

BOARD OF SUPERVISORS

W. CANOVA PETERSON, CHAIR
MECHANICSVILLE DISTRICT

SUSAN P. DIBBLE, VICE-CHAIR
SOUTH ANNA DISTRICT

SEAN M. DAVIS
HENRY DISTRICT

F. MICHAEL HERZBERG IV
COLD HARBOR DISTRICT

S. BRENT HELMICK
CHICKAHOMINY DISTRICT

J. ROBERT MONOLO
BEAVERDAM DISTRICT

FAYE O. PRICHARD
ASHLAND DISTRICT

JOHN A. BUDESKY
COUNTY ADMINISTRATOR



HANOVER COUNTY

ESTABLISHED IN 1720

WWW.HANOVERCOUNTY.GOV

PLANNING DEPARTMENT

JO ANN M. HUNTER, AICP
SENIOR DIRECTOR OF PLANNING &
COMMUNITY DEVELOPMENT

MARY B. PENNOCK
DEPUTY DIRECTOR OF PLANNING

ANDREW J. POMPEI
DEPUTY DIRECTOR OF PLANNING

GRETCHEN W. BIERNOT
CURRENT PLANNING MANAGER

DONNA S. BOWEN
PRINCIPAL PLANNER

C. JASON HAZELWOOD
CODE COMPLIANCE SUPERVISOR

ERIN M. BABER
BUSINESS MANAGER

P. O. BOX 470
HANOVER, VIRGINIA 23069
PHONE 804-365-6171

TO: Hanover County Board of Supervisors

FROM: Mary B. Pennock *MBP*
Deputy Director of Planning

DATE: October 26, 2023

RE: **Ordinance 23-18: Homeowners' Association Requirements for Private Road Subdivisions**

Background

In 2018, the Board of Supervisors approved an amendment to the Subdivision Ordinance which required the establishment of a homeowners' association (HOA) for all private road subdivisions in the A-1 and AR-6 Districts. The purpose of the HOA was to provide a mechanism for continued maintenance of private roads. These provisions were incorporated as part of a larger Subdivision Ordinance amendment to align the County's private road standards for subdivisions with the State Fire Prevention Code, Appendix D, which was also adopted by the Board at that time.

The Subdivision Ordinance requires that all private road subdivisions, regardless of the number of lots, establish an HOA [Sec. 25-56(b)]. An applicant for a 4-lot subdivision with private roads recently inquired whether an HOA should be required for smaller subdivisions, and whether a road maintenance agreement could be provided in lieu of establishing an HOA. While staff agrees there is merit to this proposal, the current Subdivision Ordinance language does not permit a road maintenance agreement in lieu of an HOA.

Staff proposes an amendment to the Subdivision Ordinance which would (1) require the establishment of an HOA for private road subdivisions with 5 or more lots (which are subject to a specific construction standard in the Subdivision Ordinance), and (2) require a road maintenance agreement for private road subdivisions with not more than 4 lots.

Proposed Ordinance

Ordinance 23-18 revises Section 25-56 of the Subdivision Ordinance to require the use of a private road maintenance agreement in lieu of an HOA when the private road subdivision serves no more than 4 lots. The Subdivision Ordinance does not impose a construction standard for subdivisions of fewer than 5 lots, so the standard of road construction and maintenance is a private one. In addition, the use of a road maintenance agreement would relieve the property owners in subdivisions containing not more than 4 lots of the administrative burden of maintaining an HOA in perpetuity, while ensuring a mechanism for private property owners to share road maintenance responsibilities.

Subdivisions of 5-31 lots would continue to require an HOA for private road maintenance.

This ordinance would not apply to projects which have already been recorded.

The ordinance was presented to the Community Development Committee on August 22, 2023.

Staff Recommendation

Staff is recommending **APPROVAL** of this request.

Planning Commission Recommendation

At its meeting of October 19, 2023, the Planning Commission held a public hearing regarding this request. During the public hearing, no members of the public spoke.

After closing the public hearing and discussion, the Hanover County Planning Commission, on a motion by Mr. Whittaker, seconded by Mr. Leadbetter, voted to recommend **APPROVAL** (Vote: 7-0) of the request.

CLEAN

DATE: 11-08-2023

ORDINANCE 23-18

AN ORDINANCE TO AMEND THE HANOVER COUNTY CODE, CHAPTER 25, SUBDIVISION ORDINANCE, SECTION 25-56 TO ABOLISH THE REQUIREMENT OF ESTABLISHING AN OWNERS' ASSOCIATION FOR LOTS SERVED BY A PRIVATE ROAD OR ACCESS DRIVE WHEN NO MORE THAN 4 LOTS ARE BEING CREATED

WHEREAS the Hanover County Subdivision Ordinance requires that an owners' association be established prior to or contemporaneous with final subdivision approval for any lot served by a private street or private access drive; and

WHEREAS the Board of Supervisors has determined that this requirement should not apply to subdivisions when no more than four lots are being created; and

WHEREAS the Board of Supervisors finds that the public necessity, convenience, general welfare and good zoning practice require that the Subdivision Ordinance be amended in accordance with these findings;

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of Hanover County:

1. That the Hanover County Code, Chapter 25, Subdivision Ordinance, Article III, Block, Lot, and Street Design Requirements, Division 5, Standards Applicable to Private Roads and Access Drives, Section 25-56, Restrictive covenants required when private streets or access drives are used, shall be amended to read as follows:

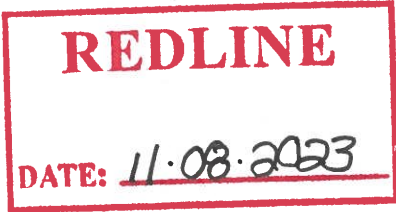
Sec. 25-56. Restrictive covenants required when private streets or access drives are used.

