

AN ORDINANCE TO REPEAL CHAPTER 33 OF THE CODE OF THE CITY OF PORTSMOUTH, VIRGINIA (2006) AND TO ADOPT A NEW CHAPTER 33.1 BOTH PERTAINING TO SUBDIVISIONS.

BE IT ORDAINED by the Council of the City of Portsmouth, Virginia:

1. That Chapter 33 of the Code of the City of Portsmouth, Virginia (2006), entitled "Subdivisions," is repealed.
2. That a new Chapter 33.1, entitled "Subdivisions," is adopted and added to the Code of the City of Portsmouth, Virginia (2006) to read as set out on Exhibit A, attached hereto and made a part hereof.
3. That the provisions of this ordinance shall take effect on the date of its adoption.

ADOPTED by the Council of the City of Portsmouth, Virginia at a meeting held on January 26, 2010.

Teste:

City Clerk

ARTICLE I. GENERAL PROVISIONS

Sec. 33.1-1. Short Title.

This chapter shall be known and may be cited as the "Subdivision Ordinance of the City of Portsmouth, Virginia," or simply as the "Subdivision Ordinance."

Sec. 33.1-2. Purpose.

This chapter is adopted pursuant to the terms and provisions of Code of Virginia, § 15.2-2240 et seq. The purpose of this chapter is to provide for the harmonious and economic development of the city; for the orderly subdivision of land and its development; for the orderly development of the general area surrounding such subdivision; for the coordination of streets within such subdivision with other existing or planned streets within the general area; for adequate provisions for drainage, flood control, light, air, protection of the waters of the Chesapeake Bay and its tributaries, and other public purposes; for the adequate and proper installation of streets, drainage, sanitary sewers, water and other utilities and facilities; for the dedication to the city of land for streets, alleys or other public purposes or the transfer to the city of easements or other rights or privileges; and for the reservation for the city of land to be acquired for public facilities.

Sec. 33.1-3. Compliance with chapter mandatory.

(a) No person shall subdivide land without making and recording a plat of subdivision and fully complying with the provisions of this chapter, except that condominiums or conversion condominium plats shall be prepared in accordance with Code of Virginia, § 55-79.58 and a copy of all documents filed with the state real estate commission shall also be filed with the Planning Director.

(b) No plat of any subdivision shall be recorded unless and until it shall have been submitted to and approved by the Agent.

(c) No person shall sell or transfer any land of a subdivision before such plat has been duly approved and recorded as provided herein unless such subdivision was lawfully created prior to the adoption of a subdivision ordinance applicable thereto; provided, that nothing herein contained shall be construed as preventing the recordation of the instrument by which such land is transferred or the passage of title as between the parties to the instrument. Under no circumstances shall a subdivision of land be recorded by Deed only.

(d) No clerk of any court shall file or record a plat of a subdivision required by this chapter until such plat has been approved by the Agent as required herein.

(e) The requirements of this chapter shall be considered separate from, and supplementary to, any requirements otherwise specified by this Code or by state or federal law. Nothing contained herein shall excuse compliance with other applicable ordinances or laws. Where local requirements are in conflict with mandatory state or federal requirements, the state or federal requirements shall prevail.

Sec. 33.1-4. Authority.

The Planning Commission and the Planning Director have been established and created pursuant to the provisions of chapter 2 and chapter 40 of this Code. Pursuant to the expressed provisions of said chapters, and in accordance with the specific provisions of this chapter, the Planning Commission, the Planning Director and the City Engineer shall have the powers and duties necessary to carry out the functions assigned to them under this chapter and the Code of Virginia.

Sec. 33.1-5. Violations and Penalties.

- (a) Any person, firm or corporation, whether as principal, Agent, employee or otherwise, violating the provisions of this chapter shall be subject to a fine of not more than \$500.00 for each lot or parcel of land so subdivided or transferred or sold. The description of such lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt any transaction from such penalties or from other remedies. Each and every day any violation of this chapter shall continue shall, except as otherwise provided, constitute a separate offense.
- (b) Any of the following shall be a violation of this chapter and shall be subject to the enforcement remedies and penalties provided by this chapter and by state law:
 - (1) To subdivide land without any and all necessary approvals under this chapter. For purposes of this chapter, subdividing land shall include any efforts to subdivide land, however preliminary, including, but not limited to, selling or offering to sell part of such land;
 - (2) To engage in any development, use, construction or other activity of any nature in any way inconsistent with any subdivision plat, variance or other action approved under this chapter;
 - (3) To violate, by act or omission, any term, condition or qualification placed by the city upon a required subdivision plat or other approval under this chapter;
 - (4) To erect, construct, reconstruct, alter, maintain or use any building or structure or to use any land in violation or contravention of any zoning, subdivision or general regulation of this chapter or any amendment thereto;
 - (5) To continue any of the above stated violations.

Sec. 33.1-6. Administration and enforcement of chapter.

The Agent is hereby delegated to administer and enforce the provisions of this chapter. The Agent shall be considered the Agent of the governing body. Notwithstanding an appeal as provided for in section 33.1-9, approval or disapproval by the Agent shall constitute approval or disapproval as though it were given by the governing body. The Agent may consult with the commission on matters contained herein and may call for written opinions or decisions from other city departments, the transportation department, and the health department in considering details of any submitted plat.

Any violation or attempted violation of this chapter or of any condition or requirement adopted pursuant hereto may be restrained, corrected or abated, as the case may be, by injunction or other appropriate proceeding pursuant to Code of Virginia, §§ 15.2-819, 15.2-2208 and 15.2-2209.

(1) The city may institute any appropriate action or proceeding to prevent violations of this chapter, or the unlawful use of land, to restrain, correct or abate such violations, to prevent the subdivision and/or use or occupancy of said land, or to prevent any illegal act, conduct, business, or use in or about such premises or land.

(2) Whenever in this chapter any act is prohibited or is made or declared to be unlawful or an offense, or wherever in this chapter the doing of any act is required or the failure to do any act is declared to be unlawful or an offense, the violation of same shall be punished as provided for in section 33.1-5.

(3) The city may stop work on any development, excavation, building or structure on any land on which there is or has been an uncorrected violation of a provision of this chapter or of a permit or other form of authorization issued hereunder in accordance with its powers to stop work under the Virginia Uniform Statewide Building Code.

(4) The city shall have such other enforcement powers and remedies as are and as may from time to time be provided for or permitted by state law for the violation of a subdivision ordinance.

Sec. 33.1-7. Effect of private contracts.

This chapter bears no relation to any private easement, covenant, agreement or restriction, and the responsibility of enforcing such private easement, covenant, agreement or restriction is not implied herein to any public official. When this chapter calls for more restrictive standards than are required by private contract, the provisions of this chapter shall control.

Sec. 33.1-8. Changes, erasures and revisions.

No change, erasure or revision shall be made on any preliminary or final plat, nor on accompanying data sheets, after the Agent has approved in writing the plat or sheets, unless authorization for such changes has been granted in writing by the Agent.

Sec. 33.1-9. Subdivider may appeal from disapproval of plat.

In the event a plat for subdivision is disapproved by the Agent or commission, the subdivider may appeal to the governing body. The governing body may override the recommendation of the Agent or commission and approve said plat. No appeal shall be made unless it is filed in writing with the clerk of the governing body within 30 days of disapproval by the Agent or commission.

Sec. 33.1-10. Plan and plat preparation-by whom prepared.

Each subdivision plan and plat shall be prepared by an individual duly qualified as set forth in title 54.1 of the Code of Virginia.

Sec. 33.1-11. How chapter may be amended.

This chapter may be amended in whole or in part by the governing body. Any such amendment shall either originate with or be submitted to the commission for recommendation prior to adoption. If no recommendation is received from the commission after 60 days from submission, the governing body may act without a recommendation. No such amendment shall be adopted without a public hearing having been held by the governing body.

Sec. 33.1-12. Resubdivision same as subdivision.

Any change in a recorded subdivision plat that modifies, creates or adjusts lot lines shall be approved in the same manner and under the same requirements as a new subdivision. This section applies to any subdivision plat of record, whether or not recorded prior to the adoption of a subdivision ordinance. Where a street, alley, easement for public passage or other public area laid out or described in such plat is affected, the plat shall be vacated pursuant to section 33.1-16 prior to resubdivision.

Sec. 33.1-13. Restrictions on division or subdivision of lots within Chesapeake Bay Preservation Areas.

Subdividers shall submit a Chesapeake Bay Site Plan, in accordance with the requirements of chapter 9.1, for any subdivision that includes any land within a Chesapeake Bay Preservation Area. The Chesapeake Bay Site Plan shall comply with all requirements of chapter 9.1.

The plan shall also show the proposed location and general extent of planned improvements. Any minimum lot size shall be adjusted to ensure sufficient buildable area outside of the CBPA RPA as delineated, or in accordance with any exceptions granted in accordance with Chapter 9.1 of the City Code.

No subdivision shall be approved until the Chesapeake Bay administrator has certified that all lots within the subdivision can meet all requirements pertaining to Chesapeake Bay Preservation Areas. The final plat shall identify the nature and extent of all Chesapeake Bay Preservation Areas.

Sec. 33.1-14. Reservation or control of land for prohibiting access.

No land shall be reserved, held or controlled for the purpose of prohibiting access to streets unless owned, held or controlled exclusively by the city.

Sec. 33.1-15. Depth in dwelling districts established pursuant to zoning law.

