

Town Zoning Ordinance
of
The Town of Painter, Virginia

Prepared by:

Painter Planning Commission

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Honorable Tom Willett

With Adopted Amendments as of August 8, 2016

Painter Town Council

Honorable Connie Campbell, Mayor
Honorable Kim Savage
Honorable Barry Frey
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Honorable Tom Willett
Honorable Jimmy Sturgis
Honorable Eric Harris

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Technical Assistance Provided by:



Accomack-Northampton Planning District Commission

Painter Town Zoning Ordinance as duly adopted by the Painter Town Council in regular session and with amendments through August 8, 2016

Certification: _____
Connie Campbell, Mayor

Teste: _____
Karen Willett, Town Clerk

The effective date of this ordinance shall be from and after its adoption by the Painter Town Council, and its provisions shall be enforced thereafter until repealed or amended.

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ARTICLE I - GENERAL PROVISIONS

I-1 Purpose and Authority to Zone. Whereas, by act of the General Assembly of Virginia as provided in Title 15.2, Chapter 22, Chapter 15.2-2280 –15.2-2327, of the Code of Virginia, as amended, the governing body of any county or municipality may, by ordinance, divide the territory under its jurisdiction into districts of such number, shape, and area as it may deem best suited to carry out the purposes of this article, and in each district it may regulate, restrict, permit, prohibit, and determine the following:

- A. The use of land, buildings, structures, and other premises for agricultural, commercial, industrial, residential, and other specific uses; and
- B. The size, height, area, bulk, location, erection, construction, reconstruction, alteration, repair, maintenance, razing or removal of structures; and
- C. The areas and dimensions of land, water, and air space to be occupied by buildings, structures and uses, and of courts, yards, and other open spaces to be left unoccupied by uses and structures, including variations in the sizes of lots based on whether a public or community water supply or sewer system is available and used; and
- D. The excavation or mining of soil or other natural resources.

Therefore, be it ordained by the governing body of the Town of Painter, Virginia, for the purpose of promoting the health, safety, and/or general welfare of the public and of further accomplishing the objectives of Section 15.1-427 of the Code of Virginia, that the following be adopted as the zoning ordinance of the Town of Painter, Virginia, together with the accompanying map. This ordinance has been designed: (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 expedite 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; (6) to protect against one or more of the following: overcrowding of land, undue density of population 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 promote affordable housing; (9) to protect surface water and ground water; and (10) to be in accord with and to implement the goals, objectives and policies set forth in the Painter Town Plan, as adopted by the Painter Town Council.

I-2 Ordinance Sets Minimum Standards. Whenever the standards set forth in this ordinance are at variance with the requirements of any other lawfully adopted statutes, rules, regulations, deed

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restrictions, covenants, or ordinances, the most restrictive, or that imposing the highest standards shall govern.

I-3 Town Liability. The zoning of any land and the granting of any permit or certificate for the use of land and/or structure shall not be interpreted as a guarantee by the Town of Painter of the suitability of such land or structure for developing or use.

I-4 Severability Clause. Should any section or provision of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this ordinance as a whole or any other part thereof other than the part so declared to be unconstitutional or invalid.

I-5 Non-exclusionary Intent. It is not the intent of this ordinance to exclude any economic, racial, religious or ethnic group from enjoyment of residence, land ownership or tenancy within the Town; nor is it the intent of this ordinance to use public powers in any way to promote the separation of economic, racial, religious, ethnic groups, nor persons with disabilities; nor is it the intent of this ordinance to use public powers in any way to deny anyone the otherwise lawful use of the resources within the Town of Painter based upon family status, except as may be the incidental result of meeting the purpose outlined in Section I-1, herein.

I-6 Vested Rights. Should any structure in any district existing in the Town of Painter on the date of adoption of this ordinance, or subsequently erected pursuant to this ordinance, be destroyed to any extent as a result of a casualty loss, such structure may be restored or replaced to like size or square footage.

I-7 Provisions for Zoning Map; Amendment to Zoning Map.

I-7.1 The locations and boundaries of the districts established by this chapter shall be as shown on a map entitled, "Official Zoning Map, Town of Painter, Virginia, 1994", which map is hereby declared to be part of this chapter. A certified copy of this map is on file in the Town Hall or office of the Administrator, and such map is signed by the mayor and certified by the town clerk. All notations, dimensions, and designations shown thereon shall be as much a part of this chapter as if the same were all fully described herein.

I-7.2 The administrative authority shall maintain a copy of the zoning map of the town, making such amendments to such map as they are approved by the town council.

I-8 Applicability. This ordinance shall apply to the incorporated territory of the Town of Painter, Virginia. However, nothing contained herein shall require any changes in the plans or construction of any building for which a building permit was granted prior to the effective date of this ordinance. However, if such construction does not commence within six (6) months or less after this ordinance becomes effective, construction shall be in conformity with the provisions of this ordinance for the district in which the activity is located.

I-9 Determination of District Boundaries. Unless zoning district boundary lines are fixed by

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dimensions or otherwise clearly shown or described, and where uncertainty exists with respect to the boundaries of any zoning districts as shown on the zoning map, the following rules shall apply:

- A. Where district boundaries are indicated as approximately following or being at right angles to the center lines of streets, highways, alleys, or railroad main tracks, such center lines or lines at right angles to such center lines shall be construed to be such boundaries, as the case may be.
- B. Where a district boundary is indicated to follow a river, creek, or branch or other body of water, such boundary shall be construed to follow the center line at low water or at the limit of the jurisdiction, and in the event of change in the shoreline, such boundary shall be construed as moving with the actual shoreline.
- C. If no distance, angle, curvature description or other means is given to determine a boundary line accurately and the above provisions do not apply, the boundary line shall be determined by the administrative authority using the scale shown on the zoning map. In case of subsequent dispute, the matter shall be referred to the board of zoning appeals, which shall determine the boundary.

ARTICLE II - DEFINITIONS

For the purpose of this ordinance, certain words and terms are defined as follows. Words used in the present tense include the future. Words in the singular include the plural, and the plural includes the singular.

II-1 Accessory Use or Structure: A subordinate use or structure customarily incidental to and located upon the same lot occupied by the main use or building. This definition of accessory structure shall include satellite dishes.

II-2 Acreage: A parcel of land, regardless of area, described by metes and bounds which is not a numbered lot on any recorded subdivision plat.

II-3 Administrator, The: The official charged with the enforcement of this ordinance. The administrator may be any appointed or elected official who is by formal resolution designated to the position by the governing body and may serve with or without compensation as determined by the governing body.

II-4 Agriculture: The tilling of the soil, the raising of crops, horticulture, forestry, and gardening, including the keeping of animals and fowl, and including any agricultural industry or business such as fruit packing plants, dairies, or similar uses.

II-5 Agricultural Lands: Those lands used for the planting and harvesting of crops or plant growth of any kind in the open; pasture; horticulture; dairying; floriculture; or raising of poultry and/or livestock.

II-6 Alteration: Any change in the total floor area, use, adaptability, or external appearance of an existing structure.

II-7 Basement: A story having part of its height below grade. A basement shall be counted as a story for purposes of height regulations, if it is used for business purposes, or for dwelling purposes by other than a janitor employed on the premises.

II-8 Bed and Breakfast House: A dwelling where lodging and breakfast is provided for compensation for up to six (6) persons (in contradistinction to hotels, boarding houses and tourist houses) and open to transients. Up to one person may be hired to assist in the operation of the establishment.

II-9 Best Management Practices (BMPs): A practice, or a combination of practices, that is determined by a state or designated area-wide planning agency to be the most effective, practical means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals.

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II-10 Boarding House: A building where, for compensation, lodging and meals are provided for at least five (5) and up to ten (10) persons.

II-11 Buffer Area: An area of natural or established vegetation managed to protect other components of a Resource Protection Area and state waters from significant degradation due to land disturbances.

II-12 Building: Any structure having a roof supported by columns or walls for the housing or enclosure of persons, animals, or chattels.

II-13 Building, Height of: The height shall be measured from the average elevation of the ground surface along the front of the building.

II-14 Building, Main: The principal structure or one (1) of the principal buildings on a lot, or the building or one (1) of the principal buildings housing the principal use on the lot.

II-15 Chesapeake Bay Preservation Area (CBPA): Any land designated by the Painter Town Council pursuant to Part III of the Chesapeake Bay Preservation Area Designation and Management Regulations, 9VAC25-830-10 et seq., and Section 62.1-44.15:72 of the Code of Virginia. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area.

II-16 Commission, The: The Planning Commission of the Town of Painter, Virginia.

II-17 Construction Footprint: The area of all impervious surface including, but not limited to, buildings, roads and drives, parking areas, and sidewalks and the area necessary for construction of such improvements.

II-18 Development: The construction, or substantial alteration, of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures.

II-19 Diameter at Breast Height (DBH): means the diameter of a tree measured outside the bark at a point 4.5 feet above ground.

II-20 District: Districts as referred to in the State Code, Section 15.1-486.

II-21 Dripline: A vertical projection to the ground surface from the furthest lateral extent of a tree's leaf canopy.

II-22 Dwelling: Any structure which is designed for use for residential purposes, except hotels, boarding houses, lodging houses, tourist cabins, apartments, travel trailers, and manufactured homes.

II-23 Dwelling, Multiple-Family: A structure arranged or designed to be occupied by more than

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one (1) family.

II-24 Dwelling, Single-Family: A structure arranged or designed to be occupied by one (1) family, the structure having only one (1) dwelling unit. Excludes mobile home as defined.

II-25 Family: One or more related persons by blood, marriage, adoption or approved foster care, six or less unrelated persons occupying a single dwelling unit, as distinguished from an unrelated group occupying a boarding house, lodging house, tourist home, or hotel.

II-26 Frontage: The minimum width of a lot measured from one (1) side line to the other along a straight building setback line as defined as required herein.

II-27 Garage, Private: Accessory building designed or used for the storage of not more than three (3) automobiles owned and used by the occupants of the building to which it is accessory. On a lot occupied by a multiple-unit dwelling, the private garage may be designed and used for the storage of one and one-half (1 1/2) times as many automobiles as there are dwelling units.

II-28 Governing Body: The Town Council of Painter, Virginia.

II-29 Home Garden: A garden in a residential district for the production of vegetables, fruits, and flowers generally for use and/or consumption by the occupants of the premises.

II-30 Home Occupation: Any occupation or profession carried on in a dwelling unit or on the premises thereof, provided that:

- A. No person other than members of the family residing on the premises shall be engaged in such occupation.
- B. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than twenty-five (25) percent of the floor area of the dwelling unit or twenty-five (25) percent of said floor area if conducted in an accessory building, shall be used in the conduct of the home occupation.
- C. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign, not exceeding four (4) square feet in area.
- D. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard.
- E. No equipment or process shall be used in such home occupation which creates noise,

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vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot, if the occupation is conducted in a single-family dwelling, or outside the dwelling unit if conducted in other than a single-family dwelling. In the case of the electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises. Bed and breakfast houses, boarding and rooming houses, tourist homes and private education institutions, the conducting of a beauty or barber shop, tea room or restaurant, rest home, clinic, doctor or dentist office, child care center, real estate office, or cabinet, metal, or auto repair shop shall not be deemed a home occupation.

II-31 Impervious Cover: A surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. Impervious surfaces include, but are not limited to: roofs, buildings, streets, parking areas, and any concrete, asphalt, or compacted gravel surface.

II-32 Institutional Use: For the purpose of this ordinance institutional uses shall be defined as those uses that pertain to government or education.

II-33 Kennel: Any place in which more than three (3) dogs, more than six (6) months of age are kept, or any number of dogs are kept for the purpose of sale or rental or in connection with boarding, care, or breeding, for which any fee is charged.

II-34 Lot: A parcel of land occupied or to be occupied by a main structure or group of main structures and accessory structures, together with such yards, open spaces, lot width, and lot areas as are required by this ordinance, and having frontage upon a street, either shown on a plat of record or considered as a unit of property and described by metes and bounds.

II-35 Lot Coverage: The impervious area of any lot or parcel including, but not limited to buildings, roads, drives, parking areas, sidewalks, patios, decks, etc.

II-36 Lot, Corner: A lot abutting on two (2) or more streets at their intersection. Of the two (2) sides of a corner lot, the front shall be deemed to be the shortest of the two (2) sides fronting on streets.

II-37 Lot, Depth of: The average horizontal distance between the front and rear lot lines.

II-38 Lot, Double Frontage: An interior lot having frontage on two (2) streets.

II-39 Lot, Interior: Any lot other than a corner lot.

II-40 Lot Width: The width of any lot at the setback line, calculated by measuring back a uniform distance from the street line as required by the setback line shall also curve or angle uniformly with the street line and the lot width shall be calculated along the said curve or angle setback line.

II-41 Lot of Record: A lot which has been recorded in the Clerk's Office of the Circuit Court.

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II-42 Manufacture and/or Manufacturing: The processing and/or converting of raw, unfinished materials, or products, or either of them, into articles or substances of different character, or for use for a different purpose.

II-43 Manufactured Home: A structure constructed to federal standards, transportable in one or more sections, which, in the traveling mode, is eight (8) feet or more in width and is forty (40) or more feet in length, or when erected on site, is three-hundred and twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling unit with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical conditions contained therein. The term "mobile home," once widely used to describe transportable housing units, has been replaced in the Code of Virginia, Section 36-85.16 et seq., by the term "manufactured home."

II-44 Mobile Home: A transportable, factory built home designed to be used as a year-round residential dwelling and built prior to the enactment of the Federal Manufactured Housing Construction and Safety Standards Act of 1974. (This definition shall not include motor homes and travel trailers.)

II-45 Modular Home: A dwelling constructed at the manufacturer's facility and transported after construction on streets and highways in sections for assembly at a site on a permanent foundation. A modular home must be built to standards established in the Building Officials and Code Administrators International, Inc. (BOCA) Basic Building Code. See Code of Virginia, Section 36-71.1 et seq. This definition shall not include travel trailers, mobile homes, or manufactured homes.

