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**Albemarle County Planning Commission**  
**401 McIntire Road**  
**Charlottesville, VA 22902**  
**February 23, 2021**  
**(Revised March 16, 2021)**

**RE: SUB2020-201 Old Trail Block 32-Request for Private Street Authorization**

Dear Planning Commission,

On behalf of March Mountain Properties LLC, the owner and developer of Old Trail Village, we request approval of a private street designation for a two-lot subdivision within Block 32 of Old Trail Village known as "Bishopgate Lane Extended."

As a preface to this request, it is worth noting the history of how this private street situation has unfolded over the past several years. Additionally, it is worth noting recent developmental successes that we believe were only feasible through the authorization and use of private streets in other areas of Old Trail Village.

The Bishopgate Lane Extended Emergency Access was originally shown in the approved preliminary plan as a gravel base road running parallel between lots 63/64 between Bishopgate Lane and the edge of the stream buffer setback. As we worked with staff on the final plan, both the Engineering and Fire / Rescue reviewers requested the portion of this Emergency Access Way that is within the development boundary be constructed to meet the County Design Standards for Roadway (i.e.; paving, curb and gutter) as shown on the exhibit below. One benefit of this is providing a terminus to a road that could be better secured with chain and bollard for more limited control and access.

After making this change to the road design within the development boundary we found it was an opportunity to re-align the lots to better meet the Building Setback limits by fronting them on the new Bishopgate Lane Extended and would provide a more optimum layout of Street Character for traditional lot configurations within this Neighborhood Model Development.

As part of this plan refinement, staff indicated that a private street waiver would be needed to allow lots to front on Bishopgate Lane Extended. We did explore the option of turning this section of road into a public road but due to several factors, it did not meet all the criteria and was left with the intent to be a private street. Unfortunately, the private street waiver could not be submitted with a final site plan (the option is only available at the initial site plan stage under the applicable provisions of the Subdivision Ordinance) so staff informed the developer they would support this being done as a 2-lot sub-division after the final site plan was approved. This effort to get an approved final site plan took almost 2 years of back-and-forth comments at the staff level; was delayed by a change in County Staff personnel; and then was further delayed by an assessor's mistake on open space ownership that had to be corrected.

This 2-year delay now finds us in a position that Staff is being asked to give higher scrutiny over the use of private streets. As a result, the processing of this private street waiver has been further delayed waiting to determine if this road meets the higher scrutiny now given to these waivers. This puts Old Trail Village in a difficult position for several reasons.

1. The Plan for block 32 has been well underway for several years and contemplated the use of the private street designation to better capitalize on lot coverage that meets our minimum build out requirement and better protect stream buffer setbacks.
2. The lots in block 32 were offered for sale due to the understanding over the past two years that Staff would support the private street waiver.
3. The concern that private streets being under higher scrutiny is difficult for Old Trail Village because Private Streets have been a cornerstone of planning principle that helped solve unique lot configurations while adhering to building setback limits; provides opportunity to better protect stream buffer setbacks by filling in lots on far reaching corners like these Bishopgate Lane Extended lots; helps meet the developer's minimum buildout requirements imposed on its zoning approval that has been an earmark of fulfilling the County's Growth Issues.
4. There are homeowners being affected by this delayed action and final lot configurations potentially being reduced causing significant financial harm.

