**COUNTY COMMISSIONERS OF CHARLES COUNTY, MARYLAND**

**2008 Legislative Session**

Legislative Day # 9

**BILL NO.** 2008-09

**Introduced by:** Charles County Commissioners

**Date Introduced:** 6/ 11 / 08

**Public Hearing: :** 7/ 9 / 08

**Commissioners Action: :** 7/ 9 / 08 Passed

**Commissioner Votes:** WC: Y, EP: Y, RC: Y, SG: Y, GH: Y

**Pass/Fail:** Pass

**Effective Date:** 7 / 19 / 08 12:01 a.m.

**Remarks:** _____

**COUNTY COMMISSIONERS OF CHARLES COUNTY, MARYLAND**

**2008 Legislative Session**

Bill No. 2008-09

Chapter No. 278

Introduced by Charles County Commissioners

Date of Introduction 6/11/08

**BILL**

AN ACT concerning**:**

Subdivision Regulations.

FOR the purpose of:

Allowing agricultural shared access easements.

BY amending:

Chapter 278 Subdivision Regulations

Article II, §12 Definition of Terms

*Code of Charles County, Maryland*

*(August 1, 1996)*

BY amending:

Chapter 278 Subdivision Regulations

Article VII, § 80 Private Rights-of-Way and Access Easements

*Code of Charles County, Maryland*

*(August 1, 1996)*

**SECTION 1.** BE IT ENACTED BY THE COUNTY COMMISSIONERS OF CHARLES COUNTY, MARYLAND, that the Laws of Charles County, Maryland read as follows:

**Section 12: Definition of Terms**

Unless otherwise specifically provided, or unless clearly required by the context, the following words and phrases defined in this section shall have the meaning indicated when used in these regulations.

***AGRICULTURAL SHARED ACCESS EASEMENTS*. ACCESS EASEMENTS, NOT CONSIDERED TO BE PUBLIC OR PRIVATE STREETS, THAT SERVE ONE OR MORE LOTS FOR THE PURPOSE OF PROVIDING RIGHT OF WAY ACCESS TO A LOT CREATED FROM A PARCEL OF LAND THAT IS A BONAFIDE AGRICULTURAL OR FORESTRY OPERATION. THE PURPOSE AND INTENT OF AN AGRICULTURAL SHARED ACCESS EASEMENT IS TO ALLOW SHARED ACCESS TO LOTS CREATED FOR THE OWNER'S IMMEDIATE FAMILY (AS DEFINED IN SECTION 80 (F) III) TO PRESERVE THE INTEGRITY OF A FARM AND FARM FAMILY.**

*Block*. An area of land containing one (1) or more lots and bounded by streets providing access to the lots.

*Cluster Development*. A development concept which encourages and permits variations in residential developments by allowing deviation in lot size, type of dwelling, lot coverage and open space from that which is normally required in the applicable zone as further described under Article X of the Charles County *Zoning Ordinance*.

*Department*. The Charles County Department of Planning & Growth Management.

*Development*. Any activity, other than normal agricultural activity, which materially affects the existing condition or use of any land or structure including mines, landfills, or land disturbances such as grading, paving, and excavation.

**Section 80: Private Rights-of-Way and Access Easements**

**(a)** The Planning Commission shall not approve any preliminary or final subdivision which proposes, creates or leaves as residual a landlocked parcel of land.

**(b)** *Private Rights-of-Way.* New lots for single family detached buildings may be provided on a private right-of-way only after receiving a modification per Section 104 of these regulations from the Planning Commission, and according to the following criteria:

**i.** All lots must be greater than three (3) acres in size, and be for single family detached dwelling units or agricultural uses;

**ii.** A private right-of-way being created with the proposed subdivision is a fee simple portion of the parcel being subdivided, and provides the sole access for the area being subdivided;

**iii.** Use of existing private rights-of-way for new lots being created are only permitted where the parcel being subdivided does not have frontage on a public road;

**iv.** There can be no more than five (5) lots for single family detached dwellings using the private right-of-way as a shared access.

**(c)** *Attached Dwelling Units*. Subject to the requirements of the Charles County *Zoning Ordinance* and *Road Ordinance*, attached dwelling units may have frontage on private drives.

**(d)** *Access Easements.* Access easements not considered to be public or private streets shall be permitted to provide sole access to a residential lot only after receiving a modification per Section 104 of these regulations from the Planning Commission.

**(e)** *Shared Access Easements.* Access easements that are not for the sole purpose of access from a public road, and are primarily provided for convenience and/or improved flow of traffic between adjoining commercial properties, may also be fully regulated by the Planning Commission.

**(F)** ***AGRICULTURAL SHARED ACCESS EASEMENTS* (DEFINED IN SECTION 12). AGRICULTURAL SHARED ACCESS EASEMENTS NOT CONSIDERED TO BE PUBLIC OR PRIVATE STREETS SHALL BE PERMITTED TO PROVIDE SOLE ACCESS TO A RESIDENTIAL LOT ONLY AFTER RECEIVING A MODIFICATION PER SECTION 104 OF THESE REGULATIONS FROM THE PLANNING COMMISSION, AND ACCORDING TO THE FOLLOWING CRITERIA:**

**i. THE PARCEL FROM WHICH NEW LOTS ARE CREATED ON AGRICULTURAL SHARED ACCESS EASEMENTS SHALL MEET THE MINIMUM REQUIREMENTS FOR INCLUSION IN AND SHALL BE SUBJECT TO COVENANTS, CONDITIONS AND RESTRICTIONS OF AN AGRICULTURAL LAND PRESERVATION DISTRICT OR EASEMENT PROGRAM, OR OTHER CONSERVATION EASEMENT THAT RESTRICTS THE USES OF THE PROPERTY TO AGRICULTURE OR FORESTRY.**

