February 28, 2018

MEMORANDUM TO: Stafford County Planning Commission

FROM: Jeffrey A. Harvey, AICP
Director of Planning and Zoning

SUBJECT: Amendment to the Zoning and Subdivision Ordinances; Consider Repeal Cluster Development Standards

ATTACHMENTS:
1. Proposed Ordinance O18-13
2. Resolution R18-39
3. Virginia Code § 15.2-2286.1
4. Board of Supervisors minutes 1/23/18

Project Manager: Susan Blackburn

ISSUE:

The Planning Commission is asked to consider proposed Ordinance O18-13 which would amend the Subdivision and Zoning Ordinances to repeal regulations concerning cluster subdivisions and cluster development. The proposed Ordinance would repeal the following County Code Sections as they pertain to cluster subdivisions: Sec. 22-58(13), “Open space land in a cluster subdivision;” Sec. 22-77(m), “Open space land in a cluster subdivision;” and Article IX, “Cluster Subdivisions,” in its entirety. The proposed Ordinance would also remove clustering provisions regarding by-right and conditional uses, and intensity, lot area, yards, and lot width requirements from County Code Sec. 28-35, Table 3.1 District Uses and Standards, as applied in the A-1, Agricultural; A-2, Rural Residential; R-1, Suburban Residential; R-2, Urban Residential—Medium Density; and R-3, Urban Residential—High Density Zoning Districts.

BACKGROUND:

Cluster development is a form of development that allows for reduced lot sizes to preserve open space and has long been considered an option for residential development in lieu of conventional residential development layouts. Cluster development is a form of performance based zoning where the ordinance allows for certain “benefits” to a developer in exchange for specified amenities.
The County’s cluster development authority is pursuant to Virginia Code § 15.2-2242, and more specifically in legislation passed by the General Assembly in 2006, Virginia Code § 15.2-2286.1.

The County first established cluster development standards on May 5, 1987, pursuant to Ordinance O87-05. Cluster development was initially allowed in the R-1, R-2, and R-3 residential Zoning Districts, upon approval of a cluster concept plan by the Planning Commission. Concerned with inconsistencies with State law and other development issues, on March 20, 2012, the Board adopted Ordinance O12-30 repealing the cluster development standards, adopting new cluster development regulations on June 19, 2012 pursuant to Ordinance O12-17. Ordinance O12-17 provided for cluster developments in the A-1, A-2, and R-1 zoning districts. The regulations have been modified over the years to address items such as: minimum tract size for a cluster development, percentage of required open space, requirement for usable open space, exclusions for floodplains and powerline easements from counting towards minimum open space requirements, and use of pipe stem (flag) lots. The cluster development standards were last modified in 2015.

At the Board of Supervisor’s annual planning retreat on January 20, 2018, the Board discussed potential future growth management strategies for the County. Board members brought up citizen complaints received about cluster subdivision developments, citing the lack of visual open space in relation to the lots, an increase in direct driveway accesses along existing rural roads, and in some instances more lots being created than would be allowed by under conventional subdivision development regulations. There was an expressed community perception of overcrowded developments and the loss of the rural character in the rural areas of the County.

The Board of Supervisors through the County’s Comprehensive Plan is committed to ensuring quality development practices and believes that cluster development, if done correctly, can result in neighborhoods that preserve farmland, forestland, and natural resources, provide areas for recreation, and maintain rural landscapes. There is concern that the current cluster development regulations may not promote the intended goals and objectives for land preservation and good subdivision practices as envisioned in the Comprehensive Plan. Therefore, the Board of Supervisors has requested pursuant to Resolution R18-39 that the Planning Commission hold this public hearing and provide its recommendation as to whether or not to repeal the current regulations.

Staff supports the creation of new regulations that better meet the goals and objectives of the Comprehensive Plan, including preserving the rural character in the rural areas of the County. It may take several months to develop new regulations and go through the public hearing process for adoption of new regulations. As a result, Staff believes that it is important to consider repealing the current regulations in order to assure that development inconsistent with the Comprehensive Plan is not encouraged.