II-46 Motor Home: Every private motor vehicle with a normal seating capacity of not more than ten persons, including the driver, designed primarily for use as living quarters for human beings.

II-47 Nonconforming Lot: An otherwise legally platted lot that does not conform to the minimum area or width 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.

II-48 Nonconforming Activity: 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.

II-49 Nonconforming Structure: 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 a use 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.

II-50 Nonpoint Source Pollution: Pollution consisting of constituents such as sediment, nutrients, and organic and toxic substances from diffuse sources, such as runoff from agriculture and urban

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land development and use.

II-51 Nontidal Wetlands: Those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to Section 404 of the federal Clean Water Act, in 33 C.F.R. 328.3b.

II-52 Noxious Weeds: Weeds that are difficult to control effectively, such as Johnson Grass, Kudzu, and multiflora rose.

II-53 Office: For the purpose of this ordinance offices are defined as a building, room or suite in which services, clerical work, professional duties or the like are carried out.

II-54 Parking Space: A permanently maintained area, enclosed or unenclosed, sufficient in size to store one (1) standard size automobile, together with a permanently maintained driveway connecting the parking space with a street or alley and permitting ingress or egress of an automobile.

II-55 Parking Area, Off-Street: Parking (as defined in II-54) space provided for vehicles outside the dedicated street right-of-way.

II-56 Plan of Development: The process for site plan or other review to ensure compliance with Section 62.1-44.15:74 of the Code of Virginia and Article XII of this Zoning Ordinance, prior to any clearing or grading of a site or the issuance of a building permit.

II-57 Public Road: A publicly-owned road designed and constructed in accordance with water quality protection criteria at least as stringent as requirements applicable to the Virginia Department of Transportation, including regulations promulgated pursuant to (i) the Erosion and Sediment Control Law (Section 62.1-44.15:51 et seq. of the Code of Virginia) and (ii) the Virginia Stormwater Management Act (Section 62.1-44.15:24 et seq. of the Code of Virginia). This definition includes those roads where the Virginia Department of Transportation exercises direct supervision over the design or construction activities, or both, and cases where secondary roads are constructed or maintained, or both, by the local government in accordance with the standards of that local government.

II-58 Redevelopment: The process of developing land that is or has been previously developed.

II-59 Required Open Space: Any space required in any front, side, or rear yard.

II-60 Resource Management Area (RMA): 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.

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II-61 Resource Protection Area (RPA): 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.

II-62 Restaurant: Any building in which, for compensation, food or beverages are dispensed for consumption on the premises including, among other establishments, cafes, tea rooms, confectionery shops, or refreshment stands.

II-63 Retail Stores and Shops: Buildings for display and sale of merchandise at retail or for the rendering of personal services (but specifically exclusive of coal, wood, and lumber yards) such as the following which will serve as illustration: drug store, newsstand, food store, candy shop, milk dispensary, dry goods and notions store, antique store and gift shop, hardware store, household appliance store, furniture store, florist, optician, music and radio store, tailor shop, barber shop, and beauty shop.

II-64 Setback: The minimum distance by which any building or structure must be separated from the front lot line.

II-65 Sign: Any display of any letters, words, numerals, figures, device, emblems, pictures, or any parts or combinations thereof, by any means whereby the same are made visible for the purpose of making anything known, where such display be made on, attached to, or as a part of a structure, surface, or any other thing including, but not limited to, the ground, any rock, tree, or other natural object, which display is visible beyond the boundaries of the parcel of land on which the same is made. A display of less than four (4) square feet in area is excluded from this definition.

II-66 Sign Structure: Includes the supports, uprights, bracing, and framework of any structure, be it single-faced, double-faced, v-type, or otherwise exhibiting a sign.

II-67 Sign, Temporary: A sign applying to a seasonal or other brief activity such as, but not limited to, summer camps, horse shows, auctions, or sale of land. Temporary signs shall conform in size and type to directional signs and may be erected for a maximum of 90 days.

II-68 Store: See Item II-63, Retail Stores and Shops.

II-69 Story: That portion of a building, other than the basement, included between the surface of any floor and the surface of the floor next above it. If there is no floor above it, the space between the floor and the ceiling next above it.

II-70 Story, Half: 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 of the floor area is finished off for use.

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II-71 Street; Road: A public thoroughfare, except an alley or driveway, which affords principal means of access to abutting property.

II-72 Street Line: The dividing line between a street or road right-of-way and the contiguous property.

II-73 Structure: Anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground. This includes, among other things, dwellings, buildings, signs, etc.

II-74 Variance: A variance is a reasonable deviation, granted by the Board of Zoning Appeals, from those provisions regulating the size or area of a lot or parcel of land or the size, area, bulk, or location of a building or structure.

II-74.1 Utility Facilities: (1) facilities for the generation, transmission, broadcasting, distribution, or relay of electricity, telephone signals, radio signals, television signals, or wireless communication signals, (2) pipelines, refining facilities, and storage tanks for hydrocarbons, petroleum products, and petrochemicals, whether natural or synthetic, (3) facilities for the production or distribution of steam, thermal energy, solar energy, nuclear energy, magnetic energy, wind energy, or geothermal energy, and (4) facilities for the treatment, transportation, disposal, distribution or storage of water, sewage, or other waste of any kind. Notwithstanding the preceding sentence, establishments for the on-premises retail sale of energy products, paint, other household products, and chemicals are not considered utility facilities even though they may involve the storage of hydrocarbons, petroleum products, and petrochemicals.

II-75 Water-dependent Facility: A development of land that cannot exist outside of the Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include, but are not limited to (i) ports; (ii) the intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers; (iii) marinas and other boat docking structures; (iv) beaches and other public water-oriented recreation areas; and (v) fisheries or other marine resources facilities.

II-76 Wetlands: Nontidal wetlands.

II-77 Yard: An open space on a lot other than a court unoccupied and unobstructed from the ground upward, except as otherwise provided herein.

A. Yard, Front. 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.

B. Yard, Rear. An open, unoccupied space on the same lot as a building between the rear line of the building (excluding steps) and the rear line of the lot and extending the full width of the lot.

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- C. Yard, Side. An open, unoccupied space on the same lot as a building between the side line of the building (excluding steps) and the side line of the lot, and extending from the front yard line to the rear yard line.

ARTICLE III - DISTRICTS

III-1 Enumeration of Districts. For the purpose of this ordinance, the incorporated area of the Town of Painter, Virginia, is hereby divided into the following districts.

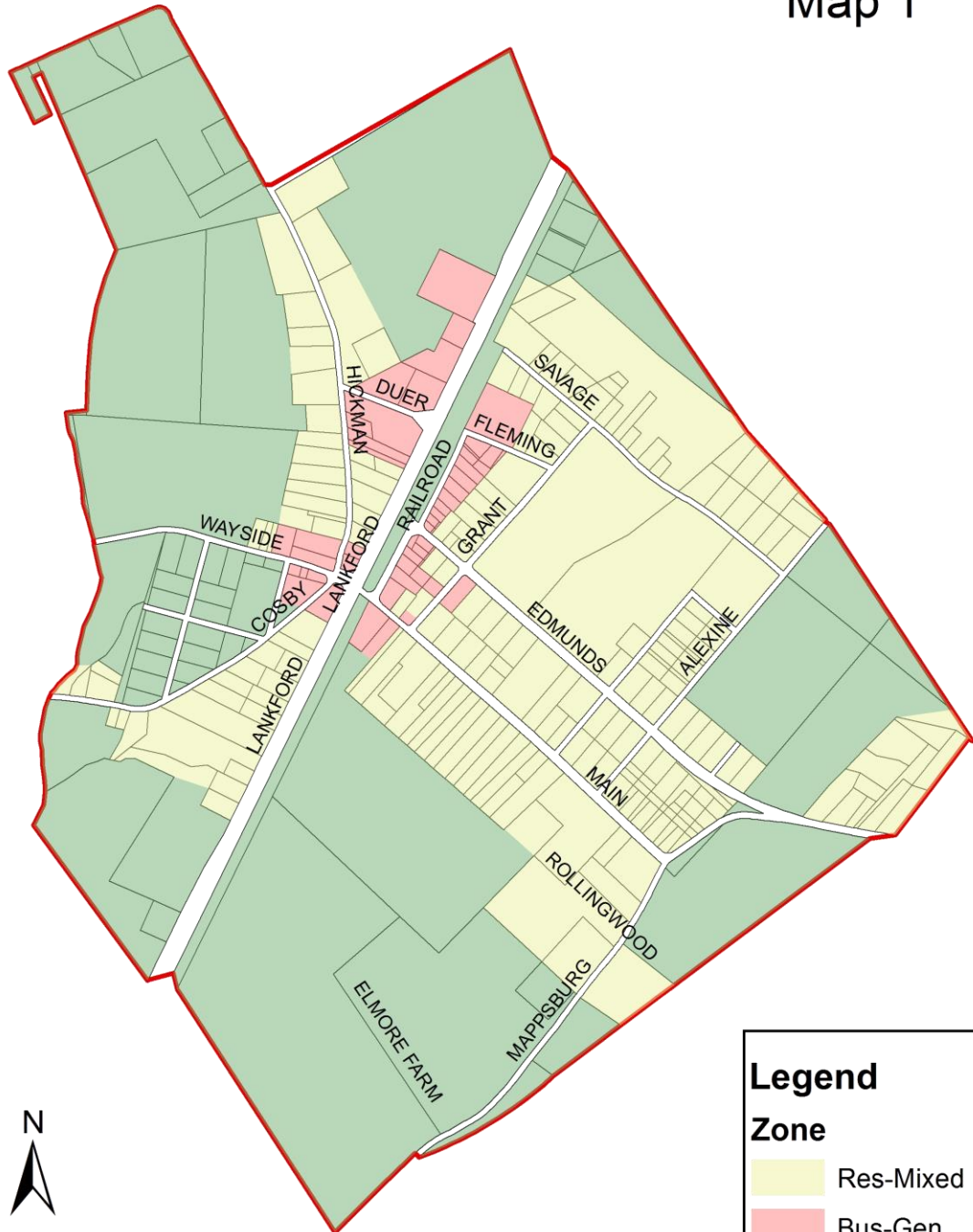
Residential, Mixed:	R-M	page 16
Business, General:	B-G	page 18
Agricultural:	A-1	page 22
Chesapeake Bay Preservation Area Overlay District:	CBPA	page 24

Location of these districts can be found on Map 1, page 13, and on Map 2, page 14.

A graphic illustration of terms defined in Article II and used in the district regulations may be found on Figure 1, page 15.

Town of Painter Zoning Map

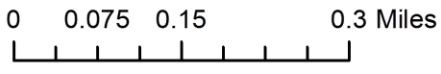
Map 1



Legend

Zone

- Res-Mixed
- Bus-Gen
- Ag

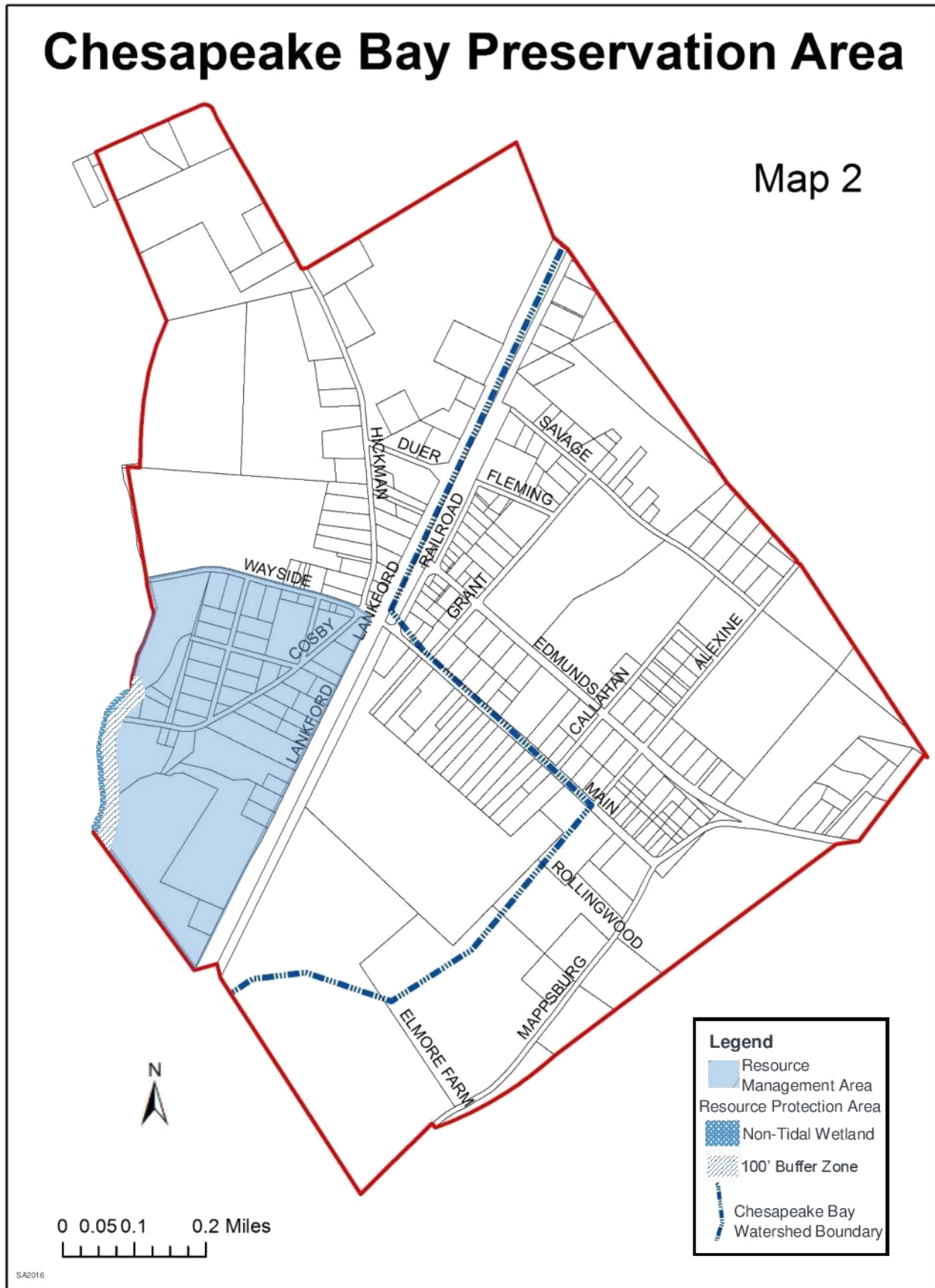


SA2016

*This is only a representation of the zoning map. For the official map, please contact the Painter Town Hall.

