

*Article 2:*  
**GENERAL REGULATIONS**

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**A. Purpose and Intent: General Effect of Zoning Ordinance**

No building or structure hereafter shall be erected and no existing building or structure shall be moved, altered, added to or enlarged, nor shall any land or structure be used or arranged for any purpose or manner other than those permitted within the assigned zoning districts and specific provisions of this ordinance. Any building or structure shall be located on an approved lot of record, and, in no case, shall there be more than one principal building on one lot unless otherwise provided in this ordinance.

**B. Prior Approvals**

Nothing in this ordinance shall be deemed to require any change to the plans, plats, lots or buildings previously approved prior to the effective date of this ordinance.

**C. Administration and Enforcement**

The provisions of this ordinance shall be administered and enforced by the Planning and Zoning Administrator, who shall be appointed by the Town Manager. The Planning and Zoning Administrator and such staff members or committees as may be assigned to or appointed by him shall have all necessary authority on behalf of the Town to administer and enforce the provisions of this ordinance, including the ordering in writing of the remedying of any condition found in violation of this ordinance, the bringing of legal action to ensure compliance with this ordinance, including, but not limited to, injunction, abatement or other appropriate action or proceeding.

**D. Building Permits**

1. A building permit is required in advance of the initiation of any building construction activity including erecting, constructing, enlarging, structurally altering, converting or relocating any building or structure and for any other activity as required by the Virginia Uniform Statewide Building Code. All applications for building permits shall be accompanied by building plans, specifications and site plans as required by the Virginia Uniform Statewide Building Code, plus additional information deemed necessary by the Planning and Zoning Administrator to enforce the provisions of this ordinance.

2. Issuance of any building permit is subject to the applicant obtaining a zoning permit or zoning waiver from the Planning and Zoning Administrator. No building permit will be issued by the Isle of Wight County Building Inspections Office until the Planning and Zoning Administrator has certified that the proposed construction and use of the premises conform with all applicable provisions of this ordinance. The Planning and Zoning Administrator shall be responsible for determining whether those applications for permits are in accord with the requirements of this ordinance.
3. It shall be unlawful for any person to erect, construct, enlarge, extend, structurally alter or use any building except in conformance with plans approved by the Planning and Zoning Administrator as required by this Article.
4. All building permits shall be issued by the Isle of Wight Building Inspections Office.

**E. Certificates of Use and Occupancy**

1. A building hereafter erected under the expressed conditions of a building permit, with the exception of accessory buildings not intended for human occupancy, shall not be occupied in whole or in part until a certificate of use and occupancy has been issued by the Isle of Wight Building Inspections Office and the Planning and Zoning Administrator. Said permit shall certify compliance with current administration requirements as stated within the documents known as the Virginia Uniform Statewide Building Code. In addition, the occupancy permit shall also certify applicable compliance with current zoning regulations as attested by the Planning and Zoning Administrator.
2. An existing building hereafter enlarged, structurally altered, and/or changed in use under the expressed conditions of a building permit, with the exception of accessory buildings not intended for human occupancy, shall not be occupied in whole or in part until an occupancy permit has been issued by the Isle of Wight Building Inspections Office and the Planning and Zoning Administrator under applicable State and Town regulations. For the purpose of zoning interpretation, the conversion of single-family residential dwelling to multi-family or other residential tenant (for lease) facility shall constitute a change in use.
3. The Planning and Zoning Administrator and the Isle of Wight Building Inspections Office shall be responsible for determining whether applications for certificates of use and occupancy as defined in the Virginia Uniform Statewide Building Code are in accord with the requirements of this ordinance.

4. No certificates of use and occupancy or temporary certificate of use and occupancy shall be issued by the Building Official unless the Planning and Zoning Administrator has certified that all applicable provisions of this ordinance have been met.
5. The Planning and Zoning Administrator shall not approve any temporary certificate of use and occupancy where the applicable provisions of this ordinance are not met, except in such instances where lack of compliance is of a temporary nature and involved site related improvements, such as landscaping, vegetative screening and paving which cannot reasonably be completed due to seasonal or weather conditions. In such instances the Planning and Zoning Administrator shall, before approving such temporary certificate of use and occupancy, be satisfied that the premises involved is physically suitable for use and occupancy in terms of access, parking and other site-related improvements.

Temporary certificates of use and occupancy shall state the nature of the incomplete work and the time period within which the work must be complete, which in no case shall exceed one hundred eighty (180) calendar days. Before approving any such temporary certificate of use and occupancy, the Planning and Zoning Administrator may require a performance bond or other form of surety approved by the Town Attorney in an amount equal to one and one fifth (1 1/5 ) times the amount necessary to meet the requirements of this ordinance, as certified by an architect, engineer or landscape professional. Such bond or surety shall be released within ten (10) days of satisfactory completion, inspection and approval of the installation of all required improvements.

6. If the provisions of this ordinance are violated, the certificate of use and occupancy shall become null and void, and a new certificate shall be required for any further use of such building, structure or land.

## **F. Zoning Districts**

The incorporated territory of the Town of Smithfield, Virginia shall be divided into classes of residential, office, commercial, industrial, and special overlay zoning districts as presented in Article 3. The location and boundaries of the zoning districts established by this ordinance are as indicated on the map entitled "Official Zoning Map of the Town of Smithfield, Virginia," as approved by the Town Council as part of this ordinance, endorsed by the Clerk to the Smithfield Town Council, and filed in the office of the Planning and Zoning Administrator.