Lots in dwelling districts established by or pursuant to chapter 40 shall have an average depth of not less than 75 feet. For the purposes of this chapter, the term “average lot depth” shall be defined to require that a minimum of 50 percent of the width of a lot have a corresponding lot depth of not less than 75 feet.

Sec. 33.1-16. Vacation of recorded plat.

Any recorded plat, or part thereof, may be vacated pursuant to section 15.2-2271 through section 15.2-2276 of the Code of Virginia, as amended. Any such vacation shall operate to destroy the force and effect of the recording of the plat so vacated and to divest all public rights in, and to reinvest to the owners, proprietors and trustee, if any, the title to the streets, alleys, easements for public passage and other public areas laid out or described in such plat.

Sec. 33.1-17. Conformance to comprehensive plan.

A proposed subdivision shall conform generally to the requirements of the comprehensive plan of the city. Substantial changes in land use as set forth in the comprehensive plan shall not be permitted unless approved by the City Council, either by formal amendment to the plan or by some other action such as granting a zoning change which implies approval of such proposed change.

Sec. 33.1-18. Construction and severability of provisions.

This chapter shall be liberally construed so as to effectuate its purposes. If any clause, sentence, paragraph, section or subsection of this chapter shall be adjudged by any court of competent jurisdiction to be invalid for any reason, including a declaration that it is contrary to the constitution of the Commonwealth or of the United States, or if the application thereof to any government, agency, person or circumstance is held invalid, such judgment or holding shall be confined in its operation to the clause, sentence, paragraph, section or subsection hereof, or the specific application hereof, directly involved in the controversy in which the judgment or holding shall have been rendered or made, and shall not in any way affect the validity of any other clause, sentence, paragraph, section or subsection hereof, or affect the validity of the application thereof to any other government, agency, person or circumstance.

Sec. 33.1-19. Private streets declaration.

If approved streets in a subdivision are not to be constructed to meet the standards necessary for inclusion in the secondary system of state highways, or are not to be dedicated to the City of Portsmouth, the subdivision plat and all deeds conveying lots in the subdivision, shall contain a statement advising that the streets in the subdivision shall not be maintained by the transportation department or the city, and where applicable, do not meet city and state design standards.

Sec. 33.1-20. Fees.

Fees, as identified in Appendix A of the City Code, shall be charged to offset the cost of reviewing plats and plans, making inspections and other expenses incidental to the administration of this chapter.

Sec. 33.1-21. Saving provision.

The adoption of this chapter shall not abate any pending action, liability or penalty of any person accruing or about to accrue, nor waive any right of the city under any provision in effect prior to the adoption of this chapter, unless expressly provided for in this chapter. Any subdivision plan which has received preliminary approval prior to the adoption of this chapter and for which a final plat is recorded within one year from the date of preliminary approval shall have vested rights under the ordinance in effect at the date of preliminary approval. Failure to record a plat within one year shall render the preliminary approval null and void.

Sec. 33.1-22. Definitions.

The following definitions shall apply in the interpretation and enforcement of this chapter.

Agent. The City of Portsmouth Director of Planning or his designee.

Alley. A minor way designed to give vehicular access to the side and rear of properties whose principal frontage is on another street.

Approved. The word "approved" shall be considered to be followed by the words "or disapproved," when the sense so requires.

Arterial streets. A street specifically designed to move high volumes of traffic from collector streets through the city and not designed to serve abutting lots except indirectly through intersecting streets. Arterial streets shall include all U.S. Highways, state primaries with one-, two-, or three-digit numbers, state secondary roads with three-digit numbers, and any other street which the Agent determines is functionally equivalent to these transportation department classifications. This definition shall not include three-digit-numbered streets which are part of a recorded subdivision or an extension thereof.

Block. Land containing lots which are bounded by streets or a combination of conservation areas, streets, public parks, cemeteries, railroads, rights-of-way, shorelines or boundaries of the city.

Building setback line. A line within a lot or parcel so designated on a recorded plat or as otherwise established by the Code, and that defines the building envelope.

Building setback line, front. As defined by chapter 40. If the front property line is straight, the building setback line is a line parallel to the front property line; if the front property line is curved, the building setback line is a line parallel to any tangent of the front property line.

Commission. The City of Portsmouth Planning Commission.

Common open space. A parcel of land, an area of water, or a combination of land and water within a site designed and intended primarily for the use or enjoyment of residents, occupants, and owners within that development in which ownership is held in common with other owners of that development. Common open space is not a buildable lot.

Condominium. A building, or group of buildings, in which units are owned individually, and the structures, common area, and common facilities are owned by all the owners on a proportional, undivided basis.

City attorney. The Portsmouth City Attorney or his designee.

City Engineer. The Portsmouth City Engineer or his designee.

Cul-de-sac. A street with only one outlet having a circular or “T” turn-around for a safe and convenient reverse traffic movement.

Easement. A right granted by a property owner permitting a designated part or interest of the property to be used by others for a specific use or purpose.

Exception. Permission to depart from the design standards of this section.

Fire chief. The Portsmouth Fire Chief or his designee.

Geographic information system (GIS). Geographic information system owned and operated by the city.

Governing body. The Portsmouth City Council.

Health department. The Commonwealth of Virginia Department of Health or an authorized official, Agent or employee thereof.

Highly erodible soils. Soils (excluding vegetation) with an erodibility index (EI) from sheet and rill erosion equal to or greater than eight. The erodibility index for any soil is defined as the product of the formula RKLST, as defined by the “Food Security Act (F.S.A.) Manual” of August, 1988 in the “Field Office Technical Guide” of the U.S. Department of Agriculture Soil Conservation Service, where K is the soil susceptibility to water erosion in the surface layer; R is the rainfall and runoff; LS is the combined effects of slope length and steepness; and T is the soil loss tolerance.

Highly permeable soils. Soils with a given potential to transmit water through the soil profile. Highly permeable soils are identified as any soil having a permeability equal to or greater than six inches of water movement per hour in any part of the soil profile to a depth of 72 inches (permeability groups “rapid” and “very rapid”) as found in the “National Soils Handbook” of July 1983, as amended, in the “Field Office Technical Guide” of the U.S. Department of Agricultural Soil and Conservation Service.

Hydric soils. Soils that are saturated, flooded or ponded long enough during the growing seasons to develop anaerobic conditions in the upper part, which are saturated for usually one week or more in the growing period and have the capacity to support hydrophytic vegetation.

Impervious cover. A surface composed of any material that significantly impedes or prevents infiltration of water into the soil. Impervious surfaces include, but are not limited to: roofs, buildings, streets, parking areas, and any concrete, asphalt, or compacted gravel surface.

Improvements. All public and quasi-public utilities and facilities including, but not limited to, streets, sanitary sewers, waterlines, stormwater management and erosion control facilities, electrical service, monuments, signs, sidewalks and streetlights required by this chapter.

Lot. A parcel of land occupied or to be occupied by a main structure or group of main structures and accessory structures, together with such yards, open space, lot width, and lot areas as are required by Chapter 40, Zoning, either shown on a plat of record or considered as a unit of property and described by metes and bounds. A lot is synonymous with parcel or tract.

Lot, corner. A lot abutting on two or more streets at their intersection. Of the two sides of a corner lot, the front shall be deemed to be the shorter of the two sides fronting on streets.

Lot, double frontage. An interior lot having frontage on two streets.

Lot, flag. A lot which has a narrow appendage, not less than 16 feet in width, providing the required street frontage and through which access is provided to an enlarged portion of the lot typically located behind another lot that abuts the street.

Lot, frontage. The minimum width of a lot measured along a street right of way from one side lot line to the other along a straight line.

Lot, interior. Any lot other than a corner lot.

Lot of record. A lot, a plat or description of which has been recorded in the clerk's office of the circuit court.

Lot, width. The width of a lot shall be measured at the required setback line as established by chapter 40.

Monument. An iron pipe a minimum of 3/4 inches in diameter with a 24 inch length or a 5/8 inches in diameter reinforcing bar with a 24 inch length driven three inches to nine inches below the surface of the adjacent ground or an alternate type as approved by the city surveyor.

Plat. A map or plan for a tract or parcel of land meeting the requirements of this chapter which is to be or which has been subdivided. When used as a verb, "plat" is synonymous with "subdivide."

Property. A unit or units of land of such size and dimensions that it may be subdivided into two or more lots.

Public sewer. A sewer system owned and operated by the City of Portsmouth or the Hampton Roads Sanitation District Commission.

Public water. A water system owned and operated by the City of Portsmouth.

Resource management area (RMA): Resource management area as defined and regulated by chapter 9.1.

Resource protection area (RPA): Resource protection area as defined and regulated by chapter 9.1.

Right-of-way. The total width of land dedicated or reserved for public or restricted travel, including pavement, ditches, drainage facilities, curbing, gutters, pipes, sidewalks, shoulders and land necessary for the maintenance thereof. The right-of-way may contain public or private utilities.

Road, future or planned future right-of-way. Any road or similar transportation facility as shown on an approved plan of development or master plan or designated on the Comprehensive Plan, Six-Year Primary or Secondary Road Plan, or any road plan adopted by the governing body.

Runoff. Precipitation which enters downstream waterways or properties.

Septic tank system. An individual non-discharge system approved by the health department which contains all the necessary apparatus for treating wastewater including a sewage holding tank and areas identified for primary and reserve drainfields.