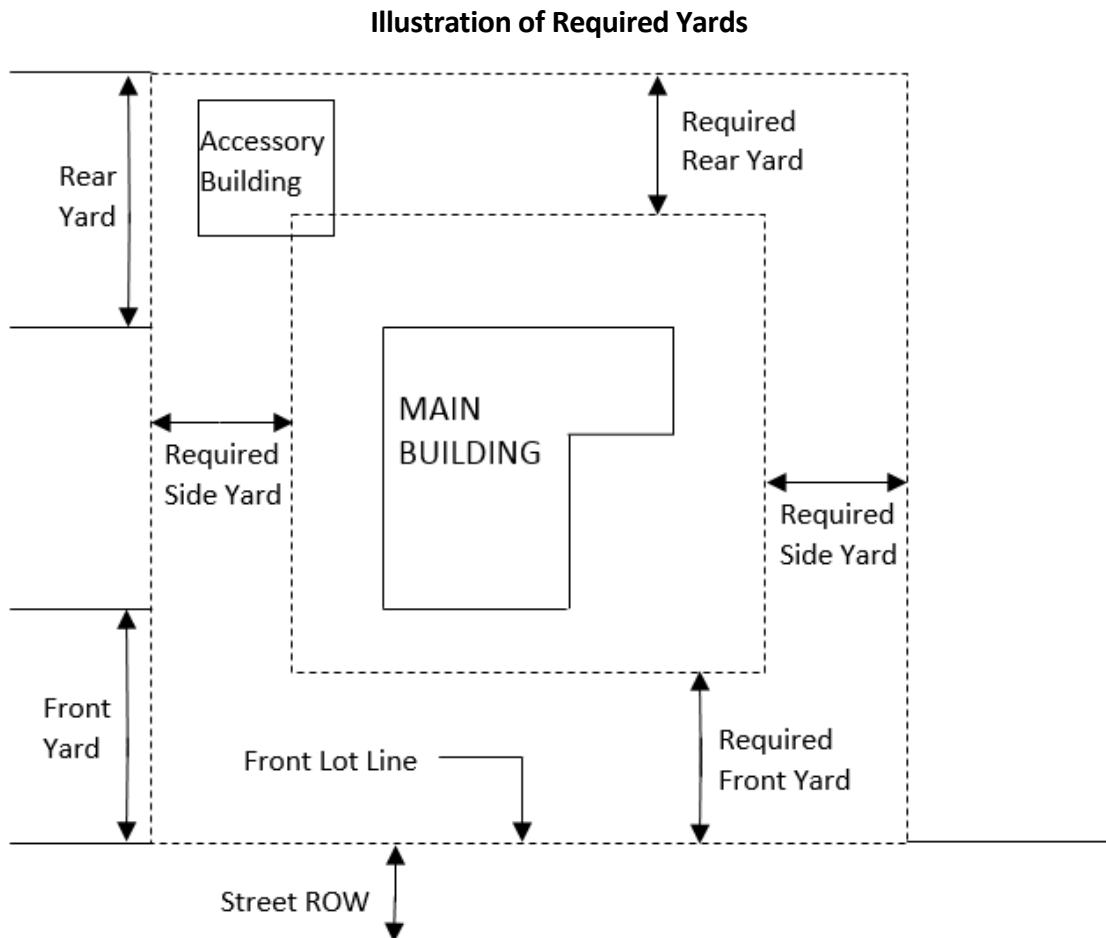
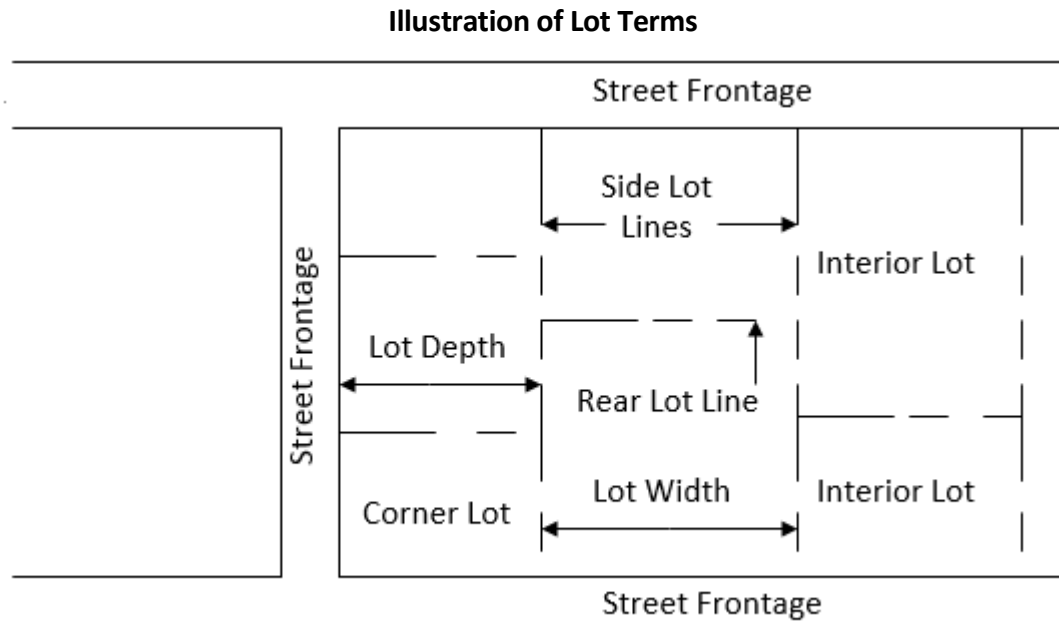
Chesapeake Bay Preservation Area

Map 2



*This is only a representation of the CBPA. For an official map, please contact the Painter Town Hall.

Figure 1: Lot Requirements



III-2 RESIDENTIAL-MIXED DISTRICT, R-M

III-2.1 Statement of Intent. This district is composed of quiet, medium-density residential areas plus certain open areas where similar residential development is recommended to occur by the Town of Painter Town Plan. The regulations for this district are designed to stabilize and protect the essential characteristics of the district and to promote and encourage a suitable environment for family life where there are children while also providing for the housing needs and tastes of a variety of people. To these ends, development is limited to a relatively medium concentration; and permitted uses are basically limited to a variety of single-unit dwellings providing homes for the residents, plus certain additional uses, such as parks, and certain public facilities that serve the residents of the district. This area is represented as Res-Mixed on page 14 of the Town of Painter, Virginia, Zoning Ordinance and as Residential on the Future Land Use Map in the Painter Town Plan.

III-2.2 Principal Permitted Uses and Structures. The following uses shall be permitted subject to all the other requirements of this ordinance as a matter of right in Residential-Mixed District (R-M).

- A. Single-Family Dwellings.
- B. Two-Family Dwellings.
- C. Multi-Family Dwellings; not permitted with individual water and sewerage systems.
- D. Single-Family Manufactured Homes nineteen feet or greater in width.
- E. Churches.
- F. Parks and Playgrounds.
- G. Accessory Buildings.
- H. Those utility facilities which are both (1) ordinary and necessary to the provision of utility services to the residences, businesses, and farms, located within the corporate limits of Painter and (2) which are used predominantly for the provision of such services to such residences, businesses, and farms located within the corporate limits of Painter are ancillary uses for which no additional permit is required so long as the utility facilities do not change the primary use of the parcel or parcels involved.
- I. Residential Swimming Pools, provided that same are located no closer than ten (10) feet to any adjoining property line, and provided that any swimming pool with a depth of twenty-four (24) inches or more, whether below or above grade, fixed or movable, shall be enclosed by independent fencing and gates at least six (6) feet high with a mesh no larger than six (6) inches.

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Swimming pools not in conformity with the foregoing shall require a Special Use Permit.

III-2.3 Special Exceptions. The following uses shall be permitted in Residential-Mixed District (R-M), subject to all the other requirements of this ordinance, only upon the obtaining of a Special Use Permit from the Town Council.

- A. Home Occupations - as defined in II-42.
- B. Bed and Breakfast Houses.
- C. Single-Family Manufactured Homes less than nineteen feet in width.

III-2.4 Area Regulations. The minimum lot area required for a permitted use in the "R-M" district is 20,000 square feet.

III-2.5 Setback Regulations. The following setback regulations shall apply in all R-M districts:

- A. The setback line shall be located at least 20 feet from a street right-of-way.
- B. No structure needs to be set back more than the average of the setbacks of the two adjacent structures.
- C. In the case of corner lots, the setback requirements from both streets shall be 20 feet.

III-2.6 Frontage Regulations. The following frontage requirement is applicable in all R-M districts: the minimum lot width at the setback line shall be 60 feet.

III-2.7 Yard Regulations. The following yard regulations shall apply in all R-M districts:

- A. Side - Each main building shall have side yards of 10 feet or more. A one story accessory building shall have a side yard of 3 feet or more and any accessory building over one story shall be 10 feet from any lot line.
- B. Rear - Each main building shall have a rear yard of 20 feet or more. A one story accessory building shall have a rear yard of 3 feet or more and any accessory building over one story shall be 10 feet from any lot line.

III-2.8 Lot Coverage. Lot coverage for all R-M districts shall not exceed 40 percent of the area of a lot.

III-2.9 Height Regulations. The following height regulations shall govern structures in the Residential-Mixed district (R-M):

- A. Accessory buildings shall be limited to two (2) stories in height, without a special use

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permit.

- B. Amateur radio antennas, antennas for reception of television signals to be viewed on the same premises as the antenna, and poles whose predominant use is for the support of ancillary utility wires shall not exceed seventy-five feet (75 ft.) in height, without a special use permit.
- C. Other structures may be erected up to thirty-five feet (35 ft.) and two and one-half stories (2 ½) in height without a special use permit.
- D. Special use permits may be granted by the Town Council for structures of heights more than thirty-five feet (35 ft.) and not exceeding six hundred fifty feet (650 ft.). If the proposed structure requiring a special use permit is or includes a tower or antenna other than those described in Article III-2.9.B above, issuance of a special use permit shall be pursuant to the provisions of Article XIV of this ordinance.

III-2.10 Access. Each dwelling unit shall front on a dedicated public street or a thirty-four (34) foot minimum width access easement.

III-2.11 Sign Regulations. The following signs are permitted in R-M District, in accordance with the regulations in Article IV of this ordinance.

- A. Memorial tablets or signs.
- B. Signs required to be maintained by law or governmental order, rule, or regulation, with a total surface area not exceeding ten (10) square feet on any lot or parcel.
- C. Signs which are within a ball park or other similar private recreational use and which cannot be seen from a public street or adjacent properties.
- D. Flags or emblems of civic, governmental, philanthropic, educational, or religious organizations, and corporate designed flags.
- E. Signs displayed for the direction or convenience of the public, including signs which identify rest rooms, location of public telephones, freight entrances, no trespassing and posted signs, or the like not exceeding a total area of eight (8) square feet per sign.
- F. Signs placed by a public utility showing the location of underground facilities.
- G. Church bulletin board and identification signs with a total surface area not exceeding twenty (20) square feet per sign.
- H. Home occupation signs with a total surface area not exceeding four (4) square feet per sign.

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- I. Up to six (6) signs, each of which shall not exceed four (4) square feet, advertising the sale or rent of the specific premises where the sign is located.

III-2.12. Off-Street Parking Requirements. No less than one (1), and no more than two (2) parking spaces shall be required for each dwelling unit, in accordance with the requirements in Article V of this ordinance.

III-3 BUSINESS, GENERAL DISTRICT, B-G

III-3.1 Statement of Intent. This district is intended to provide for the conduct of limited business which provides convenience, goods and services that serve general commercial needs and is compatible with adjacent residential uses. This area is represented by Bus-Gen on page 14 of the Town of Painter, Virginia, Zoning Ordinance and as Business-General on the Future Land Use Map in the Painter Town Plan.

III-3.2 Principal Permitted Uses and Structures. The following uses shall be permitted by right.

- A. All Uses Permitted in R-M.
- B. Professional and Business Offices.
- C. Banks and Lending Institutions.
- D. Libraries.
- E. Theaters.
- F. Restaurants.
- G. Retail Service Stores.
- H. Retail Sales Stores.
- I. Those utility facilities which are both (1) ordinary and necessary to the provision of utility services to the residences, businesses, and farms, located within the corporate limits of Painter and (2) which are used predominantly for the provision of such services to such residences, businesses, and farms located within the corporate limits of Painter are ancillary uses for which no additional permit is required so long as the utility facilities do not change the primary use of the parcel or parcels involved.
- J. Drainage, Erosion and Flood Control Devices.
- K. Residential Apartments above stores.
- L. Accessory Buildings.

III-3.3 Special Exceptions. The following uses shall be permitted in Business, General District, B-G, subject to all the other requirements of this ordinance, only upon the obtaining of a Special Use Permit from the governing body.