**G. Interpretation of Zoning District Boundaries**

In the event that uncertainties exist with respect to the intended boundaries of the various zoning districts as shown on the Official Zoning Map, the following rules shall apply:

1. Where zoning district boundaries of the Town of Smithfield appear to follow streets, alleys, railroads or highways, such boundaries shall be construed as the centerlines of those streets, alleys, railroads or highways.
2. Where zoning district boundaries appear to follow lines of lots or parcels of record, such lot or acre lines shall be construed to be such boundary.
3. Where a zoning district divides a parcel of land, the location of such boundary shall be determined by the use of the Zoning Map scale as measured to the nearest foot unless such line can be more accurately determined by geometric or land surveying computations.
4. Where indicated district boundaries are approximately following corporate boundaries, such corporate boundaries shall be construed to be the district boundaries.
5. Where district boundaries are indicated as approximately following a river, stream, or marsh, the centerline of the river, stream or marsh shall be construed to be the district boundary.
6. The Flood Boundary and Floodway Map, as amended, prepared by the Federal Emergency Management Administration, shall be incorporated into the Official Zoning Map to delineate the boundaries of the Floodplain Overlay District (FP-O District). This map is filed in the office of the Planning and Zoning Administrator.
7. The Chesapeake Bay Preservation Area Map, as adopted by the Town Council, shall be incorporated into the Official Zoning Map to delineate the boundaries of the Resource Protection Areas, Resource Management Areas, and Intensively Development Areas. This map is filed in the office of the Planning and Zoning Administrator.
8. The Historic Areas Map and zoning district language describing the boundaries of the Historic Preservation Overlay, HP-O District of this ordinance, as adopted by the Town Council, shall be incorporated into the Official Zoning Map to delineate the boundaries of the HP-O districts. The Historic Areas Map is filed in the office of the Planning and Zoning Administrator.

9. All areas of the Town which are under water are considered to be within a zoning district and controlled by applicable district regulations. District boundaries over water areas are located by noted or scaled dimensions, with reference to physical features, Town corporate limits or straight line projection of the district boundaries.

#### **H. Interpretation of District Regulations**

1. Permitted uses and special permit uses are listed for the various zoning districts governed by this ordinance. Any use not specifically permitted in a specified district or districts as a by right use or a special permit use shall be prohibited.
2. Where a reference is made to specific prohibitions it is for the purpose of clarification or guidance and no further inference may be drawn therefrom.
3. No structure shall hereafter be built or moved, and no structure or land shall hereafter be occupied, except for a use that is permitted as a by right use or a special permit use as regulated by the provisions for such use and the applicable district requirements of this ordinance.
4. No use of a structure or land that is designated as a special permit use in any district shall be established or hereafter changed to another use designated as a special use, unless a special use permit has been secured from the Town Council.
5. No sign, fence, wall, accessory use or structure, or home occupation shall be hereafter established, altered, or enlarged unless in accordance with the provisions of this ordinance.
6. Within each zoning district there are additional regulations referenced that are directly applicable to development permitted in the district.
7. If any property in the Town is not shown on the Official Zoning Map as being located within a zoning district, such property shall be classified as C-C, Community Conservation District until the property zoning designation as been changed in accord with the provisions of this ordinance.

**I. District Size**

1. Where no minimum district size is specified, the minimum lot areas and width requirements for that zoning district shall define the minimum district size.

**J. Density, Open Space and Lot Coverage**

1. The maximum density or yield (in terms of total allowable residential dwelling units or gross square footage of non-residential building area) shall be calculated based on the net developable area of the lot or property subject to development or subdivision, less the area which is either (a) existing deeded and/or dedicated public right of way contiguous to or located within the boundary of the lot, or (b) depicted on the Town's adopted Official Map or Future Land Use Plan for proposed public right-of-way, or the expansion thereof, contiguous to or located within the boundary of the lot.
2. The net developable area of a lot or property is a function of the physical land units of that lot or property, including slopes, soils, wetlands and other sensitive environmental features. Adjustment factors for physical land units are as specified on the following chart.
3. The subdivision plat and/or site plan for a project shall graphically depict the location and area for the physical land units as outlined herein below. A calculation of the net developable area shall be required for all subdivision and site plan submissions. (*Refer to illustrative example of net developable area calculation in the appendix .*)

<b>Physical Land Unit</b>	<b>Percent Credited Toward Net Acreage</b>
<i>Slopes less than 10%:</i>	100%
<i>Slopes from 10% but less than 20%:</i>	75%
<i>Slopes from 20% but less than 30%</i>	50%
<i>Slopes 30% or more:</i>	10%
<i>Soils with high shrink/swell characteristics, as defined.</i>	75%
<i>Wetlands, existing water features and streams:</i>	0%
<i>Stormwater management basins and structures:</i>	0%
<i>Above-ground 69 KV or greater transmission lines:</i>	0%
<i>Public right-of-way</i>	0%
<i>Private streets, travelways and combined travelways and parking bays</i>	0%

4. No credit towards net developable area shall be given for planned public rights-of-way, private streets, travelways and combined travelways and parking bays within a lot or

property to be developed or subdivided. Twenty percent (20%) shall be subtracted from the calculated net developable acreage to allow for street rights of way, unless it can be demonstrated by survey calculations to the satisfaction of the Planning Commission that proposed street rights of way, private streets, travelways and combined travelways and parking bays in a subdivision will be less than 20% percent of the calculated net acreage.

5. Areas deeded to and accepted by the Town for use as a public park, public school site, and/or public facilities (excluding rights of way) shall be included in the computation of the maximum allowable density for the remainder of the parcel and may provide a maximum of fifty (50%) percent of the parcel towards the required open space for the zoning district.
6. In administering the provisions of this article, the Planning and Zoning Administrator shall have the authority to interpret the definitions of qualifying physical land uses to be used for open space or landscaped open space ratios in a given district.
7. Lands in common open space shall be so covenanted and perpetually maintained, managed and owned by a non-profit organization or other legal entity established under the laws of the State of Virginia. Such entity shall be approved by the Town Attorney or designated agent as a condition of final plan approval.
8. Lands proposed for open space, recreational and active community open space, or landscaped open space shall be of a shape, size and location suitable for the intended open space uses.
9. Maximum lot coverage standards, where specified for certain zoning districts, shall be construed to include that portion of a lot occupied by buildings or structures which are roofed or otherwise not open to the sky and which are greater than three feet in height.
10. No new structures (primary or accessory) exceeding the maximum floor area ratio specified for the underlying zoning district shall be permitted to be erected on that lot. The floor area ratio shall be derived by dividing the gross floor area of all buildings on the lot by the net developable area of the lot.  
(Ord. of 8-1-2001)

**K. Annexation**

Any territory hereafter annexed into the Town of Smithfield shall be considered classified under the C-C, Community Conservation District, unless otherwise designated by ordinance or annexation agreement.

**L. Condominiums**

Notwithstanding the specific minimum lot size requirements and minimum yard requirements specified for a given zoning district, a single family detached or attached dwelling condominium development and other forms of real estate condominiums may be permitted under the Condominium Laws of Virginia. Condominium developments shall comply with the density and other provisions of the zoning district in which they are located.