Setback line. A line showing the closest point from a property line that a dwelling or principal structure may be constructed consistent with the zoning ordinance.

Street. An existing or platted right-of-way dedicated for the use of the general public, or portions thereof, either accepted by the transportation department or approved as a private transportation system under the zoning ordinance. A street shall provide access to property by vehicular and pedestrian traffic for all purposes of travel transportation or parking to which it is adopted and devoted. This term is synonymous with road, lane, drive, avenue, right-of-way, highway, or any other thoroughfare.

Street continuity. The combination of several design practices that require not only a grid street system be developed but that no area with more than 24 lots have only one ingress/egress path via public right of way.

Subdivide. The division of property into two or more lots.

Subdivider. An individual, corporation, partnership or other entity owning any property to be subdivided.

Townhouse. A dwelling unit for single-family occupancy in a structure containing three or more such dwelling units not more than three stories in height, attached by one or more vertical party walls extending to the roof sheathing without passageway openings to one or more additional such units, and each of which is serviced by an individual exterior entrance or entrances.

Transportation department. The Commonwealth of Virginia Department of Transportation or an authorized official, Agent or employee thereof.

Yard. The space which lies between the lot line and the nearest point of a structure. The minimum yard required is defined for each zoning district.

Sec. 33.1-23. Exceptions.

The commission may grant an exception to any requirement of the chapter (except use, setback, number of parking spaces, size of parking spaces or any landscape requirements), subject to the following:

(1) No such exception shall be granted unless the subdivider petitions the commission in writing. The petition shall state fully the grounds for the exception and all the facts relied upon by the subdivider. The Agent may require such additional information as he may deem necessary to process the request for the exception.

(2) The Agent shall provide written notification of the exception request to all adjacent property owners. The notification shall adhere to the following requirements:

(a) Such notice shall specifically describe the exception requested and the date, time and location of the Planning Commission meeting first considering such request; and

(b) Such notice shall be mailed by the Agent at least ten days before the Planning Commission meeting; and

(c) Evidence that such notice was sent by first class mail to the last known address as shown on the current real estate tax assessment book shall be deemed adequate compliance.

(3) The burden shall be on the subdivider to demonstrate the need for an exception.

(4) The commission shall not approve any exception unless it first receives a recommendation from the Director of Planning and unless it finds that:

(a) The granting of the exception will not be detrimental to public safety, health, or welfare, and will not adversely affect the property of others;

(b) The facts upon which the request is based are unique to the property and are not applicable generally to other property so as not to make reasonably practicable the formulation of general regulations to be adopted as an amendment to this chapter;

(c) No objection to the exception has been received in writing from the transportation department, City Engineer, health department, or fire chief; and, either

(d) Strict adherence to the ordinance requirement will cause substantial injustice or hardship. The hardship or injustice is created by the unusual character of the property, including dimensions and topography, or by other extraordinary situation or condition of such property. Personal, financial, or self-inflicted hardship or injustice shall not be considered proper justification for an exception; OR

(e) The exception will permit development to follow standards consistent with those commonly referred to as Traditional Neighborhood Development or New Urbanism.

(5) The commission in authorizing an exception may impose such reasonable conditions in addition to the regulations of this chapter as it may deem necessary in the public interest. The commission may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

(6) If granted, such exception shall be specifically stated in writing together with the supporting justifications and filed with the subdivision plan or such plat or plans deemed necessary by the Agent. A note shall be prominently placed on the record plat detailing any exception so granted.

ARTICLE II. PROCEDURES AND DOCUMENTS TO BE FILED

Sec. 33.1-24. Pre-application conference and submission of conceptual plan.

(a) Before submittal of any preliminary or final subdivision plan for a subdivision, the applicant is advised to confer with the subdivision Agent and such other agencies of the state and city as the Agent deems advisable concerning the proposed subdivision.

(b) Prior to the submission of any major subdivision plan, the applicant or his representative is advised to submit three copies of a conceptual plan for review by the director of planning, or his designee; such action does not constitute the submission of a preliminary plan and is not to be construed as an application for approval in computing time limitations in relation thereto. The planning division shall transmit comments to the applicant within 21 calendar days of submittal of a plan which meets all applicable submittal criteria.

(c) The conceptual plan may be granted conceptual plan approval with conditions that should be satisfied prior to final plan approval; such action does not constitute final subdivision approval or preliminary plan approval. Submittal of a preliminary plan that does not incorporate the conditions set forth during the conceptual plan review period, shall be reviewed by the commission under the requirements of section 33.1-29. Unless required by the Planning Director, a re-submittal of conceptual plans shall not be necessary.

(d) Conceptual plans shall, at a minimum, show:

- (1) property lines
- (2) existing and proposed building locations and orientation
- (3) building locations on adjacent properties
- (4) landscape areas/buffers
- (5) entrances/exits/access to the site (vehicular, pedestrian, etc.)
- (6) proposed use of site
- (7) building/landscape setbacks per Zoning ordinance requirements
- (8) site zoning and zoning of surrounding properties
- (9) location of stormwater management facilities
- (10) graphic scale
- (11) existing and proposed easements (conservation, utility, etc.)
- (12) unique natural features (water features, wetlands, RPA, RMA, IDA, floodplain, etc.)
- (13) list of currently binding proffers or Use Permit conditions
- (14) location of entry sign(s)
- (15) topography of site

(e) If the Planning Director determines that one or more of the above submittal requirements is not applicable to the proposed project, the Planning Director may waive those requirements.

Sec. 33.1-25. Master plan.

For multi-phased subdivisions, the subdivider shall submit to the Agent a master plan for all phases of the proposed subdivision as part of the preliminary plan submittal. The purpose of such a master plan is to permit the Agent to advise the subdivider whether his plans are generally in accordance with the requirements of this chapter. The Director, upon submission of any master plan, may study it and advise the subdivider where it appears that changes are appropriate. The Agent may mark the master plan indicating appropriate changes.

The subdivider shall return such master plan to the Agent with each preliminary plan. The master plan shall, at a minimum, show the name, location and dimensions of all streets entering the property, adjacent to the property or terminating at the boundary of the property to be subdivided.

It shall also show the location of all proposed streets, their category (e.g., arterial, collector, etc.) and any future extensions, lots, development phases, parks, playgrounds and other proposed uses of the land to be subdivided and their approximate dimensions and a conceptual layout of the water and sewer systems. The master plan is not binding on the subdivider or the governing body.

Review of a master plan does not constitute final subdivision approval or preliminary plan approval. For multi-phased subdivisions reviewed under this section, review of a master plan does not, in any way, guarantee approval of future subdivision phases.

Sec. 33.1-26. Classification of subdivisions.

(a) *Minor subdivision.* A minor subdivision shall be a division of a tract of land into fewer than ten lots abutting an existing public road within the city system of primary or secondary highways and which does not create a new street or extend an existing street. Pursuant to Section 33.1-12, any plat that modifies, vacates, or adjusts property lines shall be considered a minor subdivision.

Any contiguous or internal property owned by the same subdivider, or deemed by the Agent as a logical part of a contiguous or internal subdivision, cannot be subdivided into greater than ten lots without being reviewed as, and meeting the requirements of, a major subdivision.

(b) *Minor subdivision – infill.* A minor subdivision shall be a division of a tract of land into not more than two lots abutting an existing public road within the city system of primary or secondary highways and which does not create a new street or extend an existing street. In order to ensure compatibility of an in-fill subdivision with existing development, lots created by an in-fill subdivision shall be comparable in lot width, area, setback and frontage orientation with existing platted lots in the surrounding neighborhood. The Planning Director shall require additional lot width, area and/or setbacks as appropriate, consistent with development on adjacent property.

(c) *Major subdivision.* A major subdivision shall be a division of a tract of land into ten or more lots or any division which creates a new street or extends any existing street. However, where additional lots are being created for the sole purpose of permanent open space or common areas, the subdivision may be reviewed as, and meet the requirements of, a minor subdivision.

(d) *Townhouse or condominium subdivision.* A townhouse or condominium subdivision shall be a division of a tract of land into lots for townhouses or condominiums as shown on an approved site plan pursuant to the zoning ordinance. A preliminary or final plan shall include only those requirements for design and minimum improvements required by article III of this chapter deemed necessary by the Agent.

Sec. 33.1-27. Procedure for preliminary plan review of minor subdivisions.

(a) The subdivider shall submit to the Agent twelve copies of the preliminary subdivision plan for a minor subdivision and pay the appropriate subdivision plan review fee.

(b) Upon meeting all submittal requirements, the plan shall be reviewed by the Agent and other agencies of the city and state as deemed necessary by the Agent. The Agent shall within 60 days approve or deny the subdivision plan and notify the subdivider of the action in writing. If a final plan is approved, such approval shall be in accordance with section 33.1-34. The Agent shall certify such approval by signing the record plat. If a preliminary plan is approved, the Agent shall include in the notification of preliminary approval all conditions required for final approval. If disapproved, the Agent shall state in the notification to the subdivider the specific reasons for denial. The reasons for denial shall identify deficiencies in the plan which cause the disapproval by reference to specific duly adopted ordinances, regulations or policies, and shall generally identify such modifications or corrections as will permit approval of the plan.

(c) If the streets, drainage or utilities for the proposed minor subdivision are not fully improved as required by this chapter, the Planning Director shall require as conditions of the minor subdivision approval that:

(1) Curb, gutter, paving, sidewalks, drainage and utilities be improved to the standards for improvements currently applicable to a subdivision that is not a minor subdivision. These improvements shall be provided as required by sections 33.1-49 and 33.1-50.