The Justification for Approving this Private Street waiver can be first attributed to the most recent Old Trail Village Code of Development approved on January 14, 2016 that has Pre-Approved private streets written into the Code. In fact, those streets with lots fronting onto amenities (such as greenspace areas) can actually be approved administratively as was the case on three other streets inside this same Block 32 phase of Development (as shown in the attached Private Street Map). This map also indicates all the Private Streets already approved and constructed and being maintained by the Old Trail Community Association. Private Streets are a cornerstone planning principle for Old Trail Village as well as all Neighborhood Model Developments. In our case, the private streets help with uniquely configured lots that improve the minimum buildout that was required by the County of Albemarle in our 2016 Rezoning so that Old Trail Village can help meet the County's growth objectives. Private Streets also help craft block development so lots can front onto designed amenities and pocket parks that makes this community one of the more unique and high-quality developments within Albemarle County. To date we have designed and /or constructed almost 3 times the required pocket parks and preserved 10% more open space than is required by the Old Trail Code of Development. Private streets such as in Block 22, located south of Golf Drive and the most recent block of development prior to block 32, was authorized and approved in 2018 to exclusively provide approximately 1,750 lineal feet of private street and right-of-way to accommodate environmental restrictions that encompassed the parcel area. Preceding that, along the eastern most portion of Old Trail, blocks 16, 17, 18, and 30 were approved in 2016 and authorized to utilize approximately 1,650 lineal feet of private street and right-of-way (as shown on the attached private street map). Notwithstanding the areas mentioned above, private streets make up a generous portion of Old Trail's infrastructure and have played a major role in accomplishing the neighborhood model development zoning designation and desired urbanism. It should also be worth noting that Old Trail is a well-established, longstanding subdivision within the community and has continued to prepare, execute, and sustain the proper documentation, entities, and funding for the Old Trail Owners' Association as required by State law, and as further required to keep it operating at a desirable higher standard. The Owners Association will remain obligated both by the recorded legal instruments establishing the Owner's Association, and by State regulations to continue to design, construct, and properly maintain these private streets to meet the highest quality standards provided by the county of Albemarle.

The Old Trail Code of Development (the "COD") also makes several references expressly permitting the use of private streets. For example, on page 7 there is reference to the transportation chart indicating that Old Trail Village does have private streets in its street hierarchy. Additionally, on page 4 of the COD there is another reference to private streets being allowed to serve lots that front amenities and those streets have been pre-approved by waiver in the COD. The final location of private streets can vary and as depicted on page 6 of the COD the application plan "provides a framework for Old Trail Village through diagrammatic layouts of streets,

sidewalks, landscape material, open space configuration and variations in architectural product/placement while incorporating flexibility necessary to adapt to changing needs. The alignment of streets, utilities and sidewalks shall generally conform to the layout provided on the Application Plan, though is it not the intent of the Application Plan to dictates specific street geometrics.”

Under the state mandate for property management by an Association, the recorded Old Trail Village Covenants and Restrictions (recorded at Deed Book 2887, at page 336-387) provide assurances that the private streets will be under obligation for maintenance by the Old Trail Community Association.

In accordance with section 14-233 of the Albemarle County Code of ordinances, we are requesting that proposed street Bishopgate Extended, highlighted and shown on “EXHIBIT A” attached herein, be authorized as a private street within the block 32 development area. This would in turn allow lot 64 highlighted and shown on “EXHIBIT B” attached herein, to be subdivided into two lots as originally shown on “EXHIBIT A”.

**Sec. 14-233 When private streets in development areas may be authorized.**

A private street may be authorized in the development areas under the following circumstances, provided that the findings required by section 14-234(C) are made:

A. *By the commission.* The commission may authorize a subdivision to be developed with one (1) or more new private streets in the following circumstances:

1. *Neighborhood model development.* The proposed private street(s) would enable the principles of the neighborhood model to be more fully implemented than could be achieved with a public street, without diminishing other principles of the neighborhood model, in the following circumstances: (i) the subdivision would have a streetscape more consistent with the neighborhood model; (ii) the subdivision design would allow it to better achieve the density goals of the comprehensive plan; (iii) rear vehicular access to buildings would be provided so that the buildings may face a common amenity; (iv) a significant environmental resource would be protected; or (v) relegated parking would be provided to a greater extent than could otherwise be provided.

2. *Two-lot subdivision.* The proposed private street(s) would be within a two-lot subdivision.

3. *General welfare.* The general welfare, as opposed to the proprietary interest of the subdivider, would be better served by the construction of one or more private streets than by the construction of public streets.

B. *By the agent.* The agent may authorize one (1) or more new private streets in the following circumstances:

1. *Subdivision containing attached dwelling units or non-residential uses.* The proposed private street(s) would be in a subdivision containing attached dwelling units or non-residential uses where the units, groups of units, or non-residential uses are to be located on individual lots.

2. *Family subdivisions.* The proposed private street(s) would be within a family subdivision.

(Ord. 05-14(1), 4-20-05, effective 6-20-05)

State law reference—Va. Code § 15.2-2242(3).

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.