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- A. Auto Sales and Service.
- B. Grain and Feed Supply.
- C. Machinery Sales and Service.
- D. Wholesale Stores.
- E. Warehouses.
- F. Truck Storage and Service.
- G. Clubs and Lodges.
- H. Public billiard parlors and poolrooms, bowling alleys, dance halls, and similar forms of public amusement. In approving any such application, the governing body may establish such special requirements and regulations for the protection of adjacent property, set such hours of operation, and make such requirements as it may deem necessary in the public interest.
- I. Utility facilities not considered ancillary uses pursuant to Article III-3.2.I above.

III-3.4 Area Regulations. None, except for those uses permitted in R-M District. The area regulations in R-M shall apply to R-M uses.

III-3.5 Yard Regulations. The following are the yard regulations for B-G districts:

- A. B-G uses which use a side or rear yard must have a minimum side yard of 10 feet and a minimum rear yard of 10 feet.
- B. B-G uses that are adjacent to a residential district must have a minimum side yard of 10 feet and a minimum rear yard of 20 feet.

III-3.6 Lot Coverage. Lot coverage for all B-G districts shall not exceed 60 percent of the area of a lot.

III-3.7 Height Regulations. The following height regulations shall govern structures in the Business, General District (B-G):

- A. Accessory buildings shall be limited to two (2) stories in height, without a special use permit, and accessory buildings over one (1) story in height shall be at least ten feet (10 ft.) from any lot line.
- B. Amateur radio antennas, antennas for reception of television signals to be viewed on the

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same premises as the antenna, and poles whose predominant use is for the support of ancillary utility wires shall not exceed seventy-five feet (75 ft.) in height, without a special use permit.

- C. Other structures may be erected up to thirty-five feet (35 ft.) and two and one-half stories (2 ½) in height without a special use permit.
- D. Special use permits may be granted by the Town Council for structures of heights more than thirty-five feet (35 ft.) and not exceeding six hundred fifty feet (650 ft.). If the proposed structure requiring a special use permit is or includes a tower or antenna other than those described in Article III-3.7.B above, issuance of a special use permit shall be pursuant to the provisions of Article XIV of this ordinance.

III-3.8 Access. Each main building shall front on a dedicated public street or a thirty-four (34) foot minimum width access easement.

III-3.9 Sign Regulations. The following signs are permitted in B-G District, in accordance with Article IV of this ordinance.

- A. Memorial tablets or signs.
- B. Signs required to be maintained by law or governmental order, rule, or regulation, with a total surface area not exceeding ten (10) square feet on any lot or parcel.
- C. Signs which are within a ball park or other similar private recreational use and which cannot be seen from a public street or adjacent properties.
- D. Flags or emblems of civic, governmental, philanthropic, educational, or religious organizations, and corporate designed flags.
- E. Signs displayed for the direction or convenience of the public, including signs which identify rest rooms, location of public telephones, freight entrances, no trespassing and posted signs, or the like not exceeding a total area of eight (8) square feet per sign.
- F. Signs placed by a public utility showing the location of underground facilities.
- G. Church bulletin board and identification signs with a total surface area not exceeding twenty (20) square feet per sign.
- H. Home occupation signs with a total surface area not exceeding four (4) square feet per sign.
- I. Signs or a combination of letters may be attached to a building or structure, where business is conducted on the premises, for the purpose of advertising and displaying the name, address, and/or a business slogan, of the specific business.

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- J. Signs advertising only the price of a product provided the sign is attached to a permanent structure on the specific premises where the business is located.
- K. One (1) of the following business signs options shall be permitted by right only on the specific premises where the business is located, subject to other applicable provisions of Article IV:
 - (1) One (1) sign which shall not exceed thirty-two (32) square feet.
 - (2) Two (2) signs which shall not exceed sixteen (16) square feet.
- L. Up to six (6) signs, each of which shall not exceed four (4) square feet, advertising the sale or rent of the specific premises where the sign is located.

III-3.10 Off-Street Parking Requirements.

- A. No less than one (1) parking space shall be required for each two hundred (200) square feet or more than one (1) parking space for each four hundred (400) square feet of gross floor area or fraction thereof for permitted uses in B-G District, except as may be required in Article V of this ordinance.
- B. The zoning administrator may waive the off-street parking requirements for uses permitted by right in B-G District if application of the requirements would result in unnecessary hardship, in accordance with the provisions of Section IX-2.2 of this ordinance.
- C. Parking spaces shall conform with all requirements in Article V.

III-4 AGRICULTURAL DISTRICT, A-1

III-4.1 Statement of Intent. It is the intent of this district to provide appropriate locations for open farm land or wooded land. The regulations for this district are designed to keep the farmland for farming purposes as open land with a minimum of other development. The intent of the district is to restrict general farming activity only as far as it would cause health hazards or excessive annoyance to neighboring residential areas. This area is represented as Ag on page 14 of the Town of Painter Zoning Ordinance and as Agricultural on the Future Land Use Map in the Painter Town Plan.

III-4.2 Principal Permitted Uses and Structures. The following uses and structures shall be permitted by right subject to other provisions herein:

- A. General farming, except for hog farms and poultry houses.
- B. Forestry.
- C. Single-family Dwellings.
- D. Churches.
- E. Schools, Kindergarten, Nursery.
- F. Those utility facilities which are both (1) ordinary and necessary to the provision of utility services to the residences, businesses, and farms, located within the corporate limits of Painter and (2) which are used predominantly for the provision of such services to such residences, businesses, and farms located within the corporate limits of Painter are ancillary uses for which no additional permit is required so long as the utility facilities do not change the primary use of the parcel or parcels involved.
- G. Animal Hospital and Veterinary Office.
- H. Nurseries and Greenhouses.
- I. Open Space Recreation, Playgrounds, Parks.
- J. Swimming Pools, provided that same are located no closer than ten (10) feet to any adjoining property line, and provided that any swimming pool with a depth of twenty-four (24) inches or more, whether below or above grade, fixed or movable, shall be enclosed by independent fencing and gates at least six (6) feet high with a mesh no larger than six (6) inches.

Swimming pools not in conformity with the foregoing shall require a Special Use Permit.

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III-4.3 Special Exceptions. The following uses shall be permitted in the Agricultural District, A-1, subject to all the other requirements of this ordinance, only upon the obtaining of a Special Use Permit from the governing body.

- A. Manufactured Housing less than nineteen feet in width.
- B. Utility facilities not considered ancillary uses pursuant to Article III-4.2.F above.
- C. Specialized Animal Raising.

III-4.4 Area Regulations. The minimum lot area for a single-family dwelling, kindergarten, nursery, animal hospital, or veterinary office shall be two (2) acres. The minimum lot area for any other permitted use shall be unrestricted.

III-4.5 Setback Regulations. The following setback regulations shall apply in all A-1 districts:

- A. The setback line shall be located at least 20 feet from a street right-of-way.
- B. No structure needs to be set back more than the average of the setbacks of the two adjacent structures.
- C. In the case of corner lots, the setback requirements from both streets shall be 20 feet.

III-4.6 Frontage Regulations. The following frontage requirement is applicable in all A-1 districts: the minimum lot width at the setback line shall be 100 feet.

III-4.7 Yard Regulations. The following yard regulations shall apply in all A-1 districts: for permitted uses, the minimum side yard shall be 10 feet.

III-4.8 Lot Coverage. Lot coverage for all A-1 districts shall not exceed 20 percent of a lot.

III-4.9 Height Regulations. The following height regulations shall govern structures in the Agricultural District (A-1):

- A. Accessory buildings shall be limited to two (2) stories in height, without a special use permit, and accessory buildings over one (1) story in height shall be at least ten feet (10 ft.) from any lot line.
- B. Amateur radio antennas, antennas for reception of television signals to be viewed on the same premises as the antenna, and poles whose predominant use is the support of ancillary utility wires shall not exceed seventy-five feet (75 ft.) in height, without a special use permit.
- C. Other structures may be erected up to thirty-five feet (35 ft.) and two and one-half stories (2 ½) in height without a special use permit.

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- D. Special use permits may be granted by the Town Council for structures of heights more than thirty-five feet (35 ft.) and not exceeding six hundred fifty feet (650 ft.). If the proposed structure requiring a special use permit is or includes a tower or antenna other than those described in Article III-4.9.B above, issuance of a special use permit shall be pursuant to the provisions of Article XIV of this ordinance.

III-4.10 Access. Each building shall front on a dedicated public street or a thirty-four (34) foot minimum width access easement.

III-4.11 Sign Regulations. The following signs are permitted in A-1 District, in accordance with the regulations in Article IV of this ordinance.

- A. Memorial tablets or signs.
- B. Signs required to be maintained by law or governmental order, rule, or regulation, with a total surface area not exceeding ten (10) square feet on any lot or parcel.
- C. Signs which are within a ball park or other similar private recreational use and which cannot be seen from a public street or adjacent properties.
- D. Flags or emblems of civic, governmental, philanthropic, educational, or religious organizations, and corporate designed flags.
- E. Signs displayed for the direction or convenience of the public, including signs which identify rest rooms, location of public telephones, freight entrances, no trespassing and posted signs, or the like not exceeding a total area of eight (8) square feet per sign.
- F. Signs placed by a public utility showing the location of underground facilities.
- G. Church bulletin board and identification signs with a total surface area not exceeding twenty (20) square feet per sign.
- H. Up to six (6) signs, each of which shall not exceed four (4) square feet, advertising the sale or rent of the specific premises where the sign is located.

III-4.12. Off-Street Parking Requirements. No less than one (1), and no more than two (2) parking spaces shall be required for each dwelling unit, in accordance with the requirements in Article V of this ordinance. Provision of parking shall be in accordance with all requirements of Article V of this ordinance.

III-6 CHESAPEAKE BAY PRESERVATION AREA OVERLAY DISTRICT, CBPA

III-6.1 Title. This district shall be known and referenced as the "Chesapeake Bay Preservation Area Overlay District" of the Town of Painter, Virginia.

III-6.2 Findings of Fact. The Chesapeake Bay and its tributaries constitute one of the most important and productive estuarine systems in the world, providing economic and social benefits to the citizens of the Town of Painter and the Commonwealth of Virginia. The health of the Bay is vital to maintaining the Town of Painter's economy and the welfare of its citizens.

The Chesapeake Bay waters have been degraded significantly by many sources of pollution, including nonpoint 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 Painter Town Council as Chesapeake Bay Preservation Areas (hereinafter "CBPAs"), which include Resource Protection Areas (hereinafter "RPAs") and Resource Management Areas (hereinafter "RMAs"), 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 the Town of Painter and the Commonwealth of Virginia.

III-6.3 Authority. This Article is enacted under the authority of Section 62.1-44.15:67 *et seq.* (The Chesapeake Bay Preservation Act) and Section 15.2-2283, of the Code of Virginia. Section 15.2-2283 states that zoning ordinances may "also include reasonable provisions, not inconsistent with applicable state water quality standards, to protect surface water and groundwater as defined in Section 62.1-255.

III-6.4 Conflict with Other Regulations. In any case where the requirements of this Article conflict with any other provision of the Town of Painter Code or existing state or federal regulations, whichever imposes the more stringent restrictions shall apply.

III-6.5 Definitions. The words and terms used in the Overlay District have the meanings which are defined in Article II, Definitions, of the Town of Painter Zoning Ordinance, unless the context clearly indicates otherwise.

III-6.6 Purpose and Intent.

- A. This ordinance is enacted to implement the requirements of Section 62.1-44-15:67 *et seq.* of the Code of Virginia (The Chesapeake Bay Preservation Act) as part of the Town of Painter Zoning Ordinance. The intent of the Painter Town Council and the purpose of the Overlay District is to: (1) protect existing high quality state waters; (2) restore all other state waters to a condition or quality that will permit all reasonable public uses and will support the

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propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them; (3) safeguard the clean waters of the Commonwealth from pollution; (4) prevent any increase in pollution; (5) reduce existing pollution; and (6) promote water resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of the Town of Painter.

- B. 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 Ordinance. Unless otherwise stated in the Overlay District, the review and approval procedures provided for in the Town of Painter Zoning Ordinance Article XII, Plan of Development Requirements, the Accomack County Erosion and Sediment Control Ordinance, and the Accomack County Building Code, including all grading permits and building permits, shall be followed in reviewing and approving development, redevelopment, and uses governed by this Article.

III-6.7 Application of CBPA District.

- A. The Chesapeake Bay Preservation Area Overlay District shall apply to all lands identified as CBPAs as designated by the Painter Town Council and as shown on the Town of Painter Zoning Map as the Chesapeake Bay Preservation Area Overlay District. The Chesapeake Bay Preservation Area Overlay District is composed of a Resource Protection Area and a Resource Management Area.

- (1) Resource Protection Areas include the following land categories, the protection of which is necessary to protect the quality of state waters:
- a. Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;
 - b. A 100-foot vegetated buffer area located adjacent to and landward of the components listed in subsection a. above, and along both sides of any water bodies with perennial flow.
- (2) Resource Management Areas are generally composed of the following land categories: floodplains; highly erodible soils, including steep slopes; highly permeable soils; nontidal wetlands not included in the RPA; and hydric soils.

- B. The Town of Painter Chesapeake Bay Preservation Areas Map shows the general location of CBPAs and should be consulted by persons contemplating activities within the Town of Painter prior to engaging in a regulated activity.

III-6.8 Interpretation of Resource Protection Area Boundaries.

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- A. Delineation by the Applicant. The site-specific boundaries of the Resource Protection Area shall be determined by the applicant through the performance of an environmental site assessment, subject to approval by the Administrator and in accordance with Article XII, Plan of Development Requirements, of this Zoning Ordinance or through the submission of a Water Quality Impact Assessment as required under Section III-6.13 of this Article.
- B. Delineation by the Administrator. The Administrator, when requested by an applicant wishing to construct a single-family residence, may waive the requirement for an environmental site assessment and perform the delineation. The Administrator may use remote sensing, 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 Administrator will verify the accuracy of the boundary delineation. In determining the site-specific RPA boundary, the Administrator may render adjustments to the applicant's boundary delineation, in accordance with Article XII, Plan of Development Requirements, of the Town of Painter Zoning Ordinance. In the event the adjusted boundary delineation is contested by the applicant, the applicant may seek relief, in accordance with the provisions of Section XII-4.D, Appeals.