(2) The City Engineer also approves the proposed plat by affixing his signature thereto. Such signature shall not be affixed until the improvements required by sections 33.1-49 and 33.1-50 are installed or a bond or other security is posted and an agreement executed and filed with the City Engineer in accordance with section 33.1-49.

(3) A parcel of land containing an existing residential structure may be subdivided so as to create one additional residential lot which shall be exempt from the requirements of sections 33.1-49 and 33.1-50, pertaining to installation of curbs and gutters, street and pavement widening and offsite drainage requirements, upon the following conditions:

- (i) All provisions of the zoning ordinance of the city are met; and
- (ii) Each parcel so subdivided must front on an existing, improved public street and the proposed subdivision of such parcel shall not require the extension of an existing public street or the construction of a new public street.
- (iii) The exemption provided by this subsection shall be applied only one time to any qualified parcel of land. Any additional resubdivision of such parcels, or any part thereof, shall not be entitled to such exemption.

Sec. 33.1-28. Resubdivision with no new improvements; procedure.

(a) The City Council has determined that due to the configuration of nonconforming lots and structures on certain parcels of land intended and zoned for residential uses but which were subdivided prior to the enactment of land subdivision ordinances by the City of Portsmouth or Norfolk County, that property owners may be unable to develop such areas which in turn hinders overall redevelopment in Portsmouth.

(b) Therefore, the Planning Commission is hereby authorized to approve resubdivision plats covering such property even though the requirements of article III of this chapter pertaining to installation of curbs and gutters, street and pavement widening and off-site drainage have not been included.

(c) An applicant for resubdivision under this section shall prepare and submit a resubdivision plat as provided in this chapter and shall include a request for approval, stating that the resubdivision meets the requirements of this chapter for resubdivision of exempted property. A request made under this section shall in all other respects be submitted, processed, reviewed and approved in accordance with this chapter.

Sec. 33.1-29. Procedure for preliminary plan review for major subdivisions.

(a) The subdivider shall submit to the Agent twelve copies of the preliminary subdivision plan for a major subdivision and pay the appropriate subdivision plan review fee.

(b) Upon meeting all submittal requirements, the plan shall be reviewed by the Agent and other agencies of the city and state as deemed necessary by the Agent. The Agent shall prepare a composite report on the proposed subdivision to determine if it meets the requirements of this chapter and the zoning ordinance. The report shall include review requirements by other agencies. The preliminary plan and the Agent's composite report shall be reviewed by the Planning Commission.

(c) The commission shall consider the plan and either grant preliminary approval or disapprove it within 60 days of submittal. The plan may be granted preliminary approval with conditions. The Agent shall notify the applicant of the commission's findings in writing within seven days of the commission meeting. Such notice shall state any actions, changes, conditions or additional information that shall be required to secure final approval of the subdivision. If disapproved, the notice shall state the specific reasons for disapproval. The reasons for denial shall identify deficiencies in the plan which cause the disapproval by reference to specific duly adopted ordinances, regulations or policies, and shall generally identify such modifications or corrections as will permit approval of the plan.

Sec. 33.1-30. Preliminary plan review - Submittal requirements; major and minor subdivisions.

The preliminary plan for a minor or major subdivision shall be on a blue-line or black-line print. If more than one sheet is used, sheets shall be numbered in sequence and an index shall be provided on the first sheet. The preliminary plan for a minor or major subdivision shall include the following information:

(a) The name of the subdivision, owner, subdivider, and surveyor or engineer, the date of drawing, number of sheets, north arrow, graphic scale, legend for all symbols used, the names of all subdivisions immediately adjacent thereto, and the names of the owners of record of adjacent unsubdivided property. Meridian shown shall be based on City of Portsmouth geodetic control network. If shown on more than one sheet, match lines shall clearly indicate where the several sheets join. The preliminary plan shall also list any proffers or Use Permit conditions that affect the property.

(b) The location of the proposed subdivision on an inset map at a scale of not less than one inch equals 1,000 feet, showing adjoining roads, their names and numbers, subdivisions and other landmarks.

(c) A closed boundary survey, or existing survey of record, total acreage, acreage of subdivided area, existing buildings, existing graves, objects or structures marking a place of burial, names of owners and existing property lines within the boundaries of the tract and for adjacent properties thereto, proposed monuments, lots, lot numbers, lot areas, blocks, building setback and yard lines. The boundary survey shall conform to the requirements of Section 18VAC10-20-370 of the Code of Virginia.

If any exceptions have been granted by the Planning Commission in accordance with section 33.1-23, the preliminary plan shall include a note detailing any exception so granted. In addition any Use Permit conditions, Variances or Proffers attached to the property shall also be noted.

(d) All existing, platted and proposed streets, both private and public, including their names, numbers and widths; existing and proposed utility or other easements, culverts, drains, watercourses, lakes, their names and other pertinent data. If the streets are to be private, the plan shall include a private streets declaration in accordance with section 33.1-19.

(e) Where plan includes or abuts any natural or artificial body of water, show the approximate high waterline, bulkhead and pierhead lines where officially established, top of bank and toe of slope, proposed elevations and slopes for grading, and FEMA flood map and floodplain information.

(f) Lot lines with dimensions and proposed setback lines; if a residential lot, the total number, type, and density per type of dwelling units to be placed thereon if more than one.

(g) All parcels of land proposed to be dedicated or reserved for public use, and the conditions, if any, of such dedication.

(h) A statement that appropriate erosion and sediment control methods shall be utilized prior to any clearing, grading or construction.

(i) The preliminary plan for a major subdivision shall contain a copy of conceptual plan reviewed under the requirements of section 33.1-24.

(j) Prior to application for final approval, the subdivider shall also submit to the City Engineer and/or director of public utilities and secure approval of engineering development plans for those physical improvements set forth in sections 33.1-49 and 33.1-50 in accordance with the following:

- i. Such plans shall be prepared by a licensed professional engineer or land surveyor in the Commonwealth of Virginia and shall be complete, showing all essential details of the construction of the improvements at a scale generally acceptable to the City Engineer.
- ii. The City Engineer and/or the director of public utilities shall examine such plans and determine whether they meet the requirements of the zoning ordinance in chapter 40 and this chapter and whether they are in accord with sound engineering

principles. The subdivider shall then be advised of their approval, disapproval or any change that might be necessary to merit approval.

- iii. Approval of the development plans by the City Engineer or the director of public utilities does not constitute a guarantee of approval of the final plat.
- iv. Such plan shall show existing and proposed sidewalks.
- v. A drainage plan showing the proposed drainage system including all open ditches, closed storm drain pipes and stormwater management facilities proposed to convey the subdivision drainage to an adequate channel. The plan shall include sizes of all pipes and ditches, types of pipes and ditch linings, drainage easements and construction details of any stormwater management facilities. Drainage calculations shall be submitted with a drainage area map to verify the design of the drainage system including the adequacy of the channel receiving drainage from the proposed subdivision.
- vi. For multi-phased subdivisions, a drainage area map shall be provided with drainage calculations for all phases of the subdivision to determine the adequacy of receiving channels. If receiving channels are not adequate, the map shall include the location of proposed stormwater management facilities.
- vii. The drainage plan shall include the topographic plan and a soil map of the site. The topographic plan submittal requirements vary depending on the location of the proposed development.
- viii. An erosion control plan showing the location, type and details of proposed erosion and sediment control devices to be used during and after construction. The plan shall meet all requirements of the erosion and sediment control ordinance and shall be provided at a scale of 100 feet to the inch except in cases where the City Engineer approves an alternate scale. The plan shall show existing and proposed contours at intervals of no more than five feet.
- ix. Cross-sections showing the proposed street construction, depth and type of base, type of surface, compaction, shoulders, curbs and gutters, sidewalks, bikeways, side ditches and other features of the proposed streets.
- x. Street profiles showing the proposed grades for the streets and drainage facilities, including elevations of existing and proposed ground surface at all street intersections and at points of major grade change along the centerline of streets, together with proposed connecting grade lines therewith.
- xi. Size and location of existing sanitary sewer and water facilities; location and method of proposed connections to existing sewer and water facilities; size and location of proposed sewer and water facilities showing location of proposed water meters, gate valves, fire hydrants, fittings, manholes, sewer laterals and cleanouts; grinder pump locations; profile views of water and sewer mains with manhole rim and invert elevations and percent of slope; sewage pump station location, design and details; and water well facility location, design and details.

Sec. 33.1-31. Preliminary plan review – Submittal requirements; townhouse and condominium subdivisions.

The preliminary plan for a townhouse or condominium subdivision shall be on a blue-line or black-line print.

If more than one sheet is used, sheets shall be numbered in sequence and an index on the first sheet shall be provided. The preliminary plan shall include the following information:

(a) The name of the subdivision, owner, subdivider and surveyor or engineer, the date of drawing, number of sheets, north arrow and scale. Meridian shown shall be based on City of Portsmouth geodetic control network. The plan shall also list any proffers or Use Permit conditions that affect the property.

(b) Location of the proposed subdivision on an inset map at a scale of not less than one inch equals 1,000 feet, showing adjoining roads, their names and numbers, subdivisions and other landmarks.

