

ORDINANCE 15-13, Surety for Installation of Required Improvements, and a Modification to Installation of Required Street Trees in the RS and RM Districts



Ordinance Amendment Report
PC Meeting Date: October 15, 2015

Executive Summary

AN ORDINANCE to amend the Hanover County Code, Chapter 26, Zoning Ordinance, Sections 26-61, 26-68, 26-77, and 26-78, to modify the requirements in the RS, Single-Family Residential District and the RM, Multi-Family Residential District regarding the timing of the installation of all required street trees and sidewalks within these zoning districts; and to allow greater flexibility in the location of street trees required to be installed as part of the applicable district regulations.

Board Authorization

At their meeting of September 9, 2015, the Board of Supervisors authorized the Planning Commission to hold a public hearing on Ordinance Amendment 15-13, Surety for Installation of Required Improvements, and a Modification to Installation of Required Street Trees in the RS and RM Districts

Staff's Recommendation

The draft Ordinance is attached for the Planning Commission's consideration of the requested amendment. Staff recommends **APPROVAL** of draft Ordinance Amendment 15-13, Surety for Installation of Required Improvements, and a Modification to Installation of Required Street Trees in the RS and RM Districts

Planning Analysis

At a meeting of the Board of Supervisors' Community Development Committee on July 27, 2015, Staff presented the proposed ordinance amendment and was directed to proceed to the Board for authorization to advertise, which was granted at its meeting of September 9, 2015.

The purpose of this proposed Zoning Ordinance amendment is to modify the RS and RM District requirements regarding the timing for completion of certain required improvements.

In September 2011, the County, with input from the development community, updated and revised the provisions of the Hanover County Subdivision Ordinance. The purposes of that update included making the provisions easier to use and more functional for those whose projects are governed by it.

Prior to the 2011 Subdivision Ordinance update, the Planning Department received requests from the development community to find an alternative to the requirement of including the installation of sidewalks and street trees in the RS and RM Districts as part of the costs to be guaranteed by the required subdivision performance bond. The concern that the development community frequently raised was that these improvements were often the last improvements to be installed, and under the subdivision performance agreement, a minimum of 10% of the original subdivision performance bond amount was held until all subdivision improvements were completed and approved. This occasionally resulted in the County holding bonds that were for a value that may be several times the amount of the cost of installing the remaining sidewalks and trees.

The recommendation by staff and a private sector review committee in 2011 was to remove these items from the list of items that were governed by the Subdivision Ordinance and, therefore, included in the items covered by a subdivision performance agreement, and to create a new bonding mechanism through the Zoning Ordinance. These changes, which were adopted by the Board of Supervisors, allowed developers to post a bond for the installation of street trees, pedestrian paths and street lights in the RS and RM Districts which was separate from the larger bond posted to guarantee the Subdivision Performance Agreement. The Zoning Ordinance revisions provided for a sliding scale, based upon the number of lots in a subdivision or subdivision section, as to when these improvements must be completed.

CURRENT LANGUAGE IN THE ZONING ORDINANCE SINCE 2011:

Section 26-68. Surety for installation of required improvements. [RS District]

- (a) If the developer chooses not to complete the improvements required in Section 26-61(b) and Section 26-66 prior to recordation of the subdivision or section of a subdivision, the developer shall enter into an agreement providing for the installation of the improvements and post surety in an amount sufficient to install the remaining improvements. The surety shall be in the form of a letter of credit, certified check or cash escrow. The form of the agreement and the surety shall be approved by the County Attorney.