III.6.9 Use Regulations. Permitted uses, special permit uses, accessory uses, and special requirements shall be as established by the underlying zoning district, unless specifically modified by the requirements set forth herein.

III-6.10 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 III-6.12, Performance Standards, when such development is not otherwise allowed in the RPA.

III-6.11 Required Conditions.

- A. Development in RPAs may be allowed only if it: (i) is water-dependent; or (ii) constitutes redevelopment.
- B. A new or expanded water-dependent facility may be allowed provided that:
 - (1) It does not conflict with the Painter Town Plan;
 - (2) It complies with the performance criteria set forth in Section III-6.12 of this Article;
 - (3) Any non-water-dependent component is located outside of Resource Protection Areas;
 - (4) Access will be provided with the minimum disturbance necessary. Where possible, a

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single point of access will be provided.

- C. Redevelopment shall be permitted only if there is not increase in the amount of impervious cover and no further encroachment within the RPA, it shall conform to the stormwater management requirements and erosion and sediment control requirements of this Article.
- D. A water quality impact assessment shall be required for any proposed land disturbance, development or redevelopment within RPAs and for any development within RMAs when required by the Administrator because of the unique characteristics of the site or intensity of development, in accordance with the provisions of Section III-6.13, Water Quality Impact Assessment, of this Article.
- E. All development and redevelopment exceeding 2500 square feet of land disturbance shall be subject to a plan of development process, in accordance with Article XII, Plan of Development Requirements, of this Zoning Ordinance, including the approval of a site plan in accordance with the provisions of Section XII-4, Site Plan.

III-6.12. Performance Standards.

- A. Purpose and Intent. 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.

The purpose and intent of these requirements are also to implement the following objectives: prevent a net increase in nonpoint source pollution from new development; achieve a 10% reduction in nonpoint source pollution from redevelopment; and achieve a 40% reduction in nonpoint source pollution from agricultural uses.

The performance standards apply to all Chesapeake Bay Preservation Areas in Painter, including RPAs and RMAs.

- B. 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 site plan, the limits of land disturbance, including clearing or grading shall be strictly defined by the construction footprint. These limits shall be clearly shown on submitted plans and

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- physically marked on the development site.
 - b. Ingress and egress during construction shall be limited to one access point, unless otherwise approved by the Administrator.
- (2) Indigenous vegetation shall be preserved to the maximum extent practicable consistent with the use or development permitted and in accordance with the Virginia Erosion and Sediment Control Handbook.
- a. Existing trees over two (2) inches diameter at breast height (DBH) shall be preserved outside the construction footprint. Diseased trees or trees weakened by age, storm, fire, or other injury may be removed.
 - b. Site clearing for construction activities shall be allowed as approved by the Administrator.
 - c. Prior to clearing or grading, suitable protective barriers, such as safety fencing, shall be erected 5 feet outside of the dripline of any tree or stand of trees to be preserved. 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.
- a. Pervious material shall be used for any required parking area, alley, or other low traffic driveway, unless otherwise approved by the Administrator.
 - b. Impervious coverage on any lot or parcel shall be limited to the lot coverage permitted under the zoning district requirements of said lot or parcel and as noted on the approved site plan.
- (4) Notwithstanding any other provisions of this Article or exceptions or exemptions thereto, any land disturbing activity exceeding 2,500 square feet, including construction of all single-family houses, septic tanks, and drainfields, shall comply with the requirements of the Accomack County Erosion and Sediment Control Ordinance.
- (5) All on-site sewage disposal systems not requiring a Virginia Pollutant Discharge Elimination System (VPDES) permit shall be pumped out at least once every five years, in accordance with the provisions of the Accomack County Health Code.
- (6) A reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site shall be provided, in accordance with the Accomack County

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Health Code. This requirement shall not apply to any lot or parcel recorded prior to October 1, 1989 if such lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local Health Department. Building or construction of any impervious surface shall be prohibited on the area of all sewage disposal sites or on an on-site sewage treatment system which operates under a permit issued by the State Water Control Board, until the structure is served by public sewer.

- (7) For any development or redevelopment, stormwater runoff shall be controlled by the use of best management practices that achieve the following:
- a. For development, the post-development nonpoint source pollution runoff load shall not exceed the pre-development load, based on the calculated average land cover condition for Virginia's Chesapeake Bay watershed (0.45 pounds of phosphorous per acre per year);
 - b. For redevelopment sites, the nonpoint source pollution load shall be reduced by at least 10 percent. The Administrator may waive or modify this requirement for redevelopment sites that originally incorporated best management practices for stormwater runoff quality control, provided the following provisions are satisfied:
 - 1. In no case may the post-development nonpoint source pollution runoff load exceed the pre-development load;
 - 2. Runoff pollution loads must have been calculated and the BMPs selected for the expressed purpose of controlling nonpoint source pollution;
 - 3. If best management practices are structural, evidence shall be provided that facilities are currently in good working order and performing at the design levels of service. The Administrator may require a review of both the original structural design and maintenance plans to verify this provision. A new maintenance agreement may be required to ensure compliance with this Article.
 - c. For redevelopment, both the pre- and post-development loadings shall be calculated by the same procedures. However, where the design data is available, the original post-development nonpoint source pollution loadings can be substituted for the existing development loadings.
- (8) Prior to initiating grading or other on-site activities on any portion of a lot or parcel, all wetlands permits required by federal, state, and local laws and regulations shall be obtained and evidence of such submitted to the Administrator, in accordance with

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Article XII, Plan of Development Requirements, of this Zoning Ordinance.

- (9) Land upon which agricultural activities are being conducted shall have a soil and water quality 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 this Article.

- C. Buffer Area Requirements. To minimize the adverse effects of human activities on the other components of Resource Protection Areas, state waters, and aquatic life, a 100-foot buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist.

The buffer area shall be located adjacent to and landward of other RPA components and adjacent to any water body with perennial flow. The full buffer area shall be designated as the landward component of the RPA, in accordance with Section III-6.7, Application of CBPA District, and Article XII, Plan of Development Requirements, of this Zoning Ordinance.

The 100-foot buffer area shall be deemed to achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients.

The buffer area shall be maintained to meet the following additional performance standards:

- (1) In order to maintain the functional value of the buffer area, existing vegetation may be removed as approved by the Administrator only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices, including those that prevent upland erosion and concentrated flows of stormwater, as follows:
 - a. 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 nonpoint source pollution from runoff.
 - b. Any path shall be constructed and surfaced so as to effectively control erosion.
 - c. Dead, diseased, or dying trees or shrubbery may be removed and thinning of trees may be allowed, as permitted by the Administrator.
 - d. For shoreline erosion control projects, trees and woody vegetation may be

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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.

- (2) 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 Administrator may through an administrative process, permit encroachments into the buffer area in accordance with Article XII, Plan of Development Requirements, of this Zoning Ordinance and the following criteria:
 - a. Encroachments into the buffer areas shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;
 - b. Where practicable, a vegetated area that will maximize water quality protection and mitigate the effects of the buffer encroachment shall be established elsewhere on the lot or parcel; and
 - c. The encroachment may not extend into the seaward 50 feet of the buffer area.

- (3) On agricultural lands the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and noxious weeds from invading the buffer area. Agricultural activities may encroach into the buffer area as follows:
 - a. Agricultural activities may encroach into the landward 50 feet of the 100-foot wide buffer area when at least one agricultural best management practice, which, in the opinion of the Eastern Shore Soil and Water Conservation 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 area 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 test, must be developed consistent with the “Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15 et seq. administered by the Virginia Department of Conservation and Recreation.
 - b. Agricultural activities may encroach within the landward 75 feet of the 100-foot wide buffer area when agricultural best management practices which address erosion control, nutrient management, and pest chemical

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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 plan, including soil test, must be developed consistent with the “Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15 et seq. 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.

- c. The buffer area is not required not required to be designated adjacent to agricultural drainage ditches which appear as perennial streams on USGS topographic maps if the adjacent agricultural land has in place at least one best management practice as considered by the local Soil and Water Conservation District to address the more predominant water quality issue on the adjacent land-either erosion control or nutrient management.

III-6.13. Water Quality Impact Assessment.

- A. Purpose and Intent. The purpose of the water quality impact assessment is to identify the impacts of proposed development or redevelopment on water quality and lands within Resource Protection Areas and other environmentally sensitive lands; ensure that, where development or redevelopment does take place within Resource Protection Areas 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 Resource Protection Areas and other sensitive lands; 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 specify mitigation which will address water quality protection.
- B. Water Quality Impact Assessment Required. A water quality impact assessment, to be submitted during the plot plan, site plan and/or subdivision review process, is required for:
 - (1) Any proposed development or redevelopment within a Resource Protection Area, including any buffer area modification or encroachment as provided for in Section III-6.12.C of this Article.
 - (2) Any proposed development or redevelopment within an RMA. The Administrator may waive this requirement when it is apparent that the unique characteristics of the site (such as topography, soils, groundcover, location of wetlands and tidal shores) will prevent the proposed development from causing a degradation of water quality.

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- C. Contents of a Water Quality Impact Assessment. The water quality impact assessment shall be of sufficient specificity to demonstrate compliance with this Article. The information required in this section shall be considered a minimum; the Administrator may determine that additional information is necessary due to the nature and scope of the proposed use and development of land. The impact statement shall be prepared by qualified persons acting within the limits of their professional expertise and license, and shall include the following:
- (1) Location of the components of the RPA, including the one hundred (100) foot RPA buffer.
 - (2) Location and nature of any proposed encroachments into the RPA buffer area including the type of paving material; areas of clearing or grading; and the location of any structures, driveways and other impervious cover.
 - (3) Type and location of proposed stormwater management facilities and best management practices necessary to comply with performance standards for stormwater management contained in Section III-6.12.B(7).
 - (4) Calculation of pre- and post-development pollutant loading in accordance with Section III-6.12.B(7).
 - (5) Identification and status of any required wetlands permits from federal, state or local agencies.
 - (6) An erosion and sediment control plan in accordance with the requirements of Accomack County's Erosion and Sediment Control Ordinance.
 - (7) A narrative describing the site; the impacts of the proposed development on topography, soils, hydrology and geology; and the measures taken to mitigate nonpoint source pollution.
 - (8) Location and type of existing vegetation onsite, including the number and type of trees and other vegetation to be removed in the buffer area to accommodate the proposed encroachment or modification.
 - (9) Re-vegetation plan that supplements the existing buffer vegetation in a manner that provides for pollutant removal and erosion and runoff control.
- D. Evaluation Procedure.
- (1) Upon the completed review of a water quality impact assessment, the Administrator will determine if any proposed modification or reduction to the buffer area is consistent with the purpose and intent of this Article or if the proposed development is consistent with the purpose and intent of this Article. The Administrator will

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make a finding based on the following criteria in conjunction with Article III-6.11:

- a. The necessity of the proposed encroachment into the buffer area and the ability to place improvements elsewhere on the site to avoid disturbance of the buffer area;
 - b. Within any RPA, the proposed development is water-dependent;
 - c. The disturbance of wetlands will be minimized;
 - d. Impervious surface is minimized;
 - e. The development, as proposed, meets the purpose and intent of this Article;
 - f. Proposed erosion and sediment control devices are adequate to achieve the reductions in runoff and prevent off-site sedimentation;
 - g. Proposed stormwater management facilities and practices are adequate to control the stormwater runoff to achieve the required standard for pollutant control;
 - h. The development will not result in unnecessary destruction of plant materials on site;
 - i. 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.
- (2) The Administrator may request review of the water quality impact assessment by the Chesapeake Bay Local Assistance Department (CBLAD). Any comments by CBLAD will be considered by the Planning Commission provided that such comments are provided by CBLAD within thirty (30) days of the request.

III-6.14 Exemptions.

A. Exemptions for Utilities, Railroads, and Public Roads.

- (1) Construction, installation, operation, and maintenance of electric, natural gas, fiber-optic and telephone transmission lines, railroads, and public roads and their appurtenant structures, in accordance with (i) regulations promulgated pursuant to the Erosion and Sediment Control Law (Section 10.1-560 et seq. of the Code of Virginia) and the Stormwater Management Act (Section 10.1-603.1 et seq. of the Code of Virginia), (ii) an erosion and sediment control plan and a stormwater management plan approved by the Virginia Department of Conservation and

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Recreation, or (iii) local water quality protection criteria at least as stringent as the above state requirements will be exempt from the Overlay District requirements. The exemption of public roads is further conditioned on the following:

- a. Optimization of the road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize (i) encroachment in the Resource Protection Area and (ii) adverse effects on water quality;
 - b. Public roads as defined in Section II of this article are exempt from Overlay District requirements.
- (2) B. Construction, installation, and maintenance of water, sewer, natural gas, and underground telecommunications and cable television lines owned, permitted or both by the Town of Painter shall be exempt from the Overlay District provided that:
- a. To the degree possible, the location of such utilities and facilities shall be outside RPAs;
 - b. No more land shall be disturbed than is necessary to provide for the desired utility installation;
 - c. All 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
 - d. Any land disturbance exceeding an area of 2,500 square feet complies with all Accomack County erosion and sediment control requirements.
- B. Exemptions for Silvicultural Activities. Silvicultural activities are exempt from the requirements of this Article provided that forestry operations adhere to water quality protection procedures prescribed by the Department of Forestry in the January 1997 edition of *Forestry Best Management Practices for Water Quality in Virginia [Technical Guide]*.
- C. Exemptions in Resource Protection Areas. The following land disturbances in Resource Protection Areas 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 Administrator that:
- (1) Any required permits, except those to which this exemption specifically applies, shall have been issued;

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- (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 2500 square feet shall comply with all Accomack County erosion and sediment control requirements.