JAH:swb

Attachments (4)
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 day of __________, 2018:

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MEMBERS: VOTE:
Meg Bohmke, Chairman
Gary F. Snellings, Vice Chairman
Jack R. Cavalier
Thomas C. Coen
L. Mark Dudenhefer
Wendy E. Maurer
Cindy C. Shelton

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

AN ORDINANCE TO REPEAL STAFFORD COUNTY CODE
ARTICLE IX, “CLUSTER SUBDIVISIONS,” AND AMEND
AND REORDAIN SEC. 22-58, “CONTENT;” SEC. 22-77,
“CONTENT;” AND SEC. 28-35, TABLE 3.1 DISTRICT USES
AND STANDARDS, TO REMOVE CLUSTER REGULATIONS

WHEREAS, Virginia Code § 15.2-2286.1, requires certain localities to make provisions for cluster development; and

WHEREAS, Stafford County has provisions for cluster development; and

WHEREAS, cluster development is currently permitted in the A-1, Agricultural; A-2, Rural Residential; and R-1, Suburban Residential Zoning Districts; and

WHEREAS, the Board carefully considered the recommendations of the Planning Commission and staff, and the testimony of the public, if any, at the public hearing; and

WHEREAS, the Board desires to repeal the cluster development regulations, while working on new regulations that ensure quality development, address citizen’s concerns, and better meet the goals and objectives of the Comprehensive Plan; and

WHEREAS, the Board finds that public necessity, convenience, general welfare, and good planning and zoning practices require adoption of this ordinance;
NOW, THEREFORE, BE IT ORDAINED by the Stafford County Board of Supervisors on this the day of , 2018, that Stafford County Code Sec. 22-58, "Content;" Sec. 22-77, "Content;" and Sec. 28-35, Table 3.1. District Uses and Standards, be and they hereby are amended and reordained as followings, and Stafford County Code, Article IX, Cluster Subdivision, be and it hereby is repealed, all other portion of the County Code remaining unchanged:

Sec. 22-58. - Content.

The preliminary plan shall include the following:

(13) Open space land in a cluster subdivision—

a. The use, method of maintenance, and ownership of the dedicated open space land shall be specified on the preliminary subdivision plan and recorded subdivision plat. The use shall comply with the regulations of the underlying zoning district and shall be subject to guidelines as set forth by the appropriate state agency or department.

b. If the open space land is dedicated to park or recreational use, the use shall conform to the policy guidelines for parks and recreation in Stafford County.

Sec. 22-77. - Content.

(m) Open space land in a cluster subdivision—

(1) The use, method of maintenance, and ownership of the dedicated open space land shall be specified on the construction plan and recorded subdivision plat. The use shall comply with the regulations of the underlying zoning district and shall be subject to guidelines as set forth by the appropriate state agency or department.

(2) If the open space land is dedicated to park or recreational use, the use shall conform to the policy guidelines for parks and recreation in Stafford County.

ARTICLE IX. — CLUSTER SUBDIVISIONS

Sec. 22-266. — Legislative intent. —

The purpose of the cluster development provision is to encourage housing developments that concentrate the location of dwellings in specific areas on a site to allow the remaining land, designated as open space land, to be preserved for park or recreational purposes; conservation of land or other natural resources; historic or scenic purposes; assisting in the shaping of the character, direction, and timing of community development; wetlands; or agricultural and forestal production.

Sec. 22-267. — Open space land regulations.

The percentage of land required as open space for a cluster subdivision is stated in the zoning ordinance (County Code, chapter 28), within the districts in which cluster subdivisions are permitted. The required open space land shall be used as defined in the definitions, and owned and maintained by
a home owners association, a conservation association, an individual or any entity that can comply with the regulations of this chapter and chapter 28 of the County Code. The required open space land for a cluster subdivision shall not be used to satisfy any buffer requirements.

All cluster subdivision plans shall be reviewed by the subdivision agent or his designee for compliance with the provisions of this chapter and chapter 28 of the County Code. This shall include review of the open space land and its designated use for compliance with applicable industry and county standards for minimum area, configuration, functionality, and other requirements for such use and to ensure it furthers the goals, policies and objectives of the comprehensive plan.

Sec. 22-268. — Maintenance and ownership of open space land.

