

**BOARD OF SUPERVISORS
COUNTY OF NEW KENT
VIRGINIA**

O-15-16

At the regular meeting of the Board of Supervisors of the County of New Kent in the Boardroom of the Administration Building in New Kent, Virginia, on the 12th day of December, 2016:

<u>Present:</u>	<u>Vote:</u>
C. Thomas Tiller, Jr.	Aye
Patricia A. Paige	Aye
W.R. Davis, Jr.	Nay
Thomas W. Evelyn	Aye
Ron Stiers	Nay

Motion was made by Ms. Paige, which carried 5:2, to adopt the following ordinance:

**AN ORDINANCE TO APPROVE O-15-16
TO AMEND SECTIONS 91-27 AND 91-127 OF THE NEW KENT COUNTY CODE**

WHEREAS, pursuant to Virginia Code Section 15.2-400 et. seq., the New Kent County Board of Supervisors has the authority to amend the County Code; and

WHEREAS, the Planning Commission scheduled and conducted a formal and duly advertised public hearing on the 21st day of November, 2016 and voted 7:3:1 to forward a favorable recommendation to the Board of Supervisors to amend Sections 91-27 and 91-127 of the County Code; and

WHEREAS, the Board of Supervisors scheduled and conducted a formal and duly advertised public hearing on the 12th day of December, 2016; and

WHEREAS, the Board of Supervisors finds the amendment of Section 91-27 and Section 91-127 to the County Code will address, protect, and promote public convenience, necessity, general welfare, and good zoning practices in the County and the health, safety, and general welfare of the citizens in the County;

NOW THEREFORE, BE IT ORDAINED by the New Kent County Board of Supervisors this 12th day of December, 2016, that Chapter 91, Sections 27 and 127 of the New Kent County Code be adopted as follows:

Sec. 91-27. - Classification of subdivisions.

Subdivisions shall be classified as follows:

- (1) *Public service lots, rights-of-way.* When a lot is created for the sole purpose of developing a sewage or water facility or any other public facility, or for the sole purpose of widening or enlarging a road right-of-way, to be owned and operated or maintained by the Commonwealth of Virginia, County, other governmental or municipal entity, service authority, or sanitary district and title to such property passes at the same time as the plat is recorded, such lot shall be exempt from the requirements of this chapter except that the record plat shall adhere to the standards established in subsection 91-31(1) herein.
- (2) *Minor subdivision.* A minor subdivision shall be a division of property into ~~20~~ 7 or fewer lots or where all lots are 15 acres or larger in size or where more than ~~20~~ 7 lots are created, but which does not create a new street or an extension of an existing street, including family subdivisions as defined in this chapter. However, if any division of greater than ~~20~~ 7 lots other than a family subdivision results in a lot or lots which, in the determination of the agent and based on the zoning classification of the property could be further subdivided, and such further subdivision would require the creation of a new street or the extension of an existing street, the division shall be defined and reviewed as a major subdivision. A preliminary plan shall not be required for minor subdivisions. Family subdivisions shall be reviewed in accordance with the special provisions contained in section 91-126.
- (3) *Multiplex/townhouse/condominium subdivision.* A multiplex, townhouse or condominium subdivision shall be a division of property into lots for multiplex, townhouse or condominium development in accordance with a site plan approved pursuant to the requirements contained in the zoning ordinance. Neither a preliminary plan nor a development plan shall be required for multiplex, townhouse or condominium subdivisions; however, a site plan must have been approved and still be valid in accordance with the zoning ordinance prior to submission of a final plat for approval. Section 91-129 contains special provisions for townhouse and condominium subdivisions.
- (4) *Commercial/industrial subdivision.* A commercial or industrial subdivision shall be a division of properly zoned property to create building sites or lots for commercial or industrial purposes. The process may be commenced with site plan approval followed by submission of a final plat or by the submission of a development plan. In either case, a preliminary plan is not required. Section 91-128 contains special provisions for commercial and industrial subdivisions.
- (5) *Planned development subdivision.* A planned development subdivision shall be a division of property in accordance with an overall development master plan approved by the board. A preliminary plan shall not be required for planned development subdivisions unless specifically required of a particular development in the ordinance or resolution approving the overall development master plan. Any requirements specifically imposed on a planned development by its approving ordinance shall be fully binding upon the subdivision. In the case of a project designed to provide affordable housing approved as a planned development, the approving ordinance may authorize provisions less restrictive than those set out in this chapter, if deemed appropriate by the board to achieve the objectives providing affordable housing.

