepared and submitted to and reviewed by the Zoning Administrator in conjunction with Section 36.273, (Plan of Development) of this Article.
  - e. As part of any major WQIA submittal, the Zoning Administrator may require review by the State Water Control Board or its agent. Upon receipt of a major WQIA, the Zoning Administrator will determine if such review is warranted. Any comments by State Water Control Board or agent will be incorporated into the final review by the Zoning Administrator provided that such comments are provided within 90 days of the request.
- (6) Evaluation Procedure.
- a. Upon completed review of a minor WQIA, the Zoning Administrator will determine if any proposed encroachment into the buffer area is consistent with the provisions of this Article and make a finding based upon the following criteria in conjunction with Section 36.273:
    - 1. The necessity of the proposed encroachment and the ability to place improvements elsewhere on the site to avoid disturbance of the buffer area;
    - 2. Impervious surface is minimized;
    - 3. Proposed best management practices, where required, achieve the requisite reductions in pollutant loadings;
    - 4. The development, as proposed, meets the purpose and intent of the Article;
    - 5. The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.
  - b. Upon the completed review of a major WQIA, the Zoning Administrator will determine if the proposed development is consistent with the purpose and intent of this Article and make a finding based upon the following criteria in conjunction with Section 36.273:
    - 1. Within any RPA, the proposed development or redevelopment is water-dependent;
    - 2. The disturbance of wetlands will be minimized;
    - 3. The development will not result in significant disruption of the hydrology of the site;

4. The development will not result in significant degradation to aquatic vegetation or life;
  5. The development will not result in unnecessary destruction of plant materials on site;
  6. Proposed erosion and sediment control concepts are adequate to achieve the reductions in runoff and prevent off-site sedimentation;
  7. Proposed stormwater management concepts are adequate to control the stormwater runoff to achieve the required standard for pollutants control;
  8. Proposed revegetation of disturbed areas will provide optimum erosion and sediment control benefits;
  9. The design and location of any proposed drain field will be in accordance with the requirements of Section 36.271, and the Essex County Zoning and Subdivision Ordinance.
  10. The development, as proposed, is consistent with the purpose and intent of the Overlay District;
  11. The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in significant degradation of water quality.
- c. The Zoning Administrator shall require additional mitigation where potential impacts have not been adequately addressed. Evaluation of mitigation measures will be made by the Zoning Administrator based on the criteria listed above in subsections a. and b.
  - d. The Zoning Administrator shall find the proposal to be inconsistent with the purpose and intent of this Article when the impacts created by the proposal cannot be mitigated. Evaluation of the impacts will be made by the Zoning Administrator based on the criteria listed in subsections a. and b.

**Section 36.273. — Plan of Development.**

- (a) Purpose and Intent.
  - (1) This section is enacted to ensure compliance with this Ordinance and all applicable ordinances and regulations to protect and enhance the values of the natural environment in Essex County, to protect the economic value of the natural environment from unwise and disorderly development, to ensure the efficient use of land, and to create standards in the layout, design, landscaping and construction of development.
- (b) Applicability.
  - (1) Any development or redevelopment exceeding two thousand five hundred (2,500) square feet of land disturbance in the CBPA shall be accomplished through a plan of development processes prior to any development activities or site work such as clearing or grading of the site or the issuance of any building permit, to ensure compliance with all applicable requirements of this Article unless otherwise provided for.
  - (2) Pre-Application Conference. Prior to submitting a Plan of Development, the applicant should schedule a pre-application conference with the Administrator. Sketched plans may be submitted prior to or on the conference date. Due to the existing site conditions, the Administrator may waive certain requirements of the plan of development process.
- (c) Required Information. In addition to the requirements of the underlying Zoning and Subdivision Ordinance and any other related ordinances, regulations, or laws, the plan of development process shall consist of the plans and studies identified below. These required plans or studies may be coordinated or combined, as deemed appropriate by the Zoning Administrator. The Zoning Administrator may determine that some of the following information is unnecessary due to the scope and nature of the proposed development.
  - (1) The following plans or studies shall be submitted, unless otherwise provided for:
    - a. A site plan in accordance with the provisions of this Article and/or a subdivision plat in accordance with the provisions of the Essex County Subdivision Article of this Ordinance;

- b. An environmental site assessment;
  - c. A landscape and clearing plan;
  - d. A stormwater management plan;
  - e. An erosion and sediment control plan in accordance with the provisions of the Erosion and Sediment Control Ordinance of Essex County.
- (d) Environmental Site Assessment. An environmental site assessment shall be submitted in conjunction with preliminary site plan or preliminary subdivision plan approval applications. The Administrator may waive the requirements of the environmental site assessment provided no part of the lot or parcel being developed is within the RPA boundaries, as determined by the County. If the developer disagrees with the determination of RPA boundaries by the County, they shall submit an environmental site assessment to establish boundaries.
- (1) The environmental site assessment shall be drawn to scale and clearly delineate the following environmental features:
    - a. Tidal wetlands;
    - b. Tidal shore;
    - c. Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;
    - d. A 100-foot buffer area located adjacent to and landward of the components listed in subsection (d) (1) above, and along both sides of any water body with perennial flow.
  - (2) Wetland's delineations shall be performed consistent with the procedures specified in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, applicable at the time.
  - (3) The environmental site assessment shall delineate the site-specific geographic extent of the RPA.
  - (4) The environmental site assessment shall be drawn at the same scale as the preliminary site plan or subdivision plat, and shall be certified as complete and accurate by a professional engineer, a soil scientist, a wetlands scientist, a certified land surveyor, a certified landscape architect, or a person or firm competent to make the assessment.
- (e) Landscape and Clearing Plan. A landscape and clearing plan shall be submitted in conjunction with site plan approval or as part of subdivision plan approval. The Administrator may waive the requirements of the landscape and clearing plan if the proposed clearing and/or grading is less than ten thousand (10,000) feet. Landscape and clearing plans shall be prepared and/or certified by a certified professional or person, firm or corporation, competent to design such plans. The plan shall comply with the requirements of Article VII, Division 4 of this Ordinance and:
- (1) Contents of the plan.
    - a. The landscape and clearing plan shall be drawn to scale and clearly delineate the location, size and description of existing and proposed plant material. All existing trees on the site six (6) inches or greater diameter at breast height (DBH) shall be shown on the landscape and clearing plan. Where there are groups of trees, wood lines of the group may be outlined instead. The specific number of trees six (6) inches or greater DBH to be preserved outside of the impervious cover and outside the groups shall be indicated on the plan. Trees proposed to be removed and wood lines to be changed to create a desired impervious cover shall be clearly delineated on the landscape and clearing plan.
    - b. Any required RPA buffer area shall be clearly delineated and any plant material to be added to establish or supplement the buffer area, as required by this Article, shall be shown on the landscape and clearing plan.
    - c. Within the buffer area, trees to be removed for sight lines, vistas, access paths, and best management practices, as provided for in this Article, shall be shown on the plan. Vegetation

- required by this Article to replace any existing trees within the buffer area shall also be shown on the landscape and clearing plan.
- d. Trees to be removed for shoreline stabilization projects and any replacement vegetation required by this Article shall be shown on the landscape plan.
  - e. The landscape and clearing plan will include specifications for the protection of existing trees during clearing, grading, and all phases of construction.
- (2) Plant Specifications.
- a. All plant material necessary to supplement the RPA buffer area or vegetated areas outside the impervious cover shall be installed according to standard planting practices and procedures.
  - b. All supplementary or replacement plant materials shall be living and in healthy condition.
  - c. Where areas to be preserved, as designated on an approved landscape and clearing plan, are encroached, replacement of existing trees and other vegetation will be achieved at a ratio of two (2) planted trees to one (1) removed. Replacement trees shall be a minimum of two and one-half (2.5) inches DBH at the time of planting.
- (3) Maintenance.
- a. The applicant shall be responsible for the maintenance and replacement of all vegetation as may be required by the provisions of this Article.
  - b. In buffer areas and areas outside the impervious cover, plant material shall be tended and maintained in a healthy growing condition and free from refuse and debris. Unhealthy, dying or dead plant materials shall be replaced during the next planting season, as required by the provisions of this Article.
- (f) Stormwater Management Plan. A stormwater management plan shall be submitted as part of the plan of development process required by this Article and in conjunction with site plan or subdivision plan approval.
- (1) The Administrator may waive the requirements of the stormwater management plan when development is for single-family residence, or addition to existing homes, or utility buildings, garages, and other structures accessory to single-family residences, and agriculture structures, on a lot or parcel one (1) acre or larger in size.
  - (2) Contents of Plan. The stormwater management plan shall contain maps, charts, graphs, tables, photographs, narrative descriptions, explanations, and citations to supporting references as appropriate to communicate the information required by this Article. At a minimum, the stormwater management plan must contain the following:
    - a. Location and design of all planned stormwater control devices;
    - b. Procedures for implementing non-structural stormwater control practices and techniques;
    - c. Pre- and post-development non-point source pollutant loadings with supporting documentation of all utilized coefficients and calculations;
    - d. For facilities, verification of structural soundness, including a Professional Engineer or Class III-B Surveyor Certification.
  - (3) Site specific facilities shall be designed for the ultimate development of the contributing watershed based on zoning, comprehensive plans, local public facility master plans, or other similar planning documents.
  - (4) All engineering calculations must be performed in accordance with procedures outline in the current edition of the Virginia Stormwater Management Manual.
  - (5) The plan shall establish a long-term schedule for inspection and maintenance of stormwater management facilities that includes all maintenance requirements and persons responsible for performing maintenance.

If the designated maintenance responsibility is with a party other than Essex County, then a maintenance agreement shall be executed between the responsible party and Essex County.

- (g) Erosion and Sediment Control Plan. An erosion and sediment control plan shall be submitted that satisfies the requirements of this Article and in accordance with the Erosion and Sediment Control Ordinance of Essex County, in conjunction with site plan or subdivision plan approval.
  - (1) Final Plan. Final plans for property within CBPAs shall be final plats for land to be subdivided and/or site plans for land not to be subdivided as required by this Ordinance.
  - (2) Final plans for all lands within CBPAs shall include the following additional information:
    - a. The delineation of the RPA boundary; if any lot, parcel, or portion of lot or parcel, lies within the RPA;
    - b. The delineation of required buffer areas; if any lot, parcel, or portion of lot or parcel, lies within the RPA;
    - c. All wetlands permits required by law;
    - d. A maintenance agreement as deemed necessary and appropriate by the Zoning Administrator to ensure proper maintenance of best management practices in order to continue their functions;
    - e. WQIA as required by Section 36.272 of this Article.
  - (3) Installation and Bonding Requirements.
    - a. Where buffer areas, landscaping, stormwater management facilities or other specifications of an approved plan are required, no certificate of occupancy shall be issued until the installation of required plant materials or facilities is completed, in accordance with the approved site plan.
    - b. When the occupancy of a structure is desired prior to the completion of the required landscaping, stormwater management facilities, or other specifications of an approved plan, a certificate of occupancy may be issued only if the applicant provides to Essex County a form of surety satisfactory to the Zoning Administrator in an amount equal to the remaining plant materials, related materials, and installation costs of the required landscaping or facilities and/or maintenance costs for any required stormwater management facilities during the construction period.
    - c. All required landscaping shall be installed and approved by the first planting season following issuance for a certificate of occupancy or the surety may be forfeited to Essex County.
    - d. All required stormwater management facilities or other specifications shall be installed and approved within eighteen (18) months of project commencement. Should the applicant fail, after proper notice, to initiate, complete or maintain appropriate actions required by the approved plan, the surety may be forfeited to Essex County. Essex County may collect from the applicant the amount by which the reasonable cost of required actions exceeds the amount of surety held.
    - e. After all required actions of the approved site plan have been completed, the applicant must submit a written request for a final inspection. If the requirements of the approved plan have been completed to the satisfaction of the Zoning Administrator, such unexpended or portion of the surety held shall be refunded to the applicant or terminated within sixty (60) days following the receipt of the applicant's request for final inspection. The Zoning Administrator may require a certificate of substantial completion from a Professional Engineer or Class III-B Surveyor before making a final inspection.
- (h) Administrative Responsibility. Administration of the plan of development process shall be in accordance with this Ordinance.
- (i) Denial of Plan, Appeal of Conditions or Modifications. In the event the final plan or any component of the plan of development process is disapproved and recommended conditions or modifications are unacceptable to the applicant, the applicant may appeal the decision of the Zoning Administrator to the Board of Zoning Appeals. In granting an appeal, the Board of Zoning Appeals must find such plan to be in accordance with all applicable ordinances and include necessary elements to mitigate any detrimental impact on water quality and upon adjacent property and the surrounding area, or such plan meets the purpose and intent of the performance

standards in this Article. If the Board of Zoning Appeals finds that the applicant's plan does not meet the above stated criteria, they shall deny approval of the plan.

**Section 36.274. — Administrative Waivers.**

Nonconforming Use and Waivers.

- (1) Nonconforming Building and Structures. The lawful use of a building or structure which existed on October 22, 1991, or which exists at the time for any amendment to this Article, and which is not in conformity with the provisions of the Overlay District, may be continued in accordance with Article VIII, Nonconformities, of the Essex County Zoning and Subdivision Ordinance.

**Section 36.275. — Exemptions.**

- (a) Exemptions for Public Utilities, Railroads, Public Roads, and Facilities. Construction, installation, operation, and maintenance of electric, natural gas, and telephone transmission lines, Cable TV, railroads, and public roads and their appurtenant structures in accordance with:
  - (1) Regulations promulgated pursuant to the Erosion and Sediment Control Law (Regulation 9VAC25-840-10 et seq.) and the Stormwater Management Act (Regulation 9VAC25-870-10 et seq.);
  - (2) An erosion and sediment control plan and a stormwater management plan approved by the Virginia Department of Environmental Quality; or
  - (3) Local water quality protection criteria at least as stringent as the above state requirements are deemed to comply with this Article. The exemption of public roads is further conditioned on the following:
    - a. The road alignment and design has been optimized, consistent with all applicable requirements, to prevent or otherwise minimize the encroachment in the RPA and to minimize the adverse effects on water quality.
- (b) Exemptions for Local Utilities and other service lines. Construction, installation, and maintenance of water, sewer, natural gas, underground telecommunications and cable television lines owned, permitted or both, by an Essex County or a regional service authority shall be exempt from the Overlay District provided that:
  - (1) To the degree possible, the location of such utilities and facilities should be outside RPAs;
  - (2) No more land shall be disturbed than is necessary to provide for the proposed utility installation;
  - (3) All such construction, installation, and maintenance of such utilities and facilities shall be in compliance with all applicable State and Federal requirements and permits and designed and conducted in a manner that protects water quality; and
  - (4) Any land disturbance exceeding an area of two thousand five hundred (2,500) square feet complies with the requirements for the Essex County Erosion and Sediment Control Ordinance.
- (c) Exemptions in RPAs. The following land disturbances in RPAs may be exempted from the Overlay District: (i) water wells; (ii) passive recreation facilities such as boardwalks, trails, and pathways; and (iii) historic preservation and archaeological activities, provided that it is demonstrated to the satisfaction of the Zoning Administrator that:
  - (1) Any required permits, except those to which this exemption specifically applies, shall have been issued;
  - (2) Sufficient and reasonable proof is submitted that the intended use will not deteriorate water quality;
  - (3) The intended use does not conflict with nearby planned or approved uses; and,
  - (4) Any land disturbance exceeding an area of two thousand five hundred (2,500) square feet shall comply with all Essex County Erosion and Sediment Control requirements.



- (d) Exemptions from RMAs. An applicant may apply to have his property made exempt from the requirements of the RMA. An environmental site assessment, meeting all of the criteria in (2) below, along with a study indicating the location, concentration or absence physical characteristics must be submitted to the Administrator.
- (1) A study indicating the location, concentration or absence of the following RMA physical characteristics must be submitted to the Administrator:
- a. Highly erodible soils;
  - b. Steep slopes greater than twenty five (25) percent;
  - c. Highly permeable soils;
  - d. Nontidal wetlands not included in the RPA;
  - e. Floodplains.
- (2) The Administrator may approve an exemption after finding, upon review of the environmental site assessment, that:
- a. There is no RPA, as established by Section 36.267 (a) (1) of this Ordinance, located on or within five hundred (500) feet of any portion of the lot or parcel;
  - b. There is no RMA Component, as established by Section 36.267 (a) (2) of this Ordinance, located on any portion of the lot or parcel;
  - c. An environmental site assessment, as established by Section 36.273 (d) of this Ordinance which accurately demonstrates the absence of RMA components, is submitted and approved by the Administrator;
  - d. The environmental site assessment is prepared by a qualified soil scientist and wetland scientist, or any person who is determined to be qualified by the Administrator; and
- (3) Upon approval of an exemption, the applicant shall cause a plat depicting the areas approved for exemption to be recorded among the land records in the Circuit Court Clerk's Office of Essex County, Virginia, prior to the issuance of any permits that would otherwise be unlawful in the RMA.
- (e) Exemptions for silviculture activities. Silvicultural activities are exempt from the requirements of the Article provided that silvicultural operations adhere to water quality protection procedures prescribed by the Department of Forestry in its edition of "Forestry Best Management Practices for Water Quality in Virginia." The Virginia Department of Forestry will oversee and document installation of best management practices and will monitor impacts of forestry operations in Chesapeake Bay Preservation Areas.

**Section 36.276. — Exceptions (Variances).**

Exceptions Affecting RPA. Any exception or variance to the requirements those exceptions dealing with RPA issues, shall be reviewed and considered by the Board of Zoning Appeals of Essex County. The request for an exception shall identify the impacts of the proposed exception on water quality and on lands within the RPA through the performance of a WQIA which complies with Section 36.272.

Reserved 36.277 — 36.289

## Division 6. — Modifications and Encroachments

### Section 36.290. — Height Modifications.

The height limitations of this Ordinance shall not apply to:

- (1) Belfries.
- (2) Chimneys.
- (3) Church spires.
- (4) Conveyors.
- (5) Cooling towers.
- (6) Elevator bulkheads.
- (7) Fire towers.
- (8) Water towers and standpipes.
- (9) Flag poles.
- (10) Public monuments.
- (11) Ornamental towers and spires, domes, cupolas.
- (12) Commercial radio and television towers less than one hundred twenty-five (125) feet in height.
- (13) Silos and grain driers; tanks.
- (14) Smoke stacks.
- (15) Stage towers or scenery lofts.
- (16) Fire and parapet walls extending no more than four feet above the roof.

### Section 36.291. — Setback Encroachment.

- (a) Except as provided herein, any physical element that is attached to a principal structure must meet the minimum setback standards of the district.
- (b) The following structures shall be permitted to encroach into any yard, including front yards, provided applicable sight distance and fire safety requirements are met and maintained, and provided the following requirements are met:
  - (1) Fences pursuant to Article VII, Division 4.
  - (2) Ground level terraces, patios or decks not over 30 inches high which do not include a permanently roofed-over terrace or porch.
  - (3) Awnings or canopies provided they do not project more than eight feet from the existing building face.
  - (4) Bay windows and overhanging eaves or gutters projecting no more than three feet into the yard.
  - (5) Arbors and trellises not exceeding ten feet in height, provided that such structures do not reduce the width of the yard to less than three feet.
  - (6) Flagpoles not to exceed 25 feet in height.
  - (7) Recreational playground equipment, as defined herein, provided that such equipment does not reduce the width of the yard to less than ten feet.
  - (8) Heat pumps or central air conditioning units, except in the R-4 district, may project to a distance not to exceed 5 feet into a required side yard.

## **ARTICLE V. — USE MATRIX**

### **Section 36.310. — Purpose and Intent.**

- (a) The following table provides all use types and all zoning districts where the use type is permitted (B) by-right or (C) with approval of a conditional use permit in accordance with the requirements of this ordinance.
- (b) Some uses listed in the use matrix, in addition to the district regulations and design standards, have associated use performance standards.
- (c) All uses not specifically permitted or permitted with approval of a conditional use permit are prohibited.
- (d) Overlay Districts. Regardless of whether the use matrix lists a use as permitted or prohibited, the use type shall be restricted or prohibited by the requirements of an overlay district.

**Section 36.311. — Zoning Use Matrix – Districts and Uses.**

Table 36.12 Zoning Use Matrix - Districts & Uses													
Proposed Use/Change	Districts												Use Performance Standard Reference
	A-1, Agriculture and Forestry, Preservation	A-2, Agriculture and Forestry, General	R-1, Very Low Density Residential	R-2, Low Density Residential	R-3, Medium Density Residential	R-4, Residential Restricted	MH-1, Mobile Home Park	PUD, Planned Unit Development	B-1, Local Business	B-2, General Business	I-1, Light Industrial	I-2, Industrial	
Use Types: B - By-right   C - Conditional													
<b>Agricultural</b>													
Agriculture/Silviculture	B	B											
Agriculture, Intensive	C	C											Section 36.320
Agritourism	B	B											
Aquaculture	B	B											
Biomass conversion, small-scale	C	C											
Conservation	B	B											
Farm winery	B	B											

Essex County Zoning & Subdivision Ordinance  
 Public Hearing Draft  
 April 12, 2022

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Use Types: B - By-right   C - Conditional													
Greenhouse, commercial	C	C								C	C		
Livestock market	C												
Sportsman club, commercial	B	C											Section 36.321
Sportsman club, private	B	B											Section 36.322
Stable, commercial	B	B											Section 36.323
Stable, private	B	B											Section 36.324
Wayside stand	B	B											
<b>Residential</b>													
Dwelling, manufactured	B	B					B						Section 36.335
Dwelling, multifamily					B			B					

Essex County Zoning & Subdivision Ordinance  
 Public Hearing Draft  
 April 12, 2022

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Use Types: B - By-right   C - Conditional													
Dwelling, single-family	B	B	B	B	B	B		B					
Dwelling, townhouse					B			B					
Dwelling, two-family				B	B			B					
Group home	B	B	B	B	B	B		B					
Life care facility					C			C					
Manufactured home park							B						Section 36.336
Shelter, residential					C								
<b>Public/Civic/Recreation</b>													
Assembly, place of	C	C			C			C	C	B			
Camp, day or youth		C											

Essex County Zoning & Subdivision Ordinance  
 Public Hearing Draft  
 April 12, 2022

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Use Types: B - By-right   C - Conditional														
Campground	C	C												Section 36.345
Cemetery	B	B												Section 36.346
Cultural facility		C						C	B	B				
Educational facility, college/university								C	C	C				
Educational facility, primary/secondary	C	C	B	B	B			C	C	C				
Emergency management services facility	C	C	C	C	C			C	B	B	C	C		
Public Park and recreation area	B	B	B	B	B	B	B	B	B	B				Section 36.347
Public use	C	C						C	B	B	B	B		
Recreation facility, private			B	B	B	B	B	B						

Essex County Zoning & Subdivision Ordinance  
 Public Hearing Draft  
 April 12, 2022

Table 36.12 Zoning Use Matrix - Districts & Uses													
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Use Types: B - By-right   C - Conditional													
Religious assembly	B	B	B	B	B			C	B	B			
Utility service, major	C	C	C	C	C	C	C	C	C	C	C	C	
Utility service, minor	B	B	B	B	B	B	B	B	B	B	B	B	
<b>Commercial</b>													
Automobile repair service		C								C	B		Section 36.360
Automobile sale, rental/leasing									B	B	B		Section 36.361
Brewery or distillery	C	C									B	B	
Business or trade school		C						B		B	B	B	
Business support service								B	B	B	B	B	
Car wash									C	B	B		Section 36.362



Essex County Zoning & Subdivision Ordinance  
 Public Hearing Draft  
 April 12, 2022

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Use Types: B - By-right   C - Conditional													
Catering facility									B	B	B		
Commercial indoor entertainment								B	C	B	B		
Commercial indoor recreation/ amusement								B	C	B			
Commercial outdoor recreation/ amusement		C						C	-	C			
Construction material sales										-	B		Section 36.363
Consumer repair service								B	B	B	B		Section 36.364
Crematory										C	B		
Day care center			C	C			C	C	B	B			
Equipment repair service, heavy		C								C	B		Section 36.365

Essex County Zoning & Subdivision Ordinance  
 Public Hearing Draft  
 April 12, 2022

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Use Types: B - By-right   C - Conditional													
Equipment sales and rental, heavy		C								C	B		Section 36.366
Farmer's market		B						B	B	B			
Farm supply and service establishment		C							C	B	B		
Financial institution								B	B	B			
Funeral home									B	B			
Garden center									B	B			
Gasoline station		C						C	B	B			Section 36.367
Hospital									C	C			
Hotel									B	B			

Essex County Zoning & Subdivision Ordinance  
 Public Hearing Draft  
 April 12, 2022

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	A-1, Agriculture and Forestry, Preservation	A-2, Agriculture and Forestry, General	R-1, Very Low Density Residential	R-2, Low Density Residential	R-3, Medium Density Residential	R-4, Residential Restricted	MH-1, Mobile Home Park	PUD, Planned Unit Development	B-1, Local Business	B-2, General Business	I-1, Light Industrial	I-2, Industrial	
Use Types: B - By-right   C - Conditional													
Janitorial business										B	B		
Kennel, commercial	B	B											Section 36.368
Laundry, commercial										B	B		
Manufactured home sales										C	C		
Micro-brewery	C	C						B	B	B			
Micro-distillery	C	C						B	B	B			
Mini-warehouse									C	C	B		
Motor Vehicle Racing	C	C											
Nursing home		C	C	C	C				C	C			
Office, general								B	B	B			

Essex County Zoning & Subdivision Ordinance  
 Public Hearing Draft  
 April 12, 2022

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	A-1, Agriculture and Forestry, Preservation	A-2, Agriculture and Forestry, General	R-1, Very Low Density Residential	R-2, Low Density Residential	R-3, Medium Density Residential	R-4, Residential Restricted	MH-1, Mobile Home Park	PUD, Planned Unit Development	B-1, Local Business	B-2, General Business	I-1, Light Industrial	I-2, Industrial	
Use Types: B - By-right   C - Conditional													
Office, medical/clinic								B	B	B			
Outdoor sales, seasonal		C						B	B	B			Section 36.369
Personal Improvement Service								B	B	B			
Personal services								B	B	B			
Recreational vehicle storage, commercial		C							C	C			
Restaurant, drive-in								B	B	B			Section 36.370
Restaurant, general								B	B	B			
Restaurant, mobile								B	B	B	B		Section 36.371
Shooting range, outdoor	C	C											

Essex County Zoning & Subdivision Ordinance  
 Public Hearing Draft  
 April 12, 2022

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	A-1, Agriculture and Forestry, Preservation	A-2, Agriculture and Forestry, General	R-1, Very Low Density Residential	R-2, Low Density Residential	R-3, Medium Density Residential	R-4, Residential Restricted	MH-1, Mobile Home Park	PUD, Planned Unit Development	B-1, Local Business	B-2, General Business	I-1, Light Industrial	I-2, Industrial	
Use Types: B - By-right   C - Conditional													
Store, adult										C			Section 36.372
Store, general								B	B	B			
Store, neighborhood convenience		C						B	B	B			Section 36.373
Store, specialty								B	B	B			
Store, specialty food								B	B	B			
Studio, fine arts								B	B	B	B		
Tattoo parlor and/or body piercing salon										B			
Tradesperson service										B	B	B	Section 36.374

Essex County Zoning & Subdivision Ordinance  
 Public Hearing Draft  
 April 12, 2022

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	A-1, Agriculture and Forestry, Preservation	A-2, Agriculture and Forestry, General	R-1, Very Low Density Residential	R-2, Low Density Residential	R-3, Medium Density Residential	R-4, Residential Restricted	MH-1, Mobile Home Park	PUD, Planned Unit Development	B-1, Local Business	B-2, General Business	I-1, Light Industrial	I-2, Industrial	
Use Types: B - By-right   C - Conditional													
Veterinary hospital/clinic		C						B	B	B			Section 36.375
<b>Industrial</b>													
Bulk fuel storage and distribution											C	C	Section 36.385
Construction yard											B		Section 36.386
Junkyard												C	Section 36.387
Laboratory, research and development											B	B	
Manufacturing, heavy												B	
Manufacturing, light											B	B	
Truck/freight terminal											C	B	

Essex County Zoning & Subdivision Ordinance  
 Public Hearing Draft  
 April 12, 2022

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Use Types: B - By-right   C - Conditional														
Warehousing and distribution												B	B	
<b>Miscellaneous</b>														
Aviation facility		C										C		
Boat yard	C	C										B	B	
Broadcasting or communication tower	C	C									C	C	C	Section 36.400
Exploratory well	C	C												
Helipad		C												
Marina		C								C	B			
Parking lot, commercial									B		B			Section 36.401

Essex County Zoning & Subdivision Ordinance  
 Public Hearing Draft  
 April 12, 2022

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Use Types: B - By-right   C - Conditional													
Pier, commercial		C							B	B			
Pier, private	B	B	B	B	B	B		B					
Recycling center		C										C	
Resource extraction	C	C											
Sawmill, commercial		C									B	B	
Sawmill, mobile	B	B											Section 36.402
Small cell facility	B	B	B	B	B	B	B	B	B	B	B	B	Section 36.403
Solar energy, large-scale	C	C	C	C	C		C	C					Section 36.404
Solar energy, medium-scale	C	B									B	B	Section 36.405



Essex County Zoning & Subdivision Ordinance  
 Public Hearing Draft  
 April 12, 2022

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Use Types: B - By-right   C - Conditional													
Solar energy, Power Purchase Agreement (PPA)	C	C	C	C	C		C	C			C	C	Section 36.404
Solar energy, small-scale	B	B	B	B	B	B	B	B	B	B	B	B	Section 36.405
Solar energy, utility-scale	C	C											Section 36.404
<b>Accessory</b>													
Accessory building or structure	B	B	B	B	B	B	B	B	B	B	B	B	Section 36.415
Accessory dwelling unit	B	B	C	C				B					Section 36.416
Amateur radio antennas	B	B	B	B									
Bed and breakfast	B	B	C	C					C				Section 36.417
Family health care structure, temporary	B	B	B	B	B	B		B					Section 36.418

Essex County Zoning & Subdivision Ordinance  
 Public Hearing Draft  
 April 12, 2022

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Use Types: B - By-right   C - Conditional													
Family home day care (1-4 individuals)	B	B	B	B	B	B		B					
Family home day care (5-12 individuals)		C	C	C									
Home occupation type A	B	B	B	B	B	B							Section 36.419
Home occupation type B	C	C	C										Section 36.419
Kennel, private	B	B											Section 46.420
Outdoor storage		C								B	B	B	Section 36.421
Short-term rental	B	B	B	B	B	B		B					Section 36.422

Reserved 36.312 — 36.314

## **ARTICLE VI. — USE PERFORMANCE STANDARDS**

### **Division 1. — General Standards for Specific Uses**

#### **Section 36.315. — Purpose and Intent.**

The following additional regulations apply to specific uses as set forth below. These regulations are intended to serve as the minimum standards for these uses and are not intended to exclude other provisions of this Ordinance that may apply. The standards set forth in this Article for a specific use apply to the particular individual use, regardless of the review procedure by which it is approved, unless otherwise specified in this Ordinance. Every use shall comply with all applicable county, state, and federal regulations.

Reserved 36.316 — 36.319

### **Division 2. — Agriculture/Forestal Use Standards**

#### **Section 36.320. — Agriculture, intensive.**

- (a) Located a minimum of 1,000 feet from any boundary of a town within the County.
- (b) Located a minimum of 200 feet from any primary highway and 100 feet from any secondary highway or other right-of-way for passage;
- (c) Located a minimum of 500 feet from any residential district and from any existing residence not located on the same parcel;
- (d) Setback 200 feet from any adjacent landowner property line;
- (e) Located a minimum of 600 feet from any religious assemblies, public or private schools, and other public-owned facilities;
- (f) Located a minimum of 100 feet from any river, creek, spring, reservoir, or any public or private water supply system, including but not limited to wells or cisterns unless a greater distance is required by State or Federal requirements, including but not limited to, the Chesapeake Bay Act and the Virginia Department of Conservation and Recreation;
- (g) Agriculture, intensive uses shall submit an approved Nutrient Management Plan and any Federal and State permits prior to the issuance of any building permits for the use.

#### **Section 36.321. — Sportsman club, commercial.**

- (a) The minimum required area for the use is five acres.
- (b) Kennel, private as an accessory use shall be subject to the use requirements under this Article.

#### **Section 36.322. — Sportsman club, private.**

- (a) The minimum required area for the use is five acres.
- (b) Kennel, private as an accessory use shall be subject to the use requirements under this Article.

**Section 36.323. — Stable, commercial.**

- (a) The lot shall be a minimum of 20 acres.
- (b) Any buildings, barns, pens, and areas for the keeping of animals or animal waste storage shall be located at least 400 feet from any residential district lot line and any existing dwelling unit not located on the same parcel.
- (c) Any buildings, barns, pens, and areas for the keeping of animals or animal waste storage shall be located at least 200 feet from any adjacent lot line not within a residential district.
- (d) Any buildings for the keeping of animals shall be located at least 100 feet from any highway or other right-of-way for passage.
- (e) Riding surfaces shall be covered and maintained with a substance to minimize dust and erosion.
- (f) Fencing and other means of animal confinement shall be maintained at all times.
- (g) Pens, stalls, and grazing areas shall be maintained in a sanitary manner.

**Section 36.324. — Stable, private.**

- (a) Any buildings, barns, pens, and areas for the keeping of animals or animal waste storage shall be located at least 400 feet from any residential district lot line and any existing dwelling unit not located on the same property.
- (b) Any buildings, barns, pens, and areas for the keeping of animals or animal waste storage shall be located at least 200 feet from any adjacent lot line not within in a residential district.
- (c) Any buildings for the keeping of animals shall be located at least 100 feet from any highway or other right-of-way for passage.
- (d) Riding surfaces shall be covered and maintained with a substance to minimize dust and erosion.
- (e) Fencing and other means of animal confinement shall be maintained at all times.
- (f) Pens, stalls, and grazing areas shall be maintained in a sanitary manner.
- (g) Educational projects (e.g., 4-H Livestock) in a R-1 or R-2 district are exempt from this use but are permitted separately by County Code. However, associated structures must comply with accessory building standards unless otherwise regulated in the County Code.

Reserved 36.325 – 36.334

**Division 3. — Residential Use Standards**

**Section 36.335. — Dwelling, manufactured.**

- (a) The manufactured home dwelling shall comply with the Virginia Manufactured Housing Construction and Safety Standards Law.
- (b) The manufactured home dwelling shall be placed on a permanent foundation and shall comply with the requirements of the Virginia Uniform Statewide Building code, including skirting requirements.
- (c) Two or more manufactured home dwellings shall not be joined or connected together as one dwelling, nor shall any accessory building be attached to a manufactured home dwelling. This does not prohibit manufactured home dwellings designed and manufactured as multi-section homes.

**Section 36.336. — Manufactured home park.**

- (a) Manufactured home parks shall have access to a paved road or major collector road. The design and construction of the interior street system shall be sufficient to adequately serve the size and density of the development. All interior streets shall conform and be constructed to the specification of the Virginia Department of Transportation.
- (b) Every manufactured home park shall be enclosed with an approved fence or planted hedge not less than seven feet in height and with no openings to adjoining property other than the required entrances and exits to streets or public spaces.
- (c) All manufactured parks shall be provided with central water system and an approved sewer system, by the Virginia Health Department, and all manufactured homes within a manufactured home park shall be required to hook up to such systems.
- (d) No manufactured home site shall extend into a floodplain.
- (e) An acceptable garbage and refuse collection program and temporary storage system shall be provided, with such program and physical system subject to final plan approval.
- (f) Any expansion of existing manufactured home parks must result in full compliance with all regulations contained in this section.

Reserved 36.337 – 36.344

**Division 4. — Public/Civic/Recreation Use Standards**

**Section 36.345. — Campground.**

- (a) The minimum required area for the use shall be five acres.
- (b) A site plan shall be submitted for consideration along with the application for a conditional use permit. Such plans shall include provisions for the protection of environmental features on the campground site and for stormwater management.
- (c) No more than one permanent residence shall be allowed in a campground, which shall only be occupied by the owner or manager.
- (d) The camping area shall comply with all sanitary and other requirements prescribed by law or regulations.
- (e) All bulk solid waste receptacles shall be maintained in a clean condition. Such receptacles shall be enclosed on all four sides to shield it from public view or from unauthorized access. The owner of the premises benefitted by a bulk solid waste receptacle shall maintain the screening in workable and effective condition.
- (f) Main campground roads shall be paved or treated to prevent dust.
- (g) Each camping site shall also have one parking space, with minimum dimensions of ten feet by 20 feet.
- (h) Patrons in campgrounds may stay no longer than 14 nights in any 30-day period or 45 nights in any one calendar year. The owner of a campground shall maintain a log of all patrons, including their name, address, license plate number and state, and their length of stay. The log shall be available to County staff upon request.
- (i) Retail sales for the convenience of campground tenants are permitted. Items are limited to food, concessions, recreational supplies, personal care items, and other items clearly supportive of campground tenants' needs.
- (j) The sale and/or storage of recreational vehicles that are not occupied nightly is strictly prohibited.

- (k) The overall design shall evidence a reasonable effort to preserve the natural amenities of the site. Where natural vegetation is not sufficient to provide a visual screen then buffer landscaping is required as outlined in Section 36.489, Buffering.
- (l) Accessory structures or recreation facilities, washrooms, swimming pools, game courts, and the like shall not be located closer than 100 feet to any campground boundary or closer than 200 feet to any lot in a residential district.
- (m) Within 12 months of opening the campground, each site shall be marked to be readily identifiable and easily readable from the park or camp road.

**Section 36.346. — Cemetery.**

- (a) The approval of a cemetery shall include the following uses without further zoning approval required: all uses necessarily or customarily associated with interment of human remains, benches, ledges, walls, graves, roads, paths, landscaping, and soil storage consistent with federal, state, and local laws on erosion and sediment control.
- (b) Mausoleums, columbaria, chapels, administrative offices, and maintenance storage areas that are shown in the applicant’s plan of development shall not require additional local legislative approval provided such structures and uses are developed in accordance with the original plan of development. This subsection shall not supersede any permission adopted pursuant to Code of Virginia § 15.2-2306.

