



Legislation Details (With Text)

**File #:** 22-0109      **Version:** 1      **Name:** City Code Subdivision Amendment - Exception Process

**Type:** Ordinance-Coded      **Status:** Passed

**File created:** 2/28/2022      **In control:** City Council Legislative Session

**On agenda:** 3/9/2022      **Final action:** 3/9/2022

**Title:** Ordinance to Amend and Re-Enact Chapter 35 of the City Code of the City of Hampton, Virginia Pertaining to Transitioning the Subdivision Exception Process to an Administrative Review

**Sponsors:**

**Indexes:** Legal Compliance, Subdivision Exception

**Code sections:**

**Attachments:** 1. Redline, 2. Presentation

Date	Ver.	Action By	Action	Result
3/9/2022	1	City Council Legislative Session	approved	Pass

Ordinance to Amend and Re-Enact Chapter 35 of the City Code of the City of Hampton, Virginia Pertaining to Transitioning the Subdivision Exception Process to an Administrative Review

**Background Statement:**

The City’s “subdivision ordinance,” contained in Chapter 35 of the Hampton City Code, was comprehensively updated in 2010. As permitted by Section 15.2-2242 of the Code of Virginia, the subdivision ordinance includes provisions allowing variations in or exceptions to the general regulations of the subdivision ordinance in cases of unusual situations or when strict adherence to the general regulations would result in substantial injustice or hardship. The current subdivision exception process requires an applicant to submit a Petition for Exception to the City’s subdivision agent. The subdivision agent transmits the application to Community Development Department, which processes the Petition in the same manner as other legislative land use applications, such as use permits and rezonings. This process includes public hearings at both Planning Commission and City Council with a recommendation made by Planning Commission and a final decision made by the City Council based upon defined criteria in the City Code.

The current process is at odds with the nature of Hampton’s subdivision review, which is otherwise a completely administrative process. Unlike use permits and rezonings, subdivisions and site plans are processed through a ministerial review by City staff in the Development Services Center, including review by the Department of Public Works and the Fire Division. If the subdivision ordinance requirements are met, the subject plat is approved. City staff does not have discretion to deny a subdivision that meets the code for policy reasons. Further, the Virginia Code and City Code require that subdivision exceptions only be approved when an applicant can prove a “hardship” exists. The City Code also contains additional criteria, which the City Council must find are met, in order to grant an exception. This is a quasi-judicial review based upon set criteria, rather than a discretionary policy review.

For the foregoing reasons, staff recommends modifying the subdivision exception process to make it administrative in nature. If approved, this amendment would:

1. Authorize the Development Services Center Manager to grant exceptions, when the required criteria are met;
2. Provide applicants with an administrative appeal route before a panel consisting of the Directors of Public Works and Community Development or their designees, who by unanimous decision, would be authorized to reverse the decision of the Development Services Center Manager; and
3. Repeal the current subdivision exception fee, which was intended to cover the advertising costs required by the former public hearing process.

If, after appeal to the Directors of Public Works and Community Development, an applicant's exception request and subsequently, subdivision plat, is denied, that applicant may still appeal such denial under the typical subdivision appeal process to circuit court.

**Recommendations:**

Staff Recommendation:

Staff recommends approval.

Planning Commission Recommendation:

Planning Commission recommends approval.

**BE IT ORDAINED** by the City Council of the City of Hampton, Virginia that Sections 35-7, 35-8, and 35-11 of the City Code of the City of Hampton, Virginia be amended to read as follows:

