

Section 101-2-2. - Minimum requirements.

The following shall be considered desirable minimum requirements and may be varied or waived only in specific cases by the County Executive or, only in the case of specific requests to waive the public street frontage requirement, by the Board of Supervisors; such variance or waiver may be granted with or without conditions only upon a finding, after consideration of a recommendation from the Director of Land Development Services subsequent to the notice provisions contained in Paragraph 101-2-2(19) herein, or in the case of a specific request to waive the public street frontage requirement, after notice of the public hearings has been sent as provided below, that the waiver or variance of any minimum requirement will not adversely affect adequacy of provisions for those items set forth in Section 101-2-2; provided however, that lots in the R-A, R-P, R-C, or R-E Districts which were created on private streets shall be ineligible for a waiver of the requirement that all parcels shall front on dedicated recorded public streets for any subsequent divisions or redivisions under the Subdivision Ordinance. In the case of a specific request to waive the public street frontage requirement, the Board of Supervisors may grant such a waiver provided the private street which provides access to the application property has been constructed and recorded among the Fairfax County land records on or before June 28, 1993 and provided further that such waiver is in conformance with the applicable recommendations of the Comprehensive Plan. A lot shall not be eligible for a waiver of public street frontage requirements unless:

1. The requirements of the Subdivision Ordinance pose an unusual hardship not generally shared by other landowners, and
2. The waiver will result in a lot or lots that will be harmonious with and will not adversely affect neighboring properties.

A waiver of public street frontage requirements shall allow no more than one additional lot to be created. The waiver shall be recorded in the land records and shall state that further division of the property by waiver of the public street frontage requirement is precluded.

A waiver of public street frontage requirements may be granted by the Board of Supervisors only following a public hearing before the Planning Commission and the Board of Supervisors and after comment by relevant public safety, land use, and transportation agencies. Notice of such public hearings shall consist of certified letters, return receipt requested, postmarked at least ten working days prior to the Planning Commission public hearing, sent by the applicant to all owners of property abutting and immediately across the street from the parcel to be subdivided and which notice shall advise the recipient of the dates, times and location of the public hearings. Such notice shall also be sent by the applicant to all owners of property on the private street ("affected owners"), civic associations contiguous to affected owners and on file with Land Development Services, and the appropriate district council as designated by the Department. The Planning Commission will provide its recommendation on the proposed waiver to the Board of Supervisors within 60 days of the public hearing before the Planning Commission unless that time limit is waived by the Board of Supervisors.

An application for a waiver or variance shall be deemed to be an acceptance by the applicant that the time period within which the submitted subdivision plat must be acted upon will be stayed until the decision on the pending application for waiver or variance has become final. When a request to vary or waive a requirement of the Subdivision Ordinance is submitted, except for requests to waive the public street frontage requirement, the recommendation of the Director shall not be made for 30 days after notice of the application has been provided pursuant to Chapter 101, Section 101-2-2(19). Interested parties may file written comments which shall become part of the record and considered by the Director prior to his recommendation to the County Executive. The County Executive or the Board of Supervisors, as the case may be, may require, as a condition of any variance or waiver pursuant to this Section, dedication of right-of-way or construction of road improvements or an agreement to dedicate and/or construct such improvements as may now or in the future be reasonably required to assure the adequate provision of the requirements of this Section. Any person aggrieved by the County Executive's decision to grant or deny a variance or waiver pursuant to this Section may appeal such decision to the Board of Supervisors. Appeals of the County Executive's decision concerning any amendment to a previously granted variance or waiver shall relate to that amendment only, and shall not be brought with regard to any other decisions of the County Executive previously subject to appeal. All appeals shall be brought within ten working days of the decision at issue and shall be made by submitting a written statement of appeal to the County Executive and to the Clerk of the Board. All written statements of appeal shall include the following information: The name(s) and address(es) of the appellant(s); the date of the County Executive's decision; the date of the appeal; the interest of the appellant(s) in the action; and the statute, ordinance, standard or requirement which the appellant(s) believe has been violated by the County Executive.