- (b) The improvements identified in Section 26-61(b) and Section 26-66 may be completed at any time at or after recordation of a subdivision (or section of a subdivision) and in accordance with the following:
- (1) For subdivisions, or a section of a subdivision, that contain 20 or more lots, the improvements shall be completed and accepted before building permits have been issued for eighty percent (80%) of the lots within the subdivision or section;
 - (2) For subdivisions, or a section of a subdivision, that contain fewer than 20 lots but more than 6 lots, the improvements shall be completed and accepted before building permits have been issued for fifty percent (50%) of the lots within the subdivision or section.
 - (3) For subdivisions, or a section of a subdivision, that contain 6 or fewer lots (other than those determined by the Board to be "in-fill" development in accordance with Section 26-61(e)), the improvements shall be completed and accepted before the building permit for the final lot within the subdivision or section is issued.

The changes were welcomed by the development community but due to economic conditions, during the first few years following the adoption of these changes there were few, if any, subdivisions that triggered the requirement that these improvements be completed. Therefore there was no opportunity to see whether the new requirements addressed the concerns raised by the development community. Recently, a greater number of subdivisions have been reaching the time where the improvements must be completed. Some developers have had questions about the process and procedure outlined in the Zoning Ordinance and the Zoning Performance Agreement and have raised some minor concerns about the new process. Primarily, they are requesting an adjustment in the thresholds at which all required improvements (mostly sidewalks and street trees) must be 100 percent installed in order for the developer to avoid being in default and risk of the developer's surety being called by the County to complete the work.

Planning discussed these concerns at the Quarterly Engineers/Developers meetings that the Community Development Departments hold, and with the Home Builders Association of Richmond (HBAR), and requested feedback on possible changes. The result of this process is the proposed revised ordinance language below for the timing of completion of RS requirements covered by the developer's performance agreement. **This same language revision will be made in the RM District as well (Section 26-78)**

STAFF PROPOSED RS DISTRICT LANGUAGE, ORD. 15-13:

Section 26-68. Surety for installation of required improvements.

- (b) The improvements identified in Section 26-61(b) and Section 26-66 may be completed at any time at or after recordation of a subdivision (or section of a subdivision) and in accordance with the following:

- (1) For subdivisions, or a section of a subdivision, that contain 30 or more lots, the improvements shall be completed and accepted before building permits have been issued for the final six (6) lots within the subdivision or section;
- (2) For subdivisions, or a section of a subdivision, that contain fewer than 30 lots but more than 9 lots, the improvements shall be completed and accepted before building permits have been issued for eighty percent (80%) of the lots within the subdivision or section.
- (3) For subdivisions, or a section of a subdivision, that contain 9 or fewer lots (other than those determined by the Board to be "in-fill" development in accordance with Section 26-61(e)), the improvements shall be completed and accepted before the building permit for the final lot within the subdivision or section is issued.

When determining the number of building permits that may be issued prior to the completion of improvements within a section or subdivision, any fractional portion of lots that result as part of the percentage calculation shall be disregarded.

During this process, staff also received comments from developers regarding the requirements for placement of street trees in the RS and RM Districts. Staff has reviewed the provisions of the district regulations and the concerns raised by the development community and is also requesting that the zoning regulations which govern the location of street trees be modified from requiring they be placed at the front of each lot on a street, within a common open space easement, or massed in common open space; to also allow some grouping of trees on street segments within that the open space easement, even though the trees may not be on every single lot. This change would help to avoid the situation where a developer must plant trees on a few remaining un-built lots in order to avoid default on the performance bond, even though he expects the trees will be destroyed when the houses on those lots are constructed. This proposed change to allow greater use of clustered street trees would not prevent a builder or developer from going back and planting a tree on each of those lots if that is something they offer to their buyers. These changes would be made to Sections 26-61 (b) (1) and 26-77 (c) (1) of the RS and RM Districts respectively.

As mentioned above, all of the proposed changes have been reviewed by and drafted in conjunction with the HBAR and have been presented in various stages at three engineers/developers quarterly meetings. They have voiced their support for these amendments.