**M. Public Sanitary Sewerage Facilities**

1. The Town may develop a Sanitary Sewerage Facilities Master Plan to determine the projected sewerage flow, collection mains and facilities, easements, and costs to provide ultimate sewerage service to Town drainage sheds at full development of those sheds. Such facilities plan shall be designed to and in accordance with the adopted Comprehensive Plan. The facilities cost shall be updated annually by applying the appropriate Engineering News-Record cost index factor. The facilities plan shall be adopted by Town Council.
2. Upon adoption of a Sanitary Sewerage Facilities Master Plan, a subdivider or developer of land shall be required to pay a pro rata share of the cost of providing reasonable and necessary sanitary sewerage facilities which may be outside the property limits of the land owned or controlled by the subdivider or developer, but necessitated or required, at least in part, by the construction or improvement of such land, in accordance with the intent and provisions of Section 15.2-2243 of the Code of Virginia, the adopted Comprehensive Plan, the adopted Sanitary Sewerage Facilities Master Plan, the subdivision ordinance, and this ordinance.
3. The policy and criteria for determination of pro rata share of total cost, financial and implementation procedures and other related matters shall be the responsibility of the Town Manager and adopted by the Town Council as part of the Sanitary Sewerage Facilities Master Plan.

**N. Public Water Facilities**

1. The Town may develop a Public Water Facilities Master Plan to determine the projected public water demand, distribution mains and facilities, easements, and costs to provide ultimate public water services to Town drainage sheds at full development of those sheds. Such facilities plan shall be designed to and in accordance with the adopted Comprehensive Plan. The facilities cost shall be updated annually by applying the appropriate Engineering News-Record cost index factor. The facilities plan shall be adopted by Town Council.
2. Upon adoption of any public water facilities plan, a subdivider or developer of land shall be required to pay a pro rata share of the cost of providing reasonable and necessary water facilities which may be outside the property limits of the land owned or controlled by the subdivider or developer, but are necessitated or required, at least in part, by construction or improvement of such land in accordance with the intent and provisions of Section 15.2-2243 of the Code of Virginia, the adopted Comprehensive Plan, the adopted Public Water Facilities Master Plan, the subdivision ordinance and this ordinance.
3. The development of Town policy and criteria for determination of pro rata share of total cost, financial and implementation procedures and other related matters shall be the responsibility of the Town Manager and shall be approved and adopted by the Town Council as part of the Public Water Facilities Master Plan.

**O. Storm Drainage and Stormwater Management Facilities**

1. The Town may develop a Storm Drainage and Stormwater Management Facilities Master Plan to determine the projected storm drainage impacts, pre- and post-development runoff quantities and flow, storm drainage culverts and pipe systems, storm drainage ditches and structures, stormwater management facilities, waterfront protection measures, best management practices facilities (BMPs), easements and costs to provide adequate and necessary drainage improvements to the Town's drainage sheds at full development of those sheds. This facilities plan shall be designed to and in accordance with the future land uses on the adopted Comprehensive Plan. The facilities and improvements cost shall be updated annually by applying the appropriate Engineering News-Record cost index factor. The facilities plan shall be approved and adopted by Town Council.

2. Upon adoption of a Storm Drainage and Stormwater Management Facilities Master Plan, a subdivider or developer of land shall be required to pay a pro rata share of the cost of providing reasonable and necessary storm drainage improvements facilities which may be located outside the property limits of the land owned or controlled by the subdivider or developer, but necessitated or required, at least in part, by the construction or improvement of such land, in accordance with the intent and provisions of Section 15.2-2243 of the Code of Virginia, the adopted Comprehensive Plan, the adopted Storm Drainage and Stormwater Management Facilities Master Plan, the subdivision ordinance, and this ordinance.
3. The policy and criteria for determination of pro rata share of total cost, financial and implementation procedures and other related matters shall be the responsibility of the Town Manager and adopted by the Town Council as part of the Storm Drainage and Stormwater Management Facilities Master Plan.

**P. Accessory Uses and Structures**

1. Accessory uses are permitted in any zoning district, but only in connection with, incidental to, and on the same lot with, a principal structure which is in use and permitted in such district. Walls and fences are regulated separately in the following section.
2. Except as necessary for ongoing construction activity, the storage or overnight parking of buses, school buses and commercial vehicles (including tractors, trailers and step vans) rated over one ton (as classified by the Department of Motor Vehicles) is prohibited in any residential zoning district.
3. In residential districts, no motor homes, recreational vehicles, trailers or boats shall be parked on the street right of way. No more than two of any combination of the above cited vehicles shall be parked on a residential lot. No parking of any of the above cited vehicles shall be permitted in a front yard or side yard setback of a residential lot. No such vehicle shall be used for any form of habitation on a residential lot and no such vehicle may be connected to a private or public utility.
4. (Repealed by Ord. 9-5-2000)
5. No accessory structure shall be located in a front yard, except for flagpoles, fences and walls.

6. Accessory buildings on lots in commercial and industrial districts which abut a residential district shall be located a minimum of fifty (50) feet from such residential district line.
7. No accessory building may be placed within the limits of a recorded easement, alley or required fire lane.
8. No accessory structure other than garages shall exceed sixteen (16) feet in height. Garages may be as tall as twenty-four (24) feet in height provided that the garage shall meet the primary structure's side yard setback on all lot lines and that the height of the garage shall not exceed the height of the primary residential structure.
9. (Repealed by Ord. 9-5-2000)
10. Accessory apartments meeting the conditions listed below in section "Q" are the only accessory buildings that may be used as a residential dwelling unit.
11. No accessory building, except for farm accessory buildings, shall be constructed upon a lot for more than six months prior to the commencement of construction of the principal building, and no accessory building shall be used for more than six months unless the principal building on the lot is being used or unless the principal building is under construction. However, accessory buildings may be located on a parcel in which no primary structure exists, if such parcel is immediately adjacent to a parcel on which a single family dwelling is located and both parcels are under common ownership. Such accessory structure(s) shall be for a use accessory to the primary structure and shall be located in the rear yard. The rear yard of the parcel without a primary structure is defined as being equal to the rear yard for the immediately adjacent commonly owned parcel on which a primary structure is located.
12. Accessory buildings which are not a part of the principal structure (this includes those accessory structures that are connected to the principal building by an open breezeway), may be constructed in a rear yard, provided such accessory building does not occupy more than twenty (20) percent of the area of the required rear yard and provided it is not located closer than five (5) feet to any lot line. Accessory buildings may also be constructed in the side yard provided they meet the primary structures setback requirements.
13. Satellite dish antennas, satellite receiving dishes, satellite earth stations and similar antenna structures are deemed accessory structures. These structures shall be permitted in any zoning district under the following conditions:

