

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

**O-16-16**

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 12<sup>th</sup> day of December, 2016:

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

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

**AN ORDINANCE TO APPROVE O-16-16  
TO AMEND SECTION 91-126 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 21<sup>st</sup> day of November, 2016 and voted 10:0:1 to forward a favorable recommendation to the Board of Supervisors to amend Section 91-126 of the County Code; and

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

WHEREAS, the Board of Supervisors finds the amendment of Section 91-126 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 12<sup>th</sup> day of December, 2016, that Chapter 91, Section 126 of the New Kent County Code be adopted as follows:

Sec. 91-126. - Special provisions for family subdivisions.

(a) A single division of a lot or parcel is permitted for the purpose of sale or gift to a member of the immediate family of the property owner. For the purposes of this section, a member of the immediate family is defined as any person who is a natural or legally defined offspring, spouse, parent, sibling, grandchild or grandparent of the owner. Such subdivision shall be subject to the following provisions:

- (1) Only one such sale or gift shall be allowed per immediate family member and each lot created shall be for residential use. The gift or sale shall not, in the opinion of the agent, be for the purpose of circumventing the provisions of this chapter.
- (2) The provisions of this section shall apply only to those properties having a single-family detached residential or agricultural zoning district classification.
- (3) Area requirements:
  - a. The minimum lot size of any lot created or remaining under this section shall be 1.5 acre unless a greater size is necessary to provide adequate area for on-site water and septic systems.
  - b. No more than eight new lots may be created from the original parcel under the terms of this section.
  - c. 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:

Acreage in Original Parcel	Total Lots (new plus retained)
No less than 6.0 acres	2
7.5 acres	3
9.0 acres	4
10.5 acres	5
12.0 acres	6
13.5 acres	7
15.0 acres	8
16.5 acres and more	9

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 this 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) Where the division creates only two lots or parcels, each lot or parcel of property shall front a public road or shall front upon a private driveway or road which is in a permanent easement of right-of-way not less than 20 feet in width. Such right-of-way shall include a driveway within it consisting of, at a minimum, an all-weather surface of rock, stone or gravel, with a minimum depth of three inches and a minimum width of 12 feet. The right-of-way shall be maintained by the adjacent property owners in a condition passable by emergency vehicles at all times. A notation to this effect shall be placed on the face of the final plat and this provision shall also be included in the deeds by which the subdivision is affected. Passable condition refers not only to the surface, but also to horizontal and vertical clearance.
- (6) In the event the division creates three or more lots or parcels, a new permanent deeded 50-foot 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 91-103 shall be constructed. Building permits will not be issued on lots until the roadway is constructed and surfaced.
- (7) An erosion and sediment control plan prepared in accordance with the latest edition of the Virginia Erosion and sediment Control Handbook with appropriate surety shall be submitted for approval if the proposed right-of-way and driveway construction disturbs more than 2,500 square feet.
- (8) Access to the building site on each of the lots created shall be via a private driveway constructed with a permanent all-weather surface as defined in subsection(5) above no less than 12 feet in width properly drained and maintained in a condition passable by emergency vehicles at all times.
- (9) For property which fronts on an existing street or streets whose rights-of-way are, in accordance with section 91-93, deficient in width, one-half of the right-of-way width deficiency shall be dedicated by the subdivider at the time of plat recordation, or if right-of-way equivalent to one-half of the original deficiency has already been provided on the opposite side of the road the remaining deficiency shall be dedicated by the subdivider at the time of plat recordation.
- (10) If public water and public sewer facilities are available, as defined in this Code, to the property proposed to be subdivided then all proposed lots shall be served by such facilities in accordance with applicable provisions of the Code.
- (11) 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:
    1. A potable water well;
    2. A primary septic drain field; and
    3. A 100-percent 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.
- (12) The corners of all lots created shall be marked with iron pipes as provided for in section 91-77.
- (13) No parcel created by family subdivision shall be further subdivided unless such division is in full compliance with all requirements of this chapter.
- (14) A final plat shall be submitted to the agent for approval as provided in section 91-30 of this chapter along with an affidavit describing the purposes of the subdivision and identifying the members of the immediate family receiving the lots created. Any plan submitted shall be subject to the fees set forth in section 91-13. All physical improvements, including, but not limited to, public water, public sewer, and all-weather access drives shall be incorporated into a subdivision agreement and appropriately guaranteed in accordance with article V of this Chapter.
- (15) The property to be divided under this section must have been held by the grantor for a period of three years prior to the division unless an exception is granted in accordance with the provisions of subsection 91-126(b).
- (16) 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 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 subsection 91-126(b).
- (17) No building permit shall be issued for a period of two 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 subsection 91-126(b).
- (18) 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) CERTIFIES THAT THIS SUBDIVISION IS A BONA FIDE DIVISION UNDER THE PROVISIONS OF SECTION 91-126 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 signature of every owner of the property illustrated must be individually notarized below.