**Sec. 35-7. - Exceptions.**

- (A) Except as otherwise set forth in this chapter, the development services center manager may grant exceptions to the general provisions of this chapter not governed by chapters 9, 13.1, 33.2 and 41.1 of the City Code, the "City of Hampton Landscape Guidelines", the zoning ordinance, or the public works design and construction standards, subject to the following:
- (1) No such exception shall be granted unless the subdivider submits petition for an exception in writing at the time when the plat is filed for consideration.
  - (2) The petition shall be submitted to the subdivision agent for review by the development services center manager of the department of community development. The petition shall state fully the grounds for the petition and all of the facts relied upon by the subdivider.
  - (3) The development services center manager shall review the petition for completeness and may require such additional information as ~~he or~~ they may deem necessary to process the petition.
  - (4) The burden shall be on the subdivider to demonstrate the need for the exception.
- (B) The development services center manager shall not approve a petition for an exception unless they find that:
- (1) Strict adherence to the ordinance requirement will cause undue hardship;
  - (2) The granting of the exception will not be detrimental to public safety, health, or welfare, and will not adversely affect the property of others;
  - (3) The facts upon which the petition request is based are unique to the property for which the relief is sought and are not applicable generally to other property so as not to make reasonably practical the formulation of general regulations to be adopted as an amendment to this chapter;
  - (4) No objection to the exception has been received in writing from city's fire chief, or any affected state, federal or local agency including, but not limited to Langley Air Force Base;

- (5) The hardship is created by the unusual character of the property, including dimensions and topography, or by other extraordinary situation or condition of the property. Personal, financial, or self-inflicted hardship shall not be considered proper justification for an exception; and
  - (6) The relief sought will not in any manner vary the provisions of chapters 9, 13.1, 33.2 and 44.1 of the City Code, the "City of Hampton Landscape Guidelines", the zoning ordinance, comprehensive plan, or official map, except that those documents may be amended in the manner prescribed by law.
- (C) If granted, such exception shall be specifically stated in writing by the development services center manager and filed with the subdivision plat and improvement plans for construction. A note shall be prominently placed on the final plat detailing any exception so granted. If denied, the development services center manager shall notify the subdivider of such result in writing.
- (D) Upon denial of a petition for exception, the subdivider may appeal the decision in writing within 30 days of the date written notice was sent of such fact by the development services center manager. Within 30 days of receipt of an appeal, the development services center manager shall schedule an opportunity for the appellant to be heard before a panel consisting of the director of community development and the director of public works, or their designees. The development services center manager's decision shall only be overturned by a unanimous decision by the directors of community development and public works. The decision on appeal shall be final and unappealable except as provided in Section 35-8.

**Sec. 35-8. - Appeals.**

In the event a plat for subdivision is disapproved by the subdivision agent and the subdivider contends that the disapproval was not properly based on the ordinance applicable thereto, or was arbitrary or capricious, he may appeal such decision to the Hampton Circuit Court within sixty (60) days of written disapproval by the subdivision agent. No subdivider may pursue approval of an alternative plat while his appeal from the disapproval of the original plat is pending.

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**Sec. 35-11. - Fees.**

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- (F) Plat vacation fees. Any application for the vacation of a plat or part thereof shall be accompanied by a fee of one hundred fifty dollars (\$150.00).
- (G) At the time separate easement or dedication deeds or plats are submitted a review fee in the amount of fifty dollars (\$50.00) per instrument to be reviewed, payable to the City of Hampton shall be required.
- (H) If a subdivider, at any time during the subdivision review, submits a revised plat or development plan or portion thereof, files or makes a change to the plat or development plan under review not at the request of the subdivision agent or the director of public works as the case may be, such revision shall be accompanied by a fee of one hundred fifty dollars (\$150.00) per sheet that is revised or changed payable to the City of Hampton.
- (I) Prior to recordation of the final plat, the subdivider will pay to the city a sewage fee of five hundred dollars (\$500.00) per unit for each lot in the subdivision section being served by the sewer.
- (J) Recording fees for final subdivision plats, subdivision agreements and any other legal instrument required under this chapter for subdivisions, except for homeowners association documents shall be submitted to the subdivision agent at the time prescribed in this section or in this chapter and shall be made payable to the Clerk of the Hampton Circuit Court.