

ZONING ORDINANCE & SUBDIVISION ORDINANCE INTERPRETATIONS

NELSON COUNTY, VIRGINIA

No.	Date of Interpretation	Question	Interpretation
1	June 28, 2007	Is a family division a division for purposes of the Division Rights chart found in Z. O. Sec. 4-2-1?	Yes. Sec. 4-2-1 exempts no division from the operation of its limitations. The only exception for a family division found in Sec. 4-2 (entitled “Division Rights and Area Regulations”) is that the minimum lot size for a family subdivision is one acre rather than two. The family division exception in the Subd. Ord. does not operate to exempt such divisions and resultant lots from any land use regulation in the Z. O. See <i>Leake v. Casati</i> , 234 Va. 646 (1988) (“Even though the court’s power to order a division of land is unaffected by a subd. ord., it does not follow that those who become owners of the resulting parcels will be immune to valid laws regulating land <u>use</u> .” (emphasis in original)).
2	June 28, 2007	Is a family division exempt from the requirements of Subd. Ord. Sec. 4-4 entitled “Sewer and Water” and other requirements of the Subd. Ord.?	The Subd. Ord. definition of “Subdivision” states that “[t]he term does not apply to family division described in Sec. 3-2 (C).” Sec. 3-2 (C) provided the family subdivision provisions prior to the June 1 st (2007) amendments. While the family subdivision is now addressed in Sec. 3-2 A. (4), the failure to correct the section reference in the definition of subdivision must be considered a drafting oversight. Consequently, the requirements for a family subdivision are those found in Subd. Ord. Subsection 3-2 A. (4) as well as in Section 3-2A which calls for a preliminary and final plat. Any provision in the Subd. Ord. relating to a plat would, therefore, apply. Accordingly, the water and sewer standards do not apply to a family division; likewise, no other subdivision requirements apply unless they specifically address family subdivisions.

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3	June 28, 2007	Does a family division count as a lot for other purposes in the Subd. Ord. such as, for example, enhanced road standards under Section 4-6C, when a new lot is subsequently conveyed to a non-family member?	As described above, a family division is not a subdivision. "Lot" in the Subd. Ord. is defined as "[a]ny portion, piece, division or parcel of land <u>within a subdivision</u> which is for transfer of ownership or for building development, but excludes open space and streets." (emphasis added). Hence the lot resulting from a family division is not a "lot" within a "subdivision." For example, Mr. Brown conveyed in the past a two-acre interior lot to his son. In July 2007 Mr. Brown conveys a two-acre interior lot, which adjoins his son's lot, to a third party. The son's lot does not count for the purposes of requiring a Class 1 street to serve the third party's lot. Rather the standards in the first paragraph of 4-6C apply, as well as all requirements in the Z. O. Subsequent family divisions by Mr. Brown will not require enhanced street standards (assuming the Z. O. is satisfied); however, a subsequent conveyance to a third party would trigger enhanced street standards as Mr. Brown's residue and the two third party conveyances constitute three "Lots."
4	June 28, 2007	How are the number of lots calculated for divisions prior to the June 1 (2007) amendments?	In determining what is a "lot" and the total number of such lots on a plat, the longstanding interpretation by the Planning Director has been that the residue of a tract, when appearing on a plat, is counted as and considered a lot. In addition, in recent practice, the residue must appear on a plat when a division occurs. The June 1 (2007) amendment of the Subd. Ord. adds the definition of residue and codifies the Planning Director's interpretation that the residue is a lot for purposes of the Subd. Ord. Hence, for plats recorded after June 1 (2007), the residue is a lot even if it does not appear on the plat. Obviously, in the past, divisions were made in which only the tract divided appears on a plat. In order to establish a bright line rule, the residue, in such older plats, is not counted as a lot unless it appears or is clearly referenced on the plat.
5	June 28, 2007	When is vacation required pursuant to Subd. Ord. Sec. 6?	Subdivision vacation procedures were enacted effective March 1, 1993. Once lots are created on a plat, recorded after March 1, 1993, further division cannot occur unless vacation procedures are followed. (Please note that different rules apply in a Residential Planned Community. Zoning Ordinance Sec. 7-2-3.) Sec. 6 of the Subd. Ord. clearly embraces the requirement that a plat showing two or more lots is subject to the vacation procedure. Where no lots on the plat