- a. No satellite dish antennas, satellite receiving dishes, satellite earth stations or similar structures may be located within a front yard;
  - b. No satellite dish antennas, satellite receiving dishes, satellite earth stations or similar structures may be located closer than ten (10) feet from any property line;
  - c. In residential districts, no satellite dish antennas, satellite receiving dishes, satellite earth stations or similar structures may be more than ten (10) feet in height measured at ground grade, nor may they exceed district height requirements if attached to a residence, nor may they extend more than three (3) feet in diameter;
  - d. In commercial and industrial districts, no satellite dish antennas, satellite receiving dishes, satellite earth stations or similar structures may be more than twenty (20) feet in height measured at ground grade, nor may they exceed district height requirements if attached to a building, nor may they extend more than ten (10) feet in diameter;
  - e. Such structures shall be of a neutral color and no satellite dish antennas, satellite receiving dishes, satellite earth stations or similar structures may be repainted to anything other than a neutral color;
  - f. No lettering or advertising message shall be allowed on or attached to any satellite dish antennas, satellite receiving dishes, satellite earth stations or similar structure;
  - g. The design and placement of the antenna, satellite dish, earth station or similar structure(s) incorporates appropriate landscaping and screening measures as outlined in the Landscaping and Screening regulations in Article 9; and
  - h. Where in the opinion of the Planning and Zoning Administrator the installation and location of satellite dish antennas, satellite receiving dishes, satellite earth stations or similar structures may adversely affect the health, safety, community character and welfare of adjacent properties, a Special Exception by the Board of Zoning Appeals shall be required for the installation and location of such structure.
14. Swimming pools may occupy a required rear or side yard, provided that such pools are not located closer than ten (10) feet to a rear lot line or ten (10) feet to an interior or side lot line. Swimming pools are not permitted in the front yard. A pedestrian space at least

three (3) feet in width shall be provided between pool walls and the protective fences or barrier walls of the pool. All BOCA code requirements pertaining to fencing around swimming pools shall be adhered to. Permanent swimming pools shall be fenced and/or landscaped in a manner satisfactory to the Planning and Zoning Administrator. For the purpose of this Ordinance, permanent swimming pools shall be defined as any pool that requires electrical service for its operation. Seasonal, non-permanent, above ground pools are exempt from this provision.

15. Portable storage units are considered temporary accessory structures. Portable storage units are permitted for use for a maximum of sixty (60) days with a zoning waiver after which time a zoning permit must be obtained for up to an additional ninety (90) days of use, based upon a legitimate need for further use having been determined by the Zoning Administrator. If additional time is needed beyond what is permitted above, an appeal to the Planning Commission must be made in order to obtain the approval for further use. The Planning Commission shall have the option to attach conditions to the extended use thereof. Portable storage units can be placed in required front or side yard setback areas but cannot be placed in any right-of-way area. The use of portable storage units can be revoked by the town, whether or not previously permitted, if it is determined by the Zoning Administrator that the use or location constitutes a nuisance or a sight distance hazard. A temporary accessory structure shall not be located on any environmentally sensitive lands (RPAs) or wetlands.
  
16. Construction debris containers, including but not limited to dumpsters, are considered temporary accessory structures. Construction debris containers are permitted for on the premises and may be stored thereon during the time that a valid permit is in effect for construction on the premises. The use of construction debris containers can be revoked by the town if it is determined by the Administrator that the use or location constitutes a nuisance or a sight distance hazard. A temporary accessory structure shall not be located on any environmentally sensitive lands (RPAs) or wetlands.  
(Ord. of 9-5-2000; Ord. of 8-1-2001; Ord. of 3-1-2005; Ord. of 9-06-2011)

#### **Q. Accessory Apartments**

One accessory apartment may be maintained within a single-family detached dwelling in the C-C, S-R, N-R and DN-R zoning districts, contingent upon approval as a special use, in accordance with this article, and subject to the following:

1. The occupants of the accessory apartment shall be related to the owner of the principal dwelling by blood, adoption or marriage.

2. There shall be no other apartment facilities or room rentals in the dwelling or its accessory buildings.
3. The principal dwelling shall be occupied during the maintenance of the accessory apartment by the fee simple owner and members of the owner's family related by blood, adoption or marriage.
4. The permitted accessory apartment shall be exclusively occupied by not more than two persons, at least one of whom is related to the owner by blood, adoption or marriage and who must be either 62 years of age or older or must be physically or mentally handicapped, and the other occupant whom, if not of the requisite age, handicapped condition or familial relationship, must be a live-in attendant of the qualifying handicapped person.
  - a. A person shall be deemed physically or mentally handicapped if by virtue of a physical or mental condition such person is permanently incapable of carrying on some material activity reasonably necessary to independent daily living.
  - b. A written certification by the handicapped person's regular physician shall accompany the permit application. Such certification shall state the nature of the handicap, the effect upon the person's ability to function normally in daily life, the expected duration of the handicap and whether or not the handicap may be expected to moderate with time.
5. Off-street parking shall be as required by Article 8.
6. When a building addition or additional parking is proposed, a minor site plan meeting the requirements of Article 11 regarding site planning shall be submitted.
7. The floor plan and exterior elevations of the proposed accessory apartment and of the building housing same shall be presented to and approved by the Planning and Zoning Administrator. Exterior elevations shall not be required if no exterior changes are proposed. Exterior elevations shall also be approved by the Review Board when required by the HP-O District.
8. An accessory apartment shall have a floor area of not less than 400 square feet nor greater than 800 square feet, but in no event shall the floor area of an accessory apartment exceed twenty-five (25) percent of the existing floor area of the main building which will house the same.
  - a. An accessory apartment shall have one kitchen and shall have not more than two bedrooms, one bathroom and one all purpose room and shall be entirely located either within the outer walls of the main building or connected thereto