Notary's seal seal \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

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

Commonwealth/State of \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ :

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

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

**CERTIFICATE OF APPROVAL**

PURSUANT TO § 91-63 OF THE NEW KENT COUNTY CODE. IF THIS PLAT IS NOT FILED FOR RECORDATION WITHIN SIX (6) MONTHS AFTER FINAL APPROVAL. THIS APPROVAL WILL BE WITHDRAWN BY OPERATION OF LAW AND THE PLAT SHALL BE VOID.

THE PRIVATE RIGHTS-OF-WAY SHOWN HEREON MUST MEET THE PRIVATE STREET STANDARDS OF THE NEW KENT COUNTY; HOWEVER, THEY ARE NOT DEDICATED FOR PUBLIC USE AND WILL NOT BE MAINTAINED AT PUBLIC EXPENSE.

GRANTEES MUST HOLD SUBDIVIDED PARCELS FOR AT LEAST TWO (2) YEARS FROM PLAT RECORDING DATE.

Subdivision Agent \_\_\_\_\_ Date \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Director \_\_\_\_\_ of \_\_\_\_\_ Public \_\_\_\_\_ Utilities \_\_\_\_\_

Date \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Virginia Department of  
Transportation \_\_\_\_\_ Date \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Health Department \_\_\_\_\_ Date \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

**(b) Exceptions to holding periods.**

- (1) 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 facts for the request, including what change in life circumstances that was unforeseen at the time of the division has occurred.
- (2) The agent shall either grant or deny the request in writing. In approving a request the agent shall find that because of the change in life circumstances that was 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.

- (3) Appeals of unfavorable actions by the agent shall be made in writing to the planning commission within 30 days after the decision is rendered by the agent, or the agent's decision shall be final and unappealable. The decision of the commission will be final.

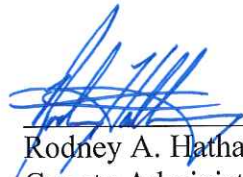
(c) Exceptions to private roadway standards.

- (1) Notwithstanding the requirements of subsection (a) above, a grantor or grantee of a family subdivision lot may request an exception to the private roadway standards by filing a written request with the agent setting forth therein the facts for the request.

- (2) Exceptions to the private roadway standards specified in this article may be granted by the Board of Supervisors following a recommendation by the Planning Commission in accordance with the procedures set out in this section. The applicant for such exception shall provide the Zoning Administrator a letter stating their justification for the exception. Upon receipt of all items deemed necessary by the Zoning Administrator, he shall prepare a staff report for the Planning Commission and Board of Supervisors for their review and consideration.

(Ord. No. O-03-05(R), 3-14-2005; Ord. No. O-17-07, 10-11-2007; Ord. No. O-16-16, 12-12-16)

Adopted this 12<sup>th</sup> day of December, 2016



Rodney A. Hathaway  
County Administrator



Ron Stiers  
Chairman of the Board of Supervisors