- (1) *Subdivision names.* The names of new subdivisions shall not duplicate nor too closely approximate the names of existing or platted subdivisions.
- (2) *Street names.* The proper name of any new street shall not duplicate the proper name of any existing or platted street, unless the new street is clearly a continuation of or in alignment with the existing or platted street.
- (3) *Street layout.*
 - (A) The arrangement, character, extent, width, grade and location of all streets or highways shall conform to the comprehensive plan and official map, as adopted.
 - (B) Where such street is not shown in the comprehensive plan or official map, it shall conform to the duly adopted County standards relating to street design and construction in the Public Facilities Manual. Such standards shall be designed in such manner as to reflect the intensity of the projected use.
 - (C)

All lots for single-family detached dwellings shall have frontage on existing VDOT maintained public streets or standard streets for which construction is to be provided in accordance with this subsection. A minor adjustment of property lines as defined in § 101-4-1 is not subject to the above requirement, provided that the plat recorded in the land records shall state that future division of the property by waiver of the public street frontage requirement is precluded. All streets that are proposed to be dedicated to public use shall be constructed to the standards required by the Public Facilities Manual. Private streets may be allowed in commercial and industrial districts, and multiple family dwelling developments. With the approval of the Director, private streets may be allowed in single family attached dwelling developments; single family detached dwelling developments in the P, R-5, R-8 and R-12 Districts; and for single family attached dwelling units when located in a single family detached affordable dwelling unit development in the R-2, R-3 and R-4 Districts. Private streets must be developed in accordance with the Public Facilities Manual. The Director may approve such private streets in those cases in which the developer agrees to bond all improvements required by this Subdivision Ordinance. Where such private streets are approved and meet the standards necessary for inclusion in the system of state highways, the developer must incorporate in all subdivision construction plans, final subdivision plats, approved deeds of subdivision and all similar instruments, the following statement: "The private streets in this development are not intended for inclusion in the system of state highways and will not be maintained by the Virginia Department of Transportation or Fairfax County, and are not eligible for rural addition funds or any other funds appropriated by the General Assembly and allocated by the Commonwealth Transportation Board." Any and all streets that are not constructed to meet the standards necessary for inclusion in the system of state highways shall be privately maintained and shall not be eligible for acceptance into the system of state highways unless improved to current Virginia Department of Transportation standards with funds other than those appropriated by the General Assembly of Virginia and allocated by the Commonwealth Transportation Board. If the proposed private streets do not meet Virginia Department of Transportation standards, the following statement shall be included on all subdivision construction plans, final subdivision plats, approved deeds of subdivision and all similar instruments as follows: "The private streets in this development do not meet the standards necessary for inclusion in the system of state highways and will not be maintained by the Virginia Department of Transportation or Fairfax County, and are not eligible for rural addition funds or any other funds appropriated by the General Assembly of Virginia and allocated by the Commonwealth Transportation Board."

- (4) *Reservations for public use.* In the interest of public welfare the subdivider shall provide reservations of suitable land for schools, parks, playgrounds in accord with the comprehensive plan, capital improvements program, and official map.
- (5) *Curbs and gutters.* These shall be installed in proposed subdivisions according to the duly adopted standards and criteria of the *Public Facilities Manual*. The requirement for installation shall be based upon actual proposed density and shall not apply to low-density development as established in the standards.
- (6)

Sanitary sewer facilities and a public water supply. These shall be installed in proposed subdivisions according to the duly adopted standards and criteria of the *Public Facilities Manual*. The requirement for installation shall be based upon actual proposed density and may be waived for low density development where a water plan and sewage plan are adequate.