- by a common wall, ceiling or floor but not by a breezeway or porch. Accessory apartments located on a separate level over a freestanding garage are also permissible provided that it is in compliance with residential building codes.
- b. The architectural treatment of the accessory apartment shall be consistent with that of the character of the principal single-family dwelling.
  - c. An accessory apartment shall be accessible from the interior of the main building of which it is part. Only one main entrance shall be permitted on the front of the accessory apartment; all other exterior entrances shall be at the side or in the rear.
  - d. No accessory apartment shall be permitted in a basement or cellar or above the first floor of the principal dwelling.
9. If the following conditions are met, then the Planning and Zoning Administrator shall issue a temporary special use permit to allow the establishment and maintenance of the accessory apartment during the time of allowed occupancy:
- a. The required public hearing is held;
  - b. The Planning and Zoning Administrator determines that all enumerated requirements have been satisfied and that the required accessory apartment will not have a net negative effect upon the peace and tranquility of adjacent properties or upon the value thereof;
  - c. All fee simple owners of the affected property have executed in form recordable among the land records of the clerk's office of the Circuit Court of the County of Isle of Wight an agreement to remove the necessary kitchen improvements and to do all other things necessary to establish the accessory apartment area as a functional, non-discrete portion of the single-family dwelling housing same upon termination of the required temporary special exception permit; and
  - d. All applicable requirements of Article 12 have been met.
10. After construction of the accessory apartment has been completed, but prior to its occupancy, a fee simple owner of the main building housing same shall certify by affidavit delivered to the Planning and Zoning Administrator that the persons who will occupy such apartment are the same to whom information was presented to the Planning and Zoning Administrator and that any handicap which formed the basis for the issuance of the temporary special exception permit continues. Upon receipt of such affidavit in proper form, an occupancy permit shall be issued. Thereafter, the

applicant or other fee simple owner of the property in question shall submit such notarized affidavit to the Planning and Zoning Administrator by first of September of each ensuing year as a requirement for the continuance of the temporary special use permit and the occupancy permit.

11. Within 45 days after the use of an accessory apartment is discontinued or after said use ceases to comply with the requirements of this section, the kitchen facilities (other than permanently installed plumbing pipes located in the wall and/or floor) shall be removed and said accessory apartments shall be brought into compliance with this ordinance in all respects. Furthermore, the portion of the main building which had contained the accessory apartment shall not thereafter be occupied or maintained as a separate dwelling unit. "Kitchen facilities" shall include sinks, dishwashers, stoves, refrigerators and the like.

## **R. Walls and Fences**

Walls and fences, berms and similar items which may restrict passage or vision or simply enhance private property may be located within required yards as defined by building setbacks except as restricted herein:

1. No walls or fences located within front and side yards shall exceed a height of forty-two (42) inches as measured from the grade at the point of placement. No walls or fences or similar items other than landscaping within rear yards shall exceed a height of six (6) feet. However, rear yard fences that are taller than forty-two (42) inches may extend to the front corners of the primary structure. Fences in the rear yard on corner lots shall meet the side yard setback adjacent to the right-of-way line in the underlying zoning district. These provisions shall not be interpreted to prohibit the erection of an open-mesh type fence enclosing any school or playground site or business or industrial activity for security purposes.
2. In business, residential and industrial districts, walls and fences which are clearly used for safety or security purposes may be superseded by other height regulations.
3. In all use districts, walls and fences, hedgerows and other dense landscaping and other items which occur on corner lots, which exceed three and one-half (3 1/2) feet in height, and present an obstruction to vision, shall be reduced in height or relocated at least twenty (20) feet from the intersection of right-of-way lines.
4. In all use districts, walls and fences, hedgerows and other dense landscaping and other items which exceed three and one-half (3 1/2) feet in height and present an obstruction of

vision to traffic ingress and egress on property shall be reduced in height or relocated in a manner which negates the obstruction.

5. In all residential districts, walls and fences which adjoin property lines shall not be electrified, barbed or otherwise secured in a manner inappropriate or dangerous to the neighborhood. Such restrictions may be waived within customary agricultural areas.
6. Trellises and trellis work, play equipment, outdoor furniture, mailboxes, ornamental entry columns and gates are allowed within required yards.
6. Walls, fences and other enclosures for uses such as swimming pools, refuse enclosures, transformers and substations may be restricted by other regulations which shall supersede this section.  
(Ord. of 9-5-2000; 8-1-2001)

#### **S. Telecommunication Towers**

1. For the purpose of this ordinance, telecommunication towers shall include radio, cellular telephone, television, microwave, short wave radio and/or any other tower used exclusively for communication purposes as interpreted by the Planning and Zoning Administrator.
2. No telecommunication tower(s) (hereinafter referred to as "tower(s)") shall be located within five hundred (500) feet of a Residential district unless the applicant can otherwise demonstrate by providing coverage, interference and capacity analysis that the proposed location of the antenna is necessary to meet the frequency reuse and spacing needs of the wireless telecommunications facility and to provide adequate coverage and capacity to areas which cannot be adequately served by locating the tower(s) in a less sensitive area.
3. Tower(s) or structures supporting telecommunication antenna(s) or otherwise conforming to all the applicable provisions of this ordinance are hereby permitted subject to approval of a special use permit in the following zoning districts when the tower(s) is considered an accessory use:
  - a. I-1, Light Industrial
  - b. I-2, Heavy Industrial

Tower(s) and supporting telecommunication antenna(s) are also permitted subject to approval of a special use permit in the following locations regardless of the underlying zoning district:

