



*Queen
Anne's
County*

DEPARTMENT OF PLANNING & ZONING

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TO: PLANNING COMMISSION MEMBER

FROM: STEVE COHOON, PLANNING DIRECTOR

MEETING DATE: DECEMBER 12, 2013

RE: **TA # 13-24 § 18: 1-19 G Use and merger of lots of substandard area or dimensions in Neighborhood Conservation (NC) District**

BACKGROUND

The ordinance's introduction reflects ongoing efforts to resolve the decade's long public health problem in South Kent Island (SKI) arising from failing septic systems. This ordinance works to manage development arising from sewer extension to the SKI communities by requiring the merger of lots in common ownership without interfering with rights guaranteed by the United States and Maryland Constitutions as interpreted by Federal and State Courts.

The County Commissioners introduced Ordinance # 13-24 on November 12, 2013, that if passed would require that lots not conforming to existing zoning be consolidated or merged with adjoining lots titled to the same person to create, to the extent possible, a lot conforming to existing zoning. This ordinance is limited to the Neighborhood Conservation (NC) Districts, which are generally older established subdivisions, and to areas now without public sewer service. The County Code does not currently have a merger requirement for nonconforming lots.

The ordinance provides for retroactive application to the date the ordinance was introduced by the County Commissioners. By imposing the merger requirements based on lot ownership as of November 12, 2013, the ordinance prevents individuals from defeating or undermining the purposes of this Bill by altering the ownership of properties between the date of introduction of this Bill and the Bill's effective date.

During the February 14, 2013 Planning Commission meeting information relating to the failing septic systems was presented by representatives from the Department of Public Works and the Department of Environmental Health. Following the presentation the Planning Commission made a resolution urging the County Commissioners to find a solution. The letter to the County Commissioners has been attached for your review.

OBJECTIVE

The purpose of this text amendment is to create building lots conforming with current zoning in the NC zoning district in subdivisions plated prior to zoning regulations. The ordinance requires the merger of substandard lots that do not conform to existing zoning to limit the number of substandard nonconforming lots that would be eligible to connect to public sewer and build once sewer service is extended to the area.

The following is the purpose of the NC zoning District as written in the County Code:

There are several varieties of NC Districts. The NC Districts are intended to preserve the character, density, and scale of existing residential neighborhoods. The NC Districts allow existing neighborhoods to conform to this Chapter 18:1, and they allow for in-fill development to be compatible with the surrounding area. NC Districts are designated for existing residential developments as follows:

- (a) NC-1: one-acre average lot size;*
- (b) NC-2: two-acre average lot size;*
- (c) NC-5: five-acre average lot size;*
- (d) NC-8: eight-thousand-square-foot average lot size;*
- (e) NC-15: fifteen-thousand-square-foot average lot size; and*
- (f) NC-20: twenty-thousand-square-foot average lot size.*

This ordinance is intended to implement the purpose as prescribed by the County Code of the NC zoning districts that have been in place since 1987.

The ordinance as proposed applies to all NC zoning districts that are not currently S-1. S-1 is the designation for a sewer service area that indicates a property is served by public sewer. Properties, improved and unimproved, designated S-1 are currently served and paying the Sanitary District for sewer service.

PROPOSED AMENDMENT TO CHAPTER 18 TEXT WITH STAFF RECOMMENDED CLARIFICATIONS

This amendment would modify Chapter 18:1 (Zoning and Subdivision Regulations) of the Code of Public Local Laws be amended by adding the following Subsection 18:1-19 G to Section 18:1-19.

Attached to this staff report is Ordinance #13-24 as introduced by the County Commissioners. Upon review by County Staff and the Planning Commission Attorney amendments to clarify the interpretation and implementation have been proposed below for your consideration.

The Staff Recommended amendments to the ordinance are shown with **UNDERLINED AND BOLD IN CAPS** for new wording, [~~strikethrough in brackets~~] for text being removed.

Chapter 18:1
Zoning and Subdivision Regulations

...

§ 18:1-19. Neighborhood Conservation (NC District).

...

G. Use and merger of lots of substandard area or dimensions in Neighborhood Conservation (NC) District in areas designated [~~S-2~~] S-3 or higher in the Comprehensive Water and Sewerage Plan.

(1) The provisions of this subsection shall apply in the NC District in areas designated [~~S-2~~] S-3, S-4, S-5, and S-6 in the Comprehensive Water and Sewerage Plan **ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION G** and shall apply notwithstanding any other provision in this Article, including, without limitation, those relating to non-conforming uses or lots. The provisions of this subsection shall not be construed to affect the non-conforming use or lot status of lots in Zoning Districts or areas to which this subsection does not apply.

(2) Except as provided in subsections (3) and (4) of this subsection, a dwelling may be constructed on a lot that does not comply with the minimum area or dimensional requirements of the zoning district in which the lot is located, provided that the lot complied with applicable minimum area and dimensional requirements, if any, at the time it was created.