5 (Cont.)			<p>have been sold, the owner, with approval by the Planning Director, may file an instrument of vacation in Circuit Court. After the “sale of any lot,” the plat may be vacated by “written instrument signed by all of the owners of lots shown on said plat and also signed on behalf of the” Board of Supervisors. In the alternative, “any interested person” may request an ordinance of vacation from the Board. The vacation does not void the entire plat, but only so much of it as is specifically changed. For example, assume an existing subdivision of ten five-acre lots. One lot owner wishes to divide his lot into two 2 ½ acre lots. The vacation, if approved, would be effective for this one lot.</p>
No.	Date of Interpretation	Question	Interpretation
6	June 28, 2007	Do divisions prior to June 1 affect the number of division rights available for a parcel?	<p>The A-1 division rights provision in Section 4-2-1 of the Z. O. applies to “a parcel of record in the Clerk’s office...on the effective date of this subsection...Such division rights are subject to, and if applicable, limited by” the Subd. Ord. Accordingly every parcel has the applicable number of rights appearing in Section 4-2-1, regardless of the mode of division (single-cut, etc.) used prior to the division rights amendment. However, in certain instances, a lot may not be further divided without additional steps. For example, as discussed in above, lots created by a plat of division recorded after March 1, 1993, may not be further divided unless the plat is vacated pursuant to Section 6 of the Subd. Ord. In addition, subdivision covenants might prohibit further division. There are probably other examples which will arise in the practical application of the amendment.</p>
7	June 28, 2007	How are the A-1 frontage and street requirements applied?	<p>The Z. O., under Setback Regulations, contains two provisions regarding road frontage: 4-3-1b. Internal lot without road frontage: Minimum of 50 feet from the property line designated as the front yard, and 4-3-5. Road frontage: Minimum of 125 feet frontage on a public or private road built to State or County road standards. Section 4-3-5 was enacted effective June 1, 2007. Virginia’s rules of statutory construction require that both provision, even though appearing mutually exclusive, be given effect. Prior to the enactment of Z. O. Section 4-3-5, the only road frontage requirement was found in Subd. Ord. 4-7C which provides that “[e]very subdivision lot shall front on a street.” Thus, in the past, lots were created that did not have the minimum road</p>

7 (Cont.)			frontage now required. In some instances, these lots were internal lots. Accordingly, the setback provisions found in Z. O. sec. 4-3-1b regarding internal lots addresses those lots created before the Z. O. was amended and provides the building setback rules for such a lot. Lots subdivided after June 1, 2007 must have the minimum 125' road frontage now found in Z. O. Sec. 4-3-5. Bearing in mind that the residue counts as a lot, a single division results in two lots. A further division of either lot creates a third lot and triggers the enhanced street requirements of Sec. 4-6C. For example, in 1999, a 10 acre parcel is divided into two 5-acre tracts, both of which appear on the plat. One tract does not front on a state road and is served by a private road over an easement of right-of-way. This arrangement satisfies the "front on a street" requirement of Subd. Ord. Sec. 4-7C because the road, quite obviously, connects to the parcel, and there was no minimum frontage standard in the Z. O. at the time. A division of either lot after June 1, 2007 activates two requirements. First, the new lot must have 125 feet of frontage on a road built to State or County standards. If the road is a private street, then, with the creation of a third lot, such street must meet the appropriate class under Subd. Ord. 4-7C.
No.	Date of Interpretation	Question	Interpretation
8	June 28, 2007	Where a parcel has internal lots which are not neatly defined on a pre-existing plat, but which were previously conveyed to the owner in various pieces, how does the surveyor determine division rights?	Where pre-existing internal lots are not clearly defined on a plat, the landowner can (a) pay a lawyer and surveyor to research and determine the proper internal lines or (b) vacate internal lines for purposes of division rights (as well as for re-division) and accept the number of rights for the single aggregate tract.
9	June 28, 2007	May a landowner retain his pre-existing internal lot lines in order to	The landowner cannot have his cake and eat it, too. Conceptually, it is nonsensical to permit vacation for one purpose – eliminating internal lines to allow re-division – and yet retain these same lines for another: division rights.