- a. Church sites when camouflaged as steeples or bell towers;
  - b. Park sites when compatible with the existing environment and nature of the park; and
  - c. Government, school, utility and institutional sites.
4. The minimum setback from the base of the tower to any property line or to any adjacent non-residential structure shall be equal to one-half (1/2) the height of the tower, unless the Town Council grants a waiver due to special or unusual characteristics.
  5. The following general criteria shall be considered in determining the appropriateness of sites for communication tower(s) when considering a special use permit:
    - a. Whether the proposed tower is to be located in an area where it would be unobtrusive to surrounding uses and would not substantially detract from the local aesthetic or neighborhood character;
    - b. Whether the application represents a request for multiple use of a proposed tower(s) as is recommended in the Town's Comprehensive Plan; and
    - c. Whether the application exhibits how the site and the tower(s) and/or antenna(s) will be designed and arranged to accommodate future multiple users.
  6. No microwave dishes or other dish or conical shaped antennas shall be permitted on the tower(s) unless otherwise approved as part of the special use permit. Photo simulations of the "before and after" visual impacts of the tower(s) shall be submitted to the Town with the special use permit application.
  7. Tower(s) and antenna(s) shall be limited in total height to one hundred and ninety-nine (199) feet or lower unless so waived by the Town Council.
  8. Line of sight profiles depicting the proposed tower with attached antenna(s) and arrays from no fewer than three (3) locations, including all critical viewsheds determined by the Planning and Zoning Administrator, shall be submitted at the time of initial application for all towers in excess of fifty (50) feet.
  9. In the event the tower(s) and antenna array(s) shall serve as the primary use of the property, any accessory facility or building greater than one hundred (100) square feet

will be designed so as to be architecturally compatible with principal structures on the site and shall be compatible with the surrounding natural or built-up environment.

10. No communications equipment shall be installed which will interfere in any way with the Town's emergency communications system.
11. Advertising or signage provided for any use other than to provide warning or equipment instruction and/or any other information pertinent to the safe operation of the facility on any portion of the tower and/or antenna or any other accessory facility shall be prohibited, and each tower shall maintain a gray or other neutral colored finish.
12. Towers shall not be artificially lighted, unless required by the Federal Communications Commission (FCC) and the Federal Aviation Administration (FAA) or other applicable authority. If lighting is required, the Planning Commission and the Town Council shall review the available lighting alternatives and approve the engineering design solution that would create the least visual disturbance to the surrounding area.
13. Tower(s) and antenna(s) in excess of fifty (50) feet in height shall include screening as deemed necessary by the Town Planning and Zoning Administrator.
14. The applicant shall possess a communication license issued by the FCC and any other federal regulatory agency as deemed necessary by the Town, and the site selection, design and operation of the facility must meet all applicable State and Federal requirements and regulations.
15. If at any time the use of the tower(s) and/or antenna(s) ceases, the owner or lessee of the tower(s) and/or antenna(s) shall dismantle and remove it within six (6) months after ceasing to use it, unless:
  - a. A binding lease agreement with another wireless communications provider on the same tower has been executed in which case an additional six (6) months shall be granted; or
  - b. The Town requests, in writing, that the tower(s) and/or antenna(s) be reserved for Town use.

## **T. Borrow Pits**

1. Borrow pits and related uses involving the extraction of natural resources conforming to all the applicable provisions of this ordinance are hereby permitted subject to approval of a special use permit in the following zoning districts:
  - a. C-C, Community Conservation
  - b. I-2, Heavy Industrial
  
2. The application for special use permit for a borrow pit shall be accompanied by a site plan meeting all the requirements for a major site plan review. In addition, the following information shall be provided with the special use permit application:
  - a. A master phasing plan;
  - b. A vehicular access plan to be utilized by the excavation operator;
  - c. An enhanced erosion and sediment control plan detailing methods to be used to protect surrounding properties and public streets;
  - d. A comprehensive facility operations plan, including an estimate of annual yardage or tonnage to be excavated;
  - e. A detailed reclamation and restoration plan;
  - f. Design and construction details for fencing and gating;
  - g. Copies of all state and federal permits for use and use operations;
  - h. Proffers and plats supporting permanent easements, setbacks and buffer areas;
  - i. Evidence of ownership's record of borrow pit operations and prior record of compliance with borrow pit permits;
  - j. A site plan depicting enhanced roadside landscape, yard setbacks and related buffers; and
  - k. An operations maintenance plan.
  
3. In addition to the bonding requirements of Article 11, Section K. 4 (Site Plan Requirements), the following bonding (surety) requirements for borrow pits development shall apply:
  - a. In addition to other bonding requirements of this Ordinance, the operator shall furnish a bond of the amount on the form to be prescribed by the Town Attorney payable to the Town of Smithfield.
  - b. The bond shall serve to condition the use permit subject to the operator performing all of the requirements of this ordinance as well as the conditions of the special use permit, the facility improvements plan, the operations plan, the reclamation and restoration plan and the maintenance plan.

- c. The operator shall submit a cost estimate for the above considerations with the bond form, with said estimate to be prepared by a registered professional engineer qualified to undertake such examinations. The Town Attorney shall employ said estimate in setting the bond or surety amount.
  - d. The bond or surety posted by the operator for such use and operations shall not be refunded until the operator has obtained the approval of the Planning Commission.
  - e. Within ten days of the anniversary of a bond, the operator shall post any additional bond in the amount determined by the Planning and Zoning Administrator.
  - f. If the operator does not undertake to complete any reclamation, operations or maintenance deficiency within thirty (30) days of notification by the Planning and Zoning Administrator, the Town may order the forfeiture of the bond or surety and have the necessary work performed with the money so received.
4. All special use permits issued for borrow pits will be valid for a period of five (5) years from the date of issuance. An extension of time or renewal of said permit will require new applications filed in accordance with the terms of this ordinance.
  5. A violation of this article shall be deemed as adequate cause to declare the special use permit null and void upon action by the Planning Commission at a regularly scheduled meetings.

#### **U. Home Occupations**

1. A home occupation permit shall be approved by the Planning and Zoning Administrator prior to commencement of business operations.
2. The home occupation shall be clearly incidental to the use of the premises for dwelling purposes.
3. The home occupation shall be conducted only by direct family members residing on the premises and not more than one person who is not a direct member of the family.