(a) Homeowners’ association or conservation association. If either of these associations is to assume ownership of the open space land, then it shall bear all responsibility for maintenance of the land and all structures thereon. There shall be restrictive covenants recorded which prohibit the use of the subject land for any purpose other than what is designated as open space land in this chapter. Such covenants shall run with the land and shall become part of the deed to each lot or parcel within the development. Such covenants shall be recorded in the county land records simultaneously with, or prior to, the recordation of the subdivision plat.

(b) Individual property owner. If the open space land is to be owned by an individual, then he or she shall bear all responsibility for maintenance of the land and there shall be restrictive covenants recorded which prohibit the use of the subject land for any purpose other than what is designated as open space land in this chapter. Such covenants shall run with the land and shall become part of the deed to each lot or parcel within the development. Such covenants shall be recorded in the county land records simultaneously with, or prior to, the recordation of the subdivision plat.

Sec. 22-269. — Access requirements for a cluster subdivision plan.

Any access through the dedicated open space land may be mitigated to lessen the impact on the open space land.

Sec. 22-270. — Review and approval of cluster subdivision plans.

The review and approval of a developer’s plans for a cluster subdivision shall follow the following steps:

(1) Concept plans: The applicant shall submit a concept plan of the proposed cluster subdivision for development proposals creating fifty-one (51) or more lots, and may submit a concept plan of the proposed cluster subdivision for development proposals creating fifty (50) or fewer lots showing the designated open space land, the intended use for the open space land, and the lot and street layout. The plan shall comply with the submission requirements as stated in the checklist included in the department of planning and zoning application for cluster subdivision concept plan and all other applicable County Code requirements. The plan will be reviewed by the subdivision agent or his designee for compliance with the cluster provisions of this chapter and chapter 28 of the County Code. If the concept plan is approved, the applicant must then submit a preliminary subdivision plan...
for review for development proposals creating fifty-one (51) or more lots, or may submit a preliminary subdivision plan for development proposals creating fifty (50) or fewer lots.

(2) Preliminary plan: Following the endorsement of the cluster concept plan by the subdivision agent or his designee, the applicant shall submit a preliminary subdivision plan under the requirements of article III of chapter 22 of the County Code.

(3) Construction plans: The requirement for the submission and approval of construction plans shall be the same as in article III of chapter 22 of the County Code.

(4) Final plats: The requirement for the submission of final plats shall be the same as in article III of chapter 22 of the County Code. On a cluster subdivision plat, the required open space land shall be clearly marked, the use stated, and the party responsible for owning and maintaining the open space be provided.

Sec. 28-35. - Table of uses and standards.

Table 3.1. District Uses and Standards

A-1 Agricultural.

(d) Requirements:

(1) Intensity:

Open space requirement for cluster subdivision = fifty (50) percent of total subdivision tract.

(2) Minimum lot area (acres):

Cluster subdivision ..... 1.5

(4) Minimum yards: (Feet)

Cluster subdivision:

Front ..... 40
Side ..... 10
Rear ..... 35

(6) Minimum lot width (in feet):

Cluster subdivision ..... 100

A-2 Rural Residential.

(c) Requirements:
(1) **Intensity:**

Open space requirement for cluster subdivision = thirty (30) percent of total subdivision tract.

(2) **Minimum lot area (acres):**

Cluster subdivision: 0.7

(3) **Minimum yards** (Feet)

Cluster subdivision:

- Front: 30
- Side: 10
- Rear: 25

(5) **Minimum lot width (in feet):**

Cluster subdivision: 80

**R-1 Suburban Residential.**

(b) **Conditional use permit:**

Cluster subdivision, maximum density 2.25 du/acre.

(d) **Requirements:**

(1) **Intensity:**

Allowable density for cluster subdivision (see conditional use permit) = 1.5 du/ae

Open space requirement for cluster subdivision = thirty (30) percent of total subdivision tract.

(2) **Minimum yards** (Feet)

Cluster subdivision:

- Front: 30
- Side: min. 8 total 18
- Rear: 25

Minimum lot size: 8,000 s.f.
(4) Minimum lot width (feet):

Cluster subdivision: ... 60

R-2 Urban Residential—Medium Density.

(a) Uses permitted by right:

Cluster development.

R-3 Urban Residential—High Density.

