

**ACTION ITEM  
BOARD OF SUPERVISORS**

**DATE** September 4, 2007

**TO:** Board of Supervisors

**FROM:** Jeffrey A Harvey  
Director of Planning and Zoning

**ISSUE:** Amend Section 22-4, Definitions, and Section 22-5, Family and Minor Subdivisions, of the Subdivision Ordinance

**RECOMMENDATION:** Approval

**BUDGET IMPACT:** N/A

**ATTACHMENTS** (4)

- [1] Background Report [4] **Reso/Ord/Proc #** 007-36
- [2] PC Minutes dtd 4/18/07 [ ] **Reso/Ord/Proc #**
- [3] PC Minutes dtd 6/6/07 [ ] **Reso/Ord/Proc #**

**REVIEW:** [X] County Administrator's Office Steve Lynch

[X] Legal Jeff Harvey

[ ] Information Technology \_\_\_\_\_

- [ ] Consent Agenda [ ] Other Business [X] Public Hearing
- [ ] Discussion Item [ ] Presentation [ ] Unfinished Business
- [ ] New Business

**PRESENTATION BY:** Jeff Harvey, Director of Planning and Zoning

**ELECTION DISTRICT:** N/A

**BACKGROUND REPORT**

**Proposed Ordinance 007-36** – Amends Section 22-4, Definitions, and Section 22-5, Family and Minor Subdivisions, of the Subdivision Ordinance. Currently, the subdivision ordinance defines an immediate family member as any person who is a naturally or legally defined offspring, spouse or parent of the owner of the parcel to be divided. Section 15 2-2244 of the Code of Virginia requires the definition of immediate family to include siblings, grandchild and grandparent as members. To prevent the use of a family subdivision to circumvent the subdivision ordinance, the subdivision ordinance requires the grantee of a lot from a family subdivision to not transfer or sell the lot to a non-immediate family member for at least five (5) years from the date of transfer. Section 15 2-2244-1 of the Code of Virginia provides that the county may require the grantee to not transfer or sell the lot for at least fifteen (15) years to a non-immediate family member and the parcel may not be subdivided using the Family exempt provisions of the ordinance unless the property has been held by the owner or his immediate family members for fifteen (15) years prior to the subdivision.

The amendment will bring the subdivision ordinance in compliance with the State code.

The ordinance amendment was recommended for approval by the Planning Commission on June 6, 2007.

- 6 Amendment to Subdivision Ordinance - Amendment to Section 22-4, Definition, and, Section 22-5, Family and minor subdivision, of the Subdivision Ordinance, pursuant to O07-36 The amendment revises the definition of immediate family to include sibling, grandchild and grandparent The amendment requires the owner of a property to have owned the property for at least fifteen (15) years prior to subdividing and conveying a portion of the property to an immediate member of the family, and the immediate member of the family shall retain ownership of the property for at least fifteen (15) years prior to transferring the property to any non-immediate member of the family

Mr Stepowany presented the staff report He stated the proposed amendment would amend the definition of immediate family to include sibling, grandchild and grandparent He stated the amendment also changes the number of years the grantee of a family subdivision can transfer or sell the property to a non-immediate family member from (5) years to fifteen (15) years with the provision that the property has been owned for at least fifteen (15) consecutive years by the current owner or member of the immediate family prior to the transfer He stated the amendment would

bring the Subdivision Ordinance in compliance with the State Code He stated staff notes that if the new time limit requirements were to be approved, any applicant for a family subdivision would be required to provide proof that they had owned the land for the previous fifteen (15) years He stated State Code does not have any provisions for relief from the fifteen (15) year requirement for recipients of the property He stated the option to sell the property would be limited to that of another qualifying family member

Mr Pitzel stated this amendment was for the County to be in compliance with State Code

Mr Judy stated they were adding in siblings to the definition of immediate family He stated the 15 years portion was optional by State Code He stated if one's mother owned the property for 14 years and you owned it for a year, which would be the 15 year period at which the property could be conveyed

Mr Cook asked if this only applied if the property was being subdivided

Mr Judy stated yes

Mr Cook opened the Public Hearing

Thomas Cropp stated he supported the revised definition of family but he questioned the 15 year requirement He stated he had not read the State Code but suggested the Planning Commission should verify that 15 years was the required provision He stated once the property was passed on, the recipient would have to own the property for 15 years which could be a burden to a family He stated he was opposed to the amendment

Kathy Beard, Stafford Council for Progress, stated she was concerned about property rights. She stated there were instances when citizens have financial problems and need to be able to borrow against their property. She stated the Ordinance would limit the availability of using one's land as an asset. She stated she was concerned that the core element in Stafford was people in rural areas and this may adversely affect them. She stated, in her opinion, there be time to make sure there were no other issues with the Ordinance.

Henry Cropp stated he was against the 15 year requirement. He stated it would be hard for a person to sell their property if they had a financial problem.

Jim Wilkerson stated he was told he could give 1 acre of property to his son but then the law changed by the time he wanted to do so.

With no one further coming forward the Public Hearing was closed.

Mrs. Kirby made a motion to put Item 6 in committee. Mr. Mitchell seconded. The motion passed 7-0.