E. Exemptions for Reconstruction Following Casualty Loss.

Reconstruction of structures and other improvements located within Chesapeake Bay Preservation Areas following a casualty loss shall be exempt from the requirements of this article, provided that:

- (1) The structure or other improvement existed on February 10, 2003; and
- (2) Reconstruction is not otherwise prohibited by an ordinance of the Town of Painter.

III-6.15 Exceptions.

- A. A request for an exception to the requirements of Sections III-6.13.C and III-6.11C of this Overlay District shall be made in writing to the Board of Zoning Appeals. It shall identify the impacts of the proposed exception on water quality and on lands within the RPA through the performance of a water quality impact assessment which complies with the provisions of Section III-6.13.
- B. The Town of Painter shall notify the affected public of any such exception requests and shall consider these requests in a public hearing in accordance with §15.2-2204 of the Code of Virginia, except that only one hearing shall be required.
- C. The Board of Zoning Appeals shall review the request for an exception and the water quality impact assessment and may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this Article if the Administrator finds:
 - (1) Granting the exception will not confer upon the applicant any special privileges that are denied by this Article to other property owners in the Overlay District;
 - (2) The exception request is not based upon conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels;
 - (3) The exception request is the minimum necessary to afford relief;
 - (4) The exception request will be in harmony with the purpose and intent of the Overlay

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District, and not injurious to the neighborhood or otherwise detrimental to the public welfare and is not of substantial detriment to water quality; and

- (5) Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a degradation of water quality.
- D. If the Board of Zoning Appeals cannot make the required findings or refuses to grant the exception, the Board of Zoning Appeals shall return the request for an exception together with the water quality impact assessment and the written findings and rationale for the decision to the applicant
- E. Requests for exceptions to provisions within this Article not listed in Section III-6-12.A above may be made in writing to the Zoning Administrator. The Zoning Administrator may grant these exceptions provided that:
1. Exceptions to the requirements are the minimum necessary to afford relief; and
 2. Reasonable and appropriate conditions are placed upon any exception that is granted, as necessary, so that the purpose and intent of this Article is preserved.
 3. *Exceptions to § III-6.12.B may be made provided that the findings noted in § III-6.15.C are made.*

ARTICLE IV - SIGN REGULATIONS

IV-1 Statement of Purpose. The following sign regulations are established to assure compatibility of signs with surrounding land usage, to enhance the economy of the Town, to protect the public investment in streets and highways, to promote the safety and recreational value of public travel, to preserve natural beauty and to promote the reasonable, orderly and effective display of outdoor advertising.

IV-2 Advertising Outdoors Regulated. No person except a public officer or employee in performance of a public duty, shall paste, post, paint, print, nail, tack, erect, place, maintain, or fasten any sign, pennant, flags, outdoor advertising signs, billboard, or notice of any kind, or cause the same to be done, facing or visible from any public street or public open space, except as provided herein.

IV-3 Definitions. The following definitions are set forth for use in this Article:

- A. Business. A sign which directs attention to a product, commodity, or service available on the premises.
- B. Home Occupation. A sign not exceeding four (4) square feet in area directing attention to a product, commodity, or service available on the premises, but which product, commodity, or service is clearly a secondary use of the dwelling.
- C. General Advertising. A sign which directs attention to a product, commodity, or service not necessarily available on the premises.
- D. Location. A sign which directs attention to the approximate location of an establishment from which the advertised product may be obtained.
- E. Directional. A directional sign which indicates the direction to which attention is called four (4) square feet or less in area, giving the name only of the farm or business responsible for the erection of same, one end of which may be pointed, or on which an arrow may be painted.
- F. Identification. A sign, not exceeding sixteen (16) square feet in area, for the purpose of showing the name and use of a convent, monastery, seminary, church, country club, sanitarium, cemetery, children's home, orphanage, fraternal organization, hospital, or other similar establishment, when such use is permitted in a residence zone as specified in this article and such sign is erected or displayed on the property as identified.
- G. Temporary. A sign applying to a seasonal or other brief activity such as, but not limited to, yard sales, summer camps, horse shows, auctions, or sale of land. Temporary signs shall

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conform in size and type to directional signs and may be erected for a maximum of 90 days.

IV-5 Height Regulations. Signs shall not exceed a height of 20 feet above ground level or the street to which it is oriented, whichever is higher.

IV-6 General Regulations.

IV-6.1. All signs shall be of balanced proportions and symmetrical in shape. All signs and the surrounding area shall be maintained in a neat and orderly manner.

IV-6.2. Except for authorized traffic signs, no sign shall be erected at the intersection of any streets in such a manner as to create a traffic hazard by obstructing vision between heights of two and one-half (2 1/2) and eight (8) feet; or at any location where it may interfere with, obstruct the view of, or be confused with any authorized traffic sign.

IV-6.3. No sign will be erected which imitates or resembles any official traffic sign, signal or device or uses the words "Stop" or "Danger" prominently displayed or presents or implies the need or requirement of stopping or the existence of danger on any highway.

IV-6.4. No sign will be erected which advertises any activities which are illegal under State or Federal law or regulations in effect at the location of such sign or at the location of such activities.

IV-6.5. No sign will be erected which is inconsistent with State law or the provisions of this ordinance.

IV-6.6. No sign will be erected which involves noise, motion or rotation of any part of the structure or displays intermittent or flashing lights, without a Special Use Permit from the governing body.

IV-6.7. No sign which is mobile shall be erected in Residential-Mixed District. Except for signs attached to buildings or permanent structures all other signs of whatever type or size permitted in this ordinance shall be permanently anchored in concrete or permanently attached to piling or posts firmly embedded in the ground. All wheels and other portable structural equipment shall be removed from the structure.

IV-7 Nonconforming Signs. The structure of any sign lawfully in existence at the time of the effective date of this ordinance may be maintained, that is, damage caused by normal wear and tear may be repaired, although it does not conform with the provisions of this ordinance. The structure of such nonconforming signs shall comply in all respects with the requirements of Article VI relating to nonconforming uses.

If the structure of such nonconforming sign is destroyed, demolished, or removed due to any reason other than voluntary removal, it may be replaced without complying with all provisions of Article IV.

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If the message on such nonconforming sign is obliterated due to any cause, it may be replaced with the same or a similar message within sixty (60) days of such destruction, demolition, or removal without complying with all provisions of Article IV, after the effective date of this ordinance. If the message is not replaced within sixty (60) days, any replacement message shall comply in all respects with the provisions of Article IV.

ARTICLE V - OFF-STREET PARKING

V-1 Statement of Intent. The purpose of off-street parking provisions is to insure adequate access to any part of the Town by fire and emergency medical services, and to promote the economic well-being of the Town by creating a pleasant shopping climate.

V-2 Parking Space Size. Parking space size shall be a maximum of 162 square feet with a width of 9 feet and a length of 18 feet and a minimum of 91 square feet with a width of 7 feet and length of 13 feet. Parking spaces required for the handicapped shall be 200 square feet with a width of 10 feet and a length of 20 feet.

V-3 Special Uses. The following uses are controlled separately from the district-wide off-street parking regulations.

V-3.1. For churches, high schools, and for theaters, general auditoriums, and other similar places of assembly, at least one (1) parking space for every five (5) fixed seats provided in said building.

V-3.2. For medical and dental offices, one per two hundred (200) square feet of gross floor area, with a minimum of eight (8) parking spaces.

V-3.4. For fraternal lodges and clubs, parking requirements shall be determined by the Administrator.

V-3.5. For post offices at least one (1) for each fifty (50) box holders but not less than three (3) spaces.

V-3.6. For restaurants, a maximum of one (1) parking space per table or booth plus one (1) for each two (2) employees.

V-4. Requirements for Handicapped Access.

<u>Total Parking Spaces in Lot</u>	<u>Accessible Spaces</u>
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1,000	2% of total

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Parking spaces for handicapped persons shall have a minimum dimension of twelve by twenty feet and shall be clearly marked "Handicapped Parking Only."

ARTICLE VI - NONCONFORMING USES

VI-1 Continuation.

VI-1.1. If at the time of enactment of this ordinance, any legal activity is being pursued, or any lot or structure is being legally utilized in a manner or for a purpose which does not conform to the provisions of this ordinance, such manner of use or purpose may be continued as herein provided.

VI-1.2. If any change in title of possession or renewal of a lease of any such lot or structure occurs, the use existing may be continued.

VI-1.3. If any nonconforming use (structure or activity) is discontinued for a period exceeding two (2) years after the enactment of this ordinance, it shall be deemed abandoned and any subsequent use shall conform to the requirements of this ordinance.

VI-1.4. Temporary seasonal nonconforming uses that have been in continual operation for a period of two (2) years or more prior to the effective date of this ordinance are excluded.

VI-1.5. Uses which were allowed as a use by right which under revisions now require a special use permit are to be considered uses of right. However, any new use would require a special use permit.

VI-2 Procedure.

VI-2.1. An application for a nonconforming use and development waiver shall be made to and upon forms furnished by the Administrator and shall include for the purpose of proper enforcement of this Article, the following information:

- A. Name and address of applicant and property owner;
- B. Legal description of the property and type of proposed use and development;
- C. A sketch of the dimensions of the lot or parcel, location of buildings and proposed additions relative to the lot lines, and boundary of the Resource Protection Area for any lot or parcel located within a Chesapeake Bay Preservation Area;
- D. Location and description of any existing private water supply or sewage system.

VI-2.2. A nonconforming use and development waiver shall become null and void twelve months from the date issued if no substantial work has commenced.

VI-3 Expansion or Enlargement.

VI-3.1. A nonconforming structure to be extended or enlarged shall conform with the provisions of

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this ordinance.

VI-3.2. A nonconforming activity, as defined in Article II of this Ordinance, may be extended throughout any part of a structure which was arranged or designed for such activity at the time of enactment of this ordinance.

VI-3.3. The Administrator may grant a nonconforming use and development waiver for the expansion of structures on legal nonconforming lots or parcels in Chesapeake Bay Preservation Areas to provide for additions to such nonconforming structures provided that:

- A. There will be no increase in nonpoint source pollution load;
- B. Any development or land disturbance exceeding an area of 2500 square feet complies with all erosion and sediment control requirements in Article III of this ordinance.
- C. The request for the waiver is the minimum necessary to afford relief;
- D. Granting the waiver will not confer upon the applicant any specific privileges that are denied by this Article to other property owners in similar situations;
- E. The waiver is in harmony with the purpose and intent of this Article and does not result in water quality degradation;
- F. The waiver is not based on conditions or circumstances that are self-created or self-imposed;
- G. In no case shall this provision apply to accessory structures.

VI-3.4 A nonconforming structure not within a CBPA to be extended or enlarged shall conform with the provisions of this ordinance.

ARTICLE VII - ADMINISTRATION AND ENFORCEMENT

VII-1 Zoning Permits. No use of any real property within the corporate limits of the Town of Painter shall take place nor shall any construction or excavation or grading therefore commence prior to the issuance of a zoning permit therefore by the Administrator. The zoning permit shall state that the proposed construction, use, or other activity is in accord with all provisions of this Zoning Ordinance. The Administrator may promulgate rules determining what information shall accompany each application for a permit herein.

VII-2 Reserved.

VII-3 Violations and Penalties. Any person who violates any provision of this ordinance or any amendment thereto, or who fails to perform any act required hereunder or does any prohibited act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars (\$100) or imprisonment in the county jail for not more than thirty (30) days, or both, for each offense. Each and every day on which any violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder. Any violation of this ordinance is hereby declared to be a public nuisance per se and shall be enjoined to cease.

ARTICLE VIII - SPECIAL USE PERMITS

VIII-1 Statement of Intent. It is recognized in this ordinance that certain uses are not necessarily incompatible with the uses traditionally associated with standard zoning districts, if the proper mitigating conditions are enacted along with the proposed use. Therefore, such uses have been designated as special uses, and have been included in Article III. Such uses are allowed in the associated districts upon the issuance of a Special Use Permit by the Painter Town Council.

VIII-2 Procedure. An application for a special use permit may be submitted by the property owner, contract owner, or optionee of the property affected. Procedures for application and review shall be as follows:

- A. The applicant shall submit an application to the Administrator. Such application shall be accompanied by evidence that the specific criteria set forth in the ordinance for the special use requested will be met. Accompanying maps showing the site of the proposed use may be required.
- B. The Administrator shall review the application, visit the site, request additional information or review by other agencies, and formulate a recommendation to the Town Planning Commission.
- C. The Administrator will transmit the collected information and his recommendation to the Planning Commission. The Planning Commission shall hold a public hearing in accordance with Section 15.1-431 of the Code of Virginia, as amended, within thirty days of receipt of the Administrator's report. The Administrator's Report, a summary of the Planning Commission public hearing, and a recommendation from the Planning Commission, shall be transmitted to the Town Council by the Town Council's first meeting after the date public hearing is held.
- D. The Town Council shall hold a public hearing in accordance with Section 15.1-431 of the Code of Virginia, in order to receive public comment and to decide upon the Special Use Permit application. Such public hearing may be held jointly with the Planning Commission, in accordance with Section 15.1-431 of the Code of Virginia, and shall be scheduled to coincide with the regularly scheduled Town Council meeting that most closely follows the Council's receipt of the Special Use Permit application. If the requirement for proper notice for a public hearing makes such regularly scheduled Town Council meeting impractical, the public hearing shall be scheduled for the Town Council meeting one meeting hence from the meeting most closely following receipt of the application by the Town Council.