- (7) *Facilities in rights of way.* In addition to improvements prescribed herein, any facility to be constructed or installed in a dedicated right of way by or for a public utility shall be subjected to review by the Director, according to the duly adopted standards and criteria of the *Public Facilities Manual*.
- (8) *Utilities.* All utilities shall be installed underground; such utilities, when provided by the subdivider, shall be installed underground in accordance with duly adopted County standards, as established in the *Public Facilities Manual*. All other utilities shall be installed underground in accordance with standards of utility practice for underground construction, which standards, and any amendments thereto, shall be furnished to the County by the utility company, and in accordance with standards furnished to and regulations issued by the applicable regulatory authority.
- (9) *Major underground utility easement (notice required).*
 - (A) In addition to the notice requirement of Section 101-2-1, any person who submits a preliminary subdivision plat, final subdivision plat or construction plan which proposes land disturbing activities within fifty (50) feet of or within a major underground utility easement located on the property shall send a written notice and a copy of such plan or plat to the owner of the major underground utility easement.
 - (B) All written notice required by this paragraph shall include the tax map reference number, the street address of the parcel, the preliminary subdivision plat, final subdivision plat, or construction plan name and County identification number and shall state that: (1) Changes and corrections to the preliminary subdivision plat, final subdivision plat or construction plan may occur prior to approval; (2) persons wishing to be notified of the approval of the preliminary subdivision plat, final subdivision plat or construction plan should submit a written request to that effect to the County Office identified in the notice; (3) the address and telephone number of the County Office where a copy of the preliminary subdivision plat, final subdivision plat or construction plan may be reviewed; (4) the preliminary subdivision plat, final subdivision plat or construction plan is subject to approval after the expiration of forty-five (45) days after the postmark date of the notice unless releases are executed by all major underground utility easement owners required to be notified; and (5) if releases are executed by all major underground utility easement owners required to be notified, the preliminary subdivision plat, final subdivision plat or construction plan may be approved sooner than forty-five (45) days after the postmark date of the notice.

(C) Such plan or plat and notice shall be sent by certified mail, return receipt requested, postmarked no later than five days after the initial submission of the plan or plat to the Director, to the owner's current registered agent on file with the State Corporation Commission. A copy of the notice and plan or plat with the corresponding postmarked white receipt shall be submitted to the Director and no plan or plat subject to this paragraph shall be approved within 45 days following the postmark date on the white receipt for the certified mailing unless releases are executed by all major underground utility easement owners required to be notified. If releases are executed by all major underground utility easement owners required to be notified, the plan or plat may be approved sooner than 45 days after the postmark date on the white receipts for the certified mailings. The original executed releases shall be submitted to the Director on a standard form available from the Director.

(10) *Sidewalks, trails and walkways.* These shall be installed in proposed subdivisions according to the duly adopted standards and criteria of the *Public Facilities Manual*. The requirement for installation shall be based upon actual proposed density and proposed use. Access shall be provided to any adjacent sidewalks, trails and walkways which exist or are shown in the comprehensive plan.

(11) *Standards and criteria.* These shall be adopted under this Ordinance in order to implement the policy and purposes enumerated herein.

(A) Such standards and criteria shall be published in the *Public Facilities Manual* and shall be effective upon adoption by the Board pursuant to notice and public hearing.

(B) The Board of Supervisors shall review the *Public Facilities Manual* annually pursuant to notice and public hearing.

(12) *Drainage and flood control.* Improvements for the purpose of adequate control of stormwater shall be required by the Director according to the standards and criteria duly adopted in Chapters 118 and 124 of the County Code and the *Public Facilities Manual*.

(13) *Stormwater quality.* All required Water Quality Impact Assessments, site-specific determinations of water bodies with perennial flow, Resource Protection Area Boundary Delineations and Resource Management Area Boundary Delineations must be submitted and adequate measures must be provided in compliance with Chapters 118 and 124 of the County Code and the *Public Facilities Manual*. The buildable areas allowed on each lot must be delineated in accordance with the *Public Facilities Manual*.

(14) *Open space.* The Director may require the dedication of up to ten percent of the proposed subdivision to the County for recreational purposes, according to the duly adopted standards and criteria of the *Public Facilities Manual*.

(15)

Monuments. In all subdivisions monuments shall be placed in the ground at all lot corners and angle points in the outer lines of the subdivision and at all points of angles and curvature in the right of way lines of all streets within the subdivision, according to the duly adopted standards and criteria of the *Public Facilities Manual*.

