

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

**O-19-02 (R2)**

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 9<sup>th</sup> day of September 2002:

| Present:               | Vote: |
|------------------------|-------|
| Julian T. Lipscomb     | Aye   |
| Rebecca M. Ringley     | Aye   |
| James H. Burrell       | Aye   |
| Dean E. Raynes         | Aye   |
| W. R. "Ray" Davis, Jr. | Aye   |

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Motion was made by Mr. Burrell, which carried 5:0, to adopt the following ordinance:

**AN ORDINANCE TO AMEND TO CHAPTER 90,  
SUBDIVISIONS, WITH RESPECT TO REGULATING  
FAMILY SUBDIVISIONS**

WHEREAS, the Board of Supervisors and the Planning Commission of New Kent County have considered the issue of the process and procedures that ought to be applicable to family subdivisions for more than a year; and

WHEREAS, the recodification of the New Kent County Code on 14 January 2002 unknowingly changed the previously existing provisions for family subdivisions; and

WHEREAS, the Board and Planning Commission conducted a duly advertised joint public hearing on 10 June 2002 to consider re-adopting the provisions in place prior to recodification; and

WHEREAS, the Board and Commission, after carefully listening to the public comment and input determined that a more comprehensive change would be in the best interests of the citizens of New Kent County; and

WHEREAS, this issue was extensively considered by the New Kent County Planning Commission; and

WHEREAS, after conducting a second duly advertised public hearing on 15 July 2002, the Planning Commission voted to recommend approval of a series of amendments to the family subdivision provisions; and

WHEREAS, the New Kent County Board of Supervisors conducted a public work session on the subject of family subdivision and specifically this ordinance on 5 August 2002; and

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

WHEREAS, the Board finds that approval of this application would address, protect, and promote public convenience, necessity, general welfare and good zoning practices in the County,

NOW THEREFORE BE IT ORDAINED this, the 9<sup>th</sup> day of September 2002, by the New Kent County Board of Supervisors that that the following amendments to Chapter 90, Subdivisions, relating to family subdivisions be, and they are hereby, approved and adopted:

➤ **Amend section 90-181 to remove the provisions for family subdivisions in order that they are set forth separately:**

**Sec. 90-181. Exemptions.**

(a) The following subdivisions are partially exempted from this chapter and are therefore not subject to the normal design standards and review procedures contained in this chapter. They are subject to any applicable zoning requirements and to the requirements of subsection (b) of this section only:

(1) Sale or exchange of parcels not within an existing subdivision between adjoining property owners where such sale or exchange does not create additional building sites or lots or new roads or means of access. Lots within existing subdivisions shall be altered in accordance with section 90-182.

~~(2) A single division of a lot or parcel for the purpose of sale or gift to a member of the immediate family of the property owner, subject only to the express requirement contained in the Code of Virginia and to the requirement that all lots of less than five acres have reasonable right-of-way of not less than ten feet or more than 20 feet providing ingress and egress to a dedicated recorded public street or thoroughfare. Only one such division shall be allowed per family member, and shall not in the opinion of the agent be for the purpose of circumventing Code of Virginia, § 15.2-2244, or this chapter. For the purpose of this subsection, a member of the immediate family is defined as any person who is a natural or legally defined offspring, spouse, sibling, grandchild, grandparent, or parent of the owner. All parcels involved must meet the standards of chapter 98.~~

(3) (2) The division or partitioning of land in an estate by court order or among the heirs of the original owner, provided that all parcels meet the standards of chapter 98. The minimum area for any lot created under this subsection shall not be less than one acre, unless central water is available; then the minimum area shall be in conformance with the requirements of the zoning district in which the lot is located.

(b) A plat of any subdivision set forth in subsection (a) of this section must be submitted to and approved by the agent. If the division creates more than two parcels or tracts that do not front on existing public streets and requires the establishment of a new access right-of-way, then the agent shall require *that* the designation of a *new* right-of-way *be* 50 feet in width, either *by conveyance be conveyed* in fee simple *or by easement*, and shall require proof from the subdivider that the right-of-way layout is in accordance with the applicable standards of the state department of transportation and this chapter. *The roadway constructed within said right-of-way shall meet the design requirements of section 90-185 or shall be a public road.* The plat shall include the following owner's certificate and certificate of approval:

(1) Owner's certificate.

