

ORDINANCE O-2020-19

AN ORDINANCE AMENDING THE POWHATAN COUNTY CODE OF ORDINANCES TO AMEND THE PROVISIONS SET FORTH IN SEVERAL SECTIONS OF CHAPTER 68 (SUBDIVISION ORDINANCE) AND CHAPTER 83 (ZONING ORDINANCE) TO REDUCE THE REQUIRED HOLDING PERIOD BEFORE CREATING A FAMILY DIVISION LOT FROM TEN YEARS TO FIVE YEARS; CLARIFY THAT ONLY ADULTS MAY RECEIVE A FAMILY DIVISION LOT; CLARIFY STANDARDS REGARDING ACCESS; INCREASE THE MINIMUM SIZE OF A FAMILY DIVISION LOT WITHIN THE AGRICULTURAL-10 (A-10) AND RURAL RESIDENTIAL (RR) ZONING DISTRICTS FROM TWO ACRES TO THREE ACRES; INCREASE THE MINIMUM SIZE OF THE RESIDUAL PARCEL REMAINING AFTER A FAMILY DIVISION WITHIN THE A-10 ZONING DISTRICT FROM TWO ACRES TO FIVE ACRES; AND DECREASE THE MINIMUM SIZE OF THE RESIDUAL PARCEL REMAINING AFTER A FAMILY DIVISION WITHIN THE RR ZONING DISTRICT FROM TEN ACRES TO FIVE ACRES.

WHEREAS, Sections 15.2-1427 and 15.2-1433 of the Code of Virginia, 1950, as amended, enable a local governing body to adopt, amend and codify ordinances or portions thereof; and

WHEREAS, Section 15.2-2240 of the Code of Virginia, 1950, as amended, mandates that each local governing body adopt a subdivision ordinance, pursuant to Sections 15.2-2240 through 15.2-2279 (Land Subdivision and Development) to assure the orderly subdivision of land and its development; and

WHEREAS, Section 15.2-2244 of the Code of Virginia, 1950, as amended, mandates that local subdivision ordinances include reasonable provisions permitting 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; and

WHEREAS, the proposed amendment is intended to ensure that subdivisions and other development promote the health, safety, convenience, order, prosperity, and welfare of the present and future residents of the County; and

WHEREAS, the proper advertisement and public hearing was conducted as required by law; and

WHEREAS, the full text of this amendment was available for public inspection in the Department of Community Development, Powhatan County Administration Building, 3834 Old Buckingham Road, Powhatan, Virginia 23139.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF POWHATAN that portions of Chapter 68 (Subdivision Ordinance) and Chapter 83 (Zoning Ordinance) be amended and reenacted as follows:

CODE OF THE COUNTY OF POWHATAN, VIRGINIA CHAPTER 68. SUBDIVISION ORDINANCE

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ARTICLE I. – GENERAL PROVISIONS

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Sec. 68-125. - Family division.

- (a) *Purpose.* The purpose of this section is to establish the procedure and standards for review of family divisions. Family division review is intended to ensure that proposed lots are appropriately and accurately delineated on a plat that serves as a permanent record of the subdivision.

(b) *Family division review standards.* An application for family division approval shall be approved on a finding the applicant has demonstrated that:

- (1) Only one such division shall be allowed during the lifetime of each adult family member of the donor or grantor without regard for ownership by the donor or grantor of differing tracts or parcels of land, and shall not be for the purpose of circumventing this ordinance. Any further division beyond one cut for each family member shall be considered a subdivision subject to the provisions of this ordinance;
- (2) The land being divided has been owned by the current owner or member of the owner's immediate family for at least five (5) consecutive years;
- (3) The owner agrees to place a restrictive covenant on the subdivided lots that would prohibit their transfer to a nonmember of the owner's immediate family for a period of five (5) years (*required holding period*). At the written request of the property owner, the subdivided lot(s) may be transferred prior to the conclusion of the *required holding period*, if the director determines, at his sole discretion, that there is a *compelling need* to convey such parcel and that the conveyance is not for purposes of circumventing the provisions of this section. *Compelling need* shall include, but shall not necessarily be limited to, (i) the transfer of the owner of the parcel by his employer to a work location more than 50 miles from the subdivided lot(s); (ii) a request to sell the property made by; a bona fide creditor pursuant to a deed of trust, action by a trustee in bankruptcy, or by order of a court of competent jurisdiction; or (iii) the death or legal incompetence of the owner. The decision made by the director may be appealed to the Board of Supervisors within thirty (30) days of a decision;
- (4) Each lot created and the residual parcel shall meet the minimum area requirements listed in Table 68-125(b)(5) and adhere to the minimum dimensional standards (except for minimum lot area) set forth in Chapter 83 (Zoning Ordinance) for the applicable zoning district.

Table 68-125(b)(5): Minimum Area Requirements for Family Division Lot and the Residual Parcel

Zoning District	Minimum Area for Family Division Lot (Acres)	Minimum Area for Residual Parcel (Acres)
Agricultural-10 (A-10) Rural Residential (RR)	3	5
Single-Family Residential-2 (R-2) Residential Utility (R-U)	2	2

- (5) No lot hereby created shall qualify as a family division unless it has a reasonable access right-of-way or easement providing ingress and egress to a publicly maintained street or road as follows (these standards will be calculated in the aggregate regardless of the timing of the divisions).
 - a. Minimum of 20 feet for one to two lots served by a driveway constructed to the residential driveway standard outlined in section 68-175(e)(8)b.1.
 - b. For a three (3) to ten (10) lot division, the lots must, at a minimum, be served by a private road constructed to standards outlined in section 68-175(e)(8)b.2.
 - c. Divisions resulting in a total of 11 or more lots, served by a public road constructed to standards outlined in section 68-175(e)(8)a.
- (6) Family divisions utilizing the private road standards of section 68-175(e)(8)b. shall be reviewed and acted on by the director, subject to certification and recordation of a road maintenance agreement as required by section 68-175(e)(8)b.2.vii for a newly-created private road. If an existing private road is subject to a road maintenance agreement, any

newly-formed lots must be made subject to the existing road maintenance agreement.(7)

Procedure for family subdivision of property held in trusts. Property held by a trust may be divided as a family subdivision provided it meets the following requirements: a. All trust beneficiaries must be immediate adult family members of one another, as defined in this section.