VIII-3 Conditions and Bonds. The Town Council may impose conditions, limitations, or other special requirements as it deems necessary to protect the public health, safety, and general welfare, such as, but not limited to, the following:

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- A. Abatement or restriction of noise, smoke, dust, vibration, odors, wastes, or other elements that may affect surrounding properties.
- B. Establishment of setback, side, front, and rear yard requirements necessary for orderly expansion and for preventing traffic congestion.
- C. Provision for adequate parking and ingress and egress to public streets and roads necessary to prevent traffic congestion.
- D. Provision for adjoining property with a buffer or shield from view of the proposed use and/or structure.
- E. Establishment of a time limit for expiration after which the permit shall no longer be valid or shall require renewal.
- F. The Town Council may require a bond, in a reasonable amount determined by the Council, to be payable to the Administrator to insure compliance with the terms and conditions of any special use permit.
- G. After due consideration, the Town Council shall make a decision and promptly notify the applicant of its decision in writing, along with a justification for denial or special conditions.

VIII-4 Review Standards. The Administrator, Planning Commission, and Town Council shall consider the following in reviewing a special use application:

- A. The proposed use and/or structure appears on the official schedule of district regulations or elsewhere in this ordinance.
- B. The proposed use and/or structure complies with the regulations governing individual special uses.
- C. The proposed use and/or structure is consistent with the Town Plan.
- D. The proposed use and/or structure will not tend to change the character and established pattern of development of the district in which it will be located.
- E. The proposed use and/or structure, and accompanying parcel development, are in harmony with the uses permitted by right in the zoning district and with the intent of the zoning district regulations and will not adversely affect the use of neighboring property or impair the value thereof.

VIII-4 Effect of Approval. The issuance of a special use permit shall authorize the applicant to construct only such structure or conduct only such uses as are specifically made part of the special

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use permit. No deviations, expansion, or other changes whatsoever shall be made from the term of the special use permit without the express written consent of the Town Council.

ARTICLE IX - PROVISIONS FOR APPEAL

IX-1 Board of Zoning Appeals.

IX-1.1. A Board of Zoning Appeals, which shall consist of no more than seven (7) and no less than five (5) residents of the Town but shall always be an odd number, shall be appointed by the Circuit Court of Accomack County according to the provisions of the Code of Virginia, Section 15.1-494. Members of the Board may receive such compensation as may be authorized by the governing body. Members shall be removable for cause by the appointing authority upon written charges and after public hearing. Appointments for vacancies occurring otherwise than by expiration of term shall in all cases be for the unexpired term.

IX-1.2. The term of office shall be for five (5) years, except that original appointments shall be made for such terms that the term of one member shall expire each year. Members of the board shall hold no other public office in the County or Town except that one may be a member of the local planning commission.

IX-1.3. Any member of the board shall be disqualified to act upon a matter before the board with respect to property in which the member has a legal interest.

IX-1.4. The board shall choose annually its own chairman, vice-chairman, and secretary. The vice-chairman shall act in the absence of the chairman.

IX-2 Powers of the Board of Zoning Appeals. The Board of Zoning Appeals shall have the following powers and duties:

IX-2.1. To hear and decide appeals from any order, requirements, decision or determination made by an administrative officer or Administrator in the administration or enforcement of this ordinance or of any ordinance adopted pursuant thereto.

IX-2.2. To authorize upon appeal in specific cases such variances from the terms of the ordinance as will not be contrary to the public interest, when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of the ordinance shall be observed and substantial justice done, as follows:

When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of specific piece of property at the time of the effective date of the ordinance or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or of the use or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the use of the property or where the board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly

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demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance.

No such variance shall be authorized by the board unless it finds:

- A. That the strict application of the ordinance would produce undue hardship; and
- B. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
- C. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

No such variance shall be authorized unless the board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

In authorizing a variance the board may impose such conditions regarding the location, character and other features of the proposed structure for use as it may deem necessary in the public interest, and may require a guarantee or bond to insure that the conditions imposed are being and will continue to be complied with.

IX-3 Applications for Variances. Applications for variances may be made by any property owner, tenant, governmental official, department, board or bureau. Such applications shall be made to the Administrator in accordance with rules and regulations adopted by the Board. The application and accompanying maps, plans or other information shall be transmitted promptly to the secretary of the Board who shall place the matter on the docket to be acted upon by the Board. No such variances shall be authorized except after notice and hearing as required by Section 15.1-431 of the Code of Virginia. The Administrator shall also transmit a copy of the application to the Planning Commission which may send a recommendation to the Board or appear as a party at the hearing.

IX-4 Appeal to the Board of Zoning Appeals. An appeal to the board may be taken by any person aggrieved or by any office, department, board or bureau of the county or municipality affected by any decision of the Administrator. Such appeal shall be taken within thirty (30) days after the decision appealed from by filing with the Administrator, and with the board, a notice of appeal specifying the grounds thereof. The Administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed was taken. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Administrator certifies to the board that by reason of facts stated in the certificate a stay would in his 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

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Administrator and for good cause shown. No such appeal shall be heard until after notice and hearing as required by Section 15.1-431 of the Code of Virginia.

IX-4.1. Appeals shall be mailed to the Board of Zoning Appeals c/o the Administrator, and a copy of the appeal mailed to the secretary of the planning commission. A third copy should be mailed to the individual official, department or agency concerned, if any.

IX-5 Public Hearing. The board shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof as well as due notice to the parties in interest and decide the same within sixty (60) days. In exercising its powers, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination of an administrative officer, or may decide in favor of the applicant on any matter upon which it is required to pass under the ordinance or may effect any variance from the ordinance. The board shall keep minutes of its proceedings and other official actions which shall be filed in the Town Hall and shall be public record. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses.

IX-6 Decision of the Board of Zoning Appeals.

IX-6.1. Any person or persons jointly or severally aggrieved by any decision of the Board of Zoning Appeals, or any taxpayer or any officer, department, board, or bureau of the county or municipality, may present to the Circuit Court of the county a petition specifying the grounds on which aggrieved within thirty (30) days after the filing of the decision in the Town Hall.

IX-6.2. Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the Board of Zoning Appeals and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten (10) days and may be extended by the court.

The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the Board and on due cause shown, grant a restraining order.

IX-6.3. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

IX-6.4. Costs shall not be allowed against the Board, unless it shall appear to the court that it acted in bad faith or with malice in making the decision from which appealed.

ARTICLE X - AMENDMENTS

X-1 General Provisions. The regulations, restrictions and boundaries established in this ordinance may, from time to time, be amended, supplemented, changed, modified, or repealed by the governing body, provided:

X-1.1. The Planning Commission shall hold at least one (1) public hearing on such proposed amendment after notice as required by law, and may make appropriate changes in the proposed amendment to the governing body together with its recommendations and appropriate explanatory materials. Such public hearing may be held jointly with the governing body at its public hearing.

X-1.2. Before approving and adopting any amendment, the governing body shall hold at least one (1) public hearing thereon, pursuant to public notice as required by law after which the governing body may make appropriate changes or corrections in the proposed amendments; provided, however, that no additional land may be zoned to a different classification than was contained in the public notice without an additional public hearing after notice required by law. An affirmative vote of at least a majority of the members of the governing body shall be required to amend the zoning ordinance.

X-2 Effect of Repeal, Amendments, or Recodification of any Part of this Ordinance on prior Proceedings, Acts or Offenses. The repeal, amendment or recodification of any part of this ordinance shall not affect any act, or offense done or committed, or any penalty incurred, or any right established, accrued or accruing on or before the effective date of such repeal, amendment or recodification, nor enlarge any such right or privilege, except as specifically provided by such repeal, amendment or recodification. Neither shall the repeal, amendment or recodification of any part of this ordinance affect any proceeding, prosecution, suit or action which may be pending, said prior laws being continued in full force and effect for those purposes.

ARTICLE XI - ZONING GUIDELINES

XI-1 Statement of Intent. In the process of considering the rezoning of land it is the intent that in order to meet the test of reasonableness and the test of like - land treated alike, the following factors shall be considered before zoning for a particular category:

- A. Character of the area.
- B. Land use and activities.
- C. Suitability for proposed use.
- D. Availability of public facilities.
- E. Compliance with the Town of Painter Comprehensive Plan.

XI-2.1 Supplemental Considerations and Regulations. Rapid development of employment, residential and commercial facilities in the Town of Painter and the resulting impact on existing public facilities, highways and other necessary public facilities and services and natural resources could exceed the ability of the Town to provide for such facilities. Therefore, under authority of Article 5.2 of this ordinance and Section 15.1-491 of the Code of Virginia, as amended, the Painter Town Council may impose conditions, including reasonable employment limitations, to ease the effect of rezoning land on the general public and on the natural resources of the Town.

XI-2.2 Conditions. In addition to the regulations herein provided for the respective zoning districts, the Town Council may adopt as a part of an amendment to the zoning map reasonable conditions provided that said conditions shall have been proffered in writing in advance of the public hearing on said amendment to the zoning map by the applicant for rezoning and provided that said conditions are accepted by the governing body as a condition to said amendment of the zoning map. Such accepted conditions shall be recorded in the records of the circuit court and run with the land until changed as a result of another rezoning approval or amended with the approval of the land owners and governing body.

XI-3 Conditional Zoning Procedure

- A. Upon the receipt by the Administrator of a rezoning petition, it shall be reviewed by the Administrator in accordance with the guidelines found in Section XII-1. The Administrator shall prepare a report for presentation to the Planning Commission. The report from the Administrator shall contain a recommendation on the reasonableness of the requested rezoning, with specific reasons provided for the recommendation.
- B. The Planning Commission, within thirty (30) days of receiving the Administrator's report,

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shall consider the Administrator's recommendations and discuss same with the applicant. The applicant shall be advised of the possibility of proffered conditions in a rezoning decision, which conditions are not meant to change the character of a fundamentally unsound rezoning, but are meant to be responsive to Town growth pressures not specifically foreseen in the existing district regulations.

- C. The Planning Commission shall forward the report of the Administrator, along with a report summarizing the content of the Planning Commission public hearing, to the Town Council.
- D. After the Town Council has received the reports from the Administrator and the Planning Commission, the applicant for the rezoning under consideration may proffer a set of conditions for consideration along with the rezoning. Such a proffer shall be addressed to the Mayor of the Town of Painter.
- E. The Town Council shall hold a public hearing on the requested rezoning in accordance with 15.1-431 of the Code of Virginia, as amended. The rezoning request and the proffered condition shall be considered at this time.
- F. In the event that a request for rezoning is approved and the proffered conditions accepted, these same conditions shall be recorded in the Clerk of Circuit Court office as a lien on such property involved in the rezoning petition and shall run with the land until removed by the Town Council as a result of an amendment to the original application or as a result of a subsequent rezoning petition.

ARTICLE XII - PLAN OF DEVELOPMENT REQUIREMENTS

XII-1 Statement of Intent. This Article is enacted to ensure compliance with all applicable ordinances and statutes, to promote innovative and creative design, to enhance the Town of Painter's traffic circulation system by providing for the convenient and safe movement of vehicles and pedestrians, to protect the economic value of the natural environment from unwise and disorderly development, to ensure the efficient use of land, and to promote high standards in the layout, design, landscaping, and construction of development.

XII-2 Application. Any development or redevelopment exceeding 2,500 square feet of land disturbance shall be accomplished through a plan of development process prior to any clearing or grading of a site or the issuance of any building permit, to assure compliance with all applicable requirements of this Ordinance. The plan of development process shall generally be satisfied by the approval of a site plan, or a plot plan in accordance with the provisions in XII-3, and any additional plans or studies as required by the Administrator.

XII-3 Plot Plans. One copy of a plot plan drawn to scale for individual single-family dwellings or accessory structures for single-family residences or for commercial development which results in a land disturbance less than 5,000 square feet and which will result in an area of impervious surface of less than 16 percent of any lot or parcel, shall be submitted to the designated authority for review and approval. Any encroachment into an RPA shall require an applicant to prepare a site plan as outlined in § XII-4 below, including the submission of a water quality impact assessment in accordance with Article III-6.13 of this Ordinance.

A. Required Information. At a minimum, the plot plan shall be drawn to scale and contain the following information:

- (1) A boundary survey of the site drawn to scale or site drawing showing the north arrow and property line boundaries and distances.
- (2) Area of the lot/parcel.
- (3) Location, dimensions, and use of proposed and existing structures including marine and temporary structures. In the case of temporary structures, the date when the structures will be removed must be indicated.
- (4) Location of all building restriction lines, setbacks, easements, covenant restrictions, and rights-of-way.
- (5) Dimensions and location of all existing driveways, parking areas, or other impervious surfaces.
- (6) Location of all existing and proposed septic tanks and drainfield areas the location of

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all existing and proposed wells, including reserve areas required according to § III-6.12(6), *where in the CBPA (RMA and RPA), a note stating that the septic tank must be pumped out once every five years will be included.*

- (7) Limits of clearing and grading.
- (8) Specifications for the protection of existing trees and vegetation during clearing, grading, and all phases of construction.
- (9) Location of Resource Protection Area (RPA) boundary, as specified in § III-6.8 of this Ordinance, including any additional required buffer areas *and a note stating that any disturbance in the RPA must receive additional review and approval by the Town.*
- (10) Location of all erosion and sediment control devices.
- (11) Amount of impervious surface proposed for the site.

XII-4 Site Plan. A site plan for any proposed development which will result in 5,000 square feet of land disturbance or greater, or any proposed development which will result in an area of impervious surface lot coverage of 16 percent or greater, or any industrial development proposal shall be submitted to the designated authority for review and approval. Any encroachment into an RPA shall require an applicant to submit a water quality impact assessment in accordance with Article III-6.13 of this Ordinance.

