

ORDINANCE NO. 22-14()

AN ORDINANCE TO AMEND CHAPTER 14 SUBDIVISION OF LAND, ARTICLE II, ADMINISTRATION AND PROCEDURE AND ARTICLE III, SUBDIVISION PLAT REQUIREMENTS AND DOCUMENTS TO BE SUBMITTED, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 14, Subdivision of Land, Article II, Administration and Procedure and Article III, Subdivision Plat Requirements and Documents to be Submitted, are hereby amended and reordained as follows:

By Amending:

- Sec. 14-234 Procedure to authorize private streets and related matters
- Sec. 14-235 Effect of approval of private street
- Sec. 14-303 Contents of final plat

By Repealing:

- Sec. 14-317 Instrument evidencing maintenance of certain improvements

CHAPTER 14. SUBDIVISION OF LAND

ARTICLE II. ADMINISTRATION AND PROCEDURE

Sec. 14-234 - Procedure to authorize private street and related matters.

Requests under sections [14-232](#) and [14-233](#) shall be submitted, processed and acted upon as follows:

A. A subdivider shall submit a request in writing to the agent at the time of the submittal of the preliminary plat or may, within the development areas, submit the written request prior to submittal of a preliminary plat or with an application to rezone the land.

1. The request shall state the reasons and justifications for the request, and shall particularly address one or more applicable bases for granting the request as identified in sections [14-232](#) or [14-233](#), and each of the five findings identified in paragraph (C) required to be made.

(a) The request shall include: (i) a map of the subdivision having contour intervals of not greater than 20 feet showing the horizontal alignment; (ii) field-run profiles and typical cross-sections of the proposed streets; (iii) the maximum number of lots to be served by each private street; and (iv) documentation explaining how the perpetual maintenance of the private street including, within the development areas, the curb, curb and gutter, sidewalks, and planting strip landscaping will be funded, and identifying the person or entity that will be responsible for maintaining the improvements. The county engineer may waive the requirement for the field-run profile in the case of an existing street or where deemed appropriate due to topography, or if the topographic map is based on aerial or field collected data with a contour interval accuracy of five vertical feet or better. A request under [section 14-232\(A\)\(1\)](#) shall include earthwork computations demonstrating significant degradation.

(b) If the request is made prior to submittal of a preliminary plat or with an application to rezone the land, it also shall include: (i) a justification for the request; (ii) a vicinity map showing a larger street network at a scale no smaller than one inch equals 600 feet; (iii) a conceptual plan at a scale no smaller than one inch equals 200 feet showing surveyed boundaries of the property; (iv) topography of the property at five-foot intervals for the property being subdivided and on abutting lands to a distance of 500 feet from the boundary line or a lesser distance determined to be sufficient by the agent; (v) the locations of streams, stream buffers, steep slopes, floodplains, known wetlands; (vi) the proposed layout of streets and lots, unit types, uses, and location of parking, as applicable; (vii) proposed private street profiles; and (viii) the maximum number of lots to be served.

2. The agent shall forward the map to the county engineer for review and comment. When the agent has received comments on the map from the county engineer, the agent shall then consider the request. The agent shall then proceed as follows:

(a) If the request for a private street is made under sections [14-232\(A\)](#) or [14-233\(A\)](#), he may recommend approval, approval with conditions, or denial. A recommendation of approval or conditional approval shall be accompanied by a statement by the agent as to the public purpose served by the recommendation, particularly in regard to the purpose and intent of this chapter, the zoning ordinance, and the comprehensive plan; or

(b) If the request for a private street is made under sections [14-232\(B\)](#) or [14-233\(B\)](#), he may approve, approve with conditions, or deny the request.

3. The commission shall not consider a request until it has received and considered the recommendation of the agent.

B. In considering a request for approval of one or more private streets, the agent and commission shall consider that: (i) private streets are intended to be the exception to public streets; and (ii) absent compelling circumstances, private streets should not cross over dams or bridges or involve other infrastructure that would be reasonably prohibitive to maintain, should not serve as the primary or sole interconnection between the subdivision and abutting property, or serve through traffic by being the connector between two or more public streets.

C. The agent and the commission may authorize one or more private streets in a subdivision if it finds that one or more of the circumstances described in sections [14-232](#) or [14-233](#) exist and it determines that:

1. The private street will be adequate to carry the traffic volume which may be reasonably expected to be generated by the subdivision.

2. The comprehensive plan does not provide for a public street in the approximate location of the proposed private street;

3. The fee of the private street will be owned by the owner of each lot abutting the right-of-way thereof or by an association composed of the owners of all lots in the subdivision, subject in either case to any easement for the benefit of all lots served by the street;

4. Except where required by the commission to serve a specific public purpose, the private street will not serve through traffic nor intersect the state highway system in more than one location; and

5. If applicable, the private street has been approved in accordance with [section 30.3](#), flood hazard overlay district, of the zoning ordinance and other applicable law.

D. In considering a request for a private street, the commission may waive the requirements of sections [14-404](#) and/or [14-412](#) as provided therein, provided that all of the applicable requirements of sections [14-232](#), [14-233](#) and this section are satisfied.