4. The home occupation shall not result in the alteration of the appearance of the residential dwelling unit or the lot on which it is located. There shall be no storage or display of goods outside of a completely enclosed structure.
5. The home occupation shall be conducted within the dwelling or fully enclosed accessory building, shall not require external alternative to the appearance of the dwelling, and shall involve no equipment which is deemed to be in conflict with the intent of the residential nature of the community.
6. The home occupation shall not involve the use or storage of explosives, flammable or hazardous materials and may not involve any process that produces smoke, dust, odor, noise, vibration, or electrical interference, which in the opinion of the Planning and Zoning Administrator, is deteriorative or harmful to surrounding properties.
7. The home occupation shall not involve the delivery and storage of materials at a frequency beyond that which is reasonable to the residential use of the property.
8. Any use which generates traffic to and from the home in excess of what is normally associated with a single-family dwelling shall not be permitted as a home occupation.
9. There shall be no group instruction, assembly or activity, or no display that will indicate from the exterior that the dwelling is being utilized in part for any purpose other than that of a residential dwelling. There shall be no advertising on the premises.
10. No home occupation shall be permitted which comprises more than twenty-five (25) percent of the gross floor area of the dwelling or more than 400 square feet of the dwelling, whichever is less.
11. A home occupation shall comply with all applicable Town, State and Federal laws and regulations governing the intended use, including applicable business licenses and permits.
12. Home occupation applicants shall permit reasonable inspections of the premises by the Planning and Zoning Administrator or other Town official to determine compliance with this ordinance and the conditions attached to the granting of a home occupation permit.
13. Any home occupation, which in the opinion of the Planning and Zoning Administrator, has violated the provisions of the home occupation permit or becomes a burden to the neighborhood due to excessive traffic, noise, hours of operation, lighting, or use intensity,

shall have its permit revoked and the home occupation shall discontinue or correct operations within ten days upon notification.

14. Any person aggrieved by the action of the Planning and Zoning Administrator in granting, denying or revoking a home occupation permit or in stipulating conditions or corrections thereto may appeal the decision to the Board of Zoning Appeals.
15. Within the context of the above requirements, home occupation uses include, but are not limited to, the following:
  - a. Artist, sculptor or photographer.
  - b. Author or composer.
  - c. Computer programmer or internet service provider.
  - d. Home care provider
  - e. Tailor or seamstress.
  - f. Professional office.
  - g. Tutoring.
  - h. Salesperson, provided that no retail or wholesale transactions occur on premises.
  - i. Telephone answering service.
  - j. Music teacher, limited to two students at any one time.
  - k. Caterer.
  - l. Child day care provider (Babysitting for not more than 5 children; however a Special Use Permit may be an option for 6-11 children in some zoning districts.)
16. Specifically prohibited home occupation uses include, but are not limited to, the following:
  - a. Auto repair or auto paint shop.
  - b. (repealed 11-2014)
  - c. Gift shops.
  - d. Adult entertainment businesses and massage parlors.
  - e. Medical and dental clinics.
  - f. Veterinary activities and kennels.
  - g. Wrecking and towing service.
  - h. Welding and machine shop.
  - i. Beauty parlors.
  - j. Barber shops.
  - k. Nursing homes, convalescent homes, and adult care facilities.

- l. Child day care center.
  - m. Eating establishments.
  - n. Antique shops.
  - o. Tourist homes.
  - p. Fortune tellers.
  - q. Small machinery repair shop.
  - r. Other similar use.
- (Ord. of 9-5-2000; Ord. of 11-4-2014)

#### **V. Lot and Yard Requirements and Modifications**

1. No structure or part thereof shall hereafter be constructed or moved on a lot which does not meet all of the minimum lot area and yard requirements established for the zoning district in which the structure is or is planned to be located.
2. The minimum lot width shall be measured at the minimum front yard setback line approved on the final subdivision plat. No portion of the lot between the front and rear yard setback lines shall be less than the minimum lot width required for the zoning district. Each lot must maintain a minimum street frontage of at least twenty-five (25) feet.
3. Pipestem lots (also known as "flag lots") are not permitted in any residential district.
4. Cornices, awnings, eaves, ADA ramps, gutters, and other similar structural overhangs at least eight feet above grade may extend not more than three feet into any required yard.
5. Uncovered and unenclosed decks, porches, patios, terraces and other similar features not covered by a roof or canopy may extend or project into a front, side or rear yard setback line not more than four (4) feet.
6. (Repealed by Ord. 9-5-2000)
7. Corner lots shall provide a setback equal to the required front setback for all yards adjoining a public street provided, however, that the setback regulations shall not reduce the buildable width of a lot to less than fifty (50) percent of lot width as measured at the point of required setback line.
8. Where the frontage on one side of a street between two (2) intersecting streets is improved with buildings having a setback greater or less than one setback heretofore

permitted, no building shall project beyond the average setback line of the existing buildings of the same zoning classification so established.

9. Chimneys, solar devices, architectural features or the like, may project into required yards not more than thirty (30) inches. No such feature shall connect a principle structure with an accessory structure unless the accessory structure conforms with setbacks applicable to principle structures and all building code requirements are met.
10. No commercial above ground fuel storage tanks may be located less than one hundred (100) feet from any residential district. Canopies and pump operations are not classified as accessory buildings and shall comply with standard principal building setbacks for the district concerned.
11. (Repealed by Ord. 5-4-2004)
12. No residential lot shall be created in which an area more than 25% of the total lot area is comprised of one or more of the physical land units: (a) slopes 30% or greater, (b) wetlands, (c) 100-year floodplains and (d) water features.
13. Development on shrink/swell soils is not encouraged by the Town of Smithfield. Any development on lots containing shrink/swell soils shall be subject to specific soils and geotechnical analysis of the lot and detailed foundation engineering evaluations for the intended improvements. The following additional lot regulations and requirements shall apply to any subdivided lot:
  - a. Lots to be developed on shrink/swell soils shall require a geotechnical study and foundation design report for each lot prior to issuance a building permit. Such report shall be prepared by a registered professional engineer and shall address (1) the location and characteristics of the soils and (2) foundation and related structural engineering design recommendations for the intended structure.
  - b. The minimum lot size for any new subdivided lot containing shrink/swell soils shall be increased by a multiple of 1.20 times the minimum lot size prescribed by the applicable zoning district in which the lot is located.
  - c. No subdivision plat or site plan shall be approved for recordation until a geotechnical and foundation report has been reviewed by the Town in conjunction with final site plan, lot development plan and/or final subdivision plat review, or as otherwise required by the Planning and Zoning Administrator.