(c) A closed boundary survey, or existing survey of record, total acreage, acreage of subdivided area, existing buildings, existing graves, objects or structures marking a place of burial, names of owners and existing property lines within the boundaries of the tract and for adjacent properties thereto, proposed monuments, lots, lot numbers, lot areas, blocks, building setback and yard lines.

If any exceptions have been granted by the Planning Commission in accordance with section 33.1-23, the plan shall include a note detailing any exception so granted.

(d) All existing, platted and proposed streets, including their names, numbers and widths; existing and proposed utility, drainage or other easements, public areas and parking spaces; culverts, drains and watercourses, lakes, their names and other pertinent data. If the streets are to be private, the plan shall include a private streets declaration in accordance with section 33.1-19.

(e) All parcels of land to be dedicated for public use and conditions of such dedication.

(f) Flood map, floodplain, and Chesapeake Bay preservation areas.

Sec. 33.1-32. Effect of approval of preliminary plan.

Approval by the commission or the Agent of the preliminary plan shall not constitute a guarantee of approval by the Agent of the final plat.

Sec. 33.1-33. Term of validity for the preliminary plan and extension.

(a) The subdivider shall have no more than 365 days from the date of approval of the preliminary plan to record a final subdivision plat in accordance with this chapter. A final plan shall be submitted and approved pursuant to section 33.1-34 prior to recordation. Failure to record a final plat within the specified time period shall make preliminary approval null and void. The Agent may, on written request by the subdivider, grant one or more extensions of preliminary approval for a period of one year upon finding:

- (1) That progress has been made in the project as defined by:
 - a. The subdivider has substantially satisfied all conditions of preliminary approval;
 - b. There has been no significant change in comprehensive plan policy or City Code requirements that affect the property; and
 - c. The project has progressed without being cited for any construction-related violation of the City Code or, in the event such violation has occurred, it has been corrected in a timely manner; or

- (2) There have been unusual delays in proceeding with the subdivision process or construction caused by government agencies or acts of God.

(b) If a subdivider records a final plat, which may be a section of a subdivision as shown on an approved preliminary plan, and furnishes to the city a certified check, cash escrow, bond, or letter of credit in an amount and form acceptable to the city for the estimated cost of construction of the facilities to be dedicated within said section for public use and maintained by the locality, the commonwealth or other public agency, the developer shall have the right to record the remaining sections shown on the preliminary plan for a period of five years from the recordation date of the first section. Such right shall be subject to the terms and conditions of the Code of Virginia and subject to engineering and construction standards and the zoning ordinance requirements in effect at the time that each remaining section is recorded.

Sec. 33.1-34. Procedure for approval of final plat.

Upon approval of the preliminary plan by the Agent, the subdivider shall submit two reproducible copies plus eight prints of the record plat to the Agent for review and approval.

The record plat shall not be approved until the applicant:

- (1) Has complied with the requirements and minimum standards of design set forth in this chapter;

- (2) Has incorporated such changes or complied with such conditions on the final plan as may have been stipulated in the letter of notification following action by the commission or Agent on the preliminary plan; and

- (3) Has made satisfactory arrangements for performance assurances as specified in article III of this chapter.

Sec. 33.1-35. Final plat-Submittal requirements.

The final plat for a subdivision shall be on blue-line or blackline print. The final subdivision plat shall be prepared by a professional engineer or land surveyor licensed by the Commonwealth of Virginia. The size of the record plat shall not be smaller than 11" x 17" or larger than 18" x 24" inches. If more than one sheet is used, sheets shall be numbered in sequence and an index shall be provided. If several sheets are necessary, they shall all be of the same size and match points shall be clearly indicated. In addition to the requirements for a preliminary plat, the final plat for a subdivision shall also include the following:

(a) The accurate location and dimensions by bearings and distances, including all curve data, for all lots, and street lines and centerlines of streets and easements and other rights-of-way. Reference must be made to known permanent monuments, and, where required by the City Engineer, to the state system of plane coordinates. Linear distances shall be in feet and decimals correct to the nearest one-hundredth of a foot. All dimensions, both linear and angular, shall be determined by an accurate control survey, which must close and balance with angular measurements correct to the nearest second. Meridian shown shall be based on City of Portsmouth geodetic control network.

(b) The data of all curves along the street frontage shall be shown in detail at the curve or in a curve data table containing the following: delta, radius, arc, tangent, chord and chord bearings.

(c) When the subdivision consists of land acquired from more than one source of title, the outlines of these tracts shall be indicated by dashed lines, and the identification of the respective tracts shall be shown on the plat.

(d) Name and location of subdivision, name and address of record owner and subdivider, date of drawing, true north point, scale and a location map with a minimum scale of 1,000 feet to the inch.

(e) Name and right-of-way width and length of each street or other rights-of-way.

(f) Location, dimensions and purpose of any easements.

(g) Designating numbers or symbols for all lots and blocks.

(h) In the case of the resubdivision of existing recorded lots, existing lot lines shall be shown by dotted lines and the resubdivision by full lines, unless the requirement for dotted lines is waived by the Planning Commission.

(i) Location and description of new monuments (cross ref. Section 33.1-48 for requirements).

(j) The zoning designation of all lots, including, but not limited to, residential, commercial or industrial areas, community facilities, recreational areas and usable open space. All parcels of land dedicated or reserved for public use, the use for which dedicated or reserved, and the conditions, if any, of such dedication or reservation.

(k) Minimum building setback lines on all lots; widths and names of abutting roads, streets and alleys; names of record owners of adjoining unplatted land; reference to recorded subdivision plats of adjoining platted land by record name, date and map book reference.

(l) Street address numbers for each lot as assigned.

(m) Natural or noteworthy features to be preserved, tidal wetlands and Chesapeake Bay Preservation Areas; and FEMA Flood Map information, including proposed minimum finished floor elevations for any lot which contains or is adjacent to a flood hazard district.

(n) Total area, usable area and unusable area in acres of each parcel or lot created.

(o) Reference to common or shared easements conveyed to public service corporations furnishing cable television, gas, telephone and electrical service to the subdivision. Such easements on the final plat shall include reference to a declaration of terms and conditions agreed to by such public service corporations and recorded in the land records of the city.

(p) A certification of each owner's consent duly acknowledged before a licensed notary public in the following format:

Owner's Certificate

The platting or dedication of the following described land (here insert a correct description of the land subdivided) is with the free consent and in accordance with the desire of the undersigned owners, proprietors, and trustees, if any.

Date	Signature
------	-----------

Name printed

Certificate of Notarization

Commonwealth of Virginia
City/County of (Name)

I, (Name Printed), a Notary Public in and for the City/County and State aforesaid, do hereby certify that the persons whose names are signed to the foregoing writing have acknowledged the same before me in the City/County aforesaid.

Given under my name this _____ day of _____, (Year) _____.

(Signature)
My commission expires _____.

Notary registration number: _____.

(q) Certificates signed by the surveyor or engineer setting forth the source of title of the owners of the land subdivided, the place of record of the last instrument in the chain of title, and that the subdivision conforms to all requirements of the ordinances of the City of Portsmouth, Virginia, in the following format:

Certificate of Source of Title

The property shown on this plat was conveyed by (previous owner) to (current owner) by (type of instrument), dated (date) and recorded in the Office of the Clerk of the Circuit Court of the (locality) in Deed Book (number), Page (number) or Instrument (number).

Engineer or Surveyor's Certificate

I hereby certify that, to the best of my knowledge or belief, this plat complies with all of the requirements of the City of Portsmouth, Virginia, regarding the platting of subdivisions within the City.

Date Name

Name printed

(r) Certificate of approval as follows:

Certificate of Approval

This subdivision is approved by the undersigned in accordance with existing subdivision regulations and may be admitted to record.

Date Director of Planning

Date City Engineer

(s) If the subdivided property contains wetlands and/or resource protection areas, there shall be a note on the plat which states the following:

“Wetlands and land within resource protection areas and associated buffers shall remain in a natural undisturbed state except for those activities permitted by Chapter 9.1 of the City of Portsmouth City Code.”

(t) The plat shall include the following note:

“Unless otherwise noted, all drainage easements designated on this plat shall remain private.”

(u) If the streets are to be private, the plat shall include a private streets declaration in accordance with section 33.1-19.

(v) If any exceptions have been granted by the Planning Commission in accordance with section 33.1-23, the plat shall include a note detailing any exception so granted.

(w) In addition to the above requirements, a digital copy of the subdivision plat in a format approved by the city surveyor shall be submitted for any major subdivision.

Sec. 33.1-36. Plats for minor subdivisions.

The submission requirements for a minor subdivision shall be the same as are set forth in this article for all subdivisions, except that the Planning Director may, in his discretion, alter or amend the submittal requirements if in his judgment the proposed subdivision will be certified as a minor subdivision.

Sec. 33.1-37 Condominium plats.

Condominiums and conversion condominiums, as defined herein, shall be required to submit to the Planning Commission condominium or conversion condominium plats prepared in accordance with Code of Virginia, § 55-79.58 and a copy of all documents filed with the state real estate commission. Said plat and documents shall be subject to approval as required by this chapter for subdivision plats.

Sec. 33.1-38. Term of validity for the final plan.

The subdivider shall record the approved record plat in the clerk's office of the circuit court of the city within 180 days after approval thereof; otherwise, such approval shall become null and void. However, in any case where construction of facilities to be dedicated for public use has commenced pursuant to an approved plan or permit with an approved and accepted surety per the requirements of this Ordinance, the time for plat recordation shall be extended to one year after final approval or to the time limit specified in the surety agreement, whichever is greater.

