COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND

2007 Legislative Session

Bill No. CB-45-2007

Chapter No. 35

Proposed and Presented by Council Member Dernoga

Introduced by Council Member Dernoga

Co-Sponsors

Date of Introduction October 9, 2007

SUBDIVISION BILL

AN ACT concerning

Private Roads and Easements

For the purpose of permitting the Planning Board to approve private roads, easements, and alleys in MARC Planned Communities developed in the I-1, I-2 or I-3 Zones in accordance with Section 27-475.06.05 under certain circumstances.

BY repealing and reenacting with amendments:

SUBTITLE 24. SUBDIVISIONS.

Section 24-128(b),

The Prince George's County Code

(2003 Edition, 2006 Supplement).

SECTION 1. BE IT ENACTED by the County Council of Prince George's County, Maryland, that Section 24-128(b) of the Prince George's County Code be and the same is hereby repealed and reenacted with the following amendments:

SUBTITLE 24. SUBDIVISIONS.

DIVISION 4. REQUIREMENTS: TRANSPORTATION AND CIRCULATION.

Sec. 24-128. Private roads and easements.

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(b) The Planning Board may approve plats and plans of development containing private roads, rights-of-way, alleys, and/or easements under the following conditions:

(1) In the O-S, R-A, R-E, and R-R Zones, a private right-of-way easement may be deemed adequate by the Planning Board if no more than four (4) lots are to be served by the easement and if shown to be in conformance with the following criteria:

(A) Such easement shall have a minimum right-of-way width of twenty-two (22) feet connecting the lots to a public road;

(B) All lots served by such easement shall have a minimum net lot area of two (2) acres, as provided in Section 24-129(a) of this Subtitle; and

(C) The use of such lots shall be restricted to one-family dwellings or agricultural purposes.

(2) In any residential zone, a private right-of-way easement with a minimum right-of-way width of twenty-two (22) feet may be deemed adequate by the Planning Board to connect any publicly-owned and operated park to a public road.

(3) In any O-S, R-A, R-E, or R-R Zone, upon the submission by the subdivider of covenants running with the land, which the Planning Board finds meet the purposes and intent of this paragraph, and upon a finding that the subdivision will not adversely affect the development of a public road system in the area of the subject property, the Planning Board may approve the subdivision with private rural roads provided that such private rural roads are designated as common areas as herein defined, and subject to the following conditions:

(A) The covenants shall be filed in the land records at time of filing the final plat and a certification shall be included on the record plat to the effect that the subdivision is subject to covenants.

(B) A resubdivision increasing the number of lots shall not be permitted unless there is a resubdivision of the entire tract.

(C) A maximum of eight (8) lots, two (2) acres or larger, shall be permitted in a subdivision using private rural roads and the number of lots five (5) acres or larger shall be unlimited, provided that each lot adjoining a private rural road shall be used for one-family dwelling or agricultural purposes.

(D) A private rural road shall not connect to more than one (1) public road and shall be constructed in accordance with the private rural road standards, pursuant to Subtitle 23 of this Code. No final plat of subdivision shall be approved without completion of the road or

the posting of a completion bond with the Department of Public Works and Transportation to assure completion of the road prior to the issuance of any use and occupancy permit.

(4) In the R-T Zone, and in the R-30, R-30C, R-18, and R-18C Zones, when land is developed in conformance with the requirements of the R-T Zone, the Planning Board may approve the subdivision with private roads, pursuant to the provisions of Section 27-433 of the Zoning Ordinance.

(5) In the R-35 Zone, the Planning Board may approve the subdivision with private rights-of-way, pursuant to the provisions of Section 27-431 of the Zoning Ordinance.

(6) Private roads may be deemed adequate to serve a recreational community development provided for by the Zoning Ordinance, provided that:

(A) Such private roads shall be conveyed to a homes association and provisions for maintenance charges shall be made; and

(B) Such private roads shall be improved to the standards set forth in Section 23-121(b) of Subtitle 23 of this Code.

(7) In Comprehensive Design and Mixed Use Zones:

(A) For land in the V-L, V-M, R-L, R-S, R-M, R-U, M-U-I, L-A-C, M-A-C, M-X-C, M-U-TC, and M-X-T Zones, the Planning Board may approve a subdivision (and all attendant plans of development) with private roads to serve attached single-family dwellings, two-family dwellings, and three-family dwellings, but not single-family detached or multifamily dwellings, in accordance with the requirements of Subsections (e) and (f) of Section 27-433 of the Zoning Ordinance, except as hereinafter provided. In all of the above zones, and in the R-R Zone when developed as a cluster subdivision, the Planning Board may approve a subdivision with alleys to serve any permitted use, provided the lot has frontage on and pedestrian access to a public right-of-way. The District Council may disapprove the inclusion of alleys during the consideration of the detailed site plan for a cluster subdivision. For the purposes of this Section, an "alley" shall mean a road providing vehicular access to the rear or side of abutting lots, and which is not intended for general traffic circulation.

