

Good morning-

The state subdivision law has been around for a long time but it was most recently amended effective July 1, 2018. That amendment gave municipalities until January 1, 2021, to implement the new changes in their ordinances. Those amendments did not alter the definition of subdivision, so they do not impact whether a project is subject to the subdivision law. The next prior amendments were in 2017 and they were required to have been implemented by January 1, 2019.

The 2017 amendments deleted section 4401(G) and (H-1) and added (H-2). The statute is clear that with the exception of the grace period for implementing changes and any express authority to deviate from the state law stated in the subdivision law, municipal regulations must comply with state law.

Looking at the Town's definition of subdivision in the Subdivision Ordinance, it appears that the definition of subdivision is consistent with state law. There may be a rules for how to count divisions that is in the statute but not in the ordinance (such as gifts to a municipality are not counted as a division), but the Ordinance definition is close. The Ordinance provides that the division of a parcel of land into three or more lots within any five-year period is a subdivision. While there are some exemptions, generally a division may be accomplished by sale, lease, development, or buildings.

Turning to the Farris proposal, the plan is so construct three seasonal cottages separated by 50 feet on an 18.8-acre parcel. The cottages would use an existing road. This will result in three buildings within five years so this triggers subdivision review as a minor subdivision under the Subdivision Ordinance and state law.

One of the criteria in the Subdivision Ordinance is that the lots comply with the Land Use Ordinance. Section 7(F) of the Land Use ordinance requires lots divided after 1988 to have 30,000 square feet per principle structure and 150 feet frontage on a road. This provision prevents the three cottages from being independent lots for purposes of zoning. However, the Subdivision Ordinance also allows cluster subdivisions which allows the layout and dimensional requirements of the Land Use Ordinance to be altered without restriction, except for building height, provided the net residential density complies with the zoning requirements. Given the size of the parcel, it appears that the proposed development will qualify as a cluster subdivision.

I am not addressing the question of whether the three cottages can operate using one well and one septic system under the state regulations for septic systems. The Subdivision Ordinance addresses those requirements in 10.7(C). They can from a subdivision and zoning viewpoint provided there is a declaration of rights to the water and sewer for each cottage (normally it would be an easement but there cannot be an easement if the whole parcel is under common ownership).

Please let me know if you have any additional questions.

Thank you,
John

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