**Section 36.347. — Public Park and recreation area.**

- (a) Any outdoor activity area, swimming pool, ball field, or court that adjoins a residential lot line shall include screening and buffering in accordance with the landscape section of this Ordinance.
- (b) Where nighttime lighting is proposed, it shall be set to automatically extinguish during park closure, and if games/events are extended beyond normal park hours it shall extinguish 1 hour after last game/event of the day. Large evergreen trees shall be required to appropriately screen any adjoining residences.
- (c) Any active recreational area, including but not limited to swimming pools, ball fields, or courts, shall not be located closer than 50 feet to any property line.

Reserved 36.348 — 36.359

**Division 5. — Commercial Use Standards**

**Section 36.360. — Automobile repair service.**

- (a) No portion of the use, excluding required screening and landscape buffers, shall be located within 250 feet of a residential district or structure containing a dwelling unit.
- (b) All repairs and maintenance of vehicles, including parts installation, shall be performed within a completely enclosed building.
- (c) No exterior display or storage of new or used automobile parts shall be permitted.
- (d) Outdoor storage, including temporary on-site storage of vehicles awaiting, repair, service, or removal, as an accessory use, where permitted, shall be subject to the use requirements of this Article.
- (e) There shall be no storage of motor vehicles within 50 feet of the public road right-of-way.

**Section 36.361. — Automobile sale, rental/leasing.**

- (a) No vehicle or equipment displays shall be located within a required yard, setback, fire lane, travelway, sidewalk, or landscaped area.
- (b) All vehicles for sale shall be parked in a parking space or a vehicle display pad.
- (c) The vehicle display pad may be elevated up to two feet above adjacent displays or grade level.
- (d) No vehicle or other similar items shall be displayed on the top of a building.
- (e) Outdoor displays shall be limited to the vehicles being sold, rented, or leased on the property. No other display of any other goods or merchandise shall be permitted.
- (f) All accessory vehicle maintenance or service shall be conducted within a completely enclosed building and subject to the use requirements of this Article.
- (g) All vehicles must be operational.
- (h) Outdoor storage, including temporary on-site storage of vehicles awaiting, repair, service, or removal, as an accessory use, where permitted, shall be subject to the use requirements of this Article.

**Section 36.362. — Car wash.**

- (a) Car washes shall be located and designed so that vehicular circulation does not conflict with traffic movements in adjacent streets, service drives, and/or parking areas.
- (b) Any use that has a car wash shall treat the car wash as a primary use for the purposes of setbacks, buffers, and landscaping.
- (c) No sales, repair, or outside storage of motor vehicles shall be conducted on the site.

**Section 36.363. — Construction material sales.**

Outdoor storage as an accessory use, where permitted, shall be subject to the use requirements of this Article.

**Section 36.364. — Consumer repair service.**

Outdoor storage as an accessory use, where permitted, shall not exceed 30 percent of the total site area and shall be subject to the use requirements of this Article.

**Section 36.365. — Equipment repair service, heavy.**

- (a) Screening and landscape buffers are required as provided in Article VII of this Ordinance.
- (b) All repairs shall be performed within a completely enclosed building.
- (c) No exterior display or storage of new or used equipment or parts is permitted.
- (d) There shall be no storage of equipment within 50 feet of the public road right-of-way.
- (e) Outdoor storage, including temporary on-site storage of vehicles awaiting, repair, service, or removal, as an accessory use, where permitted, shall be subject to the use requirements of this Article.

**Section 36.366. — Equipment sales and rental, heavy.**

- (a) No equipment displays shall be located within a required yard or setback.
- (b) The display pad may be elevated up to two feet above adjacent displays or grade level.
- (c) There shall not be more than one elevated equipment display for every 100 feet of street frontage.

- (d) No display shall be on the top of a building.
- (e) Outdoor displays shall be limited to the equipment being sold, rented, or leased on the property. No other display of any other goods or merchandise shall be permitted.
- (f) All accessory maintenance or service shall be conducted within a completely enclosed building and subject to the use requirements of this Article.
- (g) All equipment must be operational.
- (h) Outdoor storage as an accessory use, where permitted, shall not exceed 30 percent of the total site area and shall be subject to the use requirements of this Article.

**Section 36.367. — Gasoline station.**

- (a) Applicants shall demonstrate that the gasoline station will be compatible with the neighborhood with regards to traffic circulation, parking, and appearance and size of structures.
- (b) Entrances to the site shall be minimized and located in a manner promoting safe and efficient traffic circulating while minimizing the impact on the surrounding neighborhood.
- (c) Fuel pumps shall be located at least 20 feet from any property line.
- (d) Gasoline canopy shall be designed and built to be compatible with the principal use.
- (e) Dumpster screening shall be in compliance with the standards provided in Article VII of this Ordinance.
- (f) There shall be no storage of automobiles, trailers, recreational vehicles, boats, or similar equipment.
- (g) Sales of limited fuel oil or bottled gas is permitted as an accessory use.
- (h) The Zoning Administrator may require a traffic analysis to be provided by the applicant. Such analysis may include, but not be limited to, the proposed traffic flows, sight visibility for emerging vehicles, and other public safety factors.
- (i) Fuel dispensers, pump islands, overhead canopy, and air and water dispensers shall be removed upon cessation of the use for a period of more than one year.

**Section 36.368. — Kennel, commercial.**

- (a) No portion of the use, excluding required screening and landscape buffers, shall be located within:
  - (1) 100 feet from the property lines of adjoining agricultural zoned property;
  - (2) 400 feet from the property lines of adjoining residential zoned property; and,
  - (3) 400 feet from any dwelling not on the associated parcel.
- (b) All exterior runs, play areas, or arenas shall be designed with a minimum six-foot high opaque screen from adjacent lot lines and street rights-of-way.
- (c) Kennels must be kept free of waste on a regular basis to minimize impacts of odor and reduce propagation of insects.

**Section 36.369. — Outdoor sales, seasonal.**

- (a) Each stand for the retail sale of holiday goods, including fireworks, shall obtain a zoning permit by the Zoning Administrator prior to setup and sales.
- (b) Each stand shall be permitted for a period not to exceed 60 consecutive days.



- (c) No more than four permits shall be issued for the same lot during a calendar year.
- (d) No permit shall be issued to an applicant unless and until at least 30 consecutive days after a permit issued to that applicant for the same or an adjacent lot or parcel has expired.
- (e) The outdoor sales stand or display shall setback at least 35 feet from any public right-of-way.
- (f) Parking shall be supplied on the site of the primary use and not along the public right-of-way.

**Section 36.370. — Restaurant, drive-in.**

- (a) Stacking spaces shall not interfere with the travel way traffic or designated parking spaces.
- (b) A minimum of six stacking spaces shall be located behind the order speaker and four stacking spaces shall be located between the order speaker and the pickup window.

**Section 36.371. — Restaurant, mobile.**

- (a) The following additional requirements apply to sales from a mobile restaurant operating on private property or within public spaces or rights of way, except when operating in conjunction with temporary, special events permitted under applicable sections of the County Code:
  - (1) Mobile restaurants must obtain a County Mobile Restaurant permit at least three business days prior to initial operation. The permit shall be valid January 1<sup>st</sup> (or from whatever date the permit is first issued) through December 31<sup>st</sup> of the calendar year and shall be renewed annually.
  - (2) Mobile restaurants must maintain a valid business license issued by the County and a valid health permit issued by the Virginia Department of Health.
  - (3) A mobile restaurant may operate on either public property or private business zoned property or industrial zoned property with written permission from the owner.
  - (4) No items shall be sold other than food and beverages.
  - (5) No music shall be played that is audible outside of the vehicle.
  - (6) Mobile restaurant vehicles shall not block i) the main entry drive isles or impact pedestrian or vehicular circulation overall, (ii) other access to loading areas, or (iii) emergency access and fire lanes. The Mobile Restaurant must also be positioned at least 15 feet away from fire hydrants, any fire department connection (FDC), driveway entrances, alleys, and handicapped parking spaces.
  - (7) A mobile restaurant may operate between 6am and 9pm Sunday to Thursday and between 6am to 11pm Friday and Saturday (including set-up and break-down) on any one day at any single location, except during national holidays and county events during which a mobile restaurant may operate between 6am and 12am midnight. The vehicle and all accessory structures shall be removed each day.
  - (8) No signs may be displayed except:
    - a. Those permanently affixed to the vehicle.
    - b. One, A-framed sign not to exceed four feet in height and six square feet of display for each of the two sides; the sign cannot block any passageways.
  - (9) Trash receptacles shall be provided, and all trash, refuse, or recyclables generated by the use shall be removed from the site by the operator at the end of the business day.

- (10) No liquid wastes shall be discharged from the mobile restaurant.
- (11) No mobile restaurant shall locate within 100 feet of the entrance to a business that sells food for consumption (determined by measuring from the edge of the Mobile Restaurant to the main public entrance of the restaurant) unless permission of the restaurant owner is provided.
- (12) No mobile restaurant shall locate within 100 feet of a single family or two-family residential use.
- (13) A mobile restaurant may operate at any farmer's market held on public or private property, if the food truck vendor is legally parked at the farmer's market and has received written permission from the farmer's market manager and displays such written permission upon request.
- (14) The operation of the mobile restaurant or use of a generator should not be loud enough to be greater than 50 dBA at 100 feet away. Excessive complaints about vehicle or generator noise will be grounds for the Administrator to require that the Mobile Restaurant Vendor change location on the site or move to another property.
- (15) The requirements of this section shall not apply to Mobile Restaurant Vendors at catered events (events where the food is not sold through individual sales but provided to a group pursuant to a catering contract with a single payer).
- (16) A Mobile Restaurant permit may be revoked by the Zoning Administrator at any time, due to the failure of the property owner or operator of the Mobile Restaurant permit to observe all requirements for the operation of mobile restaurants. Notice of revocation shall be made in writing to address of record for Mobile Restaurant permit holder. Any person aggrieved by such notice may appeal the revocation to the Board of Zoning Appeals.

**Section 36.372. — Store, adult.**

- (a) Distances specified in this section shall be measured from the property line of one use to the property line of the other. The distance between an adult store and a residentially zoned district shall be measured from the property line of the use to the nearest point of the boundary line of the residential zoning district.
  - (1) An adult store shall be located at least 1,000 feet from any religious assembly, public assembly, nursing home, hotel, bed and breakfast, or residential zoning district in existence on the date on which the store obtains its zoning permit.
  - (2) An adult store shall be located at least 2,500 feet from any education facility, public recreational facility, or day care center in existence on the date on which the store obtains its zoning permit.
  - (3) No adult store shall be located within 1,000 feet of any other adult store.
- (b) No adult store shall display adult media, depictions of specified sexual activities or specified anatomical areas in its window, or in a manner visible from the street, highway, or public sidewalk, or the property of others. Window areas shall remain transparent.
- (c) Signs may not include graphic or pictorial depiction of material available on the premises.
- (d) The store shall not begin service to the public or any outside activity before 11:00am and shall not extend after 11:00 p.m. local time.

**Section 36.373. — Store, neighborhood convenience.**

- (a) Entrances to the site shall be minimized and located in a manner promoting safe and efficient traffic circulating while minimizing the impact on the surrounding neighborhood.

- (b) Dumpsters shall be located to minimize view from off-site areas and shall be screened in compliance with Article VII of this Ordinance.
- (c) There shall be no fuel pumps or the selling of fuel for motor vehicles.
- (d) There shall be no storage of automobiles, trailers, recreational vehicles, boats, or similar equipment.
- (e) The Zoning Administrator may require a traffic analysis to be provided by the applicant. Such analysis may include, but not be limited to, the proposed traffic flows, sight visibility for emerging vehicles, and other public safety factors.

**Section 36.374. — Tradesperson service.**

Outdoor storage as an accessory use, where permitted, shall not exceed 30 percent of the total site area and shall be subject to the use requirements of this Article.

**Section 36.375. — Veterinary hospital/clinic.**

- (a) Any treatment rooms, cages, pens, or kennels shall be maintained within a completely enclosed soundproof building
- (b) Such hospital or clinic be operated in such a way as to produce no objectionable noise or odors outside its walls.

Reserved 36.376 — 36.384

**Division 6. — Industrial Use Standards**

**Section 36.385. — Bulk fuel storage and distribution.**

- (a) Bulk storage of fuel shall be underground pursuant to the standards established by the National Fire Prevention Association (NFPA) and the U.S. Environmental Protection Agency (EPA).
- (b) Fuel dispensers shall be located at least 30 feet from any public street right-of-way and shall be located at least 100 feet from any adjoining residential property line.

**Section 36.386. — Construction yard.**

- (a) No portion of the use, excluding required screening and landscape buffers, shall be located within 100 feet of a residential district or structure containing a dwelling unit.
- (b) Storage yards for construction materials and equipment shall be designed and located to minimize visual impacts on adjacent properties and public rights-of-way.
- (c) All portions of such storage yards shall be treated and maintained in such manner as to prevent dust or debris from blowing or spreading onto adjoining properties or onto any public right-of-way.
- (d) Construction yards shall be screened by a solid wall or fence, including solid entrance and exit gates, not less than six feet nor more than ten feet in height. All fences and walls shall have a uniform and durable character and shall be properly maintained.
- (e) When fences and walls are adjacent to business or residential districts, a landscaped buffer must be provided to break visibility of the fence in accordance with the landscape section of this Ordinance.
- (f) No wall or fence screening a storage area shall encroach into a sight distance triangle.
- (g) Parts, materials, and equipment stored in the storage yard shall not be stacked higher than the screening wall or fence.

**Section 36.387. — Junkyard.**

- (a) No junkyard, salvage yard, or automotive wrecking yard or graveyard shall hereafter be established with any portion of its area within 500 feet of a public street, road, or highway.
- (b) No portion of the use, excluding required screening and landscape buffers, shall be located within 100 feet of a residential district or structure containing a dwelling unit.
- (c) All such yards shall be screened effectively from view from public streets or highways, public spaces, and adjacent property in a residential or business district by natural vegetation, topography or other means and shall be surrounded by an opaque structural fence or wall not less than eight feet in height. All fences and walls shall have a uniform and durable character and shall be properly maintained.
- (d) Inoperative vehicles or parts thereof shall not be collected or stored outside the required fence or in piles more than six feet in height.
- (e) The collection or storage of any material containing or contaminated with dangerous explosives, chemicals, gases, or radioactive substances is prohibited.
- (f) Every junkyard, salvage yard, or automobile wrecking yard or graveyard shall be operated and maintained in such a manner as not to allow the breeding of rats, flies, mosquitoes, or other disease-carrying animals and insects.

Reserved 36.388 — 36.399

**Division 7. — Miscellaneous Use Standards**

**Section 36.400. — Broadcasting or communication tower.**

- (a) The standards of this section apply whenever a conditional use permit is sought for a broadcasting or communications tower, as this use is defined in the definitions of this Ordinance. Any wireless communication antenna which meets the definition of a “Administrative review-eligible project” as defined in the Code of Virginia § 15.2-2316.6, is considered a “Utility Service, Minor” by this Article and is not subject to the provisions of this section.
- (b) General standards:
  - (1) The following sites shall be considered by applicants as the preferred order of location of proposed broadcasting or communication facilities:
    - a. Existing broadcasting or communication towers.
    - b. Public structures, such as water towers, utility structures, fire stations, bridges, steeples and other public buildings not utilized primarily for residential uses.
    - c. Property zoned Agricultural.
    - d. Property zoned Business or Industrial.
    - e. Property zoned Residential or Planned Unit Development.
  - (c) No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of Board of Supervisors that no existing tower or structure can accommodate the applicant's proposed antenna. Evidence submitted to demonstrate that no existing tower or structure can accommodate the applicant's proposed antenna shall consist of any of the following:
    - (1) No existing towers or structures are located within the geographic area required to meet the applicant's engineering requirements, as documented by a qualified and licensed professional engineer.

- (2) Existing towers or structures do not have sufficient height to meet applicant's engineering requirements, as documented by a qualified and licensed professional engineer.
  - (3) The planned equipment would exceed the structural capacity of the existing or approved tower or building, as documented by a qualified and licensed professional engineer, and the existing or approved tower cannot be reinforced modified, or replaced to accommodate the planned or equivalent equipment at a reasonable cost.
  - (4) The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers and structures, or the existing antenna would interfere with applicant's proposed antenna.
  - (5) The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development are deemed unreasonable.
  - (6) The applicant demonstrates that there are other limiting factors that render existing towers and structures unreasonable.
- (d) The maximum height of any Broadcasting and Communication Tower shall be made a condition of the conditional use permit. No facility shall be greater than 125 feet. Exceptions provided when included in a church steeple, bell tower, water tower, light pole, or other similar architecturally compatible structure,
  - (e) Towers and equipment attached to existing structures shall not extend more than 25 feet beyond the existing structure and must be designed to be architecturally compatible.
  - (f) Broadcasting or communication towers shall conform with each of the following minimum setback requirements:
    - (1) Towers shall have a minimum front, side, and rear yard setback equal to the height of the tower.
    - (2) Tower's guys and accessory structures shall satisfy the minimum setback requirements of the underlying zoning district.
    - (3) Towers shall not be located between the principal structure and a public street.
    - (4) No habitable structures or places where people gather shall be located within any "fall zone" as certified by a registered professional engineer licensed in Virginia.
    - (5) A tower's setback may be reduced or its location in relation to a public street varied, at the sole discretion of the Board of Supervisors, to allow the integration of a tower into an existing or proposed structure such as a church steeple, light pole, utility pole, water tower, public facility, or similar structure.
  - (g) More than one tower may be permitted on a lot provided all setback requirements have been met.
  - (h) All broadcasting or communication facilities shall be designed, structurally, electrically, and in other respects, to accommodate both the applicant's antennas and comparable antennas for at least three additional users, if the tower is over 100 feet in height, or for at least two additional users if the tower is over 60 feet in height.
  - (i) Proposed towers and antennas shall meet the following design requirements:
    - (1) Towers and antennas shall be designed to blend into the surrounding environment using color and camouflaging architectural treatment, except in instances where the color is dictated by federal or state authorities such as the Federal Aviation Administration.
    - (2) Broadcasting or communication towers shall be of a monopole design unless the Board of Supervisors determines that an alternative design would better blend into the surrounding environment.

- (3) Towers shall be designed to collapse fully within the lot lines of the subject property in case of structural failure.
- (j) Replacement of existing towers may be replaced without the need for a conditional use permit, subject only to administrative site plan, zoning permit, building permit, and other applicable approvals if the following are met:
  - (1) The development standards supplied in this section are met with the exception that:
    - a. The replacement tower is not required to meet current setbacks so long as the replacement tower and equipment compound do not encroach further than the existing tower; and,
    - b. The replacement tower is not required to meet the height limitations so long as the replacement tower does not exceed the existing tower height.
  - (2) The existing tower being replaced, including tower base and foundation, must be removed within six months of the initial operation of the new tower.
- (k) Towers shall be illuminated as required by the Federal Communications Commission, (FCC) but no lighting shall be incorporated if not required by the FCC, other than essential security lighting. Site lighting shall full cut-off and directed downward. When incorporated into the approved design of the tower, light fixtures used to illuminate ball fields, parking lots, or similar areas may be attached to the tower.
- (l) A buffer yard shall be provided surrounding the facility. The conditional use permit application shall include a landscape plan showing the locations, species, and size at planting for the landscaping proposed. The evergreens shall have an initial height and spacing sufficient to provide immediate screening of the accessory ground mounted equipment or structures.
- (m) Signage on site shall be limited to no trespassing or safety signs to be positioned on the fence surrounding the facility. The use of any portion of a tower for signs other than warning or equipment information signs is prohibited.
- (n) No new or existing telecommunications service shall interfere with public safety communications. Before the introduction of new service or changes in existing service, telecommunications providers shall notify the County at least ten calendar days in advance of such changes and allow the County to monitor interference levels during the testing process.
- (o) There shall be no outdoor storage associated with the facility.
- (p) A bond, whose amount shall be approved by the Zoning Administrator shall be required to assure the removal of an abandoned telecommunications facility. All towers and associated facilities shall be removed within six months of the cessation of operations at the site unless a time extension is approved by the Zoning Administrator. In the event that a tower is not removed within six months of the cessation of operations at a site, the tower and associated facilities may be removed by the County, utilizing the bond and any remaining costs of removal assessed against the owner of the tower or the landowner.
- (q) Applications requirements.

In addition to the outlined conditional use permit requirements outlined in Article III Division 5 of this Ordinance the following are also required with broadcasting and communication tower requests:

- (1) A map showing the designated search ring.
- (2) Identification of the intended service providers of the tower.
- (3) Title report or American Land Title Association (A.L.T.A.) survey showing all easements on the tower area, lease area and access to the tower.
- (4) Verifiable evidence of the lack of feasible antenna space on existing towers, buildings, or other structures suitable for antenna location within the coverage area.

- (5) An engineering report stating the number of collocation spaces on the proposed tower.
  - (6) An agreement allowing the County to collocate on the tower for the purpose of emergency service communications.
  - (7) A proposed construction schedule.
  - (8) The applicant shall certify through a written statement that the facility meets or exceeds the standards for electrometric radiation as set by the Federal Communications Commission ("FCC") at the time of the application.
  - (9) A radio frequency propagation plot indicating the coverage of the applicant's existing wireless communications sites within the area and coverage prediction of the proposed facility.
  - (10) The applicant shall provide at least two actual photographs of the site that include simulated photographic images of the proposed tower. The photographs with the simulated image shall illustrate how the facility will look from adjacent roadways, nearby residential areas, or public building such as a school, religious assembly, and the like. The County staff reserves the right to select the locations for the photographic images and require additional images. As photo simulations may be dependent upon a balloon test first being conducted, the applicant is not required to submit photo simulations with their initial application but must provide them prior to the public hearing with the Planning Commission.
  - (11) List of all adjacent property owners, their tax map numbers, and addresses.
  - (12) Aerial imagery which shows the proposed location of the tower, fenced area, and driveways with the closest distance to all adjacent property lines and dwellings.
  - (13) The County may require other information deemed necessary to assess compliance with this Article.
- (r) Procedures and Process.
- (1) Balloon test. A balloon test shall be required for new towers prior to the public hearing with the Planning Commission.
    - a. The applicant shall arrange to raise a colored balloon (no less than three feet in diameter) at the maximum height of the proposed tower and within 50 horizontal feet of the center of the proposed tower.
    - b. The applicant shall inform the community development department and adjacent property owners in writing of the date and times of the test at least seven but no more than 14 days in advance. The notice will direct readers to a new date if the test is postponed due to inclement weather. The applicant shall request in writing permission from the adjacent property owners to access their property during the balloon test to take pictures of the balloon and to evaluate the visual impact of the proposed tower on their property.
    - c. The date, time and location of the balloon test shall be advertised in the County's newspaper of record by the applicant at least seven but no more than 14 days in advance of the test date. The advertisement will direct readers to a new date if the test is postponed due to inclement weather.
    - d. The balloon shall be flown for at least four consecutive hours during daylight hours on the date chosen.
    - e. Signage shall be posted on the property to identify the property where the balloon is to be launched. The signage will direct readers to a new date if the test is postponed due to inclement weather. This signage shall be posted a minimum of 72 hours prior to the balloon test. If inclement weather postpones the test, then cancellation of the test for that day shall be clearly noted on the signage.

- f. If the wind during the balloon test does not allow the balloon to sustain its maximum height or there is significant fog or precipitation which obscures the balloon's visibility then the test shall be postponed and moved to the alternate inclement weather date provided in the advertisement. County staff reserves the right to declare weather inclement for purposes of the balloon test.
- (2) Community meeting. A community meeting shall be held by the applicant prior to the public hearing with the Planning Commission.
- a. The applicant shall inform the community development department and adjacent property owners in writing of the date, time, and location of the meeting at least seven but no more than 14 days in advance.
  - b. The date, time, and location of the meeting shall be advertised in the County's newspaper of record by the applicant at least seven but no more than 14 days in advance of the meeting date.
  - c. The meeting shall be held within the County, at a location open to the general public with adequate parking and seating facilities which may accommodate persons with disabilities.
  - d. The meeting shall give members of the public the opportunity to review application materials, ask questions of the applicant and provide feedback.
  - e. The applicant shall provide to the community development department a summary of any input received from members of the public at the meeting.
- (3) Approval process and time restrictions.
- a. The approving bodies, in exercise of the County's zoning regulatory authority, may disapprove an application on the grounds that the tower's aesthetic effects are unacceptable, or may condition approval on changes in tower height, design, style, buffers, or other features of the tower or its surrounding area. Such changes need not result in performance identical to that of the original application.
  - b. Factors relevant to aesthetic effects are: the protection of the view in sensitive or particularly scenic areas, and areas containing unique natural features, scenic roadways or historic areas; the concentration of towers in the proposed area; and, whether the height, design, placement or other characteristics of the proposed tower could be modified to have a less intrusive visual impact.
  - c. The approving bodies, in accord with State Code § 15.2-2316.4:2, may disapprove an application based on the availability of existing wireless support structures within a reasonable distance that could be used for co-location at reasonable terms and conditions without imposing technical limitations on the applicant.
  - d. Unless some other timeframe is mutually agreed upon, an application for a tower shall be reviewed by the County and a written decision shall be issued within 150 days of a completed submission.
  - e. Unless some other timeframe is mutually agreed upon, an application for collocation shall be reviewed by the County and a written decision shall be issued within 90 days of a completed submission.
  - f. A complete application for a project shall be deemed approved if the locality fails to approve or disapprove the application within the applicable period specified or mutually agreed upon.
  - g. If the County disapproves an application, it must provide the applicant with a written statement of the reasons for disapproval. If the locality is aware of any modifications to the project as described in the application that if made would permit the locality to approve the proposed project, the locality shall identify them in the written statement provided. The written statement must contain substantial record evidence and be publicly released within 30 days of the decision.



- (s) Appeal. An applicant adversely affected by the disapproval of an application for a standard process project may file an appeal within 30 days following notice to the applicant of the disapproval.

**Section 36.401. — Parking lot, commercial.**

- (a) No motor vehicle work shall be permitted in association with a parking facility except under emergency service work.
- (b) Parking shall be the principal use of all parking facilities. Spaces may be rented for parking, but no other business of any kind shall be conducted in the structure except County sanctioned farmer's markets or permitted mobile restaurants.

**Section 36.402. — Sawmill, mobile.**

- (a) No structure and no storage of lumber, logs, chips, or timber shall be located closer than 100 feet to any lot line. Trees and vegetation within the 100-foot setback shall be maintained as a buffer to abutting properties and uses, provided that during the last three months of operation the trees may be removed.
- (b) No saw, planer, chipper, conveyor, chute, or other similar machinery shall be located closer than 600 feet from any dwelling on any lot other than the lot on which the sawmill, planning mill, or wood yard is located.
- (c) All timbering and milling operations, including reforestation/restoration and the disposal of snags, sawdust, and other debris, shall be conducted in accordance with the regulations of the Virginia Department of Forestry.

**Section 36.403. — Small cell facility.**

- (a) In accordance with Code of Virginia § 15.2-2316.4, small cell facilities shall be permitted by right in all zoning districts subject to the following general performance standards.
  - (1) The small cell facility shall be installed by a wireless services provider or wireless infrastructure provider on an existing structure.
  - (2) The wireless services provider or wireless infrastructure provider has obtained permission from the owner of the existing structure to collocate the small cell facility on the existing structure and to collocate the associated transmission equipment on or proximate to the existing structure.
  - (3) Each antenna is located inside an enclosure of, or the antenna and all its exposed elements could fit within an imaginary enclosure of, no more than six cubic feet; and
  - (4) Excluding electric meter, concealment, telecommunications demarcation boxes, backup power systems, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services, all other equipment associated with the facility does not exceed 28 cubic feet, or such higher limit as may be established by the Federal Communications Commission.
  - (5) Wireless facilities which do not meet the criteria to be deemed a small cell facility shall be deemed mobile and land-based telecommunications facilities. Such facilities may be permitted pursuant to the applicable criteria and procedures of this Article.
  - (6) A wireless services provider or wireless infrastructure provider may submit up to 35 permit requests for small cell facilities on a single application. Permit application fees shall be in accordance with Code of Virginia § 15.2-2316.4, Paragraph B (2) of the Code of Virginia.

- (7) Permit applications for small cell facilities shall be reviewed and approved as follows:
- a. Permit applications for the installation of small cell facilities shall be approved or disapproved within 60 days of receipt of the complete application. The 60-day period may be extended by staff upon written notification to the applicant, for a period not to exceed an additional 30 days.
  - b. Within ten days of receipt of an application submission and a valid electronic mail address for the applicant, the applicant shall receive an electronic mail notification if the application is incomplete. If the application is determined to be incomplete, the notification shall specify the missing information which needs to be included in a resubmission in order to be determined complete.
  - c. Any disapproval of the application shall be in writing and accompanied by an explanation for the disapproval. The disapproval may be based only on any of the following reasons:
    1. Material potential interference with other pre-existing communications facilities or with future communications facilities that have already been designed and planned for a specific location or that have been reserved for future public safety communications facilities.
    2. Public safety or other critical public service needs.
    3. In instances where the installation is to be located on or in publicly owned or publicly controlled property (excluding privately owned structures where the applicant has an agreement for attachment to the structure), aesthetic impact or the absence of all required approvals from all departments, authorities, and agencies with jurisdiction over such property.
- (8) A permit application approval shall not be unreasonably conditioned, withheld, or delayed.
- (9) An applicant may voluntarily submit, and staff may accept, any conditions that address potential visual or aesthetic effects resulting from the placement of small cell facilities.
- (10) The submission of a permit application shall represent a wireless services provider's or wireless infrastructure provider's notification of the County as required by Code of Virginia § 15.2-2316.4(A).

**Section 36.404. — Solar energy, large-scale, power purchase agreement, and utility-scale.**

(a) Statement of intent.

The purpose of this section is to establish requirements for construction, operation, and decommissioning of solar facilities and to provide standards for the placement, design, construction, monitoring, modification, and removal of solar facilities; address public safety, minimize impacts on scenic, natural, and historic resources; and provide adequate financial assurance for decommissioning.

(b) Applicability.

This section shall apply to all solar facilities constructed after the effective date of this article, including any physical modifications to any existing solar facilities that materially alter the type, configuration, or size of such facilities or other equipment.

(c) Applications and procedures.

In addition to other requirements of the Essex County Zoning and Subdivision Ordinance and conditional use permit requirements, conditional use applications for solar facilities shall include the following information:

- (1) Pre-application meeting. Schedule a pre-application meeting with Essex County to discuss the location, scale, and nature of the proposed use and what will be expected during that process.
- (2) Comprehensive Plan review. A 2232 review by the County as required by the Code of Virginia (§15.2-2232) for utility-scale solar facilities. This Code provision provides for a review by the Planning Commission of public utility facility proposals to determine whether the general or approximate location, character and extent are substantially in accord with the Comprehensive Plan or part thereof.
- (3) Submit a complete conditional use permit application including:
  - a. Documents demonstrating the ownership of the subject parcel(s).
  - b. Proof that the applicant has authorization to act upon the owner's behalf.
  - c. A letter of commitment from the utility company who will interconnect to the facility.
  - d. List of all adjacent property owners, their tax map numbers, and addresses.
  - e. A description of the current use and physical characteristics of the subject parcels including identification and percentage of Prime Farmland and Farmland of Statewide Importance.
  - f. A description of the existing uses of nearby properties.
  - g. A narrative identifying the applicant, owner, or operator, and describing the proposed solar energy facility project, including an overview of the project and its location, approximate rated capacity of the solar energy facility project, the approximate number of panels, representative types, expected footprint of solar equipment to be constructed, and type and location of interconnection to electrical grid.
  - h. Aerial imagery which shows the proposed location of the solar energy facility, fenced area, driveways, and interconnection to electrical grid with the closest distance to all adjacent property lines and dwellings along with main points of ingress/egress.
  - i. Fifteen sets (11"× 17" or larger), one reduced copy (8½"× 11") and one electronic copy of the concept plan in accordance with the requirements of Subsection (4), including elevations and landscape plans as required.
  - j. Payment of the application fee and any additional review costs, advertising, or other required staff time.
- (4) Concept plan. A concept plan prepared by an engineer with a professional engineering license in the Commonwealth of Virginia, that shall include the following:
  - a. A description of the subject parcels.
  - b. Property lines and setback lines.
  - c. Existing and proposed buildings and structures; including preliminary locations of the proposed solar panels and related equipment; the location of proposed fencing, driveways, internal roads, and structures; and the location of points of ingress/egress.
  - d. The location and nature of proposed buffers and screening elements, including vegetative and constructed buffers and wildlife corridors.
  - e. A grading plan.

- f. A landscaping maintenance plan.
  - g. Existing and proposed access roads, drives, turnout locations, and parking.
  - h. Location of substations, electrical cabling from the solar energy facility systems to the substations, ancillary equipment, buildings, and structures including those within any applicable setback.
  - i. Fencing or other methods of ensuring public safety.
  - j. Distance to all adjacent property lines and dwellings.
  - k. Demonstration of compliance with applicable conditions set forth in the Chesapeake Bay Preservation Area Overlay District.
  - l. An inventory of all solar facilities – existing and proposed – within a four-mile radius.
  - m. Environmental inventory and impact statement regarding any site and viewshed impacts, including direct and indirect impacts and mitigations, to wetlands, waterways, floodplains, endangered and threatened species, national and state forests, national and state parks, wildlife management areas, conservation easements, recreational areas, or any known historic or cultural resources within three miles of the proposed project.
  - n. The applicant shall consult with the Department of Game and Inland Fisheries and provide a written recommendation regarding wildlife corridors.
  - o. Additional information may be required as determined by Essex County such as a scaled elevation view of the property and other supporting drawings, photographs of the proposed site, photo or other realistic simulations or modeling of the proposed project from potentially sensitive locations as deemed necessary by Essex County to assess the visual impact of the project, landscaping and screening plan, coverage map, and additional information that may be necessary for a technical review of the proposal.
- (5) Decommissioning plan. Submit a detailed decommissioning plan, certified by an engineer, who has expertise in the removal of solar facilities, which shall include the following:
- a. The anticipated life of the project;
  - b. The estimated decommissioning cost explicitly detailing in current dollars;
  - c. The mechanism for calculating increased removal costs due to inflation and without reduction for salvage value;
  - d. How the estimate was determined;
  - e. The method, whether escrow, surety, or security, of ensuring that funds will be available for decommissioning and removal;
  - f. The method that the estimated decommissioning cost will be recalculated every five (5) years and the surety updated accordingly; and
  - g. The manner in which the project will be decommissioned and the site restored.
- (6) Traffic study submitted with application modelling the construction and decommissioning processes. County staff will review the study in cooperation with VDOT.
- (7) Large-scale solar facilities and PPA facilities shall provide a copy of any subdivision covenants and restrictions associated with the site.
- (8) An economic cost/benefit analysis describing generated property taxes, sales taxes, other taxes, proffered payment, real property, or construction improvements related to the project, construction dollars spent locally, estimated construction jobs and construction payroll, estimated permanent jobs

and continuing payroll, and costs associated with impact on roads and other county infrastructure in the area.

- (9) An estimated construction schedule.
- (10) A community impact assessment including economic impact shall be required and shall assess the various project tax and revenue options, including but not limited to those in: Code of Virginia §58.1-2636, §58.1-3660, §15.2-2288.8, and §15.2-2316.6 through 2316.9.
- (11) A visual impact analysis demonstrating project siting and proposed mitigation, if necessary, so that the solar energy facility minimizes impact on the visual character of the County, including but not limited to, residences; historic, cultural, recreational, or environmentally sensitive areas; and scenic viewsheds.
  - a. The applicant shall provide accurate, to scale, photographic simulations showing the relationship of the solar energy facility and its associated infrastructure and development to its surroundings. The photographic simulations shall show such views of solar structures from locations such as property lines and roadways, as deemed necessary by the County in order to assess the visual impact of the solar energy facility.
  - b. The total number of simulations and the perspectives from which they are prepared shall be established by Essex County after the pre-application meeting.
- (d) Neighborhood meeting. A public meeting shall be held prior to the public hearing with the Planning Commission to give the community an opportunity to hear from the applicant and ask questions regarding the proposed project.
  - (1) The applicant shall inform Essex County and adjacent property owners in writing of the date, time, and location of the meeting, at least seven but no more than 14 days, in advance of the meeting date.
  - (2) The date, time, and location of the meeting shall be advertised in the County's newspaper of record by the applicant, at least seven but no more than 14 days, in advance of the meeting date.
  - (3) The meeting shall be held within the County, at a location open to the general public with adequate parking and seating facilities that may accommodate persons with disabilities.
  - (4) The meeting shall give members of the public the opportunity to review application materials, ask questions of the applicant, and provide feedback.
  - (5) The applicant shall provide to Essex County summary of any input received from members of the public at the meeting.
- (e) Minimum development and use standards
  - (1) Location standards for large-scale, Power Purchase Agreement (PPA), and utility-scale solar facilities. Facilities should locate on brownfields, County-owned capped landfills, or near existing industrial uses, where feasible. The location standards stated below are intended to mitigate the adverse effects of such uses on adjoining property owners, the area, and the County.
    - a. The minimum area of a utility-scale solar energy facility shall be two (2) acres, and the maximum area shall be less than 500 acres, including the required open space.
    - b. The maximum area of a large-scale solar energy facility or PPA solar energy facility shall be less than 50 contiguous acres.
    - c. The equipment, improvements, structures, and percent of acreage coverage of a facility shall be shown on the approved concept plan and site plan.
    - d. Utility-scale solar facilities shall be located a minimum of 1 mile outside the banks of the Rappahannock River.