(i) The pavement width of private roads may be reduced to not less than a minimum of twenty-two (22) feet when it is determined that the provision of the minimum width is consistent with a safe, efficient, hierarchical street system for a development.

(ii) The pavement width of private alleys shall be not less than eighteen (18) feet when it is determined that the provision of the minimum width is consistent with a safe, efficient, vehicular access to individual lots. Since alleys only provide vehicular access to lots with frontage on a public street, alleys shall not be required to be improved with street trees or curb and gutter, unless a drainage problem has been identified by the Department of Environmental Resources or the Department of Public Works and Transportation.

(B) Notwithstanding the provisions of subparagraph (A), above, a use and occupancy permit may be issued for a dwelling of any type on a lot in the R-S, R-M, R-U, L-A-C, or M-A-C Zone that is served by a private road, right-of-way, or easement (shown on a record plat) which does not meet the requirements of Subsection (a), above, provided that a building permit for such dwelling was issued prior to January 1, 1985, and further provided that the use of such lot shall be restricted to residential purposes, and development complies with all other applicable requirements of this Code.

(C) Notwithstanding the provisions of subparagraphs (A) and (B), above, the Planning Board may approve subdivision plats and Specific Design Plans, and building and use and occupancy permits may be issued, for one-family detached dwellings on lots in the R-S Zone that are served by a private access road shown on a Comprehensive Design Plan approved by the Planning Board prior to January 1, 1985, provided that:

(i) Development shall comply with all other applicable requirements of this Code;

(ii) Covenants shall be recorded among the Land Records of Prince George's County, Maryland, stating that the subject property is to be developed for one-family detached dwellings, only, and that the homeowners' association is responsible for the maintenance of the private roads, and for accessibility of the private roads to emergency equipment;

(iii) Prior to recordation, the developer shall submit a copy of said covenants to the Office of Law, for the County Attorney's review and approval of the conformity of the covenants with the requirements of this Section;

(iv) The requirements of Section 11-276(d) of the Prince George's County Code shall be met by having the Fire Chief (or his designee) approve the private roads; and

(v) The private roads to be constructed shall, at a minimum, consist of six (6) inches of bank run gravel and two (2) inches of bituminous concrete, to a width of at least twenty (20) feet.

(8) Within a Transit District Overlay (T-D-O) or Development District Overlay (DDO) Zone, the Planning Board may approve a subdivision with private rights-of-way, easements, alleys or roads.

(9) Where direct vehicular access to an individual lot fronting on a public street should be denied due to a potentially hazardous or dangerous traffic situation, a private easement may be approved in accordance with the driveway standards in Part 11 of Subtitle 27, in order to provide vehicular access, when deemed appropriate by the Planning Board.

(10) In any zone where development is pursuant to the requirements for opportunity housing as defined in Subtitle 27, the Planning Board may approve a subdivision with vehicular access via a private easement. This easement shall be at least sixty (60) feet in width and established for public ingress and egress.

(11) In the O-S, R-A, and R-E Zones, the Planning Board may approve the subdivision with private rights-of-way, provided that:

(A) The private roads shall have a minimum pavement width equal to the standard roadway width for secondary residential streets or primary residential streets, as appropriate, and shall be constructed pursuant to the Department of Public Works and Transportation specifications and standards;

(B) Covenants shall be recorded among the Land Records of Prince George's County stating that a homeowners' association is responsible for maintenance of the private roads and for accessibility of the private roads to emergency equipment; and

(C) The accessibility of the private roads to emergency equipment shall be ensured by having the Fire Chief (or designee) approve the private roads.

(12) Private roads provided for by this Subsection shall have a public utility easement contiguous to the right-of-way. Said easement shall be at least ten (10) feet in width, and shall be adjacent to either right-of-way line.

(13) Notwithstanding any provision of this Code to the contrary, the Planning Board may approve a system of public roads, private roads, rights-of-way, and/or easements for a subdivision, with land in any Residential Zone and/or the R-M Zone, provided a portion of the

land is zoned M-X-T and all of the land is the subject of the same approved Conceptual Site Plan. In such cases, the applicant shall present the Planning Board with sufficient assurances regarding the perpetual maintenance of the nonpublic roads. Prior to action by the Planning Board, the Department of Public Works and Transportation shall approve the conceptual design and widths of the nonpublic roads and conceptual connections to public roads.