ARTICLE III. REQUIREMENTS FOR DESIGN AND MINIMUM IMPROVEMENTS

Sec. 33.1-39. Unsuitable land.

Land which the Planning Commission has found to be unsuitable for subdivision due to flooding, bad drainage, or other features likely to be harmful to the safety, welfare, and general health of the future residents, and which the Planning Commission considers appropriate for subdivision, shall not be subdivided, unless adequate remedies are formulated by the developer and approved by the City Engineer and the Planning Commission.

Sec. 33.1-40. Reservation of land.

- (a) When a site for a proposed school, library, fire station, park, playground or other public building or facility shown in the comprehensive plan is located in whole or in part in a proposed subdivision, reservation of such area shall be required.
- (b) Any reservation of land for public acquisition and use as required by this provision shall be void if not executed within ten years from the date of recordation unless the City Council shall earlier release such reservation.
- (c) Required reservations shall not exceed 25 percent of the total subdivision area unless the developer agrees to reserve a higher percentage. The acquisition price of such reserved sites shall be based upon the fair market value of such site at the time of recordation and shall be an express element of the subdivision agreement. The subdivision shall also be reimbursed annually by the city for such reservation at a rate of six percent of the acquisition price from the date of recordation until the date of acquisition or release of the reserved land.

Sec. 33.1-41. Preservation of noteworthy features.

In all subdivisions, to the maximum degree reasonably possible, efforts shall be made to preserve historic sites, scenic points, trees and other desirable natural growths, watercourses and other water areas, and other features worthy of preservation. Such preserved features shall be noted on the final plat.

Sec. 33.1-42. Street and block layout.

Street and block layout shall conform to the most advantageous development of adjoining areas, and the entire neighborhood, and shall provide for the following:

- (a) Street continuity of appropriate streets.
- (b) Streets shall intersect at right angles, or as nearly as possible with a minimum tangent of 100 feet prior to intersection streets classified as collector streets or higher. When two local streets intersect a minimum 50-foot tangent section shall be provided.
- (c) Street or right-of-way jogs or off-sets shall be prohibited unless required by the City Engineer.
- (d) Less than full width streets, public or private, shall not be permitted unless required to provide access in accordance with plans approved by the Planning Commission.
- (e) No major subdivision of more than 24 lots may be approved that provides only one access point. Should topography conditions exist, the Planning Commission may grant an exception based on the unique situation and provisions by the subdivider that additional safeguards will be utilized. Dead-end streets for subdivisions of less than 24 lots shall be avoided but if necessary a cul-de-sac must be provided.
- (f) Alleys shall be provided in commercial and industrial districts, except that the Planning Commission may waive this requirement where other definite and assured provision is made for service access and off-street loading adequate for the uses proposed.
- (g) For residential lots fronting on major arterial highways, the Planning Commission may require marginal access streets, or such other treatment as may be necessary for protection of residential properties and to afford separation of through and local traffic.
- (h) Where a subdivision borders on or contains a railroad right-of-way or limited access highway right-of-way, the Planning Commission may require a street parallel to and on each side of such right-of-way at a distance suitable for the appropriate use of the intervening land, such as for park purposes in residential districts, or for commercial or industrial purposes in appropriate districts. Such distances shall also be determined with due regard for the requirement of approach grades and future grade separations.
- (i) The length, widths and shapes of blocks shall be determined with regard to provision of adequate building sites suitable to the special needs of the type of use contemplated.
- (j) The length of residential blocks shall generally not exceed 450 feet in length nor wider than 240 feet.
- (k) Walks or pedestrian ways at a mid-block point may be required when determined to be essential by the Planning Commission to provide circulation or access to schools, playgrounds, shopping centers, etc.
- (l) The use of access control strips except for reasons of traffic safety shall be discouraged.
- (m) No street intersections shall include more than four street approaches.
- (n) Where two streets intersect a common street, the minimum distance between their rights-of-way shall be no less than 250 feet measured along the centerline of such common street. Should the two streets be a low volume local street with Average Daily Traffic less than 1,500 vehicle trips per day, the minimum spacing between streets entering from opposite sides of the major street should be no less than 125 feet.

Sec. 33.1-43. Rights-of-way and easements.

- (a) Unless otherwise approved by the Planning Commission, Streets and Street widths shall be designed in accordance with the Traditional Neighborhood Design provisions contained within the Virginia Department of Transportation's Subdivision Street Design Guide, as last amended, and the City of Portsmouth Master Transportation Plan.
- (b) All dead-end streets, designed to be so permanently, shall terminate in a circular turnaround having a minimum right-of-way as approved by the City Engineer. Unless future plans call for the creation of a cross street, a "T"-shaped turning space shall be avoided.
- (c) Temporary dead-end streets (streets carried to boundary of tract for future extension of adjoining property) may be provided with a "T"-shaped turning space in the place of the required turning circle.
- (d) Easements across the entire length of lots, even if a part of the lot is underwater or part of a natural watercourse, or centered on rear or side lot lines, shall be provided for utilities and surface drainage where necessary and shall be at least 12 feet wide. The plat shall clearly state that it is the obligation of abutting property owners to keep all drainage ditches open along said easements.
- (e) In the event streets in a subdivision will not be constructed to meet the standards necessary for state street maintenance moneys to be paid to the city, the Planning Commission may require that the subdivision plat and all approved deeds of subdivision, or similar instruments, contain a statement advising that the streets in the subdivision do not meet state standards and will not be maintained by the city. In addition, the developer shall provide a financial commitment in the form as required by section 33.1-49 to provide for such street maintenance until such time as the city releases said commitment.

Sec. 33.1-44. Grades and curves and design of streets.

- (a) Minimum longitudinal street grades shall be 0.30%.
- (b) Unless otherwise approved by the Planning Commission, the design of streets and the radii of curvature on the centerline of streets shall be designed in accordance with the Traditional Neighborhood Design provisions contained within the Virginia Department of Transportation's Subdivision Street Design Guide, as last amended, and the City of Portsmouth Master Transportation Plan.
- (c) A tangent at least 400 feet long shall be provided between reverse curves on arterial streets, 100 feet on collector streets.

Sec. 33.1-45. Intersections.

For subdivision purposes, the Planning Commission may permit chords in the place of rounded corners. Street curbs at intersections shall be designed in accordance with the Traditional Neighborhood Design provisions contained within the Virginia Department of Transportation's Subdivision Street Design Guide, as last amended, and the City of Portsmouth Master Transportation Plan.

Sec. 33.1-46. Lots.

- (a) The size, shape and orientation of lots shall be appropriate for the location and for the type of development contemplated. The width, depth and area of each proposed lot shall be consistent with those in the immediate vicinity of the subdivision. Each proposed

lot shall be oriented in a manner consistent with the existing platting pattern in the neighborhood.

(b) Where no public sewer is available, the average width shall not be less than 75 feet and the area not less than 10,000 square feet for each dwelling unit.

(c) Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for the off-street service and parking facilities required by the type of use and development contemplated.

(d) Corner lots for residential use shall be platted 10 feet wider than interior lots, if necessary, to permit appropriate building setbacks on both streets.

(e) Lots having frontage on two streets (except corner lots), and reverse frontage lots abutting on an arterial or collector street with frontage on a lesser street, shall be avoided.

(f) Side lot lines shall be approximately at right angles to the right-of-way line of the street on which the lot faces.

(g) The subdividing of the land shall be such as to provide each lot with frontage on a public street.

(h) Notwithstanding the provisions of the zoning ordinance, no lot shall be created by subdivision which has a street frontage of less than 16 feet.

(i) Minimum average depth of residential lots shall be 75 feet. The Planning Commission may approve lots with less minimum average depth in downtown neighborhoods.

(j) Flag lots may be permitted if the proposed flag lot makes it possible to better utilize an irregularly shaped property or if the flag lot is used to eliminate direct access to a collector or an arterial street. In all cases, the following requirements must be met:

- (1) The flag lot shall not access an arterial street.
- (2) No part of the flag lot's access to the street (the "flagpole" or "panhandle") shall be less than 16 feet in width for residentially zoned lots and 50 feet in width for non-residentially zoned lots.
- (3) The front property line of a flag lot shall not abut the side yard of an adjacent lot.
- (4) The strip of land used for access to the main portion of the flag lot (the "flagpole" or "panhandle") shall not be included in calculating the area of the lot for the purpose of determining compliance with the dimensional requirements of this chapter or chapter 40 of this Code, nor shall any part of the "flagpole" or "panhandle" be considered to be the front yard.
- (5) No more than ten percent of the lots, in subdivisions which create ten or more lots, may be flag lots.

(k) Lot size. The minimum lot size shall be in accordance with the zoning ordinance provided, however that whenever there shall be plans in existence, approved by either the transportation department or by the governing body, for the widening, extension, or construction of any street or highway, the commission may require additional setbacks

and yards for any new construction or for any structures altered or remodeled adjacent to the future planned right-of-way in order to preserve and protect the planned future right-of-way for such proposed street or highway.

(l) Lot arrangements, design and shape. The lot arrangement, design and shape shall be related to the topography such that each lot has:

- (1) An acceptable building site in compliance with the requirements of the zoning ordinance;
- (2) Suitable access to the building site from an approved street. Unusually shaped or elongated lots, as determined by the Agent, established primarily for the purpose of providing minimum square footage shall not be permitted.