A. Required Information. The applicant shall submit six (6) prints at a scale of one hundred (100) feet to the inch of the site plan to the designated authority. At a minimum, the site plan shall contain the information required for a plot plan above and the following additional information:

- (1) The proposed title of the project and the names and addresses of the professional(s) preparing the plan, the owner or owners of record, and the applicant, if different, and a signature panel for the designated authority's approval.
- (2) Site boundaries, north arrow, scale, the present zoning and current use of the property and all contiguous or abutting parcels.
- (3) Existing topography with a maximum contour interval of two (2) feet.
- (4) All wetlands permits required by law.
- (5) Limits of existing floodplains.
- (6) Existing natural land features, trees, water features and all proposed changes to these

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features shall be indicated on the site plan, including the location of all wooded areas before development, the proposed limits of clearing and all trees to be preserved in accordance with Article III-6.12.B(2) of this Ordinance.

- (7) Public sanitary sewer system, public water mains and fire hydrants.
- (8) Slopes, terraces, retaining walls, fencing and screening within required yards, and any shoreline stabilization structures.
- (9) Plans for collecting and depositing stormwater and method of treatment of natural and artificial watercourses, including a delineation of proposed limits of floodplains, if any, as created or enlarged by the proposed development.
- (10) Stormwater management plan which shows 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 nonpoint 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 IIIB Surveyor Certification.

XII-5 Review by Administrator. The administrator shall review plot plans, site plans and subdivision plans for compliance with all requirements of this Ordinance. Within sixty (60) days of submission of a plot plan, site plan, or subdivision plan, the applicant shall be advised in writing, by formal letter or by legible markings on the plan, of any additional data that may be required or improvements that need to be made for compliance with this Ordinance.

XII-6 Denial of Plan, Appeal of Conditions or Modifications. In the event the plot plan or site plan is disapproved and recommended conditions or modifications are unacceptable to the applicant, the applicant may appeal such administrative decision to the Town Council. In granting an appeal, the Town Council must find such plan 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 this Ordinance. If the Town Council finds that the applicant's plan does not meet the above stated criteria, they shall deny approval of the plan.

ARTICLE XIII - FEE SCHEDULE

Zoning Ordinance (copy)	\$ 5.00
Zoning Permit	\$ 10.00
Special Use Permit	\$ 75.00*
Variance	\$ 75.00*
Rezoning	\$100.00*
Water Quality Impact Assessment	\$ 50.00

*The applicant for a special use permit, variance, or rezoning shall also bear the costs of any required advertisements or any associated costs.

ALL FEES ARE NON-REFUNDABLE

ARTICLE XIV – STANDARDS FOR ANTENNAS AND TOWERS

XIV-1 DEFINITIONS The following definitions are set forth for use in this Article:

- A. Alternative tower structure. Man-made trees, clock towers, bell steeples, light poles, and similar alternative-design structures that camouflage or conceal the presence of antennas or towers.
- B. Antenna. Any apparatus designed for telephonic, data, radio, or television communications through the sending and/or receiving of electromagnetic waves.
- C. Co-location. The use of a single support structure and/or site by more than one service provider.
- D. FAA. The Federal Aviation Administration.
- E. FCC. The Federal Communications Commission.
- F. Height. When referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or other structure, even if the highest point is an antenna or lightning rod.
- G. Tower. Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone and wireless communication towers, alternative tower structures, and the like.
- H. VDOA. The Virginia Department of Aviation.

XIV- 2 - Use Regulations

- A. Towers and Antennas. The purpose of these regulations is to establish general guidelines for the siting of towers and antennas. The goals of these regulations are to: (i) encourage the location of towers in non-residential areas and minimize the total number of towers and tower sites throughout the community, (ii) encourage strongly the joint use of new and existing tower sites, (iii) encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal, (iv) encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas and (v) to provide adequate sites for the provision of services with minimal negative impact on the resources of the Town.

These regulations are intended to comply with all federal and state regulations.

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B. Applicability. The provisions of this article shall apply to those antennas and towers referenced in Articles III-2.9.D, III-3.7.D, and III-4.9.D of this ordinance.

(1) Existing Structures and Towers. The placement of an antenna on or in an existing structure such as a building, sign, light pole, water tank, or other free-standing structure or existing tower or pole shall be permitted by right so long as (i.) the addition of said antenna shall not add more than twenty feet (20 ft.) in height to said structure or tower, (ii.) the highest point of the new antenna is not more than six hundred fifty feet from the ground, (iii.) no other antennas have previously been placed on this structure by right pursuant to this paragraph, and (vi.) the new antenna does not require additional lighting pursuant to FAA or applicable requirements. Such permitted use also may include the placement of additional buildings or other supporting equipment used in connection with said antenna as long as such building or equipment is placed within the existing structure or property and is necessary for such use. For purposes of this paragraph, a structure is “existing” if it was in place on the date this article was adopted by the Town Council.

(2) Replacement of Existing Towers and Antennas. Any tower or antenna existing prior to the adoption of this article or any tower or antenna subsequently approved pursuant to this article may be replaced, by right, with a tower or antenna of similar type once so long as (i.) the replacement of said antenna or tower shall not add more than twenty feet (20 ft.) in height to said structure or tower, (ii.) the highest point of the new structure is not more than six hundred fifty feet from the ground, (iii.) no other previous replacement towers or antennas have been erected on this site pursuant to this paragraph, and (vi.) the new antenna or tower does not require additional lighting pursuant to FAA or applicable requirements. The tower being replaced must be removed within one month of completion of the replacement structure. A proposed replacement tower or antenna which exceeds the height of the existing tower or antenna by more than twenty feet (20 ft.) shall be considered a new structure under these regulations.

C. General Guidelines and Requirements.

(1) Principal or Accessory Use. For purposes of determining compliance with area requirements, antennas and towers may be considered either principal or accessory uses. An existing use or an existing structure on the same lot shall not preclude the installation of antennas or towers on such lot. For purposes of determining whether the installation of a tower or antenna complies with district regulations, the dimensions of the entire lot shall control, even though the towers or antennas may be located on leased area within such lots. Towers that are constructed, and antennas that are installed, in accordance with the provisions of this ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure.

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- (2) Inventory of Existing Sites. Each applicant for an antenna and/or tower shall provide to the zoning administrator an inventory of its existing facilities that are either within Accomack County or within five miles of the border thereof, including specific information about the location, height, and existing use and available capacity of each tower. The administrator may share such information with other applicants applying for approvals or special use permits under this ordinance or other organizations seeking to locate antennas within the jurisdiction of the locality, provided, however that the administrator shall not, by sharing such information, in any way represent or warrant that such sites are available or suitable.
- (3) Design/Lighting. The requirements set forth in this section shall govern the location of all towers and the installation of all antennas governed by this ordinance; provided, however, that the zoning authorities may waive any of these requirements if they determine that the goals of this ordinance are better served thereby.
 - a. Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color, so as to reduce visual obtrusiveness.
 - b. At a facility site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend the tower facilities to the natural setting and surrounding structures.
 - c. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.
 - d. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the zoning authorities may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.
 - e. No advertising of any type may be placed on the tower or accompanying facility unless as part of retrofitting an existing sign structure.
 - f. To permit co-location, the tower shall be designed and constructed to permit extensions to a height of at least one hundred ninety-nine feet (199 ft.).
 - g. Towers shall be designed to collapse within the lot lines or lease lines, if leased area does not conform to property lot lines, in case of structural failure.

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D. Federal Requirements. All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the federal government with the authority to regulate towers and antennas.

E. Building Codes. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable federal, state, and local building codes and regulations.

F. Information Required. Each applicant requesting a special use permit under this ordinance shall submit the following. The zoning authorities may require other information to be necessary to assess compliance with this ordinance.

- (1) Owner Authorization: Written authorization from the site owner for the proposed use.
- (2) Specifications: A copy of typical specifications for proposed structures and antennas, including a description of design characteristics and materials.
- (3) Site Plan: A scaled plan, a scaled elevation view, and other supporting drawings, calculations, or documentation, signed and sealed by appropriate licensed professionals, showing the location and dimensions of all improvements including information concerning topography, radio frequency coverage, tower height requirements, setbacks, drives, parking, fencing, landscaping, and adjacent uses. The plan shall include photographs or elevation drawings depicting typical design of the proposed structures.
- (4) Visual Impact Analysis: A photographic or computer simulation of the proposed site that includes an image of the proposed tower. The simulated image shall include the foreground, the midground, and the background of the site. The images shall depict any potential visual impacts on adjacent areas.
- (5) Antenna Owners: Identification of the owners of all antennas and equipment to be located at the site as of the date of application.
- (6) Need Justification: The applicant must show that the proposed antennas and equipment could not be placed on an existing facility. Evidence that no existing tower or structure can accommodate the applicant's proposed antenna shall be consistent with the guidelines provided in Section XIV-2.G of this ordinance.
- (7) Inventory of Existing Sites: An inventory of existing sites owned or operated within Accomack County or within five miles of the County border, in accordance with Section XIV-2.C.2 of this ordinance.

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- (8) Propagation Maps: Copies of the applicant’s propagation maps demonstrating that antennas and sites for possible co-locator antennas are not higher in elevation than necessary.
- (9) Co-location Policy: A copy of the applicant’s policy regarding co-location.
- (10) Engineering Report: An engineering report, certifying that the proposed tower is compatible for co-location within a minimum of three (3) users including the primary user. This provision may be waived by the governing body in a particular case.
- (11) Notices and Advertising: It shall be the responsibility of the applicant to give the notices and to do the advertising required by Va. Code Sections 15.2-2310 and 15.2-2204 at the applicant’s expense. The applicant shall provide proof that the required notices and advertising were timely done.
- (12) FCC License: A copy of a valid FCC license for the proposed activity, or proof that the applicant is the winning bidder for an FCC license at auction and that the final issuance of the FCC license purchased at auction is pending, unless no FCC license is required.

G. Factors Considered in Granting Special Use Permits for New Towers. The applicant shall obtain a special use permit from the Town of Painter before erecting towers or antennas covered by this article, as specified in Section 2.01 of these regulations. The Town Council shall consider the following factors in determining whether to issue a special use permit, although the Council may waive or reduce the burden on the applicant of one or more of these criteria if the Council concludes that the goals of this ordinance are better served thereby.

- (1) Height of the proposed tower;
- (2) Proximity of the tower to residential structures and residential district boundaries;
- (3) Nature of the uses on adjacent and nearby properties;
- (4) Surrounding topography;
- (5) Surrounding tree coverage and foliage;
- (6) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
- (7) Proposed ingress and egress;

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- (8) Co-location policy;
- (9) Language of the lease agreement dealing with co-location;
- (10) Consistency with the comprehensive plan and the purpose to be served by zoning;
- (11) Availability of suitable existing towers and other structures as discussed below.

H. Availability of Suitable Existing Towers or Other Structures. No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the zoning authorities 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 may consist of any of the following;

- (1) No existing towers or structures are located within the geographic areas required to meet applicant's engineering requirements.
- (2) Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.
- (3) Existing towers or structures do not have sufficient structural strength to support applicant's proposed antennas and related equipment.
- (4) The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
- (5) The fees, costs, or contractual provision required by the owner in order to share an existing tower or structure or to adopt an existing tower or structure for sharing are unreasonable. Costs exceeding the cost of new tower development are presumed to be unreasonable.
- (6) The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.

I. Setbacks. The following setback requirements shall apply to all towers and antennas for which a special use permit is required; provided, however, that the zoning authorities may reduce the standard setback requirements if the goals of this ordinance would be better served thereby.

- (1) The tower must be set back from any off-site residential structure by a distance not less than twice the height of the tower.
- (2) Towers, guys, and accessory facilities must satisfy the minimum zoning district setback requirements for primary structures.

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J. Security Fencing. Towers shall be enclosed by security fencing not less than six feet (6 ft.) in height and shall also be equipped with an appropriate anti-climbing device; provided, however, that the zoning authorities may waive such requirements, as they deem appropriate.

K. Landscaping. The following requirements shall govern the landscaping surrounding towers for which a special use permit is required; provided, however, that the zoning authorities may waive such requirements if the goals of this ordinance would be better served thereby.

- (1) Tower facilities shall be landscaped with a buffer of plant materials that effectively screen the view of the support buildings from adjacent property. The standard buffer shall consist of a landscaped strip at least four feet (4 ft.) wide outside the perimeter of the facilities.
- (2) In locations in which the zoning authorities find that the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived altogether.
- (3) Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, the zoning authorities may determine the natural growth around the property perimeter may be sufficient buffer.
- (4) Existing trees within two hundred feet (200 ft.) of the tower shall not be removed except as may be authorized to permit construction of the tower and installation of access for vehicle utilities. This provision may be waived by the zoning authorities in a particular case.

L. Local Government Access. Owners of towers may provide the Town co-location opportunities as a community benefit to improve radio communication for Town departments and emergency services.

M. Removal of Abandoned Antennas and Towers. Any antenna or tower that is not operated for a continuous period of twenty-four months shall be considered abandoned, and the owner of each such antenna or tower or the owner of the underlying land shall remove same within ninety (90) days of receipt of notice from the Town notifying the owners of such removal requirement. Removal includes the removal of the tower, all tower and fence footers, underground cables, and support building, although the buildings may remain with landowner's approval. If there are two (2) or more users of a single tower, then this provision shall not become effective until all users cease use of the tower. If neither the owner of the antenna or tower nor the landowner removes said structures within the time specified above, the Town may, through its own agents or employees, remove the structure. Any special use permit applied for and granted pursuant to this article shall be deemed to convey to the Town and its agents an easement to permit entry upon the land to provide for removal pursuant to this paragraph and this easement shall run with title to the land so long as

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the tower or antenna facilities exist. The cost of removal by the Town shall be jointly and severally payable by the owners of the tower or antenna and the owners of the underlying land and may be collected by the Town as taxes and levies are collected. Charges which remain unpaid shall constitute a lien against the property.

N. Change of Status Report. The owner of any tower that required a special use permit under these regulations for which a change of user status occurs, shall submit a report to the Town Zoning Administrator. The report shall state any changes to the identity or number of users of the tower.

O. Review Fees. Any costs incurred for review by a licensed engineer of any of the above required information shall be paid by the applicant.