**ii. NEW LOTS CREATED ON AGRICULTURAL SHARED ACCESS EASEMENTS SHALL BE PERMITTED AT A DENSITY OF NO MORE THAN ONE LOT PER FULL FIFTY (50) ACRES AND SHALL NOT BE SUBJECT TO FURTHER SUBDIVISION. PRE-EXISTING DWELLINGS , DEFINED AS DWELLINGS IN EXISTENCE AS OF <u>JULY 19, 2008</u> DO NOT COUNT AGAINST**

**THE ONE LOT PER FULL FIFTY (50) ACRE DENSITY.**

**iii. NEW LOTS CREATED ON AGRICULTURAL SHARED ACCESS EASEMENTS SHALL BE FOR BONAFIDE INTRAFAMILY TRANSFERS TO IMMEDIATE FAMILY MEMBERS WHO ARE ENGAGED IN THE OPERATION OF THE FARM AND ONLY ON PARCELS THAT WERE RECORDED ON OR BEFORE JUNE 1, 1976. IMMEDIATE FAMILY IS DEFINED AS FATHER, MOTHER, SON, DAUGHTER, GRANDFATHER, GRANDMOTHER, GRANDSON, GRANDDAUGHTER, STEP-PARENTS, STEP-CHILDREN AND LEGAL WARDS AND GUARDIANS.**

**iv. A NOTATION SHALL BE PLACED ON THE FINAL SUBDIVISION PLAT DENOTING THE LOT(S) AND RESIDUE CREATED UNDER THESE PROVISIONS.**

**v. LOTS CREATED PURSUANT TO THESE PROVISIONS SHALL NOT BE FOR THE PURPOSES OF ULTIMATE COMMERCIAL SALE. A LOT CREATED PURSUANT TO THESE PROVISIONS MAY NOT BE SUBSEQUENTLY CONVEYED TO ANY PERSON EXCEPT WHERE THE CONVEYANCE IS TO A MEMBER OF THE OWNER'S IMMEDIATE FAMILY; OR WHERE THE CONVEYANCE OF THE LOT IS AS PART OF A DEFAULT ON A MORTGAGE OR DEED OF TRUST.**

**vi. ANY LOT CREATED UNDER THIS SUBSECTION MAY NOT BE TRANSFERRED OR SOLD TO A THIRD PARTY, WHO IS NOT A MEMBER OF THE OWNER'S IMMEDIATE FAMILY OR HOLDER OF A MORTGAGE OR DEED OF TRUST ON THE PROPERTY, UNLESS AND UNTIL THE PLANNING COMMISSION HAS DETERMINED THAT A CHANGE IN CIRCUMSTANCE HAS OCCURRED SINCE THE ORIGINAL TRANSFER, WHICH**

**WOULD WARRANT PERMITTING A SUBSEQUENT TRANSFER, WHEN SUCH CIRCUMSTANCES ARE CONSISTENT WITH THE WARRANTS AND EXCEPTIONS CONTAINED HEREIN; OR OTHER CIRCUMSTANCES NECESSARY TO MAINTAIN LAND AREAS TO SUPPORT PROTECTIVE USES OF AGRICULTURE AND FORESTRY. THE TERMINATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF AN AGRICULTURAL LAND PRESERVATION DISTRICT OR EASEMENT PROGRAM, OR OTHER CONSERVATION EASEMENT THAT RESTRICTED THE USES OF THE PROPERTY TO AGRICULTURE OR FORESTRY SHALL NOT BE CONSIDERED A CHANGE IN CIRCUMSTANCE. DEEDS OF TRANSFER SHALL INCLUDE A COVENANT STATING THAT THE LOT IS SUBJECT TO THE PROVISIONS OF THIS SUBSECTION. THESE COVENANTS SHALL RESTRICT THE SUBSEQUENT TRANSFER OR SALE OF A LOT OR LOTS CREATED BY THE INTRAFAMILY TRANSFER PROVISIONS CONTAINED HEREIN TO A THIRD PARTY WHO IS NOT A MEMBER OF THE OWNER'S IMMEDIATE FAMILY OR A HOLDER OF A MORTGAGE OR DEED OF TRUST ON THE PROPERTY, EXCEPT AS PROVIDED IN THIS SUBSECTION.**

**vii. ANY LOTS UTILIZING AN AGRICULTURAL SHARED ACCESS EASEMENT SHALL BE AT THE MINIMUM SIZE PERMITTED BY THE BASE ZONE AND LOCATED TO MINIMIZE IMPACT TO THE AGRICULTURAL OR FORESTRY OPERATION.**

**[(f)] (G)** Applicants proposing subdivisions involving new or existing private rights-of-way or access easements must demonstrate that all property owners which access the private right-of-way or access easement have a legal right to do so; in addition, the applicant must also provide a deed agreement for all property owners of existing and proposed lots providing for future maintenance of the right-of-way or easement.

**SECTION 2.** BE IT FURTHER ENACTED, that this Act shall take effect TEN (10) calendar days after it becomes law.

COUNTY COMMISSIONERS OF
CHARLES COUNTY, MARYLAND

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Wayne Cooper, President

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Edith J. Patterson, Vice President

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Reuben B. Collins, II

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Samuel N. Graves, Jr.

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Gary V. Hodge

ATTEST:

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Denise Ferguson, Clerk