

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

**O-15-21**

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 July, 2021:

Present:	Vote:
C. Thomas Tiller, Jr.	Aye
Patricia Paige	Aye
Ron Stiers	Aye
John N. Lockwood	Aye
Thomas W. Evelyn	Aye

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

**AN ORDINANCE TO AMEND  
SECTION 91-127 OF THE NEW KENT COUNTY CODE**

WHEREAS, the Code was amended in 2016 to modify requirements of major subdivisions and clarifying language was not added to Section 91-127, Special Provisions for Open Space and Cluster Subdivisions; and

WHEREAS, the intent of the proposed text amendment is to provide consistency and clarification for the required number of lots which requires construction of a community water system; and

WHEREAS, the required community water system shall meet the latest requirements from the Department of Public Utilities; and

WHEREAS, the Planning Commission is charged with reviewing and recommending Code/Ordinance changes to the Board of Supervisors when such changes affect the Land Development sections of the Code, and

WHEREAS, the Planning Commission conducted a duly advertised public hearing on June 21, 2021, carefully considered the public comment received, and voted 7:1 to recommend approval of these Ordinance amendments; and

WHEREAS, the Ordinance Amendments have been advertised for public hearing before the Board of Supervisors in full accord with applicable provisions of the Code of Virginia;

NOW THEREFORE, BE IT ORDAINED this, the 12<sup>th</sup> day of July, 2021, by the New Kent County Board of Supervisors, that the following sections of the New Kent County Code be readopted as follows:

**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 75 acres. Additions of less than 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) In the event of a subdivision proposal with eight (8) or more lots, the installation of a community water system shall be required. Any proposed community water system(s) shall adhere with the requirements of Section 38-62 of the New Kent County Code and shall have approval from the Director of Public Utilities or his/her designee.**

~~(g)~~ **(g)** 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)~~ **(h)** 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)~~ **(i)** Recreational space requirements.

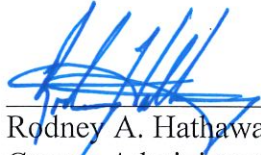
- (1) Recreational space equivalent to at least five percent of the gross land area, but no less than one acre, shall be provided and shall be suitable, as determined by the agent, for recreation purposes and the development of recreational facilities that are appropriate to the size, scale, and market 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.

~~(j)~~ **(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)~~ **(k)** 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.

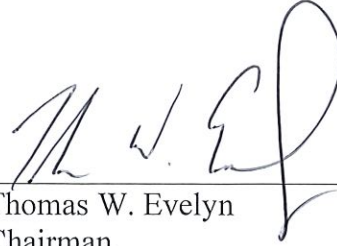
(Ord. No. O-03-05, 3-14-2005; Ord. No. O-12-09, 7-13-2009; Ord. No. O-06-15, 5-18-2015; Ord. No. O-15-16, 12-12-2016)

Attest:



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Rodney A. Hathaway  
County Administrator



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Thomas W. Evelyn  
Chairman