Attachments

- Blackline of Existing Ordinance

ORDINANCE 15-13

AN ORDINANCE TO AMEND THE HANOVER COUNTY CODE, CHAPTER 26, ZONING ORDINANCE, SECTIONS 26-61, 26-68, 26-77, AND 26-78, TO MODIFY THE REQUIREMENTS IN THE RS SINGLE-FAMILY RESIDENTIAL DISTRICT AND THE RM MULTI-FAMILY RESIDENTIAL DISTRICT REGARDING THE TIMING OF THE INSTALLATION OF STREET TREES AND SIDEWALKS WITHIN THESE ZONING DISTRICTS AND TO ALLOW GREATER FLEXIBILITY IN THE LOCATION OF STREET TREES REQUIRED TO BE INSTALLED AS PART OF THE APPLICABLE DISTRICT REGULATIONS.

WHEREAS the Hanover County Zoning Ordinance requires the installation of certain improvements, including street trees and pedestrian paths, within the RS Single-Family Residential District and the RM Multi-Family Residential District, and regulates the timing of the installation of these improvements; and

WHEREAS the development community has commented to Planning Department staff that the timing of these required improvements creates practical difficulties for the orderly development of communities in the RS and RM zoning districts; and

WHEREAS staff has determined that modifications can be made to the timing requirements set forth in the RS and RM zoning district regulations that will allow greater flexibility to the development community while continuing to ensure that required improvements are constructed and installed in a timely manner; and

WHEREAS the Board has determined that these proposed changes are consistent with the intent of the zoning regulations for these residential zoning districts and would improve the orderly development of residential properties throughout the area of the County where suburban services are provided; and

WHEREAS the Board of Supervisors finds that the public necessity, convenience, general welfare and good zoning practice require that the Zoning 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, Zoning Ordinance, Section 26-61, regarding density calculations in the RS Single-Family Residential District, shall be amended to read as follows:

Section 26-61. - Density; calculation.

The RS District provides for a range of density, to permit flexibility for planning the most appropriate development for a property. The base density shall be one (1) residential unit per full acre. Fractions of any acres shall be rounded down to the whole acre prior to multiplying for density calculation. Density calculations shall be based on the gross acreage for the district, provided that no more than fifty (50) percent of the acreage determined to be in Chesapeake Bay Resource Protection Areas may be included. To be eligible for consideration of density higher than one and one-quarter (1¼) units per acre within the district, a minimum of fifteen (15) percent of the net acreage shall be provided as common space (improved with amenities accessory to residential uses or landscaped) or open space (unimproved natural areas or buffers). For purposes of this district, "net acreage" shall be the total area of the district minus the total of Chesapeake Bay Resource Protection Areas and all slopes of thirty-five (35) percent or greater.

- (a) For densities greater than one (1) unit per acre, but less than or equal to one and one-quarter (1¼) units per acre: if curb and gutter are provided throughout the district, and the application is determined to be consistent in all respects with sections 26-55 and 26-56 above, the Board may approve increased density to a maximum of one and one-quarter (1¼) units/acre.
- (b) For densities greater than one and one-quarter (1¼) unit per acre, but less than or equal to two (2) units per acre: If at least fifteen (15) percent of the net acreage is left in open or common space, and if the following improvements are included in the district, and the application is determined to be consistent in all respects with sections 26-55 and 26-56 above, the Board may approve increased density to a maximum of two (2) units/acre.
 - (1) Street trees, planted either:
 - a. Within a street median;
 - b. Along each side of a street on which houses front in an easement created to permit the owners' association to maintain the street trees in accordance with the requirements of Section 26-67 which shall be no less than ten (10) feet wide and designated for such plantings, either on individual lots or clustered on multiple individual lots within a street segment; or
 - c. Massed or clustered in appropriate locations within common or open space along streets within a street segment to provide a terminal vista at an intersection.

