

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

O-17-05

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 9th day of May, 2005:

Present:	Vote:
Stran L. Trout	Aye
Mark E. Hill	Aye
D. M. Sparks	Absent
James H. Burrell	Aye
W. R. Davis, Jr.	Aye

Motion was made by Mr. Trout, which carried 4:0, to adopt the following ordinance:

**AN ORDINANCE TO APPROVE REENACTING
CONDITIONAL ZONING PROVISIONS AS EXISTED PRIOR
TO RECODIFICATION**

WHEREAS, the New Kent County Code was recodified in 2001; and

WHEREAS, many unintended changes were made by the editors of the recodification; and

WHEREAS, the County recently discovered that one of the changes was an incorrect rewrite of the provisions governing conditional zoning in New Kent County which the editors based on the wrong section of the Code of Virginia; and

WHEREAS, the Board of Supervisors deemed it to be of utmost importance to the citizens of New Kent County to correct this error as quickly as possible and adopted the change incorporated herein as an emergency ordinance on 11 April 2005; and

WHEREAS, this application was referred to and considered by the New Kent County Planning Commission; and

WHEREAS, after conducting a duly advertised public hearing, the Planning Commission voted to recommend approval of the application; and

WHEREAS, this application has been advertised for public hearing before the Board in full accord with applicable provisions of the Code of Virginia; and

WHEREAS, in order to assure compliance with §15.2-2286.A.7 of the Code of Virginia, it is stated by the Board that the public purpose for this Ordinance is to further the public necessity, convenience, general welfare and good zoning in the County of New Kent and that approval will further these public purposes,

NOW THEREFORE BE IT ORDAINED this, the 9th day of May, 2005, by the New Kent County Board of Supervisors that pursuant to §15.2-2298 of the Code of Virginia the following amendment to §98-782 of the County Code be, and it is hereby, approved:

Sec. 98-782. Proffer of conditions.

(a) Any owner of property making application for rezoning or amendment to the zoning map as part of the application may voluntarily proffer in writing reasonable conditions prior to any public hearing before the board of supervisors, which shall be in addition to the regulations provided for the applicable zoning district or zone by this chapter, provided that:

- (1) The rezoning itself must give rise for the need for the conditions;
- (2) The conditions shall have a reasonable relation to the rezoning;
- (3) ~~The conditions shall not include a cash contribution to the county;~~
- (4) ~~The conditions shall not include mandatory dedication of real or personal property for open space, parks, schools, fire departments or other public facilities not otherwise provided for in Code of Virginia, § 15.2-2241;~~
- (5) ~~The conditions shall not include payment for or construction of off-site improvements except those provided for in Code of Virginia, § 15.2-2241;~~

~~(6) No condition shall be proffered that is not related to the physical development or physical operation of the property; and~~

~~(7) All such conditions shall be in conformity with the New Kent County Comprehensive Pplan as defined in Code of Virginia, § 15.2-2223.~~

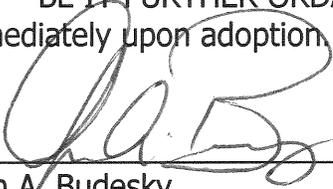
~~Once proffered and accepted as part of an amendment to this chapter, the conditions shall continue in effect until a subsequent amendment changes the zoning on the property covered by the conditions. However, the conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.~~

(b) If proffered conditions include the dedication of real property or payment of cash, such property shall not transfer and such payment of cash shall not be made until the facilities for which such property is dedicated or cash is tendered are included in the capital improvement program, provided that nothing in this section shall prevent the acceptance of proffered conditions which are not normally included in the capital improvement program.

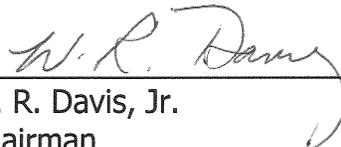
(c) If proffered conditions include the dedication of real property or the payment of cash, the proffered conditions shall provide for the disposition of the property or cash payment if the property or cash payment is not used for the purpose for which proffered.

(d) If proffered conditions include a requirement for the dedication of real property of substantial value or substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, then no amendment to the zoning map for the property subject to such conditions, nor the conditions themselves, nor any amendments to the text of the zoning ordinance with respect to the zoning district applicable thereto initiated by the board of supervisors, which eliminate, or materially restrict, reduce, or modify the uses, the floor area ratio, or the density of use permitted in the zoning district applicable to such property, shall be effective with respect to such property unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety or welfare.

BE IT FURTHER ORDAINED that this amendment shall be effective immediately upon adoption.



John A. Budesky
County Administrator



W. R. Davis, Jr.
Chairman