(16) *Soil identification and Soil Report.* ^[9]

- (A) Adequate identification of soil characteristics shall be provided in accordance with the requirements of the Public Facilities Manual and the County Code.
- (B) Unless waived in accordance with Chapter 107 of the Code, a soil report prepared by or under the direction of a professional engineer experienced in soil and foundation engineering must be submitted for proposed subdivisions located in problem soil areas, which are delineated on the official map adopted by the Board of Supervisors, and for such other proposed subdivisions where special soil or water conditions are deemed by the Director to be potentially injurious, and instances where marine clays and/or swelling and shrinking clays are discovered on the project site.
- (C) The required soil report and associated plans, specifications and other documentation must be prepared in accordance with the procedures outlined in the Public Facilities Manual adopted by the Board of Supervisors and must be accompanied by written proof of notification to five (5) adjoining property owners, or all adjoining property owners if there are less than five (5) when the Director deems that the proposed construction or grading in problem soil may adversely impact adjacent properties as a result of unstable slopes, grading or construction methods including, but not limited to, blasting or dynamic compaction. The form of such notice shall be approved by the Director.
- (D) Submission of a soil report shall not be required for the installation or repairs of linear structures in problem soils such as public utilities, sanitary sewer lines, storm sewer lines, trails, sidewalks, drainage channel improvements, telephone and cable TV lines, etc., when the associated work complies with the safety requirements of the Occupational Safety and Health Administration (OSHA) as adopted by the Commonwealth.
- (E) Submission of a soil report shall not be required as a prerequisite for any plat approval when no grading or construction work is proposed with the subject plat. The Director may require that the engineer or surveyor note on the plat that future grading or construction work in the problem soil(s) may require the submission of a soil report. For the subdivision of parcels of land where the site is unmapped, the Director may require for plat approval, submission of a soils map.
- (F)

After a soil report on the proposed subdivision has been submitted, the Director shall refer all projects to the Geotechnical Review Board. However, if it is reasonably apparent to the Director that the proposed project does not create a threat of injury to life or property then the requirement for referral to the Geotechnical Review Board shall not be applicable. The Geotechnical Review Board shall analyze soil reports referred to the Board by the Director and provide him with appropriate recommendations. The recommendations of the Geotechnical Review Board shall not be binding on the Director. No soil related construction work shall commence until the proposed work has been approved. However, approval as to soil conditions shall not relieve any person from obtaining any or all additional permits and approvals necessary for the proposed work.

- (G) The following note will be placed on the final subdivision plat where a soil report was required. "Engineering geology and/or soil reports have been reviewed and approved by the Director of Land Development Services for the property described herein and are available for review at Land Development Services. Site conditions are of such a nature that land slippage or foundation problem possibilities required the submittal of soil reports. A copy of said soil report is available at Land Development Services."
- (H) Review and approval of plans, specifications and reports by the County with or without recommendations of the Geotechnical Review Board shall in no way relieve the subdivider of the responsibility for the design, construction and performance of the structures, pavement and slopes on the project and damage to surrounding properties.
- (I) In accordance with Virginia Code § 55-70.1, the warranty on the foundation for any new dwelling against structural defects, shall be for a period no less than five years.

(17) *Erosion and sediment control.* Adequate erosion and sediment control measures shall be installed in every subdivision in compliance with the requirements of Chapters 104 and 118 of the County Code, Article 11 of the *Public Facilities Manual*, and the current Virginia Erosion and Sediment Control Handbook.

(18) *Vegetation.* Vegetation removal and replacement shall be accomplished in conformance with the requirements of Paragraph (17), *supra*, and with the policies and procedures of Chapter 122 of the Code (Tree Conservation Ordinance) and the Public Facilities Manual.

(19) *Variance or waiver (notice required).*

- (A) Any person who submits a request for a variance or waiver of the minimum requirements as set forth in this Section shall submit written proof of notification of all owners of property abutting and immediately across the street from the parcels to be subdivided. This notification must be to a minimum of five property owners other than the owner of the parcel to be

subdivided, one civic association within the immediate area as approved by Land Development Services (LDS) and to the appropriate district council as designated by LDS and will include adjacent property owners where there are fewer than five property owners abutting and across the street. Notice shall be sent to the last known address of the owner(s) as shown in the current Real Estate Assessment files. All written notice shall be sent by certified mail, return receipt requested.