(a) Uses permitted by right:

Cluster development.
RESOLUTION

At a regular meeting of the Stafford County Board of Supervisors (the Board) held in the Board Chambers, George L. Gordon, Jr., Government Center, Stafford, Virginia, on the 23rd day of January, 2018:

MEMBERS: 

Meg Bohmke, Chairman
Gary F. Snellings, Vice Chairman
Jack R. Cavalier
L. Mark Dudenhefer
Wendy E. Maurer
Cindy C. Shelton
George Washington District

VOTE:

Yes
Yes
Yes
Yes
Yes
VACANT

On motion of Mr. Snellings, seconded by Mrs. Maurer, which carried by a vote of 6 to 0, the following was adopted:

A RESOLUTION TO REQUEST THAT THE PLANNING COMMISSION HOLD A PUBLIC HEARING AND MAKE A RECOMMENDATION REGARDING THE REPEAL OF THE CURRENT CLUSTER DEVELOPMENT REGULATIONS

WHEREAS, Virginia Code § 15.2-2286.1, requires certain localities to make provisions for cluster development; and

WHEREAS, Stafford County has provisioned for cluster development; and

WHEREAS, Cluster development are currently permitted in A-1, Agricultural; A-2, Rural Residential; and R-1, Suburban Residential Zoning Districts; and

WHEREAS, the Board desires to consider repealing the cluster development regulations, while working on new regulations that ensure quality development, address citizen’s concerns, and better meet the goals and objectives of the Comprehensive Plan;

NOW, THEREFORE, BE IT RESOLVED by the Stafford County Board of Supervisors on this the 23rd day of January, 2018, that it be and hereby does request the Planning Commission to hold a public hearing and make a recommendation regarding the repeal of the cluster development regulations; and
BE IT FURTHER RESOLVED, that the Planning Commission is hereby requested to conduct its public hearing and make its recommendation to the Board by the end of February, 2018.

A Copy, teste:

Thomas C. Foley  
County Administrator

TCF:JAH:dfk
§ 15.2-2286.1. Provisions for clustering of single-family dwellings so as to preserve open space.

A. The provisions of this section shall apply to any county or city that had a population growth rate of 10% or more from the next-to-latest to latest decennial census year, based on population reported by the United States Bureau of the Census. However, the requirements of this section shall not apply to any such county or city that has a population density of more than 2,000 people per square mile, according to the most recent report of the United States Bureau of the Census.

B. Any such locality shall provide in its zoning or subdivision ordinances, applicable to a minimum of 40% of the unimproved land contained in residential and agricultural zoning district classifications, standards, conditions, and criteria for the clustering of single-family dwellings and the preservation of open space developments. In establishing such standards, conditions, and criteria, the governing body may, in its discretion, include any provisions it determines appropriate to ensure quality development, preservation of open space, and compliance with its comprehensive plan and land use ordinances. A cluster development is otherwise subject to applicable land use ordinances of the locality; however, the locality shall not impose more stringent land use requirements for such cluster development.

The locality shall not prohibit extension of water or sewer from an adjacent property to a cluster development provided the cluster development is located within an area designated for water and sewer service by a county, city, or town or public service authority.

For any "open space" or "conservation areas" established in a cluster development, the locality shall not (i) require in such areas identification of slopes, species of woodlands or vegetation and whether any of such species are diseased, the locations of species listed as endangered, threatened, or of special concern, or riparian zones or require the applicant to provide a property resource map showing such matters in any conservation areas, other than that which may be required to comply with an ordinance adopted pursuant to § 15.2-961 or 15.2-961.1 or applicable state law; (ii) require such areas be excluded from the calculation of density in a cluster development or exclude land in such areas because of prior land-disturbing activities; (iii) prohibit roads from being located in such areas for purposes of access to the cluster development, but the locality may require such roads be designed to mitigate the impact on such areas; (iv) prohibit stormwater management areas from being located in such areas; or (v) require that lots in the cluster development directly abut such areas or a developed pathway providing direct access to such areas.

For purposes of this section, "open space" or "conservation areas" shall mean the same as "open-space land" in § 10.1-1700.