(m) Lot location. Each lot shall abut and have access to a proposed public street to be dedicated by the subdivision plat or to an existing publicly dedicated street, unless otherwise specifically provided for in this chapter. If the existing streets do not meet the minimum city width requirement, including adequate right-of-way to accommodate the appropriate pavement width, drainage, sidewalks and bikeways, the subdivider shall dedicate adequate right-of-way necessary for the street to meet such minimum requirement.

(n) Lot remnants. Remnants of lots not meeting minimum lot requirements shall not generally be created by the subdividing of a tract. All such remnants shall be added to adjacent lots or, as approved by the Agent, identified as common open space or natural open space.

Sec. 33.1-47. Graves or places of burial.

When any grave, object or structure marking a place of burial is located on the land proposed for subdivision, such grave, object or structure shall be identified on any plans or site plans or subdivision plans required by this chapter.

Sec. 33.1-48. Monuments.

Monuments shall be placed at all block corners and at the tangent point of curves connecting intersecting street lines, at the points of curvature and tangency in curved street lines, and at all corners in the exterior boundary of the subdivision, and at such other points as may be designated by the City Engineer. Monuments shall be set six inches below finished grade, shall be left visible for final acceptance inspection, and shall be either:

- (1) Precast concrete, 30 inches in length, six inches square or eight inches in diameter, with a metal pin imbedded therein; or
- (2) A steel or iron pin five-eighths of an inch in diameter, set in poured concrete, at least 18 inches deep and ten inches square.
- (3) All lot corners shall be monumented with steel pins 5/8" diameter set six inches below finished grade.

Sec. 33.1-49. Utility and street improvements.

(a) In subdivisions, or parts of subdivisions, improvements shall be provided by the subdivider as follows:

- (1) Streets shall be graded to the full width and shall be designed in accordance to the approved cross-sections and profiles and the Traditional Neighborhood Design provisions contained within the Virginia Department of Transportation's Subdivision Street Design Guide, as last amended, and the City of Portsmouth Master Transportation Plan.

- (2) The pavement base and surface of streets shall be appropriate to the type of development and type of use contemplated and shall be installed in accordance with standards and specifications of the city. The thickness of base and pavement shall be determined by actual soil bearing tests of the California Bearing Ratio type or its equivalent (performed at the expense of the subdivider by an approved testing laboratory at locations specified by the City Engineer) and by anticipated traffic loading methods developed by the Asphalt Institute or the Portland Cement Association.
- (3) A drainage system shall be provided to ensure adequate drainage of both natural and stormwater. The system shall be constructed and installed in accordance with plans and specifications approved by the City Engineer. The subdivider shall be required to install necessary drainage facilities outside the property limits of the land owned or controlled by the subdivider but necessitated, at least in part, by the construction or improvement of the subdivision.
- (4) Curbs and gutters shall be installed in accordance with the plans and specifications approved by the City Engineer and shall be designed in accordance with the Traditional Neighborhood Design provisions contained within the Virginia Department of Transportation's Subdivision Street Design Guide, as last amended, and the City of Portsmouth Master Transportation Plan. The use of valley gutters shall be avoided.
- (5) Water lines shall be installed by the subdivider in accordance with plans and specifications approved by the director of public utilities. The subdivider shall be required to install necessary water facilities outside the property limits of the land owned or controlled by the subdivider but necessitated, at least in part, by the construction or improvement of the subdivision.
- (6) Sanitary sewerage shall be installed by the subdivider in accordance with plans and specifications approved by the director of public utilities. The subdivider shall be required to install necessary sanitary sewage facilities outside the property limits of the land owned or controlled by the subdivider but necessitated, at least in part, by the construction or improvement of the subdivision.
- (7) Sidewalks, at least five feet in width, shall be installed on both sides of all arterial and collector streets. Sidewalks, at least five feet in width, shall be installed along all street frontage planned for apartments or townhouses. Sidewalks, at least five feet in width, shall be required along one side of all minor and cul-de-sac streets; however, the Planning Commission may reduce or eliminate the requirements on any minor street, as defined in section 33.1-2 of the city Code, or cul-de-sac. The commission must find that such reduction will not create a pedestrian safety hazard. Sidewalks shall be installed in accordance with plans and specifications of the city and must include ramps for wheelchair access at all intersections in accordance with the requirements of the Americans with Disabilities Act and in accordance with any revisions approved by the Federal Highway Administration.
- (8) Standard city street signs shall be installed at all street intersections.
- (9) Necessary traffic-control devices, including, but not limited to, traffic signals or traffic signs which are required within the subdivision or adjacent thereto and which are approved by the traffic engineer, shall be installed.
- (10) Street lights shall be installed by the subdivider in accordance with the standards and specifications approved by the traffic engineer. The subdivider shall pay the cost of installation thereof and all costs to be incurred for the operation and maintenance thereof during the first year following the completion of installation.
- (11) Bridge widths shall be designed to the ultimate right-of-way width. Sidewalks shall be provided on both sides of bridges unless waived by the City Engineer. Timber construction, including timber pilings, shall not be permitted. Bridges shall be designed for H-20 loading (minimum). Architectural and ornamental work on bridges shall be

compatible with the area in which the bridge is located and approved by the City Engineer.

(12) Culverts shall be designed in accordance with the Virginia Department of Transportation design standards and details. Endwalls shall be provided as required by the City Engineer and shall conform to Virginia Department of Transportation standards or city standards. The developer shall provide for soil bearing investigations to determine foundation requirements. Pilings for culvert support shall be provided if needed. Ample waterway shall be provided for in culvert design, based on five-year storm recurrence and the drainage area served by the culverts. When requested by the City Engineer, the developer shall provide calculations for major culverts and bridge crossings which shall be based on a 25-year frequency to ensure that no flood hazard will result to the public rights-of-way or to residences or other structures.

(13) For the purpose of creating residential lots on existing streets, the Planning Director may modify or waive the street grading, pavement base, surface and curb and gutter requirements on an existing street constructed without such required improvements if:

- a. The city has no plans to install such improvements on the street within the next ten years;
- b. The street is currently improved or will be improved to a standard equivalent to similar streets in the neighborhood;
- c. After consultation with the City Engineer, a determination is made that the street will provide adequate and safe access and drainage to existing and future residents in accordance with the purposes of the subdivision ordinance; and
- d. The real property for which the waiver or modification is sought contains no more than five new, adjacent lots.

Any such waiver or modification shall not apply to required drainage improvements except for curbs and gutters.

(b) All engineering calculations, including soil test results, shall be furnished to the City Engineer with required submittals. Approval by the City Engineer shall not release the developer from the requirements for a safe and functional design.

(c) The developer shall be required to furnish all other data pertaining to bridges and culverts which shall be deemed necessary by the City Engineer.

(d) The cost of all physical improvements required by the provisions of this section shall be paid by the subdivider. If the actual installation of improvements is not completed prior to the application made for final plat approval, the subdivider shall execute and file with the City Engineer an agreement and bond in an amount equal to the estimated costs (as established by the city) of such improvements, plus ten percent, guaranteeing that the required improvements will be properly and satisfactorily installed within a reasonable length of time, but, in no event, more than two years. An irrevocable letter of credit issued by a bank in a form approved by the city attorney or a deposit of funds in escrow may be accepted in lieu of bond under the same terms and conditions applicable to bonds. The bond, letter of credit or deposit may be released by the city when specific improvements covered by the bond have been completed and approved by the City Engineer as being in accordance with city standards and specifications.

(e) Upon written request by the subdivider to the City Engineer, periodic partial releases of the bond, letter of credit, escrow or other performance guarantee may be made in an accumulative amount equal to no less than 80 percent of the original amount of such bond, letter of credit, escrow or other performance guarantee. Periodic partial releases shall be based upon the percentage of facilities completed and accepted by the City Engineer. Periodic partial releases may not occur before the completion of at least 30 percent of the facilities. The City Engineer shall not be required to approve more than three periodic partial releases in any 12-month period. Within 30 days after receipt of a

written notice from the subdivider for a periodic partial release or a final complete release of any bond, escrow, letter of credit, or other performance guarantee, the City Engineer shall notify the subdivider of approval or nonapproval of such requests or of any specific defects or deficiencies in construction and suggested corrective measures. If no such notice is provided to the subdivider within the two (2) year period, the periodic partial release shall be deemed approved. No final release shall be granted until after expiration of said two (2) year period and there is an additional request in writing sent by certified mail, return receipt, to the city manager. If no action is taken within ten days from the receipt of this request, then the final release of the bond, letter of credit, escrow or other performance guarantee shall be deemed approved.

(f) Upon acceptance of improvements, the subdivider shall execute and file with the City Engineer a maintenance bond equal to ten percent of the total cost of the public improvements installed for the subdivision. The subdivider shall be responsible for all maintenance or repairs for the public improvements as required by the City Engineer for a period of one year after acceptance of such improvements.

(g) In those instances in which any of the improvements as required by this section could be more conveniently installed by the city or its Agent, the city may, in its discretion, accept payment of the total cost of such improvements in lieu of actual construction or bond as required above. Such payment will be set forth in an agreement approved by the city attorney, which agreement will set forth the conditions of payment and a time limit upon the use of such payment by the city, such time limit in no instance to exceed ten years. If such payment is not utilized by the city within the agreed time limit, it will revert to the subdivider.