Mr. Cook stated Item 6 would be discussed at a work session yet to be determined.

Mr. Di Peppe stated he thought the amendment was to conform to State Code.

Mr. Judy stated the amendment would help prevent unauthorized use of the family subdivision.

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Mr. Judy stated the Virginia State Legislature amended Section 15 2-22-44 1 pertaining to the 15 year provision and there were two clauses "the property has been owned for 15 consecutive years by the current owner or member of the immediate family" He stated the second clause read "the property owner agrees to place a restrictive covenant on the subdivided property that would prohibit the transfer of the property to a non-member of the immediate family for a period of 15 years" He stated the amendment was not withstanding the provision of clause 2, a locality may reduce or provide exceptions to the period of years to prescribed in such clause when changed circumstances so require the Board may reduce or provide exceptions to the period of years prescribed in sub paragraph 4 upon such modification of a restriction the Board shall execute a writing reflecting such modification which writing shall be recorded in accordance with Virginia Code Section 17 1-2-27

Mr. Stepowany stated the changes would not require a new Public Hearing

Mr. Judy stated the Planning Commission was a fact finding body and recommending what the Ordinance should say He stated there was a Public Hearing and the public gave their opinion and an exception clause was considered He stated, in his opinion, he did not think another Public Hearing was necessary

Mr. Cook stated if another Public Hearing was not necessary, than the Ordinance should be sent to the Board

Mrs. Kirby made a motion for approval Mrs. Carlone seconded The motion passed 6-0 (Mr. Rhodes was absent)

PROPOSED

BOARD OF SUPERVISORS  
COUNTY OF STAFFORD  
STAFFORD, VIRGINIA

ORDINANCE

At a regular meeting of the Stafford County Board of Supervisors (the Board) held in the Board Chambers, Stafford County Administration Center, Stafford, Virginia, on the 4<sup>th</sup> day of September, 2007

MEMBERS

VOTE

Jack R. Cavalier, Chairman  
Mark Dudenhefer, Vice Chairman  
M S "Joe" Brito  
Peter J. Fields  
Robert C. Gibbons  
Paul V. Milde III  
George H. Schwartz

On motion of , seconded by , which carried by a vote of , the following was adopted

AN ORDINANCE TO AMEND AND REORDAIN THE COUNTY CODE BY AMENDING SECTION 22-4, DEFINITIONS, AND SECTION 22-5, FAMILY AND MINOR SUBDIVISION, OF THE SUBDIVISION ORDINANCE

WHEREAS, Section 15 2-2244 of the Code of Virginia (1950), as amended, defines an immediate family member, for purposes of subdivision of property to a family member to include siblings, grandchildren and grandparents of the owner, and

WHEREAS, Section 15 2-2244 1 of the Code of Virginia (1950), as amended, authorizes an ordinance to require the owner of a property who intends to subdivide and convey a portion of their property to a member of his immediate family must have owned the property for fifteen (15) years prior to the subdivision and conveyance, and the member of the immediate family must place a restrictive covenant on the lot stating that any sale or conveyance of the property to a non-member of the immediate family for a period of fifteen (15) years is prohibited, and

WHEREAS, the Board desires to assure provisions for family subdivisions that do not allow the circumvention of the subdivision ordinance, and

WHEREAS, the Board has carefully considered the recommendation of the Planning Commission and staff and the testimony at the public hearing, and

WHEREAS, the Board finds that public necessity, convenience, general welfare, or good subdivision practice requires adoption of such an ordinance,

NOW, THEREFORE, BE IT ORDAINED by the Stafford County Board of Supervisors on this the 4<sup>th</sup> day of September, 2007, that the Stafford County Code be and it hereby is amended and reordained by amending Section 22-4, Definitions, and Section 22-5, Family and Minor Subdivisions, of the Subdivision Ordinance as follows, with all other portions remaining unchanged

**Sec. 22-4. Definitions**

*Family, immediate member* Any person who is a natural or legally defined offspring, spouse, sibling, grandchild, grandparent or parent of the owner of a parcel to be divided among family members

**Sec. 22-5 Family and minor subdivisions**

(a) *Family subdivisions* 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, subject only to the express requirements contained in the Code of Virginia (1950), as amended, and the following provisions

(1) The grantee is an immediate family member of the owner or owner(s), who is an immediate family member as defined in this chapter

(2) The property has been owned for at least fifteen (15) consecutive years by the current owner or member of the immediate family prior to the transfer

~~(2)(3)~~ No previous transfer under this provision has been granted to the grantee in this county

~~(3)(4)~~ After the transfer of property to the grantee, the lot will not be voluntarily transferred to a nonimmediate nonmember of the immediate family member for at least five (5) fifteen (15) years from the date of transfer, except that a transfer of a shared interest may subsequently or simultaneously be made to the spouse of the grantee. This restriction shall be noted in the deed

~~13)~~ If the board finds that an extraordinary hardship is being caused by the five fifteen-year restriction, it shall reduce the time period to alleviate the hardship. This hardship provision shall be noted on the plat or in the deed

BE IT FURTHER ORDAINED that this ordinance shall apply to any application for a family subdivision officially submitted to the County after thirty (30) calendar days from the date of the approval of this ordinance

SC JAH js