- d. All recorded plats for new subdivided lots containing shrink/swell soils shall bear the following notation:

*“This lot contains shrink/swell soils which require special engineering design for foundations and structural elements. No structure will be approved for issuance of a building permit until a certified engineering design has been submitted for the foundation and other related structural elements for the proposed structure.”*

14. Protection Area (RPA) designation upon it, will require the rear yard setback to begin at a minimum of twenty-five (25) feet from the RPA line. That will assure that there is adequate area to locate all buildings and structures outside the RPA.
15. Any plat submitted to the Town must show, as applicable, the existence of a Resource Protection Area (RPA) designation, its implications regarding future development, and acknowledgment of a maintenance agreement for on-site BMPs.  
(Ord. of 8-1-2000; Ord. of 9-5-2000; Ord. of 5-4-2004)

## **W. Public Hearings**

1. Public hearings held by the Town Council, Planning Commission, Board of Zoning Appeals or other duly appointed authority, shall be held in accordance with Section 15.2-2204, 2205 and other appropriate sections of the Code of Virginia, 1950, as amended.
2. In accordance with applicable regulations, before such hearings, the following is required:
- a. Notice of the intended action shall be published once a week for two successive weeks in a newspaper of general circulation in the Town of Smithfield; provided that such notice for matters to be considered by more than one board or commission may be published concurrently. Such notice shall specify the time and place of the hearing at which persons affected may appear and present their views, not less than six days or more than twenty-one days after the second advertisement shall appear in such newspaper with not less than six days elapsing between the first and second publication.
- b. The applicant for action requiring a public hearing shall bear the cost of said notice. The Zoning Administrator shall be required to obtain the names of the adjacent property owners and notify them with certified letters. Any person entitled to such notice may waive such right in writing.

- (1) Applications for Appeals, Special Exceptions, Variances, Special Use Permits, Special Sign Exceptions, Special Yard Exceptions, Exceptions to the RPA, Rezoning and amendments to zoning ordinance involving a change in zoning classification of twenty-five or fewer parcels of land, require, in addition to the advertising required herein, written notices to be given at least five days before the hearing to the owner (the last known address as shown on the current real estate assessment records of the Town of Smithfield) of each parcel involved, the owners of all abutting property and the owners of property immediately across the street or road from the property affected. If such notice is sent by an applicant other than a representative of the Town Council, it shall be sent by registered or certified mail and the return receipts shall be filed with the records of the case. If such notice is sent by a representative of the Council, the notice may be sent by first class mail; provided that the representative make affidavit that such mailings have been made and file such affidavit with the records of the case.
  - (2) When a proposed amendment to the zoning ordinance involves a change in the zoning classification of more than twenty-five but less than five hundred parcels of land, then in addition to the advertising required hereinabove, written notice shall be given at least five days before the hearing to the owners of each parcel of land involved. Notice shall be sent by first class mail to the last known address of such owner as shown on the current real estate assessment records of the Town of Smithfield. The party responsible for sending the required notice shall make affidavit that such mailings have been made and file such affidavit with the papers in the case.
  - (3) When a proposed amendment to the zoning ordinance involves a change in the zoning classification of five hundred or more parcels of land, written notice to the owners of each parcel is not required. Notice shall be advertised as required herein.
- c. At least fourteen days preceding a public hearing involving a site specific request, the Zoning Administrator shall erect on the subject parcel or parcels, a sign or signs, in such number as indicated below, stating "PUBLIC HEARING NOTICE" and indicating the telephone number of the Planning and Zoning Administrator. The sign or signs shall be erected by the applicant within ten feet of whatever boundary line of such land abuts a public street and shall be so placed as to be clearly visible from the street. Such signs shall not be erected on

the public right-of-way. If more than one such street abuts the subject parcel or parcels, then at least two signs shall be erected in the same manner as specified above, along at least two abutting streets. If no public street abuts thereon, then signs shall be placed in the same manner as above on at least one (or as many as deemed necessary by the Planning and Zoning Administrator) boundary of the property abutting land not owned by the applicant.

3. Any sign erected as required by this article shall be maintained at all times by the Zoning Administrator up to the time of the hearing.
4. It shall be unlawful for any person, except the Planning and Zoning Administrator, or authorized agent, to remove or tamper with any required sign during the period it is required to be maintained under this section.
5. All signs erected under this section shall be removed by the Zoning Administrator within five days following the public hearing for which it was erected.
6. (Repealed by Ord. 5-4-2004)
7. Failure to constantly maintain such sign on the property prior to the date of the public hearing shall not invalidate the public hearing or any approval thereafter granted.
8. If any hearing is continued, written notice of the new hearing date shall be mailed to those persons that received notice of the previous hearing, as required above.  
(Ord. of 5-4-2004)

#### **X. Violations and Penalties**

1. The Planning and Zoning Administrator and all other Town officials and employees who are vested with duty or authority to issue permits or licenses shall adhere to the provisions of this ordinance and shall issue permits or licenses only when uses and buildings comply with the provisions of this ordinance.
2. The Town reserves the right to revoke, upon written notification and failure to remedy within a reasonable period of time, any permit wrongfully issued or otherwise found to be in conflict with the provisions of this ordinance.
3. Any person who is convicted of violating any of the provisions of this Ordinance shall be found guilty of a Class I misdemeanor.

4. In addition to pursuing the penalties and fines hereinabove provided, the Planning and Zoning Administrator may bring additional legal action to insure compliance with this ordinance, including injunction, abatement or other appropriate action or proceeding.
5. In addition to any other remedies which may be obtained under this ordinance, any person who: (i) violates any provision of any this ordinance or (ii) violates or fails, neglects, or refuses to obey any final notice, order, rule, regulation, or variance or permit condition authorized or issued by the Planning and Zoning Administrator or the Town Council under this ordinance shall, upon such finding by the circuit court, be assessed a civil penalty not to exceed \$5,000 for each day of violation. Such civil penalties may, at the discretion of the court assessing them, be directed to be paid into the treasury of the Town of Smithfield for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, in such a manner as the court may direct by order.
6. With the consent of any person who: (i) violates any provision of this ordinance related to the protection of water quality in Chesapeake Bay Preservation Areas or (ii) violates or fails, neglects, or refuses to obey any order, rule, regulation, or variance or permit condition authorized or issued by the Planning and Zoning Administrator or the Town Council under this ordinance, the Town Council may provide for the issuance of an order against such person for the one-time payment of civil charges for each violation in specific sums, not to exceed \$10,000 for each violation. Such civil charges shall be paid into the treasury of the Town of Smithfield for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein. Civil charges shall be in lieu of any appropriate civil penalty that could be imposed under Paragraph 5 immediately hereinabove. Civil charges may be in addition to the cost of any restoration required or ordered by the Planning and Zoning Administrator or the Town Council.  
(Ord. of 8-1-2000)