- e. Utility-scale solar facilities shall preserve forest resources by maintaining natural buffers.
  - f. Wetlands, waterways, and floodplains shall be avoided.
  - g. Utility-scale solar energy facility shall be located at least three miles from a town boundary.
  - h. Unless on a brownfield or capped landfill, facilities shall be located at least one mile from identified Rural Service Centers as depicted on the Future Land Use Map.
  - i. Unless on a brownfield or capped landfill, facilities shall be located at least one mile from a Business and Employment district, a Deferred Development Service District, and Rural Residential Development as depicted on the Future Land Use Map.
  - j. Utility-scale solar facilities shall be within one mile of electric transmission lines and any tie lines shall be located and buffered to block visibility from highways.
  - k. Battery energy storage systems, if required, shall be installed near the substation and with industry best practices, including a Battery Management System (BMS) with 24/7 monitoring and automated fire suppression.
- (2) Concept plan compliance. The facility shall be constructed and operated in substantial compliance with the approved concept plan, with allowances for changes required by the Virginia Department of Environmental Quality Permit by Rule (PBR) process.
- (3) Setbacks.
- a. Setback is measured from external property lines to the project facilities, excluding roads and transmission poles.
  - b. The minimum setback for utility-scale solar facilities to property lines shall be 150 feet.
  - c. The minimum setback for large-scale solar and PPA solar facilities to property lines shall be in accordance with the setback requirements for that zoning district or 50 feet, whichever is greater. Facilities shall setback a minimum of 150 feet from any existing dwellings.
  - d. The minimum setback for any battery storage units shall be 500 feet from any existing dwelling.
- (4) The maximum height of the lowest edge of the photovoltaic panels shall be 10 feet as measured from the finished grade. The maximum height of principal buildings and accessory buildings shall be 15 feet as measured from the finished grade at the base of the structure to its highest point, including appurtenances. The Board of Supervisors may approve a greater height based upon the demonstration of a significant need where the impacts of increased height are mitigated.
- (5) PV solar panels and any associated equipment shall not be located on slopes 10 percent or greater and no site shall be graded more than 50 percent of the site surface area.
- (6) Landscape buffer.
- a. Utility-scale solar facilities, including fencing, shall be significantly screened from the ground-level view of adjacent properties by a buffer zone at least 100 feet wide that shall be landscaped with a minimum of two staggered rows of eight (8)-foot tall evergreen trees. The remainder of the buffer shall be planted with staggered rows of evergreen tree plugs except to the extent that existing vegetation or natural land forms on the site provide such screening as determined by Essex County. In the event that existing vegetation or landforms providing the screening are disturbed, new plantings shall be provided that accomplish the same. Opaque architectural fencing may be used to supplement other screening methods but shall not be the primary method.
  - b. Large-scale and PPA solar facilities shall be significantly screened from the ground-level view of adjacent properties by a buffer zone at least half the required setback that shall be landscaped with plant materials consisting of an evergreen and deciduous mix (as approved by County staff),

except to the extent that existing vegetation or natural landforms on the site provide such screening as determined by the zoning administrator. In the event, existing vegetation or landforms providing the screening are disturbed, new plantings shall be provided which accomplish the same. Opaque architectural fencing may be used to supplement other screening methods but shall not be the primary method.

- (7) The facilities shall be enclosed by security fencing a minimum of eight (8) feet in height on the interior of the buffer area (not to be seen by other properties). A performance bond reflecting the costs of anticipated fence maintenance shall be posted and maintained. Failure to maintain the security fencing shall result in revocation of the conditional use permit and the facility's decommissioning.
- (8) Ground cover on the site shall be native vegetation where compatible with soil conditions and maintained in accordance with the landscaping maintenance plan and established performance measures. A performance bond reflecting the costs of anticipated landscaping maintenance shall be posted and maintained. Failure to maintain the landscaping shall result in revocation of the conditional use permit and the facility's decommissioning. Incorporation of native plant species that require no pesticides, herbicides, and fertilizers or the use of pesticides and fertilizers with low toxicity, persistence, and bioavailability is recommended. The operator shall notify the County prior to application of pesticides and fertilizers. The County reserves the right to request soil and water testing.
- (9) The utility-scale facility shall provide access corridors for wildlife to navigate through the Solar energy facility, at a number and design based on the Department of Wildlife Resources' guidance and acceptable to the County. The proposed wildlife corridors shall be shown on the concept plan submitted to the County and conditioned as part of the CUP. Areas between fencing shall be kept open to allow for the movement of migratory animals and other wildlife.
- (10) The design of support buildings and related structures shall use materials, colors, textures, screening, and landscaping that will blend the facilities to the natural setting and surrounding structures.
- (11) The owner or operator shall maintain the solar energy facility in good condition. Such maintenance shall include, but not be limited to, painting, structural integrity of the equipment and structures, as applicable, and maintenance of the buffer areas and landscaping. Site access shall be maintained to a level acceptable to the County. The project owner shall be responsible for the cost of maintaining the solar energy facility and access roads, and the cost of repairing damage to private roads occurring as a result of construction and operation.
- (12) A facility shall be designed and maintained in compliance with standards contained in applicable local, state, and federal building codes and regulations that were in force at the time of the permit approval.
- (13) A facility shall comply with all permitting and other requirements of the Virginia Department of Environmental Quality.
- (14) The applicant shall provide proof of adequate liability insurance for a solar energy facility prior to beginning construction and before the issuance of a zoning or building permit to Essex County.
- (15) Lighting fixtures as approved by the County shall be the minimum necessary for safety and/or security purposes to protect the night sky by facing downward and to minimize off-site glare. No facility shall produce glare that would constitute a nuisance to the public. Any exceptions shall be enumerated on the concept plan and approved by Essex County.
- (16) During operation, a utility-scale solar energy facility shall not produce a noise level that exceeds 65 dBA as measured at the property line or 50 dBA as measured at the nearest neighboring inhabitable building.
- (17) No signage of any type may be placed on the facility other than notices, warnings, and identification information required by law.

(18) All facilities must meet or exceed the standards and regulations of the Federal Aviation Administration (“FAA”), State Corporation Commission (“SCC”) or equivalent, and any other agency of the local, state or federal government with the authority to regulate such facilities that are in force at the time of the application.

(19) Any other condition added by the Planning Commission or Board of Supervisors as part of a conditional use permit approval.

(f) Decommissioning.

The following requirements shall be met:

(1) Solar facilities that have reached the end of their useful life or have not been in active and continuous service for a period of one year shall be removed at the owner’s or operator’s expense, except if the project is being repowered or a force majeure event has or is occurring requiring longer repairs; however, the County may require evidentiary support that a longer repair period is necessary.

(2) The owner or operator shall notify Essex County by certified mail and in person of the proposed date of discontinued operations and plans for removal.

(3) Decommissioning shall include removal of all solar electric systems, buildings, cabling, electrical components, security barriers, roads, foundations, pilings, and any other associated facilities, so that any agricultural ground upon which the facility and/or system was located is again tillable and suitable for agricultural or forestall uses. The site shall be graded and re-seeded to restore it to as natural a pre-development condition as possible or replanted with pine seedlings to stimulate pre-timber pre-development conditions as indicated on the Preliminary Site Plan. Any exception to site restoration, such as leaving access roads in place or seeding instead of planting seedlings, must be requested by the landowner in writing and shall be subject to Zoning Administrator approval.

(4) The site shall be re-graded and re-seeded or replanted within 12 months of removal of solar facilities. Re-grading and re-seeding or replanting shall be initiated within a six-month period of removal of equipment.

(5) Decommissioning shall be performed in compliance with the approved decommissioning plan. The Board of Supervisors may approve any appropriate amendments to or modifications of the decommissioning plan.

(6) Hazardous material from the property shall be disposed of through any viable recycling methods and in accordance with federal and state law.

(7) The estimated cost of decommissioning shall be guaranteed by the deposit of funds in an amount equal to the estimated cost in an escrow account at a federally insured financial institution approved by the County.

a. The applicant shall deposit the required amount into the approved escrow account before any building permit is issued to allow construction of the solar energy facility.

b. The escrow account agreement shall prohibit the release of the escrow funds without the written consent of the County. The County shall consent to the release of the escrow funds upon on the owner’s or occupant’s compliance with the approved decommissioning plan. The County may approve the partial release of escrow funds as portions of the approved decommissioning plan are performed.

c. The amount of funds required to be deposited in the escrow account shall be the full amount of the estimated decommissioning cost without regard to the possibility of salvage value.



- d. The owner or occupant shall recalculate the estimated cost of decommissioning every five years. If the recalculated estimated cost of decommissioning exceeds the original estimated cost of decommissioning by ten percent (10%), the owner or occupant shall deposit additional funds into the escrow account to meet the new cost estimate. If the recalculated estimated cost of decommissioning is less than ninety percent (90%) of the original estimated cost of decommissioning, then the County may approve reducing the amount of the escrow account to the recalculated estimate of decommissioning cost.
  - e. The County may approve alternative methods to secure the availability of funds to pay for the decommissioning of a utility-scale solar energy facility, such as a performance bond, letter of credit, or other security approved by the County.
  - f. If the owner or operator of the solar energy facility fails to remove the installation in accordance with the requirements of this permit or within the proposed date of decommissioning, the County may collect the surety and the County or hired third party may enter the property to physically remove the installation.
- (g) Coordination of local emergency services
- Applicants for new solar facilities shall coordinate with the County's emergency services staff to provide materials, education and/or training to the departments serving the property with emergency services in how to safely respond to on-site emergencies.
- (h) Conditions
- (1) The Board may include other reasonable conditions as permitted by state law and as otherwise provided for in this Chapter, including, but not limited to:
    - a. A condition(s) that requires (i) dedication of real property of substantial value or (ii) substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the granting of a conditional use permit, so long as such conditions are reasonably related to the project.
    - b. The facility shall be constructed, maintained, and operated in substantial compliance with:
      - 1. The development standards under this article.
      - 2. The approved concept plan.
      - 3. Any other conditions imposed pursuant to a conditional use permit.
      - 4. Local, state, and federal requirements.
    - c. The facility shall comply with decommissioning requirements as set forth and described in the application materials.
    - d. The conditional use permit shall require submission and compliance with supplemental plans, including but not limited to, site plans, grading plans, traffic management plans, construction mitigation plans, landscaping maintenance plans.
    - e. The applicant shall consult with the Virginia Department of Conservation and Recreation's Division of Dam Safety and Floodplain Management to conduct an inspection and evaluation of the dams within the project area and assure compliance with the Dam Safety Regulations (4VAC50-20). The applicant shall make whatever repairs and renovations required by the Dam Safety Division prior to the issuance of final permits for construction of the solar energy facility.

- f. The conditional use permit may require the applicant to submit an erosion and sediment control plan for review and approval by the County or by a qualified third party, however, the third-party review shall not supersede any requirements imposed by state agencies. The erosion and sediment control plan shall be prepared and implemented as a sequential progression, demonstrating that not more than 25% of the Site be disturbed and unstabilized at any one-time during construction. The erosion and sediment control plan will provide the means and measures to achieve stabilization of the disturbed areas to comply with this condition. The applicant shall construct, maintain, and operate the solar energy facility in compliance with the approved plan.
- g. The applicant shall submit a stormwater management plan for review and approval by the County or by a qualified third party. The applicant shall construct, maintain, and operate the solar energy facility in compliance with the approved plan.
- h. The applicant shall pay additional fees to cover the reasonable and actual cost of any review of the erosion and sediment control plan, the stormwater plan, and inspections performed by County approved qualified third parties.
- i. If the solar energy facility does not receive a building permit within twenty-four (24) months of approval of the conditional use permit, the Permit shall be terminated.
- j. If the solar energy facility is declared out of compliance with any local, state, or federal codes, or any of the Special Use Permit conditions by the Zoning Administrator or the building official, the facility must be brought into compliance within fourteen (14) days or the conditional use permit shall be terminated through Board of Supervisor approval, and the Solar Facilities shall be decommissioned.”
- k. The owner and operator shall give the County written notice of any change in ownership, operator, or Power Purchase Agreement within thirty (30) days.
- l. Applicant agrees to provide County with a list of capital equipment, including but not limited to solar photovoltaic equipment proposed to be installed, whether or not it has yet been certified as pollution control equipment by the State Corporation Commission or Virginia Department of Environmental Quality, all equipment related to any proposed battery storage facilities, and lists of all other taxable tangible property for taxable valuation. Thereafter, on an annual basis, Applicant shall provide County with any updates to this information. Further, Applicant agrees to provide the County all information it may in the future provide to the Virginia State Corporation Commission for the Commission’s use in valuing such property for taxation purposes.
- m. The conditional use permit may require other use and operating requirements, such as requirements for lighting, noise, and vegetation, to mitigate impacts associated with the use.

**Section 36.405. — Solar energy, medium-scale and small-scale.**

- (a) The design and installation of all solar energy facilities shall conform to applicable industry standards, including those of the American National Standards Institute (ANSI), Underwriters Laboratories (UL), the American Society for Testing and Materials (ASTM), or other similar certifying organizations and shall comply with all fire and safety requirements.
- (b) Small and medium scale energy facilities shall comply with all applicable federal, state, and local regulations, ordinances, and codes.
- (c) Any small or medium-scale solar energy facility shall submit a site plan to the Zoning Administrator and any small or medium-scale solar energy facility installed upon a roof top shall also submit an engineering study to the building official’s office for review.
- (d) All small or medium-scale solar energy facilities shall comply with the following performance standards:

- (1) If the solar energy facility is ground-mounted or not flush-mounted on a principal or accessory building, the panel height shall not exceed 15 feet at the tallest point.
  - (2) The solar energy facility shall comply with all setback requirements pursuant to the Dimensional Standards Table.
  - (3) The lowest surface of any panel shall be a minimum of four feet above the finished grade on which the panel is located.
  - (4) All wiring not on the solar arrays shall be underground except where necessary to connect to the public utility.
  - (5) Landscaping and screening shall be provided for ground mounted solar to block visibility of the panel(s) and ancillary equipment from adjacent properties.
  - (6) All broken or waste solar modules shall be removed from the site within 60 days of being taken out of service.
- (e) Removal of abandoned solar generating equipment.
- (1) A bond, whose amount shall be approved by the Zoning Administrator, shall be required to assure the removal of an abandoned solar energy facility.
  - (2) Any solar energy facility that has not operated for a period of 12 months shall be considered unused and abandoned. The owner of an unused facility shall remove the entire system within six months of receipt of notice from the Zoning Administrator notifying the owner of the equipment removal requirement. Removal includes removing any underground structures or supports and electrical transmission wire and disposing in accordance with local, state, and federal codes and regulations.

Reserved 36.406 — 36.414

## **Division 8. — Accessory Use Standards**

### **Section 36.415. — Accessory building or structure.**

- (a) Accessory buildings or structures in the A-1 or A-2 district shall meet the setbacks of the principal building for that district.
- (b) Accessory buildings or structures in the B-1, B-2, I-1, or I-2 district shall be subject to the following:
  - (1) The accessory building or structure shall meet the setbacks of the principal building for that district.
  - (2) No accessory building or structure shall have a height greater than the principal building.
  - (3) The accessory building shall be constructed of materials that are not inferior to the principal building.
- (c) Accessory buildings or structures in the R-1, R-2, R-3, R-4, MH-1, or PUD district shall be subject to the following:
  - (1) The total of all accessory structures shall not have a lot coverage that is greater than the principal building square footage (e.g., a home of 1,000 square feet is allowed an accessory structure or multiple accessory structures with a cumulative footprint of 1,000 square feet when setbacks and other restrictions can be met) except that accessory structures for residential townhouse use shall cover no more than 45% of the required rear yard.
  - (2) No accessory structure shall have a height greater than 20 feet measured at the highest point from grade.
  - (3) Setback and Placement. Accessory buildings or structures shall be placed in the side or rear yards and must meet a minimum setback of five feet from the adjacent lot line. Except for the following:

- a. Accessory buildings or structures on a lot adjacent to the Rappahannock River may be placed in the front yard but shall meet the front setback requirement for the district.
  - b. Accessory buildings or structures on a corner lot shall meet the required corner side setback for the district.
  - c. For residential townhouse use, accessory structures shall observe the same required front and corner side setbacks as the principal structure. No side or rear setback shall be required.
- (4) Residential accessory structures including, but not limited to, flag poles, basketball hoops, clotheslines, arbors, swings, structures less than six square feet in area, or residential yard ornaments shall be exempt from the minimum setback, lot area, and certification requirements as specified in this Ordinance.
- (d) Portable storage containers located outside of a fully-enclosed building or structure in a district other than a residential district or planned unit development and visible from adjacent properties or highways must be buffered in compliance with Article VII, Division 4, Section 36.489.
- (e) Portable storage containers located outside of a fully-enclosed building or structure in a residential district or the planned unit development district are subject to the following:
- (1) A zoning permit issued by the Zoning Administrator is required for any portable storage container located on a lot for more than 15 calendar days but is not allowed for more than 60 calendar days. There will be no fee for such permit and the permit shall be displayed on the exterior of the portable storage unit at all times.
  - (2) The portable storage container must be placed a minimum of five feet from the property line, or on the driveway of the lot. One portable storage container may be placed in a legal parking place on the street for a period no longer than 15 days with the approval of the Public Works Department and the Fire Department when space is not available on site.
  - (3) Other than the required county zoning permit, no sign shall be attached to a portable storage container except to provide the contact information of the container provider.
  - (4) Portable storage containers shall not be used in conjunction with a Type A or Type B home occupation or used as a principal use or principal building or structure.
  - (5) The vertical stacking of portable storage containers and the stacking of any other materials or merchandise on top of any storage container shall be prohibited.
  - (6) The provisions of this subsection shall not apply to properties where construction is actively occurring under a valid building permit.

**Section 36.416. — Accessory dwelling unit.**

- (a) An accessory dwelling unit is allowed only as accessory to a single-family detached dwelling.
- (b) Only one accessory dwelling is permitted per parcel.
- (c) Such structures shall comply with all dimensional standards that apply to the principal building.
- (d) An accessory dwelling unit shall not be subdivided or otherwise segregated in ownership from the principal single-family dwelling unit.
- (e) A manufactured home or recreational vehicle, travel trailer, camper, or similar vehicle shall not be used as an accessory dwelling unit.
- (f) An accessory dwelling shall obtain all proper permits and comply with all applicable requirements of the Virginia Department of Health and the Virginia Uniform Statewide Building Code.

- (g) An accessory dwelling unit that is contained within a single-family dwelling may equal the existing finished square footage of the primary dwelling, such as a basement, attic, or additional level.
- (h) The floor area of an accessory dwelling unit contained within a separate structure shall be no more than 800 square feet in finished floor area.

**Section 36.417. — Bed and breakfast.**

- (a) A bed and breakfast is allowed only as accessory to a single-family detached dwelling.
- (b) The operator shall hold a valid business license from the County and, where applicable, a septic permit from the Department of Health showing adequate capacity.
- (c) The applicant must provide and sign a statement acknowledging they have appropriate insurance that covers the bed and breakfast unit, the host, and the guests.
- (d) Every room occupied for sleeping purposes shall comply with Uniform Statewide Building Code.
- (e) Signage must comply with the signage regulations of this Ordinance.
- (f) No changes shall be made to the building exterior that would detract from its appearance as a single-family dwelling.
- (g) Off-street parking shall be provided in compliance with this Ordinance. The physical and aesthetic impact of required off-street parking shall not be detrimental to the existing character of the house and lot or to the surrounding neighborhood.
- (h) Any additions or modifications for the bed-and-breakfast shall be residential in appearance and compatible with the original structure and surrounding structures.
- (i) Bed and breakfasts are to be integrated into the residential fabric of the neighborhood in which they are located. A proposed bed and breakfast should not affect the integrity or character of the single-family residential neighborhood for which it is proposed.
- (j) Off-street parking shall be screened from surrounding family residences by landscaping or fencing which is compatible with the neighborhood and minimizes visibility of vehicles and reduces headlight glare on adjacent properties.
- (k) Guest rooms shall not have cooking facilities.
- (l) The maximum stay for a guest shall be 30 consecutive days.
- (m) Bed-and-breakfast establishments are permitted to provide transient accommodations. Food services in connection with the use shall be limited to meals provided to guests taking lodging at the facility. Full restaurant service open to the general public is a separate use, permitted according to the district regulations. Additional activities, including receptions, parties, and other events, are not permitted unless specifically authorized by the conditional use permit. Authorization for additional activities will be based on the suitability of the house and property for hosting such events. Specific consideration will be given to the floor plan of the house, the proximity of the house to neighboring houses, the size of the lot, provisions to buffer the effects of such activities from adjacent property and the ability to provide parking for such events.
- (n) Creation of an event venue or gatherings fitting the definition of Assembly, place of, shall comply with the permit requirements of Assembly, place of, as outlined in this ordinance.

**Section 36.418. — Family health care structure, temporary.**

- (a) Such structures shall comply with all setback requirements that apply to the principal building.
- (b) Only one family health care structure shall be allowed on a lot or parcel of land.
- (c) The structure shall be no more than 300 gross square feet and shall comply with all applicable provisions of the Industrialized Building Safety Law (§ 36-70 et seq.) and the Uniform Statewide Building Code (§ 36-97 et seq.).
- (d) Prior to installing a temporary family health care structure, a permit must be obtained from the County and associated fees paid.
- (e) Any family health care structure shall comply with all applicable requirements of the Virginia Department of Health.
- (f) No signage advertising or promoting the existence of the structure shall be permitted on the exterior of the structure or anywhere on the property.
- (g) Any temporary family health care structure shall be removed within 60 days of the date on which the temporary family health care structure was last occupied by a mentally or physically impaired family member receiving services or assistance.
- (h) The County may revoke the permit if the permit holder violates any provision of this section.

**Section 36.419. — Home occupation, type A and type B.**

- (a) The principal person conducting the home occupation accessory use shall be a full-time resident of the dwelling.
- (b) The area devoted to the home occupation shall not exceed more than the equivalent of one-half of one floor of the dwelling unit.
- (c) Use shall be conducted as an accessory use and shall not change the character of the dwelling unit; the use shall be conducted within the dwelling or an enclosed building and shall not have any exterior evidence of its use.
- (d) The type of traffic generated by a home occupation shall be consistent with the type of traffic of other dwellings in the area. No more than two customers may be on the property at any one time.
- (e) The home occupation shall not increase the demand on public water, public sewer, or garbage collection services to the extent that its use combined with the residential use of the dwelling shall not be significantly higher than is normal for residential uses.
- (f) No more than two vehicles associated with the home occupation shall be parked on the premises. The vehicles shall not exceed 10,000 pounds or have more than two axles.
- (g) Exterior storage of equipment, including open trailers and other business-related equipment, materials, or merchandise is prohibited.
- (h) The equipment used by the home business and the operation of the business shall not create any noise, vibration, heat, glare, dust, odor or smoke discernible at the property lines or use or store hazardous materials in excess of quantities permitted in residential structures.
- (i) The operator of a home occupation use shall secure a County business license and obtain a home occupation use permit.

- (j) Approval of a home occupation use shall be revocable at any time by the County because of the failure of the owner or operator of the use covered by the approval to observe all requirements of law with respect to the maintenance and conduct of the use and all conditions imposed in connection with the approval.
- (k) Approval of a home occupation use shall stand revoked, without any action by the County, if the use authorized has been intentionally abandoned, has ceased for a period of one year, has not commenced within one year of approval, or does not have a current business license.
- (l) One minor sign may be displayed indicating that the building is being utilized as a business.

**Section 36.420. — Kennel, private.**

- (a) Any pens or kennels shall be setback 100 feet from the property lines of adjoining agricultural zoned property;
- (b) Any pens or kennels shall be setback 400 feet from any property lines adjoining residential zoned property;
- (c) Any pens or kennels shall be setback 400 feet from any dwelling not on the associated parcel;
- (d) Screening, as approved by the Zoning Administrator, shall be provided to visually blocks pens or kennels from the front and closest side property lines.
- (e) Pens and kennels shall be kept free of waste on a regular basis to minimize impacts of odor and reduce propagation of insects.

**Section 36.421. — Outdoor storage.**

- (a) Storage areas shall be screened by a solid wall or fence, including solid entrance and exit gates, not less than six feet nor more than ten feet in height. All fences and walls shall have a uniform and durable character and shall be properly maintained.
- (b) When fences and walls are adjacent to business or residential districts, a landscaped buffer must be provided to break visibility of the fence in accordance with the landscape section of this Ordinance.
- (c) Outdoor storage shall be on the side or rear of the principal structure and screened from view from any adjacent roadway.
- (d) No wall or fence screening a storage area shall encroach into a sight distance triangle.
- (e) Parts, materials, and equipment stored in a storage area shall not be stacked higher than the screening wall or fence.
- (f) No outdoor storage shall be located within 50 feet of a residential district.

**Section 36.422. — Short-term rental.**

- (a) The following definitions shall apply as used in this section:
  - (1) *Booking transaction* means any transaction in which there is a charge to a transient by a host for the occupancy of any dwelling, sleeping, or lodging accommodations.
  - (2) *Guest or transient* means a person who occupies a short-term rental unit.
  - (3) *Host* means the owner of a short-term rental unit, or lessee of the short-term rental unit with a lease agreement that is one year or greater in length.
  - (4) *Host designee* means a person assigned by the host to be available 24/7 to answer problems associated with the short-term rental.

- (5) *Short-term rental* means a residential dwelling unit that is used or advertised for rent for transient occupancy in increments of fewer than 30 consecutive days. This use type does not include bed-and-breakfast establishments and does not apply to month-to-month extensions following completion of a year's lease.
- (6) *Residential dwelling unit* means a residence where one or more persons maintain a household.
- (b) Registration and other requirements.
  - (1) No host shall operate a short-term rental business without having registered with the Zoning Administrator as required by Virginia Code § 15.2-983, as amended.
  - (2) The Zoning Administrator will report all registrations to the County Commissioner of Revenue for the collection of the transient lodging tax as set forth in the county code.
- (c) The registration form shall include the following information:
  - (1) The name, telephone number, address, and email address of the host.
  - (2) A reminder about the importance of having appropriate levels of insurance that covers the short-term rental unit, the host, and the guests with signature by the applicant acknowledging they understand and have appropriate insurance.
  - (3) A requirement to provide the septic tank capacity from the Virginia Department of Health.
- (d) The registration shall be valid January 1<sup>st</sup> (or from whatever date the registration first occurs) through December 31<sup>st</sup> of the calendar year and shall be renewed annually.
- (e) A logbook shall be maintained for all rentals and be made available for review by the County upon request.
- (f) No signage advertising a short-term rental shall be allowed.
- (g) Registration may be revoked if more than three substantiated complaints are received within a one-year period. Revocation is for a minimum of one year but may be permanent at the discretion of the County.
- (h) Any short-term rental business in violation of zoning regulations, including operation without registering, is subject to all relevant penalties as set forth by the County.
- (j) The physical and aesthetic impact of required off-street parking shall not be detrimental to the existing character of the house and lot or to the surrounding neighborhood.
- (k) Safety.
  - (1) The unit shall meet all applicable building codes for a rental unit. The County may inspect any short-term rental once per year for compliance with applicable building codes.
  - (2) Site address. Building (dwelling) will have an approved address placed in a position that is plainly legible and visible from the street fronting the property. Structures obscured from street view or access roads in excess of one hundred and fifty (150) feet in length shall additionally post the numerical address at the roadway entrance.
- (l) Use regulations.
  - (1) No recreational vehicles, buses, or trailers shall be used in conjunction with the short-term rental use to increase the occupancy of the rental unit.
  - (2) The host shall not permit occupancy of a short-term rental unit for a period of less than overnight.
  - (3) The name and telephone number of the host or the host's designee shall be conspicuously posted within the short-term rental unit. The host shall answer calls 24 hours a day, seven days a week for the duration of each short-term rental to address any problems associated with the short-term rental unit.



- (4) The principal guest of a short-term rental unit shall be at least 18 years of age.
  - (5) The maximum number of adult guests in a short-term rental unit is limited to two adults per bedroom.
  - (6) Creation of an event venue or gatherings fitting the definition of Assembly, place of, shall comply with the permit requirements of Assembly, place of, as outlined in this ordinance.
- (m) Registration suspension or cancellation.
- (1) A registration may be suspended or cancelled for the following reasons:
    - a. Failure to collect and/or remit the transient occupancy tax or BPOL tax.
    - b. Three or more substantiated complaints (including, but not limited to, noise and excess trash) within a twelve-month period.
    - c. The failure of any short-term rental host to maintain his or her principal place of residence or domicile at the dwelling unit (as required in the residential zoning districts) used as a short term rental.
  - (2) Before any suspension or cancellation can be effective, the Zoning Administrator shall give written notice to the short-term rental host. The notice of suspension or cancellation issued under the provisions of this Ordinance shall contain:
    - a. A description of the violation(s) constituting the basis of the suspension or cancellation;
    - b. If applicable, a statement of acts necessary to correct the violation; and
    - c. A statement that if no written response by the host is received by the Zoning Administrator within 30 days from the date of the notice, the registration will be suspended or cancelled.
  - (3) The notice shall be given to the host by delivering a copy of the notice in person. If the host cannot be found, such notice shall be sent to the address of record by:
    - a. Certified mail or e-mail to the addresses in the registration form; and
    - b. A copy of the notice shall be posted in a conspicuous place on the premises.
  - (4) A copy of the notice will be provided to the Commissioner of Revenue to advise the registration and business license may be revoked.
  - (5) Any determination made by the Zoning Administrator may be appealed to the board of zoning appeals in accordance with Article II Division 6 of this Ordinance.
- (n) Penalty.

It shall be unlawful to operate a short-term rental:

- (2) Without obtaining a BPOL license and a registration as required by this Article;
- (3) After a registration has been suspended or cancelled; or,
- (4) In violation of any other requirement of this Article.
- (5) The penalty shall be a fine of \$500.00 per occurrence for an operator required to register who offers for short-term rental a property that is not registered.

Reserved 36.423 — 36.434

## ARTICLE VII. — COMMUNITY DESIGN STANDARDS

### Division 1. — Signs

#### Section 36.435. — Purpose and Intent.

- (a) The purpose of this section is to regulate the type, size, material, location, number, and condition of signs in a manner that protects and promotes the health, safety, and welfare of the community. This division shall be interpreted in a manner consistent with the First Amendment guarantee of free speech and in a manner consistent with the comprehensive plan.
- (b) This Division is intended to:
  - (1) Provide for the safety and welfare of pedestrian and wheeled traffic by minimizing visual distractions on public and private streets;
  - (2) Reduce hazards that may be caused by signs overhanging or projecting over public right of ways;
  - (3) Protect property values and encourage economic development;
  - (4) Enhance the physical appearance of the County, minimize sign pollution and preserve the scenic and natural beauty of the community;
  - (5) Promote commerce and trade to create an attractive economic and business climate; and,
  - (6) Protect against destruction and or encroachment on historic areas.

#### Section 36.436. — Permit Required; Application.

- (a) No sign, unless exempted in this division, shall be erected, constructed, posted, painted, altered, maintained, or relocated, without a permit issued by the Zoning Administrator as provided for in this division.
- (b) Before any permit is issued, an application for a sign permit provided by the Zoning Administrator shall be filed, together with sufficient information to determine if the proposed sign is permitted under the Zoning and Subdivision Ordinance and other applicable laws, regulations, and ordinances.
- (c) The application shall contain:
  - (1) The Tax Map and location (Latitude and Longitude or sketch on a site plan or plat) of the sign structure on the property;
  - (2) The name and address of the sign owner and of the sign erector along with the landowner if different than the owner;
  - (3) Three sets of drawings and/or specifications showing the number of signs applied for, dimensions to scale, elevation, design, materials, manner of illumination, method of securing or fastening, and location of the sign; and,
  - (4) Such other pertinent information as the Zoning Administrator may require to ensure compliance with this Ordinance or other Ordinances of the County.
- (d) A nonrefundable fee as set forth in the uncodified fee schedule adopted by the governing body of the County and maintained in the office of the Zoning Administrator shall accompany all sign permit applications.

- (e) All signs which are electrically illuminated shall require a separate electrical permit and inspection. Structural and safety features and electrical systems shall be in accordance with the requirements of applicable codes and Ordinances. No sign shall be approved for use unless it has been inspected by the department issuing the permit and is found to be in compliance with all the requirements of this Ordinance and applicable technical codes.
- (f) The permit for a temporary sign shall state its duration, which is not to exceed 30 consecutive calendar days unless another duration is provided in the Zoning and Subdivision Ordinance.
- (g) Permit revocation.
  - (1) All signs shall be erected on or before the expiration of 90 days from the date of issuance of the permit. After such time, the permit shall become null and void, and a new permit shall be required. Each sign requiring a permit shall be clearly marked with the permit number and name of the person or firm placing the sign on the premises, if other than on the business premise or directly related to the business.
  - (2) A sign permit shall become null and void if the use to which it pertains is not commenced within six months after the date the sign permit is issued. Upon written request and for good cause shown, the zoning administrator may grant one six-month extension.
  - (3) Whenever the use of a building or land is discontinued by the specific business, the sign permit shall become null and void and all signs pertaining to that business shall be removed by the property owner within 30 calendar days of the discontinuance.
  - (4) The Zoning Administrator shall revoke a sign permit if
    - a. The Zoning Administrator determines that the application was materially false or misleading;
    - b. The sign as installed does not conform to the sign permit application; or
    - c. The sign does not comply with applicable regulations of this division, building code, or other applicable law, regulation, or ordinance.

**Section 36.437. — General Requirements for Signs.**

- (a) The regulations contained in this Section shall apply to all signs and all districts.
- (b) All signs shall comply with:
  - (1) The provisions of this division;
  - (2) All applicable provisions of the Uniform Statewide Building Code and all amendments thereto; and,
  - (3) All state and federal regulations pertaining to the display of signage.
- (c) No sign shall be located closer than five feet to any right-of-way line.
- (d) Any illuminated sign shall employ only light of constant intensity, and no sign shall be illuminated by or contain flashing, rotating, intermittent, or moving light or lights. In no event shall an illuminated sign or lighting device be placed or directed so as to permit the beams and illumination therefrom to be directed or beamed upon a public street, highway, sidewalk, or adjacent premises so as to cause glare or reflection that may constitute a traffic hazard or nuisance.
- (e) No sign shall be illuminated in such a way that light may shine into on-coming traffic, affect highway safety, or shine directly into a residential dwelling unit.
- (f) All electronic service lines shall be underground.
- (g) Signs projecting over public walkways shall be a minimum height of 8 feet from grade level to the bottom of the sign.

- (h) Projecting signs shall not extend more than 6 feet beyond the face of the building or beyond a vertical plane two feet inside the curb line.

**Section 36.438. — Sign Area.**

The following method shall be utilized in the calculations of sign area:

- (1) The sign area permitted under this division is determined by measuring the entire face of the sign, including any wall work incidental to its decoration but excluding support elements for the sole purpose of supporting the sign.
- (2) For signs that are regular polygons or circles, the area shall be calculated by the mathematical formula for that polygon or circle. For signs that are not regular polygons or circles, the sign area shall be calculated using the area within up to three rectangles that enclose the sign face.
- (3) The surface area of any sign consisting of individual letters or figures shall include the space between such letters or figures.
- (4) Whenever one sign contains information on both sides, sign area shall be calculated based on the largest sign face. Sides are not totaled.

**Section 36.439. — Exempt Signs.**

The following signs are exempted from the provisions of the regulations of this division and may be erected or constructed without a permit in accordance with the structural and safety requirements of the building code and as outlined in the definitions, tables of sign dimensions, and other portions of this division:

- (1) Signs erected by a governmental body or required by law, including official traffic signs or sign structures, provisional warning signs or sign structures, and temporary signs indicating danger;
- (2) Flags of the United States of America, Commonwealth of Virginia, County of Essex, or other flags displayed for non-commercial purposes;
- (3) Flags for commercial purposes not exceeding 50 square feet in area;
- (4) Changing of the message content on a changeable message sign if such sign is permitted in the district;
- (5) The following small signs:
  - a. Minor signs, not exceeding three square feet each in area. Freestanding minor signs shall be located a minimum distance of twenty-five feet apart.
  - b. Memorial plaques and building cornerstones not exceeding 6 square feet in area and cut or carved into a masonry surface or other noncombustible material and made an integral part of the building or structure.
  - c. Temporary nonilluminated signs not exceeding four square feet in sign area and erected for not more than 90 consecutive days.
- (6) Window signs, subject to the dimension requirements in this division.
- (7) Menu signs.
- (8) On a property under construction or renovation, for sale, or for rent, temporary signs not exceeding four square feet for residential properties, except for multifamily, or 18 square feet for multifamily, nonresidential, or mixed-use properties.
- (9) Signs displayed on an operable vehicle while in use in the normal course of business. This section should not be interpreted to permit parking for display purposes of a vehicle to which signs are attached in a district where such signs are not permitted.

**Section 36.440. — Prohibited Signs.**

The following signs are prohibited:

- (1) Any sign affixed to, hung, placed, or painted on any other sign, fence, cliff, rock, tree, natural feature, public utility pole or structure supporting wire, cable, or pipe, or radio, television, or similar tower;
- (2) Flashing signs, signs with intermittent lights resembling, or seeming to resemble, the flashing lights customarily associated with danger or such as are customarily used by police, fire, or ambulance vehicles, or for navigation purposes;
- (3) Animated signs;
- (4) Off-premise signs;
- (5) Signs or parts of a sign not an integral part of the building design located anywhere on the roof or wall of a building such that they extend above or beyond the roof, wall, or parapet wall of a building;
- (6) Signs attached, painted, or mounted to unlicensed, inoperative, or generally stationary vehicles. Vehicles and trailers shall not be used primarily as static displays, advertising a business, product, or service, nor utilized as storage, shelter, or distribution points for commercial products or services for the general public;
- (7) Signs that emit sound, smoke, flame, scent, mist, aerosol, liquid, or gas;
- (8) Abandoned sign structures;
- (9) Mirrors or mirror devices on, in, or as part of a sign;
- (10) Inflatable signs or other floating signs that are tethered to a structure or the ground;
- (11) Any sign representing or depicting specified sexual activities or specified anatomical areas or sexually oriented goods. Any sign containing obscene text or pictures as defined by the Virginia Code;
- (12) Signs that block visibility, confuse, or dangerously distract the attention of the operator of a motor vehicle or interfere with the purpose of any traffic control signal or directional device, including but not limited to, signs that are constructed, erected, or maintained at or near an intersection or driveway and create a traffic hazard;
- (13) Signs simulating, or which are likely to be confused with, a traffic control sign or any other sign displayed by a public authority; and,
- (14) Signs advertising activities or products that are illegal under federal, state, or county law.

**Section 36.441. — District Sign Standards.**

- (a) District Standards: B-1, B-2, I-1, and I-2 Zoning Districts. Any signs located within a B-1, B-2, I-1, or I-2 shall be subject to the following requirements:
  - (1) One freestanding or wall-mounted sign per lot may be substituted with a changeable message sign subject to the following requirements:
    - a. Location, area, height, and illumination requirements shall be the same as for freestanding or wall signs.
    - b. Any changeable message sign that malfunctions, fails, or ceases to operate in its usual or normal programmed manner, thereby causing motion, movement, flashing or any other similar effects, shall be repaired, covered, or disconnected by the owner or operator of such sign within 24 hours of notice of violation.