Trees planted to comply with this standard shall comprise at least three (3) different species appropriate to this area which will cast moderate to full shade in the summer; be long-lived (over sixty (60) years); have a mature

height of at least fifty (50) feet; be tolerant of pollution and direct or reflected heat; require little maintenance; and be able to survive two (2) years with no irrigation after establishment. At least one (1) tree, a minimum of two (2) inches in caliper when planted, shall be provided for every fifty (50) feet of street length. No Bradford pear, Norway maple, or female ginkgo trees may be used to comply with this standard. Existing trees which meet the criteria specified in this section may be used to satisfy this requirement. Additional materials, such as ground covers, ornamental grasses, perennials, annuals, and shrubbery, shall be provided. All trees and additional materials shall be described on the conceptual plan.

For purposes of this section,

- (i) "street length" shall be the total amount of street frontage within the RS, Single-Family Residential District. For those areas where a temporary cul-de-sac or other turnaround is used, the "street length" shall include the entire perimeter of the temporary cul-de-sac or other turnaround.
 - (ii) "street segment" shall be the portion of a street located between its two closest intersections with other streets or between its closest intersection with another street and a cul-de-sac or other terminus.
- (2) Pedestrian paths, providing access to open space and common space and designed to be extended into adjoining developments, both residential and commercial. Paths may be located within the common or open space and placed no closer than ten (10) feet to any side or rear lot line. Open space shall be landscaped between paths and lots, except where the path is located along a lot front.
- (c) For densities greater than two (2) units per acre but less than or equal to three (3) units per acre: If the improvements specified below are provided in addition to the improvements listed in subsection (b) above, and the application is determined to be consistent in all respects with sections 26-55 and 26-56 above, the Board may approve increased density to a maximum of three (3) units/acre.
- (1) An additional five (5) percent of the net acreage set aside as open or common space, for a total of no less than twenty (20) percent.
 - (2) Street lights, placed along the existing thoroughfare along which the district fronts at intervals no greater than one hundred (100) feet apart, for a distance of at least one hundred (100) feet in either direction from any entrance intersection constructed within the district. The light poles shall not exceed twenty-five (25) feet in height, and the light source shall be directional and shielded from direct view. The general standard regarding light measurement at the property line (0.5 footcandle) shall not apply.
- (d) For densities greater than three (3) units per acre but less than or equal to four (4) units per acre: If all improvements specified in (b) and (c) above are included, and the additional improvements specified below are provided, and the application is determined to be consistent in all respects with sections 26-55 and 26-56 above, the Board may approve increased density to a maximum of four (4) units/acre.

- (1) An additional five (5) percent of the net acreage set aside as common or open space, for a total of no less than twenty-five (25) percent.
 - (2) Single-loaded streets, comprising at least ten (10) percent of the total length of the streets within the district. A "single-loaded street" shall be a street along which only one (1) side has houses, for a length equal to the frontage of no fewer than three (3) lots, fronting common or open space along the other side.
- (e) For districts which are determined to be "in-fill" by the Board, the provision of common space or open space and the additional improvements and amenities listed above shall not be required for densities greater than one (1) unit per acre where:
- (1) The "in-fill" district contains six (6) or fewer lots;
 - (2) The overall density of the "in-fill" district does not exceed the density of the adjacent subdivision through which access is obtained; and
 - (3) The "in-fill" district provides the same amenities as the subdivision through which access is obtained.

For purposes of this section, an "in-fill" district means a district to which there is no access except through an existing public road subdivision zoned other than R-S, Single-Family Residential District.

- (f) For districts which are determined by the Board to provide adequate and appropriate "workforce housing," the provision of additional open space, single-loaded streets, or street lights described in subsections (b), (c) and (d) shall not be required. In making the determination as to whether adequate and appropriate "workforce housing" has been provided, the Board shall consider the goals set forth in Section 10 of the Hanover County Comprehensive Plan.
2. That the Hanover County Code, Zoning Ordinance, Section 26-68, regarding Surety requirements related to the installation of required improvements in the RS Single-Family Residential District, shall be amended to read as follows:

Section 26-68. - Surety for installation of required improvements.