E. In approving a request for a private street, the commission or the agent may impose any condition pertaining to the private street it deems reasonable and necessary, including any condition pertaining to the funding or responsibility for maintaining the private street, including the curb, curb and gutter, sidewalks, and planting strip landscaping, ~~to be addressed in the maintenance instrument required by [section 14-317](#).~~

Sec. 14-235 - Effect of approval of private street.

If the agent or the commission approves one or more private streets in a subdivision, the following requirements shall apply:

~~A. The subdivider shall submit a maintenance agreement as required by [section 14-317](#).~~

~~AB.~~ The final plat shall must contain the statement required by [section 14-303\(N\)](#).

~~BC.~~ The subdivider shall must provide surety for the completion of the private street as required by [section 14-435](#) if the private street will not be completed prior to approval of the final plat, unless the private street was authorized under sections [14-232\(B\)\(1\)](#), [14-232\(B\)\(2\)](#), or [14-233\(B\)\(2\)](#).

ARTICLE III. SUBDIVISION PLAT REQUIREMENTS AND DOCUMENTS TO BE SUBMITTED

Sec. 14-303 - Contents of final plat.

In addition to containing all of the information required by [section 14-302](#), except for the information required by [section 14-302\(A\)\(12\)](#), a final plat shall must contain the following information:

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~~N. Statement pertaining to private streets. If the subdivision will contain one or more private streets, the following statement: "The streets in this subdivision may not meet the standards for acceptance into the secondary system of state highways and will not be maintained by the Virginia Department of Transportation or the County of Albemarle."~~ Statement pertaining to private improvements. If the subdivision will contain one or more private improvements, as defined in section 14-106, the following statement: "Unless specifically denoted as public, the streets and other required improvements in this subdivision are private in nature and will not be maintained by either the Virginia Department of Transportation or any other public agency. The maintenance thereof is the mutual obligation of the affected lot owners. Failure to maintain the improvements in substantially the same condition as originally approved by the County may constitute a violation of County ordinance(s)."

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14-317 - ~~Instrument evidencing maintenance of certain improvements.~~ [Repealed]

~~If the subdivision will contain one or more improvements that are not to be maintained by the county or any authority or other public agency, the subdivider shall submit with the final plat an instrument assuring the perpetual maintenance of the improvement, as follows:~~

~~A. The instrument shall, at a minimum:~~

~~1. Identify the plat to which the instrument applies; if the plat has been recorded, the identification shall include a deed book and page number.~~

~~2. State that the improvement will be maintained in perpetuity.~~

~~3. State that the improvement will be maintained to a standard that, at a minimum, ensures that it will remain in substantially the condition it was in when approved by the county if the improvement was installed prior to the agent signing the plat or the condition it is to be in when the surety was released as provided in [section 14-436](#); for a private street, shared driveway, or alley, the instrument also shall state substantially as follows: "The travelway shall at all times be maintained so that it is safe and convenient for passenger automobiles and emergency vehicles at all times except in severe temporary weather conditions."~~

~~4. If the instrument pertains to the maintenance of one or more private streets, alleys or shared driveways, it shall define "maintenance" by stating substantially as follows: "For purposes of this instrument, 'maintenance' includes the maintenance of the private streets or alleys, and all curbs, curbs and gutters, drainage facilities, utilities, dams, bridges and other private street improvements, and the prompt removal of snow, water, debris, or any other obstruction so as to keep the private street or alley reasonably open for usage by all vehicles, including emergency services vehicles."~~

~~5. Describe the condition of the improvement when it was approved by the county if the improvement was installed prior to the agent signing the plat or the condition it is to be in when the surety was released as provided in [section 14-436](#).~~

~~6. Identify the timing or conditions warranting maintenance of the improvement.~~

~~7. State a means to collect funds necessary for the cost of maintaining the improvement; at a minimum, the means stated shall include the right of any landowner subject to the instrument to record a lien against a non-contributing landowner, to bring an action at law to collect the funds, or both.~~

~~8. Describe how maintenance costs will be prorated among the landowners subject to the instrument (e.g., "equally," or on a percentage basis); if any lot within the subdivision may be further divided, the instrument shall also describe how maintenance costs will be prorated among the landowners after division.~~

~~9. State substantially as follows: "No public agency, including the Virginia Department of Transportation and the County of Albemarle, Virginia, will be responsible for maintaining any improvement identified herein."~~

~~B. The instrument shall be subject to review and approval by the county attorney and shall be in a form and style so that it may be recorded in the office of the clerk of the circuit court of the county. The agent may require that the instrument be on a form prepared by the county attorney.~~

~~C. For purposes of this section, the term "to maintain," or any derivation of that verb, includes the maintenance, replacement, reconstruction and correction of defects or damage.~~

~~D. Nothing in this section shall affect the rights of the county reserved under [section 14-440](#).~~

I, Claudette K. Borgersen, do hereby certify that the foregoing writing is a true, correct copy of an Ordinance duly adopted by the Board of Supervisors of Albemarle County, Virginia, by a vote of _____ to _____, as recorded below, at a regular meeting held on _____.

Clerk, Board of County Supervisors

	Aye	Nay
Mr. Andrews	_____	_____
Mr. Gallaway	_____	_____
Ms. LaPisto-Kirtley	_____	_____
Ms. Mallek	_____	_____
Ms. McKeel	_____	_____
Ms. Price	_____	_____