



RAPPAHANNOCK COUNTY
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MEMORANDUM

To: Board of Supervisors
Planning Commission
Board of Zoning Appeals

From: Garrey W. Curry, Jr., P.E., County Administrator
Michelle L. Somers, CZA, Zoning Administrator

Date: October 5, 2023

Re: Rappahannock County Zoning and Subdivision Ordinance Guidance
Maximum Density, RCC §§ 147-39 through -41 and 170-22

The application of maximum density as regulated within the Rappahannock County Code is one that seems to cause community confusion. The topic has come up recently during Planning Commission meetings, and the ensuing discussion suggests that guidance on the topic would be helpful to commissioners and the community.

The current iteration of the Rappahannock County Zoning Ordinance was adopted by the Board of Supervisors on December 4, 1986 and became effective the next day. This version of the zoning ordinance replaced the prior iteration adopted in 1973 in its entirety. The “new”/1986 zoning ordinance introduced the concept of “maximum density” that had not been associated with the earlier versions of the zoning ordinance or subdivision ordinance. Maximum density is defined in the current zoning ordinance through RCC § 170-22. The entire county code has undergone a recodification process since the zoning ordinance was adopted in 1986. Prior to recodification, the same exact wording was included in § 2.14.

RCC § 170-22 Maximum density (emphasis added)

- A. The maximum density specified for a given zoning district shall not be exceeded **except as specifically qualified elsewhere** in this chapter. **Maximum density shall be expressed in number of dwelling units.**
- B. Maximum density shall be calculated on the **gross area of the lot**, except that:
- (1) No density allowance shall be calculated for any area of a lot in an existing street right-of-way.
 - (2) Only thirty-percent density allowance shall be calculated on that area of a lot comprised of floodplain, quarries, existing water bodies larger than two acres and slopes in excess of twenty-five-percent grade.
 - (3) In all districts except the Conservation and Agricultural Districts, only fifty-percent density allowance shall be calculated on that area of a lot comprised of slopes in excess of fourteen-percent grade but equal to or less than twenty-five-percent grade. No such density reduction shall be made for the Conservation or Agricultural District.

As noted in the provided definition, the Maximum Density is “specified” for given zoning districts. The listing of allowable maximum densities are listed in **RCC § 170-37, Use regulations** with a value

presented for each resource preservation and residential zoning district ranging from 1/25 to 2/1 (**dwelling units per acre**) correlated with the intended intensity of use in those zoning districts.

The 1973 version of the subdivision ordinance was completely replaced in 1987 shortly after the zoning ordinance was replaced. Neither the 1973 nor 1987¹ version of the subdivision ordinance include any references to the concept of “maximum density,” but that was changed when the Board of Supervisors amended the subdivision ordinance in 1988 to duplicate the use regulation table (now codified as § 170-37) into the subdivision ordinance (to what is now codified as [§ 147-37](#)). To this day, the only reference to “maximum density” in the subdivision ordinance is found in § 147-37. Currently, the use regulation table is still found in § 147-37 and § 170-37 and specifies other parcel requirements such as minimum lot size, minimum lot width, and minimum yard dimensions.

§ 147-37. Area, yard and height requirements. [Added 12-5-1988; amended 1-5-2000; 1-7-2008]

The requirements in the following chart and the footnotes pertaining thereto are established as indicated:

Type of Requirement	Zoning District									
	C	A	RR-5	R-2	RV	CV	CG	HC	I	MHP
Maximum density (dwelling units/aces)*	1/25	1/25	1/5	1/2	1/1	–	–	–	–	2/1
Minimum lot size (acres)										
Conventional	5	2	5	2	1	1	1	1	2	10

Questions are often received by the zoning administrator/subdivision agent as to whether a particular parcel can be subdivided (into a parcel/”lot” less than 50 acres) and while the use regulations lay out clear direction relative to minimum lot size and width, the concept of maximum density has caused considerable confusion.

There are three critical subdivision ordinance sections that the Agent must read to determine if a parcel can be subdivided and if so, how that subdivision should be treated. These sections were actually originally included in the zoning ordinance, but removed from that chapter in 1994 and added to the subdivision ordinance where they are currently codified as:

§ 147-39. Limitation on subdivision. *A lot that exceeds the minimum provisions of this chapter may be subdivided to create more lots only where the resultant lots meet such minimum provisions of this chapter.*

§ 147-40. Limitation on resubdivision. *No lot which was, or is, created by a subdivision of land, as defined by this chapter in effect at the time of the creation of the lot, shall be subdivided again unless a special exception is granted by the Board of Supervisors in accordance with the provisions in Article VI of Chapter 170, Zoning, of the Code of Rappahannock County.*

§ 147-41. Restrictions on areas not in lots. *In the event that any area of a parcel that is subdivided is **not included** as a part of an **individual lot for a single family dwelling unit** including areas established to meet the open space requirements of this chapter, there shall be recorded with the instruments of subdivision, covenants or other restrictions designating the proposed use of such areas.*

The definitions above rely on the definitions of “lot” and “dwelling unit” found in the Subdivision Ordinance and the Zoning Ordinance respectively:

§ 147-4, Definitions; LOT – *A subdivided parcel of land of less than 50 acres intended for transfer of ownership or for building development. Prior to December 1, 1986, any parcel of less than 25 acres.*