- (2) All permitted signs may be internally lighted or indirectly lighted, unless such lighting is specifically prohibited in this division.
- (3) The size and placement of signs shall be subject to the requirements provided in Table 36.13.

<b>Table 36.13. Maximum Sign Dimensions – B-1, B-2, I-1, and I-2 Zoning Districts</b>			
<b>Sign Type</b>	<b>Number</b>	<b>Area</b>	<b>Height (ft.)</b>
<b>Window</b>	Not limited	25% of window area	Not limited
<b>Canopy</b>	4 per canopy structure	0.5 SF per LF of canopy fascia	Not extending above the cap on the fascia board or below the horizontal plane formed by the bottom of the fascia board
<b>Commercial Flag</b>	1 per lot	50 SF	30 ft.
<b>Freestanding</b>	1 per street frontage	32 SF, or 110 SF for combined freestanding sign	15 ft.
<b>Projecting</b>	1 per occupant per street frontage	15 SF	15 ft. max. above grade level
<b>Wall</b>	1 per occupant per street frontage	1 SF per LF of building frontage associated with the business	N/A
<b>Temporary</b>	Not limited	12 SF per sign, and an aggregate of 60 SF per parcel	4 ft.
<b>Minor</b>	Not limited	3 SF per sign	4 ft.
<b>Notes:</b> <i>SF = square feet; LF = linear feet; ft. = feet</i>			

**Essex County Zoning & Subdivision Ordinance**  
**Public Hearing Draft**  
**April 12, 2022**

- (b) District Standards: A-1, A-2, R-1, R-2, R-3, R-4, PUD, and MH-1 Zoning Districts. Individual signs shall be subject to the following requirements:
- (1) All permitted signs may be indirectly lighted, unless such lighting is specifically prohibited in this division.
  - (2) The number, size, and placement of signs shall be subject to the requirements provided in Table 36.14. In addition to these requirements, the total cumulative area permitted for all signs on a single parcel located in a R-1, R-2, R-3, R-4, or MH-1 district shall not exceed a maximum area of 16 SF.
  - (3) For the purposes of Table 36.14, Agricultural Uses shall be those uses categorized as Agricultural in Table 36.12, Zoning Use Matrix. Non-residential Uses shall be those uses categorized as Public/Civic/Recreation, Commercial, Industrial, or Miscellaneous in Table 36.12, Zoning Use Matrix.

Table 36.14. Maximum Sign Dimensions – A-1, A-2, R-1, R-2, R-3, R-4, PUD, and MH-1 Zoning Districts									
Residential Uses				Community Signs & Agricultural Uses			Non-Residential Uses		
Sign Type	Number	Area (SF)	Height (ft.)	Number	Area (SF)	Height (ft.)	Number	Area (SF)	Height (ft.)
<b>Freestanding</b>	N/A See Minor Sign Requirements	N/A	N/A	1 per site entrance	16 SF	6 ft.	1 per street frontage	16 SF	15 ft.
<b>Wall</b>	N/A See Minor Sign Requirements	N/A	N/A	1 per street frontage	16 SF	N/A	1 per street frontage	16 SF	N/A
<b>Canopy</b>	Not Permitted	N/A	N/A	Not Permitted	N/A	N/A	4 per canopy	0.5 SF per LF of canopy fascia	Not extending above the cap on the fascia board or below the horizontal plane formed by the bottom of the fascia board
<b>Temporary</b>	4 per parcel	4 SF	4 ft.	4 per parcel	12 SF	4 ft.	2 per street frontage	12 SF	4 ft.
<b>Minor</b>	Not limited	3 SF	4 ft.	Not limited	3 SF	4 ft.	Not limited	3 SF	4 ft.

**Notes:**  
*SF = square feet; LF = linear feet; ft. = feet*

**Section 36.442. — Structural and Maintenance Requirements.**

- (a) All signs shall be maintained in good condition meaning in appearance and structurally safe. Any sign that has deteriorated to a state of peeling, cracking, splitting, fading, or rusting is in violation of this Ordinance and subject to enforcement as outlined in Section 36.444 of this division.
- (b) Should any sign be or become unsafe or be in danger of falling, the owner thereof or the person maintaining the sign, shall be in violation of this Ordinance and subject to enforcement as outlined in Section 36.444 of this division.

**Section 36.443 — Nonconforming Signs.**

- (a) Any sign lawfully in existence on the date of enactment of this division may be maintained even though it does not conform with the provisions of this division.
- (b) The message of a nonconforming sign may be changed.
- (c) No nonconforming sign may be enlarged or altered in such a manner as to expand the nonconformity, nor may illumination be added to any nonconforming sign.
- (d) A nonconforming sign may not be moved or replaced except to bring the sign into complete conformity with this division.
- (e) A nonconforming sign destroyed by any cause may not be repaired, reconstructed, or replaced except in conformity with this division. For the purposes of this section, a nonconforming sign is destroyed if damaged to an extent that the cost of repairing the sign to its former condition or replacing it with an equivalent sign equals or exceeds 50 percent of the appraised value of the sign so damaged.
- (f) A pre-existing sign must be removed if the structure, building, or use to which it is accessory is destroyed, or demolished to an extent exceeding 50 percent of the appraised value of the principal structure, building, or use.

**Section 36.444 — Enforcement.**

- (a) *Violations.* Violations of this division constitute violations of the zoning code and the County may obtain compliance through any of the methods available for other zoning violations.
- (b) *Removal of signs in violation.* The Zoning Administrator may order the removal of any sign erected or maintained in violation of this division. The Zoning Administrator shall give 30 days' notice in writing to the owner of such sign or of the building, structure, or premises on which such sign is located to remove the sign or to bring it into compliance with this division. The Zoning Administrator may remove a sign immediately and without notice if, in his opinion, the condition or placement of the sign is such as to present an immediate threat to the safety of the public. Any surface exposed by the removal of a sign shall be restored to its original condition by the property owner and be compatible with adjacent surfaces.
- (c) *Removal of abandoned signs.* A sign shall be removed by the owner or lessee of the premises upon which the sign is located when the business which it advertises is no longer conducted on the premises. If the owner or lessee fails to remove such sign, the Zoning Administrator shall give the owner 30 days' written notice to remove it. Upon failure to comply with this notice, the Zoning Administrator or his duly authorized representative may remove the sign at cost to the property owner.

**Section 36.445. — Appeals.**

Any person aggrieved by any decision or order of the Zoning Administrator may appeal to the Board of Zoning Appeals by serving written notice to the Zoning Administrator, who, in turn, shall immediately transmit the notice to the Board, which shall meet to hear it within 30 days thereafter. The Zoning Administrator shall take no further action on the matter, pending the Board's decision, except concerning unsafe signs which present an immediate and serious danger to the public.

Reserved 36.446 — 36.454



## **Division 2. — Parking and Loading**

### **Section 36.455. — Purpose and Intent.**

- (a) The purpose of this Division is to ensure efficient traffic flow and to reduce hazards to public safety by establishing standards for off-street parking and off-street loading areas.
- (b) This Division is intended to:
  - (1) Ensure adequate parking is designed and constructed during the erection of all new structures and the modifications to existing structures.
  - (2) Provide safe and convenient traffic flow and add to the beautification of the County.

### **Section 36.456. — Generally.**

- (a) Off-street parking and loading shall be provided in all zoning districts in accordance with the requirements of this division.
- (b) For the purpose of this division, an off-street parking space is a graveled, stone, or hard all-weather surfaced area not in a street or alley.
- (c) Parking shall be provided at the time of the erection of any building or structure, not less than the amount of parking space given in Article VII, Section 36.462, Schedule of Required Spaces. Such space shall be maintained and shall not be encroached upon unless in conformance with the section on reduction below.
- (d) Loading space, as required in Article VII, Section 36.464, Off-street Loading, shall not be construed as supplying off-street parking.

### **Section 36.457. — Location in Relation to Use.**

- (a) All parking spaces required herein shall be located on the same lot with the building or principal use served; except that:
  - (1) Upon approval of a conditional use permit by the Board of Supervisors.
  - (2) Where an increase in the number of spaces is required where such spaces are/may be provided collectively or used jointly by two or more buildings or establishments.
- (b) A remote parking lot to satisfy the required spaces may be located and maintained not to exceed 600 feet from the served building.
  - (1) Such parking space shall be established by a recorded covenant or agreement as parking space to be used in conjunction with the principal use and shall be reserved as such through an encumbrance on the title of the property to be designated as required parking space.

### **Section 36.458. — Joint Use of Spaces.**

- (a) Religious Assembly parking spaces already provided to meet off-street parking requirements for theaters, stadiums, auditoriums and other places of public assembly, stores, office buildings and industrial establishments, lying within 600 feet of a religious assembly, as measured along lines of public access, that are not normally used between the hours of 6:00 a.m. and 6:00 p.m. on Sundays and that are made available for other parking may be used to meet not more than 75% of the off-street parking requirements of a religious assembly.
- (b) Other places of public assembly. Parking spaces already provided to meet off-street parking requirements for stores, office buildings, and industrial establishments, lying within 500 feet of a place of public assembly, as measured along lines of public access, that are not normally in use between the hours of 6:00 p.m. and

12:00 midnight and that are made available for other parking may be used to meet not more than 50 percent of the total requirements of parking space.

- (c) In the case of mixed or joint uses of a building or premises having different peak parking demands, the parking spaces required may be reduced if approved by the Planning Commission or Zoning Administrator in conjunction with site plan approval. In such instances, the applicants shall demonstrate that the periods of peak use are separated sufficiently, and shared parking spaces are available to all uses sharing them, so as to not cause a parking demand problem.

**Section 36.459. — Reduction.**

Off-street parking space required under this division may be reduced at a time when the capacity or use of a building is changed in such a manner that the new use or capacity would require less space than before the change. Such reduction may not be to a level below the standards set forth in this division.

**Section 36.460. — Design Standards for Off-Street Parking.**

- (a) *Surfacing.* Surfacing of off-street parking or driveways shall consist of an improved dustless surface. Areas that include lanes for drive-in windows or contain parking areas consisting of 10 or more parking spaces shall be graded and surfaced with asphalt, concrete, or other material that will provide equivalent protection against potholes, erosion, and dust.
- (b) *Area.* Off-street parking areas shall be marked off into parking spaces with a minimum width of 9 feet and a minimum length of 18 feet; or in the case of parking spaces for trucks, buses, or special equipment, parking spaces of a minimum size to be determined by the Administrator based on the nature of the parked vehicles.
- (c) *Handicap Accessible Parking.* Every land use shall include the number of handicap accessible off-street parking spaces in accordance with the requirements of the Virginia Uniform Statewide Building Code.
- (d) *Separation from Walkways and Streets.*
  - (1) Off-street parking spaces shall be separated from walkways, sidewalks, streets, or alleys by a wall, fence, or curbing.
  - (2) Off-street parking shall not be located within 5 feet of any commercial building.
- (e) *Entrances and Exits.* The entrances and exits to the parking area shall be clearly marked. Interior vehicular circulation by way of access roads shall maintain the following minimum standards:
  - (1) Access roads for one-way traffic shall have a minimum width of 14 feet, except for 45 degree parking in which case the minimum width of the access road shall be 17 feet.
  - (2) Access roads for two-way traffic shall have a minimum width of 24 feet.
  - (3) Parking areas having more than one aisle or driveway shall have directional signs or markings in each aisle or driveway.
- (f) *Drainage and maintenance.* Off-street parking facilities shall be drained to eliminate standing water and prevent damage to abutting property and/or public streets and alleys. Off-street parking areas shall be maintained in a clean, orderly and, to the extent possible, dust-free condition at the expense of the owner or lessee.
- (g) *Marking.* For parking areas consisting of 10 or more spaces, each parking space shall be striped and maintained. Parking spaces shall be marked by painted lines or curbs or other means to indicate individual spaces. Signs or markers shall be used to ensure efficient traffic operation on the lot.
- (h) *Arrangement of Interior Aisles.* All aisles within parking areas shall have a minimum width of 24 feet when the parking spaces are at a 90-degree angle with the aisle; 18 feet when the parking spaces are at 60-degree angle with the aisle; and 12 feet for parallel parking.

- (i) *Lighting.* Adequate lighting shall be provided if off-street parking spaces are to be used at night. Any lights used to illuminate parking areas shall be so arranged as to reflect light away from adjoining premises.
- (j) *Screening.* Whenever a parking area is located in or adjacent to a residential district, it shall be effectively screened on all sides which adjoin or face any property used for residential purposes by an acceptable solid masonry wall, a uniformly painted solid board fence, or evergreen hedge. Such screen shall be maintained in good condition and not less than four feet nor more than 6 feet in height, except in areas requiring natural air circulation, unobstructed view or other technical considerations necessary for proper operation, may submit a screening plan to be approved by the Zoning Administrator.
- (k) *Fleet Vehicles.* Whenever daily or overnight storage of fleet vehicles is proposed, these vehicles shall be parked in off-street parking spaces located to the side or rear of the principal structure and screened in accordance with the requirements of this division. These off-street parking spaces shall be identified on any approved site plan.

**Section 36.461. — Obligations of Owner.**

The requirements for off-street parking space and off-street loading space shall be a continuing obligation of the owner of the real estate on which any structure or use is located as long as such structure or use is in existence and the use requiring vehicle parking or vehicle loading facilities continues. It shall be unlawful for the owner of any structure or use affected by this division to discontinue, change, dispense with, or cause the discontinuance or change of the required vehicle parking or loading space, apart from the alternate vehicle parking or loading space which meets with the requirements of and is in compliance with this division. It shall be unlawful for any firm or corporation to use such structure without acquiring such land or other suitable land for vehicle parking or loading space which meets the requirements of and is in compliance with this Division.

**Section 36.462. — Schedule of Required Spaces.**

Except as otherwise provided in this Ordinance, when any building or structure is hereafter erected or structurally altered, or any building or structure hereafter erected is converted, off-street parking spaces shall be provided according to the requirements for individual uses in the following table. Where fractional spaces result, the parking spaces required shall be construed to be the next highest whole number. Specifications for exemptions to off-street parking requirements are contained in Article VII, Section 36.463, Interpretation of Specific Requirements.

Table 36.15. Minimum Off-Street Parking Requirements	
Uses	Minimum Number of Required Parking Spaces
<b>Residential Uses</b>	
<b>Manufactured dwelling, single-family or two-family dwellings, accessory dwellings, townhouses, and group home</b>	2 for each dwelling unit; 1 for each accessory dwelling
<b>Manufactured home park</b>	2 for each dwelling unit, plus 1 for owner/employee
<b>Multi-family dwellings</b>	2 for each dwelling unit, or 1 for each bedroom, whichever is greater
<b>Shelter, life care facility</b>	1 for each 2 residents

<b>Table 36.15. Minimum Off-Street Parking Requirements</b>	
<b>Uses</b>	<b>Minimum Number of Required Parking Spaces</b>
<b>Public/Civic/Recreation Uses</b>	
<b>Cultural facility</b>	3 for each 1,000 square feet of exhibit area, plus 1 for each employee on largest shift
<b>Education facility, high/college</b>	1 for each employee on largest shift, plus 1 per 3 full time equivalent students, if a stadium is built in conjunction with the school, only the parking spaces in excess of the current spaces shall be required.
<b>Education facility, primary/secondary</b>	1 for each employee on largest shift, plus 1 space for each 4 seats in the largest assembly room
<b>Public Park and recreation area</b>	1 space per 4 visitors at peak service
<b>Recreational facility, private, country club, golf club or other private clubs</b>	1 per 5 members, or 1 for each 400 square feet of floor area, whichever is greater
<b>Religious assembly, place of assembly, day or youth camp</b>	1 per 4 fixed seats in main assembly area or 1 for each 100 square feet of assembly floor space without fixed seating
<b>Commercial Uses</b>	
<b>Automobile and commercial vehicle repair service, car washes and gasoline stations</b>	3 for each bay, stall, rack, or pit, plus 1 for each gasoline pump; minimum 5 spaces
<b>Automobile and equipment sales, rental/leasing</b>	1 customer vehicle space for each 500 square feet of building floor space
<b>Brewery, distillery, winery, tasting room</b>	1 for each 150 square feet of food beverage preparation and consumption area, plus 1 per 800 square feet of operations
<b>Business or trade school</b>	1 per employee on largest shift, plus 1 per 4 students

<b>Table 36.15. Minimum Off-Street Parking Requirements</b>	
<b>Uses</b>	<b>Minimum Number of Required Parking Spaces</b>
<b>Commercial indoor amusement and recreation, bowling alleys, skating rinks</b>	1 space for each 3 persons based on maximum occupancy, plus 1 space per employee on largest shift
<b>Commercial indoor entertainment, theaters, concert halls</b>	1 for each 3 seats, plus 1 space per employee on largest shift
<b>Commercial outdoor recreation and amusement, motor vehicle racing, driving ranges, amusement park, shooting range</b>	1 per each 3-person based on maximum occupancy load, plus 1 space per employee on largest shift
<b>Day care center</b>	1 for each 250 square feet
<b>Farmer's market, seasonal outdoor sales</b>	6, plus 1 per 250 square feet
<b>Financial institutions</b>	1 for each 250 square feet of floor area, plus 4 stacking spaces per service window
<b>Funeral homes</b>	1 for each 50 square feet of main assembly area, 30 spaces minimum
<b>Garden center</b>	1 for each 300 square feet
<b>Hospitals</b>	1 per patient bed
<b>Hotel</b>	1 for each bedroom or unit, plus required parking for any restaurant or assembly space
<b>Nursing homes</b>	1 per 2 beds
<b>Office, general</b>	1 for each 400 square feet of floor area
<b>Offices, medical or clinic</b>	1 per 200 square feet of floor area; 10 spaces minimum for a clinic
<b>Personal services, personal improvement services, consumer repair service, business support service, fine arts studio, tattoo parlor</b>	1 for each 500 square feet of floor area
<b>Restaurants (except drive-in)</b>	1 for each 150 square feet of floor space, including outside seating

Table 36.15. Minimum Off-Street Parking Requirements	
Uses	Minimum Number of Required Parking Spaces
Restaurants, drive-in	1 for each 150 square feet of floor area plus stacking spaces as required in the Use Performance Standards section
Retail store (all types)	1 for each 250 square feet of floor area
Tradesperson service, catering facility, janitorial business	1 per 3 employees on maximum working shift plus space for storage of trucks or other vehicles used in connection with business
Veterinary hospital, commercial kennel	1 for each 400 square feet of floor area
<b>Industrial Uses</b>	
Construction yard, junkyard	1 per employee on maximum working shift plus space for storage of trucks or other vehicles used in connection with business
Manufacturing, light or heavy, laboratory research and development	1 per employee on maximum working shift plus space for storage of trucks or other vehicles used in connection with the business or industry
Warehouses, wholesales sales, distribution	1 for each 1,250 square feet of floor area
<b>Accessory Uses</b>	
Accessory dwelling unit	1 per unit
Bed-and-breakfast, short-term rental	1 for each bedroom in addition to parking spaces required for permanent residents of the building
Family home day care (1-4 individuals)	1 plus residential requirement
Home occupation	<b>Type A:</b> 1 plus residential requirement, <b>Type B:</b> 3 plus residential requirement

**Section 36.463. — Interpretation of Specific Requirements for Table 36.15.**

- (a) The parking requirements above are in addition to space for storage of trucks, campers, recreation vehicles, or other similar vehicles used in connection with the use.
- (b) The parking requirements in this division do not limit other parking requirements contained in the district regulations.
- (c) The parking requirements in this division do not limit special requirements, which may be imposed for approval of a conditional use or special exception.
- (d) For residential uses, the total number of off-street parking spaces provided inside a private garage shall be calculated based on the intended design of the garage.
- (e) Except as otherwise provided, the number of employees shall be compiled on the basis of the maximum number of persons employed on the premises at one time on an average day or average night, whichever is greater. Seasonal variations in employment may be recognized in determining an average day.
- (f) The parking space requirements for a use not specifically listed in the chart shall be the same as for a listed use of similar characteristics of parking demand generation.
- (g) In the case of mixed uses, uses with different parking requirements occupying the same building or premises, or in the case of joint use of a building or premises by more than one use having the same parking requirements, the parking spaces required shall equal the sum of the requirements of the various uses computed separately.
- (h) Whenever a building or use is changed or enlarged in floor area, number of employees, number of dwelling units, seating capacity or otherwise, to create a need under the requirements of this division for an increase in parking spaces of 10 percent or more, such additional spaces shall be provided on a basis of the change or enlargement. No additional spaces shall be required for the first change or enlargement which would result in an increase of spaces of less than 10 percent of those required before the change or enlargement, but this exception shall not apply to a series of changes or enlargements which together result in a need for an increase in parking space of 10 percent or more.

**Section 36.464. — Recreational Vehicle and Boat Parking.**

- (a) Occupied Lots. On lots with a principal structure, no more than two recreational vehicles, boats, trailers, or combination thereof may be parked externally.
- (b) Vacant Lots. On lots without a principal structure:
  - (1) The parking of recreational vehicles, boats, and/or trailers on vacant lots is prohibited except when the owner of the vacant lot owns a contiguous parcel that contains a principal structure.
  - (2) For vacant lots under shared ownership with a contiguous parcel that contains a principal structure, no more than two recreational vehicles, boats, trailers, or combination thereof may be parked externally.
- (c) Location on Lots. All parked recreational vehicles and boats must meet the minimum side and rear setbacks required for an accessory structure and the front setback of the district in which it is placed.
- (d) Exceptions. These standards shall not apply to Recreational vehicle storage, commercial or Outdoor storage where permitted and in compliance with this ordinance.

**Section 36.465. — Off Street Loading Requirements.**

- (a) Off-street loading shall be provided at the time of the erection of any building or structure or at the time any building or structure is altered, enlarged, or increased in capacity by adding dwelling units, guest rooms, floor area, or seats, or a change of use, not less than the amount of loading space given in article VII, section 8, Off-street loading requirements.

- (b) *Location.* All required off-street loading areas shall be located on the same lot as the use served and with the ability to be adequately screened as outlined in the design standards below.
- (c) *Surfacing.* All off-street loading areas shall be surfaced with an improved dustless surface.
- (d) *Utilization.* Space allocated to any off-street loading use shall not be used to satisfy the space requirements for any off-street parking area or portion thereof.
- (e) *Specific Requirements by Use.* Except as otherwise provided in this Ordinance, when any building or structure is hereafter erected, or structurally altered to the extent of increasing the floor area by twenty-five (25) percent or more, or any building in hereafter converted, for the uses listed below, when such buildings contain the floor areas specified, accessory off-street loading spaces shall be provided as required below or as required in subsequent sections of this Division.

<b>Table 36.16. Minimum Off-Street Loading Requirements</b>		
<b>Use or Use Category</b>	<b>Floor Area (SF)</b>	<b>Loading Spaces Required</b>
<b>Commercial and Industrial establishments (except those uses listed below)</b>	0-1,999	None
	2,000-20,000	One
	20,001-100,000	One space, plus one space for each 20,000 sq. ft.
	Each 40,000 over 100,000	One Additional
<b>Dwelling, multifamily; funeral home; hotel; office; hospital or similar institutions; or places of public assembly</b>	0-4,999	None
	5,000-10,000	One
	10,001-100,000	Two
	100,001-200,000	Three
	Each 100,000 over 200,000	One Additional

**Section 36.466. — Interpretation of Specific Requirements for Table 36.16.**

- (a) *Loading Requirements.*
  - (1) The loading space requirements apply to all districts but do not limit the special requirements which may be imposed in the district regulations.
  - (2) The loading space requirements in this division do not limit special requirements which may be imposed in connection with uses permitted by approval of a conditional use or special exception.
- (b) *Joint Use of Space.* Where a building is used for more than one use or for different uses, and where the floor area used for each use for which loading space is required is below the minimum for required loading spaced but the aggregate floor area used is greater than such minimum, then off-street loading space shall be provided as if the entire building were used for the use in the building for which the most spaces are required. In such cases, the Administrator may make reasonable requirements for the location of required loading.



**Section 36.467. — Design Standards for Off-Street Loading.**

- (a) *Minimum Size.* For the purpose of the regulations of this division, a loading space is a space within the principal building or on the same lot providing for the standing, loading, or unloading of trucks, and having a minimum area of 480 square feet, a minimum width of 12 feet, a minimum depth of 40 feet, and a vertical clearance of at least 15 feet.
- (b) *Screening.* Whenever an off-street loading area is located in or adjacent to a residential district, it shall be effectively screened on all sides which adjoin or face any property used for residential purposes by an acceptable solid masonry wall, a uniformly painted solid board fence, or evergreen hedge. Such screen shall be maintained in good condition and not less than four feet nor more than 6 feet in height, except in areas requiring natural air circulation, unobstructed view or other technical considerations necessary for proper operation, may submit a screening plan to be approved by the Zoning Administrator.
- (c) *Loading Space for Funeral Homes.* Loading spaces for a funeral home may be reduced in size to 10 by twenty-five (25) feet and vertical clearance reduced to 8 feet.
- (d) *Entrances and Exits.* Location and design of entrances and exits shall be in accord with applicable requirements of the district regulations and traffic regulations and standards. Where the entrance or exit of a building is designed for truck loading and unloading, such entrance or exit shall be designed to provide a least one off-street loading space. Where an off-street loading space is to be approached directly from a major thoroughfare, necessary maneuvering space shall be provided on the lot.

Reserved 36.468 — 36.474.

**Division 3. — Lighting**

**Section 36.475. — Purpose and Intent.**

The purpose of this Division is to:

- (1) Permit the use of exterior lighting at the minimum level necessary for nighttime safety, utility, security, productivity, enjoyment, and commerce;
- (2) Ensure exterior lighting does not adversely impact land uses on adjacent land by minimizing light trespass, obtrusive light, and glare;
- (3) Curtail light pollution, reduce sky glow, and preserve the nighttime environment for astronomy, wildlife, and enjoyment of residents and visitors; and,
- (4) Ensure security for persons and property.

**Section 36.476. — Applicability.**

- (a) *General.* The provisions of division 3 shall apply to all business zoning districts, industrial zoning districts, the R-3 High Density Residential District, the MH-1 Mobile Home Park District, and on any property located within any other zoning district that is used for non-residential purposes through a permitted use, an administrative permit, or a conditional use permit.
- (b) *Time of Review.* Review for compliance with the standards of this division shall occur as part of the review of an application for a site plan, planned development, certificate of approval, certificate of zoning use, conditional use or variance as appropriate by the Zoning Administrator.
- (c) *Existing Development.* Compliance with these standards, to the maximum extent practicable, shall also apply to redevelopment of an existing structure, building, or use when it is expanded, enlarged, or otherwise increased in intensity equivalent to or beyond 50 percent.

- (d) Signs. Lighting for signage shall be governed by the standards set forth in the separate division of this Zoning and Subdivision Ordinance regulating signs.
- (e) Exemptions. The following are exempted from the exterior lighting standards of Article VII:
  - (1) Lighting within a public street right-of-way or easement that is used principally for illuminating a roadway;
  - (2) Lighting exempt under state or federal law;
  - (3) Lighting for public monuments and statuary;
  - (4) Lighting that is required under the Uniform Statewide Building Code;
  - (5) Construction, emergency, or holiday decorative or festive lighting, provided such lighting does not create unsafe glare on street rights-of-way and is used for 90 days or less;
  - (6) Temporary lighting for circuses, fairs, carnivals, theatrical and other performance areas, provided such lighting is discontinued upon completion of the performance;
  - (7) Security lighting that is directed downward, does not glare onto adjacent property, and is controlled and activated by motion sensor devices for a duration of 15 minutes or less;
  - (8) Lighting for flags of the United States of America or the Commonwealth of Virginia, or any department, division, agency or instrumentality thereof, and other noncommercial flags expressing constitutionally protected speech;
  - (9) Architectural lighting of 40 watts incandescent or less;
  - (10) Lighting for an outdoor athletic facility;
  - (11) The replacement of an inoperable lamp or component which is in a luminaire that was installed prior to the date of the adoption of this division;
  - (12) The replacement of a failed or damaged luminaire that is one of a matching group serving a common purpose installed prior to the adoption of this division.

**Section 36.477. — Standards.**

- (a) Each outdoor luminaire subject to these outdoor lighting requirements shall be a full cutoff luminaire. The term full cut-off fixture means an outdoor light fixture shielded in such a manner that all light emitted by the fixture, either directly from the lamp or indirectly from the fixture, is projected down below the fixture.
- (b) In addition to being full cut-off lighting, all lighting shall be aimed and controlled such that directed light is directed inward to the property and confined to the object intended to be illuminated. Directional control shields shall be used when necessary to limit stray light and prevent glare to adjacent properties and vehicular public rights-of-way.
- (c) All exterior lights shall be 3,000 Kelvin light color temperature or less.
- (d) High-pressure sodium vapor or light emitting diode (LED) lights shall be the preferred type of exterior site lighting. The use of mercury vapor lights shall be discouraged in any exterior lighting applications, except for under-canopy lighting for gasoline pump islands, bank, or other drive-through or drive-in facilities.
- (e) Light fixtures under any canopy shall be recessed into the canopy ceiling with a flat lens to prevent glare.

- (f) Light fixtures in parking lots shall not be more than 20 feet in height in the Business Districts, High Density Residential District, and no more than 30 feet in height in the Industrial Districts.
- (g) Lighting for buildings, signs, accessways, and parking areas shall be so arranged as not to reflect toward public streets or cause any annoyance to surrounding property owners or residents

**Section 36.478. — Compliance.**

- (a) The lighting standards shall be enforced by the Essex County Zoning Administrator. Modifications of the lighting standards contained herein may be approved by the Zoning Administrator upon a determination that the lighting is necessary for nighttime safety, utility, security, productivity, enjoyment, and commerce and does not adversely impact pedestrians, traffic or adjacent properties.
- (b) An appeal to the Board of Zoning Appeals may be taken by any person aggrieved or by any officer, department, board, or bureau of the County affected by any decision of the Zoning Administrator in enforcement of this division as outlined in Article II, Division 6 of this Ordinance.

Reserved 36.479. — 36.484.

**Division 4. — Landscaping, Walls, and Fences**

**Section 36.485. — Purpose and Intent.**

The purpose of this division is to establish standards for landscape architecture, site design, site buffering, landscape screening, and regulate the location, height, and appearance of fences and walls. With the intent of preserving and promoting the health, safety, and general welfare of the County, this division is intended to:

- (1) Preserve and enhance the aesthetic character and visual harmony of the County;
- (2) Protect the quality of the County's natural rivers, streams, and wetlands;
- (3) Enhance erosion control;
- (4) Improve the relationship between adjacent properties through screening, buffering, and proper placement and design of fences and walls;
- (5) Promote economic development in the County's business districts and main thoroughfares; and,
- (6) Ensure the safety, security, and privacy of properties.

**Section 36.486. — Application of Landscape, Wall, and Fence Standards.**

- (a) These requirements shall apply to:
  - (1) All new developments, or redevelopments, requiring an approved site plan or uses requiring a buffer in the use development standards as specified by this Ordinance.
  - (2) All properties seeking rezoning to R-3, PUD, MH-1, B-1, B-2, I-1, or I-2 zoning.
  - (3) All properties seeking a conditional use permit in a R-1, R-2, R-3, PUD, B-1, B-2, I-1, or I-2 zoning district under the requirements of this Ordinance.
- (b) These requirements shall not apply to parcels containing single-family detached dwellings or two-family dwellings.

**Section 36.487. — Landscape Plan Requirements.**

- (a) The landscape plan shall:
  - (1) Be prepared and/or certified by a landscape architect, landscape nursery person, horticulturalist, or other design professional practicing within their area of competence; provided, however, that in the case of a single lot disturbing less than 10,000 square feet, the landscaping plan may be prepared by the property owner.
  - (2) Cover the entire project area included in the overall site plan or development plan for which approval is sought.
- (b) The landscape plan shall include:
  - (1) Location, type, size, height, and number of proposed plantings.
  - (2) Planting specifications or installation details.
  - (3) Location and size of all existing plants and trees to be retained during construction, as well as protection measures to be implemented during construction.
  - (4) Location, size, and other related design details for all hardscape improvements, signage, recreational improvements, and open space areas, fences, walls, barriers, and other related elements.
  - (5) Designation of required setbacks, yards, and screening areas.
  - (6) Location of other man-made site features, parking lots, hardscape improvements, overhead structures, and underground utilities to ensure that landscape materials will not be in conflict with the placement and operation of these improvements.
- (c) The following factors shall be considered:
  - (1) Location of trees, shrubs, groundcovers, and other landscaping to effectively utilize the natural capacities of plant materials to intercept and absorb airborne and runoff-related pollutants, and to reduce runoff volume, velocity, and peak flow increases caused by development.
  - (2) Preservation and protection of existing viable and mature trees to the maximum extent feasible.
  - (3) Appropriateness of plants and locations for the specific characteristics of the site and the purpose for installation.
  - (4) A preference to design and plant materials which are native and with reduced water needs.
  - (5) An emphasis on landscaping in front of the principal building on the site and on providing appropriate breaks in parking and vehicular areas.

**Section 36.488. — General Standards.**

- (a) Any required landscaping shall be installed prior to the issuance of a certificate of occupancy. When the planting of landscaping conflicts with the planting season, a certificate of occupancy may be issued subject to the owner or developer providing surety in an amount approved by the Zoning Administrator for any remaining plantings. The owner or developer shall provide a development agreement which sets a deadline by which the plantings will be installed to be approved by the Zoning Administrator. The surety and agreement shall be in a form approved by the County attorney.
- (b) Existing healthy trees and shrubs shall be credited toward any minimum landscaping required by this division, provided they meet minimum size standards and are protected before and during construction and maintained thereafter in a healthy growing condition.

- (c) The owner of the property upon which the required landscaping or buffering is installed shall be responsible for maintenance and replacement. If any required tree, shrub, or other landscaping element shall die or be removed after issuance of the certificate of occupancy, the developer, his or her successors or assigns, shall replace each by the end of the next planting season with trees or shrubs of the same or similar species, type, color, or character.
- (d) Landscaping shall not obstruct the view of motorists using any street, private driveway, parking isles, or the approach to any street intersection so as to constitute a traffic hazard or a condition dangerous to the public safety.
- (e) All required landscape materials shall conform to the following minimum size or height standards at the time of planting:
  - (1) Deciduous shade trees: 2" caliper
  - (2) Ornamental and understory trees: 4' height
  - (3) Coniferous trees: 6' height
  - (4) Shrubs: 12" spread or height

**Section 36.489. — Buffering.**

- (a) Landscape buffering is intended to provide a year-round visual screen between two or more properties in order to minimize visual and other adverse impacts. Buffering may consist of fencing, evergreens, boulders, mounds, or a combination of materials.
- (b) A landscape buffer area shall be required where:
  - (1) A business zoning district abuts a residential zoning district;
  - (2) Industrial zoned development abuts a residential, business, or Planned Unit Development zoning district;
  - (3) Multi-family residential development abuts any property zoned R-1 or R-2; or
  - (4) Where buffering is required under the Use Performance Standards.
- (c) A landscape buffer area shall be required where accessory outdoor storage use is adjacent to a business or residential district.
- (d) Required buffers shall consist of a continuous six-foot high buffer with a minimum width of 25 feet. Buffers shall be comprised of:
  - (1) A solid masonry wall or opaque fence at least six feet in height and landscaping consisting of two deciduous trees and four evergreen trees per 100 linear feet of buffer; or,
  - (2) Landscaping consisting of:
    - a. One evergreen tree per seven linear feet of buffer, which shall be placed in two staggered rows six feet apart;
    - b. One understory tree per twenty-five linear feet of buffer;
    - c. One deciduous tree per fifty linear feet of buffer; and,
    - d. One shrub per three linear feet of buffer.
- (e) Plants should be sufficiently large and planted in such a fashion that a year-round screen at least 6 feet in height shall be produced within one growing season.
- (f) No buildings, structures, storage of materials, or parking shall be permitted within a buffer area.

- (g) Buffer plantings shall be maintained in perpetuity in such a way as to ensure that the buffering requirements of this Ordinance continue to be met. Any dead or dying plants shall be removed within 30 days of notification by the Zoning Administrator and shall be replaced by the property owner during the next viable planting season.

**Section 36.490. — Parking Lot Landscaping.**

- (a) All vehicle parking areas shall include landscaping, both within the interior of the parking area and around its perimeter, to provide shade, screen views, mitigate runoff, and provide aesthetic appeal. However, the landscape provisions of this division shall not apply to off-street parking for individual single or two-family residential dwellings or for parking structures.
- (b) Parking Lots Adjacent to Lot Lines: For parking lots immediately adjacent to lot lines, the following landscape regulations shall apply:
  - (1) Where a parking lot (or a private driveway providing access to a parking lot or building entry) abuts a property line not common with the right-of-way of a street, a landscaping strip of 10 feet in width shall be located between the parking lot and the abutting property line.
  - (2) A minimum of one tree for each 40 feet of contiguous property line shall be planted in the landscape strip.
  - (3) Parking Lots Adjacent to Public Streets: For parking lots and private access adjacent to public streets, the following landscape regulations shall apply:
    - a. Where a parking lot (or a private driveway providing access to a parking lot or building entry) abuts a public right-of-way, a landscaping strip of 10 feet in width (not including the sidewalk) shall be located between the parking lot or private driveway and the right-of-way line.
    - b. A minimum of one tree for each 40 feet of property line common with the public right-of-way shall be planted in the landscaping strip.
- (c) Landscaped planting islands (located such that parking spaces are on opposing sides of the planting island) shall be developed in parking lots meeting the following criteria:
  - (1) The total size of the parking lot exceeds 50 total parking spaces or;
  - (2) Parking lot layout incorporates three or more double-loaded or single-loaded parking bays which are contiguous and parallel to each other.
- (d) Parking Lots with Planting Islands: For parking lots with planting islands, the following regulations shall apply:
  - (1) Interior planting islands shall, at a minimum, be provided at both ends of all bays and may also be provided within a continuous landscaped median separating two rows of parking.
  - (2) The minimum landscape area shall be 10 percent of the parking area.
  - (3) One landscape island is required for every 10 spaces.
  - (4) A minimum of one tree for each five spaces of required parking. The remaining area of the island shall be landscaped with shrubs, ground cover, lawn or additional trees.
  - (5) Planting islands shall have a minimum width of 8 feet to allow for bumper overhang and shall otherwise provide adequate width for the growth and maintenance of the intended landscape materials to be planted therein.
  - (6) Except in the case of redevelopment proposals, this parking lot tree requirement is only applicable to those proposals that necessitate additional parking spaces over those that are currently provided.