(a) If the developer chooses not to complete the improvements required in section 26-61(b) and section 26-66 prior to recordation of the subdivision or section of a subdivision, the developer shall enter into an agreement providing for the installation of the improvements and post surety in an amount sufficient to install the remaining improvements. The surety shall be in the form of a letter of credit, certified check or cash escrow. The form of the agreement and the surety shall be approved by the County Attorney.

(b) The improvements identified in section 26-61(b) and section 26-66 may be completed at any time at or after recordation of a subdivision (or section of a subdivision) and in accordance with the following:

- (1) For subdivisions, or a section of a subdivision, that contain 30 or more lots, the improvements shall be completed and accepted before building permits have been issued for the final six (6) lots within the subdivision or section;
- (2) For subdivisions, or a section of a subdivision, that contain fewer than 30 lots but more than 9 lots, the improvements shall be completed and accepted before

building permits have been issued for eighty percent (80%) of the lots within the subdivision or section.

- (3) For subdivisions, or a section of a subdivision, that contain 9 or fewer lots (other than those determined by the Board to be "in-fill" development in accordance with section 26-61(e)), the improvements shall be completed and accepted before the building permit for the final lot within the subdivision or section is issued.

When determining the number of building permits that may be issued prior to the completion of improvements within a section or subdivision, any fractional portion of lots that result as part of the percentage calculation shall be disregarded.

3. That the Hanover County Code, Zoning Ordinance, Section 26-77, regarding Design standards in the RM Multi-Family Residential District, shall be amended to read as follows:

Section 26-77. - Design standards.

(a) Street Buffers. Street buffers shall be designed and maintained in accordance with the following:

1. A buffer no less than fifty feet (50') in width shall be required along the frontage on any existing or planned road designated as a "Major Thoroughfare" on the Hanover County Major Thoroughfare Plan;
2. A buffer no less than twenty-five feet (25') in width shall be required along the frontage of all other existing public roads;
3. All buffers shall retain healthy and mature vegetation where practical. Where necessary, the buffer shall also be supplemented with a combination of trees, shrubs, or berms. If a berm is to be utilized it shall be a landscaped sculpted, non-linear undulating landform with an average height of three (3) feet. The landform shall be landscaped with low maintenance vegetation. The buffer shall be not be used to provide more than 50 (fifty) percent of the required common area, or more than 25 (twenty-five) percent of the active recreation area.
4. Pedestrian paths shall be provided within the required buffer along public roads. The paths shall be constructed of permanent materials such as concrete, asphalt, brick, pavers, or other materials which are substantially similar, and shall be no less than four (4) feet in width. The paths shall be constructed from property line to property line and shall be designed to permit extension onto adjoining properties. Where paths intersect with public roads, the path shall be designed to Virginia Department of Transportation standards and specifications. Paths constructed within highway rights-of-way may be used to satisfy these requirements provided the paths are designed to so they may be maintained by the Virginia Department of Transportation. The path shall be separated from the back of the curb by a distance of no less than four feet (4').
5. No buffer shall be located on an individual residential building lot.
6. All buffers shall be measured from the ultimate right of way for the street or Major Thoroughfare upon which they are located.

- (b) Curb and gutter shall be provided throughout the district.

(c) Street trees.

(1) Street trees shall be planted as follows:

- a. Within a street median;
- b. Along each side of a street on which houses front (i) in an easement created to permit the owners' association to maintain the street trees in accordance with the requirements of Section 26-84 which shall be no less than ten (10) feet wide and designated for such plantings, either on individual lots or clustered on multiple individual lots within a street segment, or (ii) within the right-of-way, if approved by the Virginia Department of Transportation, provided there is provision for the right-of-way and pedestrian paths to encompass an area no less than ten (10) feet from the curb; or
- c. Massed or clustered in appropriate locations within common space along streets within a street segment to provide a terminal vista at an intersection.