- (a) Any subdivision containing private streets or private access drives shall, in the deed to each tract or lot, carry a restrictive covenant to the effect that
 - (1) Certain roads in the subdivision are private in nature and shall not be maintained by VDOT or other public road agency;
 - (2) The maintenance and improvement thereof shall be the obligation of the owners' association created in accordance with subsection (b) or the owners under the maintenance agreement required by subsection (c); and
 - (3) Such private roads shall not be taken into the state secondary system, unless and until the abutting landowners or homeowners' association shall have constructed and dedicated the private roads in accordance with the latest VDOT specifications, and thereafter the Board of Supervisors shall have

recommended that said roads be taken into the state secondary system of highways.

- (b) In subdivisions of five (5) or more lots, prior to or contemporaneous with final subdivision approval for any lot served by the private street or private access drive, the subdivider shall record documents which create an owners' association and require that the association maintain the private road, with mandatory membership of all lot owners and authority for the association to assess fees and impose liens on members' property for the cost of road maintenance. If the private street or private access drive created by the subdivision is an extension of an existing street or access drive, the owners' association shall include the owners of all lots served by the street or access drive.
- (c) When no more than four (4) lots served by a private street or private access drive are being created through subdivision, the maintenance and improvement of the private road that serves the lots shall be the mutual obligation of the landowners in the subdivision. Prior to or contemporaneous with final subdivision approval for any lot served by the private street or private access drive, the subdivider shall record a maintenance agreement setting forth the obligations of all lot owners to maintain the private road. The maintenance agreement shall run with the land and be binding upon all future lot owners and shall bind owners of any additional lot created from the original lots if the use of the private road is expanded to include ingress and egress for the benefit of an additional lot, as long as the total number of lots is no more than four (4). If the use of the private road is expanded to include ingress and egress for the benefit of an additional lot which results in a total of five (5) or more lots, subsection (b) applies, unless it is a family division.

2. That this ordinance shall be effective upon the date of adoption.



ORDINANCE 23-18

AN ORDINANCE TO AMEND THE HANOVER COUNTY CODE, CHAPTER 25, SUBDIVISION ORDINANCE, SECTION 25-56 TO ABOLISH THE REQUIREMENT OF ESTABLISHING AN OWNERS' ASSOCIATION FOR LOTS SERVED BY A PRIVATE ROAD OR ACCESS DRIVE WHEN NO MORE THAN 4 LOTS ARE BEING CREATED

WHEREAS the Hanover County Subdivision Ordinance requires that an owners' association be established prior to or contemporaneous with final subdivision approval for any lot served by a private street or private access drive; and

WHEREAS the Board of Supervisors has determined that this requirement should not apply to subdivisions when no more than four lots are being created; and

WHEREAS the Board of Supervisors finds that the public necessity, convenience, general welfare and good zoning practice require that the Subdivision Ordinance be amended in accordance with these findings;

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of Hanover County:

- 1. That the Hanover County Code, Chapter 25, Subdivision Ordinance, Article III, Block, Lot, and Street Design Requirements, Division 5, Standards Applicable to Private Roads and Access Drives, Section 25-56, Restrictive covenants required when private streets or access drives are used, shall be amended to read as follows:

Sec. 25-56. Restrictive covenants required when private streets or access drives are used.

- (a) Any subdivision containing private streets or private access drives shall, in the deed to each tract or lot, carry a restrictive covenant to the effect that
 - (1) Certain roads in the subdivision are private in nature and shall not be maintained by VDOT or other public road agency;
 - (2) The maintenance and improvement thereof shall be the obligation of the owners' association created in accordance with subsection (b) or the owners under the maintenance agreement required by subsection (c); and
 - (3) Such private roads shall not be taken into the state secondary system, unless and until the abutting landowners or homeowners' association shall have constructed and dedicated the private roads in accordance with the latest VDOT specifications, and thereafter the Board of Supervisors shall have

recommended that said roads be taken into the state secondary system of highways.

- (b) In subdivisions of five (5) or more lots, Pprior to or contemporaneous with final subdivision approval for any lot served by the private street or private access drive, the subdivider shall record documents which create an owners' association and require that the association maintain the private road, with mandatory membership of all lot owners and authority for the association to assess fees and impose liens on members' property for the cost of road maintenance. If the private street or private access drive created by the subdivision is an extension of an existing street or access drive, the owners' association shall include the owners of all lots served by the street or access drive.
- (c) When no more than four (4) lots served by a private street or private access drive are being created through subdivision, the maintenance and improvement of the private road that serves the lots shall be the mutual obligation of the landowners in the subdivision. Prior to or contemporaneous with final subdivision approval for any lot served by the private street or private access drive, the subdivider shall record a maintenance agreement setting forth the obligations of all lot owners to maintain the private road. The maintenance agreement shall run with the land and be binding upon all future lot owners and shall bind owners of any additional lot created from the original lots if the use of the private road is expanded to include ingress and egress for the benefit of an additional lot, as long as the total number of lots is no more than four (4). If the use of the private road is expanded to include ingress and egress for the benefit of an additional lot which results in a total of five (5) or more lots, subsection (b) applies, unless it is a family division.

2. That this ordinance shall be effective upon the date of adoption.