- b. All trust beneficiaries must agree in writing that the property should be subdivided.
- c. All purchasers or grantees of subdivided parcels must be adult immediate family members of beneficiaries of the trust, although they need not themselves be beneficiaries.
- d. The division shall comply with all other requirements of this section for family divisions.

(8) A family division may be created by the executor/administrator of an estate so long as said family division could have been validly created by the decedent in his/her lifetime.(c) *Non-immediate family members.*

(1) No building permit shall be issued on the lot being divided off to any person other than an immediate family member.

(2) No structure on the lot being divided off shall be rented to any person other than an immediate family member.

(d) *Expiration.* Family division approval shall expire if the family division plat is not recorded with the office of the clerk of the circuit court:

(1) Within six months after the date of the family division approval; or

(2) Where construction or installation of public infrastructure improvements required to serve the area covered by the family division plat has commenced in accordance with the family division approval and their completion is ensured by a performance guarantee in accordance with section 68-215, performance guarantees, within one year after the date of the family division approval or such further time period specified in the performance guarantee; or

(3) Within an extension of the applicable time period.

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ARTICLE V. – DEFINITIONS

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Sec. 68-301. – Definitions.

Subdivision, family division means a family division is a division of a lot or parcel of land solely for the purpose of a one-time sale or gift of land from the lot or parcel owner to a member of the owner's immediate family— which is defined for purposes of regulating family divisions as any adult who is a natural or legally defined offspring, stepchild, spouse, sibling, grandchild, grandparent, or parent of the lot or parcel owner. Development of a family division requires family division approval in accordance with section 68-125, Family division.

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CHAPTER 83. ZONING ORDINANCE

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ARTICLE I. – GENERAL PROVISIONS.

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Sec. 83-107. – Use districts.

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(b) Minimum lot size.

Minimum Lot Size Reference Chart	
Scenario	Result
Minimum Lot Size (A-10 District)	10 acres
Lot Line Adjustment (A-10 District)	2 acres for parent tract on a public road; 10 acres for all other parcels; the result of the lot line adjustment may not create any additional non-conforming parcels
Lot Line Adjustment (RR District)	10 acres; parcels less than 10 acres may be increased but not decreased in size by the lot line adjustment
Family member division; main parcel on public road, or access provided to public road via main parcel (A-10 District)	3 acres for the family division parcel plus 5 acres for the residual parcel (8 acres total)
Family member division; main parcel on private road in Large Lot development (A-10 District)	3 acres for the family member division plus 5 acres for the residual parcel (8 acres total); minimum lot size to be computed outside the 50' right-of-way; private road must be upgraded to state specifications if private road serves more than ten (10) lots
Family member division (RR District)	3 acres for the family division parcel plus 5 acres for the residual parcel (8 acres total)
Family member division (R-2 District)	2 acres for the family division parcel plus 2 acres for the residual parcel (4 acres total)
Family member division (R-U District)	2 acres for the family division parcel plus 2 acres for the residual parcel (4 acres total)
Large lot subdivision exception (A-10 District)	10 acre minimum lot size; if on a private road, minimum lot size is to be computed outside the 50' right-of-way

Charitable exception (A-10 District)	2 acres for the charitable exception parcel plus 10 acres for the residual parcel
Second dwelling for family member (per conditional use permit in A-10 District); main parcel on public road	20 acres total (1 dwelling per 10 acres); minimum lot size requirements waived if dwelling is for an elderly or infirmed family member
Second dwelling for guest house or non-family member (per conditional use permit in A-10 District)	20 acres total (1 dwelling per 10 acres); minimum lot size requirements waived if dwelling is for an elderly or infirmed family member
Second dwelling on 2 lot private road (regardless of occupant, per conditional use permit in A-10 District)	20 acres total (1 dwelling per 10 acres); minimum lot size requirements waived if dwelling is for an elderly or infirmed family member
Second dwelling on 3-10 lot private road (regardless of occupant, per conditional use permit in A-10 District)	20 acres total (1 dwelling per 10 acres); minimum lot size requirements waived if dwelling is for an elderly or infirmed family member
Second dwelling on lot in any private road subdivision that is eligible for a single cut (per conditional use permit in A-10 District)	20 acres total (1 dwelling per 10 acres); minimum lot size requirements waived if dwelling is for an elderly or infirmed family member

In all other respects the Code of the County of Powhatan shall remain unchanged and be in full force and effect.

This amendment shall take effect immediately upon passage.

**ADOPTED BY THE POWHATAN COUNTY BOARD OF SUPERVISORS ON
[MONTH DD, YYYY].**



**Karin M. Carmack, Chair
Powhatan County Board of Supervisors**

Recorded Vote:

ATTEST:



**Ned Smither, Clerk
Powhatan County Board of Supervisors**

David T. Williams
Vacant (District 2)
Michael W. Byerly
Bill L. Cox
Karin M. Carmack

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