(2) Trees planted to comply with this standard shall comprise at least three (3) different species appropriate to this area which will cast moderate to full shade in the summer; be long-lived; be tolerant of pollution and direct or reflected heat; require little maintenance; and be able to survive two (2) years with no irrigation after establishment. At least one (1) tree, a minimum of two (2) inches in caliper when planted, shall be provided for every fifty (50) feet of street length. No Bradford pear, Norway maple, or female ginkgo trees may be used to comply with this standard. Existing trees which meet the criteria specified in this section may be used to satisfy this requirement. Additional materials, such as ground covers, ornamental grasses, perennials, annuals, and shrubbery, shall be provided. All trees and additional materials shall be described on the conceptual plan.

(3) For purposes of this section,

- (i) "street length" shall be the total linear feet of street frontage, whether public or private, within the RM, Multi-Family Residential District. For those areas where a temporary cul-de-sac or other turnaround is used, the "street length" shall include the entire perimeter of the temporary cul-de-sac or other turnaround.
- (ii) "street segment" shall be the portion of a street located between its two closest intersections with other streets or between its closest intersection with another street and a cul-de-sac or other terminus.

(d) Pedestrian paths shall be provided throughout the district, providing access to common area and designed to be extended into all adjoining residential and commercial developments. Paths may be located within the common area and placed no closer than five (5) feet to any side or rear lot line. Common area shall be landscaped between paths and lots, except where the path is located along a lot front. Only the area of the path, and any associated exercise equipment or amenities such as picnic areas and playgrounds may be counted towards active recreation area. The paths shall be constructed of permanent materials

such as pervious concrete, asphalt, brick, pavers, or other materials which are substantially similar, and shall be no less than four (4) feet in width, except where such paths cross Chesapeake Bay Resource Protection Area wetlands.

(e) Entrance lighting for vehicles shall be provided on one or both corners at all intersections of external thoroughfares and roads (whether public or privately maintained) within the district. Lights shall be designed and mounted in compliance with all applicable regulations of the Virginia Department of Transportation. If the lighting cannot be constructed within the right-of-way, it shall be constructed within common area.

4. That the Hanover County Code, Zoning Ordinance, Section 26-78, regarding the installation of required street buffers, street trees, pedestrian paths and street lights in the RM Multi-Family Residential District, shall be amended to read as follows:

Section 26-78. - Installation of required street buffers, street trees, pedestrian paths and street lights.

(a) The developer shall

1. at its expense, install all required street buffers, street trees, pedestrian paths, street lights and related improvements identified on the approved plans prior to recordation of the section within which those improvements are to be constructed, or
2. at the time of recordation, enter into an agreement providing for the installation of the improvements and post surety in an amount sufficient to install the remaining improvements. The surety shall be in the form of a letter of credit, certified check or cash escrow. The form of the agreement and the surety shall be approved by the County Attorney.

(b) The improvements identified in subsection (a) may be completed at any time at or after recordation of a subdivision (or section of a subdivision) and in accordance with the following:

1. For subdivisions, or a section of a subdivision, that contain 30 or more lots, the improvements shall be completed and accepted before building permits have been issued for eighty percent (80%) of the lots within the subdivision or section;
2. For subdivisions, or a section of a subdivision, that contain fewer than 30 lots but more than 9 lots, the improvements shall be completed and accepted before building permits have been issued for eighty percent (80%) of the lots within the subdivision or section.
3. For subdivisions, or a section of a subdivision, that contain 9 or fewer lots, the improvements shall be completed and accepted before the building permit for the final lot within the subdivision or section is issued.

When determining the number of building permits that may be issued prior to the completion of improvements within a section or subdivision, any fractional portion of lots that result as part of the percentage calculation shall be disregarded.

(c) Required street trees and all other landscaping required by this section shall be guaranteed by the developer or installer for a period of not less than one-year. Street trees shall not be removed during or after residences are constructed. Trees removed shall be

replaced with a like species and in a size comparable to the original planting; an alternative species may be used if approved by the Director.

5. This ordinance shall be effective on the date of adoption.