



# *Department of Planning, Zoning & Environmental Programs*

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## **M E M O R A N D U M**

**TO:** Policy File

**FROM:** Anne Ducey-Ortiz, Planning, Zoning & Environmental Programs Director

**DATE:** March 2021 (Original Policy created March 8, 2007)

**SUBJECT:** Updated Policy for Use of Private Roads or Easements for Access to Proposed Subdivisions

The Subdivision Ordinance allow lots to be subdivided without frontage on a public street in certain instances, including Family Transfers and circumstances pursuant to Section 15-31(c). Whether the applicant has the right to use an existing right-of-way or easement for access to the subdivision is ultimately a civil matter, but in order for the Subdivision Agent to ensure that the lot(s) created comply with the ordinance regarding access to a state road, additional documentation may be required and requested from the applicant.

The subdivision ordinance requires the following: "The final plat shall display the location of all proposed or existing easements and rights of way. Existing easements shall include the recordation reference along with the type (public/private, utility, ingress/egress, etc.) and width of the easement and location of the instrument. Proposed easements shall be identified and dedicated as either public or private and include the width and entity to which the easement is dedicated."

The following shall apply when an application for subdivision is submitted where the means of access from the subject property to a state road is by way of an existing right-of-way or easement. The **applicant** (owner(s) of the property to be divided or their agent) shall provide legal verification that they have the right to use the existing right-of-way or easement for purposes of subdivision. This verification shall be in addition to the completion of the owner's consent required pursuant to Section 15-73(21) of the Subdivision Ordinance by the owner or owners of the property on which the existing right-of-way or easement is located.

The type of verification needed will be dictated by the specific property and may be in the form of a recorded plat, deed, or will, certification from a licensed surveyor, copies of restrictive covenants, or another document providing the appropriate documentation. If there is question as to whether any of these forms of verification actually provide sufficient details to determine the right to use the easement for the purpose requested, the Subdivision Agent may require additional information from the applicant. A certification from an attorney licensed to practice law in the Commonwealth of Virginia may be required indicating that the attorney has reviewed the terms of the exiting easement and, in their professional opinion, the easement grants the applicant the right-of-access for the purposes of the proposed subdivision.

If the existing right-of-way is owned by the applicant, the owner's consent on the plat shall serve as verification that they are allowing the right-of-way to be used for the proposed division.

For new easements created on the subdivision plat, a written deed of easement should be prepared by an attorney and recorded with the plat. The deed of easement should indicate the terms of the new easement including provisions for maintenance and future use of the easement by the parties involved. ***It is the property owner's responsibility to have a deed of easement prepared and recorded with the plat.***