The density calculation of the cluster development shall be based upon the same criteria for the property as would otherwise be permitted by applicable land use ordinances. As a locality provides for the clustering of single-family dwellings and the preservation of open space developments, it may vary provisions for such developments for each different residential zoning classification within the locality. For purposes of this section, "unimproved land" shall not include land owned or controlled by the locality, the Commonwealth or the federal government, or any instrumentality thereof or land subject to a conservation easement.
If proposals for the clustering of single-family dwellings and the preservation of open space developments comply with the locality's adopted standards, conditions, and criteria, the development and open space preservation shall be permitted by right under the local subdivision ordinance. The implementation and approval of the cluster development and open space preservation shall be done administratively by the locality's staff and without a public hearing. No local ordinance shall require that a special exception, special use, or conditional use permit be obtained for such developments. However, any such ordinance may exempt (a) developments of two acres or less and (b) property located in an Air Installation Compatible Use Zone from the provisions of this subdivision.

C. Additionally, a locality may, at its option, provide for the clustering of single-family dwellings and the preservation of open space at a density calculation greater than the density permitted in the applicable land use ordinance. To implement and approve such increased density development, the locality may, at its option, (i) establish and provide, in its zoning or subdivision ordinances, standards, conditions, and criteria for such development, and if the proposed development complies with those standards, conditions, and criteria, it shall be permitted by right and approved administratively by the locality's staff in the same manner provided in subsection A, or (ii) approve the increased density development upon approval of a special exception, special use permit, conditional use permit, or rezoning.

D. Notwithstanding any of the requirements of this section to the contrary, any local government land use ordinance in effect as of June 1, 2004, that provides for the clustering of single-family dwellings and preservation of open space development by right in at least one residential zoning classification without requiring either a special exception, special use permit, conditional use permit, or other discretionary approval may remain in effect at the option of the locality and will be deemed to be in compliance with this section. Any other locality may adopt provisions for the clustering of single-family dwellings, following the procedures set out in this section, in its discretion.

(2006, c. 903; 2011, cc. 519, 549.)
January 23, 2018 Minutes

Item 26. Planning and Zoning: Request that the Planning Commission Conduct a Public Hearing Regarding the Repeal of the County’s Cluster Ordinance. Mr. Snellings noted that this would be a temporary repeal until the County’s Cluster Ordinance could be revised. Deputy County Attorney, Ms. Rysheda McClendon, added that it would be repealed while staff and the Planning Commission worked on it and sent it back to the Board for further review.

Mr. Snellings motioned, seconded by Mrs. Maurer, that this matter be considered time sensitive and therefore be voted on.

The Voting Board tally was:

Yea: (6) Bohmke, Cavalier, Dudenhefer, Maurer, Sterling, Snellings
Nay: (0)

Mr. Snellings motioned, seconded by Mrs. Maurer, to adopt proposed Resolution R18-39.

The Voting Board tally was:

Yea: (6) Bohmke, Cavalier, Dudenhefer, Maurer, Sterling, Snellings
Nay: (0)

Resolution R18-39 reads as follows:

A RESOLUTION TO REQUEST THAT THE PLANNING COMMISSION HOLD A PUBLIC HEARING AND MAKE A RECOMMENDATION REGARDING THE REPEAL OF THE CURRENT CLUSTER DEVELOPMENT REGULATIONS

WHEREAS, Virginia Code § 15.2-2286.1, requires certain localities to make provisions for cluster development; and

WHEREAS, Stafford County has provisioned for cluster development; and

WHEREAS, Cluster development are currently permitted in A-1, Agricultural; A-2, Rural Residential; and R-1, Suburban Residential Zoning Districts; and

WHEREAS, the Board desires to consider repealing the cluster development regulations, while working on new regulations that ensure quality development, address citizen’s concerns, and better meet the goals and objectives of the Comprehensive Plan;

NOW, THEREFORE, BE IT RESOLVED by the Stafford County Board of Supervisors on this the 23rd day of January, 2018, that it be and hereby does request the Planning Commission to hold a public hearing and make a recommendation regarding the repeal of the cluster development regulations; and

BE IT FURTHER RESOLVED, that the Planning Commission is hereby requested to conduct its public hearing and make its recommendation to the Board by the end of February, 2018.