- (e) The primary landscaping materials used in parking lots shall be trees which provide shade or are capable of providing shade at maturity. Shrubs and other live planting material may be used to complement the primary landscaping.
- (f) The landscaping shall be dispersed throughout the parking lot, with interior dimensions of any planting area (i.e., interior parking median or island) sufficient to protect and maintain all landscaping materials planted therein.
- (g) Parking lot landscaping shall be installed and continuously maintained by the owner according to the requirements contained in this article.

**Section 36.491. — Screening and Enclosure.**

- (a) Screening shall be required to conceal specific areas from both on-site and off-site views. Such areas shall be screened at all times, regardless of adjacent uses, adjacent districts, or other proximate landscaping material. Specific areas to be screened include:
  - (1) Waste receptacles (dumpsters) and refuse collection points (including cardboard recycling containers);
  - (2) Loading and service areas;
  - (3) Outdoor storage areas (including storage tanks);
  - (4) Ground-based utility equipment with size in excess of 12 cubic feet; and,
  - (5) Ground level mechanical units.
- (b) The above-mentioned areas shall be screened using an appropriate combination of landscape plants, solid fencing, or masonry walls to adequately screen them from views both on and off the subject property.
- (c) Waste receptacles and refuse containers shall be fully enclosed with tightly fitting lids.
- (d) Access to all grease containers, recycling and trash containers, and other outside storage shall be through gates capable of closure when not in use. All gates shall be closed and secured when not in use.
- (e) Screening plantings shall be maintained in perpetuity in such a way as to ensure that the screening requirements of this Ordinance continue to be met. Any dead or dying plants shall be removed within 30 days of notification by the Zoning Administrator and shall be replaced by the property owner during the next viable planting season.

**Section 36.492. — Tree and Plant Standards.**

- (a) Recommended Trees and Plants.
  - (1) Landscaping plans and plantings should generally be sustainable and biologically diverse with emphasis on trees and plants native to Virginia and the Tidewater region.
  - (2) Landscape designers shall make every effort to use healthy and locally-sourced trees, shrubs, and other plants, and to create landscapes that minimize the need for maintenance and irrigation. Invasive species are not recommended.
  - (3) Final plant selections should be made by property owners in conformance with the landscape plan regarding type (evergreen or deciduous), height and width at maturity, and in consultation with qualified landscape professionals, and should consider specific site conditions, disease resistance, and other qualities to ensure healthy and beautiful landscapes.

- (b) Tree protection standards.
  - (1) Trees which are to be preserved on site shall be protected before, during, and after the development process utilizing accepted practices. At minimum, the tree protection practices set out in the Virginia Erosion and Sediment Control Handbook, as amended, shall be utilized.
  - (2) Trees selected for preservation in order to obtain landscaping credits shall be shown on the landscape plan and clearly marked in the field. In woodland areas, groups of trees shall be selected for preservation rather than single trees wherever possible.
  - (3) Trees and groups of trees which are to be preserved shall be enclosed by a temporary fence or barrier to be located and maintained five feet outside of their dripline during construction. Such a fence or barrier shall be installed prior to clearing or construction, shall be sufficient to prevent intrusion into the fenced area during construction, and in no case shall materials, vehicles, or equipment be stored or stockpiled within the enclosure. Within the fenced area, the topsoil layer shall not be disturbed except in accordance with accepted tree protection practices.
  - (4) The developer shall be responsible for notifying all construction personnel of the presence and purpose of clearing limits and protective fences or barriers and for ensuring that they are observed.
  - (5) Where grade changes in excess of six inches from the existing natural grade level are necessary, permanent protective structures such as tree wells or walls shall be installed as recommended by the tree preservation and protection standards outlined in the State Erosion and Sediment Control Handbook.
- (c) Tree preservation standards. In determining which trees shall be preserved, consideration shall be given to preserving trees which:
  - (1) Are heritage, memorial, significant, and specimen trees;
  - (2) Complement the project design including the enhancement of the architecture and streetscape appearance;
  - (3) Can tolerate environmental changes to be caused by development (i.e., increased sunlight, heat, wind, and alteration of water regime);
  - (4) Have strong branching and rooting patterns;
  - (5) Are disease and insect resistant;
  - (6) Complement or do not conflict with stormwater management and best management practice designs;
  - (7) Are located in required buffer areas;
  - (8) Exist in natural groupings, including islands of trees;
  - (9) Do not conflict with necessary utility; and
  - (10) Have been recommended by the Commonwealth Department of Forestry, the county cooperative extension service, or a certified arborist or urban forester for preservation.

**Section 36.493. — Walls and Fences.**

- (a) Fences and walls may be used within landscaped areas to provide buffering, privacy, separation, security, or for aesthetic reasons, but may not create an unsightly or unsafe condition on or off of the public or private property on which the fence or wall is proposed.



- (b) The provisions of this section shall apply to all construction, reconstruction, or replacement of fences or walls except:
  - (1) Those required for support of a principal or accessory structure;
  - (2) Engineered retaining walls necessary to the development of a site; or,
  - (3) Temporary fences for construction activities, trees protection, and erosion and sediment control.
- (c) Fences or walls shall not be located within the public right-of-way.
- (d) Fences and walls may be located within any required yard or setback.
- (e) Fences located within an easement shall receive written authorization from the easement holder or the County (as appropriate). The County shall not be responsible for damage to, or the repair or replacement of, fences that must be removed to access such easements or facilities.
- (f) No fence or wall shall be installed in a manner or in a location so as to block or divert a natural drainage flow on to or off of any other land, unless the fence or wall has specifically been approved as part of an approved stormwater management plan.
- (g) Fences and walls within buffers shall be installed so as not to disturb or damage existing vegetation or installed plant material.
- (h) No fence or wall shall be constructed in a manner or in a location that impairs safety or sight lines for pedestrians and vehicles traveling on public rights of way.
- (i) Appearance.
  - (1) *Customary Materials.* Fences and walls shall be constructed of any combination of treated wood posts and vertically-oriented planks, rot-resistant wood, wrought iron, decorative metal materials, brick, stone, masonry materials, or products designed to resemble these materials. Where wood, masonry, or other opaque materials are specified for particular types of screening or buffering fences or walls, all other fence materials are prohibited.
  - (2) *Finished Side to Outside.* Wherever a fence or wall is installed, if one side of the fence or wall appears more “finished” than the other (e.g., one side has visible support framing and the other does not), then the more “finished” side of the fence shall face the perimeter of the lot rather than the interior of the lot.
  - (3) *Compatibility of Materials Along a Single Lot Side.* All fencing or wall segments located along a single lot side shall be composed of a uniform style, material, and color compatible with other parts of the fence.
  - (4) Chain link fencing shall be allowed, subject to the following requirements:
    - a. Agricultural Districts: Chain link fencing is permitted on lots within agricultural zoning districts.
    - b. Residential Districts: Chain link fencing is permitted on lots within residential zoning districts, provided it does not include opaque slats.
    - c. Industrial Districts: Chain link fencing shall be allowed on lots within “I” zoning districts, provided it is coated with black or dark green vinyl. Where opaque fencing is required, the chain link fencing may include black or dark green opaque slats.

- d. Business/Planned Districts: Chain link fencing shall only be allowed on lots within “B” or “P” zoning districts where the chain link fencing is not visible from any street right-of-way. The chain link fencing shall be coated with black or dark green. Where opaque fencing is required, the chain link fencing may include black or dark green opaque slats.
- (j) *Prohibited Materials.* Fences or walls made of debris, junk, rolled plastic, sheet metal, plywood, or waste materials are prohibited in all zoning districts unless such materials have been recycled and reprocessed into new building materials.
- (k) All fences and walls and associated landscaping shall be maintained in good repair and in a safe and attractive condition. The owner of the property on which a fence or wall is located shall be responsible for maintenance, including but not limited to, the replacement of missing, decayed, or broken structural and decorative elements.

**Section 36.494. — Compliance.**

The landscaping standards shall be enforced by the Essex County Zoning Administrator. Modifications of the layout and design standards contained herein may be approved by the Zoning Administrator upon a determination that the following conditions exist:

- (1) The proposed layout and design provide landscaping which will have the same or similar screening impact, intensity, or variation throughout the year when viewed from adjacent properties or rights-of-way as that which would be required by strict interpretation of the standards contained in this subsection.
- (2) The proposed layout and design fully integrate and complement the existing trees to be preserved on the site.
- (3) Any trees or shrubs installed or preserved on the site which exceed the minimum numerical requirements of this chapter shall not be subject to the species mixture, locational, maintenance or replacement requirements contained herein.
- (4) The Zoning Administrator may reduce full buffering and screening to partial buffering and screening as deemed appropriate when uses are in-kind with adjacent uses.
- (5) An appeal to the Board of Zoning Appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the County affected by any decision of the Zoning Administrator in enforcement of this Article as outlined in Article II, Division 6 of this ordinance.

Reserved 36.495 — 36.504

## ARTICLE VIII. — NONCONFORMITIES

### Section 36.505. — Intent.

With the districts established by this Ordinance or amendments that may later be adopted, there exists lots, structures, and use of land and structures in combination which were lawful before this Ordinance was adopted or amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendments. It is the intent of this Ordinance to permit these nonconformities to continue as established prior to Ordinance adoption.

### Section 36.506. — Generally.

Except as otherwise provided in this Ordinance, any lawful use, building, or structure existing at the time of an amendment to this Ordinance may be continued even though such use, building, or structure may not conform to this Ordinance's provisions and shall be deemed nonconforming. A change in occupancy or ownership shall not affect the right for the use to continue or the building or structure to remain. A building permit or special use permit lawfully granted before (insert adoption DATE) shall not be affected by this provision.

### Section 36.507. — Nonconforming Lots of Record.

In any district, structures may be erected on a nonconforming lot of record at the effective date of adoption or amendment of this Ordinance or land may be used notwithstanding limitations imposed by other provisions of this Ordinance. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements, other than those applying to area or width, or both, shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained through the modification or variance processes outlined in Article III of this Ordinance.

A developed nonconforming lot may continue in existence but may not be altered except in accordance with this article.

A nonconforming lot may become a conforming lot by meeting the current minimum lot size, lot width, and lot frontage requirements of the zoning district in which the lot is located through the following actions:

- (1) A consolidation of the nonconforming lot with an adjacent lot;
- (2) A boundary adjustment between two contiguous lots, one being nonconforming and the other being conforming, provided such adjustment does not make the conforming lot nonconforming, does not create an additional lot, and does not increase the nonconforming lot's nonconformity; or
- (3) Rezoning to a different zoning district to meet the lot size, lot width, and lot frontage requirements of that district.

### Section 36.508. — Nonconforming Use.

A nonconforming use may continue as it existed when it became nonconforming. A nonconforming use shall not be reconstructed, relocated, altered, or expanded in any manner, including the addition of new accessory uses, except as provided for in this section.

- (1) A nonconforming use may change to a conforming use.
- (2) The nonconforming use may be extended throughout those parts of a building which are lawfully and manifestly arranged or designed for such use at the time of enactment of this Ordinance provided there are no structural alterations, expansion or enlargement except those required by law or lawful order.

- (3) A nonconforming use may be changed to another nonconforming use of the same or of a more restricted classification. Whenever a nonconforming use of land or buildings has been changed to a more restricted use or to a conforming use, such use shall not thereafter be changed to a less restricted use.
- (4) A nonconforming dwelling unit may have a home occupation subject to the requirements of Article V and VI.
- (5) A nonconforming use shall lose its nonconforming status, and any further use shall conform to the requirements of this Ordinance when:
  - a. The nonconforming use is discontinued for a period of two years, regardless of whether or not equipment or fixtures are removed, shall be deemed abandoned and any subsequent use shall be in conformity with the regulations of the district in which such building or land is located.
    1. However, on application made to the Administrator by the owner or any party in interest, the Administrator may extend the aforesaid two-year period up to an additional two years for good cause.
  - b. The nonconforming use is intentionally abandoned, regardless of the length of time that has passed.
- (6) The casual, intermittent, temporary or illegal use of land or buildings shall not be sufficient to establish the existence of a nonconforming use, and the existence of a nonconforming use on a part of a lot or tract shall not be construed to establish a nonconforming use on the entire lot or tract.
- (7) When evidence available to the Administrator is deemed by him to be inconclusive, whether a nonconforming use exists shall be a question of fact and shall be decided by the Board of Zoning Appeals after public notice and hearing and in accordance with the rules of the Board.

**Section 36.509. — Buildings Nonconforming in Height, Area, or Bulk.**

A building nonconforming only as to height, area, or bulk requirements may be altered or extended, provided such alteration or extension does not increase the degree of nonconformity in any respect.

**Section 36.510. — Nonconforming Buildings, Structures, and Improvements.**

- (a) A nonconforming structure or use to be extended or enlarged shall conform with the provisions of this Ordinance.
- (b) A nonconforming building or structure shall include those circumstances where the county has:
  - (1) Issued a building permit or other permit authorizing construction and the building or structure was constructed in accordance with the building permit, and upon completion, the County issued a certificate of occupancy; or
  - (2) The owner of the building or structure has paid real estate taxes to the County for such building or structure for a period of more than the previous 15 years.

Any such building or structure may be brought into compliance with the Uniform Statewide Building Code without affecting the nonconforming status of the building or structure.

- (c) Additionally, a nonconforming building or structure shall include those circumstances where:
  - (1) A permit was not required and an authorized governmental official informed the property owner that the structure would comply with the Zoning and Subdivision Ordinance; and
  - (2) The improvements were then constructed accordingly.

In any proceeding when the authorized county official is deceased or unavailable to testify, uncorroborated testimony of the oral statement of such official shall not be sufficient evidence to prove that the authorized county official made such statement.

- (d) If a nonconforming building or structure is damaged or destroyed, even if 50 percent or greater, by fire, natural disaster or other act of God, such building or structure may be repaired, rebuilt or replaced provided that:
- (1) The nonconforming features are eliminated or reduced to the extent possible, without the need to obtain a variance;
  - (2) The owner shall apply for a building permit and any work done to repair, rebuild or replace such building shall be in compliance with the provisions of the Uniform Statewide Building Code;
  - (3) The requirements of the floodplain management regulations in the County Code are met; and
  - (4) The work is done within two years unless the building is in an area under a federal disaster declaration and was damaged or destroyed as a direct result of the disaster, in which case the time period shall be extended to four years.

Owners of property damaged by an accidental fire have the same rights to rebuild such property as if it were damaged by an act of God. Nothing herein shall be construed to enable the property owner to commit an arson and obtain vested rights under this section.

- (e) If a nonconforming mobile home is removed other than by natural disaster or public action, it may not be replaced except as provided for below unless it complies with regulations within the Ordinance.

Nothing in this section shall be construed to prevent the landowner or homeowner from removing a valid nonconforming manufactured home from a mobile or manufactured home park and replacing that home with another comparable manufactured home that meets the current HUD manufactured housing code. In such mobile or manufactured home park, a single-section home may replace a single-section home and a multi-section home may replace a multi-section home. The owner of a valid nonconforming mobile or manufactured home not located in a mobile or manufactured home park may replace that home with a newer manufactured home, either single- or multi-section, that meets the current HUD manufactured housing code. Any such replacement home shall retain the valid nonconforming status of the prior home.

**Section 36.511. — Repairs and Maintenance.**

On any building devoted in whole or in part to any nonconforming use, work may be done in any period of 12 consecutive months on ordinary repairs or on repairs or replacement of nonbearing walls, fixtures, wiring or plumbing to an extent not exceeding 20 percent of the current replacement value of the structure; provided, that the cubic content of the structure as it existed at the time of passage or amendment of this Ordinance, shall not be increased. Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any structure or part thereof declared to be unsafe by any official charged with protecting the public safety, on order of such official.

Reserved 36.512. – 36.519

## **ARTICLE IX. — SUBDIVISIONS**

### **Division 1. — In General**

#### **Section 36.520. — Title.**

This article shall be known and may be cited and referred to as the “Subdivision Ordinance of Essex County, Virginia.”

#### **Section 36.521. — Recording of ordinance.**

In accord with the Code of Virginia § 15.2-2252, a certified copy of the adopted subdivision Ordinance and any and all amendments thereto shall be filed in the office of the Subdivision Agent (Agent) and in the Clerk's Office of the Circuit Court.

#### **Section 36.522. — Amendments.**

Per the Code of Virginia, §§ 15.2-2251 and 2253, this article may be amended in whole or in part by the governing body; provided, that any such amendment shall either originate with or be submitted to the Planning Commission for recommendation; further provided, that no such amendment shall be adopted without a public hearing having been held by the governing body in accordance with § 15.2-2204. In no instance shall an amendment be adopted by the governing body of the locality without first seeking the recommendation of the Commission. If no recommendation is made by the Commission, the governing body may take action 60 days from their inquiry.

#### **Section 36.523. — Repeal.**

Upon the adoption of this Ordinance, all Subdivision Ordinances heretofore adopted by the Board of Supervisors of Essex County are hereby repealed.

#### **Section 36.524. — Circumvention.**

Development of two or more single-lot subdivisions or two or more adjoining minor subdivisions, for the purpose of circumventing subdivision requirements shall not be permitted.

#### **Section 36.525. — Exemptions.**

"Subdivision" shall not apply to:

(1) Adjoining Properties.

The sale or exchange of parcels of land between owners of adjoining properties for the purpose of adjustments in boundaries; provided that such sale or exchange shall not create a parcel of land less than the minimum requirements stipulated by County Ordinance.

(2) Utility Rights-of -Way; Public, Private Rights-of -Way.

A bona fide division of a tract of land in order that one or more of the resulting parcels may be used as part of a public utility right-of-way or other public or private right-of-way. If a parcel resulting from such division is ever to be used as a building site for other than a hereinabove described right-of-way, then before a building permit may be issued for such other use, the minimum requirement of this Ordinance shall be observed.

(3) Wills, Court Action.

The partition of lands by will, by partition deed of intestate land by the descendants of the deceased former owner or through action of a court of competent jurisdiction.

Reserved 36.526. — 36.534

## **Division 2. — Types of Subdivisions**

### **Section 36.535. — Major Subdivisions.**

Major subdivisions have 6 or more lots and therefore will have greater impact on the environment, highways, and surrounding communities than will smaller subdivisions. Therefore, major subdivisions are permitted in the A-2 Districts only when in areas designated Rural Residential or Development Service by the Comprehensive Land Use Plan Map.

### **Section 36.536. — Minor Subdivisions.**

Minor subdivisions have two to five lots and reduced impact on the environment, highways, and surrounding communities than larger subdivisions.

### **Section 36.537. — Single Divisions.**

Single subdivisions include one division of a single tract or parcel of land.

### **Section 36.538. — Family Subdivisions.**

- (a) Family subdivisions encourage and promote the ability of family members to live in close proximity to one another as housing needs change, to provide opportunities for mutual support and care of family members, and to allow for the preservation of family land holdings which might otherwise be fragmented for economic reasons. Allowing the conveyance of property between immediate family members and beneficiaries of a trust without the necessity of compliance with all of the subdivision requirements imposed on unrelated parties further this purpose. To that end, the subdivision of land for simultaneous conveyance to a member of the immediate family of the property owner shall be considered to be a family subdivision.
- (b) A single division of a lot or parcel shall be permitted for the purpose of its conveyance to a member of the immediate family of the property owner. For the purposes of this Section, a member of the immediate family is defined as any person who is the natural or legally defined offspring, stepchild, spouse, sibling, grandchild, grandparent, or parent of the owner. If the property to be subdivided is owned in joint tenancy, the necessary relationship to the grantee may exist with any one or more of the joint tenants.
- (c) Per the Code of Virginia, §§ 15.2-2244, 2244.1, and 2244.2, all family subdivisions shall be subject to the following provisions and conditions in lieu of the other subdivision regulations imposed by this chapter.
  - (1) Only one such division shall be allowed within Essex County for each immediate family member.
  - (2) The lot or parcel to be divided shall have been titled of record in the name(s) of the owner(s) for a minimum of 15 years prior to the date of recordation of the family subdivision.
  - (3) The grantor of the transferred parcel shall include a restriction in the deed to the transferred parcel that prohibits the transfer of such parcel to a non-member of the immediate family of the grantor for a period of 15 years from the date of the original transfer unless a waiver of such restriction is obtained from the Agent or the Board of Supervisors. Such restriction shall provide that any attempted conveyance in violation of the restriction shall be null and void, except for conveyances otherwise permitted under this Section.

- (4) All lots or parcels, including the parent tract, created under this Section shall remain titled in the name(s) of an immediate family member of the grantor for a period of not less than 15 years from the date of recordation of the deed of conveyance unless:
  - a. The parcel to be transferred out of the immediate family is the subject of an involuntary transfer such as foreclosure, divorce, death, judicial sale, condemnation, or bankruptcy, in which case, upon application to the Agent, any remaining required holding period shall be waived; or
  - b. The owner(s) of the parent tract dies in which case, upon application to the Agent, any remaining holding period shall be waived for the parent tract; or
  - c. The transferred parcel is later transferred to a subsequent grantee who qualifies as an immediate family member of the original grantor as set forth in this Section, in which case only the remainder of the initial required holding period shall apply to the subsequent grantee; or
  - d. The proposed transfer is submitted to the Agent for approval, and all requirements of the Essex County Zoning and Subdivision Ordinance in effect at the time the application is submitted are met; or
  - e. An exception to these provisions is made by the Board of Zoning Appeals (BZA) upon a determination of injustice or hardship as permitted under the provisions of this Ordinance.
- (5) The minimum width, yard, and area requirements of all lots or parcels, including the remaining property form which the lot or parcel is subdivided, shall be in accordance with the applicable provisions of the Essex County Zoning and Subdivision Ordinance.
- (6) Each lot or parcel shall front on a public road or upon a private driveway or road that is in a permanent easement. Lots less than five acres shall have a right-of-way not less than 20 feet in width. Lots five acres and greater shall have a right-of-way of at least 50 feet in width. Where the parcel being subdivided fronts on an existing right-of-way less than 20 feet in width, a 20-foot right-of-way shall only be required on the parcel to be subdivided and transferred. Prior to the use of any such lot or parcel for residential purposes, the required right-of-way shall include an improved driveway within it consisting of, at a minimum, an all-weather surface or rock, stone, or gravel, with a minimum depth of three inches and a minimum width of 10 feet. The right-of-way shall be maintained by those having a right to use it in a condition passable by emergency vehicles at all times. A notation to this effect shall be placed on the face of the final plat and this provision shall be included in the deed or deeds by which the subdivision is effected. Passable condition refers to not only the surface, but also to horizontal and vertical clearances.
- (7) All provisions of the Zoning and Subdivision Ordinance governing erosion and sediment control and the dedication of drainage and utility easements shall apply to family subdivisions as fully and completely as if set forth herein.
- (8) A final plat shall be submitted to the Agent for approval. The final plat shall conform to all applicable requirements of the Zoning and Subdivision Ordinance. Along with the plat an affidavit, under oath, shall be submitted, in the form prescribed by the Agent, describing the purposes of the subdivision and identifying the member of the immediate family receiving the lot created. Such plat shall be subject to the fees set forth in Section 36.737 of this Ordinance. The proposed deed of conveyance shall be submitted to the Agent and, once approved for compliance with this Section, recorded along with the approved plat. Both the deed and the plat shall contain the following statement set forth so as to be seen readily in a minimum of [twelve] (12) point type:

THIS LOT IS CREATED AS A FAMILY SUBDIVISION PURSUANT TO THE PROVISIONS OF THE ESSEX COUNTY ZONING AND SUBDIVISION ORDINANCE. THE USE AND TRANSFER OF THIS PROPERTY ARE RESTRICTED BY THE TERMS OF THAT ORDINANCE.



- (d) The Agent shall reject any proposed family subdivision if, after investigation of the facts and circumstances involved in the proposed subdivision, the Agent believes that the proposed subdivision is for the purpose of circumventing the requirements of this Chapter and is not in accordance with the purpose and intent of this Section. The burden of proving compliance with the purpose, intent, and conditions of this Section shall be on the property owner. Nothing in this Section shall be deemed to exempt family subdivisions from the requirements of other provisions of the Essex County Code which are deemed to be applicable by the Agent.

Reserved 36.539 — 36.544

### **Division 3. — Design Requirements**

#### **Section 36.545. — Suitability of Land.**

The Agent shall not approve the subdivision of land if, from adequate investigations conducted by all public agencies concerned, it has been determined that in the best interest of the public the site is not suitable for platting and development purposes of the kind proposed.

#### **Section 36.546. — Land Subject to Flooding.**

Land subject to flooding and land deemed to be topographically unsuitable, having unsuitable soils or inadequate light and air shall not be platted for residential occupancy nor for such other uses as may increase danger of health, life or property or may aggravate erosion or flood hazard. Such land within the subdivision shall be set aside on the plat for such uses as shall not be endangered by periodic or occasional inundation or shall not produce conditions contrary to public welfare.

#### **Section 36.547. — Residential Density.**

The maximum residential densities allowable within residential subdivisions shall be in accordance with the provisions of the zoning district and guided by the Comprehensive Plan and the Future Land Use Map.

#### **Section 36.548. — Mandatory Dedication of Open Space.**

- (a) In every Subdivision of over five lots, the Board of Supervisors may require the platting and dedication to the governing body, or to a homeowner's association, of suitable and adequate open space for recreation.
- (b) The Agent shall not recommend the acceptance of any land for dedication unless it finds that such land is suitable to serve the purpose of active or passive recreation by reason of its location, configuration and topography.
- (c) The amount of land necessary for said purposes shall vary, as herein set forth, in accordance with the densities of population permitted in small lot subdivisions, multi-family and PUD districts:
- (d) Recreational areas, whether publicly or privately owned, which are provided in conformance with any form of cluster, lot averaging townhouse, or planned unit development provisions, and which equal or exceed the requirements for dedication as set forth herein, may completely and fully satisfy the above requirements. However, the developer or subdivider shall satisfy the Board of Supervisors that there are adequate provisions to assure retention and future maintenance of said recreational areas.

<b>Table 36.17. Open Space Subdivision Requirements</b>	
<b>Development Type</b>	<b>Amount of Open Space (Minimum)</b>
All single-family dwellings, attached or detached	Ten percent (10%) of the total tract area of land being subdivided, exclusive of floodplain; but not less than one-half (1/2) acre in size.
All multi-family dwellings	Fifteen percent (15%) of the total tract area of land being subdivided but not less than one (1) acre
Cluster Developments, Planned Unit Developments	In accordance with the Planned Unit Development District in the Zoning and Subdivision Ordinance
Subdivisions with 300 or more lots	Net area shall be exclusive of road right-of-way

**Section 36.549. — Lots.**

(a) Lot Size.

Lot area and width shall be in accordance with the provisions of the Essex County Zoning and Subdivision Ordinance.

(b) Lot Shape.

The lot arrangement, design, and shape shall be such that lots will provide satisfactory and desirable sites for buildings, be properly related to topography, and conform to requirements set forth herein. Lots shall not contain peculiarly shaped elongations which would be substantially unusable for normal purposes solely to satisfy necessary square footage or frontage requirements or to provide access to any lot that would otherwise not have road frontage, except to the extent expressly permitted under Section 36.550.

**Section 36.550. — Flag lots.**

The use of flag lots is prohibited except where safety or environmental factors prevent normal lot design and their use improves the quality of the design of the subdivision and provides for a better use of land. The financial cost of road construction or the loss of lots shall not by themselves constitute sufficient reasons to use flag lots. Where flag lots are otherwise permitted under the provisions hereof, single lot and minor subdivisions shall be limited to one such flag lot. In major subdivisions, flag lots shall comprise no more than 10 percent of the total lots in the subdivision (percentages will be rounded to nearest whole number). The restrictions and limitations on the use and number of flag lots permitted hereunder shall not be avoided by the subdivision of land at different times. For purposes of determining the maximum number of allowable flag lots, all subdivisions of the parent tract shall be deemed to be included as part of the same subdivision, regardless of when subdivided. Where flag lots are otherwise permitted hereunder, the number of contiguous parallel narrow lot sections shall be limited to no more than two so as not to create traffic hazards, confusion and dispute with respect to boundary locations. Where a flag lot is permitted, the stem that accesses the street or road shall be no less than 50 feet in width at any point. The length of such stems shall be limited to no more than 300 feet.

**Section 36.551. — Remnants.**

All remnants of lots below minimum size, left over after subdividing a tract, must be added to adjacent lots rather than allowed to remain unusable parcels.

**Section 36.552. — Access.**

- (a) All lots or parcels of land shall have frontage on an existing or proposed street or right of way in accordance with the provisions of the Essex County Zoning and Subdivision Ordinance and shall provide an easement, road, or street to conformance with the provisions of this Ordinance from such lots or parcels of land to a public street. The Agent or Board of Supervisors, after considering VDOT's recommendation, may limit the number of accesses to public streets and secondary roads for major subdivisions if individual access for each lot in the subdivisions could create a traffic hazard due to existing public street/secondary road conditions or configurations.
- (b) If a subdivision or contiguous parent tracts are being developed in such a manner that results in 6 lots or more being accessed by the same subdivision roads, the subdivision shall be developed along an existing public street or the subject roads shall be constructed from such lots or parcels to a public street in accordance with subdivision street standards established by the Virginia Department of Transportation and comply with Section 36.554 of this Ordinance.
- (c) If a subdivision is being developed in such a manner that results in five lots or less, private streets are allowed provided that all private streets will be in conformance with Article VII of this Ordinance. Except private streets in a single lot subdivision shall comply with Article VIII of this Ordinance. Said private streets shall extend from such lots or parcels to a public street.

**Section 36.553. — Blocks.**

- (a) Length.

The maximum length of blocks generally shall be 1,200 feet and the minimum length of blocks upon which lots have frontage shall be 500 feet.

- (b) Width.

Blocks shall be wide enough to allow two tiers of lots of minimum depth, except where prevented by topographical conditions or size of the property, in which case the Agent may approve a single tier of lots of minimum depth.

- (c) Orientation.

Where a subdivision adjoins a major road, the Agent may require that the greater dimension of the block shall front or back upon such major thoroughfare to avoid unnecessary ingress or egress.

**Section 36.554. — Streets.**

- (a) Standards.

Any requirements contained herein for streets shall be deemed to be the minimum requirements.

- (b) Names.

Proposed streets which are obviously in alignment with others already existing and named, shall bear the name of the existing street. In no case shall the name of proposed streets duplicate existing street names irrespective of the use of the suffix Avenue, Boulevard, Drive, Way, Place, Lane or Court. Street names shall be indicated on the tentative and final plats and shall be approved by the Agent. Names of existing streets shall not be changed except by approval of the Board of Supervisors.

- (c) Street Name Signs.

Street name signs of a suitable and County approved design and durable material and lettered on both faces shall be installed by the subdivider on the most visible corner of every intersection. Wooden signs shall not be used.

(d) Major Subdivisions.

(1) Existing Public Streets.

In cases where subdivision lots are created on an existing State maintained road (public street) having a total width of less than 50 feet, a dedication of additional; right of way to Essex County shall be provided. If dedication of additional right-of-way is found to be needed shall require same, so that the street is not less than 25 feet in width on the subdivision side measuring from the centerline of said street.

(2) New Streets.

All roads or streets in a major subdivision shall be public streets and shall be constructed in accordance with alignment, approach angle, access, width, grading, paving, and other specifications established by Virginia Department of Transportation in effect at the time the subdivision is approved. Upon completion such road or street shall follow dedication procedure for adoption into the State Highway System.

a. Alignment and layout.

As required by § 15.2-2241 (2) of the Code of Virginia, the arrangement of streets in new subdivisions shall make provision for the continuation of existing streets in adjoining areas and proposed streets as shown on the adopted plan of land use and major thoroughfares.

1. The street arrangement shall be such as to cause no unnecessary hardship to owners of adjoining property when they plat their own land and seek to provide for convenient access to it. Where, in the opinion of the Agent, based on the adopted Comprehensive Plan or planned long-term use and development of the adjoining property, it is desirable to provide for street access to adjoining property, proposed streets shall be extended by dedication to the boundary line of such property.

b. Alleys.

Alleys should be avoided whenever possible.

c. Cul-De-Sac.

The maximum number of dwelling units allowed on a cul-de-sac shall be twenty (20).

(e) Minor Subdivision.

(1) New Public Streets.

If streets are to be public streets dedicated and accepted in the State Secondary System, said streets shall be improved and constructed in conformance with alignment, approach angle, access, width, grading, paving, and other specifications for Subdivision Street Standards established by Virginia Department of Transportation in effect at the time the subdivision is approved. All streets shall also comply with Section 36.554 (d)(2).

(2) Existing Public Streets.

In cases where subdivision lots are created on an existing State maintained road (public street) having a total width of less than 50 feet, a dedication of additional; right of way to Essex County shall be provided. If dedication of additional right-of-way is found to be needed shall require same, so that the street is not less than 25 feet in width on the subdivision side measuring from the centerline of said street.

(3) Existing Private Streets or Rights-of-Way.

In cases where subdivision lots are created on an existing private street or right-of-way having a total width of 50 feet or less, a dedication of additional right-of-way to Essex County shall be provided. If dedication of additional right-of-way is needed, requirement shall be same so that the street is not less than 25 feet in width on the subdivision side measuring from centerline of said street. Subdivider or developer shall certify to the plat officer that said private street or right-of-way is dedicated for use to the property where subdivision will be created.

(4) New Private Streets.

In cases where minor subdivision lots are created with private streets and not to be taken into VDOT's system, such streets shall be in conformance with the following provisions:

a. Alignment and Layout.

Alignment should fit closely to the existing topography so as to minimize the need for cuts and fills. In purely residential areas serving local traffic, there is advantage in purposely making the alignment of such nature so as to discourage high speed through traffic. Extreme caution, however, should be taken in the design of the alignment to assure that the safety of the facility is not reduced. Whenever possible, streets should intersect at right angles. In all hillside areas, streets running with contours shall be required to intersect at angles not less than 60 degrees, unless approved by Agent.

b. Approach Angle.

Streets shall approach the other streets at an angle of not less than 80 degrees, unless the Agent approves a lesser angle of approach for reasons of contour, terrain or matching of existing patterns. Sight distance at intersecting streets is of paramount importance, and a minimum sight distance of 300 feet should be obtained.

c. Minimum Width.

The minimum width of right of way for proposed streets, measured from lot line to lot line, shall be 50 feet and extend from such lots or parcels to a public street.

d. Grades.

Grades shall follow contours with minimum cut and fills, and maximum grade often percent, unless the Agent approves a greater per cent for reasons of contours or terrain. At intersecting streets, a landing not exceeding a three percent grade shall be provided for a distance of 25 feet from the edge of pavement of the street.

e. Base and Pavement.

The street base shall be of sufficient depth to provide a mud-free surface and prevent excessive rutting during inclement weather. The base material shall have sufficient fine material to permit bonding of the base material. Hard surface pavement is not required. When surface treatment or other asphaltic surface material is proposed, a minimum of 6 inches of aggregate base material meeting the requirements of the Virginia Department of Transportation shall be required prior to application of pavement material.

f. Cul-De-Sac.

Each cul-de-sac must be terminated by a turn-around having a right-of-way of not less than one 110 feet in diameter, and a graveled roadway of not less than 90 feet in diameter.

g. Names.

Proposed streets which are obviously in alignment with others already existing and named shall bear the name of the existing street. In no case shall the name of proposed streets duplicate existing street names irrespective of the use of the suffix Avenue, Boulevard, Drive, Way, Place, Lane, or Court. Street names shall be indicated on the plats and shall be approved by the Agent. Names of existing streets shall not be changed except by approval of the Essex County Board of Supervisors.

h. Street Name Signs.

Street name signs of a suitable and County-approved design and durable material and lettered on both faces shall be installed by the subdivider on the most visible corner of every intersection, if applicable.

i. Restrictive Covenants.

The deed of each tract in a private street subdivision shall carry a restrictive covenant to the effect that the streets in a subdivision are private in nature and shall not be maintained by the Virginia Department of Transportation or other public agency and that the maintenance and improvement thereof shall be the mutual obligation of the landowners in the subdivision abutting said roads that such private roads shall not be taken into the State Secondary System unless and until the abutting landowners shall have constructed and dedicated the private road in accordance with the Virginia Department of Transportation's subdivision street requirements in effect at the time of the request, and thereafter the Essex County Board of Supervisors shall have recommended that said road be taken into the State Secondary System of highways.

j. Plat Certification.

The face of the recorded plat or survey shall show the following statement: Streets in the subdivision are private in nature and shall not be maintained by the Virginia Department of Transportation or other public agency and the maintenance and improvement shall be the mutual obligation of the landowners in this subdivision abutting said roads that such private roads shall not be taken into the State Secondary System unless and until the abutting landowners shall have constructed and dedicated the private road in accordance with the Virginia Department of Transportation's subdivision street requirements in effect at the time of the request, and thereafter, the Essex County Board of Supervisors shall have recommended that said road be taken into the State Secondary System of highways.

(f) Single Divisions.

(1) New Public Streets.

If streets are to be public streets dedicated and accepted in the State Secondary System, said streets shall be improved and constructed in conformance with alignment, approach angle, access, width, grading, paving, and other specifications for Subdivision Street Standards established by Virginia Department of Transportation in effect at the time the subdivision is approved. All streets shall also comply with Section 36.554 (d)(2).

(2) Existing Public Streets.

In cases where subdivision lots are created on an existing State maintained road (public street) having a total width of less than 50 feet, a dedication of additional right of way to Essex County shall be provided. If dedication of additional right-of-way is found to be needed shall require same, so that the street is not less than 25 feet in width on the subdivision side measuring from the centerline of said street.

(3) New Private Street.

In cases where a subdivision is created with a private road or street, such street or road shall have a minimum width of right-of-way for the proposed street or road of 50 feet and shall be extended from such lot to a public street. The street shall be constructed in accordance with the provisions in Section 36.554 (e)(4). This private road or street will not be taken into the VDOT system, until such time as the road or street would be re-constructed to meet State specifications.

(4) Existing Private Street.

In cases where subdivision lots are created on an existing private street or right-of-way having a total width of 50 feet or less, a dedication of additional right-of-way to Essex County shall be provided. If dedication of additional right-of-way is needed, requirement shall be same so that the street is not less than 25 feet in width on the subdivision side measuring from centerline of said street. Subdivider or developer shall certify to the plat officer that said private street or right-of-way is dedicated for use to the property where subdivision will be created.