- (6) *Boundary line adjustment.* A boundary line adjustment shall be a lot line realignment between two or more adjacent lots where
- a. No additional lots are created;
 - b. The potential to create additional lots remains unaltered; and
 - c. Existing or platted streets, rights-of-way, public easements, and public improvements are unaffected by such action.

Further, no private easements or private rights-of-way shall be relocated or altered without the recordation of appropriate documents effecting such relocation or alteration. Typically, a boundary line adjustment is a minor realignment of the line or lines between two adjacent platted lots.

Neither a preliminary plan nor a development plan shall be required of boundary line adjustments provided, however, that nothing in this provision shall be interpreted to authorize the creation of a lot or lots which would otherwise be prohibited. Further, boundary line adjustments involving one or more legally nonconforming lots shall not be permitted where the result of such adjustment would increase the degree of nonconformity. Where the agent determines that the proposal goes beyond the intended minor realignment, he shall notify the subdivider, in writing, of such finding and, in so doing may require the submission of more detailed plans for review.

- (7) *Lot consolidation.* A lot consolidation shall be a plat that removes one or more existing lot lines, the effect of which is to eliminate one or more lots by combining them into a single larger parcel. Neither a preliminary plan nor a development plan shall be required of lot consolidations.
- (8) *Major subdivision.* A major subdivision shall be any division of property of ~~24~~ 8 lots or more any of which are less than 15 acres and which creates a new street, or extends any existing street, or any division of property which is not covered under any of the above provisions. Section 91-127 contains special provisions for open space or cluster subdivisions.

Sec. 91-127. - Special provisions for open space or cluster subdivisions.

- (a) The intent of the residential open space or cluster development technique is to provide design flexibility to make efficient use of topography and develop residential communities with significant permanent reservations of open space that preserve the look and feel of a rural area while exploiting economics of scale and compact design forms. This technique is only allowed in areas designated as rural lands by the Comprehensive Plan and is not allowed in the R-1 zoning district regardless.
- (b) The minimum gross area for an open space or cluster subdivision is ~~30~~ 75 acres. Additions of less than ~~30~~ 75 acres to existing open space developments may be approved if the agent finds that such an addition forms a logical extension.
- (c) Density calculations shall be based on total developable acreage (gross acreage less Chesapeake Bay Resource Protection Areas) divided by the minimum lot size of the zoning district in which located. Fractional units are rounded up to the next whole number. The result is the maximum lot yield for the development.

- (d) Lots created in open space or cluster subdivisions must access an internal road system. No lots may directly access existing public streets. Where lots abut an existing public street, a restricted access easement extending the entire distance shall be established and recorded contemporaneously with the record plat of the subdivision.
- (e) If the proposed subdivision is in a water or sewer service district as outlined by the department of utilities, public water and/or sewer must be utilized in the subdivision. The installation of all necessary facilities to connect to public water and/or sewer is the responsibility of the developer/builder/owner.
- (f) Yard, size and dimension requirements.
 - (1) There are no lot width or area requirements.
 - (2) The above notwithstanding, any lots abutting the exterior boundary of the open space development shall be of the same size as would be required of conventional development. Unless separated by an area of common open space that is not less than 75 feet in width, a lot shall be considered to be abutting.
 - (3) The rear and side yards may be reduced to zero provided that easements or covenants clearly establish the rights of the two abutting properties where principal buildings are to be constructed on or within ten feet of a property line.
 - (4) The minimum setback from external public streets shall be twice that which is prescribed in the underlying zoning district.
 - (5) The minimum setback from internal public streets shall be 20 feet; from internal private driveways, streets or alleys the setback shall be established on the plan of development.
 - (6) The minimum distance between any two buildings within the open space development shall be governed by the building code, provided, however, that the fire chief shall approve the fire protection measures for any development where principal buildings are separated by less than 20 feet.
 - (7) There are no minimum house sizes or house footprint requirements.
 - (8) Where flag lots are utilized, the "staff" portion shall be 20 feet or greater in width. A single shared access for two abutting flag lots is required; the width of the "staff" portion shall be 30 feet or greater in width.
 - (9) In the case of shared access arrangements, an easement establishing the right-of-way and maintenance responsibilities shall be recorded at such time as the lots are created and the existence of such easement shall be noted on the face of the plat creating the lots.
- (g) Open space requirements.
 - (1) No less than 50 percent of the gross area of an open space development shall be preserved as open space assuring its availability for agricultural, forestall, recreational, or open-space uses by establishment of a permanent open space conservation easement or deed restriction.
 - (2) All areas not included in lots or public street rights-of-way shall be incorporated into open space.