(3) A dwelling may not be constructed on an unimproved lot **OR LOTS** that [~~does~~] **DO** not comply with the minimum area or dimensional requirements of the zoning district in which the lot [~~is~~] **OR LOTS ARE** located if the unimproved lot [~~is~~] **OR LOTS ARE** contiguous with an improved lot under the same ownership on November 12, 2013. An unimproved lot **OR LOTS** governed by this subsection shall be administratively merged with the contiguous improved lot under the same ownership as of November 12, 2013 prior to the extension of public sewer service to the improved lot. Further, an unimproved lot **OR LOTS** that must be merged with an improved lot under this subsection shall be merged with an additional contiguous unimproved lot or lots with the same ownership on November 12, 2013 that is or are necessary to prevent leaving an unimproved lot that does not satisfy the minimum area and dimensional requirements of the zoning district. The owner conducting a merger pursuant to this subsection must [~~execute~~] **APPLY AND RECEIVE APPROVAL OF** an administrative subdivision **PURSUANT TO § 18:1-171 OF THE PUBLIC LOCAL LAWS OF QUEEN ANNE'S COUNTY** prior to the extension of public sewer service to the improved lot. If the owner of a lot or lots required to be merged under this subsection G(3) fails to [~~execute and record~~] **APPLY FOR AND RECEIVE APPROVAL OF** an administrative subdivision, the **PLANNING** Director [~~of Planning and Zoning~~] shall [~~do so promptly~~] **PROCESS, CONSIDER AND**

APPROVE AN ADMINISTRATIVE SUBDIVISION EFFECTING THE MERGER PURSUANT TO § 18:1-171 OF THE PUBLIC LOCAL LAWS OF QUEEN ANNE'S COUNTY.

(4) Except as provided in subsection (5) of this subsection, an unimproved lot that does not comply with the minimum area or dimensional requirements of the NC District in effect at the time an application for a building permit is submitted may not be used for the construction of a dwelling if the lot was contiguous to and under the same ownership as one or more unimproved lots on November 12, 2013.

(5) A lot described in subsection (4) of this subsection may be used for the construction of a dwelling if the lot is merged with the contiguous, unimproved lot or lots in order to create a lot that (i) complies with, or comes as close as possible to complying with, the minimum area and dimensional requirements of the NC District, and (ii) does not leave a contiguous lot under the same ownership that does not comply with minimum area and dimensional requirements of the zoning district. The owner conducting a merger pursuant to this subsection must ~~[execute and record]~~ **APPLY FOR AND RECEIVE APPROVAL OF** an administrative subdivision **PURSUANT TO § 18:1-171 OF THE PUBLIC LOCAL LAWS OF QUEEN ANNE'S COUNTY** as a condition precedent to receiving a building permit for the dwelling.

(6) The seller of a lot subject to merger under this subsection G must disclose in writing to any buyer of the lot the fact that the lot is subject to merger with another lot or lots under subsection G. This disclosure also shall (i) be contained in all contracts of sale, deeds or similar documents relating to the sale, (ii) cite this subsection G, and (iii) be displayed prominently with the heading "Notice of Required Lot Merger."

PROPOSED STAFF AMENDMENTS FOR CLARIFICATION

The proposed staff amendments for clarification are;

- 1) Revise the ordinance to apply only to S-3 or higher Comprehensive Water and Sewerage Plan designations on or after the effective date of the subsection. Remove the S-2 designation from the applicability section of the ordinance. An S-2 property can administratively become S-1 and generally has a sewer line in close proximity and available to connect.
- 2) Clarify and confirm that the ordinance applies to a single lot or more than one lot if applicable.
- 3) Add a clarifying reference to section 18:1-171 relating to the administrative subdivision process.
- 4) Revise the terms "execute and record" to "apply and receive approval for" which is more consistent with the terms in our County Code.
- 5) Revise Director of Planning & Zoning with Planning Director which is a specific term of the County code.

APPLICATION OF THE PROPOSED ORDINANCE

An exhibit representing examples of merger requirements has been attached for your review.

Since most properties in the 9 communities on Southern Kent Island are zoned NC – 20, we will use a minimum lot size of 20,000 square feet for our example of how this ordinance would apply. The examples listed below apply to both improved and unimproved lots. The 9 communities are also in a S-3 sewer service area

Single lot - A property owner with a single 8,000 sq foot lot that does not have the ability to merge with an adjacent parcel because there is no common ownership would remain a single 8,000 sq foot lot. Based on the ownership the 8,000 sq foot lot is as close as the property can come to a conforming parcel.

A property owner that has two 8,000 sq foot parcels would be required to merge the parcels to make a still non -conforming 16,000 sq foot property to conform as close as possible with zoning. A property improved with a home that sits on two lots is a common example of this scenario.

A property owner that has three or four 8,000 sq foot lots would be required to merge all lots. In this case the owner would have enough land for one conforming lot but not enough land to make two conforming lots. Therefore this scenario would result in a single conforming lot.

A property owner with five, 8,000 sq foot lots that are contiguous and in the same ownership may be able to combine the 5 lots into two conforming 20,000 sq foot lots.

The ordinance also requires that a seller of a lot subject to merger under this law must disclose that information in writing to any buyer. If properties in common ownership on November 12, 2013 are subject to this ordinance and are titled and conveyed separately in the future, they may not be able to connect to public sewer or obtain a building permit.

DISCUSSION AND PLANNING COMMISSION REQUEST

Staff recommends that the Planning Commission make a favorable recommendation to the County Commissioners to adopt County Ordinance 13-24 with the amendments as set forth in the staff report.