**Section 36.555. — Public and Semi-Public Facilities.**

(a) Plans and Specifications.

Six (6) blue or black line prints of the plans and specifications for all required physical improvements to be installed shall be prepared by an engineer or surveyor. These plans shall be submitted to the Agent for approval or disapproval at least 60 days prior to submission of the Final Plat. If approved, one copy bearing certification of such approval shall be returned to the subdivider upon receipt from the Virginia Department of Transportation and Health Department. If disapproved, all papers shall be returned to the subdivider with the reason for disapproval in writing.

(b) All improvements as required herein shall be installed within Subdivisions by the subdivider at their own expense. The Subdivider shall provide a bond as required in Division 4 of this Article and said bond shall not be released until construction in conformance with the requirement of this Ordinance, has been inspected and approved by the Agent, highway engineer and/or other regulatory agencies.

(c) Flood Control and Drainage.

The subdivider shall provide all necessary information needed to determine what improvements are necessary to properly develop the subject property. This information shall include contour intervals, drainage plans and flood control devices in accordance with Sections 36.701(b)(1)b.1.iii and 36.701(b)(1)c.3. of this Article and Virginia Department of Transportation specifications. The subdivider shall also provide plans for all such improvements together with an engineer's or surveyor's statement that such improvements when properly installed will be adequate for proper development. The highway engineer or Agent shall then approve or disapprove said plans. The subdivider shall also provide any additional information required by the resident highway engineer or Agent.

(d) Easements.

The Agent may require that easements for drainage and utilities through adjoining property be provided by the subdivider. Easements of not less than 16 feet in width shall be provided for water, sewer, power lines and other utilities in the subdivision when required by the Agent.

(1) Whenever a subdivision is traversed by a natural drainageway through which water flows continuously or intermittently, there shall be provided an easement conforming substantially with the boundaries of such watercourse and such further width as may be necessary for drainage and utilities at this location.

(2) Any requirement contained herein pertaining to drainage or utility easements are minimal. Hereafter all preliminary plats shall be submitted to both the Virginia Department of Transportation and the appropriate electric utility company for review and comment prior to approval of drainage and electrical easements. Where a specification proposed by either of the above mentioned agencies is more stringent than the above mentioned County specifications and is deemed by the Agent to be compatible with County objectives, the more stringent specifications shall prevail.

(e) Public Water and/or Sewer.

(1) Where public water is available, the service shall be extended to all lots within a subdivision. Every subdivision, condominium or cluster development containing any lots of less than 21,500 square feet shall be provided with either a public or centralized water system (Type A or Type B) as defined herein to serve each and every lot.

(2) Where public sewerage facilities are available, the service shall be extended to all lots within a subdivision and septic tanks shall not be permitted. Every subdivision shall be provided by the subdivider with a satisfactory and sanitary means of sewage collection and disposal meeting the approval of the Agent.

(f) Private Water and/or Sewer.

Nothing in this regulation shall prevent the installation of privately owned water distribution systems or sewage collections and treatment facilities, provided that such installations meet all requirements of the State Water Control Board, the State Health Department, and any other State, Federal or local regulation having authority over such installation. The location and construction of distribution systems shall be subject to the approval of the County Health Officer.

(1) Private Sanitary Sewer Systems.

- a. The Agent shall not approve the use of individual septic systems for any subdivision containing lots of less than 21,500 square feet.
- b. The Agent shall not approve the use of individual septic systems in any Subdivision unless it is determined beyond a reasonable doubt that the soils are suitable for such and shall receive in writing from the State Health Department a statement to the effect that the area contained in the subdivision is satisfactory for the installation of septic systems and that they will not create hazards to public health.
- c. On any lot or parcel of land divided for new construction and is not served by a sewerage treatment system requiring a Virginia Pollutant Discharge Elimination System (VPDES) permit shall provide a reserve sewerage disposal site with a capacity at least equal to that of the primary sewerage disposal site. This reserve sewerage disposal site requirement shall not apply to any lot or parcel recorded prior to October 1, 1989, and which lot or parcel is not sufficient in capacity to accommodate a reserve sewerage disposal site, as determined on the area of all sewerage disposal sites until the structure is served by public sewer or an on-site sewerage treatment system which operates under a permit issued by the State Water Control Board.
- d. Conditional septic disposal system permits which limit the use of the subject property to a specific portion of the year are hereby expressly prohibited.



- e. Off-Site/Remote Septic Systems.
  - 1. No more than 20 percent of the lots within any major subdivision shall be permitted to utilize a remote system.
  - 2. No more than one lot within any minor subdivision shall be allowed to utilize a remote system.
  - 3. Use of off-site soil-based septic systems (remote sewage disposal system) are permitted provided the following conditions are met:
    - i. Primary and reserve drainfields are identified for properties within the Chesapeake Bay Preservation Areas.
    - ii. Such system meets the requirements of the State Health Department.
    - iii. All remote sites shall be deeded with the specified lot served, or granted easements in perpetuity appurtenant to the owner of such lot to the lot or parcel upon which the structure to be served is located for the installation, maintenance, and access to and repair of sewage disposal systems.
    - iv. Remote sewage systems must be placed on common ground or out parcels which will not be developed as buildable lots.
    - v. An easement shall be shown on a plat of survey prepared by a certified land surveyor, be recorded among the land records of Essex County, and be permanently monumented in the field.
    - vi. Easements are required for conveyance lines of not less than 15 feet in width for all sewage conveyance lines extending from the lots served to the remote sites; and, such easement shall be shown on the plat.
    - vii. When multiple remote sewage disposal systems are located upon a common lot, the area for each drainfield shall be at least 10 feet from all other drainfields and 10 feet from the property lines of the subject lot.
    - viii. When multiple conveyance lines are proposed to be installed in a single easement, such conveyance lines shall be installed at one time, shall be identified with magnetic tape or trace lines, shall be permanently marked and color coded at five foot intervals for ease of identification and a copy of this color code shall be delivered to the Essex County Health Department and to the Zoning Administrator. All conveyance lines are to be installed at the time of development and no subdivision shall be approved until lines are installed or bond provided pursuant to Division 4 of this Article. No lots can be sold until conveyance lines are installed. Conveyance lines shall be installed to a minimum depth of 24 inches.
    - ix. Each subdivision utilizing remote sewage disposal sites shall include a note on the plat and in the deed that "all remote sites shall be properly maintained by the owner of the lot served by the remote site in order to protect the approved sewage disposal systems". Maintenance required hereunder shall include, at a minimum, mowing, removal of vegetation which could cause damage to the system, surface crowing and/or grading to promote drainage, and measures to protect against vehicular traffic.

(g) Fire Protection.

The installation of adequate fire hydrants in Subdivisions may be required at locations approved by the Board of Supervisors, provided necessary public or central water is available.

**Section 36.556. — Home Owners Association (HOA).**

- (a) All private streets in major subdivisions shall be subject to the submission and approval by the Essex County Board of Supervisors of a legal instrument or instruments setting forth a plan or manner of permanent care and maintenance of such private street.
- (b) All subdivisions with dedicated open space for recreation, recreation area, and equipment, central water or central sewer or both central water and sewer, and other communally owned facilities shall be subject to the submission and approval by the Essex County Board of Supervisors of a legal instrument or instruments setting forth a plan or manner of permanent care and maintenance for such communally owned facilities.
- (c) No such instrument shall be acceptable unless and until approved by the County's attorney as to legal form and effect, and the Agent as to suitability for the proposed use of the communal land.
- (d) All communal property shall be deeded to an HOA. The developer shall file a declaration of covenants and restrictions that will govern the HOA with the application for tentative approval. Such covenants and restrictions shall include, but not necessarily be limited to, the following:
  - (1) The HOA including by-laws, covenants and restrictions and articles of the association or corporation must be set up and legally constituted prior to the sale of any lot, dwelling unit or other structure located within the private street subdivision.
  - (2) Such HOA must be effectual prior to the sale of 25 percent of said lots or dwelling units, on whichever assessments are based. The entire cost for maintenance of the open spaces, recreational areas, private streets, or other communally owned facilities shall be borne by the developer until such time as the HOA becomes effectual.
  - (3) All covenants and restrictions must be for a substantial period of time with a minimum of 25 years and run with the land and must apply to all lots and dwelling units located within the subdivision.
  - (4) The HOA must be responsible for liability insurance, local property taxes, and the maintenance of all streets, land, and communally owned facilities;
  - (5) Homeowners must pay their pro-rata share of the cost of the above through assessment levied by the HOA which must become a lien on each homeowner's property. Every lot or landowner shall have the right to petition a court of competent jurisdiction to ensure adequate maintenance and upkeep of the HOA's responsibilities.
  - (6) The HOA must be able to adjust assessments to meet changing needs;
  - (7) The HOA must be organized as a nonprofit unincorporated association or nonprofit corporation, managed by either a trained professional or a Board of Directors elected by the voting member of the HOA. In accordance with the Code of Virginia § 15.2-2256, the Board of Directors or other managing professional charged with collection of fees and the maintenance of common improvements shall provide an annual report to the lot owners of all fees collected and disposition of all funds.
  - (8) Lots or dwelling units assessed by the HOA shall only be those indicated on the final plat approved by the Board of Supervisors.
  - (9) It shall be mandatory for every lot or landowner to have membership in the HOA.

**Section 36.557. — Obligation of Improvements.**

All improvements and facilities required by this article shall be installed by the subdivider at their cost and is not the responsibility of the locality, as outlined in the Code of Virginia § 15.2-2268. No bond or other performance guarantee posted by the subdivider shall be released until construction has been completed, inspected and approved. Periodic partial release is allowed as outlined in the Code of Virginia § 15.2-2245.

**Section 36.558. — Monuments.**

- (a) Upon completion of subdivision street, sewers and other improvements, the subdivider shall make certain that all monuments required by this Ordinance are clearly visible for inspection and use. Such monuments shall be inspected and approved by the highway engineer or Agent before any improvements are accepted by the Board of Supervisors.
- (b) As allowed by the Code of Virginia §15.2-2241 (7), all lot and block corners shall be marked with solid steel or iron rods not less than five-eighths (5/8) inch in diameter and 30 inches long and driven so as to be flush with the finished grade. When rock is encountered, drill a hole four inches deep in the rock and cement a steel rod one-half (½) inch in diameter whose top shall be flush with the finished grade line. The replacement of any monuments removed or destroyed during the development of the subdivision shall be the responsibility of the subdivider.

Reserved 36.559. — 36.669.

**Division 4. — Guarantees**

**Section 36.670. — Required to be Guaranteed.**

- (a) Guarantees for Improvements Shown on Plat.

Before any subdivision plat will be finally approved the subdivider shall, in lieu of construction, furnish a bond in an amount approved by the Agent to guarantee completion of the public and other site-related improvements in accordance with specifications and construction schedules established. The bond shall be payable to and held by the governing body. However, in accordance with §15.2-2241(B) of the Code of Virginia, any certified check, cash escrow, bond, letter of credit or other performance guarantee furnished pursuant to this article shall only apply to, or include the cost of, any facility or improvement shown or described on the approved plat or plan of the project for which such guarantee is being furnished.

- (b) Guarantees for Dedicated Public Uses.

In accordance with § 15.2-2241.1 of the Code of Virginia, provided the developer and the governing body have agreed on the delineation of sections within a proposed development, the developer shall be required to furnish a bond for construction of public facilities only when construction plans are submitted for the section in which such facilities are to be located.

- (c) Guarantees for Street Maintenance.

In the event a street is constructed according to the Virginia Department of Transportation specifications established by the Virginia Department of Transportation for public use, and such street or road, due to factors other than its quality of construction, is not acceptable in the State Highway System, the subdivider or developer shall furnish Essex County with a maintenance and indemnifying bond, with surety satisfactory to the Essex County Board of Supervisors in an amount set by the Essex County Board of Supervisors sufficient for and conditional upon the maintenance of such street or road until such time as it is accepted into the State Highway System. In lieu of such bond, the subdivider or developer may furnish Essex County a bank or savings and loan association's Letter of Credit on certain designated funds satisfactory to the Essex County Board of Supervisors.

[The term] "maintenance of such road" shall be deemed to mean maintenance of the streets, curb, gutter, drainage facilities, utilities or other street improvements, including the correction of defects or damages and the removal of snow, water or debris, so as to keep such road reasonably open for public usage.

- (d) Other improvements requiring a guarantee include, but are not limited to:
  - (1) Structures necessary to ensure stability of critical slopes, and for stormwater management facilities;
  - (2) Erosion and sediment control measures required as a condition to grading, building, or other permits;
  - (3) Any private streets to be constructed in a subdivision or other development;
  - (4) Any privately-owned site-related improvements, including but not limited to fencing, landscaping, buffering, internal sidewalks, lighting, paving, private recreational facilities and pavement marking, required by this article but not completed prior to issuance of occupancy certificate.

**Section 36.671. — Types of Guarantees.**

Guarantee Type. The following guarantee options are available to the subdivider to provide to the county for acceptance by the Agent or County Attorney:

- (1) Performance Bond. A performance bond shall be executed by a surety company licensed to do business in the state of Virginia.
- (2) Letter of Credit. A letter of credit shall be executed by a bank licensed to do business in the state of Virginia.
- (3) Cash Escrow. The applicant shall provide to the County of Essex cash or cashier's check.

**Section 36.672. — Amount.**

The guarantee shall be provided in the following amount:

- (1) Total estimated cost of construction based on unit prices, approved by the Board of Supervisors or designee;
- (2) Plus, an additional 10% of the total estimated cost of construction to cover administrative costs, inflation, and potential damage to existing roads or facilities, as permitted by the Code of Virginia § 15.2-2241.

**Section 36.673. — Release.**

- (a) As outlined in the Code of Virginia § 15.2-2245, The subdivider may apply for the periodic partial and final complete release of any bond required under this article.
  - (1) Periodic Partial Release.
    - a. Upon the completion of at least 30 percent of the improvements covered by a performance guarantee, the applicant may file a written request with the Agent for a partial release of such guarantee.
    - b. The Agent may inspect the facilities for conformance with the terms and conditions of the approved plan and specifications for the facilities for which the guarantee is applicable. The Agent shall not refuse to make a periodic partial or final release of guarantee for any reason not directly related to the specified defects or deficiencies in construction of the facilities covered by such bond, escrow, letter of credit or other guarantee.
    - c. The Agent shall act upon the written request for a partial release within 30 days of receipt.
    - d. If no action is taken by the Agent within the 30-day time period, the request for partial release shall be approved, and a partial release shall be granted to the subdivider or developer.
    - e. Up to 90 percent of the original amount of the performance guarantee may be released through periodic partial releases, based upon the percentage of public facilities completed and approved by the County or other agency having jurisdiction.

(2) Final Release.

- a. Upon final completion of the facilities, the subdivider or developer may file a written request for final release of the guarantee.
  - b. The Agent may inspect the facilities for conformance with the terms and conditions of the approved plan and specifications for the facilities for which the guarantee is applicable.
  - c. The Agent shall either accept the facilities and release the remaining guarantee or notify the applicant that the facilities are not accepted and that there are specific defects or deficiencies in construction.
  - d. If the Agent fails to act within the thirty-day time period, then the applicant may make an additional request in writing for final release, sent by certified mail to the County Administrator. The County Administrator shall act within 10 working days of the request. If no action is taken, the request shall be deemed approved and final release granted to the applicant.
- (b) For the purposes of this section, a certificate of partial or final completion of such facilities from either a duly licensed professional engineer or land surveyor, as defined in and limited to Code of Virginia, § 54.1-400, or from a department or agency designated by the County may be accepted without requiring further inspection of such facilities.
- (c) For the purposes of this section and as defined in the Code of Virginia § 15.2-2245, the term "acceptance" means: when the public facility is accepted by and taken over for operation and maintenance by the state agency, local government department or agency, or other public authority which is responsible for maintaining and operating such public facility upon acceptance.

**Section 36.674. — Extensions for Completion.**

If guaranteed facilities are not timely completed in a manner acceptable to the County of Essex, the Agent may proceed via the provisions for default or allow an extension of time for the completion of facilities, not to exceed one year, provided that:

- (1) All surety consents have been acquired and approved by the County;
- (2) The owner has submitted an acceptable revised schedule for completion; and
- (3) Inspection of existing physical improvements is found to be satisfactory.

**Section 36.675. — Default.**

In the event of default in the construction of guaranteed facilities, the Agent is authorized to take such action as may be required to protect Essex County including, but not limited to:

- (1) Draw or make demand on the owner or developer's security;
- (2) Contract for the completion of the work, following the rules for public procurement; and
- (3) Bring an action at law against the owner, developer, financial institution, or surety.

Reserved 36.676. — 36.684

**Division 5. — Platting Requirements, Generally**

**Section 36.685. — Approval Required Before Sale.**

Whenever any subdivision of land is proposed, and before any permit for the erection of a structure shall be granted, the subdivider or their representative shall apply in writing to the Agent for the approval of the

subdivision plat. No lot shall be sold until a final plat for the subdivision shall have been approved and recorded in the manner provided in this article.

**Section 36.686. — Subdivision Name.**

If applicable as determined by the Plat officer, every subdivision shall be given a name which shall not duplicate or closely approximate that of any other subdivision existing or planned.

**Section 36.687. — Changes to Plats.**

No change or erasure or revision shall be made on any plat, nor on accompanying data sheets after approval of the Agent has been endorsed in writing on the plat or sheets, unless authorization for such changes has been granted in writing by the Agent.

**Section 36.688. — Separate Ownership.**

Where the land covered by a subdivision includes two or more parcels in separate ownership, and lot arrangement is such that a property ownership line divides one or more lots, the land in each lot so divided shall be transferred by deed to single ownership, simultaneous with the recording of the plat. Said deed is to be deposited with the Agent and held with the plat until the subdivider is ready to record same, and they both shall then be recorded together.

Reserved 36.689. — 36.699.

**Division 6. — Preliminary Plats**

**Section 36.700. — Procedure for Single, Family, and Minor Subdivision Plat Approval.**

Prior to submission of a final plat within the jurisdiction of the County of Essex, the Subdivider may have a preliminary conference and provide a sketch plan as outlined in Section 36.701 below.

**Section 36.701. — Procedure for Major Subdivision Plat Approval.**

(a) Preliminary Phase.

(1) All proposed major subdivisions involving more than 50 lots must submit a preliminary plat for approval. When a preliminary plat is not required, such plat may be submitted voluntarily by the subdivider.

(2) Prior to the submission of a preliminary plat within the jurisdiction of the County of Essex, the Subdivider shall make known their intentions to the Agent. During this preliminary phase, the following actions shall be taken:

a. Application.

The Subdivider or their representative shall file an application to subdivide with the Agent. The application shall establish the Subdivider's intention as to subdivision.

b. Preliminary Conference.

1. The Subdivider, or their representative shall meet informally with the Agent for the purpose of presenting a general sketch plan of their proposal, including, but not limited to:

- i. Existing physical features such as natural drainageways, swamps, and wooded areas.
- ii. Existing easements and covenants affecting the property.
- iii. Surrounding land uses, streets and existing buildings.

- iv. Sketch plans and a written description regarding future land use, street and lot arrangement, number of lots, and tentative lot sizes; preliminary proposals regarding water supply, sewage disposal, surface drainage, street improvement and land to be dedicated for public streets and other public uses.
  - v. Evidence of consultation with, and tentative approval of, public utility companies concerned.
  - vi. A map drawn from the Essex County Soil Survey showing the location of various soil types underlying the property, color coded as to their limitations on septic tank absorption fields, to a scale not smaller than one inch = 1,320 feet.
2. The Agent shall discuss the proposed subdivision with the Subdivider and advise him of procedural steps, design and improvement standards and general plat requirements. The Agent shall then proceed with the following investigations:
- i. Advise the Subdivider of existing County plans which might affect the proposed subdivision.
  - ii. Check the existing zoning of the tract and make recommendations if a zoning change is necessary or desirable.
  - iii. Inspect the site or otherwise determine its relationship to existing and proposed streets, utility systems and adjacent land uses and determine any known problems.
  - iv. Upon completion of investigations described above, the Agent shall advise the Subdivider in writing of any necessary changes in their sketch plan.

(b) Preliminary Plat.

(1) Filing of the Preliminary Plat.

Its purpose is to show graphically all facts needed to enable the Agent and other public bodies to determine whether the proposed layout of the land in question is satisfactory from the standpoint of the public interest. The submission shall include the following:

a. Application for Approval.

Written application by the owner of their Agent for subdivision plat approval, on forms furnished by the Agent.

b. The Plat.

The preliminary plat shall be prepared by a qualified professional, trained and experienced in the layout of subdivisions. Engineering drawings shall be stamped with the seal of an engineer or surveyor certified in the State of Virginia. Five copies and one digital copy of the preliminary plat shall be submitted to the Board of Supervisors through the Agent. These may be blue-line or blackline prints at a scale of not more than 100 feet to the inch. Said plat shall be drawn on sheets twenty-four by thirty-six inches (24" x 36") (preferred) or thirty by forty-two inches (30" x 42") (maximum). The plat shall contain the following information:

1. Survey Data.

- i. Date, scale, true north point and number of sheets. If shown on more than one sheet, matched lines shall clearly indicate where the several sheets join. Each sheet shall be consecutively numbered (e.g., 1 of 5 etc.)
- ii. A boundary survey with a field error of closure within the limit of one in two thousand five hundred (1' in 2,500') and bearings relating to either true north or magnetic north. The location of all monuments and their type of materials should also be shown. The

survey may be related to the U.S. Geological Survey state grid north if the coordinate of two adjacent corners of the subdivision are shown. Dimensions shall be expressed in feet and decimals of a foot.

- iii. If a subdivision borders a lake, the name shall be noted and bearings of the ordinary high water mark of such lake must be established. If an active watercourse, including a periodic stream, lies adjacent to or traverses the property, its name shall be noted and it shall be necessary for the registered engineer to submit cross-sections, drainage, easements, building setback lines and supporting calculations based upon 100-year flood, as shown by Federal Flood Insurance Program. All elevations shall be referred to the County of Essex datum plane.
  - iv. Existing and proposed grades entailing contours at vertical intervals of not more than two feet. In cases where the land has less than 3 percent slope, spot elevation shall be required.
2. Persons Responsible.  
The name and address of owners(s), the Subdivider, and the surveyor responsible for surveys.
  3. Name and Location.
    - i. A vicinity or location map to the scale of not less than 1,320 feet to the inch and show the subdivision name and location. It shall also show the relationship of the proposed subdivision to the existing community facilities which serve or influence it, including main traffic arteries, school(s), parks and playgrounds.
    - ii. The proposed subdivision name (must be same as that specified in the application).
    - iii. Location of the subdivision by Magisterial district, Assessor's Parcel Number(s), County and State.
    - iv. When the subdivision consists of land acquired from more than one source of title, the outlines of the various tracts shall be identified and the names of the owners of the respective tracts shall be placed on the plat.
    - v. Location and names of abutting subdivisions and owners of adjoining parcels of unsubdivided land.
  4. Lots and Blocks.
    - i. The boundary lines of all existing and proposed blocks and lots located within the subdivision, except that when the lines in any tier of lots are parallel, it shall be sufficient to make bearings of the outer lines on the tier thereof.
    - ii. Easements shall be shown by centerline and width when lines are parallel to a boundary, otherwise boundary bearings and distances shall be shown. Where the exterior boundary lines show bearings or lengths which vary from those recorded in abutting plats or certified surveys there shall be the following note placed along such lines, "recorded as (show recorded bearing or length or both)".
    - iii. Dimensions shall be shown along all boundaries of all lots under one acre in size. All lots over one acre in size shall also have the acreage marked within the lot.
    - iv. All lots in each block shall be consecutively numbered.
    - v. All blocks shall be consecutively lettered in alphabetical order. The blocks in numbered additions to subdivisions bearing the same name shall be lettered consecutively through the several additions.



- vi. A graphic presentation showing the minimum building setback lines on all lots and parcels and a notation of the distance between such lines and the street right-of-way.
5. Adjacent Streets and Utilities.
    - i. The names of adjoining streets, state highways and subdivisions shown in their proper location.
    - ii. Abutting street lines of adjoining subdivisions, shown in their correct locations.
    - iii. Location, width, and names of all existing, proposed utility right-of-way, parks, cemeteries, permanent buildings and bridges located within 300 feet of the subdivision, and other pertinent data as determined by the Agent.
    - iv. Existing sewers, water mains, culverts, and other underground structures within the tract or immediately adjacent thereto. The location and size of the nearest public or semi-publicly owned water main and sanitary and storm sewers are to be indicated in a general way upon the preliminary plat.
  6. Dedicated Areas.

Location and area of all property proposed to be dedicated or reserved for public use or to be reserved by deed covenant for use of all property owners in the subdivision with the conditions, if any, of such dedication or reservation.
  7. Location of any mapped dam break inundation zones and any grave, object, or structure marking a place of burial.
  8. Approved Space.

A blank oblong space [three inches by six inches] (3" x 6") shall be reserved for the use of the approving authorities.
  9. Zoning on and within 300 feet of the subdivision.
- c. Additional Engineering Plans.

These plans will be prepared by a certified engineer or surveyor after conditional approval is given by the Agent of the preliminary plat. One digital copy and five blue or black line prints of engineering plans shall be submitted to the Agent. They shall be reviewed by the Agent and the VDOT Resident Engineer, and may be reviewed by other interested parties. The engineering plans shall include, as a minimum, the complete design of roadways, drainage structures and support calculations, and a plan to control soil erosion and sedimentation. The plan shall contain the following:

    1. Layout, profile, centerlines, width, grades and proposed names of all new streets and rights-of way including alleys and highways.
    2. Radii of all curves, length of tangents, and central angles on all streets.
    3. Proposed utility layouts, profiles, pipe sizes (water, sewers, storm drains), and ditch sections, including connections to any existing or proposed utility system and easements.

- (2) Review.
- a. In addition to the below, the Board of Supervisors and Agent will act accordingly with regards to timeframes of resubmittals and other agency reviews, as outlined in § 15.2-2259 of the Code of Virginia.
  - b. Upon receipt of all necessary data, recommendations and applications, a preliminary plat shall be reviewed by the Agent to determine its conformity to this Ordinance, the Comprehensive Plan, and all other ordinances and regulations in force which affect subdivisions.
  - c. The Agent shall transmit copies of the preliminary plat, or appropriate portions thereof, to the County Administrator, Resident Engineer, appropriate utility companies, the State Air Pollution Control Board, Soil Conservation Agent, and other pertinent County and State Officials and agencies as deemed necessary by the Agent for recommendations. These recommendations in respect thereto shall be submitted to the Agent not later than 10 days before the Planning Commission meeting at which the preliminary plat will be reviewed.
  - d. The Agent shall transmit copies of the preliminary plat for any major subdivision to the Planning Commission and Board of Supervisors for review and approval.
  - e. The Agent shall, within 60 days of receipt of a completed application for the approval of a preliminary plat, approve or disapprove the plat, or approve it with modifications, noting thereon any changes that will be required. If agreed to by the Subdivider, the time may be extended for no more than 30 days after which one copy shall be returned to the Subdivider with the date of the approval or disapproval, and the reason therefor in letter form, accompanying the plat.
  - f. Approval of a preliminary plat shall not constitute approval of the final plat. It shall be deemed as an expression of approval of the layout submitted on the preliminary plat as a guide to the preparation of the final plat.
  - g. As dictated by 15.2-2260 (F), An approved preliminary subdivision plat shall be valid for a period of five years, provided the subdivider (i) submits a final plat for all or a portion of the property within three years of such approval, and (ii) thereafter diligently pursues approval of the final plat which shall include that the subdivider has incurred extensive obligations or substantial expenses relating to the submitted final plat or modifications thereto.
  - h. Once an approved final plat for all or a portion of the property is recorded, the underlying preliminary plat shall remain valid for a period of five years from the date of the latest recorded final plat of subdivision for the property.

Reserved 36.702. — 36.709

## **Division 7. — Final Plats**

### **Section 36.710. — Plat Requirements for Single, Family, and Minor Subdivisions.**

The following requirements shall be adhered to in preparing plats for a single, family, and minor lot subdivisions:

- (1) Blue line or black line prints at a preferred scale of not more than 200 feet to the inch. The Agent can exercise discretion in approving other scales if circumstances justify an adjustment.
- (2) The plat shall be prepared by a qualified professional with certificates or seals signed by the engineer or surveyor certifying the plat.
- (3) The date, scale and true north point shall be shown on the plat.

- (4) A boundary survey with a field error of closure within the limit of one in ten thousand (1 in 10,000) and bearings relating to either true north or magnetic north. The location to all monuments and their type of material should also be shown. Dimensions shall be expressed in feet and decimals of a foot.
- (5) Location of the subdivision by Magisterial District, Assessor's Parcel Number(s), County and State.
- (6) Location of any mapped dam break inundation zones and any grave, object, or structure marking a place of burial.
- (7) The boundary lines of all existing and proposed blocks and lots located within the subdivision, except that when the lines in any tier of lots are parallel, it shall be sufficient to make bearings of the outer lines on one tier thereof.
- (8) Easements shall be shown by centerline and width when lines are parallel to a boundary, otherwise boundary bearings and distances shall be shown. Where the exterior boundary lines show bearings or length which vary from those recorded in abutting plats or certified surveys, there shall be the following note placed along such lines, "recorded as (show recorded bearing or length or both)."
- (9) Dimensions shall be shown along all boundaries of all lots and the acreage marked within the lots.
- (10) Lots shall be numbered.
- (11) The names of adjoining streets, state highways and subdivisions shown in their proper location.
- (12) Approved Space. A blank oblong space [three inches by four inches] (3" x 4") shall be reserved for the use of approving authorities.

**Section 36.711. — Final Approval Procedure for Single, Family, and Minor Subdivisions.**

- (a) Review. Prior to recordation, all plats of a single, family, or minor subdivision shall be reviewed by the Agent. The Agent shall examine the proposed plat with the subdivider and shall determine the following:
  - (1) Conformity to this Ordinance, the Comprehensive Plan, and all other ordinances and regulations in force which affect divisions. Parameters to check include but are not limited to:
    - a. Check the proposed lot for size, shape, configuration.
    - b. Check the existing or proposed right-of-way for compliance with this ordinance.
    - c. Verification of number of lots divided from tract.
  - (2) The plat is sufficient to accomplish a proper development and to provide adequately for the health, safety, and convenience of the proposed residents therein and for adequate access. Including but not limited to:
    - a. Existing physical features such as natural drainageways, swamps, and wooded areas.
    - b. Existing easements and covenants affecting the property.
    - c. Surrounding land uses, streets and existing buildings.
- (b) Action by the Agent. Upon receipt the Agent shall examine the final plat and all necessary certificates to determine conformance to Section 36.710 and shall within 30 days of its submission, unless the time is extended by the Agent in agreement with the Subdivider, either approve or disapprove said final plat. After the Agent reviews the final plat, such review and the date thereof shall be noted on the plat.

**Section 36.712. — Final Approval Procedure for Major Subdivisions.**

- (a) The plat shall not be approved until the subdivider has complied with the general requirements and minimum standards of design in accordance with this Ordinance, and has made satisfactory arrangements, as hereinbefore provided, to cover the cost of necessary improvements. Approval of final plat shall be written by the Board of Supervisors or Agent on the face thereof.
- (b) Final Plat. During the final plat stage, the following actions shall be taken:
  - (1) Filing of Final Plat. The Subdivider shall file with the Agent the final plat which shall conform to the requirements of this Article.
    - a. Final Plat May Constitute All or a Portion of the Approved Preliminary Plat. A final plat may constitute only a portion of the area contained in the approved preliminary plat provided that the public improvements constructed in the area covered by the plat are sufficient by and of themselves to accomplish a proper development and to provide adequately for the health, safety, and convenience of the proposed residents therein and for adequate access to contiguous areas.
    - b. The Plat. The subdivider shall submit to the Agent 12 prints and one digital drawing drawn with waterproof non-fading black ink, at a scale of not more than 100 feet to the inch for subdivision containing lots any of which are less than five acres or 200 feet to the inch for subdivision containing lots which are more than five acres. Sheets shall be sixteen by twenty-four inches (16" x 24"), including a margin of one-half inch ( $\frac{1}{2}$ " ) outside ruled border lines at top, bottom and right sides, and one and one-half inch ( $1\frac{1}{2}$ " ) for binding on the left sixteen-inch (16" ) end. Each sheet shall bear the name of the subdivision. Each plat shall, as required by the Code of Virginia §15.2-2241, meet the standards for plats under §42.1-82 of the Virginia Public Records act and show correctly on its face sufficient engineering data to reproduce any line on the ground, as well as the following:
      - 1. Name, date of approval, and file number of the preliminary plat upon which the final plat is based.
      - 2. All information required by **Section 36.701**(b) of this Article.
      - 3. All land to be dedicated to public use, except roads and streets, shall be clearly marked "Dedicated to the Public".
      - 4. The accurate location and dimensions by bearings and distances with all curve data on all lots and street lines and centerlines of streets. All dimensions shown in feet and decimals of a foot to the closest one-hundredth [(1/100)] of a foot, all bearings, in degrees, minutes and seconds to the nearest ten seconds. The boundary survey shall show in a field error of closure within the limit of one in ten thousand (1' in 10,000') and bearings related to either true or magnetic north. The data of all curves along the street frontage shall be shown in detail at the curve or in a curve data table containing the following: delta, radius, arc length, tangent length, chord length, and chord bearings.
      - 5. One (1) reproducible copy and 6 blue or black line prints of final engineering plans for streets and utilities.
      - 6. A statement to the effect that the subdivision as it appears in this plat is with the free consent and in accordance with the desires of the owners, proprietors and trustees, which shall be signed by the owners, proprietors and trustees, if any, and shall be duly acknowledged before some officer authorized to take acknowledgments of deeds.
      - 7. Certificates signed by the engineer or surveyor setting forth the source of title of the owners of the land subdivided and the place of record of the last instrument in the chain of title.

- (2) Action by the Agent.
- a. The Agent shall transmit copies of the plat, or appropriate portions thereof, to the County Administrator, Resident Engineer, appropriate utility companies, the State Air Pollution Control Board, Soil Conservation Agent, and other pertinent County and State Officials and agencies as deemed necessary by the Agent for recommendations. These recommendations in respect thereto shall be submitted to the Agent not later than 10 days before the Planning Commission meeting at which the plat will be reviewed.
  - b. The Agent shall transmit copies of the final plat for any major subdivision to the Planning Commission and Board of Supervisors for review and approval.
    1. The Planning Commission and Board of Supervisors shall ensure that the plat is in conformance with any approved preliminary plat, and all requirements of this ordinance and other ordinances of the County are met.
    2. The Board of Supervisors shall communicate the result of its review of the Final Plat to the Applicant no later than 60 days after the plat submittal.
      - i. Specific reasons for disapproval shall be contained either in a separate document or on the plat itself. The reasons for disapproval shall identify deficiencies in the plat that cause the disapproval by reference to specific duly adopted ordinances, regulations, or policies and shall identify modifications or corrections as will permit approval of the plat.
      - ii. If the review is favorable, the Board of Supervisors shall authorize the chairperson or agent to approve, sign, and date the final plat.

**Section 36.713. — Recording.**

- (a) As required by the Code of Virginia, §15.2-2254, any owner or developer of any tract of land situated within the County who subdivides the same shall cause a plat of subdivision to be made and recorded in the office of the clerk of the appropriate court. No such plat of subdivision shall be recorded unless and until it shall have been submitted, approved and certified by the Agent in accordance with the regulations set forth in this article.
- (b) As directed by the Code of Virginia § 15.2-2241 (8), after the Agent has approved the final plat, the subdivider shall file such plat for recordation in the clerk's office of the circuit court of the County within 6 months after approval thereof; otherwise, such approval shall become null and void. However, in any case where construction of facilities to be dedicated for public use has commenced pursuant to an approved plan or permit with surety approved by the Board of Supervisors or Agent, or where the developer has furnished surety to the Board of Supervisors or Agent by certified check, cash escrow, bond, or letter of credit in the amount of the estimated cost of construction of such facilities, the time for plat recordation shall be extended to one year after final approval or to the time limit specified in the approved surety agreement, whichever is greater.
- (c) To entitle a final plat to be entered in the proper books in the Office of the Clerk of Circuit Court of Essex County the certificate of consent as outlined in the Code of Virginia, § 15.2-2264, together with the certificates of approval of the Agent, shall accompany it. These certificates shall be lettered or printed legibly on the face of the final plat. After the final plat shall have been approved by the Agent, the Clerk of Circuit Court shall sign the plat and cause a certified copy of the resolution approving such plat to be attached to the plat and returned to the Subdivider.
- (d) A recorded plat or final site plan shall be valid for a period of not less than five years from the date of approval, as required by the Code of Virginia §15.2-2261.

- (e) If the provisions of a recorded plat or final site plan, which was specifically determined by the Board of Supervisors and not its Agent, to be in accordance with the zoning conditions previously approved pursuant to the Code of Virginia §§ 15.2-2296 through 15.2-2303, conflict with any underlying zoning conditions of such previous rezoning approval, the provisions of the recorded plat or final site plan shall control, and the zoning amendment notice requirements of the Code of Virginia § 15.2-2204 shall be deemed to have been satisfied.
- (f) Recordation of plats shall act as transfer of streets, termination of easements and rights-of-way as outlined in the Code of Virginia § 15.2-2265.

**Section 36.714. — Variations and Exceptions.**

Where the Board of Zoning Appeals finds that extraordinary hardships or particular difficulties may result from strict compliance with these regulations, they may approve variations or exceptions to the regulations, provided that such variations or exceptions shall not have the effect of nullifying the intent and purpose of this Ordinance; and further provided the Board shall not approve variations or exceptions to the regulations of this Ordinance unless it shall make findings based upon the evidence presented to it and in compliance with the Code of Virginia §15.2-2309.

Reserved 36.715. — 36.724.

**Division 8. — Vacation of Plats**

**Section 36.725. — Vacation.**

- (a) The Code of Virginia, § 15.2-2278 sets forth that any plat of subdivision recorded in any clerk's office, may be vacated as outlined in the sections below, taken from the Code of Virginia, § 15.2-2270 et seq. The effects of such vacations are outlined in the Code of Virginia, § 15.2-2274.

- (b) Boundary Lines.