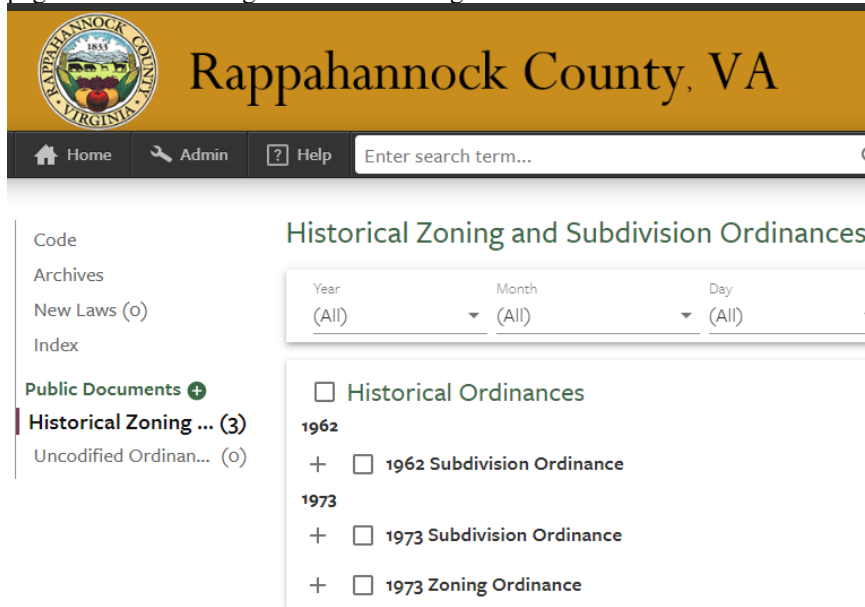
§ 170-8, Definitions; DWELLING UNIT – *One or more rooms in a **residential building** or residential portion of a building which are arranged, designed, used or intended for use as a complete independent living facility for one family, and which includes permanent provisions for living, sleeping, eating, cooking and sanitation.*

To know if a particular parcel can be subdivided, §§ 147-37 & -39 through -41 must be considered together. The following situational questions/concepts help guide a determination:

- Has the parcel been the subject of a prior division and is it less than 50-acres if created after December 1, 1986 or 25-acres prior to 1986 (i.e. has a subdivision already created a “lot”)?
 - If the answer is yes, a further division would be considered a “resubdivision” per § 140-41 thereby requiring a special exception (and maximum density analysis).
- How many “Dwelling Units” exist or plan to exist on what was the parent parcel when density limitations were put into place on **December 5, 1986** (the effective date of the modern zoning ordinance when the concept of “Maximum Density” was introduced)?
 - For example, if a parcel designated as being in the Agriculture Zoning District is 100 acres in size has three dwelling units already in place (e.g. a principal dwelling and two tenant farm houses), and the property owner desires to divide two, 2-acre vacant parcels off of the parent parcel (each meeting the minimum acreage and width requirements set for the Agriculture Zoning District) with the intention of creating two new lots for dwellings, the resulting density would be five dwelling units per 100 acres (1/20), which would exceed the allowable maximum density of 1 dwelling unit per 25 acres (1/25). The division as contemplated would not be permitted unless one of the newly created lots is either not pursued or if pursued is done so with a covenant or other restriction disallowing the development of dwelling units (per § 147-41).
 - Note that the example above assumes a flat property without much right of way or floodplain each of which could reduce the allowable density per the requirements of RCC § 170-22.B (section is repeated above).
 - Note that the definition of maximum density includes the carve out “*except as specifically qualified elsewhere,*” which would apply in situations where special exceptions or special use permits were granted for allowable uses such as accessory dwelling units.
 - The Subdivision Agent or applicant must track back to determine what the parent parcel was on December 5, 1986 and determine the number of **Dwelling Units** situated or proposed to be situated on the areal extent of that parent parcel.
 - To reiterate, as long as a parcel satisfies minimum size and shape requirements it can be created, but might require legal restrictions disallowing future Dwelling Units.
- Are there deeded restrictions already attached to a parcel that stemmed from the application of § 147-41?
 - If a parcel had “*covenants or other restrictions*” attached to it per § 147-41 disallowing the construction of dwelling units, any resulting resubdivision of that parcel would also require covenants or other restrictions attached to the title.
- The concept of there being a maximum number of division rights (five) allowed for any parcel only applies to family divisions and has no bearing on a division that does not seek the extra authorities associated with family divisions (namely lesser road requirements and waived density requirements). For family subdivisions, density requirements are replaced with other requirements provided in [§§ 147-36](#) and [170-40](#).

A fundamental takeaway is that Maximum Density only applies in the context of Dwelling Units (per the definition). A parcel can be divided into any number of new parcels that meet minimum requirements (acreage, width, and minimum yards) when dwellings are not contemplated. However, in such an instance, as stated herein, a maximum density analysis must be conducted to ensure the applicant identifies which new lots are to be tagged with deed restrictions disallowing future Dwelling Unit construction.

ⁱ Note, historical versions of the Rappahannock County Subdivision Ordinance and Zoning Ordinance are available for review on the [County's code publisher webpage](#). These documents can be accessed from the selection tree on the left of the page under the heading "Historical Zoning and Subdivision Ordinances"



The screenshot displays the Rappahannock County, VA Code Publisher website. The header features the county seal and the title "Rappahannock County, VA". Below the header is a navigation bar with links for Home, Admin, and Help, along with a search bar. The main content area is titled "Historical Zoning and Subdivision Ordinances". On the left, a sidebar lists various categories: Code, Archives, New Laws (0), Index, Public Documents (+), Historical Zoning ... (3), and Uncodified Ordinan... (0). The main content area includes filters for Year, Month, and Day, all set to "(All)". Below the filters, there is a section for "Historical Ordinances" with a list of documents:

- ☐ Historical Ordinances
- 1962**
 - + ☐ 1962 Subdivision Ordinance
- 1973**
 - + ☐ 1973 Subdivision Ordinance
 - + ☐ 1973 Zoning Ordinance