(h) If a subdivider makes an advance of payments for or construction of reasonable and necessary road improvements located outside the property limits of the land owned or controlled by the subdivider, the need for which is substantially generated and reasonably required by the construction or improvement of the subdivision or development, and such advance is accepted, the city may agree to reimburse the subdivider from such funds as the city may make available for such purpose from time to time for the cost of such advance together with interest, which shall be excludable from gross income for federal income tax purposes, at a rate equal to the rate of interest on bonds most recently issued by the city on the following terms and conditions:

(1) The city shall determine or confirm that the road improvements were substantially generated and reasonably required by the construction or improvement of the subdivision or development, and shall determine or confirm the cost thereof on the basis of a study conducted by qualified traffic engineers and approved and accepted by the subdivider.

(2) The city shall prepare, or cause to be prepared, a report, accepted and approved by the subdivider indicating the governmental services required to be furnished to the subdivision or development and an estimate of the annual cost thereof for the period during which the reimbursement is to be made to the subdivider.

(3) The city may make annual reimbursements to the subdivider from funds made available for such purpose from time to time, including, but not limited to, real estate taxes assessed and collected against the land and improvements on the property included in the subdivision in amounts equal to the amount by which such real estate taxes exceed the annual cost of providing reasonable and necessary governmental services to such subdivision or development.

(i) No certificate of occupancy shall be issued for the occupancy of any structure or building to be located in such subdivision unless and until the improvements required herein which are directly necessary to the use and enjoyment of such structure have been

installed and accepted by the city, except that final roadway surface need not be applied prior to issuance of such certificate if a suitable base and interim sealing agent acceptable to the city have been laid.

(j) A subdivider or developer of land shall pay to the city the pro rata share of the cost of providing reasonable and necessary sewerage, water and drainage facilities located outside the property limits of the land owned or controlled by the subdivider or developer but necessitated or required, at least in part, by the construction or improvement of the subdivision or development, subject to the following:

(1) No such payment shall be required until such time as the city shall establish a general sewer, water and drainage improvement program for an area having related and common sewer, water and drainage conditions and within which the land owned or controlled by the subdivider or developer is located.

(2) Such share shall be limited to the proportion of such total estimated cost which the increased sewage flow, water flow and/or increased volume and velocity of stormwater runoff to be actually caused by the subdivision or development bears to total estimated volume and velocity of such sewage, water and/or runoff from the applicable area having an established general improvement plan as required by subsection (j)(1) of this section.

(3) In lieu of any such payment, the subdivider or developer shall execute and file with the City Engineer an agreement and bond with surety, satisfactory to the city attorney, equal to the estimated costs, as established by the City Engineer, of such improvements conditioned upon payment at the commencement of construction of the facilities. An irrevocable letter of credit issued by a bank in a form approved by the city attorney may also be accepted under the same terms and conditions applicable to bonds.

(4) Any payments received shall be kept in a separate account for each of the individually established improvement programs until such time as they are expended for the improvement program.

Sec. 33.1-50. Off-site drainage.

(a) New development.

(1) A building permit will be issued by the building official for proposed construction of new development only after the City Engineer has determined that the additional off-site drainage flow from such proposed construction will not be a danger or hazard to an existing off-site drainage facility or property in the proposed construction sites' drainage basin. (Off-site drainage facilities are those facilities outside the property limits of the proposed construction site necessary to carry drainage flow from construction site to a drainage basin.) New open ditches or modification of existing ditches will not be permitted in areas zoned residential unless included in the city's master drainage plan.

(2) The City Engineer will determine whether a hazard or danger exists from such additional off-site drainage flow by approved drainage computations furnished to the City Engineer by the permit applicant in accordance with the city's master drainage plan, existing field conditions and zoning required by City Council. Computations shall be based on a normal storm return period of ten years using U.S. Department of Commerce curves and utilizing applicable existing master drainage plans on file in the office of the City Engineer, or as adjusted by the city. Where reasonably necessary to protect public or private property, the City Engineer may require calculation of drainage flow and installation of improvements based on a normal storm return period of greater than five years.

(3) After the City Engineer determines no hazard or danger results from additional offsite drainage flow, the building official will issue a building permit if other requirements are met.

(4) When the City Engineer determines that a hazard or danger results from additional off-site drainage flow, and all other legal mandates are met, the building permit will be issued only after:

a. A plan is submitted by the permit applicant to provide the off-site drainage and is approved by the City Engineer, and the permit applicant agrees to construct such approved off-site drainage pursuant to the bonding or other financing procedures set out in section 33.1-49 of this Code.

b. The City Council, at its discretion, independently or in conjunction with the permit applicant, may agree to construct such approved drainage facilities; provided, that in areas zoned residential the city will construct such facilities using nonlocal funds only. (Nonlocal funds are those received by the city from federal or state grants.)

(b) *Existing systems.* All developments shall provide retention and mass detention facilities to reduce the additional drainage flow to all existing drainage systems where sufficient land exists to permit these facilities and/or where needed to permit proper utilization of existing and proposed drainage facilities.

(c) *Safe and functional design.* Approval by the City Engineer will not release the liability of the developer from the requirements of a safe and functional design.

(d) *Compliance with state law.* The city shall comply with the express terms and conditions of Code of Virginia, §§ 15.2-2241 through 15.2-2276.

Sec. 33.1-51. Minor subdivision standards.

(a) The Planning Director may certify a subdivision or resubdivision as a "minor subdivision" if he finds that:

(1) The subdivision meets the definition of "minor subdivision" set forth in article II of this chapter and existing facilities will adequately accommodate the modification;

(2) The proposal meets all requirements with respect to lot sizes and area of the zoning ordinance and of this chapter, and that the proposal will not create a violation of any of the provisions of the zoning ordinance;

(3) The proposal will not adversely affect the development of the remainder of the parcel or of any other adjoining property; and

(4) In the case of an in-fill subdivision, the provisions of section 33.1-26 are met.

(b) If the Planning Director finds that the proposed subdivision or resubdivision meets all the requirements as set forth above and elsewhere in this chapter, he shall certify the proposed plat as a "minor subdivision" and, by affixing a notation to that effect and his signature thereto, grant final subdivision approval.

(c) If the streets, drainage or utilities for the proposed minor subdivision are not fully improved as required by this chapter, the Planning Director shall require as conditions of the minor subdivision approval that:

(1) Curb, gutter, paving, sidewalks, drainage and utilities be improved to the standards for improvements currently applicable to a subdivision that is not a minor subdivision. These improvements shall be provided as required by sections 33.1-49 and 33.1-50.

(2) The City Engineer also approves the proposed plat by affixing his signature thereto. Such signature shall not be affixed until the improvements required by sections 33.1-49 and 33.1-50 are installed or a bond or other security is posted and an agreement executed and filed with the City Engineer in accordance with section 33.1-49.

(d) For the purpose of creating residential lots on existing streets, the Planning Director may modify or waive the street grading, pavement base, surface and curb and gutter requirements on an existing street constructed without such required improvements if:

- a. The city has no plans to install such improvements on the street within the next ten years;
 - b. The street is currently improved or will be improved to a standard equivalent to similar streets in the neighborhood;
 - c. After consultation with the City Engineer, a determination is made that the street will provide adequate and safe access and drainage to existing and future residents in accordance with the purposes of the subdivision ordinance; and
 - d. The real property for which the waiver or modification is sought contains no more than five new, adjacent lots.
- Any such waiver or modification shall not apply to required drainage improvements except for curbs and gutters.

Sec. 33.1-52. In-fill subdivision standards.

In order to ensure compatibility of an in-fill subdivision with existing development, lots created by an in-fill subdivision shall be comparable in lot width, area, setback and frontage orientation with existing platted lots in the surrounding neighborhood. The Planning Director shall require additional lot width, area and/or setbacks as appropriate, consistent with development on adjacent property.

Sec. 33.1-53. Location of utilities.

(a) All utilities, including, but not limited to, wires, cables, pipes, conduits and appurtenant equipment for electricity, telephone, gas, cable television or similar service, shall be placed underground; provided, that the following utilities shall be permitted above ground:

- (1) Electric transmission lines and facilities in excess of 50 kilovolts;
- (2) Equipment, including electric distribution transformers, switch gear, meter pedestals, telephone pedestals, outdoor lighting poles or standards, radio antenna and associated equipment, which is, under accepted utility practices, normally installed above ground;
- (3) Meters, service connections and similar equipment normally attached to the outside wall of the customer's premises.

(b) Whenever existing utilities are located aboveground in proposed subdivisions, they shall be removed and placed underground except where they are within ten feet of existing public street rights-of-way.

(c) Where approved by the City Engineer, with the exception of sewer laterals and water service lines, all utilities shall be placed within easements or street rights-of-way, unless otherwise required by the city.

Sec. 33.1-54. Private streets.

There shall be no private streets permitted in any subdivision except where permitted by the zoning ordinance; provided, however, private streets may be allowed in townhouse and condominium subdivisions if the private streets are approved by the commission and meet, unless specifically exempted, all other street requirements in this chapter.

Sec. 33.1-55. Street and subdivision names.

(a) Proposed streets which align with existing streets shall bear the names of the existing streets. Names of proposed streets or subdivisions shall not duplicate, irrespective of suffixes, or be similar in sound or spelling to existing street or subdivision names in the City.

(b) Street names shall be indicated on the preliminary and final plat and shall be approved by the Agent.

(c) Names of existing streets or subdivisions shall not be changed except by approval of the governing body.