(14) For an integrated development which shall contain either land in each of the R-A, L-A-C, and R-L Zones which is a planned golf course community, or land in the M-X-C Zone, the Planning Board may approve a subdivision that includes single-family detached or single-family attached dwellings with private roads, and public utility easements for water and sewer, natural gas, electric, and telephone service and private easements for all other public utilities in accordance with the following requirements:

(A) The preliminary plan for the subject property shall include a statement explaining why private roads or rights-of-way and private easements for public utilities other than water and sewer, natural gas, electric, and telephone, notwithstanding the restrictions of Section 24-128(b)(12), will be used. The applicant shall demonstrate that dedicating roads or rights-of-way to public use in the subdivision is impractical or unnecessary, and that using private access is consistent with sound planning for the development.

(B) Department of Public Works and Transportation shall review and comment and the Planning Board shall find that the proposed access by private roads or rights-of-way will be adequate to serve the lots in the subdivision and that they are consistent with a safe, efficient, hierarchical street system for the development.

(C) Covenants approved as to form and sufficiency by the Planning Board's attorney and the County Attorney shall be recorded among the Land Records of Prince George's County, Maryland, stating that the subject property is to be developed with private roads or rights-of-way, and that the property's homeowners' association, property owners, or tenants are responsible for the maintenance of all private roads or rights-of-way including appropriate capital reserve funds, and for the accessibility to emergency vehicles of all lots on the property. The capital reserve funds shall ensure maintenance as well as resurfacing of the private roads and associated improvements such as, but not limited to, storm drainage, street lights, and street trees normally associated with public roads.

(D) The requirements of Section 11-276 of the Prince George's County Code shall be met by having the Fire Chief or his designee approve the private roads or rights-of-way, notwithstanding Section 11-276(b) and Section 11-276(f) for one- and two-family detached dwellings. For all others, the requirements of Section 11-276 shall apply.

(E) Development shall comply with all other applicable requirements of the Code. Private roads shall be bonded, permitted, and inspected by the Department of Public Works and Transportation pursuant to Section 23-142(b) of the Prince George's County Code and shall include public storm drain easements. Private streets for townhouses shall be constructed in compliance with Section 27-433(e) of the Code or as determined by the Department of Public Works and Transportation. All private roadways serving more than four (4) lots or dwelling units shall be constructed to remain passable during a 100-year flood event pursuant to Section 23-136(a)(4)(D) of the Prince George's County Code.

(F) If property in the M-X-C Zone is the subject of a recorded final plat of subdivision with public roads, upon satisfying the above criteria, the owner may vacate the public roads and replat the roads pursuant to the provisions of Section 24-108 to create parcels to be conveyed to a homeowners' association.

(15) For Use as Part of an Integrated Shopping Center:

(A) For land in the C-S-C, M-A-C, M-X-C, or M-X-T Zones, the Planning Board may approve a subdivision with a private right-of-way or easement, provided that:

(i) Such right-of-way or easement shall have a minimum right-of-way width of twenty-two (22) feet connecting the lots to a public road;

(ii) Such authorization shall be based on a written finding that the private right-of-way or easement is adequate to serve the extent of the development proposed and shall not result in any adverse impact on the access and use of other lots or parcels within the Integrated Shopping Center; and

(iii) The development shall comply with all other applicable requirements of this Code.

(B) Approval of the right-of-way or easement per this subsection shall be deemed the creation of a driveway in accordance with Part 11 of Subtitle 27.

(16) Within a MARC Planned Community developed in accordance with Section 27-475.06.05, the Planning Board may approve a subdivision with private roads, rights-of-way, easements or alleys provided that:

(A) The pavement widths of private roads may be reduced to not less than a minimum of twenty-two feet (22') in the case of two-way traffic, and eleven feet (11') in the case of one-way traffic, when it is determined that the provision of the minimum width is consistent with a safe, efficient, hierarchical street system for a development. In either case, parallel parking, a minimum of eight feet (8') wide, may be added to one or both sides of the drive lanes;

(B) The pavement width of private alleys shall be not less than eighteen (18) feet when it is determined that the provision of the minimum width is consistent with safe, efficient, vehicular access to individual lots. Since alleys only provide vehicular access to lots with frontage on a public street, alleys shall not be required to be improved with street trees or curb and gutter, unless a drainage problem has been identified by the Department of Environmental Resources or the Department of Public Works and Transportation; and

(C) The Department of Public Works and Transportation shall review and comment on all proposed private roads, and the Planning Board shall find that the proposed access by private roads or rights-of-way will be adequate to serve the lots in the subdivision and that they are consistent with a safe, efficient, hierarchical street system for the development.

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SECTION 2. BE IT FURTHER ENACTED that this Act shall take effect thirty (30) calendar days after it becomes law.

Adopted this 20th day of November, 2007.

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND

BY: _____
Camille A. Exum
Chair

ATTEST:

_____
Redis C. Floyd
Clerk of the Council

APPROVED:

DATE: _____ BY: _____
Jack B. Johnson
County Executive

KEY:
Underscoring indicates language added to existing law.
[Brackets] indicate language deleted from existing law.
Asterisks *** indicate intervening existing Code provisions that remain unchanged.