As allowed by the Code of Virginia, § 15.2-2275, the Agent may approve, the boundary lines of any lot or parcel of land to be vacated, relocated or otherwise altered as a part of an otherwise valid and properly recorded plat of subdivision or resubdivision approved as provided in this article or properly recorded prior to the applicability of this article, and executed by the owner or owners of the land. The action shall not involve the relocation or alteration of streets, alleys, easements for public passage, or other public areas. No easements or utility rights-of-way shall be relocated or altered without the express consent of all persons holding any interest therein.

- (c) Interest to the County.

Any interest in streets, alleys, easements for public rights of passage, easements for drainage, and easements for a public utility granted to the County as a condition of the approval of a site plan may be vacated by the Board of Supervisors according to the two methods listed in the Code of Virginia, § 15.2-2270.

- (d) Before Sale of Lot.

- (1) Single or Minor Subdivision.

- a. An approved and recorded plat of subdivision, or part thereof, may be vacated prior to the sale of any lot therein by the Agent utilizing the procedures set forth in the Code of Virginia, § 15.2-2271 and subsequent amendments thereto.

(2) Major Subdivision.

- a. An approved and recorded plat of subdivision, or part thereof, may be vacated prior to the sale of any lot therein by the Board of Supervisors utilizing the procedures set forth in the Code of Virginia, § 15.2-2271 and subsequent amendments thereto.

(e) After Sale of Lot.

(1) Single or Minor Subdivision.

An approved and recorded plat of subdivision, or part thereof, may be vacated after the sale of any lot by the Agent utilizing one of the two methods specified in the Code of Virginia, § 15.2-2272 and subsequent amendments thereto.

(2) Major Subdivision.

An approved and recorded plat of subdivision, or part thereof, may be vacated after the sale of any lot by the Board of Supervisors utilizing one of the two methods specified in the Code of Virginia, § 15.2-2272 and subsequent amendments thereto.

(f) Fees.

As allowed by the Code of Virginia, § 15.2-2273, the County shall establish a fee for processing an application for vacation of plat. The filing fee shall be paid in accordance with the fee schedule established by the Board of Supervisors, as amended.

(g) Duties of the Clerk.

According to the Code of Virginia, § 15.2-2276, the clerk in whose office any plat so vacated has been recorded shall write in plain legible letters across such plat, or the part thereof so vacated, the word "vacated," and also make a reference on the plat to the volume and page in which the instrument of vacation is recorded.

Reserved 36.726. — 36.734.

## **Division 9. — Enforcement, Violations, and Fees**

### **Section 36.735. — Enforcement.**

As provided in the Code of Virginia § 15.2-2254, the following applies:

- (1) No person shall subdivide land without making and recording a plat of the subdivision and without fully complying with the provisions of state code and this article.
- (2) No plat of any subdivision shall be recorded unless and until it has been submitted to and approved by the local Planning Commission or by the governing body or its duly authorized Agent, of the locality wherein the land to be subdivided is located; or by the commissions, governing bodies or agents, as the case may be, of each locality having a subdivision ordinance, in which any part of the land lies.
- (3) No person shall sell or transfer any land of a subdivision, before a plat has been duly approved and recorded as provided herein, unless the subdivision was lawfully created prior to the adoption of a subdivision ordinance applicable thereto. However, nothing herein contained shall be construed as preventing the recordation of the instrument by which such land is transferred or the passage of title as between the parties to the instrument.
- (4) No clerk of any court shall file or record a plat of a subdivision required by this article to be recorded until the plat has been approved as required herein. The penalties provided by Code of Virginia § [17.1-223](#) shall apply to any failure to comply with the provisions of this subsection.

- (5) No building permit shall be issued nor shall construction be authorized by the County on lands where a subdivision plat is required to be approved and recorded as provided in this article and no certificate of occupancy shall be issued until the compliance with this article and other applicable provisions regarding the use of any structure or land where a subdivision plat is required to be approved and recorded as provided in this article has been approved by the Agent and recorded in the office of the Clerk of the Circuit Court.

**Section 36.736. — Violation and Penalty.**

As allowed by the Code of Virginia, § 15.2-2254, any person violating any provision of this chapter shall be subject to a fine of not more than five hundred dollars (\$500.00) for each lot or parcel of land subdivided, transferred or sold in violation of this chapter and the description of such lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties or from the remedies herein provided.

**Section 36.737. — Fees.**

There shall be a charge to compensate the County for the costs incurred during the examination and approval or disapproval of every subdivision plat or lot required to be reviewed by the Agent or Board of Supervisors. This fee shall be payable to "Treasurer, Essex County," in such amount as set by schedule adopted ordinance of the Essex County Board of Supervisors.

Reserved 36.738. — 36.744



## ARTICLE X. — DEFINITIONS

### Section 36.745. — Word Usage.

For the purposes of this chapter, certain words or terms shall be defined as follows:

- (1) Words used in the present tense include the future. Words in the singular include the plural, and the plural includes the singular.
- (2) The word "shall" or "must" is always mandatory; the word "may" is permissive.
- (3) The words "used for" include "designed for," "arranged for" or "occupied for."
- (4) The word "building" includes "structures" and shall be construed as if followed by the phrase "or part thereof."
- (5) The word "person" includes "individual," "partnership," "company," "profit or nonprofit corporation," "organization" or other similar entities.
- (6) The word "erected" shall be deemed also to include "constructed, reconstructed, altered, placed, or moved".
- (7) The terms "land use" and "use of land" shall be deemed also to include "Building use" and "use of Building".
- (8) Unless otherwise specified, all distance shall be measured horizontally and at right angles to the line in relation to which the distance is tied.
- (9) The term "this chapter" means **Chapter 36 of the Code of Essex County, Virginia**.

### Section 36.746. — Definitions.

*Accessory building or structure* means a building subordinate to and located on the same lot with a principal building, the use of which is clearly incidental to that of the principal building or to the use of the land, and which is not attached by any part of a common wall or roof to the principal building. The term "accessory building" also includes, but is not limited to, portable storage containers, gazebos, carports, private greenhouses, and sheds which may be modular in nature and are delivered to the site and which may or may not have a foundation. Accessory building or structure does not include motorhomes, travel trailers or other recreational vehicles.

*Accessory dwelling unit* means a dwelling that exists as part of a principal dwelling or on the same lot as the principal dwelling and is subordinate in size to the principal dwelling.

*Accessory use (activity)* means a use of a building, lot or portion thereof which is customarily incidental and subordinate to the principal use of the principal building or the lot.

*Acreage* means a parcel of land, or portion thereof regardless of area, that may be described by metes and bounds but is not necessarily a numbered lot on any recorded subdivision plat.

*Acreage coverage* means the total acres covered by blocks of photovoltaic panels including spaces between panels, buildings, inverters, substation, battery storage, ancillary equipment, and fencing around these items but excluding wildlife corridors, mandated setbacks, wetlands, and other avoided natural or cultural features outside of the security fencing on the project site.

**Essex County Zoning & Subdivision Ordinance**  
**Public Hearing Draft**  
**April 12, 2022**

---

*Acreage, gross* means a unit of measure, the total land area to be developed including rights-of-way, easements and land set aside for public purpose.

*Administrator* means the official charged with the administration and enforcement of this chapter; also, referred to as the Zoning Administrator.

*Agent, Subdivision* means the Board of Supervisors or Plats officer of Essex County as designated to review and approve the subdivision of land and the plat of such subdivision when wholly or partly within the County.

*Agricultural, intensive* means the commercial confined keeping of animals and storage of agricultural products with accessory uses including storage bins and litter/manure storage. The operations of the use may generate dust, noise, odors, pollutants, or visual impacts that could adversely affect adjacent properties.

*Agriculture/silviculture* means any operation devoted to the bona fide production of crops, or animals, or fowl including, but not limited to, the production of fruits and vegetables of all kinds, and the production and harvest of products from silvicultural activity. This use does not include *Agricultural, intensive* (*Code of Virginia § 15.2-2288.6*).

*Agritourism* means pursuant to the Code of Virginia § 15.2-2288.6, any activity carried out at a farm winery, farm brewery, farm distillery, or an agricultural operation, that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, wineries, ranching, historical, cultural, harvest-your-own activities, or natural activities and attractions, regardless of whether or not the participant paid to participate in the activity. These rural activities also include, but are not limited to, farm tours, tours of an individual agricultural operation, hayrides, heirloom plant and animal exhibits, crop mazes, and educational programs, workshops, or demonstrations related to agriculture or silviculture.

*Alley* means a public or private way less than 30 feet in width and affording a secondary means of access to abutting property.

*Amateur radio antennas* means a freestanding or building mounted structure, including any base, tower or pole, and appurtenances, intended for airway communication purposes by a person holding a valid amateur radio (HAM) license issued by the Federal Communications Commission.

*Applicant* means the person or entity who submits an application to the locality for a permit under this ordinance.

*Aquaculture* means the growing and harvesting of marine or freshwater fish, plants or other organisms in a body of water such as a pond, lake, river, or ocean.

*Assembly, place of* means the use of land for a meeting place where persons gather together for purposes of attending civic, social, or private events on a regular or recurring basis including but not limited to, banquet facilities, conference centers, and event venues. A gathering of less than 25 persons shall not be considered a Place of Assembly provided the gathering is accessory and incidental to the principal use.

*Automobile repair service* means repair and/or maintenance of automobiles, noncommercial trucks, motorcycles, motor homes, recreational vehicles, or boats, including the sale, installation, and servicing of equipment and parts. Typical uses include tire sales and installation, wheel and brake shops, oil and lubrication services, and similar repair and service activities where minor repairs and routine maintenance are conducted.

*Automobile sale, rental/leasing* means a lot arranged, designed or used for the storage and display for sale, lease, or rent of any new or used motor vehicle capable of independent operation or any type of boat, travel trailer and recreation vehicle, provided the travel trailer and recreation vehicle is unoccupied, and where warranty repair work and other major and minor repair service is done wholly within an enclosed building as an accessory use. This definition excludes equipment sales and rental as defined in this ordinance.

*Aviation facility*, also referred to as an airport, means landing fields, aircraft parking and service facilities, and related facilities for operation, service, fueling, repair, storage, charter, sales, and rental of aircraft, and including activities directly associated with the operation and maintenance of airport facilities and the provision of safety and security.

**Essex County Zoning & Subdivision Ordinance**  
**Public Hearing Draft**  
**April 12, 2022**

---

*Base parcel* means the remaining acreage of a parcel after the subtraction of the acreage of perennial water features. The base parcel is comprised of the land acreage of a parcel. All development standards, density requirements, and submission requirements will be applied to the acreage of the base parcel.

*Battery Energy Storage Facilities* means one or more battery cells for storing electrical energy stored in a Battery Energy Storage System (“BESS”) with a Battery Management System (“BMS”).

*Battery Energy Storage System (BESS)* means a physical container providing secondary containment to battery cells that is equipped with cooling, ventilation, fire suppression, and a battery management system.

*Battery Management System (BMS)* means an electronic regulator that manages a battery energy storage system by monitoring individual battery module voltages and temperatures, container temperature and humidity, off-gassing of combustible gas, fire, ground fault and DC surge, and door access and being able to shut down the system before operating outside safe parameters.

*Bed and breakfast* means a dwelling unit occupied by the owner composed of transient lodging provided within a single family dwelling and/or one or more structures that are clearly subordinate and incidental to the single family dwelling, having not more than five bedrooms wherein food service shall be limited to breakfast and light fare for guests of the Bed and Breakfast.

*Biomass conversion, small-scale* means the conversion of any renewable biomass, including but not limited to, trees and tree residue-chips into heat, power, or biofuels (Code of Virginia § 15.2-2288.01).

*Biomass* means agricultural-related materials including vineyard, grain or crop residues; straws; aquatic plants; and crops and trees planted for energy production.

*Block* means an area of land bounded by streets, or by a combination of streets and public parks, cemeteries, railroad rights-of-way, shorelines of waterways or boundary lines of the County of Essex.

*Board of Supervisors, or Governing Body*, means the County’s legislative body. Board members are elected by popular vote and are responsible for enacting ordinances, imposing taxes, making appropriations, and establishing County policy. The Board adopts the comprehensive plan, zoning, and subdivision regulations.

*Board of Zoning Appeals* means the board appointed to review appeals made by individuals with regard to decisions of the Zoning Administrator in the interpretation of this chapter and to authorize, upon appeal, variances from the terms of this chapter when justified by special conditions.

*Boat yard* means an establishment or site used for the provision of all such facilities as are customary and necessary to the construction, reconstruction, repair or maintenance and accessory sale of boats, marine engines, or marine equipment, supplies, or services including but not limited to rental of covered or uncovered boat slips, or dock space or enclosed dry storage space, lifting or launching services.

*Brewery or distillery* means the use of land, licensed by the commonwealth, where beer or spirits are manufactured for sale. Breweries have a capacity greater than 1,000 barrels a year and distilleries have a capacity greater than 5,000 gallons a year. Consumption on the premises is permitted as an accessory use (Code of Virginia § 15.2-2288.3:1 and § 15.2-2288.3:2).

*Broadcasting or communication tower* means any unstaffed facility for the transmission and/or reception of radio, television, radar, cellular telephone, personal paging device, specialized mobile radio (SMR), and similar services. A broadcasting or communication tower usually consists of an equipment shelter or cabinet, a support tower or other structure used to achieve the necessary elevation, and the transmission or reception devices or antenna. Excluded are amateur radio antennas, which are defined separately. Also excluded are wireless communication antennas which fit the definition of Small cell facility and “Administrative review-eligible project” as defined in the Code of Virginia § 15.2-2316.6 and supplied as Utility service, minor by this ordinance.

*Brownfield* means former industrial or commercial sites typically containing low levels of environmental pollution such as hazardous waste or industrial byproducts.

**Essex County Zoning & Subdivision Ordinance**  
**Public Hearing Draft**  
**April 12, 2022**

---

*Buffer area* means an area of natural or established vegetation managed between uses or to protect other components of a resource protection area and state waters from significant degradation due to land disturbances.

*Buildable area* means the area of that part of the lot not included within the yards or open spaces required in this ordinance.

*Buildable width* means the width of that part of a lot not included within the yards or open spaces required in this ordinance.

*Building* means any structure, or part thereof, permanently affixed to a lot or lots and having a roof supported by columns or walls for the housing or enclosure of persons, animals or property of any kind.

*Building official* means an appointed official of the County who is responsible for making and certifying building inspections.

*Building site* means a piece of land consisting of the minimum lot area the zoning district where it is located where a permitted use or structure may be placed.

*Building, completely enclosed* means any building having no outside openings other than ordinary doors, windows and ventilators.

*Building, height of* means the vertical distance measure from the average elevation of the finished grade at the front of the building to the highest point of the roof for flat roofs, to the deck line of mansard roofs, and the mean height between eaves and ridge for gable, hip, and gambrel roofs.

*Building, principal* means the building in which the primary use of the lot on which the building is located is conducted.

*Bulk fuel storage and distribution* means the storage of chemicals, petroleum products and other materials in above-ground containers for subsequent resale to distributors or retail dealers or outlets.

*Bulk* means the size and shape of a building or structure and its relationship to other buildings, to the lot area for a building, and to open spaces and yards.

*Business or trade school* means a use providing education or training in business, commerce, language, or other similar activity or occupational pursuit and not otherwise defined as an Educational facility, either primary and secondary, or college and university.

*Business Support Service* means the use of land for the sale, rental, or repair of office equipment and supplies or the provision of services used by office and service establishments. Typical uses include, but are not limited to, office equipment and supply firms, small business machine repair shops, convenience printing and copying establishments, or information technology support services.

*Camp and campground* means an area that provides recreational opportunities on a daily or overnight basis, upon which are located sites for three or more travel trailers, camping trailers, pickup truck campers, motor homes, tents, or other recreational vehicle for seasonal or temporary recreational occupancy. The term "camps" includes the land and buildings used by recreational vehicle parks and civic, religious and social organizations for social, recreational, educational and/or religious activities on a seasonal basis.

*Camp, day or youth* means an establishment, either publicly or privately owned, with its services designed for the recreation and education of youth.

*Car wash* means a structure or portion thereof containing facilities for washing and/or waxing motor vehicles, typically using production-line automated or semiautomated methods for washing, whether or not employing a chain conveyor, blower, steam cleaning or similar mechanical devices operated either by the patron or others. Car washes are a separate use and not treated as an accessory to gasoline stations, automobile service, or other similar uses.

*Catering facility* means an establishment in which food and meals are prepared on premises, and where such food and meals are delivered to another location for public or private entertainment for a fee.

**Essex County Zoning & Subdivision Ordinance**  
**Public Hearing Draft**  
**April 12, 2022**

---

*Cemetery* means any land or structure used or intended to be used for the interment of human remains. Additionally, a cemetery includes mausoleums, columbaria, chapels, administrative offices, and maintenance and storage areas (Code of Virginia § 15.2-2288.5). The sprinkling of ashes or their burial in a biodegradable container on church grounds or their placement in a columbarium on church property shall not constitute the creation of a cemetery.

*Central sewer system* means a publicly or privately owned sewer system, approved by either the State Department of Health or the State Water Control Board, which serves five (5) or more structures and consists of collection and transmission lines or mains, pumping stations if necessary, and a sewage treatment and disposal facility. Such system functions by transmission of sewage away from the points of origin; collection and treatment at a sewage treatment facility, which is not located on any of the lots or parcels served by the system; and disposal or discharge of the treated effluent either on land or in surface waters.

*Central Water Supply and Distribution System (Type A)* means a central-water system serving not more than fifteen (15) connections in the case of residential consumers.

*Central Water Supply and Distribution System (Type B)* means a central water system serving the public, or more than twenty-five (25) individuals, or in the case of residential consumers, to more than fifteen (15) connections.

*Central water system* means a publicly or privately owned water system which meets State Department of Health requirements for an approved water supply, and which serves five (5) or more structures. Such system consists of a well or wells which are not located on any of the lots or parcels served by the system, pump houses, transmission lines or mains, and storage tanks if necessary.

*Certificate of occupancy* means a document issued by the building official allowing the occupancy or use of a building and certifying that the structure or use has been constructed or will be used in compliance with all applicable County codes and ordinances.

*Commercial indoor entertainment* means predominantly spectator uses conducted within an enclosed building. Typical uses include, but are not limited to, motion picture theaters, and concert or music halls.

*Commercial indoor recreation/amusement* means an establishment which provides an enclosed building for indoor sports and/or multiple coin operated amusement or entertainment devices or machines as other than an incidental use of the premises. Typical uses include bowling alleys, ice and roller skating rinks, indoor racquetball, swimming, billiard halls, game rooms, and video arcades.

*Commercial outdoor recreation/amusement* means participant or spectator uses conducted in open or partially enclosed or screened facilities. Typical uses include driving ranges, miniature golf, swimming pools, paintball facilities, sports arenas, motorized model airplane flying facilities, rodeos and outdoor amusement parks.

*Commission* means the Planning Commission of Essex County, Virginia.

*Common open space* means all open space within the boundaries of a planned "cluster" residential development designed and set aside for the common use of all residents of the development.

*Comprehensive plan* means the officially adopted comprehensive plan for the County.

*Conditional use permit* means an approval for a use that may be appropriate in a zoning district, but because of its nature, extent, and external effects, requires special consideration and restrictions relating to its location, design, and methods of operation before it can be deemed appropriate in the district and compatible with its surroundings.

*Conditional zoning* means a method for rezoning that permits the reasonable and orderly development and use of land with special restrictions in those situations in which unique, specific circumstances indicate that the existing zoning district regulations are not adequate.

**Essex County Zoning & Subdivision Ordinance**  
**Public Hearing Draft**  
**April 12, 2022**

---

*Conservation* means land set aside to achieve the preservation or conservation of water quality, land preservation, and wildlife including associated habitat. Includes game refuge and forest preserve uses.

*Construction footprint* means the area of all impervious surfaces, including, but not limited to, buildings, road and drives, parking areas, and sidewalks and the area necessary for construction of such improvements.

*Construction material sales* means establishment or place of business primarily engaged in retail or wholesale sale, from the premises, of materials used in the construction of buildings or other structures, but this use shall not include automobile or equipment supplies otherwise classified herein. Typical uses include building material stores and home supply establishments.

*Construction yard* means an establishment or place of business primarily engaged in construction activities, including outside storage of materials and equipment. Typical uses are building contractor's yards.

*Consumer repair service* means establishment or place of business primarily engaged in the provision of repair services to individuals, rather than businesses, but this use shall not include automotive and equipment repair use types. Typical uses include repair of electronics, shoes, watches, jewelry, or musical instruments.

*Crematory* means a commercial establishment that specializes in the cremation of corpses, including pets.

*Cul-de-sac* means a local street with only one (1) outlet and having a turnaround for reverse traffic movement.

*Cultural facility* means a use providing for the public display, performance, or enjoyment of heritage, history, or the arts. This use includes but is not limited to: museums, arts performance venues, cultural centers, or interpretive sites, but does not include commercially-operated theatres.

*Day care center* means any facility operated for the purpose of providing care, protection, and guidance during only part of a twenty-four-hour day. This term includes nursery schools, preschools, day care centers for individuals, including adults, and other similar uses. Excluded are public and private educational facilities, family home day care, or any facility offering care to individuals for a full twenty-four-hour period.

*Decommissioning plan* means a plan to disconnect, remove and properly dispose of equipment, facilities, or devices and to restore the property to its original condition.

*Density* means the number of dwelling units or residential lots permitted on a given unit of land. Density is determined by dividing the total number of residential units or lots to be located on the parcel by the area of the base parcel.

*Developer* means any person, group or persons, corporation, or other legal entity who, having an interest in land directly or indirectly sells, leases or develops or offers to sell, lease or develop, or advertises for sale, lease or development any lot, tract, parcel, site, unit or interest for residential, commercial or industrial development as defined herein.

*Development* means the construction, or substantial alteration, of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or infrastructures.

*Development standard* means regulations that limit the size, bulk, or siting conditions of particular types of buildings, uses located within any designated district, or permitted as conditional uses.

*Development, Commercial* means the erection or construction of a building or structure intended for use as a business establishment engaged in the storage, cartage, sale or resale of goods, wares or merchandise and/or personal services, either directly or indirectly, to consumers, retailers, wholesalers or jobbers.

*Development, Industrial* means the erection or construction of a building or structure for the production, processing, cleaning, servicing, testing or repair of materials, goods or products.

**Essex County Zoning & Subdivision Ordinance**  
**Public Hearing Draft**  
**April 12, 2022**

---

*District.* Refer to Zoning district.

*Driveway* means a private access for vehicles to a parking space, garage, dwelling, or other structure.

*Dwelling, manufactured* means a structure which: (1) Is transportable in one or more sections; (2) Is eight feet or more in width and 40 feet or more in length in the traveling mode, or is 320 or more square feet when erected on-site; (3) Is built on a permanent chassis; (4) Is designed to be used as a Dwelling Unit for one Family, with or without a permanent foundation, when connected to the required utilities; and (5) Includes the plumbing, heating, air conditioning, and electrical systems necessary for the structure. For purposes of this chapter, a Manufactured Home must meet the standards promulgated by the United States Department of Housing and Urban Development (HUD), published at 24 CFR Part 3280, including the ANSI standards incorporated therein by reference. For purposes of this chapter, a Manufactured Home must bear a data plate declaring that it meets HUD standards. Manufactured dwelling was previously identified and synonymous with mobile homes.

*Dwelling, multifamily* means any building arranged or designed to be occupied by three or more dwelling units for permanent occupancy, regardless of the method of ownership. Included in the use type but not limited to would be garden apartments, low- and high-rise apartments, apartments for elderly housing and condominiums.

*Dwelling, or dwelling unit,* means a room or group of rooms occupied or intended to be occupied as separate living quarters by a single family or other group of persons living together as a household or by a person living alone and having its own permanently installed cooking and sanitary facilities but not including boats, trailers, motor homes.

*Dwelling, single-family* means a site built or modular building designed for and used exclusively as one dwelling unit for permanent occupancy by one family, which is surrounded by open space or yards on all sides.

*Dwelling, townhouse* means a row of three or more dwelling units, each separated from one another by a continuous vertical wall without opening from basement floor to roof between units, which is commonly known as a firewall.

*Dwelling, two-family* also referred to as a duplex; means a structure arranged or designed to be occupied by two families, the structure having only two dwelling units.

*Easement* means an authorization by a property owner for use by another of any designated part of his property for one or more specified purposes, which purposes are consistent with the general property rights of the owner.

*Educational facility, college/university* means an educational institution authorized by the Commonwealth of Virginia to award associate, baccalaureate or higher degrees, and facilities associated with it. This term includes academic buildings, administrative facilities, dormitories, special housing, parking areas, dining halls and other physical plants associated with the college or university use.

*Educational facility, primary/secondary* means a public, private or parochial school offering instruction at the elementary, junior and/or senior high school levels in the branches of learning and study required to be taught in the public schools of the Commonwealth of Virginia.

*Emergency management services facility* means a building operated by a public or private entity for the storage of emergency vehicles and equipment and ancillary operations such as but not limited to fire stations, police stations, and ambulance services.

*Engineer* means an engineer licensed by the Commonwealth of Virginia.

*Equipment repair service, heavy* means general repair and rebuilding of equipment commonly used in commercial, industrial, or construction enterprises, including engine work, body work, framework, and welding.

*Equipment sales and rental, heavy* means establishments primarily engaged in the sale or rental of tools, tractors, construction equipment, commercial equipment, agricultural implements, and similar industrial equipment. Included in this use type is the incidental storage, maintenance, and servicing of such equipment.

**Essex County Zoning & Subdivision Ordinance**  
**Public Hearing Draft**  
**April 12, 2022**

---

*Erected* means built, constructed, reconstructed, moved upon, placed altered, or any physical operations on the premises required for building. Excavations, fill, drainage, and the like shall be considered a part of erection.

*Exploratory well* means any well drilled (i) to find and produce gas, oil, or other similar materials in an unproven area, (ii) to find a new reservoir in a field previously found to be productive of gas, oil, or other similar materials in another reservoir, or (iii) to extend the limits of a known gas, oil, or other similar materials reservoir.

*Family health care structure, temporary* means pursuant to all conditions set forth in the Code of Virginia § 15.2-2292.1, a transportable residential structure, providing an environment facilitating a caregiver's provision of care for a mentally or physically impaired person, that (i) is primarily assembled at a location other than its site of installation; (ii) is limited to one occupant who shall be the mentally or physically impaired person, or in the case of a married couple, two occupants, one of whom is a mentally or physically impaired person and the other requires assistance with one or more activities of daily living as defined in § 63.2-2200, as certified in writing by a physician licensed in the Commonwealth; (iii) has no more than 300 gross square feet; and (iv) complies with applicable provisions of the Industrialized Building Safety Law (§ 36-70 et seq.).

*Family home day care (4 or less individuals)* means a single-family dwelling in which one to four individuals, are received for care, protection, and guidance during only part of a twenty-four-hour day. Individuals related by blood, legal adoption or marriage to the person who maintains the home shall not be counted towards this total (Code of Virginia § 15.2-2292).

*Family home day care (5-12 individuals)* means a single-family dwelling in which more than four but less than 13 individuals, are received for care, protection and guidance during only part of a twenty-four-hour day. Individuals related by blood, legal adoption or marriage to the person who maintains the home shall not be counted towards this total (Code of Virginia § 15.2-2292).

*Family* means a person living alone, or any of the following groups living together as a single housekeeping unit: (1) any number of persons related by blood, marriage, adoption, guardianship, or duly-authorized custodial relationship; (2) up to four unrelated people; (3) two unrelated people and any children related to either of them; (4) residents of an assisted living facility or group home as allowed by the Code of Virginia §15.2-2291. Domestic servants, employed and residing on the premises, shall be considered as part of the family.

*Farm supply and service establishment* means to implement sales, rentals and service, feed and seed store, custom milling, milk depots and creameries, fertilizer storage in bags, or bulk storage of liquid or dry fertilizer in tanks or in a completely enclosed building.

*Farm winery* means an establishment as defined in Va. Code § 4.1-100 Subsection (i) and licensed by the Commonwealth pursuant to Va. Code § 4.1-207 where wine may be sold for on-premise consumption and in closed containers for off-premise consumption. The serving of light snacks (cheese, crackers, peanuts, etc.) is permitted at a farm winery, without regulation. Other food prepared on-site shall be prepared in a facility in compliance with the Virginia State Building Code requirements and licensed by the Virginia Department of Health. The sale of wine-related items that are incidental to the sale of wine is permitted at a farm winery without regulation (Code of Virginia § 15.2-2288.3).

*Farmer's market* means retail sale of fresh fruits and vegetables, and other food and related items, at a facility with spaces occupied by several different temporary tenants on a short-term or daily basis; indoor or outdoor; but this term does not include Wayside stands.

*Final Plat* means a map and any accompanying material prepared by the subdivider and approved by the Essex County Board of Supervisors or Plats Officer in accordance with the provisions of this Ordinance to be recorded as a Subdivision.

*Financial institution* means an establishment whose principal purpose is the provision of financial services, including but not limited to, an insured depository institution, a credit union, a Federal home loan bank, a small business



**Essex County Zoning & Subdivision Ordinance**  
**Public Hearing Draft**  
**April 12, 2022**

---

investment company, a depository institution holding company, a mortgage lending business, or other institutions as defined by federal statute.

*Floodplain* means all lands that would be inundated by flood water as a result of a storm event of a 100-year return interval.

*Frontage, river* means the lot width along the property line parallel to the river, however such term does not dictate the location of the front of the property.

*Frontage, road* means the length of the front lot line measured from side lot line to side lot line.

*Funeral home* means an establishment engaged in undertaking services such as preparing the dead for burial and arranging and managing funerals.

*Garden center* means an establishment or place of business primarily engaged in retail sales from the premises including trees, shrubs, seeds, fertilizers, pesticides, plants, and plant materials primarily for agricultural, residential and commercial consumers. Such an establishment typically sells products purchased from others but may sell material which they grow themselves.

*Gasoline station* means any place of business with fuel pumps and underground or aboveground storage tanks that provides fuels and oil by individual sale for motor vehicles and equipment. A store associated with automobile fuel sales shall be considered a gasoline station.

*Governing Body* means the Board of Supervisors of Essex County, Virginia.

*Greenhouse, commercial* means a structure used for the cultivation and exhibition of plants under controlled conditions in which plants are offered for sale to the public, either at wholesale or at retail.

*Group home* means a licensed residential facility in which no more than eight mentally ill, intellectually disabled, or developmentally disabled persons or no more than eight aged, infirmed or disabled persons reside, with one or more resident counselors or other resident or nonresident staff persons, shall be considered a residential occupancy by a single family. Mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined in the Code of Virginia § 54.1-3401. Such facility shall be licensed by the Commonwealth of Virginia Department of Behavioral Health and Development Services (Code of Virginia § 15.2-2291).

*Halfway house* means an establishment providing accommodations, supervision, rehabilitation, counseling, and other guidance services to persons suffering from alcohol or drug addiction, to persons re-entering society after being released from a correctional facility or other institution, or to persons suffering from similar disorders. This use is separate from Shelter, residential as defined in this ordinance.

*Health Official* means the Health Officer of Essex County, or his duly authorized representative, the sanitarian.

*Helipad* means an area designated for the landing or departure of helicopters (Code of Virginia § 15.2-2293.2)

*Highway Engineer* means the resident engineer employed by the Virginia Department of Transportation.

*Home occupation, class A* means an accessory use of a dwelling unit for gainful employment involving the provision of goods and/or services and which does not generate any additional employees or more than five customers daily. Such occupations may require the use of accessory structures.

*Home occupation, class B* means an accessory use of a dwelling unit for gainful employment involving the provision of goods and/or services and which generates not more than two full or part-time employees. No more than ten customers may be allowed on the premises daily. Such occupations may require the use of accessory structures.

*Hospital* means a building or group of buildings, having room facilities for overnight patients, used for providing services for the in-patient medical, surgical, or obstetrical care of sick or injured humans, and which may include

**Essex County Zoning & Subdivision Ordinance**  
**Public Hearing Draft**  
**April 12, 2022**

---

related facilities, central service facilities and staff offices; provided, however, that such related facility must be incidental and subordinate to the main use and must be an integral part of the hospital operations.

*Host designee* means a person assigned by a host to be available 24/7 to answer problems associated with a short-term rental.

*Hotel* also referred to as a motel or motor lodge; means the use of land for transitory lodging or sleeping accommodations offered to the public for compensation. Typical uses include hotels, motels, travel lodges, tourist homes, or hostels, but not including a Bed and Breakfast.

*Individual Well* means a well supplying a source of water to one (1) lot.

*Janitorial business* means a cleaning service that may include an office and storage of supplies.

*Junkyard* means an establishment or place of business that is maintained, operated, or used for storing, keeping, buying, or selling junk or for the maintenance or operation of an automobile graveyard. The term "junkyard" shall include the term "automobile graveyard" as defined in Code of Virginia, § 33.2-804.

*Jurisdiction* means the area of territory subject to the legislative control of the governing body.

*Kennel, commercial* means any location where raising, grooming, caring for, or boarding of dogs, cats, or other small animals for commercial purposes is conducted.

*Kennel, private* means keeping of four or more dogs that are all owned and licensed by a single owner and kept on the same property.

*Laboratory, research and development* means an establishment whose principal purpose is the research, compounding and/or packaging of scientific products, or research and development of innovative ideas in technology-intensive fields. Examples include research and development of communication systems, transportation, geographic information systems, multi-media and video technology. Development and construction of prototypes and light manufacturing may be associated with this use.

*Laundry, commercial* means establishments primarily engaged in the provision of laundering, cleaning or dyeing services other than those classified as Personal services. Typical uses include bulk laundry and cleaning plants, diaper services, or linen supply services.

*Life care facility* means a residential facility primarily for the continuing care of the elderly, providing for transitional housing progressing from independent living in various dwelling units, with or without kitchen facilities, and culminating in nursing home type care where all related uses are located on the same lot. Such facility may include other services integral to the personal and therapeutic care of the residents.

*Livestock market* means a commercial establishment wherein livestock is collected for sale and auctioned off.

*Livestock* means any animal customarily kept by humans for the purpose of providing food, clothing, or work, including but not limited to, cows, goats, horses, pigs, and poultry but not including cats, dogs, or other house pets.

*Lot area* means the total horizontal area within the lot lines of the lot.

*Lot coverage* means that percentage of a lot which when viewed from above would be covered by a structure or structures or any part thereof, excluding roof eaves and steps.

*Lot line, front* means the line separating the lot from a street on which it fronts. On a corner lot, the front shall be deemed to be along the shorter dimension of the lot; and where the dimensions are equal, the front shall be on that street on which a predominance of the other lots in the block front.

**Essex County Zoning & Subdivision Ordinance**  
**Public Hearing Draft**  
**April 12, 2022**

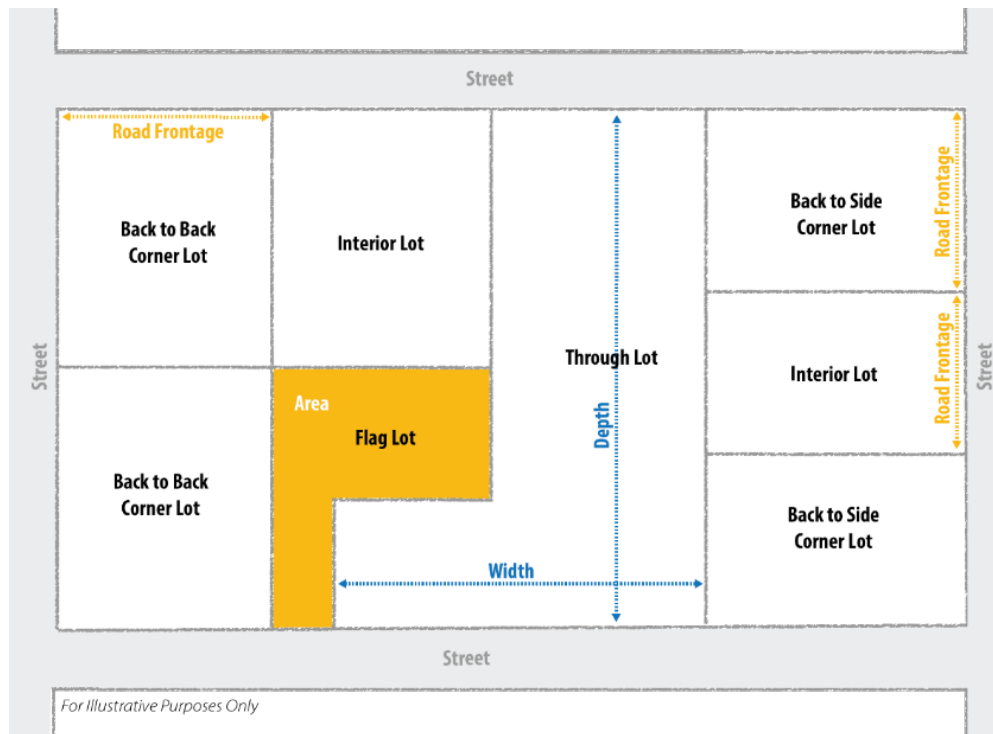
*Lot line, rear* means the lot line which is opposite the front lot line. If the lot is irregular in shape, the following criteria shall be used to determine the rear lot line:

- (a) If a rear lot line is less than 10 feet in length, or if the side lot lines come to a point at the rear, the rear lot line shall be deemed to be a line drawn parallel to the front lot line that is not less than 10 feet long, lying wholly within the Lot and located farthest from the front lot line.
- (b) If the lot has more than four contiguous Lot Lines that are not parallel to the front lot line, but all are greater than 10 feet in length, the rear lot line shall include all the lot lines that have a beginning point greater than 65 feet from the front line and have an interior angle of 135 degrees or less.
- (c) Any lot line 10 feet or less that has both ends intersecting with two lot line with the same designation shall be deemed as being part of the same line.

*Lot line, side* means any lot line other than a front or rear lot line.

*Lot* means a parcel of land intended to be separately owned, developed, or otherwise used as a unit, established by plat, subdivisions or as otherwise permitted by law.

*Lot of record* means a lot shown upon a plan of subdivision or upon a plat attached or referred to in a deed described by metes and bounds and recorded in the Circuit Court Clerk's Office of Essex County.



**Figure 36.1. Lot Types**

*Lot, corner* means a lot abutting on two or more streets at their intersection. Of the two sides of a corner lot, the front shall be deemed to be the shortest of the two sides fronting on streets.

*Lot, depth of* means the mean horizontal distance between the front and rear lot lines.