(B) The written notification required in Paragraph (A) shall include the tax map reference number, the street address of the parcel, the preliminary subdivision plat, final subdivision plat, or construction plan name and County identification number and shall state that: (1) A request for a variance or waiver of the minimum requirements contained in Section 101-2-2 of the Subdivision Ordinance of Fairfax County has been submitted to Land Development Services and the nature of the variance or waiver request (summarize the requested variance or waiver); (2) persons wishing to be notified of the approval of the variance or waiver should submit a written request to that effect to the County Office identified in the notice; (3) the address and telephone number of the County Office where a copy of the variance or waiver request may be reviewed; (4) the variance or waiver request is subject to approval after the expiration of 30 days after the postmark date of the notice unless releases are executed by all property owners, the local civic association, and the district council required to be notified; and (5) if releases are executed by all property owners, the local civic association, and the district council required to be notified, the waiver or variance may be approved sooner than 30 days after the postmark date of the notice.

(C) No waiver or variance shall be approved within 30 days following the postmark date on the white receipts for the certified mailings unless releases are executed by all property owners, the local civic association, and the district council required to be notified. If releases are executed by all property owners, the local civic association, and the district council required to be notified, the waiver or variance may be approved sooner than 30 days after the postmark date on the white receipts for the certified mailings. The original executed releases shall be submitted to the Director on a standard form available from the Director.

(20) *Street lights.* Street light poles and fixtures shall be installed in proposed subdivisions according to the duly adopted standards and criteria of the Public Facilities Manual. The requirement for installation shall be based upon actual proposed density and proposed use.

(21) *Tree conservation requirements.*

(A)

All developments requiring submission and approval of a subdivision plan, except for those controlling subdivision boundary adjustments through which no new lots are created, shall include the tree conservation requirements of Chapter 122 of the Code (Tree Conservation Ordinance) and the Public Facilities Manual.

- (B) The tree conservation requirements of this Section, Chapter 122 of the Code (Tree Conservation Ordinance) and the Public Facilities Manual or any approved proffered condition, special permit, special exception or variance shall be completed; provided, however, that completion of the requirements may be delayed when justification satisfactory to the Director is provided; such justification shall include an agreement and bond with surety satisfactory to the Director for completion in accordance with a firm schedule for timely completion.
- (22) *Places of burial.* The subject property shall be surveyed for evidence of burial places. Any grave, object, or structure marking a place of burial located on land proposed for subdivision shall be identified on any plans required by this Chapter.
- (23) *Off-site utility easements (notice required).*
- (A) In addition to the notice requirement of Section 101-2-1, any person who submits a construction plan which proposes land disturbing activities within an off-site utility easement shall send a written notice with the information required by Section 101-2-1 and a copy of such plat or plan to the owner of the property containing the easement. Notice shall be sent to the last known address of the owner as shown in the current Real Estate Assessment files and shall be sent by certified mail, return receipt requested.
 - (B) The written notification required in Paragraph (A) shall include the tax map reference number, the street address of the parcel, construction plan name and County identification number and shall state that: (1) Changes and corrections to the construction plan may occur prior to approval; (2) persons wishing to be notified of the approval of the construction plan should submit a written request to that effect to the County Office identified in the notice; (3) the address and telephone number of the County Office where a copy of the construction plan may be reviewed; (4) the construction plan is subject to approval after the expiration of thirty (30) days after the postmark date of the notice unless releases are executed by all property owners required to be notified; and (5) if releases are executed by all property owners required to be notified, the construction plan may be approved sooner than thirty (30) days after the postmark date of the notice.
 - (C) A copy of the notice and plan with the corresponding postmarked white receipt shall be submitted to the Director and no plan shall be approved within 30 days following the postmark date on the white receipts for the certified mailings unless releases are executed by all property owners required to be notified. If releases are executed by all property owners required to be

notified, the plan may be approved sooner than 30 days after the postmark date on the white receipts for the certified mailings following consideration of any comments received. The original executed releases shall be submitted to the Director on a standard form available from the Director.

