

ZONING ORDINANCE TEXT AMENDMENT (TA-22-02)
Mergers and Dwelling Unit Right (DUR) Accounting
June 21, 2022 Board of Supervisors Meeting – PUBLIC HEARING
STAFF REPORT – Department of Planning

The purpose of this staff report is to provide information to the Planning Commission and Board of Supervisors to assist them in reviewing this proposed ordinance amendment. It may be useful to members of the general public interested in this proposed amendment.

Description:

Proposed text amendment to amend Section 3.8 (Vacation or Merger of Lots in the AOC and FOC Districts) of the Zoning Ordinance (Code of Clarke County Chapter 200, Article I). The purpose is to clarify that, following reallocation pursuant to Zoning Ordinance Section 3.2 (Allocations), no lot resulting from a merger of lots shall have more dwelling unit rights (DURs) than the total number of dwelling unit rights that were assigned to the lots at the time of merger plat application filing per Section 4.2.3 (Merger) of the Subdivision Ordinance (Code of Clarke County Chapter 200, Article II).

Requested Action:

Conduct advertised Public Hearing and take action on the proposed text amendment.

Background:

Section 3.8 of the Zoning Ordinance states that when lots are merged or vacated, the dwelling unit accounting for the merged lot shall be based on the dwelling unit right allocation table in Section 3.2 – not the total number of existing dwelling unit rights (DURs) on the lots that are merged:

When dwelling unit rights have been allocated to any lot of record as of October 17, 1980, and such lot is subsequently vacated pursuant to [Title 15.2, Chapter 22, Article 6, Sections 2271 and 2272 of the Code of Virginia](#) or merged, the number of dwelling unit rights shall be reallocated, pursuant to [Section 3.2](#), to the lot(s) resulting from such vacation or merger as though the resulting lot(s) had been the tract(s) of record that existed on the [Clarke County Real Property Identification Maps](#) on October 17, 1980.

Because of this requirement, a merger of lots can result in the **loss or gain** of DURs as compared to the total number of DURs on the individual lots that are merged. Below is a discussion of the different scenarios in which post-merger DUR accounting can produce a net loss or gain and how Staff interprets these situations.

Loss of DURs

As an example, a property owner wants to merge the following two lots:

- Lot A – 100 acres, 4 DURs
- Lot B – 100 acres, 4 DURs

The resultant merged lot would be 200 acres in size and would appear to have a total of 8 DURs. However, per Section 3.8, the DURs for the merged lot must be reallocated according to the DUR allocation table in Section 3.2 which states that a 200 acre lot is allocated 6 DURs. In this scenario, the property owner would lose 2 DURs if these two lots are merged. With the exception of the merger of lots under 15 acres in size, the merger of two lots containing all of their originally-allocated DURs (consistent with the allocation chart) would result in the loss of one or more DURs in all cases. The Subdivision Ordinance was amended in 2012 to require plat review and approval for all mergers in order to inform property owners of the potential loss of DURs through merger and to advise of potential alternatives.

Gain of DURs

While DURs may be lost through merger, there are also situations in which compliance with Section 3.8 can result in the net gain of DURs. Here is an example:

- Lot A – 100 acres, 4 DURs
- Lot B – 100 acres, 1 DUR (3 originally allocated DURs were previously used to subdivide new lots)

The resultant merged lot would be 200 acres in size and would appear to have a total of 5 DURs. However, when DUR allocation is applied per the table in Section 3.2, the reallocation results in 6 DURs with a gain of 1 DUR.

Recognizing the gain of DURs through merger is problematic. The original 1980 allocation of DURs theoretically created a fixed amount of DURs for all AOC and FOC tracts in existence and there is no mechanism to create new DURs. In the aforementioned example, 3 of the 4 DURs originally allocated to Lot B were used to subdivide new lots. If an additional DUR were recognized in this situation, that DUR would be considered newly created and in excess of the original 1980 allocation.

Proposed Text Amendment:

To address the issue of gaining DURs through merger and required compliance with Section 3.2, new language would be added to the end of Section 3.8:

No lot resulting from a merger of lots shall have more dwelling unit rights than the total number of dwelling unit rights that are assigned to the lots at the time of merger plat application filing per Subdivision Ordinance Section 4.2.3 (Merger).

This new language would make it clear that no new DURs can result from the mathematical outcome of complying with the allocation chart. The new language would also state that the accounting of DURs occurs at the point in time that the merger plat application is filed for review and not at any earlier point in time that could result in the gain of DURs through merger.

The proposed Ordinance amendment text is included at the end of this Staff Report.