9 (Cont.)		preserve the highest number of division rights and also either (a) vacate the internal lot lines for purposes of re-division only, or (b) use boundary line adjustments (“change in the boundary line”) to reconfigure existing internal lots?	As a practical matter, retaining lot lines for division rights purposes and vacating them for re-division purposes would present a planning and record-keeping nightmare. However, the ordinances themselves are determinative of the question. Z. O. 4-2-1 provides that no “division or adjustment of boundary lines or any other reconfiguration of a parcel shall increase the number of parcels which may be created.” In addition, Subd. Ord. 3-2 includes a change in a boundary line – which includes a boundary line adjustment – as a type of subdivision. For example, an owner has a tract comprised of two 5-acre parcels. Each 5-acre parcel has two division rights. The owner wishes to create two 2-acre lots from Parcel A, and use a boundary line adjustment to pair the remaining acre with one acre in Parcel B, thus leaving a 4 acre lot in Parcel B. This he cannot do because the boundary line adjustment has the effect of giving Parcel A three division rights. The landowner might argue that the adjustment, in the final analysis, results in 4 divisions. This misses the point. The adjustment results in 3 divisions and 3 lots in the original Parcel A, which is prohibited by Z. O. 4-2-1.
No.	Date of Interpretation	Question	Interpretation
10	June 28, 2007	Regarding pre-June 1 internal lots, can an owner use boundary line adjustment to adjust lots, leaving sub-standard slivers?	No. A boundary adjustment may not be used to do what a straight division cannot do. A boundary line adjustment is a reconfiguration,; it is exempt from certain procedural hoops, not substantive lot rules. Pursuant to Z. O. Sec. 4-2-1, no “division or adjustment of boundary lines or any other reconfiguration of a parcel shall increase the number of parcels which may be created.” Moreover, under Subd. Ord. Sec. 3-2 A. (3), a “boundary line change shall not create additional parcels for sale or development nor leave a remainder which does not conform to the provisions of the Z. O.”
11	June 28, 2007	What if a landowner relies on an erroneous description and conveys, or retains, too many division rights?	The obligation to know what he has rests on the landowner. If he should convey and later discover he has a different number of rights after survey, then the problem is his, and must be resolved with the grantee. A misrepresentation could result in criminal charges or civil penalties.

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12	June 28, 2007	What if a landowner's description has erroneous acreage?	An accurate survey will be determinative and take precedence over an inaccurate description of record.
13	July 9, 2007	Is there standard wording that should be used on plats to record division rights information?	Yes. The following should be used: Division Rights. (a) Source reference: Plat Cabinet _____, Slide _____ (and/or) Instrument No. _____ (and/or) Deed Book _____, page _____. Total division rights: _____. (b) _____ division rights were used in this division. (c) Of _____ division rights remaining, _____ attach to [Lot _____ or Residue] and _____ to Lot _____ [and _____ to Lot _____, etc.].
14	June 14, 2007	How do division rights apply to a 90 acre parcel?	On a 90 acre parcel, 11 division rights are available for the first 75 acres. The remaining 15 acres will be absorbed into the 11 lots since they are less than 20 acres which would add an additional division right.
15	June 26, 2007	If well & septic are approved prior to 6/1 ordinance amendments, may setbacks from previous ordinance be used?	Yes. This has applied to permits issued for David Warner, Ilona Kaspenhoser and Cheryl Johnson.
16	September 4, 2007	Can a family division be done within a family trust?	No. A family trust does not have "immediate family"; therefore, the family division procedure cannot be used in this situation.
17	September 26, 2007	Section 4-1-16 states that home occupation signs up to 12 sq. ft. in total area in an Agricultural, A-1 District are a use permitted by right, whereas Section 12-11-32, "Permitted signs in all district," Table 4,	Section 4-1-16 is the original requirement pertaining to this type of sign. The zoning ordinance was amended at a later date to include Table 4, but Section 4-1-16 was not repealed. Therefore, both of these Sections of the Zoning Ordinance are valid. That being the case, the interpretation is that we must follow the less restricted Section 4-1-16 until such time as this section is amended or repealed by the Board of Supervisors.

		indicates the size of this type of sign is limited to 2 sq. ft. Which section applies?	
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