*Lot, double frontage* means a lot, other than a corner lot, having frontage on two streets.

**Essex County Zoning & Subdivision Ordinance**  
**Public Hearing Draft**  
**April 12, 2022**

---

*Lot, flag means* any lot, except a lot fronting on a cul-de-sac, that has a street frontage that is less than the minimum lot width required for the zoning district.

*Lot, interior* means any lot other than a corner lot.

*Lot, through* means a lot having a pair of opposite lot lines along two, more or less parallel, roads and which is not a corner lot. Except for a lot in a residential or residential townhouse district which has a buffer along a road, both road lines shall be front lot lines. For a lot with a buffer along a road, the land adjacent to the buffer shall be the rear lot line.

*Lot, width of* means the horizontal distance between side lot lines measured along the front building setback line.

*Manufactured home park* means the use of land for any area designed to accommodate two or more independent Manufactured Homes intended for residential use where residence is exclusively in Manufactured Homes.

*Manufactured home sales* means establishments engaged in the sale or rental of manufactured homes.

*Manufacturing, heavy* means the processing and/or converting of raw, unfinished material and/or products into articles or substances of a different character or for use for a different purpose. Uses may have significant external effects, or which pose significant risks due to the involvement of explosives, radioactive materials, poisons, pesticides, herbicides, or other hazardous materials in manufacturing or other processes. Uses may include, but are not limited to, paper products, plastic products, and pharmaceuticals.

*Manufacturing, light* means establishments primarily engaged in the on-site production of goods by hand manufacturing, assembly, packaging or fabrication of materials and products within enclosed structures without significant external effects such as smoke, noise, soot, vibration, odor, and the like. Uses may include, but are not limited to, a machine shop, bottling, electronic equipment, ceramic products, business machines, musical instruments, furniture, medical appliances, tools or hardware, any other product of a similar nature. Retail sales may be incidental to the manufacturing use.

*Marina* means a commercial, waterfront establishment whose business is offering the sale or rental of boats and marine sporting equipment and the servicing, repair, or storage of same. These establishments may provide boat slip rental, gasoline sales, sanitary pump out service, and food and drink accommodations.

*Micro-brewery* means an establishment primarily engaged in brewing ale, beer, malt liquors, and nonalcoholic beer, with a capacity of not more than 1,000 barrels per year. Micro-brewery may include a restaurant or public tasting room as an accessory use.

*Micro-distillery* means an establishment primarily engaged in distilling and blending potable liquors, including mixing them with other ingredients, with a capacity of not more than 5,000 gallons of finished product per year. A micro-distillery may include a restaurant or public tasting room as an accessory use.

*Mini-warehouse* means a building designed to provide rental storage space in cubicles where each cubicle has a maximum floor area of 400 square feet. Each cubicle shall be enclosed by walls and ceiling and have a separate entrance for the loading and unloading of stored goods. The conduct of sales, business or any other activity within the individual storage units, other than storage, shall be prohibited.

*Motor vehicle racing* means participant or spectator facilities primarily for the sport of racing machines against one another or against time.

*Nonconforming lot* means an otherwise legally platted lot that does not conform to the minimum area, width, or lot frontage requirements of this Ordinance for the district in which it is located either at the effective date of this Ordinance or as a result of subsequent amendments to the Ordinance.

*Nonconforming structure* means an otherwise legal building or structure that does not conform with the lot area, yard, height, lot coverage, or other area regulations of this Ordinance, or is designed or intended for use that does

**Essex County Zoning & Subdivision Ordinance**  
**Public Hearing Draft**  
**April 12, 2022**

---

not conform to the use regulations for this Ordinance, for the district in which it is located either at the effective date of this Ordinance or as a result of subsequent amendments to the Ordinance.

*Nonconforming use* means the otherwise legal use of a building or structure or of a tract of land that does not conform to the use regulations of this Ordinance for the district in which it is located, either at the effective date of this Ordinance or as a result of subsequent amendments to the Ordinance. Any use that was unlawful on the Date of Adoption of This Chapter shall remain unlawful and shall not be a nonconforming use.

*Nursing home* means a use providing bed care and in-patient services for persons requiring regular medical attention but does not include a facility providing surgical or emergency medical services or a facility providing care for alcoholism, drug addiction, mental disease, or communicable disease.

*Office, general* means the use of land wherein the primary use is the conduct of a business or profession such as, but not limited to accounting, tax-preparation, lenders and securities brokers, architecture, computer software, or information systems research and development, engineering, insurance, law, management, organization and association offices, psychology, theology, real estate and travel. Retail Sales do not comprise more than an Accessory Use of the primary activity of a General Office. This definition does not include Office, medical/clinic as defined by this chapter.

*Office, medical/clinic* means the use of a site for facilities which provide diagnoses, minor surgical care and outpatient care on a routine basis, but which does not provide overnight care or serve as a base for an ambulance service. Medical offices are operated by doctors, dentists, or similar practitioners licensed by the Commonwealth of Virginia.

*On-site sewer* means a septic tank or similar installation, approved by the State Department of Health, located on an individual lot or parcel and serving a single dwelling unit or other structure located on that lot, which provides proper and safe treatment and disposal of sewage.

*Operator* means the person responsible for the overall operation and management of a facility.

*Outdoor sales, seasonal* means any business or use (primary or accessory) that is conducted primarily out of doors, which may include but not be limited to: retail sales of fruits, vegetables, plants, flowers, Christmas trees, fireworks; and other similar businesses or uses.

*Outdoor storage* means the keeping, in other than a building, of any goods, materials, or merchandise on the same parcel for more than twenty-four consecutive hours. This use does not include junkyard.

*Owner* means the person or entity who owns all or a portion of a facility.

*Parcel* means a tract of land consisting of one or more lots of record.

*Parent Parcel* means a parcel of land that is proposed to be the subject of a development or subdivision of land.

*Parent Tract* means a separate lot, tract, or parcel of land conveyed by deed, devised by will or passing pursuant to the laws of descent and distribution, the boundaries of which are shown by a plat or described by metes and bounds, and recorded in the Clerk's Office of Essex County, Virginia on or before February 17 1988. However, the parent tract shall not be included as a separate lot unless the remainder is less than five (5) acres.

*Parking lot, commercial* means a site for surface parking use which is fee based and provides one or more parking spaces together with driveways, aisles, turning and maneuvering areas, incorporated landscaped areas, and similar features meeting the requirements established by this Ordinance. This use type shall not include parking facilities accessory to a permitted principal use.

*Personal improvement service* means establishments primarily engaged in the provision of informational, instructional, personal improvements and similar services. Typical uses include driving schools, health or physical fitness studios, reducing salons, dance studios, handicraft and hobby instruction.

**Essex County Zoning & Subdivision Ordinance**  
**Public Hearing Draft**  
**April 12, 2022**

---

*Personal services* means establishments or places of business engaged in the provision of frequently or recurrently needed services of a personal nature. Typical uses include beauty and barber shops; grooming of pets; seamstresses, tailors, or shoe repairs; florists; and laundromats and dry cleaning stations serving individuals and households.

*Physical Improvements* means any structure such as drainage structures, central water system, central sewage disposal systems, bridges, etc., and such other improvements as the agent may designate.

*Pier, commercial* means a fixed waterfront structure in which the owner of the pier charges a fee for members of the general public to use the pier. Allowed uses include crabbing, fishing, sunning, swimming and similar activities, but not boating or the docking of boats.

*Pier, private* means a waterfront structure, fixed or floating, used for the docking of boats owned and registered by the property owner or a guest visiting the owner, or for recreational uses such as fishing.

*Planning Commission* means a board of the local government consisting of such appointed members whose functions include advisory or nontechnical aspects of planning and may also include such other powers and duties as may be assigned to it by the Board of Supervisors.

*Plat* means a map or plan of a tract or parcel of land which is to be, or which has been subdivided. Includes the term map, plot, replat, or replot. When used as a verb, "plat" is synonymous with "subdivide".

*Portable storage container* means a portable, weather-resistant, receptacle designed and used for the storage or shipment of personal property, building materials or merchandise. Portable storage container is synonymous with shipping container.

*Primary highway* means a highway designated as a State Primary Highway or U.S. Highway by the Virginia Department of Transportation.

*Proffer* means a voluntary offer that addresses an impact or impacts from use of property or development, tendered by an applicant for conditional rezoning.

*Public hearing* means a meeting announced and advertised for soliciting formal public comment on matters under consideration.

*Public park and recreational area* means publicly owned and operated parks, picnic areas, playgrounds, indoor/outdoor athletic or recreation facilities, indoor/outdoor shelters, amphitheaters, game preserves, open spaces, and other similar uses. This use shall not include Public use or campground as defined in this ordinance.

*Public use* means the use of land, exclusively for public purposes, by any department or branch of the federal government, Commonwealth or any political subdivision, public authority, or any combination thereof. This use shall not include Public park and recreational area, Educational facilities, or Utility service (major or minor) as defined in this ordinance.

*Public water and sewerage systems* means a water or sewerage system owned and operated by the County or an authority or owned and operated by a private individual or a corporation approved by the governing body and properly licensed by the State Corporation Commission, and subject to special regulations as herein set forth.

*Purchaser* means an actual or prospective purchaser or lessee of any lot in a subdivision.

*Rated capacity* means the maximum capacity of a solar energy facility based on the sum total of each photovoltaic system's nameplate capacity.

*Recreation facility, private* means a use specifically for the residents and guests of a particular residential development, planned unit development, or residential neighborhood, including indoor and outdoor facilities. These facilities are usually proposed or planned in association with development and are usually located within or adjacent to such development.

**Essex County Zoning & Subdivision Ordinance**  
**Public Hearing Draft**  
**April 12, 2022**

---

*Recreation playground equipment* means play apparatus such as, but not limited to, jungle gyms, swing sets, slides, and sand boxes.

*Recreational vehicle* means a vehicular type or portable structure without a permanent foundation which can be towed, hauled, or driven and primarily designed as temporary living accommodations for recreational, camping, and travel use and including, but not limited to; travel trailers, truck campers, camping trailers and self-propelled motor homes.

*Recreational vehicle storage, commercial* means an area used for a fee for the storage of recreational vehicles and boats that are not currently being used.

*Recycling center* means a facility used by the general public for the collection of materials for recycling or reuse, including bins, boxes, buildings, self-propelled motor vehicles, trailers and other enclosures or receptacles. Except for County or other governmental sponsored programs to collect and/or recycle household hazardous wastes, this definition shall not include facilities for the collection of non-recyclable materials, such as business and household refuse, garbage, organic materials, medical waste, trash, junk, toxic substances or similar materials.

*Religious assembly* means a use located in a permanent building or in outdoor spaces and providing regular organized religious worship and related incidental activities. This use shall not include Educational facility, primary/secondary schools and Day care facilities.

*Required open space* means land area set aside for recreation, landscaping, or natural preservation, and not used for residences or business activities.

*Resource extraction* means a use involving on-site extraction of surface or subsurface mineral products or natural resources. Typical uses are quarries, borrow pits, sand and gravel operation, mining, soil mining, and other major excavations. Specifically excluded from this use type shall be grading and removal of dirt associated with an approved site plan or subdivision, or excavations associated with, and for the improvement of, a bona fide agricultural or forestry use.

*Resource Management Area, or RMA*, means that component of the Chesapeake Bay Preservation Area that is not classified as the Resource Protection Area. RMAs include land types that, if improperly used or developed, have the potential for causing significant water quality degradation or for diminishing the functional value of the Resource Protection Area.

*Resource Protection Area, or RPA*, means that component of the Chesapeake Bay Preservation Area comprised of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of State waters.

*Restaurant, drive-in* means an establishment primarily engaged in the preparation of food and beverages, for either take-out, delivery or table service, served in disposable containers at a counter, drive-up, or drive through service facility, or which offers curb service.

*Restaurant, general* means an establishment in which, for compensation, food or beverages are dispensed for consumption on the premises, including, among other establishments, cafes, tearooms, confectionery shops, eat-in delis and refreshment stands. Excluded from this definition are *Restaurant, drive-in* and *Restaurant, mobile*.

*Restaurant, mobile* means a readily movable wheeled cart, trailer, or vehicle designed and equipped for the preparing, service, and/or selling of food and operated at temporary locations. This definition shall include food trucks, food trailers, and food carts and shall not apply to those selling in short bursts of 30 minutes or less at a single location and moving to multiple properties through the course of a business day, such vehicles may include, but are not limited to, ice cream trucks.

**Essex County Zoning & Subdivision Ordinance**  
**Public Hearing Draft**  
**April 12, 2022**

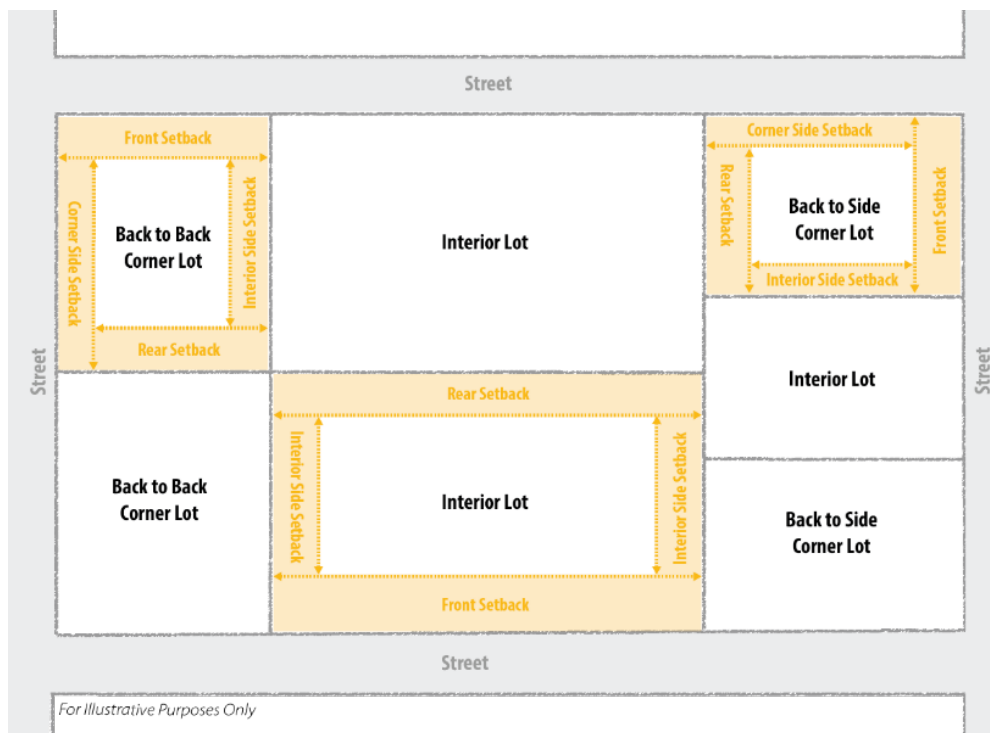
*Right-of-way* means a legally established area or strip of land, either public or private, on which an irrevocable right of passage has been recorded, and which is occupied or intended to be occupied by a street, utility service, water main, sanitary or storm sewer main, or other similar use.

*Sawmill, commercial* means a sawmill permanently located for the purpose of processing timber from the property on which located, from adjoining property, or from other properties removed from the sawmill or its environs without regard to point of origination. Such mill may or may not be held out for the processing of timber bought or sold on a price basis. Facilities may include wood processing and wood manufacturing such as, but not limited to, planing, chipping, pallets or other secondary products.

*Sawmill, mobile* means a portable sawmill located on private property for no more than three days for the processing of timber cut only from that property or from property immediately contiguous and adjacent thereto, or incidental processing of timber transported from other property.

*Secondary highway* means a highway designated as a State Secondary Highway by the Virginia Department of Transportation.

*Setback* means the minimum distance by which any building, structure, or use must be separated from the property line(s) of the lot on which it sits.



**Figure 36.2. Setback Types**



**Essex County Zoning & Subdivision Ordinance**  
**Public Hearing Draft**  
**April 12, 2022**

---

*Setback, corner side* means for corner lots, a line parallel to the right-of-way and side line of the lot denoting the minimum distance by which any structure, excluding open steps and stoops, must be separated from the side property line. The side located along the longer lot frontage shall be considered the corner side.

*Setback, front* means a line parallel to the front line of rectangular lots or, in the case of curved front lot lines, parallel to the chord of the curve, denoting the minimum distance by which any structure, excluding open steps and stoops, must be separated from the front property line. In the case of existing flag lots and irregularly shaped lots, the setback line shall be drawn on the plat in a position acceptable to the agent. In such cases, the setback line shall be perpendicular to the longer axis of the lot insofar as practicable.

*Setback, interior side* means for corner lots and interior lots, a line parallel to the side line of the lot denoting the minimum distance by which any structure, excluding open steps and stoops, must be separated from the side property line. In the case of existing flag lots and irregularly shaped lots, the setback line shall be drawn on the plat in a position acceptable to the agent.

*Setback, rear* means a line parallel to the rear line of rectangular lots or, in the case of curved front lot lines, parallel to the chord of the curve, denoting the minimum distance by which any structure excluding open steps and stoops must be separated from the rear property line. In the case of existing flag lots and irregularly shaped lots, the setback line shall be drawn on the plat in a position acceptable to the agent. In such cases, the setback line shall be perpendicular to the longer axis of the lot insofar as practicable.

*Shelter, residential* means a facility promoting temporary housing and feeding for one or more individuals who are otherwise temporarily or permanently homeless. Ancillary community support services may be provided including, but not limited to, childcare, counseling, food distribution, or vocational training. This definition excludes Halfway House, which is otherwise defined in this ordinance.

*Shooting range, outdoor* means the use of land for shooting clubs and other facilities for the discharge of firearms or other projectiles for the purposes of target practice, skeet and trap shooting, mock war games, or formal competitions, or in return for compensation.

*Short-term rental* means a residential dwelling unit that is used or advertised for rent for transient occupancy in increments of fewer than 30 consecutive days. This use type does not include bed-and-breakfast establishments and does not apply to month-to-month extensions following completion of a year's lease.

*Sign* mean any object, device, display, or structure, or part thereof, visible from a public place, a public right-of-way, any parking area, or right-of-way open to use by the general public, or any navigable body of water that is designed and used to attract attention to an institution, organization, business, product, service, event, or location by any means involving words, letters, figures, designs, symbols, fixtures, logos, colors, illumination, or projected images.

*Sign area* means the entire area enclosing the extreme limits of writing, representation, pictorial elements, emblems, or a figure of similar character, together with all material, color, or lighting forming an integral part of the display or used to differentiate the Sign from the background against which it is placed.

*Sign, abandoned* means a sign structure that has ceased to be used, and the owner intends no longer to have used, for the display of sign copy, or as otherwise defined by state law.

*Sign copy* means those letters, numerals, figures, symbols, logos, and graphic elements comprising the content or message of a sign, exclusive of numerals identifying a street address only.

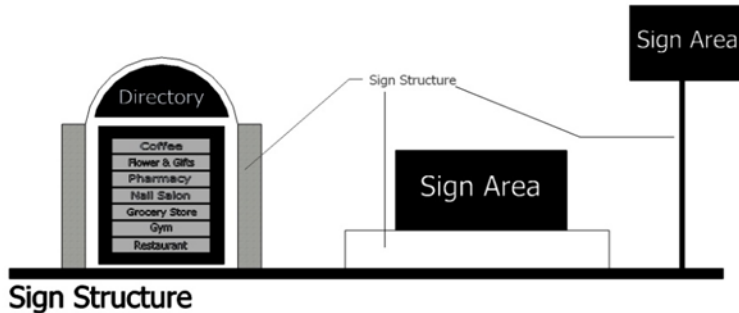
*Sign face* means the particular area of the sign structure upon which a message, copy, or advertisement is displayed for viewing.

**Essex County Zoning & Subdivision Ordinance**  
**Public Hearing Draft**  
**April 12, 2022**

---

*Sign maintenance* means to prevent through preservation, repair, or restoration, the development of any rust, corrosion, rot, chipping, peeling, or other deterioration in either the physical appearance or the safety of every sign.

*Sign structure* means any structure supporting a sign.



*Sign, animated* means a sign employing actual motion or the illusion of motion. Animated signs, which are differentiated from changeable signs as defined and regulated by this Ordinance, include the following types:

- (1) *Electrically Activated* means an animated signs producing the illusion of movement by means of electronic, electrical or electro-mechanical input and/or illumination capable of simulating movement through employment of the characteristics of one or both of the classifications noted below:
  - a. *Flashing* means an animated signs or animated portions of signs whose illumination is characterized by a repetitive cycle in which the period of illumination is either the same as or less than the period of non-illumination. For the purposes of this Ordinance, flashing will not be defined as occurring if the cyclical period between on-off phases of illumination exceeds four seconds.
  - b. *Patterned Illusionary Movement* means an animated signs or animated portions of signs whose illumination is characterized by simulated movement through alternate or sequential activation of various illuminated elements for the purpose of producing repetitive light patterns designed to appear in some form of constant motion.
- (2) *Environmentally Activated* means an animated signs or devices motivated by wind, thermal changes, or other natural environmental input. Includes spinners, pinwheels, and/or other devices or displays that respond to naturally occurring external motivation but excludes pennants and streamers.
- (3) *Mechanically Activated* means an animated signs characterized by repetitive motion and/or rotation activated by a mechanical system powered by electric motors or other mechanically induced means.

*Sign, awning* See "Sign, canopy".

*Sign, banner* means a sign utilizing a banner as its display surface.

*Sign, billboard* means an off-premises sign or sign structure with display space available for lease and designed so that the copy or poster on the sign can be changed frequently.

*Sign, canopy* means a sign displayed on or attached flat against the surface or surfaces of a canopy. Illuminated canopies, if translucent, are considered part of the total canopy sign area.

**Essex County Zoning & Subdivision Ordinance**  
**Public Hearing Draft**  
**April 12, 2022**

---

*Sign, changeable* message means a sign that includes any changing of the message either electronically or manually in which the message is stationary and does not fluctuate in size or brightness.

*Sign, exterior* means any sign placed outside a building.

*Sign, fascia* See "Wall Sign."

*Sign, flashing* See "Sign, animated, electrically activated."

*Sign, freestanding* means a sign principally supported by a structure affixed to the ground, and not supported by a building, including signs supported by one or more columns, poles, or braces placed in or upon the ground.

*Sign, illuminated* means a sign characterized by the use of artificial light, either projecting through its surface(s) (internally illuminated); or reflecting off its surface(s) (externally illuminated).

*Sign, interior* means any sign placed within a building, but not including "Signs, window" as defined by this Ordinance. Interior signs, with the exception of window signs as defined, are not regulated by this Ordinance.

*Sign, marquee* See "Sign, canopy".

*Sign, minor* means a wall or freestanding sign not exceeding three (3) square foot in area, not exceeding four feet in height, and not illuminated. Examples include not trespassing signs, displays of building address, security warning signs, parking signs, entrance/exit signs, and on-site directional signs.

*Sign, monument* means a "Sign, freestanding" having the appearance of a solid, rectangular, or cylindrical base.

*Sign, off-premise* means a sign which directs attention to a business, commodity, service, activity, or entertainment conducted, sold, or offered on a parcel of land other than the one on which the sign is located.

*Sign, on-premise* means a sign erected, maintained, or used in the outdoor environment for the purpose of the display of messages appurtenant to the use of, products sold on, or the sale or lease of the property on which it is displayed.

*Sign, pennant* means a sign made with flexible material, with or without lettering for design, usually suspended from one or two corners, and manufactured and placed for the purpose of attracting attention. Also referred to as a streamer.

*Sign, pole* See "Sign, freestanding."

*Sign, portable* means any sign not permanently attached to the ground or to a building or building surface. For example, an A-frame sign.

*Sign, projecting* means a sign other than a wall sign that is attached to or projects more than 15 inches from a building face or wall or from a structure whose primary purpose is other than the support of a sign.



Projecting/Hanging Sign

*Sign, roof* means a sign mounted on, and supported by, the main roof portion of a building, or above the uppermost edge of a parapet wall of a building and which is wholly or partially supported by such a building. Signs mounted on mansard facades, pent eaves, and architectural projections such as canopies or marquees shall not be considered to be roof signs.



*Sign, temporary* means a sign designed or intended, based on materials and structural components, to be displayed for a specified or limited period of time, regardless of type or style of sign. Examples include real estate signs, yard sale signs, contractor's signs, and special or one-time event signs per year.

*Sign, wall* means a sign that is in any manner affixed to any exterior wall of a building or structure and that projects not more than 15 inches from the building or structure wall, including signs affixed to architectural projections from a building provided the copy area of such signs remains on a parallel plane to the face of the building or to the face or faces of the architectural projection to which it is affixed.



*Sign, window* means a sign affixed to the surface of a window with its message intended to be visible to and readable from the public way or from adjacent property.

*Site plan* means a plan prepared by a professional engineer or land surveyor licensed by the State of Virginia showing all proposed improvements to the site. The site plan shall include all covenants, grants, or easements and other conditions relating to use, location, and bulk of buildings, density of development, open space, public facilities, and such other information as is required in applicable sections of this ordinance such as with conditional use, rezoning, or variance applications.

*Site, solar facility* means the entire area, including acreage coverage, setbacks, access roads, wildlife corridors, wetlands, and other natural features of a facility that generates electricity from sunlight.

**Essex County Zoning & Subdivision Ordinance**  
**Public Hearing Draft**  
**April 12, 2022**

---

*Small cell facility* means a wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six cubic feet in volume, or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet and (ii) all other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet, or such higher limit as is established by the Federal Communications Commission. The following types of associated equipment are not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation boxes, back-up power systems, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services (Code of Virginia § 15.2-2316.4).

*Solar energy, community* means a facility that generates electricity from sunlight that was not constructed by an investor-owned utility and that will be part of an investor-owned utility's community solar pilot program. A community solar energy facility does **not exceed two megawatts (2 MW)** alternating current, in accordance with the Code of Virginia [§ 56-585.1:3](#).

*Solar energy, large-scale* means a facility that generates electricity from sunlight which will be used to provide electricity to a utility provider and meets the definition of Community, Multi-family Shared, or Shared Solar Energy Facility.

*Solar energy, medium-scale* means a facility that generates electricity from sunlight primarily to reduce onsite consumption of utility power for commercial and industrial applications. Sites are between one to three acres with maximum capacity of 999 kW.

*Solar energy, multi-family shared* means a facility that generates electricity from sunlight that was not constructed by an investor-owned utility and that will be part of an investor-owned utility's multi-family shared solar pilot program. A multi-family shared solar energy facility does **not exceed three megawatts (3 MW)** alternating current at any single location or that **does not exceed five megawatts (5 MW)** alternating current at contiguous locations owned by the same entity or affiliated entities, serves at least three subscribers, is connected to the electric distribution grid serving the Commonwealth, and is located on a parcel of land on the premises of the multi-family utility customer or adjacent thereto, in accordance with the Code of Virginia § 56-585.1:12.

*Solar energy, Power Purchase Agreement (PPA)* means a facility that generates electricity from sunlight that was not constructed by an investor-owned utility and that will be part of an investor-owned utility's power purchase agreement solar pilot program. A facility has a capacity of **no less than 50 kilowatts and no more than three megawatts (3 MW)** alternating current, in accordance with the Code of Virginia § 56-594.02.

*Solar energy, shared* means a facility that generates electricity from sunlight that was not constructed by an investor-owned utility that will be part of an investor-owned utility's shared solar pilot program. A shared solar energy facility does **not exceed five megawatts (5 MW)** alternating current, serves at least three subscribers, has at least 40 percent of its capacity subscribed by customers with subscriptions of 25 kilowatts or less, is connected to the electric distribution grid serving the Commonwealth, and is located on a single parcel, in accordance with the Code of Virginia § 56-594.3.

*Solar energy, small-scale* means a facility that either (a) generates less than 20 kilowatts (kW) electricity from sunlight, consisting of one or more photovoltaic (PV) systems and other appurtenant structures and facilities within the boundaries of the site, or (b) utilizes sunlight as an energy source to heat or cool buildings, heat or cool water, or produce electrical or mechanical power by means of any combination of collecting, transferring, or converting solar-generated energy; and (c) meets at least one of the following criteria: has a disturbance zone equal to or less than one acre; is mounted on or over a building, parking lot, or other previously disturbed area; or utilizes integrated PV only.

*Solar energy, utility-scale* means a facility that generates electricity from sunlight which will be used to provide electricity to a utility provider. Sites are generally over two acres and have a capacity more than one megawatt (1 MW).

## Essex County Zoning & Subdivision Ordinance

### Public Hearing Draft

April 12, 2022

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*Sportsman club, commercial* means an area of a property devoted to commercial use for a camp dedicated for hunting and/or fishing that often includes a structure for sleeping, but not for permanent a permanent dwelling. The structure may or may not include such features as a kitchen, indoor plumbing, and other amenities found in a typical dwelling unit. A sportsman club may include facilities such as Kennel, private as defined in this ordinance, as an accessory use.

*Sportsman club, private* means an area of a property devoted to the temporary, noncommercial seasonal use for hunting and/or fishing that often includes a structure for sleeping, but not for permanent use. The structure may or may not include such features as a kitchen, indoor plumbing, and other amenities found in a typical dwelling unit. A sportsman club may include facilities such as Kennel, private as defined in this ordinance, as an accessory use.

*Stable, commercial* means the sheltered boarding of horses or ponies, or other livestock, for a revenue generating purpose. Included in this definition are horse riding academies and horse or livestock grooming operations.

*Stable, private* means the keeping, breeding, or raising of horses or ponies, or other livestock, exclusively for the personal use and enjoyment of the owner or occupant of the property or the riding of horses or ponies by the owner or occupant of the property and their guests.

*Store, adult* means an establishment that: offers for sale or rent items from any of the following categories: (a) adult media, (b) sexually oriented goods, or (c) goods marketed or presented in a context to suggest their use for specified sexual activities; and the combination of such items constitutes more than 15 percent of its stock in trade or occupies more than 15 percent of its gross public floor area; and where there is no on-site consumption of the goods, media or performances for sale or rent.

*Store, general* means an establishment for display and sale of merchandise at retail.

*Store, neighborhood convenience* means an establishment primarily engaged in the provision of frequently or recurrently needed goods for household consumption, such as prepackaged food and beverages, and limited household supplies and hardware. Neighborhood stores shall not include fuel pumps or the selling of fuel for motor vehicles. Typical uses include neighborhood markets and country stores.

*Store, specialty food* means an establishment, such as a coffee, candy, or ice cream shop, where the primary client consumption is off-site with limited seating and the product is limited to one type or line of food service.

*Store, specialty* means a small-scale (less than 2,500 square feet per business) retail use which offers for sale items of art or crafts, or which offers for sale items related to a specific theme, e.g., kitchen wares, pet care, etc.

*Story* means that portion of a building, other than the basement, included between the surface of any floor and the surface of the next floor above it, or, if it is topmost Story, the portion included between the surface of its floor and the ceiling above it.

*Story, half* means a space under a sloping roof, which has the line of intersection of roof decking and wall face not more than three (3) feet above the top floor level, and in which space not more than two-thirds (  $2/3$  ) of the floor area is finished off for use.

*Street line, or right-of-way line*, means the line between a lot, tract or parcel of land and a contiguous street.

*Street or Alley, Public Use of* means the unrestricted use of a specified area or right-of -way for ingress and egress to two (2) or more abutting properties.

*Street Width* means the total width of the strip of land dedicated or reserved for public travel, including roadway, curbs, gutters, sidewalks and planting strips.

*Street, centerline* means the centerline thereof as shown in any of the official records of the County or as established by the Virginia Department of Transportation. If no such centerline has been established, the centerline of a street shall be a line lying midway between the side lines of the right-of-way thereof.

**Essex County Zoning & Subdivision Ordinance**  
**Public Hearing Draft**  
**April 12, 2022**

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*Street, Major* means a through street or road that carries a large volume of through traffic, or anticipated traffic exceeding five hundred (500) vehicles per day:

*Street, or road*, means a public or private thoroughfare which affords the principal means of access to abutting properties.

*Street, Private* means a street affording a means of private access to two (2) or more abutting properties, having a right-of-way of not less than fifty (50) feet in width.

*Street, Public* means a thoroughfare, dedicated and accepted by the Virginia Department of Transportation for public use, which affords the principal means of access to abutting property, including road, highway, drive, lane, avenue, place, boulevard, or any other thoroughfare except an alley.

*Street, Service Drive* means a public right-of-way generally parallel and contiguous to a major highway, primarily designed to promote safety by eliminating promiscuous ingress and egress to the right-of-way by providing safe and orderly points of access to the highway.

*Street, Through* means a street, or roadway easement which affords the principal means of access to abutting properties and proving a link between two (2) or more road rights-of-way.

*Studio, fine arts* means a building, or portion thereof, used as a place of work by a sculptor, artist, or photographer; or used as a place to exhibit and offer for sale works of the visual arts (other than film).

*Subdivide* means the process of dealing with land so as to establish a subdivision as defined herein.

*Subdivider* means any individual, firm, partnership, association, corporation owning any parcel of land to be subdivided.

*Subdivision Agent* means the administrative official, or an authorized agent thereof, responsible for administering and enforcing the Subdivision portion of the Zoning and Subdivision Ordinance of the County, also referred to in the Subdivision Article, as the Agent.

*Subdivision* means the division of a parcel of land into two (2) or more lots or parcels of land for the purpose of transfer of ownership or building development, including any parcel previously separated by the owner or prior owner of such land for such purpose. The sale or exchange of parcels between adjoining lot owners, where such sale or exchange does not create additional building lots, shall be exempt from the provisions of the ordinance.

- (a) *Major Subdivision* - The division of any tract or parcel of land into six (6) or more lots.
- (b) *Minor Subdivision* - The division of any tract or parcel of land into five (5) lots or less.
- (c) *Single Lot Subdivision* - The division of any tract or parcel of land into one (1) lot; and
- (d) *Family Subdivision* means – The division of any tract or parcel of land for gift to any person who is a natural or legally defined offspring, stepchild, spouse, sibling, grandchild, grandparent, or parent of the owner.

*Surveyor* means a certified land surveyor authorized to do business in the State of Virginia.

*Tattoo parlor and/or body piercing salon* means any business that provides tattooing and/or body-piercing as those terms are defined in Virginia Code § 54.1-700, as amended.

*Tradesperson service* means an establishment or place of business primarily engaged in providing a specific trade service to individuals. Typical uses include plumbing, electricians, blacksmith, welding, and taxidermy. This definition does not include automobile repair or construction material sales as otherwise defined in this ordinance.

*Truck/freight terminal* means an area of land used for the switching, storing, assembling, distributing, consolidating, moving, repairing, weighing, or transferring of freight.

**Essex County Zoning & Subdivision Ordinance**  
**Public Hearing Draft**  
**April 12, 2022**

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*Utility service, major* means service of a regional nature which normally entails the construction of new buildings or structures such as electric generating plants and sources; electrical switching facilities and stations or substations; community wastewater treatment plants; water towers; sanitary landfills; and similar facilities. All overhead transmission lines are included in this definition.

*Utility service, minor* means service which is necessary to support development within the immediate vicinity and involve only minor structures. Included in this use type are small facilities such as “Administrative review-eligible project” as defined in the Code of Virginia § 15.2-2316.6, transformers, relay and booster devices, and well, water and sewer pump stations.

*Variance (Hardship)* - A relaxation or variance of the terms of this Ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the Ordinance would result in unnecessary and undue hardship.

*Variance* means a reasonable deviation from the provisions of this Ordinance regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the Ordinance would result in unnecessary and undue hardship which is not created by the owner, relief or remedy is not available through this ordinance, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of this Ordinance.

*Vested rights* mean a right belonging completely and unconditionally to a person as a property interest which cannot be impaired or taken away (as through retroactive legislation) without the consent of the owner. A landowner's rights are vested when the landowner (i) obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific project, (ii) relies in good faith on the significant affirmative governmental act, and (iii) incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act.

*Veterinary hospital/clinic* means an establishment rendering surgical and medical treatment of animals. Boarding of domestic animals shall only be conducted indoors, on a short-term basis, and shall only be incidental to such hospital/clinic use, unless also authorized and approved as a commercial kennel. Agricultural livestock such as horses and cows may be boarded outdoors as appropriate.

*Vicinity map* means the vicinity or location map shall show the relationship of the proposed subdivision to existing community facilities which serve or influence it. The map shall include subdivision name and location, main traffic arteries, schools, parks and playgrounds, scale, north arrow and date.

*Warehousing and distribution* means uses including storage, warehousing, and dispatching of goods within enclosed structures. Typical uses include wholesale distributors, e-commerce fulfillment centers, storage warehouses, data centers, and moving/storage firms.

*Wayside stand* means an establishment for the seasonal retail sale of agricultural or forestal goods and merchandise primarily produced by the operator on the site, or on nearby property. Agricultural goods produced on other properties owned or leased by the operator may also be allowed provided a majority of the produce comes from land surrounding the wayside stand. This use type shall include agricultural products picked by the consumer. Also referred to as a roadside or farm stand or wayside market.

*Yard* means an open space on a lot other than a court, unoccupied and unobstructed from the ground upward, except as otherwise permitted in this Ordinance.

*Yard, corner side* means for corner lots, the yard extending across the side of the lot between the right-of-way and the nearest line of the principal structure, from the front building setback line to the rear property line. The yard located along the longer lot frontage shall be considered the corner side yard.



*Yard, front* means an open space on the same lot as a building between the front line of the building (excluding steps) and the front lot or street line and extending across the full width of the lot. River frontages are not front yard lines. See Frontage, river.

*Yard, interior side* means for interior lots, the yard extending across the side of the lot between the side property line and the nearest line of the principal structure from the front setback line to the rear property line.

*Yard, rear* means an open, unoccupied space on the same lot as a building between the rear line of the building, excluding open steps and stoops, and the rear line of the lot and extending the full width of the lot.

*Yard, side* means an open, unoccupied space on the same lot as a building between the side line of the building, excluding open steps and stoops, and the side line of the lot and extending from the front yard line to the rear yard line.

*Zoning Administrator* means the administrative official, or an authorized agent thereof, responsible for administering and enforcing the Zoning and Subdivision Ordinance of the County, also referred to in this ordinance as the Administrator.

*Zoning district* means a specifically delineated section of the County in which the regulations are uniform and so designated on the zoning map.

*Zoning map* means a legally adopted map depicting the location of each zoning district of the county and all amendments thereto.