(24) *Shared Utility Easements.*

(A) Common or shared easements shall be provided for conveyance to franchised cable television operators furnishing cable television and public service corporations furnishing cable television, gas, telephone and electric service to the proposed subdivision in accordance with § 15.2-2241(6) of the *Virginia Code* and the Public Facilities Manual.

(25) *Development in mapped dam break inundation zones.* Requirements for development in a mapped dam break inundation zone of a state-regulated impounding structure are as follows:

(A) The extent of any dam break inundation zone of a state-regulated impounding structure must be identified and labeled with the name and state-issued identification number of the impoundment.

(B) The Director will, as part of a preliminary plan review, or as part of a plan review if no preliminary plan review has been conducted: (i) review the dam break inundation zone map on file with the county for the affected impounding structure; (ii) notify the dam owner; and (iii) within 10 days forward a request to the Department of Conservation and Recreation (DCR) to make a determination of the potential impacts of the proposed development on the spillway design flood standards required of the dam. DCR must notify the dam owner and the county of its determination within 45 days of the receipt of the request. Upon receipt of DCR's determination, the county will complete review of the plan. If the Director has not received a determination within 45 days of DCR's receipt of the request, DCR will be deemed to have no comments, and the county will complete its review.

(C) If DCR determines that the spillway design flood of an existing impounding structure would change based on the proposed development, the subdivider must revise the plan of development so it does not alter the spillway design flood standard of the impounding structure or make a payment towards the necessary upgrades to the affected impounding structure. The subdivider must pay one-half of the estimated construction costs of the upgrade plus administrative fees not to exceed one percent of the total amount of payment required or \$1,000, whichever is less. Payment will be made to the Dam Safety, Flood Prevention and Protection Assistance Fund pursuant to § 10.1-603.19:1 of the Code of Virginia. The subdivider must provide proof of payment to the Director prior to obtaining construction approval.

(D)

If the subdivider does not revise the plan of development, he must submit an engineering study in conformance with the Virginia Dam Safety Act (§ 10.1-604 et seq.) and the Virginia Impounding Structure Regulations (4VAC 50-20) to DCR and the Director to determine the necessary upgrades to the affected impounding structure. The study must include a contract-ready cost estimate for upgrading the impounding structure. The cost estimate does not include maintenance, repairs or upgrades to the impounding structure not made necessary by the proposed subdivision. DCR must verify that the study conforms to state requirements. Following receipt of a study, DCR has 15 days to determine whether the study is complete. DCR must notify the developer or subdivider of any specific deficiencies that cause the study to be determined to be incomplete. Following a determination that a submission is complete, DCR must notify the developer or subdivider of its approval or denial within 45 days. Any decision must be communicated in writing and state the reasons for the disapproval.

- (E) Following completion of the development, the subdivider must provide the dam owner and the Director with the information necessary for the dam owner to update the dam break inundation zone map to reflect any new development within the dam break inundation zone.
- (F) The above requirements do not apply to any development proposed downstream of a dam for which a dam break inundation zone map is not on file with the county as of the time of submission of the plan. (Code 1954, vol. 2, §§ 5-2, 5-12; 10-17-56; 3-4-59; 11-18-58; 7-12-61; 10-11-61; 7-18-62; 7-31-68; 11-19-69; 12-10-69; 2-11-70; 11-18-70; 50-74-23; 9-75-23; 18-75-23; 19-75-23; 1961 Code, § 123-2.2; 73-76-101; 11-77-101; 1-80-101; 18-80-101; 5-88-101; 8-90-101; 34-90-101; 33-91-101; 20-93-101; 31-93-101; 47-93-101; 11-95-101; 28-95-101; 36-97-101; 37-00-101; 23-01-101; 9-02-101; 14-02-101; 30-03-101; 27-04-101; 06-07-101; 21-08-101; 61-08-101; 03-14-101; 23-17-101; 04-19-101; 32-19-101.)

Footnotes:

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9. *The "Guidelines for the Preparation of Geotechnical Studies" have been duly adopted by the Board of Supervisors and are published in the Public Facilities Manual.*