This subdivision and plat are with the free consent and in accordance with the wishes of the undersigned owner(s). The undersigned owner(s) certify that this subdivision is a bona fide division under the provisions of section 90-181 of The New Kent County Code and is not submitted for the purpose of circumventing the subdivision ordinances of New Kent County. Given under our hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\* \* \*

(2) Certificate of approval.

THIS IS AN APPROVED PRIVATE SUBDIVISION PLAT PURSUANT TO SECTION 90-181 OF THE NEW KENT COUNTY CODE. THE RIGHTS-OF-WAY SHOWN HEREON ARE NOT DEDICATED FOR PUBLIC USE *AND WILL NOT BE MAINTAINED AT PUBLIC EXPENSE.*

\* \* \*

(c) Condemnations, acquisitions, or sales by the federal, state or local governments or agencies thereof, are exempt from the provisions of this chapter. This section shall have no application to any industrial park developed by the industrial development authority.

\* \* \*

➤ **Add the following language as section 90-186:**

***Sec. 90-186. Family Subdivisions.***

- (a) *A family subdivision is a minor subdivision of a single parcel for the sole purpose of permitting the property owner [grantor] to either give or sell to an immediate family member [grantee] a portion of that parcel. Such subdivision may be approved by the Agent subject to the requirements enumerated below:*
1. *Only one such sale or gift shall be allowed per immediate family member and each lot created shall be for residential use.*
  2. *The gift or sale shall not, in the opinion of the Agent, be for the purpose of circumventing the provisions of this chapter.*
  3. *Area requirements:*
    - a. *No more than 8 new lots may be created from a single parcel under the terms of this section.*
    - b. *The grantor may divide lots from the original parcel in accordance with the table below provided that all other requirements of this section are met:*

| <i>Acreage in Original Parcel</i> | <i>Total Lots (New plus Retained)</i> |
|-----------------------------------|---------------------------------------|
| <i>No less than 6.0 acres</i>     | <i>2</i>                              |
| <i>7.5 acres</i>                  | <i>3</i>                              |
| <i>9.0 acres</i>                  | <i>4</i>                              |
| <i>10.5 acres</i>                 | <i>5</i>                              |
| <i>12.0 acres</i>                 | <i>6</i>                              |
| <i>13.5 acres</i>                 | <i>7</i>                              |
| <i>15.0 acres</i>                 | <i>8</i>                              |
| <i>16.5 acres and more</i>        | <i>9</i>                              |

- c. *The minimum lot size of any lot created or remaining under this section shall be one and one-half (1.5) acre unless a greater size is necessary to provide adequate area for on-site water and septic systems.*
- d. *All lots, including that retained by the grantor, must meet the dimensional standards and any other applicable zoning requirements established by chapter 98.*
4. *The grantor shall execute a family subdivision affidavit in the form provided by the Agent as a part of the application submission. The affidavit shall stipulate that the proposed family subdivision is not for the purpose of circumventing the requirements of the New Kent County subdivision ordinance and set forth the name, age, and relationship of all eligible grantees. A true copy of said family subdivision affidavit shall be recorded with the plat creating the subdivision.*
5. *Access to the building site on each of the lots created shall be via a private driveway constructed with a permanent all-weather surface no less than twelve feet (12') in width properly drained and maintained in a condition passable by emergency vehicles at all times that connects to a public road or a private street constructed in accordance with the design provisions of section 90-185.*
6. *In the event the division creates three (3) or more lots or tracts, a new deeded fifty-foot (50') right-of-way serving those lots shall be provided. The new right-of way shall meet the Virginia Department of Transportation geometric requirements with respect to horizontal and vertical alignment. Within said right-of-way, a public road or a private roadway meeting the requirements of section 90-185 shall be constructed. Building permits will not be issued on lots until the roadway is constructed and surfaced. The lot size and number limitations of section 90-185 shall not apply to family divisions.*