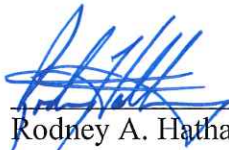
- (3) The open space shall be arranged and designed so as to facilitate its use, ensure, continuity of design, and preserve all of the sensitive environmental features within the development. Failure to achieve these goals shall be sufficient reason for the agent to deny applications for open space development plan approval or to require modifications that may include loss of lots.
- (4) With the approval of the board of supervisors, open space other than the required recreational space within an open space or cluster subdivision may be held by an owner when the open space is used for agriculture, forestry, historical preservation, or other similar uses. The board of supervisors may not approve any use of the open space not allowed under the terms of the conservation easement.
- (5) Conservation easement and deed restriction requirements:
 - a. Designated open space in cluster subdivisions shall be protected from any future subdivision or development by the establishment of a permanent conservation easement or deed restriction that must be recorded at the time of final plat subdivision approval.
 - b. The easement shall comply with the requirements of the Virginia Conservation Easement Act, Code of Virginia Title 10, Ch. 10.1 or contain similar provisions.
 - c. The conservation easement or deed restriction shall be in a form approved by the county attorney and shall provide that the eased portion of an open space subdivision shall be maintained by the owner of the property and that the county shall bear no responsibility or liability for such maintenance.
 - d. The board of supervisors, in its sole discretion, may approve a suitable alternative plan for maintaining the open space.
- (h) Recreational space requirements.
 - (1) Recreational space equivalent to at least five percent of the gross land area, but no less than one acre, shall be provided and shall be suitable, as determined by the agent, for recreation purposes and the development of recreational facilities that are appropriate to the size, scale, and market orientation of the development.
 - (2) Recreational areas shall not abut the exterior boundary of the open space development unless entirely adjacent to a publicly-owned facility or community recreation facility of an adjoining residential development.
 - (3) The agent may modify the requirement for recreational space in any manner deemed appropriate or necessary, other than reducing the area required to be set aside, for the purpose of ensuring that adequate recreation facilities are available to serve the development given its size, scale, and market orientation.
 - (4) Adequate pedestrian and bicycle facilities shall be provided which fully interconnect the development and its recreation areas both internally and with existing, planned or desirable external pedestrian and bicycle facilities.
- (i) Applications for open space developments shall be made in the same manner as prescribed for conventional subdivisions. In determining whether or not to grant approval, the applicant shall be required to show how the proposed open space cluster development provides superior

protection of rural views from existing public roadways to that which would be effected by conventional subdivision of the subject property.

- (j) Final plats recorded for an open space development utilizing the cluster technique and all deeds for lots within such development shall bear a statement indicating that the land is within an approved residential open space (cluster) subdivision and shall also bear a statement indicating the ownership status of the development's open space system and shall reference the covenants creating a property owners association which shall also be recorded at the time final plats were put to record.

(Ord. No. O-03-05, 3-14-2005; Ord. No. O-12-09, 7-13-2009; Ord. No. O-06-15, 5-18-2015, O-15-16, 12-12-16)

Adopted this 12th day of December, 2016



Rodney A. Hathaway
County Administrator



Ron Stiers
Chairman of the Board of Supervisors