Section 14-233 (A)(1)(ii):

The authorization of proposed street "Bishopgate Lane Extended" would remain consistent with previously approved private streets within Old Trail as mentioned above and better coincide with the density goals of the comprehensive plan. Prior development has successfully provided interconnectivity between private and public streets such as in Blocks 14, 16, 17, 18, 30, and 27. In addition, the private road authorization would also allow for a more aesthetic layout for the access to the emergency fire access route. The fire route requires a 20' wide durable driving surface (21A) at a minimum. There is currently an existing 30' easement that stems from Bishopgate Lane and runs across two lots. Without the authorization of a private road in this area, a 20' wide gravel path would impede on these lots, providing an unsightly area highly visible from Bishopgate Lane and deny proper frontage for these two proposed lots.

In addition, the proposal is a two-lot subdivision, satisfying the requirement of Section 14-233(A)(2). Finally, the proposed private street would be better served by the construction of the private street instead of making Bishopgate Lane Extended a public street. The section of street is greater than 150' and less than 200', meaning a full-size turnaround would be required for public dedication. The turnaround requirements would produce an equivalent, if not a greater amount of impervious footprint than the stretch of road itself. Utilities were designed, planned, and constructed in accordance with the approved road plan, which reflects a future road and private right-of-way. Lot 63, which is currently under construction, was approved and recorded based on the desired configuration of this road. This section of road (if public) would heavily encroach on existing and future lots, extend into golf course greenway, and create additional required time, money, and documentation for all parties involved (reviews, permitting, quitclaims, approvals, bonds, etc.).

14234(C)

1. The private street will be adequately constructed to carry the projected traffic volume. The street was designed using traffic volumes according to 9<sup>th</sup> addition ITE trip generation calculations. The design for the private street meets Albemarle County design standards. The proposed private street would only serve two single-family residential lots, which will generate extremely low traffic volumes.
2. The Comprehensive Plan does not provide for a public street in the approximate location of the proposed private street.
3. The ownership and maintenance associated with the authorization of this private street will be under the Old Trail Homeowners Association.
4. The private street is not intended to be a thru street for neighborhood traffic, but rather for frontage access for 2 lots as well as aesthetic access to the emergency fire route to state route 250.
5. The flood hazard overlay district requirements are not applicable for this private street.

Thank you for considering this request for "Bishopgate Lane Extended" to be granted as a private street. Please do not hesitate to reach out with any questions.

Sincerely,



Jeremy L. Fox, on behalf of March Mountain Properties LLC  
434.327.5382  
Jeremy.fox@timmons.com



TO: Department of Community Development  
Attn: Andy Reitelbach  
401 McIntire Road  
Charlottesville, Va 22902

DATE: 01/08/2021  
JOB #: 19.0146  
PROJECT: OLD TRAIL BLOCK 32

**RE: SUB2020-201 Old Trail Block 32-Request for variation of sec. 14-422 (sidewalks and planting strips)**

Dear Mr. Reitelbach:

Please see below our justification for the requested variations.

**Sec. 14-203.1 (B.) *Variation from sec. 14-422 requirement.***

***Request for a variation.*** In accordance with section 14-422, we are requesting a variation of the requirement of planting strips and sidewalk within a portion of the proposed development in Block 32 of Old Trail Village.

***Findings required for a variation.*** We are requesting the absence of sidewalks and planting strips along the private streets and private alley in Block 32. The sole purpose of these roads are to provide driveways and rear access to the proposed lots, and we believe there is not a necessity for sidewalks and trees in these areas. The variation will help meet the requirements of our code of development by providing amenity-oriented lots that are served by a private road.

**Sec. 14-422 (E.) *Variation to sidewalk requirements.***

***Consideration. (iii.)*** As noted above, we believe the sidewalks along the proposed private streets are not necessary. ***(iv.)*** The variation of the sidewalk requirement will still provide adequate connections to the pedestrian system. ***(viii.)*** The variation of the sidewalk requirement will still meet the intent of the comprehensive plan and the neighborhood model by providing amenity-oriented lots, pedestrian access, and county design requirements.

**Sec. 14-422 (F.) *Variation to planting strip requirements.***

***Consideration. (ii.)*** It is our hope that upon further review of the request for a variation regarding these requirements, a sidewalk and planting strip variation will be granted.

Thank you for your consideration regarding this request. Please feel free to contact me with any questions.

Best regards,

**Nick Hutchinson**  
**Roudabush, Gale and Associates**