7. *Prior to final approval of the subdivision:*
  - a. *Unless public water and sewer serve the lots created, the Health Department must approve on each lot of the proposed subdivision the location of:*
    - i. *A potable water well,*
    - ii. *A primary septic drain field, and* ✓
    - iii. *A one hundred percent (100%) reserve septic drain field*
  - b. *If there are any extensions of or connections to public roads, the Virginia Department of Transportation must approve the proposed subdivision.*
8. *The property to be divided under this section must have been held by the grantor for a period of three (3) years prior to the division unless an exception is granted in accordance with the provisions of section 90-186(b).*
9. *The grantee of any such sale or gift must hold the property sold or given by the grantor under the provisions of this section for a period of two (2) years before leasing, reselling or gifting it to another person unless the lot is subject to involuntary transfer through death, foreclosure, judicial sale, condemnation or similar circumstance or an exception is granted in accordance with the provisions of section 90-186(b).*
10. *No building permit shall be issued for a period of two (2) years on any lot transferred or sold pursuant to this section to anyone other than the grantee unless the lot is subject to involuntary transfer through death, foreclosure, judicial sale, condemnation or similar circumstance or an exception is granted in accordance with the provisions of section 90-186(b).*
11. *The plat shall include the following owner's certificate and certificate of approval:*

*OWNER'S CERTIFICATE*

*THIS FAMILY SUBDIVISION AND PLAT ARE WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE WISHES OF THE UNDERSIGNED OWNER(S). THE UNDERSIGNED OWNER(S) CERTIFY THAT THIS SUBDIVISION IS A BONA FIDE DIVISION UNDER THE PROVISIONS OF SECTION 90-186 OF THE NEW KENT COUNTY CODE AND IS NOT SUBMITTED FOR THE*

PURPOSE OF CIRCUMVENTING THE SUBDIVISION ORDINANCE OF NEW KENT COUNTY.

**ALL LOTS CREATED BY THIS SUBDIVISION MUST BE HELD BY AN ELIGIBLE GRANTEE FOR A PERIOD OF TWO (2) YEARS FROM DATE OF PLAT RECORDATION.**

THE FOLLOWING INDIVIDUALS ARE THE GRANTEES OF THE LOTS CREATED BY THIS DIVISION:

\_\_\_\_\_  
NAME RELATIONSHIP TO OWNER

\_\_\_\_\_  
NAME RELATIONSHIP TO OWNER

\_\_\_\_\_  
NAME RELATIONSHIP TO OWNER

Given under oath this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_.

\_\_\_\_\_(SEAL)  
\_\_\_\_\_(SEAL)  
\_\_\_\_\_(SEAL)

City/County of \_\_\_\_\_

Commonwealth/State of \_\_\_\_\_;

Acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_.

CERTIFICATE OF APPROVAL

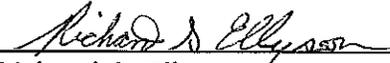
THIS DIVISION IS APPROVED AS A FAMILY SUBDIVISION THAT IS PARTIALLY EXEMPT FROM THE SUBDIVISION ORDINANCE OF NEW KENT COUNTY AND MAY BE RECORDED. THE PRIVATE STREET RIGHTS-OF-WAY SHOWN HEREON

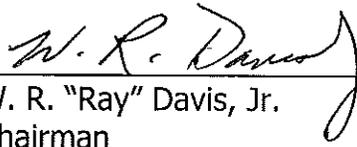
*MUST MEET THE PRIVATE STREET STANDARDS OF NEW KENT COUNTY: HOWEVER, THEY ARE NOT DEDICATED FOR PUBLIC USE AND WILL NOT BE MAINTAINED AT PUBLIC EXPENSE.*

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*Subdivision Agent*

- (b) *Exceptions to holding periods.*
- a. *Notwithstanding the requirements of subsection (a) above, a grantor or grantee of a family subdivision lot may request an exception to the holding periods by filing a written request with the agent setting forth therein the reasons for the request.*
  - b. *The agent shall either grant or deny the request in writing. In approving a request the agent shall find that because of a change in life circumstances that were unforeseen at the time of the division, a strict application of the holding period would produce a unique and undue hardship upon the grantor or grantee.*
  - c. *Appeals of unfavorable actions by the agent shall be made to the Planning Commission within thirty (30) days after the decision is rendered. The decision of the Commission will be final.*

  
Richard S. Ellyson  
Interim County Administrator

  
W. R. "Ray" Davis, Jr.  
Chairman